



MINERALS COUNCIL OF AUSTRALIA
SUBMISSION ON TAX DEDUCTIBLE GIFT RECIPIENT
REFORM OPPORTUNITIES DISCUSSION PAPER

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EXECUTIVE SUMMARY

The integrity measures proposed in the *Tax Deductible Gift Recipient Reform Opportunities* discussion paper are important and timely. The MCA supports the early implementation of the recommendations contained in the discussion paper. The MCA also urges the government to consider additional integrity measures, including those that have been adopted in other jurisdictions.

Closer scrutiny is justified: the revenue foregone is significant

Deductible gift recipients are eligible to receive income tax deductible gifts (such as financial donations) and tax deductible contributions (such as the purchase of a ticket to attend a fundraising event). The revenue forgone from these tax concessions is significant. According to the discussion paper, the revenue forgone from donations to deductible gift recipients was \$1.31 billion in 2016-17 and is expected to rise to \$1.46 billion in 2019-20.¹

Donations to registered environmental organisations totalled \$129 million in 2013-14, resulting in tax revenue forgone of \$45 million.² In 2015-16, donations to just seven registered environmental organisations – who regularly run ideological campaigns against Australian export industries – amounted to \$71 million.³

Tax concessions should only be granted to complying organisations

The rationale for granting deductible gift recipient status is that the recipient organisation generates public benefits that government or businesses may not otherwise provide. Yet there is substantial evidence to suggest that some deductible gift recipients are not complying with existing law – and that this non-compliance is deliberate and persistent.

The Minerals Council of Australia (MCA) has publicly documented numerous cases in which some registered environmental organisations (who are also registered charities) have:

- Committed, authorised or encouraged activities that are unlawful or unsafe
- Sought tax-deductible donations to support politically partisan activities
- Have not disclosed, or only partially disclosed, political activities to regulators.⁴

This conduct clearly breaches the obligations that apply under federal legislation. According to the *Income Tax Assessment Act 1997*, registered environmental organisations must have a principal purpose of conserving or improving the natural environment, or undertaking related education or research. Registered environmental organisations must also have a policy of not acting as a mere conduit for the donation of money or property, although they may fund other bodies to undertake natural conservation work. The conduit policy is consistent with the rule that political parties are not deductible gift recipients.

An additional code of conduct applies to the 75 per cent of registered environmental organisations that are also registered charities. The *Charities Act 2013* stipulates that registered charities must only have charitable purposes that are for the public benefit; and they are expressly forbidden from promoting or engaging in activities that are unlawful, contrary to public safety or politically partisan.

¹ Australian Government, [Tax Deductible Gift Recipient Reform Opportunities](#), discussion paper, 15 June 2017, p. 5.

² House of Representatives Standing Committee on the Environment, [Report on Inquiry into the Register of Environmental Organisations](#), April 2016, released on 4 May 2016, p. 7f.

³ See World Wide Fund for Nature Australia, [Annual Information Statement 2016](#) (\$26.4 million); Greenpeace Australia Pacific, [Annual Information Statement 2016](#) (\$16.9 million in calendar 2016); Australian Conservation Foundation, [Annual Information Statement 2016](#) (\$11.5 million); The Wilderness Society, [Annual Information Statement 2016](#) (\$10.5 million); The Sunrise Project Australia, [Annual Information Statement 2016](#) (\$4.7 million in calendar 2016); and Lock the Gate Alliance, [Annual Information Statement 2016](#) (\$1.1 million). All statements are published by the Australian Charities and Not-for-profits Commission.

⁴ See the Minerals Council Of Australia, [Submission to House of Representatives Standing Committee on the Environment Inquiry into the Register of Environmental Organisations](#), MCA, 29 May 2015, pp. 14-24; [Pre-Budget submission 2016-17](#), MCA, 12 February 2016, p. 42f; [Pre-Budget submission 2017-18](#), MCA, 27 January 2017, p. 17; [Submission to Joint Standing Committee on Electoral Matters Inquiry into and Report on All Aspects of the Conduct of the 2016 Federal Election and Matters Related Thereto](#), MCA, 13 February 2017.

Further, volunteer directors of a charity are required to exercise due diligence under the Commonwealth *Work Health and Safety Act 2011*.

The Australian Charities and Not-for-profits Commission (ACNC) published guidance on political campaigning and advocacy in April 2016. The guidance is directed at charity board and committee members and makes clear that charities can neither oppose a particular political party or candidate, nor engage in illegal methods to advance a charitable purpose.

Some deductible gift recipients are breaking the law

Contrary to the regulator's guidance, some registered charities continue to pursue a 'disqualifying purpose' of unlawful activity. On 2 March 2017, a director of Greenpeace Australia Pacific declared that:

You can't be on the Greenpeace board and be timid ... I've learnt that as humans we've got a human right to break the law ... So we do break into things, we do stop businesses, we do blockades where business is stopped.⁵

On 29 May 2017, Greenpeace representatives illegally boarded a coal terminal at the Port of Newcastle and streamed the action live on the charity's facebook page. NSW police arrested 16 people for trespassing. This was not an isolated incident. Since 2008, Greenpeace has scaled and vandalised Swanbank power station, blockaded and scaled Hay Point coal terminal, destroyed genetically modified crops at CSIRO, illegally boarded the bulk coal carrier *MV Meister*, and participated in the unlawful blockade of Whitehaven Coal's Maules Creek project.

350.org Australia is another registered charity that has brazenly ignored the ACNC's guidance.⁶ The Chief Executive of 350.org Australia authorised and participated in an illegal blockade of the Port of Newcastle on 8 May 2016, despite acknowledging the risks and despite a public safety warning from Port Waratah Coal Services. Police arrested 66 activists for unlawful acts including trespassing, destroying or damaging property, climbing on or attaching to a vessel without authority and failing to comply with directions from an authorised officer.

Some deductible gift recipients are engaging in partisan political campaigning

The problem of non-compliance by some deductible gift recipients (and registered charities) is also apparent in partisan political campaigning. For instance:

- 350.org Australia, the Nature Conservation Council of NSW, the Australian Youth Climate Coalition, the Australian Marine Conservation Society and the Wilderness Society (Australia) participated in a pre-election rally against Prime Minister Malcolm Turnbull in June 2016, along with the Australian Labor Party, the NSW Greens and GetUp!
- The Australian Conservation Foundation (ACF) hired a truck to drive through Minister Josh Frydenberg's electorate during the 2016 election campaign, which displayed a banner criticising the minister for refusing to sign the ACF's environment pledge
- In October 2016, the Australian Marine Conservation Society attacked the Queensland Labor Government's dealings with Adani by staging protests at Labor's state conference
- On 28 February 2017, the Australia Institute circulated an email to subscribers calling for tax-deductible donations to campaign against Pauline Hanson's One Nation in the Western Australian and Queensland state elections.

Note that these political activities were pursued *after* the ACNC reaffirmed the existing rules for charities in April 2016.

⁵ Barry Rafe, Director of Greenpeace Australia Pacific, quoted in Ellie Cooper, '[When Charities Need to Break the Law](#)', *Pro Bono Australia*, 8 March 2017.

⁶ Regarding its tax status, 350.org Australia says: '350.org Limited is a registered Australian charity but donations are NOT tax-deductible in Australia. ABN: 46 138 155 192. Some donations for joint work with our partner organisation Friends of the Earth can be made tax deductible.' See 350.org Australia, '[Build a powerful climate movement in Australia](#)', viewed on 1 August 2017.

The Sunrise Project: Conscious non-disclosure of foreign donations and anti-coal activities

The case of the Sunrise Project (which is both a registered environmental organisation and charity) raises broader concerns of transparency and accountability. *The Australian* newspaper revealed in October 2016 that a number of wealthy US foundations have been covertly funding the Sunrise Project, with the express purpose of disrupting and delaying Adani's Carmichael coal project.

In addition, the Sunrise Project is coordinating anti-coal campaigning by a number of other registered charities, including Greenpeace Australia Pacific, 350.org, the Australian Youth Climate Coalition and the Mackay Conservation Group. Emails cited in *The Australian* provide clear evidence that the Sunrise Project took steps to avoid, challenge and limit disclosure of its donors and beneficiaries to the Australian parliament. In one email, the head of the Sunrise Project advised his US supporters that he was 'seeking advice on steps we might take to avoid disclosure, challenge and limit disclosure, or to ensure that any disclosure is limited to the committee members and is not made public.'⁷ However, public reporting of donations by a number of US foundations shows that the Sunrise Project has accepted at least US\$1.9 million from foreign entities since 2012.

The example of the Sunrise Project highlights the importance of ensuring that all organisations engaged in political advocacy are subject to the same rules of transparency. While political parties are obliged to disclose the source of donations more than \$13,200, environmental organisations can spend millions of dollars every year without having to disclose the identities or locations of their donors.

A related problem is the risk that registered environmental organisations – who enjoy deductible gift recipient status – can pursue political campaigns without any limit to the tax-deductibility of donations. Whereas contributions and gifts to political parties and candidates are only tax deductible up to \$1,500, there is no limit to the tax deductibility of donations to registered environmental organisations.

MCA responses to reform proposals

The examples cited above confirm the need for more effective regulatory oversight of deductible gift recipients. The integrity measures proposed in the discussion paper give effect to the nine recommendations made by the House of Representatives Standing Committee on the Environment in April 2016 – seven of which were bipartisan. These measures will encourage greater compliance with the reasonable regulatory requirements that accompany generous tax concessions.

The MCA supports the discussion paper's proposals to require all non-government deductible gift recipients to be registered charities and to implement more rigorous reporting of advocacy activities. There are more than 600 registered environmental organisations, but the Department of the Environment and Energy only allocates 2.5 staff per year to regulate them. Moreover, the department has told parliament that assessing what an organisation actually does – as opposed to what it says it does – is not a 'standard feature' of its regulatory approach. The department has clarified that:

We have a power to request statistical information from entities and we analyse that information, but we have no additional powers to do anything in relation to that information or their activities.⁸

The reforms advanced in the discussion paper will help ensure that the actual conduct of deductible gift recipients is consistent with their claims of eligibility. The MCA supports introducing regular formal reviews by the ACNC or the Australian Taxation Office (ATO), and submits that the regulator should initially focus on cases where there is *prima facie* evidence that tax-deductible donations have supported activities that are unlawful, unsafe or politically partisan.

In addition, the MCA supports the institution of a five-year sunset rule for entities specifically listed in legislation, as well as requiring deductible gift recipients to certify in their annual information statement to the ACNC that they meet eligibility requirements, with penalties for false statements. Deductible

⁷ John Hepburn, Executive Director of the Sunrise Project, [IMPORTANT: Charity Inquiry](#), email to Sergio Knaebel, Grant Director, Sandler Foundation, 25 May 2015, WikiLeaks.

⁸ Simon Writer, General Counsel to the (then) Department of the Environment, [Evidence to House of Representatives Standing Committee on the Environment, Register of Environmental Organisations](#), Hansard, 16 June 2015, p. 10.

gift recipients should also be expressly prohibited from soliciting donations to pay criminal or civil fines, as well as financing or supporting training exercises to obstruct police.⁹

The proposal to require registered environmental organisations to commit up to 50 per cent of their annual expenditure to environmental remediation is sound in principle, but the requirement should not exclude legitimate environmental education or research as defined in the Income Tax Assessment Act. A number of MCA members undertake such work in partnership with environmental groups.

Alternatively, the federal government should consider adopting Canada's political activity rule for charities, to close the loophole of uncapped tax-deductible political donations through deductible gift recipients. Under Canadian law, charities can spend no more than 10 per cent of their resources (including staff and volunteer time) on political advocacy. Moreover, that advocacy must be non-partisan and secondary to their charitable purpose. Higher thresholds apply to smaller entities to avoid excessive regulatory burden.

Ultimately, the effectiveness of these integrity measures will depend on more active and transparent regulation. Currently, privacy provisions prevent the ACNC from commenting on the basis, progress or outcome of regulatory decisions, unless that information has already been disclosed by the charity in question, or the ACNC is correcting inaccurate public reporting. Indeed, the ACNC itself has confirmed that greater transparency would enhance administration and public trust:

I think it is fair to say that we are ourselves concerned that the privacy provisions make it very difficult for us to answer questions such as those you [Senator Abetz] are raising today. They also make it difficult for us to actually explain to the community the steps that we are taking to protect trust and confidence and to address issues of malfeasance. But that is the legislation we have at the moment and have to enforce.¹⁰

The ACNC has previously argued against returning the regulation of charities to the ATO or the Australian Securities and Investments Commission, on the ground that it would lead to 'fragmented and patchy oversight'.¹¹ When the ACNC revoked the charitable status of three entities in July 2017, the commissioner said: 'Where we find serious circumstances of mismanagement, or deliberate breaches of the ACNC Act or Governance Standards, we will revoke charity status.'¹²

The MCA has lodged five formal complaints with the ACNC over two years regarding serious and intentional breaches of the Charities Act by several large registered charities. However, none of these complaints appears to have induced any regulatory action. The reforms discussed above will help regulators address any outstanding non-compliance and should be implemented without delay.

