



Nature Conservation Council

The voice for nature in NSW

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

21 May 2015

SUBMISSION TO THE INQUIRY INTO THE REGISTER OF ENVIRONMENTAL ORGANISATIONS

Dear Committee,

The Nature Conservation Council of NSW (**NCC**) is the peak environment organisation for New South Wales, representing 130 member societies across the state. Together we are committed to protecting and conserving the wildlife, landscapes and natural resources of NSW.

We welcome the opportunity to make a submission to the inquiry into the register of environmental organisations, however we are disappointed with ongoing attacks on environment organisations that threaten the continuation of important work to improve environmental outcomes and support the public interest.

Our submission will address a number of key issues relevant to the terms of reference to the inquiry:

1. The role of environment organisations in civil society
2. The legal framework for establishing the register of environmental organisations
3. The Nature Conservation Council of NSW
4. International governance arrangements and best practice

We strongly support the important role of environment organisations in civil society, from advocacy to organising to the implementation of on the ground works, each role makes an important contribution towards the protection of the environment. We also support the current legal framework that sets up the Register of Environmental Organisations. The work of our own organisation, the Nature Conservation Council of NSW, evidently meets the legal requirements of the *Income Tax Assessment Act 1997* and we work directly for the protection and enhancement of the natural environment and the provision of information and education about the natural environment.

1. THE ROLE OF ENVIRONMENT ORGANISATIONS IN CIVIL SOCIETY

Environmental organisations play an important role in civil society. In a world that is increasingly under threat from adverse and complex problems, including climate change and unprecedented loss of biodiversity, the ability for democratic societies to adequately understand and form effective policy is



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greatly advanced by the role that can be played by environmental organisations¹. However, the overarching ability for environmental organisations to play that role remains dependant on the acknowledgment and support of governments.

Fundamentally, the evaluation of environmental organisations' importance in civil society should encompass the philosophical standpoint that "Democracy is... a kind of society, not merely a mechanism of choosing and authorising governments"². With this understood, the next line of questioning centres around what democratic processes do environmental organisations enhance and how does this further the public interest. Broadly, environmental organisations offer a place where the public can learn and actively engage in the democratic process, they build a sense of community and encourage the average citizen to speak to government about any given environmental issue of importance³. They give structure and process to an incorporated and organized public voice⁴. Most importantly, they influence the protection and preservation of the earth's natural resources and biodiversity.

The work of environment groups has led to important policy and law reform, such as improved pollution laws, eliminating lead in petrol and the creation of national parks⁵. Most significantly, environmental organisations are representing the public interest. It must be remembered that '*(e)nviro*nment groups seek clean air and water when advocating for stricter (laws) – not private profit. However they are often opposed by powerful corporations who can profit from laxer environmental law'⁶.

Civil society is at its best when environmental organisations provide increased knowledge, activism opportunities and influence policymaking. They have the ability to transcend state defined boundaries and enhance global consensus and process. Their place in the structure of our society enables them to bring the various actors of our society - international community, state and local governments, business and industry and citizenry – together in the pursuit of environmental preservation and protection⁷. However, for their full potential to be realised, there must be structures in place that promote and support the role of environmental organisations.

¹ Johnson, Ian. 'Key Players In Fighting Global Environmental Challenges'. *Economy, Culture & History: Japan Spotlight Bimonthly* 175, (2011): Humphreys, David. 'Environmental And Ecological Citizenship In Civil Society'. *The International Spectator* 44.1 (2009): 171-183

² Lang, Sabine. "Chapter 7, NGO's Inclusion in Governance and Public Accountability." *Ngos, Civil Society, And The Public Sphere*. New York, NY: Cambridge University Press, 2013. p203

³ Ibid: 203

⁴ Ibid: 203; Pagnani, Marissa A. 'Environmental Ngos And The Fate Of The Traditional Nation-State'. *Georgetown International Environmental Law Review* 15.4 (2003): 791-807. Trivedy, H. Roy. 'Ngos In A Global Future'. *Development in Practice* 9.5 (1999): 623-626. 12 May 2015; Maruca, Mary. 'Room At The Table: Voices Of Ngos'. *Endangered Species Update*; 23.1 (2006): 20-21.

