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09 February 2024

Submission to Productivity Commission

Response to draft report February 2024

Submission on behalf of

Royal Flying Doctor Service Australia Council
ABN 74 004 213 067

Contact person

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Background

Royal Flying Doctor Service ("RFDS")

The RFDS is a federated not-for-profit health service organisation which continues to provide a Mantle of Safety across regional, rural and remote Australia through a range of services including:

- emergency aeromedical evacuation services supporting rural and remote communities;
- primary health care clinics in communities that would otherwise not have any medical service or a very limited service;
- inter-hospital patient transfer services in most states;
- medical chests supported by 24/7 telephone / radio/ internet access to doctors;
- dental services in Bass Strait islands;
- dental services to regional and remote communities that would not otherwise have a dentist;
- wellbeing services to regional and remote communities including mental health support services.

The RFDS includes six Operating Sections and the Australian Council, which is the national representative body. The Australian Council holds the funding agreement with the Commonwealth, to support primary evacuation, primary health care, dental and medical chest services in conjunction with each of the Operating Sections. It coordinates and delivers national strategies, national procurement arrangements and national fundraising.

The Operating Sections are the operational bodies which deliver the health services, own the assets, and employ the majority of the staff to deliver the services. The Operating Sections also hold funding support agreements with the various State and Territory governments for the delivery of interhospital transfer services and other state-based health services.

Each of the RFDS entities is a registered charity. Each is endorsed by the ATO as income tax exempt ("ITE"), as a Public Benevolent Institution ("PBI") and as a Deductible Gift Recipient ("DGR").

Each of the RFDS of entities qualifies for the following tax concessions:

- Income tax exemption;
- FBT exemption concession; and
- GST concessions

Further information about the RFDS is available on our website:
https://www.flyingdoctor.org.au

A snapshot of the key financial statistics for the aggregated revenue of the RFDS for the year ended 30 June 2023:

Description	Aggregated amount 2023 $	Aggregated amount 2022 $
Commonwealth income	112,659,934	116,621,075
State & Territory income	233,396,441	199,448,726
Other non-government income	41,935,656	11,660,781
Fundraising income incl donations	115,289,108	91,414,552
Total income from all sources	530,370,874	490,673,083
Overall surplus of income	14,513,511	8,431,324

These amounts were drawn from the audited financial statement for the years ended 30 June 2022 and 2023. The Commonwealth income includes capital grants of $4,432,320.

Analysis of fundraising income

Category	Aggregated amount $
Donations - general	55,308,566
Donations – capital projects	7,752,555
Bequests	27,109,881
Other fundraising	25,118,105
Fundraising income incl donations	115,289,108

The above table of fundraising income shows a split between donations that are received to support general activities and donations to support specific capital projects.

For 2023, the RFDS Queensland section elected to recognise the distinction. As all sections periodically receive support specific to capital projects the aggregate amount will be greater. For accounting purposes, income from capital donations is recognised when the capital asset acquisition is acquitted so whilst recognised as income the other side is a capital asset such as a building, aircraft, or other equipment.

The above analysis shows that of the aggregate net income of $14,513,511 at least $12,184,875 is capital revenue that is committed to the acquisition of a capital asset.

Abbreviations

Abbreviations used in this submission match those shown on page 377 of the Draft report together with the following:

- ABR – Australian Business Register
- AIS – Annual Information Statement
- ITAA – Income Tax Assessment Act 1997

Submission

Draft finding 3.1
Rising income and wealth are the major reasons behind rising tax-deductible donations

Tax-deductible donations by individuals made directly to charities have increased in value, but fewer people are making such donations. From 2000-01 to 2020-21, tax-deductible donations tripled (in real terms) despite the number of taxpayers increasing by only 38%. The available evidence indicates that this coincided with individuals' financial capacity to donate increasing.

The Australian Government also made policy changes that provided additional or more flexible financial incentives to give, which likely also played a role in increasing giving. Giving into private and public ancillary funds has grown in value (from $692 million in 2011-12 to $2.4 billion in 2020-21). The relative importance of private ancillary funds has also grown from 15% to 27% of individual giving.

There is a lot of anecdotal evidence regarding the transition of wealth between generations.

The RFDS has benefitted from individuals and families who find themselves in a far wealthier position than their parents and they seek to "give back" to the community and do so by way of donations and bequests.

Many charities and DGR registered entities have a mix of sources of income including government grants / contracts to supply services and income generated by the charity itself, such as donations.

The RFDS has a number of contracts with all three levels of government including:

- Commonwealth government support for emergency evacuations, primary health care in remote locations and dental services in rural and remote locations.

- State governments contracts for inter hospital transfers, road ambulance services and medical services delivery support.
- Local governments that are seeking to support communities in their remit by providing support for the delivery of additional health services to that community.

The RFDS is first and foremost a charity, a charities that also enjoys government support to support the delivery of the health services across Australia. The reality is that government funding does not cover the cost of delivery of those health services. The RFDS relies on donor support to deliver its services.

Both the Commonwealth and State Governments have been consistent in their message that they are fiscally constrained, and that additional funding is limited and should not be expected.

The RFDS has heard from many other charities who have received this same message. Charities are being encouraged by government to fund new and existing services from sources of income other than government. A strong encouragement to be less reliant on government for income.

In recent years, the RFDS has directed a lot of effort to increase sources of income independent of government. Donations and bequest have been the primary focus.

The reality of the fundraising landscape is that a charity needs to build and maintain its database of donors and encourage those donors to support. The RFDS observation is that well-resourced donors are increasingly sophisticated in their engagement in terms of understanding the outcomes that will flow from their financial support.

The RFDS observation is that there is an increased level of competition for donor support.

Draft finding 4.1
People respond to incentives, with those on a higher income more likely to give

Preliminary modelling undertaken by the Commission indicates that people give more than they otherwise would because of the personal income tax deduction for donating to entities with deductible gift recipient status. The modelling draws on Australian taxpayer panel data and is the first time panel data has been used in Australia to estimate how people respond to personal income tax deductions for donations.

