

Background to the Register

- 2.1 This chapter provides a brief overview of the Register of Environmental Organisations (the Register), the Commonwealth scheme enabling eligible not-for-profit environmental organisations to access tax-deductible donations.
- 2.2 The chapter reviews the establishment and administration of the Register and outlines briefly how the organisations on the Register relate to charities registered with the Australian Charities and Not-for-profits Commission (ACNC).
- 2.3 Finally, this chapter briefly compares the Australian framework with arrangements in some international jurisdictions.

Deductible gift recipient status

- 2.4 For an organisation to be entitled to receive tax-deductible donations or other tax-deductible contributions, it must be a deductible gift recipient (DGR). A person who makes a donation or contribution to a DGR can claim that donation or contribution as a deduction in their tax return. Furthermore, some philanthropic bodies – such as public and private ancillary funds – and grant makers can distribute funds only to organisations that have DGR status.¹
- 2.5 The legislation that enables DGR status is the *Income Tax Assessment Act 1997* (Cth) (ITAA). For an organisation to obtain DGR status it must be listed by name in the ITAA or be endorsed by the Australian Taxation Office (ATO). An organisation may have DGR endorsement in its own

1 Philanthropy Australia, *Submission 420*, p. 1; Australian Charities and Not-for-profits Commission (ACNC), 'Factsheet: Deductible gift recipients and the ACNC' <www.acnc.gov.au/ACNC/FIS/Fact_DGR.aspx> viewed 4 March 2016.

right, or it may only be a DGR in relation to a fund, authority or institution it operates. In this instance, only gifts made to the fund, authority or institution are tax deductible.²

2.6 To be eligible for endorsement as a DGR, an organisation must fall within one of 51 categories set out in the ITAA.³ The ATO is directly responsible for the administration of 47 of these categories. The remaining four categories are the:

- Overseas Aid Gift Deduction Scheme;
- Register of Cultural Organisations;
- Register of Harm Prevention Charities; and
- Register of Environmental Organisations.⁴

The administration of each of these four categories is the responsibility of the relevant Commonwealth department.

2.7 Across all categories, approximately 28,000 organisations are endorsed as DGRs, and the estimated value of revenue forgone for donations to DGRs was approximately \$1.2 billion in 2013–14.⁵

Register of Environmental Organisations

2.8 In 1966, the Australian Conservation Foundation Incorporated became the first environmental organisation to obtain DGR status by being listed in the ITAA, and thereby became entitled to receive tax-deductible donations.⁶ Between 1966 and 1990, a further 12 environmental organisations were listed by name in the ITAA. These were:

- Greening Australia Limited;
- Landcare Australia Limited;
- National Parks Association of New South Wales;
- Victorian National Parks Association Incorporated;
- Trust for Nature (Victoria);
- National Parks Association of Queensland;
- Nature Conservation Society of South Australia Incorporated;

2 Australian Business Register, 'Deductible Gift Recipients' <<http://abr.business.gov.au/DgrListing.aspx>> viewed 3 March 2016.

3 *Income Tax Assessment Act 1997* (Cth) (ITAA), s. 30-B.