Two red herrings to divert efforts to improve transparency and accountability

Some deductible gift recipients oppose the sorts of integrity measures proposed by the House of Representatives Standing Committee on the Environment and the *Tax Deductible Gift Recipient Reform Opportunities* discussion paper.¹³ This opposition generally relies on two false contentions:

- (1) Improving the compliance of deductible gift recipients to existing law somehow amounts to a curbing of free speech or political activity
- (2) General tax principles that apply to industry associations and mining companies are somehow analogous to specific tax concessions that are granted to registered environmental organisations and charities.

⁹ These clarifications were recommended by the House of Representatives Standing Committee on the Environment, op. cit., p. 65.

¹⁰ David Locke, Assistant Commissioner, Charity Services, Australian Charities and Not-for-profits Commission, [Evidence to Senate Economics Legislation Committee: Estimates](#), Senate Hansard, 19 October 2016, p. 119.

¹¹ Australian Charities and Not-for-profits Commission, [Senate Economics Legislation Committee: ACNC Repeal: effects on the charitable sector](#), submission on the Australian Charities and Not-for-profits Commission (Repeal) (No. 1) Bill 2014, 2 May 2014, p. v.

¹² Australian Charities and Not-for-profits Commission, [Three charities lose charity status](#), media release, 20 July 2017.

¹³ See, for example, Heath Aston, ["Miners "hypocritical" on tax status, says Greenpeace"](#), *Sydney Morning Herald*, 12 June 2015; Friends of the Earth Australia, [Here we go again](#), 22 June 2017; Lenore Taylor, ["Government's letter to conservation groups has ominous implications"](#), *The Guardian Australia*, 15 July 2017; Brendan Sydes, Environmental Justice Australia, [Environmental advocacy central to democracy](#), 21 July 2017.

When it introduced the Charities Act, the Gillard Government explained that the restrictions placed on the political expression of registered charities do not breach human rights because:

- Human rights apply to individuals, not charities
- None of the restrictions under the Charities Act affect the free speech or political activity of individuals
- Entities are not required to comply with the restrictions unless they choose to register as a charity.¹⁴

Similarly, the regulatory framework for registered environmental organisations is entirely voluntary. If an entity does not wish to be bound by the principal purpose test or the conduit rule, it should not seek to be listed (or to remain) on the register.

The reform proposals in the discussion paper do no more than clarify and reinforce existing rules for registered environmental organisations and charities. It is disingenuous and self-serving to suggest that more effective administration of these rules would restrict the political freedom of individuals. The right of Australians to free political expression should not be conflated with a demand that Australian taxpayers support certain types of political activism.

In addition, parliament should not be distracted by dubious claims that subscriptions to industry associations are analogous to tax-deductible donations or that the mining sector is subsidised.

The MCA is not entitled to receive income tax deductible donations or contributions – from member companies or the public. MCA members can deduct subscriptions from their assessable income because they are a business expense under the general deductions provision (Section 8.1) of the Income Tax Assessment Act. The same provision allows workers to deduct fees to trade unions as a work-related expense in their tax returns.

Further, the Productivity Commission has confirmed that the Australian mining industry receives 'negligible' industry assistance.¹⁵ Far from being subsidised, the Australian minerals industry paid \$177 billion in company tax and royalties alone over the decade to 2015-16.¹⁶

¹⁴ Commonwealth of Australia, [Explanatory memorandum to the Charities Bill 2013](#), p. 43f.

¹⁵ Productivity Commission, [Trade and Assistance Review 2015-16](#), released on 29 July 2017, p. 30.

¹⁶ Deloitte Access Economics, [Estimates of royalties and company tax accrued in 2015-16](#), report prepared for the Minerals Council of Australia, MCA, 5 January 2017.

1. REGISTERED ENVIRONMENTAL ORGANISATIONS AND CHARITIES

- Entities listed on the register of environmental organisations are entitled to receive tax-deductible donations, but only for the principal purpose of protecting or enhancing the natural environment, or undertaking related education or research.
- Registered environmental organisations must not act as a conduit for the donation of money or property to other entities, although they may fund other organisations to undertake natural conservation work.
- 75 per cent of registered environmental organisations are also registered charities, and may therefore be eligible for income-tax exemptions, goods and services tax concessions and fringe benefits tax rebates. Registered charities must only have charitable purposes that are for the public benefit; and they are expressly forbidden from promoting or pursuing activities that are unlawful, contrary to public safety or politically partisan.

Some not-for-profit organisations are endorsed by the Australian Tax Office (ATO) to be deductible gift recipients. This means they are entitled to receive income tax deductible gifts (such as financial donations) and tax deductible contributions (such as the purchase of a ticket to attend a fundraising event).¹⁷ Political parties are not deductible gift recipients; nor are industry associations (Box 1).¹⁸

More than 600 environmental organisations enjoy deductible gift recipient status. They are either listed on the register of environmental organisations or named in the *Income Tax Assessment Act 1997*.¹⁹ Donations to registered environmental organisations totalled \$129 million in 2013-14, resulting in tax revenue forgone of \$45 million.²⁰ In 2015-16, donations to just seven registered environmental organisations – who regularly run ideological campaigns against Australian export industries – amounted to \$71 million.²¹

The principal purpose of registered environmental organisations

Section 30.265 of the Income Tax Assessment Act states that a registered environmental organisation must have protecting the environment as its principal purpose, and that it can only use donations for this purpose. In particular:

- (1) Its principal purpose 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.
- (2) It must maintain a public fund that meets the requirements of section 30-130, or would meet those requirements if the *environmental organisation were a fund, authority or institution.
- (4) [sic] It must have agreed to comply with any rules that the Minister and the *Environment Minister make to ensure that gifts made to the fund are used only for its principal purpose.²²

¹⁷ Australian Charities and Not-for-profits Commission, [Factsheet: Deductible gift recipients \(DGRs\) and the ACNC](#), viewed on 11 July 2017.

¹⁸ Australian Taxation Office, [Claiming political contributions and gifts](#), viewed on 11 July 2017.

¹⁹ Department of the Environment and Energy, [Deductible Gift Recipients: Overview](#), viewed on 26 October 2016.

²⁰ House of Representatives Standing Committee on the Environment, [Report on Inquiry into the Register of Environmental Organisations](#), April 2016, released on 4 May 2016, p. 7f.

²¹ See World Wide Fund for Nature Australia, [Annual Information Statement 2016](#) (\$26.4 million); Greenpeace Australia Pacific, [Annual Information Statement 2016](#) (\$16.9 million in calendar 2016); Australian Conservation Foundation, [Annual Information Statement 2016](#) (\$11.5 million); The Wilderness Society, [Annual Information Statement 2016](#) (\$10.5 million); The Sunrise Project Australia, [Annual Information Statement 2016](#) (\$4.7 million in calendar 2016); and Lock the Gate Alliance, [Annual Information Statement 2016](#) (\$1.1 million). All statements are published by the Australian Charities and Not-for-profits Commission.

²² Commonwealth of Australia, [Income Tax Assessment Act 1997, Section 30.265](#).

Box 1: Subscriptions to industry associations are not analogous to tax-deductible donations

Registered environmental organisations receive a special tax concession (deductible gift recipient status) in order to advance a policy outcome – namely protecting or enhancing the natural environment, or conducting related education or research.

In contrast, industry associations like the Minerals Council of Australia (MCA) are not entitled to receive income tax deductible donations or contributions – from member companies or the public. MCA members can deduct subscriptions from their assessable income because they are a business expense under the general deductions provision (Section 8.1) of the Income Tax Assessment Act.²³

In contrast, businesses cannot claim deductions for contributions and gifts to political parties, members and candidates – including payments incurred in deriving assessable income.²⁴

The tax deductibility of company subscriptions to industry bodies is no different to individuals deducting work-related expenses in their tax returns, such as fees to trade unions or subscriptions to trade, business or professional associations.

It is a fundamental and longstanding concept in tax law that any expenses incurred in gaining or producing assessable income are generally tax deductible. Taxes are paid on business profits and personal income, which flow back to the community.

The Productivity Commission has confirmed that the Australian mining industry receives ‘negligible’ industry assistance.²⁵ Far from being subsidised, the Australian minerals industry paid \$177 billion in company tax and royalties alone over the decade to 2015-16.²⁶

The conduit policy

In addition to having the protection of the environment as its principal purpose, the Income Tax Assessment Act specifies that a registered environmental organisation ‘must have a policy of not acting as a mere conduit for the donation of money or property to other organisations, bodies or persons.’²⁷ According to the Department of the Environment and Energy:

The conduit policy applies to the behaviour of a potential donor to an organisation and its public fund. An organisation must not be directed by a donor to act as a conduit by passing a donation of money or property to other organisations, bodies or persons.

A registered organisation must not act as a collection agency for tax-deductible donations intended by a donor to be passed on to another organisation or person.

The conduit policy does not apply to an organisation which, **within its principal objective to conserve the natural environment**, decides to pass funds to another entity to do environmental projects or other nature conservation work.²⁸

The conduit policy is consistent with the rule that political parties are not deductible gift recipients.

Rules governing registered charities

Deductible gift recipient status is separate from charitable status. A registered charity may be eligible for income-tax exemptions, goods and services tax concessions and fringe benefits tax rebates.

²³ Commonwealth of Australia, [Income Tax Assessment Act 1997, Section 8.1](#).

²⁴ Australian Taxation Office, [Claiming political contributions and gifts](#), viewed on 27 July 2017. See also Nick Sherry, then Senator and Assistant Treasurer, [Removing Tax Deductibility For Political Donations](#), media release, 25 February 2010.

²⁵ Productivity Commission, [Trade and Assistance Review 2015-16](#), released on 29 July 2017, p. 30.

²⁶ Deloitte Access Economics, [Estimates of royalties and company tax accrued in 2015-16](#), report prepared for the Minerals Council of Australia, MCA, 5 January 2017.

²⁷ Commonwealth of Australia, [Income Tax Assessment Act 1997, Section 30.270](#).

²⁸ Department of the Environment (as was), [Register of Environmental Organisations: A Commonwealth Tax Deductibility Scheme for Environmental Organisations: Guidelines](#), 2003 (incorporating minor updates made in December 2014), p. 11, emphasis added.

However, being a registered charity does not give an entity deductible gift recipient status and not all deductible gift recipients are registered charities.²⁹

Approximately 75 per cent of organisations listed on the register of environmental organisations are also registered charities. In 2013-14, registered charities received 99 per cent of the value of donations to organisations listed on the register.³⁰

The Gillard Government introduced the *Charities Act 2013* to clarify the common law. Registered charities must only have charitable purposes that are for the public benefit and none of these may be a 'disqualifying purpose'.³¹

A disqualifying purpose of unlawful activity

Section 11 of the Charities Act defines two patterns of behaviour that amount to a disqualifying purpose. The first is promoting, authorising or engaging in activities that are unlawful or contrary to public policy. Public policy includes the rule of law, the constitutional system of government, the safety of the general public and national security. While the Charities Act is concerned with entities rather than the individuals that comprise them, unlawful activities carried out by employees, members or volunteers are of concern if they are authorised by the entity.³²

The Assistant Commissioner and General Counsel of the Australian Charities and Not-for-profits Commission (ACNC) clarified the criteria for a disqualifying purpose of unlawful activity in parliamentary evidence on 26 November 2015:

Ms MARINO: In relation to political and illegal purposes, to what extent can a charity legitimately engage in political or illegal activity before that is considered to be its true purpose?

Mr Baird: The question is really: where do you draw the line? When I last gave evidence, I talked about an isolated act of illegality by a member of a charity and indicated that that in itself would not disclose a purpose. But, if there were a pattern of illegality or if on a holistic view of the organisation – looking at its constitution, its minutes and its activities – there were a disclosed purpose that tipped over from isolated activity into a purpose for the organisation, that would become a disqualifying purpose under our act.³³

The ACNC reiterated that unlawfulness is a disqualifying purpose in guidance published ahead of the 2016 federal election:

Can a charity have a purpose to carry out activities which are illegal in order to advocate for a change in government policy or law?

No. A charity cannot have a purpose to engage in or promote activity that is illegal

For example:

A charity with a purpose of advancing the natural environment cannot have a purpose of encouraging its members to engage in illegal methods such as intimidation, trespassing or assault to promote a change to the law regarding logging.³⁴

²⁹ Department of the Environment (as was), [Submission to the House of Representatives Standing Committee on the Environment Inquiry into the administration, transparency and effectiveness of the Register of Environmental Organisations under the Income Tax Assessment Act 1997](#), p. 6.

³⁰ *ibid.*, p. 6; House of Representatives Standing Committee on the Environment, [Report on Inquiry into the Register of Environmental Organisations](#), April 2016, released on 4 May 2016, p. 12.

³¹ Commonwealth of Australia, [Charities Act 2013, Section 5](#).

³² Commonwealth of Australia, [Charities Act 2013, Section 11: Explanatory memorandum to the Charities Bill 2013](#), p. 44f; [Addendum to the explanatory memorandum to the Charities Bill 2013](#), p. 3f; Murray Baird, Assistant Commissioner and General Counsel of the Australian Charities and Not-for-profits Commission, [Evidence to House of Representatives Standing Committee on the Environment, Register of Environmental Organisations](#), Hansard, 18 June 2015, p. 3; [Evidence to House of Representatives Standing Committee on the Environment, Register of Environmental Organisations](#), Hansard, 26 November 2015, p. 1.

³³ Murray Baird, Assistant Commissioner and General Counsel of the Australian Charities and Not-for-profits Commission, [Evidence to House of Representatives Standing Committee on the Environment, Register of Environmental Organisations](#), Hansard, 26 November 2015, p. 1.