The Commission estimated the price elasticity of giving – which is how people change their giving behaviour in response to changes in tax incentives for giving – and the income elasticity of giving, which is how people change giving behaviours in response to changes in their own income.

The Commission's preliminary estimates for:

- price elasticity of giving in Australia ranges from -0.87 to -0.92, meaning a 1% increase in the tax deduction for giving is associated with a 0.87% to 0.92% increase in giving
- the income elasticity of giving in Australia ranges from 0.555 to 0.564, meaning a 1% increase in income is associated with a 0.555% to 0.564% increase in giving.

However, these estimates are only one factor to consider when evaluating the effectiveness of tax incentives to give.

Draft finding 4.1
People respond to incentives, with those on a higher income more likely to give

The share of taxpayers claiming a deduction for giving increases with income. Most of the tax benefits from giving that accrue to people in the lowest taxable income decile go to people who had high incomes before claiming any tax deductions.

The Commission will present final estimates, using different modelling approaches, of the price elasticity of giving and the income elasticity of giving in the final report.

The RFDS experience is that the tax deductibility of a donation is a significant factor in a donor's decision process of whether to give and then identifying the amount.

The RFDS noted that at the commencement of the lock downs associated with Covid 19 donors with regular monthly contributions modified their contributions; most discontinued their regular contributions while some reduced the regular amount. The RFDS believes that the impact of Covid 19 was a good indicator that donations are impacted by economic conditions both current and expected.

The RFDS Qld Section has been undertaking a donor acquisition campaign with one of the approaches being representatives in shopping malls inviting people to donate. The feedback from these teams is that as the dual impact of interest rate rises and cost of living increases have evolved there is increasing resistance to commit. The level of engagement remained but people identified that they could not afford the donation.

The RFDS submits that donations are discretionary expenditure. As such the tax deduction at the taxpayer's marginal rate remains the most effective tool, to entice contributions from those who have the capacity to donate.

Draft recommendation 4.1
Remove the $2 threshold for tax-deductible donations

The Australian Government should amend the *Income Tax Assessment Act 1997* (Cth) to remove the $2 threshold for tax-deductible donations to entities with deductible gift recipient status.

The RFDS encourages donors to support the organisation through regular donations such as workplace giving, or regular direct debit / credit card amounts.

The concern was a person who gave $1 per week by direct debit. At the end of the year have they given a tax-deductible donation of $52 in weekly part payments or 52 individual donations of $1 that as individual donations are less than the $2 threshold. The RFDS has always encouraged donations to be made on the basis that each single transaction is equal to or over the $2 threshold.

The RFDS supports the draft recommendation to remove the $2 threshold.

Information request 4.1
Data on giving that is not tax deductible

While there are estimates of the proportion of people who have given, but do not claim an income tax deduction, more complete and recent data would inform the Commission's final recommendations on policy options that seek to improve incentives to give. The Commission is seeking information, such as survey or other data, about instances where people make donations, but do not claim a tax deduction for reasons including they:

- do not have taxable income
- choose not to claim the deduction
- donate to entities that do not have deductible gift recipient status and therefore the donations are not eligible for a tax deduction.

The Commission is also seeking information on the reasons why people choose not to claim a tax deduction for giving if they *do* have taxable income and the donations are eligible for a tax deduction.

The RFDS receives donations from a wide range of individuals, businesses, and foundations.

The RFDS offer the following observations as to those who may not claim an income tax deduction for a donation:

- Those who do not have taxable incomes.

  There are many in the community who value the work that a charity like the RFDS does, and they choose to support that organisation by providing a donation. Their taxable income may be under the income tax threshold (currently $18,300) (such as those drawing tax free superannuation pensions) or covered by rebates (such as for those on aged pensions) and the inclusion of their donations on the tax return is of no consequence.

  However, the fact that they chose to not include the donations on their tax return does not indicate that they do not value that their donation is fully tax deductible.

  We have observed some of these individuals who have minimal income for many years and then have a CGT event and are able to increase their donation in that year.

- Those who choose not to claim the deduction.

  The RFDS issues receipts for donations as a matter of standard operating policy to record the donation and maintain accountability.
  Circumstances where an individual may choose not to claim a deduction may include:
    - Where the donation receipt was lost, the individual is unable to substantiate their income tax deduction.
    - Where the donation was a first time between that organisation and the individual and an error arose in the data provided (such as an incorrect email address) so the organisation was unable to send the donation receipt.
    - Where the donation was spontaneous, and no receipt was available at the time (examples of this have been collections in support of major catastrophes such as the Victorian bushfires where buckets of cash were collected in public locations and members of the public were keen to support the cause)

- Where the donation was made by placing coins and notes in a collection tin – the RFDS is able to place small collection tins in many retail outlets such as cafes shops and hotels in rural and remote communities. Cash donated in these tins is included as donations but no receipt to the actual donor nor to the business that hosted the tin.
- Where the individual donation transaction is less than the $2 threshold (refer note re Woolworths below)

During a select period of time Woolworths in Queensland offers its customers at each register transaction, the opportunity to round up their purchase to the next whole dollar with the round up amount to be a donation by the customer to the RFDS Qld Section. The 2023 campaign ran for two weeks across Queensland raising in excess of $240,000. Small amounts that add up to something significant albeit all individually below the $2 threshold.

Woolworths offers this to other charities over the course of the year.

- Those who donate to entities that do not have gift deductible status.

Crowdfunding options including GoFundMe pages are a regular feature with request for financial support for a myriad of requests. Most of these invitations for support are not run by organisations that are DGR.

The question remains whether those who contribute to a GoFundMe project are under a mistaken belief that the amounts contributed are a tax-deductible gift.

Most NFPs rely on the contributions of volunteer labour and contributions of financial assistance in order to deliver their objects. NFPs such as sporting clubs and community associations / service clubs do not have DGR status. Individuals will regularly support these NFPs in their fundraising activities.

We anticipate that in a significant number of these circumstances the individual making the donation is motivated by the connection with the NFP such as a sporting club where a relative of the individual is playing sport organised by the NFP or the individual is a member of the service club.

