



australiannetwork of environmentaldefender's offices

Submission on the review of Australia's Future May 2009 Tax System

The Australian Network of Environmental Defender's Offices (ANEDO) consists of nine independently constituted and managed community environmental law centres located in each State and Territory of Australia.

Each EDO is dedicated to protecting the environment in the public interest. EDOs provide legal representation and advice, take an active role in environmental law reform and policy formulation, and offer a significant education program designed to facilitate public participation in environmental decision making.

Contact Us

EDO ACT (tel. 02 6247 9420)
edoact@edo.org.au

EDO NSW (tel. 02 9262 6989)
edonsw@edo.org.au

EDO NQ (tel. 07 4031 4766)
edonq@edo.org.au

EDO NT (tel. 08 8982 1182)
edont@edo.org.au

EDO QLD (tel. 07 3211 4466)
edoqld@edo.org.au

EDO SA (tel. 08 8410 3833)
edosa@edo.org.au

EDO TAS (tel. 03 6223 2770)
edotas@edo.org.au

EDOVIC (tel. 03 9328 4811)
edovic@edo.org.au

EDO WA (tel. 08 9221 3030)
edowa@edo.org.au

Submitted to the review secretariat at: AFTSubmissions@treasury.gov.au

For further information, please contact Richard Howarth at:
richard.howarth@edo.org.au

Executive Summary

The Australian Network of Environmental Defender's Offices Inc (ANEDO) is a network of 9 community legal centres in each state and territory, specialising in public interest environmental law and policy. ANEDO welcomes the opportunity to provide comment on the inquiry into *Australia's Future Tax System*.

It is becoming increasingly apparent that there is a fundamental need to reduce human activities that are contributing to the degradation of the natural environment. One key tool that has been identified as effective in shaping behaviour is the taxation system. As ANEDO specialises in environmental law and policy, this submission will concentrate on identifying those opportunities that exist within the Australian taxation system where Environmental Tax Reform (ETR) can contribute to instilling practices which are both environmentally and fiscally advantageous. David Gee, from the European Environment Agency, has defined the objective of ETR as follows:

“Environmental tax reform involves shifting a large proportion of taxation off the value-adding activities of people (employment, enterprise and investment) and onto the value-subtracting use of energy and resources and associated creation of wastes and pollution.”

However “(E)xperience over the last decades has proven that environmentally related taxes can be effective and efficient instruments for environmental policy.”¹ It is important to recognise that ETR does not represent a silver bullet in rectifying those incentives that encourage environmental degradation. Thus, in addition to the introduction of a number of ETR's, there needs to be a range of complementary measures put in place to accompany any tax reforms. These include introducing mandatory fuel efficiency standards for motor vehicles, investing heavily in public transport (instead of simply investing in road construction and maintenance) and rail freight infrastructure, supporting the renewable energy sector, as well as encouraging state and territory governments to implement changes to their urban planning policies to reduce the reliance on cars.

ANEDO's overarching recommendation is that there is a need for the three traditional taxation pillars of equity, efficiency and simplicity, to now be informed by the principles of Ecologically Sustainable Development (ESD). ESD is a long-standing and internationally recognised concept that has been affirmed by the 2002 *World Summit for Sustainable Development*. The concept was developed in response to a global realisation that rates of exploitation of natural resources are not environmentally sustainable. The aim of ESD is therefore to achieve a level of development that meets the needs of the present without compromising the ability of future generations to meet their own needs.² Such principles are becoming increasingly important when assessing tax policies with the realisation of the inextricable “relationship between human economies and the natural environment.”³

¹ Environmentally Related Taxes in OECD Countries – Executive Summary. Available at: <http://www.oecd.org/dataoecd/27/23/36966499.pdf>.

² World Commission on Environment and Development, *Our Common Future* (1987) at 43.

³ Berger, C. 2008, ‘Submission to the review of Australia's Future Tax System’, *Australian Conservation Foundation*. Available at: <http://www.taxreview.treasury.gov.au/content/submission.aspx?round=1>.

Key Recommendations

Our key recommendations are summarised below:

- the three traditional taxation pillars of equity, efficiency and simplicity, should be informed by the principles of Ecologically Sustainable Development (ESD);
- environmental tax reform (ETR) should form only one component of a suite of complementary measures to address current environmental challenges;
- the gas and oil exploration subsidy should be removed;
- taxation benefits available to primary producers should be made available to land owners wishing to dedicate land for conservation purposes;
- the Fringe Benefits Tax (FBT) treatment of company cars should be substantially altered to firstly remove the link between the valuation of the benefit and the distance travelled by the vehicle;
- the favourable FBT treatment of car parking should be removed;
- accelerated depreciation should be made available for investment in sustainable activities, such as green retrofitting of commercial buildings, and used to encourage investment in renewable energy technologies to remove the current “first mover disadvantage” that currently exists;
- the Fuel Tax Credit concessions that encourage the consumption of fossil fuels should be phased out;
- the favourable tax rate on aviation fuels should be reduced;
- the proposed CPRS needs to be amended to adequately internalise the costs associated with the consumption of fossil fuels;
- taxation benefits should only be available to those carbon sink projects that take steps to ensure sequestration occurs in line with the principles of ESD;
- the suggested favourable taxation treatment of desalination activities in the *Tax Laws Amendment (2009 Measures No.2)* should be removed;
- the requirement for businesses to be members of the *Greenhouse Challenge Plus Program* to claim fuel tax credits in excess of \$3 million recommended to be removed in the *Tax Laws Amendment (2009 Measures No.2) Bill 2009* should be retained; and
- the FBT exemption that exists for Public Benevolent Institutions should be extended to all charitable organisations.

This submission has been divided into three parts; Part A will address some of the arguments that have traditionally acted as barriers to extensive ETR in the past. Part B will address the three terms of reference pertaining specifically to the tax-transfer impacts on the environment, namely;

- 13.1 Bearing in mind that tax is one of several possible instruments that can address environmental externalities, what opportunities exist to use specific environmental taxes to address Australia’s environmental challenges?
- 13.2 Noting that many submissions raise concerns over unintended environmental consequences of taxes and transfers, such as the fringe benefits tax concession for cars, are there features of the tax-transfer system which encourage poor environmental outcomes and how might such outcomes be addressed?

- 13.3 Given the environmental challenges confronting Australian society, are there opportunities to shape tax-transfer policies which do not currently affect the environment in ways which could deliver better environmental outcomes?

Finally, Part C will make some minor general comments in regard to not-for-profit organisations.

Part A: Addressing arguments used against Environmental Tax Reform

The introduction of taxes, charges and related incentives measures aimed to assist in achieving better environmental outcomes has often been met with opposition from various sectors of industry and government. Those arguing against ETR typically raise concerns that internalising environmental impacts may lead to a loss of sectoral competitiveness and cause negative distributional impacts.⁴ There are also suggestions that the implementation of environmental tax reforms leads to economic uncertainty. However, several commentators have demonstrated that these concerns are not guaranteed by-products of ETR or, if they are, that they can be sufficiently addressed. We discuss this in detail below.

