Law Council
OF AUSTRALIA

9 December 2011

The Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: NFPReform@treasury.gov.au

Dear Sir or Madam.

Consultation Paper – A Definition of Charity

The Taxation Committee of the Business Law Section of the Law Council of Australia ("the Committee") welcomes the opportunity to provide this submission to Treasury on the consultation questions posed in the Consultation Paper released by Treasury in October 2011.

This submission provides the Committee's view as to some of the key legal, interpretive and drafting issues raised by the proposal to enact a legislative definition of "charity" in the tax law. The submission does not address all of the policy questions about the nature of charity, considering that these are better left for decision in the political arena.

Definition of Charitable Purpose – General comments

The Committee welcomes the decision of the government to enact a legislative definition of "charity" that will modernise the definition, building on the work of previous governments in particular following the recommendation of the *Sheppard Inquiry into the Definition of Charities and Related Organisations* (2002).

The Committee agrees with the general approach of the government to recommence this process based on the draft Charities Bill 2003 (**Charities Bill**) that was produced after the Sheppard Inquiry. However it is submitted that improvements can be made to that draft so as to generate a new legislative definition that appropriately reflects contemporary norms and law. Further, this Submission notes some problematic elements of the Charities Bill 2003 (and referred to in the Treasury Paper) that the Committee would not wish to see in a new statutory definition.

As an overarching comment, it is important that the definition of charity is not expanded to the extent that it becomes a cumbersome definition which is difficult to navigate for not for profit (**NFP**) organisations.

In the Committee's experience, NFPs, particularly smaller organisations, which have limited resources, frequently comment on the complexity of the tax provisions relating to NFPs. It is imperative that the statutory definition of charity is not expanded to the point of becoming incomprehensible to the entities which it is intended to apply, particularly given the intention of increasing clarity and reducing confusion and costly legal disputes (see paragraph 25 of the Consultation Paper).

The statutory definition proposed may make some substantive changes to the public benefit test – mainly in relation to the presumption of public benefit – but otherwise is largely intended to restate the common law. If the aim is to increase certainty and consistency for the NFP sector as well as supporting harmonisation between local, State and Federal government laws, then to avoid increasing confusion by requiring NFPs to refer to both the common law and the statute:

(a) the continued relevance of the common law in relation to each concept used in the statute should be expressly clarified in the statute; and

(b) where the common law remains relevant, the provisions should be clearly and simply drafted to act as appropriate signposts to the common law, rather than attempting to restate the common law.

That is, to the extent that common law concepts continue to be relevant, they should be used without restating their meaning. If common law concepts are inadequate, the appropriate concept should be set out in full in the legislation to replace the current inadequate concept.

Consultation questions

1. Are there any issues with amending the 2003 definition to replace the 'dominant purpose' requirement with the requirement that a charity have an exclusively charitable purpose?

The Committee submits that, generally, a charitable entity should have solely charitable purposes, however it has always been the case that ancillary purposes that are carried out, to further the charitable purpose, are allowed. It is accepted that the language of "dominant" purpose may be misleading, however similar issues can arise with the language of an "exclusively charitable" purpose.

The Committee supports the proposal to amend the definition of dominant purpose, as contained in the Charities Bill, so that the purpose or purposes of a charity must be exclusively charitable to the extent that this reflects the common law. However, it is important that the new definition provides that incidental or ancillary purposes that are non-charitable are still permitted, as outlined in paragraph 54 of the Consultation Paper. This is particularly relevant in a situation where activities may not be, on their face, charitable, but may further a charitable purpose.

2. Does the decision by the New South Wales Administrative Tribunal provide sufficient clarification on the circumstances when a peak body can be a charity or is further clarification required?

In its review of the unsuccessful attempt to legislate a definition of "charity" in 2003, the Board of Taxation commented (at 4.27) that the position of peak bodies 'deserves some recognition', and concluded that some clarifying reference/ example be inserted in the proposed legislation.

The Committee believes this remains true today, notwithstanding the decision in *Social Ventures Australia v Chief Commissioner of State Revenue* [2008] NSW ADT 331. While that decision is useful, it is a decision of a tribunal rather than of a superior court. Moreover, any decision is inevitably fact specific, and it would seem contrary to the general aim of the statutory provision to leave a treatment of peak bodies to the common law.

