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To whom it may concern,

This is a submission regarding Treasury's consultation on "Tax Deductible Gift Recipient Reform Opportunities".

I write as a person who was previously the Treasurer of an Incorporated Association that operates in Victoria, which has a public fund that is endorsed for DGR status by the Register of Cultural Organisations, but which has not been registered with the ACNC as it has not seemed to be *required* that we register with the ACNC (see later). However, the views expressed in this submission are my own personal views, and are not the official view of that Incorporated Association.

The organisation I write about is subject to the requirements of the Associations Incorporation Reform Act 2012 (Victoria), which places several governance requirements on us that appear to match those expected of organisations that register with the ACNC.

As required by its being included on the Register of Cultural Organisations (ROCO), its public fund is governed by a group of people of whom a majority are people who qualify as a "responsible person". We settled on the group size being 3, so it consists of one of who is also a member of the Association, but the other two are responsible persons and other than that appointment have no relationship or involvement with our Association. This is to meet the requirement that a majority of the people managing the public fund listed on ROCO must be "responsible persons", whilst at the same time ensuring that someone from our Association is present in order to explain what our Association does and to convey our views to the other two people who govern the public fund.

The group of 3 people only meet once a year, and the purpose of the meeting is to consider how much of the money in the public fund is to be released to the Association for applying to the purpose for which the public fund was set up, which is – to provide for prizes and scholarships to winners in the Eisteddfod competitions which are run each year, open to people of all ages but predominantly those aged 5 to 21. The money is not applied to other expenses of the organisation, such as administration, paying for adjudicators' costs, printing or postage, venue hire costs, as that is not what the public fund was set up for. The Treasurer of the Incorporated Association throughout the year (who is not usually one of the 3 people overseeing the fund) is banking all received deductible gifts into the bank account maintained for the public fund, in order that it is kept separate from our other income, and only transfers money out of the account when a signed authorisation from the group of 3 people has been received. The organisation's other major sources of income are fees from entrants, selling of tickets to audience attendees, and sponsorship from businesses (who are not able to claim Deductible Gifts, because they receive naming-rights over some specific competition such as the 10 year-olds violin players or 16 year-olds ballet performers), all of which go into our other bank accounts and never into the account of the public fund. The use of these other

funds is decided by the Association's normal committee, not the group of 3, and predominantly for the general things mentioned earlier.

I would not object to a requirement that entities which have DGR status be required to be registered with the ACNC. However, as I understand it, only *charities* can register with the ACNC, so perhaps the legislation about registration needs to be expanded to not be limited to only being for charities. It is not clear to me whether the organisation I refer to can strictly be considered a charity. The Charities Act says that to be a *charity* requires that *all* of purposes must be for the *public benefit.* But as not everybody is capable of performing arts, and not everyone who enters into our competitions will be a winner (as only place-getters receive a prize), maybe our purposes are not considered to be for the public benefit (although we do not prevent anyone who wishes to enter, from entering). Registration also requires us to nominate our 'Charitable Purpose' – the closest 'Charitable Purpose' might be "advancing culture", in that skills of the entrants in music, dance or drama, could be considered to be cultural. As for whether it is *advancing* culture, I am not able to make the judgement on that as not enough information is available to me about what "*advancement*" should mean. The entrants are not seeking to extend culture, they are merely learning it and demonstrating what they have acquired so far. However, I do note that some other incorporated associations that do essentially the same as us, but in other geographical regions (that is, provide performing arts competitions for entrants to potentially win prizes or scholarships based on skill in their performance), have been accepted for registration by the ACNC, but it is not clear to me whether they were *required* to, as opposed to simply being *able* to register.

The name "Australian Charities and Not-for-profits commission" suggests that it deals not only with charities, but also with non-profits that may not be charities, and so maybe the contemplated change to the legislation could be to require certain "not-for-profit" organisations (that are not charities) to become registered, rather than redefining charity to include these other organisations which is what may be required if all existing DGRs are to be required to register with the ACNC. (And perhaps at some future point, the law could require that for other tax-concessions, that the entity be *either* a "charity" *or* a "not-for-profit", but nevertheless require that it be registered with the ACNC, (e.g. the many child-based sports clubs.))

As to whether to dispense with the need for organisations to have the requirement to maintain separate public funds, I am not concerned one way or the other. I think there can be some value in requiring donations to be kept separate from other funds – but if this approach is retained, then there should be a requirement that the register makes public the purpose for which the public fund is endorsed, i.e. the purpose for which the moneys it receives may be spent. Is the purpose of receiving tax-deductible gifts to fund specific activities of the organisation (e.g. prizes and scholarships in our case), or is it permissible that under the proposed changes the received gifts could be used to pay for administrative or consumable goods and services utilised elsewhere in the organisation's activities? If the contemplated changes lead to *organisations* being endorsed which currently only have specific *funds* endorsed, then the money may be used in different ways than what the initial endorsement was for.

However, if endorsement of public funds (in contrast to organisations as a whole) remains, one issue I would propose needs to be considered regarding the present discussion paper's matters is: whether it is the Incorporated Association as a whole, or just its public fund, which should be registered with the ACNC? If the Association, then what sort of reporting would be required – would an organisation report as an entity that includes the public fund, or would it

report by separating the public fund's income and expenses from the organisation's income and expenses – and if so, how should an organisation treat the transfers between its public fund and the organisation's other funds?

