



**AUSTRALIAN  
CONSERVATION  
FOUNDATION**

Change today for  
a sustainable future

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1 June 2015

Dear Sir/Madam

**Submission to *Better Tax Discussion Paper* June 2014**

Thank you for the opportunity to provide a formal submission to the Tax Discussion Paper.

The Australian Conservation Foundation (ACF) is Australia's oldest national environmental organisation, being founded in the mid-1960s with the support of eminent Australians, the Australian community and the Australian government. Since that time, ACF has committed itself to promoting conservation causes throughout Australia and to the promotion of sustainable living, and has been honoured and privileged to be supported in its activities by eminent persons such as HRH Prince Philip, Malcolm Fraser, Gough Whitlam and Sir Garfield Barwick.

ACF has been, since its creation some 50 years ago, the leading national advocate for the environment. ACF protects, restores and sustains Australia's environment through research, consultation, education, partnerships and advocacy. ACF works with the community, business and government and is strictly non-politically partisan.

ACF is a charity registered with the Australian Charities and Not-for-profits Commission (ACNC) and has been a deductible gift recipient (DGR), listed by name, since 1966. ACF is governed by a Board and guided by a group of democratically elected Councilors. ACF is supported by approximately 9,000 members, 36,000 donors and over 240,000 active supporters.

Approximately 90 percent of ACF's funding comes from donations made by the public, which are tax deductible. Without these donations, it would be impossible for ACF to carry on its activities. ACF's status as a DGR is absolutely vital to its continuing success.

As such ACF's submission comments predominantly on Chapter 7 of the Tax Discussion Paper (**Paper**) on 'Not-for-profit sector' as it is most relevant for the operations of ACF. In particular our comments are focused on the section of the paper on deductible gift recipients from page 26 onwards.

**Administrative arrangements for tax concessions should be simplified and streamlined**

ACF submits that one national body should be responsible for coordinating and processing applications for commonwealth endorsement as a charity and also for endorsement as a deductible gift recipients (DGR) and other tax endorsements.

The current regulatory regime for DGR status, including the DGR registers, is administratively inefficient. There are four Registers under which charities can apply to be registered and in doing so obtain DGR endorsement as well as a myriad of more general categories, each of which are separately assessed.

In the case of environmental organisations, the relevant register is the Register of Environmental Organisations (REO).<sup>1</sup> The test set out in the *Charities Act* for determining whether an environmental organisation has a charitable purpose is nearly identical to the test applied by the Australian Tax Office and the Minister for Environment when determining who should be entered on REO and accordingly have deductible gift recipient status.<sup>2</sup> It is difficult to imagine any organisation that would meet one of these tests, but not the other.

The process for awarding charitable status and DGR status could and should be streamlined and conducted by the same entity. It makes no sense to have one organisation knock on a multitude of doors to obtain its endorsements to commence operations. There is no basis for creating this additional compliance framework for DGR endorsement (which is not required for income tax exemptions, FBT concessions, GST concession etc.). It is an inefficient allocation of government resources by requiring the same function (i.e. determining whether the purposes of an environmental organisation are sufficient to meet statutory requirements) to be performed by several bodies.

The Australian Charities and Not-for-profits Commission (ACNC) could be considered for this role.<sup>3</sup> ACF supported the establishment of a national charity regulator as a vehicle to achieve simplification and streamlining of regulation for charities. Since its formation, great work has been undertaken by the ACNC to this end. With the forward funding commitment for the ACNC confirmed by the Federal Government in the recent Budget, there is now an opportunity to consider what other elements of the charitable and nonprofit landscape should fall to the ACNC. ACF submits that further consideration should be given to how the various charity Registers can be incorporated into the remit of the ACNC. This would be in keeping with the Government's agenda to reduce red tape, which is one of the ACNC's purposes. It would also increase public confidence about the independence of the process of awarding endorsements to charities. The ACNC can play this role without the conflicting objectives that the Tax Office has (being a revenue raising entity) and without the risk of politicisation, as we observe to be the case with the Register being overseen by the Minister for the Environment (which will be elaborated upon below).

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<sup>1</sup> Although ACF is not listed on the REO, we have chosen to provide comment on it because the operation of the REO impacts the environment movement as a whole and thus has impacts for ACF and the ability of ACF in partnership with our colleagues to together pursue our charitable objectives.

