

To the Senior Adviser, Individuals and Indirect Tax Division, The Treasury.

Dear Sir or Madam,

Please consider my comments on the consultation paper for potential reforms to the Deductible Gift Recipient (DGR) tax arrangements. My position is that of a concerned citizen who makes regular donations to various humanitarian and environmental charities, but please note that I have no formal affiliation with any organisation that might be affected by the outcomes of this reform process. I specifically want to address consultation question 12 asking for "Stakeholders' views...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?" (Recommendation 5 from the House of Representatives Standing Committee on the Environment Inquiry into the Register of Environmental Organisations [REO]). I will answer in the negative to Recommendation 5 and my reasons for doing so are outlined below but first I would like to make a few general comments about the ridiculousness of this recommendation.

- It is clear that Recommendation 5 is a political gambit to reduce the ability of REO's to influence the policy agenda with respect to the power of other groups. Recommendation 5 takes up the call from mining and resources lobby, including the Queensland Resources Council and the Energy Resources Information Centre (funded by the gas industry). Many of these lobby groups enjoy DGR status themselves and a more appropriate recommendation, in the light of the actual and possible environmental damage the parent industries are responsible for, would see a minimum of 25 per cent of the public funds of these lobby groups spent on environmental remediation. This is as logical a suggestion, if not more so, than Recommendation 5.
- It is not clear where a figure of 25 or 50 per cent is derived from. On what basis is this figure produced? Again it seems likely the figure is a gambit aimed at reducing the influence of REO's by a commensurate amount.
- Legal, educational and advocacy activities are widely recognised for their 'public good' and it is not clear that concerns that advocacy activity may be out of step with the expectations of the broader community are coming from anyone other than lobby and political groups with conflicting interests. Australian charity law recognises that protecting the natural environment is a public good (Charities Act 2013) The Productivity Commission's 2014 inquiry into Access to Justice, and the 2016 REO inquiry itself also acknowledge this role. The High Court's Aid/Watch judgement (2010) and the Charities Act recognise that raising public awareness through advocacy is itself a charitable purpose – and an 'indispensable' part of an informed democracy. Subsection 30-265(1) of

the Income Tax Assessment Act 1997, states that "(The) principal purpose (of an environmental DGR) must be: (a) the protection and enhancement of the natural environment or of a significant aspect of the natural 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." In my opinion it is clear that protection of the environment is best achieved by the prevention of damage in the first instance and this is the role of REO's and charities that engage in law reform, public education, research, advocacy and professional legal services.

I believe there should be no compulsion on REO's engaged in "peripheral" activities (e.g. advocacy, legal services etc.) to spend any portion of their public fund on environmental remediation considering that they are more than adequately discharging their duties to protect the environment via the prevention of environmental damage. From the point of view of environmental *protection*, Recommendation 5 has no benefits. Remediation is an activity that occurs after protection has failed. Limiting the role of advocacy, education and other such "peripheral" activities is a limitation on the ability to prevent environmental damage from occurring in the first place, surely a more effective means of protecting the environment than remedial works. Organisations engaged in advocacy, provision of legal services, education etc. are directly responsible for the protection of vast swathes of Australian wilderness, Examples such as the Franklin River and the Great Barrier Reef speak volumes about the ability of REO's to achieve outstanding environmental outcomes outside the work of remediation. It is for good reason that we have the truism that "prevention is better than cure".

Recommendation 5 is an unnecessary and unwelcome narrowing of the scope of what comprises environmental protection that is at odds with what the community actually supports. If the community believed that environmental protection was best achieved only through on the ground work, then that would be supported through the actual flow of charity dollars. The fact that REO's engaged in a broad spectrum of activities are supported by charity dollars suggests that this is how the broader community understand the work of environmental protection. REO's already exist who fulfil the role of remediation and on-ground works and Australians support such groups according to their own rational views of how environmental protection is best served. Recommendation 5 seeks to limit the abilities of Australians to best choose how to allocate their precious charity dollars in a manner which is consistent with tax law, legal precedent and sheer effectiveness.

It is also the case that from the point of view of reducing complexity in the DGR tax arrangements that Recommendation 5 does not reduce complexity for either the ATO or for the REO's, one of the stated aims of the DGR discussion paper (pg. 7-9). Measuring and reporting compliance will be an impost on REO's

and on the ATO, and in the case of the impact on REO's will further diminish their ability to actually discharge their mission statements. An increase in the administrative burden on REO's will mean less dollars to spend on their core mission and the burden placed on the ATO will be borne by the taxpayer. It seems the only winner from such an arrangement will be those parties who would like to see environmental protection, in its preventative mode, weakened. It should again be noted that Recommendation 5 is not inspired by the needs of Treasury or the ATO, but comes directly from vested political and business interests.

Recommendation 5 is a blatant politicisation of tax policy at the expense of organisations who provide a clear public good, as opposed to DGR's such as mineral and resource lobby groups whose public benefit is much less clear. It is neither fair nor reasonable that such lobby groups should have this much influence on tax policy. As mentioned above, it would be more appropriate for mining and resource lobby groups who enjoy DGR status to be required to spend 25 per cent or more of their public fund on environmental remediation. This would surely be more likely to pass a fairness test and be in line with expectations of the broader community. For all the reasons outlined above I therefore reject Recommendation 5 in its entirety.

Thank you for taking the time to consider my opinions on this matter.

Yours sincerely

Nathan Sidney

