

## The Register in operation

- 3.1 The administration of the Register of Environmental Organisations (the Register) was a significant area of focus in the inquiry and an area of particular interest to the Committee.
- 3.2 Several issues were raised in evidence, which go to the current administration and operation of the Register, considered throughout this chapter:
- the role and powers of the Department of the Environment (the Department) in maintaining the Register;
  - the administration of the Register; and
  - the role and powers of the Australian Charities and Not-for-profits Commission (ACNC) in the registration and regulation of charities, and how this relates to the Register.

### **Role and powers of the Department of the Environment**

- 3.3 The Register was created to increase transparency of access to the gift provisions of the *Income Tax Assessment Act 1936* (Cth), and to enhance the fundraising ability of conservation groups.<sup>1</sup>
- 3.4 As outlined in Chapter 2, the Secretary of the Department of the Environment is responsible for keeping the Register.<sup>2</sup>
- 3.5 An environmental organisation seeking deductible gift recipient (DGR) status is assessed by the Department, before being endorsed as a DGR by

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

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

- the Australian Taxation Office (ATO).<sup>3</sup> This is in contrast to the majority of the 51 DGR categories, of which 47 are administered wholly by the ATO.<sup>4</sup>
- 3.6 The Environment Minister and the Treasurer (currently, the Assistant Treasurer, acting for and on behalf of the Treasurer for matters related to the Register) are jointly responsible for directing the Environment Secretary to enter organisations on the Register.<sup>5</sup>
- 3.7 A direction is made after the Environment Minister has notified the Assistant Treasurer in writing that he or she is satisfied the organisation is an environmental organisation.<sup>6</sup>
- 3.8 The Department's role in administering the Register includes carrying out an initial assessment of all applications for inclusion on the Register, and providing advice to the Environment Minister on whether the organisation meets the legislative requirements of the *Income Tax Assessment Act 1997 (Cth)* (ITAA) and the administrative requirements of the Register's Guidelines.<sup>7</sup>
- 3.9 An organisation must also agree to comply with any rules that the Environment Minister and the Assistant Treasurer make to 'ensure that gifts made to the fund are used only for its principal purpose'.<sup>8</sup> The Department reviews whether an organisation has agreed to abide by these rules, by reviewing an organisation's constitution, or its policies listed on its website.<sup>9</sup>
- 3.10 To determine whether an organisation meets the principal purpose test, the Department considers the objects or purposes set out in the organisation's founding documents, and the description of its activities.<sup>10</sup> The Department explained:
- Their governing documents generally give a stated purpose and then we inquire generally about how they operate. But it is around their governing documents – what they have, in essence, stated as

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

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

5 Department of the Environment, *Submission 185*, p. 12; *Income Tax Assessment Act 1997 (Cth)* (ITAA), s. 30-280(2).

6 Department of the Environment, *Submission 185*, p. 12; ITAA, s. 30-280(2).

7 Department of the Environment, *Submission 185*, p. 12; Department of the Environment, *Submission 185*, Attachment D: 'Register of Environmental Organisations Guidelines', p. 4.

8 ITAA, s. 30-265(4); Department of the Environment, *Submission 185*, p. 13; Department of the Environment, *Submission 185*, Attachment F: 'Ministerial Rules'.

9 Department of the Environment, *Submission 185*, p. 13.

10 Department of the Environment, *Submission 185*, p. 13.

their purpose, or purposes, with one of these being a primary purpose.<sup>11</sup>

- 3.11 Where there is a lack of clarity in the organisation's founding documents, the Department may undertake additional research into the structure of the organisation and its history, including its public activities over time. Such additional research may include requesting further information from the applicant or conducting business searches through avenues such as the Australian Securities and Investments Commission (ASIC).<sup>12</sup>
- 3.12 The Environment Minister considers each application and certifies that the organisation is an environmental organisation, before forwarding the application to the Assistant Treasurer for consideration.<sup>13</sup>
- 3.13 After the Assistant Treasurer has approved the recommendation to be included on the Register, the ATO processes the application for endorsement as a deductible gift recipient (DGR) and notifies the organisation of their endorsement, if successful.<sup>14</sup>
- 3.14 Once an organisation is listed on the Register, the Department's role includes reviewing annual statistical returns provided by each environmental DGR, in accordance with an organisation's reporting obligations pursuant to the ITAA.<sup>15</sup>
- 3.15 However, in its submission, the Department indicated that the 13 environmental organisations listed individually by name in the ITAA – which obtained DGR endorsement prior to the establishment of the Register – are not subject to the reporting and compliance obligations of other environmental DGRs.<sup>16</sup>
- 3.16 The Department also noted that its powers in relation to these organisations are limited.<sup>17</sup>
- 3.17 Further evidence relating to the Department's compliance role is discussed in detail in Chapter 6.