In regards to the administration of the registers, I can only speak regarding my experience dealing with ROCO. By the time I was treasurer of the organisation, its public fund had already been registered as a DGR. ROCO's requirements were that every 6 months we needed to report how much income we had received from three different source types (individual, corporate, and charitable trusts), and to provide a list of recipients who receive moneys paid out of the public fund (which is still the case). In some sense, I felt this was an inadequate amount of information being provided by us to ROCO. We were asked only for the total *number* of donors in each category (as well as the total amount received), whereas it may have been better from a tax-transparency viewpoint to provide the names of the donors, and the amounts they donated. (We did not have a large number of donors – no more than 100 each year; but other organisations may have a large number of donors for which such detail might become cumbersome for them to collate). In terms of disbursements – we were only asked for a list of the recipients (the prize winners in our case), but not asked for the amount of money given to each of them, or in aggregate. Thus ROCO would only know our total income to the fund over the years, but not know how much of it was being used or being retained. Thus it may be useful for the annual reporting to ACNC to require the public fund's details to be listed as a specific/separate items of assets and revenue and expenses to give greater transparency to the public; and it may be worthwhile to review the level of detail being provided to ROCO or whoever administers the registers going forward.

In regards to the organisation's public fund's "persons of responsibility", when I was Treasurer we had a Justice of the Peace, and a medical practitioner, joined by a member of our organisation's committee. It has not been difficult to obtain them to serve on the committee, even though we are in a rural centre in Victoria. Perhaps because they only met once a year, to consider how much of the raised money could be used in the following year, they were happy to fulfil the role. As for whether their special status in the community aided in providing for better oversight than could be achieved by leaving the decisions up to the Association's committee instead, it could be argued that there is not much difference, particularly since those two "persons of responsibility" were not involved in the other aspects of the organisation (they were not on the organisation's normal board, did not attend the normal board's meetings). In some ways though, it does seem unclear as to what benefit is provided by requiring the "persons of responsibility" to be people in particular classes of profession. And the definition of who is classed as such seems to be a little limiting. For example, our Association had an employee of ASIC on our its committee, but as they were not in a position (in ASIC) appointed by a minister, they could not be considered to fit the description of "persons of responsibility". And I was a tenured lecturer of a University, but as I was not a Senior Academic (a Professor or Dean or appointed by the Chancellor), so I was not able to be considered to fit the description either. So if Treasury is happy to remove the current restriction on responsible persons, I would not have any issue with it – it would simplify things compared to the way they are now, and would mean that the people making decisions about whether and how the funds raised could be spent are more likely to have a knowledge as to whether the expenditure is for an appropriate purpose. But retaining the restriction by retaining the current separation of the fund's governance from the Association's governance, would not have an impact on our organisation.

But in regards to the term “responsible persons” as used by the ACNC, I would like to raise as a matter of concern from my own observations: the widespread existing misunderstanding of this term amongst many organisations that are *already* registered with the ACNC. Most entities endorsed by ACNC are incorporated associations, and as such are required by their constitution to have a committee that governs the association. Yet the ACNC register often only shows one or a few of these committee members, the most common one being Treasurer, or the Secretary. I suggest that the reason for this incompleteness of information on the register arises from the misguided belief of the person who fills in the annual information statement, of thinking that because they are the person who is filling it in, that they solely are the “*responsible*” person (they misinterpret it to mean the person “responsible for filling in the return”), and they do not understand (and often the rest of the committee also do not understand), that the rest of the committee/board are supposed to also be listed as “responsible persons”. Perhaps one way around this is to change the name of the term to something else like: “Members responsible for the entity”, or alternatively, putting very detailed explanations in the forms that the person completing the annual return fills-in (visible at the point where they are asked to enter it), to make it very clear. Otherwise, many people who are involved in the governing committee of organisations will remain off-the-radar of the ACNC.

I would not object to the introduction of periodic formal reviews of all DGR entities. A re-endorsement period of every 5 years would balance the need for integrity of meeting eligibility requirements, with balancing the burden in terms of time/energy that a review may impose on the people within the organisation who have to complete the review (particularly for smaller entities). Once an organisation has been initially endorsed as a DGR, it should be assumed that it will be continuing to meet all requirements for at least a few years. But after 5 years, the members comprising the committee of the organisation could have changed considerably, and a review would be appropriate. I think a detailed review yearly would be too onerous, particularly for smaller organisations. The 5-yearly review should require an examination of the period since previous review up until the date the review is due into ACNC or ATO, (which should be set with sufficient time for the ACNC/ATO to make a decision). An example of a similar process of review occurs in the community-radio sector, where every few years the licensees of each community radio station in Australia are required to complete a thorough review of their eligibility to hold the licence, under a licence renewal process managed by ACMA, who at one stage were even publishing the reviews on their website and inviting public comment before making a decision on whether to renew the licences. ACMA still has other powers to intervene in licensees who contravened their legal obligations, or even to revoke a licence, during the period between reviews. In regards to DGRs, I think *all* should be subject to review (including specifically-listed ones), but as to who should be due in the initial year of new legislation applying, I have no opinion – it could be randomly decided to spread workload over several years. The organisation I was treasurer of was last required by ROCO to do a formal review in 2005, and I do not believe any formal review by ROCO has occurred since.

Thankyou for considering my submission.