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Tax Deductible Gift Recipient Reform Opportunities: Submission from the Friends of the Australian National Botanic Gardens Inc, Canberra

The Friends of the Australian National Botanic Gardens (Friends) welcome this opportunity to make a submission in relation to the discussion paper on Tax Deductible Gift Recipient Reform Opportunities. This submission will address the consultation questions relevant to activities, current and future, undertaken by the Friends in support of the Australian National Botanic Gardens (ANBG).

In May 2015 the Friends made a previous submission to the House of Representatives Standing Committee on the Environment Enquiry into the Register of Environmental Organisations.

Introduction

Australian National Botanic Gardens

The Australian National Botanic Gardens, Australia's living national collection, was the first botanic garden and research institution in Australia to specialise in native flora. It has made an important contribution to increasing the knowledge, appreciation and enjoyment of Australia's unique plant heritage and landscapes. The plant collection is a genetic 'safe deposit box' for the many species threatened in their natural environment. The Gardens and the Herbarium are also an invaluable resource for plant research and conservation.

Friends of the Australian National Botanic Gardens

The Friends of the Australian National Botanic Gardens Inc was formed in 1990 as a community support group for the Gardens and currently has around 2,100 individual members, mainly from Canberra and the region. The Friends, a non-profit community organisation, incorporated under the ACT Associations Incorporations Act 1991, support the Gardens in many ways, by providing assistance in-kind (for example, the voluntary guides) and through fundraising. A substantial part of our income is derived from memberships as well as native plant sales, photographic and botanic art exhibitions, weekly lunchtime talks etc.

In 2004 the Friends established a Public Fund within the Register of Environmental Organisations (REO) to provide tax deductibility for donations. The Objects of the Public Fund are set out in [Attachment A](#).



Over the years the Friends have contributed almost \$1,000,000 in funds to the Gardens, which includes \$150,000 raised in donations to the Public Fund.

Responses to Consultation Questions

Q1: What are stakeholders' views on a requirement for a DGR (other than government entity DGRs) to be a registered charity in order for it to be eligible for DGR status. What issues could arise?

The Friends of the ANBG Inc. was registered with the Australian Charities and Not-for Profit Commission (ACNC) in December 2012 and reporting relates to Friends' activities. In the experience of the Friends this registration provides assurance to potential donors about the status of the Public Fund and provides the Friends organisation with access to useful guidance material.

Q3: Are there particular privacy concerns associated with this proposal for private ancillary funds and DGRs more broadly?

The Friends see the potential for privacy issues to arise if we are required to divulge the names of any donors who have requested anonymity for acknowledgment purposes (we acknowledge donations of \$200 plus in our magazine). The Friends are, of course, happy to report for accountability purposes the value of donations received and, where appropriate, the name(s) of the donors. We would be concerned, however, if any donor details provided for this purpose were later made public, possibly deterring these donors from making any further gifts. This would undermine the whole intention of encouraging philanthropy for, and support of, a valued public institution.

Q4: Should the ACNC require additional information from all charities about their advocacy activities?

The discussion paper does not make clear what 'additional' reporting on advocacy activities may be required. The Friends note that the ACNC has already issued extensive guidance on advocacy by charities and could reasonably ask charities to report on activity in this area that relates to this guidance. As a regulator, the ACNC is already presumably able to monitor and deal with any activity that lies outside the guidelines.



Q5: Is the Annual Information Statement the appropriate vehicle for collecting this information?

Q6: What is the best way to collect the information without imposing significant additional reporting burden?

In regard to questions 5 and 6 the Friends believe that including this information in existing reporting - the Annual Information Statement - would be the best way to collect this information.

The Friends currently report to the REO, the ACNC and up to 30 June 2017, the Registrar-General ACT Government (see [Attachment B](#)). You will note that there are considerable differences in reporting requirements and, as discussed further below at Q8, some harmonization of these would be of significant value, particularly to smaller entities run by volunteers.

Q7: 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?

The Friends agree in principle with this proposal subject to an understanding of, and agreement with, the as yet undefined, transition arrangements. The Friends consider that the proposal would likely be acceptable if current Department of Environment and Energy requirements are transitioned, registration is automatically retained and no new requirements are imposed.

