



9 February 2024

Productivity Commission

Via: Online Submission

Dear Sir/Madam

JBWere Final Submission – Productivity Commission Philanthropy Inquiry Draft Report

Please find attached JBWere’s final submission in relation to the Productivity Commission’s Inquiry into Philanthropy Draft Report.

JBWere thanks the Productivity Commission (PC) for the effort and analysis of Philanthropy in Australia and recognising its important and unique role within the for-purpose sectors operating model.

This final submission follows our initial submission in May 2023 and focusses on specific recommendations made by the PC in their Draft Report.

The JBWere Philanthropic Services team has been conducting research and advising for-purpose and philanthropic clients since 2001. We provide advice to more than 500 clients who have entrusted more than \$13bn in Australia and New Zealand to JBWere – this money exists explicitly to support the delivery of social and environmental outcomes. In preparing our response we have utilised the decades of experience within the team and canvassed the view of our clients, connections, and collaborators across the broader social impact ecosystem.

JBWere would be pleased to continue to offer support through the Inquiry’s process and looks forward to seeing this opportunity to improve philanthropy in Australia realised.

Yours sincerely

Shamal Dass

Head of Family Advisory and
Philanthropic Services

John McLeod

Senior Consultant – Family Advisory and
Philanthropic Services

Jayde Ward

Director – Philanthropic Services

Overall Scope of the Draft Report

The Draft Report states the purpose of this inquiry is as follows:

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.

This is consistent with Dr. Andrew Leigh's pre-election statement on 7th April 2022:

That's why today Labor is announcing that if we're elected, an Albanese Labor Government will work with the philanthropic sector to double charitable giving by 2030. It's a big task, but we believe as you do that it's an achievable one. If we get there, this will transform Australia's culture of giving. It will mean that Australia is a much more connected nation, and if we believe the research, will be a happier and healthier nation too.

While we delve deeper into individual opportunities in this submission, we encourage the PC to explore, and revisit proposed strategies to increase philanthropic giving. The last major reform to giving was the introduction of (now) Private Ancillary Funds (PAFs) in 2001 – more than 20 years ago. This Inquiry presents a generational opportunity. We encourage the PC to be bold in their recommendations in removing the barriers, and creating incentives, that will enable the significant growth required to reach the Government's ambitious goal to double charitable giving by 2030.

National Giving Campaign

A key concern for Australian philanthropy and volunteering generally, is the falling participation rate. It is fortunate that those continuing to donate are doing so with increasing generosity. However, if we do not address the participation rate, the weight of the number of those not donating or volunteering will offset the generosity of those continuing to do so. As a result, the for-purpose sector may require additional Government resources to maintain critical services or face the prospect of reducing the extent of support to communities it serves.

JBWere encourages the Government to consider a well-co-ordinated, well-designed, and well-funded National Giving Campaign, highlighting the need and value of giving and volunteering to both the donor and the recipient. The co-dependence for Individuals, Corporations and Government on a well-functioning and supported for-purpose sector should be a high priority. Again, to quote from Dr. Andrew Leigh's speech on 7th April 2022:

We like the idea of putting in place a national giving campaign. Australia's skin cancer awareness was improved by the Slip Slop Slap campaign. Our understanding of AIDS is improved by the Grim Reaper campaign. In Canada, the My Giving Moment campaign has helped to change the culture of philanthropy in that country. We believe that there's great potential for strong national focus on changing Australia's culture of giving.

This campaign could educate the entire population on the challenges facing many of Australia's disenfranchised communities and amplify awareness and support.

As noted in the draft report, since most individual giving which would be influenced by a National Campaign is not likely to be claimed as a tax deduction, this avenue to grow giving would be expected to have a low revenue cost to Government and a broad reach. JBWere sees a National Giving Campaign as the biggest opportunity for the Government to increase philanthropic giving. It was identified as one of our 'Wish List' options to improve the level of support given to the for-purpose sector in the JBWere Support Report in 2018¹, and remains a high priority for JBWere.

¹ <https://www.jbwere.com.au/content/dam/jbwere/documents/Insights/JBWere-Support-Report-2018.pdf>

Living Bequest Structures

Just as a National Giving Campaign could lift giving for the total population, JBWere also encourages the Government to consider how to engage older Australians on the opportunity for greater philanthropic giving before and after death. This is particularly important at this time with a significant amount of wealth held by older Australians starting to transfer to the next generation. Increasingly, we are seeing discussions grow about options, such as providing family members access to inheritance earlier, increased spending during one's lifetime, or donating to philanthropic causes during one's lifetime, to see the impact created.