In those circumstances, the Committee submits that the legislation does need to further clarify the position of peak bodies, and this should be done by including a reference to the promotion of the 'effectiveness or efficiency of charities' in the list of charitable purposes in section 10 (as indeed has been done in the legislation in England and Wales, Scotland and Northern Ireland).

Public benefit

The Committee agrees that there is merit in clarifying the definition of "public benefit" in the definition. Further, it should be a part of the role of the new ACNC to provide guidance on the meaning of public benefit. Further, the Committee submits:

(a) That the Board of Taxation's recommendation that "sufficient section" be defined as one which is not merely "numerically negligible" compared with the size of that part of the community to whom the purpose would be relevant (paragraph 63-64) and recommended in part 6.25 of the Board of Taxation report to the Treasurer on the definition of charity (**BoT Report**).

This change, while subtle, would allow an organisation which assists a very small class of people to satisfy the public benefit test, provided it was not numerically negligible when assessed against the size of the part of the community to whom the purpose would be relevant, rather than the community at large. Without this change, assistance to a particular small group would be prohibited as they would be "numerically negligible" relative to the community at large.

(b) While acknowledging the difficulty in defining "numerically negligible", further guidance around the meaning of the phrase would be greatly beneficial to prospective charities in providing certainty regarding their eligibility to be classified as a charity.

(c) The comments in paragraphs 67 and 68, that native title claimants and holders should not be precluded from being characterised as a section of the public based on "familial ties" given the cultural and social differences

between such groups and the Australian and UK blood relations scenarios on which the relevant charity cases were based; and

(d) That the public benefit test in section 7 of the Bill is adequate, and that if any further explanation is required it should be in the explanatory materials (see part 7.16 of the BoT Report). Additionally, the test as outlined in section 7 allows for some flexibility and given the difficulty in determining what constitutes a benefit, the flexibility is advantageous and is a further reason that the test should not be altered.

3. Are any changes required to the Charities Bill 2003 to clarify the meaning of 'public' or 'sufficient section of the general community'?

The use of general terms such as "public" and "sufficient section of the general community" can contribute to uncertainty in the application of the legislation, as those terms are open to diverse interpretations based on individual experience. However, it would not necessarily be useful to attempt to strictly define those concepts, as some level of flexibility should be retained to allow the context of the benefit being provided to be appropriately considered and to enable change over time to match community expectations.

4. Are changes to the Charities Bill 2003 necessary to ensure beneficiaries with family ties (such as native title holders) can receive benefits from charities?

The Committee supports a reform that would ensure that native title holders through a Prescribed Body Corporate can be certain of satisfying the definition of "public" for the purposes of charity. This has been an area of significant uncertainty for native title holders, which runs counter to government policy in the native title arena.

5. Could the term 'for the public benefit' be further clarified, for example, by including additional principles outlined in ruling TR 2011/D2 or as contained in the Scottish, Ireland and Northern Ireland definitions or in the guidance material of the Charities Commission of England and Wales?

6. Would the approach taken by England and Wales of relying on the common law and providing guidance on the meaning of public benefit, be preferable on the grounds it provides greater flexibility?

It is recommended that the definition of "public benefit" be clarified in the statute, rather than relying on the common law.

Presumption of public benefit

While the Committee considers that the arguments posed in the Consultation Paper for reversing the presumption of public benefit (as currently contained in the common law for entities falling under the first three heads of charity) are valid on the most part, it is considered we consider that the better course of action is to retain the presumption of public benefit for organisations which are for the relief of poverty, advancement of education and the advancement of religion.

Generally, the natures of the activities undertaken by organisations relying on being classified as charitable are overwhelmingly benevolent. Consequently, the current common law position that an entity is presumed to be for the public benefit (in certain circumstances), unless evidence to the contrary is adduced, should remain in order to encourage and support such benevolent organisations.

The presumption that the public benefit test is satisfied (for organisations which are for the relief of poverty, advancement of education and the advancement of religion) reduces the number of issues to be addressed by an often under resourced and ill-equipped charitable sector.

Importantly, the presumption of public benefit in relation to the first three heads of charity, is merely that: a presumption, which is able to be rebutted if evidence to the contrary is identified. However, to ensure that organisations which are clearly not for the public benefit are not classified as charities, the Committee considers that it would be prudent to provide the ACNC with additional powers to question an organisation to ensure that entities which are not for the public benefit are prevented from being classed as a charity. The ACNC should, ideally, be well placed to undertake any additional inquiry required, on the basis that it should be well resourced and equipped to consider such issues and to access relevant information and resources used in other jurisdictions in determining whether an entity operates for the public benefit.

