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28 July 2017

Dear Sir/Madam,

Tax Deductible Gift Recipient Reform Opportunities Discussion Paper

Please find attached Fremantle Foundation's submission in response to the Australian Government's Tax Deductible Gift Recipient Reform Opportunities Discussion Paper.

Fremantle Foundation welcomes the opportunity to contribute to this consultation and would be pleased to discuss the matters raised in our submission. In this regard, please do not hesitate to contact me.

Yours Sincerely,

A handwritten signature in black ink, appearing to read "Dylan Smith".

Dylan Smith
Executive Officer, Fremantle Foundation

Fremantle Foundation Submission - Tax Deductible Gift Recipient Reform Opportunities Discussion Paper

Introduction – Fremantle Foundation

The Fremantle Foundation is an independent community foundation based in Fremantle WA, and is one of more than 35 community foundations across Australia. The Fremantle Foundation was established in 2010 by a group of community leaders.

On behalf of donors, the Fremantle Foundation supports critical projects in Fremantle, Perth and at times throughout WA. Along with grant making the Fremantle Foundation plays a very active community leadership role bringing together important people, organisations and effort to social issues.

- What is a community foundation? Community foundations are community-owned, not-for-profit, charitable organisations which exist for public benefit in a specific, named geographic area. Their shared purpose is to attract resources to support and revitalise local communities and build social capital. They make philanthropic grants, and often seek to build a perpetual financial asset for their community.
- Who is involved? They are governed by voluntary boards, or have input from advisory committees from the local area. Many community foundations also employ a small number of staff, often only 1 or 2 paid employees supported by volunteers. They have multiple sources of funding from a range of donors and supporters.
- Why are they important? Community foundations are a valuable and unique form of community infrastructure. They operate at the grassroots to understand community needs at the coal face, and apply their expertise and experience to make better grants. They act as a leader, connector, convenor and funder within communities and encourage civic engagement, volunteering and philanthropy.

EXECUTIVE SUMMARY AND KEY CONCERNs

The Fremantle Foundation acknowledges that the Tax-Deductible Gift Recipient Reform Opportunities Discussion Paper is reflective of the Government's commitment to addressing inequities and anomalies within the current DGR framework and we welcome this opportunity to provide our input into the consultation process.

A cohesive, equitable and transparent framework is vital to supporting the vibrant and growing culture of community philanthropy in Australia. However, the Deductible Gift Recipient (DGR) framework as it now stands is complex, onerous and mired in red tape. This creates unnecessary barriers to giving and, more importantly, limits the ability of community foundations and other philanthropic bodies to effectively distribute or make grants so that they have the greatest impact in Australian communities.

Whilst it includes several welcome recommendations, the Discussion Paper also includes proposals which are of concern. Moreover, the Discussion Paper fails to address significant issues that exist within the current DGR framework which have a negative impact on community foundations.

The Fremantle Foundation recognises that the Government provides a substantial financial contribution to NFP entities through tax concessions. However, this assertion, whilst true, omits the corollary; that this

contribution is offset by the resultant community, social and economic benefits and gains by government in relief of activities otherwise requiring government funding.

Community foundations are a significant funder of grass roots organisations, thus the Fremantle Foundation believes it has a clear role in ensuring any reforms reduce or remove existing impediments and unnecessary red-tape, address significant gaps in the current framework and abide by the guiding principles identified by the Not-For-Profit Sector Tax Concession Working Group (2013) in particular to:

- Maximise the social good
- Recognise giving in Australia
- Be effective, efficient and fair

With the above in mind, in addition to our responses to the identified issues and specific consultation questions, the Fremantle Foundation has the following over-arching comments with respect to the proposals raised in the Discussion Paper:

KEY CONCERNS

The Discussion Paper does not Address Key Issues for Community Foundations

There is growing acceptance that the complex and difficult problems facing communities around Australia can only be addressed with an integrated, multi-faceted place-based response.

As a valuable and unique form of community infrastructure, community foundations empower communities to address local challenges themselves. They seek to build social capital, catalyse development and strengthen community; they engage with their constituents as donors, advisors and volunteers. Community foundations are responsive to the challenges facing their communities and leverage their deep local knowledge to respond to need through their purposeful grant making.

And yet, community foundations - which harness local resources, strengthen community and build local capacity - are fettered by a regulatory framework that creates significant barriers. The existing tax laws are inhibiting the growth and impact of community foundations.