Anecdotal evidence is that these donations will be relatively minor with significant donations directed to entities with DGR status.

Circumstances where a business may choose not to claim a deduction may include:

- Where the recognition that the charity provided to the business became more than mere simple recognition / receipt thereby making the payment no longer able to be treated as a donation under the ITAA and more in the character of a sponsorship
- Where the business suffers a loss for income tax purposes – under the loss forward rules a gift cannot give rise to a loss forward. The business may not bother recording the donation in circumstances where there will be a loss for tax purposes as it will in effect be non-deductible.
- Where there is a statutory cap on the amount of the income tax deduction available which applies to donations to political parties.

Draft finding 4.2
A personal income tax deduction is likely to be an effective way to encourage giving

Tax incentives can be designed to target the total amount donated, increase the number of people participating in giving or to encourage particular types of giving, such as money, physical assets or time. The current design of the personal income tax deduction is likely to be the most cost-effective way for the Australian Government to encourage giving.

A flat tax credit would likely incentivise more people to give, but the total amount given overall would likely fall if people who have a high income faced a higher price of giving than they currently do. Adjustments to a tax credit to account for the likely fall in overall giving, including a hybrid approach – a tax deduction for some income cohorts and a tax credit for others – would add complexity and the effect on total donations would be uncertain.

Whether a tax deduction or tax credit would encourage more people to volunteer is highly uncertain, but they would likely increase tax integrity risks and compliance costs given volunteer work and expenses are often undocumented or informal. Government grants to support volunteering where there is a clearly identified need would likely generate greater net benefits to the community than tax incentives for volunteering, if properly targeted and evaluated.

Donations

The RFDS submits that whilst a flat tax credit may incentivise some people to give, that those so incentivised may not have the financial capacity to give. The current "cost of living crisis" as reported in the media indicates that those most likely incentivised by a flat tax credit are those impacted negatively by the cost of living crisis and whose capacity to make a discretionary expenditure donation is constrained by that cost of living crisis.

Volunteers

The RFDS experience is that individuals volunteer for a number of reasons:

- Belief in the cause or the activity of the NFP
- To keep active
- A wish to contribute to the community
- They can do some "work" without impacting on aged pensions and the like.

Most sports organisations rely on volunteers to conduct their events and activities. The RFDS employs the front-line staff. The organisation appreciates the support of volunteers to assist with many of the fundraising initiatives in communities.

The RFDS experience is that many volunteers are mature members of society who have more available time and fewer pressures that are associated with younger families.

Volunteer directors

Modern NFPs are supported by a mix of volunteer directors and paid director roles. Most NFP organisations rely on volunteer directors / management committee members.
The legal responsibilities placed on directors and management committee members are continuing to increase.

The RFDS submits that volunteers give their time. The RFDS submits that to try and record volunteer time as some form of donation would be inappropriate as no outlay is involved and the risk of manipulation.

Grants for volunteers

The RFDS experience is that some NFPs will offer the services of their members as an alternative to having to employ staff or engage businesses. A Rotary club might manage the bar at an event with the Rotary club invoicing the event for the service.

Similarly grants for services could allow volunteer time contributions to be valued at a notional rate per hour as part of the acquittal.

In each instance there is still a requirement to ensure Workplace Health and Safety requirements are met an appropriate insurance in place.

> ?
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> Information request 4.2
> Government policies to support giving
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> The Commission is seeking feedback on the advantages and disadvantages of using alternative government policies to support giving, including a tax credit and matched giving, as opposed to a tax deduction.
>
> - How would donors likely change their giving behaviour under different types of tax incentives, such as a tax credit, and what would drive those changes?
> - What would be the effect on charities of moving to a tax credit if more people were likely to give smaller amounts, but the overall amount of giving decreases?
> - If it were to be adopted, how should a tax credit be designed?
> - What would be the effect on donations of moving to a matched giving scheme, like Gift Aid, given it does not provide a direct personal benefit to encourage all taxpayers to give?
> - Would such a matched giving scheme be an improvement compared to a tax deduction and, if so, how should it be designed?

The RFDS does not support the concept of a tax credit / rebate at a rate less than a taxpayer's marginal tax rate in place of the existing deduction regime for donations.

Importance of income tax deduction

In the experience of the RFDS, an important issue for the majority of donors is whether the recipient is a DGR. The ability to claim a deduction and the extent of that deduction are both relevant.

The RFDS is confident that a tax rebate rather than an income tax deduction would act as a disincentive for all donors whose marginal rate of tax was higher than the rebate level.

Top marginal taxpayers provide the majority of donations (assessed on a total funds basis). The NFP sector relies heavily on the contributions of top marginal taxpayers. These taxpayers should continue to be provided with incentives to contribute wealth to the sector. A rebate regime would make raising funds from top marginal taxpayers more difficult.

Conversely, the RFDS considers that a potentially higher tax incentive for lower income earners will not necessarily lead to those low-income earners donating more than they already do (nor donating enough to counter any reduction in donations from higher income earners).

Lower income earners have a lesser financial capacity to donate. For most individuals and businesses donations are discretionary expenditure. In 2023 and the year to date there are many references in the media to a cost of living crisis – costs have risen at a faster rate than incomes resulting in individuals and businesses being required to review outlays and this will regularly result in reductions of discretionary expenditure.

The RFDS is heavily dependent upon community donations and believes that the deductibility of donations is a key driver in encouraging people to donate.

A tax-deductible based approach is also more easily implemented as a component of workplace giving regimes.

The RFDS also submits that a rebate compared to a tax deduction will produce a negative reaction for those whose income is subject to significant fluctuation between years changing the percentage of deduction available.

A tax credit in place of a deduction will create distortions

The RFDS submits that adoption of a fixed rate tax credit at a rate less that the taxpayer's marginal rate will introduce distortions and complexity into the tax system.

