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16 September 2019

Structural Reform Division  
The Treasury  
Langton Crescent  
Parkes ACT 2600

By Email: [DPIConsultation@treasury.gov.au](mailto:DPIConsultation@treasury.gov.au)

Dear Sir/Madam,

**Australian Government Response to Digital Platforms Inquiry**

Philanthropy Australia welcomes the opportunity to make this submission to the Australian Government in relation to its response to the final report of the Australian Competition and Consumer Commission's Digital Platforms Inquiry (Inquiry Report).

*About Philanthropy Australia*

As the peak body, 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.

## Comments on the Inquiry Report

Given Philanthropy Australia's purpose is to serve the philanthropic community to achieve more and better philanthropy, we take a strong interest in the taxation and regulatory framework for philanthropy in Australia.

We believe that this framework should be based around principles of simplicity, clarity, certainty and ensuring there are appropriate incentives to encourage philanthropy. We also recognise the importance of appropriate oversight in order to provide for the integrity of the framework and ensure that philanthropic funds are used for charitable purposes.

Philanthropy Australia believes that a vibrant culture of public interest journalism is an essential element of a liberal democracy such as Australia. It is vital to informing the public about issues of importance and shaping the debate about the future of our nation.

It is clear that the context and environment for journalism in Australia has experienced considerable change in recent years, and that this requires exploring new approaches and models for supporting the contribution of journalism to our society. For this reason, Philanthropy Australia welcomes the Inquiry Report's focus on public interest journalism in Australia.

As the Inquiry Report notes, in other jurisdictions, philanthropy is playing a relatively prominent role supporting not-for-profit public interest journalism<sup>1</sup>. Philanthropy Australia believes that philanthropy has a role to play in this regard in Australia, and a number of our members are already seeking to support public interest journalism.

However, as the Inquiry Report points out, the current taxation and regulatory framework presents a barrier to encouraging more philanthropic support for public interest journalism in Australia.

There is no category of 'deductible gift recipient' (DGR) within Division 30 of the *Income Tax Assessment Act 1997 (Cth)* (the Act) that can appropriately accommodate registered charities whose principal purpose is to produce or support public interest journalism.

In this regard, the Australian Government's response to recommendation 4 of the report of the Senate Select Committee on the Future Public Interest Journalism<sup>2</sup>, extracted below, is inadequate. Although organisations providing public interest journalism have the ability to 'seek' DGR status under the existing framework, the reality is that it is very difficult for them to actually obtain it.

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<sup>1</sup> See: <https://theconversation.com/philanthropy-is-funding-serious-journalism-in-the-us-it-could-work-for-australia-too-79349>

<sup>2</sup> See: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Future\\_of\\_Public\\_Interest\\_Journalism/PublicInterestJournalism](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Future_of_Public_Interest_Journalism/PublicInterestJournalism)

#### Recommendation 4:

- The committee recommends that the Commonwealth develop and implement a framework for extending deductible gift recipient (DGR) status to not-for-profit news media organisations in Australia that adhere to appropriate standards of practice for public interest journalism.

The Government **does not support** this recommendation.

Organisations providing public interest journalism already have the ability to seek deductible gift recipient (DGR) status under the existing legislative framework. Media organisations can seek DGR status if they meet the requirements of one of the established general categories or through specific listing in the income tax law.

More broadly, the Government has implemented a number of tax measures to support Australian entities, including those undertaking public interest journalism. Some of the key tax measures include reducing the corporate tax rate for small and medium-sized businesses; increasing the unincorporated small business tax discount; lifting the small business entity turnover threshold from \$2 million to \$10 million; and the \$20,000 instant asset write-off.

Some organisations, such as the Walkley Foundation, may be able to be endorsed as a DGR through the Register of Cultural Organisations. However under section 30.300 of the Act, in order to be eligible for such endorsement, an organisation's principal purpose must be 'the promotion of literature, music, a performing art, a visual art, a craft, design, film, video, television, radio, community arts, arts or languages of Indigenous persons or movable cultural heritage'. Many, if not most, organisations focused on public interest journalism are therefore unlikely to fit into this category.

Organisations which do not fit into any of the categories within Division 30 of the Act must obtain a 'specific listing' in the *Income Tax Assessment Act 1997 (Cth)*. This is the case with The Conversation Trust, which is listed in item 2.2.42 of section 30.25 of the Act. Obtaining a specific listing can be a long and complicated process, which requires agreement from the relevant Treasury minister and the passage of an amendment through the Parliament. It usually necessitates extensive lobbying, and is a source of significant uncertainty for the organisation seeking the specific listing. The Australian Government only agrees to a small number of specific listings, and therefore for most organisations it simply is not a realistic option.

