Law Council
OF AUSTRALIA

Legal Practice Section

24 July 2026

Hon Dr Andrew Leigh MP
Assistant Minister for Productivity,
Competition, Charities and Treasury
House of Representatives
Parliament House
Canberra ACT 2600

Cc: Peter Robjent, Treasury

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Dear Assistant Minister

Updating the Private and Public Giving Fund Guidelines

1. This submission has been prepared by the Charity and Not-for-profit Law Committee of the Law Council of Australia's Legal Practice Section.

2. We note your announcement on 26 February 2026, that the government will be updating the *Taxation Administration (Private Ancillary Fund) Guidelines 2019* (**Private AF Guidelines**) and the *Taxation Administration (Public Ancillary Fund) Guidelines 2022* (**Public AF Guidelines**—**Guidelines** is used where the comment applies to both). We understand that the Guidelines will be updated to incorporate the change to the name of ancillary funds to giving funds, the increase in the minimum annual distributions, and to introduce an ability to smooth distributions over three years.

3. The Committee requests that the Government takes this opportunity to make some other amendments to these Guidelines and to consider some suggested improvements.

4. The role and structure of giving funds should be reviewed in the light of the flexibility of the new deductible gift recipient (**DGR**) category of Community Charities,[1] and the likelihood of many existing giving funds establishing Community Charities and transferring their operations to the Community Charity.

[1] Section 30-110 *Income Tax Assessment Act 1997*

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5. The Committee recommends consideration be given to:

   (a) allowing giving funds to be structured as companies limited by guarantee;

   (b) allowing giving funds to transition to Community Charities to save on costs and administration of establishing a new entity and transferring all the assets;

   (c) amending the Guidelines to reflect the community charity guidelines;

   (d) retaining the requirement for at least one independent responsible person for private giving funds/community charities.

6. The Committee makes no further comment on the announced changes other than that we would welcome any further consultation Treasury conducts on these.

7. The Committee requests that Treasury and the ATO work together to enable the Guidelines and the ATO's model deed to be consistent. In particular, these areas require alignment:

   (a) The note describing 'responsible person' in the Guidelines (if this is to be retained) should be amended to ensure it includes all the aspects of the definition in the model deed: e.g. a director of a company whose shares are listed on the Australian Securities Exchange.

   (b) In the Private AF Guidelines, there is a need to align the definition of who can *not* be a Responsible person.

   (c) The definition of 'financial year' needs to be changed to align with the model trust deed by allowing a substituted accounting period. The definition of 'financial year' in the guidelines is found in section 995-1 of the *Income Tax Assessment Act 1997* (Cth)—"a period of 12 months beginning on 1 July". However, the model trust deeds define the term as "the period from the date of this deed to the following 30 June and then each period of 12 months beginning on 1 July and ending on 30 June in each year **or such other period as agreed to by the Commissioner**" [emphasis added].

   (d) Guideline 22(3) needs to be amended to reflect the model deed which allows, under clause 5.2, a benefit to be given to a DGR that is a related entity as a distribution under clause 4.1.

8. Guideline 15(1) should delete the words "of amounts", given the definition of "distributions" in para (4) which can mean providing benefits or distributing property or benefits.

9. Consideration should be given to the breadth and necessity of Guideline 18(3) of the Public AF Guidelines, given the requirement in that Guideline to disclose related party transactions, the number of donors and the variety of property that can be donated. We recommend that Guideline 18(3) is deleted as both onerous and unnecessary.

10. Guideline 24(2) of the Private AF Guidelines should allow donations from the directors or members of the trustee and their associates, the founder and associates, and from the founder's descendants and their associates, in order to properly provide for all aspects of intergenerational change.

11. Guideline 26 of the Public AF Guidelines should be amended to only require DGR funds (meaning gifts or contributions that were eligible for a tax deduction) and money received from those DGR funds to be distributed on a winding up to item 1 DGRs, consistently with the policy intent of the gift fund requirements in section 30-125 of the Income Tax Assessment Act 1997 and in recognition that Public AFs may receive receipts from fundraising events, bequests and sponsorship outside of tax deductible gifts, which do not need to be restricted to the DGR framework on a winding up.

12. Guideline 27 of the Public AF Guidelines should be amended to allow sub-fund portability after the minimum annual distribution has been made attributable from that sub-fund and not the whole Public AF. This will also greatly assist in the processing of these approvals by the ATO as it will not restrict these requests to just before 30 June each year.

13. Guideline 28 of the Private AF Guidelines should be amended to allow:

    - for the transfer of sub-funds, as is allowed for public ancillary funds, to cover family separations or intergenerational transfers;
    - a transfer over a period of time to cover receipt of franking credits.

14. The Committee would welcome the opportunity to discuss this submission with the Department. In the first instance, please contact Alice Macdougall, Chair, [redacted]

Yours sincerely



Greg McIntyre SC
Chair, Legal Practice Section