These distortions that would result from a fixed credit rather than an income tax deduction include:

- Sponsorship deductions at a different tax rate to the rate for a donation / gift of the same value;
- Trust distributions to charities at a different tax rate to the rate for a donation / gift of the same value;
- Social enterprises which distribute to DGRs
- Donations from PAFS and Foundations
- Accounting and tax balances

Sponsorship v donation

Many businesses require their brand to obtain recognition in return when they provide financial support to a not for profit. Where an entity receives something more than mere simple recognition in return will generally result in that contribution no longer qualifying as a gift under the income tax rules. The relationship between the business and the charity then becomes one of sponsorship where the expense is claimed for income tax purposes under the standard Section 8-1 of the ITAA 1997 rather than the gift rules.

A rebate / tax credit approach would therefore create an inconsistency where an entity claims an amount as a deductible outgoing, such as a sponsorship instead of a donation. In such circumstances, the entity would enjoy a deduction at its marginal tax rate however the same amount, if claimed as a donation would only result in the rebate / tax credit.

Trust distributions

Many discretionary trusts include in the standard list of beneficiary's charities as a category of beneficiary. The income tax law recognises and supports this by including charities as a member of the "family" for the purposes of the administration of the Family Trust legislative restrictions applying to discretionary trust.

A rebate / tax credit approach would therefore create an inconsistency in the effective tax rate where a discretionary trust distributed an amount to a charity as compared to a donation of a similar value.

Social enterprises

The number of social enterprises in Australia is increasing. A for profit entity structure operates a business activity and donates the profit generated to a DGR charity.

The social enterprise relies on the tax deduction of the donation to the DGR to reduce its income tax liability to nil or a minimal amount.

A flat rate tax credit would likely result in the social enterprise incurring a tax liability, reducing the ability of the social enterprise to pay the full amount as a donation and causing the social enterprise to be unable to honour its commitment to those who engage the social enterprise.

Donations from PAFS and Foundations

PAFs and foundations are required to distribute a minimum annual amount of donations to charities which are registered as DGR Type 1.

A donation from an income tax exempt PAF or Foundation will still be a donation. However, the flow of new donation funds into a PAF or foundation will be negatively impacted if the donor is subject to a flat tax credit rather than a deduction at marginal rates.

Accounting and tax balances

One of the challenges with a fixed rate tax credit at a rate less than the marginal tax rate is that there is a different outcome for accounting and tax. Demonstrated below by use of an example courtesy of BDO.

Example 1 - Assumptions

Income $200 and normally donate 50% of income, that is, $100.

Tax rate 30% and the flat tax credit set at half the tax rate – 15%.

	Donation fully deductible	Donation at 50% flat tax credit	Adjust donation to retain net income
Gross income	200	200	200
Donation	(100)	(100)	(80)
Income post donation	100	100	120
Tax	(30)	(45)	(48)
Net income	70	55	72

With the donation deduction as fully deductible for income tax, an amount of $70 remains after tax.

If the flat tax credit is set at half of the tax rate, and no change to the entity's policy of paying 50% of the profits as a donation, the net outcome is that the owner's remaining income is reduced from $70 to $55.

If the owner wishes to retain the same net income the solution is to reduce the donation by 20% to $80.

Example 2 – Assumptions

Income $200 and normally donate 50% of income, that is, $100.

Tax rate 48% and the flat tax credit set at half the tax rate – 24.5%.

	Donation fully deductible	Donation at 50% flat tax credit	Adjust donation to retain net income
Gross income	200	200	200
Donation	(100)	(100)	(67)
Income post donation	100	100	133
Tax	(48)	(72)	(80)
Net income	52	28	53

With the donation deduction as fully deductible for income tax, an amount of $52 remains after tax.

If the flat tax credit is set at half of the tax rate, and no change to the individual's policy of paying 50% of the profits as a donation, the net outcome is that the owner's remaining income is reduced from $52 to $28.

If the owner wishes to retain the same net income the solution is to reduce the donation by one third to $67.

If the level of donations to the RFDS were reduced by one third the RFDS would have to significantly reduce services.

The RFDS believes that donors regularly measure their donation in terms of the after-tax cost to them as donors, and not necessarily what the needs of the charity might be.

The RFDS believes the replacement of a full deduction with flat rate tax credit will result in a reduced level of donations being made.

Effect of more contributions of a lesser value

The RFDS across Australia receives many small donations and is enormously appreciative of the widespread community support. In an earlier analysis of donor profiles, the RFDS identified that more than one quarter of the number of donations were less than $25.

Subdivision 30CA of the ITAA requires a DGR to issue a qualifying receipt. The majority of donation receipts issued are now done so in an electronic form, with many organisations including the RFDS using an automated process supplemented with manually initiated electronic receipts.

Whilst the RFDS welcomes all donations the reality is that there is a fixed administration cost to receive each donation in recording the donor details, the actual donation details and issuing a receipt. All steps required by Division 30 of the ITAA.

In addition, with an increased number of small donations the RFDS anticipates that there will be a proportional increase in the number of failed credit cards, failed donor details to be completed correctly.

If there are an increased number of small donations there will be an increase in administration costs.

Gift Aid and digital vouchers

The concept of a matching donation is a common feature of many fundraising campaigns - a donor agrees to provide a certain amount and the charity invites supporters to make their donations knowing that their donation will be matched (subject to the nominated limits).

The RFDS considers that the income tax deduction at the marginal income tax rate remains an essential component of the decision to support the charity.

The RFDS does not support the Gift Aid concept. The RFDS view is that the concept as outlined in Box 4.9 introduces a complexity for a charity to encourage a donation from a taxpayer on the higher marginal tax bracket and places a responsibility on the donor to undertake additional documentation to allow the charity to claim the Gift Aid. The RFDS is concerned that the complexity is intended to make it all too hard to claim an amount from Gift Aid.

The RFDS does not support the concept of digital charity vouchers as set out in Box 4.9 as a replacement for an income tax deduction.

The RFDS experience is that donors select a charity to support based on a connection of some form such as a family member helped by the RFDS or a colleague suffering some health issue. The RFDS submits that the concept of digital charity vouchers could distract the connection between the donor and the charity causing the donor to contribute less donations that might otherwise have occurred.

