

Reporting and compliance

Existing reporting framework

- 6.1 Throughout the course of the inquiry, the Committee heard evidence relating to the powers available to the Department of the Environment (the Department) to ensure that organisations meet their responsibilities, including reporting requirements, once listed on the Register.
- 6.2 The Department's compliance process, established in the Register's Guidelines, includes reviewing statistical returns received annually, in accordance with the legislative requirements for listing on the Register.¹ The Department may take action on any compliance issues raised during the review in these returns, and following the receipt of any additional intelligence about the activities of certain organisations.²
- 6.3 The Committee heard that the Department's powers were limited, particularly when compared with the investigation or coercive powers available to the Australian Taxation Office (ATO) and Australian Charities and Not-for-profits Commission (ACNC), with regard to the regulation of deductible gift recipients (DGRs) and charities more broadly.³
- 6.4 The Department also noted that its powers to take further action were limited:

We have a power to request statistical information from entities and we analyse that information, but we have no additional

1 *Income Tax Assessment Act 1997* (Cth) (ITAA), s. 30-270(4).

2 Department of the Environment, *Submission 185*, p. 20; Department of the Environment, *Submission 185*, Attachment D: 'Register of Environmental Organisations Guidelines'.

3 See Department of the Environment, *Submission 185*, p. 20.

powers to do anything in relation to that information or their activities.⁴

6.5 These compliance powers are discussed in detail later in this chapter.

Reporting requirements for the Register

6.6 Organisations on the Register must agree to submit to the Secretary of the Department, statistical information about gifts made to its public fund within a reasonable period after the end of each financial year.⁵

6.7 Organisations must provide the following information in each statistical return:

- donations received and expenditure from the Public Fund account;
- any changes to the organisation that could affect its eligibility; and
- the environmental outcomes the organisation achieved in the year, including information on how money or property donated to the fund has been used, and how this contributes to the organisation's public purpose.⁶

6.8 The Department also retains a right to request an Audited Financial Statement, should it be required as part of assurance processes.⁷

6.9 As at 18 January 2016, 506 registered organisations had submitted their 2014 statistical return, noting some organisations operated on a calendar year, rather than a financial year, and reported at a different time.⁸

6.10 423 statistical returns for 2015 had been received by the same date, noting organisations with a reporting date aligning with the financial year were due to report in October 2015.⁹

6.11 The Department sends follow-up letters to organisations who have not submitted their statistical return by the required time, reminding them of their reporting obligations.¹⁰

4 Mr Simon Writer, General Counsel, Department of the Environment, *Committee Hansard*, Canberra, 16 June 2015, p. 10.

5 ITAA, s. 30-270(4); Department of the Environment, *Submission 185*, pp. 18-19; Department of the Environment, *Submission 185*, Attachment F: 'Ministerial Rules'. A ministerial rule is in place to ensure that organisations must not only agree to provide the statistical return, but must actually provide it.

6 Department of the Environment, *Submission 185*, p. 19; Department of the Environment, *Submission 185*, Attachment I: 'Register of Environmental Organisations – Statistical Reporting Form 2014'.

7 Department of the Environment, *Submission 185*, p. 19.

8 Department of the Environment, *Submission 185.2*, p. 4; Ms Lara Musgrave, Assistant Secretary, Parks Island and Biodiversity Science, Department of the Environment, *Committee Hansard*, Canberra, 26 November 2015, p. 12.

9 Department of the Environment, *Submission 185.2*, p. 4

- 6.12 While the Department endeavours to review each statistical return received, in practice it actively reviews 10 per cent of organisations on the Register each year.¹¹
- 6.13 After receipt of an organisation's statistical return, the Department may request additional information in the following circumstances:
- where inconsistent information has been supplied with the return;
 - where there is information suggesting that the organisation's activities are not consistent with its stated principal purpose; or
 - where the organisation is subject to a compliance audit.
- 6.14 Requests for additional information may include audited financial records and/or written responses to matters put to the organisation by the Department.¹² However, when asked by the Committee, representatives of many environmental DGRs indicated that they had not been contacted by the Department outside the regular reporting process.¹³
- 6.15 Any issues that arise from reviewing the returns that fall outside of the Department's remit or powers are referred to a relevant organisation for further review, such as the ATO, or the ACNC.¹⁴
- 6.16 Issues of compliance, including the consequences of failing to provide a statistical return, are discussed further below.

