

**Submission to the Inquiry into the
Register of Environmental Organisations,
Standing Committee on the Environment, House of Representatives**

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Our submission

We thank the Committee for the opportunity to make a submission.

This inquiry is a good idea in principle. A fundamental of good public policy is that all subsidies by the taxpayer, no matter what form they take, should be transparent and in the public interest.

The terms of reference addressed are:

1. The definition of 'environmental organisation'
2. The requirements to be met by an organisation to be listed on the Register and maintain its listing
3. Activities undertaken by listed organisations, and the extent to which these activities involve on-ground works

We recommend:

1. TOR 1. That the committee at minimum endorse the current definition of ‘environmental organisation’ that has been accepted by the High Court as allowing for advocacy, and reject any tightening of the definition in the Act or guidelines with no restrictions on the legal activities recognised as environmental.
2. TOR 2. That organisations be required to continue to work in the public interest, through on-ground activities or advocacy. ‘Advocacy’ encompasses educational activity, including that which addresses policy that contradicts accepted scientific and economic evidence, national or global. A ‘light regulatory touch’ is recommended.
3. TOR 3. Accepted activities of environmental organisations are to be judged solely by whether or not activities are demonstrably in the public interest, not by whether they are ‘on-ground’.

The remainder of our submission focuses on the public interest questions that underpin our recommendations. We address the questions about the activities of environmental organizations from an economics perspective.

Our arguments cover:

- The public interest and private economic interests
- An economic perspective on legitimate public activism including civil disobedience
- The role of NGOs in the public interest
- Tax deductions - cost-benefit and merit goods
- Relative impact on tax payers
- Revealed taxpayer preferences

The public interest and private economic interests

Adam Smith, founder of laissez-faire economics, provides a useful starting point for considering tax concessions to environmental groups and all other charities. While famous for his book *The Wealth of Nations*, Smith is also renowned for his *Theory of Moral Sentiments* in which morality and equity are placed above narrow economic interest, but still within a utilitarian framework.

Smith in the *Wealth of Nation* provides a useful framework for understanding the role of government, which he saw as being to oversee the workings of the economy in the interests of society (discussed in Lumley *Sordid Boon? The Context of Sustainability in Historical and Contemporary Economics*. Amazon Kindle. pp.71-79). Smith makes strong arguments about when and how governments should supply infrastructure and give other support to industry. Smith says private beneficiaries should “pay for the maintenance of those public works exactly in proportion to the wear and tear which they occasion of them. It seems scarcely possible to invent a more equitable way of maintaining such works.” (*Wealth of Nations* 1908 edn, pp. 351-2, quoted in Lumley p.212). Smith details over several pages the problems with government assistance to the East India Company.

Smith’s observation that government often over-steps the mark in providing assistance to industry and bowing to pressure from particular interests resonates today where the relationship between government and industry has become greatly entwined. It is in this context that environmental NGOs legitimately and vitally:

- a) Contest government interpretation of the public interest
- b) Challenge the failure of government to require private users of public resources to
 - a. Pay for externalities they cause
 - b. Pay an appropriate price for resources they use

The right to undertake such activity remains a necessary and important role for civil society.

An economic perspective on legitimate public activism including civil disobedience

Public activism including civil disobedience that contributes to achieving the greater public interest is central to democracy. It has been recognised as such since 1849 when Henry David Thoreau wrote his influential essay, "On the Duty of Civil Disobedience". Such public activism was critical to bringing independence to India and ending apartheid in South Africa. It is important to note that in modern Australia environmental organisations that have engaged in, or supported, civil disobedience devote a small proportion of their activities to civil disobedience. Civil disobedience that is not aimed specifically at the greater public good and is not but one component of a wide range of activities to that end is not endorsed by the authors.

Prominent Australian economists are concerned about an excessive and growing unhealthy influence of narrow interest group lobbyists on the democratic political process and quality of political debate, which is at times contrary to the public interest (Menadue, How the rise of the lobbyist is corrupting Australia's democracy', The Age 18/5/2015). This suggests, in some circumstances, a case for civil disobedience to give the public interest a voice. Response to activism by the mining industry and opponents of public policy to deal with climate change characterizes recent environmental activism, arguably in the public interest.

The role of NGOs in the public interest

Constrained state and federal finances are leading to declining provision of services by governments, and increasing reliance on the community to act independently to provide services. The role and importance of public good activity by NGOs and volunteers is steadily growing. There is a public interest case for providing tax deductions for donations that support the essential role of volunteers.

Indeed a distinguishing feature of NGOs is volunteerism. Volunteerism is the characteristic that distinguishes a charity from government according to Harding. In a paper *Distinguishing Government from Charity in Australian Law*, Harding describes voluntarism as pursuit of the public good 'individually by persons making autonomous choices'. This activity 'helps to explain many of the cases in which courts have been called on to draw a distinction between government and charity.'" (Harding 2009 Sydney L. Rev. p.572).

