



Katherine Szuminska
OpenAustralia Foundation Limited
C/- Not for Profit Accounting Specialists
38 Surrey Road
KESWICK SA 5035

Our reference: 1-VWSB0ZK
Phone: [REDACTED]
Contact Officer: [REDACTED]
Client ID: 24138089942

16 November 2023

We have finished our review of OpenAustralia Foundation Limited

Dear Katherine,

Thank you for providing the requested information in response to our letter dated 28 November 2022. We have finished our review of OpenAustralia Foundation Limited (The Foundation)'s endorsement as a Deductible Gift Recipient (DGR) for the period 1 July 2018 to 30 June 2022.

Thank you for being professional and cooperative throughout the review.

The Foundation is endorsed as a DGR from 7 July 2009 covered by items 1 & 4 of the table in section 30-15 of the *Income Tax Assessment Act 1997* (ITAA 1997) as a public library.

Results of our review

Based on the information we examined during the review, we have determined that The Foundation is not operating as a public library to be entitled for endorsement as a DGR under items 1 & 4 of the table in section 30-15 of the ITAA 1997.

We have enclosed reasons for our decision.

We have referred our decision to the Not For Profit, Advice & Endorsement team to issue the DGR revocation letter. The revocation is effective from **16 November 2023**.

What does this mean for you?

You're no longer endorsed as a DGR, and this means you may no longer collect tax deductible gifts. The organisation can't issue receipts to donors that say their donations are tax deductible. None of your advertising material, including your website, can state or suggest that donations to your organisation are tax deductible.

What you need to do

As you are no longer endorsed as a DGR, in accordance with the wind-up Clause 106 in the constitution any surplus gift funds must be transferred to another institution or institutions with similar objects and to which income tax deductible gifts can be made.

NEED HELP?

If you have any questions, you can phone us on **13 28 69** between 8:00am and 5:00pm, Monday to Friday. Ask for [REDACTED] on extension [REDACTED].

If you need any further assistance, you can contact [REDACTED]s manager, [REDACTED] on extension [REDACTED].

We're committed to supporting people through difficult times. If you're struggling to meet your tax and super obligations visit ato.gov.au/support

Gift funds include:

- gifts of money or property for the main purpose of the organisation
- contributions made to an eligible fund raising event held for the main purpose of the organisation
- money received by the organisation because of such gifts and contributions

Your right to review

You may object to our decision to revoke the DGR endorsement if you are dissatisfied with it.

A limit of 60 days from the date of receiving this letter applies when lodging an objection for this decision.

Objection forms and information about how to lodge an objection, including advice on time limits and documents to send in with your objection form are available from our website at ato.gov.au/objections

Yours sincerely,

Louise Clarke

Deputy Commissioner of Taxation



Reasons for our decision

OPENAUSTRALIA FOUNDATION LIMITED (The Foundation)

Issue:

1. Is The Foundation entitled to be endorsed as a deductible gift recipient (DGR) under subsection 30-125(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) on the basis that it is a public library as covered in item 4 of the table in section 30-15 of the ITAA 1997 or Subdivision 30-B item 12.1.2 of the table in subsection 30-100(1) of the ITAA 1997?

Decision:

2. The Foundation does not meet all the requirements to be endorsed as a DGR for the operation of a public library covered in item 4 of the table in section 30-15 of the ITAA 1997 or Subdivision 30-B item 12.1.2 of the table in subsection 30-100(1) of the ITAA 1997.

Relevant facts:

3. Australian Business Number (ABN): 24138089942
ABN active from 07 July 2009.
4. Entity type: Australian Public Company
5. Directors of the company
 - 1) Matthew Noah Landauer (Appointed 03/07/2009)
 - 2) Katherine Yolanda Szuminska (Appointed 03/07/2009)
 - 3) Henare William Thompson Degan (Appointed 15/10/2010)

Matthew N Landauer holds a PHD in physics from Cambridge University and is a software developer, co-founder of Katoomba (creator of co-working space), co-founder of Bleeply (collaborative social media tool) and ex-director of Visual Appliance Ltd, a visual effect software company.

