

04 August 2017

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The Treasury  
Langton Crescent  
PARKES ACT 2600

Via email: [DGR@Treasury.gov.au](mailto:DGR@Treasury.gov.au)

**Re: Submission on the Tax Deductible Gift Recipient (DGR) Reform Opportunities – Discussion Paper**

Dear Sir/Madam,

Thank you for the opportunity to provide comment on *the Tax Deductible Gift Recipient (DGR) Reform Opportunities – Discussion Paper*

The Sunshine Coast Environment Council (SCEC) was established in 1980 and is the peak environmental advocacy organisation for the Sunshine Coast region.

***Our vision: “An ecologically sustainable world achieved through individual and community stewardship of the natural environment at a local, regional and global level.”***

SCEC currently represents 65 member groups predominantly working in the areas of natural resource management, conservation, environmental restoration and protection and sustainability. This membership represents a collective of almost 10,000 individuals with a further 4000 people as SCEC supporters.

**I. Executive Summary**

DGR status allows an organisation to receive gifts and contributions for which donors are able to claim a tax deduction. The DGR tax arrangements are intended to encourage philanthropy and provide support for the not-for-profit (NFP) sector. Along with other tax concessions to the NFP sector, DGR status encourages the delivery of goods and services that are of public benefit. The DGR provisions can be found in Division 30 of the *Income Tax Assessment Act 1997* (Cth) (Gifts and Contributions).

The Not-for-Profit (NFP) sector makes a significant, invaluable and enduring contribution to the liveability and sustainability of Australia. Millions of volunteers spend countless thousands of hours volunteering in a range of sectors, including the spheres of natural resource management and environment. The benefits and contributions leveraged by these passionate and dedicated people are significant and should be suitably acknowledged.

In fact, Volunteering Australia's research department recently placed the value of a volunteer's time at \$40.35/hr. This is based on the average hourly wage in Australia, as determined by the Australian Bureau of Statistics (an increase from \$24.09 in 2006)

In a regional context, the Sunshine Coast's 64,000 volunteers contributed between \$162-324 billion to the local economy in 2014, along with \$245 million in unpaid wages.

The economic value of volunteering nationally has been placed at between \$200-290 billion when accounting for factors such as lives saved, the financial worth of emotions and latest inflation rates. This would place the volunteering sector above mining, agriculture, defence and retail in terms of its economic impact<sup>1</sup>.

It is dedicated people who are an active part of this 64,000 strong volunteer 'workforce' whom SCEC represents in our role as the peak environmental advocacy organisation for the Sunshine Coast region - a predominately volunteer based group for almost 40 years.

This representation is undertaken responsibly and with the greatest deal of respect on behalf of the community and nature.

SCEC strongly recommend Treasury does not adopt any mandatory funding diversion or limit, or related proposals targeting environmental organisations, for the following five reasons:

1. Conservation work is vitally important, but the Australian community recognises that not all environmental problems can be solved reactively. That is why there is no such limitation in the existing tax rules.
2. The proposed limitation contradicts the weight of evidence to the inquiry into the Register of Environmental Organisations (REO inquiry) of 2015-16<sup>2</sup>  
That is why half the members - 1 Liberal and 5 Labor members - rejected the proposal<sup>3</sup>.
3. A mandatory 25 per cent funding diversion would have perverse outcomes for environmental protection and inefficient administration. It would force established charities, to divert money away from their recognised areas of expertise and public benefit – or arbitrarily remove their DGR status altogether.

Such a move would unfairly diminish SCEC's role as a regional environmental advocacy group to whom the community looks to for information, education and to liaise with government and business on environmental matters that concern them.

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<sup>1</sup> Source <http://www.volunteeringsunshinecoast.org.au> and [ABS website](#) – accessed 04 August 2017

<sup>2</sup> See House of Representatives Standing Committee on the Environment, Report of the Inquiry into the Register of Environmental Organisations (REO Inquiry), April 2016, at [www.aph.gov.au/reo](http://www.aph.gov.au/reo)

<sup>3</sup> See REO Inquiry: Additional comments – Mr Jason Wood MP; Labor Members' Dissenting Report (pp 85-94)



4. There is a clear recognition in Australian charity law that a wide range of advancement, improvement and support services are of public benefit to the environment, and that advocacy is 'indispensable' to an informed democracy.

