



20 May 2015

Committee Secretary
House of Representatives Standing Committee on the Environment
PO Box 6021
Parliament House
CANBERRA ACT 2600
By email to: environment.reps@aph.gov.au

Dear Committee,

Submission to the Inquiry into the Register of Environmental Organisations

This submission is provided by the National Association of Community Legal Centres (**NACLC**), Queensland Association of Independent Legal Services Inc (**QAILS**), Federation of Community Legal Centres Victoria, Community Legal Centres Tasmania, CLC NSW and EDONQ. The first five of these organisations represent the interests of community legal centres (including Environmental Defenders' Offices - **EDOs**) across Australia, and recommend that there is no change to the administration of the Register of Environmental Organisations because it is already transparent and effective. That is, the Register currently fulfils its aim adequately.

As you know, the Register's aim is to assist environmental organisations obtain financial support from the community by providing donors with tax deductions on their donations. It therefore also assists the public and business to identify worthy recipients of those donations. This characteristic of tax deductibility is important because it sends a clear message to the public that this type of environmental protection work is vital and of public interest. This type of

financial support by donation is particularly important for the EDOs around Australia, because these organisations have suffered large cuts to their government funding in the past several years, so have become more reliant on donations from the public to fund their public-interest environmental protection work.

This submission explains the work of CLCs in general, and the work of EDOs more particularly. In relation to EDOs, we explain how they protect the natural environment through their work.

About community legal centres

Community legal centres are ‘community-based, independent not-for-profit organisations that provide a range of legal and related assistance services to people who are disadvantaged, those with special needs and/or those whose interests should be protected in the public interest. Community legal centres are a key component of Australia’s legal aid system and provide a distinctive form of service that complements services provided by legal aid commissions (**LACs**), Indigenous legal assistance service providers and the private legal profession...’¹

Briefly, community legal centres:

- provide a mix of legal services to individuals, and blend individual assistance with community legal education, systemic advocacy and other early intervention and prevention approaches including participating in law and policy reform initiatives to improve the effectiveness and fairness of law and its operation
- provide a safety net, as much as is possible within limited resources, for those who cannot obtain legal help from any other legal service provider
- use connections with their communities to identify and address appropriately the most pressing legal needs in their target community
- are expert in working with people with complex needs, and have been early instigators of targeted strategies and multi-disciplinary or integrated service delivery, and
- are highly cost effective providers of legal assistance- for example, an independent economic cost-benefit analysis in 2012 found that on average, CLCs have a cost benefit ratio of 1:18; that is, for every dollar spent by government on funding CLCs, these services return a benefit to society that is 18 times that cost.²

About Environmental Defender’s Offices

The not-for-profit Environmental Defender’s Offices (**EDOs**) are free community legal centres dedicated to helping ordinary Australians understand and participate effectively in decision-making around planning, heritage and environmental issues.

Like other community legal centres, EDOs focus on assisting the disadvantaged and vulnerable, supporting community organisations and pursuing cases in the public interest.

¹ This definition comes from Australian Government Attorney-General’s Department, *Commonwealth Community Legal Services Program Guidelines*, cl 1.2.

² Judith Stubbs and Associates, *Economic Cost Benefit Analysis of Community Legal Centres* (2012), prepared for the National Association of Community Legal Centres.

We **attach** a brochure prepared by NACLC, which highlights some of the Australians that EDOs have worked with, the very different issues they faced, and the many ways that EDOs helped those individuals and communities to have their voices heard, to actively participate in neighbourhood issues, and to contribute to decision-making processes.

These stories demonstrate that people in all parts of the country want to look after their local communities, and have peaceful enjoyment of their homes. From rural landholders wanting to understand the laws affecting their land and livelihoods, to residents seeking accountability over toxic smoke from a mine fire, and locals looking for information about noise and air-polluting car rally – it's clear that, for everyone, environment matters.

Environmental laws, EDOs and access to justice

Environmental laws are important to access to justice, including because they can help to address social disadvantage and fairness in our legal system.³ Environmental problems can have a profound effect on a local community, or the wider public, as well as individuals. In appropriate cases, EDOs may therefore represent community groups or individuals seeking access to justice.

Often, environmental issues disproportionately affect members of marginalised or lower socio-economic groups who are exposed to inappropriate developments which lower air quality, water quality or the amenity of an area. This may have flow-on effects leading to ill-health, reduced land values, disadvantage and disempowerment. For example, environmental laws can play a crucial role in assisting Aboriginal Australians to protect their cultural heritage.

Overall, environmental laws can ensure that all Australians have equal rights to a healthy environment, liveable communities and protected heritage; and ensure that businesses and government agencies have a legal responsibility to protect our environment and conserve natural resources.

