



Australian Government

Government Response: House of Representatives Standing Committee on the Environment Report

Inquiry into the Register of
Environmental Organisations

November 2023

© Commonwealth of Australia 2023

ISBN: 978-1-925832-86-0

This publication is available for your use under a [Creative Commons Attribution 3.0 Australia](https://creativecommons.org/licenses/by/3.0/au/legalcode) licence, with the exception of the Commonwealth Coat of Arms, the Treasury logo, photographs, images, signatures and where otherwise stated. The full licence terms are available from <http://creativecommons.org/licenses/by/3.0/au/legalcode>.



Use of Treasury material under a [Creative Commons Attribution 3.0 Australia](https://creativecommons.org/licenses/by/3.0/au/legalcode) licence requires you to attribute the work (but not in any way that suggests that Treasury endorses you or your use of the work).

Treasury material used ‘as supplied’.

Provided you have not modified or transformed Treasury material in any way including, for example, by changing the Treasury text; calculating percentage changes; graphing or charting data; or deriving new statistics from published Treasury statistics — then Treasury prefers the following attribution:

Source: The Australian Government the Treasury

Derivative material

If you have modified or transformed Treasury material, or derived new material from those of the Treasury in any way, then Treasury prefers the following attribution:

Based on The Australian Government the Treasury data

Use of the Coat of Arms

The terms under which the Coat of Arms can be used are set out on the Department of the Prime Minister and Cabinet website (see <https://www.pmc.gov.au/honours-and-symbols/commonwealth-coat-arms>).

Other uses

Enquiries regarding this licence and any other use of this document are welcome at:

Manager
Media Unit
The Treasury
Langton Crescent
Parkes ACT 2600
Email: media@treasury.gov.au

In the spirit of reconciliation, the Treasury acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples.

Contents

- Overview3**
- Australian Government Response5**
 - Recommendation 1:5
 - Recommendation 2:6
 - Recommendation 3:7
 - Recommendation 4:8
 - Recommendation 5:9
 - Recommendation 6:10
 - Recommendation 711
 - Recommendation 8:12
 - Recommendation 9:13

Overview

The Australian Government notes the report by the House of Representatives Standing Committee on the Environment (the Committee) for the Inquiry into the Register of Environmental Organisations (REO).

The majority of the Committee's recommendations will be, or have been, addressed by the implementation of 2 reforms:

- transition of Deductible Gift Recipient (DGR) registers, implemented through the *Treasury Laws Amendment (Refining and Improving Our Tax System) Act 2023* (Cth)
- DGR to charities reform, implemented through the *Treasury Laws Amendment (2021 Measures No. 2) Act 2021* (Cth).

On 22 March 2023, the Australian Government introduced legislation to transfer the administration of the 4 unique DGR registers, including the REO, to the Australian Taxation Office (ATO). Following consideration by the Senate Economics Legislation Committee, the *Treasury Laws Amendment (Refining and Improving Our Tax System) Act 2023* (Cth) was passed by Parliament and received Royal Assent on 28 June 2023. The amendments will commence on 1 January 2024, which will make all DGR categories consistent in administration, reduce red tape imposed on endorsed organisations, and simplify the application process for organisations seeking DGR status.

From 14 December 2021, all non-government entities seeking or maintaining DGR endorsement (including environmental organisations) must be registered as a charity with the ACNC, providing consistent and appropriate regulatory oversight. Legislative amendments contained in *Treasury Laws Amendment (2021 Measures No. 2) Act 2021* (Cth) provided a twelve-month transition period and organisations had the ability to seek an extension for up to 3 years to comply with the charity registration requirement.

These reforms have been the subject of extensive consultation. The initial public consultation in 2017, which explicitly sought feedback on the recommendations of the Committee, attracted over 2,500 written submissions. The package of reforms was broadly supported by the not-for-profit sector and other key stakeholders. Subsequent consultation on the implementation of individual aspects of the reform package, including through the release of Exposure Draft legislation on the various Bills, have also been positively received by the sector.

These reforms address the Committee's concerns regarding environmental organisations and will ensure all DGRs are subject to appropriate oversight.