Katherine Y Szuminska holds an MA in computing and a committee member of the Civil Society and is a visual effects supervisor.

Henare W T Deagon is a software engineer and a co-founder of Bleeply.

6. The Foundation is registered with Australian Charities and Not for profit Commission (ACNC) and has been endorsed as a charity with tax concessions for Income tax exemption, GST concession and FBT (Fringe Benefits Tax) concession from 07 July 2009.
7. Matthew Noah Landauer, Katherine Yolanda Szuminska and James Polley are listed as responsible persons with the ACNC.
8. GST registered from 15 November 2021.
9. The Foundation's main address is 24 BRUCE ROAD GLENBROOK NSW 2773.
10. Registered and authorised BAS agent NOT FOR PROFIT ACCOUNTING SPECIALISTS. Former registered and authorised tax agent BSA PARTNERSHIP PTY LTD.
11. The Foundation is endorsed by ATO as a DGR from 7 July 2009 covered by Items 1 & 4 of the table in section 30-15 of the ITAA 1997.

Item 1: A fund, authority or institution covered by an item in any of the tables in Subdivision 30-B.

Item 4:

- (a) the Australian Fund; or
- (b) a public library in Australia; or
- (c) a public museum in Australia; or
- (d) a public art gallery in Australia; or
- (e) an institution in Australia consisting of a public library, a public museum and a public art gallery or any 2 of them.

12. The Foundation has the following objects as outlined in the Clause 3 of its Constitution:

“The objects for which the Company is established are:

- (1) to support a nationwide open access public digital reference library for the purpose of making information relating to public bodies accessible and useful for all Australians;*
- (2) to conduct research into the use and effects of information and communication technologies relating to public engagement and developing tools to enable the sharing of information for the purpose of improving such engagement;*
- (3) to disseminate the results and methods of this research for the benefit and education of the public;*
- (4) to provide tools and services to both public and private bodies or institutions, and the general public, to enable them to reuse such data and research freely and for the public good;*
- (5) to provide content and software under an open licence wherever practicable;*
- (6) to create a network for related local, online and library communities”*

13. The Foundation’s website <https://www.oaf.org.au/>

The Foundation is a pioneering charity whose vision is to transform democracy in Australia. The Foundation’s mission is to give all Australians the tools they need to effect the change they want. The organisation creates technologies that encourage and enable people to participate directly in the political process on a local, community and national level.

14. The Foundation operates a number of websites that provide government information to the public. It uses ‘web scraping’ technology to collect data from governments and share the information on its own websites. The Foundation advocates to integrate high level of participation for citizens in the democratic process and facilitate those activities through different channels.

15. Charity programs/activities operated by The Foundation:

OpenAustralia: Reference materials offered is a collection of House of representatives and Senate Hansard, Register of Members’ and Senators’ interest. There is free public and open access to subscribe for details of when an MP or Senator speaks and/or by search subject matter since 2008. The website is funded by tax-deductible donations from the public.

Website <https://www.openaustralia.org.au/>

Planning Alerts: Reference materials offered is a collection of development applications across Australia. The aim of this to enable shared scrutiny of what is being built (and knocked down) in peoples’ communities. One can search for an application in a particular area and sign up for email alerts to get notified of new applications in the area. The website allows you to access a list of recent applications and comments on applications across Australia from various planning authorities including proposals that may affect a section of the community or as a whole. There is free public and open access to development application information to non-commercial low-volume users via the Planning Alerts website. The website also offers paid services to high volume commercial users via a subscription. PlanningAlerts is powered by tax-deductible donations from the public who use it to stay informed about changes to their local area.

