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# Register of Environmental Organisations Inquiry

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## Introduction

The Great Barrier Reef Foundation (the Foundation) is an Australian not-for-profit company limited by guarantee.

Operating since 2000, the Foundation is fostering a resilient Great Barrier Reef (the Reef) for all generations by catalysing and funding science that informs, encourages and inspires. Our network, across business, philanthropy, government, research and reef management, supports us in achieving this goal.

The Foundation is a registered charity and endorsed under the Income Tax Assessment Act 1997 for exemption from income tax. We must comply with the Corporations Act 2001 and the Australian Charities and Not-for-profits Commission Act 2012 and ultimate responsibility for the governance of the Foundation rests with the Board of Directors who ensure that the activities are directed towards achieving its mission.

The Foundation's Constitution governs the regulations of meetings and proceedings of the Board of Directors. The Foundation aligns one of its formal objects with a requirement from the World Heritage Convention, Article 17 which states:

*"the States Parties to this Convention shall consider or encourage the establishment of national public and private foundations or associations whose purpose is to invite donations for the protection of the cultural and natural heritage as defined in Articles 1 and 2 of the Convention";*

This demonstrates our strong desire to work alongside governments to achieve our mission which is the raising and provision of funding to support research contributing to the environmental protection, enhancement, preservation and conservation of tropical reefs and adjoining coral coasts.

The Foundation has a public fund called 'The Great Barrier Reef Foundation Public Fund' (the Public Fund) which is on the Register of Environmental Organisations (REO) and the Foundation is endorsed under the ITAA 1997 as a deductible gift recipient for the operation of the Public Fund. The Public Fund is the vehicle that provides the leveraging for the Foundation to meet its constitutional purpose. It enables our Chairman's Panel member program - a unique forum bringing together Australian business leaders and most eminent marine scientists. It is through these relationships that we are able to activate the considerable grant funding required to deliver on our mission and the Reef research programs. In essence the Public Fund with its tax deductible status is what triggers the bulk of our income.

In the past 10 years, the Foundation has raised more than \$50m to fund vital research to preserve the Great Barrier Reef. We regularly report the efficiency (cost

of fundraising and administration ratio) of funds used to raise each dollar of revenue to our Audit Committee and Board and the average over the last 3 years is 15.5%.

### Summary of Main Comments

The Foundation is very pleased for the opportunity to participate in the REO inquiry and we have addressed the Terms of Reference in the report following. We have also highlighted our three main comments below.

Firstly, with reference to the 3<sup>rd</sup> term of reference: The Foundation strongly recommends that any definition of on-ground environmental works includes the activities of research, monitoring and community engagement, or that these activities be expressly specified as appropriate activities to complement on-ground environmental works. Not only could our core purpose be threatened if this point was not carefully considered, but more importantly the undertaking of on-ground environmental works not underpinned by strong science and a robust evaluation strategy could have negative environmental consequences.

Secondly, in relation to the 1<sup>st</sup> term of reference: if the definition of 'environmental organisation' is altered, similarly to the comment above, the Foundation will have to review its purpose for existence and ensure alignment with the constitution and operational processes. This will be a large burden on administrative costs.

And finally the 3<sup>rd</sup> key issue for the Foundation is in relation to the 5<sup>th</sup> term of reference. The Foundation recommends that the States and Territory agencies work together to reduce duplication in reporting requirements from ACNC registered charities. This would be a step in the right direction to reduce the administrative burden on charities.

## Response to the Terms of Reference

### 1. ***The definition of 'environmental organisation' under the Income Tax Assessment Act 1997, including under Subdivision 30-E;***

The Foundation supports the current definition of 'environmental organisation' under the Income Tax Assessment Act 1997. Some general comments are included in the dot points following:

- The Foundation's objects listed in its constitution reflect the current definition of 'environmental organisation' under the ITAA 1997.
- Historically, our activities are more aligned with Section 30-265 (1) (b) – the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.
- We have recently expanded the breadth of the environmental projects that we fund to include practical on-ground action.