Australian Government Response

The Australian Government's response to the Inquiry into the Register of Environmental Organisations is set out in detail below.

Recommendation 1:

3.81 The Committee recommends that the Register of Environmental Organisations be abolished and that the administration process for endorsement as a Deductible Gift Recipient for environmental organisations be transferred wholly to the Australian Taxation Office.

The Government **supports** this recommendation.

On 22 March 2023, the Government introduced legislation to transfer the administration of the 4 unique DGR registers, including the REO, to the Australian Taxation Office (ATO). The *Treasury Laws Amendment (Refining and Improving Our Tax System) Act 2023* (Cth) received Royal Assent on 28 June 2023. The relevant amendments to the *Income Tax Assessment Act 1997* (Cth) commence on 1 January 2024 and repeal provisions that require each of the 4 government departments, including the Department of Climate Change, Energy, the Environment and Water, to maintain a separate register.

From 1 January 2024, the ATO will gain responsibility for assessing the eligibility of environmental organisations for DGR status, consistent with the other general DGR categories.

Recommendation 2:

3.81 The Committee recommends that registration as an environmental charity through the Australian Charities and Not-for-profits Commission be a prerequisite for environmental organisations to obtain endorsement as a Deductible Gift Recipient by the Australian Taxation Office.

The Government **supports** this recommendation.

The *Income Tax Assessment Act 1997* (Cth) (ITAA 1997) specifies that registration as a charity is a condition of eligibility for environmental organisations seeking DGR status (section 30-260).

To clarify, this requirement applies to the ‘general category of environment recipients’, that is, environmental organisations seeking DGR status under subsection 30-55(1), table item 6.1.1, which currently refers to the REO. It does not apply to the exceptional category of ‘specific environment recipients’, that is, those organisations seeking specific listing as a DGR under subsection 30-55(2).

This requirement was introduced under the *Treasury Laws Amendment (2021 Measures No. 2) Act 2021* (Cth), which made charity registration a condition of eligibility for all non-government DGRs (not including specific listings). The Act provided a transition period for those organisations (including environmental organisations) with DGR status that were not registered charities or operated by a registered charity at the time of their endorsement. Organisations had until 14 December 2022 to obtain an exemption from the Commissioner of Taxation from the registration requirement for a 3-year period. A limited number of organisations have obtained exemptions and will have until 14 December 2025 to obtain charity registration.

The relevant provisions in the ITAA 1997 relating to the requirement for charity registration are being amended by the *Treasury Laws Amendment (Refining and Improving Our Tax System) Act 2023* (Cth), but the requirement itself will not change. Schedule 3 of the Act, which will commence on 1 January 2024, will repeal the existing provisions that define environmental organisations (including section 30-260) and reinsert the requirement for charity registration, as a special condition under subsection 30-55(1), table item 6.1.1 in the ITAA 1997.

Recommendation 3:

3.88 The Committee recommends that the Treasurer and the Minister for the Environment pursue amendments to the Income Tax Assessment Act 1997 (Cth) to remove environmental Deductible Gift Recipients listed individually by name in the Act.

The Government **does not** support this recommendation.

The Government has the discretion to list entities by name in the *Income Tax Assessment Act 1997* (Cth) (ITAA 1997). The general approach of successive governments has been to specifically list an organisation as a DGR only in exceptional circumstances and where the organisation clearly does not fit under any of the general DGR categories. This high threshold ensures that only sufficiently exceptional organisations are specifically listed.

In recent years, the practice has been to specifically list an approved organisation as a DGR for 5 years. An organisation can apply for an extension of its specific listing DGR status prior to the end of the 5 year period. This provides the Government with the opportunity to consider whether the organisation still warrants DGR status.

The Government also has the discretion to remove specifically listed DGRs from the ITAA 1997 at any time.

Recommendation 4:

3.90 The Committee recommends that the Australian Taxation Office maintain a publicly available list of organisations that receive Deductible Gift Recipient endorsement as an environmental charity.

The Government **supports** this recommendation.

