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- The proposed action which was most opposed by the sector related to requiring environmental organisations to commit no less than 25 per cent of annual expenditure to environmental remediation. The sector considered this proposal had the intent of limiting the advocacy activities of environmental organisations.
 - This proposal was not included as part of the DGR reforms.

- The reporting requirements for environmental organisations, however, have been increased. Environmental organisations are now required to report their expenditure on on-ground environmental remediation activities.
 - : This requirement will be carried over to the new administration arrangements under the transferring of the registers reform element (DGR reform element 5).

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- Several of the organisations audited were environmental charities opposed to the Harper Government's oil pipeline policies.

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The Aid/Watch case

- In 2006, the Commissioner of Taxation revoked Aid/Watch's endorsement as a charity on the basis that it did not distribute aid and was therefore not charitable. The Commissioner also argued that it has a disqualifying political purpose.
 - Aid/Watch is an incorporated association whose stated objective is to monitor, research, campaign and undertake activities on the environmental impact of Australia's aid, trade and investment programs and projects. It is registered with the ACNC.
- In 2010, the High Court, by a 5-2 majority, overturned the Commissioner's decision on the basis that "the generation by lawful means of public debate... concerning the efficiency of foreign aid directed to the relief of poverty, itself is a purpose beneficial to the community." It also reasoned that where advocacy activities do not have a public benefit, it would be because of the "particular ends and means involved".
- The decision of the Court is reflected in the Charities Act provisions on advocacy and disqualifying purposes.



- New Zealand courts must now assess the public benefit of controversial organisations with advocacy purposes. Prior to *Greenpeace*, the courts and regulator were largely able to avoid this assessment due to the political purpose doctrine.
 - In *Greenpeace*, the Supreme Court held that an advocacy purpose is charitable if it advances a public benefit in a way similar to purposes recognised as charitable by the courts. The Supreme Court ruled that both the organisation’s end goal and the particular views it promotes must provide a public benefit for its advocacy to be charitable.
- The Board has applied the Supreme Court’s test in several cases since *Greenpeace* (see Family First case study below). The Board has decided that some charities with an advocacy purpose meet the test, but that other advocacy organisations do not.

The law is difficult for charities and the regulator to understand

- Despite the Supreme Court’s *Greenpeace* judgement, the law on charities and advocacy is complex. In particular, the Supreme Court’s decision provides little guidance on how to assess the public benefit of advocacy by an organisation.

- The current law also creates difficulty for the Board in assessing the public benefit of an organisation's advocacy. The approach in *Greenpeace* requires the Board to assess the public benefit of both the ends and particular points of view promoted by organisations.
- The review is considering how more engagement with the charities sector may assist in increasing how charities can advocate their causes and points of view.

Comparison to Australia

- The ACNC Review panel acknowledged the ambiguity around the threshold between issues-based advocacy linked to a charitable purpose and political advocacy that may constitute a disqualifying purpose. However, Treasury discussions with charity law experts suggest the law is clear and, to the extent they are unclear as to their obligations, charities could be better educated. Advocacy was discussed in recommendations 19 and 20 of the ACNC Review.
 - Recommendation 19 proposes that the ACNC be resourced to enable the Commissioner to enforce and develop the law where registered entities engage in disqualifying purposes.
 - Recommendation 20 proposes that test case funding be made available to develop the law in matters of public interest, including disqualifying purposes.

The law on charities and advocacy may be too restrictive

- Some commentators have suggested that New Zealand could broaden the range of advocacy that is acceptable for charities, which could be achieved by adopting Australia's approach to advocacy.

Comparison to Australia

- In Australia, the 'charitable purpose' definition includes promoting or opposing a change to any matter established by law, policy or practice if it furthers or aids a charitable purpose. There are also 'disqualifying purposes' under the law which a registered charity cannot have, such as partisan advocacy.

Advocacy in New Zealand: Case studies

Greenpeace of New Zealand Incorporated (Greenpeace)

- Greenpeace was denied charity registration by the Charities Commission in 2010. The organisation unsuccessfully appealed to the High Court and then Court of Appeal, before appealing to the Supreme Court in 2014.
- The Supreme Court held that a 'political purpose' exclusion no longer applied in New Zealand, meaning that political and charitable purposes are not mutually exclusive in all cases. The Supreme Court also found that illegal activity may disqualify an entity from registration when it indicates a purpose which is not charitable, even though such activity would not justify removal from the register of charities under the statute.
 - The Court then remitted the matter of determining Greenpeace's charitable status to the Charities Registration Board.
- In 2018, the Board reaffirmed its decision that Greenpeace did not qualify for registration as a charity, on the following grounds:

- Greenpeace promotes its points of view on the environment and other issues; and on peace, nuclear disarmament and weapons, in ways that cannot be found to be for the public benefit. These are independent purposes which are not charitable; and
- Greenpeace and its members' involvement in illegal activities amounts to an illegal purpose which disqualifies it from registration.

