



SUBMISSION TO BOARD OF TAXATION ON CHARITIES BILL 2003

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- 1 This submission is lodged on behalf of the Australian Conservation Foundation, Australian Marine Conservation Society, Australian Rainforest Conservation Society, Clean Up Australia and Clean Up the World, Conservation Council of South Australia, Conservation Council of Western Australia, Environment Victoria, Friends of the Earth, Greenpeace, Humane Society International, International Fund for Animal Welfare, Nature Conservation Council of NSW Inc, Queensland Conservation Council and the Wilderness Society.
- 2 Collectively these organisations have a membership or supporter base of approximately 12.2 million people (approximately 600,000 Australia wide and 11.6 million worldwide). Their members include community groups, schools and corporations as well as individual members of the public. Some of them are national organisations and others are State or Territory based, overall they comprehensively represent environmental charities across the entire country. Several have international status. They have a broad and diverse range of activities and aims but all are fundamentally and primarily directed toward the advancement, protection and conservation of the environment and its wildlife.
- 3 Overviews of each of the above entities and their charitable purposes are contained in the attached Schedule.

Executive Summary

- 4 The proposed exposure or draft *Charities Bill* 2003 ("the *Bill*") has been described as simply a codification of the common law. This is not correct. In some respects its departure from the common law is positive (eg: the broadening of the definition of "charitable purposes" (s.10) and the inclusion of "advancement of the environment" as a separate head of

charitable purpose). In other respects, however, it will narrow the definition of "charity" by imposing additional restrictive requirements upon charities. This narrowing will also counteract the intention of proposed s.10 which seeks to expand the overall definition of what constitutes a charity. The *Bill* will also severely restrict certain activities of charities and place additional administrative burdens upon them. Given that charities often perform work which the government would otherwise be required to do, in assisting the disadvantaged or otherwise benefiting the community, these restrictions and additional burdens seem at odds with encouraging charities to effectively continue that work.

- 5 Moreover, merely attempting to codify the existing common law, which is derived from a 1601 Statute¹, will not result in a better definition of what constitutes a charity in a modern society, nor will it necessarily result in a clear legislative definition.² If the government is to legislate in this area it should seek to have regard to the important and dynamic role charities play in a modern society. The law of charities needs to move forward as new social needs arise.
- 6 There are two fundamental problems with the *Bill* which centre around s.8 - the "disqualifying purposes" provision:

- 6.1 The first relates to the restriction upon a charity's ability to advocate for or against changes in the law or public policy: s.8(2)(c). Not surprisingly, this is of widespread concern and the subject of much public debate.

There is no good reason for charities' advocacy activities to be restricted in this way. The advocacy role of charities should not be singled out for special treatment particularly when other organisations, corporations and individuals, who may also be entitled to tax concessions of one type or another, are not so restricted.

¹ The *Charitable Uses Act* (1601) 43 Eliz I c4

² The common law in a number of respects is unclear and to simply attempt to codify it may magnify these problems. In other respects, the common law has developed some relatively workable principles and to seek to replace them with codified legislation (which does not in any event, encompass the full context and ambit of the common law) will lead to further litigation and increased administrative burdens upon both charities and the government.

Clearly, to be a charity a body must have a charitable purpose or purposes. Given the vital role charities play in the community, the increasingly complex environment in which they operate and the breadth and range of laws and policies which impact upon their charitable objects, charities must be given great freedom to choose the means by which they achieve their charitable purposes.

- 6.2 The second fundamental problem relates to the unfairness, unworkability and ambiguity of the prohibition on unlawful conduct - s.8(1) and also s.4(1)(e). It is not suggested that a charity should be entitled to engage in illegal activities or unlawful conduct however, as this submission will later explain, these sections lack clarity and may potentially result in quite draconian (possibly unintended) consequences.

Summary of Recommendations

- 7 In summary, we recommend that:

- 7.1 The legislation not seek to codify or replace the common law (unless it does so positively and comprehensively which the current *Bill* does not) as this will lead to uncertainty. Lack of clarity and unworkability will result in further litigation which will increase the administrative and financial burden upon both charities and government. The legislation should seek to make positive changes which either supplement or progress the common law, such as proposed s.10.
- 7.2 The *Bill* should include a positive test for the advocacy role of charities in recognition of the fact that "charity" in a modern society encompasses systemic change (whether it be in policies, laws or the methods by which issues are addressed). A suggested provision is:

"8 *A charity is permitted to:*

- (1) *advocate for or against changes to laws and policy, so long as such activities may*

reasonably be expected to further or aid its charitable purpose(s); and

(2) comment upon a political party's or a candidate's policies or activities, so long as the commentary is reasoned and is engaged in to further, or aid its charitable purpose(s)."

7.3 The "disqualifying purposes" - s.8 - provision of the *Bill* should be deleted. It does not accord with the common law and will, for the reasons set out in this submission, prove to be unworkable.

8 This submission is divided into 2 parts. The first part addresses aspects of the *Bill* which are unworkable or lack clarity. In particular, it focuses upon the two fundamental problems referred to in paragraph 6 above. This part also includes submissions in support of the "case for change". The second part contains suggested amendments to the *Bill*, which in our submission will make the *Bill* clearer and more workable.

PART I

9 Most of the public debate surrounding the *Bill* has centred around the "disqualifying purposes" provision (s.8) of the *Bill*. Of particular concern is the potential for the disqualifying purposes to severely restrict and hamper a charity's ability to advocate for or against changes in legislation or public policy. Specifically, s.8(2)(c) prohibits a charity from having as a "purpose" the *"purpose of attempting to change the law or government policy if it is, either on its own or when taken together with one or both of the other of these purposes, more than ancillary or incidental³ to the other purposes of the entity concerned."*

³ There is no guidance in the *Bill* as to what this means precisely. The expression "ancillary or incidental" has presumably been adopted in the section because it is found in a number of judgments. However, it is applied in the *Bill* without the surrounding context given to it in the cases. This is an illustration of the difficulties associated with seeking to codify the law by extracting judicial pronouncements and inserting them in legislation in isolation and without the surrounding reasoning or context. Does it mean, for example, "ancillary or incidental" at any one point in time, or having regard to the organisation's activities over a 12 month period or some other period? What is the consequence to a charity's status if, for example, if government requests the involvement of a charity in a consultative process about policy developments or law reform (as often happens) and the activities of the charity for a substantial period of time are therefore mainly directed toward the purpose of changing policy or legislation? Does the charity receive an exemption from the operation of this section for that period? Or will the charity be

Unworkability - Merging of Two Concepts

- 10 The first observation we make about this provision is it does not distinguish between an organisation's "charitable purposes" and the activities that the organisation may undertake to further its charitable purposes. It is true that the section refers to a charity's "purposes" and not its activities. It is by no means clear, however, that the section is in fact referring to a charity's purposes (that is, its stated purposes) as opposed to its activities (that is, its actual activities). In this sense, the section is ambiguous. To illustrate: assume that a charity does not have any stated purpose which falls within s.8. That is to say, it does not state in its constitution, or elsewhere, that one of its purposes is to change the law or public policy. Does this then mean that the charity is free to engage in unlimited activities to attempt to change the law or public policy in furtherance of its stated objects? This interpretation is open on the section as currently drafted. It is an interpretation which undoubtedly many charities would support, as it does not restrict their activities, although it would still represent a restriction upon their purposes.
- 11 We cannot, however, assume the above interpretation is how s.8(2)(c) will be read. It is likely that the reference to "purposes" in s.8(2) will be taken to refer to the means by which a charity pursues its charitable objects or purposes. The public debate about this provision has certainly assumed this to be the case. As the law currently stands, charities are at liberty to employ some "political means" to further their charitable purposes and this will not necessarily render them non-charitable. Nevertheless, the line between "means" and "ends" is blurred: *"The cases on charities also involve some confusion between means and ends when it comes to their persuasive activities. There is a range of activity from direct lobbying of the government to education of the public on particular issues, in the interests of contributing to a climate conducive to political change. The line between an object directed at legitimate educative activity compared to illegitimate political agitation is a blurred one, involving at the margin matters of tone and style"*⁴.

required to obtain a private ruling from the ATO which will add to the administration burden and cost for both the charity and the ATO.