Website <https://www.planningalerts.org.au/>

Right To Know: Reference material offered is a collection of Freedom of Information (FOI) requests. It makes FOI requests really easy and automatically publishes the whole paper trail between the person making the request and the government agency. It also publishes all requests online and archives requests and responses, building a massive archive of information. Right to Know is a powerful fully featured tool kit for journalists, campaigners and researchers. The Foundation staff and volunteers are able to annotate request and modify content (except attachments). There is free public and open access to all open requests. The website is funded by tax deductible donations from public to keep the website running.

Website <https://www.righttoknow.org.au/>

They Vote For You: The website is dedicated to making parliamentary voting information accessible, understandable, and easy to use so that elected representatives are held to account since 2014. There is no collection of voting records available to the public, unless through the search function. TheyVoteForYou is an open source project, that means a whole community of people add to and help maintain and improve this website. The project is hosted on GitHub. There is free public and open access to voting information of votes by division in Federal Parliament. The public can subscribe for updates. The website is funded by tax-deductible donations from the public.

Website <https://theyvoteforyou.org.au/>

Morph: Reference materials offered is a number of web scraping tools. Users can develop and build their own web scraper. There are over 11,200 public scrapers with lots of data available to reuse. There is free access to the website. There is no request to donate on the website but a request for a contribution starting at \$14 then \$ 24 and \$149 which provides the user technical support.

Website <https://morph.io/>

Election leaflets: Reference materials offered include an archive of election leaflets over past Federal and State elections. It was last updated during the Victorian State Election in 2014. The website is no longer being updated.

Website <http://www.electionleaflets.org.au/>

16. The Foundation also hosts the <https://opengovernment.org.au/> website for the Australian Open Government Partnership Civil Society Network, to gain openness, accountability and participation by committing to Open Government National Action Plan.
17. The public can access The Foundation's websites free of charge without sign in, except for PlanningAlerts commercial users and RightToKnow tools subscribers.

Planning Alerts: There are 5 commercial users that subscribe to the website at \$2,748.90 (inc. GST) per month.

Right To Know: There is one subscriber to the 'pro subscription' account at \$45 per month. The pro subscription account is aimed at journalists for making requests with additional features such as managing multiple requests and the ability to hide/embargo requests for example until after publication.

The most accessed website is <https://www.planningalerts.org.au/>. The next most accessed websites are <https://www.righttoknow.org.au/> and <https://theyvoteforyou.org.au/>.

18. ATO records show two part-time/casual employees were engaged in 2022 financial year by The Foundation for the period 6 December 2021 to 30 April 2022. The main occupation listed by the employees are as follows:
Mu'taz Al-Ashhab – Fast food cook
Oritsetseyibem Okoruodudu – Software developer

Detailed reasoning

19. Section 30-125 of the ITAA 1997 sets out the general eligibility requirements of an entity's entitlement to be endorsed as a DGR.
20. Subsection 30-125(1) of the ITAA 1997, an entity is entitled to be endorsed as a DGR if the entity:
 - (a) has an ABN; and
 - (b) is a fund, authority or institution that is described in item 1, 2 or 4 of the table in section 30-15 of the ITAA 1997; and
 - (c) is not listed by name in Subdivision 30-B of the ITAA 1997; and
 - (d) satisfies any special conditions for the category in which it is described; and
 - (e) satisfies the wind-up requirements in subsection 30-125(6) & 30-125(7)
21. Requirements (a), (c), (d) and (e) have been satisfied; (b) will be discussed as below.

