

Greenpeace submission to the ATO discussion paper on changes to the Charities Bill 2003

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Greenpeace welcomes the opportunity to comment on the Charities Bill discussion paper and would welcome opportunities for further consultation.

Consultation questions

12. Are there any issues with the suggested changes to the Charities Bill 2003 as outlined above to allow charities to engage in political activities?

13. Are there any issues with prohibiting charities from advocating a political party, or supporting or opposing a candidate for political office?

Greenpeace strongly supports changes that would allow charities to engage in political activities.

While Greenpeace does not advocate on behalf of political parties or candidates, there are occasions when such advocacy would, in our view, further the purpose of organisations. For instance, if a candidate running for a seat, denies the existence of climate change and the need to act and the other candidate holds a contrary view, there is a case to be made that acting on behalf of a particular candidate is acting in furtherance of the primary purpose of organisations such as Greenpeace that work on climate change. Greenpeace accepts that some activities on behalf of political parties or candidates may be activities that are designed to further individual or party needs rather than the charitable purposes of the organisation, but Greenpeace would oppose a blanket prohibition on such advocacy.

Illegal activities

115. The Charities Bill 2003 included as a core requirement, that an entity will not be a charity if it engages in, or has engaged in conduct (or omits to engage in conduct) constituting a serious offence. The Charities Bill 2003 also included an illegal purpose as a disqualifying purpose.

116. It may be preferable to remove this core requirement and instead include it as a disqualifying activity. That is, supporting illegal activities could also be a disqualifying activity. As outlined above, the Board of Taxation pointed to the confusion in section 8 of the Charities Bill 2003 in relation to purposes and activities, and shifting this condition could improve clarity.

117. A new regulatory regime is being proposed that will allow the ACNC to impose penalties as an alternative to the deregistration of a charity which has engaged in inappropriate conduct. This will be the subject of separate consultations.

Greenpeace is an organisation that has a long history of engaging in direct action in furtherance of both environmental and peace purposes. This has included taking

ships into the exclusion zones around Muraroa Atoll – a criminal offence under French law. It has included taking action against whaling boats and fishing boats. We have blocked train lines, occupied Lucas Heights, trespassed at the Lodge, illegally raised banners at Parliament House, amongst many other activities. These activities have never been for any purpose except the public benefit and in furtherance of our core purposes and values.

This history of civil disobedience is part of a much bigger history of individuals and organizations prepared to violate the law – often at great risk and with potentially severe criminal penalties – in order to accomplish a greater good. The obvious examples include the civil rights movement, the anti-apartheid movement and the anti-Vietnam war protests. Laws that criminalise legitimate civil disobedience are often not recognised as unjustified for years. Any linking of charitable status to illegal activities must be careful not to undermine the rights – and sometimes the obligations – of citizens to challenge injustice by breaking laws. Civil disobedience is well recognised as a powerful and legitimate agent of change for the public good.

There are also other grounds for opposing the linking of charitable status and illegal activities.

Laws already exist to address illegality, including punishments such as fines and prison terms. Linking illegal activity to de-listing as a charitable organisation is doubling up on punishment.

Such a linkage would also have the effect of imposing a more severe level of punishment on not for profits than is visited on other organizations that engage in criminal activities. For instance, Greenpeace is not aware of any provision in Australian law that removes the capacity of a corporation to continue to engage in corporate activities as a result of illegal and often criminal activity – activities that are often contrary to the public interest. For instance, Merck, the pharmaceutical company, was recently convicted in the US of knowingly allowing its Vioxx drug on the market despite knowing that it would like cause death of heart patients. Merck received a fine. It continues to operate in both the US and Australia as a legitimate corporate entity.

There are laws that permit licencing agents to consider the past acts of an organisation in determining whether to issue or re-issue a licence. For instance, the Gene Technology Act has such provisions in considering whether to issue licences for the growing of genetically modified plants. Greenpeace is not aware that these provisions have ever been used to refuse a licence. Companies such as Monsanto, which has admitted to criminal offences (["Monsanto fined \\$1.5m for bribery"](#). BBC. 7 January 2005. Retrieved 28 September 2007), holds numerous licences from the OGTR.

These corporations benefit from a number of laws that allow them to operate in Australia, from tax benefits not available to others and often direct subsidies to support their activities. Greenpeace is not aware of any laws or efforts to remove these benefits when such corporations are convicted of criminal offences.

Greenpeace is also concerned with the term ‘serious’ offences, which is vague and not defined.

Greenpeace would support consultation on an alternative punishment approach as suggested in paragraph 117, although we will not support measures that see public

interest organisations held to a standard that doesn't apply to private interest institutions.

We note, however, that 'inappropriate conduct' is an inappropriate standard. Unless defined by statute, on its face it is entirely subjective and vague.

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