



# MINERALS COUNCIL OF AUSTRALIA

SUBMISSION TO HOUSE OF REPRESENTATIVES  
STANDING COMMITTEE ON THE ENVIRONMENT INQUIRY  
INTO THE REGISTER OF ENVIRONMENTAL  
ORGANISATIONS

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MAY 2015

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## EXECUTIVE SUMMARY

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The Minerals Council of Australia (MCA) welcomes the opportunity to make a submission to the House of Representatives Standing Committee on the Environment Inquiry into the Register of Environmental Organisations. Registered environmental organisations enjoy the same tax privileges as public hospitals, school building funds, and benevolent institutions that relieve poverty and distress. These privileges are contingent on satisfying reasonable regulatory requirements that help maintain public confidence in the not-for-profit sector. It is entirely appropriate that the Commonwealth Parliament review the administration and transparency of the Register.

This inquiry is also timely because there appears to be evidence that some registered environmental organisations may not be using tax-deductible donations for their identified purpose, which is to fund practical actions to conserve and enhance the natural environment.

In particular, evidence suggests that some registered environmental organisations could be using tax-deductible donations to fund activities that have only a tangential relation (if any) to natural conservation. Their purpose is not to undertake practical action to improve the environment, or education or research that advances this aim. Rather, these organisations appear to be pursuing an ideological agenda. Some of these organisations are listed in the 'Stopping the Australian coal export boom' manifesto, which set forth a strategy for disrupting and delaying key coal projects.

In pursuing anti-development goals, some registered environmental organisations appear to be encouraging supporters to engage in illegal behaviour. These contraventions frequently involve serious and unnecessary risks to the safety of employees and volunteers in these organisations, as well as to other members of the community. Documented offences include trespass, obstruction, wilful damage to property, engaging in unregulated high-risk activity, resisting and hindering police, intimidation and piracy (illegally boarding a vessel for private ends).

Beyond the immediate risks to individuals, unlawful activities against law-abiding companies have significant economic and social costs. For example:

- A blockade of Hay Point Coal Terminal near Mackay by Greenpeace Australia Pacific cost BHP Billiton Mitsubishi Alliance approximately \$13 million and Queensland taxpayers approximately \$1 million in royalties
- Lock the Gate Alliance boasted that its blockade of gas exploration in Glenugie 'took a force of about 80 police nine hours to clear the blockaders and eighteen people were arrested'.
- A blockade of a proposed liquid natural gas project north of Broome led by the Wilderness Society necessitated a major police operation, which cost Western Australian taxpayers \$1 million over 10 days.

The problem is not simply the subsidisation of illegal and hazardous protests. There remains uncertainty over how donations to these organisations are being used. Questionable use of tax deductible donations to registered environmental organisations includes:

- paying for court fines that are incurred as part of protest activity
- paying for overseas trips to observe international protest activity and strategy
- establishing and promoting activities that return a profit to these organisations.

Further, there is some regulatory uncertainty over how these organisations can legitimately allocate these donations to other groups that undertake activities.

Registered environmental organisations that breach the legislation should not be able to keep their deductible gift recipient status. Like other not-for-profit bodies, they should observe both criminal and company law. Further, some registered environmental organisations are also registered charities,

and are therefore expressly prohibited or engaging in activities that are unlawful or contrary to public safety, or which involve promoting or opposing a political party or candidate.

The MCA considers that more rigorous monitoring and enforcement of existing rules would go a long way to strengthening the integrity of the Register of Environmental Organisations. This could include:

- Immediately deregistering any entity that has a track record of committing or promoting unlawful activities
- Transferring responsibility for administering the Register from the Department of Environment to the Australian Taxation Office (ATO)
- Leave to ATO discretion to conduct thorough audits where there is *prima facie* evidence that tax-deductible donations have been used for purposes other than environmental conservation, education and research
- Leave to ATO discretion as to whether to audit:
  - those entities that have falsely claimed deductible gift recipient status for their affiliates
  - those entities that are not listed on the Register yet have claimed deductible gift recipient status by referencing an affiliate who is
- Requiring registered environmental organisations to submit a written self-review of their purpose and activities to the ATO on an annual basis, to demonstrate their continued eligibility (the ATO currently advises all deductible gift recipients to conduct and document a self-review every year).
- Leave to ATO discretion the option of randomly auditing 5 per cent of all registered organisations per annum.

In addition, the Committee may wish to consider the following:

- Whether there is a need to increase transparency requirements for the funding of registered environmental organisations, especially where there are foreign sources of revenue
- Whether there needs to be stricter enforcement of work health and safety laws for registered environmental organisations, where they have both paid employees and volunteers
- The implications of 2014 decision of the New Zealand Supreme Court on the charitable status of Greenpeace, which confirmed that unlawful activities preclude charitable status, and that the public benefit of a charity's purpose must be proven where it is abstract or not self-evident
- Whether there is any merit in adapting the Canadian rule for charities to registered environmental organisations in Australia, whereby entities can spend no more than 10 per cent of their resources on political advocacy, and that advocacy must be non-partisan and secondary to their charitable purpose.

Some opponents of this inquiry argue that more focused regulation of the Register of Environmental Organisations would stifle freedom of speech. This is incorrect. None of the existing regulations under the Register (or any of the proposals submitted here) restrict the free speech or political activity of individuals. These regulations apply to entities, not to individuals. And limitations are only placed on entities that seek access to tax concessions through the Register. In other words, the regulatory framework that accompanies the Register is entirely voluntary. The same points were made by the previous Labor Government, when it explained that restrictions placed on the political expression of registered charities (clarified under the *Charities Act 2013*) do not breach human rights.<sup>1</sup>

In short, the right to free speech should not be conflated with an entitlement to taxpayer-funded political activity. Any assertions to the contrary should be dismissed as special pleading.

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<sup>1</sup> Commonwealth of Australia, [Explanatory memorandum to the Charities Bill 2013](#), p 49.

## 1 BACKGROUND: ENTITLEMENTS AND OBLIGATIONS

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- Entities listed on the Register of Environmental Organisations are entitled to receive tax-deductible donations, but only for the principal purpose of protecting the environment
- Registered environmental organisations must not act as a conduit for the donation of money or property to other entities, although they may fund other organisations to undertake natural conservation work
- Some registered environmental organisations are also registered charities, and are therefore expressly prohibited from promoting or engaging in activities that are unlawful or contrary to public safety, or which involve promoting or opposing a political party or candidate.

### 1.1 Establishment and expansion of Register of Environmental Organisations

The Register of Environmental Organisations allows eligible entities to be endorsed as Deductible Gift Recipients (DGRs) by the Australian Tax Office (ATO) – meaning that they are entitled to receive income tax deductible gifts (such as financial donations) and tax deductible contributions (such as the purchase of a ticket to attend a fundraising event).<sup>2</sup>

The Register was established under item 6.1.1 subsection 30-55(1) of the *Income Tax Assessment Act 1997*. The Minister of the Environment and Assistant Treasurer decide if an organisation and its public fund is listed on the Register, while the Department of Environment maintains the Register.<sup>3</sup>

In addition to giving effect to the Register, the Income Tax Assessment Act names 23 specific environment recipients for deductible gifts. These include twelve National Trusts and National Parks Associations, Landcare Australia, the Australian Conservation Foundation and the World Wide Fund for Nature.<sup>4</sup>

There are currently 614 registered environmental organisations. In the first 10 years of the Register's operation, 212 organisations were listed. In the past five years, 178 have been added.<sup>5</sup>

The Income Tax Assessment Act stipulates that: 'The Minister [Assistant Treasurer] and the \*Environment Minister must have regard to the policies and budgetary priorities of the Commonwealth Government in deciding whether to give a direction' to the Environment Secretary to list an organisation on the Register.<sup>6</sup>

### 1.2 What registered environmental organisations must do and must not do

#### ***Donations can only be used to protect or enhance the natural environment***

Section 30.265 of the Income Tax Assessment Act clearly states that a registered environmental organisation must have protecting the environment as its principal purpose, and that it can only use donations for this purpose. In particular:

- (1) Its principal purpose must be:
  - (a) the protection and enhancement of the natural environment or of a significant aspect of the natural environment; or
  - (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.

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<sup>2</sup> Australian Charities and Not-for-profits Commission, [Factsheet: Deductible gift recipients \(DGRs\) and the ACNC](#).

<sup>3</sup> Department of the Environment, [Register of Environmental Organisations: Overview](#).

<sup>4</sup> Department of the Environment, [Register of Environmental Organisations: Listed Organisations](#).

<sup>5</sup> *ibid.*

<sup>6</sup> Commonwealth of Australia, *Income Tax Assessment Act 1997*, [Section 30.280](#). NB the Act defines 'environmental organisation' as the meaning given by sections 30.260 and 30.275 and 'Environment Minister' as 'the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999*'.

- (2) It must maintain a public fund that meets the requirements of section 30-130, or would meet those requirements if the \*environmental organisation were a fund, authority or institution.
- (4) [sic] It must have agreed to comply with any rules that the Minister and the \*Environment Minister make to ensure that gifts made to the fund are used only for its principal purpose.<sup>7</sup>

The Department of the Environment clarifies that:

The objects of the organisation must be set in the context of the natural environment. This includes all aspects of the natural surroundings of humans, whether affecting them as individuals or in social groupings. The term natural to describe 'environment' is used to make a distinction between the natural environment and other types of environments eg

- built;
- cultural; and
- historic environments.

The natural environment and concern for it would include, for example: significant natural areas such as rainforests; wildlife and their habitats; issues affecting the environment such as air and water quality, waste minimisation, soil conservation, and biodiversity; and promotion of ecologically sustainable development principles.