⁵ Tsao et. al. liken this to law reform in other charitable sectors, such as social advocacy that has led to drink driving reforms and restrictions on the sales of cigarettes - see below no. 6.

⁶ Tsao et. al. 'Tax Audits of Environmental Groups: The Pressing Need for Law Reform' Environmental Law Centre, University of Victoria, Canada (2015)

⁷ Pagnani. Above n4:808



2. THE LEGAL FRAMEWORK FOR ESTABLISHING THE REGISTER OF ENVIRONMENTAL ORGANISATIONS

The Register of Environmental Organisation is set up under the *Income Tax Assessment Act 1997*. Division 30 of that Act deals with gifts or contributions and subdivision 30-E deals specifically with environmental organisations.

For the purpose of the *Income Tax Assessment Act* an environmental organisation is a body corporate, co-operative society, trust or an unincorporated body established for a public purpose by the Commonwealth, a State or a Territory that satisfies each requirements of the subdivision (in subdivisions 30-265, 30-270 30-275)⁸.

The principle purpose of an environmental organisation 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.⁹

The process and requirements relating to listing, reporting and auditing of environmental organisations is also set out in the *Income Tax Assessment Act*.

In our view, the listing process, reporting requirements and administration of the Register is effective and appropriate. There are the necessary checks and balances, including membership requirements and maintenance of a public fund required of each organisation and the appropriate mechanisms for reporting and auditing the performance and activities of listed groups.

We are concerned that the terms of reference for this inquiry appear to draw some distinction for environmental organisations who undertake on-ground work. While it is unclear why the terms of reference are framed in this way, we expect that the inquiry intends to distinguish on-ground activities from the other advocacy based activities of organisations. We argue that this distinction is misguided. As outlined above, the advocacy role of environmental organisations and their ability to engage in policy development and law reform is an important part of democratic society. We also note that the advocacy role of charitable organisations has been confirmed by the High Court in *AID/WATCH Inc v Commissioner of Taxation*¹⁰. We would strongly oppose any changes to the *Income Tax Assessment Act* which would seek to restrict the advocacy activities of environmental organisations.

3. THE NATURE CONSERVATION COUNCIL OF NSW

The Nature Conservation Council of NSW (**NCC**) is the peak environment organisation for New South Wales, representing over 130 member societies across the state. Our organisation was established in 1955 and is celebrating its 60th anniversary this year.

⁸ *Income Tax Assessment Act*, subdivision 30-260

⁹ *Income Tax Assessment Act*, subdivision 30-265

¹⁰ *AID/WATCH Inc v Commissioner of Taxation* (2010) HCA 42



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Constitution

A copy of the Constitution of the Nature Conservation Council is available on our website¹¹.

The prime aims and objects of the Council, as set out in our Constitution, are the conservation of nature, the protection of the environment and the attainment of an ecologically sustainable society.

These aims and objectives are achieved through the functions of the Council, which are described in the Constitution as:

- a) To hold conferences:-
 - (i) For the purpose of providing a means whereby those bodies interested in conservation and who subscribe to the Council's objects can have regular and formal communication with each other.
 - (ii) To consider matters of common interest and to arrive at common policy.
- b) To speak on such matters of agreed policy and to press for adoption of, or action on, agreed policy by the appropriate authorities.
- c) To sponsor or engage in education and research activities, including publication, in any area or field of conservation, alone or in co-operation with other bodies or individuals.
- d) To provide a central clearing house and repository for conservation information (other than governmental information) in the State.
- e) To provide a means of liaison with other bodies dealing with conservation, including national and international bodies.
- f) To provide information on request to member societies and assistance where possible.
- g) To do any such thing as is determined from time to time by either the Annual Conference or the Executive to be in the interests of conservation without thereby committing member organisations to support such activities

The aims and objectives of our organisation are consistent with the definition of environmental organisation in subdivision 30-E of the Income Tax Assessment Act 1997.

