

PRODUCTIVITY COMMISSION: EQT HOLDINGS LTD (EQUITY TRUSTEES)

Review of Philanthropy
Submission on behalf of EQT Holdings Limited (Equity Trustees)

BACKGROUND TO EQUITY TRUSTEES

Equity Trustees was established in 1888 for the purpose of providing independent and impartial Trustee and Executor services to help Victorian families protect and transition their wealth. We have expanded our reach Australia-wide and developed strong expertise in stewarding charitable trusts and foundations on behalf of individuals, families, corporates, and not-for-profit organisations. This includes Gifts in Wills, the establishment of Charitable Testamentary Trusts and Public or Private Ancillary funds, for individuals/families or organisations. In the last 5 years, we have facilitated almost \$500m in charitable funding to thousands of For Purpose organisations in Australia.

As a specialist in facilitating philanthropy, Equity Trustees' role is to simplify the process of creating, administering, and operating charitable structures, offering expert estate planning, investment and granting advice and maximising the community and social benefits of donors' philanthropic giving over the long term. We help clients to identify and support the positive social impact they seek to make with their giving, and often continue this giving for them beyond their lifetime, giving them certainty and peace of mind.

We envision a future where effective philanthropy plays a larger role in supporting a prosperous and equitable Australia. As a professional trustee company, we have a unique opportunity to do this at scale. By sharing our experience and knowledge as a leader in structured giving, we continue to aim to increase and support the number of Australians practising strategic philanthropy. We collaborate with and listen to those around us, whether this means working with the philanthropist or For Purpose partners, or in many cases both together.

OUR COMMITMENT TO PHILANTHROPY

-  Learn from others around us
-  Amplify voices with lived experience
-  Foster meaningful collaboration
-  Support sustainability for the sector
-  Respond with transparency and empathy at all stages
-  Share our learnings with others

Equity Trustees recognises the alignment of our commitment to philanthropy with the purpose of this inquiry and the three broad tasks assigned to the Commission, including:

- Analyse trends in philanthropic giving in Australia and the drivers of these trends

- Identify opportunities for, and obstacles to increasing philanthropic giving in Australia

- Recommend ways to respond to these opportunities and obstacles



Equity Trustees welcomes the opportunity to participate in the Productivity Commission's Inquiry into Philanthropy. We recognise we play a small part in this complex system, and we hope that our unique perspective as an Institutional funder and genuine commitment to increasing Philanthropy in Australia for the benefit of all Australians, is helpful. We are committed to collaborating and sharing our insights, so that together with the wider sector, we can grow philanthropy to be greater and more effective in the future in Australia.

EXECUTIVE SUMMARY: Our submission focuses on the following points -

1. Give more Australians the opportunity to engage with Philanthropy through diverse products and increased flexibility

Diversity of products: There is significant complexity for donors to navigate to establish and practice structured Philanthropy. The philanthropic structures available to Australians, lag behind international standards in their sophistication and flexibility. Despite many donors being asset rich, many are unable to access these assets during their lifetime. We have seen effective models in the US such as the *life income gifts* approach and believe there should be investment into expanding the range of options for Australians to capture greater giving. We support innovations such as the *superannuation living bequest* model identified by Philanthropy Australia as a useful step in this direction.

2. We need greater innovation in the use of technology to engage the new generation of Givers

The philanthropic sector needs to adapt to meet the expectations of a younger, more connected society that allows them to engage with their wealth and giving dynamically and responsively. Equity Trustees launched an online portal in response to this trend in December 2022. The portal provides donors live access to their giving data, control of their granting and reduces the cost of entry, making philanthropic giving in people's lifetime more accessible. There is an opportunity to change the narrative that 'only rich people can engage with philanthropy' through campaigns to educate referrers on the products available and share stories of everyday Australians who are making a difference in their lifetime.

3. We need to create efficiencies that allow the For Purpose sector to focus on delivering their intended impact and better engage with donors

For Purpose organisations face many challenges in accessing the funds, data and evidence they need to deliver on their impact. Taking a sector-wide approach to providing the following will deliver better outcomes: Greater flexibility around DGR status, better access to clean and well-maintained data on the For Purpose sector, better resources to assist with mapping their intended social impact, and greater access to funding/capital which allows For Purpose organisations to be more sustainable. The *#fixfundraising* campaign has seen all Commonwealth, State and Territory treasurers commit to a set of nationally consistent fundraising principles and is a great example of how we can create a more efficient sector for For Purpose organisations to attract greater funding.

