

SUBMISSION TO THE 'TAX DEDUCTIBLE GIFT RECIPIENT REFORM OPPORTUNITIES' DISCUSSION PAPER, COMMONWEALTH OF AUSTRALIA 2017

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Submission prepared by:

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Contents

Company Background.....	3
Issue 1: Transparency in DGR dealings and adherence to governance standards.....	4
Issue 2: Ensuring that DGRs understand their obligations, for example in respect of advocacy.....	4
Issue 3: Complexity for approvals under the four DGR registers.....	4
Issue 4: Complexity and red tape created by the public fund requirements.....	5
Issue 5: DGRs endorsed in perpetuity, without regular and systemic review	5
Issue 6: Specific listing of DGRs by Government	5
Parliamentary Inquiry into the Register of Environmental Organisations.....	5
Minimal annual expenditure	5
Sanctions	6
Conduit Behaviour.....	6

Company Background

Carbon Neutral Charitable Fund Ltd (CNCF) (ABN 99 124 696 966) is:

- An unlisted Australian non-profit public company limited by guarantee
- A registered medium-sized charity with ACNC
- Listed on the Register of Environmental Organisations
- Has held DGR status with the ATO since 19/9/2007, and
- Holds a charitable collection licence in Western Australia

CNCF assists organisations across Australia to minimise their impact on our environment by measuring, reducing and offsetting greenhouse gas emissions.

CNCF's services include web-based carbon calculators, developing biodiverse reforestation carbon sinks through restoring degraded farmland.

Issue 1: Transparency in DGR dealings and adherence to governance standards

We support the requirement for a DGR (other than government entity DGR) to be a registered charity in order for it to be eligible for DGR status.

Issue 2: Ensuring that DGRs understand their obligations, for example in respect of advocacy.

CNCF's purpose is to educate the community on reducing greenhouse gas emissions and undertake on ground work in revegetating degraded farmland. Our advocacy activity is restricted to, for example, a joint submission to the recent Climate Change Review.

We reserve the right to boost our advocacy activity should an issue related to our mission arise by local government, State or Federal government or an organisation(s). We therefore support Australian charities undertaking advocacy in relation to social or environmental problems to further their charitable purposes. We refer to the High Court in the Aid/Watch decision of 2010, which 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.

A requirement that a proportion of an environmental organisation's activities be directed towards environmental remediation is impractical. The supporters of charities are in the best position to determine what purpose and activities are most appropriate to achieve their charitable purpose.

Any new restriction or limitation is strongly opposed on the basis that it would impose a significant and unnecessary administrative burden on all environmental charities and the regulator.

Existing laws set appropriate boundaries on advocacy activities by charities. ACNC has guidelines for charities so no further changes are required.

Issue 3: Complexity for approvals under the four DGR registers.

It is proposed to transfer the administration of the four DGR Registers to the ATO:

- the Register of Environmental Organisations (REO)
- the Register of Cultural Organisations (ROCO)
- the Register for Harm Prevention Charities (RHPC) and
- the Overseas Aid Gift Deduction Scheme (OAGDS)

As DGR applications are assessed against the requirements of the *Income Tax Assessment Act 1997*, this proposal should improve the efficiency in the application and reporting process.

However, technical and regulatory knowledge relevant to respective disciplines may be lost if ATO does not administer with staff with specialist knowledge.

Issue 4: Complexity and red tape created by the public fund requirements

We strongly agree that the requirement for a charitable DGR entity to maintain a public fund is unnecessary.

Being a public company limited by guarantee, CNCF has its reports and audits prepared in accordance with the *Corporations Act 2001*.

Having a public fund managed by Trustees is unnecessary in terms of compliance and governance.

Removing the need for public fund requirements for charities is supported for organisations endorsed for DGR status.

Issue 5: DGRs endorsed in perpetuity, without regular and systemic review

Currently, once an entity is a DGR, it is generally for life.

CNCF supports:

- Rolling 5-year reviews by the ACNC and/or ATO to ensure that each DGR organisation is still eligible for DGR status
- Organisations confirmed as no longer eligible for DGR status would have their status revoked
- As part of completing their Annual Information Statement as a registered charity, DGRs should also be required to certify that they meet the DGR eligibility requirements

Issue 6: Specific listing of DGRs by Government

A specifically listed DGR entity has DGR status in perpetuity, unless there is a special condition that restricts its listing period. It is possible that as DGR entities can evolve over time, there may come a time when the 'exceptional circumstances' that justified their specific listing no longer applies.

CNCF does not support the idea of having a general sunset rule of no more than five years for specifically listed DGRs as a mandatory requirement where the organisation would need to reapply for endorsement.

It is recommended that the review process entail the organisation's governing committee or Board making statements in relation to the organisation's 'exceptional circumstances' policy requirement for listing. Only where circumstances have changed, should re-applying for endorsement be required.

Parliamentary Inquiry into the Register of Environmental Organisations

Minimal annual expenditure

The Review recommended that legislative and administrative changes be considered requiring environmental organisations to commit no less than 25 per cent of their annual expenditure from their

public fund to environmental remediation, and that a higher limit, such as 50 per cent, could be considered.

CNCF and many other environmental organisations already state the ratio of annual expenditure allocated to on-ground environmental outcomes. This is undertaken to provide donors and supporters transparency in relation to their contributions.

The proposal would therefore not be a reporting burden. However, CNCF's prime activity is carbon farming and eco-system restoration. The requirement to source and fund suitable scale projects means major projects tend to be undertaken each two years rather than annually. The reporting requirements should allow for this time-line or rolling average approach.

There is also the question of defining expenditure activities within 'environmental remediation'. A critical activity in relation to revegetation and reforestation work is management and administration input in sourcing sites and supervising on-going project management, monitoring and reporting.

Sanctions

CNCF supports the proposal to require DGRs to be ACNC registered charities to be subject to ACNC's governance standards and supervision to ensure that environmental DGRs are operating lawfully with respect to purpose or activities.

Conduit Behaviour

CNCF supports clear guidelines for environmental DGRs, as to the types of activities that would constitute conduit behaviour.