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11 Ms Lara Musgrave, Assistant Secretary, Engagement and Evaluation, Department of the Environment, *Committee Hansard*, Canberra, 16 June 2015, p. 1.

12 Department of the Environment, *Submission 185*, p. 13; Mr Simon Writer, General Counsel, Department of the Environment, *Committee Hansard*, Canberra, 16 June 2015, p. 1.

13 Department of the Environment, *Submission 185*, Attachment D: 'Register of Environmental Organisations Guidelines', p. 4.

14 Department of the Environment, *Submission 185*, Attachment D: 'Register of Environmental Organisations Guidelines', p. 4.

15 ITAA, s. 30-270.

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

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

## Administration of the Register

- 3.18 Representatives of organisations listed on the Register and other inquiry participants raised a number of concerns about the Department's administration of the Register, including:
- the timeliness of processing applications and responding to queries and correspondence;
  - the transparency of the registration process; and
  - the duplication and overlap of the registration and reporting process with other processes, including processes administered by the ACNC, ASIC, and state and territory regulatory bodies.

### Timeliness

- 3.19 The Committee heard evidence from some individuals and organisations that the current regulatory system governing the granting of DGR status to environmental organisations was inefficient, costly, and prohibitive to smaller organisations.
- 3.20 For example, the Community Council for Australia noted that environmental organisations applying for both DGR status and charity status had to comply with three separate regulators – the Department, the ATO, and the ACNC – with approval needed from both the Environment Minister and the Assistant Treasurer. The Council argued that this process was prohibitive to smaller charities, given the time, legal advice, and other resources required.<sup>18</sup>
- 3.21 Mr David Crosbie, Chief Executive of the Council, contrasted the cost and time involved in seeking DGR status with the process of seeking charity status through the ACNC:

In my organisation we were quoted over \$30,000 and 12 months if we wanted to be [a] DGR. We are not going to spend over \$30,000 and 12 months to become [a] DGR. We became a charity through the ACNC in less than a month ...

... I do not know them off the top of my head, but I would have thought that for almost every charity that applies the average amount of time to become a charity – because they talk you through and work you through things and provide draft legals

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18 Community Council for Australia, *Submission 425*, p. 3.

and draft constitutions and support, as a good regulator does – is less than a month.<sup>19</sup>

- 3.22 The Council of Heads of Australian Botanic Gardens Incorporated (trading as the Australian Seed Bank Partnership) submitted that the process of applying to be listed on the Register was lengthy and required regular follow-up with the Department to ascertain the status of the application. The organisation's application took about 10 months to process, and the organisation was not notified of its registration for a further two months.<sup>20</sup>
- 3.23 Dr Lucy Sutherland, National Coordinator of the Council, told the Committee that the organisation was initially advised that the application would be processed in three months. Dr Sutherland said that it would have helped if the organisation was advised of the expected delay, as this affected its ability to attract funding from funds and competitive grants requiring DGR status.<sup>21</sup>
- 3.24 Dr Sutherland also noted that, initially, the Department did not understand the nature of the work undertaken by the Council, and so the organisation had to explain to the Department how it met the principal purpose test.<sup>22</sup>
- 3.25 The Ecological Society of Australia advised that the organisation's registration took over a year from the initial application to being listed on the Register. Mrs Gail Spina, Executive Officer of the Society, suggested that lack of communication between the Department and the ATO and a 'lack of environmental understanding' or a lack of understanding of the nature of the work undertaken by the organisation, may have contributed to the delay.<sup>23</sup>
- 3.26 Mr Crosbie recalled a story from representatives of one organisation, who were informed they would have to wait another three months for the

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19 Mr David Crosbie, Chief Executive, Community Council for Australia, *Committee Hansard*, Canberra, 18 September 2015, p. 44.

