

## Community engagement with environmental deductible gift recipients

- 5.1 As discussed in the previous chapter, the Committee received evidence about a wide range of activities undertaken by environmental deductible gift recipients (DGRs).
- 5.2 The Committee was also interested to hear about the role of tax-deductible donations in supporting the work of environmental DGRs, in addition to the contribution of volunteers and the nature of engagement between environmental DGRs and the community more generally. Evidence in relation to these matters is discussed throughout this chapter.
- 5.3 This chapter also considers the evidence received by the Committee about community concerns with the activities of some environmental DGRs.

### Donations to environmental DGRs

- 5.4 As outlined in Chapter 2, there are 596 organisations listed on the Register. The number of organisations on the Register has increased steadily over time, although the rate of increase has slowed during the past four years.<sup>1</sup>
- 5.5 Since the introduction of the Register in 1992–93 until 2013–14, environmental DGRs reported collecting a total of over \$1.3 billion in donations.<sup>2</sup>
- 5.6 During the 2013–14 financial year, three quarters of environmental DGRs collected less than \$100,000 in donations each, and one quarter collected less than \$1,000. Fewer than five per cent of environmental DGRs collected

---

1 Department of the Environment, *Submission 185*, p. 9.

2 Department of the Environment, *Submission 185*, p. 9.

over \$1 million in donations each. However, the 30 largest environmental DGRs (measured by donations) collected 83 per cent of total donations.<sup>3</sup>

5.7 Some organisations indicated that tax-deductible donations constitute the majority of their income. Greenpeace Australia Pacific Limited – which does not accept funding from corporations or governments – submitted that, in the last calendar year, 95 per cent of its funding was raised from donations from more than 65,000 members of the public.<sup>4</sup> Similarly, The Wilderness Society submitted that around 90 per cent of its income was raised from donations from around 45,000 members of the public.<sup>5</sup>

5.8 By contrast, other organisations indicated that donations make up a smaller proportion of their income, alongside a variety of other funding sources.<sup>6</sup> For example, the Australian Network for Plant Conservation submitted that, in the last financial year, donations accounted for around 12 per cent of its income. Ms Joanne Lynch explained:

The majority of our income is derived from membership fees, competitive grants, course and conference fees, and sales of publications. Donations are currently a relatively small component of our income. But, for an organisation of our scale, every little bit counts.<sup>7</sup>

5.9 There was general agreement among stakeholders that tax deductibility assisted environmental organisations to attract donations. However, some stakeholders noted the difficulty in determining precisely how DGR status affects the preferences of donors.

5.10 Nature Foundation SA described fundraising as ‘a vital and constant part’ of its activities and submitted that DGR status was of ‘key importance’ to this effort.<sup>8</sup> Similarly, Worlds End Conservation highlighted the difficulty of fundraising without DGR status:

Public donations to [Worlds End Conservation] are reduced because we do not have DGR status. ... many people have offered

3 Department of the Environment, *Submission 185*, p. 10.

4 Greenpeace Australia Pacific Limited, *Submission 354*, p. 3.

5 The Wilderness Society Inc., *Submission 411*, p. 2.

6 For example, see: Ms Claire Hanratty, Managing Director, Great Barrier Reef Foundation, *Committee Hansard*, Brisbane, 14 July 2015, p. 35; Mr Craig Wilkins, Chief Executive, Conservation Council SA, *Committee Hansard*, Adelaide, 1 September 2015, p. 3; Mr Ian Atkinson, Chief Executive Officer, Nature Foundation SA, *Committee Hansard*, Adelaide, 1 September 2015, p. 31; Mr Mark Wakeham, Chief Executive Officer, Environment Victoria, *Committee Hansard*, Melbourne, 21 September 2015, p. 2.

7 Ms Joanne Lynch, Business Manager, Australian Network for Plant Conservation Inc., *Committee Hansard*, Canberra, 18 September 2015, p. 18.

8 Nature Foundation SA, *Submission 463*, p. 1.

to financially support Worlds End Conservation but have declined because they cannot claim it as a tax deduction.<sup>9</sup>

5.11 In addition to the role of DGR status in encouraging tax-deductible donations from individuals, the Committee heard evidence about the important role of DGR status in enabling environmental organisations to access grants from philanthropic bodies – in particular, public and private ancillary funds, which are limited to making distributions to DGRs.<sup>10</sup>

5.12 In its submission to the inquiry, Greening Australia noted that a recent \$1 million donation from a public ancillary fund would not have been received without the organisation having DGR status.<sup>11</sup> Mr Jonathan Duddles, Director of Strategic Engagement for Greening Australia, expanded on this point at a public hearing of the inquiry:

... having the DGR status has been critical to receiving all of our gifts. For organisations like the Ian Potter Foundation, the Myer Foundation and those organisations, it is a requirement that organisations have DGR status. You just cannot even talk to them, you do not even get in through the front door to have a conversation, without that.<sup>12</sup>