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

5 Department of the Environment, *Submission 185*, pp. 7, 11.

6 Australian Conservation Foundation, *Submission 387*, p. 1.

- Nature Foundation SA Incorporated;
 - Western Australian National Parks and Reserves Association Incorporated;
 - Tasmanian Conservation Trust Incorporated;
 - National Parks Association of the Australian Capital Territory Incorporated; and
 - World Wide Fund for Nature.⁷
- 2.9 During that period, relatively few environmental organisations had DGR status, primarily because each addition required an Act of Parliament to amend the ITAA. Due to this limitation, some environmental DGRs entered into informal arrangements with other organisations to collect tax-deductible donations on their behalf.⁸ In this way, environmental DGRs would essentially collect and distribute funds intended by donors to be passed on to organisations without DGR status.
- 2.10 To streamline the process for environmental organisations to obtain DGR status, and to increase transparency of access to tax-deductible donations, the Register of Environmental Organisations was proposed as part of the 1992–93 Budget. The Register was subsequently legislated through the *Taxation Laws Amendment Act (No. 5) 1992* (Cth) and came into effect on 24 December 1992.
- 2.11 The Register enables eligible environmental organisations to be endorsed as DGRs without the need for legislative amendment. The legislation establishing the Register also removes the ability of environmental organisations with DGR status to collect tax-deductible donations on behalf of other bodies, or act as ‘mere conduits’ for monies that were intended by the donor to be transferred to other organisations or persons.⁹
- 2.12 Currently, 596 environmental organisations are listed on the Register.¹⁰ Since the establishment of the Register in 1992, registered organisations have reported collecting a total of approximately \$1.3 billion in donations, with the organisations listed by name in the ITAA reporting an additional \$270 million.¹¹ In 2013-14 alone, registered organisations reported

7 Department of the Environment, *Submission 185*, pp. 4–5. For the current list, see ITAA s. 30-55.

8 Department of the Environment, *Submission 185*, p. 5.

9 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.

10 Department of the Environment, ‘Register of Environmental Organisations’ <<https://www.environment.gov.au/about-us/business/tax/register-environmental-organisations/listed-organisations>> viewed 4 January 2016.

11 Department of the Environment, *Submission 185*, p. 9.

collecting a total of approximately \$129 million in donations, resulting in forgone revenue of approximately \$45 million.¹²

Responsibility for the Register

- 2.13 The Secretary of the Department of the Environment is responsible for keeping the Register.¹³ The Register must include the name of each environmental organisation and the fund it maintains for the purpose of collecting donations.¹⁴ A full list of organisations on the Register is provided on the Department of the Environment's website.¹⁵
- 2.14 An organisation can only be entered onto or removed from the Register by decision of both the Environment Minister and the Assistant Treasurer, acting for and on behalf of the Treasurer.¹⁶
- 2.15 The Department's role in making assessments on an organisation's eligibility for the Register and its role in advising the Environment Minister is discussed in further detail in Chapter 3.

Definition of environmental organisation

- 2.16 An 'environmental organisation' must meet the membership, structure, and compliance requirements outlined in the ITAA.¹⁷
- 2.17 To be considered an environmental organisation, an organisation must:
- be a body corporate, a cooperative society, a trust or an unincorporated body;¹⁸
 - have a principal purpose of:
 - ⇒ the protection and enhancement of the natural environment or of a significant aspect of the natural environment; or

12 Department of the Environment, *Submission 185*, p. 11.

13 Department of the Environment, *Submission 185*, p. 12; ITAA, s. 30-255.

14 ITAA, s. 30-280(1).

15 Department of the Environment, 'Register of Environmental Organisations' <<https://www.environment.gov.au/about-us/business/tax/register-environmental-organisations/listed-organisations>> viewed 3 March 2016.

16 Department of the Environment, *Submission 185*, pp. 4, 21.

17 Department of the Environment, *Submission 185*, p. 12.

18 ITAA, s. 30-260.

- ⇒ the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment;¹⁹
- maintain a ‘public fund’ to which gifts of money or property are to be made;²⁰
 - agree to comply with any rules made by the Treasurer and Minister for the Environment to ensure gifts made to the fund are used only for the organisation’s principal purpose;²¹
 - not pay any profits, surplus or property to its members, beneficiaries, controllers or owners;²²
 - not act as a ‘mere conduit’ for the donation of monies or property to another organisation, body or person;²³
 - have rules in place to transfer any surplus assets to another fund on the Register if it is wound up;²⁴ and
 - agree to provide statistical information to the Environment Secretary each year about gifts made to the public fund after each income year.²⁵
- 2.18 If the organisation is a body corporate or cooperative society, its membership must either consist principally of bodies corporate, or have at least 50 individual members that are regarded as financial, voting members.²⁶