4. Further leadership, support and guidance from the regulator on key issues

Methods of creating social benefit are changing and the traditional philanthropy model that simply donates to charity, is no longer the only, nor the most appropriate solution in all situations. We see great opportunity for philanthropists to support the For Purpose sector beyond just traditional granting. There is a greater role that the ACNC could take in assisting funders to better understand how they can support innovation in areas such as social enterprise, advocacy and impact investing. This leadership and clarity has the potential to drive efficiencies for funders and to unlock significantly more resources and capital to support greater social impact and sustainability for the sector.

5. Charitable Trusts benefitting Indigenous Communities (Native Title Trusts)

Opportunity exists to fix inefficiencies in the way Charitable Trusts benefitting Indigenous Communities are utilised and governed. While these trusts are regulated by the ACNC, they are extremely complex and unlike more traditional charitable trusts. We believe many of the existing rules governing them are not fit for purpose, due to the unique nature of these trusts and beneficiaries. We believe that providing more tailored governance to these trusts in particular, would result in more funding being made available to support the advancement and self-determination of Aboriginal and Torres Strait Islander communities.



THE UNIQUE ROLE PLAYED BY LICENSED TRUSTEE COMPANIES

BACKGROUND:

Licensed Trustee companies provide a unique and important role in facilitating on-going philanthropy in Australia. With this professional fiduciary role comes great responsibility and opportunity, to oversee philanthropic funding for clients during and beyond their lifetime. Where this responsibility extends beyond a client's lifetime, it is always in line with their specific wishes. And with this role as an aggregated provider of services, comes the opportunity to balance sound governance with the ability to fund with innovation, to support the changing needs of the community.

As a licensed provider of trustee services to over 1,000 charitable entities, our team of 20 Specialists are responsible for approximately \$100m of charitable giving every year and overseeing ~\$3bn of charitable funds under management.

Our focus is to honour the wishes of our clients' who have left clear instructions around their giving, and to work with the For Purpose sector to distribute additional funds where we have discretion. We also work with stakeholders in fulfilling these duties, such as co-trustees, advisory panels, beneficiaries and auditors. While historically we have overseen many perpetual charitable trusts established through wills, our focus in more recent years has been using our knowledge to encourage more Australians with philanthropic intent, to start their giving during their lifetimes.

We provide professional services ranging from the establishment of philanthropic structures in Wills, through our Estate Planning services, to the daily oversight of structured giving with our Active Philanthropy client base (those giving during their lifetime). We now have over 250 (often multi-generational) families and individuals accessing our advisory services to support their giving. We steward a large number of testamentary charitable trusts and foundations, to deliver to their purpose, often into perpetuity. We are responsible for stewarding (either as sole Trustee or in conjunction with co trustees) a number of foundations with a corpus in excess of \$100m.

We maintain the highest standards of governance around the management of these entities, and work closely with the ACNC and ASIC to adhere to all required standards and expectations – which is a requirement unique to Licensed Trustee companies. In addition to this governance, we also apply deep expertise in specific areas of charitable giving and social impact to ensure we are distributing available funding in a relevant, innovative and effective way. See our [Giving Review](#) for further information.

Our on-going funding engagement with the For Purpose sector allows us to listen and share insights around what the sector seeks from funders, with existing or potential clients who come to us for advice on Philanthropy. Every year we share these learnings and best practice to support and facilitate more Australians to undertake structured giving that aligns to their personal situation and values.

Our dedicated team believe that all Australians, irrespective of their wealth levels, should be able to practice giving. We use our aggregated giving at scale to bring efficiencies to our services by reducing administrative wastage, facilitating collective giving across multiple trusts, connecting active givers with aligned organisations, as well as bringing like-minded funders together to collaborate.

By delivering professional philanthropic services at scale, we are ensuring that there is continuity of trustee duties undertaken, appropriate legal oversight provided (if changes are required such as widening powers of a trust via the Courts) and fit for purpose, targeted funding being practised, to maximise the effectiveness of our giving to support positive social change. We also provide open, transparent funding opportunities to the community, so they understand our giving approach and avoid time wastage and duplication of effort often experienced when applying for funds from multiple individual trusts.



1. MORE FLEX AND BREADTH OF PHILANTHROPIC PRODUCTS AND SERVICES

TERMS OF REFERENCE:

- i. 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.

