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**Productivity Commission
Future Foundations for Giving report**

By online upload

Dear Commissioner and Deputy Commissioners

Submission to the Productivity Commission Future Foundations for Giving Draft Report

Thank you for inviting submissions on the *Future Foundations for Giving* Draft Report (“Draft Report”).

The purpose of this submission is to address a conspicuous absence in the Draft Report of strategies to encourage volunteering.

As the Draft Report indicates at page 53 and perhaps counter to popular perceptions, philanthropy extends beyond donations of money, products and services to also include:

[people] volunteering their time and skills to benefit others, such as taking a position on a local art gallery board.

Instead however, the Draft Report focusses almost entirely on discussion and strategies to increase donations of money.

About Us

The writer is director of DF Mortimer and Associates, a law practice that focuses exclusively on the law relating to not for profit organisations and charities. The writer served as founding chair of the Law Institute Victoria Charities and Not for profits Law Committee for nine years and continues to be a member of that committee.

This submission is not sponsored by any particular client, nor does it purport to represent the views of the Law Institute Victoria Charities and Not for profit Law Committee.

In passing comment on DGR reform

The writer makes no observations in relation to the Draft Report's proposals around reform of the "DGR" system.

The writer offers a cautionary note however that any such reform should not be sold simply as a "win-win" situation for donors (who claim the benefit of the deduction against their personal income tax) and for deductible gift recipients (who receive the gift).

The words "win-win" are taken from Court testimony by noted philanthropist Andrew Forrest to justify deductions he claimed for certain transactions involving personal and company shares he had arranged for transfer to a children's' charity.¹ The deductions were denied.

DGR endorsement is not just a "win-win" for donors and charities without a cost - there is a cost to government in terms of income tax forgone on the donor's personal tax return. These are policy decisions properly the preserve of government.

Volunteering motivators: better interrogation of reasons

The writer describes the Draft Report's treatment of volunteerism as cursory. The Draft Report acknowledges volunteerism is a form of philanthropy – thank you, that is a big step.

The Draft Report then relies on survey work commissioned in 2022 to make draft finding 3.3:

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.

However another perspective on volunteerism was offered by former Productivity Commissioner Robert Fitzgerald when he was ACOSS chair in 1997. In his keynote speech at the 1997 National Landcare Conference in Adelaide, Mr Fitzgerald alluded to tensions created by landcare government funding. He is reported as saying:

Although there are some benefits in the new contracting culture if it is managed well, there are also risks to community organisations. They may find that their autonomy is eroded, their capacity to respond flexibly to local needs and circumstances undermined, and their original purpose distorted.

Mr Fitzgerald went on to note that according to ACOSS research, volunteers are motivated when they believe their unpaid work makes a contribution to their community.²

To put this another way, if a prospective volunteer cannot see the benefit of volunteering in "their community" (to use Mr Fitzgerald's words) then it stands to reason they will find better things to do, such as attending to work and family commitments.

¹ *Forrest v Commissioner of Taxation* [2010] FCAFC 6 at [76]. The Court accepted that the arrangements were caught by section 78A(2)(a) of the *Income Tax Assessment Act 1936* and denied Mr Forrest's deduction claim.

² Robert Fitzgerald "Highlights of the 1997 Landcare Conference" *Victorian Landcare* (1997) (edited abstract) issue 6 summer edition, Victorian Farmers Federation.

The Draft Report's draft finding 3.3 suggests people have a simple binary choice-volunteering or committing to work/family – without interrogating the reasons why prospective volunteers may feel a contribution to their community is not worth their time.

Perhaps a frank answer to that question might be too confronting on many levels including at a mental health level.

Without presuming to know the minds of all volunteers, the writer offers two related reasons as to why volunteers may see their contributions misplaced or exposed to political manipulation and hence, lead to a disinclination to volunteer.

1. Philanthropic gestures may be misplaced if institutional causes are not addressed

The Draft Report at figure 6.1 suggests “negative externalities” will be addressed if philanthropists provide support to generate “positive externalities”. This approach paints the philanthropist as coming to the rescue of community to address the unintended harmful consequences of government and corporate decision making. This approach in the writer's opinion, is at best simplistic (at worst, entirely obsequious).