The natural environment would exclude, for example:

- constructions such as the retaining walls of dams;
- cultivated parks and gardens;
- zoos and wildlife parks (except those parks and zoos principally carried on for the purposes of species preservation); and
- cultural sites and heritage properties.<sup>8</sup>

### ***Donations cannot be channelled to other entities or persons***

In addition to having the protection of the environment as its principal purpose, the Income Tax Assessment Act specifies that a registered environmental organisation 'must have a policy of not acting as a mere conduit for the donation of money or property to other organisations, bodies or persons.'<sup>9</sup> According to the Department of the Environment:

The conduit policy applies to the behaviour of a potential donor to an organisation and its public fund. An organisation must not be directed by a donor to act as a conduit by passing a donation of money or property to other organisations, bodies or persons.

A registered organisation must not act as a collection agency for tax-deductible donations intended by a donor to be passed on to another organisation or person.

The conduit policy does not apply to an organisation which, within its principal objective to conserve the natural environment, decides to pass funds to another entity to do environmental projects or other nature conservation work.<sup>10</sup>

The conduit policy is consistent with the rule that political parties are not deductible gift recipients.<sup>11</sup>

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<sup>7</sup> *ibid.*, [Section 30.265](#).

<sup>8</sup> Department of the Environment, [Register of Environmental Organisations: A Commonwealth Tax Deductibility Scheme for Environmental Organisations: Guidelines](#), 2003 (incorporating minor updates made in December 2014), p. 9.

<sup>9</sup> Commonwealth of Australia, *Income Tax Assessment Act 1997*, [Section 30.270](#).

<sup>10</sup> Department of the Environment, [Register of Environmental Organisations: A Commonwealth Tax Deductibility Scheme for Environmental Organisations: Guidelines](#), 2003 (incorporating minor updates made in December 2014), p. 11, emphasis added.

<sup>11</sup> Australian Tax Office, [Non-profit: Guides: In detail: Guides and Booklets: Gifts and Fundraising: Giftpack: Deductible gift recipients – an overview](#).

### **Registered organisations must keep adequate accounts and conduct regular self-reviews**

Further, the Income Tax Assessment Act requires registered environmental organisations 'to give the \*Environment Secretary, within a reasonable period after the end of each income year, statistical information about gifts made to the public fund during that income year.'<sup>12</sup> The ATO advises that:

DGRs must keep adequate accounting and other records that show and explain all transactions that are relevant to their status as a DGR. These records must also show that all gifts, deductible contributions, and any money received in respect of such gifts and contributions are only used for the principal purpose of your fund, authority or institution. You must maintain these records for at least five years after the completion of the transactions or acts to which they relate.<sup>13</sup>

The ATO also expects all deductible gift recipients to conduct regular self-reviews to ensure that they continue to operate for the purposes for which they were endorsed:

We recommend that you regularly review your DGR to ensure that it continues to operate for the purposes for which it was granted status as a DGR.

The law does not require any particular intervals between self-reviews, but we recommend a yearly review. There should also be a review when there is a major change in your organisation's structure or operations.<sup>14</sup>

The ATO instructs deductible gift recipients to maintain records to show that a self-review has been conducted. It warns that there is a legal obligation for deductible gift recipients to advise the ATO if they are no longer entitled to endorsement.<sup>15</sup>

### **General obligations that apply that apply to all not-for-profit entities**

Not-for-profit organisations and their boards face essentially the same obligations and penalties as for-profit entities. For-profit entities are accountable to the ATO, the Australian Securities Investment Commission (ASIC) and their shareholders. Not-for-profit organisations are accountable to the ATO, ASIC, their stakeholders and (if they are registered charities) the Australian Charities and Not-for-profits Commission (ACNC). In other words, not-for-profit organisations must satisfy the same standard of regulatory compliance as for-profit entities, whether the requirements relate to tax, occupational health and safety, anti-discrimination or privacy.<sup>16</sup>

In particular, the duties of volunteer directors of not-for-profit organisations are the same of those of a company director under the *Corporations Act 2001*. In addition to observing the prohibitions of criminal law, volunteer directors have a duty to:

- Avoid allowing the company to trade while insolvent
- Act in good faith
- Act honestly
- Act with reasonable care and diligence
- Not misuse their position or information obtained while acting as a director
- Disclose any material personal interest or conflict.<sup>17</sup>

All companies and not-for-profit organisations are advised to maintain Directors & Officers Liability Insurance or, if they cannot afford such cover, to indemnify their directors by Deed. However, as Carrol & O'Dea Lawyers point out:

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<sup>12</sup> Commonwealth of Australia, *Income Tax Assessment Act 1997*, [Section 30.270](#).

<sup>13</sup> Australian Tax Office, [Self-governance checklist for non-profit organisations](#), p. 11.

<sup>14</sup> Australian Tax Office, [Non-profit: Guides: In detail: Guides and Booklets: Gifts and Fundraising: Giftpack: Self-Review](#).

<sup>15</sup> Australian Tax Office, [Self-governance checklist for non-profit organisations](#), p. 11.

<sup>16</sup> See Logie-Smith Lanyon Lawyers, [For profit and for purpose: what is the difference?](#) 3 February 2015; and Our Community Group, [Compliance for not-for-profit organisations](#).

<sup>17</sup> See Josephine Heesh and Jessica Lobow, Carrol & O'Dea Lawyers, [Uncertain Times for Volunteer Directors](#), 4 December 2014.

Insurance and indemnities cannot assist a director who is guilty of any criminal offence or reckless act.

It was noted in Federal Parliaments' Standing Committee on Economics, the *ACNC Act* endeavours to 'ensure that the individuals do not seek to hide behind the protection of a corporate veil to protect themselves from acts of deliberate misconduct'.<sup>18</sup>

While registered environmental organisations are formally subject to the same monitoring and enforcement as other not-for-profits, there is substantial evidence that supervision of their activities is weak and sanctions are seldom applied.

### 1.3 Some registered environmental organisations are also registered charities

As deductible gift recipients, registered environmental organisations enjoy the same privileged tax status as public hospitals, school building funds and registered public benevolent institutions (that is, charitable institutions whose main purpose is to relieve poverty or distress).<sup>19</sup> Some registered environmental organisations are also registered as charities with the ACNC; for example, Australian Conservation Foundation Limited, Greenpeace Australia Pacific Limited and Lock the Gate Alliance Limited.

#### ***Charities must not pursue or promote actions that are unlawful, unsafe or politically partisan***

An environmental organisation's deductible gift recipient status through the Register is separate from its status as a charity. However, it is worth noting that those registered environmental organisations that are also charities are bound by law to an additional (but similar) code of conduct. In particular, the *Charities Act 2013* declares that a charitable purpose is inconsistent with activities that are unlawful, contrary to public safety or politically partisan:

In this Act:

'disqualifying purpose' means:

(a) the purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy; or

Example: Public policy includes the rule of law, the constitutional system of government of the Commonwealth, the safety of the general public and national security.

Note: Activities are not contrary to public policy merely because they are contrary to government policy.

(b) the purpose of promoting or opposing a political party or a candidate for political office.

Example: Paragraph (b) does not apply to the purpose of distributing information, or advancing debate, about the policies of political parties or candidates for political office (such as by assessing, critiquing, comparing or ranking those policies).

Note: The purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country may be a charitable purpose ...<sup>20</sup>

The Explanatory Memorandum to the Charities Bill noted that:

The disqualifying purposes provisions set out in the Bill are necessary for the protection of public order and national security, and they constitute a reasonable and proportionate way of achieving this protection. They reflect the common law.

First, charities must not have a purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy ... [This provision] restricts individuals from using charities to engage in or promote certain activities, such as illegal activities, or activities which threaten national security ...<sup>21</sup>

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<sup>18</sup> *ibid*, emphasis in original.

<sup>19</sup> Australian Tax Office, [Non-profit: Guides: In detail: Guides and Booklets: Gifts and Fundraising: Giftpack: Deductible gift recipients – an overview](#); Australian Charities and Not-for-profits Commission, [Factsheet: Public benevolent institutions and the ACNC](#).

<sup>20</sup> Commonwealth of Australia, *Charities Act 2013*, [Section 11](#).

<sup>21</sup> Commonwealth of Australia, [Explanatory memorandum to the Charities Bill 2013](#), p. 44f.



The [second] disqualifying purpose is concerned with direct partisan political engagement that supports or opposes a candidate or party for office or other partisan political engagement to the extent and in a way that this can be construed as a purpose ...

In determining whether an entity has a purpose to promote or oppose a candidate or political party, considerations could include whether the focus of the entity is on promoting or opposing a particular candidate or a political party in general, rather than on their policies that are relevant to the charitable purpose, the direct nature and extent of engagement and association with a candidate's or a party's campaigns or publications, or lack of balance in promoting or opposing the policies of another political party or candidate with similar policies relevant to the charitable purpose.<sup>22</sup>

An Addendum to the Explanatory Memorandum clarified that while the Bill is concerned with the purpose of an entity rather than its activities, promoting or committing unlawful activities may amount to a disqualifying purpose if an entity devotes a large amount of time and resources to such activities. Similarly, while the Bill is concerned with entities rather than the individuals that comprise them, unlawful activities carried out by employees, members or volunteers are of concern if they are authorised by the entity.<sup>23</sup>

### ***Governance standards for charities***

Charities must meet a set of governance standards to be registered and remain registered with the ACNC. These standards require that:

- Charities must be not-for-profit and work towards their charitable purpose
- Charities that have members must take reasonable steps to be accountable to their members and provide them with adequate opportunity to raise concerns about how the charity is governed
- Charities must not commit a serious offence (such as fraud) under any Australian law or breach a law that may result in a penalty of 60 penalty units (currently \$10 200) or more
- Charities must take reasonable steps to:
  - be satisfied that its responsible persons (such as board or committee members or trustees) are not disqualified from managing a corporation under the *Corporations Act 2001* or disqualified from being a responsible person of a registered charity by the ACNC Commissioner, and
  - remove any responsible person who does not meet these requirements
- Charities must take reasonable steps to make sure that responsible persons are subject to, understand and carry out the duties set out in this standard.<sup>24</sup>

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<sup>22</sup> *ibid.*, p. 22.