Key activities

Our organisation undertakes a wide range of activities in order to meet the aims and objectives, and functions, of the organisation. The majority of our income goes towards our environmental programs that deliver on-ground environment, sustainability and restoration work, and environmental education. We also play an important role in advocating for improved environmental outcomes for NSW. In terms of organisational expenditure, our three most recent Annual Reports¹² show that the majority of our income

¹¹ www.nature.org.au/about/governance/

¹² Copies of our Annual Reports can be downloaded from our website:
www.nature.org.au/about/governance/annual-reports/



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goes directly to our on-ground conservation and sustainability programs, with a smaller percentage going towards environmental advocacy activities (**Table 1**).

Table 1

Category	2011/2012	2012/2013	2013/2014
Environmental Programs	42%	48%	57%
Environmental Advocacy	29%	26%	20%
Overheads and Administration	15%	15%	16%
Fundraising	9%	8%	6%
Member service and governance	4%	4%	2%

While NCC does receive Government funding for a significance proportion of our program work, we also rely on donations from supporters to undertake a substantial amount of our core functions as a peak organisation. We have become even more reliant on donations since the Federal government cut critical funding by stopping its annual grants to voluntary environment, sustainability and heritage organisations¹³.

Being listed on the Register of Environment Organisations helps us to raise much needed money to protect the environment. DGR status informs potential donors that we are a recognised and established organisation that has undergone the scrutiny of being listed on the register. It also allows us to apply for philanthropic grants that are only available to groups that have DGR status. This suggests that DGR status assists donors and trusts to identify environment groups set up to effectively and responsibly manage and use donations for the purpose of protecting the environment. Without tax deduction status NCC would find it harder to raise money to fund our work.

More information on our current key programs is outlined below.

- **Healthy ecosystems program**

Our Healthy Ecosystems program helps maintain and enhance biodiversity, cultural values and resilience by engaging, educating and training communities. Our programs are based on the key elements of on-ground work with landholders to provide education and restore wildlife habitat.

We work with rural property owners, public land managers and Indigenous landholders to deliver real world solutions to environmental challenges, including fire management, invasive species control and restoration of wildlife habitat. Our programs bring together scientific expertise and proven community engagement strategies to protect and restore nature and build lasting capacity for effective natural resource management.

¹³ www.theguardian.com/environment/planet-oz/2014/may/15/budget-axe-of-small-grant-fund-will-hurt-conservation-groups-across-australia



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Some of our key projects include:

Hotspots:

The Hotspots Fire Project is an education and training program we run with the NSW Rural Fire Service (RFS) to increase understanding of the role of fire in the bush and how it can be best managed for a variety of outcomes, including environmental outcomes. Since 2005, the Hotspots team has run more than 110 workshops for over 1,400 landholders. These have resulted in 670 property fire management plans covering about 140,000 hectares. The workshops, which are held over two days, are based on the latest science and practical, on-the-ground experience of fire management professionals. They give landholders the knowledge and skills they need to develop fire management plans and conduct burns that reduce the risk of dangerous wildfire damaging their property, while also enhancing wildlife habitat.

For full details about the Hotspots Fire Project workshops, visit the [Hotspots website](#)¹⁴.

Firesticks

Through the Firesticks project, we are working with Indigenous communities and government agencies to integrate contemporary and Aboriginal fire practices to protect and enhance wildlife habitat and Indigenous cultural values. The Firesticks program facilitates training, implements on-ground works and conducts scientific monitoring to establish a greater understanding of the ecological impact of cultural burning practices. The program aims to work with fire to enhance ecosystem health by improving habitat condition and connectivity within culturally connected landscapes. The ultimate goal of Firesticks is to support cultural learning pathways that enable and empower Aboriginal and non-Aboriginal communities to work collectively towards resilient landscapes.

For full details about the Firesticks Project, visit the [Firesticks website](#)¹⁵.

