

9 February 2024

**The Balnaves Foundation's response to the Productivity Commission: Future foundations for giving draft report released November 2023.**

The Balnaves Foundation (Foundation) is a private ancillary fund (PAF) that was established in 2006 by Neil Balnaves AO for the purpose of creating a better Australia through philanthropy. Since then, the Foundation has donated over \$40 million to Australian charities.

It is in our capacity as an established philanthropic organisation, and a member of Philanthropy Australia, that we provide the following response to the Productivity Commission's (PC) draft report on the Future foundations for giving.

Please note that the following submission is in order of priority for the Foundation.

**Information request 8.1**

**Effect of changes to the minimum distribution rate for ancillary funds.**

**Response:**

It is the Foundation's view that the current distribution rate of 5% of Net Assets for Private Ancillary Funds should not change. When considering inflation and the reasonable expense of running a PAF, the investments of a PAF must make a return of 7.5% – 9.5% annually to maintain the corpus in real terms. Due to market dynamics, there will usually be a negative or low return once every 5 years, and therefore a return of 10-14% is needed in the other years to maintain the corpus in real terms. This is no easy task and returns less than this will see the corpus of a PAF decline. We fear that a distribution rate any higher than 5% will see many PAFs cease to exist in 20-30 years. The negatives of this scenario are as follows:

1. The philanthropic sector will decline rather than grow. This is contrary to the very intention of the PAF structure.
2. A PAF will be giving less and less in real terms every year.
3. It is less attractive to set up a PAF because:
  - a. A key attraction of the PAF structure is that far more funds go to charity over the long-term and the impact is greater.
  - b. Many are attracted to PAFs because they see the structure as a positive for future generations of their family.
  - c. Some founders are attracted to the long-term legacy that is left in their name.
4. Philanthropy breeds philanthropy. The larger the sector the more it becomes a societal norm to 'give back' which leads to even more philanthropy.
5. If a PAF ceases to exist due to running out of money the built-up institutional knowledge and expertise is lost.

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## **Draft recommendation 8.1**

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

#### **Response:**

The Foundation strongly agrees with the recommendation to enable distributions of funds to be smoothed over three years.

Due to market dynamics, it is inevitable that from time to time the net assets of a PAF at June 30 will be less than their value at June 30 the previous year. In an economic crisis they could be substantially less. In this situation the PAF must increase its giving well past the mandated 5% if it wishes to maintain the dollar value of its giving. However, the philanthropist also must protect the corpus of the Foundation, and a massive increase in its distribution rate at such a time can seriously affect the long-term existence of the PAF. Therefore, the PAF has an incentive to reduce its giving in dollar terms for that year. This is a shame because an economic crisis is usually the time when a charity is in desperate need for a philanthropist to maintain or increase its giving.

Smoothing the distribution over 3 years fixes the problem as philanthropists know that they can still protect the corpus and the long-term viability of the PAF by replenishing the corpus when economic conditions improve, which is usually within a 3-year period. This change would mean philanthropists can maintain the dollar value of their giving and even increase it to respond to the greater need at that time. We agree that the resulting distributions must be at least equal to (or higher than) the amount that would have otherwise been payable under existing rules.

## **Draft finding 9.1**

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

#### **Response:**

The Foundation strongly agrees with this finding and believes that the suggested recommendations for a sound regulatory framework would help to rectify the incorrect and inaccurate understandings of the broader public. In particular the way charities report to the ACNC (6.2) and the way the data gathered is disseminated (7.4).

There is overwhelming public opinion on how charities utilise the funds they raise and how the public expect charities to spend the donor dollar. These do not align. Unfortunately, this will not change until the broader public view the not-for-profit sector in the same lens as the commercial sector; as organisations who need to hire the best staff, and train and resource them accordingly to deliver the best result, rather than organisations who should operate on less than 10% administration expenses.

There is a need for transparency in reporting and definitions of where expenses are recorded in order to educate and set expectations for the charity sector and the public that supports them.

### **Draft 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.**

**Response:**

The Foundation agrees that a public campaign could indeed help broaden and increase participation in giving, however it is our view that there are greater social misconceptions that need to be addressed first, that could detrimentally undermine any campaign.

There is a fundamental lack of giving culture in Australia. Whilst we can see that campaigns for individuals or disaster relief can often galvanise the community, the broader sector is in dire need of support to reestablish the base rules for good business as a charity. There is a clear need to educate the Australian public on the role of the charity sector and the impact it has whilst aligning expectations on the cost of operating a charity. This must be shared and used to educate the broader public, and also taught in schools to embed giving and volunteering in the next generation, if we are to change the culture of giving in the future.

### **Draft recommendation 10.1**

**Establishing an Aboriginal and Torres Strait Islander philanthropic foundation.**

**Response:**

It is the view of the Foundation that any project or program for the benefit for Aboriginal and Torres Strait Islander people should be done in full and transparent consultation with them. It should be designed, developed and implemented by those it is for the benefit of. Whilst the concept of establishing an Aboriginal and Torres Strait Islander philanthropic foundation as outlined in the draft report, seems like a good idea, we have concerns that there was no evidence that this concept came from Aboriginal and Torres Strait Islander people or has been agreed to by them before being included in this report.

### **Draft recommendation 6.1**

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

**Response:**

The Foundation strongly supports the PC's recommendation for reforming the deductible gift recipient system as outlined in point 6.1, in particular, the recommendation to extend eligibility for DGR status to most classes of charitable activities.

