

Submission in response to the Productivity Commission's Draft Report on Philanthropy Inquiry

Overview

The Paul Ramsay Foundation (PRF) appreciates the opportunity to provide further submission to the Inquiry, responding to points raised in the Commission's draft report.

In addition to the points put forward in our previous submission to this Inquiry, we make the following submissions:

- **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**
 - We support the proposed DGR reform and the importance of a simplified DGR system based on the principle of public benefit and anchored to purpose. One way this could be achieved is by including the charitable purpose categories set out in the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) in the list of DGR endorsement categories in Subdivision 30-B of the *Income Tax Assessment Act 1997* (Cth) (ITAA), thereby linking the two systems.
 - We recommend that funds only receive DGR status if they can demonstrate an overall public, rather than private, benefit. Any funds receiving DGR status should be required to report annually on public benefit.
- **Information request 8.4 – Making bequests through superannuation easier**
 - We recommend legislation be amended, in consultation with superannuation funds, to enable Australians to direct some of their unspent super to a charity. This would help to mitigate the impact of increasing intergenerational wealth transfers which are exacerbating and entrenching intergenerational inequity.
- **Information request 8.5 – Barriers and opportunities for innovative giving vehicles**
 - We recommend the development of a joint philanthropic and government strategy to improve the enabling policy environment and grow the network of Australian Community Foundations, particularly in communities that are under resourced.
- **Draft Recommendation 10.1 – Establishing an Aboriginal and Torres Strait Islander philanthropic foundation**
 - We support the intent behind this draft recommendation and recommend the establishment of endowments to *multiple (rather than one)* existing and emerging First Nations-led funds and foundations to better cater to the diverse needs of First Nations people. This work should be done in consultation with First Nations peoples (particularly those in existing and emerging First Nations-led funds and foundations).
 - In addition, philanthropy and government practices can be amended to “address asymmetry of power in philanthropy, centre Indigenous rights and leadership,

[and] address barriers to funding Indigenous Peoples”¹. These actions could include:

- Establishing an agreed definition for a First Nations-led charitable organisation
- Increasing the transparency in public reporting, including through the Annual Information Statements
- Better alignment between ACNC and ORIC approaches
- Addressing limitations of governance requirements in the *Corporations (Aboriginal and Torres Strait Islander) (CATSI) Act 2006*.

In response to 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

We endorse the Commission’s draft recommendation for a simpler, refocused DGR system and **suggest that further consideration be given to how simplification could ensure DGR categories are anchored to purpose rather than activities or outputs. This would ensure organisations are not constrained from evolving their activities in pursuit of their charitable purpose and public benefit.**

This could be implemented by including the charitable purpose categories set out in the Australian Charities and Not-for-profits Commission Act 2012 (Cth) in the list of DGR endorsement categories in Subdivision 30-B of the Income Tax Assessment Act 1997 (Cth) (ITAA), thereby linking the two systems in a manner similar to the operation of the Public Benevolent Institution and Health Promotion Charity categories. While this would require an amendment to the ITAA to recognise the relevant charitable purpose categories, potential applicants would only be required to submit one application for charity registration with the ACNC, which would then be sent on to the Australian Tax Office for approval regarding DGR endorsement. Permitting access to DGR endorsement for charities by recognising charitable purposes in the ITAA would reduce the administrative burden on charities, and importantly would ensure clarity around the tax deductibility of donations for both the charities themselves and for potential donors, increasing confidence in the system.

The complexity and range of issues tackled by the charitable sector means for-purpose organisations are achieving social impact and systems change in new and evolving ways. For example, the work of intermediaries that convene, connect and drive collaboration and good practice across impact areas does not fit neatly into one DGR category. Similarly, First Nations and place-based organisations which often undertake holistic cross-cutting work to deliver positive outcomes for their community are sometimes constrained by having to identify a specific category or activities to which their fundraising is then limited.

Deductible gift recipient status should be linked to demonstrable public benefit, in line with charity law principles.

Therefore, funds (including school building funds and scholarship funds) should only receive deductible gift recipient status if they can demonstrate a public, rather than private, benefit. Any funds receiving DGR status should be required to report annually on public benefit.

¹ Page 2: [Funding-Trend-Analysis-on-Indigenous-Peoples-Philanthropy-20-Recommendations-for-Future-Actions.pdf](https://internationalfund.org/Funding-Trend-Analysis-on-Indigenous-Peoples-Philanthropy-20-Recommendations-for-Future-Actions.pdf) (internationalfund.org)

In response to draft recommendations and requests in Chapter 8 – Structured Giving Vehicles

Community Foundations

We endorse the Commission’s statement that community foundations contribute to building social capital for the reasons set out in box 8.1.