The RFDS submits that a matched giving scheme would be a retrograde step and will lead to reduced levels of donations by individuals and by businesses with a consequential reduction in services delivered by charities.

Benefits of donor led services

There are many advantages to a donor sourced contribution when compared to a government grant, Gift Aid style donation or digital vouchers. These advantages include:

- A charity can provide services that would otherwise not be able to be provided.
- A charity is able to establish a new and / or innovative service to test if the service can be delivered and if the service will be used by those targeted.
- A new concept can be tested and proven and the new service offering to be de risked.
- Many trusts and foundations embrace the concept of seed capital to underwrite new initiatives so that when the data is able to support the outcomes the service / project can be suitable to funded in an ongoing capacity by a government grant.
- Donor led programs can provide a quick and timely response to the needs of a community.
- Donor led programs can also provide a tailored response to match the identified needs of a community.
- Flexibility in the design and the manner of delivery of service programs.
- Communities can have self-empowerment over the service programs delivered locally, increasing the impact and effectiveness of the program itself.

The RFDS supports the Commission's commentary in the draft report:

> *At this time, the Commission sees no strong case to change the personal income tax deduction to a matched giving, voucher or contribution scheme because these do not provide the same direct personal incentive to encourage people to give. (page 160)*

The RFDS notes the Commission's Draft finding 4.2:

> A flat tax credit would likely incentivise more people to give, but the total amount given overall would likely fall if people who have a high income faced a higher price of giving than they currently do.

The RFDS submits that whilst a flat tax credit may incentivise some people to give, that those so incentivised may not have the financial capacity to give. The current "cost of living crisis" as reported in the media indicates that those most likely incentivised by a flat tax credit are those impacted negatively by the cost of living crisis and whose capacity to make a discretionary expenditure donation is constrained by that cost of living crisis.

Summary

The RFDS's experience is that the existing regime which provides for a deduction for donations is important to individual taxpayers. The RFDS submits that tax deductibility of donations is an essential requirement to the donation income that is received by the RFDS each year.

The RFDS submits that a reduction in the proportion of a donation that is tax deductible or a reduction to the effective tax rate at which the donation is deductible will result in a reduced level of donations received.

As outlined under the heading accounting and tax the RFDS has shown how a reduction in the individual tax deduction by half tax rate requires a reduction in the donation by one third for the individual to retain the same after-tax income.

The Commission has identified that the majority of donations are from individuals on the higher tax brackets, which is those who have disposable income.

A one third reduction in donation income would result in the RFDS needing to significantly reduce health services.

The RFDS respectfully submits that the Commission should help charities to raise more philanthropy through increased donations, not less. To encourage those with the financial resources available to donate to do so.

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

The Australian Government should amend the *Income Tax Assessment Act 1997* (Cth) to reform the DGR system to focus it on activities with greater community-wide benefits. The scope of the reformed system should be based on the following principles.

- There is a rationale for Australian Government support because the activity has net community-wide benefits and would otherwise be undersupplied.
- There are net benefits from providing Australian Government support for the activity through subsidising philanthropy.
- There is unlikely to be a close nexus between donors and beneficiaries, such as the material risk of substitution between fees and donations.

In applying these principles, the Australian Government should:

- extend eligibility for DGR status 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
- expressly exclude the following classes of charitable activities or subtypes:
  - primary, secondary, religious and other informal education activities, with an exception for activities that have a specific equity objective (such as activities undertaken by a public benevolent institution)
  - the activities of childcare and aged care in the social welfare subtype (other than activities undertaken by a public benevolent institution)
  - all activities in the subtype of advancing religion
  - activities in the other analogous purposes subtype that are for the purpose of promoting industry or a purpose analogous to an exclusion in another subtype
  - activities in the law subtype that further another excluded subtype
- 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.

DGR registration is by application to the ATO and the DGR registration can be granted in one of two manners:

- The entity as a whole is registered as a DGR – where the nature of the activities undertaken by the entity and its purpose indicate that all activities of the charity are of a type worthy of DGR status.
- The entity establishes a gift fund, which fund is registered as a DGR - where the nature of the activities undertaken by the entity and its purpose indicate that there is a mix of activities, some that qualify for DGR, and some that do not.

Under both scenarios the charity needs to be able to demonstrate that the expenditure using the DGR funds is applied in accordance with the DGR purposed.
The RFDS submits that there is merit in extending the categories under which a charity can apply for entity registration as a DGR or to be able to establish a gift fund. This comment is

predicated on the assumption that the current system of income tax deductibility for donations is retained.
If the ability to access DGR registration is to be based on charity subtype, consideration needs to be given to entities that have multiple parts and consequently qualify for several subtypes. This will be particularly relevant where not all parts / subtypes qualify for DGR registration.

The RFDS submits that the gift fund system where a part of an entity's activities qualify for DGR registration will need to be maintained.

The RFDS submits that exclusion from entitlement to DGR should not be based on the nature of the body but remained focused on the activity delivered.

School building funds

The Commission is recommending in the draft report that the Australian Government should withdraw DGR status from school building funds.
The recommendation is stated to be based on two reasons:

- the perceived risk that school fees will be masked as donations to a school building fund;
- that government funding of the education sector has increased since the category of school building funds was first enacted.

School fees v donations

Donations to school building funds are voluntary.

As a charity, a school building fund is subject to the governance requirements of the ACNC, the rules contained in Division 30 (the DGR rules) and those in Division 50 (income tax exemption rules).

The RFDS submits that there are adequate protections in the existing law governing school building funds to ensure the school building fund is operated in accordance with the law.

The RFDS provides health services to regional, rural and remote areas of Australia including many indigenous communities.

Through the delivery of primary health care services and mental health services to regional, rural and remote areas of Australia the RFDS becomes aware of factors impacting the well being of those communities. One component supporting the health of those communities is the availability of appropriate education resources within, or otherwise available to those communities.

The RFDS understands that smaller regional rural and remote non-government schools do not have the same financial capability as some long established urban based schools. For regional rural and remote non-government schools, the DGR registered school building funds provide a structure for those schools to access donation dollars from outside their location and for the school / fund to be able to apply for grants from PAFs and foundations that are Type 2 DGR entities.