If the definition is altered the Foundation would have to review the constitutional objects in order to ensure continued compliance with the ITAA 1997. Any change to the definition could be oppositional to the Foundation's current purpose and operational processes and would potentially have a large administrative burden.

### 2. ***The requirements to be met by an organisation to be listed on the Register and maintain its listing;***

The Foundation notes that the actual establishment of the Public Fund was a significant undertaking but once set up the maintenance is not onerous and from our perspective appears appropriate. We support the requirements such as maintaining a separate bank account and accounting/reporting procedures as it assists with the management of the Foundation. We also strongly support the requirement to have a management committee to manage the Fund.

An additional comment the Foundation would like to make is in regard to the membership requirement in section 30-275. It is anomalous and the legislative intention is not apparent. An organisation can qualify with just a few members if they are all companies. These could be private companies with only one or two shareholders so they cannot be assumed to be indirectly representative of a significant number of individuals. Some of these members could have no voting entitlements. On the other hand, if an organisation accepts individuals as members and these outnumber any corporate members, it is required to have 50 members who are individuals and who must be financial members and entitled to vote. Any corporate members it has are on top of the required number of individual members even though the company could indirectly represent many individuals. An organisation with an approximately equal mix of body corporates and individuals as members, even if it is of significant size, is not eligible without special approval. Locally based organisations in particular are likely to be of interest to local businesses and companies as well as individuals. Why should such organisations need to seek special approval?

### 3. ***Activities undertaken by organisations currently listed on the Register and the extent to which these activities involve on-ground environmental works;***

The purpose of the activities undertaken by organisations currently listed on the Register should be to achieve genuine environmental benefit. How this is done in practical terms however, is not a one size fits all model and there is a need for sufficient flexibility to cater for a range of models. The Foundation primarily funds research programs that deliver data, information and knowledge that is relevant and accessible to Reef managers, policy-makers and other end-users. We use a path-to-impact model which ensures that the research we fund responds to the priority needs of reef managers (for example by aligning with the Long Term

Sustainability Plan for the Great Barrier Reef) and contributes positively to the Reef's future. However, under this model some of the work that we fund is by design going to take longer to deliver measurable environmental benefits than others. This is particularly relevant when it comes to testing highly innovative and potentially transformative approaches, as these approaches much be assessed within a rigorous, incremental and risk-managed framework.

With regard to the extent of on-ground environmental works undertaken by organisations on the register, this ultimately comes down to how on-ground works is defined, as is it a broad and subjective term. It is important to note that the recently released Long Term Sustainability Plan for the Great Barrier Reef (basically the blueprint for the protection, preservation and restoration of one of the world's greatest environmental assets) outlines the actions that need to be undertaken to ensure that the environmental values of the Reef are maintained. These actions include a combination of monitoring, research, on-ground works and community engagement. This is because on-ground works not underpinned by strong science and an appropriate monitoring and evaluation framework can result in unintended consequences (environmental, social and economic) or they may simply fail due to a lack of understanding about the cause and effect relationships at play. For example, the restoration of a habitat through on-ground action where the underlying cause of the habitat's decline has not been addressed would likely fail and thus would not be an effective use of donor funds.

In addition, our experience suggests that donors can perceive the implementation of on-ground environmental works to be within the remit of government – local, state or federal. Increasing the expectation regarding the amount of on-ground works to be undertaken by organisations on the Register could make fundraising efforts for environmental organisations even more challenging.

The Foundation therefore strongly recommends that any definition of on-ground environmental works includes the activities of research, monitoring, evaluation and community engagement, or that these activities be expressly specified as appropriate activities to complement on-ground environmental works.