The role of volunteerism and the case for tax deductions was examined over 2012 and 2013 by a working group established within Treasury, the Not for Profit Sector Tax Concession Working Group. This group was examined the tax concessions provided to NGOs in terms of fairness, simplicity and effectiveness. **Significantly, the Group recommended extending Deductible Gift Recipient status to all charities registered with the Australian Charities and Not-for-profits Commission.**

Tax deductions - cost-benefit and merit goods

Applying a social benefit cost framework, the income tax deduction is a relatively low cost public intervention resulting in much greater benefits, providing a needed service and saving public resources for other uses. The question of market failure underpins the case for tax deductibility of donations to NGOs. One reason for public intervention – in this case via granting tax deductibility of donations – is where the market fails to supply sufficient of 'merit goods'. There are plenty of examples where merit goods are under-supplied and the public acts to increase the supply. For example, rigorous analysis and information about important public policy issues constitutes a merit good. Some of the activities of NGOs would fit the criterion of being merit goods. The Productivity

Commission in its 2010 research report on *The Contribution of the Not-for-Profit Sector* makes a variant of this case.

Question: who decides some good or service is a merit good and is under-supplied by the private sector? Governments do this all the time, albeit at times with a mix of motives ranging from genuine identification of an under-supplied merit good, to using this notion as a cover for subsidizing supportive interest groups to reward and retain support. They also may withdraw support for suppliers of goods and services, including information.

Relative impact on tax payers

Tax deductibility of financial contributions to permitted entities reduces the overall tax income of governments, and hence limits the goods and services the public is able to supply. Deductions for environmental NGOs are small in absolute and relative proportion of government funding. Tax deductions for other charities are large by comparison, and deductions for private business activities are far greater.

Estimates from 2005 of giving to charity are reported in *The Giving Australia: Research on Philanthropy in Australia*. Non-profit organisations received \$5.7 billion per year donated by individuals. Environment and animal welfare groups received less than 5 per cent of this total, but up from 2 per cent in 1997 (p.23). 13.4 million people, 87 per cent of adult Australians, gave the estimated \$5.7 billion.

In 2012-13, ATO statistics show that gifts and donations claimed by individuals as tax deductions amounted to \$2.3 billion (ATO Taxation Statistics 2012-13 Charities - Table 5 Gifts claimed).

The wider context for considering these claimed tax deductions encompasses the tax deductions, subsidies and rebates (e.g. the diesel fuel rebate worth alone approx. \$2 billion per year) granted by government to the private sector pursuing private interest. Businesses are answerable to their shareholders alone, notwithstanding interest in corporate social responsibility. Governments mandate is to represent the interests of all members of society.

Revealed taxpayer preferences

Tax payers donate to environmental groups, which are voluntary. In donating the donor makes a conscious choice between the donation and competing uses of the same funds (e.g. travel, food, donation to other charities). As a 'consumer' the tax payer arguably fully informs themselves as to the uses of the funds, or they have built up a relationship of trust with the environment group. NGOs are increasingly required to reveal their administrative costs, bringing about greater transparency.

Environmental and animal welfare groups received money from 25 per cent of the 13.4 million Australian donors in 2005 (The Giving Australia report p.24) – a sizeable proportion of the adult population.

The link between donations and affiliation is an important one highlighting the issue of trust. Many of the donors to environment groups are not affiliated to them. It is reported in the 2005 report, that only 15 per cent of the three million plus donors to environment and animal welfare groups were affiliated to those groups. This was the lowest link between donation and affiliation of any category of non-profit organisation (p.25).

By contrast, tax payers do not directly make decisions about subsidies – who gets what and how much. Effectively these subsidies are hidden from the tax payer and are not specifically endorsed or dis-endorsed. Often the nature and extent of public subsidy of private activity become transparent

only through the research and publicity given by environmental organisations - a further public benefit in the calculus of benefit cost analysis.

There is evidence that taxpayers have deep concerns about subsidies provided by the public to private interests and value the transparency provided by environmental groups. In 2013, an opinion poll by Essential Research, commissioned by Market Forces, showed 64 per cent of 1,005 people surveyed disapproved of government spending \$2 billion to subsidise diesel and petrol for mining companies. Only 18 per cent approved (Australian Financial Review 21/1/2013). In 2012, a poll by Lonergan Research of 1,008 Australians found that 91 per cent believe the \$2 billion given to the mining industry every year in fuel tax credits would be better spent on health and education. A further 77 per cent agreed that the fuel tax credits scheme should be scrapped for mining companies. (ACF Online report 27/4/2012)

In Summary

The existence and activism of environmental organizations emerge out of, and characterize, healthy democracy. Determining the right of environmental organizations to exist and act according to what they do is not warranted: recognizing their role in on-ground works and contributing to public debate and the public good is all that is required. The benefits of their contribution to healthy democracy and pursuing public good by supplying under-supplied goods and services far outweigh the costs of tax deductibility of donations and time given by supporters and volunteers.