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**TAX DEDUCTIBLE GIFT RECIPIENT STATUS REFORM
OPPORTUNITIES**

COMMENTARY ON PROPOSALS

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We welcome the opportunity to respond to the discussion paper “Tax Deductible Gift Recipient Reform Opportunities”.

Birds Queensland (The Queensland Ornithological Society Inc.) is a registered charity with DGR status. It has a membership of approximately 760 individuals. Members volunteer to undertake roles to support the functioning of the organisation including its management. It has no paid staff.

Birds Queensland receives donations and contributions to carry out its conservation work to support bird life by various means within Queensland. It lodges returns to account for these activities through its audited financial statement and the provision of its constitution. Annual Reports are also publically available. It provides annual returns to the Queensland State Department of Fair Trading as an incorporated NGO and to the ACNC as a registered Charity.

We support compliance with environmental DGRs principle purposes under the Income Assessment Act (1997) (Cth), namely:

- The protection and enhancement of the natural environment or of a significant aspect of the natural environment; or
- The provision of information and education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.

A long-standing policy objective of DGR provision is to encourage philanthropy within Australia. Where changes to conditions for DGR are being considered, we urge that this fundamental policy objective be maintained. We encourage assessment of any proposed changes to the administration of DGR to determine whether these could impede philanthropic activity, particularly towards organisations supporting the natural environment. We are particularly concerned that where the administrative burden of compliance conditions outweighs the capacity of small organisations like Birds Queensland to comply, and where the cost of doing so outweighs the benefits of holding DGR status, small charity organisations like ourselves will withdraw their DGR status. This would limit the scope of opportunity for the Australian public to support philanthropy.

Brief Response to Summary of Proposed Reforms

1. *All DGRs could be required to be charities registered and regulated by the ACNC.*
Birds Queensland supports this proposed requirement but cautions against any processes that arise from this reform that lead to greater administrative or regulatory burden on charities.
2. *The ACNC's guidance for registered charities help organisations to understand their obligations, particularly for certain types of advocacy.*

We find the current information from the ACNC, particularly in regard to advocacy, to be useful and informative in several respects. We note that the current advocacy advice factsheet is not a statement of law or legal option as such and it may be useful to include a statement to this effect. The use of 'Disqualifying Purposes' provides a useful but in some respects ambiguous guide to activities that a Charity may undertake and also should avoid in its advocacy work.

The area of potential ambiguity rests in the understanding of the meaning of public policy. The ACNC's factsheet describes public policy in terms of 'the rule of law, the constitutional system of government, the safety of the general public and national security.' Such terms can be open to interpretation especially in relation to the safety of the general public.

There can also be considerable debate on the differences between public policy as defined in these broad terms and government policies on specific issues such as the environment. It is within these grey areas that charities concerned with environmental issues have the greatest difficulty in determining activities that may place at risk their charitable status. We note the less than reassuring current advice - 'undertaking activities that are contrary to government policy will not necessarily be contrary to public policy or show a disqualifying purpose.'

In this regard we note that at times State and Commonwealth Government can hold contrary policy on the same issue and that sometimes different government departments can administer law and regulation that can also act against each other's intentions. Take for example the legislated protection of threatened species and the proposal to develop a mine in an area of threatened species habitat.

3. *The ACNC could revoke an organisation's registration status, and consequently the ATO would revoke the organisations DGR status, if one of the grounds for revocation under the ACNC Act were to exist.*

We are concerned about lack of detail on appropriate and transparent processes in any decision to revoke charitable and so DGR status. We would seek clarification of the investigative processes and authority to gather evidence for such a decision, who and how the decision is made and the right to representation and administrative appeal, including impacts on subsequent applications for Charitable and DGR status both for the organisation and the members of its board of management.

4. *The Administration of DGR registers be transferred to the ATO.*

The value of this change in administration is beyond the scope and expertise of Birds Queensland. However we would raise the issue of how the ATO would ensure any expert advice, for example in regard to DGR status for environmental organisations, will be retained for the purposes of determining DGR status.