Loss of Sectoral Competitiveness

“Sectoral competitiveness refers to the ability of an industry or sector in a given country to expand its share of exports in world markets.”⁵

The perceived loss of sectoral competitiveness when considering the implementation of ETR has typically been raised by sectors that have the potential to be most affected and those with operations heavily dependant on emissions intensive activities. Traditionally, arguments supporting the notion of a loss of sectoral competitiveness suggest that where foreign competitors are not subject to the same controls, regulations or environmental taxes, some Australian industries would become uncompetitive leading to the relocation of companies abroad. Whilst this may cause concern to those areas of the economy that have traditionally been subsidised in the past, ANEDO submits that it is more important for Australian businesses to operate in accordance with the principles of ESD, and ensure that all inputs into the production process, including the environmental costs, are appropriately priced.

Although ANEDO recognises that some industries may have some cause for concern in terms of loss of sectoral competitiveness, it is worth noting that some commentators have observed that “to date, environmentally related taxes have not been identified as causing significant reductions in the competitiveness of any sector”⁶ and “in practice it is difficult to find examples of the negative impact of environmentally related taxes on competitiveness.”⁷ One commentator goes further to state:

⁴ Environmentally Related Taxes in OECD Countries – Executive Summary. Available at: <http://www.oecd.org/dataoecd/27/23/36966499.pdf>.

⁵ Kunal, A.G., Sen K., Vaidya, R.R. 2003, *International Competitiveness, Investment and Finance: A Case Study of India*, Routledge.

⁶ Environmentally Related Taxes in OECD Countries – Issues and Strategies. Available at: <http://www.oecd.org/dataoecd/13/10/2385291.pdf>.

⁷ Cebreiro-Gomez, A., Heady, C. & Vassnes, E. ‘Do environmental taxes reduce sectoral competitiveness?: some theoretical and ex-post case studies’, OECD Centre for Policy and Administration. Available at: https://editorialexpress.com/cgi-bin/conference/download.cgi?db_name=IIPF62&paper_id=29.

“There is no clear evidence that high or relatively high environmental standards have had a systemic negative impact on competitiveness of firms, industries or economies”⁸

Despite these findings, some countries that have applied environmentally related taxes have attempted to address the risk of a loss of sectoral competitiveness by providing total or partial exemptions for energy intensive industries.⁹ ANEDO submits that the implementation of new environmental taxes should attempt to strike a balance between responding to environmental challenges such as climate change in an appropriate time period and allowing a sufficiently smooth transition period for both business and society to restructure and adjust. However, ANEDO submits that providing permanent “total or partial exemptions” to energy intensive industries reduces the incentive to transition to more environmentally sustainable practices by those most polluting industries. As stated above, it is fundamental that an appropriate price is placed on all inputs in the production process in order to encourage the transition to a low carbon economy. Without substantially shifting priorities and providing taxation incentives for both the use and development of less emissions-intensive forms of energy, the necessary transition period is going to be greatly lengthened.

In alleviating the concerns of a loss of sectoral competitiveness, it is also important for the Government to ensure that the discussion does not simply focus on the possible deterioration of the current favourable treatment offered to those economic activities that are heavily dependant on the consumption of fossil fuels. Consideration must also be given to the other side of the coin. That is, the fact that:

“when fossil fuel and other polluting industries are favoured, the remaining industries are penalised. In particular, companies offering environmentally friendly and efficient technologies, processes, products and services face a competitive disadvantage.”¹⁰

In this vein, rather than focussing on the impact on fossil-fuel intensive sectors, ANEDO submits that a review of the Australian tax system presents a timely opportunity to implement tax reforms that encourage the development of new ‘green’ sectors (such as renewable technologies and energy efficiency) as a key element of Australia’s transition to a low carbon economy.

Negative Distributional Impacts

Another argument against environmental tax reform is that it creates negative distributional impacts. Indeed, ANEDO acknowledges that social equity issues and the potential impacts on low-income households from ETR are key challenges for decision makers when attempting to establish a taxation system that prices environmental externalities.

⁸ OECD, *Evaluating Economic Instruments for Environmental Policy*, OECD Paris 1997.

⁹ Environmentally Related Taxes in OECD Countries – Executive Summary. Available at: <http://www.oecd.org/dataoecd/27/23/36966499.pdf>.

¹⁰ Hamilton, Schlegelmilch, Hoerner & Milne, “Environmental Tax Reform: Using the tax system to protect the environment and promote employment”, Australian Collaboration (2000). Available at: http://www.acfonline.org.au/uploads/res/res_tp0.04.pdf.

In relation to climate change, ANEDO has recommended that the taxation system should be utilised to encourage the transition to a low carbon economy. This will necessarily involve increasing taxation on the production, supply and consumption of energy. However, the result of this is that in some circumstances this may:

“disadvantage low-income households because they have to spend relatively more of their incomes on energy products... as a result, low income households will tend to benefit disproportionately from improvements to the environment due to ETR.”¹¹

ANEDO submits that it is essential that sufficient consideration is given to how best to address these inequities. There are two approaches suggested – compensation strategies (such as reducing other taxes or through modifying the social security system) and mitigation strategies (such as rate reductions or exemptions for industry).

Generally, it has been observed that compensation strategies are preferred over mitigation strategies, as compensation strategies maintain the price signal of an environmental tax “whilst reducing the negative impact of the tax on low-income households.”¹² Mitigation strategies on the other hand have the potential to reduce the effectiveness of environmental tax reforms by removing the impetus for change within industries that would come about through the imposition of a price signal.

Consistent with our previous submissions, ANEDO supports compensation strategies for those disadvantaged by policy reforms through structural adjustment packages. For example, we support assistance being directed to low-income households due to increased energy prices resulting from the CPRS, and we strongly support additional assistance directed at introducing energy efficiency measures and consumer information. This will address some of the social equity issues that arise with the rise in energy costs that the CPRS is projected to cause. We also support structural adjustment for communities that will require assistance through the retraining of workers and towards establishing new industries for communities that are reliant on emissions-intensive activities.¹³

On the basis that such strategies are employed, negative distributional impacts are not a valid basis for deferring environmental tax reforms.

Economic Uncertainty

Following on from the above, an argument that is often raised concerns the economic uncertainty that accompanies the incorporation of environmental taxation reforms. This argument is more likely to be tendered in the current climate, as many countries are in the midst of one of the worst economic downturns witnessed in recent decades. However, in light of these events it is important to draw attention to the fact that:

¹¹ Hamilton, Schlegelmilch, Hoerner & Milne, “Environmental Tax Reform: Using the tax system to protect the environment and promote employment”, Australian Collaboration (2000). Available at: http://www.acfonline.org.au/uploads/res/res_tp004.pdf.

¹² Environmentally Related Taxes in OECD Countries – Executive Summary. Available at: <http://www.oecd.org/dataoecd/27/23/36966499.pdf>.

¹³ However, please see our separate submission on Issues paper 4 regarding concerns relating to over-reliance on Australia’s CCS potential: available at <http://www.edo.org.au/edonsw/site/policy.php>.

“More and more governments around the world are recognising not only that policies to protect the environment can be designed to prevent the loss of jobs, but also that failure to protect the environment can also result in lost jobs and lower growth and that this is becoming increasingly true over time.”¹⁴

Such statements highlight the importance of responding to environmental challenges in the short term to prevent not only ongoing environmental degradation, but also economic slowdown in the longer term.