<sup>2</sup> Compare, s.12 of the *Charities Act* with s.30-265 of the *ITAA*. Under s.12 of the *Charities Act*, an entity will have a charitable purpose if its purpose is either: (a) advancing the natural environment or (b) promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country if the change is in furtherance or hindrance of a purpose of advancing the environment. In that regard, the *Charities Act* defines "advancing" to include protecting, maintaining, supporting, researching and improving. Under s.30-265(1) of the *ITAA*, an environmental organisation must have as its purpose either: (a) the protection and enhancement of the natural environment or a significant aspect of the natural environment or (b) the provision of information, education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.

<sup>3</sup> The view of the Productivity Commission is that a national body 'should be responsible for coordinating and processing applications for Commonwealth endorsement and the maintenance of all specific DGR registers' (Productivity Commission 2010, 'Contribution of the not-for-profit sector', p166).

## Having separate registers with Ministerial oversight allows for politicisation of DGR status

On Thursday 26 March 2015 the House of Representatives Standing Committee on the Environment (Standing Committee) adopted an inquiry referred by the Minister for the Environment, the Hon Greg Hunt MP, asking the Committee to inquire into and report on the Register of Environmental Organisations. ACF is concerned that there is political motivation behind this Inquiry and this is relevant for the Tax Discussion paper as it goes to the problems inherent with Ministerial oversight of separate DGR registers. This concern is underpinned by public statements made over the past 18 months by the Federal Council of the Liberal Party,<sup>4</sup> Coalition MPs<sup>5</sup> and representatives from the Minerals Council of Australia and the Institute of Public Affairs (IPA),<sup>6</sup> all of which have targeted the advocacy role of Australia's environmental organisations. There have been direct calls for the removal of tax deductible status for these organisations.

The capacity to advocate is a legitimate and vital element of charitable purpose across the range of areas in which charity occurs, from environmental to social welfare and international aid organisations. The role of advocacy within charitable purposes has been asserted over many years and most recently affirmed in both case law and statute.<sup>7</sup> ACF believes that there is sufficient evidence to warrant concern that the Standing Committee Inquiry will be used as an attempt to limit the freedom of speech of advocacy-based environmental organisations; and to ban or restrict deductible gift recipient status for these organisations.

Environmental organisations already have to meet the test in the *Charities Act* to become endorsed as a charity and then comply with the conditions of that endorsement. The Minister should not be in the position to be able to impose additional conditions on this through creating an alternative test for DGR status, which would be a clear politicisation of an administrative task. This not be possible in the first place if the DGR registers fell within the remit of the ACNC or indeed if the DGR registers were abolished all together, and responsibility for awarding charitable status and DGR endorsement sat with the one independent national body.

In summary, we submit that the existence of the DGR registers should be reviewed with a view to streamlining to ease the administration and compliance burden for the organisations.

Thank you for the opportunity to make this submission.

Yours faithfully



Kelly O'Shanassy  
Chief Executive Officer  
Australian Conservation Foundation

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<sup>4</sup> ABC News (30 June 2014) [http://www.abc.net.au/news/2014-06-29/andrew-nickolic-moves-to-strip-charity-status-from-some-environ/5557936?WT.ac=statenews\\_tas](http://www.abc.net.au/news/2014-06-29/andrew-nickolic-moves-to-strip-charity-status-from-some-environ/5557936?WT.ac=statenews_tas)

<sup>5</sup> Daily Mercury <http://www.dailymercury.com.au/videos/christensen-sets-his-sights-green-political-activi/22865/>

<sup>6</sup> Sinclair Davidson for Minerals Council of Australia 'A Critique of the Coal Divestment Campaign' (2014) ([http://www.minerals.org.au/file\\_upload/files/reports/A\\_critique\\_of\\_the\\_coal\\_divestment\\_campaign\\_Sinclair\\_Davidson\\_Jun\\_2014.pdf](http://www.minerals.org.au/file_upload/files/reports/A_critique_of_the_coal_divestment_campaign_Sinclair_Davidson_Jun_2014.pdf))

<sup>7</sup> The purpose of advocacy is now recognised in the Charities Act 2013 (Cth) (Section 12(l)). This statutory definition clearly contemplates that an organisation whose purpose is to influence law, policy or practices in Australia or overseas (i.e. engage in advocacy) has a charitable purpose if that advocacy relates to a recognised charitable purpose such as advancing education, advancing culture or advancing the environment. This reflects the position at common law in Australia, as determined by the High Court of Australia in *Aid/Watch v Commissioner of Taxation*. The High Court of Australia identified the public benefit to advocacy in its contribution to public discussion, and through this, its support of the system of representative and responsible government that is mandated in the Constitution of the Commonwealth of Australia.