<sup>23</sup> Commonwealth of Australia, [Addendum to the explanatory memorandum to the Charities Bill 2013](#), p. 3f.

<sup>24</sup> Australian Not-for-profit and Charities Commission, [Manage My Charity: Meet Governance Standards](#).

## 2 SCALE OF TAXPAYERS' CONTRIBUTION TO REGISTERED ENVIRONMENTAL ORGANISATIONS

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- Instead of taking practical action to conserve or improve the environment, some registered environmental organisations appear to be pursuing an ideological objective of deliberately hindering fossil fuel projects.
- There are reasonable grounds for investigating whether some registered environmental organisations are misdirecting donations towards activities that could be considered political.

### 2.1 Estimated tax revenue foregone

It has been the policy for successive governments to provide tax concessions for not-for-profit organisations and charities, on the basis that they generate public benefits that government or private firms may not otherwise provide. Nevertheless, as Treasury argues, 'it is important to assess their effectiveness to ensure that the concessions continue to meet their intended policy objectives'.<sup>25</sup>

Treasury also observes that:

NFP [not-for-profit] tax concessions result in significant revenue forgone. The two largest groups of tax concessions involve exemptions from paying fringe benefits tax (FBT) for public benevolent institutions (PBIs), health promotion charities (HPCs), public hospitals, non-profit hospitals, and public ambulance services; and income tax deductions for making gifts to DGRs.<sup>26</sup>

Further:

[T]he deduction for gifts to DGRs has remained relatively stable, increasing from nearly \$900 million in 2010-11 to almost \$1.2 billion in 2017-18. However, the actual revenue forgone from NFP concessions cannot be quantified because many organisations are not required to submit tax returns. This means that the actual revenue forgone is likely to be higher than is currently reported.<sup>27</sup>

The value of tax concessions granted to registered environmental organisations (income tax deductible gifts and tax deductible contributions) is difficult to determine accurately. This is because:

- There are other organisations with deductible gift recipient status that are not listed on the Register of Environmental Organisations
- Any estimate of the taxpayer subsidy to registered environmental organisations will be highly conservative, because these entities do not have to submit tax returns.

Based on an analysis of the available financial records of the 16 most politically active registered environmental organisations, the MCA estimates that the total revenue of these organisations averages at least \$78 million per year.

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<sup>25</sup> Australian Government, [Tax Discussion Paper](#), 30 March 2015, p. 124.

<sup>26</sup> *ibid.*, p. 124.

<sup>27</sup> *ibid.*, p. 125.

## 2.2 Ideological objectives of some registered environmental organisations

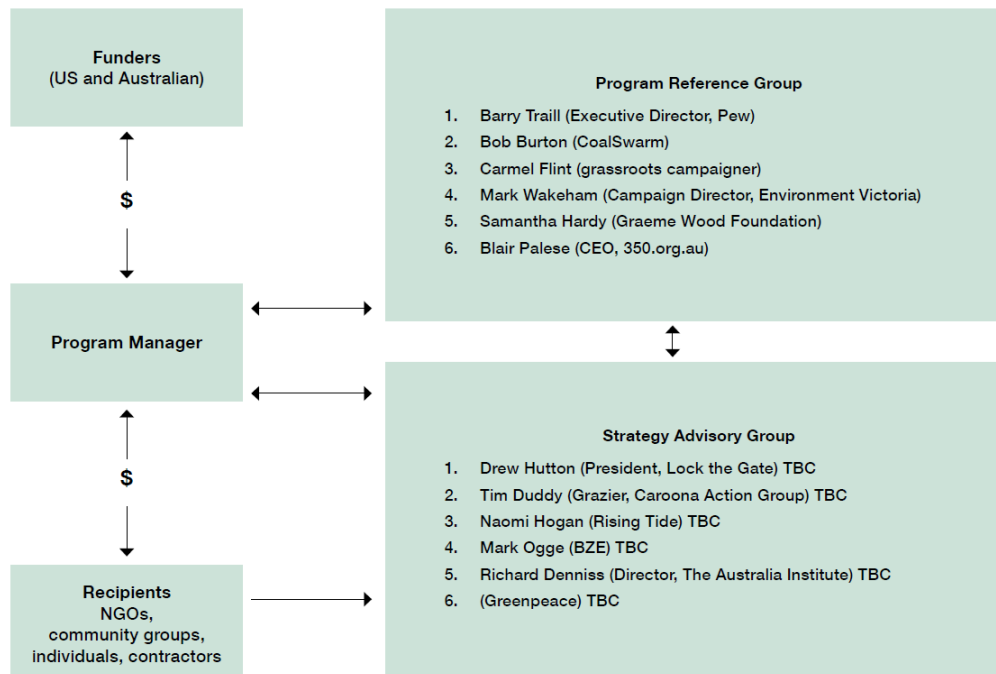
There is no reason to suppose that the majority of entities listed on the Register of Environmental Organisations are not undertaking genuine environmental projects or related education or research. Yet there is evidence that some registered environmental organisations have used tax-deductible donations to undertake activities that have only a tangential relation (if any) to natural conservation. It appears that their purpose is not to undertake practical action to improve the environment, or education or research that advances this aim. Rather, these organisations seem to be pursuing an ideological objective of stopping Australian fossil fuel projects.

For example, the following registered environmental organisations have declared their opposition to Australia’s coal and gas industries and have developed a comprehensive campaign plan to stop coal projects:

- **Friends of the Earth Australia:** ‘We are ... building campaigns relating to Australia's greenhouse gas emissions and the impacts of the fossil fuel industries on communities. We participate in the Lock the Gate alliance against coal-seam gas, we are involved in campaigns against the expansion of the domestic and export coal industries’<sup>28</sup>
- **World Wide Fund for Nature Australia** advocates ‘a switch to 100% renewable energy’ and ‘a phase out of fossil fuel exports’<sup>29</sup>
- **The Wilderness Society:** ‘Our fossil fuels campaign seeks to keep globally significant reserves of oil, gas and coal in the ground by halting new large projects proposed in marine and terrestrial wilderness areas throughout Australia.’<sup>30</sup>

### Excerpt from *Stopping the Australian coal export boom manifesto*<sup>31</sup>

Program management structure



<sup>28</sup> Friends of the Earth Australia, [Climate Justice](#). See also Section 3.2 below.

<sup>29</sup> World Wide Fund for Nature Australia, [How should Australia contribute to a climate change solution?](#)

<sup>30</sup> The Wilderness Society, [Fossil Fuels](#).

<sup>31</sup> See John Hepburn (Greenpeace Australia Pacific), Bob Burton (Coalswarm) and Sam Hardy (Graeme Wood Foundation), [Stopping the Australian coal export boom: Funding proposal for the Australian anti-coal movement](#), November 2011, p. 12.

Greenpeace Australia Pacific was a primary author of the 'Stopping the Australian coal export boom' manifesto, which set forth a strategy for disrupting and delaying key coal projects. Lock the Gate Alliance is listed as a strategic adviser. 350.org Australia, an unregistered entity that is affiliated with Friends of the Earth Australia (which is registered) is also nominated as a key contributor (see Section 3.2 below).

### 2.3 Are taxpayers subsidising undeclared political activity?

Under the *Commonwealth Electoral Act 1918*, third parties or organisations that incur political expenditure (other than registered political parties, candidates and Federal government agencies) are required to disclose those sums to the Australian Electoral Commission (AEC).

The AEC states that:

Political expenditure is expenditure incurred by a person or organisation, or with their authority, on:

- public expression of views on a political party, candidate in an election or member of the Commonwealth Parliament by any means,
- public expression of views on an issue in an election by any means,
- printing, production, publication, or distribution of any material that is required under s328, s328A or s328B of the Act to include a name, address or place of business,
- 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.
- opinion polling and other research relating to an election or the voting intention of electors.<sup>32</sup>

According to AEC, the following registered environmental organisations disclosed the following amounts as being expended during the 2013 Federal election (Table 1):

**Table 1: Declared political expenses of selected registered environmental organisations, 2013 Federal Election (\$A)**

	Public expression of views on party, candidate or member	Public expression of views on federal election issue	Printing, production, publication or distribution of material requiring authorisation	Broadcast of political matter requiring authorisation	Opinion polling or research on election issue or voting intentions	Total by entity
<b>Australian Conservation Foundation</b>	26,578	8,333	56,402	0	116	91,429
<b>The Climate Institute (Australia)</b>	9,650	0	27,500	5,900	38,650	81,700
<b>Greenpeace Australia Pacific</b>	53,641	0	0	0	0	53,641
<b>World Wide Fund for Nature Australia</b>	0	0	695,373	0	46,310	741,683
<b>Total by AEC category</b>	89,869	8,333	779,275	5,900	85,076	
					<b>Grand total</b>	<b>968,453</b>

Source: Organisations' Third Party Returns of Political Expenditures to the Australian Electoral Commission

<sup>32</sup> Australian Electoral Commission, [Third parties incurring political expenditure](#), updated 11 September 2014.