If environmentally beneficial taxation instruments are to be implemented, it is necessary that the negative economic perceptions, such as the loss of sectoral competitiveness and fear of negative distributional impacts, which traditionally accompany such a transition, be addressed. The OECD Environment Programme identified that acceptance of such environmentally beneficially taxation reforms can be aided through “identifying, simply and clearly, the objectives behind an environmentally related tax, disseminating information about the need to address the environmental problems, and allowing sufficient time for public hearings or other forms of consultation.”¹⁵ ANEDO submits that the implementation of such strategies may assist in the transition period once a new tax is introduced.

Part B: Tax-transfer impacts on the environment

13.1 Bearing in mind that tax is one of several possible instruments that can address environmental externalities, what opportunities exist to use specific environmental taxes to address Australia’s environmental challenges?

There are numerous examples that demonstrate the failure by successive Australian Governments to adequately address environmental externalities within the taxation system.

“An externality is a cost associated with the production or consumption of a good or services that, while important to society, has not been taken into account by either the producers or consumers.”¹⁶

Dealing with environmental externalities is undoubtedly one of the greater challenges to be addressed when attempting to develop a more equitable and socially responsible taxation system. A study conducted in the EU in 2000 demonstrated that less than 50% of external costs and infrastructure costs were internalised in the prices users pay for the road and rail systems, as well as estimating that the degree of internalisation of externalities in the energy sector range from 0-36%.¹⁷ The failure to take into account externalities in Australia should not be underestimated, with the environmental

¹⁴ Hamilton, Schlegelmilch, Hoerner & Milne, “Environmental Tax Reform: Using the tax system to protect the environment and promote employment”, Australian Collaboration (2000). Available at: http://www.acfonline.org.au/uploads/res/res_tp004.pdf.

¹⁵ Environmentally Related Taxes in OECD Countries – Issues and Strategies. Available at: <http://www.oecd.org/dataoecd/13/10/2385291.pdf>.

¹⁶ Hamilton, C., Denniss, R., & Turton, H. 2001, ‘Taxation and the Environment – Discussion Paper Number 44’, The Australia Institute, Canberra. Available at: https://www.tai.org.au/documents/dp_fulltext/DP46.pdf.

¹⁷ European Environment Agency, *Report on Environmental Taxes*, EEA 2000.

externalities associated with transport alone, amounting to approximately \$30 billion per annum.¹⁸

Having recognised the failure to adequately internalise all costs associated with such environmentally damaging activities, ANEDO will explore the potential opportunities that exist within the taxation system to shape behaviour and achieve mutually positive fiscal and environmental outcomes.

In order to address the first term of reference it is important to identify what are “Australia’s environmental challenges.” ANEDO has decided to focus on the four following key environmental challenges, all of which have been identified in the 2006 *Australia State of the Environment* report:¹⁹

- the impacts of climate change;
- issues surround water allocation and droughts;
- the overconsumption of natural resources; and
- the loss of biodiversity.

Each of these environmental challenges, and the opportunities to internalise some of their externalities will now be looked at in turn.

The impacts of climate change

“Climate change is an important issue for Australia. While there is debate about scientific predictions, it is almost universally accepted that temperatures are rising. The extent of rise is uncertain and continuous adaptation of environmental and sectoral policies, in an uncertain environment, is the key.”²⁰

Undoubtedly, one of the overwhelming concerns that is facing both Australia and the world is the challenge of climate change and its associated impacts. The science is now clear²¹ that the impacts of decades of reliance on a carbon based economy have led to the alteration of the earth’s natural climatic processes which have begun, and will continue, to present Australia with a wide array of environmental challenges. The ongoing impacts will continue to impact on Australia’s social, economic and environmental arenas in a substantial manner as noted by Garnaut:

“Australia would be a big loser—possibly the biggest loser amongst developed countries—from unmitigated climate change. The pace of global emissions growth under “business as usual” is pushing the world rapidly towards critical points, which would impose large costs on Australia directly and also indirectly

¹⁸ Hamilton, C. and Denniss, R. 2000, ‘Tracking Well-being in Australia: The Genuine Progress Indicator 2000 – Discussion Paper Number 35’, The Australia Institute, Canberra.

¹⁹ One of the key issues that will not be addressed is the lack of accurate, nationally consistent environmental data. The State of the Environment Report 2006 stated that without such information it is “impossible to give a clear national picture of the state of Australia’s environment because of the lack of accurate, nationally consistent, environmental data. This has particularly serious consequences for identification and management of Australia’s biodiversity, coasts and oceans, and natural and cultural heritage. Better time-series and spatial data are needed across almost every environmental sector.”

²⁰ 2006 Australia State of the Environment Report. Available at: <http://www.environment.gov.au/soe/2006/publications/report/index.html>

²¹ IPCC Fourth Assessment Report, Working Group 1 Report “The Physical Science Basis”. Available at: <http://www.ipcc.ch/ipccreports/ar4-wg1.htm>

through the effects on other countries of importance to Australia. The world of business as usual would be deeply problematic for Australia, not least because of the stress that it would place on vulnerable economies, societies and politics in Australia's Asian and Pacific neighbourhood."²²

Therefore in response to the challenge of climate change, alterations to specific areas of tax legislation need to occur to alter behaviour and assist the transition to a low-emission economy.

ANEDO notes that the development of the Carbon Pollution Reduction Scheme is the major tool by which the Federal Government plans to internalise the traditionally unaccounted externalities associated with the consumption of fossil fuels. ANEDO has been an active participant throughout the development of the scheme, contributing numerous submissions and appearing at hearings throughout the consultation process. Throughout our submissions, we have supported the introduction of a domestic emissions trading scheme as part of suite of measures to address climate changes, as long as it encapsulates the broadest possible coverage, is transparent, equitable, and robust. However, ANEDO submits that the proposed CPRS in its current form as exhibited will fail to implement the necessary measures required to adjust to a low carbon economy and will not facilitate the changes needed to internalise the externalities associated with the consumption of fossil fuels. One such example includes the cent-for-cent excise reduction that will offset the impact of emission pricing on all fuels currently subject to the general rate of 38.143 cents/litre.²³ A number of concerns dealing with the perverse environmental incentives encouraging an ongoing dependence on the consumption of fossil fuels will be addressed in the following term of reference (13.2).

Issues surrounding water allocation and droughts

“The recent drought was particularly severe because it was hotter than previous droughts, and because it affected almost the entire continent. It demonstrated that some of the water resources for our cities and irrigation-based industries, which are already stressed and over-allocated, are particularly vulnerable to ‘natural’ climate variability, let alone the increased climate variability that is expected over the coming decades.”²⁴

In a recent submission regarding the *Water Amendment Bill 2008*, ANEDO made a number of comments regarding the necessity of adequately pricing water to reflect environmental, economic and social costs. That is, the price of water must include the unquantified environmental costs of water use that are not currently factored into pricing considerations. These “costs” include changes in habitat, water quality and ecological conditions.²⁵ Water is not an unlimited resource. Therefore users should pay a price for water that reflects its scarcity. If environmental (and indeed social) externalities are not reflected in the price of water, then more water is used than would otherwise be the case if these costs were internalised.

