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Productivity Commission

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Dear Commissioners

## Submission to the Productivity Commission – Philanthropy Enquiry

Perpetual is pleased to have an opportunity to make a submission to the Productivity Commission's Philanthropy Enquiry. We note the three important headline items within the Terms of Reference and enclose a response to each.

As the one of the largest managers of philanthropic funds in Australia and as an organisation that has worked with and advised philanthropists for more than 130 years, we are well placed to provide insight into the policy ambition to double giving in Australia by 2030.

Perpetual currently manages over 1100 charitable trusts and endowments and our philanthropic clients distribute more than $120M a year to affect positive social, cultural, and environmental change in communities domestically and internationally. We operate a philanthropic advisory business focused on helping our clients to maximise their impact, identifying high quality organisations for them to invest in, as well as engaging our clients' families in values based giving practices.

As a Wealth Manager, Perpetual is also uniquely positioned to understand the critical role of the trusted adviser in influencing living and testamentary giving.

Perpetual is a member and capacity funder of Philanthropy Australia, and we are supportive of their extensive submission titled A *Strategy to Double Giving by 2030.* We note in our submissions, items within the PA submission we believe should be a priority for policy and government support.

Yours sincerely

Caitriona Fay

Managing Partner, Community and Social Investments

## Information request 1. Scope of Inquiry

Perpetual recognises that there are a significant and increasing number of charitable trusts established through the settlement of Native Title claims across Australia. Further, we recognise the substantive value of these charitable vehicles. These charitable trusts facilitate community prioritised and led disbursement of funds for the direct benefit of Aboriginal and Torres Strait islander individuals, families, and communities. They provide extensive service support to communities and are an outstanding example of community-led philanthropic decision making. We believe there is an opportunity to identify and recognise these philanthropic vehicles as some of this country's best practice philanthropy. These vehicles are unique to Aboriginal and Torres Strait Islander community and traditional owner groups and represent a specific demonstration of First Nations philanthropy.

## Information request 2. Vehicles, Trends, Motivations for Giving

### Data

The Commission is seeking advice on the value of improved data sets on giving in Australia. Perpetual notes Philanthropy Australia's submission on a national giving and community participation data set. Perpetual supports the idea that a national comprehensive data set on giving will provide value, however, Perpetual also notes the vital role of this Commission in supporting the reduction of red tape on philanthropists and charities alike. As such, any comprehensive dataset should focus equally on process simplification rather than simply adding unnecessary reporting requirements to Annual Information Statements or other systems of reporting.

Perpetual, as a trustee and estate administrator, also notes the significant lack of information currently available on bequests from probated estates. Currently, charities report bequest income in annual and financial reports but there is no collated data available on the prevalence of gifts in wills. With the largest intergenerational wealth transfer in human history about to begin, the Commission may wish to understand whether there is a straightforward process through the estate administration mechanism to effectively capture this data. Such an approach would be an opportunity to capture and highlight gifts from estates, and the capacity to track the efficacy of campaigns to increase gifts in wills more thoroughly.

### Vehicles

Perpetual notes the Living Legacy Trust (LLT) structure advocated for by Philanthropy Australia and is broadly supportive of this, assuming the right structural controls are in place so as not to diminish trusts in the charitable sector. While we recognise that LLTs provide Australians with property assets with new ways to consider giving, this trust structure would appeal to donors whose primary wealth is tied to an asset they cannot afford to divest while they are living.

Perpetual believes there are further opportunities to incentivise high net worth or ultra-high net-worth Australians to give more in their lifetime. We have presented two papers for consideration in Appendix I & II of this document.

The first is a Community Development Trust structure to enable individuals to provide 10 years of dedicated funding to charities of their choice. These trust structures would also enable prospective philanthropists to test a process for structuring their giving without committing to locking up capital in a perpetual trust structure. Perpetual advises many high and ultra-high net worth individuals and families who are concerned about locking away family wealth, or who are concerned about the need to access their resources in future years. A 10-year trust structure that incentivises giving and provides guaranteed funding for the community sector would be a useful tool to bring more people to philanthropy without providing any additional tax foregone challenges. Full details of the structure can be found in Appendix I.

The second structure is a Capital Loan Fund. This structure seeks to provide a more effective way for philanthropists to provide no-interest-loans to charities, either for large-scale capital campaigns, or for the provision of longer-term funding security. The current process of enabling PAFs (Private Ancillary Funds) to provide loans to charities is clunky and administratively burdensome. A tax ruling or change to PAF/PuAF guidelines on a capital loan fund establishment and incentivising the development could lead to significant amounts of additional capital deployed for community benefit. Full details on this structure can be found in Appendix II.