The AEC figures show that the individual organisations listed spent these amounts:

- Australian Conservation Foundation: \$91,429
- The Climate Institute (Australia): \$81,700
- Greenpeace Australia: \$53,641
- World Wide Fund for Nature Australia: \$741,683

In the same financial year (or calendar year in the case of Greenpeace) these four organisations received and spent the following amounts:

**Table 2: Income and expenses of selected registered environmental organisations (\$A millions)**

Entity and reporting period	Gross Income	Donations and bequests	Total expenses	Campaign expenses
Australian Conservation Foundation (2013-14)	12.4	10.3	12.9	5.9
The Climate Institute (Australia) (2013-14)	1.9	1.4	2.1	Not specified
Greenpeace Australia Pacific (calendar 2013)	20.2	17.2	16.3	9.2
World Wide Fund for Nature Australia (2013 - 14)	29.8	28.9	29.7	11.6 ('domestic projects')

Source: Organisations' Annual Information Statements to the Australian Charities and Not-for-profits Commission and their annual financial reports

Based on these sets of publicly available figures, the MCA estimates that in 2013-14, these four organisations declared the following shares of spending as political expenditure:

- Australian Conservation Foundation: 0.71 per cent of total expenses and 1.55 per cent of campaign expenses
- The Climate Institute (Australia): 3.85 per cent of total expenses
- Greenpeace Australia Pacific: 0.33 per cent of total expenses and 0.58 per cent of campaign expenses
- World Wide Fund for Nature Australia: 2.50 per cent of total expenses and 6.38 per cent of campaign expenses

The issue these figures raise is that some registered environmental organisations incurred expenditure on activities that could be regarded as political outside of defined election periods, but had no requirement under the Commonwealth Electoral Act to disclose them.

The *Income Tax Assessment Act 1997* contains no guidance on what activities could be described as political or advocacy versus what activities could be considered informational or educational.

This risk is exemplified by the apparent funnelling of tax-deductible donations through a registered environmental organisation (the Rainforest Information Centre) to the Greens party. Amended minutes of a 2002 meeting of the Queensland Greens state that:

The NSW Greens are having a 'We don't take money from developers' campaign and have asked us to abide by this. We have been asked to ask ecologically sensitive developers who wish to donate to donate to the Rainforest Information Centre's account which they have agreed to pass on to us. **Drew [Hutton] moved that 'we approve that donations be made to the Rainforest Information Centre who will**

**reroute the money to the Queensland Greens. John [McKeon] seconded. Approved by consensus.**<sup>33</sup>

Similarly, a 2012 media release from the Queensland Greens revealed:

Prominent Queensland Greens member Libby Connors and her husband, Drew Hutton, President of Lock the Gate Alliance will travel to the United States to help uncover adverse impacts of coal seam gas and shale gas mining ...

Dr Connors said the trip was partly self-funded and **partly covered by donations from Lock the Gate supporters.**<sup>34</sup>

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<sup>33</sup> See [Amended Minutes of the Queensland Greens Management Committee meeting](#), 8 August 2002, p. 7 (emphasis added) and Hansard, Joint Standing Committee on Electoral Matters, [Reference: Conduct Of The 2004 Federal Election And Matters Related Thereto](#), Canberra, 8 August 2005, p. EM78.

<sup>34</sup> Queensland Greens, [Qld Environmentalists' Frack Fact Finding Tour in USA](#), media release, 12 July 2012, emphasis added.

### 3 UNLAWFUL AND INAPPROPRIATE ACTIVITIES OF SOME REGISTERED ENVIRONMENTAL ORGANISATIONS

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- Some registered environmental organisations have been involved with illegal behaviour – contrary to both criminal and company law
- Some registered environmental organisations (and unregistered affiliates) may have breached the policy intent of the *Income Tax Assessment Act 1997*
- Nevertheless, these organisations are retaining their deductible gift recipient status.

#### 3.1 Unlawful and unsafe activities

It was noted in Section 1 that registered environmental organisations – like all not-for-profit organisations – must observe both criminal and company law. It was also noted that an additional code of conduct – which explicitly prohibits unlawful and unsafe activities – applies to those registered environmental organisations that are also registered charities. Notwithstanding these codes of conduct, there have been a number of registered environmental organisations – several of them with charitable status – that appear to have been involved or associated with illegal activities and behaviour. Moreover, these contraventions have involved serious and unnecessary risks to the safety of employees and volunteers in these organisations, as well as to other members of the community.

##### ***Greenpeace Australia Pacific***

Greenpeace Australia Pacific Limited is both a registered environmental organisation and a registered charity that is permitted to operate across Australia (except in the Northern Territory) as well as in Fiji and Papua New Guinea. Nonetheless, Greenpeace Australia Pacific has engaged in unlawful and unsafe activity, based on the following evidence:

We have blocked train lines, occupied Lucas Heights, trespassed at the Lodge, illegally raised banners at Parliament House, amongst many other activities ... This history of civil disobedience is part of a much bigger history of individuals and organizations prepared to violate the law ...<sup>35</sup>

In 2013, the CEO of Greenpeace Australia Pacific appeared to claim that his organisation was entitled to engage in illegal behaviour:

In a liberal democracy, citizens confronting a wrong are presented with a range of lawful options for making their views heard. These include rights under administrative law and such other procedural and legal mechanisms as may exist, campaigning through the media and in the community, political lobbying, and electoral participation.

Despite years of committed effort by thousands of Australian citizens, all available lawful options have proven wholly inadequate and ineffective for reining in the coal industry which is hell-bent on reckless expansion ...

It is the gulf between the scale and immediacy of the threat posed by the radical expansion of the coal industry and the absence of effective lawful options to address the hazard that creates the conditions in which civil disobedience is justified.<sup>36</sup>

On the basis of this evidence, it would be difficult to claim that the acts committed by Greenpeace Australia Pacific would be unintended, incidental or insignificant.

Further evidence includes:

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<sup>35</sup> Greenpeace Australia Pacific, [Greenpeace submission to the ATO discussion paper on changes to the Charities Bill 2003](#), 2011.

<sup>36</sup> David Ritter, Chief Executive Officer of Greenpeace Australia Pacific, [Coal, climate and civil disobedience](#), *The Drum*, 7 May 2013.

- In July 2008, four Greenpeace activists (three from Australia, one from Scotland) broke into Swanbank Power Station in Ipswich and scaled one of its 137-metre-high smokestacks. The activists spent 33 hours on top of the smokestack and one of them abseiled down it, painting graffiti in large letters. The activists pleaded guilty to charges of wilful damage, engaging in unregulated high-risk activity and trespass. The Scottish activist was placed on a \$500 two-year good-behaviour bond while the three Australian activists were each fined \$500. All four activists were ordered to pay \$23,241 in damages. A further nine activists, who were arrested before they could climb the smokestack, pleaded guilty to trespass and were fined \$300 each.<sup>37</sup>

Ipswich District Inspector Noel Power affirmed that the activists had put themselves in danger and used a considerable amount of police resources: 'This has involved a dedicated police response for two days. There have been other jobs the officers could have been attending to.'<sup>38</sup> The then Queensland Energy Minister, who had met with Greenpeace the day before, said: 'At no time did they say to me that they're going to have people breaking into property. It's quite unnecessary and irresponsible and extreme behaviour to be climbing the stack of a power station'.<sup>39</sup> Similarly, the then Shadow Minister for Police observed that the tying up of police, firefighters, paramedics and SES volunteers was an egregious misallocation of public resources: 'To tie our police and our emergency services in this way is totally irresponsible by these people and they must be brought before the court and dealt with accordingly'.<sup>40</sup>

Nevertheless, Greenpeace employee Julien Vincent was unrepentant, saying after his court appearance that he would do it all again.<sup>41</sup> Mr Vincent subsequently highlighted the relative leniency shown by Australian courts to activists who cite political motivations (Box 1).

#### Box 1: Statement on the 'emerging culture of activism' in Australia

The day after Julien Vincent was sentenced for illegal acts at Swanbank Power Station, he wrote the following comments in response to a blog that suggested British courts are more indulgent towards activists than Australian courts:

[T]here is a rising culture of climate change activism in Australia. 29 people were arrested at a protest at Bayswater power station in the Hunter Valley last weekend and I could roll off a list of actions that Greenpeace, other organizations, community groups and folk banded together to act [undertook] in the past year. I could well be missing a lot from overseas, but this seems fairly unique and **I think the leniency often used by our legal system reflects this emerging culture of activism ...**

The magistrate took a range of things into consideration, one of which was the cause that motivated the protest ... The Queensland Times had a print article today that quoted the magistrate as having said **ours was a 'political point made in a grand way' ...**

So yep, we were happy to plead guilty to the charges but it's certainly fair to say that the reason behind our protest factored in the final sentencing.<sup>42</sup>

Mr Vincent now runs Market Forces (see Section 3.2 below).

<sup>37</sup> See '[Calls for more smoke stack protest arrests](#)', *ABC News*, 11 July 2008; Anna Caldwell, '[Overnight demonstration fails to shut down Swanbank](#)', *Queensland Times*, 14 July 2008; Andrew Korner, '[Power protestor will pay compo](#)', *Queensland Times*, 23 August 2008; Shannon Molly, '[Swanbank smoke stack protesters avoid jail](#)', *Brisbane Times*, 4 November 2008; '[Greenpeace trio fined thousands over smoke stack stunt](#)', *ABC News*, 4 November 2008.

<sup>38</sup> Inspector Noel Power, Ipswich District Police, quoted in Anna Caldwell, op. cit.

<sup>39</sup> The Hon Geoffrey Wilson MP, then Queensland Minister for Mines and Energy, quoted in '[Minister slams "extreme activists" at Swanbank protest](#)', *ABC News*, 14 July 2008.

<sup>40</sup> The Hon Vaughan Johnson MP, then Queensland Shadow Minister for Police and Corrective Services, quoted in '[Calls for more smoke stack protest arrests](#)', *ABC News*, 11 July 2008.

