Future foundations for giving

Draft report post-release briefing webinar transcript

Associate Commissioner Krystian Seibert: I do want to welcome everybody to this public webinar following the release of the Productivity Commission's draft report from its Philanthropy inquiry – the *Future foundations for giving* draft report. I'm joined by my colleagues Alex Robson, Deputy Chair of the Productivity Commission and Presiding Commissioner of this inquiry, and Julie Abramson our other Commissioner, and members of the team that have been very hard at work over the past weeks and months on this inquiry.

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I do want to just cover off on some housekeeping. So there's a Q&A box and you can ask questions down there and we'll endeavour to answer some of them as we go in the chat where we can. But there is also some time for questions at the end of the webinar. And I will stress too that this is just the first of many engagement opportunities. There'll obviously be an opportunity to put in submissions in response to the draft report, there will be public hearings in February, there's going to be a lot of consultation and engagement, and this is just the beginning of that process.

And we've actually got a question in there about whether a recording of today will be made available, I think there will be a recording made available – we'll put the recording on the website in the next few days. So for those who can't join they'll be able to watch it there.

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And before I go any further I do want to acknowledge the traditional owners of the lands on which I'm coming to you from, the lands of the Wurundjeri people of the Kulin Nation. And we're coming to you today from different lands across Australia and I would like to acknowledge their continuing connection to land, waters and community and pay our respects to Elders past, present and emerging.

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So, the way we'll do it today – I'll speak for a little bit and then I'll pass to Alex and then it'll pass back to me as well. And we've got quite a lot to cover, but hopefully it'll give you a good overview of what's in the draft report and an opportunity to ask questions as well. So our approach to this inquiry has been three-pronged. So we were asked to identify opportunities for, and obstacles to, increase philanthropic giving in Australia. And as part of that we undertook a very wide-ranging public consultation process including public hearings, submissions and now releasing a draft report. And we've engaged with a very diverse range of stakeholders. And we've also had a specific Aboriginal and Torres Strait Islander people and organisations engagement strategy and focus, we've engaged with a diverse range of Aboriginal and Torres Strait Islander people and organisations to inform the draft report. And that ultimately does lead to recommending ways to respond to the opportunities and obstacles that we've identified.

We've been obviously guided by our terms of reference. Past reviews – there have been a lot of reviews in this space, and we have been referencing them, drawing upon them, and those of you that have been through the draft report will have seen that. And of course, participant input and feedback. And the context for all of this is of course the Australian Government's goal to double giving by 2030.

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So in terms of that engagement, we had over 100 consultation meetings, 7 roundtables, we've had 275 submissions, 74 brief comments since February. So there's been a lot of engagement and we really want to thank all of you for sharing your experiences, expertise and perspectives. It has been really helpful for shaping our thinking. And also for those who the team have been able to follow up with, ask questions, including some technical questions, really appreciate that and really want to extend our thanks for that.

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In terms of the approach that we've adopted we have had that approach I just talked about before in terms of the step-by-step way that we've worked. But chapter two of the draft report sets out our assessment approach to this area. So we've adopted a structured assessment approach to determining the role of government in relation to supporting philanthropy, because that's what this inquiry is essentially about – what does government do to support philanthropy, why does it do it, what should change? And we thought it's really important to have a logical approach to that, and chapter two sets that out in detail. And we do find that there is a role for government supporting philanthropy, but there are also trade-offs in terms of deciding how to provide that support. And we've been really upfront and honest about those trade-offs, and we can have a discussion about that and seek views and perspectives about that. For example, reforming the deductible gift recipient system, the DGR system, has benefits but changes that expand access to tax concessions can also affect tax expenditures. And from the perspective of the government that represents a budget cost under the way that the budget is prepared, and we have to be mindful of these trade-offs and think about them holistically.

We've had a focus on government levers such as tax incentives, regulation and information flows, but we have also considered levers such as capacity strengthening to facilitate access to philanthropy and it has been a particular focus of our engagement with Aboriginal and Torres Strait Islander people and organisations. And we've also recognized the fact that philanthropic funding has both got strengths and limitations that government funding does not have. So philanthropy can be more agile and flexible in terms of the support that it provides, can assist with encouraging innovation, but government has got less direct control and oversight over funding priorities when donors direct where support goes, which benefits from a tax concession which does amount to a form of a government subsidy. So there are those trade-offs and we have to balance them and think about things holistically and we've sought to do that as part of the draft report.

