

Submission to the Productivity Commission

Draft report: Future foundations for giving

9 February 2024



**HUMANE SOCIETY
INTERNATIONAL**
AUSTRALIA



This submission is made on behalf of a coalition of seven of Australia’s leading animal welfare charities (Coalition of Animal Welfare Charities), being the Australian Alliance for Animals, Companion Animal Network Australia, FOUR PAWS Australia, Animals Australia, Humane Society International Australia, World Animal Protection Australia and Voiceless, the animal protection institute.

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1. Response to the draft report's recommendations

We welcome the Commission's draft report *Future foundations for giving*. The draft report is of an extremely high quality and comprehensive in its scope and recommendations. We also thank the Commissioners for their careful consideration of the issues raised in our original submission and those from other organisations which argued for reform of current philanthropy laws, particularly in relation to DGR status.

We agree with the majority of the Commission's findings and recommendations in the areas covered by our original submission. In particular, we **support** the following findings and recommendations:

- **Draft finding 5.1** *The deductible gift recipient (DGR) system is poorly designed, overly complex and has no coherent policy rationale.*
- **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.*

Eligibility for DGR status should:

- *be extended to most classes of charitable activities, drawing on the charity subtype classification in the Australian Charities and Not-for-profits Commission Act 2012 (Cth) to classify which charitable activities are eligible for DGR status and which are not.*
 - *only grant DGR status to government entities where they are analogous to a charity and undertake activities that would be eligible for DGR status if undertaken by a charity*
 - *continue to limit the scope of the DGR system to registered charities and equivalent government entities*
 - *only use the specific listing mechanism in exceptional circumstances. When it is used, the Australian Government should increase transparency about applications, how these are assessed, and the decision-making process to maintain confidence in the broader DGR system.*
- **Draft recommendation 6.2.** *Supporting reforms to improve the deductible gift recipient (DGR) system.*

To facilitate the implementation of reforms to the DGR system, and provide greater clarity to both charities and the Australian Charities and Not for profits Commission (ACNC), the Australian Government should:

- *amend the Australian Charities and Not for profits Commission Act 2012 (Cth) to require the ACNC to register all new and existing charities with all applicable charitable subtypes. This should include any necessary amendments to enable the*

ACNC to compel the provision of necessary information to assess eligibility for subtype registration where that registration has not been applied for by an entity. Charities should continue to be able to seek review of subtype registration decisions through the Administrative Appeals Tribunal or its successor

- *develop a legislated definition of what constitutes a public benevolent institution to delineate its scope more clearly.*

Notwithstanding our support for these proposed reforms, we think there are some aspects of the report that could be improved with further clarification, information or explanation. Before we cover these aspects in more detail, there is one overarching point we would like to make.

In our view, animal welfare charities (charities with the purpose of preventing or relieving the suffering of animals) are consistently underestimated by policy makers in terms of their importance to the Australian community and the value of the work they do.

As we stated in our original submission, animal welfare charities are consistently in the top three causes Australian donors support,¹ with 41% of givers classified as ‘highly motivated’ to support this cause. Animal welfare is also a key concern of donors giving in response to natural disasters, with the majority of Australian donors seeking to contribute to organisations associated with disaster response.²

Animal welfare is also the top cause area that people want to donate their time to. As the Commission notes, according to research from Volunteering Australia (p116 of the draft report) more volunteers want to assist animal welfare charities than any other type of organisation:

Animal welfare was the most common type of organisation people were interested in volunteering for (29.4%) followed by environmental organisations (23.0%) and children and youth (22.7%).

Despite this evidence, the work of animal welfare charities is still often regarded as less important in terms of its value to society than the work of human welfare charities. This has led to a system where animal welfare charities are disadvantaged in terms of their access to government funding, tax concessions and DGR status, and their representation in many decision-making processes.

While the recommendations in the draft report will go some way to address these inequities, particularly in terms of access to DGR status, we feel that there is room for the Commission to specifically recognise in the draft report the growing value of animal welfare charities to Australian society, and support actions that will further assist the sector in its mission to help animals in need.

¹ <https://morestrategic.com.au/australias-most-popular-causes/>

² <https://library.workplacegivingaustralia.org.au/2023-nfp-insights-the-charities-landscape/>

2. Reform of the deductible gift recipient system

We support the draft recommendation and key points made in Chapter 6 to address the inefficiencies and inequities of the current system through reform to create fairer and more consistent outcomes.