We have a great opportunity in our role of Trustee and philanthropy specialist, to improve the philanthropic experience for both donor and grant recipient in Australia. As a professional adviser we often support clients through key life events, where we can inform, educate and guide them in establishing a suitable philanthropic structure or bequest.

Australia is lagging behind in the breadth of innovation we have applied to the products and structures available for philanthropists to practice giving. Compared to world leaders in facilitating philanthropy, such as the US; Australians are limited in the ways they can convert their assets into philanthropic funding or support. Australians can only give in 3 ways (beyond mainstream fundraising): through a bequest in their Will, through an Ancillary fund during their lifetime (Public/Private) or through a charitable Trust either during or post their lifetime. These products are complex to understand for every-day Australians, limiting in the form of assets they can receive, can be costly to maintain and often require a professional adviser to establish and oversee them.

We have seen numerous examples of potential donors being limited in their efforts to support the sector, eg. They have had large property portfolios but no feasible way to unlock the value of these assets during their lifetime without creating complex and costly trust structures.

Research undertaken overseas highlighted the varied philanthropic products/services that allow more people to convert their complex assets into philanthropic funding/support. We support further regulatory investigation into some of these options, to remove barriers to people needing greater flexibility to give. An example of this seen in the US is where service providers deliver Planned Giving, through establishing *life income gifts*, where 'typically a donor contributes cash, stocks, or other assets and, in return, receives an income for life. When the arrangement terminates, the remainder assets pass to the [charitable] organisation'. (Services provided by TIAA Kaspick, California, <https://www.kaspick.com/>)

The lack of philanthropic options in Australia is a barrier to more people practising philanthropy and we support Philanthropy Australia's request for Superannuation Bequests to be utilised as an example of this innovation. The current common practice within the superannuation industry produces very poor outcomes for the charitable sector and severely limits bequests. Superannuation Trustees should be encouraging their members to choose their beneficiary on death to be their estate and for their wishes to be carried out by their executor across their whole estate on death. This creates a large opportunity to increase charitable giving in Australia.

We would also welcome further consideration being given to Trustee companies having more flexibility in how Trustee fees are collected from income versus capital, for charitable trusts established prior to May 2010. This is important for older trusts where no access to capital is allowed in the Deed/Will, particularly in low income producing years, to maximise the amount of available income to distribute to charitable beneficiaries. We experienced the challenge of this during the recent pandemic, when the community was desperately in need of funding, however income levels were at a historic low due to market impact of the global pandemic. We believe that the trustee having more flexibility to take fees from capital in these circumstances, would drive a better balance between preserving the long-term capital value of the corpus, while also supporting the distribution of income when it is truly needed.



2. INNOVATION IN THE USE OF TECHNOLOGY

TERMS OF REFERENCE:

- i. **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.**

In addition to the widening of the available products, we also need to see an investment in technology which facilitates faster and more efficient giving. An example of this is the philanthropy portal that Equity Trustees launched this year. (See case study below).

By harnessing and leveraging the value that these technologies bring, we can empower more people to self-direct their giving, rather than relying on traditional advisory firms.

(A case study of innovation that facilitates more accessible giving)

In 2019 visiting counterparts in the US, Equity Trustees experienced first-hand the power of technology in driving greater participation in giving. While there are many examples of technology supporting donors to make individual donations to initiatives, we see the investment into further technology in Australia, such as automated donor giving platforms, (which removes administrative costs and allows lower entry points) to be only a good thing for Australia. This type of tech. innovation was seen a way to 'democratise philanthropy', in that it aims to make it more affordable and accessible to all to practice philanthropy.

There has been a surge in younger clients' desire to practice their giving on their portable devices and in a more bespoke way. Following the success of the Donor Advised Fund model in the US, Equity Trustees' launched an online philanthropic portal to clients, who wish to have a more efficient, faster and often more donor-directed way of giving. Utilising technology from the US, Equity Trustees now offers the following to donors:

- Ability to establish a sub-account within a Public Ancillary Fund (PuAF) online, for as little as \$5K seed funding.
- Lower trustee and investment fees, reflective of the platform efficiencies yet providing real time reporting on available balances for granting.
- A segmented offering to cater for 'self-serve' philanthropy (undertaken solely by the donor via a portal), through to full-service granting support at a higher opt-in price point.
- A dedicated portal to house all donor giving information, including historic giving, regular giving functionality, total oversight of investment performance and fees, as well as access to leading insights on strategic giving from our team.

