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Submission regarding the Discussion Paper on potential reforms to the Deductible Gift Recipient (DGR) tax arrangements.

This submission is made from my perspective as one partner in a self-funded retiree couple who make significant donations to charities and someone who has had over 35 years' experience working on policy with non-profit organisations both with and without DGR status. While we have claimed tax deductions for our gifts to charities and DGRs in the past it is unlikely we will in the future because most of our significant superannuation pensions are not taxable. In summary I :

- Support a strong and efficient charity and deductible gift recipient sector by maintaining existing taxation concessions for charities and donors.
- Support a strong and diverse environmental sector – including charities and other not-for-profits – which is vital to ensure that Australia's environment is protected, and that governments and businesses comply with their legal obligations and the rule of law.
- Support the diverse range of activities that contribute to on-ground environmental outcomes, including advocacy, research, policy development, public education and information about the environment, environmental legal and support services, community engagement and participation, overseas capacity-building and local conservation work.
- Support a legitimate and non-political review of the administrative and governance arrangements for not-for-profits, that focuses upon streamlining and refining regulation, reducing red tape while enhancing transparency and enabling community involvement.
- Support the adequate resourcing of the ACNC to assist and regulate all charities and many DGRs.
- Reject the blatant politically motivated recommendations which target only environmental organisations, and acknowledge that the referenced REO Inquiry recommendations were not unanimous, objective or neutral.
- Reject any pejorative language such as 'generous tax concessions', that is not consistent and includes a comparison with the For-Profit and corporate sector's tax concessions.
- Reject the disenfranchisement of donors to environmental DGRs and charities, whose counterparts to other not-for-profits do not have their priorities for the expenditure of their financial contribution overridden by pre-mandated 25 – 50 per cent strings attached.
- Reject any current proposed reform not to be applied across all DGRs and charities consistently and equitably on the grounds it reflects an unacceptable and discriminatory political bias.
- Reject any attempts to single-out and penalise environment DGRs and charities working to achieve their stated public purpose of protecting the environment and advocating the precautionary principle, on the grounds it will be seen to be a politically motivated attempt to silence free public debate, alternative opinions, and community dissent.

Context

Like other sectors of the economy, Charities and DGR's operate in a competitive market providing a wide range of products and services for their supporters. For example some environmental groups concentrate on environmental repair and restoration work while others work primarily in an advocacy role and a whole spectrum of organisations work across a continuum in between. This diversity is a result of free market operations and open competition since federation where organisations compete for the support of the public in attracting both human and financial capital. Any change of policy therefore must insure that it does not interfere with these free market operations or distort competition to favour some organisations more than others.

Charities and DGRs primarily operate in areas where there is market failure by the For-profit and Corporate sector. For example many charities who provide services to people who are disadvantaged in the community e.g. the aged, people with disabilities, aboriginal and Torres Strait Islanders, Refugees, victims of abuse and people living in poverty also advocate on their behalf because they often do not have the resources or skills to advocate for themselves. In fact many organisations just consult with these groups and their service providers and concentrate on advocacy for them.

Similarly many charities and DGRs operate to care for the environment for the benefit of the whole community. They advocate on behalf of the land, sea, air, river systems, fauna and flora and other resources because these elements of the environment do not have a voice to advocate for themselves. Various sectors and industries e.g. mining, agriculture, transport, manufacturing and urban development can all have negative impacts on the various elements of the environment. They can use their profits to advocate on their behalf for the use of resources and to the detriment of the environment. When they do so they can claim these activities as legitimate tax deductible expenses e.g. staff wages, contributions to industry organisations and payments to lobbyists and consultants. Any changes to policy therefore must ensure that Charities and DGRs receive the same taxation benefits as the for-profit sector and are not discriminated against. In a free market, open and democratic society it is essential that all parties are provided with a level playing field and operate under the same rules.

Response to Specific questions in the Discussion paper

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

This proposal is strongly opposed and should be rejected as it has no purpose in an open and democratic society. In fact it goes against the very essence of democracy. The High Court found in 2010 that advocacy is critical to a healthy democracy.

Charities are already subject to substantial annual reporting requirements, various registration checks, reporting, transparency and compliance safeguards under charity and tax laws (some of which overlap). They are also directly accountable to the public and donors when raising awareness of their activities and fundraising for their charitable purpose and through their annual reporting.

The proposed changes would divert resources from organisations' purposes and into additional administration and compliance reporting, and also away from the priorities of donors. Environmental charities provide an important public benefit by facilitating informed democratic engagement to advance environmental protection.

If this proposal is implemented it should be challenged in the courts to ensure the ATO will require equivalent additional information from all public and private corporations claiming tax concessions on expenditure for their lobbying and advocacy activities.

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

This proposal is strongly opposed and should be rejected as it would tie up and divert charities' resources into time-consuming administration, which will frustrate members and donors that monies specifically donated to support the organisation's purpose are not being utilised in accordance with the donors' intent and wishes. It poses a new, enormous and unnecessary cost to tax-payers. There are current, substantial, regular reporting and complaints processes already in place. The ACNC compliance and auditing includes a process of de-registering disbanded or dormant charities that fail to comply and DGR status would also be revoked as a result.