5. Additional limits on environmental charities would reflect poorly on Australia's international reputation and be out of step with comparable jurisdictions. None of these outcomes aligns with the public interest, or community expectations of charity and tax laws, or the common understanding of environmental protection.

Indeed, this would have a dramatic impact on a huge range of environmental charities undertaking important advocacy, research and education activities which benefit the entire community and the world at large.

### **Public Benefit**

The current tax concessions for charities and not-for-profits, including provision for DGR status and income tax exempt status, are appropriate and should be retained.

The Register of Environmental Organisations (the Register) under the Income Tax Assessment Act 1997 (ITA Act) has recognised the 'public good' of environmental purposes for over 20 years. By allowing tax-deductible donations, the Register encourages Australians to give to charities with the principal purpose of protecting, researching, educating and informing people about the natural environment. Similarly, income tax exemptions for charities themselves reflect their 'public good' purposes<sup>4</sup> as well as their often significant reliance on government grants and/or charitable donations.

A strong and diverse environmental sector – including charities and other not-for-profits – 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.

This is in the interests of all Australians, and is particularly important at a time when Australia's environment and native species are under increasing stress.<sup>5</sup> Systemic challenges include waste and pollution prevention, climate change, adaptation and emissions reduction, biodiversity protection and water security. Queensland is experiencing a cocktail of pressures and exceeding thresholds across a range of indicators<sup>6</sup>. In many such areas, advocacy, behavioural change and improved regulation is more appropriate and effective than 'remediation'. Indeed, irreparable environmental harm needs to be avoided as mitigation and remediation are no substitute for the compounding losses.

The clear message is that environmental protection for the public benefit goes well beyond environmental remediation, and requires collaboration and expertise in a range of fields, including the NGO sector. For this reason, the Guidelines on the Register of Environmental

<sup>4</sup> See for example, The Hon Ian Sheppard AO QC, Robert Fitzgerald AM, and David Gonski, Report of the Inquiry into the Definition of Charities and Related Organisations (2001), chapter 22, pp 186-187

<sup>5</sup> See State of the Environment 2016; and State of the Environment 2011 reports to the Australian Government

<sup>6</sup> <https://www.ehp.qld.gov.au/state-of-the-environment/>



Organisations (2003 p 9) recognise that protecting the natural environment includes, among other things, promoting the principles of ESD.

It is important to note that the amount of donations received by environmental charities from the public is small, but vital. Environmental DGRs reported a total of \$147 million in tax-deductible donations in 2014-15. This would equate to about 6% of the federal Environment Portfolio budget<sup>7</sup> Tax revenue forgone would be less than this, yet the environmental outcomes and other public benefits are recognised as significant<sup>8</sup>.

Deductible gift recipients often have limited paid staff (if any) and rely on hardworking volunteers to further their charitable aims for the greater good– such is the case at SCEC. Yet charities and NGOs can be more responsive and connected than centralised government agencies, and their networks are often more in touch with ‘on the ground’ issues. For example, local community groups rely on peak environmental charities for a two-way flow of information and/or advocacy and provide an important ‘port of call’ for the public on a raft on issues and topics. Environmental charities therefore provide an important public benefit by facilitating informed democratic engagement to advance environmental protection, understanding and stewardship.

In presenting differing, informed perspectives to government and industry, environmental charities can assist, improve and complement government and business activity (without always necessarily being in full agreement). For example, we facilitate dialogue with community members and government bureaucrats, members of parliament and elected officials, and provide a voice for the environment in public policy debates, where that voice may otherwise not be heard.

Recent trends in public policy-making and reductions in departmental resourcing have also increased the importance of environmental and other charities. All of these factors increase the need for environmental charities to engage in service delivery, advocacy, policy development, education and public dialogue for environmental stewardship. Tax-deductible donations are an important and often only source to enable charities and NFP’s to do this. Overall, the evidence suggests that the range of public benefits that environmental charities provide strongly justifies their tax-concessional status.<sup>9</sup>

### **Responses to Questions in Treasury’s DGR Reform Discussion Paper**

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<sup>7</sup> 15 Department of Environment and Energy, Annual Report 2015-16, p 302; Portfolio Budget Statements 2014-15 No. 17, Environment Portfolio (2014), p 7. We understand that charities on the Register of Environmental Organisations make up about 1 in 1000 not-for-profit organisations in Australia, and about 1% of charities. See Treasury Re:think Tax Discussion Paper (2015), p 121: ‘There are around 600,000 NFPs in Australia’ and ‘around 60,000... registered charities’. There were around 600 registered environmental organisations in 2015