5. *The public fund requirement for DGR that are charities could be removed and DGR entities could apply to be endorsed across multiple categories.*

Birds Queensland can see some advantages of achieving DGR status across multiple categories given that its work involves a wide range of approaches to the conservation of birds.

6. *Regular reviews by the ACNC and or ATO to ensure an organisations DGR status was up to date and provide confidence to donors wishing to claim tax deductions for donations. In addition DGRs would be required to certify annually that they meet DGR eligibility requirements.*

Birds Queensland supports processes that give confidence to the public, donors and potential donors that donated funds are being spent on activities in line with the Society' purposes. It does not support administrative processes that are overly burdensome and do not have in place mechanism that communicate to the public a quality assured Charity and DGR status.

The proposed requirement that 25% of annual expenditure from the public fund be allocated to environmental remediation.

We recognize and support remediation as an important approach to the conservation of some natural environments. However, we reject the prescriptive nature of a requirement that 25% of annual public fund expenditure be allocated to remediation. We strongly suggest this will distort efforts to appropriately allocate funding to the most effective means of supporting natural environments. We also suggest that the administrative issues arising from such a requirement may lead to overly burdensome compliance and in some cases unintentional and unwanted outcomes.

The Prescriptive Nature of the Proposal

We are unable to find a clear and complying justification for such a proposal within either the House of Representatives Standing Committee of the Environment Inquiry Report of The Register of Environmental Organisations (2016) or the Tax Deductable Recipient Reform Opportunities Discussion Paper (2017).

The proposal appears less concerned with the purpose of expenditure of donated funds and more concerned to direct these funds to specific activities. That is, the proposal seeks to exclude a quarter of all funds raised through donation from activities aligned with several principle purposes prescribed for environmental DGR status – research, information and education for example. While a good case

can be made for the expenditure of donated funds to purposes for which an organisation gains its Charitable and DGR status, to prescribe now these purposes should be achieved makes the erroneous assumption that these activities are an effective and indeed appropriate way of achieving these purposes. There are many instances where this will not be the case. The requirement to allocate 25% of donated fund expenditure in any one year to specific remediation activities can drive organisations towards activities to achieve financial expenditure targets rather than basing their activities on, for example, an evidential best practice approach to sustaining natural environments.

The Problem of Definition.

A key issue is how remediation is defined and the scope of activities considered to fall within this definition for the purpose of administering such a requirement. In general terms remediation usually refers to actions that seek to rectify damage that has occurred in the past to a natural environment. Common remediation activity examples are tree planting and the reclamation of contaminated soils.

While remediation is a significant and important activity it precludes on the ground activities that support the sustainability of environments that are thus far in unspoiled condition and also activities that take place in areas where natural environments have been extinguished.

An example of the former case is the securing of the natural habitat for the threatened Night Parrot on land that is thus far undisturbed. Donations have supported research into this bird's habitat requirements so further donated funds can be secured to purchase these lands to support long-term survival.

An example of the latter is a case where roosting grounds of the critically endangered Eastern Curlew are extinguished to develop a port complex. In this case an artificial roost is constructed as an offset. This construction does not involve remediation but rather the constructing of new habitat within an industrial complex.

While both these examples describe practical on the ground activities either would fit within a common definition of remediation. It is of interest to note that in both these cases State and Federal governments have sought the support of NGOs like Birds Queensland to secure a future for these threatened species which, in some instances, has involved the raising of funds from the public and business organisations to support these activities.

A further example demonstrates how environments may be maintained for bird survival but without remediation, as it is commonly defined. Moreton Bay, off the coast of Brisbane, is a designed RAMSAR site and recognised as such by the Commonwealth Government, a signatory to this international convention. It is an important habitat for migratory shorebirds some of which are identified as threatened species under the Environmental Protection and Biodiversity Act

(1999) (Cth) and associated Recovery Plans. The growth in human population and urbanisation puts pressure on the Bay, which is now increasingly used for recreation while also supporting local plant, bird, mammal and fish life. Public policy at State and Local government level recognizes that sharing these areas involves both the development of regulatory guidelines and public education to achieve appropriate use of the environment, rather than a strategy built on remediation. Our participation in this endeavour can involve a major funding commitment, supported through donations and enacted in partnership with Local and State Government authorities. It would seem inappropriate to curtail such activities and to shift donated funds from such important activities to meet specific remediation targets.