Community foundations generally operate a 'public ancillary fund' (an 'Item 2' deductible gift recipient) – which imposes significant restrictions on their operations:

- Community foundations cannot accept donations from one of the most common forms of private foundation, 'private ancillary funds', as private ancillary funds are also an 'Item 2' deductible gift recipient – this cuts them off from a significant source of philanthropic funding and precludes Private Ancillary Funds from leveraging the expertise and community knowledge of community foundations.
- As an 'Item 2' DGR community foundations are limited to funding DGR 1 charities from their Public Ancillary Funds. This creates an obstacle for locally responsive organisations with relevant experience, particularly in rural and regional areas where there are fewer local DGR1s, undermining community resilience and creating unnecessary dependency on external organisations and government.

The Fremantle Foundation believes that a new deductible gift recipient category within Division 30 of the *Income Tax Assessment Act 1997* (Cth) specifically for community foundations is needed to remove these

barriers, reduce red tape and enable community foundations to focus on generating impact in their communities.

We expect that the revenue forgone from the change would be minimal. This would be an affordable reform, which will grow community philanthropy and strengthen community resilience in Australia.

Distinction between Charitable Purpose and Activities

The Fremantle Foundation is concerned that The Discussion Paper does not clearly differentiate 'charitable purpose' from 'activities of charities'. Charitable purposes are clearly defined in the Charities Act 2013 (Cth) (section 12(1)) and whilst connected to, are not interchangeable with a charity's activities. Charities with different purposes may employ similar activities or charities with the same purpose may employ very different activities. Essentially, a charity's purpose is its 'horse', its activities are its 'cart'. It is our view that DGR reform should focus on purposes. To do otherwise creates unnecessary level of scrutiny and consequent red-tape, casts doubt and uncertainty over what activities a DGR entity can lawfully undertake and, effectively, risks putting the cart before the horse.

Charities and Advocacy

Australian charities may legitimately undertake advocacy to address the root causes of social and environmental problems that relate to their charitable purpose. Any charity engaging in advocacy does so within a prescribed legal framework and has access to guidance from the ACNC to ensure it does so appropriately.

The Discussion Paper asserts that 'some charities and DGRs undertake advocacy activity that may be out of step with the expectations of the broader community'. Given that there is no objective measure to determine broad community expectations with respect to advocacy, it is inappropriate to use this as a rationale for the reforms proposed within the Paper. It is the Fremantle Foundation's view that the requirement that all DGRs become registered charities under the purview of the ACNC is sufficient. Any additional requirements, particularly when these single out the specific environmental organisation cohort, are unnecessary and not in keeping with the aforementioned guiding principles.

Compliance

The Fremantle Foundation is supportive of the intention to reduce 'red-tape' within the reporting framework and supports further integration of the ACNC into the regulatory framework for DGR. Transparency and accountability of DGRs is vital. However, we do not believe there is a case for rolling reviews or audits. Both the ACNC and the ATO have sufficient jurisdiction to undertake reviews and audits where they believe this is warranted, and it is not apparent that introducing new and costly formal review processes will result in any perceived or actual benefits.

DETAILED COMMENTS – CONSULTANTS QUESTIONS

- Q1. What are stakeholders' views on a requirement for a DGR (other than government entity DGR) to be a registered charity in order for it to be eligible for DGR status. What issues could arise?**

The Fremantle Foundation is supportive of reform enabling organisations to operate as part of an accessible cohesive regulatory and compliance framework. The Fremantle Foundation notes that appropriate resources would need to be made available to assist DGRs who are not currently registered. Unforeseen consequences, particularly with respect to DGRs that could not meet this requirement, would need to be thoroughly explored.

- Q3. Are there particular privacy concerns associated with this proposal for private ancillary funds and DGRs more broadly?**

Community foundations are committed to the principle of transparency and the Fremantle Foundation is not aware of any privacy concerns with respect to this question. The ACNC regulatory framework includes adequate provisions and processes to enable the appropriate withholding of information.

- Q4/5/6 Should the ACNC require additional information from all registered charities about their advocacy activities?**

Is the Annual Information Statement the appropriate vehicle for collecting this information?

What is the best way to collect the information without imposing significant additional reporting burden?