⁴ *Public Trustee v Attorney-General of New South Wales & Ors* (1997) 42 NSWLR 600 at p 621

- 12 It is extremely important in this context to draw a clear distinction between "purposes" and "activities". As one Canadian commentator has noted⁵ these expressions are now often used interchangeably and this has led to confusion in the application of Canada's legislative scheme.
- 13 In order for the legislation to be workable it will need to clearly distinguish between, on the one hand, charitable objects or purposes and on the other hand, the activities carried out by an organisation to further those objects. Failure to do this is likely to result in the courts again having to determine difficult questions of definition in order to clarify the operation of the statute.

Additional Burden - Dual Test to Determine Charitable Status

- 14 The second problem with the section is that it effectively imposes an additional "activity test" to determine whether an entity falls within the definition of "charitable purposes" (whether intentionally or not, that is the effect of the section). This departs from the current position which looks primarily to a charity's expressed purposes to determine its status. The change is likely to result in further litigation. This will add to the administrative burden of those government agencies which deal with charities (eg: the ATO) and upon the charities themselves who will be required to demonstrate compliance with the dual purpose and activity test. Moreover, the activity component of the test requires ongoing review (refer paragraph 16 herein).
- 15 It is the purpose for which an organisation is established that is important when considering whether it should be afforded charitable status. The courts have recognised that it is sometimes necessary to have regard to a charity's activities when determining its purposes, but that it is by no means a requirement in every case and extrinsic evidence (such as activities) should only be used to resolve ambiguity⁶. Moreover, to

⁵ Deborah J Lewis, 'A Principled Approach to the Law of Charities in the Face of Analogies, Activities and the Advancement of Education' (2000) *Queens Law Journal* 679 at 691: "*there has been confusion in this area due in part to judges using the phrases "charitable activities" and "charitable purposes" interchangeably...*"

⁶*Public Trustee v Attorney-General of New South Wales & Ors* (1997) 42 NSWLR 600 at p 609-10:- "*The objects of the body are to be found in its constitution. This contains a statement of "objectives" preceded by a set of "principles underlying council policy"...I consider the correct approach is to look to the constitution...[which] provides a coherent statement of the [body's objects]... and to use extrinsic evidence of activities only if there be ambiguity and only to the extent necessary to resolve it.*"

divorce the activities which a charitable body undertakes from its charitable purposes, ie: the context in which the activities are conducted, is to potentially misconstrue them and place undue weight on the nature of a particular act or activity as opposed to the purpose for which it is conducted.

- 16 The section places an ongoing obligation upon a charity (and arguably upon the ATO in its administration of charities) to continually monitor certain of its activities to ensure they remain "incidental or ancillary". Given that the activities of a charity will vary broadly from time to time, does this mean that its status will also vary from time to time? The section will impose an increased administrative burden upon the charity to continually monitor its activities.

Restriction on Activities

- 17 Thirdly, s.8(2) of the *Bill* has the potential to severely restrict the role of charities in areas of legislative reform and policy development; areas where the influences of the charitable and not for profit sector are often most needed.
- 18 Our submission in this respect is twofold:
- 18.1 First, the test proposed by s.8(2) is arguably more restrictive than the current position with respect to the extent of advocacy activities that a charity may undertake.
- 18.2 Secondly, and perhaps more importantly, this is an area which requires reform and an expanded definition in order to take into account the increasing role this sector will contribute to the community and to the development of representative policies and laws in the future. We urge the government not to confine itself to enacting a position which is derived from an ancient Statute as adopted and construed on a case by case basis by the courts. Codification of the existing position *per se* does not deliver any real benefit. If there is to be a legislative framework it should seek to take account of the environment in which modern

charities operate and be adaptive to the needs of the 21st century.⁷

18.3 The *Bill* in this respect does not promote the development of the charitable sector. Moreover, the rationale for the restriction seems to be directed at the role of the courts and not the role of charities.⁸ Accordingly, its continued application to the definition of charities should be carefully examined and questioned.

19 A charity is defined (and has been since 1601) by reference to its purposes and not by its activities. As the law currently stands a charity cannot have illegal or political purposes. The common law⁹ recognises that a charity may engage in activities which can be broadly called "political", such as advocating for change, so long as that is not the purpose for which the charity is established or its dominant activity: "*...the mere fact that trustees may be at liberty to employ political means in furthering the non-political purposes of a trust does not necessarily render it non-charitable.*"¹⁰ In our submission, the common law allows a

⁷ "...Judging from the number of times that this court has been called upon in recent years of life on the eve of the third millennium, I may be forgiven for expressing the wish that this [the law of charity] is an area where some creative legislative intervention would not be out of order..." Hugessen J.A. in *Vancouver Regional FreeNet Association v M.N.R* [1996] 3 FCR 880 (F.C.A) and discussed in article by Lewis, above n5.

⁸ Under the common law in Canada, a charity is not "exclusively charitable" if one of its purposes is political reform (it can have other ancillary purposes but not a "political reform" purpose). As Lewis points out: "*This rule developed so that, if ever the need arose, the courts could administer charities under their own terms. Since laws can only be changed by legislature, and the court is unable to determine if a specific change in law will be for the public benefit, a court cannot administer a charity with political purposes. Thus to keep courts out of the political process, political purposes are not charitable purposes.*" (our emphasis) above n5, 7. The authorities establish that political purposes cannot be regarded as charitable because a court has no means of judging whether a proposed change in the law will, or will not, be for the public benefit - refer by way of example, *Bowman v Secular Society* [1917] AC 406. This however, in our submission, does not prevent the legislature from expressly recognising that activities which seek to change policy or laws undertaken in furtherance of charitable purposes are permissible.

⁹ In our submission, there is no longer a clear, single common law test but a series of propositions that may be derived from a number of cases which result in several requirements that a charity must meet. Over recent decades the courts have, in our submission, evinced a reasonably tolerant stance when reviewing charities' "other" purposes (including what may be described as political purposes) to determine if such other purposes subordinate the charitable purpose(s) of the entity. The courts have also recognised that the law of charity is a moving subject, refer *McGovern v AG* [1981] 3 All ER 493 at p.503 citing Lord Wilberforce "*...there may well be purposes which do not fit neatly into one or other of the headings [in Pemsel's case]...secondly, the words used must not be given the force of a statute to be construed and thirdly...the law of charity is a moving subject...*". To impose a rigid test such as that posed in s.8(2)(c) of the *Bill* will have the effect, in our submission, of changing the law in this area so that it becomes narrower and more restrictive.

¹⁰ *McGovern* p.509

body to pursue charitable purposes by *means* of political agitation and this does not invalidate its objects.¹¹ A charitable body may:

19.1 advocate a change in the law or public policy which can reasonably be expected to help it achieve its charitable purposes; and

19.2 oppose a change in the law or public policy which can reasonably be expected to hinder its ability to achieve its charitable purposes¹².