<sup>8</sup> 16 See the Hon Ian Sheppard AO QC, Robert Fitzgerald AM, and David Gonski, Report of the Inquiry into the Definition of Charities and Related Organisations (2001), pp 15-16 and Chapter 22. See also the Productivity Commission Access to Justice Arrangements (2014), pp 708-709

<sup>9</sup> 8 For more information see EDOs of Australia, Submission to the House of Representatives Inquiry into the Register of Environmental Organisations (May 2015), pp 7-9. Available at: [www.aph.gov.au/Parliamentary\\_Business/Committees/House/Environment/REO](http://www.aph.gov.au/Parliamentary_Business/Committees/House/Environment/REO) or by request after publication

SCEC acknowledges that The Treasury Discussion Paper sets out 13 questions for feedback on seven issues being;

- Transparency in DGR dealing and adherence to governance standards
- Ensuring DGRs understand their obligations, for example in relation to advocacy
- Complexity for approvals under the four DGR registers
- Complexity and red tape created by the public fund requirements
  
- DGRs endorsed in perpetuity, without regular and systemic review
- Specific listing of DGRs by Government
- Parliamentary Inquiry into the Register of Environmental Organisations (REO)

However, please note that we will focus on questions 12 under and 13 specifically in the following comment;

### **Parliamentary Inquiry into the Register of Environmental Organisations**

*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? [Discussion Paper, p 18]*

The Sunshine Coast Environment Council strongly rejects the proposal that all environmental DGRs be required to divert a proportion of their expertise and funding to a narrow concept of 'environmental remediation' – as recommended by some members of the REO Inquiry<sup>10</sup>

It is unjustified on the evidence and an inefficient use of resources, for the government of the day to single out environmental DGRs and define and direct what they do. It also sets an adverse precedent for other charitable and DGR sectors. We acknowledge that this proposal does not originate with Treasury, but was initiated by a small number of private interest groups<sup>11</sup>.

That their particular interests do not align with the broader public interest and benefits provided by environmental charities and DGRs should not be the impetus, let alone the basis, for this present DGR 'reform.'

Further, SCEC does not support unreasonable audits of activities or activity requirements beyond compliance with charity law, ACNC requirements, the Office of Fair Trading (in the case

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<sup>10</sup> See House of Representatives Standing Committee on the Environment, Report of the Inquiry into the Register of Environmental Organisations (REO Inquiry), April 2016, at [www.aph.gov.au/reo](http://www.aph.gov.au/reo)

<sup>11</sup> REO Inquiry Report (2016), para 4.70-4.72. Namely the Queensland Resources Council; and the Energy Resources Information Centre, which 'promotes the natural gas industry' and is 'funded by the natural gas industry' (see <http://www.energyresourceinformationcentre.org.au/about-us/>). The Inquiry Report notes that the Minerals Council of Australia and the Australian Taxpayer's Alliance proposed similar restrictions



of Queensland) and other relevant bodies to whom we report. These are obligations with which we naturally comply and understand the importance of.

This proposal also 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. This also risks inconsistency with current requirements for protection of the environment contained in the Income Tax Assessment Act, which recognises that not all environment protection work can be undertaken retrospectively.

Environmental protection for the public benefit goes well beyond environmental remediation, and requires collaboration and expertise in a range of fields, including the NGO sector.

For some environmental organisations, environmental remediation is their primary purpose, but for others such an arbitrary requirement would inhibit work towards the prevention of environmental harm and could result in stop them from working towards their stated public purpose.

### **Legitimacy of Advocacy**

Australian charity law has long recognised that advocacy by charities is critical to a robust and healthy democracy, and that protecting the environment is a public good

The Discussion Paper raises concerns that some DGRs may be involved in advocacy activities without the knowledge of their donors. It is quite ludicrous to infer that donors may not be aware they are supporting advocacy undertaken by the charities to which they choose to donate. Any advocacy organisation or group clearly explains and describes themselves as undertaking an advocacy role and on what basis that occurs – environmental advocacy in SCEC's case.

The underlying assumptions of the Discussion Paper's recommendations appear to be that donors are giving no thought to whom they are giving their money and how it will be expended. This is clearly not the case.

