

May 21, 2015

Committee Secretary  
House of Representatives  
Standing Committee on the Environment  
PO Box 6021  
Parliament House  
Canberra ACT 2600

By email to: [environment.reps@aph.gov.au](mailto:environment.reps@aph.gov.au)

Dear Sir/Ms:

**Re: Parliamentary Inquiry** into the Register of Environment Organisations

Thank you for the opportunity to make these comments. When the Committee takes evidence at hearings, please also accord us the privilege of being heard, preferably in Melbourne.

**1. Who we are:**

Gene Ethics is a Company Limited by Guarantee, founded in 1988. We are a non-profit educational network, with over 6,000 citizens and kindred groups who envisage a safer, more equitable and sustainable GM-free society. We want the precautionary principle, scientific evidence and the law rigorously applied to all proposed uses of genetic manipulation (GM) techniques and their products, including synthetic biology and other emerging techniques. Gene Ethics generates and distributes accurate information and analysis on the ethical, environmental, social and economic impacts of GM. Our education programs critically assess GM for the general public, students, policy-makers and interest groups.

**2. Recommendations:**

We recommend to the Committee that:

1. **the definition of 'environmental organisation'** in the *Income Tax Assessment Act 1997* remain unchanged as it is a robust and suitable characterization, fit for purpose;
2. **the criteria and principal purposes that qualify organisations** for listing on the Register of Environmental Organisations not be amended, as practical, physical environmental work must be augmented by education, research and policy-making, to be effective;

3. **continued inclusion of all those now on the Register be reconfirmed**, since they meet the requirements for listing, comply with the law and pursue 'purposes beneficial to the community' and 'contribute to public welfare'.

A majority of judges of the High Court found in *AIDWATCH Incorporated v Commissioner of Taxation* [2010] HCA 42 (High Court of Australia, 1 December 2010) that generation of public debate was a charitable purpose because its activities contributed to public welfare and were therefore charitable:

<https://wiki.qut.edu.au/display/CPNS/AidWatch+Incorporated+v+Commissioner+of+Taxation> ; The Australian Tax Office also summarises the court's findings thus:

- "The court was of the view that the origin of the apparent "political activities" disqualification notion (i.e., *Bowman v Secular Society Ltd* [1917] AC 406) was decided in a context which did not take account of the Australian Constitution, and the inherent right of constituents for agitation and communication about matters affecting government, politics and policies.
- The court decided that in Australia, there is no general doctrine which excludes from charitable purposes "political objects".
- The court held that the concern of and attempts by Aid/Watch to promote the effectiveness of aid delivery was clearly aimed at the relief of poverty and that the promotion and generation by lawful means of public debate about matters affecting the better use of and delivery of Australian aid was a matter falling within the fourth Pemsel head, i.e., purposes beneficial to the community."

<http://law.ato.gov.au/atolaw/print.htm?DocID=LIT%2FICD%2FS82of2010%2F0001&PiT=99991231235958&Life=20141211000001-99991231235959>

4. **those listed on the Register of Environmental Organisations** continue to have tax deductibility for donations towards the cost of their work, as the legislation now permits. Great public benefit derives from their work in protecting and enhancing the quality of our environments and human health, to benefit us all;
5. **the present reporting requirements** for those on the Register remain unchanged, as the government is committed to minimising red tape. The administrative burden of compliance for organisations should be commensurate with the already stringent and enforceable monitoring and scrutiny that the Tax Office and the Department of the Environment practice;
6. **the Taxation Act be amended to allow** a percentage of DGR-raised finances to be used for non-partisan political activity or advocacy so an organization on the Register could oppose or contest government policies but could not back specific candidates for election. Canadian law is a precedent. See: <http://www.cbc.ca/news/politics/7-environmental-charities-face-canada-revenue-agency-audits-1.2526330>

### 3. Commentary:

3.1 The Register was established some 40 years ago to encourage community support for the environment movement and has been effective in achieving its goals. It has always been tightly administered, regulated and monitored to ensure compliance with stringent rules.

3.2 Talking with all levels of government, informing politicians and officials of community sentiment on environmental policy and protection, is an essential dialogue. It would cease if green groups were dumped off the Register and lost much of their capacity to raise funds.