Despite this, in most cases we still see larger asset values at death due to property values and accumulated superannuation. From the limited data available, Australia appears to lag behind similar countries for bequests to charity, whether this is the proportion of estates leaving a charitable bequest (7% in Australia is half what is seen in the UK and US)² or the proportion of overall donations to charity that come from bequests (7% estimated for Australia versus 13% in the UK and 9% in the US)².

While history and culture have some influence on higher international bequest giving values, the incentives offered by living bequest structures in the US have also had an impact on giving from estates. JBWere strongly encourages the Government to consider a living bequest system for Australia, particularly at this point of the intergenerational wealth transfer.

Charitable Bequests from Superannuation

While JBWere strongly supports the removal of the 'death tax' from superannuation given to charities, we were also encouraged to see the recommendation to allow charities to be beneficiaries from superannuation bequests. It remains a paradox that superannuation withdrawn and donated the day before death gains a tax deduction, while donations the day after are subject a tax penalty.

We appreciate the stated purpose of superannuation being to fund retirement but would suggest that after the death of the superannuant, the purpose of those assets changes. If the goal is to improve Australia's rate of bequests to charity, these impediments to gifting part of this significant asset should be removed.

Payout Ratios for Ancillary Funds

PAFs were introduced in Australia in 2001, which is about 100 years after their introduction the US, where foundation numbers grew from 27 to more than 4,100 between 1915 and 1955, and now number around 125,000³. The reason for highlighting this is to emphasise that they are still relatively new giving vehicles in Australia.

The number of new PAFs established in 2007 and 2008 was 164 and 169. However, this number dropped in 2009 due to uncertainty on the rules of operation.³ Ultimately, payout ratios were set at 5%, which saw the recommencement of growth in new PAFs.³ This has parallels to the US where annual payout requirements were introduced in 1969 (set at 6%) and over the subsequent five years, 5,000 closed (15% of the total in 1969).³ Congress then reduced the payout rate to 5% in 1976 where it has remained for almost 50 years. It should be noted that in the US, the 5% payout ratio also includes eligible expenses plus donations, while in Australia, expenses are not included as part of the required minimum payout. This should also be considered in any change to payout ratios.

² <https://research.qut.edu.au/australian-centre-for-philanthropy-and-nonprofit-studies/research/giving-australia/> , <https://givingusa.org/> , <https://www.cafonline.org/> <https://fundraising.co.uk/>

³ <https://www.philanthropyroundtable.org/resource/private-foundations-and-the-5-percent-payout-rule/>

In addition, the Australian Taxation Office (ATO) data shows PAFs have recorded an average payout of 10.0% since establishment and 8.2% since the 2009.³ Deeper analysis would be needed to understand the effect of changing minimum rates (see data section below). It cannot be assumed that raising the rate by 1% would automatically lift PAF giving by the \$60m shown in figure 8.7, as that analysis assumes an average size for all PAFs and all in the 5-6% band were at the minimum of 5% (\$11.6 Billion X 49% giving between 5-6% X 1% increase).⁴ It also does not account for a potential drop in the number of new funds being established under a higher payout ratio regime.

JBWere cautions against changing the rules around Ancillary Fund minimum payout ratios as it may again risk lowering their growth potential at a time when many, including JBWere, believe that for a country with significant wealth like Australia, there should be a far greater use of both private and public ancillary funds. We support the recommendation to continue the ability to average payouts over three years as happened during the COVID pandemic, as this provides PAFs with additional flexibility.

Deductible Gift Recipient (DGR) Categories

JBWere agrees with the PC's comment that "*the DGR system is poorly designed, overly complex and has no coherent policy rationale*" (pg.175). The fact that other countries, such as the US, UK and New Zealand, do not discriminate between charity causes and offer tax deductible donations for all charities, supports this statement.

In the 2010 'Contribution of the Not-for-Profit Sector' report, the PC stated (recommendation 7.3) "*The Australian Government should progressively widen the scope for gift deductibility to include all endorsed charitable institutions and charitable funds. Consistent with the Australian Taxation Office rulings on what constitutes a gift, payments for services should not qualify as a gift.*"

JBWere welcomes the projected increase in the number of DGRs by 5,000 to 15,000. However, we do not support the recommended reduction in other areas such as school building funds, estimated to number 5,000, due to perceived private benefit. While a child of a donor may benefit for a few years, this is quite small compared to the total number benefitting for the life of the building. That same argument could be applied to donors to cultural organisations or even medical research, particularly rare diseases, and environmental causes where donors could also potentially gain a personal benefit for themselves and their descendants due to the impact of their gift. The small and tenuous nature of the connection between donation and personal benefit could indeed be made to many charity cause areas. The current ATO rules around what constitutes a gift already exist to cover 'forced' donations and personal benefit. JBWere believes these are sufficient to address the PC's concerns.