Duplication with other reporting requirements

- 6.17 The Committee was advised that the reporting requirements placed on organisations listed on the Register duplicated other regulatory requirements, including the reporting requirements to maintain registration as a charity with the ACNC, and reporting requirements of relevant state and territory regulatory bodies, such as fundraising reporting requirements.
- 6.18 The Department confirmed some of its reporting requirements were duplicative with reporting requirements for the ACNC.¹⁵ This duplication

10 Department of the Environment, *Submission 185.1*, p. 5.

11 Department of the Environment, *Submission 185*, p. 20; Ms Musgrave, Department of the Environment, *Committee Hansard*, Canberra, 26 November 2015, p. 6.

12 Department of the Environment, *Submission 185.2*, p. 6.

13 For example, see: Ms Carol Shannon, Treasurer, Painted Dog Conservation Inc., *Committee Hansard*, Perth, 3 September 2015, p. 21; Mr Matthew Brennan, National Director, Operations, The Wilderness Society Inc., *Committee Hansard*, Sydney, 17 November 2015, p. 11; Ms Katherine Smolski, Chief Executive Officer, Nature Conservation Council of NSW, *Committee Hansard*, Sydney, 17 November 2015, p. 14.

14 Ms Musgrave, Department of the Environment, *Committee Hansard*, Canberra, 26 November 2015, p. 6.

15 Department of the Environment, *Submission 185*, p. 19.

currently affects approximately 445 registered charities, which have also been endorsed as a DGR.¹⁶

6.19 Registered charities are required to provide the ACNC with an Annual Information Statement, containing financial and other information.¹⁷ The ACNC manages the regulatory impost on different-sized charities by tapering the reporting requirements for small, medium and large charities:

The small charities are required from this year, when financial reporting is required for the first time, to input nine data items; the medium charities, 12 data items plus reviewed or audited accounts; and the large, 15 data items plus audited accounts. There is a much higher threshold for the medium and larger charities.¹⁸

6.20 The ACNC confirmed that a large volume of information collected by the Department in a statistical return is also collected in the ACNC Annual Information Statement.¹⁹

6.21 Whereas the ACNC makes certain information on the Annual Information Statement publicly available, the Department cannot make statistical information provided to it publicly available, as this would breach the taxpayer confidentiality provisions in the *Taxation Administration Act 1953*.²⁰

6.22 Information collected by the Department, that is not collected by the ACNC, includes:

- the number of members of an organisation;
- the amount received specifically from donations of money and property;
- the organisation's environmental outcomes;
- a description and the percentage of activities conducted outside Australia; and
- the time taken to complete the statistical return form.²¹

6.23 Evidencing the duplication of reporting requirements across numerous agencies, the Great Barrier Reef Foundation told the Committee that its current reporting obligations included reporting annually (and more frequently in some instances) to the Department in relation to the Register, the Queensland Office of Fair Trading regarding fundraising approval

16 Australian Charities and Not-for-profits Commission (ACNC), *Submission 189*, p. 11.

17 ACNC, *Submission 189*, p. 13; Department of the Environment, *Submission 185*, pp. 19-20.

18 Mrs Susan Pascoe AO, Commissioner, ACNC, *Committee Hansard*, Canberra, 18 June 2015, p. 2.

19 ACNC, *Submission 189*, p. 11.

20 Department of the Environment, *Submission 185*, p. 20.

21 ACNC, *Submission 189*, p. 11.

under the *Collections Act 1966* (Qld), and the ACNC in relation to its charity status.²²