Definition of 'environmental organisation'

We recommend retaining the current definition of 'environmental organisation' under the Income Tax Assessment Act 1997 so those organisations continue to hold deductible gift recipient status. Organisations that satisfy the 'principal purpose' test benefit the public and donations to them should remain tax deductible.

Reporting and compliance

The administrative burden on environmental organisations should not be increased. Environmental charities are already subject to sufficient scrutiny by government and philanthropic funders, regulators and the public, particularly given their limited resources.

Organisations listed on the Register of Environmental Organisations are required to submit statistical information to the Department of the Environment on an annual basis. The Department undertakes an assurance program involving a sample of organisations. Organisations subject to this assurance program may be requested by the Department to

³ For further information on the public benefits of environmental laws and protections, see ANEDO, 'In defence of environmental laws', May 2012 (available on request).

provide supplementary information to the statistical return at that time, and this may include an audited financial statement.

In our view, the requirement for annual reporting, together with reporting to regulators (which may include the Australian Charities and Not-for-profits Commission, the Australian Securities and Investments Commission, state Offices of Fair Trading or Consumer Affairs [or their equivalents], and other departments) is appropriate. Transparency is also assured for EDOs, which are membership organisations that rely on philanthropic funding and individual donors, adding an additional level of accountability.

Activities

Environmental organisations that help to proactively protect the environment, including on-groundwork, education, advice, casework and advocacy should retain their deductible gift recipient status because of the great public benefit of their work in protecting the environment and human health dependent on our environment.

EDOs provide the community with free advice and representation, educational materials and outreach services. EDOs are also committed to working with governments to improve environmental laws, writing submissions in response to public inquiries and providing advice on expert panels and stakeholder reference groups.

Casework and client advice

EDOs' clients are diverse and include residents' groups, farmers, Aboriginal elders, conservation groups and concerned individuals. Unlike proponent-developers (who are typically well resourced), many clients lack the means to hire a private solicitor, and lack an understanding of or experience with the legal system; depending entirely on EDOs for advice and where necessary, access to courts and tribunals.

Indeed, high demand for EDOs' services across urban and regional Australia highlights the importance and relevance of this work. For example, in 2012-13, EDO NSW provided 1200 free initial telephone advices and over 190 detailed written advices about environment and planning law matters. Similarly, EDO Victoria provided 249 advices (telephone and written) over the same period.

This demand is further reflected in outreach work, with EDO offices delivering a significant number of workshops and seminars across Australia about specific areas of environmental law, including native vegetation, marine parks, contaminated land, water management, planning law, mining, agricultural land, and Aboriginal cultural heritage.

Casework services also provide the community with an opportunity to enforce the law and to protect areas of environmental and agricultural significance. Cases are carefully chosen after seeking additional advice from counsel regarding prospects, and are recognised for their contribution to public interest environmental jurisprudence at a Federal, State and Territory level.

By way of extension, it is widely recognised that EDO offices contribute to the overall efficiency of the court system by only litigating in exceptional circumstances, and by managing what are often complex matters in a highly professional manner. An important part of this process is

counselling the vast majority of clients against litigation, thereby reducing court lists and the overall cost to the community of litigation.

Community information and education

EDOs play a critical role in ensuring that community members understand the decisions that affect them, and that their involvement in decision-making is efficient and effective. All offices produce fact sheets on a range of topics and bulletins providing updates on changes to laws and policies. More detailed publications produced by EDOs include:

Mining laws

- *Mining Law in NSW: A guide for the community*
- *Mining and Coal Seam Gas Law in Queensland*
- *Community Guide to Mining (Tasmania – in production)*

Unrepresented litigants

- *Community Litigants Handbook, Queensland*
- *Going It Alone: A Guide for Unrepresented Litigants in the Resource Management and Planning Appeal Tribunal, Tasmania*

Environmental law guides

- *Rural Landholder's Guide to Environmental Law in New South Wales (4th edn)*
- *A Guide to Private Conservation in NSW*
- *Caring for Country: A Guide to Environmental Law for Aboriginal Communities in NSW*
- *Caring for the Coast: A Guide to Environmental Law for Coastal Communities in NSW*
- *Getting the Drift: A community guide to pesticide use in the NSW Northern Rivers*
- *Environmental Law Handbook, ACT*
- *Environmental Law Handbook, Tasmania*

Producing and updating fact sheets, practical environmental law resources and procedural guides is a cost effective way to improve community awareness and enhance public participation in environmental decision making and enforcement.

Strong advocacy, public understanding and participation are essential to create the framework for effective on-ground work.

Submissions and advice

In some instances, the most efficient means of avoiding or resolving disputes is to advocate to government for legislative, policy or practice change in that particular area.