3.3 Meanwhile, corporations whose activities may harm the environment would still be able to claim their lobbying, policy-making and influence peddling as tax-deductible business expenses. The Institute for Public Affairs and some political parties advocate that green groups should lose tax-deductibility for gifts but their own tax-deductibility is not under review. Without a community voice, corporate access to decision-makers would be unfettered and unchallenged. That is not in the public interest.

3.4 The inquiry received a public airing on the ABC's 7.30 Report, on 10/04/2015. Three Liberal Parliamentarians were interviewed and two are members of the Committee of Inquiry.

3.5 From the program content, it is fair to conclude that the Government and some Committee members are negatively targeting environment groups and their economic viability. Of 600 groups on the Register of Environmental Organisations, it is said that as many as 150 could be effectively defunded if the committee recommends they be stripped of their Deductible Gift Recipient (DGR) status that allows them to issue tax deductible receipts for gifts over \$2.

3.6 An attack on the environment movement also assaults our democracy and the life support systems on which we all depend for our survival.

3.7 In the program, ABC presenter Conor Duffy notes that Tasmanian MP Andrew Nikulic started the push to strip the groups of the privilege of tax deductibility, moving a motion at the Liberal Party's Federal Council meeting where it was unanimously endorsed. So we ask:

Why does the inquiry not explore tax deductibility for donations of all those groups with DGR including, for instance, think tanks, political parties and churches?

3.8 Selecting environment organisations for unusual attention suggests that establishment of this Committee of Inquiry results from sectoral lobbying, not broad democratic public concern.

3.9 Mr Nikulic and the government have evinced little concern publicly that extractive industries received an average annual subsidy of \$2.9 billion for the past 6 years <http://www.abc.net.au/news/2015-04-07/corporate-tax-avoidance-inquiry-to-begin-this-week/6373862> and that many companies avoid Australian tax in offshore tax havens and allocate their profits and costs to minimize their Australian tax.

3.10 In contrast, as the Sydney Morning Herald reports: "the government has chosen to focus on the estimated \$90 million returned to individuals for donations to environment groups rather than the \$1.6 billion in deductions associated with churches and the big welfare charities and aid agencies." <http://www.smh.com.au/federal-politics/political-news/preventing-political-advocacy-by-environment-groups-an-attack-on-democracy-20150518-gh4dak.html>

3.11 Mr Nikulic seeks to justify the decisions of the Liberal Party's Federal Council and the government majority in the House or Representatives, to mount the inquiry, when he claims: "People are legitimately concerned that tax deductible status, that very generous gift from the taxpayer, is being used in ways that they wouldn't accept. That is, to run down legitimate businesses, to engage in illegal activities at times."

3.12 We ask Mr Nikulic to produce hard evidence to the Committee of:

1. The number of people 'legitimately concerned' about tax deductions for donations to green groups, and their demographics, including occupations;

2. Donors to environment groups who are dissatisfied with how their donations are spent and what democratic processes exist to redress their concerns;
3. Whether businesses should come under similar government scrutiny, to ensure that minimizing their environmental impacts accords with contemporary societal values and that they are not getting tax breaks to pollute or degrade our environment; and
4. Cases where 'illegal activities at times' are inadequately policed or not subject to laws applied to all sections of the community, including businesses.

3.13 Liberal MP and Chair of the Committee, Alex Hawke goes on to claim: "Green groups are not sacrosanct. They need to be subject to the same accountability and transparency as other sectors."

3.14 We agree that all sectors should have equal and fair scrutiny under the Tax laws and other regulations agreed by the parliament.

3.15 But Mr Hawke contradicts his own claim of 'accountability and transparency' for all when he says: "I don't believe there's a comparison with the IPA here. This is specifically about the purposes of the environmental register." Can green groups be assured of a positive hearing and fair treatment, given these attitudes of the chair of this Inquiry.

3.16 The 7.30 Report presenter also notes that: "Both the Labor and Liberal parties have think tanks, Chifley and Menzies House, that also enjoy tax deductibility," and asks Mr Hawke: "Isn't it hypocritical to keep the taxpayer subsidising those groups?"