5.13 The Committee also heard evidence about a decline in state and federal government funding for not-for-profit environmental organisations, and how this had increased the importance of tax-deductible contributions and other sources of income.<sup>13</sup> Mr Duddles explained:

... government funds for public good outcomes are declining in Australia and globally – that is very much a trend – which means that organisations like ours need to raise significantly more private funds.<sup>14</sup>

---

9 Mr Peter Knapp, Director, Worlds End Conservation Pty. Ltd., *Committee Hansard*, Adelaide, 1 September 2015, p. 34.

10 Philanthropy Australia, Submission 420, p. 1; Mr Ian Atkinson, Chief Executive Officer, Nature Foundation SA, *Committee Hansard*, Adelaide, 1 September 2015, p. 31; Mr Krystian Seibert, Policy and Research Manager, Philanthropy Australia, *Committee Hansard*, Melbourne, 22 September 2015, p. 37.

11 Greening Australia, *Submission 398*, p. 4.

12 Mr Jonathan Duddles, Director of Strategic Engagement, Greening Australia, *Committee Hansard*, Melbourne, 22 September 2015, p. 30.

13 Associate Professor Nigel Andrew, President, Ecological Society of Australia, *Committee Hansard*, Brisbane, 14 July 2015, p. 49; Mr Mark Wakeham, Chief Executive Officer, Environment Victoria, *Committee Hansard*, Melbourne, 21 September 2015, p. 2; Ms Rachel Walmsley, Policy and Law Reform Director, EDO New South Wales, EDOs of Australia, *Committee Hansard*, Sydney, 17 November 2015, p. 35.

14 Mr Duddles, Greening Australia, *Committee Hansard*, Melbourne, 22 September 2015, p. 29.

- 5.14 Mr Piers Verstegen, Director of the Conservation Council of Western Australia, noted that the Council had responded to the withdrawal of government funding by increasing its emphasis on its tax-deductible fundraising activities.<sup>15</sup>
- 5.15 Similarly, during its program of site inspections, the Committee heard from several environmental DGRs that were attempting to generate reliable income from fee-for-service arrangements or social enterprises.

## Public participation in environmental work

- 5.16 The Committee heard evidence about the role of environmental DGRs in enabling members of the public to participate – directly or indirectly – in the protection and enhancement of the natural environment.
- 5.17 The Australian Psychological Society noted that supporting the work of environmental organisations – by donating time or money – may be the only option available to some people who wish to act on their concerns about environmental matters such as climate change.<sup>16</sup>
- 5.18 Several stakeholders noted that, by donating to environmental DGRs, members of the community were able to have their views represented in public debate on environmental matters. For example, as Dr Anna Olijnyk explained:
- Many people may not have the time or expertise to engage in advocacy on their own behalf, and we think that DGR status is an important way of encouraging them to contribute to public debate by way of financial support.<sup>17</sup>
- 5.19 Many environmental DGRs noted the significant contribution made by volunteers to environmental work. For example, Conservation Volunteers Australia submitted that the organisation engages over 12,500 volunteers in practical conservation activities throughout Australia.<sup>18</sup> In the previous financial year, the organisation mobilised around 400,000 volunteer hours, equivalent to \$10 million of investment.<sup>19</sup>

---

15 Mr Piers Verstegen, Director, Conservation Council of Western Australia, *Committee Hansard*, Perth, 3 September 2015, pp. 3, 5.

16 Dr Susie Burke, Senior Psychologist, Public Interest, Environment and Disaster Response, Australian Psychological Society, *Committee Hansard*, Melbourne, 22 September 2015, pp. 17–18.

17 Dr Anna Olijnyk, private capacity, *Committee Hansard*, Adelaide, 1 September 2015, p. 7.

18 Conservation Volunteers Australia, *Submission 289*, p. 1.

19 Mr Ian Walker, Director, Conservation, Conservation Volunteers Australia, *Committee Hansard*, Melbourne, 22 September 2015, p. 32.

- 5.20 Similarly, Nature Foundation SA submitted that volunteers contributed over 10,000 hours to the organisation in the last year alone, and that its voluntary management committee includes experts from government, business, academia, and the community.<sup>20</sup>
- 5.21 Aside from the direct contribution to environmental outcomes, several stakeholders highlighted benefits to physical health and mental health associated with volunteer work, and with engagement in environmental issues more broadly.<sup>21</sup>
- 5.22 Lastly, at several site inspections around Australia, the Committee heard about significant in-kind contributions made to environmental DGRs by landholders, businesses, and other community members.