We appreciate the breadth of the scope that this reform would offer, as explained in Table 6.1 and on P185 of the draft report:

Most classes of charitable activities would be in scope for DGR status, including activities that have been largely excluded from the DGR system to date, such as advocacy in furtherance of another charitable purpose, public interest journalism, smaller social welfare charities that do not meet the criteria to be a public benevolent institution, and a more diverse range of animal welfare and health promotion charities.

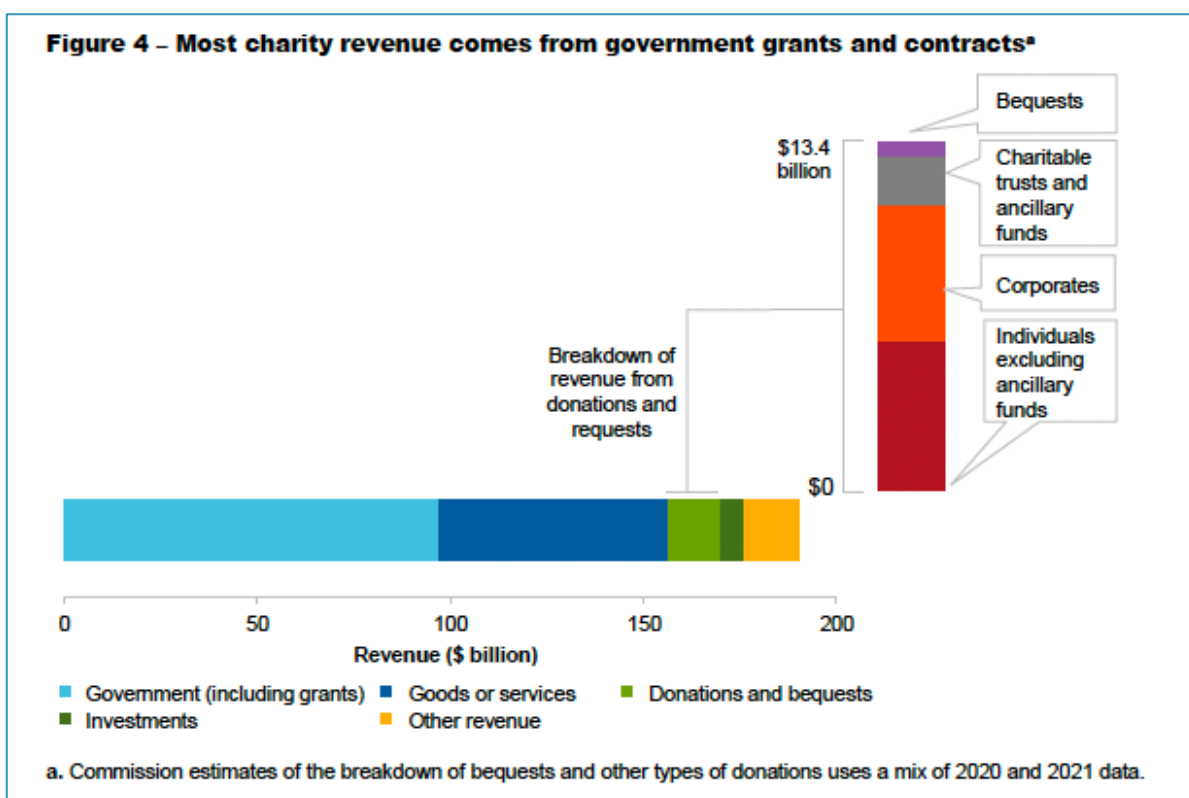
In our original submission, we made the following points in relation to DGR eligibility as it applies to animal welfare charities:

- The work of animal welfare charities that focus on addressing and preventing systemic issues is of clear and vital importance to the Australian philanthropic community, and modern DGR regulations should reflect this.
- There is a lack of clarity and consistency under current regulations and this has a negative impact on animal welfare charities.
- Many animal welfare charities are excluded from fundraising opportunities due to their lack of DGR status.
- The current rules work against animal welfare charities remaining competitive and true to their mission.
- Removing these barriers will ensure that all donors supporting the significant issue of animal welfare will be recognised for their charitable giving.
- The scope of 'animal welfare' under the ATO DGR criteria should be redefined to recognise the value of the vital and broad body of work being done by animal welfare charities (charities with the purpose of preventing or relieving the suffering of animals) for the benefit of animals and the wider community.