Many philanthropists find structured giving difficult to establish (many providers require a minimum of \$20K-50K seed funding or more), too expensive or not fit for purpose eg. Current practice shows advisors often establishing standalone Private Ancillary Funds (PAF), when the clients' needs can be efficiently and affordably met by utilising a sub-fund within a PuAF. Equity Trustees believes this is the most fit for purpose structure to achieve growth and create efficiency in the sector.

Through the delivery of our philanthropy portal, we aim to overcome some of these barriers currently preventing more everyday Australians from commencing structured giving during their lifetimes, by partnering with external investment advisers to offer a white-labelled version of this portal to a wider cohort of givers.

We believe that by lowering the entry point to commence structured giving, providing further education about the pro's and con's of different structures to referrers and allowing a tailored pricing range for clients requiring different levels of support will achieve this. Utilising technology means we can increase our efficiency as a service provider and more readily scale our offering to those wanting to give.



Work needs to be done in Australia to educate people about the importance of philanthropic giving and to remove the stigma that *'only rich people can/should practice philanthropy'* – to encourage all Australians to give within their means and in a fit for purpose manner should they wish to. Utilising technology also makes it easier to transfer knowledge and education around best-practice philanthropy and collaborative impact.

We would welcome the opportunity to increase the use of technology in driving further structured giving and share our learnings with others.



3. CREATING EFFICIENCIES ALLOWING THE FOR PURPOSE SECTOR TO FOCUS ON DELIVERING THEIR INTENDED IMPACT AND BETTER ENGAGE WITH DONORS

TERMS OF REFERENCE:

1. 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.
2. Consider the appropriateness of current sources of data related to philanthropic giving, and how databases could be enhanced in a cost-effective manner.

There are several ways to increase the efficiency of getting greater funding to the For Purpose sector, in a faster and more effective way. These include:

- **Greater flexibility around DGR status:** We support Philanthropy Australia's submission that proposes all charities registered with the ACNC be given DGR status. This would reduce inequities between existing charities, reduce red tape, increase the number of charitable organisations that ancillary funds can legally grant funds to, and incentivise giving from the wider public.
- **Better access to clean and well-maintained data on the For Purpose sector.** The ACNC Charity register could be easier to search, more accurately categorised and more dynamic. This would enable givers to find it easier to pay donations out.
 - If intermediaries like licensed Trustee companies were able to obtain a real-time data feed from the Charity Register, this would also help philanthropists (like the sub-fund holders in our Public Ancillary Fund) to access up to date information on charities doing work that is of interest to them and would enable them to identify charities that have recently been de-registered or otherwise incurred sanctions.
 - The ACNC is well placed to act as a central, validated repository of bank account details and addresses for the sector. There is considerable administrative effort required by for-purpose organisations any time they change bank details (or their mailing address), as they must inform multiple funders of this change and this creates workload and risk for organisations looking to verify these new details (particularly in a climate of increased cybercrime and a proliferation of online scams).
- **Better resources available to the For Purpose sector to assist with mapping their intended social impact:** One of the biggest challenges organisations face is capturing and using evidence of impact for their own use/learning and to provide to current and prospective funders. While resources exist such as consultants providing training in impact measurement, and benchmarking data and tools are available for organisations to access, such as CSI's *Amplify Social Impact* initiative, this information should be available free of charge to the sector. There is a significant capacity and capability gap in the For Purpose sector that limits the ability of organisations to develop, implement and use outcomes measures to inform their work and to report to current/potential funders. We fund capacity for organisations to build measurement resource/capability into their projects and work, however if we are truly to make progress on creating more evidence-led resources for For Purpose organisations to make decisions about their services and for donors to use when making their granting decisions, we must centrally fund this effort and equip the sector to have the capacity to do what is being asked of them.



- **Fix Fundraising:** We support Philanthropy Australia’s submission that proposes an enduring national solution rather than ‘harmonised rules’ that can be weakened over time by individual jurisdictions making changes:
 - Charities (and charitable foundations with fundraising requirements such as public ancillary funds) registered with the ACNC should be deemed to be approved to fundraise nationally;
 - Identical fundraising legislation should apply across the country; and
 - State-based regulators should access any information they require through the ACNC portal.