## Information request 3. Role of Government in Philanthropy

There is a significant role for philanthropy to play in the funding infrastructure of our nation. Philanthropic capital should be seen as the life blood of civil innovation, to prove and trial ideas and enable our charitable organisations to test and learn. Perpetual also strongly believes that philanthropy has a role beyond that of a provider of ‘risk capital.’ Philanthropy has a vital role to play in lifting the voices of vulnerable, marginalised, and under-serviced groups, in investing in and participating in advocacy and affecting systemic change that is additive to charitable outcomes.

Philanthropy is not an extension of government and philanthropy should never replace government funding for core service provision. Philanthropy should address gaps in the system, provide linkages to improve outcomes and demonstrate the need to increase or redirect government investments where necessary. By working together, philanthropy can invest in innovations that government cannot reasonably support but, if successful, may lead to better outcomes for individuals, families, and communities.

Perpetual *does not* believe structures or processes that enable government to impact philanthropic grant making autonomy would be of value or welcomed. Nor do we believe that government operated or run investable pools of funding would be attractive to donors.

We do believe that there is value in a more formalised approach to government and philanthropic engagement. Philanthropy Australia has recommended a governance arrangement to drive government-civil collaboration for a better society. This recommendation is made with a view to assisting the growth of giving in Australia, but also has the potential to ensure that philanthropy hears the voices of the broader community sector in its grant making. This kind of governance structure must not only add value to philanthropy governance but must also have the support of the charities sector.

## Information request 4. DGR (Deductible Gift Recipient) Framework

**Broaden DGR eligibility**

Perpetual is supportive of Philanthropy Australia’s recommendations relating to the extension of Deductible Gift Recipient (DGR) status to all charities and their position for the need for broader DGR reform. The way DGR status is currently administered is built on foundations that enables some charities to access the benefit of providing tax deductions to donors, while other charities miss out, regardless of their work or contribution to the community.

There are some additional unintended consequences to the current process of unequal access among charities to DGR status. Private and Public Ancillary Funds are required to distribute to eligible entities that hold DGR1 status. This requirement means that charities without DGR1 status risk being perceived as less legitimate than those charities with DGR1 status. The inability of outstanding charitable organisations, who cannot receive DGR status, to work with philanthropy to attract much needed funding to the widest range of communities and beneficiaries is an error in our system that needs to be rectified.

Perpetual recognises the work of GiveOUT and The Aurora Group in the production of the *Where are the Rainbow Resources.* That report states that the vast majority of Australia’s LGBTQ+ led charitable organisations do not have DGR status and operate on less than $80,000 a year. The inability of these organisations to grow and fundraise effectively means that the over-representation of LGBTQ+ people in statistics related to homelessness, bullying and poor mental health outcomes, cannot be effectively addressed.

We know the same challenges that face LGBTQ+ led organisations face many small regional and remote charities, community hubs and even local sporting organisations. While this inconsistency in approach is maintained, we limit the capacity to grow giving, and to get vital dollars into communities.

The current system of providing DGR endorsements leads to inefficiencies, requiring non-endorsed organisations to make use of intermediary entities that have the right DGR status to auspice their work. In some instances, these intermediaries add significant value and capacity support but in other instances they are simply a pass-through mechanism who can charge a fee to those charities or funders. This system is neither efficient nor does it add value to the charitable sector.

## Information request 6. Unnecessary Regulatory Barrier to Philanthropic Giving

### Ancillary Funds

DRG endorsement processes represents a key regulatory burden and barrier for much of the sector. As outlined above, Perpetual supports the position of Philanthropy Australia on extending DGR to all charities.

We do however wish to raise some concerns regarding any consideration given to enabling Private Ancillary Funds to distribute to Public Ancillary Funds. Perpetual believes that this change may have unintended consequences if endorsed without proper consideration. We do not believe these are minor in nature and if handled without consideration may erode trust in philanthropy.

