Professor Alex Robson, Ms Julie Abramson and Mr Krystian Seibert
Philanthropy Inquiry
Productivity Commission

5 May 2023

Dear Commissioners Robson, Abramson and Seibert,

Submission to the Productivity Commission Review of Philanthropy

The Ian Potter Foundation welcomes the Productivity Commission inquiry into the motivations for philanthropic giving in Australia and the opportunities to grow it further, and appreciates the opportunity to make a submission.

Since our founding in 1964, the Foundation has committed more than $420 million of our own funds to charitable projects, very often in partnership with a range of other philanthropists and philanthropic foundations.

Based on our experience we believe there are a range of practical measures that could increase both the level and quality of philanthropic giving in Australia.

The attached submission includes recommendations on how the Federal Government could facilitate greater giving, from individuals via existing savings and investments vehicles like superannuation, and from operating companies through carried-forward charitable donations.

We further believe government could help improve the quality of giving from PAFs by allowing closer partnerships with PuAFs, affording them greater flexibility to make very large grants, and by incentivising greater levels of social impact investment as a complementary activity that allows philanthropic giving to focus on where it is most needed.

We welcome the opportunity to engage with the Commission to discuss the opportunities referred to above and to assist more generally.

Sincerely,

Paul Conroy
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Submission to the Productivity Commission Inquiry into Philanthropy
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About us

The Ian Potter Foundation (Foundation) is a major Australian philanthropic foundation that supports and promotes excellence and innovation. The Foundation was established in 1964 by Australian financier, businessman and philanthropist, Sir Ian Potter (1902 –1994).

We envision a fair, healthy, sustainable and vibrant Australia. In honour of the legacy of our founder and benefactor, Sir Ian Potter, we encourage excellence and enable innovation to facilitate positive social change.

The Foundation has a strong track record of funding projects that respond decisively to key issues and develop our creativity and capacity as a nation.

Since 1964, the Foundation has committed over $420 million across more than 10,000 grants to projects both large and small.

Helping increase philanthropic giving in Australia

We welcome the Productivity Commission's Inquiry into philanthropy and the potential opportunities to improve both the efficiency and effectiveness of philanthropy in Australia.

The Foundation has a long-standing interest in this sector. Sir Ian Potter worked with the Australian Treasurer, Harold Holt CH, and the Australian Taxation Officer to amend the Income Tax Assessment Act in 1964 to authorise deductions for gifts made to organisations with tax-deductible status. This policy change is generally considered to have unlocked a significant increase in the number and size of philanthropic trusts since the 1960s.[1]

Since its establishment, the Foundation has worked to increase both the level and impact of philanthropic giving in Australia, through innovation in research, early-stage funding, capacity building and 'system change' philanthropy. For example:

- *Research:* In 2012, the Foundation invested $3m into Australia's first research centre devoted to matching disease treatments to an individual's genetic makeup, The Ian Potter Centre for Genomics and Personalised Medicine. The centre subsequently secured a further $10m from philanthropy and $50m from Federal and Victorian governments.
- *Early-stage funding:*
    - In 2020, we granted $1m to the Murdoch Children's Research Institute to support their work to improve mental health in primary schools. This resulted in $850,000 being donated from other philanthropic organisations and over $1.4m from the Victorian Government for pilot programs, which subsequently led to $200m in funding from the Victorian Government for the state-wide roll-out of the program.
    - In 2020, the Foundation committed $20m at an early stage to the National Gallery of Victoria's plans for Australia's largest gallery of contemporary art and design. The NGV has since secured substantial further funds, including $100m from the Fox family.
- *Capacity building:* In 2020, we invested $3m in White Box Enterprises, a charity and incubator of large-scale jobs-focused social enterprises. Our investment helped White Box to secure a

[1] Peter Yule (2006), *Ian Potter A Biography*. Melbourne: The Miegunyah Press, pp.265-266.

further $11.9m from 23 corporate and philanthropic partners, create or enable 400 jobs for disadvantaged Australians, and support 22 social enterprises.[2]
- *System change:* In 2020, we co-founded WaterTrust Australia – a new institution capitalised with $32m over 10 years to improve decision-making on freshwater catchments in Australia.

Main recommendations

We believe there are significant opportunities to increase both the level and quality of philanthropy in Australia through reform of the regulations related to tax-deductible giving and private ancillary funds.

We endorse the submission to the Productivity Commission by Philanthropy Australia – of which the Foundation is a member – and especially its submissions in relation to:
- Allowing Ancillary Funds (AFs) to distribute to other ancillary funds, such as Private Ancillary Funds (PAFs) being able to distribute to Public Ancillary Funds (PuAFs) – this will improve the quality, impact and responsiveness of giving, and time limits can be put in place to ensure such funds are ultimately distributed to charities that support the community.
- Superannuation bequests – giving Australians the choice to bequest some of their unspent superannuation funds to charity via a binding death nomination, and for such contributions to be without the current tax penalty (being up to 15% taxation plus the 2% Medicare levy).

We have some additional commentary on the Philanthropy Australia submission and some further suggestions on how to increase the level and quality of philanthropic giving as follows:

1. *Facilitating PAF distributions to PuAFs*

As referred to above, we support Philanthropy Australia's submission to allow granting between Ancillary Funds. Furthermore, we believe PAF distributions to PuAFs should count toward a PAFs' minimum 5% annual distribution requirement. This would give PAFs the flexibility to distribute substantial funding for impact via PuAFs that may, for example, have particular scale and specific expertise that will improve the effectiveness of the funds directed to community need.