## Public trust in environmental DGRs

- 5.23 There was general agreement among stakeholders about the importance of public trust and confidence in the not-for-profit environmental sector.
- 5.24 Research commissioned by the Australian Charities and Not-for-profits Commission (ACNC) in 2013 found that charities' activities are the most important factor affecting public trust and confidence.<sup>22</sup> The research also highlighted the importance of not-for-profit organisations being transparent about their governance, activities, and expenditure.
- 5.25 The extent to which environmental DGRs are required to report to the Department of the Environment (the Department) is discussed in Chapter 6.
- 5.26 However, throughout the inquiry, the Committee heard evidence about the various ways in which environmental DGRs inform the public – members, supporters, and the broader community – about their activities.<sup>23</sup> For example, environmental DGRs submitted that they report information to the public through regular newsletters, in annual reports, and online.

---

20 Nature Foundation SA, *Submission 463*, p. 1; Mr Bob Lott, President, Nature Foundation SA, *Committee Hansard*, Adelaide, 1 September 2015, p. 32.

21 For example, see: Ms Lois Levy, Campaign Coordinator, Gecko-Gold Coast and Hinterland Environment Council Association, *Committee Hansard*, Brisbane, 14 July 2015, p. 15; Mr Walker, Conservation Volunteers Australia, *Committee Hansard*, Melbourne, 22 September 2015, p. 32.

22 Australian Charities and Not-for-profits Commission (ACNC), 'Public trust and confidence in Australian charities', May 2013, p. 5, <[https://www.acnc.gov.au/ACNC/Pblctns/Rpts/PublicTrust/ACNC/Publications/Reports/Trust\\_con.aspx](https://www.acnc.gov.au/ACNC/Pblctns/Rpts/PublicTrust/ACNC/Publications/Reports/Trust_con.aspx)> viewed 4 February 2016.

23 For example, see: Ms Katherine Smolski, Chief Executive Officer, Nature Conservation Council of NSW, *Committee Hansard*, Sydney, 17 November 2015, p. 16.

- 5.27 In addition to the primary function of DGR status in enabling eligible organisations to access tax-deductible contributions, which is discussed earlier in this chapter, several stakeholders submitted that DGR status confers a degree of legitimacy on organisations listed on the Register.<sup>24</sup>
- 5.28 For example, in its submission to the inquiry, the Nature Conservation Council of NSW suggested that DGR status signifies to potential donors that an organisation has undergone a degree of scrutiny. The submission went on to explain:
- DGR status assists donors and trusts to identify environment groups set up to effectively and responsibly manage and use donations for the purpose of protecting the environment.<sup>25</sup>
- 5.29 Similarly, Senator Matthew Canavan submitted that organisations with DGR status enjoy an increased level of public trust, in part because it is assumed that governments have adequate mechanisms in place to ensure compliance with regulatory requirements.<sup>26</sup>
- 5.30 However, the Community Council of Australia argued that DGR status bestows no direct benefits on an organisation. The Council stated that the extent of government support for a DGR depends on the level to which that organisation engages with the community and, through that engagement, is successful in attracting tax-deductible donations.<sup>27</sup>

## **Stakeholders' concerns about environmental DGRs**

- 5.31 Throughout the inquiry, the Committee heard a range of community concerns about the activities of some environmental DGRs. These matters are discussed in the remainder of this chapter.
- 5.32 Reporting, compliance, and the handling of complaints in relation to environmental DGRs are considered in Chapter 6.

## **Accuracy of information and education**

- 5.33 The Committee heard concerns about inaccurate or misleading information contained in advertisements and campaigns co-ordinated by some environmental DGRs.

---

24 Victorian Government, *Submission 457*, p. 1; Mr Ian Atkinson, Chief Executive Officer, Nature Foundation SA, *Committee Hansard*, Adelaide, 1 September 2015, p. 30.

25 Nature Conservation Council of NSW, *Submission 369*, p. 5.

26 Senator Matthew Canavan, *Submission 493*, p. 6.

27 Community Council of Australia, *Submission 425*, p. 6.

- 5.34 For example, it was suggested that some environmental DGRs use information selectively or rely on information lacking a scientific or evidentiary basis. It was also suggested that some environmental DGRs misrepresent or exaggerate environmental impacts, in particular impacts associated with resource-use industries such as mining and forestry.<sup>28</sup>
- 5.35 In a submission to the inquiry, Mr Mark Poynter argued that the public education role of environmental DGRs relies on full disclosure of all relevant information, but that some organisations engaged in public advocacy and lobbying have an interest in misrepresenting environmental issues.<sup>29</sup> Mr Poynter submitted:
- ... often this misrepresentation is ... achieved by selective use of information, emotive language, and strategic avoidance of critically important context to create impressions that often paint a completely unreal picture of the level of environmental threat.<sup>30</sup>
- 5.36 In response to questions from the Committee, representatives of environmental DGRs agreed on the importance of using accurate information as a basis for education and public campaigning.
- 5.37 Representatives outlined a variety of methods through which they attempt to ensure the accuracy of information provided to the public, also noting that they attempt to correct any statements found to be inaccurate.<sup>31</sup>
- 5.38 As noted in Chapter 2, guidelines issued by the Department state that the provision of information and education by environmental DGRs should ultimately be directed at some positive benefit relating to the protection of the natural environment.<sup>32</sup>
- 5.39 However, at a public hearing of the inquiry, representatives of the Department noted that there is no explicit requirement for information and education provided by environmental DGRs to be accurate. The