20 The restrictions sought to be imposed on charities are not imposed on other sectors: As the 2002 UK Report into Charities and the Not-for-Profit Sector¹³ notes:- the restrictions on the advocacy activities or role of charities are "anomalous" and in "*many continental European countries for example, France, Netherlands and Sweden there are no comparable restrictions on not for profit organisations.*"¹⁴ Moreover, charities speak for large sections of the community and often for those who do not have a "voice" of their own. Charities also provide an important counterweight to government and business interests.

21 There are a number of powerful reasons why the advocacy role of charities should not be restricted and should be encouraged¹⁵:

¹¹ *Public Trustee v Attorney General of New South Wales* (1997) 42 NSWLR 600 at pp.616/617.

¹² *Re Inman* [1965] VR 238 at p.242 re: RSPCA

¹³ Private Action Public Benefit: A Review of Charities and the Wider Not-for-Profit Sector published by the Prime Minister's Strategy Unit UK Cabinet Office, September 2002 ("UK Report"), paragraph 4.51.

¹⁴ See also:- Update on the Taxation of Philanthropic Entities in the Netherlands: Exemption of Business Profits Destined for a Public Cause and Other Important Changes in Tax Law by Ineke A. Koele: "*The Netherlands has a genuinely attractive legal atmosphere for philanthropic activities. There is very little administrative or tax control of the organisations, the public objects that can be carried out are wide-ranging and open-ended, there is a full exemption of accumulated income and gains, individuals may deduct the value of their gifts against 100% of taxable income, and there is a fairly liberal policy as regards international activities. As disadvantages one might mention the obligation to pay 11% gift tax upon any substantial gift to a charitable entity and the fact that any active business income is always subject to normal corporate income tax rules.*"

¹⁵ The UK Report paragraph 4.52, stipulates 3 main reasons why charities "advocacy and campaigning role" should be encouraged and not restricted:

- Their strong links into local communities mean that charities are particularly well placed to monitor, evaluate and comment upon policies as they are implemented.
- Charities still enjoy higher levels of public trust and confidence than politicians or established political institutions, and are therefore well placed to offer alternative ways of engaging with the public policy debate and the processes of democracy.
- The diversity of the causes represented by charities mean that they are able to give voice to a far wider range of political perspectives, including those minority groups or interests, than might otherwise be heard by government.

- 21.1 Government policies and legislation regulate almost all aspects of every day life, the ability to lobby for change is essential.
- 21.2 Charities speak for a broad spectrum of the community and play an increasingly important and beneficial role in our society.
- 21.3 Campaigning or advocating to improve or change government policies and legislation can, and does, contribute to charitable purposes such as relieving poverty, improving health and education and protecting the environment.
- 21.4 History has shown us that some parts of the national heritage can only be conserved with the active help of the Parliament. Key examples include - Fraser Island, the Franklin River, the Great Barrier Reef, the Daintree Rainforest and Kakadu National Park.
- 21.5 Governments often seek the input and assistance of charities in areas of legislative reform and policy development. The *Bill* overlooks the fact that governments actively seek the views of charities.
- 21.6 The independence of the charitable and not for profit sector is highly prized and is one of the reasons it operates so effectively and with great public support. The ability to speak freely about laws and policies is a key element of this independence.
- 22 Recently, the Victorian Civil and Administrative Tribunal¹⁶ specifically considered whether the ACF's advocacy activities subordinated its charitable purposes and held that they did not. In so holding, the Tribunal observed that "*people engaged in conservation may be said to be engaged in something that is in some sense political...it [is] obvious that some parts of the national heritage can only be conserved with the active help of the executive and the Parliament.*" Also, that "*for a variety of reasons many charities nowadays will not be able to avoid conduct that may be said to be political.*"

¹⁶ Australian Conservation Foundation Inc v Commissioner of State Revenue [2002] VCAT 1491

23 Two examples from the activities of the ACF, will suffice to highlight the overwhelming need for environmental charities to be able to engage in public debate and to advocate for or against legislative or policy changes in order to better achieve their charitable purposes.

23.1 **Water:** For more than a decade ACF and other environment organisations have contributed to policy considerations, public education and collaborations with government and industry (including via formal consultative committees) on water and river issues. Over this period this combination of advocacy, education and collaboration by ACF has contributed to the following:

- (i) The 1991 Industry Commission Water Inquiry report, and the subsequent development of the COAG Water Resources Policy in 1994.
- (ii) The continuing implementation of water policy reforms by state governments in NSW, Victoria and Queensland in particular:
 - raising the plight of the rivers such as the Murray Darling and the Snowy into the public policy arena;
 - withdrawal of the proposal to construct a dam at the beautiful and remote Dimond Gorge, Fitzroy River, in the Kimberley - a site that is now a rapidly-growing tourist destination;
 - the continuing development of environmental flow arrangements within the Murray Darling, and in particular, the 'Living Murray' initiative of the Murray Darling Basin Ministerial Council
- (iii) Detailed policy input to the development of the 2003 COAG Water Policy Communique, including ACF's joint statement with the National Farmers' Federation - Principles for a Long Term Australian Water Policy and Action Plan.

23.2 **Natural Resource Management:** In 1989 and again in 2000, ACF worked collaboratively with the National Farmers' Federation on key natural resource management initiatives that each led to substantial policy changes:

- (i) In 1989 ACF and NFF successfully advocated to the federal government for the establishment of a National Landcare program that would foster individual and community actions to protect, restore and sustain the environment in rural Australia. The Commonwealth Government took up this policy change and implemented the Decade of Landcare - a continuing initiative that has fostered the development of a national landcare movement from its origins in rural Victoria. Strong community support has resulted in millions of hours of voluntary effort in raising awareness and promoting community involvement, in environmental rehabilitation, and in tree-planting and biodiversity conservation.
- (ii) In 2000 the ACF/NFF 'Repairing the Country' initiative, which highlighted the enormous task ahead in addressing key environmental issues such as salinity, water quality, and biodiversity decline, was of pivotal significance to the subsequent COAG initiative - the \$1.4 billion National Action Plan for Salinity and Water Quality.

24 The Report of the Charities Definition Inquiry, June 2001, noted that *"advocating on behalf of those the charity seeks to assist, or lobbying for changes in law or policy that have direct effects on the charity's dominant purpose, are consistent with furthering a charity's dominant purpose. We therefore recommend that such purposes should not deny charitable status provided they do not promote a political party or a candidate for political office."* We note that s.8 of the *Bill* is at odds with this recommendation and also brings into contention a new element being a "political cause" which is not defined in the *Bill*, thus further reducing the workability of the section and the definition.

- 25 Finally, there is another fundamental objection to s.8(2). It is drafted on the assumption that if an organisation has as one of its purposes the desire to change legislation or public policy in a particular area associated with its charitable endeavours, that necessarily disqualifies the organisation from being a charity. This poses a significant and serious restraint on the ability of charities to achieve their charitable objects. For the reasons articulated above it is, in this day and age, a matter of necessity for charities not only to undertake advocacy activities but also to be able to have as a "purpose" the purpose of systemic advocacy or change, to enable them to address the very causes of the problems which they seek to address; to find solutions and not just apply "bandaids" and to seek to alleviate, not just relieve, problems and their causes.
- 26 For example, assume that one of an environmental charity's six objects was to *"ensure that urban planning and development is founded upon the principles of environmental protection and conservation by seeking to change planning laws and government policy to ensure that buildings and cities are more ecologically sustainable"*. This should not disqualify it from maintaining its status as a charity. Take another example: an institution has as its principle object the furtherance of education for poor children in rural areas. It has as a further purpose seeking to achieve better funding for country schools by advocating for changes in the law relating to school funding by government. It would be extraordinary if the environmental charity, or the education institution, were to lose charitable status because of the inclusion of such a purpose in their objects. Yet this may be a consequence that would follow from the enactment of s.8(2) in its present form.