Government contributions

In the Commission's draft report the second reason is that there is now greater government contributions to non-government schools compared to the time when the deduction was introduced.

The RFDS submits that there is greater government funding now than in the past for many sectors in which DGR registered entities provide services including health services, disability support, homelessness support.

School building funds for non-government schools reduce the pressure on government funding, allowing the government to focus on the government schools and other demands for funds including health.

The RFDS respectfully submits that school building funds, library funds and similar should retain their DGR status.

Charity prerequisite

The RFDS agrees that the DGR endorsed entities must be charities or government entities. The RFDS supported this proposal when it was being considered and notes that this requirement is only reaching implementation.

This approach ensures all DGR entities are subject to the governance required overseen by the ACNC or by the particular government.

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Information request 6.1
Improving the specific listing mechanism

The Commission expects that, under its proposed reforms of the deductible gift recipient system, specific listing would be used only in exceptional circumstances, but welcomes further feedback on:

- what role it should play, if any
- how applications should be assessed
- how transparency could be improved, including what further information should be published about the entities that apply for specific listing, how applications are assessed and decision-making processes about why or why not an application is approved
- whether specific listing should be done through regulation rather than legislation.

Specific listing

The RFDS submits that the Australian Government should retain the power to use the specific listing mechanism as the parliament sees fit, rather than being limited to having to first define if the entity satisfies the term exceptional circumstances.

This allows for certainty of DGR status to be established in circumstances where short notice is applicable.

The RFDS considers that the process of the addition to the specific listing needing to be considered in the Australian Parliament is sufficient to manage the risk of any lack of transparency.

Information request 6.4
How expanded access to deductible gift recipient (DGR) status would change giving

The Commission is seeking information, including survey and data information, on how people would change their giving behaviour if DGR status is expanded to most charitable activities (subject to the exclusions described in draft recommendation 6.1).

- Would the expansion in the scope of the DGR system likely result in additional giving overall? If so, by how much?
- Would donors give less to entities with existing DGR status and more to those that gain DGR status under the proposed reforms? If so, by how much?

Observations from the RFDS fundraising teams:

- Charities that do not have DGR status seek to be able to obtain DGR status so they can receive tax deductible donations and be able to apply for grants from foundations and PAFs who are restricted to donating to DGR Type 1 registered entities.
- Individuals and businesses do value income tax deductions so will look more favourably on those charities that have DGR status.

The RFDS anticipates that with respect to accessing support from foundations and PAFs an increase in the number of entities that qualify as DGR registered will not increase the pool of funds available to distribute to DGR registered entities. But there will be more charities competing for the PAFs and foundations donations.

An increase in the number of entities that qualify as DGR registered is likely to allow more individuals and businesses to find a cause with which they align and thereby increase the total value of donations.

All DGR registrants will need to ensure that they remain relevant to their donors as competition for the donor dollar will be greater.

Draft recommendation 7.1
A more transparent and consistent approach to regulating basic religious charities

The Australian Government should amend the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) to remove the concept of 'basic religious charity' and associated exemptions, so all charities registered with the Australian Charities and Not-for-profits Commission have the same governance obligations and reporting requirements proportionate to their size.

Information request 7.1
Building a stronger regulatory framework

The Commission is seeking information on options that would support implementation of draft recommendation 7.2.

- What changes would be needed to enable the Australian Charities and Not-for-profits Commission (ACNC) to direct a registered charity undergoing revocation of its ACNC registration to transfer surplus assets to another registered charity, without impinging or duplicating the powers available to state and territory regulators? For example,

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Information request 7.1
Building a stronger regulatory framework

should it be done through an administrative power or by specifying co-operation in the intergovernmental agreement (draft recommendation 7.4)?

- Whether providing the ACNC standing in each jurisdiction's Supreme Court should be in relation to charitable trusts only or other charity structures and, if so, what legislative changes would be necessary to give effect to this?

The Commission is also seeking further information about options for ensuring that the assets of dormant charities are directed toward benefiting the public, including what test may be appropriate for determining whether a charity is 'dormant' and what steps could be taken in response.

Charities at risk of losing ACNC registration

One of the prerequisite conditions to obtaining DGR status is having the appropriate wind up / loss of DGR status clause in the constitution of the charity.

The standard clause that on winding up any remaining assets must be distributed to an organisation with like objects needs an additional requirement that where the entity has DGR registration, the assets must be distributed to another entity with like objects and who also has comparable DGR status. The DGR component of the assets is linked to the loss of DGR status, not just the wind up of the organisation.

If a charity loses ACNC registration status, loss of DGR status is an automatic consequence.
A DGR revocation clause is the main way an organisation can show that it is required to transfer any surplus gifts, deductible contributions and related money to another DGR if it:

- is dissolved or wound up (closed), or
- has its DGR endorsement revoked (cancelled) by the ATO (whichever comes first).

Section 30-125 (6) of the ITAA states:

> *a document constituting the entity or rules governing the entity's activities must require the entity, at the first occurrence of an event described in subsection (7), to transfer to a fund, authority or institution gifts to which can be deducted under this Division:*
>
> *(a) any surplus assets of the gift fund (see section 30-130); or*
>
> *(b) if the entity is not required by this section to meet the requirements of section 30-130 — any surplus:*
>
> *(i) gifts of money or property for the principal purpose of the fund, authority or institution; and*
>
> *(ii) contributions described in item 7 or 8 of the table in section 30-15 in relation to a fund-raising event held for that purpose; and*
>
> *(iii) money received by the entity because of such gifts or contributions.*

When ITAA was amended in 2013 to legislate the requirement of this clause, the requirement was not grandfathered for existing charities; that is, it would apply to all DGR entities.

If the charity loses its ACNC registration it will cease to be regulated by the ACNC. If a company limited by guarantee it will revert to supervision by ASIC. If an incorporated association, it will remain under the jurisdiction of the state in which it is incorporated.

Dormant charities

Legislation now requires that all non-government entity holders of DGR status must be an ACNC registered charity. This replaced the system where entities other than charities could be provided with DGR status.