---

28 For example, see: Mr Mark Poynter, *Submission 360*, pp. 6–10; Australian Petroleum Production and Exploration Association, *Submission 580*, pp. 18–20; Mr Michael Roche, Chief Executive, Queensland Resources Council, *Committee Hansard*, Brisbane, 14 July 2015, pp. 1–2; Senator Matthew Canavan, *Committee Hansard*, Brisbane, 14 July 2015, p. 11; Mr Bruce Holland, Secretary, The Norwood Resource Inc., *Committee Hansard*, Adelaide, 1 September 2015, p. 15.

29 Mr Mark Poynter, *Submission 360*, p. 10.

30 Mr Mark Poynter, *Submission 360*, p. 9.

31 For example, see: Mr Robert Makinson, Management Committee Member and past President, Australian Network for Plant Conservation Inc., *Committee Hansard*, Canberra, 18 September 2015, p. 20; Mr Steve Meacher, Vice President, MyEnvironment, *Committee Hansard*, Melbourne, 22 September 2015, p. 10; Dr Michael Williams, President, Mackay Conservation Group, *Committee Hansard*, Bowen, 30 September 2015, p. 10.

32 Department of the Environment, *Submission 185*, p. 15.

representatives also noted that the powers available to the Department to regulate the communications of environmental DGRs were limited.<sup>33</sup>

- 5.40 Several stakeholders recommended that the Committee consider additional regulation in relation to the accuracy of information and education provided by environmental DGRs.<sup>34</sup> However, it was also submitted that it is appropriate for any inaccuracies to be corrected through the course of public debate.<sup>35</sup>

## Economic and social impacts

- 5.41 The Committee heard concerns about the activities of some environmental DGRs leading to adverse economic and social impacts, particularly in regional communities. In particular, stakeholders voiced concern about activities aimed at impeding development in resource-use industries.
- 5.42 As an example, stakeholders raised the *Stopping the Australian Coal Export Boom* strategy, which was developed with input from members of several environmental organisations.<sup>36</sup> Elements of the strategy include disrupting and delaying mining and infrastructure projects, creating a perception of risk in relation to coal investments, and eroding public and political support for the coal industry.<sup>37</sup>
- 5.43 At a public hearing in Bowen in Queensland, members of the community argued that the actions of some environmental DGRs were leading to less capital investment in the region and, as a result, diminished economic conditions and fewer employment opportunities.<sup>38</sup> In particular, concerns were raised about repeated challenges to approval processes for mining and infrastructure projects.

---

33 Mr Simon Writer, General Counsel, Department of the Environment, *Committee Hansard*, Canberra, 26 November 2016, p. 8.

34 Queensland Resources Council, *Submission 257*, p. 16; Senator Matthew Canavan, *Submission 493*, p. 19; The Norwood Resource Inc., *Submission 494*, p. 3.

35 Dr Olijnyk, *Committee Hansard*, Adelaide, 1 September 2015, p. 8.

36 For example, see: Queensland Resources Council, *Submission 257*, pp. 11–13; NSW Minerals Council, *Submission 260*, p. 12; Ports Australia, *Submission 358*, p. 5; Senator Matthew Canavan, *Submission 493*, p. 14; Minerals Council of Australia, *Submission 497*, pp. 10–11; Australian Petroleum Production and Exploration Association, *Submission 580*, p. 10.

37 J. Hepburn, B. Burton, and S. Hardy, 'Stopping the Australian Coal Export Boom: Funding proposal for the Australian anti-coal movement' <[http://www.abc.net.au/mediawatch/transcripts/1206\\_greenpeace.pdf](http://www.abc.net.au/mediawatch/transcripts/1206_greenpeace.pdf)> viewed 12 February 2016.

38 Mr David Hartigan, Deputy Chairman, Resource Industry Network, *Committee Hansard*, Bowen, 30 September 2015, pp. 6, 8; Ms Elouise Lamb, Economic Development Specialist, Whitsundays Marketing and Development Ltd., *Committee Hansard*, Bowen, 30 September 2015, pp. 25, 27; Mr Bruce Hedditch, Chairman, Bowen Chamber of Commerce, *Committee Hansard*, Bowen, 30 September 2015, p. 29.