The fact that most organisations seeking to satisfy the public benefit requirement are likely to succeed should not be a factor in shifting the burden to those organisations. The administrative burden associated with establishing public benefit will cause limited resources to be diverted from the organisations benevolent activities. It is more appropriate for the ACNC to determine whether to investigate this issue further on an exceptions basis.

Further, by maintaining a position akin to the common law, a number of the issues raised in the Consultation Paper in paragraphs 65-70 would be resolved. Additionally, the statutory definition of charity would be simplified, rather than being further complicated by including extra public benefit requirements.

If the presumption of public benefit is removed, as contemplated in the Consultation Paper, the Committee considers that significant guidance and assistance should be provided by the ACNC to ensure that organisations are guided through the process of satisfying the public benefit test. The extent and type of assistance provided by the ACNC should take into account overseas experience and should cater specifically for smaller charities with limited resources, capabilities and understanding of the legislative landscape. Assistance could be provided in the form of:

(a) detailed and tailored fact sheets relating to the various different categories of public benefit;

(b) ACNC rulings and determinations (similar to tax rulings); and

(c) a phone service to assist charities in establishing their public benefit.

7. What are the issues with requiring an existing charity or an entity seeking approval as a charity to demonstrate they are for the public benefit?

The question as to whether there should, or should not be, a presumption of public benefit has been controversial, however, in particular in light of administrative experience in the United Kingdom where the presumption was removed.

However, it is important to remember that, as a matter of law, all charities must be for public benefit. The presumption of public benefit has as its main role in the current era, to reduce administrative and compliance costs that may be required in respect of the ACNC, and each charitable entity, if each entity needed to demonstrate public benefit. The presumption may also play a role where the purpose is considered generally to be beneficial but benefits are amorphous or difficult to quantify.

It is suggested that, to reflect contemporary realities of charity law, the presumption of public benefit should be extended to every listed purpose in the definition of charity, apart from the residual category ("other purposes for public benefit"). It would still be open in this case for the ACNC to initiate an inquiry, in light of the definition of "public benefit" above, into whether public benefit is actually evident in respect of a particular charity, and for courts to decide this on the basis of competing evidence.

8. What role should the ACNC have in providing assistance to charities in demonstrating this test, and also in ensuring charities demonstrated their continued meeting of this test?

See comments above under question 7.

9. What are the issues for entities established for the advancement of religion or education if the presumption of benefit is overturned?

See comments above under question 7.

Purpose and activities test

10. Are there any issues with the requirement that the activities of a charity be in furtherance or in aid of its charitable purpose?

The Committee supports the requirement that the activities of a charity be in furtherance or in aid of its charitable purposes, so long as inadvertent or isolated instances of activities in violation of the requirement do not automatically lead to loss of charitable status.

The issue of accumulation of funds is not discussed at all in the Consultation Paper. It would be beneficial to consider the accumulation of funds within a charitable organisation in the statutory definition of charity so that it is clear for all charities what level of accumulation is permitted without jeopardising an organisation's charitable status.

11. Should the role of activities in determining an entity's status as a charity be further clarified in the definition?

The Committee opposes the inclusion of an "activities" test in the definition of charitable purpose. In particular, the Committee considers that care must be taken not to confuse the activities undertaken to derive the income and the purpose to which that income is put. The Committee's submission below deals with both Question 10 and 11.

The nature of activities carried on by an entity endorsed as a charity should not impact on the entity's status as a charity. In this regard if a charity engages in commercial business or trade and derives income, provided those funds are contributed solely toward the entity's charitable purpose/s, how those profits are derived should not be relevant (unless of course they are gained through illegal activities).

However, it would clearly be inequitable to grant tax concessions to entities identified as charities where the entity generates funds through commercial activities but not all the funds are distributed in furtherance or in aid of the entity's charitable purposes. In the Committee's submission, such a situation would be extremely unusual given that an organisation's ability to distribute funds is entirely limited by its constituent documents and under current ATO criteria those require the charitable purpose to be clearly stated, prohibit distributions to non charitable organisations, and also have strict provisions on what can occur to the funds in the circumstances of a winding up.