Requirement (b): Public Library

22. Item 4 of section 30-15 and subdivision 30-B at item 12.1.2 of subsection 30-100(1) of the ITAA 1997 allows an income tax deduction for certain gifts and donations made to a public library.
23. The Tax Ruling TR 2000/10 *Income tax: public libraries, public museums and public art galleries* (TR 2000/10) sets out the Commissioner's views on what is a public library for the purposes of gift deductibility under Division 30 of the ITAA 1997.
24. The term 'public library' is not defined in the Act. Paragraph 5 & 15 of TR 2000/10 states 'public library' is not a technical term and is to be understood in its ordinary or everyday meaning. The Macquarie Dictionary¹ explains the term 'library' as:
"a place set apart to contain books and other literary material for reading, study, or reference, as a room, set of rooms, or building where books may be read or borrowed ... a collection of manuscripts, publications, and other materials for reading, study, or reference "
25. Paragraph 17 of TR 2000/10 further states, while it would be expected that ordinarily, a library would be located within a building, this is not always the case.
26. Paragraph 5 of TR 2000/10 requires the following characteristics to be met in order for a library to fall within the definition of 'public library' for the purposes of Division 30 of the ITAA 1997:
 - (a) Its collection is made available to the public;
 - (b) It is owned or controlled by a government or quasi-government authority, or by persons or an institution having a degree of responsibility to the public;
 - (c) It is constituted as a library, other people recognise it as such, and it conducts itself in ways that are consistent with such a character;
 - (d) It is an institution in Australia
27. The term library is to be understood by their everyday meaning and the form it takes may have changed over time to include a digital library. The features of a library listed above is fundamental to a public library regardless of the form a library takes, whether digital or physical. Therefore, The Foundation is expected to have these features in order for it to be constituted as a public library acceptable by the Commissioner for the purposes of gift deductibility under Division 30.
28. Each of the characteristics described in paragraph 5 of TR 2000/10 and its application to The Foundation will be considered below.

Collection

29. TR 2000/10 does not specify what items can form the collections of a library. We refer to the ordinary or natural meaning of a public library as per paragraph 14 of TR 2000/10.
30. Paragraph 29 of TR 2000/10 outlines 'the terms library...imply that exhibits of literature...are collected'. Literature/literary material is broadly defined and interpreted.
31. According to TR 2000/10, the nature of an entity's collection is one of the fundamental features in determining whether an entity constitutes a public library. The way entity collects must be consistent with that of a library. The collection should consist of books and other literary material for reading (including over the internet), study, or reference or a collection of manuscripts, publications, and other material for reading, study, or reference. The collection must be displayed in such a way that engages viewers as part of the collection of the library.
32. In its application for endorsement as a DGR dated 13 July 2009, The Foundation makes the following contention as to what constitutes a collection at paragraph (4)(c):

¹ <https://www.macquariedictionary.com.au>

The collections that the OpenAustralia Foundation makes available include but not limited to material available to the public. Further details of the available collections are as follows:

- (c) collections currently offered by the OpenAustralia Foundation include the following:
 - (i) House of Representatives Hansard from [aph.gov/au](http://aph.gov.au);
 - (ii) Senate Hansard from apj.gov.au;
 - (iii) the Register of Members' interests via the Registrar for the Committee of Parliamentary Privilege and Members interests;
 - (iv) the Register of Senators' interests via the Registrar for the Committee of Senators' interests;
 - (v) Members' and Senators' voting records will be available shortly via a separate web project which will also connect to <http://www.openaustralia.org>

- 33. The Foundation does not contain any books or other library material for downloading, reading or study which an ordinary person would recognise as a public library. Since the TR 2000/10 was published, the current conception of what constitutes a library has changed. It is not necessary for a library collection to be solely physical, although many libraries constitute a combination of physical and digital collections. Given that the services of library have evolved over time with digitisation, a narrow interpretation that a library collection need to be made of books in electronic and paper forms should be avoided. It is accepted that a library can be in a digital form, but the fundamental features as required of a physical library must be present for the purposes of determining what constitutes a public library under item 4 of the section 30-15 of the ITAA 1997 or Subdivision 30-B item 12.1.2 of the table in subsection 30-100(1) of the ITAA 1997.
- 34. The reference materials offered include House of Representatives and Senate Hansard, Register of Members' and Senators' interests, Members' and Senators' voting records, council development and planning applications, FOI requests, web scraping tools and election leaflets.
- 35. From review of The Foundation's collection activities, The Foundation has a collection of information. While the information is in the public domain, the technology used to present the information in the relevant websites of The Foundation would likely to be considered to be exhibits of literature or a collection of literacy materials for reading, study or reference.
- 36. The offering of reference materials such as House of Representatives and Senate Hansard, registers of parliament members, senator voting records, data on Council planning development records, FOI requests, web scraper tools and election leaflets can be accepted as a collection. However, The Foundation's collection does not meet the purpose and functions of a library as examined below.