<sup>41</sup> As reported in '[Greenpeace trio fined thousands over smoke stack stunt](#)', *ABC News*, 4 November 2008.

<sup>42</sup> Julien Vincent, online comments posted on 5 November in response to Graham Young, '[Climate Law Divergence](#)', *Ambit Gambit*, 4 November 2008, emphases added.



- In August 2009, Greenpeace activists shut down the Hay Point Export Coal Terminal near Mackay for more than 36 hours as they climbed coal-loading equipment and blockaded the port with their largest ship, the 72-metre diesel vessel *Esperanza*. Four activists chained themselves to the top of the terminal and dangled 50 metres above the ground. The *Esperanza* entered the waters at Hay Point without using a marine pilot – contrary to mandatory safety procedures – and anchored illegally for about five hours. This trespass and blockade cost BHP Billiton Mitsubishi Alliance approximately \$13 million and Queensland taxpayers approximately \$1 million in royalties.<sup>43</sup>

The Russian captain of the *Esperanza* pleaded guilty to three maritime offences and one criminal charge of failing to comply with the direction of a harbour master and was fined \$8,000. The presiding magistrate told the captain that ‘you were given warnings and you acted in complete defiance of those warnings’.<sup>44</sup> While charges against Greenpeace for unsafely operating a ship and failing to report a ship’s movements were dropped, 15 activists pleaded guilty to charges ranging from trespass to engaging in unregulated high-risk activity. Fines between \$300 and \$750 were handed down.<sup>45</sup> The then CEO of Greenpeace Australia Pacific fully endorsed this criminal behaviour, claiming that: ‘The real crime is the fact the coal industry continues to expand.’<sup>46</sup>

- In July 2011, two volunteers for Greenpeace Australia Pacific destroyed a genetically modified wheat crop, which had been engineered by the CSIRO to increase its nutritional value. The perpetrators were sentenced to a nine-month suspended gaol term for intentionally destroying Commonwealth property, while Greenpeace Australia Pacific was ordered to pay \$280,000 in reparations. Justice Penfold noted that the unlawful act was clearly carried out at either the instigation of Greenpeace, or with its backing. Justice Penfold said she hoped Greenpeace was also unaware of the full ramifications of the act, rather than ‘cynically’ exposing junior staff members to the justice system.<sup>47</sup> While the two Greenpeace volunteers expressed regret for their actions, a spokesman for Greenpeace Australia Pacific said they had been fully briefed beforehand by the organisation:

With all due respect to the judge all Greenpeace employees, activists [sic] involved in these types of activities, are fully briefed on what will happen and the consequences of what will happen ... Nobody does this in ignorance of the consequences. Jess and Heather are people of honest integrity. They undertook this action with their eyes wide open.<sup>48</sup>

The Australian Academy of Science condemned Greenpeace for acting against both science and its own stated objective:

This kind of mindless vandalism against science is completely unacceptable ... For an organisation that claims to be dedicated to the protection of the environment, this is an unconscionable act.<sup>49</sup>

- In April 2013, six Greenpeace activists (from five countries including Australia) illegally boarded MV Meister, a fully loaded bulk coal carrier bound for South Korea.<sup>50</sup> Without

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<sup>43</sup> See David Barbeler, ‘[Greenpeace ramps up coal protests](#)’, *Courier Mail*, 6 August 2009; ‘[Greenpeace protestors stop work at coal terminal](#)’, *Brisbane Times*, 7 August 2009; and Clare Chapman, ‘[Greenpeace ship’s captain fined](#)’, *Daily Mercury*, 11 May 2010.

<sup>44</sup> Magistrate Ron Muirhead, quoted in Clare Chapman, op. cit.

<sup>45</sup> See ‘[Greenpeace ship captain fined \\$8000](#)’, *Sydney Morning Herald*, 9 May 2010; ‘[Activists fined](#)’, *MyResources*, 28 April 2010.

<sup>46</sup> Linda Selvey, then Chief Executive Officer of Greenpeace Australia Pacific, quoted in ‘[Greenpeace ship captain fined \\$8000](#)’, *Sydney Morning Herald*, 9 May 2010.

<sup>47</sup> Louise Andrews, ‘[Guilty, but good behaviour wanted from Greenpeace activists](#)’, *Canberra Times*, 20 November 2012.

<sup>48</sup> Ben Pearson, Head of Programs, Greenpeace Australia Pacific, quoted in Louise Andrews, op. cit.

<sup>49</sup> Australian Academy of Science, ‘[GM crop destruction unacceptable: Academy of Science](#)’, 14 July 2011.

<sup>50</sup> According to [Section 51](#) of the *Commonwealth Crimes Act 1914*, an act of piracy means ‘an act of violence, detention or depredation committed for private ends by the crew or passengers of a private ship or aircraft and directed: (a) if the act is done on the high seas or in the coastal sea of Australia – against another ship or aircraft or against persons or property on board

warning the captain or crew, the activists scrambled aboard the bulk carrier from small boats as it left Abbot Point.<sup>51</sup> After spending a fruitless night on deck, the activists were allowed off the ship by the captain, who slowed the vessel so they could disembark safely. Activist Emma Giles reported: 'He showed concern for our safety and offered us medication and water if we needed it'.<sup>52</sup> A spokeswoman for Greenpeace Australia Pacific said the action was part of larger push for a 'campaign of civil disobedience' against the coal industry.<sup>53</sup> No charges were laid against Greenpeace for this dangerous violation of international maritime law. In its annual report for 2013, Greenpeace International celebrated the MV Meister incident as a 'highlight' of its fleet's operation for that year.<sup>54</sup>

### **Lock the Gate Alliance**

Like Greenpeace Australia Pacific, Lock the Gate Alliance is both a registered environmental organisation and a registered charity. Lock the Gate Alliance appears to have encouraged and supported illegal and dangerous actions in its campaign against gas and coal mining. Evidence includes:

- In January 2013, Lock the Gate Alliance participated in an unlawful blockade of a gas exploration operation in Glenugie near Grafton. Activists attempted to stop the delivery of equipment to the site and some locked themselves onto equipment, trees and structures. The blockade was broken by the NSW Public Order and Riot Squad and 18 people were arrested on 25 charges including resisting and hindering police in the execution of their duty, obstructing paths and destroying or damaging property.<sup>55</sup> Lock the Gate Alliance even boasted in a media release of the extraordinary police resources that the blockade had consumed: 'It took a force of about 80 police nine hours to clear the blockaders and eighteen people were arrested'.<sup>56</sup>
- Between March and May 2014, Lock the Gate Alliance participated in a blockade of Peter Graham, a dairy farmer in Bentley who allowed Metgasco to drill a gas well on his land. The blockade was led by an unknown organisation called Front Line Against Gas, whose spokeswoman, Naomi Tarrant, had been arrested with Lock the Gate Alliance National President Drew Hutton the year before at a blockade near Kyogle.<sup>57</sup> In the article 'Front Line takes control at Bentley' published by *The Nimbin GoodTimes*, Ms Tarrant was quoted as follows:

With operational activities scheduled to begin any day now, we have blocked the main drive to the planned exploration site and we will continue use non-violent direct action to safely protest and halt any upcoming operational activities.<sup>58</sup>

The activists built a blockade across Mr Graham's driveway from star pickets with steel spikes welded to the end, splayed in several directions (see image below).<sup>59</sup> An activist on the ground described another dangerous device, known as the 'dragon':

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another ship or aircraft; or (b) if the act is done in a place beyond the jurisdiction of any country – against a ship, aircraft, persons or property.' This definition is consistent with international maritime law (see the International Maritime Organization, [Piracy and Armed Robbery against ships](#).)

<sup>51</sup> Owen Jaques, '[Greenpeace activists back on Rainbow Warrior ship](#)', *Daily Mercury*, 25 April 2013.

<sup>52</sup> '[Coal ship activists head back to Cairns](#)', *news.com.au*, 25 April 2013.

<sup>53</sup> Georgina Woods, Senior Climate Campaigner, quoted in Owen Jaques, op. cit.

<sup>54</sup> Greenpeace International, [Annual Report 2013](#), p. 11.

<sup>55</sup> See '[Glenugie Blockade: 18 arrested, 25 charges laid](#)', *The Northern Star*, 7 January 2013 and '[Metgasco starts Glenugie drilling](#)', *The Northern Star*, 12 January 2013.

<sup>56</sup> Lock the Gate Alliance, '[Glenugie Blockade shows fighting spirit against coal seam gas in Northern Rivers](#)', media release, 7 January 2013.

<sup>57</sup> Hamish Broome and staff reporters, '[Metgasco secures drilling rig at Doubtful Creek](#)', *The Northern Star*, 7 February 2013.

<sup>58</sup> Naomi Tarrant, spokeswoman for Front Line Against Gas, '[Front Line takes control at Bentley](#)', *The Nimbin GoodTimes*, 3 March 2014, p. 4.

<sup>59</sup> Hamish Broome, '[Anti-CSG activists block access to Bentley farmer's property](#)', *The Northern Star*, 8 April 2014.

In the Bentley case, there are more than ten devices in the Rosella driveway. Some are dragons. The thought of a dragon sends shivers down the spine: it means under the surface is a configuration of welded metal set in concrete. It acts as an anchor and the simmos [activists who deliberately obstruct police] lock deep down into it. When a dragon is in action everything stops. Overnight a new lock-on had been installed at the Rosella gate.<sup>60</sup>

### Illegal barricade imposed on private property in Bentley<sup>61</sup>



Peter Graham warned that the blockade was jeopardising public safety and preventing him from farming:

Now they've gone another step [from driving metal pickets into the road surface] and put these dangerous spikes, and they are dangerous spikes, that they've put in the roadway to stop trucks.