³⁴ Australian Charities and Not-for-profits Commission, [Political campaigning and advocacy by registered charities – what you need to know](#), 23 April 2016, emphasis in original.

A disqualifying purpose of politically partisan activity

The second disqualifying purpose for a registered charity is direct partisan political engagement that supports or opposes a candidate or party for office. While charities are allowed to assess and compare the policies of alternative political parties, a heavy engagement with a particular party or candidate, or a lack of balance in assessing similar policies of competing parties or candidates, may indicate a disqualifying purpose.³⁵

The ACNC elaborated on this obligation in guidance published ahead of the 2016 federal election:

Can a charity spend money to publicly express its views on issues and policies of different political parties during an election?

Yes, as long as the spending is clearly tied to the charity's purpose and would not be perceived as an independent purpose of explicitly promoting or opposing a particular party or candidate. The charity should also check that the spending is permitted by its governing rules.

Members of the charity's governing body should also take care to comply with Australian electoral laws and refer to the [Australian Electoral Commission](#)'s guidance.³⁶

The Gillard Government explained that the restrictions placed on the political expression of registered charities do not breach human rights because:

- Human rights apply to individuals, not charities
- None of the restrictions under the Charities Act affect the free speech or political activity of individuals
- Entities are not required to comply with the restrictions unless they choose to register as a charity.³⁷

Work health and safety obligations for volunteer directors

Under the *Work Health and Safety Act 2011*, volunteer directors of a charity are considered to be officers of the organisation. As such, they are required to exercise due diligence, including implementing safety training for volunteers and other policies and procedures that adequately cover what workers and volunteers do.³⁸

³⁵ Commonwealth of Australia, [Charities Act 2013, Section 11](#); [Explanatory memorandum to the Charities Bill 2013](#), p. 22.

³⁶ Australian Charities and Not-for-profits Commission, op. cit., emphasis in original.

³⁷ Commonwealth of Australia, [Explanatory memorandum to the Charities Bill 2013](#), p. 43f.

³⁸ Safe Work Australia, [Volunteers: The Essential Guide to Work Health and Safety for Volunteers](#), 1 August 2012, p. 23.

Box 2: Regulator says greater transparency would enhance administration and public trust

Currently, privacy provisions prevent the Australian Charities and Not-for-profits Commission from commenting on the basis, progress or outcome of regulatory decisions, unless that information has already been disclosed by the charity in question, or the ACNC is correcting inaccurate public reporting. This means that the ACNC cannot say whether a particular charity has failed to meet its obligations, whether regulatory action was taken, what that action was, or why it was taken.

The opacity of the ACNC's regulatory decisions is illustrated in the following exchange between Senator Eric Abetz and Assistant Commissioner David Locke:

Senator ABETZ: Similarly, with World Vision and Save the Children in relation to the moneys that now appear to be have been diverted to Hamas, one imagines that that would be of grave concern to the ACNC, if people were making charitable donations and they were going to organisations of that nature. Are you telling me that privacy also stops you from telling us whether any action has been taken?

Mr Locke: What I can tell you is that allegations raised with regard to money laundering or terrorist financing are very high risk, obviously, for the community, as well as for the ACNC. Those matters we take extremely seriously. Where there are allegations and there is any evidence to support that, then we would open an investigation. I can tell you we have 59 active investigations at the moment but, no, I am not able to disclose the names of those charities, I am afraid. However, I can tell you that –

Senator ABETZ: Or whether investigations are taking place.

Mr Locke: No, I am not able to, I am afraid, but I can tell you that the issues that you raise would be issues of great concern for the ACNC, and those are the sorts of issues where we do open investigations.

Senator ABETZ: And then once an investigation is complete, nothing is said unless of course their charitable status is revoked – is that correct?

Mr Locke: In our legislation, it specifies certain compliance powers, which, if they are exercised, they actually have to be recorded on the register. So, in those circumstances, we can actually give information about the exercise of those powers. We cannot set out the facts behind that but we can indicate that. They include if we issue warnings, if we enter into enforceable undertakings and indeed if we revoke a charity's status. I think it is fair to say that we are ourselves concerned that the privacy provisions make it very difficult for us to answer questions such as those you are raising today. They also make it difficult for us to actually explain to the community the steps that we are taking to protect trust and confidence and to address issues of malfeasance. But that is the legislation we have at the moment and have to enforce.³⁹

³⁹ David Locke, Assistant Commissioner, Charity Services, Australian Charities and Not-for-profits Commission, [Evidence to Senate Economics Legislation Committee: Estimates](#), Senate Hansard, 19 October 2016, p. 118f.

2. COMMITTING, AUTHORISING OR PROMOTING UNLAWFUL ACTIVITY

- There is substantial evidence to suggest that some registered environmental organisations and charities have a 'disqualifying purpose' of unlawful activity.
- Greenpeace Australia Pacific, 350.org Australia and Lock the Gate Alliance have all committed, authorised and promoted unlawful and unsafe actions, contrary to the Charities Act and the Commonwealth Work Health and Safety Act.
- Nevertheless, these organisations are have not been removed from the register of charities or (in the cases of Greenpeace and Lock the Gate) the register of environmental organisations.

An April 2016 report by the House of Representatives Standing Committee on the Environment presents substantial evidence that suggests some registered environmental organisations are committing, authorising or encouraging illegal activities. The report notes that a number of industry associations and companies, as well as the police forces of NSW and Victoria, submitted evidence of protest activity that has 'involved serious risks to the safety of employees, volunteers, and other members of the community.'⁴⁰

The MCA has drawn attention to the following apparent breaches of the *Charities Act 2013*:

- Over the past nine years, Greenpeace Australia Pacific has scaled and vandalised Swanbank power station, blockaded and scaled Hay Point coal terminal, destroyed genetically modified crops at CSIRO, illegally boarded the bulk coal carrier *MV Meister*, and illegally boarded a coal terminal at the Port of Newcastle (see below).
- The Chief Executive of 350.org Australia authorised and participated in an illegal blockade of the Port of Newcastle on 8 May 2016, despite acknowledging the risks and despite a public safety warning from Port Waratah Coal Services. Police arrested 66 activists for unlawful acts including trespassing, destroying or damaging property, climbing on or attaching to a vessel without authority and failing to comply with directions from an authorised officer (see below).
- The Leard Forest Alliance blockaded Whitehaven Coal's Maules Creek project for more than three years.⁴¹ Parliamentary evidence by Whitehaven Coal revealed that activists regularly placed themselves, workers and police at risk by trespassing and locking on to heavy equipment.⁴²
- Lock the Gate Alliance has participated in unlawful and dangerous blockades of gas exploration operations in Glenugie and Bentley – and boasted of the police resources it has tied up (see below).

Greenpeace Australia Pacific

Greenpeace Australia Pacific is a large registered environmental organisation and charity, with an annual total gross income of \$17.4 million, a annual campaigning budget of \$11 million, 62 paid staff and 10 volunteers.⁴³ Greenpeace has an incontrovertible record of encouraging and pursuing unlawful activities. On numerous occasions, Greenpeace staff and volunteers have pleaded guilty to criminal offences and been fined accordingly. Additionally, representatives of Greenpeace have publicly asserted a right to break the law (Box 3). Even though this unlawful behaviour is calculated

⁴⁰ House of Representatives Standing Committee on the Environment, [Report on Inquiry into the Register of Environmental Organisations](#), April 2016, released on 4 May 2016, p. 61.

⁴¹ The following five members of the Leard Forest Alliance are both registered environmental organisations and registered charities: Greenpeace Australia Pacific, Lock the Gate Alliance, the Wilderness Society, Friends of the Earth (Australia) and the Nature Conservation Council of NSW.

⁴² See Brian Cole, Executive General Manager Project Delivery, Whitehaven Coal, [Evidence to House of Representatives Standing Committee on the Environment, Register of Environmental Organisations](#), Hansard, 18 June 2015, pp. 6, 8ff.

⁴³ Greenpeace Australia Pacific, [General purpose \(RDR\) financial report for the year ended 31 December 2016](#), p. 9; [Annual Information Statement 2016](#), published by Australian Charities and Not-for-profits Commission.

and recurrent, Greenpeace somehow remains eligible for deductible gift recipient status and charitable status.

Box 3: Greenpeace representatives assert that they have a right to break the law

Julien Vincent, then Climate and Energy Campaigner, 2008:

[T]here is a rising culture of climate change activism in Australia ... I could well be missing a lot from overseas, but this seems fairly unique and I think the leniency often used by our legal system reflects this emerging culture of activism ...

The magistrate [in the Swanbank Power Station case, discussed overleaf] took a range of things into consideration, one of which was the cause that motivated the protest ... The Queensland Times had a print article today that quoted the magistrate as having said ours was a 'political point made in a grand way' ...

So yep, we were happy to plead guilty to the charges but it's certainly fair to say that the reason behind our protest factored in the final sentencing.⁴⁴

Greenpeace submission to the Australian Taxation Office, 2011:

We have blocked train lines, occupied Lucas Heights, trespassed at the Lodge, illegally raised banners at Parliament House, amongst many other activities ... This history of civil disobedience is part of a much bigger history of individuals and organizations prepared to violate the law ...⁴⁵

David Ritter, Chief Executive Officer, 2013:

In a liberal democracy, citizens confronting a wrong are presented with a range of lawful options for making their views heard. These include rights under administrative law and such other procedural and legal mechanisms as may exist, campaigning through the media and in the community, political lobbying, and electoral participation.

Despite years of committed effort by thousands of Australian citizens, all available lawful options have proven wholly inadequate and ineffective for reining in the coal industry which is hell-bent on reckless expansion ...

It is the gulf between the scale and immediacy of the threat posed by the radical expansion of the coal industry and the absence of effective lawful options to address the hazard that creates the conditions in which civil disobedience is justified.⁴⁶

Jessica Panegyres, then Greenpeace Political Adviser, 2015:

Jessica Panegyres: The tens of thousands of Australians who regularly donate to Greenpeace every month recognise and support that we employ a range of tactics to [protect the environment].

Alison Carabine: And that range of tactics includes breaking the law?

Jessica Panegyres: Absolutely, when necessary.⁴⁷

Barry Rafe, Director of Greenpeace Australia Pacific, 2017:

The thing with activist organisations ... is there is an element of endorsing illegal behaviour. And that's an area I struggle with because we teach directors that if it's illegal it's unethical ...

You can't be on the Greenpeace board and be timid ... I've learnt that as humans we've got a human right to break the law, there are consequences but we've got a ... right to break the law ... So we do break into things, we do stop businesses, we do blockades where business is stopped.

You know, coal deliveries might be stopped. There are things that happen in bank branches where we put banners up ... We have staff who want to be in harm's way, and we've got to ease them back. We've got global protocols about who can go abseiling, we've got the Greenpeace SAS; we run sophisticated drones.

I've sort of reconciled we do get very good legal advice on this.⁴⁸

⁴⁴ Julien Vincent, then Greenpeace Climate and Energy Campaigner, online comments posted on 5 November 2008 in response to Graham Young, '[Climate Law Divergence](#)', *Ambit Gambit*, 4 November 2008.

⁴⁵ Greenpeace Australia Pacific, '[Greenpeace submission to the ATO discussion paper on changes to the Charities Bill 2003](#)', 2011.

⁴⁶ David Ritter, Chief Executive Officer of Greenpeace Australia Pacific, '[Coal, climate and civil disobedience](#)', *The Drum*, 7 May 2013.

⁴⁷ ABC Radio National Breakfast, '[Greenpeace responds to Senator's calls to remove its tax deductible gift status](#)', 2 June 2015 (quotation begins at 01:24).

Scaling and vandalising of Swanbank Power Station in Ipswich, Queensland

In July 2008, four Greenpeace activists (three from Australia, one from Scotland) broke into Swanbank Power Station in Ipswich and scaled one of its 137-metre-high smokestacks. The activists spent 33 hours on top of the smokestack and one of them abseiled down it, painting graffiti in large letters. The activists pleaded guilty to charges of wilful damage, engaging in unregulated high-risk activity and trespassing. The Scottish activist was placed on a \$500 two-year good-behaviour bond while the three Australian activists were each fined \$500. All four activists were ordered to pay \$23,241 in damages. A further nine activists, who were arrested before they could climb the smokestack, pleaded guilty to trespassing and were fined \$300 each.⁴⁹

Ipswich District Inspector Noel Power affirmed that the activists had put themselves in danger and used a considerable amount of police resources: 'This has involved a dedicated police response for two days. There have been other jobs the officers could have been attending to.'⁵⁰ The then Queensland Energy Minister, who had met with Greenpeace the day before, said:

At no time did they say to me that they're going to have people breaking into property. It's quite unnecessary and irresponsible and extreme behaviour to be climbing the stack of a power station.⁵¹

Similarly, the then Shadow Minister for Police observed that the tying up of police, firefighters, paramedics and SES volunteers was an egregious misallocation of public resources

To tie our police and our emergency services in this way is totally irresponsible by these people and they must be brought before the court and dealt with accordingly.⁵²

Nevertheless, Greenpeace employee Julien Vincent was unrepentant, saying after his court appearance that he would do it all again.⁵³ Mr Vincent is now Executive Director of Market Forces (see Box 4 in section 4 below).