- 5.44 More generally, it was also suggested that the interests of the regional communities were not adequately represented in debate in relation to environmental matters.<sup>39</sup>
- 5.45 However, in Bowen, the Committee also heard evidence about positive engagement between environmental DGRs and the local community through the Mackay–Whitsunday Healthy Rivers to Reef Partnership, which brings together industry, farming, and conservation groups, in addition to local government and the business development sector.
- 5.46 Mr Robert Cocco, Chief Executive Officer of Reef Catchments, one of the environmental DGRs involved in the partnership, explained:
- What we are seeing coming out of that partnership is a strong drive from everyone who sits around the table trying to come up with what is fundamentally a balance between how we continue to be able to let our regional communities prosper and flourish and be vibrant – places where people want to live – while at the same time looking after some of the key assets that drive our agricultural industries [and] tourism industries.<sup>40</sup>
- 5.47 In response to questions from the Committee, representatives of environmental DGRs described attempts to consult with affected communities.<sup>41</sup> For example, Mr Lyndon Schneiders, National Campaigns Director of The Wilderness Society, highlighted the negotiation of the Tasmanian Forestry Agreement in 2013 as an example of environmental organisations working together with industry and affected communities to achieve sustainable environmental, economic, and social outcomes.<sup>42</sup>
- 5.48 Mr Schneiders went on:
- ... I cannot think of a campaign that we operate anywhere in the country where we have not gone and spent the time working with the local community.<sup>43</sup>

---

39 For example, see: Senator Matthew Canavan, *Submission 493*, pp. 10–12; Mrs Tarah Medcalf, private capacity, *Committee Hansard*, Bowen, 30 September 2015, p. 22.

40 Mr Robert Cocco, Chief Executive Officer, Reef Catchments Ltd., *Committee Hansard*, Bowen, 30 September 2015, p. 3.

41 For example, see: Mr Dermot O’Gorman, Chief Executive Officer, WWF Australia, *Committee Hansard*, Canberra, 18 September 2015, p. 34; Mr David Ritter, Chief Executive Officer, Greenpeace Australia Pacific Limited, *Committee Hansard*, Sydney, 17 November 2015, p. 3.

42 Mr Lyndon Schneiders, National Campaigns Director, The Wilderness Society Inc. *Committee Hansard*, Sydney, 17 November 2015, p. 8.

43 Mr Schneiders, The Wilderness Society Inc., *Committee Hansard*, Sydney, 17 November 2015, p. 12.

## Political activity

- 5.49 Throughout the inquiry, stakeholders expressed concerns about the involvement of some environmental DGRs in political activity.
- 5.50 For example, the Committee heard examples of environmental DGRs campaigning in recent state and federal elections, through activities including doorknocking in marginal seats, lobbying candidates, and distributing scorecards evaluating or ranking the policies of various political parties.<sup>44</sup>
- 5.51 Stakeholders expressed concerns about a lack of guidance on the extent to which political activity is both consistent with the purpose of the Register and a legitimate application of tax-deductible donations, and also about a lack of transparency in relation to the political expenditure of environmental DGRs.<sup>45</sup>
- 5.52 There was general agreement among representatives of environmental DGRs about the importance of providing information in an independent and nonpartisan manner.
- 5.53 For example, Ms Kelly O'Shanassy, Chief Executive Officer of the Australian Conservation Foundation, stated:
- While we may seek to influence the views of politicians, business leaders and communities, we remain strictly nonpartisan. We base our views on the policy and not the party behind it.<sup>46</sup>
- 5.54 Ms O'Shanassy went on to argue that the credibility of the organisation, and the trust of its supporters and the wider community, would be jeopardised if it were to act in a partisan manner.
- 5.55 Representatives of the Department advised that there is no specific prohibition on environmental DGRs engaging in political activities. Instead, the relevant consideration under the *Income Tax Assessment Act 1997* (Cth) is whether or not those activities are consistent with the principal purpose test.<sup>47</sup>
- 5.56 In its submission to the inquiry, the ACNC noted the *Charities Act 2013* (Cth) prohibits charitable organisations from having a disqualifying

---

44 For example, see: Senator Matthew Canavan, *Submission 493*, pp. 8–10.

45 For example, see: Australian Taxpayers' Alliance, *Submission 492*, p. 1; Senator Matthew Canavan, *Submission 493*, pp. 8–10; Minerals Council of Australia, *Submission 497*, pp. 11–13.

46 Ms Kelly O'Shanassy, Chief Executive Officer, Australian Conservation Foundation, *Committee Hansard*, Melbourne, 21 September 2015, pp. 29–30. The Australian Conservation Foundation is not listed on the Register but is listed as a DGR in the *Income Tax Assessment Act 1997*.

47 Ms Lara Musgrave, Assistant Secretary, Engagement and Evaluation, Department of the Environment, *Committee Hansard*, Canberra, 16 June 2015, p. 5.

purpose, including a ‘purpose of promoting or opposing a political party or a candidate for political office’.<sup>48</sup> The submission explained:

If an organisation’s affiliation with a political party is so extensive as to suggest that it is a main purpose to elect the party or candidate, this is likely to show a disqualifying purpose.<sup>49</sup>

- 5.57 However, the ACNC noted that the purpose of distributing information, or advancing debate, about the policies of political parties or candidates for political office (including by comparing or ranking those policies) would not disqualify an organisation from being a charity.<sup>50</sup>

