



# Productivity Commission: Philanthropy inquiry

Submission from Atlassian Foundation and Pledge 1%

30 March 2023

## Introduction

My name is Mark Reading. I am the Head of Foundation for the Atlassian Foundation, which comprises two entities:

- Atlassian Foundation Australia (an Australian DGR registered Private Ancillary Fund); and
- Atlassian Foundation International Limited (an Australian Public Benevolent Institution).

I am also the Chair of the Advisory Board of Pledge 1%. Pledge 1% is a global corporate philanthropy movement co-founded by [Atlassian](#) that has an aim of making those in the larger community key stakeholders in the decision-making and activities of entrepreneurs. Pledge 1% operates as part of Tides Foundation, a USA 501(c)(3) registered charity.

This submission is made on behalf of both Atlassian Foundation and Pledge 1%.

Since being established late in 2014, the Pledge 1% movement has mobilised over USD2 billion in philanthropic capital.

The Pledge 1% movement has been endorsed and supported by notable Australian philanthropic organisations, including the Australian Philanthropic Services Foundation (APSF).

Information on the Pledge 1% movement can be found on the [Pledge 1% website](#).

Typically, businesses joining the Pledge 1% movement are early-stage, private businesses, with most of the equity owned by a small group of founders.

Pledge 1% encourages business founders to pledge to use 1% of their business' resources for societal benefit. Typically, founders will pledge to use 1% of equity, profit, employee time and/or product for social impact. For example, many years ago, Atlassian's co-founders, Scott

Farquhar and Mike Cannon-Brookes pledged all 4 pledge types. Some Pledge 1% members will pledge a subset of the 4 pledge types.

### **Scope of the inquiry/research study**

We note the purpose of the inquiry is to understand trends in philanthropic giving in Australia, the underlying drivers of these trends, and to identify opportunities and obstacles to increasing such giving. The inquiry should make recommendations to Government to address barriers to giving and harness opportunities to grow it further.

In undertaking the inquiry/study, the Commission should:

1. Consider the tendencies and motivations for Australians' charitable giving, including through different donation channels such as workplace giving, bequests, private foundations, in-kind donations, and volunteering.
2. Identify opportunities to increase philanthropic giving and the extent of their potential impact, including:
  - i. The role of, and effectiveness of, foundations in encouraging philanthropic giving and supporting the charitable sector.
  - ii. Successful public strategies in other jurisdictions — across business, not-for-profits and philanthropic sectors — that have enhanced the status of giving or the level of philanthropic activity.
  - iii. The potential to increase philanthropy by enhancing the effectiveness and efficiency of the use of donations.
3. Examine current barriers to philanthropic giving, including:
  - i. The burden imposed on donors, volunteers and not-for-profits by the current regulatory framework for giving and how this affects their philanthropic decisions.
  - ii. The ability of donors to assess and compare charities based on evidence of effectiveness, including through impact evaluations and making comparisons across charities. In doing so, the Commission should consider the work of overseas impact evaluation comparison sites.
4. Consider the appropriateness of current sources of data related to philanthropic giving, and how databases could be enhanced in a cost-effective manner.
5. Examine the tax expenditure framework that applies to charities. In particular, assess the effectiveness and fairness of the deductible gift recipient framework and how it aligns with public policy objectives and the priorities of the broader community.
6. Identify reforms to address barriers or harness opportunities to increase philanthropy, and assess benefits, costs, risks, practicalities and implementation considerations. In doing so, the Commission should advise on priority areas for reform, having regard to:
  - i. The integrity of the taxation system and the current fiscal environment.
  - ii. The benefits that flow to not-for-profits from existing programs.
  - iii. The benefits that would flow from increased philanthropic giving.

In addition to the general information provided in this submission which contributes to the Productivity Commission's consideration of Scope of inquiry Item 1, in this Submission I have addressed Items 3 and 6 within the Scope of inquiry:

3. Examine current barriers to philanthropic giving, including:
  - i. The burden imposed on donors, volunteers and not-for-profits by the current regulatory framework for giving and how this affects their philanthropic decisions; and
6. Identify reforms to address barriers or harness opportunities to increase philanthropy, and assess benefits, costs, risks, practicalities and implementation considerations. In doing so, the Commission should advise on priority areas for reform, having regard to:

- I. The integrity of the taxation system and the current fiscal environment.
- II. The benefits that flow to not-for-profits from existing programs.
- III. The benefits that would flow from increased philanthropic giving.

