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Dear Treasury,

## **Treasury Laws Amendment (Measures for Consultation) Bill 2023: Deductible Gift Recipient Registers Reform**

### **Who we are**

Governance Institute of Australia is a national membership association, advocating for our network of 43,000 governance and risk management professionals from the listed, unlisted, public, not-for-profit and charity sectors. As the only Australian provider of chartered governance accreditation, we offer a range of short courses, certificates and postgraduate study and professional qualifications. Our mission is to drive better governance in all organisations, which will in turn create a stronger, better society.

Our members have primary responsibility for developing and implementing governance frameworks in listed, unlisted and private companies, as well as not-for-profit organisations including charities and the public sector. We regularly contribute to the formation of public policy through our interactions with Treasury, ACNC, ASIC, APRA, ACCC, ASX, the ATO and other government and industry stakeholders.

Many of our members serve as officers of charities, or work for, or are involved with charities and are therefore involved in compliance with the ACNC requirements. Governance Institute is itself a charity operating in the legal form of a company limited by guarantee, established to promote and advance the efficient governance, management and administration of commerce, industry and public affairs and the development of secretaryship of organisations through education and the dissemination of information.

Our key comments and recommendations in relation to the Consultation are set out below:

### **Governance Institute recommends:**

- Omitting the special condition requiring the maintenance of a gift fund.
- Simplifying the process of updating an organisation's or public fund's key information.
- Clarifying that reporting on statistical information about gifts made during an income year is not required to be made to the 'Secretary'.
- Considering a wider review of the gift fund regime.

### **General Comments**

As a long-term supporter of the ACNC, Governance Institute is pleased to see progress on reducing unnecessary regulatory burden on the Australian charitable and not-for-profit (NFP) sector. We, therefore, welcome efforts to streamline reporting requirements.

Harmonising the last four categories of deductible gift recipient (DGR) into the ATO is a step forward, which our members endorse. However, they consider there is scope for a more fundamental rethink of the gift fund regime to better adhere to the objectives of the ACNC.

### **Comments on the Exposure Draft (ED)**

The ED proposals are a positive step towards reducing the administrative burden on charities and NFPs, but there are some issues our members consider need to be addressed.

Specifically, there is a need for greater detail to explain the benefits of the reforms, with a clear indication that there will be no additional administrative burden on NFP's.

There are also some consistency concerns that undermine Section 1.1 [Outline of Chapter] and need to be addressed.

### **Gift fund**

On commencement, a public fund is treated as a gift fund and section 30-130 of ITAA97 applies. This requirement is proposed as a 'special condition' to an organisations endorsement as a DGR. Our members consider that the requirement to maintain a gift fund imposes an unnecessary administrative burden on organisations and diminishes the benefits that can flow to the community.

The proposed reform seeks to change organisations [*Environmental Organisation, Harm Prevention Charities, Cultural Organisations and Overseas Aid*] from being a DGR for the operation of a fund (section 30.120(b)) to being a DGR in its own right (section 30.120(a)). Any other organisation that is endorsed as a DGR in its own right is not required to maintain a gift fund (section 30.125).

**Governance Institute recommends** that the special condition requiring the maintenance of a gift fund be omitted. Alternately, further explanation is required in the Explanatory Material to provide the policy intention underlying the gift fund.

## **Notification of amendments**

It is a requirement that organisations notify the relevant Minister of changes in the name or objects of an organisation or public fund. This notification may require an update to the DGR Register. The transitional legislation does not provide for these requirements. Our members are concerned about unnecessary delays in updating the register and in responsible persons actioning these changes.

Given the aim is to reduce the administrative burden on entities, Governance Institute recommends a more intuitive process for updating the key information of an organisation or public fund, an issue that could be remedied by notification directly to the ACNC.

## **Reporting**

Section 1.14 of the Explanatory Material states that statistical information about gifts made during an income year no longer need to be provided to the 'Secretary'. It would therefore seem to follow that the ACNC and ATO receive the necessary information via other mechanisms, such as an entity's charity registration.

**Governance Institute recommends** clarifying that reporting is not required to be made to the 'Secretary' and that it should be encompassed within an entity's annual information statement.

## **Re-assessment of the DGR Regime**

Our members consider that these proposed administrative changes provide an opportunity for reassessing the broader DGR regime. Conceptually, the reasoning behind requiring a gift fund for some DGR bodies is to quarantine the money that has received special tax treatment.

Quarantining the funds simplifies the task of identifying and transferring the money to another DGR body, if the entitlement to DGR status is lost. This requirement does, however, add to the costs of administering a DGR. In our members' experience, very few DGR entities lose their DGR entitlement leading to a forced transfer of DGR funds from the gift fund.

For this reason, requiring specified DGR entities to operate a gift fund burdens them with additional administrative costs for little purpose.

While there is a similar need with DGR charities, such as public benevolent institutions and health promotion charities, for funds to be transferred to a similar DGR body if the charity is wound up, the requirement for these DGR charities to maintain separate gift funds was removed some years back.

Our members believe the requirement to retain an obligation for a gift fund to be contrary to the purpose of the ACNC (to reduce administrative burdens on charities), in view of the fact that few DGR bodies lose their status and result in DGR funds having to be transferred from gift funds.

Our members maintain that there is a reasonable case for removing the need for a specific gift fund, while still requiring that relevant charities account for DGR funds separately in their accounts.

In doing this, any balance in the gift account would be known if the DGR body were to lose its DGR status. We acknowledge that identifying the funds is necessary to ensure funds used for a DGR purpose are isolated so that in the event of insolvency, the isolated funds are available to other DGR bodies, rather than being available to other creditors.

**Governance Institute recommends** a re-assessment of the broader DGR regime to ensure the regime creates no unnecessary or additional administrative burden on entities.

If you have any questions in connection with the letter, please contact Catherine Maxwell (catherine.maxwell@governanceinstitute.com.au).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Megan Motto', written in a cursive style.

Megan Motto

CEO