Scaling and ship blockade of Hay Point coal export terminal near Mackay, Queensland

In August 2009, Greenpeace activists shut down the Hay Point Export Coal Terminal near Mackay for more than 36 hours as they climbed coal-loading equipment and blockaded the port with their largest ship, the 72-metre diesel vessel *Esperanza*. Four activists chained themselves to the top of the terminal and dangled 50 metres above the ground. The *Esperanza* entered the waters at Hay Point without using a marine pilot – contrary to mandatory safety procedures – and anchored illegally for about five hours. This trespassing and blockade cost BHP Billiton Mitsubishi Alliance approximately \$13 million and Queensland taxpayers approximately \$1 million in royalties.⁵⁴

The Russian captain of the *Esperanza* pleaded guilty to three maritime offences and one criminal charge of failing to comply with the direction of a harbour master and was fined \$8,000. The presiding magistrate told the captain that 'you were given warnings and you acted in complete defiance of those warnings'.⁵⁵ While charges against Greenpeace for unsafely operating a ship and failing to report a ship's movements were dropped, 15 activists pleaded guilty to charges ranging from trespassing to engaging in unregulated high-risk activity. Fines between \$300 and \$750 were handed down.⁵⁶ The

⁴⁸ Barry Rafe, Director of Greenpeace Australia Pacific, quoted in Ellie Cooper, ['When Charities Need to Break the Law'](#), *Pro Bono Australia*, 8 March 2017.

⁴⁹ See ['Calls for more smoke stack protest arrests'](#), *ABC News*, 11 July 2008; Anna Caldwell, ['Overnight demonstration fails to shut down Swanbank'](#), *Queensland Times*, 14 July 2008; Andrew Korner, ['Power protestor will pay compo'](#), *Queensland Times*, 23 August 2008; Shannon Molly, ['Swanbank smoke stack protesters avoid jail'](#), *Brisbane Times*, 4 November 2008; ['Greenpeace trio fined thousands over smoke stack stunt'](#), *ABC News*, 4 November 2008.

⁵⁰ Inspector Noel Power, Ipswich District Police, quoted in Anna Caldwell, *op. cit.*

⁵¹ The Hon Geoffrey Wilson MP, then Queensland Minister for Mines and Energy, quoted in ['Minister slams "extreme activists" at Swanbank protest'](#), *ABC News*, 14 July 2008.

⁵² The Hon Vaughan Johnson MP, then Queensland Shadow Minister for Police and Corrective Services, quoted in ['Calls for more smoke stack protest arrests'](#), *ABC News*, 11 July 2008.

⁵³ Julien Vincent, then Greenpeace climate and energy campaigner, as reported in ['Greenpeace trio fined thousands over smoke stack stunt'](#), *ABC News*, 4 November 2008.

⁵⁴ See David Barbelor, ['Greenpeace ramps up coal protests'](#), *Courier Mail*, 6 August 2009; ['Greenpeace protesters stop work at coal terminal'](#), *Brisbane Times*, 7 August 2009; and Clare Chapman, ['Greenpeace ship's captain fined'](#), *Daily Mercury*, 11 May 2010.

⁵⁵ Magistrate Ron Muirhead, quoted in Clare Chapman, *op. cit.*

⁵⁶ See ['Greenpeace ship captain fined \\$8000'](#), *Sydney Morning Herald*, 9 May 2010; ['Activists fined'](#) *MyResources*, 28 April 2010.

then Chief Executive of Greenpeace Australia Pacific fully endorsed this criminal behaviour, claiming that: 'The real crime is the fact the coal industry continues to expand.'⁵⁷

Destruction of genetically modified wheat crop in Belconnen, ACT

In July 2011, two volunteers for Greenpeace Australia Pacific broke into a CSIRO farm and destroyed a genetically modified wheat crop with whipper-snippers. The volunteers were sentenced to a nine-month suspended gaol term for intentionally destroying Commonwealth property, while Greenpeace Australia Pacific was ordered to pay \$280,000 in reparations to the CSIRO. Justice Penfold noted that the unlawful act was clearly carried out at the instigation of Greenpeace, or with its backing. Justice Penfold said she hoped Greenpeace was also unaware of the full ramifications of the act, rather than 'cynically' exposing junior staff members to the justice system.⁵⁸

While the two Greenpeace volunteers expressed regret for their actions, a spokesman for Greenpeace Australia Pacific said they had been fully briefed beforehand by the organisation:

With all due respect to the judge all Greenpeace employees, activists [sic] involved in these types of activities, are fully briefed on what will happen and the consequences of what will happen ... Nobody does this in ignorance of the consequences. Jess and Heather are people of honest integrity. They undertook this action with their eyes wide open.⁵⁹

Illegal boarding of bulk coal carrier MV Meister near Bowen, Queensland

In April 2013, six Greenpeace activists (from five countries including Australia) illegally boarded *MV Meister*, a fully loaded bulk coal carrier bound for South Korea. Without warning the captain or crew, the activists scrambled aboard the bulk carrier from small boats as it left Abbot Point.⁶⁰ After spending a fruitless night on deck, the activists were allowed off the ship by the captain, who slowed the vessel so they could disembark safely. Activist Emma Giles reported: 'He showed concern for our safety and offered us medication and water if we needed it'.⁶¹

A spokeswoman for Greenpeace Australia Pacific said the action was part of larger push for a 'campaign of civil disobedience' against the coal industry.⁶² No charges were laid against Greenpeace for this dangerous violation of international maritime law. In its annual report for 2013, Greenpeace International celebrated the *MV Meister* incident as a 'highlight' of its fleet's operation for that year.⁶³

350.org Australia

Blockade of Port of Newcastle, NSW

350.org Australia is a large registered charity, with an annual total gross income of \$1.1 million, 17 paid employees and 25 volunteers.⁶⁴ On 21 April 2016, the Chief Executive and Director of 350.org Australia, Catherine Blair Palese, announced her intention to lead an illegal blockade of the Port of Newcastle and incited others to perform, fund or otherwise support this dangerous activity:

[I]n early May, we're looking at the world's biggest direct action to stop fossil fuels called 'break free'. 'Break free' will happen in early May and Australia will kick off one of the first events on 7th and 8th and **we will be there in Newcastle specifically to hold up the coal shipments out of the Newcastle Coal Terminal ...** It's *the* world's largest coal terminal and we need to stop shipments out and we need to send a message that **coal exports have to stop**. It can no longer be part of the economy that makes up Australia's future ... It's a big ask. **We are asking some people to get arrested, we are asking some people to step up, join the**

⁵⁷ Linda Selvey, then Chief Executive Officer of Greenpeace Australia Pacific, quoted in '[Greenpeace ship captain fined \\$8000](#)', *Sydney Morning Herald*, 9 May 2010.

⁵⁸ Louise Andrews, '[Guilty, but good behaviour wanted from Greenpeace activists](#)', *Canberra Times*, 20 November 2012.

⁵⁹ Ben Pearson, then Head of Programs, Greenpeace Australia Pacific, quoted in Louise Andrews, op. cit.

⁶⁰ Owen Jacques, '[Greenpeace activists back on Rainbow Warrior ship](#)', *Daily Mercury*, 25 April 2013.

⁶¹ '[Coal ship activists head back to Cairns](#)', *news.com.au*, 25 April 2013.

⁶² Georgina Woods, Senior Climate Campaigner, quoted in Owen Jacques, op. cit.

⁶³ Greenpeace International, *Annual Report 2013*, p. 11.

⁶⁴ 350.org Limited, *Financial Statements For the Year Ended 30 June 2016; Annual Information Statement 2016*, published by the Australian Charities and Not-for-profits Commission. Regarding its tax status, 350.org Australia says: '350.org Limited is a registered Australian charity but donations are NOT tax-deductible in Australia. ABN: 46 138 155 192. Some donations for joint work with our partner organisation Friends of the Earth can be made tax deductible.' See 350.org Australia, [Build a powerful climate movement in Australia](#), viewed on 1 August 2017.

event, be in kayaks and boats, literally blockade that day and be part of a flotilla that will say no more fossil fuels out of that port. Thank you.

There are 350[.org Australia] workers and volunteers in this crowd who are organising that day, so if you haven't signed up I urge you please to do what you can do, whatever it might be. It could be **raising money** for the event; it could be supporting some of the people that are going; it could be coming yourself; it could be celebrating Mother's Day on the beach to cheer on the **people on the boats that are gonna get out there and take that risk; it could be getting in a boat yourself ...**⁶⁵

Similarly, in the lead-up to the blockade, 350.org Australia's Campaigns Director, Charlie Wood, acknowledged the risk of the action to volunteers but emphasised that stopping coal shipments – and not safety – was her organisation's top priority. As the *Newcastle Herald* reported:

'Safety is critical to us, and we've got a very robust risk management plan,' Ms Wood, of conservation coalition 350.org, said.

'We're training and briefing people before the event, providing First Aid and there are people whose job it will be to watch other people on the water.'

Sunday's protest is part of 12 days of global action against fossil fuel exports, and follows a smaller blockade on Newcastle harbour in 2014.

In that demonstration a protester was dragged under a tugboat and, police say, nearly sucked into its propulsion system.

Another elderly protester fell and hit his head on a kayak.

Asked if protesters would obey orders on Sunday to leave shipping lanes clear, Ms Wood said it would 'depend how things play out on the day' but that 'the idea is to block coal movements'.⁶⁶

As Ms Palese is a responsible person of Greenpeace Australia Pacific, it is perhaps unsurprising that Greenpeace supported 350.org's blockade and authorised its volunteers to participate.⁶⁷

On 8 May, around 200 protesters blocked the Port of Newcastle with kayaks. 57 people were arrested for trespassing when they lay across the tracks of a coal rail bridge. A 25-year-old woman who locked herself onto the mooring line of bulk carrier *MV Tangerine Island* in Mayfield was charged with climbing on or attaching to a vessel without authority and failing to comply with directions from an authorised officer. A 35-year-old man who piloted a rigid-hulled inflatable boat was arrested for assisting a person to climb on or attach to a vessel without authority.⁶⁸

In addition, a 41-year-old man who attached himself to a conveyor belt above a ship at Kooragang Island was charged with trespassing and destroying or damaging property, while a 39-year-old man who attached himself to a ship loader at Mayfield was charged with trespassing and malicious damage. Three women were arrested for trespassing after they abseiled from Stockton Bridge at Port Waratah coal terminal; and two of them were also charged with destroying or damaging property.⁶⁹

In total, 66 participants in the 350.org Australia blockade were arrested.⁷⁰ Newcastle police commander Superintendent John Gralton said some protesters had 'set out to break the law and put others at risk.'⁷¹ Three days prior to 350.org Australia's blockade, Port Waratah Coal Services issued a statement warning of the high risk of injury and death to anyone who enters a coal terminal without authorisation or training:

Safety is always our number one concern.

⁶⁵ Catherine Blair Palese, Chief Executive Officer and Director of 350.org Australia, video recording of speech at [Bill McKibben: The Hottest Year, The Hottest Fight](#), an event organised by 350.org Australia, Sydney, 21 April 2016 (quotation begins at 09:32).

⁶⁶ Tim Connell, '[Tough new laws won't apply to Newcastle coal protest](#)', *Newcastle Herald*, 6 May 2016.

⁶⁷ Ben Solity, '[I Want To Break Free \(From Fossil Fuels\)](#)', Greenpeace Australia Pacific Blog, 7 May 2016.

⁶⁸ See Tim Connell *et al.*, '[Newcastle harbour coal blockade: live updates, photos, video](#)', *Newcastle Herald*, 8 May 2016; Australian Associated Press, '[Police charge 66 at Newcastle protests](#)', *The Australian*, 9 May 2016.

⁶⁹ *ibid.*

⁷⁰ *ibid.*

⁷¹ Ian Kirkwood, '[Protesters arrested as hundreds of canoes blockade Port of Newcastle in climate change protest](#)', *Newcastle Herald*, 8 May 2016.

Port Waratah's equipment and machinery, most of which are automated or controlled remotely, can be dangerous for those who are untrained and unaware. It would be a tragedy if a protestor was injured or killed on site, or if the lives of workers or the police were placed in danger by the actions of a few.

There are also exclusion zones in place around vessels, even whilst at berth. These are in place to ensure the safety of members of the public, wharf workers and vessel crew. We ask that you respect these exclusion zones. Our very real concern is that someone will be seriously injured or killed if these warnings are ignored.⁷²

Unfortunately, these warnings were ignored by the staff of 350.org Australia, who both participated in criminal and high-risk activity and encouraged others to do so. Ms Palese posted on social media that she spent the morning of Mother's Day 'in front of #coal trains Newcastle'⁷³ while volunteer Jesse Kalic conceded that: 'We are putting ourselves at risk by being here today but we feel that it's far riskier to not take action on climate change'.⁷⁴ Further, campaigns director Charlie Wood stated that participants in the protest had been provided with legal briefings and knew the associated risks.⁷⁵

The conduct of representatives of 350.org Australia is disturbing for three reasons. First, it reveals that the 'charitable' purpose of 350.org Australia is not, as declared to the regulator: 'Education about climate change and the the need to move from fossil fuels to low-carbon energy systems',⁷⁶ but rather to stop Australian coal exports through a campaign of disruption and delay. This strategy was outlined in the infamous *Stopping the Australian coal export boom* manifesto, which lists Ms Palese as a campaign adviser.⁷⁷

Second, Ms Palese acknowledged that 350.org Australia committed unlawful and unsafe acts of trespass and sabotage to further this 'charitable purpose'. Ms Palese also called for donations to support these illegal and dangerous acts. This is clearly a breach of the Charities Act.

