

Ms Susan Bultitude
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The Treasury
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By email: DGR@treasury.gov.au

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Dear Ms Bultitude

Consultation on potential reforms to the Deductible Gift Recipient tax arrangements

Thank you for the opportunity to make a submission to this consultation. The Human Rights Law Centre's submission is limited to consideration of consultation questions 1, 4, 12 and 13.

Q.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?

For many years, laws and regulation around DGR status have been overly complex, inconsistent and difficult to navigate. This has prevented tax concessions from flowing to many charities that provide significant public benefit, as well as increasing uncertainty for DGR entities undertaking advocacy. It is critical that the government create an enabling tax environment, including DGR status, for not-for-profit groups to ensure that they can continue their valuable work, including advocacy.

In principle, we support a requirement for a DGR (other than a government entity DGR) to be a registered charity in order to be eligible for DGR status.

However, we would also support the converse proposition that has been recommended by the Productivity Commission and Not-For-Profit Sector Tax Concession Working Group. In 2010 the Productivity Commission recommended that the scope of DGR status be progressively widened to include all endorsed charitable institutions and funds.¹ This was supported in 2013 by the Not-For-

¹ Productivity Commission, *Contribution of the Not-For-Profit Sector*, Research Report, 2010, recommendation 7.3.

Profit Sector Tax Concession Working Group.² Extending DGR status would reduce complexity and regulatory costs, improve community organisations' ability to access non-government money and foster a strong, independent and diverse sector.

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

We do not see a need for additional information to be sought from all charities about their advocacy activity. The reform is only supported by an unattributed statement in the discussion paper that "there are concerns that some charities and DGRs undertake advocacy activity that may be out of step with the expectations of the broader community" (paragraph 15). There is no evidence provided in support of this statement and it is not a sufficient basis on which to expand reporting obligations.

Q.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?

We do not support a requirement that a percentage of annual expenditure of environmental organisations be committed to environmental remediation, whether it be 25 per cent or 50 per cent.

By requiring a minimum amount of remediation work, the government would be creating an arbitrary distinction between remediation work and advocacy, undervaluing the strong contribution that advocacy has made to conserving iconic Australian places of great environmental value, including national parks, marine parks and wetlands.

The consequences would be severe: effectively stripping DGR status from advocacy groups who have acted according to their charitable purposes.

Since *Aid/Watch* and the passing of the *Charities Act 2013* (Cth) it is clear that environmental charities can engage in advocacy including political advocacy so long as it is in accordance with their charitable purposes. The Charities Act provides that "advancing the natural environment" is a valid charitable purpose (section 12(1)).

Advocacy by environmental and charitable organisations should be seen as a vital part of the communications between voters, Members of Parliament and government, and between voters amongst themselves, which the High Court has recognised as "an indispensable incident" of Australia's constitutional system.³ In *Aid/Watch*, the High Court recognised that these constitutional processes contribute to public welfare.⁴

The requirement would also create an unnecessary amount of bureaucracy and administrative burden on organisations.

² *Not-for-Profit Sector Tax Concession Working Group- Final Report*, May 2013-7.

³ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 559-560.

⁴ *Aid/Watch Inc v Commissioner of Taxation* (2010) 241 CLR 539, [45].

Q.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?

Assuming that all DGRs are registered with the ACNC as charities, there is no need for further regulation. Charities are not allowed to have disqualifying purposes, including the purpose of engaging in or promoting activities that are unlawful or contrary to public policy.⁵

Thank you for the opportunity to participate in this consultation. We would be happy to discuss the issues further.

Yours sincerely



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⁵ Charities Act 2013 (Cth) s 11.