

1 June 2015

Tax White Paper Task Force
The Treasury
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Dear Taskforce members,

Re:think Tax Discussion Paper – Chapter 7 – Not-for-Profit Sector

EDOs of Australia welcome the opportunity to comment on the Australian Government's *Re:think Tax Discussion Paper (Discussion Paper)*.ⁱ While we are not tax lawyers, we welcome the opportunity to provide comment on Chapter 7 of the Discussion Paper.

We are a network of independent not-for-profit community legal centres that specialise in public interest environmental law. EDOs have 30 years' experience advising Australian communities on using the law to protect the environment, including advice, casework, education and law reform. These services are fundamental to providing 'access to justice' across the spectrum of federal and state environmental and planning laws.

Each EDO is a charity registered with the Australian Charities and Not-for-profits Commission (**ACNC**), and a Deductible Gift Recipient (**DGR**) under tax laws.ⁱⁱ EDOs are also income tax exempt charities. These tax concessions recognise the public benefits we provide, and create incentives for the public to protect the natural environment through tax-deductible donations. In the current funding climate, our reliance on charitable donations is increasing.

In summary, EDOs of Australia submit that the long-term conservation of Australia's natural and cultural heritage needs a strong and diverse environmental charity and not-for-profit sector. We therefore urge the Australian Government to:

- maintain existing taxation conditions for environmental charities and donors;
- support the continued role of the ACNC to assist and regulate all charities;
- continue to recognise the range of activities that contribute to on-ground environmental outcomes; and

- support a strong environmental charity and not-for-profit sector, as a crucial element in forging a more sustainable path for the wellbeing of present and future Australians.

This submission briefly outlines why charitable status and tax concessions are important to EDOs of Australia. It then responds to the questions in Chapter 7 of the Discussion Paper, with particular regard to environmental charities and not-for-profits.

Why charitable status and tax concessions are important to EDOs

The Australian Government's withdrawal of all federal funding from EDOs, announced by the Attorney-General in late December 2013, has placed significant strain on individual EDOs' capacity to assist the community on public interest environmental law matters.ⁱⁱⁱ

EDOs' limited funding enables communities to access high quality legal advice, representation and technical expertise in situations where significant environmental and heritage values are under threat – and where legal processes have not been followed. This provides access to justice,^{iv} an important check on decision-making,^v and creates opportunities for positive and enduring environmental outcomes.^{vi}

The first EDO opened its doors in NSW in 1985, and EDOs were first listed on the Register of Environmental Organisations from 1993. Subsequently, EDOs across Australia have obtained charitable or DGR status to assist and encourage individual donors to help protect the environment through the law. Historically, EDOs have relied less on charitable funding and much more on other 'public' sources.^{vii} However, in the current climate of diminished government funding, EDOs are reorienting their funding sources in good faith to include more private charitable donations.

For further information on EDOs and our work please see www.edo.org.au; and the National Association of Community Legal Centres brochure, *Environment Matters* (2013), at www.nacclc.org.au/resources/NACCLC_EDO_WEB.pdf.

Responses to *Re:think Tax Discussion Paper* questions

Chapter 7 of the Discussion Paper considers the not-for-profit sector (pp 121-127). Recognising the sector's 'important and intrinsic role in Australian society', it asks four questions:

47. *Are the current tax arrangements for the NFP sector appropriate? Why or why not?*
48. *To what extent do the tax arrangements for the NFP sector raise particular concerns about competitive advantage compared to the tax arrangements for for-profit organisations?*
49. *What, if any, administrative arrangements could be simplified that would result in similar outcomes, but with reduced compliance costs?*
50. *What, if any, changes could be made to the current tax arrangements for the NFP sector that would enable the sector to deliver benefits to the Australian community more efficiently or effectively?*

We address each question below, with particular regard to environmental charities.

47. Are the current tax arrangements for the NFP sector appropriate? Why or why not?

The current tax arrangements for charities and not-for-profits, including provision for DGR status and income tax exempt status, are appropriate and should be retained.

