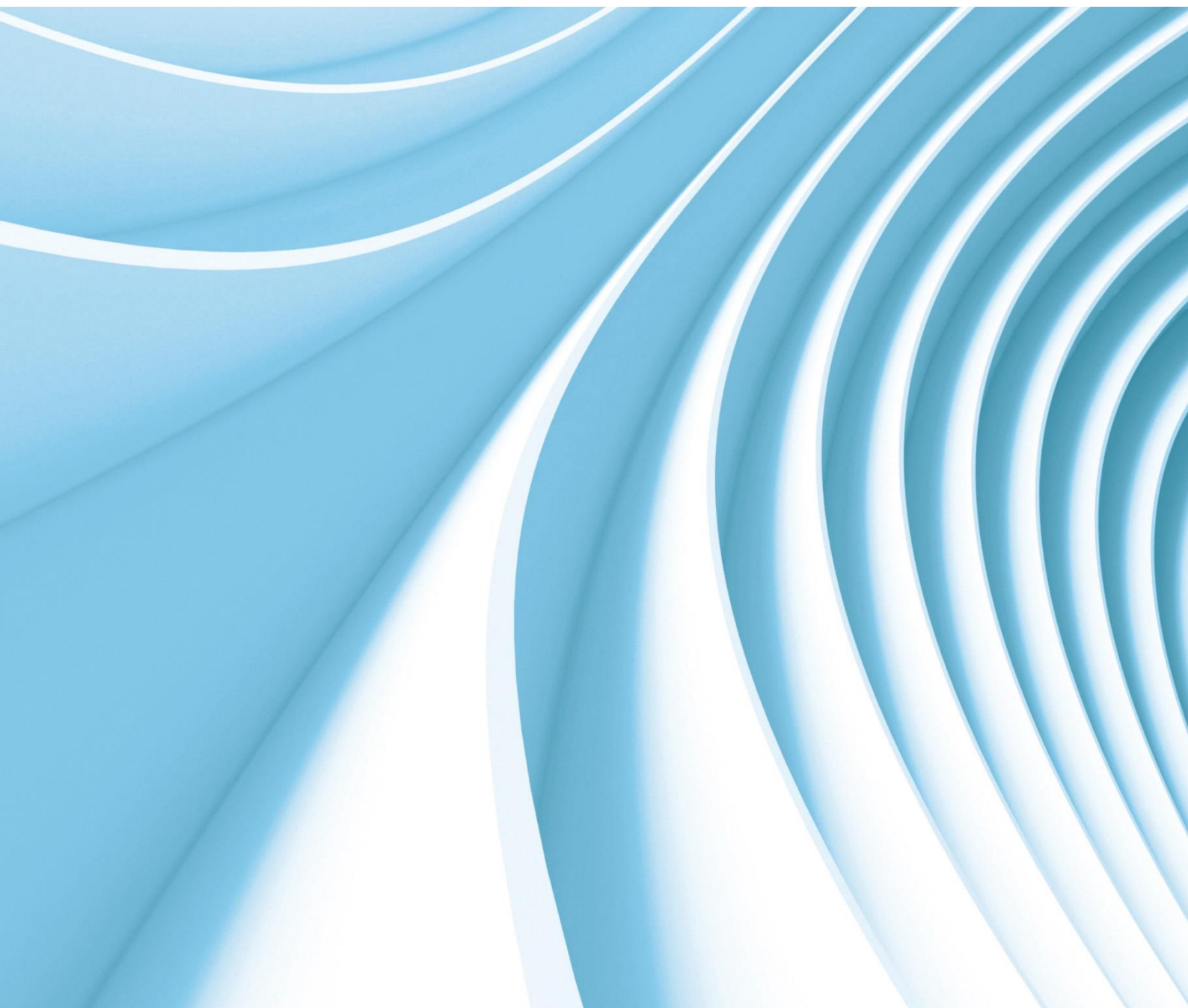




# **Future foundations for giving**

## **Inquiry report**

Overview



**The Productivity Commission acknowledges the Traditional Owners of Country throughout Australia and their continuing connection to land, waters and community. We pay our respects to their Cultures, Country and Elders past and present.**

## **The Productivity Commission**

The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long term interest of the Australian community.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Further information on the Productivity Commission can be obtained from the Commission's website ([www.pc.gov.au](http://www.pc.gov.au)).

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10 May 2024

The Hon Dr Jim Chalmers MP  
Treasurer  
Parliament House  
CANBERRA ACT 2600

Dear Treasurer

In accordance with section 11 of the *Productivity Commission Act 1998*, we have pleasure in submitting to you *Future foundations for giving*, the Commission's final report for the philanthropy inquiry.

Yours sincerely,

Handwritten signature of Alex Robson in black ink.

**Alex Robson**  
Presiding Commissioner

Handwritten signature of Julie Abramson in black ink.

**Julie Abramson**  
Commissioner

Handwritten signature of Krystian Seibert in black ink.

**Krystian Seibert**  
Associate Commissioner

## **Disclosure of interests**

Alex Robson declared that he is a Professor at Griffith University.

Julie Abramson declared her role on the board of a dual sector (vocational education and higher education) institution.

Krystian Seibert declared that he is the Chair of Mental Health First Aid Australia, an Adjunct Industry Fellow at the Centre for Social Impact, Swinburne University of Technology, and a member of the Bachelor of Politics, Philosophy and Economics Advisory Board at Deakin University. Until May 2023, he had a part-time role as the Policy and Regulatory Specialist at Philanthropy Australia.

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Full report can be found at: <https://www.pc.gov.au/inquiries/completed/philanthropy/report>

## **Acknowledgments**

The Commissioners would like to thank those who contributed to this inquiry. They would like to thank the team and acknowledge the Australian Charities and Not-for-profits Commission, the Australian Taxation Office and the Treasury for providing secondees to the team for this inquiry.

The Commission also thanks the Australian Charities and Not-for-profits Commission and the Australian Taxation Office for the data they provided to this inquiry.

# Overview

## Key points

- \* Philanthropy contributes to a better society by providing money, time, skills, assets or lending a voice to people and communities who would otherwise have lower quality outcomes or have less access to goods and services.**

  - Many Australians give money, other assets or their time. Over \$13 billion was donated to charities in Australia in 2021 and 6 million people volunteered in 2022.
  - Philanthropy, particularly volunteering, can help build social capital by contributing to social networks, building trust within communities, and diffusing knowledge and innovations through communities.
  - Philanthropy can also provide untied, flexible or long-term funding for more innovative and riskier projects compared to what government funding can offer.
- \* Philanthropy in Australia is increasing and government policies are supporting this growth. The Productivity Commission's recommendations reinforce the foundations for philanthropy in Australia, so that the benefits of giving can continue to be realised into the future.**
- \* The deductible gift recipient (DGR) system is not fit for purpose and should be reformed.**

  - The arrangements that determine which entities can access DGR status are poorly designed, overly complex and have no coherent policy rationale.
  - All Australian taxpayers co-invest in charities through the DGR system, so reform is needed to simplify the DGR system and direct support to where there is likely to be the greatest net benefits to the community from subsidised philanthropy. If adopted, the Commission's recommendations would mean that more charities overall would be able to access tax-deductible donations.
- \* An independent organisation should be established to strengthen relationships between Aboriginal and Torres Strait Islander organisations and philanthropic networks.**

  - Provisionally called 'Indigenous Philanthropy Connections', it should be led and controlled by Aboriginal and Torres Strait Islander people and be funded by an endowment provided by the Australian Government.
- \* Reforms are needed to enhance the regulatory framework for charities and to support high levels of public trust and confidence in charities now and into the future.**

  - Establishing a National Charity Regulators Forum comprised of Australian, state and territory charity regulators would formalise the regulatory architecture to embed coordination and cooperation.
- \* The Commission has designed policy principles to inform the minimum distribution that ancillary funds are required to make each year to charities for the benefit of the wider community.**

  - Guided by these principles, the Australian Government should set the minimum distribution rate for ancillary funds between 5% and 8%, following further consultation with the philanthropic and charitable sectors.
- \* The Australian Government should create more value for the public from the data collected about charities and giving, including by publishing aggregate information on corporate giving and by requiring listed companies to be more transparent to stakeholders about their giving.**



Philanthropy literally means ‘the love of humanity’. Each day, millions of Australians express this sentiment in practical ways, seeking to improve the wellbeing and resilience of their communities by contributing to causes they care about.

People and organisations give for many reasons. Some are highly personal, such as those associated with a loved one or with their family experiences. Religious traditions and values provide an important source of motivation for many people and shape the ethos of many Australian charities. Other motivations can be broader, such as wanting to ‘give back’ to the community by helping those in need. Access to philanthropic networks and information also shape decisions to give.

Whatever our reasons for giving, Australians give generously. Over \$13 billion was donated to charities in Australia in 2021 and 6 million people volunteered in 2022. In real terms, the Productivity Commission expects giving to increase by \$6.4 billion or 48% by 2030 (box 1).

This once-in-a-generation inquiry comes at a key point in time. While the Australian Government has a goal to double giving by 2030, some of the most important policy settings that would underpin such an increase are not fit for purpose. This report therefore focuses on reforms to build firmer foundations for philanthropy in Australia, so that the benefits of giving can continue to be realised into the future.

The reforms proposed in this report focus on four main areas: improving the system that determines which charities have access to tax-deductible donations; improving access to philanthropic networks for Aboriginal and Torres Strait Islander people; enhancing the regulatory framework for charities and ancillary funds; and improving public information on charities and donations.

Policy choices come with trade-offs. Subsidising philanthropy through tax deductions can encourage giving, but it also means the Government collects less revenue through income tax, which could otherwise be used to fund core government services or fund charities directly. Regulation can provide benefits, but it can impose compliance burdens and require additional resources for regulators. The bottom line is: there is no free lunch.

