

# Submission in response to the Discussion Paper on Tax Deductible Gift Recipient Reform Opportunities

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Healthy planet, **healthy people.**

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## About DEA

Doctors for the Environment Australia (DEA) is an organisation of medical doctors and medical students across Australia. DEA works in an almost entirely voluntary capacity to educate a wide sector of our profession and the community by presenting scientific evidence in relation to preventing environmental degradation leading to poorer health outcomes now and for future generations.

Our membership base, together with our Scientific Advisory Committee, includes many prominent and highly respected Australians who actively support our activities. DEA is completely independent of all political parties and corporations, allowing it to maintain integrity and its ability to educate on sound scientific principles at all times.

Section 5.3 of the Australian Medical Council entitled 'A Code of Conduct for Doctors in Australia, 2009' states "*Good medical practice involves using your expertise and influence to protect and advance the health and wellbeing of individuals, patients, communities and populations.*" DEA follows this code by protecting human health through a wide range of educational and other activities aimed at preserving, restoring and preventing further degradation of natural environments.

Deductible Gift Recipient status (DGR) plays a significant part in helping our largely volunteer base run our day to day activities assisting DEA to raise funds to pay for currently 2 FTE (full time equivalent) employees. These employees are vital to support our large volunteer base. DEA's medical professional volunteers always pay their own travel, accommodation and other expenditure when participating in DEA business or meetings. This is consistent with its requirements under Section 30.270 of the 1997 Income Tax Assessment Act.

## Consultation Process

Request for feedback and comments

The consultation paper considers potential reforms to the Deductible Gift Recipient (DGR) tax arrangements.

This submission aims to address the specific consultation questions under the defined headings listed in the Consultation Process.

# Strengthening Governance Arrangements

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

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?*

Response:

DEA supports the requirement for DGRs to be a registered charity in order to be eligible for DGR status. The issues that could arise are the breadth of the definition of a charity. A registered environmental organisation such as DEA has a specific role in protecting health of the community by protecting the environment upon which all health ultimately depends. For example, we work for clean air, free from pollution so as to prevent heart and lung diseases.

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

Response:

DGR's should be able to do so provided the definition of a charity, functioning in the public interest, is sufficiently broad.

3. *Are there particular privacy concerns associated with this proposal for private ancillary funds and DGRs more broadly?*

Response:

There may be some privacy concerns for some charities but DEAs activities are fully transparent. Its financial arrangements are open to rigorous scrutiny and are audited annually.

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

Consultation questions

4. *The ACNC should require all registered charities to outline their advocacy activities.*

Response:

The primary functions of DEA are to research the scientific evidence linking environmental factors to human health and to educate the medical profession, individuals, patients, communities and the population

about those links. It is also DEA's responsibility to advocate policies that are consistent with the evidence in an unbiased and non-partisan manner. A mature democracy should insist that DEA accepts that responsibility to fully honour our duty of care for community and population health as well as our duty of care for patients and other individuals. Advocacy can also be fundamentally educational. DEA will have no difficulty in outlining its advocacy activities. It already does so in its annual report and will provide more detail if required.

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

Response:

The Annual Information Statement or its equivalent should give a clear outline of the activities of the organisation. If further information is required, then it should be openly disclosed.

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

Response:

If additional information was being sought, then a clear standard electronic document could be written to make its collection straightforward and not be too onerous on small not-for profit organisations with limited resources.

## Reducing Complexity

Issue 3: Complexity approvals under the four DGR registers.

Consultation questions

7. *What are the 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?*

Response:

DEA supports the need for all DGR recipient organisations to complete an Annual Information Statement and to lodge annual financial reports for public scrutiny. DEA agrees that all DGRs, registered as charities, should adhere to the same ACNC reporting and governance standards.

Transferring the administration of the four current groups to the ATO may be an administrative challenge. Past experience suggests that centralised control of a large number of organisations and creating one size fits all arrangements does not always work well. It can lead to

overburdening of the agency and administrative delays even with the best of intentions.

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

Consultation questions

8. *What are the 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?*

Response:

Provided all DGR's are required to maintain absolute financial clarity in the receipt and use of the funds they raise, via membership fees and by donations, then the proposed new arrangement may not require a public fund to receive tax deductible donations. The introduction of ACNC governance standards and the development of more sophisticated accounting and electronic banking may well make the requirement for a charitable DGR entity to maintain a public fund unnecessary. DEA has always made its public fund open for scrutiny.

Information technology and risk management consultants continue to warn about the dangers of hacking into confidential systems. If it takes over the additional responsibilities of DGR charities, the ATO will need to ensure all that high-level safeguards are established and rigorously maintained.

DEA has no wish to register in multiple DGR categories and makes no comment about the proposal.

