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Senior Adviser
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Dear Sir/Madam

**Submission to Tax Deductible Gift Recipient Reform Opportunities Discussion Paper - 15 June 2017**

## PART A - INTRODUCTION

TEC was established in 1972 and since then has undertaken over 100 community based campaigns to protect the environment in the city and country including the introduction of lead free petrol, protection of rainforests, energy and water efficiency, public transport, safeguarding urban green spaces and new national parks across the coast, inland and forests. Undoubtedly the quality of the environment for millions of people has been improved and tens of thousands of jobs created.

Our frank view of the more contentious DGR proposals in the Discussion Paper that emanate from the parliamentary committee is that they have been developed through a political prism and distort not only the valid and constructive uses that DGR status is used for, but also insult the broad community's long standing support for groups that engage in work that leads to policy and behavioral change.

## PART B - CONSULTATION QUESTIONS

What are stakeholders' views on a requirement for a DGR (other than government entity DGR) to be a registered charity in order for it to be eligible for DGR status. What issues could arise?

TEC has no objection that a DGR organisation must be a registered charity to be eligible for DGR status.

Should the ACNC require additional information from all charities about their advocacy activities?

Charity law focuses on purposes and not activities, and the DGR framework generally has a focus on purpose rather than activity. This can only be the most sustainable approach as by favouring activity, there is an invitation to regularly reassess in response to political pressures.

We strongly oppose the activity-level focus in the Paper.

The Discussion Paper states that "there are concerns that charities are unsure of the extent of advocacy they can undertake without risking their DGR status. This is a particular concern for environmental DGRs, which must have a principal purpose of protecting the environment." I have never heard a NGO say this – and the limit on political election activity is also well understood. Any uncertainty might be propagated by media statements from recent industry and political interests but the simple solution to this is to reassert the existing and long standing understanding.

Charities undertaking advocacy has been recognised as both a legitimate activity and one essential to our system of parliamentary democracy.

No evidence has been put forward for the need for new reporting obligations for advocacy activities – they are strongly opposed on the basis that they would impose new and unjustified red tape on charities.

Requiring that a certain proportion of an environmental organisation's activities be directed towards environmental remediation represents an intrusion into the autonomy of environmental organisations and amounts to government trying to 'pick winners' in terms of what approaches charities should use to achieve their charitable purpose.

Well targeted and proportional approaches to maintain transparency and accountability for charities are supported and this can be achieved by ensuring all DGRs are registered as charities under the purview of the ACNC, as the Discussion Paper proposes.

What are stakeholders' views on the proposal to transfer the administration of the four DGR Registers to the ATO? Are there any specific issues that need consideration?

The ACNC has a proven record and the skills to regulate charities and to be a 'one stop shop' for the sector. It is an independent entity that can play the role of administering the DGR Registers without the conflicting objectives that the Tax Office has (being a revenue raising entity) and operates at arms-length from political decision-making.

What are stakeholders' views on the proposal to remove the public fund requirements for charities and allow organisations to be endorsed in multiple DGR categories? Are regulatory compliance savings likely to arise for charities who are also DGRs?

The public fund requirements are useful as an internal accountability measure.

What are stakeholders' views on the introduction of a formal rolling review program and the proposals to require DGRs to make annual certifications? Are there other approaches that could be considered?

Reviews and audits should be conducted only at the point where systemic issues have been identified. Giving a regulator powers beyond this opens up a situation similar to what arose in Canada in 2014 under former Prime Minister Stephen Harper who launched politically motivated special tax audits on environmental groups to silence critique of his government. The Harper government made a special allocation to the Canadian Revenue Agency — during otherwise deep budget cuts — of $13.4 million to fund tax audits of "political activities" by non-profit groups that provide tax receipts for donations.

The ACNC and the ATO already have the power to undertake reviews and audits where they believe they are warranted.

What are stakeholders' views on the idea of having a general sunset rule of five years for specifically listed DGRs? What about existing listings, should they be reviewed at least once every five years to ensure they continue to meet the 'exceptional circumstances' policy requirement for listing?

This requirement is not necessary if these organisations are charities registered with and annually reporting to the ACNC. If the 5 year reapplication was dealt with by politicians it may result in significant disruption. The process is often a political one and the consequence is that with the turn of the political cycle specified DGRs may be revoked.

Stakeholders' views are sought on requiring environmental organisations to commit no less than 25 per cent of their annual expenditure from their public fund to environmental remediation, and whether a higher limit, such as 50 per cent, should be considered? In particular, what are the potential benefits and the potential regulatory burden? How could the proposal be implemented to minimise the regulatory burden?

This is an overtly politically inspired proposal. The fact is that the advocacy and policy work of NGOs has and will continue to lead to far more tree planting and remediation work than could be achieved by redirecting their funding. In addition, tree planting and remediation is after the fact of environmental damage. The areas protected contain many more trees and avoiding the damage that requires remediation by advocacy and policy change, is a far better use of resources.

Any move to implement such a requirement would be a direct attack on the legitimate and lawful advocacy activities of environmental organisations and fly in the face of the High Court's decision in *Aid/Watch* discussed above. Charities must be permitted to pursue their charitable purpose in the most effective and efficient way possible (while remaining lawful). How they achieve these purposes must not be dictated or limited by the government.

The Aid/Watch case which went all the way to the High Court and was the result of the mobilisation of the charitable sector to ensure that the High Court provided clarity on the issue of advocacy and to ensure that the small incorporated association of Aid/Watch was not silenced. If the government were to make any move to reform laws to restrict advocacy as proposed, the government should expect the courts to be called upon again to scrutinise any such restriction.

Stakeholders' views are sought on the need for sanctions. Would the proposal to require DGRs to be ACNC registered charities and therefore subject to ACNC's governance standards and supervision ensure that environmental DGRs are operating lawfully?

We condemn any illegal behaviour but stress that laws already exist to deal with these matters. The recommendations proposed would create unnecessary red tape, overlap existing laws and provide implementation difficulties.

It is already the case that a registered charity with the ACNC has to meet the test in the *Charities Act* to become endorsed as a charity and then comply with the conditions of that endorsement.

The *Charities Act* provides that the following purposes would disqualify an organisation from charitable purpose:
the purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy; or
the purpose of promoting or opposing a political party or a candidate for political office.[1]

This requirement is fully understood and complied with by TEC. The HoR DGR Inquiry uncovered no evidence of unlawful conduct by environment groups. Evidence did stress that peaceful assembly or protest has long been an important part of Australian democracy and it remains so today. Peaceful protests are a symptom of a healthy democracy. International law binds Australia to respect, protect and facilitate Australians' rights to assemble peacefully and associate freely.[2] This entails a positive obligation on the government to facilitate peaceful assembly and a presumption in favour of unrestricted and unregulated peaceful protests.[3]

Yours faithfully,

Jeff Angel
Director

[1] *Charities Act 2013* (Cth), s.11.

[2] Human Rights Council, The Rights to Freedom of Peaceful Assembly and of Association, 24th sess, UN Doc A/HRC/RES/24/5 (8 October 2013) [2].

[3] OSCE Office for Democratic Institutions and Human Rights, Guidelines on Freedom of Peaceful Assembly, 2010, 2.2