*(see above Executive Summary and Key Concerns – **Distinction between Charitable Purpose and Activities & Charities and Advocacy**)*

- Q8. What are stakeholders' views on the proposal to remove the public fund requirements for charities and allow organisations to be endorsed in multiple DGR categories? Are regulatory compliance savings likely to arise for charities who are also DGRs?**

The Fremantle Foundation is supportive of the removal of the public fund requirements for charities and to allowing organisations to be endorsed in multiple DGR categories. These proposals will result in a reduction of red tape for charities and will decrease the complexity of the DGR framework. However, we would seek assurances that the proposal will not adversely impact Public Benevolent Institutions and ask if such charities would be permitted to be endorsed in multiple DGR categories, provided their principal purpose is unchanged?

It is the Fremantle Foundation belief that the points raised in the Discussion Paper with respect to Public Funds apply equally to Community foundations operating a Public Ancillary Fund and that:

- *The community and donors would be better served by allowing the Community Foundation to be a charity with DGR 1 tax status. This could be achieved by a simple amendment to create a new deductible gift recipient category within the Income Tax Assessment Act 1997 (Cth) specifically for community foundations.*
- *The majority of community foundations are located in rural and regional Australia and face similar challenges in identifying committee members for public funds because of the tighter definition of 'responsible person' in the tax area.*

- Q9. What are stakeholders' views on the introduction of a formal rolling review program and the proposals to require DGRs to make annual certifications? Are there other approaches that could be considered?**

It is the Fremantle Foundation's view that the transparency and accountability of DGRs is important. However, we believe that ipso facto rolling reviews and audits are not warranted and would create an

unnecessary burden for DGRs, the vast majority of which are already registered with the ACNC and thus governed by a regulatory framework which requires annual reporting. Both the ACNC and the ATO have sufficient powers to ensure compliance and can respond if systemic issues are identified.

- Q11. What are stakeholders' views on the idea of having a general sunset rule of five years for specifically listed DGRs? What about existing listings, should they be reviewed at least once every five years to ensure they continue to meet the 'exceptional circumstances' policy requirement for listing?**

It is the Fremantle Foundation's view that this is unwarranted and would create an unnecessary burden for these organisations. The need for exceptional circumstances exceptions is symptomatic of an inadequate DGR category framework which has evolved in an adhoc way. For example, community foundations are unable to be DGR endorsed despite their purpose of promoting and encouraging philanthropy. In the absence of more comprehensive reforms, such as those proposed in the Not-for-profit Sector Tax Concession Working Group's report Fairer, simpler and more effective tax concessions for the not-for-profit sector (May 2013), specific listings are necessitous. The introduction of a general sunset rule for specifically listed DGRs would have the effect of increasing the red tape with no resulting or apparent benefits given the Australian Government already has the option to direct the Treasury to review specifically listed DGRs.

- Q12: Stakeholders' views are sought on requiring environmental organisations to commit no less than 25 per cent of their annual expenditure from their public fund to environmental remediation, and whether a higher limit, such as 50 per cent, should be considered? In particular, what are the potential benefits and the potential regulatory burden? How could the proposal be implemented to minimise the regulatory burden?**

*(see above Executive Summary and Key Concerns – **Distinction between Charitable Purpose and Activities & Charities and Advocacy**)*

Charities engage in advocacy to address the root causes of social and environmental problems. The introduction a requirement for environmental organisations to commit 25-50% of their annual expenditure to environmental remediation has no evidentiary justification. Charities themselves are best placed to determine what approaches and activities are most appropriate in order for them to achieve their charitable purpose. The proposed restrictions and limitations unfairly single out environmental organisations and will result in unnecessary red-tape.

- Q13. Stakeholders' views are sought on the need for sanctions. Would the proposal to require DGRs to be ACNC registered charities and therefore subject to ACNC's governance standards and supervision ensure that environmental DGRs are operating lawfully?**

The Fremantle Foundation believes that the oversight and powers of the ACNC are sufficient if all DGRs are required to be a registered charity, as proposed in paragraph 21 of the Discussion Paper. This will mean that all DGRs, including environmental DGRs, will become subject to the Charities Act 2013 and will not be permitted to have disqualifying purposes such as the purpose of engaging in or promoting activities that are unlawful or contrary to public policy, or the purpose of promoting or opposing a political party or a candidate for political office.

Where the ACNC considers that a registered charity has such a disqualifying purpose, it can call upon enforcement tools which it can use to ensure compliance.