²² Garnaut Climate Change Review, Interim Report to the Commonwealth, State and Territory Governments of Australia, February 2008. Available at: <http://www.garnautreview.org.au/CA25734E0016A131/pages/all-reports--resources>.

²³ CCH Climate Change and Environment Alert, Issue 13-2009. Available at: www.cch.com.au/parliament.

²⁴ 2006 Australia State of the Environment Report. Available at: <http://www.environment.gov.au/soe/2006/publications/report/index.html>

²⁵ K Hussey & S. Dovers (eds.) *Managing water for Australia- the social and institutional challenge*, CSIRO Publishing at 78.

ANEDO submits that there are a number of ways in which the overconsumption of water could be addressed. Proper pricing achieved through measures such as a price floor may assist in reducing current non-sustainable practices, reduce the use of water resources and stimulate water efficiency measures at lowest cost. Alternatively the taxation system may provide a vehicle for ensuring that the full cost of the use of water is incorporated into the price. ANEDO submits further investigation should be undertaken to identify the social, economic and environmental costs and benefits that may arise if the taxation system was to play a greater role in the consumption of water.

The over consumption of natural resources

“increases in use of energy, land, water and other materials, are also significant, particularly because individual consumption of most resources is increasing to support the Australian lifestyle.”²⁶

It is paramount that a substantial adjustment occurs in regard to the pricing and taxation for the extraction of natural resources with the “core objective to encourage sustainable use of renewable resources and reduce unsustainable use of non-renewable resources.”²⁷ The undervaluation of natural resources, primarily in the mining, agriculture, forestry and fishing industries has encouraged both overconsumption and unsustainable harvesting practices. As has been observed:

“A levy or charge may be imposed by regulatory bodies for the private consumption of public resources... without such charges the resource may be overexploited and ultimately lost to the community at large... At the very least, the charge should be set at a level appropriate to recover the regulatory body's administrative costs plus the value of the resource consumed, however in practice full cost recovery is often not achieved.”²⁸

ANEDO submits that the traditional measures of permits, levies and licensing are not achieving the sustainable consumption practices required largely as a result of inadequate pricing. In addition to these non-taxation measures, ANEDO submits that the historic taxation incentives that were deliberately aimed at subsidising access to natural resources (such as the Fuel Tax Credits for mining operations, discussed below) are outdated. Such incentives continue to persist partly as a result of the “powerful influence of short term political objective at the State and local government level which favours exploitation of natural resources to the detriment of the natural environment.”²⁹

ANEDO therefore submits that there should be a revision of non-taxation measures that are failing to bring about sustainable consumption practices. Furthermore taxation

²⁶ 2006 Australia State of the Environment Report. Available at: <http://www.environment.gov.au/soe/2006/publications/report/index.html>.

²⁷ Green Capital, Advancing Corporate Sustainability, an initiative of the Total Environment Centre. “Funding the future: Towards a green tax reform plan to accelerate sustainable economic recovery and the transition to a low eco-impact society.” Available at: <http://www.greencapital.org.au/images/total%20environment%20centre%20green%20tax%20reform%20plan.pdf>

²⁸ Gumley, W. 2001, ‘The role of economic instruments in promoting sustainable land use’, *Australasian Journal of Natural Resources Law and Policy*, Vol. 7, No. 2, Pgs. 137-167.

²⁹ Gumley, W. 2004, ‘Investment Markets and Sustainable Agriculture; A Case for Ecological Tax Reform’, *Revenue Law Journal*, Vol. 14, Pgs 190-213.

reforms are needed in this area again to promote the consumption of resources in a sustainable manner. Examples include appropriately considering the suggestions of some commentators that “any new primary production or forestry venture seeking taxation concessions should demonstrate that its activities are ecologically sustainable, before being eligible for tax relief.”³⁰ Ecological sustainability should be assessed objectively by DEWHA or another agency with appropriate expertise, with the definition of ecological sustainability clearly defined in legislation. Such proposals (as long as they accommodate the relevant social equity issues) are in line with ANEDO’s suggestion for the three traditional taxation pillars of equity, efficiency and simplicity, to be informed by the principles of ESD.

The loss of biodiversity

“The formation of mega-metropolitan centres with increasing population density on Australia’s coasts has the potential to displace much valuable biodiversity”³¹

The ongoing loss of biodiversity stemming from alterations in land use, impacts of invasive species and the destruction of habitat are likely to be exacerbated by the impacts of climate change.

“Past climate changes have caused species extinctions and major reorganisations of ecological communities. Current climate change is likely to cause a greater problem for species due to a combination of the rapid pace of change (predicted to be faster than most changes during the last 1.8 million years) and the extent of existing pressures on biodiversity.”³²

With such extensive environmental pressures facing biodiversity, the Australian Government should be implementing incentives to encourage the conservation of natural systems. One important set of changes which would assist in the conservation of such systems are those that attempt to bridge the gap between the tax incentives available for land used for primary industry and land used for conservation.

“tax incentives for conservation measures are provided to landholders who are conducting a business on the land, where landholders who wish to conduct solely conservation on their land are unable to access the same tax concessions.”³³

There have recently been some changes allowing a range of concessions for conservation uses of land both at the State and Federal level³⁴:

³⁰ Gumley, W. 2004, ‘Investment Markets and Sustainable Agriculture; A Case for Ecological Tax Reform’, *Revenue Law Journal*, Vol. 14, Pgs 190-213.

³¹ 2006 Australia State of the Environment Report. Available at: <http://www.environment.gov.au/soe/2006/publications/report/index.html>.

³² Holden, T., Smith, J. & Graham, K., 2009, ‘Climate Change and Biodiversity – Discussion Paper’, NSW Environmental Defender’s Office.

³³ Binning, C. & Young, M. 1999, *Talking to the Taxman about Nature Conservation: Proposals for the introduction of tax incentives for the protection of high conservation value native vegetation*, Land and Water Resources R&D Corporation, Research Report 4/99, Environment Australia, Canberra.

³⁴ For further detail, please see the Environmental Defender’s Submission to the NSW Legislative Assembly Standing Committee on Natural Resource Management Inquiry into disincentives for ecologically sustainable land and water use in NSW. Available at: http://www.edo.org.au/edonsw/site/pdf/subs05/nat_res_050511.pdf.

- The landowner can obtain an income tax deduction for any loss in value of the land as a result of placing a conservation covenant on it.
- The landowner can obtain a concessional capital gains tax treatment for land subject to a conservation covenant.
- The landowner can obtain an income tax deduction for gifts of land to certain conservation trusts.
- Land tax, stamp duty and local rates are not payable in NSW on land subject to conservation agreements.