For example, the Register of Environmental Organisations (**the Register**) under the *Income Tax Assessment Act 1997 (ITA Act)* has recognised the ‘public good’ of environmental purposes for over 20 years. By allowing tax-deductible donations, the Register encourages Australians to give to charities with the principal purpose of protecting, researching, educating and informing people about the natural environment. Similarly, income tax exemptions for charities themselves reflect their ‘public good’ purposes, as well as their often significant reliance on government grants and/or charitable donations.

A strong and diverse environmental sector – including charities and other not-for-profits – is vital to ensure that Australia’s environment is protected, and that Australian governments and businesses comply with their legal obligations in the best interests of all Australians. This is particularly important at a time when Australia’s environment and native species are under increasing stress.^{viii}

As Robert Hill articulated as Environment Minister in 2001, integration of environmental considerations is an essential element of planning for economic growth. This requires a significant rethink of priorities that are attuned to the concept of *ecologically sustainable development (ESD)*.^{ix} In 2011, the then Treasury Secretary emphasised that, to maintain ‘sustainable wellbeing’ for present and future generations, there is a need to balance *environmental and social capital* in addition to traditional notions of physical, financial and human capital.^x In 2013, the National Sustainability Council reinforced this view, noting that ‘A healthy natural environment with functioning ecosystem processes is... an economic and social imperative’.^{xi}

The amount of money that environmental charities receive from the public is small, but very important.^{xii} They often have limited staff budgets (if any) and often rely on hard-working volunteers to further their charitable aims and get things done. Yet charities and NGOs can be more nimble and responsive than centralised government agencies, and their networks are often more in touch with ‘on the ground’ issues. For example, local community groups may rely on peak environmental charities for a two-way flow of information or advocacy. Environmental charities therefore provide an important public benefit by facilitating informed democratic engagement to advance environmental protection.

Charities and NGOs are also an essential source of independent information. Recent CSIRO research (focusing on perceptions of mining) found that the Australian public does not trust information from any one sector absolutely. Yet on average, NGOs were more trusted than government or industry sources.^{xiii}

By presenting a different perspective to government agencies, environmental charities can assist, improve and complement government activity (without always agreeing with it). They facilitate dialogue with community members, and provide a voice for the environment in public policy debates, where that voice may be otherwise overlooked. Recent trends in public policy-making and reductions in departmental resourcing have also increased the importance of environmental and other charities.

All of these factors increase the need for environmental charities to engage in service delivery, advocacy, policy development and public dialogue for environmental protection. Tax-deductible donations are an important enabler for charities to do this. Overall, we submit that the range of public benefits that environmental charities provide clearly justifies their tax-concessional status, and that the concessional arrangements are appropriate.^{xiv}

48. To what extent do the tax arrangements for the NFP sector raise particular concerns about competitive advantage compared to the tax arrangements for for-profit organisations?

EDOs provide unique services not covered by the private legal sector or Legal Aid. This is acknowledged by the Productivity Commission:

Strategic advocacy, law reform and public interest litigation are areas where there are few incentives for private lawyers to act. Private lawyers are focused mainly on achieving outcomes for individual clients. They are less interested in achieving broad-based reforms that could result in positive outcomes for the wider community.^{xv}

More generally, there are few private sector incentives to protect the environment as a primary organisational purpose (or advocate for its protection). This is at the heart of recognising environmental advancement under the *Charities Act 2013* (Cth),^{xvi} and providing tax concessions for environmental organisations.

As the 2001 independent inquiry into the definition of charities affirmed ‘The environment is a public good.’ The inquiry recommended ‘the advancement of the natural environment’ should be recognised as a charitable purpose, and that it was ‘significant enough to warrant its own head of charity’.^{xvii}

The inquiry’s expert panel took this view because:

The benefits that flow from protecting the environment cannot be appropriated by any person or persons for their own private benefit. For example, improving the air quality in Sydney or the water quality in Adelaide is for the benefit of all people who live in those cities, whether they contributed directly to that improvement or not.