Collection is made available to the public

- 37. Paragraph 6 and 7 of TR 2000/10 explains that the Commissioner accepts the collection of a library as being available to the public where it is for use by the public or for a section of the public. Availability need not be indiscriminate and can be limited to sections of the public, however access cannot be '*minor*'.
- 38. A review of The Foundation websites demonstrates the reference material is available to the public. The information hosted on websites by The Foundation is available to the public free of charge. The resources are available to any individual with an internet connection at any time. No membership is required to access the resources. The contact details on the website including postal address, email and website addresses and twitter account allow easy access for public to inquire and/or access the resources.
- 39. It is accepted The Foundation's digital library is available to the public without restriction, therefore this requirement is satisfied.

Owned or control by a government or quasi-government authority, or by persons or an institution having a degree of responsibility to the public

40. As per paragraph 8 of TR 2000/10 we accept that persons or institutions have a degree of responsibility to the public in the circumstances explained in Taxation Ruling TR 95/27 *Income tax: Public Funds* at paragraphs 7, 21, 22 and 23.
41. The Foundation is not a government or quasi government authority. It is a Company limited by guarantee and registered with Australian Charities and Not for profits Commission (ACNC). The Foundation must be owned or controlled by people or institutions who, because of their tenure of some public service or their position in the community, have a degree of responsibility to the community as a whole.
42. As an incorporated entity, in order to satisfy this requirement, the majority of the members of the controlling body must be persons having a degree of responsibility to the public. The Foundation's Constitution contains clauses (Clause 68 & 69) for establishment of committee of directors, board (such as advisory board) or branches to administer the library. Clause 45 requires the majority of directors at all time must be 'Responsible Persons'. Clause 2.1 provides definition of a 'responsible person'.
43. The Foundation's library is administered by the members of a board who are directly involved in managing the operations of the library. The board of directors is made up of majority of responsible people who are company directors of The Foundation. Currently the Board is managed by James Polley, Katherine Szuminska (Director) and Matthew Landauer (Director), all duly elected as per the AGM minutes and listed as responsible persons on the ACNC website.
44. As per paragraph 22 of TR 2000/10, the responsible persons and directors of The Foundation are from recognised organisation and are professional members of different sectors of business that can be accepted as having a public character. All the directors hold relevant tertiary degrees, Board member James Polley has an MA in business administration and is the General Manager at the Australian Society of Archivists Inc. The qualifications and professional standing of The Foundation directors and board members demonstrate a requisite degree of responsibility to the public that each of them hold.
45. Furthermore, we expect a public library to show a public character as per paragraph 9 of TR 2000/10, the library must not be operated for the profit or gain of its owners or members. The ATO accepts an organisation as non-profit where its constituent or governing documents prevent it from distributing profits or assets for the benefit or particular people both while it is operating and when wind-up. The Foundation has suitable non-profit clause (Clause 5) and wind-up clauses (Clause 105 & 106) in The Foundation's Constitution.
46. Given the long-standing involvement of The Foundation as an advocate for transforming democracy in Australia and to create technologies that encourage people to participate in the political process, it is reasonable to conclude that The Foundation as an institution has a degree of responsibility to the community as a whole.
47. Therefore, the public ownership and control requirement has been satisfied.

