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Tax Deductible Gift Recipient Reform Opportunities Discussion Paper

We wish to make a submission to the consultation paper which proposes potential reforms to Deductible Gift Recipient (DGR) tax arrangements.

Lock The Gate Alliance (LTGA) has DGR and Charity Status and has been operating under these conditions since 2006. We have over 96,000 supporters and volunteers, including more than 250 groups across Australia. Almost 7,500 of these people donate to us to help support the work we do.

In summary:

- 1) We have welcomed the changes brought by the ACNC over the last 2 years to create a one-stop shop for charities with guidance and reporting. We are strong supporters of the transparency and structure which the ACNC have provided and believe their role as a strong, independent authority should be continued and not undermined in any way.
- 2) For charities like ours that already provide annual reporting and an annual audit, and who also have to report to multiple state bodies in relation to fundraising permits, we do not support any additional reporting burden.
- 3) We do not support changes which are targeted at one part of the charity sector and which appear to have arisen from politically-motivated attacks by the mining industry. We believe such changes will undermine and distort the administration of the sector.
- 4) We believe it is entirely inappropriate to force environmental organisations to conduct on-ground remediation works of 25-50%. This is effectively offloading the rehabilitation responsibilities of the for-profit sector onto the charity sector.
- 5) It is particularly notable that recent research by the Queensland Government found that progressive rehabilitation by the mining industry is so poor, that only 9% of disturbed land has been rehabilitated[1].
- 6) It would be extraordinary if environmental charities were held to a requirement for on-ground remediation that the mining industry itself, which causes the damage in the first place, does not even go close to meeting.

Response to key recommendations

The following recommendations are supported by Lock The gate:

- All DGRs could be required to be charities registered and regulated by the ACNC (other than government entities, which cannot be charities).
- The ACNC's guidance for registered charities (and subsequently for DGRs) help these organisations to understand their obligations, particularly for certain types of advocacy. The ACNC has already developed guidance on advocacy so DGRs that are not currently registered charities should refer to this resource.
- The ACNC could revoke an organisation's registration status, and consequently the ATO would revoke the organisation's DGR status, if one of the grounds for revocation under the ACNC Act were to exist.
- The public fund requirement for DGRs that are charities could be removed and DGR entities could apply to be endorsed across multiple categories.

The ACNC has already brought a substantially increased level of transparency. We already undertake significant annual reporting to the ACNC. We do not support any measures that may be applied disproportionately to one part of the charity sector. ACNC powers as they currently stand are sufficient, and we do not support additional regulation or reviews. All that should be required to certify ongoing eligibility is an additional question in the annual report.

We are also supportive of the following recommendation, however we believe that it sits best with ACNC, rather than ATO. The ACNC is designed for purpose and brings the independence and expertise that is needed to undertake the administration of the registers:

- To simplify the application process for DGRs, the administration of the four DGR registers could be transferred to the ATO. Those organisations that do not fall within the four registers would still be able to apply to the Minister Revenue and Financial Services for specific listing.

Response to Consultative Questions

The first three consultative questions are supported by LTG:

Q1. 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?

Q2. Are there likely to be DGRs (other than government entity DGRs) that could not meet this requirement and, if so, why?

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

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

We believe that there are sufficient general reporting processes already in place, and we do not support creating an additional reporting burden. We cannot see why there would be such a heavy emphasis on one aspect of the many roles which charities undertake. We believe this will lead to a potential bias in the administration of charities which is inappropriate. As long as our activities are consistent with our primary purpose, we do not believe that is relevant or appropriate for this information to be sought.

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

The current Annual Information Statement is already sufficient in terms of reporting, and additional reporting requirements are likely to substantially increase the reporting burden. The goal of ACNC when first envisaged was to reduce that burden. It is important to note that charities like ours have numerous other annual reports to make, including multiple reports in relation to state fundraising permits.

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

As discussed, the proposal will add a significant reporting burden regardless of how it is collected, and we do not support it in practice nor in principle.

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?

As noted above, we are not opposed to simplification of the administration of the DGR registers, but believe it must go to the ACNC, not the ATO.

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?

We agree with the proposal to remove public fund requirements. A public fund takes substantial time and effort to administer, and it would definitely lead to administrative savings for our organisation.

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?

We believe this is unnecessary for charities that do an annual audit and annual report to ACNC. A rolling review just adds to administrative burden and has the potential to be used disproportionately against one part of the sector. ACNC should review only those charities WITHOUT annual reporting requirements that have been DGRs for a long time, to conduct a status update. We do not support further involvement of ATO in this process – the ACNC was established to provide a one

stop shop to provide clearer reporting requirements and a complaints process for charities, and it is working well. We do not support changes to that now to introduce a role for the ATO, which will create confusion and added burdens to charities who are just getting used to the ACNC processes.

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

As noted above, we do not support additional administrative burdens and reviews for charities that provide an annual report and annual audit to the ACNC.

Q11. 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 circumstances' policy requirement for listing?

We do not believe that a sunset rule is needed. As long as these organisations are reporting as required, we can see no reason why they should be automatically discontinued.

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?

We are opposed to this proposal in practice and in principle. It is inappropriate for the charity sector to be forced to remediate damage caused by the for-profit sector. The potential regulatory burden would be very severe. This proposal appears to have been motivated by a political agenda being run by the mining industry. We believe that it threatens to distort and undermine the administration of the charity sector, by introducing ad hoc constraints to one part of the sector.

Q13. Stakeholder's 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?

We are concerned at the apparent bias in this question in relation to environmental DGRs, when the ACNC and REO have both acknowledged that there has not been any identified issues with such organisations. We do NOT support any additional sanctions, and consider that that the current requirements by the ACNC are sufficient and are working appropriately. The proposal requiring DGRs to be ACNC registered charities is sufficient to ensure strong governance standards and supervisions to ALL DGRs.

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[1] Better Mine Rehabilitation for Queensland 2017, Discussion Paper, Department of Premier and Cabinet, Treasury