Conclusion and Recommendations

- 27 Our primary submission is that s.8 is unnecessary in its entirety¹⁷. (We deal specifically with s.8(1) in the next section). To include a disqualifying purpose test in the legislation represents a significant departure from the common law. Our strong preference and recommendation is for the disqualifying purposes test to be removed

¹⁷ However, if it is to be retained we suggest that s.8(2)(c) should be deleted and the balance of s.8(2), the other "disqualifying purposes", should be limited to preventing a charity from having as its purpose or dominant activity the promotion of a political party or candidate for political office.

from the legislation and to replace s.8 with a positive provision about what "political" activities a charity may undertake to further its charitable purposes. That would make the legislation more workable and if further definition were required, guidelines to supplement this provision could be considered.

28 We suggest that the *Bill* expressly provide that:

28.1 A charity be permitted to engage in advocacy activities¹⁸ (including advocacy for or against changes to laws and policy) so long as such activities may reasonably be expected to further or aid its charitable purpose(s). For example, "Grass roots" lobbying¹⁹ should be permitted as part of the acceptable sphere of a charity's activities; and

28.2 A charity also be permitted to comment upon a particular political party's or a candidate's policies or activities, so long as the commentary is reasoned and is engaged in to further, or aid its charitable purpose(s). Often commenting²⁰ upon a political party's policies will be an important element in educating the public about a particular aspect of conservation (or other charitable purpose) and seeking to further and contribute to informed public debate and awareness is quite different from engaging in party politics.

¹⁸ Advocacy activities should be unlimited in a quantitative sense by reference to time spent, amount of such activities in any given period or expenditure on such activities.

¹⁹ "Grass Roots lobbying" is activities which do not involve direct lobbying of candidates but which seek to mobilise public opinion and encourage members of the public to make their views known to legislators and such activities in the main include a genuine educational dimension.

²⁰ In a critical analysis of an equivalent provision in the US legislation, Joseph S. Klapach observes: *"To realize the benefits of this deal with the IRS, however, the charity must sacrifice its "soul" by agreeing to restrict the range of activities it will undertake. Section 501(c)(3) imposes just such a restriction by prohibiting tax-exempt organisations from engaging in political campaign activities. Thus, to receive tax-exempt status, charitable organisations must relinquish the right to comment on candidates, even though the election of a particular candidate might dramatically aid or hinder that organisation's ability to accomplish its exempt purposes. In this way, [the section's] prohibition of political campaign activity effectively silences a charity at a time when it feels most compelled to speak, when its speech might be the most effective in furthering its mission, and when the public debate surrounding issues of concern to it becomes most intense. In essence, s.501(c)(3) forces a charity to sacrifice part of its vision and its institutional character to ensure its operational success. Refer: Thou Shalt Not Politic: A principal approach to s.501(c)(3)'s Prohibition of Political Campaign Activity, 84 Cornell Lrev. 504 (1998-1999) p.506.*

Unlawful Purposes

- 29 In summary, ss.4(1)(e) and 8(1) of the *Bill* lack clarity and are ambiguous. In addition, s.4(1)(e) is capable of retrospective operation and its ambit is unclear. In any event, those sections are unnecessary. If a charity engages in illegal activities it will be dealt with by the law in the same fashion as any individual, business or government body. Why should a charity be effectively punished twice?
- 30 Moreover, s.8(1) is capable of an extremely narrow construction. It may for example, preclude environmental charities from engaging in peaceful protesting activities. Significant environmental and world heritage sites were only saved from destruction by being brought to the nation's attention through peaceful protesting activities by environmental organisations and the public. These actions and the associated public discussion around issues such as the future of the Franklin River in the early 1980s, played an important role in our dynamic democracy – eventually leading parliament to act to protect these valuable parts of our heritage.
- 31 Dealing first with s.4(1)(e) which is wrought with difficulties:
- It does not specify the circumstances in which an entity is taken to have engaged in a serious offence. Is it, for example, sufficient that the ATO, for example, be satisfied that an offence has been committed or must the offence be established in the criminal courts before it becomes relevant to the entity's status? The definition of serious offence in s.3 is of no assistance in this regard.
 - Can a charity be convicted of a serious offence? If it is a corporation it could be. But if it is an unincorporated association it may not. This then places some bodies at greater risk than others due simply to the manner in which they are established.
 - The section appears to override the presumption of innocence until proven guilty, ie: it potentially imposes a sanction (disqualification of charitable status) for allegedly engaging in conduct in the absence of a finding that the offending conduct

either has been engaged in or has lead to the commission of a serious offence.

- If the prerequisite of the section is not that an entity be convicted of a serious offence by a court, who then is to determine whether it has engaged in conduct that constitutes a serious offence, and by what standard is the entity to be judged - civil or criminal?
- If the decision is to be made by an administrative decision-maker then presumably it will apply a civil standard of proof. This is unacceptable when dealing with "serious offences" which are defined in the *Bill* to be indictable offences.
- How does a charity review an adverse decision, particularly when there is no requirement that there first be a conviction. The *Bill* provides no mechanism for review, which means the charity would only have limited rights of review in relation to a decision that potentially can bring about its demise.
- Does it apply to all "serious offences", for example, what if the offence has nothing to do with the charity's endeavours as a charity?
- Is it the activities of the charity itself or the activities of its members and/or employees to which the section refers?
- The requirement in the section that an entity "has not engaged" in conduct that constitutes a serious offence, will create interpretive difficulties. The use of the phrase "has engaged" suggests it has retrospective operation. It is unclear whether conduct that has occurred prior to the commencement of the legislation will affect charity's entitlement to be afforded charitable status.

32 Section 8(1) poses the same difficulties. In addition, the definition of "serious offence" does not apply to s.8(1). Accordingly, it is by no means clear what is meant by the expression "unlawful conduct".

33 Assuming a charity does engage in conduct that constitutes a serious offence or that it is "disqualified" under s.8(1) because of unlawful conduct:

- Is the revocation of its charitable status permanent?
 - How does it seek to become reinstated?
 - The *Bill* has no procedures in this regard and has no sliding scale of "penalties".
- 34 The *Bill* does not consider the impact upon the beneficiaries of a disqualified charity. Revocation of charitable status is an extremely harsh punishment as it will severely impact upon a charity's ability to continue to fulfil its purposes and objects. In many cases it will mean that the charity must cease to operate and be put out of existence. This is a consequence that would only be warranted in the rarest of circumstances.
- 35 Moreover, if a charity is disqualified there will be uncertainty about tax deductions and the potential retrospective operation of the section may create difficulties in the area of a charity's fundraising activities. For example, if there is uncertainty about whether donations made prior to disqualification will still be tax deductible if a charity is subsequently disqualified, this may discourage people from donating. The resolution of such issues will impose additional administrative burdens upon the charity and the ATO. Moreover, the uncertainty in this area may lead to a reduction in donations which will result in a further financial burden upon the charity.