Despite that fact that a number of improvements have been made, a marked difference exists in terms of the tax deductibility of expenditure on managing the land, deductibility of interest and GST differences. These differences equate to strong disincentives that ultimately may prevent landowners from setting aside land for conservation purposes. Specifically these disincentives include:

- Expenses incurred to manage land used for conservation purposes are not tax deductible (unless the landowner is carrying out a business on that land), while expenses incurred in managing land used for primary production will be tax deductible. In addition, there are specific tax rebates for landcare operations for land used for primary production, but not for land used for conservation³⁵. This provides;
 - a disincentive to convert land to a conservation use from a primary production or other income-generating use, because tax deductibility will be lost; and
 - a disincentive to actively manage land that is used for conservation, because expenses incurred in managing the land will not be tax deductible.
- It would appear the negative gearing of land used for conservation purposes is not allowed (where the land is not being used for a business). In other words, interest repayments are not tax deductible if the land is not being used to carry on a business.³⁶ This provides a disincentive to convert land to a conservation use from a primary production or other income-generating use, because tax deductibility of interest payments will be lost. It is unlikely under the current tax system that individuals will buy land for conservation purposes with borrowed money as it will not provide a financial return. If amendments were made to the effect that individuals were able to use their interest payments on conservation land as an offset for profits from primary production, then an incentive for private conservation activities would exist.
- GST treatment is complicated but, essentially, sale of land used for primary production will be GST-free while sale of land used for conservation will not be GST-free.³⁷ The effect of this will be limited for businesses because they can offset the tax paid through a GST input tax credit. However, there will still be timing issues for businesses and there may be differences in the amount of tax paid for buyers and sellers who are not GST-registered businesses.

³⁵ *Income Tax Assessment Act 1997* (Cth), Subdivision 387-A.

³⁶ Ian Potter Foundation (1999) *Philanthropy: Sustaining the Land*, Melbourne, pages 11-12.

³⁷ See Productivity Commission (2001), *Constraints on Private Conservation of Biodiversity*, Research Paper, AusInfo, Canberra, pages 73-75.

Taxation reforms are needed to ensure that these disincentives that currently exist for those individuals wishing to manage land for conservation purposes are removed. Examples include³⁸:

- Expenses incurred in managing land for conservation purposes, whether by a conservation trust or private landowner, should be tax deductible and eligible for Landcare rebates, whether or not the expenses are incurred in the course of earning income.
- Interest repayments for land used for conservation purposes could be tax deductible.
- GST treatment of land used solely for conservation purposes could be made GST free.
- ‘Stewardship payments’ could be made to landholders for the costs of conservation management for land under a conservation agreement.³⁹ Such payments should be recognised as assessable income and thus any costs associated with earning that income (ie, in managing the land for conservation) would be tax deductible.⁴⁰ Funding for such an activity could be sourced from re-allocating some of the current environmentally perverse subsidies, such as the current fossil fuel exploration subsidy.

ANEDO submits that implementing such changes to the taxation system would provide greater incentives for land owners to consider conservation as an option for land use.

13.2 Noting that many submissions raise concerns over unintended environmental consequences of taxes and transfers, such as the fringe benefits tax concession for cars, are there features of the tax-transfer system which encourage poor environmental outcomes and how might such outcomes be addressed?

There are a number of negative environmental consequences that have been encouraged as a result of some poorly formulated features of the tax-transfer system. ANEDO submits decision makers should be beginning to look at strategies that focus on:

“integrating environmental protection and economic decision-making on an equal-footing, further decoupling pollutant emissions from economic growth and applying a mix of instruments to resolve environmental problems.”⁴¹

ANEDO will now address some of the more environmentally perverse incentives that exist within the taxation system.

³⁸ For further detail, please see the Environmental Defender’s Submission to the NSW Legislative Assembly Standing Committee on Natural Resource Management Inquiry into disincentives for ecologically sustainable land and water use in NSW. Available at: http://www.edo.org.au/edonsw/site/pdf/subs05/nat_res_050511.pdf.

³⁹ This is already done in some jurisdictions, such as NSW where voluntary conservation agreements and ‘incentive payments’ are proposed for some conservation and revegetation activities undertaken pursuant to a property vegetation plan under the new *Native Vegetation Act 2003*.

⁴⁰ See Industry Commission (1998), *Charitable Organisations in Australia*, Report No 45, AGPS, Melbourne, page 348.

⁴¹ Blazey, P. 2007, ‘China’s Rapid Economic Growth and Resultant Negative Externalities’, *UNSW Law Journal*, Vol 30, No. 3, Pgs 867-878.

Fringe Benefits Tax

“Motor vehicles provided to employees by companies and government departments comprise about 16.5% of vehicle sales in Australia but cause about 40% of peak hour traffic and 20% of all traffic. These vehicles are responsible for a disproportionate fraction of the greenhouse gas emissions from the transport sector.”⁴²

The perverse incentives and environmental pitfalls that exist in relation to the taxation of company cars have been documented in reviews such as the *Review of Business Taxation* in 1999, the *House Standing Committee on Environment and Heritage on Sustainable Cities* in 2005 and the *Senate’s Standing Committee on Rural and Regional Affairs and Transport report on Australia’s Future Oil Supply and Alternative Transport Fuels* in 2007. Despite this extensive attention, the fringe benefits tax concessions awarded for the use of company cars continue to exist.

One of the major problems arises from the methodology that is used to evaluate the amount to which the applicable taxpayer is entitled to deduct. One of the methodologies, called the statutory formula method⁴³ provides that the tax payer is required to pay a “statutory fraction” of the purchase value of the car that decreases as the number of kilometres travelled increases (i.e. this method assumes that the greater the distance travelled, the lower the proportion of private use and therefore the lower the fringe benefit to the employee). This leads to the situation dubbed as “March Madness”⁴⁴ or the “March Corporate Rally”⁴⁵ whereby individuals receiving this benefit are given the incentive to travel more kilometres in order to reduce the amount of tax paid. This encourages the consumption of fossil fuels, increases emissions, promotes unnecessary travel and acts as a disincentive to adopt other forms of sustainable transport.

One of the justifications for the introduction of this concessionary tax, which may now be considered highly inappropriate, was to support the Australian car industry. At the time when the concession was introduced, Australian made cars made up almost “85% of domestic passenger sales whilst imported vehicles were subject to significant tariffs and import quotas... (and) a concession which encouraged the purchase of new vehicles... would indirectly benefit the industry.”⁴⁶ This is no longer that case, with the majority of domestic sales now coming from offshore car manufactures. Furthermore, as Australia has the third highest transport emissions per capita in the world, with 92 percent of urban passenger transport being undertaken by private motor vehicles,⁴⁷ it is questionable whether the Australian Government should be supporting domestic private passenger car sales at all.

⁴² Reidy, C. 2001, ‘Public subsidies and incentives to fossil fuel production and consumption in Australia - A Draft Discussion Paper’, Institute of Sustainable Futures, University of Technology, Sydney.

⁴³ The alternate method is the operating cost method which only accounted for 7% of total motor vehicle FBT in 1998/99 (ATO, 2001).

⁴⁴ Taxpayers Australia (2008) *Editorial - Let’s end the FBT ‘March Madness’*, Monday 18 February, 2008 by Tony Greco CEO.

⁴⁵ Review of Business Taxes (1999) *A Tax System Redesigned*, July, Commonwealth of Australia.

⁴⁶ Black, C.M. 2008, ‘Fringe benefits tax and the company car: aligning the tax with environmental policy’, *Environmental and Planning Law Journal*, Vol. 25, No. 3, Pgs. 182-195.