Q8: 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?

Removing public fund requirements

The discussion paper does not provide any information about the operation of DGR arrangements if the requirement for a public fund were removed. The Friends would want to have more information about this. We could, however, envisage a situation in which the Friends Council would oversee management of the DGR arrangements. It would be feasible to maintain the required separation of funds etc.



We note that, as previously discussed (Introduction), the Friends already raise significant funds each year. This money is used to support the ANBG in areas outside the scope of the Trust Deed of the Public Fund. We assume that DGR status would only apply to donations received and the Friends would still report this income derived by other means (membership and income-generating activities) to the ACNC.

We would also be keen for the talented people recruited for the Public Fund management committee to remain involved under any new arrangements.

Removing the Public Fund requirement, with its accountability requirements, may be helpful in reducing the burden on smaller charities such as the Friends and possibly larger ones as well. As the Parliamentary Report noted (para 5.6), in 2013-14 three-quarters of DGRs collected less than \$100,000 in donations each; the Friends are in this category. Many, or all, of these are likely to be fully voluntary and meeting the requirements of running a public fund may well be challenging.

There is currently considerable workload in reporting to both the REO and ACNC as set out in the response to Q5 and 6 ([Attachment B](#)). As well as the usual letters of appointment, DGRs also need to deal with REO nomination forms and deeds when people are joining or departing the management committee.

Identifying suitable appointees

One aspect that does, in our view, require attention (assuming the continuation of the Public Fund requirement) is the matter of identifying suitable 'responsible persons'. We are not surprised to read that the tight restriction on responsible persons can pose a problem for rural communities. Certainly in Canberra under current REO arrangements, it is not possible for us to appoint retired public servants or academics to the Public Fund if they do not qualify in other regards; this rules out a large pool of potential talent. The Friends also believe that this is unnecessary and discriminatory.

The Friends note too that there is an inconsistency between the language in the REO guidelines and Trust Deed of our Public Fund on 'responsible persons', and the registration and reporting requirements. The REO guidelines and the Trust Deed require that 'a majority of the administrators of the fund are required to have the requisite degree of responsibility to the wider Australian community by virtue of their tenure of public office or their position in the



community etc.’ whereas the REO nomination form requires all of the administrators to meet these requirements.

Reducing regulatory compliance

Some reduction in regulatory compliance would be helpful. Last year the Friends reviewed Public Fund requirements and found that these were spread across the Friends’ Constitution, the Trust Deed of the Public Fund and the guidelines for the REO. As noted under Q5 and 6, until recently the Public Fund reported to the ACNC, Department of the Environment and the ACT Government. The ACNC and ACT Government have now agreed on a reduction in reporting as of 1 July 2017, which should be very helpful.

Q9: 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?

Q10: What are stakeholders’ views on who should be reviewed in the first instance? What should be considered when determining this?

In answer to Q9 and 10, Friends see no problem with a formal rolling review program and an annual certification requirement. The annual reviews could be conducted on a risk management basis.

Accountability is important given the tax deductions received by DGRs involve a loss of revenue to the Commonwealth. It is also important for regulators and the public to see that the DGRs are achieving their objectives.

Q11: What are stakeholders’ views on the idea of having a general sunset rule of five years for specifically listed DGRs? What about existing listings, should they be reviewed at least once every five years to ensure they continue to meet the ‘exceptional circumstances’ policy requirement for listing?

As stated in Q11, this does not appear to affect the Friends as it is not a ‘specifically listed organisation’ granted DGR status in ‘exceptional circumstances’.



Q12: 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 Friends wish to express their strongest possible concern at the possibility of a 25-50 per cent target for environmental remediation.

The 2015 Parliamentary report discussed remediation as follows:

4.82 The Committee accepts that definitional issues may arise from this recommendation, and will need to be addressed by government. To assist with this, the Committee's view is that activities that should qualify as

ACTIVITIES UNDERTAKEN BY ENVIRONMENTAL DEDUCTIBLE GIFT RECIPIENTS 47

remediation work includes revegetation, wildlife rehabilitation, plant and animal pest control, land management, and covenanting.

4.83 On the other hand, the Committee's view is that activities such as education, research, advocacy, legal services, activities involved in representing member organisations, and activities carried out overseas should not qualify as remediation work.