Third, as Chief Executive and Director of 350.org Australia, Ms Palese expressly authorised volunteers both to commit unlawful acts and to engage in unregulated high-risk activity – contrary to both the Charities Act and the Commonwealth Work Health and Safety Act.

Lock the Gate Alliance

Lock the Gate Alliance is a large registered environmental organisation and charity, with an annual total gross income of \$2.2 million, 11 paid employees and 200 volunteers.⁷⁸ Despite encouraging and supporting dangerous actions against mining operations, Lock the Gate Alliance enjoys both deductible gift recipient status and charitable status.

Blockade of gas exploration in Glenugie, NSW

In January 2013, Lock the Gate Alliance participated in an unlawful blockade of a gas exploration operation in Glenugie near Grafton. Activists attempted to stop the delivery of equipment to the site and some locked themselves onto equipment, trees and structures. The blockade was broken by the NSW Public Order and Riot Squad and 18 people were arrested on 25 charges including resisting and hindering police in the execution of their duty, obstructing paths and destroying or damaging property.⁷⁹

⁷² Port Waratah Coal Services, [Community Announcement](#), 5 May 2016.

⁷³ Catherine Blair Palese, Chief Executive Officer and Director of 350.org Australia, [Spent my Mother's Day morning w angelic #climate guardians in front of #coal trains Newcastle. #breakfree2016](#), posted on 8 May 2016 at 09:43 AEDT.

⁷⁴ Jesse Kalic, quoted in Australian Associated Press, ['Police charge 66 at Newcastle protests'](#), [news.com.au](#), 9 May 2016.

⁷⁵ Tim Connell, ['350.org coal protesters could blockade Newcastle again, "on needs basis"'](#), [Newcastle Herald](#), 9 May 2016.

⁷⁶ 350.org, [Annual Information Statement 2016](#), published by the Australian Charities and Not-for-profits Commission.

⁷⁷ See John Hepburn (Greenpeace Australia Pacific), Bob Burton (Coalswarm) and Sam Hardy (Graeme Wood Foundation), [Stopping the Australian coal export boom: Funding proposal for the Australian anti-coal movement](#), November 2011.

⁷⁸ Lock the Gate Alliance, [Financial Report For the Year Ended 30 June 2016](#); [Annual Information Statement 2016](#), published by the Australian Charities and Not-for-profits Commission.

⁷⁹ See ['Glenugie Blockade: 18 arrested, 25 charges laid'](#), [The Northern Star](#), 7 January 2013 and ['Metgasco starts Glenugie drilling'](#), [The Northern Star](#), 12 January 2013.

Lock the Gate Alliance even boasted in a media release of the extraordinary police resources that the blockade had consumed: 'It took a force of about 80 police nine hours to clear the blockaders and eighteen people were arrested.'⁸⁰

Blockade of Peter Graham's dairy farm in Bentley, NSW

Between March and May 2014, Lock the Gate Alliance participated in a blockade of Peter Graham, a dairy farmer in Bentley who allowed Metgasco to drill a gas well on his land. The blockade was led by an organisation called Front Line Against Gas, whose spokeswoman, Naomi Tarrant, had been arrested with Lock the Gate Alliance National President Drew Hutton the year before at a blockade near Kyogle.⁸¹ In the article 'Front Line takes control at Bentley' published by *The Nimbin GoodTimes*, Ms Tarrant was quoted as follows:

With operational activities scheduled to begin any day now, we have blocked the main drive to the planned exploration site and we will continue use non-violent direct action to safely protest and halt any upcoming operational activities.⁸²

The activists built a blockade across Mr Graham's driveway from star pickets with steel spikes welded to the end, splayed in several directions (see image below).⁸³ An activist on the ground described another dangerous device, known as the 'dragon':

In the Bentley case, there are more than ten devices in the Rosella driveway. Some are dragons. The thought of a dragon sends shivers down the spine: it means under the surface is a configuration of welded metal set in concrete. It acts as an anchor and the simmos [activists who deliberately obstruct police] lock deep down into it. When a dragon is in action everything stops. Overnight a new lock-on had been installed at the Rosella gate.⁸⁴

Illegal barricade imposed on private property in Bentley



Source: Hon Anthony Roberts MP, then NSW Minister for Resources and Energy and Special Minister of State, ['NSW Government condemns unlawful damage to private property'](#), media release, 16 April 2014.

⁸⁰ Lock the Gate Alliance, ['Glenugie Blockade shows fighting spirit against coal seam gas in Northern Rivers'](#), media release, 7 January 2013.

⁸¹ Hamish Broome and staff reporters, ['Metgasco secures drilling rig at Doubtful Creek'](#), *The Northern Star*, 7 February 2013.

⁸² Naomi Tarrant, spokeswoman for Front Line Against Gas, ['Front Line takes control at Bentley'](#), *The Nimbin GoodTimes*, 3 March 2014, p. 4.

⁸³ Hamish Broome, ['Anti-CSG activists block access to Bentley farmer's property'](#), *The Northern Star*, 8 April 2014.

⁸⁴ Margie Cameron, ['Protected hills: How one person saw the Bentley blockade'](#), *Echo NetDaily*, 1 April 2014.

Mr Graham warned that the blockade was jeopardising public safety and preventing him from farming:

Now they've gone another step [from driving metal pickets into the road surface] and put these dangerous spikes, and they are dangerous spikes, that they've put in the roadway to stop trucks.

But to me it's more of a safety for a person, them or ourselves, but they are such a permanent structure that it's going to be difficult to remove this issue now. They're right in the driveway of our entry into our property.

Look there's no doubt that there is another entrance, but this is one of the main entrances that we use when we're moving livestock or moving machinery. Lock the Gate tell us that they're not interfering with the farmer, but what they don't understand is how an operating farm works.⁸⁵

In addition, five activists subjected Mr Graham to verbal abuse that 'left him shaking'.⁸⁶

The NSW Minister for Resources and Energy was unequivocal in his judgment of the Bentley activists:

[T]he Minister condemned the unlawful behaviour of extremist protestors at the Bentley Farm, near Casino, in Northern NSW ...

Since the establishment of the camp protestors have continuously entered Mr Graham's property illegally and caused deliberate damage. This includes chaining, padlocking and welding gates, and laying barriers of concrete and metal spikes on driveways.

Mr Roberts said this behaviour was unacceptable and would not be tolerated.⁸⁷

Lock the Gate Alliance spokesman Ian Gaillard was prominent at the Bentley blockade, having established the activist camp on property next to Mr Graham's farm.⁸⁸ Mr Gaillard told local media in March 2014 that he was not complicit in confrontations with police: 'I would not promote it, but I would understand.'⁸⁹ However, in April 2014 Mr Gaillard was photographed at the front of the blockade, handing police a letter of 'take notice'.⁹⁰ He also declared that activists would not allow Metgasco to start drilling at Bentley, even if the NSW Government passed legislation banning protests at drilling sites.

In April 2015, Metgasco said it would need police to escort gas drilling equipment onto its site. In December that year, Metgasco agreed to sell its Northern Rivers licences to the NSW Government for the \$25 million on offer.⁹¹

⁸⁵ ['Gas land owner says Bentley protestors jeopardise safety'](#), *ABC News*, 4 March 2014.

⁸⁶ Hamish Broome, ['Confrontation with protestors "left me shaking", says farmer'](#), *The Northern Star*, 8 April 2014.

⁸⁷ The Hon Anthony Roberts MP, then NSW Minister for Resources and Energy and Special Minister of State, [NSW Government condemns unlawful damage to private property](#), media release, 16 April 2014.

⁸⁸ Geoff Chambers, ['Angry army of anti-gas protestors waits for police on NSW far north coast'](#), *Daily Telegraph*, 26 April 2014.

⁸⁹ Hamish Broome, ['Bentley protest justified, say organisers'](#), *The Northern Star*, 18 March 2014.

⁹⁰ See Sean Nicholls and Samantha Walton, ['Metgasco wins challenge to Bentley suspension'](#), *The Land*, 24 April 2015.

⁹¹ Chris Calcino and Hamish Broome, ['Metgasco confirms they will seek compensation'](#), *Daily Mercury*, 24 April 2015; Sean Nicholls and Anne Davies, ['Metgasco wants police help for gas drilling in Bentley after court victory'](#), *Sydney Morning Herald*, 24 April 2015; ['The rise and fall of Metgasco'](#), *The Northern Star*, 22 January 2016.

3. POLITICALLY PARTISAN ADVOCACY

- There is substantial evidence that a number of registered environmental organisations and charities are engaging in politically partisan advocacy, contrary to their obligations under legislation.
- During the 2016 federal election campaign, some organisations actively campaigned against particular candidates. Moreover, some of this campaign material was not authorised, even though authorisation is required by the Australian Electoral Commission during an election period.
- There appears to be inconsistencies between what has been declared as political expenditure to the Australian Electoral Commission, and what has been declared as campaigning or educational expenditure to the Australian Charities and Not-for-profits Commission.

There is compelling evidence that some registered environmental organisations and charities are frequently engaging in politically partisan advocacy. For instance:

- Environment Victoria, the Wilderness Society, Friends of the Earth and the Victorian National Parks Association collectively targeted marginal seats in the 2014 Victorian state election.⁹²
- On 14 August 2015, the Australian Conservation Foundation authorised a one-page advertisement against Minister Hunt. The advertisement included the logos of five other entities that are both registered environmental organisations and registered charities (see below).
- The Wilderness Society (Queensland) authorised campaign material during the 2015 Queensland state election urging voters to 'Put the LNP last'.⁹³
- Lock the Gate Alliance conducted a doorknocking campaign ahead of the 2015 NSW state election.⁹⁴
- 350.org Australia, the Nature Conservation Council of NSW, the Australian Youth Climate Coalition, the Australian Marine Conservation Society and the Wilderness Society (Australia) participated in a pre-election rally against Prime Minister Malcolm Turnbull in June 2016, along with the Australian Labor Party, the NSW Greens and GetUp! (see below).
- The ACF hired a truck to drive through Minister Josh Frydenberg's electorate during the 2016 election campaign, which displayed a banner criticising the minister for refusing to sign the ACF's environment pledge (see below).
- In October 2016, the Australian Marine Conservation Society attacked the Queensland Labor Government's dealings with Adani by staging protests at Labor's state conference.⁹⁵
- Friends of the Earth Australia passed on a donation of \$262,000 from Graeme Wood to the political group GetUp!⁹⁶
- On 28 February 2017, the Australia Institute circulated an email to subscribers calling for tax-deductible donations to campaign against Pauline Hanson's One Nation in the Western Australian and Queensland state elections (see below).

⁹² Gay Alcorn, '[Victorian government has "worst environmental record since the 60s"](#)', *The Guardian Australia*, 13 November 2014.

⁹³ See '[Davis TV ad 1 – 2015 Qld Election](#)', *You Tube*, authorised by T. Seelig. Tim Seelig is campaign manager for the Wilderness Society (Queensland).

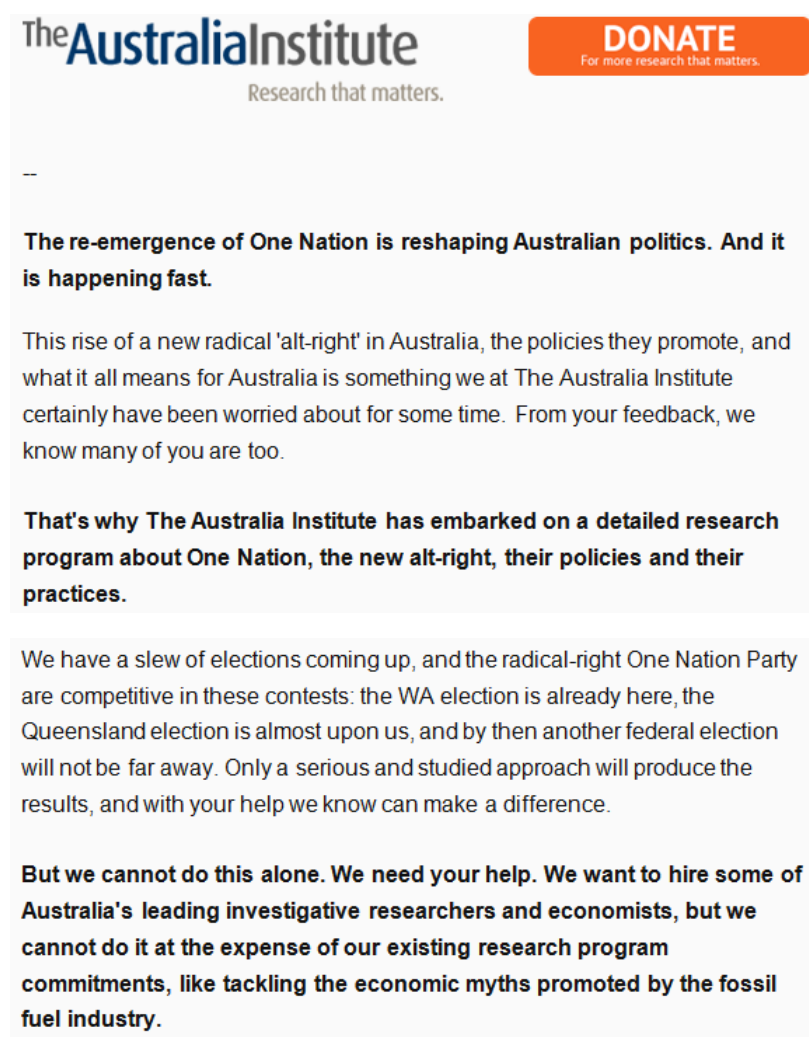
⁹⁴ Lock the Gate Alliance, '[Doorknocking with Gas Free Northern Rivers](#)', February 2015.