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And in terms of our assessment approach, we have been trying to be structured and logical about it. Establishing the role of government in the context of philanthropy and looking at the limitations of current policy settings that may result in less giving than is socially desirable. For example, an individual is making a giving decision to donate some money or some time for example, and there can be broader spillover benefits to the wider community, to wider society, and they may not be factored into that individual's decisions which can be an argument for some sort of additional support. There can be inequality, in terms of access to benefits from giving. And then we've determined whether the policy settings are meeting government objectives and looked at the range of different policy levers government has got when it comes to supporting philanthropy. And then assessing options to enhance policy settings, identifying options for addressing problems, assessing potential benefits and costs, and outcomes of different options, how they affect different groups, different parts of the community. And try to ultimately do our best to select options that try and maximise the net benefits to the community as a whole, overall.

And there are some judgments that need to be made there and we do our best endeavours to try and get the judgments right. But we have a draft report, draft recommendations, requests for information to test our thinking. And then there's more consultation, more engagement. And overall the context for this is around the benefits that flow from giving to the broader community, to wider society, and the role of government supporting that and the different levers that are available. And we have been very mindful of the context. So I'll pass now to Alex who'll look at some of the trends, and some of the data that we've analysed. The team have done some fantastic work on this and then we'll talk some more about some other things.

Presiding Commissioner Alex Robson: Thanks Krystian. So as Krystian said – and welcome everybody – I'm going to talk about some trends and motivations and then we'll delve into some of the recommendations around tax deductions on the DGR system and then I'll hand back to Krystian. So this slide, by way of introduction to what I'm going to talk about, on the left hand panel there we've got total financial donations to charities in Australia using ACNC data since 2014. So over 13 billion dollars Australians gave to charities in the most recent year of measurement, which was 2021. It has been increasing and in nominal terms, if current trends were to continue, that would double by 2030. On the right-hand side though we've got data on formal volunteering rates and that has been declining over the last few years. And so we do in the report go into a bit of detail around volunteering in various places and have some recommendations around that.

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So breaking down the data a little bit more, the left-hand panel here has donations by individuals that are tax deductible to entities with DGR status. So this has been increasing quite strongly over the last 20 years – it has tripled in real terms. If that current trend were to continue it would increase by 27% in real terms by 2030, so that form of giving is increasing overall. But the story behind that, or part of the story, is that the number of taxpayers, or the proportion of taxpayers that are claiming that deduction is reducing. So the average donation in terms of tax-deductible donations is increasing, but there's fewer people out of the population that are making those tax-deductible donations. So this is part of the data that we had to confront when we were framing our analysis and recommendations.

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If we look at giving vehicles, so these are structured giving vehicles – private ancillary funds and public ancillary funds – so this is ways of giving in which individuals can donate to a fund rather than to a charity itself and then the funds are distributed after taking an upfront tax deduction over time. If we just look at, for example, private ancillary funds, this chart is using the same data as before – in the light blue line which is tax-deductible donations, the dark blue line is donations to private ancillary funds these structured giving vehicles. Sorry, that's the aggregate donations less the private ancillary funds, and so the gap there or that wedge that's growing over time is the donations to private ancillary funds. And the point of this chart is to demonstrate that that form of giving is becoming increasingly prevalent in terms of this data. So we do devote a bit of analysis and recommendations and findings in the report to both private ancillary funds and public ancillary funds for this reason – that they are becoming a significant source of giving in Australia.

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In terms of motivations, the charity sector itself is very diverse but individuals' motivations for giving is equally diverse. People give for a range of reasons – they can give because of their religious background or their spiritual faith, they could give for family reasons, personal experience, they strongly believe in a cause, they may engage in or want to have some recognition or engage in so-called conspicuous giving or signalling, it could be for peer reasons, or it could be to get a tax deduction. There are many different motivations for giving. And that's one of the things we have to confront in framing our findings and recommendations – policy tools will have different impacts on individuals depending on their motivations for giving.

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So one example of a particular motive for giving that we looked at in the data is that we got a large data set from the Australian Taxation Office, and one of the things that you can look at in that data – it's anonymized, but there's many many observations – is patterns of giving by postcode and in particular instances in time and this is just an example of the application of that data. So we looked at postcodes surrounding the areas that were affected by the Tathra bushfires and if you look at the pattern of giving over this six-year period, and 2018-19 is the year of those bushfires, and this data simply shows that average donations by people in the affected postcodes actually increased in that year. So it suggests first of all that's one of the motives for giving is to respond to natural things like natural disasters, but also that even people in the affected areas were very generous in that particular year not withstanding that they also may have been directly affected themselves.

