



Law Council
OF AUSTRALIA

Legal Practice Section

2 March 2026

Committee Secretariat
House Standing Committee on Communications, the Arts and Sport
Department of the House of Representatives
PO Box 602
Canberra ACT 2600

By email: communications.reps@aph.gov.au

Dear Committee

Inquiry into arts and cultural philanthropy

1. This submission has been prepared by the Charity Law Committee of the Law Council of Australia's Legal Practice Section (the **Committee**). The Committee welcomes the opportunity to make a submission to the House Standing Committee on Communications, the Arts and Sport about the inquiry into arts and cultural philanthropy.
2. Cultural organisations operate in a complex world of State and Federal laws that apply to the various different forms of funding:
 - State and Federal government funding;
 - philanthropic funding;
 - sponsorship;
 - fundraising events;
 - ticket and merchandising sales;
 - bequests;
 - works and contributions from creatives; and
 - Commonwealth, State and local tax concessions and incentives.
3. While simplifying the tax system and regulation in relation to all these differing types of funding sources will assist cultural institutions and creatives, the Committee's submission is confined to the following aspects of the inquiry's terms of reference, principally in relation to cultural organisations, rather than individual creatives:
 - government policies;
 - the tax and regulatory settings providing incentives and disincentives for philanthropic giving and private support; and
 - potential government initiatives to increase philanthropic participation.

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State and Federal government funding

4. Cultural institutions need long lead times for planning and managing funding sources. Building long-term philanthropic support can take months if not years, and so timely notification by governments of funding and commitments to multiyear funding from all levels of government is important.
5. Many grassroots and community cultural organisations not only exist to promote the arts but also to use the arts to further other charitable purposes—including, for example: as a means of reducing isolation; education and raising awareness of societal issues; addressing and preventing mental illness; and/or providing the voiceless with a voice. It is often difficult for these smaller community organisations to know which is the most appropriate department to seek funding support from.
6. The Committee encourages all governments to be clear and consistent as to:
 - funding amounts and timeframes and providing sufficient notice for any changes to government funding; and
 - how to support the grassroots and community cultural organisations with other charitable purposes.

Philanthropy and the DGR system

7. The Committee supports the recommendations of the Productivity Commission in the *Future Foundations for Giving* report released in July 2024¹—in particular, the recommendation to simplify the deductible gift recipient (**DGR**) system in the *Income Tax Assessment Act 1997* (Cth) (**ITAA**). For example, while there is a DGR category for cultural organisations, the grassroots and community organisations that also pursue other purposes as noted above, are required to choose a ‘principal’ purpose rather than operating with multiple purposes. This can be confusing and complicated, and may result in these organisations not achieving the DGR status necessary for them to receive philanthropic funding.
8. Many high-net-worth individuals wish to support arts and culture, and many of these individuals or families have their own philanthropic foundations for this purpose. These foundations are generally private ancillary funds. The DGR system has “items” that are relevant to the ability to give. Private and public ancillary funds are both referred to as “item 2 DGRs”.² Item 2 DGRs cannot give to each other.
9. Many cultural organisations wish to establish external fundraising foundations to build an endowment or future fund to assist with changes in funding sources into the future. However, due to the complications in the DGR system, these are difficult to make successful as:
 - The fundraising foundations generally have to be public ancillary funds in order to receive DGR status, and this prevents the most likely philanthropic funders

¹ <https://assets.pc.gov.au/inquiries/completed/philanthropy/report/philanthropy.pdf>.

² So named as it is described, along with private ancillary funds, as tax deductible in item 2 of the table in section 30-15 *Income Tax Assessment Act 1997*.

from giving to them as these are private ancillary funds. As noted above, an item 2 DGR cannot give to another item 2 DGR.

- The fundraising foundations have to be public ancillary funds as the ITAA makes a distinction between a “fund” and an “institution” such that the requirements for a cultural organisation to be an item 1 DGR³ include that it is an “institution” which requires more activity than merely receiving, investing and grant-making funds which would be the intended role of a fundraising foundation.
10. The distinction between “fund” and “institution” is no longer relevant and has been removed in many places already in the ITAA—removal of this requirement in relation to cultural organisations will better enable them to build funding to cover changes in other sources of funding into the future.
 11. When cultural organisations were moved from the Department of the Arts to the ATO, a special condition was introduced in item 12.1.1 of the table in section 30-100 of the ITAA requiring gifts to be received by the gift fund. Most categories of DGR do not have this special condition and there is no clear policy rationale for this requirement for cultural organisations. The gift fund requirements for DGRs were largely removed in recognition of the sophisticated accounting software enabling gifts to be tracked without the necessity of a separate fund. The existence of a gift fund requirement also causes confusion for philanthropic foundations as it is not clear whether grants from these foundations are properly characterised as “gifts” at all, particularly if the grant is conditional. This is an extra and unnecessary administrative burden for cultural organisations and may act as a disincentive to giving.
 12. The Committee recommends that the Government:
 - simplifies the DGR system;
 - allows private ancillary funds to give to public ancillary funds that are limited to supporting a particular cultural organisation;
 - removes the requirement that a tax-deductible cultural organisation must be an “institution”;
 - removes the special condition that gifts must be received by a gift fund; and
 - clarifies whether grants from foundations with or without conditions are “gifts” for the purpose of the gift fund and for GST purposes.

Philanthropy and GST

13. There continues to be significant confusion about the application of GST on grants, and the Committee continues to recommend amending Goods and Services Tax Ruling 2012/2⁴ and the ATO guidance on its website.⁵ Cultural organisations are often uncertain about when they need to remit GST, and whether they can cover this cost by requesting the philanthropic funder to increase the grant to cover GST.