The Productivity Commission reinforced this in its *Access to Justice* report (2014):

As a result of negative environmental externalities, the social benefits for a community in raising environmental matters are more likely to exceed the private benefits for a single individual.^{xviii}

The Productivity Commission went on to note the ‘strong grounds’ for public funding to the legal assistance sector, including for environmental matters which cover the range of EDOs’ work.

We submit that the same ‘strong grounds’ apply to charitable and tax-concessional status of EDOs, other environmental charities and not-for profit organisations. This includes organisations that ‘undertake strategic advocacy, law reform and public interest litigation’. Just as individuals give to other types of charities knowing that the public benefit of that money will not accrue directly to them, the same is true with environmental charities.

Accordingly, in relation to EDOs there are no ‘competitive advantage’ concerns. Tax laws should continue to recognise the importance of environmental protection as a public good to be encouraged through charitable status and tax exemptions (such as DGR status and income-tax exemptions for charities).

49. What, if any, administrative arrangements could be simplified that would result in similar outcomes, but with reduced compliance costs?

EDOs of Australia support the continuation of a dedicated ACNC to ensure consistency, independence and efficiency in governance requirements across the charity and not-for-profit sectors. An independent regulator reflects best practice.^{xix} Consideration should be given to whether the ACNC should assume more responsibilities for environmental charities (and other DGR categories^{xx}) rather than splitting these between various agencies.

In addition to the ACNC (as general charity regulator), charities on the Register of Environmental Organisations are regulated by the Environment Department and the Australian Tax Office (**ATO**) according to rules and safeguards under the ITA Act.

As the Discussion Paper notes (p 127):

‘While DGR status is highly valued, the process for applying for it can be time consuming. ... There are also different requirements for DGR status across the different general categories which creates further complexity.

Environmental charities on the Register are subject to various registration checks, reporting and transparency measures and other safeguards under charity and tax laws. Legal safeguards and transparency have increased since the ACNC was established in 2012, and the ACNC continues to play an important assistance role.

There are 5 main steps to be listed on the Register of Environmental Organisations:

1. The environmental charity registers with the ACNC.
2. The charity applies to the Department of Environment for DGR status.
3. The charity is assessed, and is certified by the Environment Minister.
4. The charity is then endorsed by the ATO and the Assistant Treasurer to have DGR status (i.e. tax-deductibility for donors).

5. The charity is then listed on the Register of Environmental Organisations.

Once registered, 'environmental organisations' have various ongoing obligations under the ITA Act.^{xxi} For example, registered environmental organisations must submit an annual return to the Environment Department for each financial year, noting the number of donors, amount of donations received and types of activities funded. These annual returns are similar but additional to *all* charities' annual returns to the ACNC, regarding their charitable and other income, activities and outcomes.

Accordingly, we submit that the costs of adding any *additional* administrative, compliance and regulatory requirements on environmental organisations would outweigh any benefits, particularly given the limited resources of environmental organisations, and the small proportion of charities they represent (perhaps 1%).

In addition to considering whether the ACNC should assume more responsibilities, it should also be considered whether registration and reporting requirements could be harmonised, in a way that reflects charities' limited administrative capacities and budgets. This could include, for example, a single form shared between agencies where appropriate, with key details published in accordance with existing ACNC practices.

50. What, if any, changes could be made to the current tax arrangements for the NFP sector that would enable the sector to deliver benefits to the Australian community more efficiently or effectively?

Further to the suggestions above, in considering what assistance could enable charities and the broader not-for-profit sector to deliver benefits efficiently, the limited staffing and administrative resources in these organisations must be recognised.

