



Animal Defenders Office

Using the law to protect animals

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The Animal Defenders Office is accredited by Community Legal Centres Australia Inc.

Philanthropy Inquiry
Productivity Commission
GPO Box 1428
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5 May 2023

Submissions in respect of the Productivity Commission's Inquiry into Philanthropy

Dear Productivity Commissioners

On 23 March 2023 the Productivity Commission (**the Commission**) issued a call for submissions in respect of its Philanthropy Inquiry (**the Inquiry**), which seeks to analyse the motivations for philanthropic giving in Australia and identify opportunities for its growth.

The Animal Defenders Office (**ADO**) has responded to the Commission's call by providing submissions in relation to opportunities to expand philanthropic giving in respect of animal welfare and advocacy organisations in Australia.

1 Overview of the ADO

The ADO is a nationally accredited not-for-profit community legal centre specialising in animal law, with a focus on providing free animal law services to the community.¹ The ADO is a member of Community Legal Centres Australia Inc., the national peak body representing community legal centres across Australia. The ADO does not receive government funding and exists on donations from members of the public. The ADO was established in 2013 and has been run by volunteers since that time.

2 Terms of reference and scope of ADO's submissions

2.1 Terms of reference

The terms of reference (**TOR**) for the Inquiry include to examine "the current barriers to philanthropic giving", including the "burden imposed on donor, volunteers and not-for-profits by the current regulatory framework for giving and how this affects their philanthropic decisions" (TOR 3(i)).² The TOR also include considering "the effectiveness and fairness of the deductible gift recipient framework and how it aligns with public policy objectives and the priorities of the broader community" (TOR 5).

¹ Further information about the Animal Defenders Office can be found at: www.ado.org.au.

² <https://www.pc.gov.au/inquiries/current/philanthropy/terms-of-reference>

2.2 Scope of the ADO's submissions

The ADO's submissions for the purpose of the Inquiry are principally directed at TOR 3(i) and 5, which focus on the current legislative and regulatory framework surrounding the "deductible gift recipient" (DGR) scheme. Owing to the limited scope of the DGR-eligible categories currently recognised by the Australian Taxation Office (ATO) in respect of animal welfare,³ many animal welfare advocacy organisations such as the ADO are not eligible for DGR status. In broad outline, these submissions recommend that the DGR-eligible categories in respect of animal welfare should be expanded to accommodate broader mandates and activities of organisations than those recognised under the current framework.

3 DGR Status

3.1 General purpose of the DGR scheme

Where an organisation or entity holds DGR status, it is eligible to receive tax-deductible donations. This allows the donating taxpayer to claim a tax deduction on their donation, thereby increasing the incentive for public donations. The laws on deductible gift recipients are, at their core, designed to incentivise charitable contributions from the community, which in turn increases the public philanthropic investment in the social causes advocated for by the organisations.

3.2 DGR status of animal welfare organisations under the current legislative and regulatory framework

Under the present legislative and regulatory framework, animal welfare organisations must fall within one of two categories to be considered for DGR status:

- (i) 'Animal welfare charity': To classify as an 'animal welfare charity', an animal organisation must, as its *main* activity (as stated in the organisation's constitution or set of rules),⁴ provide short-term direct care to animals (not only native wildlife) who have been lost, mistreated or are without owners, or rehabilitate orphaned, sick or injured animals (not only native wildlife) who have been lost, mistreated or are without owners.⁵ Importantly, if the main focus of the organisation centres on public education, lobbying or campaigning for animal rights, then the ATO will not consider it an 'animal welfare charity' for the purpose of DGR endorsement.
- (ii) 'Environmental organisations': To classify as an 'environmental organisation', an organisation must be incorporated and have as its main purpose either the protection or

³ Australian Taxation Office, 'Deductible Gift Recipients (DGRs)' (<https://www.ato.gov.au/Non-profit/Getting-started/Getting-endorsed-for-tax-concessions-or-as-a-DGR/Is-my-organisation-eligible-for-DGR-endorsement-/DGR-categories/>), which provides information on DGR categories, eligibility criteria, and compliance requirements.

⁴ Though the organisation can undertake other activities, it must have one or both of these as its main activity to classify as an animal welfare charity.

⁵ *Income Tax Assessment Act 1996* (Cth), s 30.45(1), Table 1, Item 4.1.6. See also Australian Taxation Office, 'What is an animal welfare charity?' ([What is an animal welfare charity? | Australian Taxation Office \(ato.gov.au\)](https://www.ato.gov.au/Non-profit/Getting-started/Getting-endorsed-for-tax-concessions-or-as-a-DGR/Is-my-organisation-eligible-for-DGR-endorsement-/DGR-categories/on-Office-(ato.gov.au)))

enhancement of the natural environment (or a significant aspect of it), or the provision of information or education, or carrying on researching, about the natural environment (or a significant aspect of it).⁶

Organisations that do not come under one or both of these two recognised heads (such as the ADO) are not eligible for DGR endorsement by the ATO, and therefore cannot rely on the tax incentives of the DGR scheme to encourage public donations to their organisation. Unsurprisingly, this significantly hinders the extent to which such organisations can source and deploy public donations to fund their operations.

