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350.org Submission to Treasury Tax Deductible Gift Recipient Reform Opportunities Discussion Paper 15 June 2017

The following submission by 350.org Australia is in response to the consultation questions raised by the discussion paper Tax Deductible Gift Recipient Reform Opportunities released on 15 June 2017.

Although not currently holding the status of Deductible Gift Recipient (DGR), 350.org Australia makes this submission as a key member of the conservation and environmental sector in Australia. 350.org feels compelled to respond to the discussion as it is deeply concerned by recommendations that are a threat to the sector as a whole and the important work we do.

Environmental organisations in Australia have made this country a better place. Great advocacy over many decades has ensured that places we cherish such as the Great Barrier Reef World Heritage Area, the Blue Mountains, Tasmanian forests, Kakadu and Macquarie Island remain protected. Advocacy has ensured that our petrol is lead free, sewage is no longer washing up on our beaches and important heritage areas are safe from development.

Environmental advocacy has helped make our country better for all of us and we believe it should continue to do so.

350.org is concerned that a number of the questions asked in this Treasury Discussion Paper are based on minority recommendations (Recommendations 5 and 6) of the House of Representatives Standing Committee on the Environment Inquiry in the Register of Environmental Organisations (the REO).

We are also concerned that this Inquiry was called without a single complaint to the regulator and believe it is a political attack on environmental advocacy. It is the ideological attack on environmental organisations that we object to.

Charities and not-for-profit organisations play an active and essential role in public policy. This is well-recognised across all of the developed countries of the world. Canada's federal tax administrator the Canada Revenue Agency in a recent report titled "*Report of the Consultation Panel on the Political Activities of Charities*" made the following observation:

"Charities have long played a critical role in our society. Along with providing much-needed programs and services, they serve all Canadians by pressing for positive social and environmental change. Charities bring commitment and expertise to the formulation of public policy, develop innovative solutions to issues and engage a diverse group of stakeholders, many directly affected by the matters under discussion. This is particularly valuable in an era of complex social and environmental challenges and constrained government budgets, where all informed perspectives and ideas are vital.

"To enable and maximize the contributions of charities, we need a regulatory environment that respects and encourages their participation in public policy dialogue and development."

(Canada Revenue Agency; Report of the Consultation Panel on the Political Activities of Charities, 31/3/17, cited from: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/pltcl-ctvts/pnlrprt-eng.html>.)

The observations made in Canada are as true for environmental organisations as they are to other charitable sectors such as aid, public health, human rights, child protection, human trafficking, etc.

Environmental NGOs play an immensely important role within civil society. As the sector has matured, larger conservation groups have developed that are well-organised and that work on a broad-range of issues rather than just being a single issue group with a local focus.

Among these organisations there are those that provide programs and services in conservation, remediation, agricultural innovation, environmental policy, energy, development and much more. However, at a deeper level, the sector also works to influence the way people perceive nature and the relationships and interactions they have with nature. This often centres on the issue of using the land for its resources and for conservation and sustainability. At the heart of much of the work of this sector is the debate on society's perception of the environment and our relationship with it.

The environmental NGO sector in Australia brings together committed experts with an impressively diverse range of skills: They create public policy, formulate solutions to problems large and small, engage with a broad range of stakeholders and partner with all aspects of society to address the issues they work on. In an era that questions the central role of government in drafting policy both for its lack of diversity as well as its growing priority on economic growth, a vibrant, well-supported, diversity of opinion and

organisations that champion our environment and protecting it for the future should be seen as an important asset to all levels of government.

Environmental organisations advocate for better public policy based on this work.

In spite of this there appears to be a clear political motive that lies behind this particular Inquiry process. While on the surface it includes the management of the tax deductible or DGR scheme, on closer inspection there appears to be a particular focus on the environmental sector.

As this is the area of most concern to 350.org in Australia, this submission will confine itself to discussion of those points that are relevant to environmental organisations.

