

DEPARTMENT OF THE ENVIRONMENT

Ref: **Secrecy**

REGISTER OF ENVIRONMENTAL ORGANISATIONS— **Secrecy**

Key Points:

- **Secrecy**
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- The Register is a Commonwealth tax deductibility scheme for environmental organisations enabled under *Income Tax Assessment Act 1997* (the Act). It allows eligible organisations to be endorsed as DGRs by the Australian Taxation Office (ATO). The Register is one of four DGR categories not assessed through the ATO.
- In order to be entered onto the Register, the Minister must be satisfied, *inter alia*, that the organisation meets the ‘principal purpose test’, meaning that the organisation’s principal purpose is either:
 - 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 decision in *Sea Shepherd Australia Limited v Commissioner of Taxation* [2013] FCAFC 68 (3 July 2013) relates to its application under the animal welfare DGR category, not the Register, which has a different test for entry.
- DGR status through the Register is separate from an organisation’s status as a ‘charity’ and eligibility for income-tax and other exemptions, which are administered by the Australian Charities and Not for Profits Commission and the ATO.

Suggested comments:

- Due to privacy considerations and secrecy provisions under taxation law, the Department cannot comment on individual cases.
- As part of our overall risk management approach, we take into account a range of intelligence and information from various sources, including representations from the public about their concerns.
- This is added to information we gather ourselves or obtain from other agencies. As the result of our intelligence gathering processes, we take appropriate compliance action, which varies based on the circumstances and can include remedial actions to comply with the law or, in the more serious cases, remove entitlement to tax concessions.

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- The Department's compliance process endeavours to be transparent, fair and accountable, and is set out in the Register's Guidelines which are publicly available.

If raised:

- The Minister is not involved in which organisations are identified for compliance action. The Department makes compliance decisions based on a range of risk factors.

Background:

Register of Environmental Organisations

- The Minister is a statutory decision maker for the Register under the Act and an organisation can only be entered onto the Register if both the Minister and the Assistant Treasurer, acting for and on behalf of the Treasurer, issue a direction to the Environment Secretary to do so. As per section 30-280(2) of the Act, this direction can only be made if the Minister has notified the (acting) Assistant Treasurer in writing that the Minister is satisfied the organisation is an environmental organisation.
- To be satisfied that an applicant organisation is an environmental organisation, the Minister must be satisfied that it meets the membership, structure and compliance requirements outlined in the Act.
- There is no requirement for an environmental organisation to conduct activities that are in line with Government policy, however section 30-280(4) of the Act states: "The Treasurer and the Environment Minister must have regard to the policies and budgetary priorities of the Commonwealth Government in deciding whether to give a direction."

Removal from the Register

- Section 30-285 of the Act provides the Minister and the Assistant Treasurer may issue a direction to the Environment Secretary to remove an organisation from the Register.
- The Guidelines for the Register state that an organisation may be removed from the Register for, *inter alia*, no longer meeting the requirements of the Act. The Guidelines state that the removal process involves two warning letters, before the submission of an instrument of removal for consideration by the Minister and the (acting) Assistant Treasurer.
- The Register is currently taking compliance action against a number of organisations, including Secretcy

Sea Shepherd Australia Limited v Commissioner of Taxation

- Sea Shepherd Australia first applied to the ATO for DGR status in February 2010 as an animal welfare charity. To receive DGR endorsement under this category an organisation's principal activity must be "providing short-term direct care to animals (but not only native wildlife) that have been lost, mistreated or are without owners; and/or rehabilitating orphaned, sick or injured animals (but not only native wildlife) that have been lost, mistreated or are without owners." The application was refused.
 - Sea Shepherd Australia sought a review of the ATO's decision by the Administrative Appeals Tribunal, which affirmed the Tax Commissioner's decision. Sea Shepherd Australia then appealed to the Full Federal Court, which delivered a split decision (two-