Other organisations may adopt other approaches, such as the Guardian Civic Journalism Trust, which involves a partnership with the University of Melbourne. Once again, structuring such arrangements involves significant time and effort, and will therefore not be an option for most organisations.

For these reasons, Philanthropy Australia strongly supports recommendation 11 of the Inquiry Report, and encourages the Australian Government to rethink the response it provided to the report of the Senate Select Committee on the Future Public Interest Journalism, based on the evidence showing that the existing DGR framework is not capable of adequately supporting public interest journalism in Australia.

Creating a new DGR category for public interest journalism within Division 30 of the Act would provide a simpler and more consistent method for organisations focused on public interest journalism to obtain DGR status.

Although public interest journalism will usually be considered charitable under section 12(1)(k) of the *Charities Act 2013 (Cth)*, there would be benefit in creating a specific new charitable purpose within section 12 (1) of the *Charities Act*. Although not absolutely essential, such a reform would recognise the vital role played by public interest journalism within Australia's democracy.

As noted in the Inquiry Report, implementation of these reforms would require careful design, in particular to ensure that public interest journalism is properly defined and that any additional conditions for registration and endorsement are appropriately examined.

Philanthropy Australia recommends that Departments of the Treasury and of Communications and the Arts engage closely with stakeholders as part of this design process.

### ***Recommendation 1***

***That the Australian Government accepts recommendation 11 of the Inquiry Report, and creates:***

- ***A new category of charitable purpose for public interest journalism within the Charities Act 2013 (Cth)***
- ***A new category of deductible gift recipient for public interest journalism within the Income Tax Assessment Act 1997***

***As part of implementing these reforms, the Departments of the Treasury and of Communications and the Arts should engage closely with stakeholders.***

Should the Australian Government not be inclined to create a new DGR category, consideration should be given to creating a new independent charitable organisation whose principal purpose is to support public interest journalism in Australia, and providing it with a specific listing in section 30.105 of the *Income Tax Assessment Act 1997 (Cth)*.

The organisation could be regarded as an 'infrastructure' body focused on supporting the capacity of other organisations and individuals undertaking public interest journalism in Australia.

It could administer a grants program for this purpose, with funding provided by the Australian Government and philanthropy, including by way of a 'matching grants' arrangement. In addition, it could act as an auspicing partner for philanthropic funding to flow to organisations which cannot access DGR status themselves.

For example, where an organisation is undertaking public interest journalism, but cannot be endorsed as a DGR, it could open an 'account' with the infrastructure body. Donations and grants from the general public and philanthropic organisations could be made to the infrastructure body, asking that they be credited towards the 'account' of the relevant organisation.

The infrastructure body would need to establish parameters for the types of organisations that can access its services. Some relevant factors to consider are set out on pages 339-340 of the Inquiry Report. It would also need to be independent of the Australian Government, and governed in a transparent and accountable manner, with a board that is appropriately representative of stakeholders.

There would be merit in the Australian Government providing funding to support the organisation's core operations over at least its first 4 years, if not longer, including possibly providing an endowment for the organisation which could support its operations over the longer term.

There is a precedent for such infrastructure bodies being created in Australia.

The Foundation for Rural and Regional Renewal was established in 1999. Its purpose is to support collective investment between government, business and philanthropy to improve the lives of those living in rural, regional and remote Australia. It was funded through a combination of government and philanthropic support, and granted DGR status through a specific listing in section 30.105 of the *Income Tax Assessment Act 1997 (Cth)*. A \$10.7 million grant was provided by the Australian Government, with a further \$3.8 million provided as an incentive to raise further funding. The Sidney Myer Fund was a key philanthropic backer, providing \$1 million at the outset, with ANZ Trustees and the Pratt Foundation each also donating \$1 million<sup>3</sup>.

Australian Schools Plus was established in 2013. Its purpose is to improve the education outcomes of Australian students in need by increasing schools' access to philanthropy. Public schools cannot be registered charities nor can they be endorsed as a DGR, making it very hard for them to attract philanthropy. This was recognised by the 2011 Review of Funding for Schooling (the 'Gonski Review'), which recommended the creation of an organisation to build the capacity of schools to engage with philanthropy. In response, the Australian Government provided seed funding for the organisation, and granted it DGR status through a specific listing in section 30.25 of the *Income Tax Assessment Act 1997 (Cth)*<sup>4</sup>.

Other examples include Creative Partnerships Australia (and the Australian Cultural Fund which it manages) and the Australian Sports Foundation (although it is important to note that amateur sport is not a charitable purpose in Australia, which limits the philanthropic support which the Australian Sports Foundation can receive).