Constituted as a library, other people recognise it as such, and it conducts itself in ways that are consistent with such a character

48. As per paragraphs 14 and 15 of TR 2000/10 the term 'public library' is not defined in the Act, is not a technical term and is to be understood in its ordinary meaning. A library is 'a place set apart to contain books and other literary material for reading, study or reference as a room, set of rooms, or building where books may be read or borrowed...a collection of manuscripts, publications, and other materials for reading, study or reference.'
49. The Commissioner's view regarding purposes and functions is contained in paragraphs 24 to 37 of TR 2000/10.

50. Paragraph 24 of TR 2000/10 states that whether an institution is a public library depends on the purposes for which it is constituted, how people recognise it, and the ways it operates.
51. The constituent or governing documents of a public library must be consistent with its character. Also, an organisations activity, acquisitions policy, staffing, advertising and membership will be relevant. The ways an organisation collects, preserves, maintains, and makes its collection available must be consistent with how a library operates.
52. The information provided in Clause 3 of the Constitution indicates that The Foundation is operating a public digital reference library as reflected in its objects.

(a) Purposes for which it is constituted as a library

53. Paragraph 25 and 27 of TR 2000/10 provide further explanation of the purposes of a public library institution noting it is necessary to consider an institution's name, governing documents, the character of the service provided, objectives and policies, acquisition policy, advertising, ownership of its assets, its controls, staffing, membership of associations and its financial organisation. If these do not indicate the purpose of the institution is to be a library, we do not accept that it is such. Where purposes and activities other than those of a public library are evident, it is necessary to determine whether they are minor and consistent with the purposes and activities of a public library.
54. Paragraph 37 of the TR 2000/10 notes the employment of qualified librarians although not essential, is an indicator that an institution is a library. While the degree of expertise may vary with the size and nature of the institution, the lack of appropriate knowledge and skills may indicate the institution is not a library.
55. Review of employees records show low level of staffing and none employed as librarians. Staffing is based on volunteers that would assist in operating and maintaining the websites and two staff (Directors) employed full time and a further two on a parttime or casual basis (main occupation listed as fast-food cook & software developer earning an average of \$8,000 from The Foundation). The low level of permanent staffing may indicate that The Foundation is not an online public library.

(b) Recognise as a public library

56. As stated in Paragraph 24 of TR 2000/10, another fundamental requirement of a public library is that it can be recognised by people as a library and it conducts itself in ways that are consistent with such character. There is no sufficient evidence to demonstrate that an ordinary person would recognise The Foundation's websites as a public library. Nor does Commissioner accept that a search engine falls within the definition of a library. Furthermore, making the collection available for use and displaying the collection in a way that people engage them as part of the collection of a public library is a critical feature of a library.
57. While we acknowledge the Constitution has clause in its objects that indicate that The Foundation is operating a public digital reference library, the evaluation of the websites that are in operation by The Foundation, the name, content, financial reports and their donation form, does not make any reference that The Foundation as a whole is operating as an online public library. The summary of activities and charity programs listed on the ACNC website do not mention that The Foundation is an online public library. There is no external public advertising or promotion of the resources as a public library. There is no mention in any of The Foundation's websites that The Foundation as a whole is an online library.
58. In the absence of any clear wording or website content indicating that The Foundation is established as an online public library, the general public may not recognise the websites that The Foundation operate are an online library but instead may compare it to a search engine or a platform to acquire information.
59. The Foundation resources are not readily identifiable as the public collection of a library and it is not evident that a substantial section of the community would know or consider these resources to be a public library or know how to access them.

60. The reason given in the DGR endorsement application why the general public will recognise The Foundation as a public library is insufficient and offers no explanation. An internet mediated communication does not make the website platform a public library.
61. The Foundation's use and display of collection on its websites are not recognised as a public library. The websites are not operating or held out to be public libraries. Accordingly we are unable to accept The Foundation is operating a public library when the general user is unable to recognise it consistent with the character and conduct of an online public library.