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So we looked at three broad reform pillars in this report. One is around the DGR system itself, so this deductible gift recipient system which governments set the rules around which charities can access tax-deductible donations and which cannot. So it's deliberately directing funds in some sense towards certain areas and away from others. So we looked at whether that system was fit for purpose. The second pillar was looking at Australia's regulatory system. We didn't do a full review of the ACNC, but we did look at their regulatory architecture, and in particular, cooperation and coordination between the Commonwealth and the states and territories. And the final reform pillar that we looked at was public information and access to philanthropy. So unlike other markets, the market for philanthropy, for want of a better term, isn't governed by prices and profits it's really a matter of getting access to information and access to networks and so we focused in on those sorts of things when we were looking at policy reform directions.

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So there are two aspects to the tax deduction – it has been around for more than 100 years in one form or another. So when you give to a charity that has DGR status in Australia, you can claim a personal income tax deduction. It's uncapped and so what's really happening there is you can give some money but then the amount that you give effectively out of your pocket is reduced by the amount which you can claim back on your tax. And so this affects the so-called price or tax price of giving for an individual. So the question for policy is well first of all does that really induce people to give more? And secondly, how much more? And is there a case for changing that given the answers to those kinds of questions?

And we looked at those questions in a bit of detail and we'll do some more statistical analysis for the final report. What we found was that a 1% decrease in the tax price of giving, which depends on the tax rate that an individual faces, so if that was to change by a little bit then that would incentivise individuals to give between 87 and 92 cents more. So this is an effective way of incentivising more giving. And for that reason and for the reason based on the numbers that we were getting out of that analysis, we came to the conclusion, or preliminary finding at least in this report, that the size of that deduction and its design are, there's no strong case for reform.

We looked and thought about and we've canvased in the report different ways of incentivising giving, so things like a tax credit or different tax deductions for different income groups, but based on our analysis so far, and we're happy to receive feedback on this, we can't see a good case for changing that deduction in particular. For the reasons that Krystian was talking about, if you give a greater tax deduction then that comes at a cost of lower government revenue. On the other hand, if you were to make the deduction less generous these numbers suggest that you would get less giving and so we think the balance is broadly right.

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But what we did look at on the other side of that was the extent to which this DGR system is working – so which entities can receive those tax-deductible donations and which of them cannot. And we found that the system which has evolved over more than 100 years is poorly designed, overly complex, it's costly for many charities to actually navigate their way through the system, they miss out for reasons that seem pretty anomalous much of the time. So for example, and there's many of these kinds of examples that we looked at, if you're a charity that prevents child illness you can access DGR status but if your goal is to prevent child injuries you cannot. So that was one of the major findings of this report is that we wanted to think about ways in which we could simplify that system and make it more consistent. And we started out in good Productivity Commission tradition by thinking about the economic principles on which you would base such a system and that's around recommendation 6.1. And I'll talk about those principles. As a result of the application of those principles to classes of activities, most classes of charitable activity would still be in scope. There would be some excluded, particularly where according to the principles and application of them tax-deductible donations are not warranted. So that's draft recommendation 6.1.

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So the three principles we came up with, in thinking about which charitable entities should be able to access DGR and which should not. The first is that there should be a rationale for taxpayer support because the activity that's occurring has net community wide benefits and would otherwise be underprovided. The second then is whether there would be net benefits from providing support through this tool or this policy tool of actually subsidising philanthropy. So governments have a range of ways in which they could support various activities, the question that this second principle is looking at is really or whether if you do allow an entity to access tax donations whether that would actually be likely to provide net benefits. And again it's done on an activity basis not an entity by entity test and the classes of activity are defined using the existing ACNC charity subtype classifications. And the third principle is looking at this question and it's really around a tax integrity question of whether there's a close relationship or nexus between donors and beneficiaries. So for example the material risk of substitution between fees and donations. So the idea here is to think about certain activities where I could give a donation which would allow me to claim a reduction in my tax and in exchange for that donation I get charged a lower fee for something, we think that should be a principle on which entity activities shouldn't be able to access the DGR system.

So they're three simple principles. And then what we did in the report was apply that to not to entity by entity, but classes of activity. Applying it to 60,000 charitable entities would have been too complicated and not practical, so we looked at this existing subtype classification.