We support upfront and ongoing assistance from regulators such as the ACNC or the Environment Department to help charities meet their regulatory requirements.^{xxii} As Australia's independent charity regulator, the benefit of the ACNC is that it can provide resources, forums and networks to build the capacity of environmental and other charities to comply with obligations and more effectively achieve their aims.

Regulators should also consider the potential interaction with other regulatory schemes, and collaborate to ensure that the relationships between these obligations are clear (for example, charity and electoral funding laws, state fundraising laws etc).

Charitable environmental protection goes beyond 'on-ground works'

It is vital that the advancement and protection of the environment continues to be recognised as a charitable and tax-deductible purpose, and that this goes beyond 'on-ground environmental works' such as landscape restoration. On-ground works continue to be a very important part of protecting and enhancing the natural environment. However, as this submission illustrates, there are many other important components to achieving positive environmental outcomes that the community expects, and that environmental charities fulfil. This is demonstrated by the existing

scope of 'principal purpose' for the Register of Environmental Organisations, which includes environmental *information, education and research* (ITA Act, s. 30-265).

Other examples of beneficial charitable activities to protect the environment include:

- advocacy for law reform to address systemic environmental issues;
- awareness-raising and community education;
- promoting access to justice, including by way of legal representation;
- third party (community) enforcement of environmental law breaches;
- encouraging public participation in decision-making; and
- advocating for enhanced protection of particular natural areas, such as a new national park or Aboriginal place.

Advancing and protecting the 'natural environment' should reflect contemporary society

Finally, with regard to the scope of principal purpose for charities on the Register of Environmental Organisations, the meaning of 'natural environment' should reflect contemporary understanding of urban and rural environments.^{xxiii}

The Guidelines to the Register give examples of what the *natural environment*, and concern for it, would include.^{xxiv} We submit that the 'natural environment' should be broadly interpreted in line with the evolving experience of the Australian landscape, its modification and urbanisation.

In addition to non-urban natural areas like wilderness areas, protection of the 'natural environment' should include (for example) protection of urban parklands – given their benefits to wellbeing, recreation, ecosystem services and habitat for native species. This is consistent with the 2001 inquiry on the definition of charities, which noted that 'the aesthetic value of the natural environment ... contributes to wellbeing, particularly among highly urbanised populations.'^{xxv}

Alternatively, specific reference could be made to the conservation of the built environment and heritage (both Aboriginal and non-Aboriginal) to recognise the broader public benefit of protecting the environment in these contexts.

We hope this submission is of assistance to the Taskforce. For further information please contact me or Mr Nari Sahukar on (02) 9262 6989.

Yours sincerely,
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ⁱ <http://bettertax.gov.au/publications/discussion-paper/>

ⁱⁱ Under the *Income Tax Assessment Act 1997* (Cth) (**ITA Act**).

ⁱⁱⁱ Until December 2013, many EDOs relied almost exclusively on federal funding to assist communities across Australia, with an 18-year track record of bipartisan support. The sudden withdrawal of almost \$10 million in expanded funding over four years, as well as all annual Community Legal Service Program (**CLSP**) funding, raises the real prospect of closure for some offices and staff.

^{iv} See Productivity Commission, *Access to Justice Arrangements* (2014), p 711-13.

^v See for example, ICAC, *Anti-corruption safeguards in the NSW planning system* (2012) regarding appeal rights.

^{vi} See National Association of Community Legal Centres, *Environment Matters* (2013), at www.nacclc.org.au/resources/NACLC_EDO_WEB.pdf.

^{vii} This has included annual funding from federal, state and territory governments and state Law Societies (particularly in NSW); project-specific or grant-based funding from governments (such as environment departments and grant agencies); and for some public interest case work, payment by clients (individuals or groups) who have the means to do so.

^{viii} See for example *State of the Environment 2011*, 'Headlines', independent report to Australian Government.