But to me it's more of a safety for a person, them or ourselves, but they are such a permanent structure that it's going to be difficult to remove this issue now. They're right in the driveway of our entry into our property.

Look there's no doubt that there is another entrance, but this is one of the main entrances that we use when we're moving livestock or moving machinery. Lock the Gate tell us that they're not interfering with the farmer, but what they don't understand is how an operating farm works.<sup>62</sup>

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<sup>60</sup> Margie Cameron, '[Protected hills: How one person saw the Bentley blockade](#)', *Echo NetDaily*, 1 April 2014.

<sup>61</sup> Sourced from the Hon Anthony Roberts MP, then NSW Minister for Resources and Energy and Special Minister of State, '[NSW Government condemns unlawful damage to private property](#)', media release, 16 April 2014.

<sup>62</sup> '[Gas land owner says Bentley protestors jeopardise safety](#)', *ABC News*, 4 March 2014.

In addition, five activists subjected Mr Graham to verbal abuse that 'left him shaking'.<sup>63</sup>

The NSW Minister for Resources and Energy was unequivocal in his judgment of the Bentley activists:

[T]he Minister condemned the unlawful behaviour of extremist protestors at the Bentley Farm, near Casino, in Northern NSW ...

Since the establishment of the camp protestors have continuously entered Mr Graham's property illegally and caused deliberate damage. This includes chaining, padlocking and welding gates, and laying barriers of concrete and metal spikes on driveways.

Mr Roberts said this behaviour was unacceptable and would not be tolerated.<sup>64</sup>

Lock the Gate Alliance spokesman Ian Gaillard was prominent at the Bentley blockade, having established the activist camp on property next to Mr Graham's farm.<sup>65</sup> Mr Gaillard told local media in March 2014 that he was not complicit in confrontations with police: 'I would not promote it, but I would understand'.<sup>66</sup> However, in April 2014 Mr Gaillard was photographed at the front of the blockade, handing police a letter of 'take notice'.<sup>67</sup> He also declared that activists would not allow Metgasco to start drilling at Bentley, even if the NSW Government passed legislation banning protests at drilling sites.<sup>68</sup> In April 2015, Metgasco said it would need police to escort gas drilling equipment onto its site.<sup>69</sup>

#### **Additional evidence:**

- The Leard Forrest Alliance, which includes five registered environmental organisations,<sup>70</sup> has continually obstructed Whitehaven Coal's operations at Maules Creek. There have been over 350 arrests at Whitehaven's Maules Creek site, with an 'estimated 4000 people [who] have come through the camp in that time'.<sup>71</sup> One activist, who is employed by 350.org Australia and works with Quit Coal, Friends of the Earth and Front Line Action on Coal was arrested on 31 October 2014 after 'climbing a tripod and disrupting hauls [sic] trucks leaving the company's Tarrawonga mine'.<sup>72</sup>

Idemitsu Australia Resources, which operates the nearby Boggabri Coal mine, has been reported as spending \$40,000 per week 'on security to protect its operations from attacks by anti-coal protesters'.<sup>73</sup>

- An blockade of a proposed liquid natural gas project north of Broome, which was led by the Wilderness Society, necessitated a major police operation cost Western Australian taxpayers \$1 million over 10 days.<sup>74</sup>

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<sup>63</sup> Hamish Broome, '[Confrontation with protesters "left me shaking", says farmer](#)', *The Northern Star*, 8 April 2014.

<sup>64</sup> The Hon Anthony Roberts MP, then NSW Minister for Resources and Energy and Special Minister of State, '[NSW Government condemns unlawful damage to private property](#)', media release, 16 April 2014.

<sup>65</sup> Geoff Chambers, '[Angry army of anti-gas protesters waits for police on NSW far north coast](#)', *Daily Telegraph*, 26 April 2014.

<sup>66</sup> Hamish Broome, '[Bentley protest justified, say organisers](#)', *The Northern Star*, 18 March 2014.

<sup>67</sup> See Sean Nicholls and Samantha Walton, '[Metgasco wins challenge to Bentley suspension](#)', *The Land*, 24 April 2015.

<sup>68</sup> Chris Calcino and Hamish Broome, '[Metgasco confirms they will seek compensation](#)', *Daily Mercury*, 24 April 2015.

<sup>69</sup> Sean Nicholls and Anne Davies, '[Metgasco wants police help for gas drilling in Bentley after court victory](#)', *Sydney Morning Herald*, 24 April 2015.

<sup>70</sup> Namely Greenpeace Australia-Pacific, Lock the Gate Alliance, the Wilderness Society, Friends of the Earth Australia and the Nature Conservation Council of NSW.

<sup>71</sup> See Front Line Action on Coal, '[Brisbane Residents converge on CommBank to save the reef](#)', media release, 22 May 2015 and Andy Paine, '[Two and a half years on the front lines against coal](#)', *andypaine*, 13 May 2015.

<sup>72</sup> Vicky Validakis, '[Batman protester targets Whitehaven Coal haul trucks](#)', *Mining Australia*, 31 October 2014.

<sup>73</sup> Ross Tyson, '[Bill of rights – Leard forest protesters won't be moved](#)', *Northern Daily Leader*, 11 January 2014.

<sup>74</sup> Anne-Louise Brown, '[\\$1 million taxpayer bill for police at Broome protest](#)', *WA Today*, 15 May 2012.

### 3.2 Using donations for purposes other than environmental conservation, education or research

The *Income Tax Assessment Act* stipulates that environmental organisations can only use donations to fund activities that conserve or improve the natural environment. The Act also requires that registered environmental organisations do not act as a mere conduit for the donation of money or property to other entities or individuals. Under guidance published by the Department of the Environment, registered environmental organisations may pay other organisations to undertake natural conservation projects, but they cannot act as collection agencies for tax-deductible donations which donors intend to be passed on to other organisations or persons (recall Section 1.2).

#### **Organisations claiming tax deductibility status**

Friends of the Earth Australia is a registered environmental organisation that openly campaigns against the nuclear industry, free trade and genetically modified food.<sup>75</sup> On its website Friends of the Earth lists 13 other activist organisations that it describes as ‘affiliates’.<sup>76</sup> Friends of the Earth claims that three of its affiliates are eligible for tax-deductible donations, namely:

- CounterAct (see Box 2 overleaf)
- Market Forces
- Public Transport Not Traffic

As at 28 May, all three of these organisations claim on their websites that donations to their organisations are tax deductible.<sup>77</sup> However, none of these organisations are listed on the Register of Environmental Organisations. Based on the *Income Tax Assessment Act 1997*, it would appear that Friends of the Earth Australia have incorrectly endorsed unregistered affiliates as deductible gift recipients, rather than advising them to make separate applications to the ATO through the proper channels. By the same token, it seems that CounterAct, Market Forces and Public Transport Not Traffic have incorrectly claimed deductible gift recipient status by referencing a ‘parent’ who is.

In addition to claiming deductible gift recipient status for three affiliates, Friends of the Earth Australia apparently endorses another anti-development organisation, 350.org Australia. According to 350.org:

For those able to donate \$1,000 or more, your donation can be made tax deductible through the assistance of Friends of the Earth (FOE) in Australia. Please make cheques payable to the Friends of the Earth Australia Fund – if mailing a cheque, please attach a note stating it is for the 350.org Australia project.<sup>78</sup>

In the example of 350.org Australia, it is unclear under the *Income Tax Assessment Act 1997* whether the mere promotion or publicising of environmental campaigns is sufficient justification to claim that 350.org Australia is eligible to receive such endorsement from Friends of the Earth and claim tax deductibility status.

At the very least, this evidence highlights that there is a strong need to amend the legislation to make it clear how registered environmental organisations can use donations. Similarly, greater certainty is required regarding the rules for ‘sharing’ deductible gift recipient status between affiliates.

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<sup>75</sup> See Friends of the Earth Australia, [Anti-nuclear & Clean Energy \(ACE\) Campaign: Trade and Corporates](#); and [Sustainable Food and Agriculture](#).

<sup>76</sup> Friends of the Earth Australia, [Affiliates](#).

<sup>77</sup> On its website [homepage](#), CounterAct asserts that: ‘We’re funded by individual, tax deductible donations. Support us, to support many campaigns’.

Market Forces claims on its website that: ‘Remember that your donations are tax deductible and our parent organisation, Friends of the Earth, will send out a receipt for your donations at the end of the financial year.’ See Market Forces, [Single donation – thank you](#); and [Regular donor – thank you](#).

On its website, Public Transport Not Traffic writes: ‘Please note: Friends of the Earth (FOE) is handling the administration of donations, so when you make an online donation, you’ll be emailed a tax-deductible receipt from FOE as well as a PayPal receipt’ (Public Transport Not Traffic, [Donate](#)).

<sup>78</sup> 350.org Australia, [Donate](#).

## Box 2: Are taxpayers subsidising activist training?

CounterAct is a group that provides training in civil disobedience and campaigning for anti-development activists. It calls on supporters to 'CounterAct the corporate-government system with training and skills to grow your community or campaign' and notes that:

We have run workshops for, or collaborated with, The Wilderness Society, Quit Coal, Australian Youth Climate Coalition, Leard Forest Alliance, Friends of the Earth, Lock the Gate, Save Bastion Point, No Macca's in Tecoma, Greenpeace, Broome No gas, the East West tunnel campaign and others.<sup>79</sup>

The workshops run by CounterAct include the following topics::

Campaign strategy and planning tools – Facilitation and group dynamics – Conflict resolution Introduction to Nonviolent Direct Action (NVDA) – Philosophy and history of NVDA – Case studies of effective NVDA worldwide – Action Planning for NVDA/Civil disobedience – Traditional and social media skills – Activist legal rights and legal observing – Street medics: first aid for activists – Police liaison... and more.<sup>80</sup>

The observations of a journalist who attended a CounterAct workshop on 'non-violent direct action' in March 2015 are revealing:

NVDA, we are told from the beginning of the day by convenor Nicola Paris, is all about 'putting bodies in the way of business as usual'. There are other terms for NVDA: people power, civil resistance, satyagraha, nonviolent resistance, pacifica militancia, and positive action ...