We also refer to The Australia Institute Poll of 25 September 2015 [Australian public support environmental advocacy](#)

### **Response to question 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? [Discussion Paper, p 19]*

Transparency and legal safeguards have increased since the ACNC was established in 2012. Charities and DGR organisations are already subject to various registration checks, reporting, transparency and compliance safeguards under charity and tax laws (some of which overlap).



Charities also communicate directly with the public to raise awareness of their activities and to raise funds directed to their charitable purpose.

The ACNC continues to provide important assistance to the sector, including useful guidance on charities and advocacy.<sup>12</sup> The Charities Act makes clear that advocacy directed towards a charitable purpose is lawful and acceptable (s. 12). This can include advocacy that is ‘political’ – in that it may well intersect with issues of concern to the electorate, the policies of a political party, or laws passed by a parliament.<sup>13</sup> The Charities Act also makes clear that advocating for policy and law reform is in itself a legitimate charitable purpose (for example, reform to better address homelessness or environmental protection). This reinforces the High Court’s view in the Aid/Watch case (2010) that advocacy is of public benefit, and is ‘indispensable’ to an informed democracy and public debate.<sup>14</sup> The Productivity Commission has also found that systemic advocacy provides a public benefit and improves community access to justice.

For these reasons – coupled with existing legal safeguards, ACNC guidance and established reporting requirements – SCEC considers it is unnecessary nor particularly advantageous to require DGRs or charities to provide specific additional information on their advocacy activities.

SCEC supports the ACNC’s role as an independent regulator to ensure consistent and efficient governance across the charity and not-for-profit sectors. An independent regulator reflects best practice.<sup>15</sup> We also feel it is important for the ACNC to have the ability to support and assist charities to apply for DGR status, either by administering this directly, or by liaising with the ATO

## Conclusion

In summary, SCEC recommends that the Australian Government and Treasury:

- Support a strong and efficient charity and DGR sector by maintaining existing taxation concessions for charities and donors;
- Reject the proposal that all environmental organisations must divert at least 25-50% of tax-deductible donations to ‘environmental remediation works’, and related limitations targeting environmental organisations;
- Continue to recognise the wide range of activities that contribute to local and systemic environmental outcomes in Australia and internationally – including environmental law and support services, advocacy, research, information, education, community engagement and local conservation work;
- Support the ACNC to assist and regulate all charities (and many DGRs); and

<sup>12</sup> 24 Australian Charities and Not for Profits Commission (ACNC):

[http://www.acnc.gov.au/ACNC/Register\\_my\\_charity/Who\\_can\\_register/What\\_char\\_purp/ACNC/Reg/Advocacy.aspx](http://www.acnc.gov.au/ACNC/Register_my_charity/Who_can_register/What_char_purp/ACNC/Reg/Advocacy.aspx)

<sup>13</sup> See Charities Act ss. 11 and 12 – the important distinction is that a charity does not exist for the purpose of supporting or opposing a political party or candidate, or an unlawful purpose.

<sup>14</sup> French CJ, Gummow, Hayne, Crennan and Bell JJ Aid/Watch Inc v Commissioner of Taxation [2010] HCA 42 at 44.

<sup>15</sup> 9 See for example <https://www.gov.uk/government/organisations/charity-commission> ; <http://www.oscr.org.uk/>

- Take opportunities for minor, well-planned changes to increase administrative efficiency and maintain the high level of public trust in DGRs and charities

In closing we remind that following a 2016 visit to Australia, the UN Special Rapporteur on Human Rights Defenders stressed the importance of advocacy and concerns about a range of efforts to reduce funding to environmental organisations in Australia. He noted<sup>16</sup>

*“The opposition to environmental defenders [has] taken the form of funding cuts, threats to the deductible gift recipient status of environmental organisations and efforts to vilify advocacy by environmental organisations. ... I encourage the Government to reject the flawed recommendations of the Committee, proposing new requirements to spend a quarter of donor funds on environmental remediation and introducing unnecessary restrictions on the type of work environmental organizations should conduct.”*

Yours sincerely

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<sup>16</sup> Michel Forst, United Nations Special Rapporteur on the situation of human rights defenders, ‘End of mission statement – Visit to Australia’, 18 October 2016, available at <http://un.org.au/files/2016/10/2016-10->