This will save time, effort and resource which can be redirected to more value-add work in growing philanthropy.

- **Greater access to funding/capital which allows For Purpose organisations to be more sustainable:** *The Partners in Recovery* series of reports produced by Social Ventures Australia and the Centre for Social Impact highlighted the significant financial challenges that the For Purpose sector faces in terms of its financial resilience. Many For Purpose organisations are trapped in unreliable funding patterns with a heavy reliance on Govt/other funding to survive which detracts from their ability to focus on the most effective ways of delivering on their mission. They typically have very limited reserves to fall back on and no/low access to loans or other debt options.



4. FURTHER LEADERSHIP, SUPPORT AND GUIDANCE FROM THE REGULATOR ON KEY ISSUES

ADDITIONAL AREAS OF OPPORTUNITY:

While the terms of reference of this Inquiry do not specifically cover topics such as impact investing, we wanted to flag it in our submission, along with other areas we feel the ACNC could deliver further leadership and support toward the challenge of growing philanthropy.

"There is a diverse array of solutions being developed to address imminent social and environmental challenges that cannot be sustained by traditional grant, philanthropic and government funding sources (Charlton et al. 2014, p.10)."

We see great opportunity for philanthropists in contributing to the development of more innovative ways of supporting the For Purpose sector beyond just traditional granting. There is a greater role that the ACNC could take in assisting funders to better understand areas such as social enterprise, advocacy and impact investing to provide greater clarity around what can and can't be funded from particular structures. This leadership and clarity has the potential to drive efficiencies for funders who seek to direct their funding in this way.

It is a common experience for funders to be approached to support initiatives which fall into areas where there is confusion around their ability to fund. We appreciate the complexity and reasons for these areas not being as easily regulated, but with stronger oversight and education, funders will better understand how they can support these parts of the sector and which players in the philanthropic landscape can participate. For example, Charitable Trusts have greater power to fund non-DGR status organisations, hence we focus these trusts where possible on funding relevant charitable activities being undertaken by social enterprise and other non-DGR entities.

In addition, greater leadership and clarity around how funders can support organisations engaging in advocacy would be beneficial, as was the ACNC's recent update to charities wanting to fund/support the Voice/Yes Campaign. There appears to be a general lack of consistency and understanding of what is allowable to fund on many occasions such as the recent funding push towards the Yes Campaign. National harmonisation of the definition of what is considered charitable under State-based law and the Commonwealth Charities Act 2013, by having the States adopt the Commonwealth definition, would be very beneficial.

Other leadership on how Trusts and Foundations can more fully use their corpus to further their charitable purpose (for example through participating in impact investing) and still be deemed to satisfy their Fiduciary obligations, would be welcome. As would the continued support, endorsement and advancement of the work of bodies such as the Impact Investing Taskforce Expert Panel.

As the For Purpose sector matures and embraces innovation in the way it tackles social problems and longer-term sustainability - funders also need to be supported to maximise their giving in new and innovative ways.



5. CHARITABLE TRUSTS BENEFITTING INDIGENOUS COMMUNITIES (NATIVE TITLE TRUSTS)

ADDITIONAL AREAS OF OPPORTUNITY:

In the terms of reference, seeking the engagement of Aboriginal and Torres Strait Islander people was highlighted as a consideration.

We do not represent First Nations people, however we have insight into the operation of charitable trusts established for the purposes of benefiting Aboriginal people, hence our inclusion of this in our submission.

Our role as Trustees in this capacity is to preserve and protect indigenous wealth, however if we wish to maximise the amount of money benefitting first nations people, we need to address the inefficiencies within the current system. We feel progress made in this area would result in more funding going to the intended beneficiary and provide much needed funding to support the advancement of aboriginal communities.

The inefficiencies relate to the inflexibility in administration resulting from charitable (and trust deed) restrictions, despite the fact the distributions are benefiting a people recognised widely at law as experiencing poverty and social disparity. There are many barriers to receiving and distributing these funds. This is an important area of focus because while these trusts are regulated by the ACNC, they are extremely complex and we believe that many of the rules governing the trusts are not fit for purpose.

We encourage the Commission to actively seek submissions and input from relevant organisations on this matter, as they would provide a unique perspective of operating a charity within the ORIC (Office of the Registrar of Indigenous Corporations) regulatory environment relevant to this inquiry.