20 Council of Heads of Australian Botanic Gardens Inc. (trading as Australian Seed Bank Partnership), *Submission 100*, p. 1; Dr Lucy Sutherland, National Coordinator, Australian Seed Bank Partnership, Council of Heads of Australian Botanic Gardens Inc., *Committee Hansard*, Friday, 18 September 2015, Canberra, p. 39.

21 Dr Sutherland, Australian Seed Bank Partnership, Council of Heads of Australian Botanic Gardens Inc., *Committee Hansard*, Canberra, 18 September 2015, Canberra, p. 39. For another example, see: Mrs Gail Spina, Executive Officer, Ecological Society of Australia, *Committee Hansard*, Brisbane, 14 July 2015, p. 50.

22 Council of Heads of Australian Botanic Gardens Inc. (trading as Australian Seed Bank Partnership), *Submission 100*, p. 1; Dr Sutherland, Australian Seed Bank Partnership, Council of Heads of Australian Botanic Gardens Inc., *Committee Hansard*, Canberra, 18 September 2015, Canberra, pp. 38–39.

23 Mrs Spina, Ecological Society of Australia, *Committee Hansard*, Brisbane, 14 July 2015, p. 50.

- application to be processed, because a departmental officer had taken leave.<sup>24</sup>
- 3.27 The Department advised that no specific service standards apply to processing applications for inclusion on the Register. Nevertheless, the Department maintains a Service Charter that applies to all administrative activities, including the administration of the Register. This Charter requires responses to correspondence within 20 working days after receipt, and if that is not possible, an acknowledgement should be sent within this timeframe indicating the expected date of reply.<sup>25</sup>
- 3.28 The Department informed the Committee that in the three years up to January 2016, the Department took an average of 11 months to process applications, from submission of the application to submission to the Environment Minister for consideration.<sup>26</sup> However, the Department did not provide the average time taken from the initial submission of an application, through to final approval and listing on the Register.
- 3.29 The Department also told the Committee that 1.5 ASL (average staffing level) was allocated to the administration of the Register (as at 17 July 2015).<sup>27</sup>
- 3.30 By contrast, the ACNC generally processes applications for registration as a charity within 28 days, if no further information is required.<sup>28</sup>
- 3.31 ATO case officers must have regard to their client service charter when assessing applications for DGR status. Specifically, officers must have regard to the standards established for providing 'private written advice' and aim to finalise applications containing complete information, or upon receipt of complete information, within 28 days. For all DGR applications received within 2009–10, the average elapsed time from receipt to completion was approximately 37 days (the average elapsed time for applications of 'fast-tracked cases' was 27 days).<sup>29</sup>
- 3.32 The Law Council of Australia submitted that a reasonable timeframe should be applied to the application process for the Register, so that

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24 Mr Crosbie, Community Council for Australia, *Committee Hansard*, Canberra, 18 September 2015, p. 44.

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

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

27 Department of the Environment, *Submission 185.1*, p. 1.

28 Australian Charities and Not-for-profits Commission (ACNC), 'The registration process and FAQs' <[http://www.acnc.gov.au/ACNC/Register\\_my\\_charity/Start\\_Reg/Reg\\_process\\_FAQ/ACNC/Reg/Reg\\_process\\_FAQ.aspx](http://www.acnc.gov.au/ACNC/Register_my_charity/Start_Reg/Reg_process_FAQ/ACNC/Reg/Reg_process_FAQ.aspx)> viewed 19 February 2016.

