Treasury Laws Amendment (Delivering an Efficient and Trusted Tax System) Bill 2026

Senate Standing Committees on Economics

Submitter:

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Introduction

I welcome the opportunity to make a submission on the Treasury Laws Amendment (Delivering an Efficient and Trusted Tax System) Bill 2026.

The bill is a mixed measure. It combines four quite different proposals. Schedule 1 removes the 2-dollar minimum for tax deductible gifts to deductible gift recipients. Schedule 2 changes the way trustees of closely held trusts report quoted beneficiary tax file numbers. Schedule 3 makes a set of minor and technical amendments, including in relation to Public Trustee appointments in self-managed superannuation funds and small drafting changes to the Australian Securities and Investments Commission Act 2001. Schedule 4 excludes tobacco and gambling related activities from the Research and Development Tax Incentive, subject to a harm minimisation exception.

That structure matters because the schedules are not equal in significance. Some are mainly tidying and administrative simplification. One is a more substantial integrity measure. Parliament should therefore resist the temptation to treat the bill title as a substitute for careful scrutiny. A bill described as delivering an efficient and trusted tax system should be tested against that standard, not sheltered by it.

The right test is good public purpose. Does a measure simplify the law in a way that serves the public, strengthen administrative integrity without unfairly shifting burden or opacity onto ordinary people, and restrain Commonwealth use of the tax system to

confer favourable treatment on activities that are socially harmful or extractive. A further test is whether the measure helps build a floor that all can stand on while regulating ceilings that enable disproportionate extraction. On that basis, the schedules warrant different responses.

Schedule 1

Removing the 2-dollar threshold for deductions for gifts or contributions

I support Schedule 1.

The case for removing the 2-dollar threshold is straightforward. The threshold is historically stale, administratively awkward and poorly adapted to contemporary donation practices such as point of sale rounding and small online gifts. The supporting material notes that the threshold is a historical remnant whose real value has eroded sharply over time and that the Productivity Commission recommended its removal. It also notes that charities are not legally required to issue receipts for every very small donation and may choose practical thresholds of their own.

In that sense, Schedule 1 is sensible simplification. A person who gives 1 dollar to a deductible gift recipient is still making a gift. The tax law does not become more principled by pretending otherwise. Removing a minor artificial threshold reduces needless friction and better reflects the way modern low value giving often occurs. The Explanatory Memorandum also makes clear that the purpose of the measure is to encourage low value donations to deductible gift recipients, particularly in contemporary settings such as point of sale round up arrangements.

That said, Parliament should not oversell the significance of this change. The Bills Digest notes that in 2022 to 2023 around 4.4 million people claimed 2.26 billion dollars in deductions for gifts or donations to deductible gift recipients, with 93 per cent of the total deductions going to individuals with above median incomes and 82 per cent being claimed by people in the top income decile. That is a reminder that tax deductible giving, while often worthwhile, is not a neutral or evenly distributed mechanism. It tends to advantage those with the highest taxable incomes and the greatest capacity to give.

There is also a political tension in the way the reform has been framed. The Explanatory Memorandum states that the removal of the threshold is limited to gifts or contributions under subdivision 30 A and is not extended to donations to political parties and independent candidates and members under subdivision 30 DA. That carve out may be deliberate, but it exposes a logic inconsistency. If the principle is that the tax law should not maintain an outdated and artificial minimum threshold where modern donation practices now include small digital and point of sale gifts, that simplification logic does

not naturally stop at the boundary of political donations. Once Parliament says a 1-dollar charitable gift is still a real gift and should not be ignored by the tax system, it becomes harder to explain why the same reasoning is not at least confronted in the political donation setting.

That does not mean the two categories must be treated identically. Political finance raises separate democratic integrity concerns and Parliament may reasonably decide to keep it distinct. But if that is the position, it should be defended openly as a deliberate policy distinction grounded in the special risks of political funding, not left to sit as an unexplained exception inside a bill promoted on the basis of simplicity, modernisation and low value giving. As presently framed, the measure invites the reader to accept simplicity as the governing principle while quietly preserving inconsistency where political sensitivity begins.

That in turn points to a broader public purpose issue. Charitable giving should not be treated as a substitute for direct public provision of essential goods and services. The Commonwealth is not dependent on private philanthropy in the way a household is dependent on gifts. A currency issuing national government can always mobilise Australian dollars to fund public purpose, subject to real resource and inflation constraints. Parliament should therefore support this simplification without drifting into the fiction that philanthropy can or should replace properly funded public systems.