Sea Shepherd New Zealand

- In May 2018, the Board registered Sea Shepherd NZ Trust Limited (Trust) and Sea Shepherd NZ Limited (Company) as charities.
 - The Board considered these entities advance charitable purposes, and any non-charitable purposes are ancillary to their charitable purposes. The entities' purposes of advancing education, protecting the environment and advancing animal welfare are charitable.
- Although the Trust undertakes advocacy activities, the Board considered that this is a small part of the Trust's overall activities and is ancillary to the Trust's identified charitable purposes. The Board considered that the Company does not engage in any advocacy and does not undertake activities to protect the environment and advance animal welfare.
- The Board's decision on Sea Shepherd is distinguishable from Greenpeace because:
 - Greenpeace's main focus is to advocate its own particular views on environmental issues that cannot be determined to be for the public benefit in a way previously accepted as charitable by the courts; and
 - Sea Shepherd focuses on tangible activities and education; and there is no evidence that Sea Shepherd New Zealand is involved in illegal activities from which an illegal purpose can be inferred.

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TREASURY MINISTERIAL SUBMISSION

17 September 2019

PDR No. MS19-002148

Assistant Minister for Finance, Charities, and Electoral Matters

cc: Treasurer

MEETING BRIEF - SEA SHEPHERD

TIMING: Ahead of your **19 September** meeting with Jeff Hansen, Sea Shepherd Australia's managing director and a director of Sea Shepherd Global.

KEY POINTS

- You, through your office, have requested briefing ahead of your meeting with Mr Hansen of the Sea Shepherd organisation.
- Sea Shepherd is a not-for-profit conservation organisation that seeks to advocate for and protect the marine environment. Sea Shepherd is best known for its previous activism to disrupt whaling by Japanese vessels. Sea Shepherd undertakes a range of activities.
 - Sea Shepherd advocates against and works to expose the potential impacts of; shark nets, off-shore drilling, the Adani coalmine and the expansion of the fossil fuel industry, the destruction of coral reefs from trawling, the loss of coastal nesting sites from commercial development, and the illegal poaching of marine wildlife.
 - Sea Shepherd supports efforts to pick up rubbish, particularly marine rubbish (for example by helping clear marine debris from beaches across Australia).
 - Sea Shepherd co-operates with national governments by assisting them to stop illegal, unreported and unregulated fishing in national territorial waters and marine reserves, particularly with nations that lack the resources to enforce local fishing laws.
- Mr Hansen would like to present to you the work of Sea Shepherd and discuss Sea Shepherd Australia's application for deductible gift recipient status through addition to the Register of Environmental Organisations (REO).
 - The application is currently with the Minister for the Environment, the Hon Sussan Ley, and if she approves the application she will write to seek your agreement. For more information on adding organisations to the REO see MS19-001625.
- Mr Hansen is scheduled to meet with the Minister for the Environment shortly before his meeting with you.
- Further information on Sea Shepherd, including its direct-action approach can be found in [Additional Information](#).

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ADDITIONAL INFORMATION



Mr Hansen has been managing director of Sea Shepherd Australia since 2008. He first joined Sea Shepherd in 2006 as a ground support volunteer and served on board the *MY Steve Irwin* as Quartermaster during the '2007-2008 Antarctic Whale Defence Campaign'.

Mr Hansen sits on the board of Sea Shepherd Global, Sea Shepherd Australia and Sea Shepherd New Zealand

Mr Hansen has a degree in electronic and computer engineering (hons) and has a Diploma of Education, secondary.

Mr Hansen enjoys diving, surfing, skiing, painting and keeping fit, having completed two Ironman Triathlons and a number of marathons. He and his wife have two children.

Further information on Sea Shepherd

- Sea Shepherd was founded in 1977 by Paul Watson, one of the original members of Greenpeace. This followed his expulsion from the leadership of Greenpeace, regarding his aggressive direct action approach.
- According to its mission statement, Sea Shepherd Conservation Society "uses innovative direct-action tactics to investigate, document, and take action when necessary to expose and confront illegal activities on the high seas".
 - While Sea Shepherd and Mr Watson emphasise that Sea Shepherd does not break laws and their actions have never resulted in a single injury, they admit to having rammed and sunk several ships, throwing glass bottles of foul-smelling butyric acid on the decks of vessels at sea, boarding of whaling vessels while at sea, and seizing and destroying drift nets at sea.
 - Sea Shepherd's tactics have been opposed by security experts, and by Greenpeace who also opposes whaling.
- Recently, Sea Shepherd's approach against Japanese whaling has been screened in the film "Defend, Conserve, Protect", which screened at selected cinemas around Australia from 25 July 2019.
- Sea Shepherd abandoned its pursuit of Japanese whalers in 2017, saying that Japan's increased use of military technology and new anti-terrorism laws made tracking the ships impossible.

TREASURY MINISTERIAL SUBMISSION

21 August 2019

PDR No. MS19-001670

Assistant Minister for Finance, Charities, and Electoral Matters

cc: Treasurer

POLITICAL EXPENDITURE OF CHARITIES: FOUR ORGANISATIONS

TIMING: N/A.

