



Labor Members' Dissenting Report

Introduction

The Labor members of the House of Representatives Standing Committee on the Environment, Andrew Giles MP, the Hon. Mark Butler MP, Sharon Claydon MP, the Hon. Mark Dreyfus MP and Tony Zappia MP, wish to acknowledge the work of the committee secretariat over the course of this inquiry. We appreciate their hard work, and the professional manner in which it was done. We also acknowledge the contributions of all who contributed to this inquiry, whether by way of presenting evidence, providing a submission, or otherwise setting out their views. These contributions made clear to us the importance of this inquiry to Australians.

Over the course of the inquiry the committee heard from a diverse array of environmental organisations and other interested groups from around the country. The submissions and evidence demonstrated the extraordinary contribution of Registered Environmental Organisations to the preservation of our natural environment, and to the health of our democracy.

The overwhelming weight of evidence presented to the committee points to the vital importance of maintaining the tax deductibility of donations to environmental organisations, without imposing further conditions or constraints on the operation of those organisations.

Despite the efforts of government members, no disinterested evidence was adduced in support of the proposition that a distinction should be drawn between so-called 'on ground' environmental activities on the one hand, and advocacy, on the other.

In these circumstances, the Labor members of the committee find it extraordinary that government members have recommended to, in effect, constrain the capacity of environmental organisations to engage in advocacy work. We completely reject this undemocratic proposition. Citizens should be supported to question government decision-making and corporate power, not manoeuvred into silence by legislative and administrative action.

However, government members have, seemingly, preferred ideology and interest to evidence. We are particularly concerned by the apparent reliance on the submission and evidence of Senator Matthew Canavan in support of contentious recommendations (to which we are opposed) in preference to expert views and submissions given by those working in or with environmental organisations.

Governments should be slow to seek to define the bounds of legitimate non-government activity in a healthy democracy.

Recommendations 1, 2, 3, 4, 7, 8 and 9

Labor members are broadly supportive of these recommendations, which largely reflect the weight of the evidence received and the terms of reference of the inquiry. We are concerned that appropriate transitional arrangements, and consultation with affected organisations, must take place in good time prior to the introduction of measures to give effect to these recommendations by government.

Recommendation 5

The majority report has recommended a minimum of a 25 per cent proportion of environmental organisations' annual public expenditure be granted towards 'remediation work'.

This recommendation to incorporate a 25 per cent remediation requirement is inconsistent with the vast majority of the submissions before the inquiry. In our view, governments should be very slow to seek to define the bounds of legitimate non-government activity. This goes to the heart of a functioning civil society, and a healthy democracy.

We reject the proposal advanced at 4.81 of the majority report, that a precondition of DGR status must be a requirement to "undertake a mix of activities, and that this mix should include practical environmental work such as remediation".

We are unpersuaded by the assertion of government makes of 4.87 that they anticipate that “such a requirement would not restrict the freedom of environmental DGRs to engage in advocacy or public debate, nor would it exclude organisations engaging in these activities from attracting DGR status.”

In its submission, The Wilderness Society wrote that setting a limit for advocacy work would “create unnecessary regulatory burden for the administration of the register as environmental organisations would need to demonstrate the percentage of organisational resources dedicated to advocacy activities, which, if defined as in Canada, is an incredibly complex and subjective task and inconsistent with the Australian Government’s stated policy objectives of reducing red tape and regulatory burden.”

The weight of evidence rejects the premise, advanced by government members, that there exists a dichotomy between advocacy and ‘on ground’ work. The evidence instead shows that it will increase red tape and treat environmental organisations differently to other not for profit organisations.

Moving away from a purpose test to one based on activities creates red tape on both ends and acts as a brake on innovation through constraining the manner in which organisations can seek to achieve their objectives.

For example AYCC acknowledged that whilst activities such as tree planting are important “large- scale systematic changes to protect the environment, especially to address climate change, are impossible to achieve without advocacy.”

