



Ref: EC15-001198

The Hon John Cobb MP
Chair
Standing Committee on the Environment
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Mr Cobb

Thank you for your letter of 3 December 2015 to Dr de Brouwer seeking further information to assist the Committee's Inquiry about the Register of Environmental Organisations.

I have enclosed answers to the questions raised in the letter. The Department has consulted with the Australian Taxation Office and the Treasury in developing the responses.

Yours sincerely

Rhondda Dickson
Acting Secretary

18 January 2016

Encl.

1. Regarding the application process:

a. What are the Department's service standards for processing applications?

There are no specific service standards for processing applications for the Register, but the Department maintains a Service Charter which applies across its administrative activities including to the administration of the Register. The Charter requires the provision of accurate and up-to-date information where it can be provided and clear and respectful responses to questions. Responses to correspondence are required within 20 working days after receipt and if that is not possible, an acknowledgment will be sent indicating an expected date of reply.

b. What is the average time taken to process applications?

Based on Register applications over the past three years, the average time taken by the Department to process an application is 11 months, from submission to the Department by the applicant, to submission to the Minister for the Environment by the Department for approval.

c. What process is used to ensure applications are processed consistently by different staff or at different times?

The Department maintains a comprehensive procedure for processing applications for the Register. Processing is limited to around 1.5 Full Time Equivalents working on the Register, so any variation in approach is reduced. In addition, oversight and clearance by line managers contributes to consistency.

2. Regarding the principal purpose test:

a. What process is used to determine whether or not a particular purpose or activity is consistent with the principal purpose test?

In assessing an application, the Department ensures that the organisation's constitution reflects its principal purpose and that purpose is consistent with an Environmental Organisation protecting the environment, as required by the *Income Tax Assessment Act 1997*.

Assessment of an organisation's principal purpose focuses on the objectives and the activities of the organisation and can include examining the organisation's governance protocols, its history and its current activities.

b. Does the Department consider policy advocacy in relation to environmental matters to be a principal purpose consistent with the test?

The Department tests the principal purpose of an organisation against the relevant requirements of the *Income Tax Assessment Act 1997*. To the extent that policy advocacy activities of a particular organisation protect the environment, this can contribute to establishing the required principal purpose.

3. In evidence to the Inquiry, the Law Council of Australia noted that the role of the Minister for the Environment in relation to the Income Tax Assessment Act 1997 is not recognised in the Administrative Arrangements Order.

a. What are the implications of this exclusion?

The Treasury and the Australian Taxation Office provide the following advice:

The Minister for the Environment has a decision making authority under the *Income Tax Assessment Act 1997* that he or she is satisfied that an organisation is an environmental organisation for the purpose of the Act. The Treasurer is responsible for administering the tax law.

b. Has the Department taken any steps to rectify this?

The Department accepts the advice from the Treasury and the Australian Taxation Office that the current situation does not need to be changed.

4. Regarding the conduit policy:

a. What specific financial arrangements are prohibited under the conduit policy?

The conduit policy is intended to stop registered organisations acting as collection agencies for tax-deductible donations intended by a donor to be passed on to another organisation or person. It is also intended to stop the donor from directing the organisation to act as a conduit and pass money onto their preferred organisation, body or person.

The integrity of the Australian taxation system can be undermined through conduit arrangements. The Treasury and the Australian Taxation Office provide the following advice:

As the donor is receiving a tax deduction by gifting to an organisation with Deductable Goods Recipient status on the Register, it is important that the funds are not then passed to an organisation that does not have Deductable Goods Recipient status.

Tax ruling TR 2005/13 "What is a gift" makes clear that *an essential attribute of a gift is that benefaction is intended and in fact conferred on the recipient*. If, through a conduit arrangement, the actual recipient of the benefaction is not a Deductable Goods Recipient status organisation, then no tax deduction is available to the donor.

b. How does the Department ensure compliance with the conduit policy and any other restrictions on financial arrangements?

