

9 February 2024

Productivity Commission
GPO Box 1428
Canberra ACT 2601

Via online portal

Dear Commissioners

RE: Productivity Commission draft report: Future foundations for giving

The FSC welcomes the opportunity to consult on the Productivity Commission's draft report, *Future foundations for giving* (the report). The FSC and its members are supportive of the objectives in the report, namely making the process of charitable giving easier for those who wish to do so and thus, encouraging more people to give to and support the charitable sector.

Whilst the report covers a broad range of topics in relation to philanthropic giving, the FSC has focused its submission largely on the role of superannuation in philanthropy and to an extent, how this interacts with bequeathing through estates. The FSC particularly wishes to raise that there would be significant burden and responsibility on the superannuation industry if giving directly from superannuation were to be made easier, where this responsibility would best be with estates who are currently well equipped to assist people in charitable giving after they have passed. The FSC also encourages the Productivity Commission to consider recommending taxation concessions for superannuation given to charities in certain situations.

About the Financial Services Council

The FSC is a peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services. Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, and financial advice licensees.

The financial services industry is responsible for investing more than \$3 trillion on behalf of over 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is one of the largest pools of managed funds in the world.

Summary of Recommendations

1. The Productivity Commission's report change its recommendation of making it easier to give to a charitable organisation directly from a person's superannuation and instead, recommend that the process to transfer assets from superannuation to a person's estate for the intention of giving be made easier.
2. The Productivity Commission to further explore the options to provide a tax concession for those who wish to give superannuation assets to a charitable organisation through their estate in the event of their death, to encourage charitable giving and provide certainty that

their superannuation is going where they intend for it to go.

Charitable giving from estates provides a more secure, safer structure for philanthropy

Superannuation is a growing \$3.6 trillion industry where the objective is to 'preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way' in the current draft of The *Superannuation (Objective) Bill 2023* before parliament. In many cases superannuation may be able to serve its objective and additionally be able to help support others through philanthropic giving, where this can largely occur through bequeathing assets to a charitable organisation upon a person's death. The FSC is supportive of the principle but notes that the process in which this can be done is critically important and needs appropriate safeguards.

The report states that some submissions suggest that a way to encourage charitable giving would be to make bequests directly through superannuation easier. The FSC's members have raised that charitable giving directly through superannuation nominations puts a lot of the responsibility on the trustee and is often done separately to a person's estate planning. This could lead to various complications relating to claims of financial dependents and non-dependents, any essential debt recovery, conflicts in wills, lapsed nominations, etc. and could be a very timely and costly process for the 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 lead to more staffing costs for the trustee to work through complicated nominations and in turn lead to higher fees for all superannuation consumers.

The FSC notes that 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, their dependents and whether via a Will or Intestacy. What is crucial is that there is an estate. An 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.

Superannuation law was not, and has not developed, to cover family provision obligations. To include charities as a superannuation dependent would lead to such payments being removed from the family provision legal environment, creating a burden for trustees, and diminishing rights for a family member in need to seek greater provision. If a family member in need is unable to obtain proper provision then the demand for social security is likely to increase.

The FSC and its members submit that assets from superannuation should be transferred over to a person's estate, where funds can then be distributed as intended. The FSC supports necessary changes to legislation to make this process easier for a trustee. Estates are better equipped to work through the complications that can occur throughout the nomination process, estates also have a lot greater flexibility in how a person 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 intend. Further to this, 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.

Recommendation 1

The Productivity Commission's report change its recommendation of making it easier to give to a charitable organisation directly from a person's superannuation and instead, recommend that the process to transfer assets from superannuation to a person's estate for the intention of giving be made easier.

Providing tax concessions will help encourage more philanthropic giving from Superannuation through estates

The report currently states that there is 'no case for reducing superannuation taxes for bequests', due to the already generous concessions provided for superannuation during a person's life and the potential cost to the Government.

The FSC notes the report's reasons for not recommending tax concessions and would like to highlight that tax concessions in bequeathing assets from superannuation in order to give to a charitable organisation would assist in incentivising philanthropy. Therefore, this should be an option further explored by the Productivity Commission in recommending ways to encourage more charitable giving in Australia. While there are concerns that this may work against the aforementioned objective of superannuation, there can be conditions applied to any concessions that may be recommended. An example of a concession would be to apply the same tax treatment of providing superannuation to a financial dependant to any charitable giving from superannuation through as estate, thus not taxing amounts given to charitable organisations. This option would ensure the objective of superannuation is being met through providing income throughout retirement and then allowing someone to bequeath their assets to a charitable organisation of their choosing without having to consider taxation consequences.

Recommendation 2

The Productivity Commission to further explore the options to provide a tax concession for those who wish to give superannuation assets to a charitable organisation through their estate in the event of their death, to encourage charitable giving and provide certainty that their superannuation is going where they intend for it to go.

If you have any questions about this submission, please contact me.

Yours sincerely

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Aidan Johnson

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