⁹⁵ See Felicity Caldwell, '[Queensland Labor state conference to be targeted by protesters](#)', *Brisbane Times*, 28 October 2016; ABC News, '[Adani's Qld Gov approval sparks protest](#)', 4 April 2016.

⁹⁶ See Friends of the Earth Australia, '[Affiliates](#)', viewed on 19 July 2017; Ean Higgins and Jared Owens, '[Wotif's Graeme Wood backed \\$2m strike at Rupert Murdoch](#)', *The Australian*, 26 October 2016.

Examples of political campaigning by registered environmental organisations and charities

The Australia Institute



The re-emergence of One Nation is reshaping Australian politics. And it is happening fast.

This rise of a new radical 'alt-right' in Australia, the policies they promote, and what it all means for Australia is something we at The Australia Institute certainly have been worried about for some time. From your feedback, we know many of you are too.

That's why The Australia Institute has embarked on a detailed research program about One Nation, the new alt-right, their policies and their practices.

We have a slew of elections coming up, and the radical-right One Nation Party are competitive in these contests: the WA election is already here, the Queensland election is almost upon us, and by then another federal election will not be far away. Only a serious and studied approach will produce the results, and with your help we know can make a difference.

But we cannot do this alone. We need your help. We want to hire some of Australia's leading investigative researchers and economists, but we cannot do it at the expense of our existing research program commitments, like tackling the economic myths promoted by the fossil fuel industry.

Politics In The Pub: The Rise Of The New 'Alt Right'



Catch a thought-provoking Politics in the Pub discussion between The Australia Institute Executive Director Ben Oquist and former journalist, author and researcher Phil Dorling. With the rise of the One Nation Party, the resignation of Cory Bernardi, and Trumpism, join us as we discuss the new 'alt right' in Australia, what it means and what can be done.

Source: Ben Oquist, Executive Director of the Australia Institute, *It's happening fast*, email to subscribers, 28 February 2017; The Australia Institute, [Politics in The Pub: The Rise of the New 'Alt Right'](#), viewed on 19 July 2017.

Australian Conservation Foundation



ACF
@AusConservation

Follow

And here's **#ACFpledge** on a truck, in electorates like Kooyong now **@JoshFrydenberg**, Helen McLeod & Margaret D'Arcy



RETWEETS 5 LIKES 3



6:55 PM - 28 Jun 2016



Australian Conservation Foundation

15 March - 🌐

Australian politicians are on an expensive junket to meet coal billionaire Adani in India. Guess who's crashing their party? **#StopAdani**



Source: Australian Conservation Foundation, ['And here's #ACFpledge on a truck, in electorates like Kooyong now @JoshFrydenberg, Helen McLeod & Margaret D'Arcy'](#), *Twitter*, 28 June 2016; ['Surprise! Australians join QLD Premier's junket to India'](#), *facebook*, 15 March 2017.

ADVERTISEMENT

IS GREG HUNT THE MINISTER FOR THE ENVIRONMENT OR THE MINISTER AGAINST THE ENVIRONMENT?

It's seldom in a lifetime that an opportunity arises to change the course of a nation and its environment.

Greg Hunt, the Federal Minister for the Environment, has such a moment in his career. An approval he gave, wrongly, to the proposed Adani Group's coal mine in Queensland has been overturned by the Federal Court.

He has a chance to correct his original mistake. He has new information before him that wasn't in his possession when the first decision was made.

But will he take that rarest of all political opportunities – the second chance?

The Project

The proposed Adani Group's coal mine would be the largest mine ever built in Australia. Its area would be five times the area of Sydney Harbour. Its emissions from the burning of its coal would be one and a half times those of the entire country of New Zealand.

And this at a time when the rest of the developed world is racing to shift to cleaner renewable energy options.

It is also a time when business leaders around the world are calling for Government policy to aid renewable energy and remove subsidies from coal.

The Company

Who would build this mine? A company with a great environmental record for its previous efforts?

No. The Adani Group has a history of ignoring environmental conditions placed on its projects, including destruction of a 75 ha mangrove conservation zone in India and building an entire airport without proper environmental approvals.

Greg Hunt says conditions placed on the mine would suffice.

You don't let the fox into the hen house and then try to contain him, Minister Hunt.

The Financing

You might imagine banks are rushing to finance this \$16 billion project.

Not so. Just last week Australia's largest bank, the Commonwealth, withdrew support for the Adani Group's coal mine.

Many other banks have said they would not fund a coal project with export facilities near the Great Barrier Reef.

The Decision

The Minister's department and the Adani Group has called the Federal Court's decision a technical glitch.



The failure to consider the impact of the Carmichael mine on two native species found only in Queensland is not a glitch. New information before the Minister also shows it will affect other endangered species and massive groundwater reserves.

Departments don't make decisions, Minister Hunt. Ministers do.

So are you the Minister for the Environment or the Minister against the Environment?

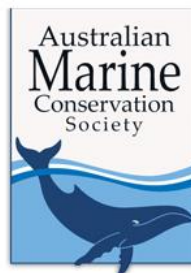
www.action.org.au/protect-the-galilee

Authorised by Kelly O'Shanassy, ACF, 60 Leicester Street Carlton.



Source: Australian Conservation Foundation, Australian Youth Climate Coalition, GetUp!, Mackay Conservation Group, Seed, Australian Marine Conservation Society, the Wilderness Society and Greenpeace Australia Pacific, [Is Greg Hunt the Minister for the Environment or the Minister against the Environment?](#) Advertisement authorised by Kelly O'Shanassy, CEO of Australian Conservation Foundation, 14 August 2015.

CHIP IN TO FUND OUR MOBILE BILLBOARD



Donation Details

Make a donation

<input type="button" value="\$35"/>	<input checked="" type="button" value="\$55"/>	<input type="button" value="\$100"/>	<input type="button" value="\$200"/>
<input type="button" value="\$350"/>	<input type="button" value="\$500"/>	<input type="text" value="\$ enter amount"/>	

Source: Australian Marine Conservation Society, [Chip in to fund our mobile billboard](#), viewed on 9 February 2017.

Australian Youth Climate Coalition

After getting elected on a "save the Reef" platform, QLD Labor have spit in the face of everyone who had faith in them to stop this project by giving the project "critical infrastructure" status. Basically a free kick for Adani to show how much the QLD Government loves them (and coal).



Source: Kelly Mackenzie, Australian Youth Climate Coalition, [9 reasons why you should get fired up about stopping Adani again](#), 10 November 2016.

THE WEEK WE PUSHED THINGS UP A NOTCH

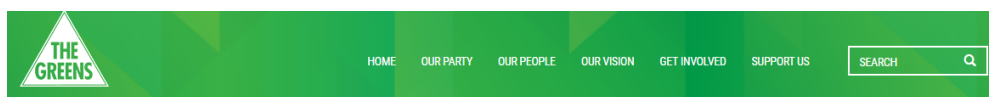
WATCH: A week out from the federal election, people around the country took bold action to hold Australia's worst blockers of climate action to account. Check out the highlights video below.



HIGHLIGHTS FROM POLLUTION FREE POLITICS PUSH!

Source: gofossilfree.org.au, [Pollution Free Politics](#), viewed on 13 July 2017; and 350.org Australia, [Pollution Free Politics](#), viewed on 13 July 2017. NB that neither of 350.org Australia's websites seem to contain authorisation, as required by the Australian Electoral Commission during an election period.

350.org Australia's 'pollution free politics' campaign mirrors that of the Australian Greens party.



POLLUTION FREE POLITICS

Get Dirty Money Out Of Politics

As long as there is big money in politics, politicians will represent the interests of big business and big polluters - not the people who elect them. The Australian people can see through the government's inaction on global warming - and on the other side there is money from big coal, big mining and big business.

It's time to get money out of parliament and to clean up politics.

First Name

Last Name

E-mail Address

Phone Number

Suburb

Postcode

Mailing options

- Hear more from us about democratic reforms
- Hear more from our federal Greens MPs

[Read more](#)

[SIGN NOW](#)

Source: Australian Greens, [Pollution Free Politics](#), viewed on 13 July 2017

350.org Australia (continued)



350.org Australia added 5 new photos.
28 June 2016 · 🌐

GetUp and 350.org have taught the climate action blockers a lesson in how to use the internet, buying up web addresses linked to their names and using them to inform the public of their horrible records.

Check the sites out below, then like and share to spread some truth:

<http://georgechristensenmp.com/>

<http://andrewnikolicmp.com/>

<http://peterduttonmp.com/>

<http://barnabyjoycemp.com/>

<http://angustaylormp.com/>

#PollutionFreePolitics



Source: 350.org Australia, '[GetUp and 350.org have taught the climate action blockers a lesson ...](#)', facebook, 28 June 2016. This post was not authorised, even though authorisation is required by the Australian Electoral Commission during an election period.

350.org Australia (continued)

 **350.org Australia** shared Stop Adani's photo.
9 July at 23:50 · 🌐

Annastacia Palaszczuk MP's Cabinet are doing two things this week: visiting Cairns and feeling the pressure from the awesome Stop Adani Cairns team. This just a taste of the week to come with one #StopAdani Cairns volunteer photo-bombing Qld Treasurer Curtis Pitt MP who recently gave Adani a dirty deal on coal royalties.
We won't stop until we #StopAdani!



Stop Adani
9 July at 23:01 · 🌐

This week Annastacia Palaszczuk MP's Cabinet is in Cairns and we are ready to welcome all of them!
Here's our awesome #StopAdani Cairns volunteer photo-bombing Qld Treasurer Curtis Pitt MP who recently gave Adani a dirty deal on coal royalties.
We won't stop until we #StopAdani!

 **350.org Australia** added 4 new photos to the album #PollutionFreePolitics Push.
23 June 2016 · 🌐

Two weeks out from the federal election, people around the country took bold action to hold Australia's climate action blockers to account for the damage they are doing to our future. #PollutionFreePolitics
LIVE action here: <http://gofossilfree.org.au/pollution-free-push-live/>



 **350.org Australia**
23 June 2016 · 🌐

Brisbane you never fail to inspire!
Right after the occupation at Peter Dutton's office has concluded with major media interests, people continued on to set up the banner right under his nose!
The fight for critical action on climate won't stop until we get the climate blockers out of our Parliament House! Like and Share to show your support for a #PollutionFreePolitics



 **350.org Australia**
26 June 2016 · 🌐

Thanks to Janelle Saffin for signing the #PollutionFreePolitics pledge!
LIKE and SHARE to say thank you to Janelle Saffin, the former member and current Labor candidate for the New South Wales seat of Page.



Source: 350.org Australia, '[Two weeks out from the federal election](#)', facebook, 23 June 2016; '[Brisbane you never fail to inspire!](#)', facebook, 23 June 2016; '[Annastacia Palaszczuk MP's Cabinet are doing two things this week ...](#)', facebook, 9 July 2017; '[Thanks to Janelle Saffin for signing ...](#)', facebook, 26 June 2016. None of the June 2016 posts were authorised, even though authorisation is required by the Australian Electoral Commission during an election period.

350.org Australia, the Nature Conservation Council of NSW, the Australian Youth Climate Coalition, the Australian Marine Conservation Society and the Wilderness Society (Australia)



Source: 350.org Australia, '[Climate Fizza – Election Climate Rally](#)', *facebook*, authorised by Paul Oosting, National Director of GetUp!, 26 June 2016. See also See Greenpeace Australia Pacific, '[Greenpeace targets Malcolm Turnbull at electorate office to urge action on climate change and coal](#)', media release, 24 June 2016; The Wilderness Society, '[Election Climate Rally](#)', 26 June 2016; Australian Labour Party, Warringah Labor, '[At the climate #FIZZA rally in Wentworth](#)', *You Tube*, 26 June 2016; NSW Greens, '[Climate Fizza – Election Climate Rally](#)', 26 June 2016; and Getup! '[Climate Fizza Rally June 26](#)', viewed on 19 July 2017.

Partial or non-disclosure of political expenditure to the Austalian Electoral Commission

Under the *Commonwealth Electoral Act 1918*, third parties or organisations that incur political expenditure (other than registered political parties, candidates and federal government agencies) are required to disclose those sums to the Australian Electoral Commission (AEC). The AEC states that:

Political expenditure is expenditure incurred by a person or organisation, or with their authority, on:

- public expression of views on a political party, candidate in an election or member of the Commonwealth Parliament by any means,
- public expression of views on an issue in an election by any means,
- printing, production, publication, or distribution of any material that is required under s328, s328A or s328B of the Act to include a name, address or place of business,
- broadcast of political matter in relation to which particulars are required to be announced under sub-clause 4(2) of schedule 2 to the Broadcasting Services Act 1992.
- opinion polling and other research relating to an election or the voting intention of electors.⁹⁷

⁹⁷ Australian Electoral Commission, '[Third parties incurring political expenditure](#)', updated 11 September 2014.

