

To Queer Screen
From Allens
Date 10 October 2024
Matter No 1315482
Subject Explanatory Memorandum — Amendments to Queer Screen Constitution in relation to Public Fund

1 Background

On 1 January 2024, pursuant to the *Treasury Laws Amendment (Refining and Improving Our Tax System) Act 2023* (Cth), new laws were introduced in relation to the 'cultural organisation' category of deductible gift recipient (**DGR**) status.

Relevantly, prior to 1 January 2024, Queer Screen was an endorsed DGR on the basis that it maintained a public fund on the register of cultural organisations. Article 11 of the Queer Screen Constitution (the **Constitution**) ensured the proper maintenance and operation of the public fund.

The new laws, however, both shifted responsibility for the 'cultural organisation' category of DGR from the Department of Infrastructure, Transport, Regional Development, Communication and the Arts to the Australian Taxation Office (the **ATO**) as well as replacing the onerous requirements of a public fund with the more relaxed requirements of a gift fund.

Under the applicable transitional rules, Queer Screen's DGR endorsement was automatically transferred to the new DGR category and Queer Screen's existing public fund is automatically deemed to be a gift fund unless or until Queer Screen establishes a replacement gift fund.

Given Queer Screen now intends to update its constitution generally, it should make the proposed amendments (below) to its constitution to reflect the less-onerous requirements of a gift fund. Under the new law, the fund **no longer needs**:

- a specific name;
- a separate bank account for gifts and deductible contributions;
- to be managed by members of a committee, a majority of whom have a degree of responsibility to the general community;
- to notify the ATO of changes to the fund rules;
- to inform the former relevant government department of specific matters such as statistical information or changes, including changes to the membership of the management committee; and
- to ensure that any surplus assets of the fund on windup go to another entity listed on a particular register.

Our suggested amendments are intended to give effect to these changes.

The funds currently in Queer Screen's public fund should be considered part of the new gift fund, and any future gifts to Queer Screen should be accounted for as part of this gift fund.

2 Suggested Amendments

Article	Type of Change	Explanation
1.1 [Definitions]	Deletion of two definitions and addition of two definitions	Adding definitions of a 'Contribution' and 'Fund Raising Event' to reflect use in the new Gift Fund rules in article 11. Deleting definitions of 'Cultural Organisation' and 'Register of Cultural Organisations' as no longer referred to in the ITAA 97.
3.1 [Objects]	Amendment to existing sub-article	Minor change to refer to 'Gift Fund' rather than 'Public Fund'.

Article	Type of Change	Explanation
3.4 [Application of property on winding up]	Addition of a sub-article and amendment to existing sub-article	The added sub-article is designed to ensure that the general winding up provision interacts smoothly with the specific 'Gift Fund' winding up provision. This is based on ATO guidance.
11 Gift Fund Former: 11 Establishment and operating of a Public Fund	Amendment to article title	Amendment to rename article 11 'Gift Fund'.
11.1 [Continuation of the former public fund]	Addition of new article	The added article acts as a transition clause (from the new law to the old law) to avoid any doubt in relation to the new fund rules and the proposed constitutional amendments.
11.2 [Establishment and operation of Gift Fund] Former: 11.1 [Maintaining Public Fund]	Amendment to existing sub-articles	The amendments reflect the changes to the law. Specifically, removing the old requirements for a separate bank account and that receipts must be made in the name of the Public Fund.
11.3 [Limits on use of Gift Fund] Former: 11.2 [Limits on use of Public Fund]	Amendment to existing article	Minor change to refer to 'Gift Fund' rather than 'Public Fund'.
11.4 [Receipts for Gifts] Former: 11.3 [Administration of Public Fund]	Removal of existing article and replacement with new article	The amendment removes the onerous requirement for Queer Screen to have a management committee (of responsible people) that oversees the gift fund. In its place, a new article dealing with receipts is inserted. While this article is not strictly necessary, it outlines the matters that must be included should Queer Screen choose to issue a receipt for a gift to the Gift Fund. If Queer Screen does not want to include this, we are comfortable to delete it altogether.
11.5 [Winding up] Former: 11.4 [Winding up]	Amendment to existing article	Minor amendments to reflect ATO guidance.
11.6 [Change in fund requirements]	Addition of new article	The new article is designed to ensure that in the event that there are further changes to the law, the Queer Screen constitution will remain compliant with those changes.
13.3 [Restrictions on powers]	Deletion of existing article	The term 'Cultural Organisation' no longer exists in the ITAA 97 and nor do the rules

Article	Type of Change	Explanation
		<p>that attached to it, making this article no longer necessary.</p> <p>There still remain administrative requirements governed by the ACNC but these are already included at article 16.</p>
15 [Altering the constitution]	Deletion of existing article	<p>While there is a requirement to notify the ACNC of changes to the Constitution, there is no requirement to separately notify the Commissioner of the ATO. The ACNC requirement will apply whether or not this clause is in the Constitution and it is thus unnecessary to include it (it is not a common clause).</p>