PART II

Suggested Amendments

Core Definition

- 36 The "core definition" of charity in s.4 is unnecessarily complex and is primarily directed toward stating what activities preclude a charity from attaining charitable status. To make the section clear and more workable we suggest the following:

"(1) A reference in any Act to a charity, to a charitable institution or to any other kind of charitable body, is a reference to an entity that is a non-profit entity which has a dominant purpose that is

charitable and, unless subsection (2) applies, is for the public benefit.

(2) *[As currently appears in the Bill]*

(3) *A charity or charitable institution or any other kind of charitable body may not be an individual, a partnership, a political party, a superannuation fund or a government body.*²¹

37 We also recommend that the *Bill* be amended so that entities which have already been afforded charitable status be "grandfathered" under the new legislation so that they do not have the additional administrative burden of demonstrating their charitable status again. This would also make the legislation more workable from the perspective of those who administer it.

38 In our submission, sub-section 4(1)(c) is unnecessary. It is another illustration of the overall restrictive nature of the *Bill*. Moreover, it does not accurately reflect the common law position with respect to a charity's "other purposes" and this will lead to difficulties in its interpretation and application. No doubt there will be the need for charities and the ATO to resort to litigation to determine what exactly is meant by this section. Our proposed amendment to s.6 makes sub-section 4(1)(c) redundant in any event.

39 Sub-section 4(1)(d) is dependant upon the status of s.8. We submit that s.8 is unnecessary, or at least requires substantial redrafting as it currently is unworkable.

40 We have already made submissions in Part I about sub-section 4(1)(e) and recommend its deletion.

Public Benefit Test

41 The core definition in s.4 also requires that a charity's dominant purpose must be for the public benefit (in addition to being charitable). In principle we agree with that proposition (and it accords with the common

²¹ We note that others have raised concerns about the ambit and meaning of these exclusions, but do not seek to address those issues in this submission.

law) however, the proposed definition of "public benefit" in the *Bill* is problematic.

- 42 Section 7 provides that a "purpose" will be for the public benefit if it:
- is aimed at achieving universal or common good; and
 - has practical utility; and
 - it is directed to the benefit of the general community or to a sufficient section of the general community.
- 43 The primary difficulty we perceive with this 3 point test is the second dot point above - "practical utility". It is difficult to see how a "purpose" (the entity's stated objects or aims) can of itself have practical utility. The carrying out of a specific purpose may result in practical utility. Again, the *Bill* blurs the distinction between purposes and activities. It is not clear whether the section means that it is sufficient that an object/purpose itself must be directed at being useful or whether the charitable activity must produce useful results. Furthermore, the notion of "practical utility" may narrow the scope of the definition if it is interpreted as a requirement to show some definite tangible benefit. Many charities seek to alleviate poverty or other disadvantages in the community, as opposed to providing direct "relief to the poor". Often the benefits of alleviating the cause of the problems are not readily identifiable within a fixed period of time, would this then preclude the entity from being recognised as charitable despite its stated purposes clearly being charitable? For example, do spiritual and emotional outcomes fall within the scope of "practical utility". We recommend the deletion of that aspect of the definition in s.7.
- 44 We note that the *Bill* has not incorporated the Review Board's recommendation that an "altruistic" component be incorporated into the definition of charitable. We agree that this recommendation should not be adopted. The imposition of an additional test namely, altruism is: Firstly, unnecessary in light of the public benefit test; secondly, it will impose an additional administrative burden in that it will be an additional factor to assess and thirdly, its inclusion may narrow the definition of charitable purposes and make it less workable.

Dominant Purpose

45 Section 6(1) of the *Bill* would be clearer if it were amended to read:

"6(1) An entity has a dominant purpose that is charitable if and only if:

- (a) it has one or more purposes that are charitable purposes;*
and
- (b) its other purposes further, or are in aid of, its charitable purposes."*

This would overcome the unworkability and lack of clarity associated with the current sub-section 6(1)(b). Sub-section 6(2) should be deleted as it suggests that an entity may either have a dominant charitable purpose or a dominant public benefit purpose. A body cannot have two dominant purposes. Charitable status is determined by reference to the entity's stated objects and "public benefit" is the key factor to apply when assessing whether a purpose is charitable. The core definition - s.4(1) - recognises this and so, s.6(2) is unnecessary.

Disqualifying Purpose

46 Our primary submission is that s.8 of the *Bill* departs from the common law, is unnecessary and for those reasons and for the reasons set out in Part I, it should be deleted in its entirety:

- For the reasons discussed in Part I, the subject matter of sub-section 8(1) is unworkable.
- Sub-section 8(2)(a) is superfluous by reason of the suggested definitions of "dominant purpose" and "charitable purpose", and for the reasons set out in Part I should be either deleted entirely or substantially amended.
- For the reasons set out in Part I of this submission, it is neither desirable or workable to have a "Disqualifying Purposes" (or activities) section in the legislation. We recommend as an alternative, the adoption of a positive statement about what activities a charity may undertake with respect to "political" advocacy. We suggest the following:

"8 *A charity is permitted to:*

- (1) *advocate for or against changes to laws and policy, so long as such activities may reasonably be expected to further or aid its charitable purpose(s); and*
- (2) *comment upon a political party's or a candidate's policies or activities, so long as the commentary is reasoned and is engaged in to further, or aid its charitable purpose(s)."*

Charitable Purposes

47 "Charitable purposes" are defined in s.10 of the *Bill*. To better reflect the common law position and to overcome concerns evidenced by the existing sub-sections 4(1)(d) and (e) and s.8(1) (which should all be deleted), we suggest the inclusion of a new sub-section (3) in s.10:

"10(3) Charitable purposes do not include purposes that are illegal, or promote a political party or candidate for political office."

48 As discussed in Part I, the fact that a charity's purpose cannot be to promote a particular party or candidate should not prevent it from commenting upon the policies of a particular party or candidate, if such comment furthers its charitable purposes, ie: charitable environmental bodies should be entitled to assess and comment upon policies which best promote the conservation and protection of the environment and those which don't. The Explanatory Memorandum to the *Bill* or guidelines could provide additional definition in this area if required. For example, they could stipulate that the commentary must be reasoned and informative.

Environmental Purposes

49 The inclusion in s.10 of the *Bill* of the advancement of the "natural environment" (as well as the addition of other purposes such as the advancement of "culture" and "social or community welfare") is

welcomed. However, the reference to the "natural environment" may be too narrowly interpreted. For example, it potentially does not encompass the "built" environment. A key aspect of conservation and preservation of the environment, and in order to create a healthier environment in which we live, is to develop environmentally sustainable cities. In addition, problems with the natural environment are often the direct result of human activities conducted far from the area which is impacted upon ie: pollution of river environments and climate change have induced coral bleaching on the Great Barrier Reef.

50 A suggested alternative to s.10(1)(f) is:

*"the advancement of the protection of the environment."*²²

Additional Charitable Purposes

51 We note the Review Board's Report stated that the definition "any other purpose that is beneficial to the community" (as reflected in s.10(1)(g) of the *Bill*) would include the "promotion and protection of civil and human rights" and the "prevention and relief of suffering of animals".

52 Human Rights is an issue of such fundamental importance to humanity it should in our submission, be specifically recognised in the legislative definition of charitable purposes.

53 It is recommended that the purpose of protecting and promoting human rights be included as a charitable purpose in its own right. We suggest the inclusion in s.10 of the *Bill* of a further purpose, namely:

*"the promotion and protection of civil and human rights"*²³

Date: 3 October 2003

Arnold Bloch Leibler

²² See also s.3(1) of the *Environment Protection and Biodiversity Conservation Act 1999* No. 91 (Cth) which recognises that advancement and protection of the environment is a broad concept.

