



**AUSTRALIAN
CONSERVATION
FOUNDATION**

Change today for
a sustainable future

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22 September 2017

Dear Sir/Madam

Correction of Erroneous Statements in Minerals Council of Australia Submission in relation to Tax Deductible Gift Recipient Reform Opportunities Discussion Paper

The Australian Conservation Foundation (ACF) had the opportunity to read the Minerals Council of Australia (MCA) submission in relation to the Discussion Paper "Tax Deductible Gift Recipient Reform Opportunities Discussion Paper 15 June 2017" (Discussion Paper) and wishes to correct certain erroneous statements regarding ACF contained in MCA's Submission.

Firstly, ACF wishes to explain correctly the law around charitable organisations with deductible gift recipient status and the right of those organisations to advocate for change including at a political level.

A. ADVOCACY, THE LAW AND ACF'S ACTIVITIES

ACF'S activities involve advocacy. By 'advocacy' we mean influencing decision-making in the interests of conservation and sustainability. Advocacy is fundamental to ACF'S success in driving large scale positive impacts to protect the environment. The only way that these systemic changes can happen is if there is vibrant, robust and open public discussion and debate about the issues affecting the environment. The law is clear that a charity is permitted to engage in advocacy that relates to the charity's purposes. (For further explanation, see ACF'S Submission in relation to the Discussion Paper dated 2 August 2107.)

ACF is strictly politically non-partisan and advocates for the environment widely to all decision-makers regardless of political affiliation. One of ACF'S goals is to see all political parties hold good policy and make good decisions to protect our environment and move Australia towards sustainability. We base our views on the colour of the policy and not the colour of the party behind it.

In light of this, the MCA submission contains several allegations about ACF'S activities that are manifestly incorrect. We seek to correct these statements as follows.

B. INCORRECT STATEMENTS MADE BY MCA REGARDING PARTISAN POLITICAL CAMPAIGNING BY ACF AND ACF'S CORRECTION

1. On page 2 of the MCA's Submission under the heading "Some deductible gift recipients are engaging in partisan political campaigning" the following statement is made by the MCA in relation to ACF:

"The problem of non-compliance by some deductible gift recipients (and registered charities) is also apparent in partisan political campaigning. For instance: ...

• The Australian Conservation Foundation (ACF) hired a truck to drive through Minister Josh Frydenberg's electorate during the 2016 election campaign, which displayed a banner criticising the minister for refusing to sign the ACF's environment pledge.... "

(Note this example is repeated at page 19 of the MCA submission)

It is incorrect to say that this banner was partisan. All activities undertaken by ACF in the 2016 Federal Election strictly complied with guidance from the Australian Charities and Not-for-profits Commission (ACNC) and met ACF's very strict commitment to remaining non-partisan. ACF's goal is to achieve multi-partisanship around environmental policy, because we understand that solving systemic threats like climate change will take longer than a term of government and therefore requires leadership from more than one political party. Accordingly, ACF openly runs public activities during election periods with the objective of encouraging all political parties to have strong environmental policies. One such mechanism is to assess parties' policy commitments and communicate this to the public via scorecards or pledges. This mechanism has been specifically sanctioned by the Charity regulator, the ACNC, which publishes a guidance note containing the following:

"Can a charity produce material which compares and ranks the policies of political parties?"

Yes. Assessing, comparing or ranking the policies of political parties or candidates as part of carrying out a charitable purpose is acceptable, as long as the material is related to the charity's purpose. However, the charity cannot have a purpose of explicitly promoting or opposing a political party. If the material produced explicitly tells members or supporters which party to vote for based on this ranking, the charity runs the risk of being found to have a disqualifying political purpose." (ACNC Guidance Note on Charities, elections and advocacy, available [here](#).)

The banner in question featuring the Greens, Labour and Coalition candidates in Kooyong was for the purpose of assessing parties' commitments to the environment and communicating these to the public. Importantly, it was not for the purpose of supporting or dissuading any particular candidate for election to the Australian Parliament. ACF is strictly non-partisan. It does not tell people who to vote for.