We therefore welcome the proposed reforms, however we would like to take the opportunity to further strengthen the case for them regarding animal welfare charities.

2.1 Animal welfare charities get most of their income from donations, not government

Figure 4 (p9) in the draft report provides a breakdown of the sources of charity revenue across all charities in Australia and concludes that most charity revenue comes from government grants and contracts. This is not the case for animal welfare charities. Animal welfare charities receive very little income from government and gain most of their income from donations and bequests, which means a change in DGR status would have a much bigger positive impact on this type of charity than for other charities.



For example, using the information published in the ACNC Annual Information Statement, we've looked at the main sources of income that the members of the Alliance for Animals drawn from (Table 1). For comparison, we've also included several RSPCA and Animal Welfare League charities as these organisations receive some government income due to their role in enforcing animal welfare legislation.

None of the members of the Alliance for Animals receive any income from government, with all receiving most of their income from donations and bequests. Income from government to the RSPCA and Animal Welfare League ranges from 0% to 13.91% of total income.

We make this point to underscore how significant expanding the eligibility of DGR status to all animal welfare charities will be. The reliance of the sector on donations strengthens the argument that all animal welfare charities should be given DGR status.

Table 1 – Income sources for selected animal welfare charities

(source: most recent AIS on the ACNC website)

Charity	DGR eligible?	% Government	% Goods or services	% Donations and bequests
Alliance for Animals	No	0	0	99.16
Animals Australia	No	0	0.54	97.54
World Animal Protection	Yes*	0	0	99.73
Voiceless	No	0	0	80.35
Humane Society International	Yes*	0	26.67	71.73
Four Paws	No	0	0	99.78
RSPCA Australia	Yes	0.25	50	43.85
RSPCA NSW	Yes	10.74	20.88	64.25
RSPCA Vic	Yes	6.18	20.61	70.81
RSPCA Qld	Yes	2.67	15.49	58.32
RSPCA SA	Yes	7.63	34.01	41.22
RSPCA WA	Yes	13.91	10.81	69.17
Animal Welfare League NSW	Yes	1.36	20.99	73.39
Animal Welfare League Qld	Yes	1.43	78.67	18.57
Animal Welfare League SA	Yes	0	44.19	55.38

* These charities received DGR status via a public fund under the Register of Environmental Charities.

2.2 Clarifying how many animal welfare charities currently have DGR status

In relation to charities registered under the subtype of ‘animals’, Table 5.1 of the draft report states that a ‘relatively high proportion of these [animal] charities have DGR status, but there are restrictions on the types of activities covered’.

We are concerned that that this comment downplays the number of small and medium animal welfare charities without DGR status. While we do not have the overall data to confirm this, there are many animal welfare charities that do not have DGR, or only have DGR for specific types of activities. According to ACNC data, there are 1132 charities that list preventing or relieving the suffering of animals as one of their charitable purposes. The majority (78%) of these

are small charities. However, the ACNC dataset does not record whether a charity has DGR status.

If the Commission's analysis includes a breakdown of the number of small, medium and large charities within each subtype that currently have DGR status it would be very helpful for this to be included in the report.

2.3 Broadening the scope of advocacy-related activities

We welcome the draft report's indication that under the proposed reforms, charities undertaking advocacy activities related to most charitable purposes would become eligible for DGR status.

The report explains its justification for this reform in terms of the benefits that advocacy activities can provide the community (p78, p192). We agree with this justification but believe that the report should make it clear that DGR eligibility under this charity subtype should not be limited to policy advocacy itself (promoting or opposing a change in law, policy or practice), but also includes activities which charities carry out to inform advocacy, such as research, policy development, direct action and other efforts aligned with that purpose.

In practice, this work can take significant time and resources to ensure that advocacy for policy and law reform is properly evidence-based. In the case of animal welfare charities, this may include reviewing existing literature, funding new scientific or social research, and/or instigating consultation processes to seek stakeholder views on policy reform before any advocacy is undertaken. We would like to see the report clarify that DGR eligibility for advocacy-based charities would extend to these broader activities.

2.4 Supporting advocacy where this may be in tension with government policy

The draft report explains the legal definition of a charity includes specific requirements that it:

- have only charitable purposes that are for, or to advance, the public benefit
- not be an individual, a political party or a government entity
- not have a disqualifying purpose.