The High Court in *FC of T v Word Investments Limited* [2008] HCA 55 agrees with this position. In that case, the High Court specifically accepted a charity could engage in business or trade to generate profits provided its funds were directed towards its charitable purposes. It should be noted that in that case the taxpayer was established as a financial and fund raising support company for another entity which was endorsed as a deductible gift recipient. It had sought to be endorsed in its own right as a tax exempt charitable institution, and its primary activity was running a commercial funeral business. The High Court rightly accepted that this did not impinge on the charitable status of the taxpayer.

The Commissioner's submissions in *Word Investments* confused the distinction between the way in which funds are generated to apply to a charitable purpose and the charitable purpose itself. Essentially the Commissioner argued that because Word Investments was engaged in investment, trading and other commercial activities it could not meet the requirements for endorsement. The High Court held that this approach was wrong. The memorandum of association of Word Investments stated the charitable purpose of advancing religion in a charitable sense. Evidence was given by the recipient institutions that when funds were received they had to be applied for charitable purposes and therefore Word Investments itself was entitled to be endorsed.

The Committee submits that this particular issue is one which does not need legislative sanction given that it is clearly the current law in Australia – and the Committee would submit that it has always been the law. If legislative intervention is necessary to ensure that the distinction between the activities of an entity and its charitable purpose are clearly delineated the Committee would respectfully submit that the approach to be adopted is nothing more complicated than the approach adopted by the High Court in *Word Investments,* i.e. that the nature of activities undertaken to generate funds which are then applied for an entity's charitable purpose do not impact on the charitable status of the entity.

Despite the decision in *Word Investments*, the Commissioner has maintained his view the starting point in determining whether an institution is charitable is to look at the objects in the constituent documents of the institution and the activities which give effect to those objects.[1] The Commissioner further states in TR 2011/14 that where an entity's objects are mixed in nature and it is not clear what its main or dominating characteristics are, it is necessary to consider the entity's activities to determine whether it is a charity.

This approach is wrong, and is inconsistent with the decision of the High Court. Many charitable institutions engage in commercial business or trade to legitimately raise funds for their charitable purposes and indeed need to do so in order to supplement their donation income.

Political activities

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?

The Committee comments on these questions together.

To the extent that any particular activities of a charity are determined, from a policy perspective, to result in the disqualification of that entity from being treated as charitable, the Committee supports having those activities enunciated in legislation. Section 8(2) of the Charities Bill proposes to legislate the position with regard to political activities and provides greater certainty and clarity by taking the issue from the realm of common law to statute.

However, the Committee supports:

(a) the proposed modification discussed in paragraph 108 relating to the removal of section 8(2)(c) of the Charities Bill (which would result in activities directed at changing the law or government policy not being disqualifying activities).

[1] Taxation Ruling TR 2011/14, at paragraph 188

(b) the comments in paragraph 114 of the Consultation Paper, originally endorsed by the Board of Taxation (discussed at part 3.45 of the BoT Report), suggesting the removal of "cause" from section 8(2)(a) of the Charities Bill.

14. Is any further clarification required in the definition on the types of legal entity which can be used to operate a charity?

More generally, the Committee supports the approach taken in sections 4 and 5 of the 2003 definition, which effectively ignore the type of legal structure (association, company or trust) used by the charity. Indeed, it is submitted that this approach needs to be carried over to the wording of particular tax concessions. For example, section 50-5 of the ITAA 1997 draws a distinction between charitable 'institutions' and charitable 'funds', a distinction which serves no apparent purpose and should be removed. The distinction creates many problems in practice, particularly given the narrow view that the Commissioner has taken of the word 'institution': refer paras 23-25 and 163-172 of TR 2011/4. While it must be acknowledged that the Commissioner's view has some foundation in case law, the distinction often pollutes the decision whether to establish a charity as an association or company limited by guarantee on the one hand, or a trust on the other – a decision which should be reached on other (non-tax) grounds.

The Committee believes that the introduction of a statutory definition of 'charity' is an ideal platform for removing the distinction between charitable institutions and funds from the tax law.

15. In the light of the *Central Bayside* decision is the existing definition of 'government body' in the Charities Bill 2003 adequate?