- 6.24 Friends of the Earth Australia advised that it reported to numerous agencies including Consumer Affairs, state and territory fundraising licensers, the ATO, the Department (for the Register) and the ACNC. Friends of the Earth therefore supported refining the reporting processes and appointing the ACNC as the primary regulator.²³
- 6.25 The Department told the Committee that it did not seek to duplicate the reporting requirements of other agencies such as the Australian Securities and Investments Commission (ASIC) and ACNC, advising that where possible, the Department used existing legislatively-based reporting requirements to assist with any of its lines of inquiry.²⁴

Existing compliance framework

- 6.26 The Department's compliance powers in relation to operation of the Register primarily relate to issues of compliance with the *Income Tax Assessment Act 1997* (Cth) (ITAA).²⁵
- 6.27 The Department is able to request information from organisations on the Register, on the basis of information that has or has not been provided pursuant to registration requirements. However, the Department's enforcement and investigative powers are limited, particularly when compared with the powers of the ATO and ACNC:

We cannot compel – we have no evidence-gathering powers or the capacity to coerce information from somebody through the obtaining of warrants or any of those sorts of mechanisms that might be available to other regulators. The options available to us in an enforcement sense are also quite limited. They are essentially the capacity to remove somebody from the register. It is a binary proposition: you can be on the register or you can be taken off. That is all we can do.²⁶

22 Great Barrier Reef Foundation, *Submission 279*, p. 5.

23 Ms Samantha Castro, Operations Coordinator, Friends of the Earth Australia, *Committee Hansard*, Melbourne, 21 September 2015, p. 21.

24 Ms Musgrave, Department of the Environment, *Committee Hansard*, Canberra, 26 November 2015, p. 7; *Committee Hansard*, Canberra, 16 June 2015, pp. 9–10.

25 Mr Writer, Department of the Environment, *Committee Hansard*, Canberra, 16 June 2015, p. 3.

26 Mr Writer, Department of the Environment, *Committee Hansard*, Canberra, 16 June 2015, p. 3.

- 6.28 The power to remove an organisation from the Register rests with the Environment Minister and the Assistant Treasurer, acting for and on behalf of the Treasurer.²⁷
- 6.29 To remain on the Register, an organisation must continue to meet the principal purpose test. The Department determines whether an organisation continues to meet this test by reviewing an organisation's activities (as set out in their constituting documents, statistical returns and other documents).²⁸
- 6.30 General Counsel with the Department, Mr Simon Writer, noted the subjective nature of this assessment:
- Some of the judgements about those can be quite fluid and, I suppose, subjective, depending on that person's perspective. But what we look at is compliance with our principal purpose test. We necessarily, I suppose, take a fairly broad view about what compliance with that can be.²⁹
- 6.31 Issues that may lead to an examination of whether an organisation should remain on the Register, include complaints received that an organisation is:
- no longer meeting the requirements of the ITAA;
 - not collecting tax deductible donations from the public;
 - not using donations to the public fund for the principal purpose of the organisation; and/or
 - not adhering to the model rules for public funds, as established in the Register's guidelines.³⁰
- 6.32 If an organisation refuses to provide information requested by the Department, the Environment Minister may be entitled to make adverse findings.³¹
- 6.33 Alternatively, the Department may refer a matter to the ATO or the ACNC, as both of these organisations have broad investigative powers –

27 Department of the Environment, *Submission 185*, p. 21.

28 Ms Lara Musgrave, Assistant Secretary, Engagement and Evaluation, Department of the Environment, *Committee Hansard*, Canberra, 16 June 2015, p. 2; Mr Writer, Department of the Environment, *Committee Hansard*, Canberra, 16 June 2015, pp. 4–5.

29 Mr Writer, Department of the Environment, *Committee Hansard*, Canberra, 16 June 2015, p. 5.

30 Mr Writer, Department of the Environment, *Committee Hansard*, Canberra, 16 June 2015, p. 2; Department of the Environment, *Submission 185*, p. 22; Department of the Environment, *Submission 185*, Attachment D: 'Register of Environmental Organisations Guidelines'.