For that reason, my support for Schedule 1 is qualified in one respect. It is welcome as a narrow simplification measure. It should not be used as cover for underfunding essential services and then inviting the public to patch the gap through tax preferred donations.

Schedule 2

Modernising tax administration systems

I support the objective of Schedule 2 in principle, but only with caution and with an insistence on privacy, procedural clarity and genuine necessity.

The bill changes the reporting rules for closely held trusts so that quoted beneficiary tax file numbers are reported through the trust return rather than through separate quarterly reporting. The Explanatory Memorandum says this is intended to improve matching and pre filling of beneficiary returns, reduce compliance costs and help ensure the right amount of tax is paid. It also states that the broader modernising measure is expected to increase receipts by 81.6 million dollars over five years and that Schedule 2 engages privacy rights because trustees will be required to report beneficiary tax file numbers that have been quoted to them.

There is a legitimate administrative case for this. If the Australian Taxation Office already receives the relevant trust distribution information, there is an obvious logic in aligning identity data with that reporting event rather than running a clumsy parallel process. Simpler reporting can be good public administration if it is genuinely simpler, well explained and tightly confined.

But this is also the sort of measure that can slide too easily from simplification into quiet expansion of data collection and quiet transfer of compliance risk. The supporting material itself acknowledges that privacy rights are engaged. That point should not be treated as a routine formality. Tax file numbers are sensitive identifiers. Once more entities handle them, store them and transmit them, the consequences of error, misuse or breach expand accordingly.

The first caution, therefore, is purpose limitation. Schedule 2 should be used only for the clearly stated function of trust income matching and related tax administration. It should not become a platform for gradual widening of data use through administrative practice rather than fresh parliamentary scrutiny.

The second caution is procedural fairness. The Explanatory Memorandum explains that where the Commissioner is not satisfied that the quoted number is correct, that the beneficiary has a tax file number, or that it is reasonable to provide the correct number to the trustee, notice must be given and the ordinary withholding consequences can follow. Parliament should ensure those notice requirements are not treated as token steps. Where an error or mismatch produces withholding consequences, the affected person should receive clear reasons, a practical correction pathway, and a fair opportunity to rectify records without being buried in administrative friction.

The third caution is transparency. The Bills Digest notes that Treasury completed consultation on the draft legislation but that submissions were not published. That is not a good habit in a measure touching privacy, trustee obligations and automated tax administration. If government wants trust in the system, it should not treat external scrutiny as optional.

In substance, then, Schedule 2 is supportable. But it should be approached as a measure requiring guardrails, not as a neutral technical upgrade beyond serious concern. Administrative efficiency is not a licence for diffuse surveillance, hidden burden shifting or unexplained withholding consequences.

Schedule 3

Minor and technical amendments

Schedule 3 deserves to be treated with precision rather than inflated rhetoric. Parts of it are unobjectionable housekeeping. One part addresses a real practical issue and another touches a sensitive institutional boundary. None of it should be dressed up as major reform.

Part 1, which corrects a typographical error in earlier legislation, is plainly unobjectionable. The law should say what it means and point to the right provision.

Part 2 is more meaningful. The supporting material explains that it allows a Public Trustee acting for a client with a self-managed superannuation fund to approve a person as trustee or as director of the trustee company in circumstances involving death, legal disability or enduring power arrangements, and to allow that person to be remunerated. The Bills Digest explains the practical problem this is meant to solve, namely that incapacity or death can leave a fund unable to function properly or unable to meet trusteeship requirements because removal and replacement mechanisms are often clumsy or deadlocked.

That problem is real. Parliament is entitled to fix machinery problems that otherwise leave people trapped in legal and administrative paralysis. If a member loses capacity or dies, the law should provide a workable pathway for lawful trusteeship and continuity.

Even so, Parliament should be careful not to convert a practical accommodation into a soft gateway for weak oversight or undisciplined remuneration. That caution is not theoretical. Official review material in Queensland has identified serious concerns about Public Trustee fee practices, including the level and complexity of fees, lack of transparency, lack of clarity about what clients receive for those fees, and questions about the reasonableness of some charges and their consistency with fiduciary duties. Review material has also indicated that existing scrutiny does not necessarily test whether fees are reasonable in the circumstances or what impact they have on vulnerable clients' financial outcomes. In that context, the existence of written approval, appropriate qualifications and necessary licences is important, but not sufficient if applied mechanically. So too is the requirement that remuneration not be more favourable than would reasonably be expected in the relevant circumstances. Those safeguards should be applied seriously, not cosmetically. A legal disability or death should not become an opening for private or quasi-public rent extraction from a vulnerable person's retirement savings.