Disqualifying purposes include activities that are unlawful or contrary to public policy, or purposes that promote or oppose a political party or candidate for political office.

In the context of advocacy, the draft report acknowledges that advocacy can include *'expressing views on policy issues which are different from the government or the wider public, noting that charities cannot have a 'disqualifying purpose' such as promoting or opposing a political party or candidate for political office, which is an appropriate limitation designed to preserve their independence (chapter 2).'*

In the animal advocacy sector there are many situations where the views of charities on policy issues are different from current government policy, especially where such policy has historically been strongly influenced and aligned with commercial interests such as animal agriculture industries. Examples include advocacy on ending the use of battery cages for layer hens, live animal export, the use of gas stunning in the slaughter of pigs, and conditions in factory farms. Animal welfare charities have been advocating against these practices over many years, against strong opposition from animal agriculture industries. We anticipate that for-profit organisations, with vested interests in maintaining the status quo, are highly likely to oppose the extension of DGR status to animal advocacy charities, either in submissions to the current process, or during the process of legislating the proposed reforms.

It is crucial that the final report includes additional wording to pre-empt arguments that could be made to equate animal advocacy in the agriculture space with a 'disqualifying purpose' or being against the 'public benefit'. We seek to ensure that narrow interpretations of these requirements do not limit the practical impact of policy advocacy charities, and that animal welfare charities in particular should not be penalised for taking part in the discourse within society about issues that affect animals.

2.5 Strengthening the case for the inclusion of public interest journalism

We welcome the draft report's references (p17, p185, p205,) to public interest journalism and support the recommendation that charities focused on public interest journalism should become eligible for DGR status under the proposed reforms.

However, we feel the report could be stronger in explaining the importance of public interest journalism, in the same way that it already sets out the benefits of advocacy activities to the community. It would be helpful if similar supporting text were included to explain the justification for extending DGR status to public interest journalism so it is less likely that this recommendation, which could face considerable opposition from vested commercial interests, is lost or diluted in the legal drafting process.

Providing a more detailed justification for expanding DGR status to public interest journalism will help ensure readers of the final report understand the merit of the argument. We also hope that providing more information on the significance of this reform will increase its likelihood of implementation.

We believe that public interest journalism is a vital aspect of a healthy democratic society. It also provides a means of increasing the impact and audience for advocacy activities conducted by charities, such as those with the purpose of preventing or relieving the suffering of animals.

- Public interest journalism plays a crucial role in providing accurate, reliable, and independent information to the public. It helps citizens make informed decisions, hold institutions accountable, and participate actively in democratic processes.

- Public interest journalists act as watchdogs, investigating and exposing wrongdoing or corruption in society. By shining a light on important issues, they contribute to transparency, accountability, and the functioning of a healthy democracy.
- Public interest journalism often focuses on marginalised communities or neglected issues that may not receive adequate coverage from commercial media outlets. By giving voice to under-represented groups, including non-human animals, it helps address social inequalities and promotes fairness in society.
- Public interest journalists often tackle sensitive topics (such as the cruelty to animals associated with industrialised animal agriculture) or challenge powerful individuals or institutions. Protecting their independence through charitable status can help safeguard freedom of expression and ensure diverse perspectives are heard.

The draft report notes that there is no DGR category that covers the specific purpose of producing or supporting public interest journalism, and as a result only 40% of registered charitable news organisations currently have DGR status (p170).

The PIJA submission (submission #192) explains that public interest journalism 'informs public discussion and decision making, ensures open justice and holds powers to account'. PIJA reports that there are 94 registered charitable operating news outlets, but only 38 of these have DGR status.

Given the powerful interests which could oppose this change, precisely because of the public good that public interest journalism serves, it would help if the report included a clear statement about the reasons why public interest journalism should be eligible for DGR. Providing a clear definition of public interest journalism would also be helpful so this could be used to create a new charity subtype, as proposed in the PIJA submission.

3. Enhancing the effectiveness of charities

We note that the Inquiry's Terms of Reference included the following points relating to examining opportunities to increase the impact of charities:

- The potential to increase philanthropy by enhancing the effectiveness and efficiency of the use of donations (TOR 2iii).
- 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 (TOR 3ii).