In addition to traditional structures for giving in Australia, giving platforms such as community foundations have a specialist focus on particular issues, places and cohorts. As the Australian philanthropic sector expands, **philanthropic funding should be well-targeted and impactful, and should benefit places and communities where there is less social mobility and economic connectedness.** Community foundations enable any donor to contribute, in large and small amounts. Local leadership and governance ensures local/regional opportunities are prioritised to advance social and economic wellbeing and opportunities.

Community foundations also create efficiencies in administration and management of funding relationships with local recipients, and have demonstrated their value in co-ordinating emergency response funding for COVID-19, bushfires and floods.²

While community foundations are well-represented in urban areas, the model also thrives in small towns and regions. Similarly, based on international experience we anticipate that community foundations are likely to be a model that thrives in First Nations communities. Reforms supporting the expansion of community foundations and this emerging national network can advance places and communities in rural and regional areas that are under resourced. This is essential to building social capital and ensuring a more equitable distribution of philanthropic giving.

As stated in our original submission, **we propose that the Commission recommend a joint philanthropic and government strategy to grow the network of Australian Community Foundations.** The scope of this strategy, developed in partnership with philanthropic funders, community foundations and government could include:

- Review of the current taxation status for community foundations to simplify access for donors and funders
- Research and evidence of the role of community foundations, their impact and potential, both in Australia and globally.³ In particular:
 - a) the variety of roles played by community foundations
 - b) specific attention to understand how the community foundation model can thrive and deliver benefits to communities where there is less social mobility and economic connectedness⁴
 - c) specific attention to understand from First Nations communities how a community foundation model might be used to strengthen self-determination

² Koondie Woonga-gat Toor-rong received and distributed PRF emergency COVID relief funding consistent with self determination principles for First Nations funders. Northern Rivers Community Foundation were able to quickly distribute PRF funds to organisations in need after the 2022 floods.

³ For example: Smart and Caring Canada Campaign which grew the profile and granting capacity of community foundations.

⁴ Mornington Peninsula Foundation in Victoria is focused on redistribution of wealth: the area has some of the wealthiest and poorest communities in Australia

- d) data to inform whether and how community foundations increase philanthropic giving and leverage new donations
- e) analysis of the ways in which local, state and federal governments have contributed to advancement of community foundations in Australia⁵
- f) lessons and insights from global practice.

Superannuation bequests

We recommend the amendment of legislation, in consultation with superannuation funds, to enable Australians to direct some of their unspent super to charity. The Commission has noted the complexities of the current process for bequeathing through super, relying on binding death nominations in conjunction with a legal will. As the value of Australia's super assets continues to grow, simplifying the process to direct unspent super to nominated charities would unlock significant capital to help address social and environmental challenges. This would be achieved without negatively affecting government revenue, as money bequeathed through super is taxed at up to 17 cents in the dollar.

This change would also assist to mitigate the impact of increasing intergenerational wealth transfers which are exacerbating and entrenching intergenerational inequity. As with all giving structures, consideration should be given as to how to avoid inadvertently further concentrating donations into the largest 10% of charities as measured by annual revenue (which receive around 94% of all donations).

In response to draft recommendation 10.1- Establishing an Aboriginal and Torres Strait Islander philanthropic foundation

PRF is committed to First Nations communities being self-determining, and we welcome the Commission's findings supporting the goals of First Nations communities and addressing barriers faced in accessing philanthropy. This is particularly important given wealth inequality is rising in Australia and historically First Nations peoples have been excluded from wealth accumulation, as well as suffering adverse impacts in some circumstances.

Draft recommendation 10.1: Establishing an Aboriginal and Torres Strait Islander philanthropic foundation

We support the intent behind this draft recommendation and recommend the establishment of endowments to *multiple (rather than one)* existing and emerging First Nations-led funds and foundations to better cater to the diverse needs of First Nations people. We also recommend practical changes to help address many of the barriers First Nations organisations and communities face in attempting to interact with philanthropy.

We strongly support First Nations-led philanthropy, consistent with international best practice which states "*Indigenous-led Funds are guided by Indigenous worldviews and led-by and for Indigenous Peoples. Indigenous-led Funds strengthen self-determination and support a process that empowers the communities, at the local to the global level, to be able to change*

⁵ For example: Federal Government role in establishing FRRR in collaboration with the Sidney Myer Fund 2000; Victorian Government seeding funds and challenge grants for community foundations 2009; Victorian Government and Bendigo Bank seeding grants to establish community foundations from Victorian Bushfire Appeal 2019.

*paradigms and shift power relations addressing the asymmetry of powers and resources to recognition and reciprocity.*⁶ Internationally, we are seeing multiple funds and foundations established to cater to the diverse needs of First Nations peoples, ranging from nation-based or geographic-based organisations to those centred around specific sectors or topic areas. Similar funds and foundations are emerging in Australia. As this occurs, there are a number of practices, reflections, learnings and actions that will be required by philanthropy to **“address asymmetry of power in philanthropy, centre Indigenous rights and leadership, [and] address barriers to funding Indigenous Peoples”**⁷.

