



Nature Conservation Council

The voice for nature in NSW

Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600
Via Email: DGR@treasury.gov.au

2 August 2017

Dear Senior Adviser,

RE: Tax Deductible Gift Recipient Reform Opportunities Discussion Paper

The Nature Conservation Council of NSW (**NCC**) is the peak environment organisation for New South Wales, representing over 150 member societies across the state. Together we are committed to protecting and conserving the wildlife, landscapes and natural resources of NSW. We have been the voice for the environment in NSW working towards necessary protections for our forests, oceans, rivers and wildlife for over 60 years.

The Register of Environmental Organisations (**REO**) under the *Income Tax Assessment Act 1997* has recognised the importance and public good of environmental purposes for over 20 years. The REO supports Australians donating to charities with the principal purpose of protecting, researching, educating and informing people about the natural environment by allowing tax-deductible donations. NCC is an organisation listed on the REO and a charity registered with the Australian Charities and Not-for-profits Commission (**ACNC**).

We welcome the opportunity to comment on the *Tax Deductible Gift Recipient Reform Opportunities Discussion Paper*.

There are a number of recommendations in the Discussion Paper which may facilitate less complex administrative arrangements for charities which seek or hold DGR status, such as ensuring environmental DGRs are registered as charities and subject to the regulatory oversight of the ACNC. There may also be benefits with removing the need for DGR organisations to establish and manage public funds. Nonetheless, it is clear that there is a political motive in this review process. While ostensibly it relates to management arrangements for all not for profits, it singles out environmental organisations (eNGOs) for particular and inappropriate scrutiny.

eNGOs have already been subject to considerable scrutiny in recent years. The House of Representatives Standing Committee on the Environment's inquiry on the Register of Environmental Organisations (REO inquiry) was widely criticised as being political in nature and creating a risk of unnecessarily increasing the administrative burden on REOs. The dissenting report to the REO inquiry noted that:

The weight of evidence rejects the premise, advanced by government members, that there exists a dichotomy between advocacy and 'on ground' work. The evidence instead shows that

it will increase red tape and treat environmental organisations differently to other not for profit organisations.

Moving away from a purpose test to one based on activities creates red tape on both ends and acts as a brake on innovation through constraining the manner in which organisations can seek to achieve their objectives.¹

During the REO inquiry process, it was made clear that the Australian Charities and Not for Profits Commission (ACNC) believes that it has the appropriate enforcement powers to regulate all charities, including eNGOs.

It is disappointing that Treasury has therefore decided to re-open this line of attack. It looks like an attempt to hamper the efforts of the environmental movement to fit the interests of industry that profits from environment destruction.

We further note that while the Discussion Paper has been open for public comment, organisations on the REO have received their annual return form. Unlike in recent years, organisations have been required to report on their activities. NCC is extremely concerned about the apparently pre-emptive decision to require this information which distinguishes between a charities purpose and its activities.

We provide the following response to specific consultation paper questions.

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

Charities are already subject to substantial annual reporting requirements. Additional reporting would increase the time and resources that charities need to put into reporting and compliance, which seems to be the real motivation here. The more time eNGOs are tied up on unnecessary reporting, the less time we have to represent our members and supporters and be effective advocates for nature, clean air and water.

The Discussion Paper states that “[t]here are concerns that charities and DGRs are unsure of the extent of advocacy they can undertake without risking their DGR status. This is a particular concern for environmental DGRs, which must have a principal purpose of protecting the environment”. Not only does the Discussion Paper not provide evidence that DGRS recipients broadly are engaging in advocacy beyond that allowed under the *Charities Act 2013*, eNGOs are being singled out without substantive evidence of any broader problem. Instead, this appears to be an attempt to pressure organisations to reduce their environmental advocacy activities, despite the legitimacy of advocacy being recognised by current laws. The ACNC website clearly states:

The Charities Act makes clearer the existing law on advocacy and political activity by charities. A charity can advance its charitable purposes in the following ways:

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- *involving itself in public debate on matters of public policy or public administration through, for example, research, hosting seminars, writing opinion pieces, interviews with the media*
- *supporting, opposing, endorsing and assisting a political party or candidate because this would advance the purposes of the charity (for example, a human rights charity could endorse a party on the basis that the charity considers that the party's policies best promote human rights), and*
- *giving money to a political party or candidate because this would further the charity's purposes.*²

The ACNC website goes on to provide guidance on what a charity must avoid and also provides a webpage with specific guidance *Charities, elections and advocacy*³ to assist any organisations who are unclear about their charitable requirements.

The lawfulness and appropriateness of charities engaging in political advocacy has been confirmed by the High Court. In the *Aid/Watch* case (2010) the High Court found that advocacy is of public benefit, and is indispensable to an informed democracy and public debate.⁴ We strongly reject the need for any additional reporting of advocacy activities. Further, the practical application of such reporting is questionable as determining whether activities should be described as advocacy or education, research, promotion or member communication would impose a significant and unnecessary burden on eNGOs. There is no justification in the Discussion Paper for imposing such a burden.

Ensuring the ACNC is resourced to provide appropriate education and guidance about the extent of allowable advocacy is a more appropriate response to any legitimate concerns in relation to DGR advocacy. Further, there is a clear ACNC complaint process if a member of the public believes that a charity is engaging in inappropriate activity.