- As described in the Department's evidence to the Inquiry on 26 November 2015, around 10 per cent of applications are checked each year to ensure they comply with the ongoing eligibility requirements of the Register. Compliance with the conduit policy is within the scope of these audits.

5. Regarding the requirement for organisations to have a minimum of 50 financial members:

a. What is the rationale for this requirement?

The Treasury and the Australian Taxation Office provide the following advice:

To ensure that the group's purpose is community based and provide diffuse control that should reduce the risk of private benefit. The public benefit of the organisation's activities must totally overwhelm any incidental private benefit that a 'member' might receive.

- b. **Section 30-275(c) of the *Income Tax Assessment Act 1997* provides for a Ministerial exemption to the membership requirements because of 'special circumstances'. In what circumstances might a Ministerial exemption be appropriate?**

Under section 30-275(c), the Minister for the Environment can make a determination that an organisation does not have to meet the requirements in section 30-275(a) or (b) on the basis of special circumstances. The *Income Tax Assessment Act 1997* does not define what special circumstances must apply in order for the Minister to make a determination under section 30-275(c). The Minister has discretion in the granting of such exemptions.

- c. **How many organisations have been exempted from the membership requirements under section 30-275(c) of the Act?**

One organisation has been exempted from the requirements in section 30-275(a) or (b) and it was entered onto the Register in 2013. The then Minister determined that the organisation, while having less than 50 members, could be exempted on the basis of its strong internal governance controls and long standing and relevantly qualified membership.

6. **Regarding publicly available information about the principal purpose of organisations on the Register:**

- a. **Through what means can members of the public find out about the stated principal purpose of organisations on the Register?**

The list of organisations on the Register is available on the Department's website. The principal purpose of the organisation is not disclosed. A person would need to consult the organisation directly to obtain further information. If the organisation is also a charity with the Australian Charities and Not-for-profits Commission, information about charity sub-type and a copy of the organisation's charter will usually be available at the Australian Charities and Not-for-profits Commission website.

- b. **Are there any impediments to this information being made available to the public through the Department's website, for example?**

The taxpayer confidentiality provisions of Division 355 of Schedule 1 to the *Taxation Administration Act 1953* prevent the Department from providing any information obtained or generated by the Department for the purposes of administering the Register. Note that the Australian Charities and Not-for-profits Commission's information is obtained for the purposes of the *Australian Charities and Not-for-profits Commission Act 2012*, which has different disclosure requirements to the *Taxation Administration Act 1953*.

7. **What impediments are there to the information contained in annual statistical returns being made available to the public?**

The taxpayer confidentiality provisions of Division 355 of Schedule 1 to the *Taxation Administration Act 1953* prevent the Department from providing any information obtained or generated by the Department for the purposes of administering the Register, including information contained in the annual Statistical Returns.

- 8. Based on the 2015 Statistical Return form, the Department seeks information from organisations about how the money from their Public Fund has been spent, and how this contributes to the organisation's principal purpose.**

- a. How much information and what level of detail needs to be included in this section?**

The organisation provides a statement about the expenditure from their Public Fund and how this contributes to their principal purpose. The organisation self assesses the level of detail supplied in the statement. The Department seeks further additional information when the detail is insufficient to satisfy the reporting requirements or where issues are raised.

- 9. Based on the 2015 Statistical Return form, the Department seeks information from organisations about activities conducted by the organisation outside Australia.**

- a. What is the purpose of collecting this information?**

The High Court of Australia, in *Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited* (2008) found that charities are considered to be pursuing their objectives principally 'in Australia' even if they merely operate to pass funds within Australia to another charity that conducts its activities overseas.

Prior to the High Court decision, the taxation policy position was that a charitable institution needed to meet two requirements to be exempt from income tax. It must have a physical presence in Australia; and, to the extent it has a physical presence in Australia, it must incur its expenditure and pursue its objectives principally in Australia.