Establishment of a First Nations philanthropic foundation

JBWere strongly supports First-Nations led philanthropy in Australia. Certain communities have long faced significant resource gaps, hindering their ability to address unique challenges and pursue self-determined development.

In principle JBWere supports draft recommendation 10.1. However, our experience aligns with international examples that indicate addressing systemic issues will require a multitude of funds, foundations, and organisations to provide the flexibility required to address the significantly varying needs and desires across different peoples, cultures, and geographies.

⁴<https://www.ato.gov.au/about-ato/research-and-statistics/in-detail/taxation-statistics/taxation-statistics-2020-21>

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JBWere recommends further consultation with First Nations peoples to determine the right approach to ensure the potential benefits can be realised. Risks and challenges include:

- Ensuring genuine community control: Establishing a single First Nations Foundation would centralise resources, however, it also raises concerns about equitable distribution across diverse communities. Balancing diverse community voices and ensuring representation across various First Nations groups would be crucial.
- Transparency and accountability: Clear governance structures and robust reporting mechanisms are vital to maintain trust and public confidence.
- Balancing individual community interests with broader national priorities within the foundation's decision-making processes.
- Aligning the foundation's goals with community aspirations and developing culturally appropriate impact evaluation methods.

Giving and Volunteering Data

JBWere welcomes the focus on sector data. We have used existing data sources and developed some new and timely ones (e.g. the JBWere-NAB Charitable Giving Index, Top 50 individual and corporate givers lists published annually in the Australian Financial Review) to create a clearer picture and deeper understanding of giving trends in Australia. We understand what is available and what is missing.

The collection of bequest data through the annual information statements provided by charities to the Australian Charities and Not-for-profits Commission (ACNC) is an important addition, particularly as Australia progresses through the intergenerational wealth transfer period of the next two decades. Examining the existing ancillary fund data currently collected by the ACNC for the ATO will help the Government better understand patterns of giving through these vehicles of growing importance. Critically, it can also inform and guide both donors and recipients towards better practices. We would encourage the Government to explore further opportunities to gain a better understanding and greater visibility of charitable trust data.

Corporate giving is complex and definitions are not consistent. While JBWere strongly supports data collection through ATO returns, we believe this should extend beyond donations to DGRs to include community investment through organisations and structures that are not charities or DGRs and to individual communities, where corporates can deduct the expenditure.

The need is even more acute when it comes to truly understanding of the requirements and priorities of Aboriginal and Torres Strait Islander communities. This in turn, could lead to more targeted and impactful support, ensuring resources are allocated effectively and address the specific challenges faced by these communities.

While these improvements will add greatly to giving data, timeliness is still an issue. A live data cube from the ACNC, including the most recent Annual Information Statement (AIS) returns, could have a significant impact. For example, the majority of charities will now have their 2023 AIS individually available for search on the ACNC website. However, a full data cube would make it possible to see overall trends. Currently the latest full data sets from either the ACNC or ATO are for the 2021 financial year. Adding the AIS data to the current "Registered Charities" data cube would improve timeliness by 15 months.

Finally, a consistent methodology as well as regular and timely reporting of detailed volunteering data would help the Government develop a better understanding of the evolving role of volunteering in the community.



About JBWere

JBWere provides a wide range of investment advisory, research, and wealth management services to a substantial and diversified client base. We have more than 500 staff and offices in Melbourne, Sydney, Brisbane, Canberra, Adelaide, Perth, Auckland, Christchurch, and Wellington. Our clients include for-purpose groups and organisations, government bodies, financial institutions, high-net-worth individuals and families across Australia and New Zealand. We are proud to be the leading provider of philanthropic, governance, strategy, and investment advice to the for-purpose sector, who have entrusted us with more than \$13 billion of their financial assets. Since 1840, JBWere has provided world-class investment advice and superior service to our discerning clients. Our reputation as a market leader is founded on our commitment to excellence, our diverse service offering and the expertise of our people. JBWere has evolved over the decades from a privately owned Australian partnership and is now 100% owned by National Australia Bank. We have research alliances with UBS, MSCI and Moelis Australia. To discuss how we might be able to work with you please contact us on 1300 263 166 or Philanthropic.Services@jbwere.com