Consequently, the ACNC is the regulator of all non-government DGR entities. The ACNC is empowered by its governing statute to regulate charities.

Income tax legislation

Division 50 of the ITAA prescribes requirements that must be met at all times to retain income tax exemption by a charity.

As a registered charity, pursuant to Subsection 50-5 of the ITAA 1997 each member of the RFDS Group is income tax exempt provided it continues to meet two broad requirements and three specific tests at all times.

The broad requirements for Australian based charities are:

- The entity must have a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia (paragraph 50-50(1)(a))
- The entity must be endorsed as exempt from income tax by the ATO.

There are separate requirements for charities:

- That meet the requirements of Item 1 of 30-15 (the DGR rules); and
- Is a prescribed institution located outside Australia and is income tax exempt in its country of residence; or
- Is a prescribed institution based in Australia but incurs its expenditure and pursues its objectives principally outside Australia.

The three specific tests are:

- Comply with all the substantive requirements in its governing rules (paragraph 50-50(2)(a))
- Apply its income and assets solely for the purpose for which the entity is established (paragraph 50-50(2)(b)); and
- Continue to be recognised as a registered charity by the ACNC (Section 50-47)

Director Duties – Australian Charities and Not-For-Profit Commission

The Australian Charities and Not-for-profit Commission, as a separate body to the ATO, governs the duties of the Board (also known as 'Responsible Persons') of a charity.

The ACNC has established seven duties of Responsible Persons: -

- Act with reasonable care and diligence;
- Act honestly in the best interest of the charity and for it purpose;
- Not misuse the position of responsible person;

- Not to misuse information obtained in performing duties;
- Disclose any actual or perceived conflict of interest;
- Ensure that the charity's financial affairs are managed responsibly; and
- Not allow a charity to operate while insolvent.

The Responsible Persons must ensure their duties to the institution are discharged, or risk the implementation of the following measures by ACNC:

- The Responsible Persons may be stricken off the register and banned from taking the position of a Responsible Persons in another institution; and / or
- The institution may lose their charity registration with the ACNC which will result in the ATO removing all income tax and fringe benefit tax exemptions, and DGR and PBI status.

Each charity (other than some exclusions) is required to lodge an Annual Information Statement (AIS) which contains key data and commentary:

- Income for the year by category;
- Expenditure by category;
- Assets by category;
- Text outlining the achievements for the year in the AIS; and
- Text outlining plans for the year ahead.

All of this information is publicly available on the ACNC website, available for access by the ACNC as regulator.

The term dormant should not be interchangeable with low level of activity.

The nature of the sector in which a charity operates may be subject to change and a charity may need to change the focus of its activities. Charities may also have a period during which they need to build their financial base so the charity can be financially sustainable when it increases the level of activity.

Combination

The combination of the ACNC Act and Division 50 of the ITAA, a charity must take caution to clearly demonstrate how each transaction is in within and assists with achieving its purpose and is undertaken in the best interest of the charity.

The directors / management committee of the charity are charged with the responsibilities under the ACNC legislation and the income tax legislation to ensure that all amounts of income received, not just DGR donations, are applied solely to the purpose of the organisation.

RFDS submits that there is a strong argument that if a charity is truly dormant, that the charity may not be directing all of its assets solely to the objects of the charity as required by both Division 50 of the ITAA and the ACNC Act.

Draft finding 8.1
There is no case for reducing superannuation taxes for bequests

The current taxation arrangements for superannuation treat a donation to a charity in the same way as a payment to any other non-dependent beneficiary. The tax system is not neutral in death and provides a larger tax benefit for the superannuation component of an estate. Adding further concessions at the time of death would be a relatively costly way for the Australian Government to incentivise philanthropic giving.

The RFDS notes the recommendation by the Commission.

Information request 8.2
Timely distributions of donated funds for charitable purposes

The Commission is seeking views on whether, and in what circumstances, the regulatory framework for entities that have deductible gift recipient status should encourage timely distributions for charitable purposes, and whether there should be regulatory consistency between giving vehicles to encourage distributions.

This information request suggests that all donations received should be distributed, in a timely manner. Is this to other organisations or as expenditure? What is timely?

Donations are received by charities for multiple purposes including:

- Delivery of ongoing key services/ activities aligned to the charity's purpose;
- Delivery of trial / new services;
- Acquisition of capital assets;
- Financial assistance at times between grants;
- Research projects to identify needs;
- And many more.

Legislation now requires that all non-government entity holders of DGR status must be an ACNC registered charity. This replaced the system where entities other than charities could be provided with DGR status.

Consequently, the ACNC is the regulator of all non-government DGR entities. The ACNC is empowered by its governing statute to regulate charities.

The directors / management committee of the charity are charged with the responsibilities under the ACNC legislation and the income tax legislation to ensure that all amounts of income received, not just DGR donations, are applied solely to the purpose of the organisation.

For Public Ancillary Funds and Private Ancillary funds there is already a minimum distribution standard established. The nature of these types of funds is that they are regularly established with an amount of seed capital that is invested.

The RFDS submits there are already adequate legislation and regulatory controls in place.

Information request 8.4
Making bequests through superannuation easier

The Commission is seeking information, including from donors, charities and superannuation funds, on options to allow people to nominate their superannuation death benefit to a charity. The Commission welcomes further information on the:

- potential design of a mechanism to enable people to direct a portion of their superannuation death benefit to nominated charities, including the roles and responsibilities of parties such as trustees and estate executors
- benefits, costs, risks, necessary safeguards, and potential unintended consequences of policy options enabling a person to direct their superannuation death benefit to nominated charities
- factors, such as family or financial circumstances, that would contribute to a person deciding whether to take up the option to direct their superannuation death benefit to nominated charities.

There are many key factors that may contribute to a person deciding whether to direct their superannuation death benefit to a charity:

- No children / grandchildren / dependents
- The individual wants to ensure they make a difference to a charity they care about after passing
- Unable to give at the level they wish during retirement as they are on a fixed income but would like to give after their death.
- Circumstances where the superannuation benefits are the primary asset and income source, so the individual does not want to draw down too significantly on their superannuation balance due to the unknown of how long they will live.