With this in mind, the Commission developed a framework to assess where there is a role for government to support philanthropy and where policy changes are needed. This assessment was based on the expected benefits and costs to the community of different forms of government involvement in philanthropy. The Commission drew on the perspectives of donors, charities, philanthropic foundations, researchers and governments to analyse policy options to support giving, including their effect on equity and efficiency.

The Commission was informed and guided by the contributions of inquiry participants through 1,611 public submissions, 1,593 brief comments, over 120 consultations, 10 roundtables and 6 days of public hearings, as well as previous government reviews and the academic literature.

### **Box 1 – Trends in giving**

Over \$13 billion was donated to charities in Australia in 2021, an increase of 26% in real terms since 2017. The Commission estimates that total giving to all registered charities will be about \$26.5 billion in 2029-30 if the average nominal growth rate of 7.9% remains.


While the total value of donations has increased over recent decades, a lower proportion of people who have taxable income are giving. In short, fewer people are claiming a tax deduction for giving, but those who do are giving more.

### Box 1 – Trends in giving

Small charities in Australia are heavily reliant on donations (as opposed to government grants or trading activities) and volunteers – charities with revenue under \$250,000 receive about 40% of their total revenue from donations on average. However, donations are concentrated in a small number of large charities. In 2016, the largest 10% of charities (by annual revenue) received 94% of all donations and the 25 largest charities received almost 20% of total donations.

Volunteering is widespread in Australia – more than half of all charities operate without paid staff. However, since 2010, there has been a decline in the formal volunteering rate. The volunteering rate reached a historical high in 2010 at 36% and then fell to 25% in 2020, coinciding with the COVID-19 pandemic. The decline in the formal volunteering rate has coincided with a rise in informal volunteering, where people support non-family members outside their household.

### Different ways people in Australia give

There are three main sources of donations	Donations can be in different forms	Some donors give directly, through giving vehicles, giving groups or platforms
 <b>People</b>	<b>Money and assets</b> In 2021, charities received <b>\$13.4 billion</b> in donations	<b>Giving directly</b> <ul style="list-style-type: none"> <li>• One-off giving</li> <li>• Regular or planned giving</li> </ul>
 <b>Estates</b>	<b>Goods and services</b> 77% of people donate goods each year	<b>Giving vehicles and collective giving</b> <ul style="list-style-type: none"> <li>• Private funds (private ancillary funds, charitable trusts)</li> <li>• Public funds (public ancillary funds, community foundations)</li> <li>• Giving circles</li> </ul>
 <b>Organisations</b>	<b>Time</b> In 2022, <b>about 6 million</b> people formally volunteered	<b>Technologies</b> <ul style="list-style-type: none"> <li>• Matching platforms</li> <li>• Online giving platforms</li> </ul>

## Government’s role in supporting philanthropy

Governments support philanthropy in a variety of ways, including providing financial incentives to donors, providing grants to charities and maintaining a regulatory framework that supports public trust and confidence in charities. Income tax deductions are the main way that the Australian Government encourages giving to charities, but it is not the main way in which governments provide financial support to charities. Together, the Australian, state, territory and local governments provided \$97 billion in 2021 in direct funding to charities through grants and contracts. On average, this is about 50% of revenue for charities.

Policy settings to encourage giving should align with peoples’ motivations, but many of the reasons people give or do not give cannot be influenced by government policy. For example, income and wealth are major determinants of giving – almost half of all tax-deductible donations are made by people who are in the top 1% of income earners. Work and family commitments are the main reason people do not volunteer.






Not all efforts to increase giving depend on government – philanthropic organisations can shape the future of philanthropy and support giving in Australia. While only governments can make changes to regulation or the tax system, philanthropic organisations could, for example, collaborate to fund a public giving campaign.

How, and to what extent, governments support philanthropy should be informed by analysis of the benefits philanthropy creates that governments cannot deliver independently or deliver less effectively or efficiently.

### Philanthropy provides different benefits than government

The funding provided by philanthropy has different benefits (and costs) to government support and can be a complement to, or substitute for, direct government funding (figure 1).

**Figure 1 – The characteristics of government funding and philanthropic funding**

<b>Government funding</b> 	<b>Philanthropic funding</b> 
<ul style="list-style-type: none"> <li>Accountable through democratic processes</li> <li>Scalable</li> <li>Transparent</li> <li>Might attract other funding</li> </ul> 	<ul style="list-style-type: none"> <li>Risk capital</li> <li>Patient capital</li> <li>Can be untied</li> <li>Flexible</li> <li>Responsive</li> </ul> 
<ul style="list-style-type: none"> <li>Inflexible</li> <li>Reporting burden</li> </ul> 	<ul style="list-style-type: none"> <li>Donors may be misaligned with a charity's values</li> <li>Reporting burden</li> </ul> 

Philanthropy can provide funding for activities that the community values and that would otherwise be underfunded or not funded at all due to constraints on governments.

Donors and charities can also have specific skills, relationships or experience working with networks or communities that government does not. These skills and networks may allow donors and charities to achieve better and more valued outcomes at lower cost compared with direct government provision or grant funding. Some types of giving, like volunteering, create indirect benefits for society by contributing to social networks, building social capital within communities, and diffusing knowledge and innovation.

The Maranguka initiative is an example of how a community has been able to build a trusting relationship with philanthropic partners to deliver tangible change in Bourke, New South Wales. The initiative is a First Nations community-led place-based model of justice reinvestment that redirects resources that would be spent on prisons back into the community. Philanthropic funding enabled the community to try innovative approaches that provide positive outcomes for the community.

Inquiry participants commented that philanthropy can also enable innovation by providing ‘patient capital’ through long-term untied funding, which governments often cannot do. For example, it is common for government grants to be linked to short-term funding cycles. Philanthropic funding can have a different risk profile from government funding and can have a greater tolerance for – and even expectation of – failure when trialling new models of service delivery. This can have important positive spillovers for government. Once philanthropy has funded initiatives that have demonstrated success, governments could provide funding on a larger scale and change policy settings more widely.

Philanthropy can also support advocacy that conveys the perspectives of communities, facilitating their input into democratic processes and policy outcomes. This can include expressing views on policy issues that are different from those of the government or the wider public.

The Alannah and Madeline Foundation commented on the value of philanthropy:

The characteristics of the philanthropy dollar in a charity's revenue mix are unique and precious. It is the only social change dollar that can be used as social risk capital: it is free to fund innovation, to pilot, to fail and try again ... diversity and freedom are core to [philanthropy's] success. It is free of government and political agenda and election cycles: it can fund activities and costs that are unattractive or 'out of bounds' to other revenue sources or funders; it can be multi-year and unrestricted in its use. (sub. 47, p. 4)

Like private and government provision, philanthropy can also fail to meet the efficiency and equity goals or expectations of the community. A donor cannot easily observe how their donation has been used and whether this aligns with their intentions. Using subsidised philanthropy to fund goods and services means government has less control over how those public funds are spent, which may be an issue if the interests and preferences of donors are not well aligned with those of the broader community.

The way philanthropic funding is provided is as relevant as the quantity of funding. Philanthropy can be 'practiced' in different ways and the decisions philanthropic organisations make about their funding approaches influence the effectiveness of philanthropy and can contribute to improved outcomes for the wider community. Ensuring that philanthropic practices continue to evolve, where necessary, to meet the changing needs and expectations of charities and the community is an essential part of a thriving philanthropic and charitable sector.

## **The deductible gift recipient system needs major reform**

The deductible gift recipient (DGR) system underpins the Australian Government's financial support of giving in Australia. People who give more than \$2 to an entity with DGR status and have taxable income can claim a 100% tax deduction for their donation. The amount a person can claim as a deduction – and therefore the tax-deductible donations a charity can receive – is uncapped, but it is limited by a taxpayer's marginal tax rate, their taxable income, and their willingness and capacity to give.

The DGR system exists to support certain forms of giving and the work of eligible entities (charities and government entities that conduct charitable-like activities). It seeks to steer donations and other resources toward certain charitable purposes and activities. As such, the DGR system does not cover all charitable activities or all charities – and nor should it.

The design of the tax deduction for giving for individuals provided by the Australian Government has two components – a tax incentive to encourage people to donate and the system that determines which entities can receive tax-deductible donations.

The Commission found that the tax deduction increases giving and does not need to change. The extent to which it increases giving and the extent to which the subsidy flows to charities is not clear due to the difficulties in modelling giving behaviour (box 2). The modelling indicates that increasing the value of the tax deduction over 100% of the amount donated is unlikely to be a cost-effective way of encouraging additional giving.

However, the arrangements that determine which entities can access DGR status are poorly designed, overly complex and have no coherent policy rationale. This creates inefficient, inconsistent and unfair outcomes for charities, donors and the community.

All Australian taxpayers effectively co-invest in charities through the DGR system, so access to tax-deductible donations should:

- be fair, simple and transparent
- direct donations toward charitable activities that are likely to provide the greatest net benefits to the whole community from providing support through tax-deductible donations.

Any policy change that increases giving to entities with DGR status will come with a fiscal cost. Concerns about this trade-off were expressed to the Commission by various inquiry participants, with the South Australian Council of Social Service commenting that ‘tax revenue forgone needs to be a crucial calculation of any proposal to increase philanthropy’ (sub. 83, p. 2).

## **Box 2 – Income tax deductions increase giving**

People may be more likely to give, or decide to give more, if the cost of donating an extra dollar (price of giving) is lowered through a tax deduction or their income increases. The price of giving varies depending on a person’s marginal rate of income tax – the higher a person’s marginal income tax rate, the lower the price of giving due to the tax deduction for giving.

A taxpayer dollar that is used to encourage philanthropy (through a tax deduction) cannot be spent on another government priority, so government must consider the extent to which that dollar encourages additional giving. However, this comparison is only one consideration when assessing a tax deduction for giving because it does not fully account for the costs and benefits of giving or the other uses of that revenue.

