

Review of Philanthropy

Productivity Commission

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Introduction

The University of Queensland's T.C. Beirne School of Law and the PA Research Foundation welcome the opportunity to contribute to the Productivity Commission's Review of Philanthropy.

For more than a century, The University of Queensland (UQ) has maintained a global reputation for delivering knowledge leadership for a better world.

The most prestigious and widely recognised rankings of world universities consistently place UQ among the world's top universities.

UQ has won more national teaching awards than any other Australian university. This commitment to quality teaching empowers our 52,000 current students, who study across UQ's three campuses, to create positive change for society.

Our research has a global impact, delivered by an interdisciplinary research community of more than 1500 researchers at our six faculties, eight research institutes and more than 100 research centres.

The [TC Beirne School of Law](#) is a global centre of research excellence contributing to the understanding and development of law nationally and internationally and the effectiveness of law as a discipline across a broad range of legal and policy issues.

The PA Research Foundation (the PA Foundation) was established as the philanthropic arm of the Princess Alexandra Hospital, Queensland. The PA Foundation builds relationships with the community to enable people to support research and patient care at one of Australia's leading cancer treatment and clinical trials centres.

This submission represents the opinions of the contributing authors listed in this document. It does not necessarily represent an official position of The University of Queensland.

Summary and recommendations

Our submission focuses on the motives for giving and the current barriers Queensland hospital foundations face under existing regulatory frameworks. Although our submission does not address all aspects of the Productivity Commission's inquiry, it is informed by our practical knowledge and critical understanding of Australia's not-for-profit sector.

Our submission provides an explanation of Australian cultural norms around giving and demonstrate how existing regulations have a determinantal impact on the resources of hospital foundations. Our primary objective to the Productivity Commission is twofold: firstly, to provide valuable insights into how Australian cultural norms and values can be best utilised to persuade the public to embrace philanthropy as an effective alternative to traditional charity; and secondly, to illustrate that treating public foundations as charities within the Australian Charity and Not-for-Profit Commission framework is at odds with a system of philanthropy.

We thank the Productivity Commission for holding the inquiry and accepting our submission.

Recommendations outlined in this document are:

1. That appropriate consideration be given to how an aspirational philanthropic system will reflect Australia's normative cultural values of 'giving a hand' and 'helping out a mate'.
2. That diversity and heterogeneity be embraced and have meaningful representation in an expanded philanthropy system and sector.
3. That care be given not to impose another jurisdiction's cultural values towards philanthropy upon the Australian giving public and not-for-profit sector.
4. That Australia creates its own model of philanthropy that will effectively support micro and macro impact and investing, which is sustainable in Australia's economy.
5. That the creation of a legal, philanthropic entity with qualifying features that will separate philanthropic activities from charitable purposes.
6. That all types of philanthropic entities be registered under quasi-corporate legislation.
7. That in going forward, the Productivity Commission undertake further research into establishing a formal philanthropic legal structure that can be established and governed by statute.
8. That creating and labelling a philanthropy sector within the wider not-for-profit sector will assist in developing understand and rhetoric around philanthropic entities and activities.

9. That law reform efforts focus on eliminating the power imbalances between individual statutory foundations and government, as well as between philanthropic donors and not-for-profit organisations.
10. That statutory frameworks be less restrictive on an individual foundation's ability to make autonomous investment decisions.
11. That statutory foundations be removed from 'whole government reporting' if the federal government wishes to expand philanthropy.
12. That costly and unnecessarily dual regulatory and reporting burdens for statutory foundations be removed by agreement between all state and territory governments.

Terms of reference

- i. **Consider the tendencies and motivations for Australians' charitable giving, including through different donation channels such as workplace giving, bequest, private foundations, in-kind donations and volunteering.**

Extensive research has been conducted by scholars and practitioners across various disciplines, including economics, physiology, marketing, taxation, philosophy, sociology, and politics, to delve into the topic of why people, households, and businesses give. Their efforts have resulted in a wealth of data and techniques to understand donors better. Profiling donors and formulating new models to better understand the paradoxical nature of giving has only revealed that there remains a great deal to learn about the act of giving.

The Australian culture plays a crucial role in this debate, yet it is often overlooked. Egalitarianism, a core value of Australian culture, prioritizes inclusion and equality. The not-for-profit sector in Australia exemplifies the notion of doing good for the collective. All types of not-for-profit organisations in this sector share a common commitment to unity and egalitarianism. The sense of belonging motivates Australians to give, be it a roadside sign inviting everyone to join a club or a welcoming sign at the entrance of a building or sports ground. The ideals of equality and collectivism unite Australians and foster social cohesion through acts of kindness by 'giving a hand' and 'helping out a mate'. Please refer to the Case Study below to see how these cultural norms and values are demonstrated.

Charity law undeniably upholds the cultural values of unity and togetherness in Australia. Our legal and regulatory frameworks effectively guide and promote giving towards legally recognised charitable purposes that benefit the public. Australian culture places significant emphasis on the formal aspects of charity, further reinforcing the notion that giving has practical value. Consequently, many Australians are highly motivated to contribute and give what they can and when they can.