³ Item 12.1.1 section 30-100 *Income Tax Assessment Act 1997*.

⁴ <https://www.ato.gov.au/law/view/document?docid=GST/GSTR20122/NAT/ATO/00001>.

⁵ <https://www.ato.gov.au/businesses-and-organisations/gst-excise-and-indirect-taxes/gst/when-to-charge-gst-and-when-not-to/grants-and-sponsorship>.

Philanthropy and cultural organisations which are government entities

14. The Committee supports the ability to fund cultural projects and individuals by donations through Creative Australia's Australian Cultural Fund.
15. However, as Creative Australia is a government entity, it is not charitable. There are numerous State, Territory and Commonwealth arts and cultural organisations that are government entities and are not charitable.
16. The ITAA allows these government entities to be item 1 DGRs, but there are still difficulties in accessing philanthropic funding as explained below.
17. Government cultural organisations cannot appear on the register operated by the Australian Charities and Not-for-profits Commission (**ACNC**) as they are not charitable, causing donors to be confused and concerned, which hampers philanthropic support for cultural organisations that are government entities.
18. Some individuals and philanthropic foundations do not want to give to government, and so, while they may want to support a particular cultural organisation, they do want to give directly to a government cultural organisation. For this reason, and for future funding, many government cultural organisations establish a fundraising foundation that is independent of government but whose purposes are to support the government cultural organisation either generally or through supporting specific programs, exhibitions, events or purchases. As noted above, the existing DGR system operates such that this fundraising foundation must generally be a public ancillary fund thereby restricting the receipt of funds from private ancillary funds.
19. Charitable status exists under State and Territory common law, and federal laws only regulate charities in relation to taxation. Without legislative input, under common law, an entity would cease to be charitable if it gave funds to a government entity even if that government entity was a charity. This issue has to some extent been managed, enabling many (but not all) philanthropic foundations to give to cultural organisations that are government entities with DGR status. But further action is required to simplify, clarify and remove the risks of non-compliance and loss of charitable status for foundations giving to government cultural organisations.
20. Currently, section 13 of the *Charities Act 2013* (Cth) allows "funds" to remain charitable under Commonwealth law if they give to government entities that would be charitable if they were not government entities. As noted above, the distinction between "fund" and "institution" has largely been removed and this is another instance where the reference to funds is historical and no longer relevant. If this reference were changed to "entities", that would enable many more charities to give to government cultural organisations as many public ancillary funds and foundations structured as companies do not come within the meaning of "fund".
21. Under State and Territory laws, currently Queensland, Western Australia, New South Wales, Victoria and South Australia enable charitable trusts to utilise powers in the relevant statutes to remain charitable and give to government entities that would be charitable if they were not government entities. When these laws were first introduced, they required trustees to undertake specific action to enable this—recently Western Australia and Queensland have made amendments streamlining,

simplifying and clarifying these powers, which removes the risks to foundations giving to government cultural organisations.

22. The Committee recommends that the Government:
- amends *Australian Charities and Not-for-profits Commission Act 2012* (Cth) to enable government entities that would be charitable but for their connection with government to be listed and recognised on the ACNC’s register as government entities with DGR status;
 - allows private ancillary funds to give to public ancillary funds that are limited to supporting a particular cultural organisation;
 - amends section 13 of the Charities Act to refer to “entities” rather than “funds” to remove the confusion as to the “type” of charities that can give to government entities and remain charitable under Commonwealth law; and
 - encourages all States and Territories to adopt the amendments in Part 6 of the *Charitable Trusts Act 2022* (WA)⁶ and expand the operation of these provisions to any entity and not just trusts.

Fundraising—events, gift incentives, merchandise

23. There are a number of areas that increase the difficulty of cultural organisations raising funds through various fundraising techniques.
24. The Committee supports the Commonwealth Government’s commitment, and the work done to date, to encourage State and Territory governments to adopt the National Fundraising principles⁷ to make charitable fundraising simpler for cultural organisations and consistent through Australia.
25. Currently the Minor Benefits Contribution⁸ is hardly ever used as the figures are not reflective of the costs cultural organisations incur and the ticket prices for fundraising events. The Committee recognises the reasons for introducing the concept of deductible contributions, but unfortunately the current requirements make it unrealistic to put in place as a means of encouraging philanthropy. The Committee recommends that further consultation to change the amounts prescribed, so as to reflect and enable the policy objective and incentivise philanthropy through fundraising events.
26. A number of cultural organisations run incentive programs with different layers of benefits for donations. The Committee recommends that consultation about, and review of, the strict limitations that restrict the cultural organisations from providing access to their assets as a means of encouraging support.

⁶ https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/wa/consol_act/cta2022201/s48.html.

⁷ <https://www.nfplaw.org.au/free-resources/fundraising-and-holding-events/fundraising/national-fundraising-principles>.

⁸ <https://www.ato.gov.au/businesses-and-organisations/not-for-profit-organisations/gifts-and-fundraising/tax-deductible-donations/is-it-a-gift-or-contribution>.

27. The Committee would welcome the opportunity to discuss this submission with the Standing Committee. In the first instance, please contact the Committee Chair, Alice Macdougall [REDACTED]

Yours sincerely

A handwritten signature in grey ink, appearing to read 'Greg McIntyre', is positioned above the typed name.

Greg McIntyre SC
Chair, Legal Practice Section