Table 1 overleaf shows AEC declarations for the past seven years by Greenpeace Australia Pacific, the Climate Institute, the World Wide Fund for Nature Australia (WWF-Australia) and the Australian Conservation Foundation (ACF). Evidently, these organisations have engaged regularly and extensively in Australia's political system.

Yet while political parties are obliged to disclose the source of donations greater than \$13,200, environmental groups can spend millions of dollars every year without having to disclose the identities or locations of their donors. This lack of transparency constitutes a potential threat to Australia's sovereignty, by allowing foreign interests to exert political influence by covertly funding domestic environmental groups (section 4).

Further, there appears to be inconsistencies between what has been declared as political expenditure to the AEC, and what has been declared as campaigning or educational expenditure to the ACNC. For instance, Greenpeace's 2015 financial report to the ACNC shows that it allocated \$9.4 million to what it described as 'campaigning expenditure' in calendar 2015. However, Greenpeace only declared \$28,592 in political expenditure to the AEC for 2014-15. In calendar 2016, Greenpeace spent \$11 million on campaigning expenditure but only declared \$53,406 to the AEC for 2015-16.⁹⁸

Similarly, World Wide Fund for Nature Australia informed the ACNC that it spent \$13.1 million on 'domestic projects' and \$3.1 million on 'community education' in 2014-15. In contrast, the entity informed the AEC that it spent \$432,566 on producing or distributing political material in the same period. In 2015-16, WWF-Australia spent \$11.5 million on domestic projects and \$2.7 million on community education, but declared just \$230,161 in producing or distributing political material to the AEC.⁹⁹

The Australian Conservation Foundation reported to the ACNC that it spent \$6.7 million in 2015-16 on 'environmental impact initiatives', including \$3.3 million on 'Community Engagement, Mobilising & Organising'.¹⁰⁰ But the organisation only declared \$173,783 in political expenditure to the AEC in 2015-16.

Again, while the Climate Institute conducted what it described as 'pre-election polling' between 2 and 6 June 2016, it apparently did not declare any expenditure to the AEC on opinion polling and other research relating to an election or the voting intention of voters for 2015-16.¹⁰¹

These examples highlight the importance of ensuring that all organisations engaged in political advocacy are subject to the same rules of transparency. While political parties are obliged to disclose the source of donations more than \$13,200, environmental organisations can spend millions of dollars every year without having to disclose the identities or locations of their donors.¹⁰²

A related problem is the risk that registered environmental organisations – who enjoy deductible gift recipient status – can pursue political campaigns without any limit to the tax-deductibility of donations. Whereas contributions and gifts to political parties and candidates are only tax deductible up to \$1,500, there is no limit to the tax deductibility of donations to registered environmental organisations.¹⁰³ And since some of these organisations are freely engaging in partisan political activity, this presents a significant loophole for tax-deductible political donations.

The federal government should consider adopting Canada's political activity rule for charities, to close the loophole of uncapped tax-deductible political donations through deductible gift recipients (section 5).

⁹⁸ Greenpeace Australia Pacific, [General Purpose Financial Report \(RDR\) for the year ended 31 December 2015](#), p. 11; [General purpose \(RDR\) financial report for the year ended 31 December 2016](#), p. 9.

⁹⁹ World Wide Fund for Nature Australia, [Annual Report: 30 June 2015](#), p. 10; [Annual Report: 30 June 2016](#), p. 11.

¹⁰⁰ Australian Conservation Foundation Incorporated, [Annual Financial Report for the year ended 30 June 2016](#), p. 12.

¹⁰¹ See the Climate Institute, [Pre-Election Polling Factsheet](#), June 2016.

¹⁰² Australian Electoral Commission, [Disclosure threshold](#), viewed on 28 July 2017.

¹⁰³ Australian Taxation Office, [Claiming political contributions and gifts](#), viewed on 27 July 2017. See also Nick Sherry, then Senator and Assistant Treasurer, [Removing Tax Deductibility For Political Donations](#), media release, 25 February 2010.

Table 1: Declared political expenses of selected registered environmental organisations and charities, 2009-10 to 2015-16

	Entity	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Public expression of views on a political party, candidate in an election or member of the Federal Parliament by any means	Greenpeace	\$81,791	\$51,931	\$35,331	\$78,274	\$53,641	\$22,692	\$46,150
	The Climate Institute	\$0	\$55,446	\$0	\$0	\$9,650	\$0	\$0
	WWF-Australia	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	ACF	\$0	\$0	\$0	\$0	\$26,578	\$0	\$0
Public expression of views on an issue in an election by any means	Greenpeace	\$0	\$0	\$0	\$0	\$0	\$0	\$109
	The Climate Institute	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	WWF-Australia	\$0	\$144,894	\$0	\$0	\$0	\$0	\$2,500
	ACF	\$0	\$89,896	\$0	\$2,070	\$8,333	\$0	\$7,441
Printing, production, publication, or distribution of any material that is required by section 328 or 328A of the Act to include a name, address or place of business	Greenpeace	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	The Climate Institute	\$0	\$61,942	\$0	\$0	\$27,500	\$0	\$0
	WWF-Australia	\$0	\$20,936	\$0	\$0	\$695,373	\$432,566	\$230,161
	ACF	\$7,135	\$88,000	\$0	\$9,561	\$56,402	\$0	\$147,142
Broadcast of political matter in relation to which particulars are required to be announced under sub-clause 4(2) of schedule 2 to the Broadcasting Services Act 1992	Greenpeace	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	The Climate Institute	\$134,425	\$101,473	\$0	\$0	\$5,900	\$25,310	\$0
	WWF-Australia	\$0	\$0	\$0	\$0	\$0	\$0	\$121,728
	ACF	\$0	\$31,358	\$0	\$0	\$0	\$0	\$0
Opinion polling and other research relating to an election or the voting intention of voters	Greenpeace	\$6,000	\$0	\$20,143	\$0	\$0	\$5,900	\$7,147
	The Climate Institute	\$0	\$19,034	\$0	\$27,250	\$38,650	\$0	\$0
	WWF-Australia	\$0	\$48,867	\$0	\$0	\$46,310	\$0	\$0
	ACF	\$14,567	\$33,172	\$0	\$18,450	\$116	\$0	\$19,200

Source: Organisations' Third Party Returns of Political Expenditures to the Australian Electoral Commission, obtained from Australian Electoral Commission, [Annual Returns Locator Service](#), viewed on 10 February 2017 and 4 August 2017. NB that The Climate Institute closed in June 2017 and is no longer searchable on the AEC's website.

4. THE SUNRISE PROJECT: A CASE STUDY IN NON-DISCLOSURE

- The Sunrise Project – a registered environmental organisation and charity – is pursuing an ideological campaign against Adani and the Australian coal industry. The Sunrise Project does not appear to have disclosed this campaign to the Australian Charities and Not-for-profits Commission or declared any expenditure to the Australian Electoral Commission.
- The Sunrise Project's ideological campaign is being covertly funded by donations from foreign organisations. The organisation has admitted taking steps to avoid, challenge and limit disclosure of its donors and beneficiaries to the Australian parliament. However, public reporting of donations by a number of US foundations shows that the Sunrise Project has accepted at least US\$1.9 million from foreign entities since 2012.
- The Sunrise Project appears to be supporting several other organisations that campaign against Australia's resources sector, notably GetUp!, Greenpeace Australia Pacific, 350.org, the Australian Youth Climate Coalition, Mackay Conservation Group, and Market Forces.

An uncharitable and undisclosed purpose of anti-coal activity

The Sunrise Project is a registered environmental organisation and charity that reports its principal activities to the ACNC as 'research, education and capacity building' with a view to preserving the environment and preventing dangerous climate change.¹⁰⁴ However, *The Australian* has exposed how foreign funds have been funnelled through the Sunrise Project to support vexatious legal challenges to Adani's Carmichael coal project in Queensland, as well as to induce objections from Indigenous groups.

Irene Simpson, a native title claimant for the Wangan and Jagalingou people, said that the media report confirmed long-held suspicions that an 'infiltration of outsiders' had undermined a jobs agreement with Adani by spreading misinformation:

These outsiders came in and divided the group, they came to a meeting of our people ahead of the vote and told lies about what the mine would do to our country.¹⁰⁵

In addition, the Sunrise Project signed a heads of agreement with native title claimant Adrian Burragubba and other clan members (which apparently never took effect) that offered a community development program worth \$325,000 and a university scholarship worth \$600,000. This agreement was contingent on continued opposition by these persons to the mine.¹⁰⁶

According to *The Australian*, the Executive Director of the Sunrise Project, John Hepburn, wrote an email to the US-based Sandler Foundation in August 2015 following a legal decision against Adani. Mr Hepburn said he was going to buy a 'few bottles of bubbly' for a celebration with 'our colleagues at GetUp!!!!, Greenpeace, 350.org, Australian Youth Climate Coalition, Mackay Conservation Group, Market Forces and the brilliant and tireless Sunrise team'.¹⁰⁷

The Australian further revealed that the objective of the Sunrise Project is not merely to stop Adani's project, but to shut down the Australian coal industry entirely. Mr Hepburn boasted that 'the whole Galilee Basin fossil fuel industrial complex is in its death throes'. He also mocked the Australian coal industry claiming 'there is some kind of foreign-funded and tightly orchestrated conspiracy to systemically destroy the Australian coal industry', sarcastically adding: 'I seriously don't know where they get these wacky ideas from!'¹⁰⁸

In a subsequent media statement, Mr Hepburn verified the revelations made by *The Australian*, saying: 'Of course we and other environmental groups are fighting tooth and nail to stop the Adani

¹⁰⁴ See the Sunrise Project Australia, [Annual Information Statement 2013](#), [Annual Information Statement 2014](#), [Annual Information Statement 2015](#), published by Australian Charities and Not-for-profits Commission.

¹⁰⁵ Michael McKenna, ['Indigenous clan blasts "outside activists" interference'](#), *The Australian*, 22 October 2016.

¹⁰⁶ bid.

¹⁰⁷ Dennis Shanahan, ['Foreign funding for Adani lawsuits'](#), *The Australian*, 22 October 2016.

¹⁰⁸ bid.

project'. He also asserted that Australia's decision to develop its coal resources would pose 'a major diplomatic risk' if Hillary Clinton were elected president of the United States.¹⁰⁹

Mr Hepburn was formerly a senior campaigner for Greenpeace Australia Pacific and the lead author of *Stopping the Australian Coal Export Boom*, which states:

Our strategy is essentially to 'disrupt and delay' key projects and infrastructure while gradually eroding public and political support for the industry and continually building the power of the movement to win more.¹¹⁰

This document also nominated the Sierra Club as a prospective partner in developing and implementing a campaign against the Australian coal industry. In 2012, *The New York Times* reported that the Sierra Club 'secretly' accepted \$26 million in donations from people associated with a natural gas company to fund an anti-coal campaign in the United States:

The Sierra Club used the Chesapeake Energy money, donated mainly by the company's chief executive from 2007 to 2010, for its Beyond Coal campaign to block new coal-fired power plants and shutter [sic] old ones.¹¹¹

In the same vein, the US-based Tides Foundation has donated millions of dollars to green groups that campaign against the Australian coal industry – including US\$452,000 to the Sunrise Project (Box 4).

Box 4: US-based Tides Foundation donates millions to anti-coal activists in Australia

The Australian newspaper revealed the following in May 2017:

The Tides Foundation, established in 1976 in San Francisco, gave \$105,000 in both 2015 and 2016 to an Australian group, Market Forces, which works to stop 'investment in projects that would harm the environment'.

Allegations in Canada suggest so-called third parties influenced its 2015 election campaign, with MPs pushing for an inquiry into claims the Tides Foundation sank \$700,000 into eight politically active groups that may have used the funds on election advertising.

Market Forces is an affiliate of the green group Friends of the Earth, but is not registered with the Australian Charities and Not-for-profits Commission. An ABN check shows it is not 'entitled to receive tax-deductible gifts' ...

The Tides Foundation has donated to a range of Australian environmental groups registered as charities since 2012, including \$5000 to the Mackay Conservation Group, \$20,000 to the Bob Brown Foundation, \$20,000 to the Climate Council of Australia, \$10,000 to the Australian Marine Conservation Society, \$100,000 to Sea Shepherd, \$405,000 to the Lock the Gate -Alliance, \$452,000 to the Sunrise Project; \$568,472 to the Great Barrier Reef Foundation, and \$568,323 to Nature Conservancy Australia, according to donations listed on Tides Foundation reports.

The Mackay Conservation Group, Bob Brown Foundation, Sunrise Project, Australian Marine Conservation Society and Market Forces are members of the Stop Adani alliance aimed at quashing the \$16.5 billion Carmichael mine in Queensland's Galilee Basin. The alliance wants new coal projects banned.¹¹²

Steps taken to 'avoid disclosure, challenge and limit disclosure'

None of the Sunrise Project's four annual information statements to the ACNC make any mention of its anti-coal agenda or related funding from foreign entities.¹¹³ The organisation's financial accounts for 2016 report \$4.7 million in grants and donations, but the share of donations from foreigners is not

¹⁰⁹ John Hepburn, Executive Director of the Sunrise Project, [Podesta Adani Wikileaks: Clinton Presidency will hold mirror to Turnbull's climate inaction](#), media statement, 22 October 2016.