3.17 Mr Hawke responds: "Yeah, well that's an issue that can be looked at by a separate committee or group and absolutely that should be accountable and it should be transparent and it should be subject to the public interest test."

3.18 This raises more legitimate public interest questions that Mr Hawke should answer in the Committee's deliberations on its Terms of Reference:

1. Will Mr Hawke and his colleagues propose a motion for a general review of tax deductibility to the Federal Council of the Liberal Party and its Parliamentary wing?
2. Why do this Committee's Terms of Reference fail to investigate tax all organisations that enjoy tax deductibility for donations under Subdivision 30-B of the Tax Act, which accords Deductible Gift Recipient (DGR) status to those working in the fields of: Health, Education, Research, Welfare and rights, Australian disaster relief funds, Defence, Environment, Industry, trade and design, The family, Marriage education organisations, International affairs, Developing country relief funds, Developed country disaster relief funds, Sports and recreation, Philanthropic trusts, Cultural organisations, Fire and emergency services?
3. When will the Liberal MPs on the Review Committee also advocate that think tanks, churches, and political parties, using their tax-deductible donations to do advocacy and policy work with political agendas, also have their DGR status and operations reviewed and possibly cancelled?

3.19 Alex Hawke contends that: "the environment register is for groups to do actual practical environmental work or some education and other purposes." But the Act makes no reference to an environment organisation being required to do 'actual practical environmental work'.

3.20 To qualify for DGR, the Tax Act says: "Its principal purpose must be:

- the protection and enhancement of the natural environment or of a significant aspect of the natural environment; or
- the provision of information or education, or
- the carrying on of research, about the natural environment or a significant aspect of the natural environment.”

3.21 Environmental Organisations on the Register qualify on these grounds as they would not otherwise have been eligible for inclusion in the first place.

3.22 Nationals Senator, Matthew Canavan says in the 7.30 Report: “I don't think its right that Australian taxpayers, including people who work in the mining industry, are asked to fund those (campaign) activities. ... engaging in what I would view as the political debate, not the environmental debate.” So:

Will the committee explore the impacts of citizens withholding taxes, or governments withholding tax concessions, on the stable funding of activities such as the armed forces, pollution mitigation, or retirement funds for Parliamentarians?

Will the committee ask Senator Canavan to clarify his odd distinction between: ‘the political debate, (and) the environmental debate’?

3.23 As there can be no economy without the environment and its natural assets – biota, water, soil, air, sun, minerals and the built environment – it is our strongly held view that no valid distinction or separation can be made between political and environmental debates.

3.24 Auspicing is also discussed in the 7.30 report, as a subject the Committee will investigate. It is common practice, throughout the not-for-profit sector generally, for a group with DGR status to exercise its discretion to allocate funds to assist the work of kindred organisations. Though they lack DGR status, such groups doing valuable environmental work may themselves lack the resourcing and administrative capacity to apply for inclusion of the Register. A multitude of volunteer organisations are in this category. The rules are consistent with the Tax Office’s prohibition on the **channeling of funds** between groups.

3.25 In the case of Environment Organisations on the Register, the Environment Department and the Australian Taxation Office have already intensively scrutinized the auspicing that green groups practice. The integrity of the present system is assured as criminal sanctions apply to organisations on the Register producing, or tendering to regulators, fraudulent or misleading documents. <http://www.comlaw.gov.au/Details/C2014C00196>

3.26 As Cam Walker, the Campaigns Director of Friends of the Earth (FoE) recalls in the 7.30 Report, FoE “was also subject to the investigation and again it was found that we were acting within the guidelines.”

3.27 Outsourcing is also a common practice in business these days so a prohibition on auspicing would be out of step with contemporary practices in all sectors of the economy.

3.28 If DGR for some or all non-profit environment organisations on the Register were revoked, government would be taxing us twice for our financial commitment to conserve and enhance the livability of our environment.