Should the Australian Government not be inclined to create a new DGR category for public interest journalism, creating an organisation whose principal purpose is to support public interest journalism in Australia, modelled on the Foundation for Rural and Regional Renewal, Australian Schools Plus and other similar existing organisations is another option that the Australian Government could consider.

## **Recommendation 2**

***Should the Australian Government not agree to create a new category of deductible gift recipient for public interest journalism within the Income Tax Assessment Act 1997, it should support the creation of new independent charitable organisations whose principal purpose is to support public interest journalism in Australia. One role for the body would be to support the flow of philanthropic funding to organisations undertaking public interest journalism but which cannot access DGR status themselves. The Australian Government's support should involve:***

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<sup>3</sup> See: [https://www.frrr.org.au/cb\\_pages/history.php](https://www.frrr.org.au/cb_pages/history.php)

<sup>4</sup> See: <https://www.schoolsplus.org.au/about-us/>

- **Seed funding for the organisation to support its core operations over at least 4 years**
- **The provision of a specific listing in section 30.105 of the Income Tax Assessment Act 1997 (Cth)**

### **Broader Comments on the Deductible Gift Recipient Framework**

The need for a new DGR category for public interest journalism highlights the broader deficiencies of the DGR framework.

The framework has evolved in an ad hoc and piecemeal manner, and is complex, cumbersome and a source of red tape. The lack of comprehensive reform of our DGR framework is a problem which continues to impede the ability of many charities to access philanthropy.

It is not only organisations whose principal purpose is to produce or support public interest journalism that currently cannot obtain DGR status. Other organisations such as neighbourhood houses and community centres, as well as organisations whose principal purpose is to promote the prevention of injuries of human beings (as compared to diseases, for which there is a DGR category), face major barriers to obtaining DGR status.

The DGR framework also creates considerable difficulties for community foundations, limiting their ability to grow place-based and grassroots philanthropy.

Men's and Women's sheds also face difficulties, and the Australian Government has responded to this by announcing the creation of a new DGR category for those organisations<sup>5</sup>.

Although this announcement is welcome, it also underlines the flaws within the DGR framework, and continues the ad hoc and piecemeal approach taken to its evolution.

Philanthropy Australia has discussed these issues in more detail in previous submissions<sup>6</sup>, and believes that comprehensive reform of the DGR framework is needed, as recommended by the Not-for-profit Sector Tax Concession Working Group's report 'Fairer, Simpler and More Effective Tax Concessions for the Not-for-Profit Sector'<sup>7</sup>.

This would involve extending DGR status to all charities that are registered with the Australian Charities and Not-for-profits Commission (ACNC). However the use of tax deductible donations would be restricted to purposes and activities that are not solely for the advancement of religion, or the advancement of education through child care and primary and secondary education, except where the activity is sufficiently related to advancing another charitable purpose.

<sup>5</sup> See: <http://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/unlocking-fundraising-mens-and-womens-sheds>

<sup>6</sup> See: [https://www.philanthropy.org.au/images/site/publications/Philanthropy\\_Australia\\_Submission\\_-\\_DGR\\_Framework\\_Reform\\_Discussion\\_Paper.pdf](https://www.philanthropy.org.au/images/site/publications/Philanthropy_Australia_Submission_-_DGR_Framework_Reform_Discussion_Paper.pdf) and [https://www.philanthropy.org.au/images/site/blog/Philanthropy\\_Australia\\_Submission\\_-\\_Tax\\_Discussion\\_Paper.pdf](https://www.philanthropy.org.au/images/site/blog/Philanthropy_Australia_Submission_-_Tax_Discussion_Paper.pdf)

<sup>7</sup> See: <https://treasury.gov.au/sites/default/files/2019-03/NFP-Sector-WG-Final-Report.pdf>

Such a change would simplify the DGR framework, cutting red tape and broadening access to philanthropy. It move Australia closer to the situation in jurisdictions such as the United States, Canada and the United Kingdom.

Philanthropy Australia believes that in the absence of such comprehensive reform, the DGR framework will continue to not be fit for purpose, notwithstanding some incremental improvements that are made over time.

### ***Recommendation 3***

***The Australian Government should undertake comprehensive reform of the deductible gift recipient framework, as recommended by the Not-for-profit Sector Tax Concession Working Group's report 'Fairer, Simpler and More Effective Tax Concessions for the Not-for-Profit Sector'.***

### **Next Steps**

Philanthropy Australia once again thanks the Australian Government for the opportunity to provide these comments. Should the Departments of Treasury or of Communications and the Arts wish to discuss any of the matters raised in this submission further, please do not hesitate to contact Sarah Wickham, Policy & Research Manager ([swickham@philanthropy.org.au](mailto:swickham@philanthropy.org.au), 03 9662 9299).

Yours Sincerely



Sarah Davies

**Chief Executive Officer**