

11 May 2012
Manager
Philanthropy and Exemptions Unit
Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: NFPReform@treasury.gov.au

Dear Treasury

**Exposure draft: Restating and standardising
the special conditions for tax concession entities
(including the 'in Australia' conditions)**

Greenpeace Australia Pacific Limited welcomes the opportunity to comment on the Revised Exposure Draft restating the in Australia special conditions for tax concession entities and applauds the Government for listening to the concerns raised by Greenpeace and other organisations in relation to the previous draft.

Regarding 30-18 (5)(b) & 30-19

Greenpeace is concerned the regulations for which the Environment Secretary will make his or her determination are incomplete and not available in draft form to enable thorough critique of the Exposure Draft.

Because of this Greenpeace is concerned that any such determination made may be subject to the political will of the governmental of the day and not bound by any objective criteria thus diminishing the integrity of the determination process.

Greenpeace is concerned the regulation requirements to maintain DGR status would create a heavy compliance burden that again may be open to politicisation in having to demonstrate:

1. a genuine need to conduct activities overseas in order to further its purpose;
2. that those activities undertaken outside Australia are effective in achieving its purpose
3. if the entity has an in-country partner, the entity must demonstrate that it effectively interacts and coordinates activities with its in-country partner;
4. the entity must show it has in place current and appropriate governance arrangements for the proper monitoring of any overseas activities undertaken by both it and any in-country partners to ensure that any money and property is being used in an proper and effective manner

Greenpeace is concerned of the requirement that the entity must comply with all Australian and foreign laws, Australia's international treaty obligations, and uphold the high reputation of Australia and it's not-for-profit sector or risk losing its DGR status. Greenpeace is an organisation that has a long history of engaging in direct action in furtherance of both environmental and peace purposes. This has included taking ships into the exclusion zones around Muraroa Atoll – a criminal offence under French law. It has included taking action again whaling boats and fishing boats. We have blocked train lines, occupied Lucas Heights, trespassed at the Lodge, illegally raised banners at Parliament House, amongst many other activities. These activities have never been for any purpose except the public benefit and in furtherance of our core purposes and values.

This history of civil disobedience is part of a much bigger history of individuals and organizations prepared to violate the law – often at great risk and with potentially severe criminal penalties – in order to accomplish a greater good. The obvious examples include the civil rights movement, the anti-apartheid movement and the anti-Vietnam war protests. Laws that criminalise legitimate civil disobedience are often not recognised as unjustified for years.

Any linking of charitable status to illegal activities must be careful not to undermine the rights – and sometimes the obligations – of citizens to challenge injustice by breaking laws. Civil disobedience is well recognised as a powerful and legitimate agent of change for the public good.

There are also other grounds for opposing the linking of charitable status and illegal activities.

Laws already exist to address illegality, including punishments such as fines and prison terms. Linking illegal activity to de-listing as a charitable organisation is doubling up on punishment.

Such a linkage would also have the effect of imposing a more severe level of punishment on not for profits than is visited on other organizations that engage in criminal activities. For instance, Greenpeace is not aware of any provision in Australian law that removes the capacity of a corporation to continue to engage in corporate activities as a result of illegal and often criminal activity – activities that are often contrary to the public interest. For instance, Merck, the pharmaceutical company, was recently convicted in the US of knowingly allowing its Vioxx drug on the market despite knowing that it would like cause death of heart patients. Merck received a fine. It continues to operate in both the US and Australia as a legitimate corporate entity.

There are laws that permit licencing agents to consider the past acts of an organisation in determining whether to issue or re-issue a licence. For instance, the Gene Technology Act has such provisions in considering whether to issue licences for the growing of genetically modified plants. Greenpeace is not aware that these provisions have ever been used to refuse a licence. Companies such as Monsanto, which has admitted to criminal offences ("[Monsanto fined \\$1.5m for bribery](#)". BBC. 7 January 2005. Retrieved 28 September 2007), holds numerous licences from the OGTR.

These corporations benefit from a number of laws that allow them to operate in Australia, from tax benefits not available to others and often direct subsidies to support their activities. Greenpeace is not aware of any laws or efforts to remove these benefits when such corporations are convicted of criminal offences.

Greenpeace is also concerned with the terms 'uphold the high reputation of Australia and it's not-for-profit sector, which is vague and not defined.

Greenpeace will not support measures that see public interest organisations held to a standard that doesn't apply to private interest institutions.

In summary Greenpeace **cannot endorse the exposure draft in its current form** due to the serious integrity issues and compliance burden raised in our submission and **strongly recommends the Government postpone and changes to the taxation arrangements of charities** and allow instead the ACNC develop the legislation within the context of a holistic regulatory framework reform.

For further information please contact:

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