The Voluntary Nature of Remediation Work

In our case, volunteers conduct most of the on-the-ground remediation projects where these occur. The cost burden for an organisation like Birds Queensland is often in the support services it is required to provide to ensure this on-the-ground remediation work can legally and safely be carried out. The cost of public liability insurance and health and safety training are examples of these required and necessary 'background' costs. It is unclear whether these administrative costs, often supported through donations, would be included within the scope of any requirement of how donated funds are to be expended on remediation.

Given that these supportive 'background costs' are usually defrayed across several projects to reduce the cost burden (for example public liability insurance will cover all members engaged in all authorised activities) it will be administratively difficult to determine the pro rata amount allocated to specific remediation projects.

It is usually the availability of volunteers that makes a remediation project viable. In this case individual volunteers carry the labour and ancillary costs. This can permit donations to be allocated to areas where activities can't easily be undertaken by volunteers - for example, ecological research. We would wish to avoid a situation where to meet regulated allocation requirements, we were seeking ways to financially support volunteers on remediation projects (through for example subsidising travel) and so removing funds from other areas to achieve public fund expenditure allocation targets.

Regulatory Burden.

Birds Queensland supports appropriate administrative requirements to ensure governance, accountability and transparency in its operations, including measures that ensure proper conduct in relation to achieving compliance with environmental DGRs principle purposes under the Income Assessment Act, 1997

(Cth). It does not support regulatory requirements that are burdensome and do not efficiently achieve transparent and accountable operations.

We note that neither the Discussion Paper nor the House of Representative Standing Committee of the Environment Report consider the differential impact of regulation on charities of different sizes (apart from giving more time to achieve compliance and the provision of further advice from the ACNC). A small charity like Birds Queensland, with all compliance tasks achieved by volunteers, is quite a different operation to a large charity with paid professional staff.

At present annual returns involve the external auditing of finances which includes the auditing of donations and, as part of its requirements as a incorporated body, an annual return which can describe activities undertaken in an annual report as well as its governance arrangements. A clear justification would need to be specifically generated why these process are not currently sufficient (even if not shared by different levels of government). It may be that minor adjustments and greater collaboration across governments could reduce regulatory burden without imposing a further regulatory impost.

Administrative complexity.

Donations to public funds vary annually and do so for several reasons. Some are the direct result of our fund raising campaigns such as funding designed to target the survival of a particular species and its habitat. Other reasons involve donations offered voluntarily for particular purposes that are not prescribed by the organisation, such as support for early career ornithological researchers. Occasionally, bequests are made to support funding over several years. Sometimes these bequests can distort the annual funding pool but are not available for projects within a current year.

Sometimes funds are donated to support member services that indirectly support the capacity to undertake on-the-ground activities, for example the maintenance of a library, expenditure on journals, the maintenance of a collection of identification photographs and support to maintain communications. It is unclear how these vital support functions are to be accounted for within a remediation allocation since these are not direct remediation items yet without them remediation activities would not effectively take place.

Many projects take place in partnership with other organisations such as State and Local Government agencies and other organisations. Resource sharing, including some costs, are usually identified to enhance the success of the project. In such circumstances, the monetary cost of the project may fall to organisations outside Birds Queensland but the in-kind effort in terms of volunteer time and expertise may be extensive. In other words, while the effort may be greater than 25% of the overall cost (when the volunteer effort is costed against equivalent

salaried positions) the actual monetary cost may be much less than 25% of the pool of available donated funds.

A further difficulty is that it is not known what the actual amount of donations is until the end of the financial year yet necessarily some projects are supported from the public fund throughout the financial year. It will be difficult to achieve a target of 25% or more on remediation when the total size of the public fund is not known until the end of the financial year.

We envisage considerable difficulty in producing a regulatory framework for administering such a proposal that would be fair, account for a wide range of activities that support the environment and does not distort effort and the expectations of donors.