(c) Functions and operates in a way consistent to a public library

62. Paragraph 26 of TR 2000/10 states, libraries operate to collect, preserve and maintain their collections, and make them available for use. Ownership and control of its own collection and preservation of their collections are important features consistent with being a library.
63. If an institution's activities are not consistent with these functions, the Commissioner will not accept it as a library. The mere possession of a collection of literature is unlikely, on its own, to make an institution a library. Therefore, it is critical that the library operates not only to collect, preserve but also needs to maintain the collection in a way that public recognise it as a public library.
64. Paragraph 30 of the TR 2000/10 note making the collection available for use is a distinguishing feature of a library. The modes of use include lending, display, making available for reading (including over the internet) and vary with the sort of institution and its particular purpose.
65. Operationally, the websites which hold the collections of materials useful to the public are held on servers in Australia and USA. The websites specify how members of The Foundation and the public can access its online public digital materials which consists of parliamentary material, voting records, register of parliamentarian and senators' interest, an archive of electoral leaflets, lists of FOI requests and development applications via a portal function which allows for searching of the collection, including the body of documents.
66. Paragraph 42 of TR 2000/10 acknowledges that display is one of the functions of a public library and that a collection of resources may be accumulated over time and stored in a common area. The display of these resources would not, in itself, be accepted as a library. The Commissioner would require the collection to incorporate other features of a public library. Display of a collection is only one of the functions of these institutions. The purpose and function of the collection should incorporate other features consistent with those of a public library.
67. Given a system of classification of material and ability to search is a key aspect of a library, it is difficult to find that The Foundation would be readily identifiable as a public library, if the heading 'library' is not included. There is no mention of The Foundation operating as an online public library to make it consistent with the character and conduct of an online public library.
68. Paragraph 35 of TR 2000/10 explains ownership and control of its own collection is consistent with being a library.
69. Some of the resources currently available may also be accessible in some form in local or state libraries and local, state and federal government offices.
70. The Foundation maintains ownership and control for some of its websites but sufficient evidence has not been provided to confirm that The Foundation maintains adequate control of the collection. These features indicate that The Foundation has limited control over these resources which is an indicator against it being a public library.
71. Paragraph 36 of TR 2000/10 notes a function of libraries is preservation of their collections.
72. As The Foundation has limited control over the resources which are simply accumulated and displayed on its websites, it has not demonstrated that a function of The Foundation is to preserve a collection of a public library.

73. In addition to the finding that the function and purpose of The Foundation's collection is not consistent with that of a public library, the Commissioner also considers that The Foundation lacks other functions of a public library, including ownership, control and preservation of collection that is in the nature of literature.
74. The Foundation carries on various activities in different websites. The Foundation applied for endorsement as a deductible gift recipient on the basis it is a 'public library' as a whole.
75. We are of the view the activities below do not meet the purpose and functions of a public library:

Right to know: The primary function and purpose of the website is to assist and guide the user to make a FOI request. The public publications of these requests does not make the website a public library. Paragraph 26 of TR 2000/10 specifically states, "*mere possession of a collection of literature is unlikely on its own to make an institution a library*". The collection of FOI request is not held or displayed in a way that it is operating as a public library.

They Vote For You: The primary function and purpose of the website is to make parliamentary voting information accessible. There are no exhibits of literature, there is no link to official voting records nor other primary source of information. The website compiles its own list of votes that is based on debate transcripts of House of Representative and Senators or the votes are mapped against The Foundation's own pre-set policies. The website invites public to maintain and improve the content. The public will have difficulty in recognising the website as a public library where there is no primary source documents as part of its collection. The Foundation does not control the collection as it relies on the public to improve, find, contribute, edit and classify policies which include fixing mistakes or adding something new.