The Commission undertook econometric modelling to estimate:

- the price elasticity of giving, which is how people change their giving behaviour in response to changes in tax incentives for giving
- the income elasticity of giving, which is how people change their giving behaviour in response to changes in their own income.

Using two models and several different modelling specifications, the Commission’s estimates fall within the following range if a taxpayer gives \$100 and had disposable income of \$50,000 (holding all other factors constant):

- a 1% decrease in the price of giving increases giving between 48 cents and \$1.67
- a 1% increase in disposable income increases giving between 86 cents and \$1.17.

These estimates indicate that personal income tax deductions and higher incomes are likely to encourage people to donate more. However, there is less certainty about the amount giving increases due to the tax deduction and the cost to government of incentivising an additional dollar of giving. This modelling has limitations and the estimates above are an average across all taxpayers. An explanation of the Commission’s analysis and areas for further work are presented in appendix B.

The Australian Government also incentivises corporate giving through the corporate tax system and these incentives interact with Australia’s dividend imputation system. However, data limitations mean that the Commission has not been able to assess the effect of the tax deduction on corporate giving.

## A fairer and simpler DGR system

The DGR system is not fit for purpose as a mechanism for determining which entities undertaking activities that benefit the community should be able to receive tax-deductible donations from individuals. The scope of the system has evolved in an ad hoc way and it is becoming more complex as new DGR endorsement categories are added in a piecemeal manner.

There is no explicit policy rationale justifying why some charitable activities are within scope, but others are not (box 3). Inquiry participants were concerned about these inconsistencies. For example, the Community Council for Australia commented that ‘the complexity of the current DGR arrangements make it an almost unworkable system, particularly for small charities’ (sub. 218, p. 6).

Specific listing in legislation can be used to gain DGR status for entities that do not neatly or easily fit into a single endorsement category and can be a way to address unforeseen or exceptional circumstances. However, the existing process lacks transparency, is time consuming for charities seeking endorsement and can lead to inconsistent outcomes. Access to decision makers can be an important factor in an entity being specifically listed.

### Box 3 – The scope of DGR coverage is piecemeal and ad hoc

Many participants raised concerns about charitable activities that do not have DGR status.

- Charities that relieve poverty or distress in the community are eligible for DGR status, but charities that focus on prevention face barriers to eligibility.
- The health promotion charity category is available to charities promoting prevention or control of diseases in people and the community, but this does not include prevention of injuries.
- Many smaller grassroots and volunteer-run charities can be ineligible for DGR status, such as community gardens or neighbourhood houses.
- Participants highlighted that certain animal welfare charities are not eligible, particularly those focused on advocacy rather than direct short-term care of animals.

Some charities cannot easily access DGR status because they provide a broad range of support to a group of people or community and therefore do not neatly fit into one DGR endorsement category (as is required under current policy settings). This includes charities that support women, young people, Aboriginal and Torres Strait Islander people and communities, LGBTIQ+ people, or consumers. For example, the principal purpose of environmental organisations with DGR status must be the protection of the natural environment. Marrie and Marrie commented that:

This renders most Indigenous ranger services and “caring for country” organisations ineligible because the objects of their constitutions/rules of incorporation, in keeping with their holistic approach to culture and country, generally include cultural, as well as a range of other purposes, and thus are too broad to satisfy the criteria for an environmental DGR organisation. (2013, p. 4)

Many smaller community-based charities have less capacity to navigate these (and other) complexities.

Reform is needed to simplify the DGR system and refocus it on activities that are likely to generate the greatest net benefits for the community as a whole. This would create fairer and more consistent outcomes for charities, donors and the broader community.

The Commission proposed a comprehensive overhaul of the DGR system applying a principles-based framework to assess and improve the DGR system. This will simplify the current system, reduce the risk of distortions to giving due to different treatment of activities that offer very similar outcomes and provide guidance to underpin its future development. There should be three criteria to determine if a class of charitable activity is within the scope of the DGR system.

- First, there is a rationale for taxpayer support because the activity is expected to generate net community-wide benefits and would otherwise likely be undersupplied.
- Second, there are net benefits from providing government support for the activity through subsidising philanthropy (as opposed to other government funding mechanisms, like grants).
- Third, there is unlikely to be a material risk of converting tax-deductible donations to private benefits for donors.

The Commission assessed each ACNC charity registration subtype against these principles to determine which charity subtypes would be eligible for DGR status. Charities registered under most subtypes would be within the scope of the reshaped, refocused DGR system, including many that are not currently eligible. This would expand access to DGR status to more charities and give donors more choices about which charities they can make tax-deductible donations to.

In practice, making assessments about which classes of charitable activities should be within the scope of the DGR system is challenging, subjective and contestable. The Commission considered the trade-offs, including the fiscal cost involved in expanding the DGR system and, using the principles above, prioritised changes where government support of philanthropy is likely to have the largest net community-wide benefits. The Commission worked to balance the risk of including certain classes of activities in the DGR system (where this may not be warranted), against the risk of excluding certain activities that should be in scope.

In response to the draft report, there was widespread support for expanding DGR status to most classes of charitable activities. Many participants also expressed significant concerns that DGR status would be withdrawn from some classes of charitable activities (school building funds, and religious and ethics education in government schools) and not extended to charities with the sole purpose of advancing religion.

### **A more diverse set of charities would have DGR status**





While simplicity, efficiency and fairness are the primary goals of the Commission's proposed reforms, one of the expected effects would be to make the set of charities with DGR status more diverse.

It is expected that the number of charities with DGR status would increase from about 25,000 charities to somewhere in the range of 30,000 to 40,000 charities.

Most charities that currently have DGR status would be largely unaffected by the proposed reforms (figure 2). For example, almost half of charities that currently have DGR status are public benevolent institutions and these charities would be unaffected.

The reforms would expand access to DGR status for many charities, including those that provide small-scale benevolent relief activities (but are not registered as public benevolent institutions). The reforms would also expand access to DGR status for charities that prevent disadvantage, charities that promote human rights or reconciliation, animal welfare charities, charities focused on injury prevention, and public interest journalism. Charities undertaking advocacy activities in furtherance of other included charitable purposes would also become eligible for DGR status, such as social welfare and human rights organisations that advocate for policy change.

**Figure 2 – Likely outcomes for charities from reforming the DGR system**

The status quo is maintained for ...	Changes to DGR status for ...
<p><b>charities retaining DGR status</b></p> <ul style="list-style-type: none"> <li>• Most charities that currently <b>do</b> have DGR status, including public benevolent institutions, health promotion charities, animal welfare, environmental, cultural and formal higher education charities.</li> <li>• More than <b>20,000</b> charities are in this group.</li> </ul> 	<p><b>charities gaining DGR status</b></p> <ul style="list-style-type: none"> <li>• Charities that currently <b>do not</b> have DGR status, such as those focused on advocacy and prevention, a wider range of animal welfare charities and many charities run solely by volunteers.</li> <li>• An estimated <b>10,000 to 20,000</b> charities could gain DGR status.</li> </ul> 
<p><b>charities not gaining DGR status</b></p> <ul style="list-style-type: none"> <li>• Charities undertaking activities for advancing religion and advancing industry, as well as some aged care, early childhood education and care, and other education activities.</li> <li>• About <b>15,000 to 20,000</b> charities are in this group.</li> </ul> 	<p><b>charities with DGR status withdrawn</b></p> <ul style="list-style-type: none"> <li>• Mainly charities that have DGR status for school building funds or to provide religious and ethics education in government schools.</li> <li>• Fewer than <b>5,000</b> charities are in this group.</li> </ul> 

Charities that pursue multiple eligible purposes would also find it easier to access DGR status because eligible entities would only need one DGR endorsement from the Australian Taxation Office (ATO), which would cover all eligible activities. This would assist charities that support groups of people rather than a single activity. For example, charities that support women, young people, Aboriginal and Torres Strait Islander people and communities, LGBTIQ+ people, or consumers. Community foundations – giving structures controlled and managed by members of the community to support local needs – would no longer need specific listing to access DGR status under the Commission’s proposed reforms.

The proposed reforms would also make it simpler for grassroots and smaller charities to access DGR status if, for example, they have not had the resources to establish a public benevolent institution. This would include neighbourhood houses, community gardens and many charities that are dependent on volunteers and have few or no paid staff. To illustrate, the Commission estimates that only a third of charities wholly dependent on volunteers have DGR status and about 6,000 additional volunteer-run charities would have easier access to DGR status under the Commission’s proposed reforms.

**Most, but not all charities, would have DGR status**

There are some classes of charitable activities where exclusions are warranted so that taxpayer support is directed to where the net community-wide benefits are expected to be largest from support through tax deductibility for donations (figure 2). These activities provide public benefits, but the Commission does not



consider that additional support for these activities through the DGR system is warranted. These charities would continue to be eligible for income and other tax exemptions they currently are entitled to.

Withdrawing DGR status from some activities means that donations directed to those charitable activities would no longer be tax deductible, but donors could continue to provide support through non-tax-deductible donations.

### **School education should be funded outside the DGR system**

Most school education activities are already outside the scope of the DGR system, except when provided by public benevolent institutions or for school infrastructure, libraries and scholarships.

School education is a priority for governments and there are sound economic and social reasons for government support. Reflecting this, extensive government funding is provided outside the DGR system. For these services, tax-deductible donations are not the best mechanism for allocating government support to where it is needed. Government funding provided through tax-deductible donations would not be allocated on the basis of need, or even on a universal basis. Rather, because donations from people in higher marginal tax brackets receive a larger tax deduction, it would provide higher levels of indirect government support to schools servicing communities with a greater capacity to donate.

The Commission has similar concerns about school building funds. Tax-deductible donations are unlikely to be the best mechanism for allocating government support for school infrastructure. Of those primary and secondary non-government schools that receive donations for school building funds, half of these schools receive about 95% of the donations.