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What it would mean under our proposals, there would be four things that could happen. If we apply the principles and if you had DGR status, one of the things that could happen is you could obviously retain it and there's more than 20,000 charities in that group. In terms of the status quo there's another group of around 15 to 20,000 charities who don't currently have DGR status and in application of our principles means that they would not be able to get it. And so in that respect the status quo would be maintained for those groups as well. So that is things like advancing religion and advancing industry and there's around 15 to 20,000 charities in that group.

On the other side, there's changes in status potentially and we think for quite a substantial number of charities who would gain DGR status under the application of our proposed principles. So if you didn't have DGR status so if you're for example focused on advocacy and prevention and some of those anomalies that I talked about before, under our principles you would be able to access DGR. And we estimate that up to 20,000 charities will gain DGR status there. And finally, there's the group where they currently do have DGR status, and application of the principles means that they would be excluded and there would have to be transitional arrangements applied. And this is for things like school building funds where we think an application of those principles rules that activity out of being able to access DGR status. And there's fewer than 5,000 charities in that group.

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So overall, for this part of our reforms, we think that it would simplify the DGR system considerably. It would have the effect, we believe, of directing support by design towards activities with the greatest community-wide net benefits. Obviously that decision is still in the hands of donors themselves, they make the decision on where they direct their funds notwithstanding any tax deduction or not. But there would certainly be a more diverse range of charities who would have DGR status under our proposed changes. It would assist also charities that work across multiple purposes, so that is one of the complications that charities face at the moment when they work across multiple subtypes. It would be advantageous to smaller charities, particularly including those dependent on volunteers, and we estimate that around 6,000 volunteer-led charities potentially now get access to DGR status.

The fiscal effects, we've done an estimate of the cost of that, it's approximately $100 million a year which in the bigger scheme of things is relatively modest. But it is important to note here the trade-offs so the further you extend DGR status, the higher those costs would be, and so that is something that we kept in mind in thinking about our proposed changes. I think that's it for me now Krystian over to you.

Associate Commissioner Krystian Seibert: Thanks Alex. And I might just handle a few questions that have come up. We've typed answers to some of the questions as Alex has been speaking, but I might just cover off on a few of them. Alex talked about some of the benefits of the DGR system reforms and we've had some questions around there. One from Ellie around the charities gaining DGR status is focused on advocacy and prevention and what the prevention relates to. So there's a couple of aspects to that. There are a lot of charities that can focus on say prevention of poverty, disadvantage, promoting social inclusion, that sort of thing and they currently can't get DGR status if they have a very heavy focus on prevention rather than relief. And so these reforms would expand eligibility to that class of charities. But also, we do have the anomalous situation that Alex talked about where a charity that is trying to prevent injuries in some children or people can't actually get DGR status, whereas a charity that is preventing illnesses or diseases can get DGR status, so that's sort of what the prevention refers to there.

Claire has got a question around would not-for-profit news organisations potentially access DGR status under the proposed changes? So we have mentioned that in chapter six that based on our assessment of the scope, this would include registered charities that do public interest journalism for example. But it's something that we'll also welcome further feedback on. But we do discuss that.

And there was also one question from Paul around can you provide further comment on the recommendation to remove DGR eligibility from schools? And there's some further comments from Paul around that. So I think it's important to point out that schools overall in Australia currently are not eligible for DGR status, they can have various DGR funds or entities, but as a whole they're not eligible generally. So Alex mentioned how under the way we've looked at this, certain types of DGR entities that schools can operate, such as school building funds, would become ineligible. But we also welcome feedback on that. And I think that this reflects the fact that there can be issues in terms of private benefit and substitution of fees for donations in this context. And back in 2013 the Not-For-Profit Sector Tax Concession Working Group, when it recommended DGR reform, it didn't recommend expanding it to education more broadly for that reason. It didn't talk about school building funds per se, but we think that there are some similar issues in terms of private benefit, those integrity risks around substitution of fees towards donations in that context. But like with everything we welcome feedback and input in response to all the draft proposals in our report.

So I wanted to talk a bit about regulation and a few other things. So we've got a chapter that's focused on regulation and we have looked at not the entire ACNC regulatory framework but those parts of the framework that we think are more tied to giving and philanthropy. And some of you will know that I was involved with establishing the ACNC in 2012 and yesterday was actually the 11th birthday of the ACNC's commencement. But we sort of were looking at the ACNC and we thought that the first decade of its operations was really around focusing on establishing itself as a regulator, registering charities, checking the charities were still existing because many charities no longer existed despite being registered, streamlining reporting requirements, developing the charity register and building that out. And we think that the second decade is an opportunity for the ACNC to pivot its posture in a variety of different ways. We're not proposing any dramatic changes or anything like that, but some of the things that we're looking at are just some legislative and policy changes to support its role. Proposing a Statement of Expectations from the government just around the ACNC's regulatory approach, the design of its charity register, reflecting the needs of donors broadly defined and the wider public.