### Illegal and unlawful conduct

- 5.58 Lastly, stakeholders expressed concern about instances of illegal and unlawful activity carried out by individuals either associated with or supported by environmental DGRs.
- 5.59 Examples given in evidence to the inquiry include instances of trespass, damage and destruction of property, blocking access, maritime offences, and resisting and hindering police.<sup>51</sup>
- 5.60 An incident raised by several stakeholders involved the destruction of a crop of genetically modified plants that was part of an experiment being conducted by the Commonwealth Scientific and Industrial Research Organisation (CSIRO) at the Ginninderra Experiment Station on Crown land in the Australian Capital Territory.
- 5.61 Following the incident, two individuals were convicted on the charge of intentionally destroying Commonwealth property and given suspended sentences of nine months’ duration.<sup>52</sup> At the time the incident occurred, the individuals were both employees of Greenpeace Australia Pacific Limited, which is an environmental DGR.<sup>53</sup>
- 5.62 During the trial in the Supreme Court of the ACT, the facts of the case were set out by the Hon. Justice Penfold:

Early on the morning of 14 July 2011, the two accused, wearing protective suits, face shields, hard hats and ear muffs, climbed over several fences to reach the genetically modified wheat crop

---

48 ACNC, *Submission 189*, p. 8; *Charities Act 2013* (Cth), s. 11.

49 ACNC, *Submission 189*, p. 8.

50 ACNC, *Submission 189*, pp. 7–8.

51 For example, see: Queensland Resources Council, *Submission 257*, pp. 7–9; NSW Minerals Council, *Submission 260*, pp. 8–10; Senator Matthew Canavan, *Submission 493*, pp. 10–13; Minerals Council of Australia, *Submission 497*, pp. 14–19.

52 *R v Latona and McCabe* (2012) SCC 70; SCC 71, pp. 9–10.

53 *R v Latona and McCabe* (2012) SCC 70; SCC 71, pp. 5–6.

and then used brush cutters with nylon cutting heads, sometimes called whipper-snippers, to cut down the wheat crop.<sup>54</sup>

5.63 In a pre-sentence report, the individuals stated that ‘non-violent direct action’ was necessary to advance their campaign to end production of genetically modified food.<sup>55</sup>

5.64 Justice Penfold went on to explain how the destruction of the crop was publicised by both the individuals and Greenpeace:

One of the two [accused] ... conducted interviews for ABC Radio and Television, and shortly afterwards, digital footage depicting the actions of the protesters was provided to ABC staff and also posted on the internet.

Later that day, Greenpeace released a statement on its official website about the removal of what it called the ‘controversial crop’, quoting [the two accused].<sup>56</sup>

5.65 Prior to the conclusion of the trial, Greenpeace made a payment of \$282,560 (the amount identified as the cost of reinstating the lost experiment) to CSIRO in the nature of reparations.<sup>57</sup> This was noted by Justice Penfold in discussing the role of Greenpeace in the incident:

The material before me suggests that these offences were committed at the instigation of, or at least with the backing of, those who are ultimately responsible for the operations of Greenpeace Australia. The willingness of those people to spend over \$280,000 on reparations, presumably money intended by Greenpeace supporters to fund the pursuit of Greenpeace’s aims rather than the re-instatement of a GM experiment run by CSIRO, indicates wholehearted support, at least among the organisation’s leaders, for the actions of [the two accused].<sup>58</sup>

5.66 In the months preceding the incident, Greenpeace had submitted several Freedom of Information requests to the CSIRO in an attempt to ascertain the nature of the experiments being pursued at the site; however, these requests were refused on the basis of commercial confidentiality.<sup>59</sup>

5.67 At a public hearing of the inquiry, and in response to questioning from the Committee about the incident, Mr David Ritter, Chief Executive Officer of

---

54 R v Latona and McCabe (2012) SCC 70; SCC 71, p. 2.

55 R v Latona and McCabe (2012) SCC 70; SCC 71, p. 4.

56 R v Latona and McCabe (2012) SCC 70; SCC 71, p. 2.

57 R v Latona and McCabe (2012) SCC 70; SCC 71, p. 4.

58 R v Latona and McCabe (2012) SCC 70; SCC 71, p. 9.

59 R v Latona and McCabe (2012) SCC 70; SCC 71, p. 4.

Greenpeace Australia Pacific Limited, stated that the incident occurred prior to his employment with the organisation.<sup>60</sup>

5.68 However, Mr Ritter went on to suggest that the handling of the incident by the relevant authorities was 'an example of the system working'.<sup>61</sup>

5.69 Mr Ritter also argued that the extent of Greenpeace's support for the two individuals did not constitute a broader endorsement of illegal activity. Mr Ritter explained:

The intention was not to break the law. The intention was to protect the environment.<sup>62</sup>

5.70 Mr Ritter added that he had ruled out activities of a similar kind from occurring in the future.<sup>63</sup> However, in its submission to the inquiry, Greenpeace stated that 'non-violent direct action' is 'one of [its] key methods for protecting the environment'.<sup>64</sup>

5.71 More broadly, some stakeholders expressed concern about some environmental DGRs engaging in unsafe protest activity and protest activity designed to interfere with commercial or industrial operations.