The Committee agrees that the Commonwealth, the States and Territories should be excluded from the definition of charity, and that this exclusion should also refer to local governments.

However the Committee questions the rationale for excluding bodies 'controlled by' such Governments. If a Government decides to carry on certain activities via a separate legal entity, then the tax status of that entity should be judged by references to its purposes and activities, as is the case with any other alleged charity, and it is difficult to see why a level of government control (eg. over Board appointments), or funding, has much to do which that. Excluding such bodies would also appear to be out of step with recent State-based legislation, which allows room for Government controlled charities. Moreover, excluding bodies 'controlled by' Government from charity status is unlikely to have much impact on income tax exemption, as many such bodies are likely to be 'STBs' under Division 1AB of Part III of the ITAA 1936 in any event (although those provisions have their own difficulties). If the concern relates to other tax concessions – eg. GST or FBT – then perhaps it would be better to exclude government bodies from those tax concessions more explicitly.

Alternatively, if bodes 'controlled by' Government are to be excluded from being charities, then it is submitted that significant administrative clarification will be needed, as the 'controlled by' concept is inherently uncertain in application (notwithstanding the decision in *Central Bayside*). The Committee notes that this also seems to have been the view of the Board of Taxation, who felt that detailed definitions were needed to clarify the key concepts.

16. Is the list of charitable purposes in the Charities Bill 2003 and the *Extension of Charitable Purposes Act 2004* an appropriate list of charitable purposes?

17. If not, what other charitable purposes have strong public recognition as charitable which would improve clarity if listed?

The Committee comments on these two questions together, as follows:

As discussed above in the Introduction and in response to Question 1, the Committee submits that an extension of the list of charitable purposes beyond those listed in the Charities Bill would be appropriate. The full extent of such a list is a matter for political decision, reflecting the desires of the community as a whole. However, it is submitted that the list in the Charities Bill could appropriately be broadened to reflect contemporary Australian norms. Further, some clarification could be provided in respect of a number of the heads listed there. The inclusion in Appendix A of the Consultation Paper, of the Charities and Trustee Investment (Scotland) Act 2005, provides a useful model on which the Treasury could draw, in developing a listing suitable for Australia.

To ensure that the statutory definition is genuinely contemporary and does not contain “old echoes” and “muffled arguments” from past law, the Committee proposes that the common law requirement that a purpose should be “within the spirit and intendment” of the preamble to the Statute of Elizabeth should be specifically ousted by statute.

If there is doubt about a particular purpose fits within one of the general heads of charity or where the government wishes to encourage activity in a particular area, specifically listing a charitable purpose in section 10 of the Charities Bill would increase certainty in the NFP sector.

18. What changes are required to the Charities Bill 2003 and other Commonwealth, State and Territory laws to achieve a harmonised definition of charity?

The Committee submits that, once a comprehensive, clear statutory definition of charity is enacted at the federal level, this will go a long way to providing a basis for federal harmonisation, where appropriate, of the definition. Similarly, registration as a charity by the ACNC for federal purposes will provide a first point of reference for State and Territory administration of charities.

Further steps may be desirable to increase harmonisation, through appropriate channels, once the federal definition is enacted.

The Committee considers that Commonwealth, State and Territory laws should be amended so that a reference to a charity is taken to be a charity as defined by the Commonwealth legislation. States and Territories could then expand or limit the definition as they see fit.

19. What are the current problems and limitations with Australian Disaster Relief Funds ("ADRFs")?

Issues currently arise in the effective use of ADRFs related to timing issues. ADRFs cannot be established to generally support disaster relief activities as and when a disaster occurs (or even as and when a disaster is declared). This makes it impossible for funds to be collected in advance of disasters occurring and necessarily results in a delay of being able to raise funds and then distribute those funds to those affected by the disaster, or used in providing goods and services to those affected.

The introduction of a general head of charitable purpose that will be activated as and when disasters arise (or are declared) would assist in enabling entities to be "disaster-ready". Some specific acknowledgement of an ability to accumulate funds in a general ADRF would be required to recognise the forward-looking nature of such a fund.

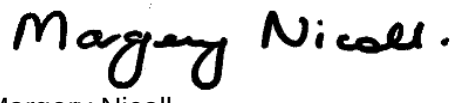
20. Are there any other transitional issues with enacting a statutory definition of charity?