Note that I wrote directly to Minister Frydenberg to address claims that ACF has acted in a partisan manner in the 2016 Federal Election. That correspondence dated 6 July 2016 appears at **Appendix 1** to this letter.

2. On page 19 of the MCA's Submission under the heading "POLITICALLY PARTISAN ADVOCACY" the following statement is made by the MCA in relation to ACF:

"There is compelling evidence that some registered environmental organisations and charities are frequently engaging in politically partisan advocacy. For instance:

- ***On 14 August 2015, the Australian Conservation Foundation authorised a one-page advertisement against Minister Hunt. The advertisement included the logos of five other entities that are both registered environmental organisations and registered charities (see below).***

Again, this is not an example of politically partisan advocacy. The advertisement in question does not support, promote, encourage or oppose the election of a political candidate. Rather the advertisement is focussed on an environmental decision of an elected representative of Australia and the purpose of this advertisement is to hold this decision-maker to account for his environmental policy and action. While we are not politically-partisan, ACF will take steps to hold decision-makers to account and communicate this to the Australian public. ACF has been doing this for 50 years via a variety of mechanisms and relating to representatives from both major political parties but in all instances this is strictly non-partisan and in accordance with the ACNC's guidance on *Charities, elections and advocacy*.

One significant misrepresentation throughout the MCA submission is that an electoral authorisation on materials in some way 'evidences' politically partisan advocacy. This is incorrect. By way of example, the advertisement in question contains an authorisation under the *Commonwealth Electoral Act 1918* because it is a requirement of that Act for any materials that provide "public expression of views on an **issue** in an election by any means." The environment was (as it invariably is) an issue in that election. Accordingly, ACF takes care to ensure authorisations are included on all public materials during an election period.

The MCA submission repeatedly confuses advocacy relating to an **issue of public interest** with advocacy to **promote the election of a particular politician or party**.

3. On page 21 of the MCA's Submission under the heading "Examples of political campaigning by registered environmental organisations and charities" certain examples are given by the MCA in relation to so-called "political campaigning" by ACF.

As above, the examples provided here by the MCA are incorrectly portrayed as demonstrating politically partisan campaigning. This is false. They are all relating to environmental **issues** that are the subject of ACF campaigns in pursuit of our environmental purpose, and they do not promote or oppose a political party or candidate for election.

4. On pages 27 – 29 of the MCA's Submission under the heading "Partial or non-disclosure of political expenditure to the Australian Electoral Commission" is the Table set out in APPENDIX 2 to this letter.

The Submission then goes on to make the following three statements:

1. ***"Table 1 overleaf shows AEC declarations for the past seven years by Greenpeace Australia Pacific, the Climate Institute, the World Wide Fund for Nature Australia (WWF-Australia) and the Australian Conservation Foundation (ACF). Evidently, these organisations have engaged regularly and extensively in Australia's political system."***

Firstly, ACF does not deny that it regularly engages in Australia's political system for the purpose of influencing policy and decisions by politicians and government that deliver environmental outcomes for Australia. Ultimately, we aim to achieve multi-partisanship around environmental policy because, as stated, solving systemic threats to the environment will take longer than a term of government and therefore requires leadership from more than one political party.

These AEC declarations are pointed to by the MCA in an attempt to produce 'evidence' that ACF is politically partisan. Again, this totally misunderstands and misrepresents the requirements of the *Commonwealth Electoral Act 1918*. Electoral law requires an organisation to declare expenditure used

for 'the public expression of views *on an issue* in an election by any means' (section 314AEB). Because the environment is invariably an issue in play at election time, ACF is careful to declare all expenditure that comments on that issue in the context of the election during an election period. The production of this data in this context by the MCA is misleading, deceptive and ill-informed.

2. ***“Further, there appears to be inconsistencies between what has been declared as political expenditure to the AEC, and what has been declared as campaigning or educational expenditure to the ACNC.”***

and

3. ***“The Australian Conservation Foundation reported to the ACNC that it spent \$6.7 million in 2015-16 on ‘environmental impact initiatives’, including \$3.3 million on ‘Community Engagement, Mobilising & Organising’. But the organisation only declared \$173,783 in political expenditure to the AEC in 2015-16.”***

Again, this demonstrates at best a misunderstanding of charity and electoral law and, at worst, a deliberate deceptive muddling of the two.