5.72 In its submission to the inquiry, the NSW Police Force explained:

The familiar protest tactics observed are interference with business activities through obstruction of vehicles and roads, 'lock-ons', trespass, malicious damage and the erection of harmful structures designed to cause delay such as placement of flammable liquids around blockades.<sup>65</sup>

5.73 Representatives of several industry associations submitted that protest activity has, in some instances, involved serious risks to the safety of employees, volunteers, and other members of the community.<sup>66</sup>

5.74 Industry representatives also noted the financial cost that can be imposed on taxpayers and affected companies by protest activity.<sup>67</sup>

---

60 Mr David Ritter, Chief Executive Officer, Greenpeace Australia Pacific Limited, *Committee Hansard*, Sydney, 17 November 2015, p. 4.

61 Mr Ritter, Greenpeace Australia Pacific Limited, *Committee Hansard*, Sydney, 17 November 2015, p. 4.

62 Mr Ritter, Greenpeace Australia Pacific Limited, *Committee Hansard*, Sydney, 17 November 2015, p. 4.

63 Mr Ritter, Greenpeace Australia Pacific Limited, *Committee Hansard*, Sydney, 17 November 2015, p. 4.

64 Greenpeace Australia Pacific Limited, *Submission 354*, p. 14.

65 NSW Police Force, *Submission 683*, p. 1.

66 Ports Australia, *Submission 358*, pp. 3-5; Minerals Council of Australia, *Submission 497*, p. 14.

67 NSW Minerals Council, *Submission 260*, p. 13; Queensland Resources Council, *Submission 257*, p. 4.

- 5.75 The police forces of New South Wales and Victoria submitted that protest activity associated with environmental organisations has a significant and ongoing impact on police resources.<sup>68</sup> The NSW Police Force explained:
- Police involvement with protest activity goes beyond mere attendance at the protest site. A significant amount of time is invested in investigations, arrests, charges and subsequent court attendance for unlawful protest activity.<sup>69</sup>
- 5.76 Several stakeholders also expressed concern about organisations providing support to individuals to engage in civil disobedience.
- 5.77 For example, the Australian Petroleum Production and Exploration Association submitted that CounterAct ‘promotes illegal activity and is primarily involved in running training camps to teach activists how to frustrate lawful development and be strategically arrested by police’.<sup>70</sup>
- 5.78 CounterAct operates as a part of Friends of the Earth Australia, which is an environmental DGR, and receives tax-deductible donations on that basis.<sup>71</sup>
- 5.79 At a public hearing, Ms Nicola Paris, the Coordinator of CounterAct, stated that the focus of the organisation’s training is not on directing people to break the law:
- ... I never direct anyone to break the law. I would actively encourage people, if they were considering it themselves, to think very carefully about the consequences. ... I believe that if I can support communities that want to take these types of actions themselves to do that in a more safe and peaceful way, then that is a completely valid form of education and training.<sup>72</sup>
- 5.80 The Committee also heard evidence of environmental DGRs soliciting tax-deductible donations for the purpose of paying penalties and fines.<sup>73</sup> Senator Matthew Canavan submitted that the effectiveness of deterrents to illegal and unlawful activity is undermined if environmental DGRs indicate that fines will be paid through donations.<sup>74</sup>

---

68 NSW Police Force, *Submission 683*, p. 1; Victoria Police, *Submission 685*, p. 7.

69 NSW Police Force, *Submission 683*, p. 1.

70 Australian Petroleum Production and Exploration Association, *Submission 580*, p. 4.

71 Ms Nicola Paris, Coordinator, CounterAct, *Committee Hansard*, Melbourne, 21 September 2015, p. 19.

72 Ms Nicola Paris, Coordinator, CounterAct, *Committee Hansard*, Melbourne, 21 September 2015, pp. 20–21.

73 Minerals Council of Australia, *Submission 497*, p. 24; Australian Petroleum Production and Exploration Association, *Submission 580*, p. 18.