3.29 In a posting entitled “Australia tops the charts... in tax deductions” on January 29, 2014, [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/FlagPost/2014/January/tax-expenditures-2014](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2014/January/tax-expenditures-2014) the Parliamentary Library notes:

“Tax expenditures are reported [in an annual statement by Treasury](#). In 2012–13, there were 363 tax expenditures provided under the Australian tax system, the total value of which was estimated at approximately \$115 billion, or 7.5% of Gross Domestic Product (GDP). For comparison, total government direct spending in 2012–13 was about 23.5% of GDP. ... negative gearing, the private health insurance rebate, and family tax benefit are not counted as tax expenditures in the Treasury tax expenditures statement.”

3.30 At only \$90 million pa, deductions for donations to groups on the Register are therefore estimated at less than 0.08% of total tax expenditures. This does not justify the government selecting the Register for unfair and unwarranted review, when there are no demonstrable problems with its cost or administration. It is fair to conclude that this Inquiry is being held to placate vested interests that lobbied for this action, to disarm the environment movement’s capacity to carry out its crucial roles in our democracy. The material base of our economy must be protected and enhanced, not raped and pillage at great cost to our community.

#### **4. Terms of Reference of the Inquiry:**

- the administration and transparency of the Register of Environmental Organisations
- its effectiveness in supporting communities to take practical action to improve the environment.

##### **4.1 Our comments on the Committee’s Terms of Reference:**

The Commonwealth Department of Environment and Tax Office have always vigilantly, effectively and transparently administer and monitor the Register. Registered groups are required to regularly and extensively report on their finances and membership. Criminal sanctions for producing false documentation ensure compliance.

Without the Register and the oversight it brings, the benefits of an effective, largely voluntary, and community-based environment movement would be greatly diminished. Without the expertise and skills in policy development, planning, management, and advocacy provided by groups on the Register, practical community action to conserve, protect, manage, curate, research, and improve natural and built environments would be difficult, if not impossible.

Can the Committee document particular examples where the system has failed, to justify the inquiry and the stated intention to dump some groups off the Register?

##### **4.2 The Inquiry will have particular regard to:**

4.2.1 the definition of 'environmental organisation' under the Income Tax Assessment Act 1997, including under Subdivision 30-E;

The Act says:

“An environmental organisation is:

(a) a body corporate; or (b) a co-operative society; or (c) a trust; or (d) an unincorporated body established for a public purpose by the Commonwealth, a State

or a Territory; that satisfies each requirement in sections 30-265 and 30-270.”

“Its principal purpose must be: the protection and enhancement of the natural environment or of a significant aspect of the natural environment; or the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.”

The organisations on the Register meet all of these criteria. Successive Environment Ministers have given their imprimatur to organisations applying for inclusion on the Register. The Ministers also have ample powers to investigate and remove groups from the Register for non-compliance with the rules, yet few have been removed.

Thus, the government’s decision to mount an inquiry with the intention of dumping groups off the Register en masse is a political exercise rather than a free and fair forum to ensure the continued good governance that has pertained until now.

What examples does the Committee have of organisations not complying with the purposes set out in the Act that would justify the removal of up to 150 organisations from the Register?

#### 4.2.2 the requirements to be met by an organisation to be listed on the Register and maintain its listing;

No changes to the Act or its administration are necessary. To be a registered organisation: “It must maintain a public fund” and “gifts made to the fund are used only for its principal purpose.” It must also satisfy the strictures of section 30-270. This gives the ATO appropriate and well-used powers to examine and decide whether or not organisations comply. The sanction of being removed from the Register and losing DGR status, as well as criminal sanctions, are strong incentives for compliance. We know of no revocations of membership of the Register.

Does the Committee have examples of non-compliance that have not been remediated by the intervention of the Minister, the Department of Environment or the Tax Office?

#### 4.2.3 activities undertaken by organisations currently listed on the Register and the extent to which these activities involve on-ground environmental works;

Committee members’ insistence that ‘on-ground environmental works’ are the sole criteria for compliance with the rules of the Register are just wrong. Practical work is only a small part of ‘protection and enhancement’ of the natural environment and the Tax Act’s definition also includes: ‘provision of information or education’ and ‘research’.