So here I find myself learning about the long history of NVDA, and being run through the personal legal ramifications if I should find myself arrested. I am given floor space and a partner to practise [sic] my ability to become a total dead weight, so that if I am ever arrested, it will be that much more difficult for police officers to drag me away.

At some stage of the day we are handed an information sheet that lists the '198 methods of nonviolent action'. These methods are broken up into three categories: protest and persuasion (for example, picketing, staging mock funerals, skywriting), non-cooperation (striking, boycotting, orchestrating a sitdown) and intervention (organising a pray-in, guerilla theatre, land seizure). We spend our time very much focusing on the latter, and the war stories from the half-dozen presenters rapidly pile up.<sup>81</sup>

On its website, CounterAct have published a 'logistics checklist for people preparing for community blockades' as well as 'a hand out on the role of police liaison and you can check out an FAQ [frequently asked questions] to blockade basics for people who have never been to a community blockade before'.<sup>82</sup> (See also images overleaf.)

It appears from this evidence that CounterAct (and Friends of the Earth Australia) believe that teaching people how to confront and obstruct police is a legitimate ground for claiming tax-deductible donations:

We are under attack with the LNP government coming out swinging at environment groups. And our work through Friends of the Earth is their number one target ...

When you donate to CounterAct all proceeds go 100% towards training, resource development and capacity building.

**We are an affiliate member of Friends of the Earth (Australia) and donations are completely tax deductible.**<sup>83</sup>

<sup>79</sup> CounterAct, [About](#).

<sup>80</sup> Friends of the Earth Australia, [Affiliates](#).

<sup>81</sup> Sam Cooney, '[Learning the tricks of nonviolent direct action](#)', *The Saturday Paper*, 14 March 2015.

<sup>82</sup> CounterAct, [Resources](#).

<sup>83</sup> CounterAct, [Donate](#), emphasis added.

## Excerpts from CounterAct's website<sup>84</sup>



[About](#) [News](#) [Projects](#) [Resources](#) [Events](#) [Contact Us](#) [Donate](#)

### Legal

In choosing to participate in peaceful civil disobedience actions you can often come face to face with police. Here are some tools to assist you – firstly, with understanding your legal rights when participating in actions, but also some tips in dealing with police, as well as minimising the information you share with them if they happen to want to keep an eye on you.

#### Police liaison

- Our guide for the role of [police liaison](#)
- [Facing police at protests](#) – great overview from Activist Rights website

#### LEGAL

Be aware that some information on external websites listed may be out of date, or only relevant to various state jurisdictions. Please ensure you double check or get legal advice before relying on any information linked below.

- [Environmental Defenders Office](#) – find your local EDO and fact sheets for your state here

### Projects

Here are some of the programs we have run, and folks we have been working with and supporting:

- [The Change Course](#) – *Practical skills for advocacy and campaigning*. Running for the second year in June 2014. This gave a broad overview of skills needed to be an effective campaigner. From community organising, to social media and fundraising, we covered a great set of tools to take away, increasing skills, and developing better capacity in the areas our participants work in.
- [Melbourne Activist Legal Support](#) is a new group we are working with to support social movements in Melbourne with legal observer training, and legal rights briefings for activists.
- Melbourne Campaigners Network holds regular gatherings for campaigners, activists, and organisers to discuss ideas, exchange resources and discover new approaches to social change. We co-convene this [regular event](#) with Plan to Win.
- Climate movement – We have supported many groups on this issue over a number of years now – both in Melbourne, and through training at national events, such as Climate Camps, Switch off Hazelwood, and a series of 'Act Up' convergences at the [Maules Creek mine](#) in Leard state forest, NSW. We work with [Quit Coal](#), [Lock the Gate](#) and [Gasfield Free Seaspray](#). Most recently we helped to establish Direct Action Melbourne, a network of groups working together on nonviolent direct actions relating to climate change.
- James Price Point (Walmadan) We visited and worked with the 'Broome No Gas' community campaign several times since first being invited to run nonviolent direct action training in 2011. An inspiring and ultimately successful campaign – you can read about their significant win [here](#). We developed and contributed to this excellent [camp booklet](#) which may be helpful for many other campaigns also.

We are also working on developing [resources](#) for Australian campaigners, and will be continuing to add to, and expand our list of some great tools for campaigners from around the world. We [released](#) a needs analysis for activist training in Australia in early 2014.



<sup>84</sup> See CounterAct, [Resources: Legal](#) and [Projects](#).

### ***Is it permissible to use tax deductible donations to pay court fines?***

There is evidence that anti-development activists may be using tax-deductible donations to pay penalties for illegal acts. This appears to be in contravention of the *Income Tax Assessment Act 1997*, Section 30.265 which defines the principle purposes of registered environmental organisations. Specifically, it is hard to see as legitimate that donations made for the protection or enhancement of the environment or the provision of information or education can be used to pay for court fines.

In April 2015, activists who disrupted coal mining activity at Maules Creek were subjected to fines ranging from \$600 to almost \$8000. These activists had chained themselves to bulldozers, suspended themselves from trees and blocked gates and vehicles. Leard Forest Alliance spokeswoman Ros Druce said donations made to various anti-mining movements would help cover the costs of some fines.<sup>85</sup> Lock the Gate Alliance spokesman Phil Laird subsequently refused to clarify Ms Druce's comments.<sup>86</sup>

During a senate estimates hearing on 25 May 2015, Senator Matthew Canavan asked the Department of the Environment whether using tax-deductible donations to pay fines is legitimate. Deputy Secretary Steven Kennedy replied: 'It's not expressly prohibited.'<sup>87</sup> While such an act is not expressly prohibited, it also seems inconsistent with Section 30.270 of the *Income Tax Assessment Act*, which states that a registered environmental organisation 'must have a policy of not acting as a mere conduit for the donation of money or property to other organisations, bodies or persons.'<sup>88</sup> If there is any ambiguity about the illegality of paying fines using donations collected by a registered environmental organisation, it should be cleared up as soon as possible.

### ***Promoting for-profit activities***

'Brand licensing' is an important source of fundraising for some registered environmental organisations. This consists of:

A licensing agreement [that] grants a manufacturer the right to develop, market and sell approved products (typically leveraging a company's brand name, logo(s), mark(s) and/or licensable assets) to approved retailers in return for payment — typically a royalty and guarantee based on wholesale sales as specified in the license agreement.<sup>89</sup>

Sungevity and Powershop sell their product through Australian environmental organisations in return for commissions or royalties. For every customer who goes 'solar with Sungevity', up to \$250 is donated to selected entities. To date, Sungevity has paid \$45,910 in commissions to various 'not-for-profit' environmental groups, including (but not limited to):

- Australian Conservation Foundation – product launched 20 May 2013, \$1200 raised to date
- Beyond Zero Emissions – product launched 22 May 2013, no funds declared to date
- World Wide Fund for Nature Australia's Earth Hour – product launched 2 December 2014, \$750 raised to date
- Lock the Gate Alliance – product launched 10 April 2014, \$2260 raised to date.<sup>90</sup>

Sungevity also supports the anti-coal Sierra Club<sup>91</sup> in the United States, sending 'USD750 to your local Sierra Club chapter'.<sup>92</sup>

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<sup>85</sup> ['Big fines for area's protesters'](#), *The Courier*, 2 April 2015.

<sup>86</sup> 'Greenies cough up for activists' fines', *Courier Mail*, 23 May 2015, p. 5.

<sup>87</sup> ['Green groups can pay fines with donations'](#), *The Australian*, 25 May 2015.

<sup>88</sup> Commonwealth of Australia, *Income Tax Assessment Act 1997*, [Section 30.270](#).

<sup>89</sup> Perpetual Licensing, [How Brand Licensing Works](#).

<sup>90</sup> Sungevity, [Partners](#).

<sup>91</sup> See John Hepburn (Greenpeace Australia Pacific), Bob Burton (Coalswarm) and Sam Hardy (Graeme Wood Foundation), [Stopping the Australian coal export boom: Funding proposal for the Australian anti-coal movement](#), November 2011, pp. 11, 15.

<sup>92</sup> Sierra Club, [Go solar with Sungevity and the Sierra Club](#).



Powershop has brand licensing arrangements in place with Beyond Zero Emissions<sup>93</sup> and Environment Victoria.<sup>94</sup>

It appears inconsistent with the intent of the legislation that covers registered environmental organisations for these organisations to be receive a taxpayer funded benefit while also using their 'brand' as a way to engage in for-profit ventures.

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<sup>93</sup> Energy Freedom, [Switch to an energy retailer that supports clean energy.](#)

<sup>94</sup> Environment Victoria, [Switch to greener, cheaper electricity.](#)

## 4 FEDERAL MONITORING AND ENFORCEMENT

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- There is no systematic process for assessing how registered environmental organisations are using tax-deductible donations and whether such use is legitimate
- There is a strong case for increasing both the transparency and quality of financial reporting, particularly for large registered environmental organisations
- Transferring administration of the Register from the Department of the Environment to the ATO would be a logical step towards greater scrutiny and more effective enforcement.