## **Integrity**

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

Consultation questions

9. *What are stakeholders views on the introduction of a formal rolling review program and the proposals to require DGRs to make annual certificates? Are there other approaches that could be considered?*

Response:

DEA agrees that all DGRs should be subject to uniform governance requirements whether it is an ACNC registered charity or not. All DGRs should undertake an annual review and audit and have it available for

scrutiny by the ACNC or the ATO upon request. The process should be open and transparent.

In the case of DEA, the provision of such information to members is also mandated by the constitution, which requires an independently audited financial statement. DEA has no problem in presenting its statement as a publicly viewable document on the ACNC website and is strongly supportive of such accountability.

Desk top reviews by the ACNC and/or ATO could be undertaken as they chose. DEA has no problem in supporting a more detailed review within a specified period, possibly within five yearly intervals, if necessary.

*10. What are the stakeholders' views on who should be reviewed in the first instance? What should be considered?*

Response:

Because the process of reviewing all DGRs will be a major administrative challenge, the organisations that should be reviewed in the first instance are probably those that have been unable to provide their own annual statements or reviews.

*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 circumstance' policy requirements for listing?*

Response:

DEA has no difficulty supporting a uniform process of this nature, with absolute openness and transparency to ensure that no political bias is involved. We have reservations about a sunset clause which could involve additional work for government and organisations. It would seem unnecessary if all regulations and documentations have been observed.

## **Parliamentary Inquiry into the Register of Environmental Organisations**

Comments will be made by DEA in response to the various recommendations made following that inquiry.

### **Recommendation 1**

*65. The Committee recommended that the Register of Environmental Organisations be abolished and that the administrative process for*

*endorsement as a DGR for environmental organisations be transferred wholly to the ATO.*

Response:

DEA accepts that the Australian government is able to follow through with this recommendation and DEA will, of course, accept the new arrangement. Whether the centralisation of the process leads to efficiencies and real benefits to the community or not, time will tell.

## **Recommendation 2**

*67. The Committee recommended that registration as an environmental charity through the ACNC be a prerequisite for environmental organisations to obtain endorsement as a DGR by the ATO.*

Response:

DEA accepts that this would then become necessary. DEA complies already.

## **Recommendation 3**

*69. The Committee recommended that the Treasurer and the Minister for the Environment pursue amendments to the Income Tax Assessment Act 1997 (Cth) to remove environmental DGRs listed individually by name in the Act.*

Response:

DEA would need to know how this provision was being administered to be able to give an informed opinion on its fairness. There would need to be an open and transparent internal appeals mechanism to enable any delisted organisation to challenge the decision without having to involve any court challenge.

## **Recommendation 4**

*71. The Committee recommended that the ATO maintain a publicly available list of organisations that receive DGR endorsement as an environmental charity.*

Response:

DEA has always advocated openness and transparency in its objectives and operations. Its documents and public fund are already open for scrutiny.

## **Recommendation 5**

*73. The Committee recommended that legislative and administrative changes be pursued by the ATO to require that the value of each environmental DGR's annual expenditure on environmental remediation*

*be no less than 25 per cent of the organisation's annual expenditure from its public fund.*

Follow up consultation question

*12. Stakeholders views are sought on requiring environmental organisations to commit to no less than 25% of their annual expenditure from their public fund to environmental remediation, and whether a higher limit, such as 50%, should be considered? In particular, what are the potential benefits and the potential regulatory burden? How can the proposal be implemented to minimise the regulatory burden?*

Response from DEA:

To address this particular question our submission needs to return to Clause 15 in this Australian Government Discussion Paper of 15 June 2017.

Clause 15 states: *"There are some concerns that some charities and DGRs may be out of step with expectations of the broader community, particularly environmental DGRs, which have a principle purpose of protecting the environment"*

Response:

When Doctors for the Environment Australia (DEA) was initiated and sought registration as a charitable organisation seeking tax Deductible Gift Recipient (DGR) status, it was recommended by the Coalition Federal Government Ministers of the Environment, Senator Robert Hill and Dr David Kemp MP, that it should apply as an environmental organisation rather than as a health organisation because its purpose was to protect and improve community health by addressing environmental hazards to it, rather than treat specific diseases or individual patients.

DEA strongly opposes this recommendation as it does not reflect the breadth of ways environmental organisations make a contribution. Whilst activities such as environmental remediation are important, also essential is the contribution made by groups that address the underlying causative issues of environmental degradation and not just act at the end point.

### **The definition of 'environment organisation' under the Income Tax Assessment Act 1997, including under Subsection 30-E.**

Under the Income Tax Assessment Act 1997 (hereafter referred to as 'The Act'), an environmental organisation's structure must fulfil Section 30.2.60 and it must conform to the requirements of Section 30.270. DEA supports and conforms to both of these requirements. In particular,



Section 30.270 of The Act provides safeguards to ensure that funds obtained are used appropriately. DEA certainly does that.