When an environmental organisation is endorsed by the ATO as a DGR, the ATO is responsible for updating that organisation's DGR status and charity tax concession status in the Australian Business Register (ABR). This information is publicly available via ABN Lookup, the free public view of the ABR.

As all non-government environmental organisations seeking DGR endorsement are now required to be registered as a charity, the ACNC Charity Register provides further publicly available detail around the operation of individual environmental organisations. The Charity Register includes annual information statements and information including registration status, charity size, charity subtype, who the charity helps, ABN and location.

Recommendation 5:

4.81 The Committee recommends that legislative and administrative changes be pursued by the Australian Taxation Office to require that the value of each environmental deductible gift recipient's annual expenditure on environmental remediation work be no less than 25 per cent of the organisation's annual expenditure from its public fund.

The Government **does not** support this recommendation.

Public consultation on the proposal to require environmental DGRs to allocate a proportion of their annual expenditure to environmental remediation work revealed significant concerns. The majority of submissions to the 2017 discussion paper opposed this proposal and strongly defended charities' rights to advocate. The consultations indicated setting limits on charities' advocacy and regulating their activities, rather than charitable purpose(s), would be viewed as a significant departure from the long-established legal framework underpinning Australia's not-for-profit sector.

There were concerns raised that the proposal may negatively impact organisations focused on preventing environmental damage, rather than remedying existing damage. In particular, organisations that primarily pursue environmental conservation, education and research activities for the benefit of the public may be adversely impacted.

While the Government does not support mandating a level of remediation by environmental organisations, it will continue to ensure these organisations are subject to appropriate oversight by the ATO and ACNC.

As a condition of eligibility to be a DGR, all non-government environmental organisations must be registered as a charity, apart from the limited number that are exempt for a specified period under the transitional arrangements in *Treasury Laws Amendment (2021 Measures No. 2) Act 2021* (Cth).

Charities are required to report to the ACNC and submit annual information statements, which include information on charities' activities and, with the exception of basic religious charities, financial information. Charities' annual information statements are published on the ACNC Charity Register, which is publicly available on the ACNC website, unless the charity successfully applies to have the information withheld.

All charities, including environmental organisations, provide transparency around their operations through annual reporting to the ACNC by way of the Annual Information Statement, and additional information, depending on the charity's size.

All DGRs are subject to ongoing eligibility assessment by the ATO.

Recommendation 6:

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

The Government **notes** this recommendation.

As a condition of eligibility to be a DGR, all non-government environmental organisations must be registered as a charity, apart from the limited number that are exempt for a specified period under the transitional arrangements contained in the *Treasury Laws Amendment (2021 Measures No. 2) Act 2021* (Cth).

Charities registered with the ACNC must meet all the criteria for ongoing registration, including that the charity does not have a purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy.

Registered charities, other than basic religious charities, must also comply with the ACNC's 6 governance standards.

Standard 3 provides that a registered charity must not commit a serious offence (such as fraud) under any Australian law or breach a law that may result in a civil penalty of at least 60 penalty units. Regulations to extend this governance standard to prohibit certain kind of summary offences, and to require registered entities to maintain reasonable internal control procedures, was considered by the Parliament and disallowed on 25 November 2021.

In addition, under Standard 4, registered charities must take reasonable steps to ensure their Responsible People (such as board or committee members or trustees) are not disqualified from managing a corporation under the *Corporations Act 2001* (Cth) or currently disqualified from being a Responsible Person for a registered charity by the ACNC Commissioner. Standard 5 provides that charities must take reasonable steps to ensure their Responsible People know, understand and carry out their legal duties, including the duty to act with reasonable care and diligence and the duty to act in the best interests of the charity. Standard 6 requires charities to take reasonable steps to become a participating non-government institution in the National Redress Scheme for Institutional Child Sexual Abuse if they are, or are likely to be, identified as being involved in the abuse of a person.

The ACNC undertakes regulatory action when a charity does not comply with the governance standards. In serious cases of non-compliance, the ACNC may instigate investigations, obtain enforceable undertakings, suspend or remove a charity's responsible persons, issue penalty notices or deregister a charity.