⁴⁷ Report of the Senate Environment, Communications, Information Technology and the Arts Committee - *The Heat Is On: Australia’s Greenhouse Future*, 2000. Available at: http://www.aph.gov.au/SEnate/committee/ecita_ctte/completed_inquiries/1999-02/gobalwarm/report/c06.htm.

Car parking is another non-cash benefit that receives concessional taxation treatment. It contributes to traffic congestion and encourages car use, and therefore should also be removed.⁴⁸ The car parking threshold for the FBT year commencing on 1 April 2008 states that parking up to a cost of \$7.07⁴⁹ is not classified as a fringe benefit and is accordingly tax free.⁵⁰ This amounts to approximately \$1700 per annum in tax-free car-parking benefits; ANEDO believes that this FBT concession for car parking should be removed. The fact that public transport receives no such concessions further highlights the illogical and inequitable nature of the current FBT system. A novel suggestion, which is not a taxation measure, to limit the amount of transport into cities is the introduction of a cap and trade scheme for car spaces in CBD locations whereby:

“a limit is placed on the number of new car spaces made for private use in new developments... The pool of available parking spaces would then be auctioned and a market would develop for parking spaces.”⁵¹

The FBT concession that exists in regard to car parking and company cars encourages the use of private transport which brings with it a number of associated costs:

“Transport imposes significant social costs, in the form of accidents, air and noise pollution, greenhouse gas emissions, loss of amenity for other road users and pedestrians, opportunity cost of land used for transport and damage to wildlife. Congestion also imposes major social costs, consuming valuable productive time. The financial subsidy to road transport is estimated to be up to \$20 billion per annum, excluding the cost of greenhouse gas emissions.”⁵²

ANEDO is not opposed to the concept of a FBT and recognises the necessity for non-cash benefits to be appropriately taxed. However the current methodology for calculating the FBT for company cars should be amended to remove one of the more environmentally perverse incentives that exist with Australia’s taxation system.

Options for FBT reform

ANEDO recommends the introduction of reforms similar to those introduced in the United Kingdom in April 2002, whereby the taxable value of the company car was to be “based on the car’s list price and its CO₂ emissions, as opposed to the list price and the annual business mileage.”⁵³ This methodology also supports the recommendation provided in the Ralph Committee Report which proposed a structure that “would remove the link between the valuation of the benefit and the distance travelled by the vehicle.”⁵⁴ Similar reforms have been suggested to be implemented in Canada, whereby

⁴⁸ ANEDO supports some exceptions to the removal of this concession, such as disabled drivers.

⁴⁹ Taxation Determination TD 2008/12. Available at: <http://law.ato.gov.au/atolaw/view.htm?Docid=TXD/TD200812/NAT/ATO/00001>.

⁵⁰ An increase on the \$6.78 threshold in 2007.

⁵¹ Hamilton, C., Denniss, R., & Turton, H. 2001, ‘Taxation and the Environment – Discussion Paper Number 44’, The Australia Institute, Canberra. Available at: https://www.tai.org.au/documents/dp_fulltext/DP46.pdf.

⁵² Hamilton, C., Denniss, R., & Turton, H. 2001, ‘Taxation and the Environment – Discussion Paper Number 44’, The Australia Institute. Available at: https://www.tai.org.au/documents/dp_fulltext/DP46.pdf.

⁵³ *Income Tax (Earnings and Pensions) Act 2003* (UK), s114.

⁵⁴ Black, C.M. 2008, ‘Fringe benefits tax and the company car: aligning the tax with environmental policy’, *Environmental and Planning Law Journal*, Vol. 25, No. 3, Pgs. 182-195.

the rate used to calculate the benefit was again based on the vehicles GHG emissions.⁵⁵ The Canadian reforms were based on modelling and a subsequent report conducted by the David Suzuki Foundation which found that the reforms would:

“improve economic efficiency since it corrects negative environmental externalities by providing improved price signals. Overall, there are minimal impacts on fairness, although some drivers that are unable to switch vehicle classes could experience increased taxes. Finally, the policy is considered relatively simple...”⁵⁶

In his final report to Government, Garnaut made the suggestion that:

“the current treatment of vehicles and parking spaces distorts decision towards private vehicle use and greater demand of transport overall. These provisions could be improved by:

- Ensuring the salary sacrifice arrangements are mode neutral; and
- Amending the statutory fraction method to ensure it is distance neutral.”⁵⁷

As well as removing incentives for car use, tax policies that actively support sustainable modes of transport should be developed such as salary packaging or rebates for bicycles, car share schemes and public transport tickets.

ANEDO supports the implementation in Australia of a combination of the suggested FBT reforms made above.

Fuel Tax Credits

ANEDO submits that the fuel tax credit program is in need of substantial remodelling. The program rebates the excise on fuels, both diesel and petrol, when used in electricity generation or for a vehicle travelling on a public road with a gross vehicle mass greater than 4.5 tonne. Furthermore, the credit is available for diesel consumption in certain off-road activities, including those activities that were previously eligible under the energy grants credits scheme⁵⁸ as well as all fuel used by heavy vehicle greater than 20 tonnes. By no means is this a trivial amount with the scheme costing \$924 million in 2005/06.

“The current system of vehicle and travel charges is inefficient and leaves major externalities unpriced, leading to a general overconsumption of travel. Further, different transport modes do not receive similar treatment, with rail-based transport covering a larger proportion of its total costs, compared to road-based transport. Consequently, all evidence suggests that there is overconsumption of road transport.”⁵⁹

⁵⁵ David Suzuki Foundation, *Drive Green: Company Car Tax Shift*, 2005. Available at: http://www.davidsuzuki.org/Economy/EFR/Drive_Green.asp.

⁵⁶ David Suzuki Foundation, *Drive Green: Company Car Tax Shift*, 2005. Available at: http://www.davidsuzuki.org/Economy/EFR/Drive_Green.asp.

⁵⁷ Garnaut Climate Change Review Final Report, 2008. Available at:

http://www.garnautreview.org.au/domino/Web_Notes/Garnaut/garnautweb.nsf

⁵⁸ Powerpoint Presentation presented by the Australian Taxation Office, July 2006. Available at: http://www.ato.gov.au/content/downloads/Fuel_Tax_Credits.pdf.

⁵⁹ Hamilton, C., Denniss, R., & Turton, H. 2001, ‘Taxation and the Environment – Discussion Paper Number 44’, The Australia Institute. Available at:

ANEDO submits that the current methodology being used to provide taxation benefits for the consumption of fossil fuels, has not only developed environmentally perverse incentives but also raises a number of social equity issues. In awarding concessions:

“certain fuel users are insulated from the full price of fuel, they will have less of an incentive to use fuel efficiently, and the burden of emissions reductions will accordingly fall more heavily on other activities.”⁶⁰

In terms of social equity issues, ANEDO supports ACF’s position that:

“there is a serious discrepancy when individual commuters (who have no alternative to automotive transport) pay full excise rates while businesses in the transport sector, using the same roads and generating the same pollution per unit of fuel, are effectively exempt.”⁶¹

This is contrary to the polluter pays principle and provides no incentive to shift towards a low carbon economy. ANEDO therefore submits that the current Fuel Tax Credit concessions be reassessed, taking into account social equity issues, with an aim to reduce the current availability of such concessions.