While the draft report provides an extensive examination of the problems with the current DGR system and the benefits of DGR reform, we note that it does not support expanding tax

exemptions to cover a broader range of charities and is dismissive of proposals to report on the effectiveness of charities. We would like to re-iterate our view that both these measures could increase the impact of animal welfare charities and ask that the Commission reconsider its response to these two aspects of its Terms of Reference. The following two sections provide more detail on these points.

3.1 Enhancing the effectiveness of the use of donations to animal welfare charities

Under the current arrangements, Public Benevolent Institutions and Health Promotion Charities are (rightfully) entitled to a capped exemption under the Fringe Benefits Assessment Act 1986 and a Meal, Entertainment and Holiday Benefit.

In our original submission we put the case for expanding these tax exemptions to incorporate animal welfare charities. We argued that this change would reflect community sentiment regarding the importance of animal welfare and enable animal welfare charities to optimise the effectiveness of the use of donations by offering competitive salary and benefits packages to attract and retain highly skilled staff who are able to work more productively and efficiently.

We acknowledge the Commission's statement that *"the tax concessions available to Australian charities have been examined extensively elsewhere and so the Commission has not duplicated that analysis here"* (p177). We do not seek changes to the types of tax concessions that are available to PBIs, rather we seek to extend these concessions to include charities assisting non-human animals in need.

We are disappointed that the Commission *"does not see a compelling reason for expanding the scope of what can constitute a PBI, noting the proposed reforms will expand access to the DGR system for a more diverse range of charitable activities. PBI eligibility should be restricted to charities 'organised, conducted or promoted' to provide benevolent relief to people in need (ACNC 2023j) and not extended to other purposes for the benefit of the public."*

The expansion of DGR eligibility will indeed assist animal welfare charities in increasing income from donations. However, without additional access to the tax concessions available to PBIs, charities who work to assist (non-human) animals in need will remain at a competitive disadvantage in their ability to hire and retain the best possible employees suited to providing their essential services.

Our member organisations have ongoing first-hand experience of the difficulties of attracting high quality skilled staff when competing in the same labour market as PBIs and have reported that this problem has only become worse in recent years due to the tight labour market and rising inflation.

Animals Australia provided the following explanation of how lack of access to FBT concessions negatively impacts their effectiveness in their submission to the current inquiry (#183, p7, *Competition in the skilled labour market*):

Animals Australia as an advocacy organisation is reliant on the commitment, skills and creativity of our people to effectively pursue our purpose of a kinder world – we do not make widgets in a factory, we do not produce ‘products’ for sale! It is therefore crucial that we can attract and maintain key skilled people in this challenging field; we must be competitive in the labour market.

Our recruitment priorities will always place values-alignment at the top, but a close second will be the skills and experience of those joining us to ensure our team remains efficient and effective. The current post-COVID era, with a very tight labour market and the cost-of-living crisis are providing increasing challenges for us. The ability to provide added benefits has never been more important.

Along with values alignment for candidates, flexibility has always been a key attractant for Animals Australia employees. However, since COVID workplace changes, particularly flexibility is in most employers’ toolkit! Inflation is now causing significant strain on potential employees such that salaries are a more significant part of a candidate’s considerations. Employers able to offer generous salary packaging arrangements are therefore ahead of the game – not only for new candidates but even for existing employees.

Animals Australia is not currently eligible for full Fringe Benefits Tax (FBT) concessions, and along with the additional operational costs of administering salary packaging, it is rarely feasible for us to offer this benefit to employees. If the tax arrangements were altered to provide the full FBT concession it would certainly be a benefit we could offer and so then be more competitive for key people in the labour market.

Companion Animal Network Australia (CANANA) made a similar case for extending taxation benefits offered to PBIs to companion animal charities in a letter to the Treasurer, Dr Jim Chalmers, in June 2022:

The Australian Government rightfully supports Public Benevolent Institutions (PBIs) and health promotion charities by granting them a capped exemption from Fringe Benefits Taxation and a capped Meal, Entertainment and Holiday Benefit. This arrangement allows the PBI or health promotion charity to provide valuable salary packaging benefits to their employees.

This exemption acknowledges the valuable work of Health Promotion Charities and PBIs and the importance to provide incentives to attract and retain suitably qualified and skilled employees in their sectors.

The work of companion Animal Charities is of equal importance. The health and welfare benefits of the human-animal bond is measurable and indisputable. Its impact affects the overwhelming majority of the Australian Community.