In addition to the above, Section 30.265 of The Act requires that an organisation is to have as its principle purpose

- (a) The protection and enhancement 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.

DEA can provide a large volume of documentary evidence to demonstrate that it has been doing this since its commencement.

The principle purpose of DEA is to protect the environment for the fundamental reason that all human health, and that of life more broadly, is absolutely dependent upon the environment in which we all live.

Health can be detrimentally affected directly by hazards like asbestos fibres, air and water pollution, heavy metal poisoning and many other actual or potential environmental hazards.

It can also be affected on a much larger scale and for a much longer time frame by the multiple direct and indirect health consequences of climate change with progressively rising average national and global average annual temperatures as have been occurring over the past four decades.

There is now a well-established consensus among authoritative climate scientists that unless global greenhouse gas emissions are dramatically reduced urgently and sufficiently, then the target of reducing the average global temperature rise to no greater than 2°C (and preferably no more than 1.5°C) above pre-industrial times will not be achieved and the consequent damage to the environment and human health will be devastating.

Health, and comfortable habitation, can be affected in multiple ways. There is now strong evidence to predict that the number of days annually in which maximal daily temperatures exceeding 35°C will rise substantially in all of the Australian capital cities. When the Black Saturday heat wave and associated bushfires struck Victoria in December 2009, twice as many vulnerable people died prematurely from heat effects as the 173 people who died in the associated bush fires.

Droughts and rampant bushfires in some regions, cyclones and floods in others, the widespread loss of habitat and often agricultural land can all have direct and delayed health consequences as well as enormous infrastructure and economic losses. The loss of bio-diversity can mean

the loss of potential medicinal advances to the detriment of health. The southerly march of higher temperatures in Australia can also be accompanied by the spread of traditional tropical diseases such as malaria and dengue.

## Functions of environmental organisations

Environmental organisations can perform three main functions, all of which are absolutely in the interest of the community.

The first is to become very well informed about the scientific evidence regarding environmental hazards and environmental changes. In the case of DEA, it also means having a deep understanding of the scientific evidence linking environmental factors with their impacts on human health.

The second function is to seek to preserve and protect the natural environment and to ensure the sustainability and the longevity of its resources by lawful means.

And thirdly, environmental organisations can seek to expand aspects of it. Widespread tree planting is one such measure. Individual members of DEA have performed that function, collectively planting hundreds, or possibly thousands, of trees to protect water courses, create wind breaks, revegetate cleared land and introduce trees into areas previously devoid of them. Some have planted plantations of trees for structural timber purposes.

The third function is not the core purpose of DEA and nor should it be. The specific focus of members of DEA is to acquire an evidence based understanding of the links between the environment and health. DEA's expertise, skills, opportunities and volunteer time is much better spent upon research, education and advocacy, all with the community's health and wellbeing as the fundamental objective. It is absolutely in the public interest to do so. It is a dereliction of our calling as medical doctors to be aware of these hazards and yet to remain silent.

To require this organisation of busy medical practitioners and medical students to devote 25% or more of the voluntary time and resources, spent on DEA activities, to plant trees or conduct similar environmental remediation work, is unreasonable and counter-productive.

Clause 16 states (in part): "*Broadly, the various requirements for DGR eligibility are directed at ensuring the activities of DGRs deliver benefits to the Australian community.*"

DEA's activities are absolutely directed at the community interest. None of its activities are for personal financial gain, personal aggrandisement or pursuing political office. Its activities are directed at researching the scientific evidence linking environmental hazards with health and using its standing and influence to educate the medical profession, other health care workers, the community, the media and policy makers about those links and those hazards.

When policy makers challenge those messages, or fail to heed them, then in a healthy democracy it is incumbent upon DEA, as a well-qualified and responsible organisation, to voice its concerns in an open, transparent, non-partisan and lawful way.

## **Non-governmental organisations are essential in a healthy democracy**

Information that forms the basis of policy discussion must come from a variety of sources in a democratic society. Contributions from government, business and non-governmental organisations (NGOs) are essential in formulating policy and public discourse. A strong NGO sector and its educational role are indispensable to the democratic process. This was recognised by the 2013 Charities Act, which expanded the definition of 'charitable purpose'. It includes: *'Advancing the environment'*.

But it also recognises that many charities serve their purpose by organised community input through raising the awareness and involvement in public debate. This is highlighted by defining another charitable purpose as:

*'promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, state, territory or another country, in furtherance or protection of one or more of the above purposes'*.