Submissions and evidence received demonstrate that advocacy and environmental conservation are intrinsically linked. However this is not reflected in this recommendation. Regard ought to have been had to the influential High Court case *Aid/Watch Incorporated v Commissioner of Taxation* (2010). This decision not only clarified the role of charities within Australia’s democratic process, it also recognised advocacy and engagement in political process by charities as legitimate, indeed vital, activities to be undertaken by registered charities.

Political speech by charities enriches the political process by encouraging political debate, facilitating citizen participation and engagement and promoting political pluralism.¹

1 *Aid/watch incorporated v Commissioner of taxation of the commonwealth of Australia* (2010) 241 CLR 539.

The High Court has long recognised an implied freedom of political communication in the Australian Constitution. It is deeply concerning that a restriction, in effect, on political speech has been proposed.

Several submissions outlined the importance of public participation in environmental protection and the requisite tax concessions afforded in compensation for financial contributions, enrolled through DGR status.

The current tax system provides benefits for different stakeholder groups within the community, including, of course, the capacity for businesses to claim deductions in respect of the costs of their lobbying – regardless of the public benefit associated with their activities.

Members of the public who receive the benefit of a tax deduction if they choose to donate to an environmental organisation are contributing to a public good. This contribution is believed to enhance political engagement and representative democracy, and also to give a voice to those outside Parliament. This was referenced in the final report in Dr Anna Olijnyk's submission:

Many people may not have the time or the expertise to engage in advocacy on their own behalf, and we think that DGR status is an important way of encouraging them to contribute to the public debate by way of financial support.²

We agree it is an important way of supporting a robust civil society. Also, on a practical level, government members have failed to have regard to the resourcing implications to oversight this recommendation, or to its impact on the operation of environmental organisations, which would be required to devote resources to administration in place of advancing their objectives. This, in circumstances, where the recommendation seems to be at odds with evidence and where 'efficiency' is a key element of the terms of reference of the inquiry. Indeed, the majority report appears to recognise this challenge at 4.82, in discussing 'definitional issues'.

2 Cited in: House of Representatives Standing Committee on the Environment, *Inquiry into the Register of Environmental Organisations*, p. 52.

Recommendation 6

The Labor members of the committee have several concerns relating to this recommendation, regarding the practicality and monitoring of the potential penalties imposed and relevant privacy matters pertaining to disclosure.

The report also details a compliance framework in which an organisation with DGR status must disclose any arrests, charges or convictions for illegal activity in relation to any employee or responsible member for the organisations, as a part of their self-assessment.

Given the nature of many environmental organisations is based on volunteer networks and promotes inclusive environments with large groups of people, the extent to which this recommendation could be implemented is questionable. For example Conservation Volunteers Australia submitted that the organisation engages over 12,500 volunteers in practical conservation activities throughout Australia.³

Further, this recommendation is unhelpful when dealing with concerns about illegal behaviour within organisations. We condemn any illegal behaviour, and note that laws already exist to deal with these matters. The recommendations proposed would create unnecessary red tape, overlap existing laws and provide implementation difficulties.

Philanthropy

A major public policy challenge addressed in the evidence – however, not the subject of the recommendations – is that of encouraging philanthropic gifting and not seeking to confine the capacity of people, or institutions, to give to the organisations they wish to support.

In its submission, AEGN points to the strengths of philanthropy within both the public and private sectors. They also note the growth in the sector where people who have been successful in business are starting to “give back to the community” by using philanthropy as a vehicle.

3 Mr Ian Walker, Director, Conservation, Conservation Volunteers Australia, *Committee Hansard*, Melbourne, 22 September 2015, p. 32; cited in: House of Representatives Standing Committee on the Environment, *Inquiry into the Register of Environmental Organisations*, p. 52.

Furthermore, AEGN points towards the benefits philanthropy gives to newer organisations, who may eventually receive Government funding, however, in the initial stages need financial support to succeed.

In these circumstances, it is disappointing that the recommendations in the majority report have not had regard to this question of supporting philanthropic gifting, in particular where other recommendations may impact the capacity of individuals to donate to the causes they choose to support.

Mr Andrew Giles MP
Deputy Chair

The Hon. Mark Butler MP
Member

The Hon. Mark Dreyfus QC MP
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Mr Tony Zappia MP
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