11) What are stakeholders' views on the idea of having a general sunset rule of five years for specifically listed DGRs?

This proposal is strongly opposed and should be rejected. Automatic de-listing every five years of specifically listed DGRs when neither the purpose, nor the criteria may have changed, and without any infringement or breach occurring is ludicrous. Needing to re-apply just to maintain the status quo is a waste of resources and time for both the charities and the taxpayer, via the assessing entities. It seeks to tie up and divert charities' resources into time-consuming administration. To be fair the government would have to apply similar standards to the for-profit sector requiring them to re-register as companies or trusts every five years.

12) 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 proposal is strongly opposed and should be rejected. It is like insisting that victims of crime should continue to live with their perpetrators or pay for their punishment. I do not support audits of activities, or activity requirements beyond compliance with charity law and ACNC requirements. This proposal undermines the clear recognition in Australian charity law (both at common law and in legislation) that advocacy and other diverse forms of environmental advancement, improvement and support services are of public benefit to the natural environment, and to an informed democratic society. Environmental protection for the public benefit goes well beyond environmental remediation and the non-profit sector plays a valuable role in monitoring and advocating for the environment thus providing huge savings to government and the taxpayer.

The proposal is also discriminatory against one group of DGRs. For some environmental organisations environmental remediation is their primary purpose, but for others such an arbitrary requirement will have the perverse result of preventing them from working towards their stated public purpose.

The proposal will also be unworkable in most cases as remediation work requires the consent and collaboration of landholders and other agencies entrusted with environmental protection, resources and equipment and a skilled workforce which the DGR's may not have or be able to employ. In addition Industry is not likely to want organisations which have a strong environmental advocacy role involved in cleaning up their environmental degradation. Will Mining companies seriously want

environmental advocates poring all over their old mine sites collecting evidence while they work on remediation to use against them in their advocacy services?

The inclusion of this divisive proposal raises legitimate concerns regarding the perceived connection between this review and the mining sector's agenda, and that this review's aims are politically motivated, and seek to silence certain voices in the community rather than introduce meaningful reforms for the entire not-for-profit sector.

13) 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?

The proposed specific sanctions for environmental DGRs are strongly opposed and should be rejected. The Discussion Paper's failure to provide any justification for, or evidence to support, the singling out of environmental DGRs in this context is deeply concerning and smacks of a political agenda to target one sector of the community due to perceived political and social beliefs. It is not the role of the Treasury of the government to endorse and implement the whim of the fossil fuel and mining sectors, to the detriment of not-for-profits' rights to free speech and advocacy.

Proposed specific sanctions are clearly an attempt to limit the activity, and therefore arguably the effectiveness, of environmental DGRs. Peaceful protest is part of a healthy and robust democracy, and is undertaken when considered necessary by a range of individuals and organisations, including disability advocates over treatment of the vulnerable, groups raising awareness over indigenous access to health and education for example. Again, no justification is provided to warrant treating one group differently to others. Engaging in peaceful protest is not illegal and State Police have significant powers to deal with protests which do engage in unlawful activity.

The current role of the ACNC in overseeing charity regulations and investigating any issues and/or complaints is supported. Any perceived illegal behaviour should be referred to the authorities as per normal. The inconsistency in Treasury's approach is noted with concern: there is no mention of introducing any proposed equivalent limitations or sanctions for public and private corporations that receive the benefit of tax deductibility for expenditure etc, when caught breaching pollution, land clearing, threatened species protection, occupational health and safety, tenants' rights and other laws.

Unintended consequences

As with any proposed changes to laws or regulations careful consideration should be given to unintended and perverse consequences for government and other sectors and they should be made aware of these. For example:

- Any attempt to discriminate against environmental DGRs could result in them collaborating more with similar international organisations and even merging with them thus removing themselves from some aspects of national control e.g. ACNC registration, while harnessing the advocacy power of global communications to a global audience.
- To meet any expenditure requirements on remediation environmental DGRs could simply merge with organisations and individuals including landholders who are already doing this work.
- Similarly they may take to lobbying foreign governments with similar environmental perspectives to impose sanctions on Australia e.g. the European Union in respect of trade negotiations.

- Requiring compliance with extra rules to maintain DGR status may induce some organisations to forgo their DGR status thus freeing them up to engage in other forms of financing e.g. international crowd funding, and commercial activities in competition with the For-profit sector.

As an individual citizen with significant non-taxable pension income and a strong commitment to environmental protection, the DGR status of organisations I wish to donate to is of no concern. In fact should the government move to discriminate against such organisations with some of the proposals outlined in the discussion paper it would only serve to encourage me to significantly increase my donations.

I suspect that there are many other retired citizens in similar circumstances who currently fund environment DGR's who would take similar action and that this number is likely to grow significantly with the growth of self- funded superannuants.

Tax deductibility is only one consideration in why people donate to charities.

Yours Sincerely

Robert Whiting