29 Australian National Audit Office, *Audit Report No. 52 2010–11, Administration of Deductible Gift Recipients (Non-profit Sector): Australian Taxation Office*, p. 78.

organisations could better plan their forward activities based on the resolution of that application.<sup>30</sup>

- 3.33 CORENA (Citizens Own Renewable Energy Network Australia Inc.) told the Committee:

Since environmental issues are often time-sensitive, the Register could support environmental groups more effectively by simplifying the approval process and by processing applications promptly so that groups that meet the requirements of entry can achieve their environmental purpose sooner.<sup>31</sup>

## Transparency

- 3.34 The Committee also heard evidence suggesting that transferring the administration of the Register from the Department to an impartial and independent entity would enhance the transparency of the application process.
- 3.35 The Not-for-profit Project of the University of Melbourne Law School submitted that the current system requiring ministerial approvals could be perceived as undermining the impartiality and integrity of the tax concession system.<sup>32</sup>
- 3.36 Dr Joyce Chia, representing the Not-for-profit Project, noted that requiring the approval of two ministers created a perception of political involvement, regardless of whether this was an accurate assessment.<sup>33</sup>
- 3.37 Dr Greg Ogle outlined the perceived bias inherent in the process:
- When you have the environment minister deciding it, there is a risk that environment groups will shift their practices to try and second-guess what the minister wants. At a minimum, there is a perception problem of political interference.<sup>34</sup>
- 3.38 The Community Council for Australia also considered it inappropriate for individual ministers to have the final say in determining charitable status or eligibility for DGR status.<sup>35</sup>

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30 Law Council of Australia, *Submission 662*, p. 11; Adjunct Professor Greg McIntyre, Chair, Australian Environment and Planning Law Group, Law Council of Australia, *Committee Hansard*, Canberra, 18 September 2015, p. 2.

31 CORENA, *Submission 23*, p. 2.

32 Not-for-Profit Project, University of Melbourne Law School, *Submission 220*, p. 4.

33 Dr Joyce Chia, former Research Fellow, Not-for-profit Project, University of Melbourne Law School, *Committee Hansard*, Melbourne, 22 September 2015, p. 14.

34 Dr Greg Ogle, private capacity, *Committee Hansard*, Canberra, 18 September 2015, p. 26.

35 Community Council for Australia, *Submission 425*, p. 4.

- 3.39 The Council proposed that the ACNC determine charitable status and make recommendations to the ATO regarding DGR eligibility, to create a more transparent, accountable and credible process. In the Council's view, this process would build public trust and confidence, while holding charities to higher standards of governance and reporting than the existing framework.<sup>36</sup>
- 3.40 The Australian Youth Climate Coalition (AYCC) submitted that the ACNC was an independent body, free of political interference, and therefore in a position to regulate and maintain the Register.<sup>37</sup> The Not-for-profit Project supported this proposal.<sup>38</sup>
- 3.41 Other transparency and accountability issues were raised in connection with the Department's administration of the Register. Some submitters argued that the current regulatory framework did not provide an appropriate level of transparency, because the statistical information provided annually to the Department was not made available to the public.<sup>39</sup>
- 3.42 The administration of the Register is subject to taxpayer confidentiality provisions that prohibit the disclosure of such statistical information provided to the Department.<sup>40</sup> These transparency issues are discussed further in Chapter 6.

### Duplication of processes

- 3.43 The Committee heard a range of evidence outlining the duplication and overlap that existed between the process of seeking DGR endorsement through the Register, related registration processes, such as registration as a charity with the ACNC, and other regulatory requirements, such as registering with ASIC and state and territory regulatory authorities.
- 3.44 As noted in Chapter 2, approximately 75 per cent of the 596 organisations listed on the Register are also registered charities with the ACNC.<sup>41</sup>
- 3.45 The ACNC noted there were broad similarities between the requirements for eligibility for, and maintenance of, being listed on the Register to gain DGR status, and registration with the ACNC to gain charity status.<sup>42</sup> These

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36 Community Council for Australia, *Submission 425*, p. 5.

37 Miss Kirsty Albion, National Director, *Committee Hansard*, Australian Youth Climate Coalition, Melbourne, 22 September 2015, p. 3.

38 Dr Chia, Not-for-profit Project, University of Melbourne Law School, *Committee Hansard*, Melbourne, 22 September 2015, p. 14.