Coldstream Project

Our Coldstream project implements habitat restoration works across the nationally-significant Upper Coldstream on the north coast of NSW around the Pillar Valley and eastern edge of the Clarence River floodplain. The Upper Coldstream contains a significant proportion of the largest coastal wildlife corridor on the north coast of NSW, providing the connectivity and landscape diversity required by iconic species such as the coastal emu. The area is known to harbour some of the most diverse eucalypt forests and forested wetlands in the world, provides habitat for more than 110 threatened species, and supports an exceptionally high diversity of native plants, with more than 800 species already recorded during project surveys. It is likely that the native plant list could reach 1,000 species - a significant proportion of Australia's total.

In collaboration with 44 landholders we are working to reduce the impacts of weeds, pest animals and wildfire on the nationally significant values of Pillar Valley and surrounding catchments. With support from key stakeholders and linkages to complementary programs on adjoining public lands of the Yuraygir

¹⁴ <http://hotspotsfireproject.org.au/>

¹⁵ www.firesticks.org.au/



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Coast, the project aims to implement best practice habitat restoration across 25,000 hectares. Rather than each landholder and land manager working alone, the Upper Coldstream Project enables stakeholders to tackle these landscape-scale problems in a coordinated, cooperative way across the whole catchment.

For full details about the Coldstream Project, visit the [website](#)¹⁶.

Bushfire Program

The Bushfire Program arose to ensure that all Bushfire Management activity is ecologically sustainable while protecting life and property. The program has been actively involved in fire management, bushfire education and advocacy for sustainable land policy since 1979. We have been actively involved in fire management since 1979, and since *Rural Fires Act 1997* we have had statutory rights to appoint conservation representatives to the Bush Fire Coordinating Committee (BFCC), Rural Fire Service Advisory Committee (RFSAC), and 67 Bush Fire Management Committees (BFMCs) around the state.

The program promotes the exchange and the dissemination of peer-reviewed science and information. We regularly run workshops, conferences, and forums to help people and organisations get together to discuss bushfire and conservation issues. Our *Preparing For Fire* interactive workshop series is designed for communities on the urban-bushland fringe where the risk of bushfire is high and the bushland is especially important for conservation. The Bushfire Program also reviews policy and provides advice on ecologically sustainable fire management.

For full details about the Bushfire Program, visit the [website](#)¹⁷.

- **Sustainable Living Program**

Our sustainable living programs have helped thousands of households save power, reduce waste and make the switch to clean renewable energy.

Some of our key projects are outlined below:

Power Savers Program

The Power Savers program aims to help people reduce their energy bills, increase their comfort at home and reduce carbon emissions. Power Savers provides up to 1000 households with a free home energy assessment, practical advice on saving power and tailored energy efficiency solutions for their home. It also provides continuing education, communication and networking support to promote lasting energy savings.

Food Waste Challenge

Our Food Waste Challenge workshops provide participants with new skills and practical tips to waste less food. Each workshop series covers the following topics: environmental and economic impacts of food

¹⁶ www.nature.org.au/healthy-ecosystems/coldstream-project/

¹⁷ www.nature.org.au/healthy-ecosystems/bushfire-program/



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waste, shopping and menu planning, cooking with correct portion sizes, cooking leftovers, storing food correctly and preserving seasonal and surplus food.

- **Environmental Leadership and Advocacy**

The Nature Conservation Council also has an important leadership and advocacy role in NSW.

As a member-based, peak organisation we act as a clearing house of information for our member groups and provide them with information via our website, newsletters, email and via workshops and presentations. We pass on important information about Government policy and law reform processes, and provide members with information to help them understand and participate those processes, including, for example, briefing notes and submission guides.

In representing our members, we speak out on matters of agreed policy and press for adoption or action on agreed policy by the appropriate authorities. To do this we undertake media and communications work, write on behalf of our members to Government agencies and key decision makers, engage in Government policy and law reform processes, and engage with law makers in our NSW Parliament. We also work to recruit and mobilise new members and supporters to increase our effectiveness as a ‘voice for nature’ in NSW. As a peak organisation we are invited to sit on advisory committees and provide expert input to Government. We also encourage our members to participate in democratic society by engaging with elected representatives on key environmental issues.