Daly and Cobb make the distinction between “localized externalities” and “pervasive externalities”.³ The respected authors define pervasive externalities as being externalities that cannot be addressed by “tinkering with relative prices”. This type of externality must be addressed they say, “by quantitative limits or institutional change”.

They go on to argue for measures of social wellbeing other than by reference to the GDP.

With the exception perhaps of supporting not for profit advocacy to government, the philanthropist cannot contribute to the reduction in harmful pervasive externalities.

2. Philanthropy as an excuse for government responsibility avoidance

In 2002 the academic Paul Gomberg published *The Fallacy of Philanthropy*.⁴ His article was a professional attack on a view expressed by Australian philosopher Peter Singer. Singer had suggested that rescuing a child from drowning is motivated by the rescuer's sense of ethical duty. Singer argued this duty should be extended to greater personal agency to assist more people in distress, by for example, giving money to relief organisations.

Gomberg on the otherhand said a possible better application of that duty might be to focus on “institutional causes” rather than assisting particular relief efforts. For Gomberg the fallacy of philanthropy says:

‘feed the hungry,’ presenting liberal politics (do-gooding) as an ethical duty. It short circuits political discussions of large-scale causes of poverty. I argue that much poverty is created by institutions that could be other than as they are.

³ Hermann E Daly and John B Cobb Jnr *For the Common Good* Beacon Press 1989 at p 54.

⁴ Paul Gomberg “The fallacy of philanthropy” *Canadian Journal of Philosophy* March 2002 at p 30.

Gomberg goes on to say ⁵ rather bluntly:

Focussing our attention on immediate help, the analogy [of feeding the hungry as an expression of ethical duty] tends to obscure that the ordinary workings of capitalist markets create and exacerbate poverty. So the fallacy of philanthropy narrows the discourse about hunger. It lets capitalism off the hook.

A direct example the writer provides occurred on 20 November 1997 whilst working as an undergraduate lawyer on a Rural Industries Research and Development Corporation funded microfinance project for landcare.⁶

At this time landcare volunteers had completed tree planting works for the year and began preparing for summer watering. The trees had a variety of known benefits including acting as carbon sinks.

On that day Prime Minister Howard made a statement called *Safeguarding the Future: Australia's response to Climate Change*. The Prime Minister's statement acknowledged the \$1.25 billion Natural Heritage Trust, describing it as "the most profound commitment of any government to the environment".

To landcarers in the writer's knowledge, it seemed that the Australian Government was increasing its commitment to reducing greenhouse gases. However the Prime Minister's statement also suggested another agenda at play:

Australia's proposal for negotiated, differentiated targets [at Kyoto] is the best basis for a fair outcome which has a prospect of actually being put into practice and improving the world's environment.

The Kyoto Protocol was signed 10 December 1997 and according to the Australia Institute, Australia in fact was controversially permitted an 8% increase its carbon emissions.⁷

Productivity Commissioner and Deputy Commissioners might imagine how landcare volunteers in the circumstance described above could feel betrayed – what is the point of planting trees to control emissions when the Government uses that very activity to successfully argue for an *increase* in Australia's emissions?

⁵ Paul Gomberg *ibid* at p55.

⁶ Derek Mortimer *The Landcare Revolving Loan Fund: a Development Report* RIRDC 2003.

⁷ Clive Hamilton *The Poisoned Chalice: Australia and the Kyoto Protocol* (1998) The Australia Institute.

This concludes the writer's submission. You will see the writer suggests volunteers may not feel motivated to contribute because their contributions either cannot address pervasive externalities or they may perceive their contribution will inadvertently be used by government and corporate bodies to avoid their own responsibilities.

If the Productivity Commission does wish to further discuss the submission, it should feel free to contact us.

Yours faithfully
DF MORTIMER & ASSOCIATES

Derek Mortimer
Principal

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