Setting the background to this submission, it should be acknowledged that scrutiny of the environmental sector has been considerably applied -- some would say excessively applied -- over recent years. An inquiry by the House of Representatives Standing Committee on the Environment into the Register of Environmental Organisations (REO inquiry) was widely criticised as being political in nature. At the time, the Australian Charities and Not-for-profits Commission (ACNC) stated that it believed that it had the appropriate enforcement powers to regulate charities.

It is 350.org Australia's view is that this particular inquiry, with its focus on environmental NGOs, can only really be viewed as an attempt to revisit past issues from certain parties that are politically motivated. In particular we would call out the interests of the fossil fuel and mining lobby, the Minerals Council in particular, as the likely driving force behind this unnecessary review.

Response to specific consultation paper questions

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

There are already considerable reporting requirements placed on charities and not-for-profits to be registered. 350.org Australia believes that regulation is necessary and is even a positive burden if it bolsters trust within the community. However, these requirements should be formulated so that they are as efficient as possible; do not double-up nor put unnecessary reporting burdens on what are often small, under-resourced organisations that do not have significant administrative, legal and accounting support.

350.org Australia believes that the reporting requirements currently available to the ACNC are already at a level that allows them to adequately police any infringements of charitable status rules.

If issues arise from the community around an organisation's advocacy activities, there is a complaint process already available for them to take.

With a complaint structure already in place, and guidelines developed by the ACNC, it is the view of 350.org Australia that any additional reporting requirements of advocacy activities

in particular is simply an increase on the valuable time and limited resources that charities have to put into reporting and compliance.

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

Again with resourcing restrictions for the bulk of not-for-profit organisations, the recommendation to force them to have to go through the process of re-applying after a certain period should be rejected. The time and effort necessary to process re-applications would be onerous to both the organisation and the government. It would come at a tremendous cost to the taxpayer. In addition, it is worth noting that under the ACNC's investigative powers since its establishment, only a handful of organisations have had their charitable status revoked due to violations of their operations as charities demonstrating that a full review of all charities every five years is a heavy-handed and highly bureaucratic response when there is currently no evidence that it is needed.

350.org Australia questions why the government sees this aspect of DGR registration as an issue in the first place. Surely if there is regular reporting and a complaints process that can identify charities that need to be reviewed, there is no need to enforce a regular re-application process that would be a heavy burden to the sector as a whole and those who regulate it.

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?

350.org Australia rejects outright any attempt to force ENGOs to direct a certain proportion, at whatever level, of its work to fund environmental remediation and cannot see any clear positive net benefits from doing so.

Under Australian law, a charity is defined by its Purpose. The role of government is to ensure that these charities are properly administered as to the designated Purpose of each. It is the role of the charity's Board, made up of Australian citizens who usually volunteer their time for organisations whose work they deeply care about, to determine the best way in which that organisation can achieve its Purpose. This is a fundamental tenet of the relationship between charities and government.

The fact that this government wants to change that relationship represents a radical departure from Australia's historical practise and intended purpose of supporting charities to be effective in the important civil society work that they do.

The fact that the government is focused only on environmental advocacy through this Inquiry is ideological in nature and, we believe, has been initiated by vested interests in the

resources sector that are threatened by action on climate change. We believe any effort to halt advocacy for climate change action will be detrimental to Australia and Australians as a whole. As the world moves rapidly to reduce greenhouse gas emissions and move clean energy, failure to respond to this environmental threat and adapt to a low carbon economy is a risk to all.

This ideological attack on environmental advocacy is the start of an attack on civil society and its important role in this country and is, we believe, an attempt to shut down those speaking out against inaction and the failure to lead on the issue of our time.

Environmental advocacy has made Australia a better place over many decades. The jobs associated with environmental tourism, the quality of life, the improvement in our health and well-being are just some examples of these improvements that have been hard won through advocacy. All of these achievements, existing and future, are under threat from any attempt by government to dictate how organisations decide to achieve their Purpose.

