



# PRODUCTIVITY COMMISSION EQT SUBMISSION\_09022024\_

Submission made by EQT Holdings Ltd. (Equity Trustees)

Dear Commissioners,

Please find attached our final submission to the Productivity Commission's (Commission) Philanthropy Inquiry Draft Report, which seeks to provide supplementary information to Equity Trustees' initial submission made in May 2023.

The Report raises general and specific items for action, and Equity Trustee has responded with insights and data relevant to our position as a Licensed Trustee company (LTC). We are very committed to our role and responsibility as steward of 1000 charitable trusts, distributing over \$100m p.a to the community, and trust our insights will be valuable.

We thank the Commission for undertaking this complex piece of work, and extensively collaborating with all facets of the sector.

We are open to further consultation.

**Key points of focus:**

1. INFORMATION REQUEST 8.5: Barriers and opportunities for innovative giving vehicles
2. Draft Recommendation 10.1 Establishing an Aboriginal and Torres Strait Islander (ATSI) Foundation
3. Draft Recommendation 6.1& 6.2 Deductible gift recipient (DGR) system
4. INFORMATION REQUEST 8.3: Regulatory arrangements for charitable trusts by Licensed Trustee Companies.
5. INFORMATION REQUEST 8.4: Making Bequests through Superannuation

Sincerely,

**Jodi Kennedy**

General Manager, Philanthropy & Community Trusts  
EQUITY TRUSTEES



## **Introduction:**

Equity Trustees is committed to responding to emergent giving trends and donor needs and views this opportunity as one of both removing barriers and of exploring and scaling solutions. The entire sector will benefit from 'doubling giving' – but this demands investment in catalytic approaches that focus on those that are living.

Encouraging more people to give involves inspiring a sense of purpose, providing accessible avenues for participation, and fostering a culture of giving – it requires systemic behavioural change. Equity Trustees is buoyed by the opportunities the Commission's review unlocks and the imperative for the sector to back bold and innovative ideas.

We know that younger generations are engaging earlier in philanthropy than previous generations, are driven by values of social responsibility, sustainability, and ethical consumerism. They prioritise purpose-driven initiatives and seek opportunities to drive a cultural shift towards lifelong giving. The rise of digital platforms and mobile apps is democratising philanthropy, enabling broader participation and greater transparency in charitable giving.

Donors are increasingly interested in supporting organisations that demonstrate measurable impact and outcomes. There is a growing emphasis on evidence-based philanthropy, where donors seek data-driven approaches and rigorous evaluation methods to assess the effectiveness of their contributions. Strategic philanthropy is gaining traction, with donors focusing on specific issues, geographic areas, or populations.

The conditions are firmly in place to activate future generations; elevate the work and voices of current donors and unlock the giving potential of all Australians. There is a noticeable appetite for more inclusive practices in 'philanthropy' - this is where the potential for change lies and where Equity Trustees will continue to focus its attention.

## **INFORMATION REQUEST 8.5: Barriers and opportunities for innovative giving vehicles**

To increase participation rates of a diverse segment of Australians in giving, the Commission needs to focus on removing barriers to innovation. Further access to effective tech supported structured giving (such as the EQT philanthropy portal), provides a platform for giving on a broader basis than currently.

We consider wider regulatory support of innovative structures such as:

1. Life income gifts
2. Community development trusts and
3. Capital loan funds.

are great examples of more flexible and effective ways to increase donor participation and giving. These have the potential to unlock significant value via access to capital that is currently out of reach.

### National Giving Campaign

To reach the goal of doubling giving by 2023 we need more Australians giving during their life. As per Section 10 in the draft report, we are strong supporters of a public National giving campaign to drive awareness, engagement, and participation in giving from all Australians.

## **Draft Recommendation 10.1 Establishing an Aboriginal and Torres Strait Islander Foundation**

We share the observations of the Commission on the barriers for ATSI communities accessing philanthropic funding. As both a dedicated funder and Trustee of many Community/Native Title Trusts, we



are supportive of the Commission's focus on exploring viable solutions. We agree that more money needs to be directed to ATSI lead organisations to drive effective and appropriate outcomes.

EQT supports the draft recommendation 10.1 to investigate the creation of a Foundation focussed on strengthening ATSI communities to engage with philanthropy and volunteering. Based on our close relationship with ATSI communities via our various Trustee roles, we consider this to be an extremely complex strategy that requires deep consultation and consideration of how funds would be equitably distributed across a vast and diverse number of organisations.

