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Submission in response to Tax Deductible Gift Recipient Reform Opportunities Discussion paper, June 2017

I make this submission as a private citizen with an interest in social and environmental issues, and a contributor of tax deductible to charitable organisations. I think that it is important that in a democratic country like Australia that these civil society groups can not only provide services (like environmental remediation) but also engage in public education campaigns, awareness raising and advocacy. The tax-deductible gift recipient system should be structured to encourage individuals to make donations to charities of their choice, including those that have environmental protection as their purpose. I wish to make the following comments in response to the Tax Deductible Gift Recipient Reform Opportunities Discussion paper, June 2017.

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

Advocacy is an important function of civil society organisations in a well-functioning democracy. Groups that engage in public advocacy serve the public good by helping distribute information, educating the public, and helping ideas gain currency and be incorporated into public policy. These groups have resources often not available to the individual, have high level advocacy skills, and act as a conduit between citizens and government.¹ The community expectation is that civil society organisations such as charities and not for profit organisations can freely and opening contribute to public debate, engage in advocacy, and seek to influence policy, even when the positions they advocate differ from, or indeed are critical of government policy and or the activities of business. This is so, regardless of whether the organisation is a recipient of tax-deductible gifts, or not.

In a democratic society, charities should be able to engage in public advocacy relatively free from government influence or control. Requiring all charities to report on their advocacy activities to the ACNC is onerous, burdensome and problematic. It is not appropriate that the ACNC should take on the role of policing and assessing the advocacy activities of charities. It is difficult to envisage any motive for this reporting other than for the ACNC to act on behalf of government as arbiter of what types, forms and extent of advocacy work is appropriate. Having a sort of charity police may have the effect of silencing charities from articulating views critical of government policy.

¹ The Australian Collaboration, Democracy in Australia – Civil society and public advocacy: An opinion piece <http://www.australiancollaboration.com.au/pdf/Democracy/Civil-society.pdf>

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?

Environmental charities and organisations in Australia are diverse and varied in their activities and focus. For some the primary focus is undertaking on the ground environmental remediation work, such as planting trees, weed reduction, purchasing land for nature reserves and being custodians of these reserves, looking after wildlife, and engaging in land and coast care activities. For others, the focus is engaging in public education and raising public awareness of environmental issues, and running campaigns and other advocacy activities. Some engage in a combination of advocacy and awareness raising and on the ground activities. All fulfil an important role in civil society and their existence can be considered in the broad public good.

Australia has a long history of environmental advocacy, which has contributed to significant decisions being made about the environment, such as the public outcry over koala killings in the early 1900s leading to their protection, protection of the Franklin River and much of South-West Tasmania in the 1980s, and more locally the declaration of Mungo National Park in 2001.²

There is a public good served by civil society groups who advocate on environmental issues and in doing so contribute to public debate. This is particularly important given that lobby groups actively advocate to government on behalf of industry regarding issues and developments that potentially impact the environment. Environmental organisations provide balance in public debate by presenting the collective view of those in the community concerned about environmental issues.

The High Court found that advocacy is a legitimate activity of not for profit and charitable organisations, *Aid Watch Incorporated v Commissioner of Taxation* [2010] HCA 42. The Court stated that the generation by lawful means of public debate concerning the efficiency of foreign aid directed to the relief of poverty is itself a purpose beneficial to the community, and that in Australia there is no broad general rule excluding "political objects" from charitable purposes.³

Tax deductible donations from individuals are an important way for citizens to contribute to civil society, and an important source of income for environmental charities and not for profit organisations. The tax deductible gift recipient system should be structured to make it easy for individuals to contribute to charities of their choosing, including those who have environmental protection as their purpose.

There are no obvious benefits to requiring environmental organisations to commit no less than 25 per cent of their annual expenditure from their public fund to environmental remediation (25

² Australian Environmental Grantmakers Network, History of the movement, <https://www.aegn.org.au/environmental-organisations/history-of-the-movement/>

³ High Court of Australia, *Aid Watch Incorporated v Commissioner of Taxation* [2010] HCA 42.

per cent expenditure rule). To the contrary, the imposition of such a condition is discriminatory, anti-democratic, potentially inefficient and imposes significant regulatory burden.

This application of this condition to environmental charities and organisations discriminatory as this condition is not proposed for other categories of charity or organisation who are tax-deductible gift recipients, nor should it be. Such a condition is anti-democratic, because this condition seeks to limit the ability of environmental charities and organisations to undertake advocacy work to contribute to public debate on environmental issues and to influence public policy.

Many individual citizens provide tax deductible donations to these organisations to support the advocacy work they do, and these donations are an important source of income for these charities and organisations. Removing tax deductibility gift status of these organisations for non-compliance with this condition would threaten the existence of such groups, and in doing so weaken the ability of citizens with an interest in protection of the environment to collectively have their views heard. The absence of environmental groups as a voice at the table in public debate would undermine the fairness and balance in public debates, as the capacity for industry lobby groups to participate would remain unhindered.

The imposition of the 25 per cent expenditure rule is potentially inefficient, as particular environmental charities will have specialist expertise that may be geared predominantly toward advocacy or for others remediation. Forcing those charities with more of an education and advocacy focus to undertake remediation work is inefficient, as there may be other charities who have more developed expertise in this area, who can do this particular work more efficiently (per dollar donated).

There is an obvious regulatory burden imposed on the charitable organisation in having to apportion and report on expenditure on advocacy work. There are also difficulties in defining activities as strictly either advocacy or remediation. For example, some environmental charities undertake research and data collection activities. It would be problematic and unfair if a simple either advocacy or on the ground remediation activity dichotomy classified these activities as advocacy.

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