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?

350.org Australia does not support the introduction of specific sanctions for ENGOs. Such a move would see the government following the lead of the fossil fuel and mining sectors in punishing organisations who advocate for the reduction of fossil fuels in the face climate change and our own obligations under the COP Treaty; a worrying position if put into practice.

350.org Australia is a strong advocate for the responsible management of a transition from fossil fuels to a renewable energy. It does so with the valid weight of a climate change science consensus behind it. We believe that non-violent protest is a valid way to communicate the growing call for action to entrenched institutional power that typically follows the status quo and is slow to change.

Non-violent protest is a cornerstone of sustaining a healthy democracy and there should be no implication that being engaged in peaceful protests implies that an NGO is involved in 'illegal' activity.

The history of protest in Australia has been strong and has resulted in some decisions of global importance. Famously the World Heritage listed Franklin River site was heroically saved by thousands of people willing to put their safety and freedom on the line in the early 1980s. In 1998 protesters from Australia and around the world came to the call of the Mirarr people of Northern Territory to block work on the Jabiluka uranium mine site surrounded by another World Heritage listed area, now Kakadu National Park. The results of their actions saw the rehabilitation of country, protection of unique environments and the rights of native owners restored.

There are many such examples of the need to protest and rebalance the excessive power of the status quo and to bring environmental and cultural justice within Australia. By penalising the right to protest through a system of sanctions, the government would significantly suppress an important avenue for checking power against public opinion in our country.

Furthermore, as referred to in 'recommendation 6' of the REO inquiry, the issue raised in this question would unnecessarily penalise NGOs where their staff, volunteers, members or even people 'without formal connections to the organisation' were involved in 'illegal' activity. This is both unable to be policed and deeply draconian. It also begs the question, how would it even be monitored and by whom.

The fact is that Australia has laws, police and courts that currently deal with protest activity. And let's remember that the House of Representatives Inquiry into the REO was initiated because there have been no complaints to the regulator. Not one. The reality is that there is no national emergency with regards to environmental protest and there is absolutely no evidence of the need for this recommendation.

The suggestion of sanctions is far more than an attempt to restrict environmental NGOs but rather is clearly aimed at trying to limit the public's right to protest in the face of unjust laws or activities, a worrying threat to free speech and democracy.

Conclusion

350.org Australia views that the issues raised above from the discussion paper Tax Deductible Gift Recipient Reform Opportunities are, at heart, motivated by political intentions. It therefore is of the view that these should not be implemented.

Environmental advocacy has made this nation a better place and will continue to do so.

350.org Australia urges that thought be given to the value of NGOs, large and small, to civil society, not just at an implementation level, but also in driving deeper societal debate and policy development for issues of critical public interest. The government should recognise this as a positive force for the country, not a threat to its authority.

350.org recognises that a legitimate and non-political review of the governance arrangements for not-for-profits could be beneficial, and welcomed by both by the community and the sector itself. In order for this to take place, unnecessary duplication must be removed, as should inconsistencies in how different charities are managed and there must be a reduction in reporting burdens that still provide the necessary transparency and rigour.

The government must, however, recognise the value of the millions of dedicated Australians who fund, volunteer with and work for environmental and other charities across the country. The power of charities is the harnessing of these dedicated citizens. Government attacks on the efforts of these people to build a better future is unwarranted, unnecessary and an attack on our democracy.

It should also be recognised that NGOs are typically made up of staff, volunteers and other participants who, while having impressive dedication, knowledge and skills in their fields, are usually not resourced to be able to conform to an unnecessary and onerous reporting structure. The process should be as streamlined and effective as possible so that the asset of civil society is able to flourish.

Thank you,

A handwritten signature in black ink, appearing to read 'Blair Palese', with a long horizontal flourish extending to the right.

Blair Palese

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