39 For example, see: Senator Matthew Canavan, *Submission 493*, p. 23.

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

41 ACNC, *Submission 189*, pp. 4, 10.

42 ACNC, *Submission 189*, p. 8. These similarities are listed in detail on pp. 8-10.



- similarities include the type of organisation; the purpose test required to be met under both schemes; and annual reporting requirements.<sup>43</sup>
- 3.46 ACNC Commissioner, Mrs Susan Pascoe AM, considered that the main argument for keeping registration for DGR status separate to the process for charity registration was that DGR status was administered by the ATO, rather than the ACNC. However, Mrs Pascoe noted that:
- ... the ACNC operates in a streamlined process with the ATO for the application of all tax concessions, so we determine charitable status and then pass it immediately over to the ATO and to their various registers.<sup>44</sup>
- 3.47 As it currently stands, an environmental organisation registering as a charity may indicate their intention to also apply for DGR status. The organisation must then satisfy a number of threshold eligibility questions, which triggers the transfer of the applicant's registration data from the ACNC to the Department, to consider the organisation for listing on the Register. However, the organisation would then still need to be endorsed as a DGR by the ATO, in accordance with the process described earlier in this chapter.
- 3.48 Register administrators may limit the data required in the application process to information that has not already been collected by the ACNC.<sup>45</sup> The ACNC submitted that it was committed to working with the Department to further reduce the regulatory burden and improve administrative efficiencies for registered charities. At the time of submitting to the inquiry, the ACNC was consulting with the administrators of the various DGR registers on how processes could be further streamlined. In this inquiry, the ACNC recommended that it work with the Department to further progress work on alignment options to reduce red tape in the administration of the Register.<sup>46</sup>
- 3.49 Representatives of the Department confirmed they were in regular contact with the ACNC about streamlining processes and supported consideration being given to the ACNC administering the Register.<sup>47</sup>
- 3.50 Notwithstanding the streamlining that has so far occurred between the Department and the ACNC, the Committee heard evidence citing a

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43 ACNC, *Submission 189*, p. 9.

44 Mrs Susan Pascoe AM, Commissioner, ACNC, *Committee Hansard*, Canberra, 18 June 2015, p. 1.

45 ACNC, *Submission 189*, p. 13; Department of the Environment, *Submission 185*, p. 13.

46 ACNC, *Submission 189*, pp. 3, 13.

47 Department of the Environment, *Submission 185.2*, p. 5; Ms Lara Musgrave, Assistant Secretary, Engagement and Evaluation, Department of the Environment, *Committee Hansard*, Canberra, 16 June 2015, p. 3.

complex system which involved unnecessary duplication, costs, and administration.

- 3.51 Dr Joyce Chia, representing the Not-for-profit Project, submitted that the existence of a DGR register separate to registration as a charity created regulatory gaps:

The sector is already quite confused about charitable status and DGR. They often think, if they have charitable status, that people can donate to them; they get even more confused when they realise there is another register that they have to sign up to with a different set of sanctions and a different set of reporting requirements. It is certainly duplicative, ineffective and inefficient...<sup>48</sup>

- 3.52 Mr Murray Baird, Acting Commissioner and General Counsel for the ACNC, told the Committee that requiring an organisation to register as a charity with the ACNC, as a prerequisite to applying for the Register, would reduce the duplication in administrative processes:

I think that at the moment the challenge for some environmental charities is that they effectively have to double report and have double compliance obligations and double registration obligations.<sup>49</sup> So the prerequisite of registration as a charity would open the gateway to streamlining the process. Most of the functions would be achieved at the first gateway – becoming a charity – and the rest could be streamlined.<sup>50</sup>

- 3.53 Professor Ann O’Connell, also of the Not-for-profit Project, told the Committee that a streamlined process should retain the robustness and transparency of the framework:

We do not want to do away with any reporting requirements, because transparency is important for integrity and for our revenue system.<sup>51</sup>

- 3.54 Dr Chia argued that the Register had been superseded by a more comprehensive system of regulation through the ACNC.<sup>52</sup> This view was echoed by others, who questioned the continuing need for the Register
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48 Dr Chia, Not-for-profit Project, University of Melbourne Law School, *Committee Hansard*, Melbourne, 22 September 2015, p. 14.

49 Mr Murray Baird, Acting Commissioner and General Counsel, ACNC, *Committee Hansard*, Canberra, 26 November 2015, p. 3.