In regard to the recommendation to “expressly exclude the following classes of charitable activities or subtypes:

- primary, secondary, religious and other informal education activities, with an exception for activities that have a specific equity objective (such as activities undertaken by a public benevolent institution)”

It is the Foundation's view that equity objectives should be broad and that primary and secondary public education institutions should be included and not excluded. If public schools are excluded from fundraising with deductible gift recipient status, there is a high likelihood that there will be an increased need for government support for these schools, where donations previously filled the need.

## **Draft recommendation 6.2**

### **Supporting reforms to improve the deductible gift recipient (DGR) system.**

#### **Response:**

The Foundation agrees with the PC's recommendations to support reforms to improve the deductible gift recipient (DGR) system. In particular, by registering all new and existing charities with all applicable charitable subtypes as this will serve the broader public in understanding the multifaceted nature of charities and the role they play, whilst also help direct potential donors to a wider offering of charities to support.

However, the ACNC website should be upgraded to become more user friendly to search for this and other information that is available. The ACNC should also be linked to the ABN Lookup and display the current DGR status on the relevant charities page.

## **Information request 6.4**

### **How expanded access to deductible gift recipient (DGR) status would change giving.**

#### **Response:**

As a private ancillary fund, only donations made to DGR 1 status charities are included in the annual minimum distribution. It is our view that by extending eligibility for DGR status to most classes of charitable activities, and the subsequent increase to the number of charities with DGR status would lead to an increase in overall giving. This increase would be from private and public ancillary funds, corporates and individuals who are more likely to give more, rather than reduce their existing giving to give to a new charity.

It is also our view that changing the status may also lead to an increase in volunteering, as both corporates and individuals often commit to both financial and non-financial support.

## **Draft recommendation 4.1**

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

#### **Response:**

It is the Foundation's view that the \$2 threshold for tax-deductible donations to entities with deductible gift recipient status should remain intact for the following reasons:

- It establishes a minimum standard of giving, that charitable organisations are worth more than a few cents.

- It would significantly impact the capacity of Australian businesses like Woolworths or McDonald's to continue offering their 'round up' offering at point of sale, thus limiting a significant donation platform for a range of charities and making small contributions easy for the consumer.
  - By removing the threshold, the business would be required to provide a tax-deductible receipt for small donations, thus requiring the business to achieve and maintain DGR2 status or coordinate with their charity partners on issuing a tax deductible receipt, thus increasing the logistical red tape for such an enterprise.
  - Due to the nature of the material these receipts are often printed on, they would likely not last up to 12 months until the donors next tax return, thus making it more difficult for the ACNC and ATO to properly track charitable giving and skewing data.

## **Draft recommendation 7.2**

### **A suite of reforms to strengthen the Australian Charities and Not-for-profits Commission.**

#### **Response:**

The Foundation supports the PC's recommendation for a suite of reforms to strengthen the Australian Charities and Not-for-profits Commission (ACNC). The ACNC should be seen as the peak body and source of trusted and vetted information for the not-for-profit sector in Australia.

Whilst we agree with the recommendations as outlined in 7.2, it is also our view that if the Australian Government were to amend the Act to enable to the Commissioner of the ANCN to:

- publish details of recommendations given to a charity to address actual or potential non-compliance with the Act or the Australian Charities and Not-for-profits Commission Regulations 2022 (Cth)
- publish circumstances and reasons for referrals made to other Australian government agencies (including state and territory regulators) under section 150-40 of the Act, in instances where harm caused by the disclosure does not outweigh the public benefit of that disclosure.

That this be done with careful consideration to the potential damage and risk to the charity's reputation with the public. It is well established that in the current climate, a misstep can lead to serious ramifications to an organisation's brand and reputation, thus potentially risking their ability to support their beneficiaries.

## **Draft recommendation 7.4**

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

#### **Response:**

The Foundation supports the PC's recommendation to create regulatory architecture to improve coordination and information sharing among regulators.

It is our view that there should be established links at the national, state and territory level to ensure clarity and understanding of the regulations and roles for information sharing and data gathering.

## **Draft recommendation 9.1**

### **Creating more value from the data held by Australian Government agencies.**

#### **Response:**

The Foundation agrees with the PC recommendation to create more value from the data held by Australian Government agencies. In particular the ACNC should be a known and trusted source of information for the broader Australian public and for the charity sector.

#### **Additional information:**

In addition to the above response to the draft recommendations and findings, the Foundation would also like to address the following inclusions in the submission from Philanthropy Australia (PA).

### **3.3 A strategy to grow Australia's Community Foundation network**

The Foundation supports PA's call for a strategy to grow Australia's Community Foundation network and believes that this will help serve the wider community. Community Foundations are uniquely positioned to increase community participation and social capital as well as address place-based disadvantage and inequities in philanthropic giving across Australia and supporting grassroots initiatives at the local level.

### **3.5 Strengthening the Charity Sector**

The Foundation agrees with PA's suggestions to build the capabilities of the charity sector to help stabilise and grow this vital sector. The government has an opportunity to show best practice in:

- Creating a single national fundraising regulation regime; replacing the seven different State and Territory sets of rules, creating clear structure and efficiencies.
- Reducing the red tape for charities had publicly recognising charities have expertise in how to deliver impact and should be partners in driving change.
- Paying what it takes by providing full funding to charities for services they would otherwise provide and fully factor in market wage rates, the skills required and appropriate indexation.
- Improving funding certainty by committing to funding for long-term projects and protecting this from changes to government, policy and budget changes.

The Foundation agrees with PA's case for reform, in particular that stronger capability and impact will lift national giving by giving donors confidence their donations will make a difference.