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Tax Deductible Gift Recipient Reform Opportunities Discussion Paper

My name is Franklin Bruinstroop, of [redacted], a voter and a member of the Fisher electorate. I wish to make a submission regarding the consultation paper which proposes potential reforms to Deductible Gift Recipient (DGR) tax arrangements.

I am a pensioner, and make small contributions to a number of Environmental Non-government Organisations (ENGOs), including Lock the Gate, Beyond Zero Emissions and Friends of the Earth. I do this because I see their role as highlighting aspects of environmental health to government and the broader public that fall below the radar of government and their workers, and value that role. To me, it is supportive role towards long-lasting environmental and economic health of this country and the world of which we are interdependent part.

As the review process clearly identifies Environmental Non-government Organisations (ENGOs) for particular scrutiny, while ostensibly relating to management arrangements for all Not for Profit Organisations, I am concerned that the process incorporates bias, and that that bias appears to be politically motivated.

ENGOs have already been subject to considerable scrutiny in recent years. The House of Representatives Standing Committee on the Environment's inquiry on the Register of Environmental Organisations (REO inquiry) was widely criticised as being political in nature. During the REO inquiry process, it was made clear that the Australian Charities and Not for Profits Commission (ACNC) believes that it has the appropriate enforcement powers to regulate charities.

I find it extremely disappointing that Treasury has therefore decided to re-open this line of attack by revisiting issues from a politically motivated inquiry. It looks like an attempt at social engineering of the environmental movement to fit the interests of the fossil fuel and mining lobby.

Consultation questions

*1. 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?*

The goal of the DGR process should be to encourage community involvement, engagement and ownership of issues they are concerned about. Encouraging civil society to own their issues of concern is not only good public policy, it is very good economic policy.

Governments around the world acknowledge the benefit of community involvement and actively seek to promote philanthropy

All DGRs should be charities and all charities should be DGR. It is difficult to justify the current distribution of DGR eligibility which reflects the arbitrary and ad hoc manner in which DGR eligibility has developed. It makes good policy sense that all donations made to registered, complying charities should be tax deductible. This is the practice in comparable countries like the UK and Canada.

Given there is a well-functioning regulator determining charitable status through an effective process, and given charitable status is embedded in the notion of public benefit, DGR should be directly associated with charitable status.

This position has been supported by the Productivity Commission and the Not For Profit Tax Concessions Working Group.

I support the proposal that eligible organisations should be registered charities before they can be granted DGR status (question 1).
The regulatory regime set out in the Australian Charities and Not for Profits Commission Act 2012 and associated instruments emphasises both accountability and red tape reduction. It strikes the right balance to 'support and sustain a robust, vibrant, independent and innovative not-for-profit sector'.

The ACNC and the ATO both have powers to investigate and make a proportionate response when charities are not meeting their obligations for accountability to the Australian public. It is clear that the ACNC is actively exercising these powers from the number of charities that have had their registration lapsed or revoked.

*2. Are there likely to be DGRs (other than government entity DGRs) that could not meet this requirement and, if so, why?*
Not to my knowledge.

*3. Are there particular privacy concerns associated with this proposal for private ancillary funds and DGRs more broadly?*
Not to my knowledge

*4. Should the ACNC require additional information from all registered charities about their advocacy activities?*
Australian charities can undertake advocacy to further their charitable purposes, for example through supporting or opposing relevant government policies and decisions. The importance of this was recognised by the High Court in the Aid/Watch decision of 2010, where the Court held that charities undertaking advocacy was essential to Australia's constitutional system of parliamentary democracy. This decision was subsequently legislated in the Charities Act 2013

Any attempt to silence charities by requiring annual reporting of advocacy activities or any other measures would be to the detriment of civil society (question 4). Advocacy is a critical tool to address the causes of social and environmental problems. Addressing the symptoms of a problem is important, but a much greater social benefit can be achieved if the ultimate causes can be addressed. In many cases, policy or regulatory change is needed to solve the root causes of a problem.

There is a suggestion in the discussion paper that some advocacy activities by charities 'may be out of step with the expectations of the broader community'. No supporting evidence is provided for this claim in the paper. In addition, it is not the expectations of the broader community, but an organisation's charitable purpose, that must determine a charity's activities. Annual reporting of advocacy would also undoubtedly increase the regulatory burden on charities, contrary to the policy emphasis of recent years (see above).
For these reasons, I strongly oppose this proposed reform.

*5. Is the Annual Information Statement the appropriate vehicle for collecting this information?*
See answer 4

*6. What is the best way to collect the information without imposing significant additional reporting burden?*
See answer 4

*7. 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?*
I support ending Departmental oversight of the four registers and ceding greater powers to the ACNC to make recommendations to the ATO regarding DGR.

*8. 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?*
My readings suggest this issues is more complex than I initially thought, and haven't the capacity to put forward my own nuancing on the question, However, I have read the position put forward publically by the Australian Charities Foundation, and quote it below, as a position I endorse:

**ACP's Position**

There is growing acceptance that the complex and difficult problems facing communities around Australia can only be addressed with an integrated, multi-faceted place-based response.

As a valuable and unique form of community infrastructure, community foundations empower communities to address local challenges themselves. They seek to build social capital, catalyse development and strengthen community; they engage with their constituents as donors, advisors and volunteers. Community foundations are responsive to the challenges facing their communities and leverage their deep local knowledge to respond to need through their purposeful grant-making.

And yet, community foundations – which harness local resources, strengthen community and build local capacity – are fettered by a regulatory framework that creates significant barriers. The existing tax laws are inhibiting the growth and impact of community foundations.