50 Mr Baird, ACNC, *Committee Hansard*, Canberra, 26 November 2015, p. 3.

51 Professor Ann O’Connell, Not-for-profit Project, University of Melbourne Law School, *Committee Hansard*, Melbourne, 22 September 2015, pp. 14-15.

52 Dr Chia, Not-for-profit Project, University of Melbourne Law School, *Committee Hansard*, Melbourne, 22 September 2015, p. 14.

given developments associated with the establishment of the charities regulator in recent years.

## Proposals for reform

### Eradicating duplication

- 3.55 As evidenced above, a number of organisations and individuals who participated in the inquiry argued that the process of seeking endorsement as a DGR through the Department and the ATO should be streamlined with the process for attaining charity status through the ACNC. It was argued that this streamlining would reduce duplication and increase transparency in the DGR application process.
- 3.56 As noted above, the Community Council for Australia submitted that the best way to reduce red tape while improving transparency and accountability would be to empower the ACNC to determine charitable status and make recommendations to the ATO on DGR eligibility.<sup>53</sup>
- 3.57 Mr David Crosbie, Chief Executive of the Council, told the Committee:
- It makes absolute sense to have all charities registered through the Australian Charities and Not-for-profits Commission. It makes absolutely no sense to have multiple levels of sub-ministerial decision making around whether somebody is a charity and whether they should get DGR [status]. The processes around that are an absolute mess.<sup>54</sup>
- 3.58 Mr Krystian Seibert, of Philanthropy Australia, told the Committee that moving the registers, including the Register of Environmental Organisations, under the supervision of the ACNC, together with the ATO, would be consistent with the management of most other DGR categories.<sup>55</sup>
- 3.59 Dr Greg Ogle submitted that the biggest improvement to efficiency would be to abolish the Register and have tax deductibility assessed by either the ATO or the ACNC, as was already the case for many non-environmental charities.<sup>56</sup> He reasoned that the ACNC, as the purpose-built regulator,

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53 Community Council for Australia, *Submission 425*, p. 5; Dr Chia, Not-for-profit Project, University of Melbourne Law School, *Committee Hansard*, Melbourne, 22 September 2015, p. 14.

54 Mr Crosbie, Community Council for Australia, *Committee Hansard*, Canberra, 18 September 2015, p. 43.

55 Mr Krystian Seibert, Policy and Research Manager, Philanthropy Australia, *Committee Hansard*, Melbourne, 22 September 2015, p. 38.

56 Dr Greg Ogle, *Submission 335*, p. 3.

and the ATO were better equipped and qualified to assess DGR status than the Environment Department and Minister.<sup>57</sup>

- 3.60 Professor Ann O’Connell, of the Not-for-profit Project, noted that placing environmental DGRs within the scope of the ACNC would enable a range of enforcement mechanisms that were not currently available to the Department.<sup>58</sup>
- 3.61 Issues of enforcement and compliance are discussed further in Chapter 6.

### Requiring charity registration with the ACNC

- 3.62 As outlined in Chapter 2, for most general DGR categories, organisations must apply directly to the ATO to seek DGR endorsement.
- 3.63 For some categories of DGR, organisations must first register as a charity through the ACNC, as a prerequisite to seeking DGR endorsement through the ATO. For example, registration with the ACNC is currently required for organisations listed on the Register of Harm Prevention Charities and under the Overseas Aid Gift Deduction Scheme.<sup>59</sup>
- 3.64 The ACNC recommended that registration as a charity with the ACNC become a prerequisite for listing an organisation on the Register.<sup>60</sup> Mr Murray Baird, Acting Commissioner and General Counsel of the ACNC, advised the Committee that introducing this requirement would streamline registration, reporting, compliance, transparency, and data-sharing arrangements. In the ACNC’s view, these functions did not need to be duplicated elsewhere.<sup>61</sup>
- 3.65 Mr Baird considered how the two registration processes would align, having regard to the current overlapping requirements:

The definitions of environmental organisations for REO purposes and for our purposes under the Charities Act are closely aligned, and there is no serious conflict between those respective requirements ...