Finally, we undertake or commission independent research on key environmental issues that affect NSW.

We advocate for the adoption of laws, policies and programs that will result in the protection, restoration or improved management of land, water and natural ecosystems in New South Wales. As outlined above, this is an important aspect of the work of environmental organisations and such activities should not be restricted.

4. INTERNATIONAL GOVERNANCE ARRANGEMENTS AND BEST PRACTICE

Governance arrangements of environmental organisations differ in various jurisdictions. For example, Europe recognises the important social benefit of providing non-government organisations with tax breaks and full freedom to advocate for policy and law reform¹⁸. Similarly Scotland, England and Wales do not apply quantitative limits on political activity¹⁹.

Canada has some of the tightest regulation, with a 10% cap on the amount of donated money that can be spent on ‘political’ work, including law reform and advocacy. Canadian law has been criticised for its strict regulation of environmental organisations, which has created an ‘advocacy chill’ that “stops charities speaking out on important policy issues – even when the issues directly relates to their charitable mission and even when they have the legal right to do so”²⁰. The United States also puts limits on lobbying activities.

¹⁸ Tsao et. al. Above no. 6

¹⁹ Ibid.

²⁰ Ibid.



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Unlike for profit business and industry, environmental non-profits have limited funds to advocate for the protection of clean air and water and against pollution, loss of biodiversity and climate change. It is our view that current efforts to restrict organisation's ability to raise funds from individuals or other entities are politically motivated and further tips the scale in favour of vested interests over the protection of the environment and the public good.

In Australia, the common law has developed to recognise the public interest benefits of charities engaging in advocacy. The 2010 landmark decision in *AID/WATCH Inc v Commissioner of Taxation* confirms that charities can openly and actively engage in advocacy. In 2014, the New Zealand Supreme Court followed suit, effectively ruling that the traditional 'political purpose' exclusion should not apply²¹.

Any changes to Australian legislation to overcome the decision in *AID/WATCH Inc v Commissioner of Taxation* would be seen as a direct attack on charitable organisations and environment groups in particular. As highlighted throughout our submission, environmental organisations play an important role in democratic society, and give voice to the public interest. Those opposed to this role are often business and industry, who in contrast, have a vested interest in silencing the voice of environment groups.

CONCLUSION

Environmental organisations play an important role in civil society. They offer a place where the public can learn and actively engage in the democratic process, they build a sense of community and encourage the average citizen to speak to government about any given environmental issue of importance. They give structure and process to an incorporated and organised public voice, and most importantly, they influence the protection and preservation of the earth's natural resources and biodiversity.

The overarching ability for environmental organisations to positively contribute to democratic society and, ultimately, the protection of the environment, is greatly enhanced by governments acknowledging and supporting that role.

Environmental organisations are rightly identified as charitable organisations under the *Income Tax Assessment Act*. Listing on the Register of Environment Organisations and DGR status helps environmental organisations to raise much needed money and assists donors and trusts to identify environment groups set up to effectively and responsibly manage and use donations for the purpose of protecting the environment. Without tax deduction status environment organisations would find it harder to raise money to fund their work.

The Australian High Court has recognised the important advocacy work of charitable organisations, and has found that this is not inconsistent with charitable purposes. This confirms that organisations listed on the Register of Environmental Organisations are able to advocate for the protection of the environment.

Recent attacks on environment organisations are misguided, and often led by those with vested interests that would benefit from weakened environmental regulation and oversight. In contrast, environmental organisations act in the public interest and do not stand to profit from their work.

²¹ Re Greenpeace of New Zealand Inc (2014) NZSC 105.



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While we recognise the need for a transparent process for listing organisations on the Register, including monitoring and enforcement, we strongly oppose any attempts to limit the advocacy role of charities, including environmental organisations. This would not be in the public interest and the environment would be all the poorer for it.

Yours sincerely,

Kate Smolski
Chief Executive Officer