Community foundations generally operate a 'public ancillary fund' (an 'Item 2' deductible gift recipient) – which imposes significant restrictions on their operations:

- Community foundations cannot accept donations from one of the most common forms of private foundation, 'private ancillary funds', as private ancillary funds are also an 'Item 2' deductible gift recipient – this cuts them off from a significant source of philanthropic funding and precludes Private Ancillary Funds from leveraging the expertise and community knowledge of community foundations.
- As an 'Item 2' DGR community foundations are limited to funding DGR 1 charities from their Public Ancillary Funds. This creates an obstacle for locally responsive organisations with relevant experience, particularly in rural and regional areas where there are fewer local DGR1s, undermining community

resilience and creating unnecessary dependency on external organisations and government.

Australian Community Philanthropy believes that a new deductible gift recipient category within Division 30 of the Income Tax Assessment Act 1997 (Cth) specifically for community foundations is needed to remove these barriers, reduce red tape and enable community foundations to focus on generating impact in their communities.

We expect that the revenue forgone from the change would be minimal. This would be an affordable reform, which will grow community philanthropy and strengthen community resilience in Australia.

*9. 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?*
The discussion paper does not provide any evidence of widespread abuse of DGR status (question 9). Unless evidence is provided, it would not be an efficient use of taxpayers' money to establish a formal rolling review program which would be an expensive undertaking. The transparency and accountability of DGRs is important. However, reviews and audits should be conducted only at the point where systemic issues have been identified or certain risk thresholds have been surpassed. Similarly, unless there is evidence of widespread abuse of DGR status, it is not reasonable to add to the regulatory burden on charities by requiring them to make annual certifications. The policy emphasis for several years has been on red tape reduction for charities. There is currently no compelling argument to reverse that emphasis in relation to DGR status.

*10. What are stakeholders' views on who should be reviewed in the first instance? What should be considered when determining this?*
From my readings, the discussion paper put forward by the government, shows no cause for concern or alarm in the DGR status of NGOs, and the few tightening of governance process suggested in my response would ensure that there is no need for particular targeted reviews, other than through current processes.

*11. What are stakeholders' views on the idea of having a general sunset rule of no more than five years for specifically listed DGRs? What about existing listings, should they be reviewed at least once every, say, five years to ensure they continue to meet the 'exceptional circumstances' policy requirement for listing?*
The time and effort that would be required within charities to re-apply, and for this paperwork to be processed by government would be enormous. This would be at a direct cost to taxpayers.

Stay with the current system, where there is regular reporting and a complaints process that can identify charities which may need to be reviewed.

*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 issue was already dealt with at length during the REO inquiry.

There are many thousands of organisations already working on remediation activity. Why would the government force ENGOs to limit or unduly constrain their activity? Once again this could only be seen as being politically motivated.

If the Treasury wishes to propose reforms to the management of DGR listed organisations, it should as part of this process reaffirm advocacy as being an entirely valid and necessary activity of charity.

The discussion paper mentions both charitable purposes and charitable activities. Charity law focuses on purposes and not activities, and the DGR framework generally has a focus on purpose rather than activity.

This is for a good reason. It allows those responsible for charities to devote an organisation's resources to the most efficient and effective way of achieving its purposes. This allows  a flexibility that a pure activities approach might not allow.

Environmental organisations (or any other DGR charities) should not be required to spend a nominated proportion of their expenditure on activities specified by the government.

Charities and their supporters are in the best position to determine what approaches are most appropriate in order to achieve their charitable purpose. This proposal would directly undermine the ability of charities to undertake activities that most effectively and efficiently achieve their charitable purposes, and increase the regulatory burden of red tape. I strongly oppose this proposed reform.

*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?*
I do not support the introduction of specific sanctions for environmental DGRs.

This is exactly what the Minerals Council of Australia have been calling for – the government would be seen as following the lead of the fossil fuel and mining sectors if it placed specific sanctions against ENGOs.

The current regulatory regime is clear about which charities can legitimately be established, and ensuring that charities do not have a 'disqualifying purpose.'
A disqualifying purpose includes:
a purpose to promote or oppose political parties or candidates
a purpose to engage in or promote unlawful activity
a purpose to engage in or promote activities contrary to public policy (which does not include opposing specific policies of the Government).

Any environmental or other charity currently registered by the ACNC will be regulated according to these clear principles

All charities –environmental or otherwise – should be held to the same  standards. There is no evidence in the discussion paper or elsewhere that the ACNC is not meeting its statutory obligations to enforce the relevant legislation and regulations , so there is no demonstrated need for additional regulation for environmental (or any other) charities.

Charities are already subject to substantial annual reporting requirements

If a member of the public believes that a charity is engaging in inappropriate activity, they can make a complaint to the ACNC

This would increase the time and resources that charities need to put into reporting and compliance

Conclusion

In conclusion, I urge you to put aside the recommendations in the paper which seem clearly politically motivated.

A legitimate and non political review of the governance arrangements for not for profits will be broadly welcomed, both by the community and the NFP sector, if they remove unnecessary duplication, inconsistencies in how different charities are managed, and reduce reporting burdens while ensuring transparency and rigor in the reporting process.

However, an attempt to limit or sanction environmental groups for working to protect the natural environment will be seen as being politically motivated and will be seen as such by the broader community.

Non violent protest/protection is a cornerstone of sustaining a healthy democracy. It is important to be clear that individuals associated with a particular organisation being engaged in peaceful protests/protection actions does not imply that an NGO is involved in ‘illegal’ activity, and that there are adequate processes in place to determine the legal standing of actions.

While I was not very involved in the peaceful protection actions raising awareness of environmental issues in the damming of the Franklin River and the mining of Jabiluka, it was the peaceful protection actions in both cases that led to quality environmental and economic outcomes.