

OPENING STATEMENT

Introduction

Thank you for the opportunity to attend and provide a private briefing to the Joint Standing Committee on Electoral Matters.

I understand that the Committee is particularly interested in matters relating to **Secrecy**

However, I believe it would be of assistance if I give some general background on the Register and associated compliance actions before touching on the particular issue raised.

Background

By way of background, 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 Deductible Gift Recipients (DGRs) by the Australian Taxation Office (ATO).

DGR status means donations made will be tax deductible for the donor.

There are 51 DGR categories in the Act.

The Register is one of four DGR categories not assessed through the ATO. The others are the:

- Register of Cultural Organisations under the Minister for the Arts;
- Register of Harm Prevention Charities under the Minister for Social Services; and the
- Overseas Aid Gift Deduction Scheme under the Minister for Foreign Affairs.

The Minister with responsibility for the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) is a statutory decision maker for the Register under the Act, in this instance Minister Hunt.

An organisation can only be entered onto the Register if both Minister Hunt and the (acting) Assistant Treasurer, acting for and on behalf of the Treasurer, issue a direction to the Environment Secretary to do so. Under the Act, this direction can only be made if Minister Hunt has notified the (acting) Assistant Treasurer in writing that he is satisfied the organisation is an environmental organisation.¹ As at the **Secrecy**, there were **Sec** organisations on the Register.

To be satisfied that an organisation is an 'environmental organisation', Minister Hunt must be satisfied that it meets the membership, structure and compliance requirements outlined in the Act. Importantly, to be entered onto the Register an organisation's principal purpose must be:

- a) the protection and enhancement of the natural environment or of a significant aspect of the natural environment; or
- b) the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.²

This is a broad test and allows considerable latitude. However, the term "natural environment" does provide some limitations.

There is no requirement for an environmental organisation to conduct activities that are in line with Government policy. However, 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 [to enter an organisation on the Register]."³

Decisions made in relation to the Register are subject to judicial review through the provisions of the *Administrative Decisions (Judicial Review) Act 1977* (Cth). And, as with any administrative decision making the Ministers are bound by standard administrative decision making principals including procedural fairness.

¹ As per section 30-280(2)

² As per Section 30-265(1)

³ As per Section 30-280(4)

Finally, the Committee should note that 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 (ACNC) and the ATO.

Compliance action and responsibilities

It may also be of use to Joint Standing Committee on Electoral Matters if I outline responsibilities for compliance action before I touch on the particular allegation of interest to the Committee.

Compliance in relation to the Register can be shared across three agencies, depending on the issues involved. These agencies are:

- the Department;
- the Australian Taxation Office; and
- the Australian Charities and Not-for-Profits Commission.

All of these agencies take into account a range of intelligence and information from various sources, including representations from the public about their concerns, as part of an overall risk management approach to compliance.

This is added to information the Department gathers itself or obtains 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, removal of entitlements to tax concessions.

Department's compliance processes

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 on our website.

The Department may investigate complaints where they relate to an organisation's compliance with the requirements of the Act. Questions about the private tax affairs of any particular individual or organisation is beyond the scope of the Department's remit.

The Register's Guidelines state that the grounds for removing an organisation from the Register include:

- no longer meeting the requirements of the Act; or
- not collecting tax-deductible donations from the public; or
- not using donations to the public fund for the principal purposes of the environmental organisation; or
- not adhering to the model rules for public funds as set out in Section 7 of the Register's Guidelines.

The removal process generally involves two warning letters, and the submission of an instrument of removal for consideration by the Minister and the (acting) Assistant Treasurer.

The Senate Standing Committee on Environment and Communications Legislation Committee will be notified that, in response to a question taken on notice from the recent Supplementary Budget Estimates hearings, in 2013–14, approximately 40 compliance warnings were issued. In 2014–15, to date approximately 10 compliance warnings have been issued. The Department carefully considers the organisation's response to the compliance warning, and takes further action where appropriate.

The Department does not have investigative or coercive powers under the Act. Largely, compliance action is taken in response to disclosures made through the statistical return process. Examples, without naming individual organisations, include not properly maintaining a public fund management committee and no longer meeting the minimum membership requirements under the Act.

