



Tarkine National Coalition Inc  
PO Box 218  
Burnie, 7320

[office@tarkine.org](mailto:office@tarkine.org)

Committee Secretary  
House of Representatives Standing Committee on the Environment  
PO Box 6021  
Parliament House  
Canberra ACT 2600

14 May 2015

**Submission to the inquiry into the administration and transparency of the Register of Environmental Organisations and its effectiveness in supporting communities to take practical action to improve the environment.**

Thank you for the opportunity to make a submission.

Tarkine National Coalition is a not for profit organisation dedicated to the protection of the Tarkine Wilderness in north west Tasmania. Tarkine National Coalition is on the Register of Environmental Organisations.

To pursue protection of the Tarkine, Tarkine National Coalition engages in public education of the values of the Tarkine, promotion of the case for conservation, and environmental advocacy.

In this role TNC has been pro-active in promoting visitation of the Tarkine, as an alternate economic driver to the resource extraction industries that would be displaced by the protection of the Tarkine. TNC has sought and received funds for the construction of bushwalking trails at Mt Donaldson and Philosopher Falls, and for the production of a self guide brochure to 24 walks and features within the Tarkine. TNC also worked with the Cradle Coast Authority to develop the Tarkine Tourism Development Strategy, a strategy that maps a plan to develop a predicted 1100 jobs. TNC has also worked with projects that may have positive impacts on legacy issues related to previous environmental impact, such as Mancala's Burns Peak mining project and Elementos' Cleveland mine project at Luina.

TNC has also coordinated a National Heritage nomination for the Tarkine, which resulted in an Emergency National Heritage Listing for the Tarkine in 2010, and a recommendation from

the Australian Heritage Council for a 439,000 hectare National Heritage Listing for the Tarkine.

In acting as an advocate for the Tarkine, we have at times been required to offer criticism and opposition to policies, practices or proposals that damage or seek to damage the natural and cultural values of the Tarkine. This has included taking the role of advocate into the Tasmanian planning system, and in the courts where there has been a prima facie case that decisions by administrators of relevant authorities have failed to account for legislative protections afforded to the Tarkine.

As I understand from comments by Senators seeking this inquiry, that the role of organisations on the Register of Environmental Organisations in litigation has caused them concern, and that in particular, the role of Tarkine National Coalition in litigation causes them concern.

It is our view that appropriate litigation is it completely consistent with our role in advocating for protection of the Tarkine, and as such consistent with the purposes for which we are listed on the Register of Environmental Organisations. I refer to the following cases to demonstrate the role of litigation in protection of the Tarkine.

Tarkine National Coalition Incorporated v Minister for Sustainability, Environment, Water, Population and Communities [2013] FCA 694

In this case, TNC argued that the Minister for Sustainability, Environment, Water, Population and Communities had failed to have regard to the Approved Conservation Advice for the Tasmanian Devil in the assessment and approval of the Shree Minerals' Nelson Bay River Mine, as was required by the *Environment Protection and Biodiversity Conservation Act 1995*. The court found in favour of the TNC, and set aside the Minister's decision to approve the mine. Without TNC's advocacy in this matter, an unlawful decision to approve this development would have proceeded despite a failure to conduct a lawful assessment process.

Tarkine National Coalition Inc v Schaap [2014] TASSC 66

In this case, TNC argued that the Director of the Environment Protection Authority had acted unlawfully by exceeding his powers in amending the permit granted to the Shree Minerals' Nelson Bay River Mine. The amendment allowed the storage of twenty times as much acid producing waste as the original permit allowed, and for the waste to be stored above ground despite the EPA Board specifically refusing above ground storage, referring to it as 'not safe'. The court found in favour of the TNC, and set aside the amended permit, requiring the mine store its waste in accordance with the provisions of the original permit.

Tarkine National Coalition Inc. v West Coast Council and Venture Minerals Limited [2013] TASRMPAT 103

In this case, TNC argued that the EPA had failed to properly consider impacts on the Tasmanian devil from transport to and from the mine site, and erosion and sedimentation from operations at the mine site, in its assessment of the Venture Minerals' Riley Creek Mine. The Resource Management and Planning Appeals Tribunal agreed that on the evidence presented by TNC, that the permit conditions relating to road kill were insufficient, and that the erosion control mechanisms in the permit conditions were in fact the wrong prescriptions for the soil type on the site and likely to result in significant erosion and sedimentation issues. The tribunal did not grant the orders sought by TNC to set aside the approval, and instead imposed new conditions on transport movements and erosion controls to address the issues TNC had brought before it. It is estimated that the aversion of the likely erosion and sedimentation issues saved the Tasmanian taxpayer from a multi-million dollar remediation cost.

#### Tarkine National Coalition Incorporated v Minister for the Environment [2014] FCA 468

In this case, TNC argued that the Tasmanian EPA, acting for the Commonwealth Minister for the Environment under a bilateral agreement, had failed to conduct assessments of cumulative impacts from Venture Minerals' proposed mines, and other's existing and proposed mines in the assessment of the Riley Creek proposed mine. The court found that the EPA did fail to conduct the cumulative assessment, however dismissed TNC's case seeking to set the approval decision aside. TNC has appealed this decision to the Full Bench of the Federal Court, and is awaiting decision in this appeal.

In making decisions to pursue litigation in cases taken by TNC, the TNC Board has sought and deliberated on competent legal advice before making decisions to proceed. In all of these cases, TNC has been satisfied that the protection of the Tarkine was advanced by progressing litigation. TNC has also been satisfied that without TNC pursuing litigation in these matters, unlawful decisions would stand unchallenged. No court or tribunal has ever found that TNC has acted in a vexatious or malicious manner.

In answering the question as to whether our donors should receive a tax deduction for contributing to TNC, where TNC's activities include litigation, I tender the following arguments:

1. In a society based on the Rule of Law, Australia should not seek to remove DGR status from organisations seeking to ensure that the law is properly administered. TNC's cases have sought to address instances where we assert that environmental laws are not being administered in a lawful manner. The decisions handed down in our cases back our assertion.
2. The current system creates balance in the tax treatment of parties to litigation. TNC act on behalf of members and supporters, who share the common goal of seeking protection for the Tarkine. In making a donation, donors receive a tax deduction. If TNC were a for-profit company, any costs associated with litigation would be fully tax deductible as a business expense, as it is for the proponents of developments in the Tarkine who have not only joined cases brought by TNC, but have also instigated litigation in their own right.

3. Not-for-profits in other sectors are afforded DGR status, and are not restricted from raising funds for use in litigation consistent with their aims.

Tarkine National Coalition collected \$107,161 in the 2014 financial year, and \$115,721 in the 2013 financial year through tax deductible donations. Being able to offer donors a tax deduction for their donations is important to raising money to fund our work. The funds raised are spent in Australia on products and services in Australia.

Please call me on                      if you have any questions.

Yours sincerely

Scott Jordan  
Campaign Coordinator  
Tarkine National Coalition Inc