As the federal government seeks to unlock philanthropy's hidden benefits, government policy and law reform must appreciate Australia's strong cultural upbringing of 'giving a hand' and 'helping out a mate.' However, cultural imaginings of egalitarianism and unity understood within Australia's historical context has deficiencies. Excluding and Othering¹ drives the informational base as to how and what Australians will give to a specific cause. From a consequentialist perspective, it is worth mentioning that along with welfarism, the choice of 'giving a hand' to achieve utility will ignore inequalities and reinforce prejudicial attitudes towards difference. Thus, a donor's selective choices and decisions will be adapted in order to be consistent with the settler state utilitarian spirit.

¹ Alastair Greig et al, *Inequality in Australia* (Cambridge University Press, 2003); Hyacinth Udah, "'Not by Default Accepted": The African Experience of Othering Being Othered in Australia' (2018) 53(3) *Journal of Asian Studies* 384; Aileen Moreton-Robinson et al (eds), *Sovereign Subjects: indigenous sovereignty matters* (Routledge, 2007).

If the overall aim here is to enhance the status of giving, then we make the elementary point that diversity and personal heterogeneities (in how the act of giving is delivered, which might not be regarded as strictly 'Western' or in the 'Australian way') must receive the serious attention it deserves.

Case Study: Hero Surfers – 'Top Blokes'

A notable illustration of the value Australian culture places on 'giving a hand' is best seen in how Australians respond to natural disasters. When famed surfers Mick Fanning and Joel Parkinson transported isolated people and pets in the flooded areas of Northern New South Wales to safety, their acts of doing represented how they were held out to be equals in the 'mud army', and together their efforts yielded results. Regardless of Fanning and Parkinson's sporting achievements, individual wealth and celebrity status, their actions were heralded with great affection, and the pair earned the label of being 'top blokes'.²

Recommendation:

1. That appropriate consideration be given to how an aspirational philanthropic agenda will reflect Australia's normative cultural value of 'giving a hand' and 'helping out a mate'.
2. That diversity and heterogeneity be embraced and be meaningfully represented in an expanded philanthropical system.
3. That great care be given *not* to impose another jurisdiction's cultural values towards of philanthropy here in Australia.
4. That attention must be given not to impose a model of philanthropy that does not accommodate Australian cultural norms and values.

² See Duncan Murray, 'Absolute Legend Mick Fanning's Selfless Act During NSW Floods', *Fox Sport* (2 March 2002) (online) <<https://www.foxsports.com.au/surfing/absolute-legend-mick-fannings-selfless-act-during-nsw-floods/news-story/f1d91a1c85cca0e06bffc07b5e080011>>; Caitlin Cassidy, 'A Jet Ski Turned Up With Mick Fanning On It': world champion surfer ferries locals through NSW floods', *The Guardian* (2 March 2002) (online), <<https://www.theguardian.com/australia-news/2022/mar/02/a-jetski-turned-up-with-mick-fanning-on-it-world-champion-surfer-ferrying-locals-through-nsw-floods>>; Heath Gilmore, 'Mick Fanning, the group text and the mud army fighting for the Northern Rivers', *Sydney Morning Herald* (9 March 2002) (online) <<https://www.smh.com.au/national/nsw/mick-fanning-the-group-text-and-the-mud-army-fighting-for-the-northern-rivers-20220309-p5a391.html>>.

- ii. **Identify Opportunities to Increase Philanthropic Giving and the Extent of their Potential Impact, including:**
- (i) **The role of, and effectiveness of, foundations in encouraging philanthropic giving and supporting the charitable sector.**

Private foundations have been used in the past to avoid the constraints of charitable trusts. Both private and public foundations are registered charitable entities within Australia's not-for-profit sector. The term 'charity' is applied to foundations under the *Australian Charities and Not-for-Profits Act 2013* (Cth), which means that foundations and other philanthropic entities are linked to the not-for-profit sector.³

It can be difficult for the general public to differentiate between philanthropic entities and other forms within the sector due to the blurring of entity forms. To establish a system of modern philanthropy, it is necessary to untangle foundations and philanthropic entities from the structure of 'charity'. This requires educating the public about the fundamental differences between charities and philanthropic entities, such as foundations. While both legal forms aim to address needs, philanthropic entities use different methods and have a wider reach than charities. Anheier and Toepler argue that charities focus on providing relief to the suffering through a purpose. In contrast, they observe that philanthropy 'systematically seeks out the root causes of these issues and endeavours to find a solution to these issues.'⁴ To establish trust and support for modern philanthropy, it is important for the general public to understand these distinctions. We, therefore, propose forming, registering, and governing philanthropic organisations under their quasi-corporate legislation.

To increase transparency and regulation of philanthropic organisations, it is recommended that a sub-sector be established within the not-for-profit sector. This would streamline the process of collecting data on their performance and enable the Australian Charities and Not-for-profits Commission to regulate and improve the transparency of these entities. It would also facilitate public education on contemporary philanthropy and social enterprises in Australia.

³ *Australian Charities and Not-for-Profit Commission Act 2012* (Cth) s 25-5 and *Charities Act 2013* (Cth) s 5, 6 12.