A key benefit will be the creation of a consolidated vehicle for other philanthropic funders to contribute to and the empowerment of ATSI communities to drive the initiative and outcomes sought.

### **Draft Recommendation 6.1 & 6.2 Deductible gift recipient (DGR) system**

EQT supports the Commission's views that the DGR system is flawed, and that reform is required.

EQT agrees with the recommendation for a simpler, refocused deductible gift recipient (DGR) system that creates fairer and more consistent outcomes for donors, charities, and the community, as outlined in the draft report.

### **INFORMATION REQUEST 8.3: Regulatory arrangements for charitable trusts by Licensed Trustee Companies (LTC).**

LTCs play an important role in the philanthropic marketplace, and in many instances provide a role that can't be fulfilled by other trustees.

LTC's are the most highly regulated of all classes of Trustees, and by law must place the needs of the beneficiary above those of other stakeholders, to ensure the wishes of the Benefactor are carried out and community benefit is protected. LTC's adhere to regulatory obligations of the ACNC and ASIC and are governed by the Corporations Act.

It is important to note that multiple forms of trusteeship can be applied to govern charitable trusts. Trustee structures can use LTC's, non-licensed trustee entities or individuals, or a combination of these.

Essentially the differences between LTCs and other forms of trusteeship are:

- LTCs are licensed
- LTCs hold capital for the protection of beneficiaries and to provide greater certainty of continuity
- LTCs must abide by the Corporations Act
- LTCs have obligations to the ACNC and to ASIC
- For charitable structures fees are capped for LTCs (noting they are not capped for any other trustees)

There are many reasons why a donor or testator would choose to appoint a professional LTC to oversee their perpetual charitable trust, as opposed to the many other options available to them.

Key reasons include:

- Surety is sought on the professional and ongoing management of the trust structure over multiple decades
- An existing long-term, and in some instances, multi-generational relationship with the LTC provides confidence on trusteeship and asset protection
- Family members have indicated a lack of interest in the trusteeship, or there are no existing family members (or none with a relationship with the founder/testator)



- There are complex assets or companies that may still be operating that require professional oversight and/or winding up
- There are concerns around the complexity of the beneficiary relationships
- The court has appointed a LTC after ongoing issues with lay trustees in the management of a trust.
- The regulatory oversight of LTCs provides certainty to donors/testators as to how their trust will be overseen.

Our experience demonstrates that donors and testators often specifically choose an LTC, depending on their individual needs, preferences, and circumstances. Key reasons can include:

**Professional Expertise:**

- LTC's have professional expertise in trust administration, legal matters, and financial management. This is particularly valuable for perpetual trusts or those involving substantial assets.

**Legal Compliance:**

- LTC's are regulated entities, and they must comply with specific legal and regulatory requirements and adhere to regulatory obligations to the ACNC and ASIC. This can provide individuals with confidence that their trust is being managed by professionals with deep knowledge of Charitable and Trust Law.

**Corporate Governance:**

- LTC's have well established corporate governance structures and procedures. This contributes to the professional administration of the trust, including adherence to compliance standards and transparent reporting to the Regulator.

**Continuity and Stability:**

- LTC's offer continuity and stability in the management of a trust. Unlike individual trustees who will change due to personal circumstances, a corporate trustee is a perpetual entity, providing consistency and assurance over the long term.

**Risk Mitigation:**

- LTC's have risk management systems in place to mitigate various risks associated with trust administration. This can include financial risks, legal risks, and operational risks. Trustee companies are held to the highest level of accountability of all trustees.

**Asset Protection:**

- LTC's can provide an additional layer of separation between personal assets and trust assets. This separation can be beneficial in terms of asset protection and reducing the risk of personal liability for individual trustees.

**Social Impact Expertise:**

- LTC's have professional social impact teams with subject matter expertise, spanning a range of complex social problems. When teams responsible for distributing grants possess deep knowledge in social impact, they are better equipped to assess and support initiatives that contribute positively to society in an efficient manner, while avoiding duplication and wastage. This scaled approach also creates the opportunity for collaborative funding across trusts with similar purpose, saving the sector time and administrative effort when seeking funding and allowing pooled funding to be made for longer periods of time.



Further to this background, we have provided supplementary data in relation to the specific points raised by the Commission.