Advantages	Disadvantages
• If designed well it could reduce the waiting time to receive gift in wills funds as super and estate transfers are tied up with taxation matters • Could also reduce time spent engaging lawyers in the above process • Protecting donors wishes from executor fraud (i.e. executor not implementing their wishes) • Removal of the tax penalty would lead to a higher propensity of gifts • The concept of donating through super bequests is not well known and a policy change would likely lead to an increase in donations	• Another mechanism to explain to donors in what can already be a complex or sensitive area • If not easy to change or alter can delay supporters in making the change • Risk of people implementing it once and never changing it (what a supporter cares about changes during key milestones in life)

The RFDS submits that any death benefit distribution to a charity from superannuation benefits should not be done within the superannuation fund as to do so would require a change to the sole purpose test. Rather the superannuation death benefit should be withdrawn from the superannuation fund as a death benefit, paid to the estate of the deceased and the distribution to the charity by the executors of the estate of the deceased.

If the intention is to allow such a distribution to be made without the estate incurring a tax liability, an amendment to the taxation rules could deem a distribution to a DGR charity as a distribution to a dependent of the deceased.

For integrity purposes the concession could be restricted to amounts paid to charities that are registered DGR entities at the time of the payment.

Draft finding 9.1
Administrative expenses are not an accurate reflection of the performance of a charity

An overemphasis, amongst donors and other stakeholders, on the amount of revenue that charities spend on administrative expenses can lead to incorrect conclusions about charity effectiveness and create perverse incentives for charities. For example, it can result in the underreporting of administrative costs or underinvesting in core capabilities and capacity, such as staff training, which undermines long-term capacity to further charitable purposes and benefit the community.

Charities have incentives to provide information about effectiveness to donors, and this information is shared in various ways. Introducing additional requirements, including standardised quantitative measures, would be impractical and may lead to significant unintended consequences.

Every organisation requires administration in order to manage its activities and to comply with the range of duties and legal responsibilities placed on both the organisation and its governing personnel.

The level of administration required will vary between the type of organisation, the type of services, the compliance requirements of the sector in which it operates, and the information required to inform its funders and supporters.

The RFDS operates aircraft and delivers health services, two highly regulated activities. In addition, services are delivered that are funded in part by the Australian Government, respective State governments and local government. Administration is a necessary cost of receiving these government support.

One of the objectives of the ACNC has been the reduction of red tape including duplicated reporting between the ACNC and State regulators. Encouraging governments to draw their required information from what is lodged at the ACNC is worthy of support.

One area of administration that continues to involve duplication is that of the fundraising legislation, the different requirements that each state imposes and the uncertainty that follows from charities with an increased focus using online fundraising.

However, for many organisations, it is the excessive red tape associated with contract tendering, management and administration that poses the greatest unnecessary and unproductive burden on NFP. Much of this could be avoided if a risk-based approach was adopted by governments.

Draft recommendation 9.1
Creating more value from the data held by Australian Government agencies

The Australian Charities and Not-for-profits Commission (ACNC) and the Australian Taxation Office (ATO) should work together to enhance the utility of Australian Government sources of information on charities and giving for donors and the public.

The ACNC should:

- present data on the ACNC charity register in ways that are more meaningful and accessible to donors and the public (such as more prominently presenting charities' deductible gift recipient status), where it is enabled to do so by the Australian Government.

The ACNC and the ATO should work together to:

- publish additional information on distributions by ancillary funds, including collecting and publishing additional information by sub-funds within public ancillary funds.
- raise public awareness of government sources of information on charities, including the ACNC charity register.

The Australian Government should:

- implement reforms to enable the ACNC to publish circumstances and reasons for referrals made to other government agencies (draft recommendation 7.2)
- address regulatory impediments to the ACNC presenting more meaningful information on the ACNC charity register, where necessary.

The ABR currently displays the DGR status of a charity and whether the entity is a Type 1 or Type 2 DGR category.

The RFDS notes that there is a link from the ACNC "Search for a Charity" page to the ABR to check the DGR status.

At present the primary register to check DGR status is the ABR.

The RFDS respectfully questions the need for a duplicated register and the administration cost to maintain on the ACNC charity register whether the charity is a DGR and whether the charity is a Type 1 or Tye 2 DGR.

The RFDS has participated in previous consultations with the ACNC on the design and content of the AIS and encourages any contemplated changes to be open to consultation.

Draft recommendation 9.2
Embedding donor and public views in the Australian Charities and Not-for-profits Commission's (ACNC) regulatory approach

To provide clarity on how the ACNC balances the views of charities, donors, volunteers and the wider public in its regulatory approach, the responsible Australian Government minister should issue a statement of expectations that sets out how these views should be balanced, when:

- designing the content and the presentation of the ACNC charity register and other public resources.
- making decisions about what information to collect through the annual information statement.

Draft recommendation 9.2
Embedding donor and public views in the Australian Charities and Not-for-profits Commission's (ACNC) regulatory approach

- making decisions about whether to withhold or remove information from the charity register.
- forming consultative committees.

The design of the ACNC charity register should be shaped by research on the information needs of donors of all sizes, and evaluation of the charity register should inform its content and presentation.

Each charity is required to complete an AIS which contains key information including financial data. The AIS is required to reflect the information for the charity for whom the AIS is applicable.

If the same charity is required to lodge financial statements it is required to prepare those financial statements as General Purpose financial statements, that is, in accordance with all accounting standards.

One of those standards is AASB 10 Consolidated Financial Statements.

Where a charity controls another entity in accordance with the tests in AASB 10, the financial statements of the charity reflect the consolidated Statement of Financial Position and consolidated Statement of Financial Performance.

The financial statements will contain different numbers to the AIS.

Large charities will regularly contain several separate and distinct components or business units. The AIS was updated for the 2022 year to allow charities to provide descriptions of different activities within the AIS, recorded as projects. But this does not contain any financial data.