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Senior Adviser
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Individuals and Indirect Tax Division
The Treasury
Langton Crescent
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By email: DGR@treasury.gov.au / ExternalConductStandards@treasury.gov.au

Dear Sir/Madam,

Deductible Gift Recipient Reforms and External Conduct Standards for Charities Registered with the Australian Charities and Not-for-profits Commission

Philanthropy Australia thanks the Treasury for the opportunity to make a submission in relation to the Treasury's consultation on the implementation of Deductible Gift Recipient (DGR) reforms and the introduction of External Conduct Standards (ECS) for charities registered with the Australian Charities and Not-for-profits Commission (ACNC).

As the peak body for philanthropy in Australia, Philanthropy Australia's purpose is to serve the philanthropic community to achieve more and better philanthropy.

The community we serve consists of funders, grant-makers, social investors and social change agents working to achieve positive social, cultural and environmental change by leveraging their financial assets and influence.

Informed, independent and with reach and credibility, Philanthropy Australia gives its Members a collective voice and ability to influence and shape the future of the sector and advance philanthropy.

We also serve the community to achieve more and better philanthropy through advocacy and leadership; networks and collaboration; professional learning and resources; and, information and data-sharing.

Our membership consists of approximately 800 trusts, foundations, organisations, families, individual donors, professional advisers, intermediaries and not-for-profit organisations.

The taxation and regulatory framework for philanthropy is critical to supporting a vibrant and growing culture of giving in Australia.

Philanthropy Australia therefore takes a strong interest in reforms proposal which impact upon this framework, including the implementation of DGR reforms and the introduction of the ECS for charities registered with the ACNC.

Deductible Gift Recipient Reforms

Philanthropy Australia has examined the proposals in the 'Deductible Gift Recipient Reform' consultation paper and is broadly supportive of the proposals. However, we do draw the Treasury's attention to the submission from the Law Council of Australia, which addresses a number of matters in more detail.

We note that a number of ancillary funds are not currently registered as charities. Under the proposals, these ancillary funds will be required to register as charities and will be provided with a one-year transitional period in order to comply with this obligation. This period will commence on 1 July 2019 and conclude on 30 June 2020.

We note however that this allows only 9 months to pass the necessary legislation and implement the necessary system changes. Given that a Federal election may be called during this time, it is possible that the Government may need to shift the start date for the reforms.

The Commissioner of Taxation will have a discretion to exempt ancillary funds and other DGRs from the requirement to register as charity. This is a sensible proposal which will provide flexibility to consider the special circumstances of certain ancillary funds and other DGRs.

A small proportion of ancillary funds that are not currently registered as charities may have as their purpose the distribution of funds to other organisations which are ineligible to register as charities. We note that this is one of the circumstances specifically identified in the consultation paper where the Commissioner may provide an exemption from the requirement to register as a charity.

External Conduct Standards for Charities Registered with the Australian Charities and Not-for-profits Commission

Philanthropy Australia supports the introduction of External Conduct Standards (ECS) for charities registered with the ACNC.

We believe that it is important to have appropriate oversight arrangements in place to ensure that where a registered entity operates overseas or sends funds overseas, that these funds are used for charitable purposes and are not for other illegitimate purposes. Ultimately, we believe that the ECS will help support public trust and confidence in Australian charities, both within the philanthropic sector and within the broader community.

However, Philanthropy Australia does have one major concern with the ECS as they are currently drafted, and we therefore cannot support the ECS in their current form.

Many philanthropic organisations which are members of Philanthropy Australia, such as public and private ancillary funds or income tax exempt charitable trusts, distribute funds for

use overseas. In many if not most cases these funds are distributed to an Australian registered entity, which then uses them for charitable purposes overseas.

A per the *Private Ancillary Fund Guidelines (2009)* and the *Public Ancillary Fund Guidelines (2011)*, public and private ancillary funds can only operate in Australia, and must grant funds to an Australian DGR (such as a registered entity which is approved under the Overseas Aid Gift Deduction Scheme). They cannot distribute funds directly to an organisation operating overseas.

Under the current wording of the ECS, if a philanthropic organisation is making a distribution to a registered entity in Australia and the funds are to be used overseas, then *both* the philanthropic organisation *and* the registered entity receiving the funds will have to comply with the ECS.

This arrangement will unnecessarily duplicate regulatory obligations, without providing any benefits in terms of improved regulatory outcomes.

Philanthropic organisations will be required to undertake extensive due diligence on registered charities which they provide funds to in Australia for use overseas, even though those registered charities will themselves be required to comply with the ECS.

Philanthropy Australia believes that the ECS should only apply where a registered entity actually operates outside Australia (e.g distributes funds directly overseas or delivers programs overseas) or works with a third party that is operating outside Australia but only where that third party is not already itself a registered entity.

Therefore, Philanthropy Australia recommends that the following amendments be made to the 'Application' clause in each of the ECS:

Application

- (2) This standard applies to a registered entity that is:
- (a) operating outside Australia; or
 - (b) working with third parties that are operating outside Australia (other than registered entities).

Provided these amendments are made, Philanthropy Australia will be in a position to support the ECS.

Philanthropy Australia also makes the following additional comments:

- The word 'minimise' is used in certain part of the ECS, e.g clause 50.30 (3) (a) in Standard 3. 'Minimise' could be interpreted as 'reduce to zero', and in many if not most cases the only way to minimise certain risks (such as corruption, fraud or financial impropriety) associated with a charity's activities overseas will be to not undertake any activity at all. This would in turn harm the beneficiaries of the charity. We therefore believe that instead of using the term 'minimise', it is more appropriate to use a term such as 'mitigate' or 'manage'. Such terms would reflect the fact that a charity's activities overseas will come with certain risks, but that these risks need to be reduced to the furthest extent possible whilst recognising that there are benefits from the charity pursuing its charitable purposes.

- The ECS will impose some new regulatory obligations for certain charities. Philanthropy Australia recognises the need for these obligations, however we also believe that a transitional period will be needed to provide charities with time to ensure appropriate procedures are put in place. In addition, we understand that the ACNC has been resourced to develop guidance and support for charities so that they understand their obligations and are equipped to meet them. The provision of such guidance and support will be essential.

Philanthropy Australia would welcome the opportunity to discuss the matters raised in this submission further. In this regard, please do not hesitate to contact Sarah Wickham, Policy & Research Manager, on (03) 9662 9299.

Yours Sincerely

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

Sarah Davies
Chief Executive Officer