... There are clear criteria in the Charities Act about qualifications to become and remain a charity, including disqualifying purposes such as illegality and political purposes that the ACNC is bound to apply. Any other requirements could be set out for eligibility for subtype of environmental activity on the charities register or by

57 Dr Ogle, *Submission 335*, p. 3.

58 Professor O’Connell, Not-for-profit Project, University of Melbourne Law School, *Committee Hansard*, Melbourne, 22 September 2015, p. 13.

59 ACNC, *Submission 189*, pp. 4, 10.

60 ACNC, *Submission 189*, p. 3.

61 Mr Baird, ACNC, *Committee Hansard*, Canberra, 26 November 2015, p. 3.

way of special conditions to be set out in the tax act for eligibility for tax deductibility.<sup>62</sup>

- 3.66 It was noted that about 25 per cent of environmental DGRs (organisations listed on the Register) are not currently registered as charities with the ACNC. Mr Baird suggested, however, that few of these organisations would fall outside eligibility to be on the charity register.<sup>63</sup>
- 3.67 Dr Greg Ogle noted that there had been a lengthy process of informing organisations about the ACNC, its role, and regulatory requirements, which may account for some of the 25 per cent of organisations who had yet to register with the ACNC. Furthermore, Dr Ogle suggested that some organisations may no longer exist or be functioning, or may be in the ‘far-flung bits of the environment movement who do not understand the requirements’.<sup>64</sup>
- 3.68 The AYCC supported consideration of a DGR scheme for environmental organisations administered by ‘an effective collaboration of the ATO and the ACNC, independently of any government department’.<sup>65</sup>
- 3.69 The AYCC submitted that the endorsement and regulatory model used for public benevolent institutions and health promotion charities could be utilised for environmental organisations.<sup>66</sup>
- 3.70 To register as a health promotion charity, an organisation must be eligible to be registered as a charity under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (ACNC Act) and have any of the charitable purposes outlined in section 12 of the *Charities Act 2013* (Cth). The organisation must then meet criteria outlined in section 25-5 of the ACNC Act, including being an ‘institution whose principal activity is to promote the prevention or the control of diseases in human beings’.<sup>67</sup>
- 3.71 For health promotion charities and public benevolent institutions, the ACNC reviews the purposes and activities of each organisation and determines their entitlement to be registered in those categories. The ATO

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62 Mr Baird, ACNC, *Committee Hansard*, Canberra, 26 November 2015, p. 1.

63 Mr Baird, ACNC, *Committee Hansard*, Canberra, 18 June 2015, pp. 4–5.

64 Dr Ogle, *Committee Hansard*, Canberra, 18 September 2015, p. 26.

65 Australian Youth Climate Coalition (AYCC), *Submission 359*, p. 7.

66 AYCC, *Submission 359*, p. 7.

67 *Charities Act 2013* (Cth), s. 12; *Australian Charities and Not-for-profits Commission Act 2012* (Cth), s. 25-5.

See also: ACNC, *Commissioner’s Interpretation Statement: Health Promotion Charities*, p. 2; ACNC, ‘Factsheet: Health Promotion Charities’ <[www.acnc.gov.au/ACNC/FTS/Fact\\_HPC.aspx](http://www.acnc.gov.au/ACNC/FTS/Fact_HPC.aspx)> viewed 25 February 2016.

then assesses whether the organisation meets all other requirements for endorsement for the relevant tax concessions, such as DGR status.<sup>68</sup>

- 3.72 The Department supported consideration of streamlining options, including the proposal that the ACNC administer the Register.<sup>69</sup>

## **Committee comment**

- 3.73 The Committee has heard evidence from a range of individuals, experts, and representatives of environmental DGRs and other organisations during the course of this inquiry.
- 3.74 Inquiry participants made a number of proposals for reform of the Register, with some suggesting the Committee consider broader reform of DGR status and tax concessions across the entire not-for-profit sector.<sup>70</sup>
- 3.75 However, the Committee has been tasked with inquiring into and reporting on the administration and transparency of the Register of Environmental Organisations.
- 3.76 Accordingly, any discussion of broader tax reform and reform of the regulation of the not-for-profit sector is outside of the terms of reference of this inquiry and outside of the purview of this Committee.
- 3.77 Based on evidence received during this inquiry, the Committee is of the view that a wider review of DGR endorsement processes would be timely and could lead to a range of benefits to the not-for-profit sector and government more broadly, including a reduction in red tape and unnecessary duplication of administrative processes.
- 3.78 Having regard to the terms of reference of this inquiry, there is overwhelming evidence that the current requirements for endorsement as a DGR and inclusion on the Register overlap significantly with the requirements for registration as a charity with the ACNC, in addition to other registration and regulatory frameworks that environmental DGRs operate within.
- 3.79 In the interests of removing unnecessary duplication and achieving efficiencies in processing applications for both charity and DGR status, the Committee supports the recommendation that registration as a charity through the ACNC be a prerequisite for obtaining DGR status as an