In particular, if there were to be a change that requires “public benefit” to be proactively established on the evidence by every charity (removing the presumption), significant transitional support and assistance will be required.

Otherwise, it is submitted that the ACNC should be given adequate powers to ensure that all organisations shall be given adequate time to register under the new regime without penalty and without risk of losing charitable tax-exempt status. A transition period of, say, two years during which existing status of entities will definitely be maintained, would be appropriate. The Committee notes that in other countries where a similar process was introduced (for example New Zealand), all existing charities were required to reapply for charitable status, and the process was extremely time consuming and costly for the charities involved. The Committee submits that any new process must be streamlined and consideration should be given to providing a substantial transitional period for existing charities that may need to restructure or amend their governing documents to fit within the definition of charity or make other organisational changes depending on the final form of the statutory definition.

If you have any questions in relation to this submission, in the first instance please contact the Committee Chair, Ms Teresa Dyson, on 07-3259 7369.

Yours faithfully,



Margery Nicoll
Acting Secretary-General

Law Council
OF AUSTRALIA

19 December 2011

The Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: NFPReform@treasury.gov.au

Dear Sir or Madam,

Consultation Paper – A Definition of Charity

The Environment and Planning Law Group of the Law Council of Australia ("the EPLG") welcomes the opportunity to provide a supplementary submission in respect of the Consultation Paper – *A Definition of Charity* released by Treasury in October 2011.

The EPLG supports the comments and recommendations made by the Law Council's Tax Committee in its submission dated 9 December 2011. In particular, the EPLG recognises the value of advocacy and law reform activities undertaken by environmental organisations in pursuit of their charitable purposes, and endorses the Committee's support for:

(a) *the proposed modification discussed in paragraph 108 relating to the removal of section 8(2)(c) of the Charities Bill (which would result in activities directed at changing the law or government policy not being disqualifying activities).*

(b) *the comments in paragraph 114 of the Consultation Paper, originally endorsed by the Board of Taxation (discussed at part 3.45 of the BoT Report), suggesting the removal of "cause" from section 8(2)(a) of the Charities Bill.*

The EPLG does not seek to revisit matters addressed in the Tax Committee's submission. This supplementary submission is confined to providing the EPLG's view on the proposal to include "advancement of the natural environment" as a charitable purpose.

GPO Box 1989, Canberra
ACT 2601, DX 5719 Canberra
19 Torrens St Braddon ACT 2612

Telephone **+61 2 6246 3788**
Facsimile +61 2 6248 0639

Law Council of Australia Limited
ABN 85 005 260 622
www.lawcouncil.asn.au

Environmental protection as a charitable purpose

Over the past few decades there has been an increasing recognition of the public benefits associated with maintaining a healthy environment, and the interdependence of natural resources and human activities.[1] Issues relating to pollution, water management, climate change and protection of agricultural resources are properly recognised as human rights issues. Equally, many of those issues impact disproportionately on the most disadvantaged members of society.[2]

Given the direct and indirect public benefits of environmental protection, the EPLG supports the proposal in the Bill to expand the traditional *Pemsel* heads of charity and explicitly include protection of the environment as a charitable purpose.

However, the EPLG believes that the wording in clause 10 of the Bill, "the advancement of the natural environment", is too narrow. The emphasis on natural environment ignores the complex interactions of communities, industry and the environment, and the role of planning and development in achieving environmental outcomes. A broader understanding of these factors is reflected in the definition of 'environment' in the *Environment Protection and Biodiversity Conservation Act 1999*.[3]

It is important that work to protect, plan for, regulate or manage the built environment is also recognised as a legitimate objective for a charitable organisation. To facilitate charitable work relating to the built environment, the EPLG recommends that the list of charitable purposes in clause 10 be amended to include "advancement of the protection of the environment".

If you have any questions in relation to this submission, in the first instance please contact the EPLG Chair, Mr Matthew Baird, on 02 8003 4878.

Yours faithfully,

Margery Nicoll.

Margery Nicoll
Acting Secretary-General.

[1] See, for example, Articles 1, 2 and 4 of the *Draft Principles on Human Rights and the Environment 1994*.
[2] For more discussion of this issue, see EDO NSW and EDO Vic. 2009. *Protection of Human Rights and Environmental Rights in Australia*: Discussion Paper.
[3] Section 3(1), *Environment Protection and Biodiversity Conservation Act 1999*