In addition, there is the potential for a donor to be able to directly or indirectly convert a tax-deductible donation into a private benefit. Potential donors are most likely to be people directly involved with the school and benefit directly from donations, such as students, their parents or alumni. Evidence from participants is that the share of parent contributions relative to those from alumni and other donors vary widely. The transaction here is closer to a market exchange of donations for lower fees and this could incentivise recipients to make tax-deductible donations to lower the non-tax-deductible price they are charged for the good or service. In these circumstances, it is unlikely that including school building funds or school education in general within the scope of the DGR system would provide net community benefits.

Many participants argued that parents and students do not gain a private benefit from donations to school building funds because fees are not reduced in an explicit *quid pro quo* or because the lead times for infrastructure mean that new facilities would be used by future students. However, there is little doubt that substitution – broadly defined – between donations and fees does occur. Indeed, many participants responded to the draft report by stating that withdrawal of DGR status for school building funds would create upwards pressure on costs for parents.

School building funds for primary and secondary schools and religious education would be the main entities that would no longer be eligible for DGR status under the Commission's proposals. There are currently about 5,000 DGR endorsements for school building funds. Of these, three-quarters are charities and the remaining quarter are government entities, such as public schools. Transitional arrangements would be required so that schools can adjust (described below).

Most other classes of activities in the education charitable subtype, including formal higher education and research activities, would remain within the scope of the DGR system.

Consistent with the overarching rationales for government support for school education, the Commission is proposing that charities should be able to obtain DGR status for activities that have an explicit equity objective. Any classes of activities currently carried out through a public benevolent institution, including the

provision of school education, *would continue* to be eligible for DGR status. For example, many non-government schools in remote Aboriginal and Torres Strait Islander communities currently have DGR status as public benevolent institutions and this would remain under the Commission's proposed reforms. This would also expand coverage to charities in the education subtype for activities that are analogous to those undertaken by public benevolent institutions.

Other classes of charitable activities with substantial risks of donors converting tax-deductible donations into a substantial private benefit are already outside the DGR system. These arrangements would not be changed. Specifically, extending DGR status to industry bodies, as well as aged care and early childhood education and care, is not warranted. However, any classes of activities currently carried out through a public benevolent institution *would continue* to be eligible for DGR status.

### **No strong case for government support of activities which have the sole purpose of advancing religion through the DGR system**

Religious organisations play an important role in many people's lives and communities across Australia. Religious faith and values can also provide important inspiration for undertaking a range of charitable activities. For some people, undertaking activities such as helping those in need is how they put into practice their religious beliefs and values within the community.

For the purposes of the DGR system, it is important to distinguish between two broad kinds of valuable activities that religious organisations undertake:

- activities that help people in need – which are a core tenet of most, if not all – religious faiths
- activities that have the sole purpose of advancing religion.

On the first category, the Commission's recommended reform of the DGR system will make it easier for religious-based charities to access DGR status for their other eligible charitable activities. This could include activities for the purpose of advancing social welfare that are guided by a religious ethos, such as local community outreach to provide emergency food and accommodation to those in need. Religious-based charities could also access DGR status for activities for the purposes of advancing reconciliation or human rights. Activities for these purposes could include promoting religious tolerance and advocating for religious freedoms.

On the second category, charities that have the sole purpose of advancing religion are largely excluded under the current DGR system. The Commission does not see a case for expanding the DGR system to cover these charities. While religious practice provides benefits to the community, it is unlikely to be unsupplied in a way that would warrant additional support via the DGR system.

Religious education activities (other than those classified as formal higher education) should also be specifically excluded from the DGR system. Not doing so would risk creating an inconsistent approach to how activities related to advancing religion (and activities for advancing education) would be treated under the Commission's proposed reforms. In addition to the removal of access to DGR status for school building funds for religious education purposes, an implication of this proposal is that DGR status for religious education (as well as alternative ethics education) in government schools would be withdrawn. While the organisations with these DGR endorsements provide important services to the community, the way they operate and the costs they incur in doing so are largely driven by state and territory government policies and priorities, and may be more appropriately funded by those governments, rather than by the Australian Government via the DGR system.

Under the Commission's proposed reforms, a charity undertaking a combination of excluded and non-excluded activities could still apply for DGR status, with a 'gift fund' used to ensure that tax-deductible donations are only directed toward non-excluded activities, as currently occurs. This would provide some flexibility for charities, while maintaining simplicity. For example, charities (such as religious organisations)

that undertake excluded activities (advancing religion) would still be eligible for DGR status for any non-excluded charitable activities they undertake (for example, advancing social and public welfare services) using gift fund arrangements.

### **Transition arrangements are needed, but the fiscal cost is likely to be modest**

Transition arrangements for implementing the proposed reforms to the DGR system are necessary. There should be a five-year transition for charities that would no longer have DGR status to adjust their fundraising activities. There should also be a further period to use those donations for their intended purposes. Given the long lead times that can apply to the use of donations for capital works, it would be unduly restrictive to require these funds to be used within the five-year transition period.

Where DGR status is withdrawn from school building funds and religious and ethics education in government schools, alternative government funding arrangements should be put in place.

The intent of the proposed DGR reforms is not to reduce government support for infrastructure in primary and secondary schools. The Australian Government should consider alternative, better arrangements as part of a broader consideration of school funding arrangements.

In the case of the withdrawal of DGR status for religious education or ethics in government schools, state and territory governments could consider providing funding or other assistance to support approved providers to comply with the obligations those governments impose on these school programs. It would be up to those governments to determine the form of that support – matched grant funding could be one approach if those governments wish to maintain incentives for giving as part of the funding allocation design.

While there is expected to be a significant increase in the number of charities that become eligible for DGR status under the proposed reforms, the effects on the overall level of giving are expected to be relatively modest, noting that this is difficult to predict with certainty. This is because charities with DGR status already receive about 80% of total giving to charities. The number of charities with DGR status would increase by between 5,000 and 15,000 – many of the charities entering the DGR system would be relatively small. Although small charities rely heavily on donations, most donations go to large charities. This means that even if donations to small charities with newly acquired DGR status increased substantially, this would likely only have a small effect on the total amount given to all charities.

In the medium term, the Commission estimated the net fiscal cost of the proposed reforms would be about \$70 million each year. However, there is substantial uncertainty about this estimate as it is difficult to anticipate behavioural responses.

## **Improve access to philanthropy for Aboriginal and Torres Strait Islander people**

Philanthropy can and should support the goals and ambitions of Aboriginal and Torres Strait Islander people and communities. Initiatives led by Aboriginal and Torres Strait Islander people have enabled Aboriginal and Torres Strait Islander communities to build effective partnerships with philanthropy and provide grant funding for projects or geographical areas (for example, Koondie Woonga-gat Toor-rong, the First Peoples' Assembly of Victoria's Self-Determination Fund, Community First Development, and First Nations Futures).

There is an opportunity for more Aboriginal and Torres Strait Islander communities to further their goals and ambitions through philanthropic funding and networks. However, the Commission heard that some Aboriginal and Torres Strait Islander organisations may be less willing to receive philanthropic funding or interact and

engage with philanthropists who, in their view, 'obtained their wealth at the detriment of First Nations people' (Jumbunna Institute for Indigenous Education and Research, pers. comm., 3 October 2023).

Other Aboriginal and Torres Strait Islander organisations that would like to access philanthropic networks and funding have found the approaches of some philanthropic donors may create barriers for Aboriginal and Torres Strait Islander people and communities to access philanthropic funding. For example, a report by the Centre for Social Impact and the Jumbunna Institute (2023, p. 16) included the following perspective:

The philanthropic space is a very elitist and exclusive 'club' that makes it difficult for people without the right connections or right backgrounds to enter.

Strengthening the capacity of Aboriginal and Torres Strait Islander organisations to access philanthropic networks, where doing so aligns with the values and interests of those organisations, would potentially contribute to government policy commitments to Aboriginal and Torres Strait Islander people under the National Agreement on Closing the Gap. These include supporting a stronger community-controlled sector and building and strengthening structures that empower Aboriginal and Torres Strait Islander people to share decision-making authority.

The Commission recommends the Australian Government provide funding to support the establishment of a new organisation, provisionally called Indigenous Philanthropy Connections. The goals of Indigenous Philanthropy Connections should be to strengthen the capacity of:

- non-Indigenous philanthropic organisations to be more culturally safe and effective in their work with Aboriginal and Torres Strait Islander organisations
- Aboriginal and Torres Strait Islander organisations to build relationships and partnerships with philanthropic and volunteering networks
- Aboriginal and Torres Strait Islander communities by supporting the establishment and growth of new and existing Aboriginal and Torres Strait Islander philanthropic organisations.

It should not replicate or replace work already being done by Aboriginal and Torres Strait Islander organisations to improve access to philanthropy. To achieve these objectives, the detailed design of Indigenous Philanthropy Connections' remit and governance structure should be led by, and subject to further engagement with, Aboriginal and Torres Strait Islander people.

Establishing Indigenous Philanthropy Connections would not lessen the responsibility of governments to strengthen outcomes for Aboriginal and Torres Strait Islander people and communities.

Extensive engagement has informed this recommendation and it has been reshaped between the draft and final report based on the feedback from Aboriginal and Torres Strait Islander inquiry participants.

Indigenous Philanthropy Connections should operate for the benefit of Aboriginal and Torres Strait Islander people, led by a board comprised of a majority of Aboriginal and Torres Strait Islander people. The Government should provide lump-sum funding for an endowment and the Indigenous Philanthropy Connections board could choose to seek additional contributions to the endowment from philanthropic funders. The Australian Government endowment should be large enough to ensure that Indigenous Philanthropy Connections is financially sustainable and independent, without the need to seek further funding from either government or philanthropic organisations.

Appropriate governance arrangements will be necessary to ensure that its functions do not duplicate the roles and responsibilities of other bodies, including government agencies. Indigenous Philanthropy Connections would report on the outcomes of its activities and its impact should be independently evaluated after 10 years of operation.

