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Australian
Charities and
Not-for-profits
Commission

24 March 2022

[REDACTED]

Our reference: ACNCSUB2022/4

ACNC submission – Remake of the *Charitable Trusts Regulation 2017* (NSW)

[REDACTED],

Thank you for inviting us to comment of your remake of the *Charitable Trusts Regulation 2017* (NSW) (**the Regulation**).

We have reviewed the Regulation, as well as the relevant provisions of the *Charitable Trusts Act 1993* (NSW) (**the Act**), especially Part 4A of the Act.

The note to the Regulation currently explains that ‘prescribed trust’ is limited to entities that are “registered with the Australian Charities and Not-for-profits Commission under the *Charities Act 2013*.” The *Charities Act 2013* (Cth) defines ‘charity’, but the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) establishes the ACNC and the Charity Register, and gives the Commissioner the power to register entities as charities. Accordingly, the note references the incorrect piece of legislation. We suggest replacing ‘*Charities Act 2013*’ in the Regulation with ‘*Australian Charities and Not-for-profits Commission Act 2012*’.

Otherwise, in our view, the Regulation seems appropriate in its current form, and we do not see a need for significant changes. We note your department’s preference to make few, if any, alterations to the Regulation. If broader changes become likely, we would welcome an opportunity to consider those changes.

Further observation

We understand that Part 4A of the Act essentially provides that a prescribed trust may distribute money, property, or benefits to a Deductible Gift Recipient (**DGR**), or for the establishment of a DGR. The Act clarifies that the DGR endorsed entity that receives the benefit does not need to be a charity, or established for a charitable purpose.

Section 5(b) of the *Charities Act 2013* (Cth) provides that a charity must only have charitable purposes, or



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purposes that are incidental or ancillary to, and in furtherance of, a charitable purpose. Regardless of Part 4A of the Act, if an entity distributed money, property, or benefits to a non-charitable DGR, it may not be entitled to be a registered charity and at risk of registration being revocation.

As a result of the *Treasury Laws Amendment (2021 Measures No. 2) Act 2021* (Cth), most DGR endorsed entities will be required to be registered charities. However, there are some exceptions, such as government entities or specifically listed DGRs. Further, a transitional arrangement is in place whereby, in exceptional cases, existing non-charity DGRs may have until 2025 to obtain charity registration. Therefore, despite this recent legislative change, some DGRs will not be charities, and it remains the case that a registered charity will not be able to give money, property, or benefits to those DGRs.

We understand that only the Regulation is being reviewed, and this potential inconsistency arises in the Act. We make this observation so that you are aware of it, and we can discuss it further should the Act be reviewed in the future.

If you have queries about this submission, or wish to discuss further, please contact [REDACTED], Policy Officer, at [REDACTED]

Regards,

[REDACTED]

The Hon Dr Gary Johns
Commissioner
Australian Charities and Not-for-profits Commission