^{ix} Statement by Senator the Honourable Robert Hill, Minister for the Environment and Heritage 22 May 2001, *Investing in Our Natural Heritage — Commonwealth Environment Expenditure 2001-02*; cited by the Hon Ian Sheppard AO QC, Robert Fitzgerald AM, and David Gonski, *Report of the Inquiry into the Definition of Charities and Related Organisations* (2001). Under the *Environment Protection and Biodiversity Conservation Act 1999*, ss 3-3A, *ecologically sustainable development* has been defined as: 'using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased'. See: www.environment.gov.au/resource/national-strategy-ecologically-sustainable-development.

^x Dr Martin Parkinson, 'Sustainable Wellbeing- An Economic Future for Australia', Address for the Shann Memorial Lecture Series (August 2011), available at www.treasury.gov.au.

^{xi} *Sustainable Australia Report 2013*, 'Reducing the environmental impact of economic growth', p 81.

^{xii} We understand that charities on the Register of Environmental Organisations make up about 1 in 1000 not-for-profit organisations in Australia, and about 1% of charities. See *Re:think Tax Discussion Paper*, p 121: 'There are around 600,000 NFPs in Australia' and 'around 60,000... registered charities'. We understand there are around 600 environmental organisations on the Register.

^{xiii} Moffat K, Zhang A and Boughen N, (2014), *Attitudes to Mining in Australia*, CSIRO, p11.

^{xiv} For more information see EDOs of Australia, *Submission to the House of Representatives Inquiry into the Register of Environmental Organisations* (May 2015), pp 7-9. Available at: www.aph.gov.au/Parliamentary_Business/Committees/House/Environment/REO or by request after publication.

^{xv} Productivity Commission, *Access to Justice Arrangements* (2014), p 708. Specific discussion of EDOs is at pp 711-13.

^{xvi} The 'purpose of advancing the natural environment' is a charitable purpose (*Charities Act 2013* (Cth), s 12(1)(j)).

^{xvii} Sheppard, Fitzgerald and Gonski, *Report of the Inquiry into the Definition of Charities and Related Organisations* (2001), recommendation 13, p 15. The 2001 inquiry took *advancement* to include 'protection, maintenance, support, research, improvement or enhancement.' (p 16) For further details on the rationale see chapter 22 of the report, pp 186-187.

^{xviii} Productivity Commission, *Access to Justice Arrangements* (2014), p 711. See also report recommendation 21.1. Specific discussion of EDOs is at pp 711-13.

^{xix} See <https://www.gov.uk/government/organisations/charity-commission>; and <http://www.oscr.org.uk/>.

^{xx} We note for example the Discussion Paper's observation that (p 127): '...organisations that operate across a range of DGR categories may not be eligible to be endorsed under a single category. This may require them to restructure, seek specific listing by name in the [ITA Act], or forgo DGR status altogether.'

^{xxi} For more detail see Attachment A to the EDOs of Australia *Submission to the House of Representatives Inquiry into the Register of Environmental Organisations* (May 2015), at: www.aph.gov.au/Parliamentary_Business/Committees/House/Environment/REO or by request after publication.

^{xxii} For example, the Charity Commission of England and Wales has produced comprehensive guidance on *Speaking out: guidance on campaigning and political activity by charities* (2008). See also Australian Environment Department's *Guidelines to the Register of Environmental Organisations*.

^{xxiii} To be listed on the Register, the *principal purpose* of an environmental organisation must be:

- the *protection and enhancement* of the natural environment (or a significant aspect of the environment); or
- providing *information* or *education* about the natural environment (or a significant aspect of it); or
- carrying on *research* about the natural environment (or a significant aspect of it).

(ITA Act 1997, s. 30-265).

^{xxiv} Australian Government, Department of the Environment, *Guidelines to the Register of Environmental Organisations* (2003), p 9. For example – significant natural areas, wildlife, habitat, waste, air, water, soil, biodiversity and promoting ecologically sustainable development principles.

^{xxv} Sheppard, Fitzgerald and Gonski, *Report of the Inquiry into the Definition of Charities and Related Organisations* (2001), p 187.