Philanthropy Australia, in its submission, quite rightly outlines the challenge that many arts and hospital “foundations” with DGR2 Status currently face in their fundraising from Private and Public Ancillary funds. Many of these “foundations” are in fact themselves Public Ancillary Funds, endorsed with DGR2 Status and therefore ineligible to receive funding from other Ancillary Funds. Many of these “foundations” were established prior to the period where Ancillary Funds were required to make their distributions to DGR1 entities and in a period where government entities, such as hospitals and galleries, were not able to be considered charities or receive DGR status themselves. These “foundations”, who exist to raise money for the benefit of the community, should have their status reviewed as part of DGR reforms. Rather than creating another Public Ancillary Fund exception, as required to endorse community foundations and other philanthropic funds, this issue should be resolved through a broader DGR reform lens. Continued ad hoc approaches only serve to further deepen disparity and the need for system reform.

Public trust and benefit from distributing ancillary funds must be protected. The risk of a reform that simply enables an ancillary fund to meet its mandatory distribution by donating to another ancillary funds, means there may not be an immediate community benefit. Without proper consideration, a Private Ancillary Fund could meet its mandatory distribution rate of 5% by donating to a public fund that capitalises the donation or utilises it to meet its own 4% mandatory distribution requirement. Perpetual is supportive of reforms that enable distributions to be made from Public to Private Ancillary funds and from Private to Public Ancillary Funds, once measures are in place to ensure mandatory distributions are maintained and made for public benefit.

We have seen the community outcry of failure to ensure public benefit from foundations in the United States with the consistent criticism of Donor Advised Funds (DAF). These vehicles are perceived as providing tax benefit without a guarantee of community benefit. Any reform must protect the community, or we may see the same mistrust arise in Australia and an erosion of trust will limit growth in philanthropy.

### Gifting via Super & Estates

The size of the superannuation market in Australia is significant. We know that many Australians die with residual superannuation balances but are de-incentivised to leave any component of these balances to charities or philanthropic structures because of the application of a tax penalty. There is no more powerful a statement about leaving a legacy than providing a gift via your will for the benefit of the broader Australian community.

There is currently no tax benefit for an individual to leave a gift via their superannuation, and yet many people wish to do so. Giving after your death is an act of complete altruism, but currently regulation penalises individuals for considering this approach via residual superannuation. Removing this barrier will see many Australian communities better off.

Perpetual strongly supports Philanthropy Australia’s position on this issue.

**Bequest Education for Executors**

In addition to the reform outlined above, Perpetual also encourages the Commission to consider a process whereby individuals and organisations administrating estates have access to information and support to better consider how assets are transferred from estates to charities. Where a testator has left a gift in their will, the executor of that estate must decide how assets make their way the beneficiary. Feedback from Perpetual's Not-For-Profit clients indicates that in many instances, the executors miss opportunities to transfer assets in tax effective ways. For example, a charity that holds DGR status can receive assets in-specie where a CGT K3 event may occur. As those charities are tax exempt, those assets can then be sold without the CGT event occurring. If instead the assets are sold and the cash transferred, the estate has not been optimised.

Perpetual recommends the creation of education materials to better support executors to understand and appropriately consider their responsibilities to administer and handle charitable bequests.

**Unlisted Shares**

Perpetual is supportive of Philanthropy Australia's submission that the Commission consider ways to enable business owners to donate unlisted shares in a cost effective and streamlined manner. We believe the suggestion of use of share valuations within a three-year time-period to be common sense. We note that this issue is one faced by all business owners who hold unlisted shares and philanthropic intent.

The Commission may also wish to consider recommendations to the ACNC regarding the treatment of unlisted shares donated by a founder so as they comply with related party transaction guidelines and guidance on the management of conflicts of interest.

**Corporations Act – Trustee restrictions**

The Corporations Act (the Act) Section 601BE(3)(a) states that fees charged by a licenced trustee to charitable trusts must be paid from trust income rather than capital. All other trusts structures aside from charitable trusts can take fees from either capital or income under Section 601TBE (2). Perpetual requests that the Commission consider bringing charitable trusts in line with all other trusts structures and enable fees to be charged from either income or capital.

Many testamentary charitable trusts are capital restricted, meaning the trustee can only distribute income to beneficiaries. When the Trustee Companies Act (Vic) was altered in 1995, to limit the capacity of charitable trust trustees to distribute and therefore erode capital, interest rates were much higher than they are today. The overall sentiment of that change remains important, a trustee must not erode capital in such a way that diminishes the capacity of a trust to grow over time and provide increasing levels of income support for the benefit of the community. The unintended consequence of that 1995 amendment, in a world of sustained and low interest rates, has been to limit the funds available for distribution, despite growth of trust capital.