4.84 Expenditure applied directly to remediation work should qualify, as well as ancillary activities that support remediation, in so far as those activities are necessary to the carrying out of remediation work (for example, administrative work to secure necessary permits).

4.85 Environmental DGRs may also provide funding to other environmental organisations to undertake remediation work in order to meet this requirement. However, to maintain the integrity of the system, it is the Committee's view that only funding to other environmental DGRs should qualify and all funding arrangements should comply with the no-conduit policy (see Chapter 6).

The Public Fund of the Friends of the ANBG allocates fund to ANBG projects in line with the Objects in its trust deed ([Attachment A](#)), and a list of projects funded to date is attached ([Attachment C](#)). To continue to provide the support appropriate to a botanic garden the Friends would want agreement on a definition of 'remediation' that was either very broad or specifically allowed an exemption appropriate to these circumstances. There is a good case to be made for scientific and educational support in environmental remediation, as exemplified by recent Public Fund funding for the National Seed Bank, *ex situ* conservation projects, and possible future projects as the development of a new banksia garden as a means of species



protection. Education and research are specifically excluded in the definition discussed in the Parliamentary report, yet in the case of our Public Fund these activities directly complement the work of the ANBG and are mentioned in the Fund's Objects.

The Friends note that some of the discussion on the definition of remediation is not relevant to the Public Fund of the Friends. Advocacy is handled by the governing body of the Friends, its Council; from time to time Council makes representations to Government on matters relating to the ANBG, in particular its funding. The Friends also pay Public Fund administration costs, which would include any legal expenses. As a voluntary organisation we have no staff costs.

The Friends also have concerns about the Public Fund having to meet annual remediation targets:

- Once the Public Fund has made decisions on funding of ANBG project proposals, the ANBG then assumes responsibility for implementation, fitting the work on these projects into its priorities. The Friends are closely consulted but have no input into timing.
- The funds raised by the Public Fund vary from year to year with the result that the Public Fund cannot forecast how much money will be available for it to spend each year. Remediation targets would make it difficult for the Public Fund to manage its funds to achieve the best result for the ANBG.

Overall, we suspect there are a number of Friends of other botanic gardens groups across Australia who would find themselves unable to provide effective support if this proposal proceeds in its current form. This would be unfortunate as public funding for such important institutions, including the Australian National Botanic Gardens, becomes increasingly constrained.

Reporting on remediation and other outcomes in the REO 2017 Statistical Return Form

The Friends of the ANBG are concerned to see that the REO 2017 Statistical Return Form has modified the reporting requirements for 2016-17 to require reporting on remediation and other specific outcomes. To our knowledge, this requirement was introduced without prior advice and before the completion of the Discussion Paper process. This raises concerns about transparency and also the possibility that the Public Fund (and other entities with DGR status) could have previously made decisions that properly reflected their trust deed but are not consistent with these proposed new requirements.



It is important also to note that the Objects of the Public Fund, as defined in the Trust Deed, include increasing community awareness, use and enjoyment of the ANBG and promoting the continued development of the Gardens. All projects supported by the Public Fund are subject to agreement by the ANBG, and enhance the ANBG's capacity to meet its public interest objectives, among them increasing visitor numbers and dissemination of its research to a wider community. The Friends would be very concerned if the Public Fund were not able to fund projects relevant to these Objects.

Acting as a conduit

The Public Fund of the Friends allocates funds to ANBG projects in accordance with its Objects (Attachment A) and the decisions of the management committee are not influenced by the expressed preference or influence of particular donors.

Q13: 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?

The Friends are of the view that the ACNC has a range of powers, not least, the ability to deregister a non-compliant entity, and that these powers in combination with current police powers over fraud and the like, are sufficient.

Lesley Jackman

President

24 July 2017

Barbara Podger

Chair, Public Fund

Attachment A

The Objects of the Public Fund of the Friends of the ANBG



Friends of the National Botanic Gardens Inc.

