



Submission to the Productivity Commission on Philanthropy

Dear Commission Members,

The draft report correctly identifies that the current system for determining which charities receive tax deductible status is incoherent and inconsistent. The aim of making the system simpler, fairer and consistent is laudable. However, the report itself is inconsistent in parts leading to several flawed conclusions.

Don't be stingy on incentivising giving

The report laments the cost of tax deductibility on the Federal Government budget. This simplistic view fails to acknowledge the reduced burden on governments when donations are made, often enabling charities to provide goods and services at little or no cost. It overlooks the fact that donors typically receive little or nothing in return for their contributions, forgoing potential personal enjoyment if they had spent the money on themselves. The report aims to increase giving but adopts a stingy attitude toward the major incentive for encouraging philanthropy.

It also ignores that the supposed cost to government is far higher than it should be because Australia has amongst the highest rates of personal income tax in the developed world. Economists are nearly unanimous in recommending tax reform that reduces personal and corporate tax rates funded by increases to the GST and a broad-based land tax. Lower income taxes would also take much of the heat out of similar debates on negative gearing and franking credits.

Get the principles right

The three principles are a reasonable attempt to determine which charities receive tax deductible status. However, they can be simplified as follows:

First principle: The test should simply be "is there community benefit?" The use of "community-wide" is problematic as many charities target a specific group of people (e.g. refugees or indigenous Australians) and are therefore not community wide. Determining what would "otherwise be undersupplied" by the market is a potential lawyer's picnic. How do you determine the correct number or type of cultural festivals that should be supplied? If there aren't any being supplied, doesn't that indicate that there isn't demand for the festivals without substantial subsidies?

Second principle: Delete this principle entirely as the first principle tests whether there is value in the activity. We should be encouraging citizens to donate to what they believe is important. The alternative is having governments tax people and having politicians allocate to whatever they believe is important, which often coincides with what they consider will win votes for themselves.

Third principle: Agreed.

Don't be biased

The report frequently mentions expanding the list of charities with tax deductible status to include "charities that support women, young people, Aboriginal and Torres Strait Islander people and communities, LGBTIQ+ people, or consumers" as well as "animal welfare charities, charities focused on injury prevention and public interest journalism". This is a very diverse list of charities that the report deems worthy of receiving tax deductible status and includes sub-groups based on race, age, gender and sexual orientation.



However, the report singles out “all activities for the purpose of advancing religion; and activities related to aged care; childcare; and primary, secondary, religious and informal education”. It is notable that not for profits associated with religious groups are common amongst these sectors. It is difficult not to observe an anti-religion bias amongst the authors of the report which has overridden their stated aim of consistency.

As an example, the report fairly raises the question of whether donations to school building funds should receive tax deductible status. These donations can be seen as problematic as; (1) the donor’s children are likely to attend the school and (2) some private schools have facilities far exceeding the standard at public schools. On the first point, this is a common issue for most donations made for building purposes.

For instance, medical facilities and cultural institutions often name buildings after wealthy donors. These donors may have received medical treatment at the facilities or may regularly attend arts events in the very buildings named after them. The answer to this question ultimately goes back to the first principle, is there a community benefit? If the charity can put forward a good case that there is a community benefit, then the donation should be tax deductible.

On the question of whether a donation is for something that is deemed too opulent, this also has wider implications. Should the Sydney Opera House lose tax deductible status because the building is deemed too opulent? Would a charity that places children from low income families into private schools lose tax deductible status if the children are sent to high fee private schools? There are two main ways to deal with this question; either don’t apply an opulence test or establish guidelines that require tax deductible charities to spend in an efficient and moderate fashion.

If the writers of the report want to be consistent while excluding religious not for profits from having tax deductible status, then all other groups focussed on lifestyle choices must also be excluded. This includes charities that focus on arts, culture, LGBTIQ+ and sport.

Written by Jonathan Rochford for Narrow Road Capital on February 8, 2024.