²³ The definition of: *"the promotion and protection of civil and human rights and reconciliation"* is recommended as a separate charitable purpose in the 2002 UK Report.

SCHEDULE

Overviews

Overviews in alphabetical order of:

- **Australian Conservation Foundation**
- **Australian Marine Conservation Society**
- **Australian Rainforest Conservation Society**
- **Clean Up Australia and Clean Up the World**
- **Conservation Council of South Australia**
- **Conservation Council of Western Australia**
- **Environment Victoria**
- **Friends of the Earth**
- **Greenpeace**
- **Humane Society International**
- **International Fund for Animal Welfare**
- **Nature Conservation Council of New South Wales**
- **Queensland Conservation Council**
- **The Wilderness Society**



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Overview of Australian Conservation Foundation

- 1 ACF was established in 1965. Since then it has grown to become a national conservation organisation with a membership that is spread across every State and Territory. ACF has approximately 50,000 supporters including 20,000 paid up members comprising a diverse and broad range of individuals, corporations and community organisations (for example: schools and scout groups). The ACF is a democratic organisation governed by a Council. Councillors are elected for three years and ordinary ACF members are eligible for election. The Council elects the President, Treasurer and the two Vice Presidents.
 - 1.1 ACF's head office is in Melbourne. ACF also has offices in Adelaide, Perth, Sydney, Canberra and in Cairns. It employs approximately 57 full time staff (excluding casual staff), 50 of whom are based in Victoria. It also receives considerable assistance from an extensive volunteer "workforce".
 - 1.2 ACF is an incorporated association, incorporated in the Australian Capital Territory under the *Associations Incorporations Act 1991* (ACT). ACF presently holds charitable and deductible gift recipient status for the purposes of Federal and State taxation laws.
 - 1.3 ACF's primary purposes and objects are set out in its Constitution and may be summarised as follows:
 - making every effort to achieve ecological sustainability by, amongst other things, doing all things designed to protect the natural environment in both Australia and elsewhere;
 - acting as a clearing house for collection, evaluation, dissemination and interchange of information and other material relating to conservation;
 - co-operating with persons, corporations, institutions, governments and other bodies in Australia or elsewhere concerned with or interested in conservation;
 - taking action to promote conservation;
 - providing financial and research assistance in relation to conservation projects;
 - sponsoring, providing or contributing towards lectures, scholarships or other awards for research, study or

literary contribution in connection with any of its objects;
and

- furthering its objects by production of books, pamphlets, radio and television programs, lectures and films.

1.4 In 2000, the ACF developed a Mission Statement to reflect its objects. The Mission Statement encapsulates ACF's mission, vision, value and philosophy:

- **"Mission - what we do**

ACF campaigns to protect, restore and sustain the environment

- **Vision - what we want**

ACF will inspire and promote a society which is environmentally aware and responsible

- **Values - how we act**

ACF is professional, collaborative and courageous

- **Who we are**

ACF is a national, community-based environmental organisation"

1.5 **ACF's Vision: A sustainable Australia**

Finding environmental solutions that will protect, restore and sustain the country to the benefit of all Australians by:

- Environmental modernisation - a cleaner and more efficient economy
- Repairing our lands and rivers and promoting sustainable livelihoods in rural Australia
- Protecting our great natural areas
- Vibrant and informed communities, businesses and governments acting together for a sustainable Australia.

ACF's Shared Vision

1.6 *"Efficient use of water and smart land use will drive innovation and will generate jobs and wealth. Imagine we've achieved a sustainable Australia, where we have a modern, clean economy and vibrant healthy cities, our rivers are flowing and rich with life and the great landscapes of this ancient country are there for all to enjoy and for our children to inherit."²⁴*

²⁴ Extract from a speech given by Don Henry, Executive Director, ACF in September 2003.

Overview of Australian Marine Conservation Society



The Australian Marine Conservation Society (AMCS) is Australia's longest serving and largest non-government organisation that is solely dedicated to the conservation and protection of Australia's marine environment. Established for over thirty years, AMCS is a recognised authority and advocate for marine and coastal conservation and has local branches around Australia.

The Society's supporter base consists of over 1000 members and supporters from across the spectrum of Australian society, as well as a modest international membership. Membership consists of marine scientists, university academics and students, divers and snorkellers and the general public, including many families. AMCS has a Head Office in Brisbane and seven regional branches, based in Moreton Bay (Qld), Sydney, Perth, Adelaide, Kangaroo Island (SA), Melbourne and the Great Ocean Rd. These branches are volunteer based, concentrate on regional issues and are not individually incorporated.



Australian Rainforest Conservation Society Inc.

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Overview of Australian Rainforest Conservation Society Inc.

The Australian Rainforest Conservation Society Inc was established in 1982 to protect and conserve Australia's remaining rainforests. The Society has played a national role in protection of rainforests and has prepared the nominations for Australia's two rainforest World Heritage Areas as well as that for Fraser Island. Over the years, the Society's objectives have broadened to incorporate the conservation of forest biodiversity in general, and it is currently involved in a regional planning process covering more than 30 million hectares in the Brigalow Belt of Queensland.

The Australian Rainforest Conservation Society's membership consists of principally individual and joint (household) members, with a total membership of approximately 800.

Professor Aila Keto AO

President



Clean Up Australia and Clean Up the World



Overview of Clean Up Australia and Clean up the World

Mission & Objectives

Clean Up Australia inspires and works with all Australians to clean up, fix up and conserve our environment by:

- Harnessing community enthusiasm and support to participate in critical activities concerning the environment
- Raising awareness of environmental issues through proactive communication and education
- Sharing and exchanging our knowledge and expertise with the global community to empower environmental action
- Playing an effective role in repairing the environment and achieving greater sustainability
- Voicing community concerns on the state of the environment and actively promoting environmental repair
- Continuing to grow and develop Clean Up Australia activities and events to maintain their relevance to the environment and increase community participation.

The Organisation

Clean Up Australia Ltd and Clean Up the World Pty Ltd are community-based not-for-profit organisations, based in Sydney, Australia, that support and facilitate practical action and environmentally efficient solutions on issues such as water pollution, water conservation, waste management, resource re-use, recycling and remanufacturing.

Events

Clean Up Australia co-ordinates two flagship events Clean Up Australia Day and the Clean Up the World campaign.

Clean Up Australia Day, held every 1st Sunday in March has grown to be Australia's largest community-based environment campaign and now includes – Business Clean Up Day, Schools Clean Up Day as well as the traditional Clean Up Australia Day.

Born from Founder and Chairman's Ian Kiernan AO's desire to clean up his beloved Sydney Harbour, this national activity annually attracts the support of **over half a million volunteers** who have, over the last fourteen years, removed more than 196,000 tonnes of rubbish.

With over 120 participating countries **Clean Up the World** is a year round community based environmental action campaign that culminates in a weekend of celebration held the third weekend of September.

Over the last decade Clean Up the World has engaged more than **40 million volunteers** in projects and programs to clean up, fix up and conserve their local environment.

Projects

Drawing on the relationships made via Clean Up Australia Day, **Fix Up Projects** are an ongoing environmental partnership between the community, local government and industry to repair and remediate our environment.

Since the launch of 'Clean Up to Fix Up' in the mid 1990s more than 80 community-based projects have been assisted by Clean Up Australia. Our support includes information, management, facilitation of funding, promotional help, contact sharing, endorsement and advice.