There will be periods where it is more sensible for the trustee to take fees from capital rather than income and vice versa. Perpetual believes that providing experienced trustees with the capacity to decide from where fees should be taken, has the potential to increase funding for the charitable sector without diminishing the future potential of these trusts. ASIC currently provides wording that could be utilised, namely requiring that the charging of fees must not significantly affect the capital of the trust and is a fair reflection of the work and expertise required.

**Program Related Investments**

Perpetual recommends that the Commission consider recommending adjustments the Privat end Public Ancillary Fund guidelines, to make Program Related Investments (PRIs) more straightforward within the Australian context.

Perpetual recognises the important role of impact investments within the Australia social and environmental funding eco-system. In the United States, PRIs are utilised as an additive around impact investments. PRIs in essence are a flexible funding and finance tool that enables foundations to provide a loan, equity or financial guaranty for the furtherance of a charities mission. Unlike an impact investment, any returns from the PRI must be redistributed and therefore, the funding of the PRI can count against a mandatory distribution. These tools are useful for Foundations who do not wish to use their capital for high-risk impact investments but are attracted to the potential for a return that can be recycled for community benefit. Foundations that use PRIs in the United States, fund high risk opportunities, recognising that if there is no financial return, the grant may still have had a social impact. This kind of funding can also be helpful to charities in establishing their credentials for future impact investments. This is a simple adjustment to Guidelines that has not material impact to the Australian taxpayer, and in fact may lead to better outcomes for Australian communities.

## Information Request 7. Consumer Information on the Effectiveness of Not-for-Profit Organisations

Perpetual believes there is enormous strength and effectiveness across Australia's not-for-profit sector. The sector has long held and stewarded the trust of Australian communities and donors. Most not-for-profits in Australia function with the support of a dedicated volunteer cohort and/or skilled workforce.

There is no single data set that any government can provide to help a donor establish the effectiveness of any one not-for-profit organisation. The nature of social, cultural, and environmental outcomes is nuanced and can only truly be established over extended periods of time. Any instrument broad enough to capture outcomes across sectors, organisations and programs will be by its nature too simplistic to be meaningful to donors.

Each not-for-profit organisation has a responsibility to effectively map its own outcomes and impact journey and to share those data with individual donors as required. Equally, the simplest way for donors to understand the effectiveness of a not-for-profit organisations they are considering supporting with a donation is seek that evidence directly from the organisation itself.

If there is a specific role for philanthropy and government to play in tracking organisational effectiveness, it is by funding and supporting organisations to map their own intended impact and outcomes. Both government funders and philanthropic funders consistently under-resource the organisations they support in areas of research and evaluation. This means those organisations must find alternative revenue to support evaluative work and to understand and track their own impact and effectiveness.

Perpetual provides advisory services to philanthropic individuals and families. We have researched and analysed global best practice in organisational assessment processes, specifically for the purpose of grant-making.

What we have learned is that there is no one dataset that guarantees effectiveness. We believe the best assessment a donor can undertake is to understand how well the not-for-profit maps its own organisational effectiveness, its efficiency, how it manages risks and how it invests in outcomes/impact measurement and evaluation.

Perpetual's 16-person philanthropy team, plus external expert assessment panels assess more than 1400 organisations and application from not-for-profit organisations annually. Our recommendation to the Commission is to encourage ongoing transparency through the maintenance of the ACNC registry and invest in trusted advisor capability to guide philanthropists through an assessment process.

## Information Request 8. Other Measures to Support Potential Donors

Perpetual is one of Australia's largest and best-known Private Wealth advisory firms. We have been providing advice and support to philanthropic families since the earliest days of our establishment in 1886. The oldest charitable trust that Perpetual continues to manage is almost 130 years old and is evidence of the value a perpetuity philanthropic trust can provide. Today, Perpetual manages, with and on behalf of our clients, more than 1100 charitable trusts and endowments. We believe advice on charitable giving is a vital part of helping those we work with to meet their aspirations for their families and communities.

Perpetual operates formalised philanthropic advice training for all our Wealth Advisors. All new staff receive inductions on philanthropy, helping them understand the technical aspects of giving (structures, regulatory obligations and tax benefits and restrictions) as well as the soft skill components (choosing the right structure, developing philanthropic strategy, engagement of next generation, understanding impact). All of Perpetual's client fact finds and estate planning fact finds include engagement to understand charitable intent.