31 Department of the Environment, *Submission 185*, p. 21.

- noting that for the ACNC to exercise its powers of enforcement, the organisation must also be a registered charity.³²
- 6.34 The deregistration process involves sending two warning letters to the organisation in question, and giving the organisation three months to respond. Following this, a recommendation is made to the Environment Minister and Assistant Treasurer for the organisation's removal from the Register.³³
- 6.35 The Environment Minister does not have the power to remove organisations immediately and without being subject to general administrative law principles.³⁴
- 6.36 Decisions to remove organisations from the Register are subject to judicial review through the *Administrative Decisions (Judicial Review) Act 1977* (Cth). Such decisions are not subject to internal or merits review.³⁵
- 6.37 Since the introduction of the Register in 1992, 126 organisations have been removed from the Register. Of these, 105 requested their removal, 14 failed to provide the relevant statistical and other reports required in the legislation, and seven had their Australian business number cancelled. No organisation has to date been deregistered on the basis of non-compliance with its stated objectives, as outlined in its constitutional documents.³⁶
- 6.38 Three compliance letters were issued by the Department in 2013–14 and one was issued in 2014–15, on the basis of concern regarding compliance with the principal purpose requirement. Of these, one organisation subsequently requested removal from the Register, two organisations provided sufficient information to satisfy the Department that they were in compliance, and one organisation did not provide sufficient information in its response to the Department. That matter was referred to the ATO for further consideration.³⁷
- 6.39 The Department noted that the failure to submit a statistical return was the most common reason for issuing a compliance notice. The Department waits several months after 31 October before issuing such a notice. Where no other compliance issues are identified, the Department takes no further action unless the organisation fails to comply with reporting requirements

32 Department of the Environment, *Submission 185*, p. 21.

33 Department of the Environment, *Submission 185*, p. 22.

34 Department of the Environment, *Submission 185*, p. 21.

35 Department of the Environment, *Submission 185*, p. 22.

36 Department of the Environment, *Submission 185*, p. 22; *Submission 185.1*, p. 14.

37 Department of the Environment, *Submission 185.1*, p. 15. At the time of providing this evidence to the Committee, the outcome of this investigation was not known to the Department.

in further years. If this occurs, a notice of intent to remove for repeated non-compliance may be issued.³⁸

Investigation of complaints

- 6.40 In investigating complaints made regarding organisations on the Register, the Department first looks to the documents provided by an organisation (for example in an organisation's statistical return), before undertaking any further inquiries about issues of compliance.³⁹
- 6.41 The Department received two complaints about registered organisations in 2013-14. One of these matters was resolved following provision of supplementary information by the organisation. The other was referred to the ACNC, who determined there was no information to support the complaint. Accordingly, the Department closed the matter.⁴⁰
- 6.42 In 2014-15 the Department received one complaint, which is currently under investigation by the Department and has also been referred to the ACNC. No organisations have been deregistered on the basis of a complaint received in this period.⁴¹
- 6.43 Where a complaint has been made against an organisation on the Register, the Department may request further information from the organisation based on the information that has or has not been provided. If no information is provided, a recommendation may be made to the relevant Ministers to deregister an organisation. This would depend on the nature of the complaint and what information the Department has to hand, as a lack of information may make the capacity to make such a recommendation difficult.⁴²
- 6.44 Where the Department cannot investigate a matter further due to a limitation to its powers, the Department may refer an organisation or persons to another relevant agency, such as the ATO, the Australian Federal Police, or the Australian Competition and Consumer Commission.⁴³