9. 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?

NCC has seen no evidence to support the need for rolling reviews of DGRs or annual certificates. The ACNC's reporting program already requires an annual information statement from all charities and financial statements for larger charities. These reporting and governance requirements, as well as its compliance and auditing abilities, make additional rolling reviews unnecessary.

REO organisations are currently required to undertake specific reporting, in addition to ACNC reporting requirement. We support ensuring all DGR organisations are subject to the ACNC requirements so there is streamlined and consistent reporting across DGR organisations.

²https://www.acnc.gov.au/ACNC/Register_my_charity/Who_can_register/Char_def/ACNC/Edu/Edu_Char_def.aspx

³ https://www.acnc.gov.au/ACNC/Reg/Charities_elections_and_advocacy_.aspx

⁴ French CJ, Gummow, Hayne, Crennan and Bell JJ *Aid/Watch Inc v Commissioner of Taxation* [2010]

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?*

NCC is a DGR charity and for decades has worked with land holders, the NSW Rural Fire service and in more recent years Indigenous Protected Areas to improve bushfire management for biodiversity and cultural outcomes. Our staff and volunteers include ecologists and project managers with extensive knowledge of how to effectively manage on ground remediation works to enhance outcomes for the environment. We are proud of the contribution that we have made to protecting the natural environment through these programs but recognise that this is only one aspect of the work needed to ensure protection of our forests and oceans, control land clearing, restore rivers and wetlands to health, and promote clean renewable energy.

We also employ and support volunteers who are committed advocates working to change and improve the laws and regulations of NSW that ensure required protections for our degraded water resources, landscapes and oceans.

The notion that environmental advocacy groups doing the critical work to enshrine protections into law would suddenly be required to spend 25%- 50% of their resources for on ground works is as foolish as it is blatantly politically motivated.

In order to protect our environment and communities that are under threat from pollution, land degradation and climate change we need knowledgeable advocacy organisations that can work within and outside government processes to ensure the environment is factored into decision making. As peak body representing over 150 member societies, we have close connections to the issues and know what is actually happening in the environment and can inform government bodies of the impacts and effects of policy and the concerns of well-informed and interested people. eNGOs are also an essential source of independent information. CSIRO research (focusing on perceptions of mining) found that the Australian public does not trust information from any one sector absolutely. Yet on average, NGOs were more trusted than government or industry sources.⁵

There are scores of talented effective organisations that carry out important on ground remediation, which is also an important part of environment protection efforts.

Both environmental remediation and environmental advocacy are necessary for positive environmental outcomes. For example, in the recent rewrite of the NSW land clearing legislation, the draft legislation was to allow for clearing of lands previously remediated by community groups using taxpayer funding. Through a concerted effort including policy development, lobbying and community engagement, NCC and other DGR environmental non-profits effectively advocated for a change in the regulation to ensure some of these sites were protected from clearing.

⁵ Moffat K, Zhang A and Boughen N, (2014), *Attitudes to Mining in Australia*, CSIRO, p11.

If the Treasury wishes to propose reforms to the management of DGR listed organisations, it should as part of this process reaffirm advocacy as being an entirely valid and necessary activity of charity, consistent with current laws. We note that the *Income Tax Assessment Act 1997* defines the principal purpose for an environmental DGR as either (a) protecting the 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. The proposal to spend a percentage of funds on remediation activities would require organisations which received DGR because they fit under provision (b) to use the donations they receive for an entirely different purpose.

Granting of DGR status is based on the purpose of an organisation. A charity may only conduct activities that further its charitable purposes. Any policy that tries to enforce a government prescription of what activities an organisation should undertake to achieve its purpose is highly inappropriate.

Further, there is no evidence that such an approach will achieve the best possible results for the environment. The dissenting report in the REO inquiry also noted that:

Moving away from a purpose test to one based on activities creates red tape on both ends and acts as a brake on innovation through constraining the manner in which organisations can seek to achieve their objectives.

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?*

We do not support the introduction of specific sanctions for environmental DGRs as this is exactly what the Minerals Council of Australia have been calling for – the government would be seen as following the lead of the fossil fuel and mining sectors if it placed specific sanctions against eNGOs.

Non violent protest is a cornerstone of sustaining a healthy democracy. Being engaged in peaceful protests does not imply that an NGO is involved in 'illegal' activity.

We are confident that there are currently sufficient governance and reporting mechanisms in place through the ACNC to deal with any specific concerns about individual charities that might arise and support streamlining DGR governance through the ACNC.

Conclusion

We urge you to put aside the recommendations requiring inappropriate limitations on charitable activities, and inequitable and burdensome governance arrangements for eNGOs in the Discussion Paper. A legitimate and non political review of the governance arrangements for not for profits will be broadly welcomed, if they remove unnecessary duplication, inconsistencies in how different charities are managed, and reduce reporting burdens while ensuring transparency and rigor in the reporting process.

However, singling out NGOs working to protect our natural environment is inappropriate and will continue to be seen as being politically motivated by the broader community.

Please do not hesitate to contact me on (02) 9516 1488 or ncc@nature.org.au if you would like any further information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kate Smolski', written in a cursive style.

Kate Smolski
Chief Executive Officer
Nature Conservation Council of NSW