**1. The Commission's Report raises the issue of portability options of moving from an LTC post the donor/testator's lifetime, and whether appropriate mechanisms exist to oversee this perpetual/long term trustee appointment.**

Equity Trustees provides the following comments;

- Perpetual Charitable Trusts by design, are set up to provide long tenure and surety to donors who establish them during their lifetime, to allow their chosen trustee to deliver to their wishes
- When establishing any charitable trust, the founding donor can ensure there is appropriate power within the deed/will to remove and appoint a trustee, including an LTC
- If an LTC does not act in accordance with their duties, the Supreme Court has the power to remove the trustee
- Equity Trustees clearly communicates with founding donors at establishment, that they have various options available to them about how and by whom the trust will be managed beyond their lifetime
- The current regulation and mechanisms in place are ample to protect the donor/testator and community interest.

A donor/testator chooses their executor and trustee carefully and does so on the basis that it will fulfil their role permanently. Any retrospective amendments to portability would not meet the needs of the testator, who could have created this option during their lifetime. If LTC's are not performing their role appropriately, there are effective mechanisms to have them removed.

**2. The Commission's Draft Report raises the issue of how LTC's fees are structured and applied.**

LTC's are subject to regulated fee caps where they act as trustee of a charitable trust. Provisions regarding remuneration are set out in Part 5D.3 of the Corporations Act. Section 601TEA provides the courts with the power to reduce fees in certain circumstances. While these fee caps are in place, usually, discounts to these legislated fees ensure that fees are suitable for delivering to the individual trust/foundation's purpose. LTC's are required to publish their fees for acting as trustee on charitable trusts.

The Draft Report noted that commission-based fees could create a disincentive for funds to be distributed. Equity Trustees does not charge commission-based fees but notes that trusts typically apply asset-based fees on the corpus.

Trustees must put the needs of the trust beneficiaries first, above their own commercial considerations. Industry practice is to distribute all net income available in any given year, and not to build corpus, unless there is a mitigating reason. We are governed by trust deed or Will on what proportion of income is to be distributed and in most trusts this is 100% of the available income. In some circumstances the testator may request a small proportion of income be capitalised each year, clearly if this has been included the testator has given it thought and this is their wish. In no circumstances would Equity Trustees capitalise income without having clear instructions. The Australian Tax Office also has guidelines on capitalising income which, if not complied with, could risk the trust's tax-exempt status.

Equity Trustees has strong governance controls in place to oversee annual distributions to maximise community benefit of the distributable funding. Equity Trustees openly communicates this funding amount and breakdown with external stakeholders.

The Corporations Act (the Act) Section 601BE(3)(a) states that fees charged by a licensed trustee to charitable trusts must be paid from trust income rather than capital. All other trust structures aside from charitable trusts can take fees from either capital or income under Section 601TBE (2).

As per our initial submission in May 2024, we would like the Commission to consider bringing charitable trusts in line with other trusts structures and enabling fees to be charged from either income or capital.



### 3. The Commission raised market consolidation and concentration.

We believe that consolidation of the sector has not contributed to a lessening in market competition, for the following reasons:

- Donors/testators have many choices when it comes to appointing a trustee of their charitable trust
- LTC's compete against a wide range of service providers, such as independent accountants, public trustee companies, many other professional providers or individuals, as well as other LTC's
- LTC's do not hold the majority of market share of current charitable structures. The Commission's Draft Report (Figure 4. page 9), shows that of the revenue generated for the charitable sector, only a small proportion of this comes from structured vehicles such as Charitable Trusts or Ancillary funds<sup>1</sup>. Consolidation of LTC's has provided many benefits and cost-savings to the sector, by leveraging an LTC's ability to grant collectively, use economies of scale when administering charitable trusts and avoiding the replication of key tasks by having a centralised service model when overseeing the governance of multiple trusts. (See Appendix 1 for case studies on our consolidated Small Grants Round & Medical Research & Health Partnership program)
- LTC's are regularly asked to compete for new business as trustee and often when appointed, are filling a unique role that other Trustees cannot fill for the donor (see section 1.)
- LTC's are very transparent with their pricing, product offering, service level offering, and this is evidenced by current independent Trustees of the William Buckland Foundation in their submission to this Inquiry.
- LTC's annually report via the ACNC Annual Information Statements on each of the trusts under their stewardship and follow strict guidelines to ensure the highest level of governance and transparency is adhered to.

### 4. The Commission's Report highlights the LTC's ability to provide both Trustee and Investment Management services and to create 'common funds' for the purpose of investing consolidated charitable funds, and other asset pools, to generate a return.