Part 3 is formally minor but institutionally worth noticing. The amendment to subsection 14(1) of the Australian Securities and Investments Commission Act 2001 is described as a readability and clarity change that makes explicit that the Minister may direct ASIC by writing. Whatever the drafting purpose, Parliament should never become too relaxed about provisions that sit close to ministerial direction and regulatory independence. That caution is not abstract. Treasury presently describes ASIC as an independent body, and recent parliamentary material shows that the independence boundary remains active and contested in practice. Treasury has recently relied on the distinction between a direction about policies or priorities and a direction about a particular case, while a House committee recorded ASIC's evidence that a Treasurer's Statement of Expectations does not direct ASIC as to how to pursue enforcement.

Recent Senate Economics References Committee material from its inquiry into Australian Securities and Investments Commission investigation and enforcement also shows how quickly confidence can erode when the regulator appears too comfortable with political channels or too resistant to scrutiny. The committee recorded ASIC's attempts to influence the inquiry process from the outset, referred to questions about ASIC's discussions with the Minister, and concluded that there had been significant concerns with ASIC's approach to the inquiry from its outset. The point is not that this drafting amendment itself proves interference. It is that current official material shows why Parliament should treat even small clarifications of executive direction powers with care. Confidence in an independent regulator is damaged not only by overt misuse of power, but by institutional arrangements and conduct that appear too comfortable from the perspective of ministerial influence.

Overall, I do not oppose Schedule 3, but I would caution strongly against treating it as innocuous housekeeping simply because much of it is framed as minor or technical. It is mostly statute maintenance, but it also contains a practical accommodation that could invite weak oversight or extractive charging if not tightly applied, and an ASIC amendment that, though formally small, touches a boundary where confidence in regulatory independence can be damaged by both misuse and appearance. The committee should therefore describe Schedule 3 accurately and scrutinise it with care. It is not major reform, but it is not beneath institutional concern.

Schedule 4

Exclusion of tobacco and gambling related activities from the Research and Development Tax Incentive

Schedule 4 is the strongest and most important part of the bill. I support it in principle, but I consider it materially incomplete and in need of strengthening.

The bill excludes activities related to gambling, gambling like practices, tobacco, tobacco products, tobacco accessories, vaping goods, tobacco extract and nicotine goods intended for human use from eligibility for the Research and Development Tax Incentive, while preserving eligibility where the activity is conducted solely for harm minimisation purposes. The Explanatory Memorandum states that the purpose is to ensure that the Commonwealth does not use the incentive to confer favourable treatment on this type of research and development, while allowing activities solely directed to reducing harm to remain eligible.

That basic proposition is sound. The issue is not that public money is paying for these activities. At the federal level that framing is false. The issue is that the Commonwealth is deliberately choosing to use the tax system to confer favourable treatment on research activity connected to industries structurally linked to addiction, dependency, health damage and wider social harm.

The bill is therefore right to move in this direction. But it does not go far enough. It still proceeds largely on an activity-by-activity basis, which leaves too much room for relabelling, internal cost shifting and fungibility. Money is fungible. A gambling or tobacco firm that receives favourable tax treatment for one category of eligible work is freed to deploy more of its own capital on adjacent commercial activity. An activity level exclusion is better than nothing, but it is not the cleanest integrity model.

That is why the amendment circulated by Ms Sharkie deserves serious attention. It notes the scale of harm and calls for complete exclusion of all research and development activities conducted by gambling and tobacco companies, and by entities such as research organisations obtaining funding from such companies, on the basis that profits drawn from community harm should not attract favourable treatment through the tax system. That direction is substantially closer to the right public purpose answer.

At minimum, Parliament should strengthen Schedule 4 in one of two ways.

The stronger option is entity level exclusion. If a company’s business is materially grounded in gambling or tobacco, it should not receive this incentive. Its research and development should be self-funded.

If Parliament is unwilling to adopt full entity level exclusion, then the harm minimisation exception should be narrowed sharply. It should be confined to genuinely independent research and development conducted for public health, cessation, consumer protection or harm prevention purposes, with strict governance rules excluding ordinary commercial control by the relevant industry. The present drafting leaves too much scope for a harmful industry to obtain favourable treatment for activity framed as

minimisation while still serving brand, product, compliance marketing or behavioural retention objectives.