To ensure that funds received by a PuAF from a PAF are passed through to charities within a reasonable period of time, the Foundation believes there should be a requirement for PuAFs to re-distribute the received funds from a PAF within three years (in addition to the PuAF's minimum 4% distribution requirement).

2. *Donations from well-resourced Self-Managed Superannuation Funds*

There are a number of well-capitalised self-managed and other superannuation funds in 'pension mode' that are likely to be in excess of the requirements of individual beneficiaries.

The Government acknowledges this and, as a result, is currently proposing to change the taxation regime for higher superannuation balances – including, for example, an increase to a tax rate of 30 per cent that will apply to accounts with $3 million or more during the accumulation phase.

There is also an opportunity to allow well-capitalised superannuation funds, with balances over a similar threshold but in pension mode, to be able to make donations directly to DGRs during the

[2] WhiteBox Enterprises (2023). 'Impact.' Available here.

superannuant's lifetime. This would free up such capital to assist organisations supporting the community.

3. *Spreading Ancillary Fund distributions over three years*

Many Ancillary Funds (AFs) aim to operate in perpetuity. This is achieved by building up a sizeable corpus and running a disciplined investment strategy that yields excellent returns, allowing AFs to make substantive distributions each year while continuing to grow the real value of their underlying assets.

While minimum distributions are critical to ensuring funding flows to charitable purposes, the challenge is that, for those AFs wanting to operate in perpetuity, sizeable grants aimed at driving significant system impact are often difficult to undertake without diminishing the underlying assets. Instead, the current regulatory framework drives regular, more moderate giving, which may have a lower collective impact.

A stronger solution would be to allow AFs to spread distributions over a 3-year period, which could be done while still maintaining a minimum annual distribution amount. This would facilitate larger grants, which can have a more transformative impact but also ensure funds flow to support charitable activities.

For example, PAFs could be allowed to distribute only 3% of the value of net assets in any one year provided they distribute more in subsequent years and achieve the 5% on average over 3 years. In the case of PuAFs, a similar approach could be taken, requiring a minimum 2% distribution in any one year provided they achieve the 4% distribution requirement over a 3-year period.

This 'spreading' of distributions would both allow AFs to defer a large grant if the intended recipient is not quite ready to receive it at financial year end, and also actively encourage AFs to make occasional very large grants.

4. *Allowing operating companies to carry forward charitable donations*

Operating companies are able to carry forward many costs and operating losses to subsequent financial years. However, this does not include any costs/losses due to charitable donations, perhaps due to differences between the relevant legislative acts.

This means that operating companies are often unable to know how much they might be willing to donate until the final month of the financial year (when it's likely operating result for the year is clearer) - at which point it is usually too late for charities to make appropriate requests that can be given due consideration by a potential donor.

Allowing operating companies to carry forward deductions for charitable donations (as permitted for its other costs) could significantly increase the level of corporate philanthropy.

5. *Facilitate a step change in PAF contributions to social impact investment*

We note that, in light of the current Social Impact Investing Taskforce established by the Department of Prime Minister and Cabinet, the Productivity Commission only intends to consider issues relating to social impact investment as part of this inquiry to the extent it can be regarded as a complement to, or substitute for, philanthropic giving.

The tax regime that facilitates social impact investment in the United States is tested, works well, and has helped finance a huge range of social ventures that create jobs and deliver significant public benefit. It also shows that social impact investment can be a valuable complement to philanthropic giving. It can improve the effectiveness of philanthropic capital allocation by offering flexible terms and conditions, and in the process fund activity that cannot be easily financed in any other way. It can also increase the proportion of total capital flowing for public benefit (as a foundation can divert part of its corpus invested in traditional capital markets towards more 'social' capital markets).

In line with the US model, we recommend that AFs be permitted to count the principal value of a loan to DGR-eligible organisations – and not just part of their interest repayments – towards their minimum annual distribution requirements.[3]

As outlined by Philanthropy Australia in a submission to a Treasury consultation on this point in 2017, adopting a US-style model would increase the availability of alternate sources of finance for DGRs — at no cost to the Federal Budget and without any legislative change.[4]

To ensure that the overall level of philanthropic giving is maintained, we recommend that the the minimum distribution requirement for the AF in future years of a loan or other social impact investment be increased by the aggregate value of (i) any interest payment on the loan received by the AF plus (ii) the repayment of any loan principal received by the AF in a financial year. For practical purposes, we believe this increase should be 'spreadable' over a 3-year period rather than within the year of receipt.

Based on the US experience and the growth of social impact investment, we believe this reform could incentivise Australian AFs to harness their corpus more fully for charitable objectives.

Engagement with the Productivity Commission

We welcome the opportunity to engage with the Commission to discuss the opportunities referred to above and to assist more generally.

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[3] Currently, only the difference between an AF's discounted interest payments on loans to charitable organisations and the market rate of interest payments count toward the minimum annual distribution. (See Australian Government, (2017), 'Social Impact Investment Discussion Paper, p.30, available here). In contrast, in the United States, the entirety of a loan issued by a US-registered Private Foundation to further their charitable purpose qualifies as a Program-Related Investment toward their minimum annual payout requirements. (See Internal Revenue Code Section 4944(c) available here, 'Program-Related Investments' available here, and 'Private Operating Foundation – Endowment Test' available here).

[4] Philanthropy Australia (2017), 'Philanthropy Australia Submission – Social Impact Investing Discussion Paper.' Available here.