#### **4. *Reporting requirements for organisations to disclose donations and activities funded by donations;***

The Foundation strongly supports disclosure of donations and activities funded by donations. Some comments follow outlining our disclosure processes we have in place and the benefit we would gain from improved benchmarking information:

- The Foundation has an ethical donations policy (published on our website) which supports open and transparent dealings with all parties. Where the donor suggests that a donation be applied to a particular project or purpose, this must be approved by the Board.
- We support transparency of donors and activities by donors because of the value contributed to the Foundation from the Public Fund. We currently acknowledge donors over \$1,000 on our website.
- We publish a set of general purpose financial statements in our annual report, prepared in accordance with Australian Accounting Standards and interpretations issued by the Australian Accounting Standards Board and the Corporations Act 2001. These financial statements are audited annually by Deloitte.
- With improved and more transparent donor and activity disclosure we would support being involved in and having access to benchmarking exercises. We recognise the limitation with achieving consistent definitions across organisations but with clear guidance and definitions of costs (fundraising vs administration) improved consistency could be achieved.

In summary, the Foundation strongly supports more open and transparent reporting requirements around donors and activities and notes that any improvement in transparency should not come with any increase in administrative burden. We believe this would improve reporting and benchmarking as well as enhance the donor community confidence in the not-for-profit sector.

**5. *The administration of the Register and potential efficiency improvements;***

The Foundation currently has to report annually (more frequently in some instances) to the REO, Office of Fair Trading (QLD) for our fund raising approval under the Collections Act, and the Australian Charities and Not-for-profits Commission (ACNC).

There is some duplication of reporting information provided to the agencies above however the REO information is centred about the 'Public Fund' and not the organisation as a whole. The other agencies are focused on the 'Organisation' and examples of the duplication of requirements are following:

- A copy of the Foundation's audited annual return is provided to the Office of Fair Trading (OFT) and the ACNC. We believe it would be beneficial to see all States and Territories come together to agree to waive their lodgement requirements for ACNC registered charities.
- Donation information is provided to REO and ACNC. It would be good to see the REO agree to obtain donation information from the ACNC for environmental organisations that are registered charities.
- Our financial year is the calendar year and therefore the timetable for reporting requirements differs depending on the agency which can add complexity.

Based on the comments above, the Foundation suggests that the States and Territory agencies work together to reduce duplication in reporting requirements from ACNC registered charities. Where possible if information is provided to the ACNC it would be beneficial for the other agencies to access this information directly from the ACNC as opposed to the registered charity.

**6. *Compliance arrangements and the measures available to the Department of the Environment and the Australian Taxation Office to investigate breaches of the Act and Ministerial Guidelines by listed organisations; and***

The Foundation supports improved visibility and greater understanding on the current compliance arrangements. This would enable further comment from us on this directly. The Foundation notes that as an enforcement measure, the ATO only has the power of dis-endorsement from DGR status which is a drastic step if the breaches are minor and would prejudice innocent donors if the power is applied retrospectively. The Foundation recommends that there should be a range of powers so that the ATO can take proportionate measures, similar to the powers given to the ACNC.

As a further comment, the Foundation would like to take this opportunity to point out an incorrect statement in the REO Guidelines. It is stated that testamentary gifts must not be paid to the public fund but this is contrary to the gift fund section 30-130 in the ITAA 1997 which requires gifts to be paid to the gift fund. 'Gift' is not defined in the ITAA 1997 and takes its ordinary meaning which includes testamentary gifts. The REO acknowledged to the Foundations' lawyers in writing several years ago that this statement is incorrect and the Guidelines are to be amended in due course. The Guidelines have still not been amended. In the meantime, organisations that follow the Guidelines in regard to the treatment of testamentary gifts will be in breach of the ITAA 1997.

The Foundation would like to see improved visibility and greater understanding on the current compliance arrangements in place. It would be good to see the above inconsistency between the REO guidelines and the ITAA 1997 with regards to testamentary gifts reviewed as a part of this inquiry.

**7. *Relevant governance arrangements in international jurisdictions, and exploring methods to adopt best practice in Australia.***

We encourage learning from international jurisdictions and are very supportive of adoption of the best practice approach. We also support improved governance arrangements, however a balance needs to be maintained to ensure that the administrative costs remain low and the maximum possible amount of donations can be applied directly to delivering on an organisation's mission.

While pursuing best practice in governance is important for environmental organisations, the Foundation does not see that the REO or the ATO have any role to play in that regard. Their role should be limited to overseeing compliance with the tax legislation and should not duplicate the governance oversight of the ACNC, ASIC and the OFT.