## Regulatory arrangements that support donor confidence

Effective and proportionate regulation of charities is essential to maintain the trust and confidence of donors, taxpayers and the beneficiaries of the goods and services that are provided by charities. Regulators should have a sufficient range of enforcement tools to adopt a graduated, risk-based approach to regulation and enable proportionate responses to misconduct.

Donors (as well as regulators) are largely unable to observe whether charities use donations for their intended purposes. While most charities take their obligations to donors, the public and governments seriously and act within the law, well-designed regulation can give the community confidence that funds are being used for charitable purposes. This can influence whether a person will donate and how much they donate.

Effective regulation is also essential due to the scale of funding charities receive from governments and donors to support their work in the community. In 2021, charities received \$190 billion in revenue – largely from government grants and contracts, selling goods and services, and donations. The net assets of charities were \$281 billion in 2021, almost 32% larger than in 2017.

The regulatory framework for charities has sound foundations, but the presence of multiple regulators creates inconsistencies, confusion and unnecessary regulatory burden. Strengthening the ACNC's information gathering powers, and embedding coordination and cooperation through formalised regulatory architecture would improve the regulation of Australian charities. While some reform is needed, the analysis presented in this inquiry should not be interpreted as suggesting the Commission found or is concerned about widespread non-compliance in the charitable sector.

## Reforms to the Australian Charities and Not-for-profits Commission

Charities are subject to oversight from multiple national, state and territory regulators, each with their own institutional arrangements, responsibilities, powers, priorities and resources. The Australian Charities and Not-for-profits Commission (ACNC) is the national charities regulator. However, regulatory oversight is not consolidated at the national level because the Australian Parliament does not have the constitutional power to generally legislate for charities or the full range of structures a charity can adopt. Two effects of this are:

- charities found to have engaged in the same kind of misconduct can face different regulatory consequences
- the full scope of the ACNC's regulatory powers is limited to a small proportion of charities characterised as 'federally regulated entities' and charities that operate outside Australia.

A referral of powers by state parliaments is likely to be the best approach to address the constitutional limitations of the ACNC, but that would involve significant implementation challenges and costs. Variation across jurisdictions may still occur if some states decline to refer a matter to the Australian Parliament.

Given this, the Commission proposed a suite of recommendations that build on the existing collaborative approach to charities regulation that would strengthen the ACNC's information gathering powers and are proportionate to current and foreseeable risks. The Commission's recommendations include enabling the ACNC to:

- require a charity to provide information necessary to form an opinion on whether it is a 'federally regulated entity'
- require a charity undergoing revocation of its ACNC registration to evidence the distribution of its net assets to an eligible entity, unless the ACNC Commissioner waives that requirement
- have standing so it can seek orders in the Supreme Courts of all jurisdictions, where necessary, to protect charitable assets.

There are also technical issues in charities law that require further examination. In consultation with the Standing Council of Attorneys-General, the Australian Attorney-General should refer an inquiry to the Australian Law Reform Commission to examine:

- the scope and coverage of Australian, state and territory charities laws focused on opportunities to simplify and harmonise laws across jurisdictions
- the roles and responsibilities of state and territory Attorneys-General and other relevant regulators in relation to the oversight of charities, including charitable trusts.

As the behaviour of donors and charities evolves, a referral of powers may need further consideration by governments, should it become apparent that the current sharing of responsibilities for charities regulation is not sufficient.

A sound regulatory framework will only promote trust and confidence in the charitable sector if the ACNC exercises its powers when the need arises. ACNC data suggests that it has made limited use of its formal enforcement powers. The Commission was not asked to assess the effectiveness of the ACNC as a regulator and acknowledges there are several explanations for why the ACNC may not have used its formal enforcement powers more routinely. As the ACNC progresses through its second decade of operation, it may have greater ability to assume a more assertive enforcement and compliance posture, where necessary, to support trust and confidence in the charitable sector.

The role, powers and functions of the ACNC would be expanded if these recommendations were adopted. The reforms the Commission is proposing to strengthen the ACNC are more likely to be successful if the ACNC is able – and resourced – to adopt a more assertive regulatory posture, while retaining its emphasis on supporting charities to meet their obligations through education and guidance.

## **A national, cooperative approach to charities regulation**

Most charities act with integrity and seek to comply with their regulatory obligations. However, when there is misconduct, those adversely affected, including the public, expect proportionate action to be taken by regulators or law enforcement agencies against those responsible. The roles, responsibilities and interactions between relevant regulators should be clear so the public knows where to turn if there is actual or alleged misconduct by a charity.

Regulators of the charitable sector frequently collaborate. For example, some regulators have memorandums of understanding in place to clarify the circumstances in which they will work together or share information. The Commission did not hear evidence that arrangements between regulators to deal with misconduct are inadequate and the current level of cooperation is encouraging. Rather, it is a question of whether those arrangements would be sufficiently robust in the event of major or systemic misconduct that requires clear lines of responsibility and coordination to protect public trust and confidence in the sector.

In the Commission's view, a more formal and comprehensive approach is needed to embed coordination and cooperation amongst regulators given the complexity of the regulatory system and the limits of the ACNC's enforcement powers. This would represent a shift toward a 'joint stewardship' approach to charities regulation, which recognises that charities regulation in Australia is implemented through a network of regulators at different levels of government. The ACNC has a key role within this network, but state and territory regulators and Attorneys-General also have significant responsibilities.

Establishing a National Charity Regulators Forum (Forum) would build the necessary regulatory architecture for this network of regulators. It would clarify roles and responsibilities, facilitate closer collaboration and information sharing, progress charities law and regulation reform, support the identification and management of regulatory risks, and enable coordination of responses in the event of large-scale misconduct. Other regulatory

forums, such as the Council of Financial Regulators, would serve as a useful model. The terms of reference and governance arrangements for the Forum should be set out in an intergovernmental agreement.

State and territory governments are working to progress reforms to fundraising authorisation and nationally-harmonised fundraising conduct requirements to reduce regulatory burden for charities. It is important that these reforms are fully delivered. The Council on Federal Financial Regulators, which agreed to these reforms, should commission an independent review of outcomes of the fundraising harmonisation process and options to maintain regulatory consistency over time within 12 months of the tabling of this report in Parliament. This review and the response from the Council on Federal Financial Relations should be made public.

## **Enhancing transparency and regulatory consistency**

To enhance regulatory consistency and public transparency, the Commission is also proposing to remove the concept of a basic religious charity and associated exemptions, so that all charities are subject to the same ACNC regulatory framework, including principles-based governance standards and financial reporting requirements proportionate to their size.

Most basic religious charities are small and like other small charities would only be required to provide basic annual financial information to the ACNC, without having it independently audited or reviewed. It would also mean the ACNC would be able to act in response to an actual or likely breach of its governance standards by a basic religious charity.

Participants had mixed views on whether additional reporting requirements for some religious charities were unduly burdensome and whether they could contravene the free exercise of religion under the Australian Constitution or Australia's obligations under international law.

Based on evidence from submissions, consultations and analysis of relevant judicial decisions the Commission's view is that removing the concept of a basic religious charity and related exemptions from ACNC legislation would, on its face, comply with section 116 of the Constitution.

## **Minimising unnecessary regulatory barriers to volunteering**

Volunteering is widespread in Australia and volunteers may be subject to a range of screening checks to determine whether they pose a risk to the people they work with. The benefits of screening checks are well established and they help to protect beneficiaries, including people who may be at-risk or vulnerable, from those who may cause them harm.

Inquiry participants expressed concern about unnecessary duplication – between different types of screening checks and across jurisdictions – and the costs this creates for volunteers and charities. For example, Volunteering WA (sub. 64, p. 6) submitted that 'volunteer screening is the most frequently cited barrier and administrative burden on the sector'.

Some work is underway to progress working with children checks reforms as part of a national strategy for preventing and responding to child sexual abuse. However, this work is limited to one type of check and does not consider the implications of government policies affecting volunteer participation more broadly.

The Commission proposed that governments explicitly consider how changes to policies and programs affect volunteers. Governments should, for example, consider from the outset how major reforms (such as the NDIS) may affect the need for – and availability of – volunteers (like in the disability sector) and what steps could be taken to support or 'crowd in' volunteer contributions, rather than crowding them out. For example, the effects of policy changes on volunteers could be included in regulatory impact analysis processes.

## Structured giving vehicles could be enhanced

Just as people's motivations for giving vary, *how* people give also reflects their personal preferences and circumstances. Some people adopt a longer-term approach to giving by using structures that allow them to commit to giving in the future, either as a once-off gift (such as a charitable bequest) or through regular distributions, including through structures such as ancillary funds.

Ancillary funds are trusts established for the purpose of providing money, property or benefits to eligible entities with DGR status, where donors receive a tax deduction for donations into the fund (box 4).

### Box 4 – What are public and private ancillary funds?

Private ancillary funds are trusts established for private philanthropic giving and are largely used by family groups or businesses.

Public ancillary funds are trusts that collect donations from the public and are typically used by community and corporate foundations, wealth management providers, and as fundraising vehicles. A 'sub-fund' in a public ancillary fund can be used instead of a private ancillary fund.

There are exceptions for the first years of operation, but in general, public ancillary funds must distribute the greater of 4% of net assets or \$8,800 each year and private ancillary funds must distribute the greater of 5% of net assets or \$11,000 each year.

## The benefits of ancillary funds to the community could be bolstered

Government policy encouraging the formation of private ancillary funds has coincided with a noticeable increase in individual giving. Giving into private and public ancillary funds has grown both in value (from \$692 million in 2011-12 to \$2.4 billion in 2020-21) and as a share of giving by individuals (donations to private ancillary funds have grown from 15% to 27% of individual giving). As a result, ancillary funds have accumulated a pool of net assets that has grown from \$4.6 billion in 2011-12 to \$16.4 billion in 2020-21.