Recommendation 7

6.79 The Committee recommends that environmental organisations with deductible gift recipient status be required to submit an annual self-assessment to the Australian Taxation Office supporting their continuing eligibility for endorsement as a deductible gift recipient.

The Government **notes** this recommendation.

All DGRs are subject to ongoing eligibility assessment by the ATO.

In addition, environmental organisations are now required to be registered with and subject to oversight by the ACNC. As a condition of eligibility to be a DGR, all non-government environmental organisations must be registered as a charity, apart from the limited number that are exempt for a specified period under the transitional arrangements in *Treasury Laws Amendment (2021 Measures No. 2) Act 2021* (Cth).

Charities registered with the ACNC must meet all the criteria for ongoing registration, including being not-for-profit and having a charitable purpose for the public benefit. A charity must also submit annual information statements and continue to meet the description of its entity subtype, such as advancing the natural environment.

The ACNC will undertake regulatory action in cases where a charity does not meet the description of its entity subtype or the criteria for registration. In serious cases of non-compliance, the ACNC may instigate investigations, obtain enforceable undertakings, suspend or remove a charity's responsible persons, issue penalty notices or deregister a charity.

Recommendation 8:

6.85 The Committee recommends that the Commonwealth Treasury, in consultation with the Australian Taxation Office, review the provisions in the Income Tax Assessment Act 1997 (Cth) prohibiting conduit behaviour, with a view to providing clear guidance to environmental deductible gift recipients, as to the types of activities that would constitute conduit behaviour.

The Government **notes** this recommendation.

The Government supports restrictions on conduit behaviour to ensure donations to DGRs are used for proper purposes.

All DGRs are subject to the requirement that a gift is not deductible if given to a DGR on the condition that it is transferred to another organisation (Taxation Ruling TR 2005/-13 Income tax: tax deductible gifts – what is a gift).

The requirement to have a policy regarding conduit behaviour by environmental organisations is also specifically addressed in the tax law. Subsection 30-270(2) of the *Income Tax Assessment Act 1997* (Cth) (ITAA 1997) currently requires environmental organisations to have ‘a policy of not acting as a mere conduit for the donation of money or property to other organisations, bodies or persons.’

The relevant provisions in the ITAA 1997 relating to the requirement for a conduit policy are being amended by the *Treasury Laws Amendment (Refining and Improving Our Tax System) Act 2023* (Cth), but the requirement itself will not change. Schedule 3 of this Act, commencing on 1 January 2024, will repeal the existing provisions that apply to environmental organisations (including section 30-270) and reinsert the requirement for a conduit policy, as a special condition for an environmental organisation under subsection 30-55(1) table item 6.1.1 in the ITAA 1997.

The ATO provides guidance to DGR organisations on the conduit policy requirements on its website.

Recommendation 9:

6.88 The Committee recommends that the Australian Taxation Office, in conjunction with the Commonwealth Treasury, investigate options for establishing annual reporting requirements for organisations to maintain deductible gift recipient status as an environmental organisation, where such reporting is to be made publicly available.

The Government **supports** this recommendation.

As a condition of eligibility to be a DGR, all non-government environmental organisations must be registered as a charity, apart from the limited number that are exempt for a specified period under the transitional arrangements in *Treasury Laws Amendment (2021 Measures No. 2) Act 2021* (Cth).

Charities registered with the ACNC must submit an Annual Information Statement every reporting period, unless they are exempt in certain circumstances. The Annual Information Statement includes information about the charity, its activities and, in most cases, basic financial information. Medium and large charities are also required to submit an annual financial report with their Annual Information Statement. Small charities can choose to submit a financial report, but it is not mandatory.

Charities' annual information statements are published on the ACNC Charity Register, which is publicly available on the ACNC's website. The Charity Register includes a range of details about each organisation, including its establishment date, charity entity subtype and the size of the charity. DGR status is publicly available and may be found on the Australian Business Register.

Charities have ongoing obligations to the ACNC that they must meet to remain registered, including a requirement to submit an Annual Information Statement. If they do not remain registered as a charity, an organisation's DGR status may be revoked by the ATO Commissioner.