Projects have included major initiatives such as Lord Howe Island's waste management strategy, treatment of Taronga Zoo's wastewater, the remediation of Parsley Bay, Richmond's water re-use initiative and the Moonee Ponds Creek Stormwater Litter Project in Victoria.

Localised community led Fix Up projects which are supported by Clean Up Australia include 'Carpbusters' - a carp reduction and native fish regeneration program in Queensland, remediation of Mermaids Pool in Manly, NSW and the Derwent River and Coastal Clean Up, Hobart, Tasmania.

Campaigns

Through community education campaigns such as **Bag Yourself a Better Environment**, which aims to change retailer and consumer attitudes and actions to the use of plastic bags, and **Leave Only Footprints**, a beach litter reduction education campaign, Clean Up Australia continues to foster and support community led environmental reform.

Our supporters

All of the events, activities, projects and campaigns undertaken by Clean Up Australia depend on funding derived from partnerships, grants, sponsorship and donations.

Clean Up Australia Day sponsors and supporters:

- Major sponsors - Collex, Ford Australia and McDonald's Australia
- Internet partner - Secure Interactive
- Official suppliers - Qantas, AON, Ansell and Shop-A-Docket
- Official supporters - Becton Dickinson, Coles Supermarkets, Look Digital and Kennards Self Storage
- Business Clean Up Day supporter - Kyocera Mita
- Kids Clean Up Kit supporter - SABCO.

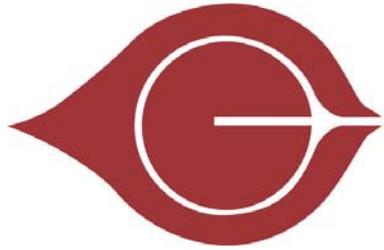
Clean Up the World campaign sponsors and supporters:

- Major sponsor and partner - Duskin & UNEP
- Internet partner - Secure Interactive
- Global media partner - National Geographic Channel International
- Official airline - Qantas
- Supporters - Commonwealth Government's Department of Foreign Affairs and Trade

Projects funders and supporters, include:

- Commonwealth Government's Environment Australia and Heritage Trust
- State Governments and their environmental agencies across Australia
- Local Councils
- Industry associations and businesses

Environmental organisations



Conservation Council of South Australia Inc

Overview of Conservation Council of South Australia Inc

The Conservation Council of SA is an independent strictly non-party political community group. It is the peak environment group in the State providing leadership, support and advocacy and innovation to the environment movement and broader South Australian communities for an enduring healthy environment in SA.

The organisation promotes links, provide services and acts as a catalyst within the environment movement in SA, and aims to promote ecological, economic and social/cultural planning founded upon ethical principles of protection and conservation.

CCSA was founded in 1971 and is based at 120 Wakefield Street, Adelaide. It has a membership of 53 member groups whose estimated individual memberships total well over 60.000 South Australians. CCSA also has a strong supporter base of some 1000 individuals and donors.

CCSA has a small administration staff, and also runs and/or hosts a range of environmental projects. The organisation also runs a specialist research and reference Library.

CCSA is an incorporated associated, is GST registered, and has status as an 'Income Tax Exempt Charity' and can attract tax deductible donations through a Gift Fund registered with the Register of Environmental Donations.



CONSERVATION COUNCIL

OF WESTERN AUSTRALIA INC.

City West Lotteries House
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Overview of the Conservation Council of Western Australia

The Conservation Council of WA is an umbrella organisation for around 65 conservation and environment organisations, covering approximately 10,000 members. We also have individual supports and subscribers (non-voting). We cover the whole of Western Australia and work on any conservation or environment related matter affecting Western Australia.

OBJECTS

The prime object of the Council is to promote conservation and environmental protection throughout the State of Western Australia and more particularly but without limiting the generality of the foregoing:

To provide a means whereby those bodies interested in conservation and environmental protection and which subscribe to the Council's objects can have regular and formal communication with one another.

To consider matters of common interest and to arrive at agreed common policy.

To act as spokespersons on matters of agreed policy and to press for adoption of, or action on, agreed policy by the appropriate authorities.

To sponsor or engage in education and research activities in the field of conservation and environmental protection.

To provide a clearing house and repository for conservation and environmental information in the State.

To provide a means of liaison with other bodies dealing with conservation and environmental protection, including national and international bodies.

To provide assistance to Member Bodies and Corresponding Bodies where possible, provided that such assistance is deemed to further the objects of the Council.



Overview of Environment Victoria

Environment Victoria is the state's peak non-government environment group working to protect our urban, rural and natural environments. We work on a range of environmental issues - conserving our native vegetation, restoring the health of our rivers, reducing our contribution to climate change and reducing our environmental impact in our everyday lives - to bring about a society living in harmony within a healthy environment.

We represent over 85 regional, local environment groups and over 1100 individual supporters. The local/regional members of EV represent a diverse collection of environmental interests from urban and rural sustainability to biodiversity conservation across the State.

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Friends of the Earth

Overview of Friends of the Earth

- 1 Friends of the Earth (FoE) Australia was established in 1971. It is a federation of independent groups who co-operate on environmental and social justice campaigns. FoE operates with the understanding that the 'environment' cannot be separated from social considerations, and hence has a strong social perspective in the way it addresses its campaigns. There are currently 13 member groups. It is the Australian member of Friends of the Earth International, which, with member groups in 63 countries, is the world's largest environmental federation. FoE (Australia) represents over 2000 members through its regional groups.
- 2 FoE (Australia) is an incorporated association.
- 3 The primary purposes and objectives set out in FoE (Australia)'s Constitution can be summarised as follows;
 - the conservation, restoration, and rational use of the ecosphere;
 - to stimulate a movement of social change towards an ecologically stable and self-managed society;
 - to preserve the natural environment in Australia;
 - to promote public awareness of environmental issues in Australia through public awareness activities and the production of leaflets, booklets, films and other educational materials;
 - to assist other people and organisations interested in these objectives to carry out their tasks through the maintenance of resource centres, newsletters, magazines and communication with like-minded national and international bodies.

Overview of Greenpeace

Greenpeace is an international NGO formed in 1972. It has offices in 40 countries and is financially supported by 2.6 million people around the world. Greenpeace is independent of all governments and business and refuses funding from either source.

Greenpeace Australia Pacific has existed since 1976. It currently operates five offices, two of which are in Australia. Funding for the organisation is provided by over 100,000 individual financial supporters.

The mission of Greenpeace is expressed in the following words:

Greenpeace is an independent campaigning organisation which uses non-violent direct creative confrontation to expose environmental problems, and to force the solutions which are essential to a green and peaceful future.

Greenpeace's goal is to ensure the ability of the earth to nurture life in all its diversity. Therefore, Greenpeace seeks to protect bio-diversity in all its forms; prevent pollution and abuse of the earth's land, air and fresh water; end all nuclear threats; promote peace, global disarmament and non-violence.

Peter Mullins
Chief Executive Officer
Wednesday, October 01, 2003



Overview of Humane Society International

Humane Society International is the largest animal protection organisation in the world with over 7 million supporters globally. HSI was established in Australia in May 1994 for the Asia Pacific region and has grown to 40,000 supporters. Our objective is to promote the enhancement and conservation of all wild plants and animals and to promote the protection of all living things from cruelty and neglect.

Overview of International Fund for Animal Welfare

29 September 2003

Protecting and Caring for Animals in Our Shared World

IFAW is committed to good conservation outcomes that benefit both people and wildlife.