Community legal centres engage in law reform activity to advocate for changes to laws, policies and procedures that are unfair or impede access to justice for their client groups.

Law reform constitutes a core prevention strategy. Rather than assisting an isolated individual with a problem, law reform activity can benefit large numbers of people in our community, and the community itself, by preventing legal problems in the future. In this respect, it makes a permanent contribution to the welfare of our society, albeit a contribution that can be difficult to quantify and measure.

EDOs have been actively involved in policy development and advocacy for reform of planning and environmental laws. The practical experience of EDO lawyers in listening to community concerns, monitoring developments, analysing laws and finding solutions to land use planning disputes provides a unique perspective on the effectiveness of existing laws.

Policy work is complex and ongoing, even within a single issue. As Bridgman and Davis have argued, the general policy cycle involves, amongst other things, the identification of issues, policy analysis, development and critique of policy instruments, consultation, coordination, decision making, implementation, and evaluation.⁴

As Dovers has commented, "advances in environmental and sustainability policy are more likely to be initiated by non-government individuals and groups rather than governments".⁵ With this in mind, EDOs contribute to law reform in both a reactive and proactive capacity. Their contribution to law reform proposals adds to the rigour of the decision making process, strengthens legislative protections and reflects the desire that litigation only be a last resort.

The policy work of EDOs is well-respected. EDOs are regularly invited to participate in legislative reform processes, consultation and government inquiries, both individually and through the Australian Network of EDOs (**ANEDO**). ANEDO made 19 submissions on national issues in 2012-13. EDOs also contribute to law reform processes in each jurisdiction, depending on capacity and reform activity within government. For example, in 2012-2013, EDO NSW prepared over 40 law reform submissions. In the same period, EDO Tasmania prepared 5 detailed submissions, and EDO WA prepared 3 submissions and was an active member of the EPA stakeholder reference group.

Within limited resources, EDO policy work often prioritises submissions in relation to government reform proposals. However, EDOs also prepare reports making the case for appropriate law reform. For example, EDO SA produced a paper entitled *Land Biodiversity and the Law: The Case for Reform* and EDO Tasmania collated proceedings from its conference on best practice marine farming into a paper entitled *Improving Tasmania's Marine Farming Framework*. The network has also conducted a range of comparative analyses that have identified areas for improvement and jurisdictions that are out of step with national standards on issues such as sustainability, access to justice or climate change. For example, the network produced in 2012 a report entitled, *Protect the laws that protect the places you love: An assessment of the adequacy of threatened species & planning laws in all jurisdictions of Australia*.

⁴ See, in particular Chapter 4 of Bridgman P and Davis G (2004) *The Australian Policy Handbook 3rd edition*, Allen & Unwin, Sydney. For a different perspective, but one which also highlights the complexities, see Howlett M and Ramesh M (2003) *Studying Public Policy: Policy Cycles and Policy, Subsystems* Oxford University Press, Ontario. They argue that there are five related stages in the policy cycle: agenda-setting, policy formulation, decision making, policy implementation and policy evaluation.

⁵ Dovers S (2005) *Environment and Sustainability Policy: Creation, Implementation, Evaluation* Federation Press, Sydney at p 11.

Community legal centres have been engaging in law reform and policy work since they first began in the 1970s. As Nicole Rich has commented in her study of community legal centres and law reform:

“CLCs have achieved outcomes such as amendments to legislation, the enactment of new legislation, prompting government regulators to take action, convincing business and government to change their practices, and cementing ongoing consultative roles with governments and businesses. Community legal centres are also often the sole agency identifying and advocating on issues experienced by their clients.”⁶

Finally, law reform can be about substantive law, or it can be related to accessible and equitable methods of resolution. For example, it can involve advocating to government for a straightforward, low cost and informal pathway to be available for resolving civil disputes rather than an indirect, complicated and costly pathway that is currently available.

Conclusion

All of the EDOs' activities are important, and contribute to better policy, effective environmental protections, and a better environment. Deductible gift recipient status should not be limited to activities that involve on-ground physical environmental work, but should recognise the advocacy, education, casework, advice and other important services provided by EDOs.

We would be pleased to provide further information to your inquiry, and would welcome the opportunity to contribute to any public hearings. Please direct any further inquiries to James Farrell

Yours sincerely,

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⁶ Nicole Rich, *Reclaiming Community Legal Centres: Maximising our potential so we can help our clients reach theirs* (Consumer Action Law Centre/VLF, April 2009) 13 <<http://consumeraction.org.au/wp-content/uploads/2012/04/Reclaiming-community-legal-centres.pdf>> (accessed 18 October 2013).