The representative bodies of traditional owner groups include land councils or, if they have native title determined, prescribed body corporates are regulated by ORIC. The majority of, if not all, of these Corporations are 'charitable entities'. Many are registered Deductible Gift Recipients also.

(A case study based on our role as Trustee of Charitable Trusts established for specific Traditional Owner or Native Title groups)

Compensation provided to communities whose land and culture is being impacted by an external party, should be directed to those communities with minimal restriction as to how it can be received. It is compensation for a loss, a recognition that culture has been adversely affected. The Indigenous Land Use Agreements (ILUAs) or other similar agreements acknowledge this. While most communities would prefer this compensation to be directly provided to traditional owners, there are many reasons why this is not the accepted model. Including:

- *Ensuring the benefit of the compensation is experienced by current and future generations*
- *Ensuring equity and fairness in the disbursement of benefits (not necessarily equal, eg elders)*
- *Objective management of the funds at arm's length.*

In many agreements, trustees' have compliance obligations contained within the ILUAs, Sub-Fund Agreements and Trust Deeds. If the trust is charitable – it adds further complexity and regulation. Many compensation agreements include two types of trusts, a charitable trust and a non-charitable trust. Non-charitable trusts are administered according to agreements, trust deeds and common law. They can be administered with benefits going directly to the Aboriginal community that has negotiated the compensation.



Charitable trusts, however, as required by the ACNC – require that benefits be more broadly distributed – to the “Aboriginal community”. This is often inconsistent with the intent of the compensation agreements with specific traditional owner groups and can create issues for trustees trying to comply with Agreements under these charitable registration requirements.

Courts have continuously recognised that assistance to Aboriginal and Torres Strait Islander peoples is charitable in nature. For example, as recently as 2022, the NSW Supreme Court commented on this exact point –

See paragraphs [59]-[61] below from [*Aboriginal Housing Office v Mabel Mary Jacky* \[2022\] NSWSC 916](#):

Other purposes beneficial to the community

*There is no dispute that a trust for providing assistance to Aboriginal people, in particular in relation to their housing needs, is capable of being a valid charitable trust. There have been many cases where trusts established to assist Aboriginal people (in particular, by improving their economic and educational status) have been held to be charitable within the fourth Pemsel category provided that the Compton test is satisfied: eg *Re Mathew (deceased)* [1951] VLR 226; *Dareton Aboriginal Land Council v Wentworth Council* (1995) 89 LGERA 120 at 125; *Aboriginal Hostels Ltd v Darwin City Council* (1985) 33 NTR 1 at 14; *Alice Springs* at 40-41; *Shire of Derby-West Kimberley v Yungngora Association Inc* at [54] per Newnes AJA (with whom Buss and Miller JJA concurred); *Cant v Kirby* [2011] NSWSC 1193 at [46]; *Groote* at [104]-[107].*

*In *Cant v Kirby*, Gzell J said at [46] “[t]he assistance of Aboriginal persons is a charitable purpose” citing *Re Mathew (deceased)*. In the latter case, O’Byrne J upheld a testamentary trust of property “to be used by (the trustee) in his discretion for the benefit of the Australian aborigines” as a valid charitable trust within the fourth Pemsel category, stating (at 232) that “Aboriginal Australians are notoriously in this community a class which, generally speaking, is in need of protection and assistance”.*

*Similarly, in *Aboriginal Hostels Ltd v Darwin City Council*, Nader J stated (at 16) that “no right thinking person could quarrel with the general proposition that Aboriginals are in need of special consideration and assistance” and said (at 17) that the provision by the appellant of hostel accommodation for Aboriginal people in the circumstances of that case was “an attempt to meet an obvious need in Aboriginal society”.*

Traditionally, trusts established for traditional owner groups or native title holders are treated with the same levels of restrictions as any others by the ACNC. The provision of unrestricted types of benefits to the Aboriginal and Torres Strait Islander community – would satisfy this legal interpretation. We propose that the ACNC look to aligning their practices and regulations.

In summary, we see unnecessary administrative burden and restriction in the way these trusts are governed, especially by professional trustee companies already operating within high regulatory environments as financial licensees. There is much opportunity for improvement, and alignment with the assessment of charitable purposes for Aboriginal and Torres Strait Islander communities with legal authority, which would result in more effective administration and greater funds being distributed to support and empower First Nations communities.

We would be happy to engage our team of specialist Trust Managers with the commission should they choose to explore this further.