38 Department of the Environment, *Submission 185*, p. 23.

39 Mr Writer, Department of the Environment, *Committee Hansard*, Canberra, 16 June 2015, p. 3.

40 Department of the Environment, *Submission 185.1*, p. 13.

41 Department of the Environment, *Submission 185.1*, p. 13

42 Mr Writer, Department of the Environment, *Committee Hansard*, Canberra, 16 June 2015, p. 3.

43 Mr Writer, Department of the Environment, *Committee Hansard*, Canberra, 16 June 2015, p. 3.

Role of other regulators

The ACNC

- 6.45 The ACNC's broad regulatory powers in relation to registered charities contrast with the limited powers available to the Department in relation to organisations with DGR status, listed on the Register.⁴⁴
- 6.46 The ACNC has a number of regulatory powers in relation to potential breaches of the ACNC legislation, which can include:
- Information gathering and monitoring powers: inspecting, copying and retaining documents and entering premises with consent or a warrant;
 - Enforcement powers: warnings, directions, enforceable undertakings, injunctions and suspension and removal of a charity's responsible persons; and
 - Revocation of a charity's registration, in certain circumstances.⁴⁵
- 6.47 Currently, if an organisation's charity status is revoked by the ACNC, the organisation may still retain its DGR status and standing on the Register, as the two processes are separate.⁴⁶
- 6.48 The ACNC has memoranda of understanding (MOUs) with the ATO, ASIC, the Registrar of Indigenous Corporations and the Tertiary Education Quality and Standards Agency. These MOUs cover issues such as information sharing, mutual assistance in the exercise of the agencies' functions, and referral of compliance matters.⁴⁷

The ATO

- 6.49 The ATO is responsible for the DGR endorsement of the majority of the 51 DGR categories, excepting the four Registers (Register of Environmental Organisations, Register of Cultural Organisations, Register of Harm Prevention Charities, and the Overseas Aid Gift Deduction Scheme).⁴⁸
- 6.50 The onus is on organisations to understand the requirements for DGR endorsement, to seek an assessment of their eligibility in the first instance

44 ACNC, *Submission 189*, p. 14.

45 ACNC, *Submission 189*, p. 14. For the full suite of regulatory powers of the ACNC to apply, the organisation must be a 'federally regulated entity' pursuant to s. 205-15 of the ACNC Act 2012 (Cth).

46 ACNC, *Submission 189*, p. 14.

47 ACNC, *Submission 189*, p. 14.

48 Department of the Environment, *Submission 185*, p. 8.

and to ensure they continue to maintain eligibility through self-assessment.⁴⁹

- 6.51 Once organisations have DGR status, they are legally obligated to advise the ATO if they are no longer entitled to endorsement.⁵⁰
- 6.52 There is, however, no requirement for organisations to seek an assessment of their ongoing eligibility for DGR endorsement, nor is there a requirement for DGRs to report to the ATO on their ongoing compliance with the DGR requirements.⁵¹
- 6.53 The ATO identifies risks and non-compliant organisations through intelligence scans and assessments and the assessment of information recorded on ATOi, which is the ATO database holding information on entities and individuals of potential interest in risk identification.⁵²

Transparency

- 6.54 The Committee heard complaints during the inquiry that the current regulatory and compliance framework relating to the Register lacked transparency.
- 6.55 For example, the Minerals Council of Australia submitted there was no systematic process whereby organisations were assessed on how they used tax-deductible donations, and whether such use was consistent with the organisation's principal purpose. While the Council noted that organisations were required to provide a 'brief statement on environmental outcomes for the financial year', it also noted that such statements were not made available for public scrutiny.⁵³
- 6.56 Senator Matthew Canavan raised concerns about the information required to be reported by organisations on the Register, recommending that additional reporting obligations be placed on organisations, and that this information be publicly available:

49 Australian National Audit Office (ANAO), *Audit Report No. 52 2010–11, Administration of Deductible Gift Recipients (Non-profit Sector): Australian Taxation Office*, p. 112.

50 ATO, *Self-governance checklist for non-profit organisations*, p. 11, <www.ato.gov.au/Non-profit/Your-organisation/In-detail/Checklists/Self-governance-for-not-for-profit-organisations/> viewed 12 February 2016. See also: Minerals Council of Australia, *Submission 497*, p. 6.

51 Australian National Audit Office (ANAO), *Audit Report No. 52 2010–11, Administration of Deductible Gift Recipients (Non-profit Sector): Australian Taxation Office*, pp. 112–13.