The problem cannot be solved by asking administrators to infer whether a claimant subjectively intended harm minimisation. That test is too easy to game. If Parliament retains an exception, independence should be established only by objective statutory criteria. Eligible research should have to be commissioned, governed and published independently of the relevant industry, with no direct industry control over the research question, protocol, methodology, data, interpretation, timing or publication of results. Funding should flow through an independently administered public or statutory pool rather than direct bilateral industry commissioning. Full preregistration, complete conflict disclosure, mandatory publication, external oversight, clawback powers and strict ineligibility for mixed purpose or commercially entangled projects should also apply. Without such bright line safeguards, the exception will remain vulnerable to sophisticated relabelling of ordinary commercial research as harm minimisation.

There is also a broader principle here. The Research and Development Tax Incentive is not a neutral entitlement. It is a tax preference instrument. Parliament is entitled to decide that some sectors should not receive favourable treatment through that instrument because the social harms are so substantial and so predictable that the ordinary case for encouragement collapses. That is not hostility to innovation. It is a judgment about public purpose. Not all innovation deserves preferential treatment.

This logic also has implications beyond this bill. If Parliament accepts that favourable tax treatment should be withdrawn from gambling and tobacco related research because these sectors generate serious social harm, it should become more willing to ask the same public purpose question elsewhere, including in relation to business models built on addiction, engineered dependency, behavioural manipulation or chronic financial distress. The tax system should not be blind to the difference between productive development and extractive commercial refinement.

Conclusion

This bill should not be waved through as a neat package under a reassuring title. It is not one measure with one moral logic. It is four different measures carrying different risks, different merits and different implications for public purpose. Parliament should therefore reject any attempt to treat the label delivering an efficient and trusted tax system as a substitute for disciplined scrutiny.

Schedule 1 is a modest and sensible simplification and may proceed. But it should proceed on an honest basis. It does not transform the giving system, it does not cure the regressive distribution of deductible giving, and it must not be used to romanticise

private philanthropy as a substitute for properly funded public provision. If Parliament wishes to preserve a distinction between deductible gift recipient giving and political donations, it should defend that distinction openly on democratic integrity grounds rather than quietly preserving inconsistency inside a bill dressed up as simplification.

Schedule 2 is supportable in principle, but only with real caution. Administrative convenience for the state is not the same thing as public trust. A measure that expands the reporting and handling of sensitive identifiers should not be treated as routine merely because it is framed as system modernisation. If Parliament allows this schedule to proceed, it should do so on the basis that privacy, clear notice, correction pathways, transparency and strict purpose limitation are not optional extras. Efficiency without safeguards is not trust. It is merely smoother administration of risk shifted onto others.

Schedule 3 should also be described honestly. Much of it is statute maintenance. But it is not all harmless housekeeping. The Public Trustee amendment addresses a real practical problem, yet it also touches a field where vulnerable people have previously faced serious concerns about opaque and unreasonable charging. That makes vigilance over remuneration and oversight essential, not decorative. The ASIC amendment is formally small, but it sits close to the boundary between ministerial direction and regulatory independence. Parliament should never become casual about that boundary. Public confidence in an independent regulator can be corroded not only by direct interference, but by arrangements and conduct that create the appearance of institutional comfort with executive influence.

Schedule 4 is the strongest and most important part of the bill, and it is the part that most clearly exposes the larger public purpose question. The issue is not that public money is paying for harmful sector research. At the federal level that framing is false. The real issue is that the Commonwealth is deliberately choosing to use the tax system to confer favourable treatment on research activity connected to industries structurally linked to addiction, dependency, health damage and wider social harm. That is a policy choice. Parliament is entitled to reject it. Indeed, it should. But the present drafting still stops short of the cleaner integrity position. An activity-by-activity exclusion leaves too much room for relabelling, internal cost shifting and sophisticated gaming. The harder and more coherent principle is that entities materially grounded in gambling or tobacco should not receive this incentive at all. If Parliament is unwilling to go that far, then the harm minimisation exception should be radically tightened and confined to genuinely independent research under objective statutory criteria that cannot be manipulated through commercial entanglement or clever drafting.

In the end, this bill should be supported only in a differentiated and unsentimental way. Schedule 1 may proceed as a narrow simplification. Schedule 2 should proceed only with stronger guardrails and sharper scrutiny. Schedule 3 may proceed, but not under the comforting fiction that everything minor is trivial. Schedule 4 should be amended to adopt a much harder public purpose line. An efficient and trusted tax system is not merely one that processes claims smoothly or tidies old drafting. It is one that exercises judgment about what the Commonwealth should facilitate, what it should restrain and what forms of favourable treatment are incompatible with the public good. Parliament should pass what meets that test, amend what falls short and refuse what cannot be justified.