The International Fund for Animal Welfare (IFAW) works to improve the welfare of wild and domestic animals throughout the world by reducing commercial exploitation of animals, protecting wildlife habitats and assisting animals in distress. IFAW seeks to motivate the public to prevent cruelty to animals and to promote animal welfare and conservation policies that advance the well-being of both animals and people.

IFAW was founded in Canada in 1969. Since that time, IFAW has grown to become one of the largest international animal welfare organisations in the world. IFAW has representation in 15 countries and a staff of more than 200 experienced campaigners, legal and political experts, and internationally acclaimed scientists. IFAW pursues a variety of local, national and global campaigns around the world. In each region where we work, IFAW's work is informed by local customs and culture and tailored to the particular economic and political conditions of that area. All of IFAW's efforts are rooted in the belief that a world in which animal life can survive and thrive is fundamental to human well-being.

Our purpose is reflected in the objects clause of our Constitution, which is as follows:

"The objects for which the Company is established are to promote the welfare and preservation of animals throughout the world but particularly in their natural environment including but not limited to:

- (a) the conservation and protection of their natural habitat;*
- (b) the support and conduct of research and the gathering, publication and communication of information concerning animals, the welfare or preservation of which is or may be threatened, endangered or otherwise at risk or which are or may be subject to injury, stress or cruelty; and*
- (c) the soliciting, accepting, application and use of money, gifts and other contributions or property for such welfare and preservation."*

IFAW has more than two million supporters around the world - including more than 50,000 in Australia. IFAW is primarily funded by supporter donations, spending 73 cents in every dollar directly on animal welfare.

IFAW brings a unique perspective to animal welfare by having a clearly stated aim in its Mission Statement to "promote animal welfare and conservation policies that advance the well-being of both animals and people". IFAW is committed to achieving balanced solutions to conservation

challenges - solutions that meaningfully address the needs of both wildlife and people in the world we all share.

IFAW's work is concentrated in two program areas: Wildlife and Habitat Protection, and Animals in Crisis and Distress. Our five international priority areas are Whales, Elephants, the Convention on International Trade in Endangered Species (CITES), Pet Rescue and Emergency Relief.

A key focus of our international work that serves as a useful example of our work in Australia is the International Whaling Commission (IWC). IFAW is a key NGO at the Commission's annual meetings and has a team of campaigners and scientists in six countries working on whale conservation, as well as operating the scientific research vessel *Song of the Whale*. IFAW in Australia provides a scientific adviser to the Australian Government delegation to the Scientific Commission of the IWC, and contributes to the broader IWC intercessional work of the Australian Government and to its ongoing domestic and regional commitment to improve whale conservation.

IFAW is supporting the gathering of scientific data in Australia and the South Pacific to understand the extent of the whales' recovery and help governments make science-based decisions on setting up whale sanctuaries.

International Fund for Animal Welfare (Australia) Pty Ltd was established in 1983 and is now known as the IFAW Asia Pacific regional office. The Sydney office opened in July 2000, and presently has 9 full-time employees, consultants and a dedicated volunteer team. International Fund for Animal Welfare (Australia) Pty Ltd is a company registered in NSW under the Corporations Act 2001, and presently holds charitable fundraising permissions and deductible gift recipient status for the purposes of Federal and State laws.

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NATURE CONSERVATION COUNCIL OF NSW Inc.

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Overview of Nature Conservation Council of NSW Inc

30 September 2003

The Nature Conservation Council of NSW (NCC) is the state's peak environment group representing over 130 member organisations and through them, 150,000 individuals. NCC, formed in 1955, is an Incorporated Association in NSW with DGR and tax exempt status. It is a non-profit, membership based organisation which currently employs 15 full time paid staff and many volunteers.

NCC has an Executive (Board) which governs the organisation. The Members of the Executive are representatives of NCC member societies and are elected each year by the Annual Conference of members. Office bearers are elected by the Executive.

Vision: An ecologically sustainable NSW

Mission: To protect, conserve and promote the NSW environment.

NCC's Constitution, most recently amended at the 2001 Annual Conference, states the Council's objects as:

The prime aims and objects of the Council are the conservation of nature, the protection of the environment and the attainment of an ecologically sustainable society, which aims and objects shall be pursued by the Council primarily within the State of New South Wales, but also within Australia and globally.

NCC's Constitution also sets out the organisation's functions:

- (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.
- (a) To speak on such matters of agreed policy and to press for adoption of, or action on, agreed policy by the appropriate authorities.
- (b) To sponsor or engage in education and research activities, including publication, in any area or field of conservation, alone or in cooperation with other bodies and individuals.
- (c) To provide a central clearing house and repository for conservation information (other than governmental information) in the State.
- (d) To provide a means of liaison with other bodies dealing with conservation, including national and international bodies.

- (e) *To provide information on request to member societies and assistance where possible.*
- (f) *To do any such thing as 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.*

NCC has statutory responsibilities in NSW to nominate environmental representatives to some Government advisory committees and policy processes.



Overview of Queensland Conservation Council

Queensland Conservation Council is the peak body for the environmental in Queensland, and our vision is to 'protect, conserve Queensland's environment to create a sustainable future for our community'. We represent over 50 member groups and hundreds of individual supporters, and have 60 representatives sitting as environmental consultants on committees throughout the state.



THE WILDERNESS SOCIETY

Protecting, Preserving, Promoting Wilderness

Overview of The Wilderness Society (TWS)

- 1 TWS was established in 1976. It is now one of Australia's largest and most respected conservation organisations. TWS is a non-profit, membership based environment group. It has an increasing membership base and together with supporters and volunteers up to 100,000 individuals are involved with the organisation. TWS is a national organisation with separately incorporated branches throughout Australia. TWS has a relatively non-hierarchical and open structure. Each branch and the national body have Management Committees elected by the members.
 - 1.1 TWS's head office is in Hobart. TWS also has offices in Perth, Adelaide, Cairns, Brisbane, Sydney, Wollongong, Newcastle, Melbourne, Canberra and Hobart. TWS has shops located in Sydney, Hobart, Adelaide and Newcastle. It employs approximately 60 full time staff, and in addition a number of casual staff involved in fundraising, together with a vast volunteer "workforce".
 - 1.2 TWS is an incorporated association, incorporated in Tasmania under the *Associations Incorporation Act 1964*. TWS holds charitable and deductible gift recipient status for the purposes of Federal and State taxation laws.
 - 1.3 TWS's primary purposes and objects are set out in its Constitution and may be summarised as follows:
 - To promote the concept of wilderness
 - To prevent the destruction of wilderness
 - To secure the future of wilderness
 - To enlarge the area of wilderness
 - To promote the rights of wilderness
 - To promote those ideas and actions which will enhance humanity's understanding, enjoyment and protection of the environment of Earth.
 - 1.4 TWS's mission may be summarised as
 - To protect, promote and restore wilderness and natural processes across Australia for the survival and ongoing evolution of life on Earth.

NATIONAL OFFICE

The Wilderness Society Inc. (Tas) ABN 62 007 508 349

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Membership 1800 030 641

Calendars, Diaries & Screen Savers 1800 035 354

1.5 In support of its objectives and mission, TWS conducts a large range of different activities, including:

- public education and empowerment;
- advocacy and negotiation;
- political and corporate lobbying;
- peaceful protest;
- desk and field research.

TWS is politically unaligned, but uses the political process to maximise good conservation outcomes.

1.6 The majority of TWS's income is in the form of donations, membership payments or purchases of goods by individual members and supporters.



Russell Hanson
Chief Executive Officer