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So in terms of the ACNC and the regulatory framework, our recommendations go to addressing some of the gaps in the ACNC's current powers. For example, the ACNC can only use its graduated enforcement powers in relation to certain types of charities – federally regulated entities they're called. So for example we're proposing that the ACNC should be able to ask for information to determine whether a charity is a federally regulated entity for example. And also some changes just to enable and ensure that the commissioner of the ACNC can perhaps use the jurisdiction of state courts, where necessary, to support their other enforcement powers.

We are also proposing the establishment of a National Charity Regulators Forum. So we've seen good collaboration and cooperation between the ACNC and the various state and territory bodies that are also involved in charity regulation in other ways. So they're all jointly stewards of the charity regulatory framework and this would be a bit of a way of formalising that, building some scaffolding around that, supporting cooperation, collaboration, that sort of thing.

We have also made a recommendation to remove the concept of the basic religious charity and associated exemptions from the ACNC legislation. So there is inconsistent application of accountability and governance requirements between charities and this would address that and ensure there's a consistent standard of accountability and governance requirements. But that it's proportionate to the size of charities. Most basic religious charities, as far as we're aware, are small entities – they have revenue of under $500,000 – although we don't know for certain, but the information that we have is that they are small. So this wouldn't require providing audited financial statements etc for the vast bulk of them. And it would merely mean that they have to comply with the basic minimum governance standards that other charities have to comply with, including many religious charities as well because there are quite a number of religious charities that are not basic religious charities, for example, those that are incorporated.

And also our recommendations focus on providing charities and donors and others with greater clarity about the regulatory regime. For example, having the ACNC being given funding to provide test case funding where there's a need to develop the law in a matter of public interest and also to provide binding ruling. So we heard from stakeholders there can be uncertainty, that there can be donations that aren't made, this is a particular issue in the case of charitable housing for example, the uncertainty. And so we thought that a binding ruling scheme could address some of that and provide some more certainty to stakeholders and in doing so promote giving, promote philanthropy.

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So as we talk about in the report there are quite high levels of public trust and confidence in charities. And we also talk about the links with that in terms of support and giving and that's why regulation exists, that's the role partly of regulation. So this would enable that to continue to support that public confidence so that donors can give with confidence to charities. But also provides more consistent regulation of charities as well and we do have some other things that we've focused on in the context of regulation as well.

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We're seeking more information around the gifting of excess superannuation on death. So at the moment, if somebody passes away and they have excess superannuation the only way, it can be given to a charity is if it goes to their will or their estate and then goes to the charity. You can't do it directly from a binding death nomination, which is an instrument that people can use to direct superannuation to their dependents or spouse, for example. So we're seeking views on making bequests from superannuation easier, and about the workability of that, the potential for any particular unintended consequences, options for the design of some sort of mechanism in that space.

We don't think that there's a case to change taxation arrangements for superannuation bequests. So if there is excess superannuation upon death and it goes to a charity subject to a tax – we're not proposing any changes there. And we think it would be a relatively costly way for government to incentivise giving. But we are looking at making giving easier.

And we're also asking whether the current minimum distribution rate for ancillary funds – so ancillary funds are public and private foundation structures, giving vehicles – whether they're appropriate, whether they maximise the net benefits to the community. As some of you all know when you've got an ancillary fund you make a donation into it, you get an upfront tax deduction and then there's a distribution requirement every year based on its net assets. So as that chart that Alex showed earlier does show, over time ancillary funds are taking up a larger slice of tax-deductible giving in Australia. And we just want to make sure that the regulatory settings that apply to them are right so that there is that continual flow of grants to charities and ultimately that that's benefiting the community. So we're seeking views on that.

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We've also looked at public information on charities and giving. And one of the main proposals that we've got here is that there is the ACNC Register, so the Australian Charities and Not-for-profits Commission, they've got a public register that's got information on registered charities. We want to ensure that the information provided there is provided in a meaningful and accessible way for donors and the wider public. For example, on research about what donors and the wider public actually want in terms of information to help them with their decision-making. But we made the point too that standardised measures of charity effectiveness, such as the proportion of charity revenue spent on administration costs or overheads, that's not a reliable measure of effectiveness. And when donors and others rely too heavily on it, it actually can lead to charities not being able to invest in core capabilities and capacity, so we've got a draft finding on that.