Companion Animal Charities, compared to other charitable groups, struggle to secure sustainable funding and are reliant on significant volunteer support.

Employees working in this sector are among the lowest paid employees in the Australian economy.

In contrast over two thirds of Australians own a pet, annually contributing over \$12.2 billion per annum to the Australian Economy. Recent studies demonstrate pet ownership saves almost \$4 billion in health expenditure each year; this is a very significant and powerful contribution.

Despite the significant contribution to the health and well-being of 70% of Australians, Companion Animal Charities are excluded from the benefits afforded to PBIs and health promotion charities.

It is time to correct this inequity and oversight. Without this change we risk losing critical employees and struggle to attract and obtain qualified and skilled people to the sector.

We want to create a fairer and more equitable Australia by granting Australian Companion Animal Charities, the taxation benefits provided to Public Benevolent institutions and Health Promotion Charities.

This small change will offer significant benefit to employees in the sector and acknowledge the value of fostering the human-animal bond to create a healthier and better Australian community.

We ask that the Commission considers the value that the Australian community places on animal welfare and the important role that charities that provide relief to *animals* play in Australian society in determining its position on the scope of PBI- related tax concessions.

In 2023 we commissioned an independent organisation, BehaviourWorks Australia, to conduct a survey of Australians' beliefs and behaviours related to animal welfare³. One of the questions asked was how much should animal suffering be considered in government policy decisions (Figure 1). Forty-six percent of respondents said that government policy decisions that affect animal welfare should consider whether animals suffer *to an equal degree to human suffering*. A further 28% said that decisions should consider whether animals suffer but weigh it less than human suffering.

We make this point because it serves to illustrate that, in the mind of Australians, there is little to no divide between the importance of charities that help *people* in need or *animals* in need.

The draft report notes that what constitutes a PBI has evolved over time as the meaning has never been defined in legislation (Box 5.1, p166). We propose that it is time for the definition to evolve further, to encompass charities that help relieve the suffering of animals in need and to

³ <https://www.allianceforanimals.org.au/animal-welfare-policy-barometer>

extend the same tax concessions to these charities as are currently available to PBIs and health promotion charities.