## **Background and opportunity**

Typically, a substantial amount of time elapses between when a founder pledges to use 1% of their equity for social impact and when a liquidity event occurs. Consequently, there is a risk that due to changes in circumstances (e.g. changes in the directors and shareholders of the Pledge 1% member company), the pledge may not be honoured, notwithstanding the intention to follow through when the pledge of equity was made.

Pledge 1% views it as desirable from a public policy perspective for founders to have a means of giving their equity pledge legally binding form.

Accordingly, in 2020, with the pro bono support of [PwC Australia](#), a Founder Deed of Equity Gift was developed. Pursuant to the Founder Deed of Equity Gift, the founder makes a legally binding commitment to donate the pledged shares to one or more Australian non-profits with DGR registration.

To seek clarity on tax issues connected with the Founder Deed of Equity Gift, in November 2020 an Australian based member of the Pledge 1% community, Andrew Herbert, the founder of [Cangler](#), sought a Private Binding Ruling (PBR) from the Australian Taxation Office (ATO). The ATO issued a PBR in March 2021. Andrew subsequently [executed the Deed of Equity Gift](#).

An edited version of the [Private Binding Ruling \(number 1051807655739\)](#) issued to Andrew Herbert has been published on the ATO Legal Database.

One of the issues with equity being donated by founders is that due to subsequent capital raisings by the company, over time the percentage of the company equity pledged may be diluted such that it is less than 1%.

One way of overcoming this potential dilution is for the company (rather than the founder) to pledge to issue 1% of its equity capital to an Australian non-profit with DGR registration, effectively for nil consideration.

Accordingly, in 2021, with the pro bono support of [Pitcher Partners](#), a Company Deed of Equity Gift was developed. Pursuant to the Deed, the company executing the Deed makes a legally binding commitment to donate to one or more Australian non-profit entities with DGR registration, an amount equal in value to 1% of the equity in the company. The obligation under the Company Deed of Equity Gift is to make a cash donation, however the company can satisfy the donation by issuing shares to the recipient(s) of the donation.

A potential tax issue in connection with this approach arises from what is referred to as the “value shifting rules”. The value shifting rules are set out in Division 725 of the the *Income Tax Assessment Act 1997 (1997 Act)* and apply when there has been a “direct value shift” under a “scheme involving equity or loan interests in an entity”.

An Australian based Pledge 1% member, [Greener](#), who wished to execute the Company Deed of Equity Gift sought confirmation that the value shifting rules would not apply, by applying for a Private Binding Ruling (PBR) from the Australian Taxation Office (ATO).

The ATO concluded the value shifting rules would apply.

Due to the complexity of the value shifting rules and the implications arising from their application, Greener was unable to execute the Company Deed of Equity Gift.

Those of us working on finding a way for companies that have pledged to use 1% of their equity for social impact to make that pledge legally binding have been unable to find a solution.

### **Policy suggestion for consideration**

We believe an appropriate approach to addressing the existing impediment to this form of corporate philanthropy would be to make a direct value shift in favour of a charity with Deductible Gift Recipient registration a specific exclusion from Division 725 of the *Income Tax Assessment Act 1997*.

### **Relevant documents**

Enclosed with this document are:

1. Founder Deed of Equity Gift
2. Edited version of Private Binding Ruling (number 1051807655739) (relating to the Founder Deed of Equity Gift)
3. Redacted application for Private Binding Ruling (relating to the Company Deed of Equity Gift), including Company Deed of Equity Gift, in two separate documents:
  - 3.1. Redacted application for Private Binding Ruling
  - 3.2. Company Deed of Equity Gift
4. Redacted correspondence with the ATO in connection with document 3, the application for Private Ruling (relating to the Company Deed of Equity Gift)

### **Other matter**

We are aware of correspondence between StartGiving and the Australian Taxation Office in relation to an issue that impedes donations of shares by founders to a PAF or DGR entity. The issue is that currently founders of early-stage companies that are looking to donate unlisted shares in their company to a private ancillary fund (PAF) or DGR entity have insufficient clarity regarding the valuation process that would be applied to the shares being transferred, including under what conditions said valuation process would be used by the ATO. At present this is only clarified after the donation has already been made and the legal transfer cannot be revoked.

StartGiving have proposed a solution to this issue that would not require any legislative or policy change. It may be addressed through procedural clarification. We support the recommendations being made by StartGiving.