KEY POINTS

- At our meeting on 20 June 2019, you sought further information on the political expenditure of three charities. These three organisations were:
 - The Australian Conservation Foundation;
 - Greenpeace Australia Pacific; and
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- Furthermore, you sought information on the political expenditure of an additional organisation of Treasury's choosing. This organisation is:
 - Farmers for Climate Action Limited.
- A breakdown of the political expenditure of these four organisations from 2015-16 to 2017-18 is at Attachment A. Please note that disclosures of political expenditure of these organisations significantly vary from year to year.
- The Australian Electoral Commission (AEC) definition of political expenditure is included in Additional Information, along with aggregated political expenditure statistics for all charities for the 2017-18 financial year.

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ATTACHMENT A – POLITICAL EXPENDITURE BREAKDOWN OF FOUR CHARITIES**The Australian Conservation Foundation Incorporated**

- The stated primary object of the Australian Conservation Foundation (ACF) is to make every effort to achieve ecological sustainability for the planet Earth by doing all things designed to protect the natural environment in Australia.
- This organisation's charitable purpose is advancing the natural environment.
- In 2017-18, the total political expenditure for this organisation was \$191,213.

Australian Conservation Foundation Incorporated	2017-18	2016-17	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
Public expression of views on an issue in an election by any means:	\$81,651	-	\$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:	\$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:	\$0	-	\$0
Opinion polling and other research relating to an election or the voting intention of voters:	\$109,562	-	\$19,200
Total:	\$191,213	-	\$173,783

Greenpeace Australia Pacific

- The stated primary objects of Greenpeace are to protect, preserve and enhance the natural environment; and to promote nuclear disarmament and peace.
- This organisation's charitable purpose is advancing the natural environment.
- In 2017-18, the total political expenditure for this organisation was \$105,690.

Greenpeace Australia Pacific	2017-18	2016-17	2015-16
Public expression of views on a political party, candidate in an election or member of the Federal Parliament by any means:	\$3,397	\$13,825	\$46,150
Public expression of views on an issue in an election by any means:	\$11,900	\$3,331	\$109
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:	\$32,348	\$0	\$0
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:	\$28,045	\$0	\$0
Opinion polling and other research relating to an election or the voting intention of voters:	\$30,000	\$0	\$7,147
Total:	\$105,690	\$17,156	\$53,406

Farmers for Climate Action Limited

- The stated primary objects of the organisation are protect and enhance the natural environment, particularly water, air and soil quality and conservation; biodiversity; and ecologically sustainable land use, and provide education on the impact on the natural environment of climate change, for the public benefit.
- This organisation's charitable purpose is advancing the natural environment.
- In 2017-18, the total political expenditure for this organisation was \$58,566.

Farmers for Climate Action Limited	2017-18	2016-17	2015-16
Public expression of views on a political party, candidate in an election or member of the Federal Parliament by any means:	\$0	-	-
Public expression of views on an issue in an election by any means:	\$0	-	-
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:	\$0	-	-
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:	\$58,566	-	-
Opinion polling and other research relating to an election or the voting intention of voters:	\$0	-	-
Total:	\$58,566	-	-

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Philanthropy, charity and democracy

It is obvious the privileged position in Australian society that charities occupy brings with it special responsibilities and a duty to ensure that the generosity of the community is not misused.

This is pertinent to the theme of this Summit – the role of philanthropy in our democracy.

Please be in no doubt that I'm a big supporter of charities using their expertise and experience working on the frontline to give voice to those on the margins of society. Advocacy is a critical component of our democracy and contributes to the development of public policy.

However, there is a reasonable debate about when that crosses over into political advocacy, with all the different regulations political entities face in comparison to charities.

There are a number of fairly activist charities and I do have concerns when groups (such as Aussie Farms and the Save the Tarkine

Coalition, whose operations involve encouraging criminal trespass on private property and the sabotage of legitimate businesses), abuse that privileged position.

Political activists and organisations condoning criminal activities masquerading as charities corrodes Australian's trust in charities overall and diminishes the legitimate contribution that charities make to our democracy.

Let me assure you that where a charity undertakes advocacy to further its charitable purpose, and abides by existing laws, there is no threat to their charitable status. However, the Government will be looking into political advocacy of charities and we welcome the views of the philanthropic sector.

Fostering a vibrant and innovative sector

Whether on advocacy or other matters, the Government needs to strike a balance in protecting the integrity of the sector and fostering a vibrant and innovative sector.

I know this is also an area in which Philanthropy Australia has a keen interest. Your policy priorities released in the lead up to the May election are a great example of advocacy contributing to the public debate. And I can assure you that your first priority – no changes to refundable franking credit arrangements – is one this Government wholeheartedly supports.

This Government appreciates that refundable franking credits are a vital source of income for philanthropic trusts and foundations which enables them to provide more support to charitable causes in the community. Indeed, in 2016-17, the value of refundable franking credits claimed by philanthropic trusts and foundations and other income tax-exempt entities was over \$1.1 billion.