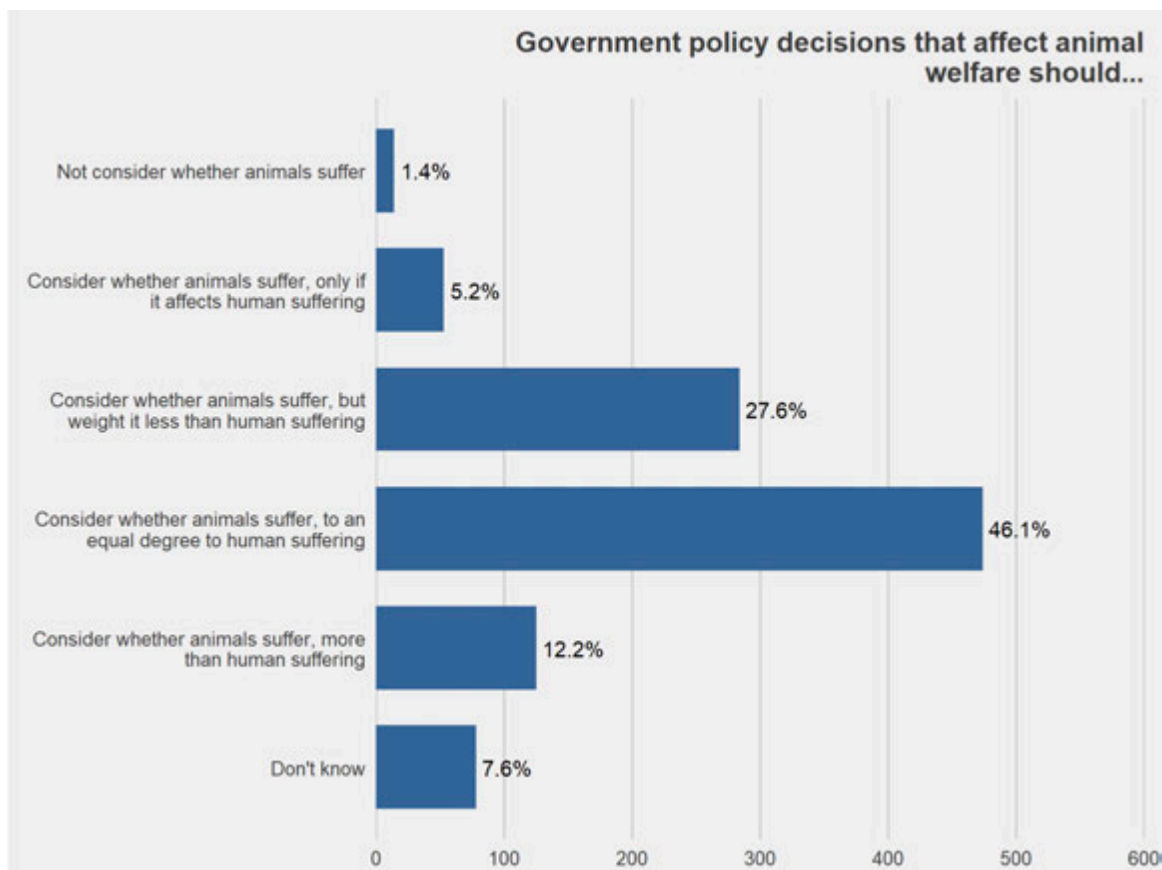


Figure 1 - How much should animal suffering be considered in government policy decisions

3.2 Encouraging an impact-focused culture

We are concerned that the draft report is missing an important opportunity to improve the quality of information available to the public while also improving the effectiveness of Australian charities by concluding that reporting on 'effectiveness' across all charities is *impractical*.

We acknowledge that many charities already publish some form of impact report to attract donors. This is a relatively recent trend and there is a broad variation in how charities define 'impact' and what is included in these types of report, but it demonstrates the interest from individual donors and larger funders in having access to information about a charity's impact. We think that it would be beneficial for donors seeking to understand the effectiveness of a charity if all charities were provided with best practice advice on impact reporting and for a basic level of impact reporting to be required as part of the ACNC AIS.

We also note that existing charity comparison websites do not currently assess any Australian charities. Unless additional data are made available through the ACNC reporting requirements,

it seems unlikely that charity comparison websites attempting to evaluate Australian charities would be able to provide additional meaningful advice.

We agree that administrative expenses are not an accurate reflection of the performance of a charity. There is also no agreed consistent definition of what expenses should be included as 'administrative'. But again, this does not mean that better ways to provide more accurate information to the public on the effectiveness and impact of charities are not available.

We feel that the report has missed an important opportunity to help encourage charities to improve their effectiveness and their impact by providing them with advice on best practice, training, reporting templates and incentives to report impact in a consistent and meaningful way.

We support the **Draft recommendation 9.1**. *Creating more value from the data held by Australian Government agencies* in its intent to increase the utility of data available on the ACNC charity register, but we think more detail could be added to require a basic level of data for charity impact evaluation and more could be done to encourage charities to go further than this to meet best practice evaluation.

For example, the report refers briefly to some charities using a 'Theory of Change' diagram to present a visual representation of how a program's interventions and outputs lead to its planned outcomes and long-term change or impact (p80). Our own experience of developing theory of change diagrams for our overall mission and for specific programs of work is that this is a simple yet extremely helpful way of thinking through and demonstrating pathways to impact. Adding a requirement for a Theory of Change to the ACNC AIS requirements for large and medium sized charities would provide a simple means of encouraging charities to map out the connections between their activities and purpose.

We **support** the recommendations in the submission on the draft report from [Effective Altruism Australia](#) in relation to piloting three potential methods of evaluating and improving the impact of Australian Charities. Specifically, these recommendations are to:

- Create an equivalent of the Australian Centre for Evaluation that supports the not-for-profit sector to develop theories of change, collect evidence and conduct evaluations.
- Fund a pilot of an Australian organisation that does opt-in charity evaluation and promotes its findings.
- Provide grants that help build and support the nascent ecosystem of charity evaluation in Australia and attract organisations that are experienced at reviewing consumer products into evaluating charities.

We agree with [Effective Altruism Australia](#) that by piloting several methods of evaluation and impact assessment and assessing what works, refinements can be made over time that increase benefits while avoiding risks.

Any changes to improve the evaluation and reporting of the impact of charities must be straightforward to implement and accompanied by appropriate support, to ensure that they do not result in counterproductive outcomes such as increased administrative costs.

ENDS