3.3 Effectiveness and fairness of the deductible gift recipient framework

As mentioned, TOR 5 of the Inquiry seeks to consider “the effectiveness and fairness of the deductible gift recipient framework”.⁷ The ADO submits that the current DGR legislative and regulatory framework in respect of animal welfare organisations is neither effective nor fair.

In the context of animal welfare philanthropy, a significant barrier to charitable giving under the current framework is that organisations such as the ADO are ineligible for DGR status due to the narrow and rigidly defined categories of eligibility.⁸ It is well established that tax incentives, such as the DGR scheme, strengthen charitable giving to organisations.⁹ However, as the Commission recognises, “[g]etting DGR status therefore becomes critically important to organisations seeking to attract philanthropic funding, particularly those for which private donations are a major source of revenue”.¹⁰ Organisations that are not eligible for DGR status are forced to rely on a bare, non-incentivised model of philanthropy that typically engages less donor behaviour compared to that of a DGR-endorsed organisation. The deleterious effect of this for not-for-profit organisations such as the ADO, which relies exclusively on donations from members of the public to fund its operations, is particularly acute.

The ADO submits that the current DGR framework is not “effective” because it supports and promotes the same *types* of charities and organisations due to its narrowly defined and selective DGR eligibility criteria. In practical terms, this creates an ‘issue monopoly’ within that particular social cause, where certain issues are emphasised and supported by public philanthropy whilst different but equally worthwhile issues within that same social cause are neglected or avoided due to organisations not being able to obtain DGR status. In this way, the present DGR framework fails to recognise the plurality of issues that can arise under a single philanthropic banner (such as ‘animal welfare’), with the framework currently supporting very few to the neglect of many. The DGR framework therefore cannot be said to be “effective” given that it fails to promote the full panoply of issues that come under the

⁶ An ‘environmental organisation’ must also establish and maintain a public fund, as well as satisfy several other administrative requirements in order to qualify for endorsement.

⁷ Productivity Commission, Public Inquiry into Philanthropy, Term of Reference 5.

⁸ Item 4.1.6 of Table 1 of s 30.45(1) of the *Income Tax Assessment Act 1997* (Cth).

⁹ OECD, *Taxation and Philanthropy*, Ch 2 ‘The case for providing tax concessions for philanthropy’, <https://www.oecd-ilibrary.org/sites/722d538f-en/index.html?itemId=/content/component/722d538f-en>.

¹⁰ Productivity Commission, *Review of Philanthropy – call for submissions*, p 16.

banner of 'animal welfare' and, as a result, fails to engage the full potential of public philanthropy in the Australian community in respect of these issues.

The current DGR framework differentiates between advocating for native animals (DGR eligible) and advocating for animals in general, or non-native classes of animals such as 'farmed' animals (not DGR eligible). The ADO submits this differentiation is not sustainable in the mid-2020s in the face of widespread community concern about animal welfare and animal protection *in general*, which is discussed further below. The ADO submits that the framework therefore does not achieve "fairness", and that the current overly narrow eligibility categories represent, in their present form, a structural flaw in the existing DGR framework as it applies to animal welfare philanthropy.¹¹

Noting that there is no "systematic and broad-based review mechanism for continued access to DGR status",¹² the ADO submits that any concerns as to the 'over-inclusion' of organisations for DGR status could more appropriately be assuaged by a robust review mechanism into organisations' continued eligibility to hold DGR status. In the ADO's view, an example of a more effective and responsive regulatory approach would be to broaden the eligible class of activities that DGR-endorsed animal protection (and other) organisations can undertake, but implement more rigorous oversight and control mechanisms to ensure that organisations with DGR status are conducting their operations in a manner consistent with their stated purpose.

3.4 Asymmetry in the deductible gift recipient framework and broader community priorities

Under TOR 5, the Commission is to consider how the "*effectiveness and fairness of the deductible gift recipient framework*" aligns with "*the priorities of the broader community*".¹³ In the ADO's submission, the current deductible gift recipient framework for animal welfare organisations fails to align, to a significant degree, with the contemporary views held by the Australian community on animal protection and advocacy issues.

This misalignment is attributable, at least in part, to an asymmetry that has emerged between the overly narrow legislative and regulatory eligibility rules for animal welfare organisations obtaining DGR status, compared to the growing support for and awareness of animal welfare in general in contemporary Australian society.