The Department can, and often does, request additional information from organisations in relation to specific concerns which may be raised. The vast majority of organisations cooperate with such requests. I should note here that [REDACTED] **Secrecy** [REDACTED]

Where an organisation does not respond to the Department's questions, the Department may be entitled to make adverse findings.

The sole sanction the Department has in relation to the Register is removal from it, subject to general administrative law principles.

Principal purpose provisions of the Act

A frequent issue is whether an organisation continues to act in accordance with the 'principle purpose' requirements of the Act. Indeed, donations made into the public fund can only be expended for the environmental purposes of the organisation.

However, as I have previously stated to the Committee, the principal purpose enshrined in the Act is a broad test and allows considerable latitude in permissible activities.

The Conduit provisions of the Act

One of the issues that can cause concern is what is referred to as the "Conduit Policy". The Act provides that an organisation on the Register "must have a policy of not acting as a mere conduit for the donation of money or property to other organisations, bodies or persons."⁴

What this means in practice is not defined in the Act. However, the Explanatory Memorandum described the policy required by the Act as one that "must state that any allocation of funds or property to other organisations, bodies or persons will be made in accordance with the established objectives of the organisation and not be influenced by the expressed preference or interest of a particular donor to the organisation."

We note that the Act only requires that an organisation have a policy of not acting as a 'mere conduit'. It does not specifically require that the organisation does not in fact act as a 'mere

⁴ Section 30-270(2)

conduit'. Nevertheless, the Department's expectation is that an organisation follows its conduit policy and that the policy is genuinely held by the organisation.

Secrecy

A further difficulty is where the arrangement involves the concept of a "benefit" flowing rather than money. Indeed, this may fall outside the Department's considerations. The Department does not and cannot consider look at individual donations and the benefit flowing from them when dealing with questions relating to the Conduit Policy. This would be outside our remit and fit solely with the ATO.

ATO's jurisdiction

The Department may refer allegations about organisations on the Register to the ATO where it believes it lacks the necessary powers to properly investigate the matter, such as when organisations refuse to any questions asked by the Department.

The Department may also refer matters to the ATO where it believes the allegations involves matters beyond the provisions in tax legislation relating to the Register. For example, examining the flow of monies relating to a particular donation.

Where the allegation relates to an individual tax payer's claim for a deduction, and the legitimacy of the deduction, this falls solely within the ATO's jurisdiction.

Where the Committee's queries go to specific donations or deductions these are matters for the ATO. | draw the Committee's attention to the confidentiality...

Comment [A1]: Add details based on advice to be received.

ACNC jurisdiction

The Department may also refer matters to the ACNC where the organisation on the Register is a Registered Charity. However, not all entities on the Register will fall within this category as the Act does not require that organisations listed on the Register are registered as charities with the ACNC.

The ACNC may be involved where there are allegations a Registered Charity is (or could be) breaching the ACNC Act, especially where this conduct threatens public trust and confidence in the charity and the sector more broadly.

The Department notes it is the Government's policy to abolish the ACNC. This matter is the responsibility of the Minister for Social Services. Questions regarding this the ACNC should be referred to the Minister or his Department.

Cooperation

The Department works closely with the ATO and ACNC as appropriate.

Obviously, all agencies involved must operate within the limits of the respective legislation under which they are established.

It is important to note that the ATO works under strict confidentiality arrangements which prevent the disclosure of information about taxpayers—be they individuals or organisations—including to other Commonwealth agencies such as ourselves unless access is granted through a warrant or as otherwise provided for under legislation.

The ACNC has broader powers to share information with the Department where it is satisfied that the information will enable or assist the Department to perform or exercise its functions or powers. The Department treats such information in the strictest confidence.

State and Territories

Finally, it is also important to note that State and Territories may also have a compliance role, especially for Associated Incorporations or through requirements to hold a licence to fundraise

(authority to fundraise). In some instances, allegations made may relate to these matters and therefore are referred to the appropriate state or territory authority.

It is clear that not-for-profit organisations are subject to a number of review mechanisms, including accountability to their membership.

Secrecy

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