Further consultation is required with First Nations peoples to determine the most appropriate approach, including with existing and emerging First Nations-led sub-funds and foundations. The risks of the current proposed approach are that a “one size fits all” approach does not adequately represent the diversity or address the distinct needs of First Nations communities. Additionally, it risks exacerbating the competition for scarce resources First Nations communities already experience, and may result in government and philanthropy feeling absolved of their responsibility to improve their practices.

An alternative approach is supporting several existing and new First Nations-led initiatives rather than a single endowment. This would provide multiple opportunities to move towards more equitable funding approaches while recognising the diversity of First Nations peoples and communities, and the need for more local and regional opportunities. Having multiple funds and foundations means more local initiatives, enabling people to work in place and maintain connection to the lands in which they live and want to impact. A single national foundation will face similar challenges to other national foundations, like PRF, in not being able to work in every place, not having all of the local intelligence and not being as connected in place.

Related opportunities

In addition to Recommendation 10.1, **further actions are required to best support the self-determination of First Nations people and communities and address barriers to accessing existing philanthropy.** The philanthropic network International Funders for Indigenous People outlined a number of these in their 2023 report *Funding Trend Analysis on Indigenous Peoples in Philanthropy*. Most relevant to the scope of this enquiry, some immediate opportunities include:

- **Establishing an agreed definition for a First Nations-led charitable organisation** as there are currently a range of definitions.
- **Increasing the transparency in public reporting**, including through the Annual Information Statements, which could include:
 - Number of First Nations people on the Board
 - Number of First Nations people employed by the organisation

⁶ [Indigenous Led Funds Working Group – International Funders for Indigenous Peoples](#)

⁷ Page 2: [Funding-Trend-Analysis-on-Indigenous-Peoples-Philanthropy-20-Recommendations-for-Future-Actions.pdf \(internationalfunders.org\)](#)

- Geographical spend: where the public beneficiaries are located, preferably at the regional or local level (current AIS data only requires head office location and often does not provide jurisdictional data for programs)
- In addition, for Ancillary Funds and Charitable Trusts:
 - Amount of funding committed towards advancing First Nations outcomes
 - Proportion of this funding which is committed to First Nations-led organisations
 - Funding committed towards advancing First Nations outcomes as a proportion of total quantum of funding.
- **Better alignment between ACNC and ORIC approaches**, including:
 - Alignment of organisational sizes, and therefore reporting thresholds.
 - Consistent data collection for organisations that are registered with both ACNC and ORIC. However, care should be taken to not impose undue burden on smaller First Nations-led organisations.
 - Consolidation of data into a single source (currently ACNC and ORIC data must be manually consolidated, and data fields do not align).
 - Consistent approaches to compliance actions. The ACNC’s principles-based approach to compliance⁸, particularly their graduated response, may better support organisations to manage and address compliance issues.
- **Addressing limitations of governance requirements in the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI) Act***. Section 246-25 of this Act stipulates leaders of ORIC-registered entities cannot be appointed beyond a period of two years, and organisations must apply for an exemption. This has the unintended consequence of undermining governance by driving significant turnover that is not imposed on any other corporations, and in fact is considered poor governance practice. The lack of continuity in leadership and the negative impact this has on delivery of long-term outcomes may also create risks and deter potential funders or partners. It also stymies the professional development of First Nations leaders and disrupts trust-building and smooth delivery of services between an organisation and community.

Acting on these immediate opportunities will enable more transparent approaches to funding First Nations goals and ambitions and will enable aggregated analysis to improve the collective philanthropic efforts, something which we are unable to quantify or capture in current reporting efforts. Further to this, greater public reporting and democratic access to data will enable analysis and understanding of best practice, including by capturing in-depth case studies of success and learnings. It will also enable a more equitable approach to funding and enhance accountability of philanthropy back to First Nations communities.

⁸ [Commissioner's Policy Statement: Compliance and enforcement | ACNC](#)

Other Considerations

- We wish to reiterate the recommendation from our original submission that the Commission consider recommending adding a goal of **increasing the impact** of philanthropy alongside the goal of doubling giving by 2030. For this to occur government has a key role to play, including through:
 - increased sharing of data and evidence (e.g., to better understand outcomes and the elements of effective philanthropic funding);
 - improved engagement with the sector to inform its understanding of challenges and issues, government objectives, and indicative future direction of policy and programs (e.g., to improve where funds are directed);
 - understanding of the conditions required for government support or adoption of philanthropy funded programs and trials; and
 - increased clarity and understanding of the respective roles of government and philanthropy, including when and where we partner.
- PRF encourages consideration of ways to improve transparency around the diversity of leadership and Boards, perhaps through ACNC and ORIC registered information.

Conclusion

The Foundation welcomes further engagement with the Inquiry on any of the issues addressed above.

END