The point was raised about the requirement to provide both of these services together. Equity Trustees can demonstrate that while this option is available to them, LTC's can provide their services in an 'unbundled' offering. The donor/testator has the right to request the use of an independent investment manager, which will be upheld, if considered prudent. We regularly work with external Investment Managers to manage charitable assets where there is a need or desire for separation between the Trustee and the Investment Manager.

Under charitable law, most charitable trusts require capital and income to be segregated, as there are legally 2 different entities entitled to these components; with the trust entitled to the capital and the beneficiaries entitled to the income. This means investments need to be able to focus on delivering to 2 different needs, and as such, common funds are designed to do this and there are very limited alternative investment options available in market that meet this need at scale. Fees vary from one charitable trust to another with many Charitable Trusts benefitting from bespoke fee arrangements, in accordance with the complexity, workload and risk associated with administering that trust. All trusts stewarded by Equity Trustees comply with the legislated fees set by the Regulator.

Equity Trustees' dedicated asset management function sits independently of our Trustee business and specialises in managing assets on behalf of tax-exempt organisations who need long-term capital

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• <sup>1</sup> Of the total charity revenue of \$13.4bn, the ~\$100m distributed p.a. from structured giving vehicles managed by Equity Trustees, is minimal, with the Commission reporting that of all sources of donations, charitable trusts and ancillary funds make up only 14% of the total giving market. In terms of the total ~8000 Charitable Trusts and Ancillary funds registered, Equity Trustees only stewards ~1000 of these structures, and oversees approximately \$3bn of total charitable assets, out of a wider market of \$45bn.



growth and reliable sources of income generated for distribution to the community. Our fiduciary responsibility requires us to ensure that the assets invested in any trust under our stewardship are fit for purpose and invested to balance the needs of the capital and income beneficiaries.

#### **INFORMATION REQUEST 8.4: Making Bequests through Superannuation**

While Equity Trustees is a supporter of charitable giving via Bequests, we would ask the Commission to consider the practicalities of how a Superannuation Bequest initiative would work in practice. The process of how giving would be executed through Superannuation is critically important and needs appropriate safeguards to ensure all classes of beneficiaries are protected. We also note the Government's recently legislated purpose of Superannuation is *to preserve savings to deliver an equitable and sustainable retirement, alongside government support*. The purpose makes no comment around estate planning and the comment around equity and sustainability are targeted at ensuring superannuation balances are reasonable in size and as fully utilised as possible prior to death.

Based on the business case developed to this point, we would like the commission to consider the potential significant burden and responsibility placed on the superannuation industry and particularly superannuation trustees, if giving directly from superannuation were to be made possible. Distributing funds to charitable organisations requires specific governance and understanding of the sector and charitable law, and we believe this mechanism best lies within estate administration. This process is currently well equipped to assist people in charitable giving after they have passed and laws have been developed over many years to protect beneficiaries and the community.

The high-level risks to the concept of giving charitably directly from a donor's Superannuation, will come from claims of financial dependents and non-dependents, any essential debt recovery, conflicts in wills, lapsed nominations, etc. and would inevitably be a very timely and costly process for the Superannuation trustee. This is further complicated in the cases where there is a life insurance benefit payable, which is included with the amount of superannuation as a total death benefit. If nominations are made through the trustee, this would inevitably lead to an increase in administration costs and governance for the trustee to work through complicated nominations and in turn lead to higher fees for all superannuation consumers.

The body of knowledge in regard to obtaining "proper provision" from a deceased's wealth by surviving family members - including legislation, policy and practice lies primarily within Wills and Estate law. Legislation and Court rulings in these areas of law set out established and developing rights and responsibilities for a deceased and their dependents, whether via a Will or Intestacy. What is important is that there is an estate, and the ability to pay superannuation death benefits direct to charities would see wealth bypass an estate and lose the protections afforded under Wills and Estate Law.

Our recommendation is that assets from superannuation should be transferred over to a person's estate, where funds can then be distributed as intended by the donor/testator. Executors of estates are equipped to work through the complications that can occur throughout the nomination process and estates have a lot greater flexibility in how a donor/testator can philanthropically give in the event of a person's death. There is a significant legal framework surrounding estate planning, meaning someone wishing to leave their assets to a charitable organisation has more certainty that they will be giving as they intended. Estate planning and advice are readily available and accessible, making it easier for someone to plan who they want to give to, and how other factors such as financial dependents would fit in with their estate.