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68 AYCC, *Submission 359*, p. 7; p. 29; Justice Connect, *Guide to Deductible Gift Recipient Status*, March 2014, p. 29.

69 Department of the Environment, *Submission 185.2*, p. 5.

70 For example, see: Not-for-profit Project, University of Melbourne Law School, *Submission 220*, p. 4.

environmental organisation. Furthermore, the Committee considers that the process of DGR endorsement should be transferred completely to the ATO.

- 3.80 Specifically, an environmental organisation seeking to obtain DGR status should be required to register with the ACNC as a charity with a purpose of 'advancing the natural environment'<sup>71</sup> before having its application for DGR endorsement assessed by the ATO.
- 3.81 Therefore, it is the Committee's view that the Register itself, and the role of the Department in the administration of the Register, would no longer be necessary. Accordingly, the Committee recommends that the Register be formally abolished as part of the transfer of administration from the Department to the ACNC and the ATO.

### **Recommendation 1**

**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.**

### **Recommendation 2**

**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.**

- 3.82 Given the role and powers of the ACNC and the ATO, as outlined in this report, together these recommendations would streamline administrative processes whilst retaining a framework that is robust, accountable, and transparent.
- 3.83 Furthermore, given the evidence provided to the Committee regarding the timeliness of the application processes through the ACNC and the ATO, in contrast with the administration of the Register by the Department, the

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<sup>71</sup> *Charities Act*, s. 12(1)(j).

- Committee is confident that these recommendations would result in a streamlined application process for environmental organisations seeking DGR endorsement.
- 3.84 Upon implementation, the Committee expects the ACNC and the ATO to require each organisation currently on listed the Register to undertake a rigorous assessment process to ensure compliance with these new arrangements.
- 3.85 The Committee notes that the requirement for environmental charities to ‘advance the natural environment’ includes ‘protecting, maintaining, supporting, researching, and improving’ the natural environment.<sup>72</sup> The Committee considers that this definition largely encompasses the features of the principal purpose test currently required to be met by organisations seeking inclusion on the Register.
- 3.86 Similarly, the Committee notes evidence from the ACNC indicating that the majority of the 25 per cent of environmental DGRs not currently registered as charities would be eligible for registration. The Committee is therefore satisfied that the proposed reforms would not unduly disadvantage many active environmental DGRs.
- 3.87 To further streamline administrative arrangements, and to improve the consistency and transparency of access to tax-deductible donations, the Committee considers that environmental organisations listed by name in the ITAA should be required to obtain DGR endorsement through the same process as other organisations.
- 3.88 The Committee sees no reason for the treatment of these organisations to be different from that of other environmental DGRs. This recommendation would therefore bring all environmental DGRs under a common reporting and compliance framework (see Chapter 6). Of course, care would need to be taken in relation to the timing of the implementation of this recommendation. Transitional arrangements would be required to ensure that organisations currently listed in the ITAA would have ample opportunity to seek endorsement as a DGR under the new regulatory framework, before being removed from the ITAA.

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<sup>72</sup> *Charities Act*, s. 3.



**Recommendation 3**

**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.**

- 3.89 Lastly, to ensure that the availability of tax-deductible donations to environmental organisations remains transparent, the Committee recommends that the ATO maintain on its website a publicly available list of environmental organisations that receive DGR endorsement after obtaining charity status under the environmental subtype. The list should be updated as required and should include, at a minimum, the name of each organisation's public fund and the date on which it received DGR endorsement.
- 3.90 The Committee notes that this level of transparency is consistent with the publication of the Register by the Department.

**Recommendation 4**

**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.**