52 Australian National Audit Office (ANAO), *Audit Report No. 52 2010–11, Administration of Deductible Gift Recipients (Non-profit Sector): Australian Taxation Office*, pp. 115–16.

53 Minerals Council of Australia, *Submission 497*, p. 25.

At a minimum, this information should include timely reporting of financial statements but could extend to include specific examples of how the organisation has met the principal purpose test and mandatory reporting of any criminal charges or convictions of employed staff or volunteers relating to the work of the organisation.⁵⁴

- 6.57 Noting the increased compliance burden this would place on registered organisations, and that the majority of organisations were ‘properly dedicated to improving the natural environment’, Senator Canavan submitted that consideration should be given to restricting the application of additional requirements to organisations above a certain donation threshold, to ensure the additional requirements were ‘well targeted’.⁵⁵
- 6.58 Further, the Senator considered that greater resourcing of the Department could be funded through the introduction of an annual levy paid by organisations on the Register who receive substantial donations (of more than, say, \$1 million per year). According to the Senator, a similar approach had been recommended by Treasury in its *Scoping Study for a National Not-for-profit Regulator*, albeit for a different purpose.⁵⁶
- 6.59 Timber NSW submitted that details about monies entering an organisation’s public fund, and how these funds were applied, should be placed in the public domain so that taxpayers could see where taxpayer funds were being allocated.⁵⁷
- 6.60 As noted above, the Department is precluded from publishing the statistical information provided to it annually by organisations, due to taxpayer confidentiality provisions in the *Taxation Administration Act 1953* (Cth).⁵⁸
- 6.61 However, the Department noted that as 75 per cent of environmental organisations listed on the Register were also registered charities with the ACNC, members of the public could gain access to some information provided to the ACNC that was made publicly available.⁵⁹

54 Senator Matthew Canavan, *Submission 493*, p. 23.

55 Senator Matthew Canavan, *Submission 493*, p. 23.

56 Senator Matthew Canavan, *Submission 493*, p. 24.

57 Timber NSW, *Submission 183*, p. 3.

58 Department of the Environment, *Submission 185*, p. 20; Mr Writer, Department of the Environment, *Committee Hansard*, Canberra, 26 November 2015, p. 12; Department of the Environment, *Submission 185*, Attachment I: ‘Register of Environmental Organisations – Statistical Reporting Form 2014’.

59 Ms Musgrave, Department of the Environment, *Committee Hansard*, Canberra, 26 November 2015, p. 12.

6.62 The ACNC confirmed that information provided in charities' Annual Information Statements was made publicly available on the ACNC Register.⁶⁰

6.63 The ACNC described the role of its public Register of charities:

The public Register of charities is a key element in the ACNC's role in maintaining, protecting and enhancing public trust and confidence in the Australian NFP [not-for-profit] sector. In addition to making reported information available publicly, the ACNC uses this information in research publications, to provide the public, charity sector, government and others with accurate information about the Australian charity sector.⁶¹

Acting as a 'mere conduit'

6.64 The Committee heard some evidence suggesting that some organisations were acting as 'mere conduits' by accepting donations on behalf of organisations that had not achieved DGR status.

6.65 As outlined in Chapter 2, an environmental organisation on the Register may not act as a 'mere conduit' for the donation of monies or property to another organisation, body or person.⁶²

6.66 Acting as a 'mere conduit' is considered akin to acting as an umbrella organisation for other environmental bodies. Organisations must therefore act to ensure that:

... any allocation of funds or property to other institutions, bodies or persons will be made in accordance with the established objectives of the organisation and not be influenced by the expressed preference or interest of a particular donor to the organisation. Organisations can not act as a mere collection agency for moneys intended by a donor to be transferred onto other preferred institutions, bodies or persons.⁶³

6.67 Further clarification was provided by the Department in a supplementary submission to the inquiry:

The conduit policy is intended to stop registered organisations acting as collection agencies for tax-deductible donations intended