⁴ Helmut K. Anheier and Stefan Toepler, *International Encyclopedia of Civil Society* (Springer, 2010).

Recommendation:

1. That the creation of a legal philanthropic entity with qualifying features that separates philanthropic activities from charitable purposes.
2. That the creation of a philanthropy sector within the wider not-for-profit sector.
3. That philanthropic entities be created and governed under its own quasi-corporate legislation.
4. That going forward the Productivity Commission undertake further research into establishing formal philanthropic legal that can be established and governed by statute.

iii. Examine Current Barriers to philanthropic giving, including:

- (i) The burden imposed on donors, volunteers and not-for-profits by the current regulatory framework for giving and how this affects their philanthropic decisions.**

The federal government's desire to cultivate a transformative change that will drive behaviour towards philanthropy marks an exciting shift in public policy. Nonetheless, the emphasis on the donor here overlooks the manifold issues that already hamper many foundations. We argue that it will be difficult to sustain a policy agenda that is primarily focused on capturing all types of donors to maximise beneficial outputs without addressing and resolving some notable problems.

The PA Foundation and other public foundations are established and governed by individual statutes at a state and territory level. These individual foundations struggle to cultivate their independence away from the state, and consequently, there are many organisational inflection points compared to other forms of charities.

Arguably the PA Research Foundation is a philanthropic statutory body established under the *Queensland Government Hospital Foundations Act 2018 (Foundations Act)*. This statutory framework disempowers the PA Foundation (and others) to be adaptable and innovative. Box 1 below highlights operational disadvantages experienced by the PA Foundation owing to the *Foundations Act*.

Box 1 – The PA Foundation's Operational Disadvantages

- a. Selection and appointment of board members:
 - i. Appointments are made only once per year;
 - ii. Coordinated by the Office of Health Statutory Agencies (OHSA) and approved by the Minister for Health and the Governor in Council; and
 - iii. it is a six to nine (6-9) month process.
- b. The *Foundations Act* places control on some of the activities of the Foundation including:
 - i. Acquiring a business,
 - ii. Entering into joint ventures,
 - iii. Acquiring shares,
 - iv. Disposing of property.

From time to time, many public foundations encounter difficulties with government intervention and authority. The existing legislative regime does not encourage mutual cooperation and for foundations to be truly autonomous entities. In order to accomplish their objective of generating a meaningful impact and

improving their operating capability, legal reform is necessary to remove unnecessary levels of bureaucracy and red tape at the state government level. This will allow the PA Foundation and others to function more efficiently and independently.

If the federal government introduces a new philanthropy plan, the PA Foundation and other legal foundations must be ready to compete, adjust, and protect themselves in a fiercely competitive donor market. Without relaxed government control and reporting regulations, the PA Foundation will face difficulties in achieving its objectives, managing risks, and maintaining its sustainability.

Achieving aspirational policy goals can be difficult due to the state-federal constitutional structure. In establishing the ACNC, all not-for-profit organisations are required to report and comply with regulations from both levels of government. Despite attempts to streamline reporting requirements, the PA Foundation (as well as other Queensland hospital foundations) fall outside these efforts. Box 2 provides information on the PA Foundation's regulatory obligations, while Box 3 highlights the challenges of managing this dual regulatory system's administrative and financial burdens.

Box 2 –Foundation's Regulatory Obligation

In addition to ACNC reporting the PA Research Foundation, along with 11 other Queensland Hospital Foundations, has to participate in Queensland ;whole of government reporting; including:

- a. Annual Financial Audit and reporting to the Queensland Audit Office.
- b. Annual General Reporting to the Department of Premier and Cabinet (DPC).
- c. Reporting on overseas travel to DPC.
- d. Reporting on consultancies to DPC.
- e. Frequent (2-4 times a year) reporting to the Office of the Information Commissioner.
- f. Irregular and frequent reporting to the Office of Health Statutory Agencies (OHSa)

Box 3 – The Financial Impact

a. Increased Costs:

Staff costs associated with this burden across the 11 Hospital Foundations is estimated to be well over \$500,000 p.a. These are direct costs to donations and include:

- i. Foundation CEO time;
- ii. Administrative support staff;
- iii. Financial support staff; and
- iv. Staff of the OHSA.

b. Real Costs:

- v. Audit fees \$250,000 (accumulative cost across all Hospital Foundations).

c. Lost Opportunity Costs:

- vi. Failure to engage quality board members.
- vii. Missed partnership opportunities with other charities or in establishing new businesses.
- viii. Delayed ability to capitalise on investment markets.

Box 3 above shows the administrative costs of Queensland hospital foundations. This highlights the need for a new approach to improve statutory philanthropic foundations' abilities and financial resources through better reporting and regulation.

Recommendation:

1. That a rebalancing of power between individual statutory foundations and government.
2. That statutory frameworks promote and not restrict an individual foundation's ability to independently make decisions and manage their organisation.
3. That statutory foundations be removed from 'whole government reporting'.
4. That costly and unnecessarily dual regulatory and reporting burdens for statutory foundations be reduced.

Contributing authors

This submission has been written by the following authors.

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