Whilst DEA is primarily an organisation that provides high level peer reviewed evidence, it does accept that its activities may influence policy. DEA notes that the High Court of Australia in a 2010 ruling (*Aid/Watch Incorporated v Commissioner of Taxation*) also accepted that generation of public debate is consistent with a charitable purpose and that there is no general doctrine to exclude political objects from charitable purposes. Attempts to curtail this would also curtail the healthy democracy that Australia enjoys. Such representation contributes to the maintenance of representative and responsible government.

DEA strongly considers that to address 'on ground' environmental issues in a responsible way, the root causes need to be addressed and ideally prevented. Education and the provision of information are essential aspects of this. Without this, there will only be limited tangible

improvements to the environmental hurdles we face. Organisations that inform and enlighten the general public perform a vital role in civil society and the benefits of tax deductibility status for this cannot be overstated.

Since the previous Inquiry into the Register of Environmental Organisations undertaken in 2015, there has been a decided shift in the thinking and actions of the insurance industry, some superannuation funds, many in the agricultural sector, and those who are advising the corporate sector about governance and risk management through the official publications of institutions like the Australian Institute of Company Directors.

There is now a clear understanding that the multiple risks of climate change are real, that ignorance of them is no longer an excuse, that superannuation funds and companies (if they have any), may be burdened by stranded assets in coal investments in particular, and that there are multiple other financial ramifications of climate change including damage to infrastructure and the costs associated with the health and safety of their employees.

The advice now being given is that company directors must begin factoring in these risks among their wider risk profile and introduce measures to put mitigation and/or adaptation measures in place and that they will be held to account for financial losses and damage to the reputation and brand of their company if they fail to do so.

The authoritative expertise of a focussed organisation like DEA, with a clear understanding of the scientific evidence for, and multiple health risks of, air pollution and climate change can be of real value to these companies as they navigate a responsible financial, social and ethical course for their future. The financial stability of these companies will, in turn, be in the wider interests of the community.

It is absolutely essential that Australian policy makers receive all of the well-informed advice they can and DEA is well placed to be of real community value in that context. The tragedy of asbestos mining in Australia should remind all policy makers of the danger of ignoring strong scientific evidence and well informed medical advice.

It is also crucial for the sake of future generations that a non-governmental organisation like DEA continues to function. The medical student members of DEA are well aware that their lives, and those of their generation and patients, will be placed at increasing risk if climate change and related problems are not addressed by an urgent, structured and effective transition towards a low carbon future as quickly as possible.

The role of DEA will be to continue giving well informed advice to all sectors of the community as Australia and the World moves to avert the terrible consequences of a future where too little was achieved and it took too long.

In summary, DEA opposes the necessity for recommendation 5, and reiterates that it is far too prescriptive. It fails to recognise the great value in protecting the existing environment and the dangers to health by failing to do so.

## **Recommendation 6**

*75. The Committee recommended that administrative sanctions be introduced for environmental DGRs that encourage, support, promote, or endorse illegal or unlawful activity undertaken by employees, members or volunteers of the organisation or by others without formal connections to the organisation.*

Consultation question

*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 governance standards and supervision ensure that environmental DGRs are operating lawfully?*

Response:

DEA has within its endorsed policies that all of its activities must be lawful. DEA also emphasises that its approach is non-partisan and that it has no allegiance to any political party, elected politician or aspirant for political office. In a free and open democracy where ideas are discussed in the public arena, it seeks to promote the scientific evidence and health concerns relevant to environmental hazards but does so in an open, transparent, lawful and non-partisan way.

Adherence to ACNC governance standards and supervision should be sufficient to ensure that compliance is occurring. Any sanctions being considered would need to be fair and reasonable for any breach of these standards and not just to stifle valid community concern about an issue.

## **Recommendation 7**

*75. The Committee recommended that environmental organisations with DGR status be required to submit an annual self-assessment to the ATO supporting their continuing eligibility for endorsement as a DGR.*

Response:

DEA would comply with this requirement.

## **Recommendation 8**

*80. The Committee recommended that the Commonwealth Treasury, in consultation with the ATO, review the provisions in the Income Tax Assessment Act 1997 (Cth) prohibiting conduit behaviour, with a view to providing clear guidance to environmental DGRs, as to the types of activities that would constitute conduit behaviour.*

**Response:**

DEA supports this provision.

## **Recommendation 9**

*84. The Committee recommended that the ATO, in conjunction with the Commonwealth Treasury, investigate options for establishing annual reporting requirements for organisations to maintain deductible gift recipient status as an environmental organisation, where such reporting is to be made publicly available.*

**Response:**

DEA is in favour of these measures. It already has annual reporting and audit of its financial records.

## **References**

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<sup>1</sup> <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2017/Tax-Deductible-Gift-Recipient-Reform-Opportunities>