60 ACNC Act, s. 40-5; ACNC, *Submission 189*, p. 12.

61 ACNC, *Submission 189*, p. 12.

62 ITAA, s. 30-270(2).

63 Explanatory Memorandum to the Taxation Laws Amendment Bill (No. 5) 1992 (Cth) and the Income Tax (Dividends and Interest Withholding Tax) Bill 1992 (Cth), p. 43.

by a donor to be passed on to another organisation or person. It is also intended to stop the donor from directing the organisation to act as a conduit and pass money onto their preferred organisation, body or person.⁶⁴

- 6.68 The conduit rule, however, did not preclude an organisation from otherwise working with other groups to pursue their primary purpose:
... the notion of acting as a mere conduit is purely about being directed to be a funnel for the money – which is different from organisations pursuing their purposes, working with others, funding groups, forming alliances or carrying on activities with groups. That is different from, ‘I am going to give you money, only for you to give it to her’.⁶⁵
- 6.69 Tax Ruling 2005/13 makes clear that if, through a conduit arrangement, the actual recipient of the benefaction is not a DGR status organisation, then no tax deduction is available to the donor. An essential component of a ‘gift’ in this scenario is that benefaction is intended and in fact conferred on the recipient.⁶⁶
- 6.70 The Department advised that compliance with the conduit policy is within the scope of its audits conducted on approximately 10 per cent of statistical returns each year.⁶⁷
- 6.71 Organisations such as Painted Dog Conservation Incorporated, suggested that clarification of the provisions regulating ‘mere conduit’ behaviour would assist organisations to comply with the requirement, while allowing organisations to legitimately provide financial and operational support to ‘in situ conservation projects, working on the ground in Australia and abroad’.⁶⁸

Options for strengthening reporting and compliance

- 6.72 The Minerals Council of Australia submitted that transferring the Register from the Department to the ATO would be a logical step towards greater scrutiny of listed entities and more effective enforcement of the ITAA. The

64 Department of the Environment, *Submission 185.2*, p. 2.

65 Ms Musgrave, Department of the Environment, *Committee Hansard*, Canberra, 16 June 2015, p. 7.

66 Department of the Environment, *Submission 185.2*, p. 2.

67 Department of the Environment, *Submission 185.2*, p. 2.

68 Painted Dog Conservation Incorporated, *Submission 324*, p. 2; Ms Carol Shannon, Treasurer, Painted Dog Conservation Incorporated, *Committee Hansard*, Perth, 3 September 2015, p. 18.

Council envisaged that more rigorous monitoring and enforcement of existing rules would include:

- allowing the ATO discretion to conduct audits where there was prima facie evidence that tax-deductible donations had been used for an improper purpose;
- allowing ATO discretion to conduct audits where there were claims an organisation had falsely claimed deductible gift recipient status for their affiliates, or claims that organisations not listed on the Register had claimed tax-deductible status through an affiliate;
- requiring organisations to submit a written self-review of their purpose and activities to the ATO on an annual basis, to demonstrate their continued eligibility; and
- requiring the ATO to conduct a random audit of five per cent of all registered organisations per year.⁶⁹

6.73 As noted earlier in this chapter, the ACNC has broad regulatory powers in relation to certain registered charities, in contrast to the Department's more limited powers in relation to organisations listed on the Register.⁷⁰

6.74 The ACNC therefore noted that if registration as a charity became a prerequisite to endorsement as a DGR for environmental organisations, all organisations on the Register would be subject to the ACNC's power to revoke charity registration following proof of a breach of ACNC legislation, with full ACNC regulatory powers available where an organisation meets certain criteria under the *Australian Charities and Not-for-profits Act 2012* (Cth).⁷¹

Committee comment

6.75 The Committee notes its recommendation made in Chapter 3 of this report that environmental organisations should be required to register as an environmental charity with the ACNC, before being eligible to seek endorsement as a DGR with the ATO.