In terms of data gaps, two of the big data gaps that we identified are information on bequests. The data that's available is quite a few years old. And Dr Christopher, the late Dr Christopher Baker at the Centre for Social Impact at Swinburne, spent a lot of time going through paper probate records around Australia to get some data on bequests. And we've recommended that in reporting to the

ACNC, charities split out their reporting on donations and bequests so that we get some data on bequests. And it's easier to get that kind of data than going through paper records of probate. And that was in response to submissions that have been raised with us. And we've also proposed some changes to require listed companies, so larger public companies, to publicly report information on their donations so that there's more transparency around corporate giving and also to include that in their tax returns to the ATO so we get some aggregate data.

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As I mentioned at the outset we have had a specific strategy focusing on engaging with Aboriginal and Torres Strait Islander people and organisations. And we've proactively sought to inform our thinking, inform our draft report, by listening to their perspectives and their views on philanthropy, how they practice philanthropy, their experience of engaging with philanthropy as well. And it's important to recognise the many different ways that Aboriginal and Torres Strait Islander people practice philanthropy and volunteering and they don't always think about it that way as well. And the stories and experiences that were shared with us, very generously, have been used, together with other research that has been undertaken, to formulate this draft recommendation regarding the Australian Government supporting the establishment of an Aboriginal and Torres Strait Islander philanthropic foundation. The Foundation would focus on building partnerships between Aboriginal and Torres Strait Islander communities and philanthropy to further the goal and aspirations of those communities.

We've seen what partnerships between Aboriginal and Torres Strait Islander communities and philanthropy can do in places like Bourke in New South Wales with the Maranguka justice reinvestment project. And this is about building on that. And we're proposing the Australian Government make a contribution, but that there will also be additional contributions from philanthropic funders.

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So volunteering has been a focus throughout the draft report, but I did want to just draw out some of the specific recommendations as well here. For example, in terms of the focus throughout our report we've been able to calculate roughly how the proposals we we've put forward regarding the reform of the DGR system would benefit many organisations that are solely volunteer run. And those organisations do disproportionately miss out on access to DGR status at the moment. And the proposals we put forward would benefit those sorts of organisations. But we've also identified that unnecessary regulation or changes to policies and programs can be undertaken in a way that doesn't consider the impacts on volunteers. And it's really important that governments more proactively think about how changes to policies and programs impact volunteering and think about how they can actually facilitate volunteer contributions and volunteer inputs when they're designing policies in aged care or disability or in other areas.

We've made a recommendation around collecting better data through the Census on volunteering. And also we have discussed, and that's what I alluded to just before, that there can be different perspectives on what is volunteering and what's not volunteering depending on cultural backgrounds. And including there can be different perceptions and ideas about what's volunteering or not volunteering in Aboriginal and Torres Strait Islander communities.

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This is the last one, second last one. In terms of next steps, as I said at the beginning, this is just the beginning of the engagement that we will be undertaking in response to the draft report. We have to get the final report to the Australian Government by the 11th of May next year. And although that seems like quite far away, there's a lot to do before then. So we will be welcoming submissions and also brief comments – you don't have to put a full submission you can make a brief comment through our website as well. We had about 74 of them since February.

In response to our draft report – we've got draft recommendations, draft findings, information requests – we'll have public hearings in February as well in Perth, Adelaide, Brisbane, Canberra and Melbourne. We're certainly going to be trying to hold hearings as widely as possible and to make it as easy for people to participate as they can. And we'll be doing further consultation meetings as well. And then we'll be working on finalising the report to provide it to the government by May next year.

And the final slide has just got some information about how you can be involved, keep up to date with what's happening on our inquiry.

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The inquiry website, if you've not registered there, register there to get updates. You can contact the team there using that email. And if you don't want to put a submission in, you can put a brief comment in as well. So appreciate that's been a lot of content but might pass it over to Alex or Julie if you wanted to make any further comments or try and answer some questions as well.

Presiding Commissioner Alex Robson: Thanks Krystian. Nothing further from me, but Julie did you want to make any comments?

Commissioner Julie Abramson: No all good thank you.