Aviation fuels

The impact of the consumption of aviation fuels has been well known for some time:

“Aircraft emit gases and particles directly into the upper troposphere and lower stratosphere where they have an impact on atmospheric composition. These gases and particles alter the concentration of atmospheric greenhouse gases, including carbon dioxide (CO₂), ozone (O₃), and methane (CH₄); trigger formation of condensation trails (contrails); and may increase cirrus cloudiness—all of which contribute to climate change”⁶²

Despite the knowledge of environmental damage, aviation fuels are taxed at just over 3 cents per litre, as opposed to the petrol excise of 38 cents per litre. ANEDO submits that aviation fuels should be taxed at a rate that is at the very least equivalent to that of petrol.

Removal of the gas and oil exploration subsidy

In order to encourage the transition to a low carbon economy, there is an immediate need to reassess the current subsidies that support fossil fuel exploration. Currently a 150% tax break is available to companies in regard to monies spent in the exploration of

https://www.tai.org.au/documents/dp_fulltext/DP46.pdf

⁶⁰ Berger, C. 2008, ‘Submission to the review of Australia’s Future Tax System’, *Australian Conservation Foundation*. Available at: <http://www.taxreview.treasury.gov.au/content/submission.aspx?round=1>.

⁶¹ Berger, C. 2008, ‘Submission to the review of Australia’s Future Tax System’, *Australian Conservation Foundation*. Available at: <http://www.taxreview.treasury.gov.au/content/submission.aspx?round=1>.

⁶² Penner, J.E., Lister, D.H., Griggs, D.J., Dokken, D.J., McFarland, M. (eds) 1999, IPCC Special Report Aviation and the Global Atmosphere – Summary for Policymakers. Available at: [http://yosemite.epa.gov/oar/GlobalWarming.nsf/UniqueKeyLookup/SHSU5BVRS6/\\$File/sum_aviation.pdf](http://yosemite.epa.gov/oar/GlobalWarming.nsf/UniqueKeyLookup/SHSU5BVRS6/$File/sum_aviation.pdf).

fossil fuels; i.e. for every \$1 the company spends on gas and oil exploration, they receive \$1.50.⁶³ As a result:

“a perverse situation exists where society pays the fossil fuel industry to pollute, pays the environmental cost of that pollution and pays the cost of attempting to establish new technologies in a market with substantial financial barriers. If Australia and other countries are serious about reducing greenhouse gas emissions then there is a clear need to reduce the magnitude of fossil fuel subsidies.”⁶⁴

Such fossil fuel subsidies need to be eliminated as they “deepen inter-generational inequities by accelerating the depletion of non-renewable resources and contribute to the most challenging environmental externalities.”⁶⁵ Deepening inter-generational inequities is contrary to ANEDO’s primary recommendation that there is a need for the three traditional taxation pillars of equity, efficiency and simplicity, to now be informed by the principles of Ecologically Sustainable Development. Indeed,

“Subsidy removal and redirection should be an effective way to achieve a substantial reduction in greenhouse gas emissions, although the potential reductions have not been estimated. Subsidy removal should also have positive effects throughout the whole economy by removing some of the market distortions and failures that currently exist.”⁶⁶

For the above reasons, ANEDO recommends the removal of the fossil fuel exploration subsidies.

Tax Breaks for Carbon Sink Forests and MIS Forestry Plantations

In July last year, ANEDO provided a submission to the inquiry by the Senate Standing Committee on Rural Affairs and Transport regarding the implementation, operation and administration of the legislation underpinning carbon sink forests. ANEDO had a number of concerns with the *Tax Laws Amendment (2008 Measures No.1) Bill 2008*, primarily as a result of the fact that it provided tax incentives for the establishment of plantation forests as carbon sinks without ensuring that positive environmental outcomes (carbon storage) are achieved. The Bill failed to stipulate that plantations are to be managed for carbon sequestration purposes in the long term. Furthermore the Bill failed to ensure that the projects be carried out only after comprehensive environmental impact assessments and in suitable locations (i.e. with regard to latitude, rainfall and species selection). ANEDO suggested amendments be made to the Bill such as spreading out the deductions for expenditure over a period of time to help address concerns regarding permanence of plantations. ANEDO submits that the changes implemented by the *Tax*

⁶³ Greenpeace submission to *Australia’s Future Tax System*. Available at: <http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/submissions.htm>.

⁶⁴ Reidy, C. 2001, ‘Public subsidies and incentives to fossil fuel production and consumption in Australia – A Draft Discussion Paper’, *Institute for Sustainable Futures – University of Technology, Sydney*. Available at: http://www.isf.uts.edu.au/publications/CR_2001.pdf.

⁶⁵ Ashiabor, H. & Blazey, P. 2007, ‘Phasing Out Detrimental Ecological Subsidies in the Fossil Fuel Sector: Challenges and Prospects for the Asia Pacific Region’, *Asia Pacific Journal of Environmental Law*, Vol. 10, No. 3 & 4.

⁶⁶ Reidy, C. 2001, ‘Public subsidies and incentives to fossil fuel production and consumption in Australia – A Draft Discussion Paper’, *Institute for Sustainable Futures – University of Technology, Sydney*. Available at: http://www.isf.uts.edu.au/publications/CR_2001.pdf.

Laws Amendment (2008 Measures No,1) Bill 2008 be reassessed to ensure that taxation benefits are only available to those carbon sink projects that take steps to ensure sequestration occurs in line with the principles of ESD.

Furthermore the continuation through the *Tax Laws Amendment (2007 Measures No. 6) Bill 2007* of tax benefits to Managed Investment Scheme (MIS) Forestry which encourage the clearing of native vegetation and degradation of the environment, is representative of the perverse incentives that still exist in this area.

This bill continues the offer of large up front deductions to investors in MIS Forestry Schemes in support of the Government's Forestry 2020 Vision policy. Yet although the Policy is intended to be in support of sustainable forestry, in areas such as the Tiwi Islands, this deduction acts as an incentive behind the clearing of native vegetation and threatened species habitat of international significance in order to establish the plantations under the scheme (also causing the release of significant carbon stores⁶⁷). Whilst MIS Forestry tax incentives may be supportable to a degree in certain circumstances where impacts on water, biodiversity and other environmental issues are considered acceptable, we believe that the tax incentive must be removed for all the costs of plantations which are established by the clearing of native vegetation, or on recently cleared land (whether or not the investor is actually paying for the clearing activity or not). The second issue is that these establishment activities are often driven by the need to expend establishment fees within a constrained period so that the investor can claim the tax offset (previous 12 / 13 month rule). This encourages practices that often fail to consider environmental management issues, resource constraints of the land and the relevant environmental approval conditions. We believe that amendments be made to ensure that these considerations are adequately taken into account, including increasing the time period allowed for which the tax offset can be claimed.