The Australian Government intends to legislate to reinstate the taxation policy position prior to the High Court decision. The former Assistant Treasurer's media release of 14 December 2013 refers: <http://axs.ministers.treasury.gov.au/media-release/008-2013/>

- b. How does the Department use this information?**

The Statistical Return form was amended to collect information so that the Department could identify the relevant organisations when the legislation was passed.

- 10. Based on the 2015 Statistical Return form, the Department asks organisations to estimate the amount of time it took for the form to be completed.**

- a. What is the average time taken by environmental organisations to complete the Statistical Return form?**

Based on 423 Statistical Returns for 2015 which have been received by the Department, the average time for completion was 63.5 minutes. Note that 2015 Statistical Returns were only due in October 2015 for organisations with a reporting period aligned with the 2014-15 financial year. Organisations reporting on the 2015 calendar year or another annual basis are not included in the average count.

- 11. In relation to 2014 Statistical Returns:**

- a. How many registered organisations have submitted their 2014 returns?**

For the 2014 Statistical Returns, 506 registered environmental organisations have submitted a return.

b. What action has the Department taken in relation to 2014 returns not yet received?

Registered organisations that failed to lodge a 2014 Statistical Return were issued with a letter to remind them of their reporting obligations.

12. Section 30-285(1) of the Income Tax Assessment Act 1997 provides for the Environment Minister and the Assistant Treasurer to direct the Environment Secretary to remove an environmental organisation from the Register.

a. What are the grounds on which an organisation may be removed from the Register?

The 'Register of Environmental Organisations, Guidelines' includes the following grounds for removal:

- no longer meeting the requirements of the *Income Tax Assessment Act 1997*;
- not collecting tax-deductible donations from the public;
- not using donations to the public fund for the principal purposes of the environmental organisation; and
- not adhering to the model rules for public funds as set out in section 7 of the Register's Guidelines.

b. Is the discretion to remove organisations from the Register broad enough to permit removal in cases of unlawful conduct?

The Treasury and the Australian Taxation Office provide the following advice:

In accordance with section 30-285 of the *Income Tax Assessment Act 1997*, the Assistant Treasurer (acting for and on behalf of the Treasurer) and the Minister for the Environment may direct the Environment Secretary to remove an environmental organisation. An organisation must meet the requirements of the *Income Tax Assessment Act 1997* and adhere to the model rules for public funds. In particular, a public fund must be controlled or administered by persons or institutions having a degree of responsibility to the community as a whole. This could arise, for example, from a person's occupation or tenure of some public office, or a person's or institution's position in the community. Unlawful conduct of a 'responsible person' is not likely to meet the requirements of the *Income Tax Assessment Act 1997* or adhere to the model rules for public funds.

13. Has the Department ever worked with the Australian Charities and Not-for-profits Commission to streamline reporting processes or harmonise requirements? Are there any impediments to this occurring?

Yes, the Department has regular contact with the Australian Charities and Not-for-profits Commission including about streamlined processes. The Department supports consideration of streamlining options that involve the Australian Charities and Not-for-profits Commission administering the Register.

14. What process is used to check or query the accuracy of information provided in annual returns?

As described in the Department's evidence to the Inquiry on 26 November 2015, around 10 per cent of applications are checked each year to ensure they comply with the ongoing eligibility requirements for the Register. The accuracy of information supplied in the Statistical Returns is within the scope of these audits.

15. The Department's 2015 Statistical Return form states that' ... the Department may request supplementary information, including an audited financial statement, as part of its assurance process.'

a. How does the Department determine that such information is required?

Additional information is requested for a number of reasons including:

- where inconsistent information is supplied with the Statistical Return;
- where there is information which suggests the activities of the organisation are not consistent with the stated principal purpose; or
- when the organisation is subject to a compliance audit.

b. What sort of supplementary information has been sought in the past?

Additional information has included audited financial records and written responses to matters put to the organisation by the Department.