### 4.1 Lack of transparency – flexible self-reporting

As noted in Section 1.2, the *Income Tax Assessment Act 1997* requires registered environmental organisations submit statistical information to the Secretary of the Environment ‘within a reasonable period after the end of each income year’. The Department of the Environment clarifies that the submission of statistical information need not include an audited financial statement.<sup>95</sup> However, the Department may request an audited financial statement as part of its assurance programme for the Register, and initiate action to remove any organisation that refuses to comply.<sup>96</sup>

Nonetheless, there is no systematic process for assessing how registered environmental organisations are using tax-deductible donations, and whether such use is consistent with a principal purpose of conserving or improving the natural environment (or conducting related education or research). While registered environmental organisations are required to provide the Department with ‘a brief statement on environmental outcomes for the financial year’, these statements are not made available for public scrutiny, even for large organisations whose revenue exceeds \$1 million per year.

Flexible self-reporting was probably reasonable in previous years, when the Register of Environmental Organisations was smaller and listed entities were generally concerned with conservation and other practical environmental projects. But given the large number of listed entities today, there is a strong case for increasing both the transparency and quality of financial reporting, particularly for large organisations.

### 4.2 Insufficient administrative oversight – ‘set and forget’

A striking feature of the Register of Environmental Organisations is that once entities are listed, their registration persists by default. While the Australian Charities and Not-for-profits Commission publishes updates of entities that have had their charitable status revoked,<sup>97</sup> the Department of the Environment does seem to provide similar information for registered environmental organisations.

The MCA understands that at present, only one employee in the Department of the Environment is responsible for administering the Register. If this level of resourcing is correct, it is plainly insufficient to administer over 600 organisations claiming tax concessions.

The ATO expects all deductible gift recipients to conduct and document self-reviews on an annual basis, as they have a legal obligation to advise the ATO if they have deviated from the purpose for which they were endorsed (recall Section 1.2). Transferring administration of the Register of the Environmental Organisations from the Department of the Environment to the ATO would be a logical step towards greater scrutiny of listed entities and more effective enforcement of the Income Tax Assessment Act.

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<sup>95</sup> Department of the Environment, [Register of Environmental Organisations: Frequently Asked Questions](#), p. 4.

<sup>96</sup> Department of the Environment, [Register of Environmental Organisations 2014 Statistical Return](#), p. 1.

<sup>97</sup> See, for example, Australian Charities and Not-for-profits Commission, [Notice of revocation of listed charities: Revocation effective 30 March 2015](#).

## 5 LESSONS FROM COMPARABLE COUNTRIES

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- Developments in New Zealand and Canada, while pertaining to registered charities, are relevant to the concerns of the House of Representatives Standing Committee on the Environment Inquiry into the Register of Environmental Organisations
- A 2014 decision of the New Zealand Supreme Court on the charitable status of Greenpeace confirmed that unlawful activities preclude charitable status, and that the public benefit of a charity's purpose must be proven where it is abstract or not self-evident
- In Canada, charities can spend no more than 10 per cent of their resources on political advocacy, and that advocacy must be non-partisan and secondary to their charitable purpose.

### 5.1 New Zealand

In August 2014, a majority of the New Zealand Supreme Court handed down a significant decision regarding the charitable status of entities that have political purposes (*Re Greenpeace of New Zealand Incorporated: An appeal from a decision of the Charities Commission under the Charities Act 2005*). The Court ruled that while charities that have political purposes are not by that fact prevented from obtaining charitable status, the following caveats apply:

- An entity that engages in political advocacy must have a purpose that is consistent with the legal understanding of charity, and the means by which that entity pursues its purpose are important in determining if a public benefit exists
- If public benefit is not self-evident, it must be proved by evidence. Entities that can show tangible good in the work that they do (e.g., housing or feeding those in need) can establish 'charitable purpose' more easily than those who only promote ideas *they* consider to be of public benefit. Further, uncontroversial abstractions are not exempt from this requirement.
- Illegal purposes – whether stated openly or implicit in continual misconduct – are not charitable purposes and therefore prevent an entity from obtaining charitable status.<sup>98</sup>

New Zealand legal firm Bell Gully sums up the Court's judgment as follows:

The Court's decision has immediate impacts for Greenpeace's and other entities' ability to obtain the benefits of 'charitable entity' status. But the decision isn't a watershed one that effectively redefines all political advocacy as a 'charitable purpose' under section 5 of the Charities Act 2005. Rather, the Court has confirmed that a 'charitable purpose' generally involves 'tangible public utility'. Consequently, the continued need for public benefit means that it will be difficult for an organisation to show that the standalone promotion of an idea or cause is a 'charitable purpose' that supports granting it registration as a 'charitable entity'.<sup>99</sup>

This logic of the New Zealand Supreme Court is consistent with the terms of reference of the current inquiry, which focuses on the effectiveness of the Register of Environmental Organisations in supporting communities to take practical action to improve the environment. Those registered environmental organisations whose purposes are abstract or ideological should be required to demonstrate that their activities are delivering a tangible public benefit that justifies the tax concession granted to them.

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<sup>98</sup> Ian Gault and Rebecca Rose, [Supreme Court declares charities can be 'political', but no watershed decision](#), Bell Gully, 11 August 2014.

<sup>99</sup> *ibid.*

## 5.2 Canada

Under Canadian law, a registered charity may only engage in political behaviour if it devotes substantially all of its resources to charitable purposes and activities. 'Resources' include all of a charity's financial resources, capital assets, staff and volunteer time, and donated resources. In addition, a charity's political conduct must be non-partisan, connected to its charitable purpose and secondary to that purpose. An activity is presumed to be political if a charity:

- Explicitly encourages the public to contact a politician or public official to urge them to retain, oppose or change a law, policy or decision – whether by any level of government in Canada or abroad
- Explicitly communicates to the public that a law, policy or decision by any level of the Canadian Government (or government abroad) should be retained, opposed or changed
- Explicitly indicates in its materials (whether internal or external) that the intention of the activity is to incite, or organise to put pressure on, a politician or public official to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country; or
- makes a gift to another qualified recipient of donations to support political activities.<sup>100</sup>

The Canada Revenue Agency explains how the political activity rule is interpreted to avoid harming smaller charities:

When a charity takes part in political activities, the [Income Tax] Act requires that **substantially all** of its resources must be devoted to charitable activities ...

We usually consider **substantially all** to mean 90% or more. Any charity using at least this amount of its various resources for charitable work can be assured that we will not revoke its registration on the basis that it is not devoting enough of its resources to charitable activities. Therefore, as a general rule, we consider a charity that devotes no more than 10% of its total resources a year to political activities to be operating within the **substantially all** provision.

However, we recognize that this may have a negative impact on smaller charities. In an effort to alleviate this hardship, we will exercise our discretion and not revoke the registration of smaller charities for the excessive use of their resources on political activities as long as they meet the following administrative guidelines:

- Registered charities with **less than \$50,000** annual income in the previous year can devote up to 20% of their resources to political activities in the current year.
- Registered charities whose annual income in the previous year was **between \$50,000 and \$100,000** can devote up to 15% of their resources to political activities in the current year.
- Registered charities whose annual income in the previous year was between **\$100,000 and \$200,000** can devote up to 12% of their resources to political activities in the current year.<sup>101</sup>

The House of Representatives Standing Committee on the Environment may wish to consider whether there is any merit in adapting the Canadian rule for charities to registered environmental organisations in Australia.

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<sup>100</sup> Canada Revenue Agency, [Political activities basic requirements](#), date modified 12 March 2013.

<sup>101</sup> Canada Revenue Agency, [Political Activities: Policy Statement](#), Reference number CPS-022, effective date 2 September 2003, emphasis in original.

## 6 REFORM PROPOSALS

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- More rigorous monitoring and enforcement of existing rules by the ATO would strengthen the integrity of the Register of Environmental Organisations
- Any registered environmental organisation that has a track record of committing or promoting unlawful activities should be immediately struck from the Register
- The House of Representatives Standing Committee on the Environment may wish to consider recommending additional requirements to improve the transparency of the Register and prevent conduct by listed entities that is illegal, unsafe or politically partisan

The MCA considers that more rigorous monitoring and enforcement of existing rules would go a long way to strengthening the integrity of the Register of Environmental Organisations. This could include:

- Immediately deregistering any entity that has a track record of committing or promoting unlawful activities
- Transferring responsibility for administering the Register from the Department of Environment to the Australian Taxation Office (ATO)
- Leave to ATO discretion to conduct thorough audits where there is *prima facie* evidence that tax-deductible donations have been used for purposes other than environmental conservation, education and research
- Leave to ATO discretion as to whether to audit:
  - those entities that have falsely claimed deductible gift recipient status for their affiliates
  - those entities that are not listed on the Register yet have claimed deductible gift recipient status by referencing an affiliate who is
- Requiring registered environmental organisations to submit a written self-review of their purpose and activities to the ATO on an annual basis, to demonstrate their continued eligibility (the ATO currently advises all deductible gift recipients to conduct and document a self-review every year).
- Leave to ATO discretion to randomly audit 5 per cent of all registered organisations per annum.

In addition, the Committee may wish to consider the following:

- Whether there is a need to increase transparency requirements for the funding of registered environmental organisations, especially where there are foreign sources of revenue
- Whether there needs to be stricter enforcement of work health and safety laws for registered environmental organisations, where they have both paid employees and volunteers
- The implications of 2014 decision of the New Zealand Supreme Court on the charitable status of Greenpeace, which confirmed that unlawful activities preclude charitable status, and that the public benefit of a charity's purpose must be proven where it is abstract or not self-evident
- Whether there is any merit in adapting the Canadian rule for charities to registered environmental organisations in Australia, whereby entities can spend no more than 10 per cent of their resources on political advocacy, and that advocacy must be non-partisan and secondary to their charitable purpose.