Animal welfare continues to be amongst the highest-ranking social causes for Australians, with support and awareness of the cause continuing to track in an upward trajectory. Indeed, the Commission's 2016 Inquiry into, and subsequent Report on, Agriculture recognised the public benefit that derives from maintaining animal welfare standards in respect of farm animals.¹⁴

¹¹ Marrie, H. and Marrie, A. 2013, *Identifying and Removing Structural Flaws in the Current Framework Governing Deductible Gift Recipient (DGR) Endorsement to enable Indigenous Organisations to Better Access Philanthropic Support*, DGR Reform Background Briefing Paper, 25 June, Bukal Consultancy Services.

¹² Productivity Commission, *Review of Philanthropy – call for submissions*, p 16.

¹³ Productivity Commission, Public Inquiry into Philanthropy, Terms of Reference 5.

¹⁴ Productivity Commission, *Productivity Commission Inquiry Report: Regulation of Australian Agriculture* (No. 79, 15 November 2016), p 204ff.

In 2018 an Australian Government-commissioned report into attitudes towards farm animal welfare revealed, on a quantitative analysis, that there was overwhelming social concern in Australia for the welfare and treatment of farmed animals (95%).¹⁵

Similarly, research conducted by the Responsible Investment Associate Australasia demonstrated that the avoidance of animal cruelty was amongst the highest priorities of social causes in the context of consumer attitudes towards investing. As noted in the Report, “[m]ore Australians seek to avoid activities linked to animal cruelty, including animal testing or animal products, increasing to 67% this year from 63% in 2020”.¹⁶ This increase, which surpassed social concerns such as the avoidance of human rights abuses (63%) or environmental damage (50%), demonstrates that animal welfare is an exceedingly important priority amongst the broader community. As a consequence of this rise in societal concern for animal protection, organisations such as the ADO have a legitimate role to play in advocating for and giving expression to these widely-held views of the broader community.

Historically, the growing concern of Australians for the welfare of animals in general was noted by the High Court of Australia in the 2001 case of *ABC v Lenah Game Meats*.¹⁷ In a well-known passage Kirby J acknowledged animal welfare as a legitimate subject of public debate and noted the importance of public interest groups in raising awareness of the issues and of generating public debate.¹⁸ Yet these very groups identified by the High Court in 2001 as critical to fostering this important public debate are still denied access to the DGR scheme and the philanthropic benefits that flow from it.

There is, then, significant scope for the role of animal advocacy organisations such as the ADO to advocate for changes to animal welfare laws and policies in a way that reflects the community’s increasing concern about the issue. The ability of organisations such as the ADO to advocate on behalf of the community about animal welfare as a legitimate and serious issue of concern can depend quite literally on the amount of public donations received. For this reason, the ADO submits that the eligibility categories for DGR status should be expanded to include organisations advocating for both native and non-native animal welfare.

Finally, the ADO submits that the social services it provides are filling an unmet need in the community and saving governments from providing these services. ADO volunteers have provided free legal services to many hundreds of (human) clients across Australia with legal issues involving animals. The ADO receives no government funding and therefore depends entirely on philanthropic giving. In 2017 the *Review of NSW Community Legal Centre Services* acknowledged that ‘national services’ such as the ADO could be funded by the NSW government.¹⁹ The ADO is therefore clearly saving governments from providing services to disadvantaged members of the community. Therefore at the very least it

¹⁵ Futureye, ‘Australia’s Shifting Mindset on Farm Animal Welfare’, commissioned by the Australian Department of Agriculture and Water Resources, 2018 at 10-11.

¹⁶ Responsible Investment Associate Australasia, *From Values to Riches 2022: Charting consumer demand for responsible investing in Australia*, (Melbourne, 2022).

¹⁷ *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* [2001] HCA 63.

¹⁸ *Ibid* at 217.

¹⁹ Alan Cameron, *Review of NSW Community Legal Centre Services*, December 2017, at 68.

should be given access to the DGR scheme so its volunteers can continue to provide these much-needed services to Australians who care about animals.

4 The ADO's recommendations

The ADO submits that a broader range of animal welfare organisations should be eligible for DGR status given the important role they play in advocating for, and bringing about change in respect of, the welfare of animals in Australia, which is a matter of significant public concern.

As such, the ADO proposes the following recommendations to the Commission:

Recommendation 1: Items 4.1.6 of Table 1 in s 30.45(1) of the *Income Tax Assessment Act 1997* (Cth) be amended to include a broader range of activities relevant to animal welfare beyond short-term direct care and rehabilitation.

Recommendation 2: In the alternative, Table 1 in s 30.45(1) of the *Income Tax Assessment Act 1997* (Cth) be amended to insert a new item providing for the deductible gift recipient status of institutions whose principal activity is, or is reasonably connected to, the protection and welfare of animals.

Thank you for taking these submissions into consideration.

Liam Ogburn and Tara Ward

Volunteers | Research Officer and Solicitor

Animal Defenders Office