The MCA insinuates that the \$13 million that ACF declared as its annual expenditure to the ACNC in the financial year 2015-16 was for politically partisan campaigning. In fact, that was the ACF's overall operating budget for that year including what we need to pay to keep electricity connected to our offices as well as run our various environmental programs. Over the same period ACF also declared \$174,000 in spending to the Australian Electoral Commission (AEC) in line with the Australian electoral law, as discussed above. Again, we see it being pointed to by the MCA as 'evidence' of politically partisan advocacy. On the contrary, those funds were spent during the 2016 election on advocating policies that are good for our environment and society and highlighting the policy positions of parties and politicians. However, ACF is required by Electoral law to declare expenditure that comments on an **issue** in an election and so we are always careful to do so.

There are no inconsistencies whatsoever between these various figures. The declared amounts were for two entirely different returns and for entirely different purposes, and neither demonstrates politically partisan advocacy or campaigning.

Please note it has come to my attention that there was an error made in ACF's AEC return of 2013/4, where it was mistakenly stated that ACF had spent money that fell into category 1, 'political expression of views on a political party'. ACF is in the process of submitting an Amended Return to correct this error.

ACF takes its responsibilities under the law very seriously and goes to lengths each year to ensure our strict compliance with it. Accordingly, we feel we must formally correct the false and misleading statements detailed above contained in the MCA submission and request that this letter is considered by the Inquiry along with our original submission made to it.

Yours faithfully



Kelly O'Shanassy
Chief Executive Officer
Australian Conservation Foundation

APPENDIX 1: Letter from ACF to The Hon. Josh Frydenberg MP dated 6 July 2016



6 July 2016

The Hon. Josh Frydenberg MP
Federal Member for Kooyong
695 Burke Road,
CAMBERWELL VIC 3124

Email: josh.frydenberg.mp@aph.gov.au

Dear Minister,

RE: Incorrect claims that ACF has acted in a partisan manner in the 2016 Federal Election

Congratulations on your re-election as MP for the seat of Kooyong.

I write with regards to your public comments claiming that the Australian Conservation Foundation (ACF) acted in a partisan manner in your electorate during the 2016 Federal Election. I refer to your comments in The Australian on July 5th and 6th and 3AW on July 3rd where you claim that ACF is “using their deductible gift recipient status to fund aggressive insurgent political campaigns against Coalition members” and that ACF “may as well call themselves a sub-branch of the Greens”.

These claims are incorrect.

All activities undertaken by ACF in the 2016 Federal Election have complied with guidance from the Australian Charities and Not-for-profits Commission (ACNC) and have met ACF’s very strict commitment to remaining non-partisan.

ACF is proud of our political independence. Over the past 50 years, our independent advocacy has helped drive extraordinary commitments from governments of all political persuasions, as well as business and community.

ACF’s goal is to achieve multi-partisanship around environmental policy, because we understand that solving systemic threats like climate change will take longer than a term of government and therefore requires leadership from more than one political party.

While we are not partisan, we do hold political parties and governments to account for their environmental policy and action. We’ve been doing so for 50 years and use a variety of mechanisms to assess parties’ policy commitments and communicate this to the public. ACF wrote to you on May 31st 2016 outlining our processes for the 2016 Federal Election (copy attached) including the processes around our scorecard, supporter pledge and candidate pledge for clean energy, cutting pollution and protecting our rivers, reefs, forests and wildlife. We also outlined our processes for promoting our scorecards and pledges via email, mail, social media, advertising and peer-to-peer conversations.

It is important to note that it is the parties themselves that determine how they score on ACF's scorecard as it is based on the parties' environment commitments. Disappointingly, the Coalition started the election with poor policy positions, failed to make substantial new commitments throughout the campaign and scored poorly when compared to other key parties.