Recent developments - *Tax Laws Amendment (2009 Measures No.2) Bill 2009*

It is clear that the taxation system is in need of extensive ETR, with taxation incentives still being proposed that encourage activities that are both energy intensive and ecologically damaging. A Bill currently before Senate, the *Tax Laws Amendment (2009 Measures No.2) Bill 2009*, is proposing to implement a refundable tax offset in relation to desalination projects approved under the *National Urban Water and Desalination Plan*. The environmental costs associated with desalination plants are well documented and include impacts such as:

- High energy use and often result in additional green house gas production,
- Physical destruction to marine environments,
- Liquid wastes with:
 - high salt concentrations, chemicals used during defouling of plant equipment and pre-treatment, and
 - toxic metals (which are most likely to be present if the discharge water was in contact with metallic materials used in construction of the plant facilities.)⁶⁸

⁶⁷ A recent study conducted by the ANU entitled 'Green Carbon – The role of natural forest in carbon storage' demonstrates the value of old growth forests in terms of higher biodiversity, ecosystem resilience and carbon residence time.

⁶⁸ Sydney Coastal Councils Group, *Desalination Fact Sheet*. Available at: www.sydneycoastalcouncils.com.au/documents/WhatIsDesalination-factsheet.pdf.

ANEDO acknowledges that ensuring access to water for basic human needs is undoubtedly a high priority. However we disagree with the rationale behind providing taxation incentives towards such ecologically destructive processes. Therefore, ANEDO submits that taxation incentives should instead be provided for alternate measures that are aimed at maintaining water availability such as:

- taxation incentive to help develop and improve technology for recycling and re-use of water, and
- the implementation of demand management strategies (such as education and water restrictions).⁶⁹

The fact that the proposed Bill also proposes to remove the requirement for businesses to be members of the *Greenhouse Challenge Plus Program*⁷⁰ to claim fuel tax credits in excess of \$3 million⁷¹ suggests that the current Government is continuing to encourage reliance on emissions intensive activities.

13.3 Given the environmental challenges confronting Australian society, are there opportunities to shape tax-transfer policies which do not currently affect the environment in ways which could deliver better environmental outcomes?

ANEDO's comments in response to this term of reference are restricted to some preliminary observations regarding the opportunities that exist to encourage 'accelerated Green depreciation'.

Whilst depreciation refers to the rate at which a long-lived asset loses value, accelerated depreciation refers to the situation where the law allows firms to calculate depreciation for an asset over a time period that is shorter than the actual life of the asset.⁷² The concept of accelerated Green depreciation "is accelerated depreciation for buildings that meet an environmental standard"⁷³ and is aimed at providing incentives such as for building owners to refurbish, or retrofit, existing building stock to bring about reductions in the substantial environmental footprint of the buildings sector. Green measures introduced during retrofitting include improving energy efficiency, water conservation, waste avoidance and pollution prevention. The importance of reducing the energy consumption and subsequent carbon footprint of commercial buildings should not be underestimated as "the commercial building sector is a major user of energy, accounting for around 7 per cent of Australia's final end use energy consumption."⁷⁴

⁶⁹ Sydney Coastal Councils Group, *Desalination Fact Sheet*. Available at:

www.sydneycoastalcouncils.com.au/documents/WhatIsDesalination-factsheet.pdf.

⁷⁰ Greenhouse Challenge Plus enables Australian companies to form working partnerships with the Australian Government to improve energy efficiency and reduce greenhouse gas emissions. Available at: <http://www.environment.gov.au/settlements/challenge/>.

⁷¹ Schedule 7, *Tax Laws Amendment (2009 Measures No.2) Bill 2009*.

⁷² Richardson, D. 2008, 'The tax treatment of capital investment in renewable energy', The Australia Institute. Available at: <https://www.tai.org.au/file.php?file=WP118.pdf>.

⁷³ Property Council of Australia -The Second Plank: Green Depreciation. Available at: <http://www.propertyoz.com.au/library/Green%20Depreciation.pdf>.

⁷⁴ Green Depreciation: A preliminary analysis – Report prepared for the Property Council of Australia by the Centre for International Economics. Available at: <http://www.propertyoz.com.au/library/greendep.pdf>.

ANEDO submits that accelerated depreciation could also be effectively implemented to drive investment in the renewable energy technology sector. It has been pointed out that investment in such technology is often made highly unattractive for businesses as “investors in renewable energy will be facing quite steep and unpredictable changes in the value of their assets – changes that are much larger than the expected physical life of their assets would imply.”⁷⁵ With prices on such technologies “expected to fall significantly over time, the absence of accelerated depreciation provisions will exacerbate a ‘first mover disadvantage’”⁷⁶ which is contrary to the need to stimulate investment in renewable energy.

Accelerated depreciation is also a favourable concept in the current economic climate, as it has been used in the past to stimulate the economy:

“The Government has decided to provide substantial acceleration of depreciation deductions for plant and equipment for tax purposes....The tax preference....will encourage [domestic plant and equipment] investment relative to alternatives, including foreign investment abroad...The acceleration of depreciation for plant and equipment will be focused particularly on assets with long lives.”⁷⁷

It is therefore fundamental that accelerated depreciation provisions are expanded to include a broader range of investments, including renewable energy and retrofitting of residential and commercial buildings.⁷⁸

Part C: Not for Profit Organisations

As ANEDO’s expertise lies in environmental law, this submission is focussed primarily on the terms of reference contained in chapter 13: Tax-transfer impacts on the environment. However, as ANEDO is also a not-for-profit organisation, we wish to make the following short comments in regard to chapter 7: Not-for-profit organisations.

It is important to recognise that there have been numerous Commonwealth inquiries into the taxation treatment of not-for-profit organisations. Unfortunately many of the recommendations raised, and knowledge obtained, throughout these inquiries have failed to be implemented. As raised in the PIAC submission to this inquiry⁷⁹ ANEDO submits that the tax review should begin by analysing those reviews already conducted prior to conducting additional research.

In particular we support many of the proposals raised in the *Industry Commission Inquiry into Charitable Organisations in Australia (1995)* review which recommends both the exemption from income tax free status and retention of tax deductibility of donations. ANEDO submits that all current tax exemptions that are applicable to charitable organisations should be retained. It is important to note that ANEDO does not support the removal of exemptions from FBT for Public Benevolent Institutions (PBIs) as

⁷⁵ Richardson, D. 2008, ‘The tax treatment of capital investment in renewable energy’, The Australia Institute. Available at: <https://www.tai.org.au/file.php?file=WP118.pdf>.

⁷⁶ Richardson, D. 2008, ‘The tax treatment of capital investment in renewable energy’, The Australia Institute. Available at: <https://www.tai.org.au/file.php?file=WP118.pdf>.

⁷⁷ Paul Keating, Prime Minister One Nation, 26 February 1992, pp71-72

⁷⁸ ACF Submission to Australia’s Future Tax System.

⁷⁹ Available at:

http://taxreview.treasury.gov.au/content/submissions/Public_Interest_Advocacy_Centre.pdf.

proposed in the 1995 review. We recommend that the FBT exemption afforded to PBIs be extended to all charitable organisations and support the capping of the FBT exemption that was introduced subsequent to the 1995 review. Furthermore, as a result of our field of expertise (public interest environmental law), ANEDO is constantly interacting with non-government organisations (NGO's) that are often operating under very tight financial constraints. ANEDO submits that the amendments to the taxation treatment of PBI's and charitable organisation raised throughout this term of reference, be extended to include NGO's. This would assist in ensuring that such organisations can focus their resources towards achieving the outcomes for which they were created.