Morph: The primary function and purpose is to offer a number of web scraping tools, where users can develop and build their own web scraper. The website mentions it is time consuming to build and maintain scrapers. The Foundation invites scrapers to write in their own language. The website <https://morph.io/> hosted by <https://www.linode.com> in Fremont, CA, USA was made to look after those scrapers and enable collaboration in the open. The technology (collection of scrapers) is easily accessible for public inspection, use and reuse via the internet. The website lacks the fundamental feature of ownership and control of the collection to be a library.

Elections leaflets: The primary function and purpose is an archive of election leaflets, last updated during the Victorian State Election in 2014. The website specifies "*Sadly, we will not be collecting leaflets this time. Unfortunately, OpenAustralia Foundation doesn't have the time or the resources to run Elections leaflets during upcoming elections*". The usefulness of the information to the public deteriorates if the collection is not maintained and regularly updated. It would not achieve its object as a digital reference library that is accessible and useful for all Australians as set out in its objects of its Constitution. Merely accumulating past election leaflets is not establishing a collection.

76. Some features of **OpenAustralia** and **PlanningAlerts** websites may be in principle considered to operate as an online library accessing links to exhibits of MPs speech, register of interest, planning developments data and comments on planning applications in a way that the public might find useful and recognise the websites as a library source. However, examination of the websites and their content has not identified any clear wording that the websites are operating as a public library, nor is the website content regularly maintained. Without such assurance, the display of information would not be viewed nor engaged by the public as part of a public library.
77. The activities of The Foundation relating to Right to know, They Vote For You, Election Leaflets and Morph websites are not regarded as activities of an online public library and not minor compared to overall activities of The Foundation.
78. The Foundation is constituted, recognised and operated to provide resources to access relating to public bodies. In pursuing its purpose, The Foundation displays and makes resources accessible on The Foundation website. The provision of these resources is The Foundation's primary function and this in itself, is not

accepted as operating a public library. Although statements in support of the application have been made that The Foundation's library meets the requirements of the collection of a library and incorporates many other features consistent with those of a public library, there is insufficient evidence that exhibits of literature or other works are collected, preserved and maintained in The Foundation's library. It has not been demonstrated that the resources of The Foundation library are the collection of a public library as opposed to a simple accumulation of resources displayed on a website.

79. The Foundation do not incorporate all the features consistent with purpose and functions of a public library. Therefore, this requirement has not been satisfied.

An Institution in Australia

80. The term 'Institution' is not defined in the legislation.
81. The Foundation is established as a public company limited by guarantee with its own Constitution and is endorsed as a charitable institution. The Foundation is endorsed as a public library by the ATO. The Foundation is established and operating in Australia and its collection is available to the public in Australia.
82. It is accepted The Foundation is an institution which has its own ABN, is governed by its own Constitution, rules and operational framework, which governs its objectives and activities.
83. Therefore, this requirement is satisfied. The Commissioner accepts that The Foundation is an institution.

Conclusion

84. The Commissioner is not satisfied that The Foundation is constituted as a public library as a whole. It lacks the required purposes and functions for a public library. The possession, purposes and functions of the digital collection maintained by The Foundation do not incorporate features consistent with those of a public library as stated in TR 2000/10.
85. As The Foundation is not considered to be a public library for the purposes of item 4 of the table in section 30-15 of the ITAA 97 or Subdivision 30-B item 12.1.2 of the table in subsection 30-100(1) of the ITAA 1997, The Foundation does not satisfy the requirements set out in paragraph 30-125(1)(b) being a fund, authority or institution that is described as a DGR category.
86. Therefore, The Foundation is not eligible for DGR endorsement.

Legislation:

Income Tax Assessment Act 1997 section 30-125
Income Tax Assessment Act 1997 section 30-15
Income Tax Assessment Act 1997 subdivision 30-B
Income Tax Assessment Act 1997 section 30-100, Item 12.1.2

ATO view documents:

Taxation Ruling TR 2000/10 Income tax: public libraries, public museums and public art galleries
Taxation Ruling TR 95/27 Income tax: public funds