Principal purpose test

- 2.19 As noted above, the test for inclusion on the Register is in terms of ‘purpose’ rather than ‘activity’.²⁷ It is considered that an organisation’s principal purpose must be its chief or main purpose, but not necessarily its sole purpose.²⁸
- 2.20 Providing that the organisation has one of the principal purposes established in section 30-55 of the ITAA, there are no apparent restrictions

19 ITAA, s. 30-265(1).

20 ITAA, s. 30-265(2).

21 ITAA, s. 30-265(4).

22 ITAA, s. 30-270(1).

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

24 ITAA, s. 30-270(3).

25 ITAA, s. 30-270(4).

26 ITAA, s. 30-275.

27 Department of the Environment, *Submission 185*, p. 14.

28 Department of the Environment, *Submission 185*, p. 14.

on the activities an environmental DGR engages in to achieve its principal purpose.²⁹

- 2.21 The Department's role in assessing whether an organisation meets the principal purpose test is discussed further in Chapter 3.
- 2.22 The Committee heard there was confusion and lack of clarity regarding various aspects of the principal purpose test. Some of these definitional issues are introduced below and discussed further in Chapter 4.

Protection and enhancement of the natural environment

- 2.23 The term 'natural environment' is not defined in the ITAA. However, the Explanatory Memorandum to the legislation establishing the Register states:

... '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.³⁰

- 2.24 In referring to the guidance outlined in the Explanatory Memorandum, the Department noted that the purpose of 'protecting and enhancing the natural environment' was very broad, and could include activities which extend beyond on-ground work to the promotion of general principles and policies.³¹

Provision of information or education

- 2.25 While there is a requirement that the provision of information or education be about the natural environment or a significant aspect of the natural environment, the Department noted there is no express limitation in the ITAA that the provision of information or education must be aimed at achieving the protection and enhancement of the natural environment.³²
- 2.26 However, although not specified in the ITAA, the Department advised that it considers that the provision of information or education, or the

29 Ms Lara Musgrave, Assistant Secretary, Engagement and Evaluation, Department of the Environment, *Committee Hansard*, Canberra, 16 June 2015, p. 5; Not-for-profit Project, University of Melbourne Law School, *Submission 220*, p. 2.

30 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. 46; Department of the Environment, *Submission 185*, p. 14.

31 Department of the Environment, *Submission 185*, p. 14.

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

carrying on of research, should ultimately be directed at some positive benefit relating to the protection of the natural environment:³³

The test for us is: 'Are the activities about the promotion of those things?' There is a test around whether the information and education and undertaking of activities is for the protection and enhancement of the environment ...³⁴

- 2.27 The Department provided no additional guidance as to what form information or education might take, or what activities might be considered informational or educational.

Relationship between DGRs and registered charities

- 2.28 In general, endorsement as a DGR by the ATO is a separate process from registration as a charity. Charitable status is granted by the ACNC, the independent statutory authority responsible for the regulation of charities.³⁵
- 2.29 The *Charities Act 2013* (Cth) governs the granting of charitable status. This Act requires that a charity must pursue one or more charitable purposes and have no disqualifying purposes.³⁶
- 2.30 Whereas DGR status entitles an organisation to receive tax-deductible donations, charitable status entitles an organisation to access a range of tax concessions including income tax exemption, GST concessions, and fringe benefits tax rebates.
- 2.31 An organisation with DGR status will not necessarily be a registered charity, and vice versa. However, charitable status is a prerequisite of endorsement for many DGR categories, including two of the four DGR registers – the Register of Harm Prevention Charities and the Overseas Aid Gift Deduction Scheme.³⁷
- 2.32 In the case of environmental organisations, charitable status is not a requirement of listing on the Register. However, the ACNC advised that there are broad similarities and no significant conflicts between the requirements of DGR status and the requirements of charitable status.³⁸

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

34 Ms Musgrave, Department of the Environment, *Committee Hansard*, Canberra, 16 June 2015, p. 5.

35 Department of the Environment, *Submission 185*, p. 6.

36 *Charities Act 2013* (Cth), s. 12; ACNC, *Submission 189*, pp. 5–8.