By design, ancillary funds can create a timing gap between the initial act of a person or family donating into the fund, and the point or points in time when money is distributed from the fund to eligible entities with DGR status. This means there can also be a gap between the revenue cost from income tax deductions for the donations and the flow of benefits to the community.

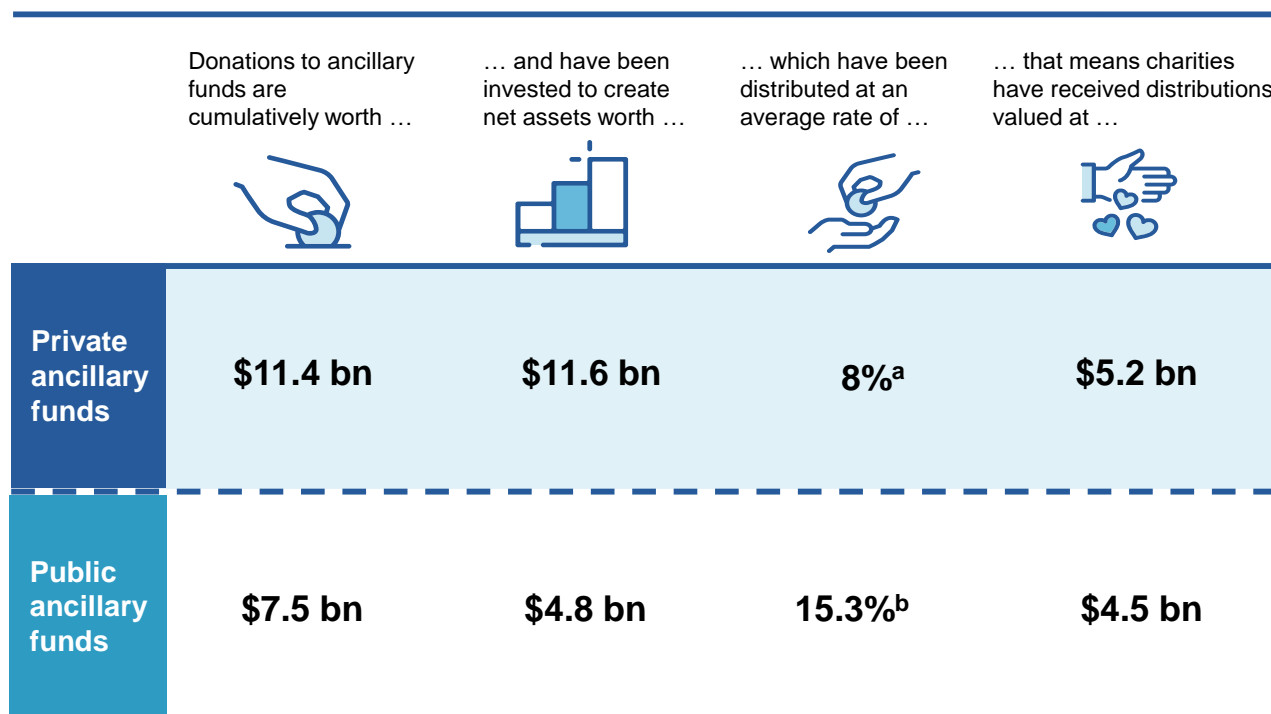
This upfront revenue cost is offset by larger amounts of distributions flowing to the community (figure 3). The point in time that this happens depends on many factors, including:

- how much and how frequently people give into a fund
- the earnings of the fund and administration costs
- the preferences of donors providing, and charities receiving, funds now or later (the discount rate).

Ancillary funds must make a minimum distribution to eligible charities each year (box 4). The minimum distribution rate is the main policy lever available to the Government to ensure a reasonable and steady flow of funds to charities from ancillary funds for the benefit of the wider community.



**Figure 3 – Pathway of ancillary fund donations reaching beneficiaries**



**a.** Private ancillary funds is cumulative total from 2000-01 to 2020-21. The distribution rate is the average rate for 2011-12 to 2020-21. **b.** Public ancillary funds is cumulative total from 2011-12 to 2020-21 due to data availability.

Analysis conducted by the Commission on a sample of private ancillary fund data found that of the approximately 50% of private ancillary funds that distributed 5%–6% of their net assets in 2020-21, 66% of these private ancillary funds distributed between 5%–6% every year between 2017-18 and 2020-21. This suggests that for a significant proportion of funds, the minimum distribution rate is a consistent binding constraint.

Currently, there is no explicit or widely held rationale or principles-based framework that explains the minimum distribution rates for ancillary funds. The Commission has identified three principles to determine the minimum distribution rate for ancillary funds and other supporting regulation.

- Ancillary funds should operate for the purpose of supporting entities with DGR status to further their charitable purposes and provide benefit to the community.
- The minimum distribute rate should be set to facilitate the desire of some ancillary funds to operate in perpetuity without *guaranteeing* that all ancillary funds do so or incentivising that particular outcome.
- The minimum distribution rate should be appropriately targeted so that charities receive funding when they need it most.

Determining the minimum distribution rate should be informed by policy principles, and the available data on the behaviour of donors and preferences of charities. However, choosing a rate entails trade-offs and is subject to a degree of judgement.

To illustrate, if the distribution rate for private ancillary funds increased from 5% to 6%, about an extra \$60 million would be expected to flow to the community each year. For public ancillary funds, if the distribution rate increased from 4% to 5%, an extra \$5 million would be expected to flow to the community each year. However, the trade-off would be that less money would be available to distribute from these funds in the future.

The Commission recommends that the Australian Government should set the minimum distribution rate at between 5% and 8% for ancillary funds. The exact rate should be based on the Government’s assessment of

the trade-off between distributions to charities now versus the future, potential impacts of future inflows into ancillary funds and further consultation with the philanthropic and charitable sectors.

There should be a five-year period before any new rate applies to allow existing ancillary funds to make any necessary changes to their investment strategies. Going forward, the minimum distribution rate should be reviewed every 10 to 15 years to decide whether the rate should be adjusted, informed by the views of ancillary funds and charities.

In addition, ancillary funds should be required to develop and maintain a 'distribution strategy'. Individual ancillary funds would determine the content of their strategy, prompting them to think about how they provide support for charities. Distribution strategies could include the causes funds give to, the ways they provide support and how they evaluate their own effectiveness.

The Commission also recommends greater flexibility around ancillary fund distribution rates, by smoothing the distribution rate over a period of up to three years, subject to some conditions that would ensure the distributions are at least equal to (or higher than) the amount that would have otherwise been required under the minimum distribution rate. To improve the transparency of ancillary funds, the Commission recommends the ATO publish additional aggregate information on distributions by ancillary funds, including information on sub-funds within public ancillary funds.

## **No case to change taxation of superannuation charitable bequests**

While it is currently possible to provide a bequest from superannuation to a charity, the arrangements are relatively complex. The restrictions on who can receive benefits from superannuation after someone has passed away means that if someone wishes to leave excess superannuation to a charity directly (their superannuation death benefit), they must complete a binding death nomination directing funds to be distributed to their estate. They must then specify in their will the amount or percentage of their estate to be donated to charity.

The Commission agrees in principle with the arguments put forward by participants that it should be as simple as possible to make a bequest to a charity, including from superannuation. However, it is essential that any new arrangements are consistent with the purpose of superannuation, including the sole purpose test – which requires superannuation funds to be maintained solely for the provision of retirement benefits or death benefits – and any legislated objective of superannuation. For these reasons, simplifying the process for making a bequest to charity from superannuation would be best progressed as part of wider reforms to the binding death nomination process.

The Commission does not agree with the case for greater tax concessions for bequests from excess superannuation. The current tax arrangements for superannuation treat a donation to a charity in the same way as a payment to any other non-dependant beneficiary. Superannuation is concessionally taxed throughout its life cycle, so adding further concessions at the time of death may be a relatively costly way (in terms of any increase in giving per dollar of revenue forgone) for the Australian Government to incentivise giving.

## **Supporting donor choice and public accountability**

While markets are characterised by exchanges between a buyer and seller of a good or service, philanthropy does not involve such an exchange and donors do not expect to receive a financial or other direct benefit in return for their donation. In conventional markets, prices convey information to producers and consumers regarding changes in preferences, opportunity costs and relative scarcity. The absence of price signals in the

market for charitable donations means that other sources of information tend to play a greater role to inform decision making by donors and charities.

It can be difficult for donors to navigate which charities align with their preferences and motivations to give. Charities have strong incentives to publish information that could attract donations or volunteers, or promote the sector, but may be less likely to publish information that does not benefit them directly. This means that governments have a role in providing the public with reliable information based on data they collect from charities to achieve their policy and regulatory goals. This information can inform people's decisions about whether and how to give, as well as promote trust and confidence in the charitable sector.

## **Improving information that is available to donors and the public**

The Commission is proposing that the ACNC enhance information on charities and giving for donors and the public by:

- collecting and presenting data in ways that are more meaningful and accessible to donors and the wider public
- raising public awareness of the ACNC charity register.

There is scope to enhance the ACNC charity register. For example, the Commission heard that DGR status is an important consideration when donors are deciding whether to support a charity and this information should be included on the register.

Evaluations enable charities to better understand what initiatives work, why, when and for whom. However, the benefits of governments requiring charities to make standardised effectiveness evaluations publicly available is unlikely to outweigh the costs and risks. The Commission also found that administrative expenses are not an accurate reflection of a charity's performance and should not be over-emphasised by donors and other stakeholders. Work is underway within the charitable sector to change narratives about these expenses.

## **Enhancing public data on giving, including volunteering**

There is little detailed public information on giving, aside from tax-deductible donations by individuals. Better public information about giving could help policy development and could increase giving by making it more visible. But collecting additional information also creates costs and other practical barriers that must be considered.