It is also important to note that it is the candidates who decided whether they would sign ACF's candidate pledge to support clean energy, cut pollution and protect rivers, reefs, forests and wildlife. At the meeting you held with ACF supporters on June 24th 2016 you indicated that you would not take the opportunity to sign the candidate pledge. The ALP and Greens candidates did sign the pledge. This was then communicated to ACF supporters and the Kooyong community.

With limited resources, ACF could only work in a small number of electorates in this election. One of those of course was Kooyong. We chose to work in Kooyong for two reasons. The first is because we have many supporters in that electorate who want their elected leader to commit to strong action on clean energy, cutting pollution and protecting nature. The second is because ACF has identified you as an important member of the Coalition who has the leadership qualities to influence the Coalition's currently inadequate climate and nature policies. Given the relative stability of the Kooyong electorate, we anticipate that you will be a long-term MP with whom we can work.

The Australian community is demanding real action on climate change. Recent polling commissioned by The Climate Institute showed that since the 2013 election, voter concern about climate change has surged almost 20 per cent to 72 per cent. It also showed that only 17 per cent of Australians think the Coalition has a credible climate plan.

I implore you to listen to Australians and your constituents on these most critical issues and work within the Coalition to strengthen your climate and nature policies. By doing so, we hope that ACF can list you as 'pledged' and score the Coalition's policies highly at the next Federal election.

As mentioned in our meetings with you, ACF and our supporters in Kooyong want to work with you to improve the Coalition's climate and nature policies, and I look forward to doing so over the coming term of government.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kelly O'Shanassy', written in a cursive style.

Kelly O'Shanassy
Chief Executive Officer

APPENDIX 2

Table 1: Declared political expenses of selected registered environmental organisations and charities, 2009-10 to 2015-16

	Entity	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Public expression of views on a political party, candidate in an election or member of the Federal Parliament by any means	Greenpeace	\$81,791	\$51,931	\$35,331	\$78,274	\$53,641	\$22,692	\$46,150
	The Climate	\$0	\$55,446	\$0	\$0	\$9,650	\$0	\$0
	WWF-Australia	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	ACF	\$0	\$0	\$0	\$0	\$26,578	\$0	\$0
Public expression of views on an issue in an election by any means	Greenpeace	\$0	\$0	\$0	\$0	\$0	\$0	\$109
	The Climate	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	WWF-Australia	\$0	\$144,894	\$0	\$0	\$0	\$0	\$2,500
	ACF	\$0	\$89,896	\$0	\$2,070	\$8,333	\$0	\$7,441
Printing, production, publication, or distribution of any material that is required by section 328 or 328A of the Act to include a name, address or place of business	Greenpeace	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	The Climate	\$0	\$61,942	\$0	\$0	\$27,500	\$0	\$0
	WWF-Australia	\$0	\$20,936	\$0	\$0	\$695,373	\$432,566	\$230,161
	ACF	\$7,135	\$88,000	\$0	\$9,561	\$56,402	\$0	\$147,142
Broadcast of political matter in relation to which particulars are required to be announced under sub-clause 4(2) of schedule 2 to the Broadcasting Services Act 1992	Greenpeace	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	The Climate	\$134,425	\$101,473	\$0	\$0	\$5,900	\$25,310	\$0
	WWF-Australia	\$0	\$0	\$0	\$0	\$0	\$0	\$121,728
	ACF	\$0	\$31,358	\$0	\$0	\$0	\$0	\$0
Opinion polling and other research relating to an election or the voting intention of voters	Greenpeace	\$6,000	\$0	\$20,143	\$0	\$0	\$5,900	\$7,147
	The Climate	\$0	\$19,034	\$0	\$27,250	\$38,650	\$0	\$0
	WWF-Australia	\$0	\$48,867	\$0	\$0	\$46,310	\$0	\$0
	ACF	\$14,567	\$33,172	\$0	\$18,450	\$116	\$0	\$19,200

Source: Organisations' Third Party Returns of Political Expenditures to the Australian Electoral Commission, obtained from Australian Electoral Commission, [Annual Returns Locator Service](#), viewed on 10 February 2017 and 4 August 2017. NB that The Climate Institute closed in June 2017 and is no longer searchable on the AEC's website.