37 ACNC, *Submission 189*, p. 10.

38 ACNC, *Submission 189*, pp. 8–10.

- 2.33 Consistent with this, there is a substantial overlap in the membership of the two categories. Approximately 75 per cent of organisations listed on the Register are also registered charities.³⁹ In 2013–14, registered charities received 99 per cent of the value of donations to organisations listed on the Register.⁴⁰

Comparison with international jurisdictions

- 2.34 The terms of reference to this inquiry ask the Committee to consider relevant governance arrangements in international jurisdictions, and to explore options for adopting best practice in Australia.
- 2.35 Governance practices in international jurisdictions are addressed throughout this report. However, a brief consideration here of the wider regulatory frameworks in comparable jurisdictions, is prudent.
- 2.36 In comparable jurisdictions, not-for-profit environmental organisations that meet certain requirements can access tax concessions, including tax concessions in relation to individual donations.⁴¹
- 2.37 In the United Kingdom and Canada, all registered charities are eligible to receive tax-deductible donations.⁴²
- 2.38 In New Zealand, an organisation is not required to be a registered charity to be eligible to receive tax-deductible donations. However, the eligibility criteria for tax-deductibility include that funds are applied to charitable, benevolent, philanthropic or cultural purposes, and registered charities are automatically assessed for tax-deductibility.⁴³
- 2.39 In the United States, the most common category of tax-exempt organisations – which are entitled to receive tax-deductible donations – requires that an organisation be established and operated exclusively for a charitable purpose.⁴⁴
- 2.40 Although the interpretation of charity and charitable purpose differs in each jurisdiction, the definitions are sufficiently broad in each case to include organisations whose purposes relate to the environment.
- 2.41 In all four jurisdictions, eligibility for tax concessions is administered by the agency responsible for revenue collection in that jurisdiction – the
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39 ACNC, *Submission 189*, p. 4.

40 Ms Musgrave, Department of the Environment, *Committee Hansard*, 16 June 2015, p. 5.

41 Department of the Environment, *Submission 185.1*, pp. 4–11.

42 Department of the Environment, *Submission 185.1*, pp. 5, 9.

43 Department of the Environment, *Submission 185.1*, pp. 6–7.

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

equivalent of the ATO in Australia. In the United Kingdom and New Zealand, administration of charitable status is the responsibility of an independent charities regulator, comparable to the ACNC.⁴⁵

Committee comment

- 2.42 The Committee notes the evolution of the DGR framework since 1966, when the first environmental organisation gained DGR endorsement by being listed in the provisions of the ITAA.
- 2.43 With now almost 600 organisations listed on the Register, and another 13 listed by name in the ITAA itself, anomalies have emerged in the system of regulation applied to environmental DGRs when compared with the governance and administration of other DGR categories.
- 2.44 Issues relating to the administration and operation of the Register, raised in evidence by a variety of inquiry participants, are discussed in detail in Chapter 3.
- 2.45 The establishment of the ACNC, as a means of regulating the registration of charities more broadly, has introduced some duplication with the DGR endorsement process for environmental organisations, and placed some doubt over the effectiveness of the DGR framework, particularly in relation to issues of compliance and enforcement. These issues are discussed in detail in Chapter 6.
- 2.46 The Committee notes, however, that a more fulsome and broad ranging consideration of the overall DGR framework is outside of the terms of reference and scope of this inquiry.
- 2.47 Accordingly, the Committee has focussed its attention in this report on ways of improving the administration, transparency and efficiency of the DGR framework as it relates to environmental organisations only.
- 2.48 Nevertheless, the Committee encourages a broader and more thorough consideration of the entire DGR system by the Australian Government, in due course.

45 EDOs of Australia, *Submission 403*, p. 15.