GPO Box 1777, Canberra ACT 2601 • ABN 57 096 639 836

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- 3.1** The Trust is established and must be maintained exclusively for public charitable purposes in Australia, being the purposes of providing money, property or benefits to:
- (a) support the Gardens:
 - (i) in the protection and enhancement of the natural environment through the conservation of a significant collection of the Australian native flora;
 - (ii) in research into and display of the diversity of plant life, its ecological and geographic distribution and its horticultural values; and
 - (iii) in providing information and education to the community about growing, studying and promoting Australian plants through lectures, workshops and guided tours.
 - (b) increase community awareness of the scientific, education, conservation and recreation functions of the Gardens;
 - (c) promote the continued development of the Gardens;
 - (d) serve as a link to encourage the use and enjoyment of the Gardens by the community;
 - (e) raise money for its objectives.

Attachment B

**Information requirements of ANBG Friends/Public Fund regulators as at 30 June
2017**

ABN 57 096 639 836

Information	Regulator REO	Regulator ACNC	Regulator Registrar General ACT Govt, Access Canberra.
Governing legislation/Regulations, Standards, Trust Deeds, Guidelines etc	Model Rules for PFs on the REO. Guidelines to the REO, incl Model Rules for PFs, 2003. Taxation Ruling 95/27. Income Tax Assessment Act 1997 (S30-E). Charitable Trust Deed FANBG 2004.	ACNC Act https://www.legislation.gov.au/Details/C2016C00306 Friends of the ANBG registration details: <ul style="list-style-type: none"> Entity is a charity Entity subtype is 'advancing the natural environment' Size of charity is 'small' as revenue is less than \$250K 	ACT Associations Incorporations Act 1991. ACT Associations Incorporations Regulations 1991. Red Tape Reduction Legislation Amendment Act 2017.
Friends' Constitution 2015 references	11.	Nil	9.3
Completed annual return & date	Within 4 months of the end of the FY – 31 October	31 January	Previously 31 November. No longer required to report to after 1 July 2017 if registered as a charity in the ACT with ACNC. Specifically: <ul style="list-style-type: none"> not required to submit annual return to Access Canberra or require a fund raising licence in the ACT; not required to meet audit requirements if revenue is under \$250K (the ACNC threshold for a small charity); and not required to notify Access Canberra of changes of address for service or contact details.
Audited financial	Yes	Optional. The Friends is Registered as Small	Yes



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statement of accounts Friends & PF		Charity as revenue is less than \$250K. Provision of annual financial statement for small charity is optional – the ANBG Friends Council Executive decided in 2015 to submit the Friends and PF annual audited financial statements.	
Copy of Auditor's report	Yes	As above. Optional for small charity, however provided 2015, 2016.	yes
Statistical and other information required.	Information on the expenditure of moneys and management of PF assets.	Information on size/number of members, environmental activities undertaken and how these helped achieve the Friends' charitable purpose, beneficiaries of the Friends' activities – activities can be financial or non-financial (eg developing a new strategic plan)	
Details of Council members and Public Officer, changes of Council or PF membership, other changes.	PF membership only, and REO then makes a decision to accept or not. Majority of PF members are required to be 'responsible persons'. Changes to be notified asap.	Elected Council members. Must be 'responsible persons' which has the same meaning as 'responsible entity' under s205-30 of the ACNC Act. Changes to be notified within a month. A declaration is made that a responsible person is not on the ASIC Register of Banned or Disqualified Persons.	Elected members of Council and Public Officer. Notify after AGM and within a month if change occurs at any other time. Public Officer must be ACT resident.
Notification of changes of Friends Constitution/Objects or rules	Not specified, however the October 2015 Constitution was provided.	Yes and any change to charity sub type.	Yes
Register of members	No	No	Yes, records must be kept and available for inspection.
Changes of PF	Yes	No	No



Attachment C

Summary Listing of Completed Public Fund Projects:

Year	Description	\$
2007	Rock Garden Shelter	38,400
2010	Lichen website	14,300
2011	Environmental Monitoring System	49,000
2012-13	Eucalypt Discovery Trail signage	2200
2013-14	Model termite mound, Red Centre Garden	10,800
2013-14	Reprint and update Eucalypt Discovery Trail brochure	400
2014-15	Freezer for seed storage for the National Seed Bank	\$7,425
2014-15	Seed Counter for National Seed Bank	\$14,440
2015-16	Aboriginal Plant Use Trail, signage and brochure	10,700