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Castan Centre for Human Rights Law

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**Submission to the Tax Deductible Gift Recipient Reform Opportunities
Discussion Paper**

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Dear Sir/Madam

Castan Centre for Human Rights Law - Submission to the Tax Deductible Gift Recipient Reform Opportunities Discussion Paper

Thank you for the opportunity to make a submission to the above discussion paper. The Castan Centre is supportive of the need, as noted in the Discussion Paper, ‘to strengthen the DGR governance arrangements, reduce administrative complexity and ensure that an organisation’s eligibility for DGR status is up to date.’

However, the Castan Centre does have concerns relating to some of the consultation questions posed to stakeholders, namely questions 4, 12 and 13. Our responses to those questions are set out below.

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

No, advocacy is a legitimate charitable activity. As noted in our submission to the Inquiry into the Register of Environmental Organisations (‘REO Inquiry’),¹ the statutory definition of ‘charitable purpose’ in the *Charities Act 2013* (Cth) clearly contemplates that an organisation whose purpose is to advocate to influence law, policy or practices in Australia or overseas is permitted to advocate for reform where that advocacy relates to advancing education, advancing culture or advancing the environment.² This statutory definition is consistent with the High Court decision in *Aid/Watch Incorporated v Commissioner of Taxation*.³

The Castan Centre notes that the ACNC has produced an information guide to alert charities to their obligations regarding their advocacy activities.⁴ It also has a process by which the public can raise concerns about a particular charity, which the ACNC can investigate if it believes it to be sufficiently warranted. The Castan Centre is therefore of the view that the current level of information required in the Annual Information Statement about a charity’s advocacy activities is sufficient. It would impose an unnecessary reporting burden to require additional information.

¹ Submission 348.

² *Charities Act 2013* (Cth) s 12(1).

³ (2010) 241 CLR 539.

⁴ ‘Charities, elections and advocacy: Political campaigning and advocacy by registered charities – what you need to know’ (April 2016) <http://www.acnc.gov.au/ACNC/Reg/Charities_elections_and_advocacy_.aspx>.

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?

The Castan Centre notes that this question is based on recommendation 5 of the REO Inquiry Report. The Castan Centre does not support any requirement to place limits on the activities that can be undertaken by environmental organisations. Currently, to be classified as an environmental organisation and therefore eligible for DGR status and to be placed on the Register of Environmental Organisations, an organisation's principle purpose must be:

- (a) the protection and enhancement of the natural environment or of a significant aspect of the natural environment; or
- (b) the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.⁵

Accordingly, provided that an environmental organisation's activities are in furtherance of its principle purpose, being either of the above, there should be no restriction on the kinds of activities by which it achieves that purpose, other than that they be lawful.

A difficulty with requiring environmental remediation to make up 25 per cent of an environmental organisation's annual expenditure is that not all environmental organisations are equipped or designed to undertake environmental remediation work. In particular, an environmental organisation whose principle purpose is informative, educative or research based would have significant difficulty in meeting any prescribed remediation requirement.

In addition, to limit the mandatory activities further to simply environmental remediation fails to recognise that activities which involve 'practical environmental work' that 'achieves clear on-ground environmental outcomes'⁶ can involve prevention of environmental degradation in the first place rather than remediation of environmental harm that has already occurred.

As far as we are aware, no other category of DGR or charity is required to undertake a mix of activities or required to commit a prescribed percentage of their annual expenditure on specific activities. It is therefore inappropriate to single out environmental organisations in this manner.

The Castan Centre further notes that recommendation 5 from the REO Inquiry was not supported in the Labor Members' Dissenting Report or in the additional comments made by Mr Jason Wood MP. Recommendation 5 appears to be based almost entirely on the views of a very select number of submissions from the resources industry and without any considered analysis of the evidence or practical considerations that were highlighted by Mr Wood in his additional comments. Accordingly, the Castan Centre is alarmed that this Discussion Paper is not merely seeking views on the REO Inquiry's already contentious recommendation for 25 per cent of annual expenditure to be spent on environmental remediation activities, but also views on doubling it to 50 per cent.

⁵ *Income Tax Assessment Act 1997* (Cth), s. 30-265(1)

⁶ REO Inquiry Report, [4.80]-[4.81].

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?

This question derives from recommendation 6 of the REO Inquiry. This was the only other recommendation that was not supported in either the Labor Members' Dissenting Report or by Mr Jason Wood MP.

All registered charities and DGRs should operate lawfully, including environmental organisations. Accordingly, environmental organisations should be subject to the same standards and oversight as any other charity or DGR. The Castan Centre supports the proposal to require all DGRs to be ACNC registered charities. The ACNCs governance standards and supervision are therefore sufficient to ensure that environmental DGRs are operating lawfully. No additional sanctions relating only to environmental organisations are necessary or appropriate.

Yours faithfully,

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