74 Senator Matthew Canavan, *Submission 493*, p. 13.

- 5.81 In its submission to the inquiry, the ACNC indicated that charitable organisations are prohibited from having a ‘purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy’.<sup>75</sup> However, the submission explained:
- This would require evidence of more than particular individuals being involved in illegal activity, that is, it requires evidence of a purpose of engaging in illegal activity.<sup>76</sup>
- 5.82 At a public hearing of the inquiry, representatives of the ACNC advised that instances of unlawful activity would be cause for immediate inquiry, and that a continuing pattern of unlawful activity may indicate that an organisation is not meeting governance standards set out by the ACNC.<sup>77</sup>
- 5.83 The ACNC’s governance standards are designed to provide a minimum level of assurance that charitable organisations are meeting community expectations. Among other requirements, the standards require that charities must not commit a serious offence under Australian law.<sup>78</sup>
- 5.84 In its submission, the ACNC also indicated that charitable organisations must not be characterised by a decision by an Australian government agency under Australian law as engaging in, or supporting, terrorist or other criminal activities.<sup>79</sup>
- 5.85 Representatives of the Department advised that the consideration of illegal activity is not mandated by the legislation that establishes the Register, but that instances of illegal activity could be relevant to an assessment of an organisation’s principal purpose.<sup>80</sup>
- 5.86 However, some stakeholders recommended that organisations found to have engaged in illegal and unlawful activity, or organisations that have advocated or promoted such activity, be suspended or removed from the Register, making them ineligible to receive tax-deductible donations.<sup>81</sup>

---

75 ACNC, *Submission 189*, pp. 7–8; *Charities Act*, s. 11.

76 ACNC, *Submission 189*, p. 8.

77 Mr Murray Baird, Assistant Commissioner and General Counsel, ACNC, *Committee Hansard*, Canberra, 18 June 2015, p. 3.

78 *Australian Charities and Not-for-profits Commission Regulation 2013 (Cth)*, div. 45.

79 ACNC, *Submission 189*, p. 9; *Australian Charities and Not-for-profits Commission Act 2012 (Cth)*, s. 25-5(3).

80 Mr Simon Writer, General Counsel, Department of the Environment, *Committee Hansard*, Canberra, 26 November 2015, pp. 8–9.

81 For example, see: Australian Taxpayers’ Alliance, *Submission 492*, pp. 4–6; Senator Matthew Canavan, *Submission 493*, p. 22; Minerals Council of Australia, *Submission 497*, p. 3.

## Committee comment

- 5.87 The Committee acknowledges the significant contribution of members of the public to the work of environmental DGRs. Equally, the Committee acknowledges the important role of environmental DGRs in enabling members of the public to actively participate in the protection and enhancement of the natural environment.
- 5.88 Evidence presented to the Committee indicates that the Register plays an important role in supporting positive engagement between communities and environmental organisations.
- 5.89 However, the Committee notes stakeholders' concerns about the activity of a small number of environmental DGRs, ranging from providing false and misleading information to serious instances of criminal activity. The Committee considers that such activity undermines public trust and confidence in environmental DGRs and in the not-for-profit sector more broadly.
- 5.90 In particular, the Committee considers it inappropriate for an environmental DGR to use the illegal and unlawful activity of individuals in order to further its purpose or gain publicity for a particular point of view.
- 5.91 Effective regulation of environmental DGRs is necessary to ensure that public trust and confidence in the sector is maintained and strengthened. Furthermore, DGR status should have a role in enabling members of the public to identify organisations that are meeting community expectations.
- 5.92 As a consequence of the Committee's recommendation that charitable status be a prerequisite for environmental organisations seeking DGR status, all environmental DGRs would be required to comply with the ACNC governance standards and be prohibited from having an illegal or political purpose.
- 5.93 The Committee considers that this would provide greater assurance to members of the public that environmental DGRs are operating lawfully and in the public interest.
- 5.94 However, in light of the evidence received, the Committee considers that additional administrative sanctions, including revocation of DGR status, should apply to environmental DGRs that support or are associated with illegal or unlawful activity.

## Recommendation 6

**The Committee recommends that administrative sanctions be introduced for environmental deductible gift recipients that encourage, support, promote, or endorse illegal or unlawful activity undertaken by employees, members, or volunteers of the organisation or by others without formal connections to the organisation.**

- 5.95 Examples of conduct that the Committee expects would be captured by any changes include blocking access, trespass, destruction of property, violence and assault, and acts of civil disobedience.
- 5.96 Payment of penalties or court-ordered fines in relation to the above should also be captured. Similarly, supporting (financially or otherwise), training in, or promoting the above should be captured.
- 5.97 The Committee expects that appropriate administrative sanctions would depend on the extent and seriousness of the offence and on the nature of the relationship between the offender and the organisation.
- 5.98 However, the Committee is of the view that environmental DGRs that are characterised by a decision under Australian law as having engaged in or supported serious criminal activity should have their DGR endorsement suspended for a period of at least five years.
- 5.99 The Committee considers that both the Australian Taxation Office (ATO) and the ACNC should have an ongoing role in monitoring and investigating the conduct of environmental DGRs.
- 5.100 However, environmental DGRs should, as a condition of attracting DGR status, be required to disclose to the ATO any arrests, charges, or convictions in relation to employees or responsible members.
- 5.101 The Committee expects that decisions to apply sanctions to environmental DGRs would be the responsibility of the Commissioner of Taxation (or an authorised delegate). The Committee also expects that an appropriate review process would be established, including a provision for internal and/or judicial review.
- 5.102 Additional recommendations intended to strengthen the reporting and compliance arrangements for environmental DGRs are discussed in Chapter 6.