These legitimate activities cannot be carried on without organisations and their members also engaging in policy making, advocacy, and a range of adjunct activities that all focus on ‘the protection and enhancement of the natural environment or a significant aspect’ of it, that facilitate the primary purpose and without which it would not be effective.

Will members of the committee provide examples of perceived problems of non-compliance, so citizens better understand what is wrong with the present system?

#### 4.2.4 reporting requirements for organisations to disclose donations and activities funded by donations;

Financial and membership reporting requirements are already very stringent. They are not in need of review as there appears to be no evidence of non-compliance.

The Committee should give examples of the perceived problem with current reporting provisions so organisations that are subject to innuendo and veiled threats can respond and become compliant, if there is a factual basis to the accusations.

Mediation and counselling is adopted in every other arena of government regulation, prior to the strict enforcement of the law. It is of great concern that this inquiry may turn into a kangaroo court where justice is not done or seen to be done.

#### 4.2.5 the administration of the Register and potential efficiency improvements;

Annual reporting of the matters set out in the Tax Act ensure the onus is on participants to optimise the efficient administration of the Register, through strict compliance with its rules and regulations. Membership of the Register is acknowledged by all in the environment movement to be a valuable and indispensable privilege that ensures financial viability through secure sources of tax-deductible funding. Being on the Register is highly valued, nurtured and protected.

The present provisions are stringent enough and give government more than adequate powers to optimise the administration and to maximise efficiency.

Will the Committee please provide examples of any perceived problems, to assist witnesses to make more informed comments on this Term of Reference?

#### 4.2.6 compliance arrangements and the measures available to the Department of the Environment and the Australian Taxation Office to investigate breaches of the Act and Ministerial Guidelines by listed organisations;

The existing checks and balances that ensure compliance are appropriate as investigations can result in removal from the Register or criminal prosecution. No additional powers are required as very thorough investigations of various organisations have, over the years, confirmed their compliance.

Again we ask the Committee and its members, 'Are there examples of perceived problems with compliance and short-comings in the effectiveness of sanctions that would justify any perceived concerns with the operation of the present system?'

#### 4.2.7 relevant governance arrangements in international jurisdictions, and exploring methods to adopt best practice in Australia.

We cannot comment in detail on this topic but note that the Canadian Conservative Government engaged last year in searching audits of environment organisations.

<http://www.cbc.ca/news/politics/7-environmental-charities-face-canada-revenue-agency-audits-1.2526330> At least one organisation appealed the results of its audit.

The report says that in Canada: “By law, charities are allowed to use a maximum of 10 per cent of their resources for political activity or advocacy, but the guidelines are clear that it cannot be partisan activity. That has been interpreted for years to mean that a group can oppose a government policy but cannot back a specific candidate in an election.”

To clarify the Australian situation it may be helpful to amend the Taxation Act to include participation in democratic political activities, as actions to which funds raised through DGR could be applied.

Which overseas jurisdictions do committee members perceive as having superior or inferior DGR systems to Australia’s, as the basis for a further round of discussions.

## **5. Conclusions:**

5.1 Nothing we know of suggests that there are any systemic problems with the current administration or operation of the Register of Environmental Organisations. It was established to serve the public interest and is successfully doing that.

5.2 Business and industry receive various concessions and subsidies for lobbying and other political activities. So it is fair and appropriate that community-based organisations also receive support for their practical, research, policy and educational work – informing politicians and policy-makers to develop, advocate and implement positive environmental policies. All these activities are merely different aspects of effective environmental protection, for which the register was created.

5.3 We commend our recommendations to the Committee and request a written response to the questions we have posed. We especially direct our questions to those members of the Committee of Inquiry who appear to have pre-judged the outcome. Dumping many organisations off the Register of Environmental Organisations en masse and depriving them of their DGR status would not serve the interests of democracy or our life support systems.

Please accept and favourably consider these comments. Also accord us the opportunity to meet the Committee when it convenes, preferably in Melbourne.

Yours sincerely,

A handwritten signature in black ink that reads "Bob Phelps". The signature is written in a cursive style with a long horizontal line extending to the right from the end of the name.

**Bob Phelps**  
**Executive Director**