The transparency of corporate giving and accountability to shareholders, consumers, employees and the broader public could be increased by requiring listed companies to publicly report itemised information on their donations of money, goods and time to entities that have DGR status. Additionally, the ATO should require listed companies to report charitable donations of money and assets as an item in their company tax return, allowing the ATO to regularly publish aggregated data on corporate giving.

The ABS should be resourced to gather data on informal volunteering and time spent in formal and informal volunteering in the Census and annually through a survey such as the General Social Survey. In instances where volunteering has different cultural meanings, the ABS should also develop methodologies to reduce underreporting of volunteering by Aboriginal and Torres Strait Islander communities and culturally and linguistically diverse communities, in consultation with these communities.



# Recommendations and findings

## Chapter 3: Philanthropy in Australia



### Finding 3.1

#### Rising income and wealth are the major reasons behind rising tax-deductible donations

Tax-deductible donations by individuals made directly to charities have increased in value, but fewer people are making such donations. From 2000-01 to 2020-21, tax-deductible donations tripled (in real terms) despite the number of taxpayers increasing by only 38%. The available evidence indicates that this coincided with individuals' financial capacity to donate increasing.

The Australian Government also made policy changes that provided additional or more flexible financial incentives to give, which likely also played a role in increasing giving. Giving into private and public ancillary funds has grown in value (from \$692 million in 2011-12 to \$2.4 billion in 2020-21). The relative importance of private ancillary funds has also grown from 15% to 27% of individual giving.



### Finding 3.2

#### Volunteering is widespread in Australia, but the formal volunteering rate has declined

In 2022, about one in four people in Australia (about 6 million people) volunteered for an organisation. Nearly twice as many people volunteered informally (that is, assisting people other than family members, outside of the context of an organisation or group).

However, the formal volunteering rate fell from 36% in 2010 to 25% in 2020. Data indicates that by 2022, the volunteering rate had recovered slightly to 26.7% following the COVID-19 pandemic.

These figures likely understate total volunteering given official data sources use language and definitions that may result in underreporting of such giving because of different cultural meanings of volunteering.



### Finding 3.3

#### People give or do not give for a range of personal reasons

People give for a range of complex and multifaceted reasons that can change over time. Specific events can also prompt people to give. Common patterns of giving behaviour include:

- people affected by natural disasters are likely to donate more to help others in their own community
- some people with high net worth use giving vehicles (such as ancillary funds or trusts) to connect with family through giving, to leave a legacy or to teach skills to the next generation
- many businesses use high-visibility giving, including pro bono work, to bolster their corporate reputation, and to attract and retain employees and customers.

People choose not to give for a variety of reasons. A lack of financial resources is one of the main reasons people do not donate money and common reasons people do not volunteer are work and family commitments. A lack of trust in how charities will use donations and financial constraints on volunteering are also common reasons people choose not to give.

## Chapter 4: How governments can incentivise giving



### Finding 4.1

#### People respond to incentives, with those on a higher income more likely to give

Modelling undertaken by the Commission indicates that people give more than they otherwise would because of the personal income tax deduction for donating to entities with deductible gift recipient status. The modelling draws on Australian taxpayer panel data and is the first time panel data has been used in Australia to estimate how people respond to personal income tax deductions for donations.

The Commission used two models to estimate the price elasticity of giving – which is how people change their giving behaviour in response to changes in tax incentives for giving – and the income elasticity of giving, which is how people change giving behaviours in response to changes in their own income.

The Commission's estimates fall within the following ranges for:

- price elasticity of giving in Australia: from -1.67 to -0.48, meaning a 1% increase in the tax deduction for giving is associated with a 0.48% to 1.67% increase in giving
- the income elasticity of giving in Australia: from 0.86 to 1.17, meaning a 1% increase in income is associated with a 0.86% to 1.17% increase in giving.

However, these estimates are only one factor to consider when evaluating the effectiveness of tax incentives to give.

The share of taxpayers claiming a deduction for giving increases with income. Most of the tax benefits from giving that accrue to people in the lowest taxable income decile go to people who had high incomes before claiming any tax deductions.

**Recommendation 4.1****Remove the \$2 threshold for tax-deductible donations**

The Australian Government should amend the *Income Tax Assessment Act 1997* (Cth) to remove the \$2 threshold for tax-deductible donations to entities with deductible gift recipient status.

**Finding 4.2****A personal income tax deduction is likely to be an effective way to encourage giving**

Tax incentives can be designed to target the total amount donated, increase the number of people participating in giving or to encourage particular types of giving, such as money, physical assets or time. The current design of the personal income tax deduction is likely to be the most cost-effective way for the Australian Government to encourage giving.

A flat tax credit would likely incentivise more people to give, but the total amount given overall would likely fall if people who have a high income faced a higher price of giving than they currently do. Adjustments to a tax credit to account for the likely fall in overall giving, including a hybrid approach – a tax deduction for some income cohorts and a tax credit for others – would add complexity and the effect on total donations would be uncertain.

Whether a tax deduction or tax credit would encourage more people to volunteer is highly uncertain, but they would likely increase tax integrity risks and compliance costs given volunteer work and expenses are often undocumented or informal. Government grants to support volunteering where there is a clearly identified need would likely generate greater net benefits to the community than tax incentives for volunteering, if properly targeted and evaluated.

## Chapter 5: An assessment of the deductible gift recipient system

**Finding 5.1****The deductible gift recipient (DGR) system is poorly designed, overly complex and has no coherent policy rationale**

The DGR system is not fit for purpose as a mechanism for determining which entities should be eligible to receive indirect government support through tax-deductible donations. There is no coherent policy rationale for why certain entities are eligible for DGR status and others miss out. The complexity of the system continues to increase as new DGR endorsement categories are added in a piecemeal manner.

The DGR system creates inefficient, inconsistent and unfair outcomes for donors, charities and the community. It needs reform.

## Chapter 6: Reforming the deductible gift recipient system



### Recommendation 6.1

**A simpler, refocused deductible gift recipient (DGR) system that creates fairer and more consistent outcomes for donors, charities and the community**

The Australian Government should amend the *Income Tax Assessment Act 1997* (Cth) to reform the DGR system to focus it on activities with greater community-wide benefits. The scope of the reformed system should be based on the following principles.

- There is a rationale for Australian Government support because the activity has net community-wide benefits and would otherwise be undersupplied.
- There are net benefits from providing Australian Government support for the activity through subsidising philanthropy.
- There is unlikely to be a close nexus between donors and beneficiaries, such as the material risk of substitution between fees and donations.

In applying these principles, the Australian Government should:

- extend eligibility for DGR status to most classes of charitable activities, drawing on the charity subtype classification in the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) to classify which charitable activities are eligible for DGR status and which are not
- expressly exclude the following classes of charitable activities or subtypes:
  - primary, secondary, religious and informal education activities, with an exception for activities that have a specific equity objective (such as activities undertaken by a public benevolent institution)
  - the activities of early childhood education and care and aged care (other than activities undertaken by a public benevolent institution)
  - all activities in the subtype of advancing religion
  - activities in the other analogous purposes subtype that are for the purpose of promoting industry or a purpose analogous to an exclusion in another subtype
  - activities in the law subtype that further another excluded subtype
- only grant DGR status to government entities where they are analogous to a charity and undertake activities that would be eligible for DGR status if undertaken by a charity
- continue to limit the scope of the DGR system to registered charities and equivalent government entities
- only use the specific listing mechanism in exceptional circumstances. When it is used, the Australian Government should increase the transparency of applications, how these are assessed, and the decision-making process to maintain confidence in the broader DGR system.



**Recommendation 6.2****Supporting reforms to improve the deductible gift recipient (DGR) system**

To facilitate the implementation of reforms to the DGR system, and provide greater clarity to both charities and the Australian Charities and Not-for-profits Commission (ACNC), the Australian Government should:

- amend the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) to require the ACNC to register new and existing charities with all applicable charitable subtypes where a charity has endorsement as a DGR or has indicated they will be seeking such endorsement. This should include any necessary amendments to enable the ACNC to compel the provision of necessary information to assess eligibility for subtype registration where that registration has not been applied for by an entity. Charities should continue to be able to seek review of subtype registration decisions through the Administrative Appeals Tribunal or its successor
- develop a legislated definition of what constitutes a public benevolent institution to delineate its scope more clearly.

**Recommendation 6.3****Transition arrangements to support reform of the deductible gift recipient (DGR) system**

In implementing reforms to the DGR system, the Australian Government should also provide a transition period of five years, during which time entities with DGR status (largely, school building funds and entities that provide religious and ethics education in government schools) can maintain their existing DGR endorsements and receive tax-deductible donations.

Subsequently, there should also be a further period in which these entities can use those donations for their intended purposes. The length of this period should be determined by balancing the potential constraints imposed on entities with the benefits of simplifying the DGR system over the longer term.

In the context of the proposed withdrawal of DGR status for school building funds, the Australian Government should concurrently develop and put in place other funding mechanisms for primary and secondary school infrastructure outside the DGR system.

## Chapter 7: A sound regulatory framework

**Recommendation 7.1****A more transparent and consistent approach to regulating charities**

The Australian Government should amend the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) to remove the concept of 'basic religious charity' and associated exemptions, so all charities registered with the Australian Charities and Not-for-profits Commission are regulated in a consistent manner. This should include obligations to comply with principles-based governance standards and reporting requirements proportionate to size.



### **Recommendation 7.2** **Strengthening the Australian Charities and Not-for-profits Commission**

The Australian Government should:

- amend the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (the Act) to enable the Commissioner of the Australian Charities and Not-for-profits Commission (ACNC) to require a charity to provide the information necessary to assess whether the charity is likely to be a ‘federally regulated entity’
- amend the Act to enable the Commissioner of the ACNC to require a charity undergoing revocation of its ACNC charity registration to evidence the intended or actual distribution of its net assets to an eligible entity unless that requirement is waived by the Commissioner
- work with state and territory governments to ensure the Commissioner of the ACNC has the necessary enforcement powers to fulfil their role within the regulatory framework for charities. This should include implementing or reforming laws, where necessary, to confirm that the Commissioner of the ACNC has standing to make applications in a state or territory Supreme Court for orders regarding the administration of charities, including the protection of assets held in trust for charitable purposes, regardless of a charity’s structure.