Associate Commissioner Krystian Seibert: There's a question from Caleb Simpson about: what data does the Commission rely on to identify the risk of tax-deductible donations being converted to private benefits for donors? So as I mentioned, we aren't the first to have commented that this can be a problem in the education space. But if there are suggestions around regulatory tools or that sort of thing in that context that can provide you know feedback to us about that we'd very much welcome that. But it has been examined in a number of other contexts as well. Julie did you want to answer a question that you had there?

Commissioner Julie Abramson: Yes. Charmaine has asked about the difference between rulings and test cases. This is something that we'll obviously be consulting on a bit more. But generally speaking, the test case is when you're not sure what the law is, so it's unclear and you need a court decision on it. Rulings tend to be in relation to specific, in the tax space anyway, specific issues which deal with a specific problem. And it's more of an administrative-type thing because it's an interpretation and it gives the party certainty so that they can proceed on that basis – the Tax Act will be applied in the following ways. So one is to deal with big picture uncertainty, although it might be a constrained set of circumstances, and the other is actually the application to it to a particular charity, I think in this case. We're consulting on it, so we are interested in people's views on that. Thank you.

Associate Commissioner Krystian Seibert: And there's another question around whether we'll address best practice philanthropy in our report to government. So we do address it in a number of places – we make the point that it's not just the dollars that are given but it's also how they are given and that there are different approaches to philanthropy. We have a discussion of that in chapter 10, especially in the context of Aboriginal and Torres Strait Islander communities. So we make recommendations to the government, so if there are proposals around the role of government in that context, we welcome that sort of input in response to the draft report in submissions in terms of if there are proposals around how the government should influence how philanthropy is practiced then it's certainly something that we can consider.

Presiding Commissioner Alex Robson: Thanks Krystian. I will just look at a question from John Church around superannuation. And John's got a specific question around the $3 million cap and the changes that the government has recently made in that area. Our general finding John on superannuation was that if you look at it over a lifetime basis it is concessionally taxed relative to other income and we couldn't see a good case for providing a further incentive in relation to super and donations. But what we do seek further information on is how to make it easier and simplify the process of making charitable donations from superannuation in general apart from the tax deductible aspect of it.

So Julie did you want to add anything more to that particular information request on super and bequests?

Commissioner Julie Abramson: No. I think we're certainly asking some more questions. We have a view that there needs to be some simplification in terms of being able to donate your excess superannuation. We're particularly interested in hearing from the superannuation industry as well because there obviously will be some practical issues, there may be problems with Trust Deeds as to how in fact super can be distributed. And as Alex said with the taxation arrangements, we saw no reason to change them. This is a draft report, if you have a different view please put in a submission and talk to us about that. Thanks Alex.

Associate Commissioner Krystian Seibert: We've got some questions around motivations as well. One from Cassandra Chapman. And thank you Cassandra for the research you do which we have drawn upon in parts of our report. And Cassandra has asked about the approach that we take and that it sort of considers the various motivations that are very kind of rational (rationalist motivations) whereas a lot of giving is emotive or emotional and how we sort of handled that. I think it's important to recognise that the limitations of government policy levers in that context, in that we are considering tax incentives, regulation, some enhancements to information etc, but a lot of the engagement with donors, the storytelling, that sort of thing, charities do that and fundraisers do that. And I think that there's sort of limits to what government does in this space and what the different policy levers are versus the different motivations for giving that charities engage with their donors in relation to those motivations in order to inspire more giving. I don't know if you wanted to say anything about that Alex?

Presiding Commissioner Alex Robson: No I think that's right, I mean the difficulty Cassandra is that those, I think you put it you know the sort of non-rational motives, which I would think about it as a sort of you know different rational basis, rather than you know tax and other things. The thing is that they're so diverse, and so coming up with a policy that you know does leverage things as diverse as giving for a faith-based or religious reason or giving on the one hand, or because you strongly believe in a cause or if you've got someone in your family who was affected by something, you know those are quite diverse and personal experiences and motives. But I mean we're happy to get feedback and further submissions on policies that would shift the dial in relation to those motives. But as we saw just from that tax data, the tax deduction that the Australian Government has is quite an effective and powerful set of incentives. And you know at the margin they would apply to somebody, to various extents, who's giving for tax related reasons or for other reasons. It's all about how much you can shift the dial for the average taxpayer and potentially for different income groups as well.