6.76 Given the wide-ranging investigation and compliance powers available to both the ACNC and the ATO, the Committee takes the view that most of the issues of compliance and enforcement raised in relation to the Register

69 Minerals Council of Australia, *Submission 497*, p. 28.

70 ACNC, *Submission 189*, p. 14.

71 ACNC, *Submission 189*, p. 14. For the full suite of regulatory powers of the ACNC to apply, the organisation must be a 'federally regulated entity' pursuant to s. 205-15 of the ACNC Act.

- during this inquiry will be alleviated, should the Committee's recommendation be adopted.
- 6.77 Based on evidence from the ACNC provided throughout this inquiry, the Committee is confident of the ACNC's capacity to adequately respond to most community concerns or queries raised with it, about environmental charities.
- 6.78 The Committee considers that to ensure matters of compliance are dealt with promptly, the ACNC and the ATO must be adequately resourced to enable the agencies to make any necessary inquiries, undertake any investigations, or take any other actions available to them.
- 6.79 The Committee is of the view that in addition to meeting annual reporting requirements with the ACNC to maintain charity status, organisations should also be required to submit an annual self-assessment to the ATO regarding their continuing eligibility for DGR status.

Recommendation 7

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.

- 6.80 The Committee notes that the ATO already recommends that DGRs complete a self-assessment on an annual basis, and provides a standard form on its website. However, this is not a legal requirement to maintain endorsement.
- 6.81 Noting the Committee's comments in Chapter 5, the Committee recommends that organisations be required to disclose any arrests, charges or convictions for illegal activity in relation to any employees or responsible members of the organisation, as part of the self-assessment.
- 6.82 The Committee notes that throughout the inquiry, it heard a number of claims that some organisations appeared to be acting as 'mere conduits' for the donation of money or property to other entities or individuals.
- 6.83 For example, there were suggestions that some environmental DGRs were claiming to share tax-deductible recipient status with unregistered entities. There were also suggestions that some unregistered entities were claiming to have DGR status, and were soliciting tax-deductible donations on that basis, despite not actually having such status.

- 6.84 While the Committee cannot investigate individual claims of this nature, the Committee considers it important to ensure that public trust, accountability, and transparency in the DGR endorsement process remains. This should include strict enforcement of the rules for DGR endorsement, including the no-conduit policy.
- 6.85 The Committee therefore recommends that the provisions relating to conduit behaviour in the ITAA with respect to environmental DGRs be reviewed to ensure they are both clear and enforceable. Further, efforts should be made by the ATO to inform environmental DGRs of their continuing obligations not to engage in conduit behaviour.

Recommendation 8

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.

- 6.86 It is the Committee's view that unregistered organisations should not be able to solicit tax-deductible donations on the basis of an affiliation with an environmental DGR. For an organisation with an affiliate structure, each affiliate of that organisation soliciting tax-deductible donations from the public should be required to obtain DGR endorsement in its own right.
- 6.87 The Committee also recommends that the ATO undertake a thorough assessment of at least 10 per cent of environmental DGRs per year, to ensure ongoing compliance with obligations to maintain DGR endorsement.
- 6.88 Finally, having regard to taxpayer confidentiality, the Committee recommends that the ATO, in consultation with the Commonwealth Treasury, investigate options for establishing annual reporting requirements, with a view to reported information being made available to the public.

Recommendation 9

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.

- 6.89 The Committee envisages that annual reporting should not unnecessarily duplicate the reporting requirements of the ACNC, but instead focus on the specific requirements for endorsement as a DGR and information that was formerly captured by the Department.
- 6.90 Having regard to the Committee's comments in Chapter 4, the Committee recommends that organisations be required to report sufficient financial information to demonstrate compliance with the requirement to undertake environmental remediation work.
- 6.91 Noting the Committee's support for reducing duplication in reporting requirements, the Committee supports continued information-sharing between the ACNC and the ATO to reduce the overall reporting burden, while still achieving the outcomes intended by these recommendations.
- 6.92 The Committee is confident that its recommendations, taken together and fully implemented in the spirit intended by the Committee, would streamline processes and reduce the regulatory burden on environmental DGRs, while bolstering public confidence in, and improving the transparency of, environmental charities and the not-for-profit sector more broadly.