### **Recommendation 7.3** **Review of charities law by the Australian Law Reform Commission**

The Australian Government should refer an inquiry to the Australian Law Reform Commission to examine:

- the scope and coverage of Australian, state and territory charities laws focused on opportunities to simplify and harmonise laws across jurisdictions
- the roles and responsibilities of state and territory Attorneys-General and other relevant regulators in relation to oversight of charities, including charitable trusts.



### **Recommendation 7.4** **Increasing certainty about Australian Charities and Not-for-profits Commission regulation**

The Australian Government should:

- provide test case funding for the Australian Charities and Not-for-profits Commission (ACNC) to distribute to charities in specific circumstances for the purpose of developing the law
- amend the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) to introduce a rulings scheme for the ACNC, modelled on part 5-5 of schedule 1 of the *Taxation Administration Act 1953* (Cth), to support certainty in regulatory outcomes.



### Recommendation 7.5

#### Regulatory architecture to improve coordination and information sharing among regulators

The Australian Government should:

- establish a permanent National Charity Regulators Forum comprised of Australian, state and territory charity regulators
- develop and agree to an intergovernmental agreement to, among other things:
  - give effect to the National Charity Regulators Forum and determine its terms of reference, how the chair is selected and the corresponding secretariat support, frequency of meetings, and any other operational matters
  - clarify roles, responsibilities and information sharing arrangements between the Australian Charities and Not-for-profits Commission, relevant Australian, state and territory regulators, and Attorneys-General through the development of memorandums of understanding, including in relation to referrals, joint compliance approaches, appointments of a lead regulator, non-operating charities and processes to protect charity assets
  - progress charities law and regulation reform
  - identify any regulatory risks in the sector and collaborative approaches for managing, mitigating and responding to these risks, including the development of legislative or policy responses where needed.



### Recommendation 7.6

#### Review of nationally consistent fundraising regulation reforms

The Council on Federal Financial Relations should:

- continue to monitor the implementation of nationally consistent fundraising registration, reporting and conduct requirements by state and territory governments
- commission an independent review of the outcomes of the fundraising harmonisation process and options to maintain regulatory consistency over time within 12 months of the tabling of this report in Parliament. This review and the response from the Council on Federal Financial Relations should be made public.



### Recommendation 7.7

#### Explicitly consider the effects on volunteers when designing policies and programs

To support volunteering, Australian, state, territory and local governments should consider how changes to policies and programs would affect volunteers. This includes adopting measures that may mitigate any adverse effects on volunteer participation and identifying opportunities for volunteers as part of policy or program design.

## Chapter 8: Structured giving vehicles



### Recommendation 8.1

#### Improving the effectiveness and performance of ancillary funds for the whole community

The Australian Government should amend the private ancillary fund and public ancillary fund guidelines to:

- set the minimum distribution rate at between 5% and 8% for ancillary funds, based on:
  - the Government’s assessment of the trade-off between bringing forward the funds that are distributed to charities and a lower amount distributed in the future
  - available information
  - further consultation with the philanthropy and charitable sectors
- require that ancillary funds develop a ‘distribution strategy’ outlining how they will support eligible entities to further their charitable purpose.

The Australian Government should also:

- change the name of ancillary funds to Private and Public Giving Funds to make their philanthropic purpose clearer
- provide a five-year period of notice before any new minimum distribution rate applies to allow existing ancillary funds to make any necessary changes to their investment strategies
- conduct a periodic review of the minimum distribution rate every 10 to 15 years to decide whether the rate should be adjusted
- conduct and publish a survey of charities on their preferred minimum distribution rate for ancillary funds and how money is distributed to charities each time the minimum distribution rate is reviewed.



### Recommendation 8.2

#### Enabling distributions of funds to be smoothed over three years

The Australian Government should increase the flexibility of the regulatory regime by amending the private ancillary fund and public ancillary fund guidelines to enable smoothing of the distribution rate over a period of up to three years, with integrity measures to ensure the resulting distributions are at least equal to (or higher than) the amount that would have otherwise been payable under existing rules.



### Recommendation 8.3

#### Improving public information on ancillary funds

The Australian Taxation Office should:

- publish additional aggregate information on distributions by ancillary funds
- collect and publish additional information on sub-funds within public ancillary funds
- raise public awareness of information on ancillary funds, including by collaborating with the Australian Charities and Not-for-profits Commission to include additional information in the Australian Charities Report.

**Finding 8.1****There is no case for reducing superannuation taxes for bequests**

The current tax arrangements for superannuation treat a donation to a charity in the same way as a payment to any other non-dependant beneficiary. The tax system is not neutral in death and provides a larger tax benefit for the superannuation component of an estate. Adding further concessions at the time of death would be a relatively costly way for the Australian Government to incentivise philanthropic giving.

## Chapter 9: Public information about charities and giving

**Finding 9.1****Administrative expenses are not an accurate reflection of the performance of a charity**

An overemphasis, amongst donors and other stakeholders, on the amount of revenue that charities spend on administrative expenses can lead to incorrect conclusions about charity effectiveness and create perverse incentives for charities. For example, it can result in the underreporting of administrative costs or underinvesting in core capabilities and capacity, such as staff training, which undermines long-term capacity to further charitable purposes and benefit the community.

Charities have incentives to provide information about effectiveness to donors and this information is shared in various ways. Introducing additional requirements, such as standardised effectiveness measures, would be impractical and may lead to significant unintended consequences.

**Recommendation 9.1****Enhance information published by the Australian Charities and Not-for-profits Commission**

The Australian Charities and Not-for-profits Commission (ACNC) should enhance the usefulness of the information it provides on charities and giving for donors and the public. The ACNC should:

- present data on the ACNC charity register in ways that are more meaningful and accessible to donors and the public based on stakeholder consultation
- publish the DGR status of charities on the ACNC charity register
- raise public awareness of the ACNC charity register and other government sources of information on charities.

**Recommendation 9.2****Introduce enhanced disclosure and reporting of corporate giving**

The Australian Government should introduce a requirement for listed companies to publicly report itemised information on their donations of money, goods and time (volunteering) to entities with deductible gift recipient status. This would enhance accountability to shareholders, consumers, employees and other stakeholders within the community.



### **Recommendation 9.2**

#### **Introduce enhanced disclosure and reporting of corporate giving**

The Australian Taxation Office (ATO) should amend the company tax return to require listed companies to report donations of money and assets to entities with deductible gift recipient status as a distinct line item in deductions, similar to what is required for individuals.

The ATO should regularly publish aggregate information on corporate giving in Australia (for example, in the Australian Taxation Statistics) including, at a minimum, donations by company size, taxable status and industry.



### **Recommendation 9.3**

#### **Improve data on charitable bequests**

To provide more information about giving through charitable bequests, including trends over time, the Australian Charities and Not-for-profits Commission should require registered charities to separately report income from bequests in their annual information statement and publicly report the aggregate data.



### **Recommendation 9.4**

#### **Improve the usefulness of public information sources on volunteering**

The Australian Bureau of Statistics (ABS) should improve the usefulness of public information sources on volunteering. It should amend the questions on volunteering in the Census to capture:

- whether respondents engaged in informal volunteering (in addition to whether they engaged in formal volunteering with an organisation)
- the amount of time the respondent engaged in formal or informal volunteering (for example, hours each week).

The ABS should also collect more detailed information on volunteering annually through a survey such as the General Social Survey. At minimum, the survey should collect information on whether respondents engage in formal and informal volunteering, and the time spent engaged in these activities. However, the ABS should strongly consider including additional questions to improve information on volunteering, in consultation with relevant stakeholders.

Following engagement with communities, the ABS should develop methodologies that enable better measurement of volunteering by Aboriginal and Torres Strait Islander communities and culturally and linguistically diverse communities.

## Chapter 10: Increasing participation in giving



### Recommendation 10.1 Establish Indigenous Philanthropy Connections

The Australian Government should establish an independent organisation, provisionally called Indigenous Philanthropy Connections, controlled by – and for the benefit of – Aboriginal and Torres Strait Islander people and communities.

The goals of Indigenous Philanthropy Connections should be to strengthen the capacity of:

- non-Indigenous philanthropic organisations to be more culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people and organisations
- Aboriginal and Torres Strait Islander people and organisations to build relationships and partnerships with philanthropic and volunteering networks
- Aboriginal and Torres Strait Islander communities by supporting the establishment and growth of new and existing Aboriginal and Torres Strait Islander philanthropic organisations.

Indigenous Philanthropy Connections should:

- have governance arrangements that support self-determination, including a board comprised by a majority of Aboriginal and Torres Strait Islander people
- not replace or replicate existing Aboriginal and Torres Strait Islander philanthropic organisations
- be funded by an endowment from the Australian Government that is large enough to guarantee that it is financially sustainable and independent, without need to seek further funding from either government or philanthropy.

The Australian Government should also fund an independent evaluation of Indigenous Philanthropy Connections, to be conducted 10 years after its establishment.



### Finding 10.1 A government-funded public campaign could help broaden participation in giving, but there is insufficient evidence to conclude that such an intervention would be effective

More evidence is needed, including through rigorous evaluations from Australia or overseas, to demonstrate that a government-funded campaign would be effective at increasing giving and yield net benefits to the community.

Governments could maximise the chances of a successful public campaign (and opportunities for learning) by ensuring any public campaigns that involve public resources (whether it be a campaign run by a government agency or public funding of a sector-led campaign) adhere to sound program design, evaluation and transparency principles.