But I might just answer this question. Ash has got a question about the biggest game changing idea that would really shift the dial to double giving. I think this report – those three big reform ideas are all game changing. Now you know we're not making the claim here that you know that would directly lead to a doubling of giving. But I mean reforming the DGR system, given that it's not fit for purpose, given the ad hoc way in which it's evolved, Ash over more than 100 years, it doesn't have a sound policy rationale as far as we can tell. I mean we think that's game changing for the sector and for the public as a whole. We think the regulatory changes and the ways in which we recommend that the Commonwealth and states cooperate and setting up that architecture and that is game changing. And then the recommendations we make around public information – making that more fit for purpose. And also around the Aboriginal and Torres Strait Islander-led Foundation, you know all of it is game changing in our view.

Commissioner Julie Abramson: The other thing that I'd add Alex, is we have looked to the future here. So we are asking for some more information but we did put up a slide which showed that the pattern of giving is changing. So we've been thinking what will it look like with PayPal giving and those types of platforms, and that might mean that there's actually changes around regulation and some of those other issues. So we're very interested in getting feedback on those issues. Thanks Alex.

Associate Commissioner Krystian Seibert: We just had a couple of questions about the NFP sector tax concession working group final report from 2013. So that working group was a group of sector and tax experts supported by the Treasury at the time to do that review. And they provided their final report to the government, the final report was released a couple of years later, I think through an FOI request. And it was made available on the Treasury website so it is publicly available. It can be found through Google, but otherwise we can find and provide a link to it, but it is a publicly available report.

There was a couple of other questions, there was one around schools again from Paul, I don't know if Alex if you wanted to answer that.

Presiding Commissioner Alex Robson: Just have to find it. What time was it?

Associate Commissioner Krystian Seibert: At 4:14 – it'll be great to see the data that led to the conclusion that fee substitution is happening in response to building fund donations.

Presiding Commissioner Alex Robson: Yeah so well, we did look at, as outlined in the draft report, some examples of statements of fees and donations to building funds. And that principle that we looked at was really where there's a material risk of this substitution happening. And it's potentially not just school building funds, but other activities as well. And so application of that principle is really risk based. And also the application of the other principles, whether it is the best way of supporting school infrastructure noting that it is a very important part of providing education services and so on. But we felt that once we had those principles it was clear that the application of those principles would give that result in relation to school building funds.

I would also note though that under the proposed changes you could still donate to schools for the purposes of infrastructure, you just wouldn't get a tax deduction. You could also donate to a school for other reasons, so for example, for a scholarship fund or equity-based reasons and that would come under a different subtype and then that would be tax deductible. The other aspect of it is that there are arms length entities, such as Schools Plus, that are now set up who have a goal of directing DGR donations towards these sorts of things, and there's a bit of a discussion in the report around that. But on the application of our principles, it was very clear to us that school building funds, the DGR status according to that would be withdrawn.

Associate Commissioner Krystian Seibert: And some schools that focus on particular disadvantaged cohorts, for example, might have public benevolent institution (PBI) status for example, and that won't be changing. And just speaking on the question of PBI we've got a question from Jennifer B about if you're recommending extending eligibility for DGR status to most classes of charities, why have you not recommended the abolition of PBI?

So we've recommended that there be a legislative definition to delineate the scope of the PBI. At the moment there isn't any kind of legislative guidance for the scope of that definition. We haven't recommended abolishing the concept of PBI because it wasn't raised with us in submissions to abolish it. But also the PBI is necessary because it delineates the scope of entities that are eligible for additional FBT concessions and therefore you need some sort of concept there to draw boundaries around that. And I assume Jennifer you weren't saying to abolish it so that the FBT concessions are no longer applicable, but yeah that's why we still need some sort of a concept there, some sort of definition.

Commissioner Julie Abramson: Krystian I'll just deal with Alice's question which was about the role of the State Forum. I think we've seen some really good work being done on fundraising where we've got sort of cooperation between the states and territories and I think the more that we see these charitable organisations that are operating amongst different states, the more important it is that we have some sort of formal architecture. We've talked about it looking like the financial sector forum but it would also, I think, have elements like the ACL. So you'd be able to have all the parties in the room to talk about the best approach. Also, we raised before the issue about the platforms and the giving platforms into the future and I think that those type of issues would be well on the agenda. But obviously we'll be consulting with our state and territory colleagues and the ACNC on that.

Presiding Commissioner Alex Robson: Okay well thanks Julie and thanks Krystian. We do have to wrap up. We are out of time. We have tried to answer as many questions as we could in the time allotted, but again thank you everybody for attending this webinar and if you do have comments or questions we'd be happy to receive them either as a formal submission or it's just a comment and the website is pc.gov.au. So thank you everybody for listen this afternoon. Thank you so much. Bye.