¹¹⁰ John Hepburn (Greenpeace Australia Pacific), Bob Burton (Coalswarm) and Sam Hardy (Graeme Wood Foundation), [Stopping the Australian coal export boom: Funding proposal for the Australian anti-coal movement](#), November 2011, p. 5.

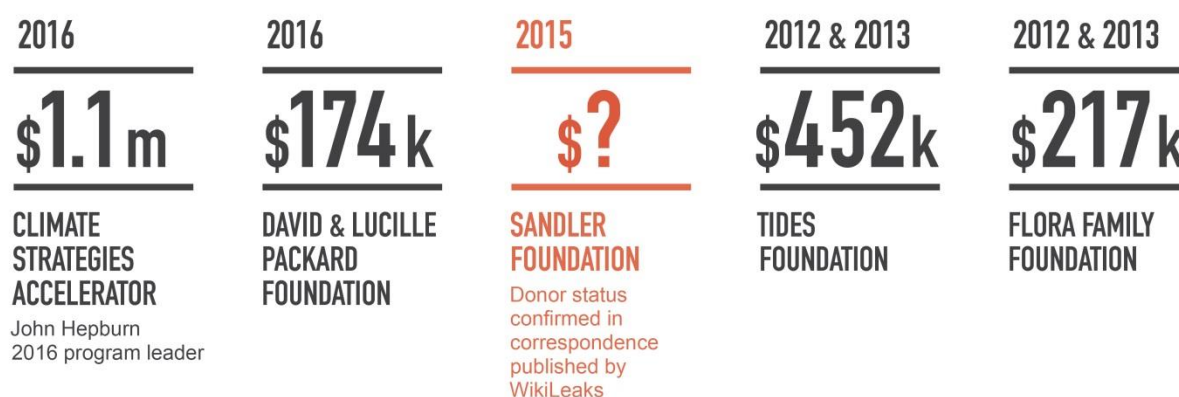
¹¹¹ Felicity Barringer, 'Answering for Taking a Driller's Cash', *New York Times*, 13 February 2012.

¹¹² Joe Kelly, 'Green activists intent on killing coal accept funding from US foundation', *The Australian*, 30 May 2017.

¹¹³ See The Sunrise Project Australia, [Annual Information Statement 2013](#), [Annual Information Statement 2014](#), [Annual Information Statement 2015](#), [Annual Information Statement 2016](#), published by Australian Charities and Not-for-profits Commission.

disclosed.¹¹⁴ However, public reporting of donations by a number of US foundations shows that the Sunrise Project has received at least US\$1.9 million from foreign entities since 2012 (Figure 1).

Figure 1: Known foreign donations to The Sunrise Project, 2012 to 2016 (US dollars)



Source: Climate Change Accelerator, [Current Projects: 2016 CSA Program Leaders](#); David & Lucille Packard Foundation, [The Sunrise Project Australia Limited](#); Flora Family Foundation, [2012 Board Grants](#), [2013 Board Grants](#); Sergio Knaebel, Grant Director, Sandler Foundation, [Fwd: Adani update - what a week!](#) Email to James Sandler, Director, Sandler Foundation and to others, 6 August 2015, WikiLeaks; Tides Foundation, [Tides Foundation Grantees 2012](#), [List of 2013 Grantees](#). All pages viewed on 26 July 2017.

The Sunrise Project reports its main expenses for 2016 as ‘grant funding and donation expenses’ (\$3.0 million) and ‘program expenses’ (\$1.4 million) but it does not disclose the recipients of these grants and donations, or the specific programs funded.¹¹⁵ Nor does it appear that the Sunrise Project has made any declarations of political expenditure to the Australian Electoral Commission.

Indeed, documents reveal that the Sunrise Project consciously avoided disclosing both the source of its donations and the beneficiaries of its grants. Regarding the announcement of a House of Representatives inquiry into registered environmental organisations, Mr Hepburn warned his US sponsors that he had ‘concerns about the potential PR impact of disclosure of both our funding and grantees.’ He advised his US supporters that he was ‘seeking advice on steps we might take to avoid disclosure, challenge and limit disclosure, or to ensure that any disclosure is limited to the committee members and is not made public.’¹¹⁶

Mr Hepburn’s concern was shared by his foreign sponsors. After receiving ‘positive’ news on delays to the Adani project courtesy of their funding efforts, a grant director of the Sandler Foundation told his superior that: ‘I’m starting to think that our high tolerance for risk on this project is paying off!’¹¹⁷

The case of the Sunrise Project exposes the risk to Australia’s sovereignty of permitting foreign entities to fund – in secret – activities intended to shut down a key Australian export industry. The Indian Power Minister, Piyush Goyal, said the vexatious litigation against Adani ‘will certainly dampen future investments’ from India.’ Mr Goyal also warned that India’s growing demand for coal could be met from other markets, such as Indonesia and South Africa, if Australian coal was not available.¹¹⁸

Clearly, no organisation should be allowed to pursue an undeclared political campaign with undisclosed foreign donations, especially where that campaign is likely to serve the commercial interests of foreign competitors and investors at the expense of Australian exports and jobs.

¹¹⁴ The Sunrise Project Australia, [Financial report for the year ended 31 December 2016](#), published by Australian Charities and Not-for-profits Commission, p. 11.

¹¹⁵ *ibid.*, p. 11.

¹¹⁶ John Hepburn, Executive Director of the Sunrise Project, [IMPORTANT: Charity Inquiry](#), email to Sergio Knaebel, Grant Director, Sandler Foundation, 25 May 2015, WikiLeaks.

¹¹⁷ Sergio Knaebel, Grant Director, Sandler Foundation, [Fwd: Adani update - what a week!](#) Email to James Sandler, Director, Sandler Foundation and to others, 6 August 2015, WikiLeaks.

¹¹⁸ Dennis Shanahan and Michael McKenna, [Foreign-funded anti-coal activists risk driving India away](#), *The Australian*, 24 October 2016.

5. USEFUL LESSONS FROM CANADA

- The federal government should consider adopting Canada’s political activity rule for charities, to close the loophole of uncapped tax-deductible political donations through deductible gift recipients.
- Under Canadian law, charities can spend no more than 10 per cent of their resources on political advocacy, and that advocacy must be non-partisan and secondary to their charitable purpose. Higher thresholds apply to smaller entities to avoid excessive regulatory burden.
- The Australian Charities and Not-for-profits Commission has previously told parliament that it working on clarifying the threshold for politically partisan activity and is aware of the Canadian approach.

Under Canadian law, a registered charity may only engage in political behaviour if it devotes substantially all of its resources to charitable purposes and activities. ‘Resources’ include all of a charity’s financial resources, capital assets, staff and volunteer time, and donated resources. In addition, a charity’s political conduct must be non-partisan, connected to its charitable purpose and secondary to that purpose. An activity is presumed to be political if a charity:

- Explicitly communicates a call to political action (that is, encourages the public to contact an elected representative or public official and urges them to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country)
- Explicitly communicates to the public that the law, policy, or decision of any level of government in Canada or a foreign country should be retained (if the retention of the law, policy, or decision is being reconsidered by a government), opposed, or changed
- Explicitly indicates in its materials (whether internal or external) that the intention of the activity is to incite, or organize to put pressure on, an elected representative or public official to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country
- Makes a gift to another qualified donee to support political activities.¹¹⁹

The Canada Revenue Agency interprets this political activity rule to avoid burdening smaller charities:

When a charity takes part in political activities, the [Income Tax] Act requires that **substantially all** of its resources must be devoted to charitable activities ...

We usually consider **substantially all** to mean 90% or more. Any charity using at least this amount of its various resources for charitable work can be assured that we will not revoke its registration on the basis that it is not devoting enough of its resources to charitable activities. Therefore, as a general rule, we consider a charity that devotes no more than 10% of its total resources a year to political activities to be operating within the **substantially all** provision.

However, we recognize that this may have a negative impact on smaller charities. In an effort to alleviate this hardship, we will exercise our discretion and not revoke the registration of smaller charities for the excessive use of their resources on political activities as long as they meet the following administrative guidelines:

- Registered charities with **less than \$50,000** annual income in the previous year can devote up to 20% of their resources to political activities in the current year.
- Registered charities whose annual income in the previous year was **between \$50,000 and \$100,000** can devote up to 15% of their resources to political activities in the current year.
- Registered charities whose annual income in the previous year was between **\$100,000 and \$200,000** can devote up to 12% of their resources to political activities in the current year.¹²⁰

The ACNC has previously told parliament that it working on clarifying the threshold for politically partisan activity and is aware of the Canadian approach (Box 5).

¹¹⁹ Canada Revenue Agency, [Political activities basic requirements](#), date modified 12 March 2013.

¹²⁰ Canada Revenue Agency, [Political Activities: Policy Statement](#), Reference number CPS-022, effective date 2 September 2003, emphases in original.

Box 5: Political activity metrics would close the loophole for tax-deductible political donations

Senator CANAVAN: I do not have the Charities Act in front of me, but I did quote it to you last time. I felt, from memory, there was quite clear prohibition on charities campaigning for an individual or a party or campaigning against a party or a candidate at an election.

Mr Baird: Certainly, if there is a purpose of engaging in activity that promotes or opposes a political party or a candidate for political office –

Senator CANAVAN: So if it engages in activity that promotes or opposes a candidate, how is this not –

Mr Baird: That is, has a ‘purpose’ of engaging in such an activity is the test in the act.

Senator CANAVAN: So they can do all these other things. They can spend other time doing other things and as long as only some aspect of their activities does those things they are fine.

Mr Baird: Without commenting on a particular case, it of course depends on the nature and extent of the activity at the point at which it tips over into a purpose.

Senator CANAVAN: At what point would that happen? Would it be if 30 per cent of their activities were devoted to this kind of activity? How do you test that anyway? How do you test what is their purpose? Do you ask them?

Mr Baird: You look at all the context. You look at their constitution, their website or their activities as a whole and –

Senator CANAVAN: With all due respect, Mr Baird, this seems like a paper tiger. If I went and asked somebody, ‘What’s your purpose?’ they are, of course, not going to come back with the answer, ‘Our purpose is in breach of the Charities Act.’ They will tell you that it is not.

Mr Baird: It is certainly not a subjective test. It is an objective test that we make inquiry into, senator.

Senator CANAVAN: How do you judge when someone’s purpose is against what they say? What would be the threshold for you to say, ‘We don’t agree with you. We don’t think your constitution properly reflects your purpose’?

Mr Baird: If we were of that view, we would give them a show cause notice and ask for an explanation.

Senator CANAVAN: Basically, this is one giant loophole for our political donation and other laws, because political parties have caps on how much they can accept for a tax-deductible purpose to campaign in those ways. But what you are saying is there are no caps, therefore, on charities which are DGR listed, because as long as it is not contravening their purpose they can accept as many donations as they like for tax-deductible purposes and use those for political campaigning purposes.

Mr Baird: There would be a point at which an activity that was repeated would be deemed to go to purpose.

Ms Pascoe: At a recent meeting of charities regulators in common law countries it was reported that only Canada puts metrics around the quantum that can be received. It is something that is being looked at. We held a forum in Sydney last week where the other jurisdictions were present as well and, because this is a federal election year and there has been some ambiguity around it, we are working at the moment on guidance on political advocacy. It is not clear that we would set metrics around it, because it is not typically the way that we have acted in Australia. For example, when you look at fundraising, only Victoria puts a metric around the distribution of fundraisers. All of the other states and territories have it as a broad category about a suitable amount that should be distributed. So I take your point: I think it is an area that requires clarification and we are working on it ...¹²¹

The federal government should consider adopting Canada’s political activity rule for charities, to provide both the regulator and deductible gift recipients with an objective test for determining the threshold for a disqualifying purpose of politically partisan activity. If all non-public deductible gift recipients were required to be registered charities (as recommended by the discussion paper) then implementing the Canadian rule would close the loophole of uncapped tax-deductible political donations through deductible gift recipients.

¹²¹ Susan Pascoe AM, Commissioner, and Murray Baird, Assistant Commissioner, General Counsel, Australian Charities and Not-for-profits Commission, [Evidence to Senate Economics Legislation Committee: Additional Estimates](#), Senate Hansard, 10 February 2016, p. 45.

APPENDIX: DECLARATIONS OF EXPENDITURE BY THE MCA TO THE AUSTRALIAN ELECTORAL COMMISSION

Table 2: Declared political expenses of the Minerals Council of Australia, 2009-10 to 2015-16

	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Public expression of views on a political party, candidate in an election or member of the Federal Parliament by any means	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Public expression of views on an issue in an election by any means	\$0	\$699,267	\$0	\$449,450	\$0	\$0	\$334,164
Printing, production, publication, or distribution of any material that is required by section 328 or 328A of the Act to include a name, address or place of business	\$3,136,866	\$3,298,692	\$72,366	\$1,344,853	\$0	\$0	\$235,542
Broadcast of political matter in relation to which particulars are required to be announced under sub-clause 4(2) of schedule 2 to the Broadcasting Services Act 1992	\$14,048,058	\$0	\$719,896	\$0	\$0	\$0	\$0
Opinion polling and other research relating to an election or the voting intention of voters	\$0	\$0	\$0	\$0	\$0	\$0	\$220,000