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The Hon Gladys Berejiklian MP
Treasurer & Minister for Industrial Relations
Parliament of New South Wales
Level 17
52 Martin Place
SYDNEY NSW 2000

via email: office@treasurer.nsw.gov.au

Dear ~~Treasurer~~ Gladys

Stamp duty for not-for-profits undergoing merger or restructure

I am writing with regard to a peculiarity in New South Wales law about which the Australian Institute of Company Directors' (AICD) members and the broader not-for-profit (NFP) community are concerned relating to the application of stamp duty to NFPs undertaking merger activity. New South Wales is the only jurisdiction in Australia in which stamp duty applies to NFPs in these circumstances.

The AICD is committed to excellence in governance. We make a positive impact on society and the economy through governance education, director education, director development and advocacy. Our membership of more than 38 000 includes directors and senior leaders from business, government and the NFP sectors.

In New South Wales, an exemption to stamp duty is set out in s273B(1) of the *Duties Act 1997* (NSW). This section exempts transactions that are corporate reconstruction transactions within a corporate group.

In order for this exemption to apply, a parent entity must hold 'securities' in the subsidiary entity. NFPs that are companies limited by guarantee do not have issued securities and so the exemption does not apply. For this reason, the exemption is also not accessible to incorporated associations.

New South Wales is the only Australian jurisdiction in which a relief for stamp duty is available to for-profit businesses, but not to NFPs.

The AICD's *2015 NFP Governance and Performance Study* found that 32 cent of respondents had discussed undertaking a merger at the board table in the previous 12 months. Mergers are a growing trend within the NFP sector and we anticipate this is likely to continue.

NFPs choose to merge for a number of reasons, usually with the intention increasing efficiency and effectiveness in delivering outcomes. In the current context, the application of stamp duty to NFPs represents a potential disincentive for NFPs to restructure or merge for reasons of efficiency. Government is a key beneficiary of increased effectiveness of NFPs, and the potential impact of this disincentive flows on to government, not-for-profits and the broader community.

The purpose of the exemption outlined in section s273B(1) is to provide relief from duty on intragroup transactions, recognising that genuine corporate restructures should be encouraged. NFPs have the same pressures and considerations in undertaking restructures and mergers as their commercial counterparts. We believe that the intention behind the exemption in s273B(1) should also apply to NFPs, and that minor legislative amendments could facilitate this.

I seek a meeting to discuss our Members' views on this issue with a view to considering whether there is opportunity to extend the relief from stamp duty that businesses in New South Wales currently enjoy in the context of genuine restructures to the NFP sector.

Should you like to discuss this further, please contact our NFP Policy Adviser, Lucas Ryan on (02) 8248 6671 or lryan@aicd.com.au.

Yours sincerely

JOHN BROGDEN
Managing Director & Chief Executive Officer