Perpetual has also worked with Stanford University's Centre on Philanthropy and Civil Society to develop an Advisor Toolkit, to assist financial advisors, and other trusted advisors to guide their clients through philanthropic conversations. This toolkit has been created on a commons licence to ensure any advisor who wishes to make use of it can.

Perpetual believes that trusted advisors have a critical role to play in growing philanthropy in Australia. We believe an advice workforce that is able to provide support to their clients effectively on their charitable intent will unlock significant resources for the benefit of Australia's charitable sector.

It is estimated that there are over 20,000 ultra-high net worth people in Australia ($30m plus net wealth) and yet there are only approximately 2,000 Private Ancillary Funds. This demonstrates that there is a breakdown between those who can establish philanthropic foundations and those that do.

Research from Queensland University of Technology's, Australian Centre for Philanthropy and Nonprofit Studies, suggests that outside of peers, the greatest influences in bringing people to philanthropy are their advisors (Scaife et al, 2012). The Commission should consider the role it can play in growing the capability of advisors to raise and discuss philanthropy with their clients.

Some suggestions include, ensuring professional accreditation for advisors includes modules on charitable giving. Encouraging the development of fact finds for financial advisors and estate planning lawyers that asks clients to provide details on their charitable intent. Additionally, and to incentivise learning and development by trusted advisors, specific accreditations could be considered to highlight advisors or advisory businesses who have invested time in developing their capability in philanthropic advice.

We know investing in advisor capability matters. Perpetual has tracked the extent to which the individuals and families we work with have charitable intent. For example, we found that more than 40% of our clients have provided for a charity via their will, which is significantly more than the Australian average of 7%. We believe that many of the clients who work with Perpetual do so because we are a fiduciary and values-based business aligned with their own values. But we also believe the simple act of engaging with our clients on philanthropy increases the chances they will consider how to show express their values through giving.

**Fundraisers**

Perpetual would also like to acknowledge the significant role played by fundraisers in Australia and encourages the Commission to examine ways of increasing investment in fundraisers and the profession. They are critical trusted advisers who bring people to charitable giving. While Perpetual as a business does not employ fundraisers, we work with may across the sector and recognise the role they play as being vital to stewarded resources into the community. We ask that the Commission consider recommendations from any-body representing fundraiser in Australia, specifically as it relates to bringing more people to the profession and increasing board governance capability in the fundraising space.

The sector will be better for any investment in fundraising capability and support.

## Information Request 9. Cost-effectiveness of Public Data Sources

As noted in the call for submission, Government agencies such as the ABS, ACNC and ATO do an excellent job of collect data and then making those datasets publicly available. These agencies coupled with government funding agreements and philanthropic grant reporting requirements; all add a burden onto charities in their collection process. The need for more data needs to be counterbalanced with benefit, the end-user capability to use those data effectively, the costs and the increasing risk (privacy and nefarious access) related to the storage of those data.

Perpetual invests in not-for-profit capability in digital data governance. We believe the sector does not receive the support it requires to invest in digital data governance. Government agencies and philanthropy quite often add to organisational risk by seeking excess data from not-for-profit organisations. We urge the Commission to resist recommendations that seek more collection without strong support from the not-for-profit sector.

With the significant amount of data currently available, the Commission may wish to consider encouraging State and Federal Governments to invest in platform capability to make those data more easily accessible and useable by donors and not-for-profits alike. Perpetual currently operates a partnership with Seer Data & Analytics, to make all Government open-source datasets available to our philanthropy and not-for-profit clients for use in their strategic decision making.

Perpetual is supportive of Philanthropy Australia’s recommendations on a National Giving and Community Participate Data set if it does not place further reporting burdens on the not-for-profit sector but instead streamlines and creates efficiencies. It should be noted that the merging of some datasets through an integrated platform would enable a resolution of some of the items they have raised.

As mentioned earlier in the document, there is a need to solve the collection of bequest data through the estate administration process.

## Item 10. Information Request 10. Public Strategies to Increase the Status of Giving

Perpetual is generally supportive of Philanthropy Australia’s submission on a National Giving Campaign.

## Item 11. Identifying and Assessing Reform Options

Perpetual notes Philanthropy Australia’s extensive work in outlining overseas initiatives and nudge programs.

APPENDIX I Advancing a Culture of Philanthropy

APPENDIX II: Amplifying the Impact of Perpetual’s Philanthropic Clients