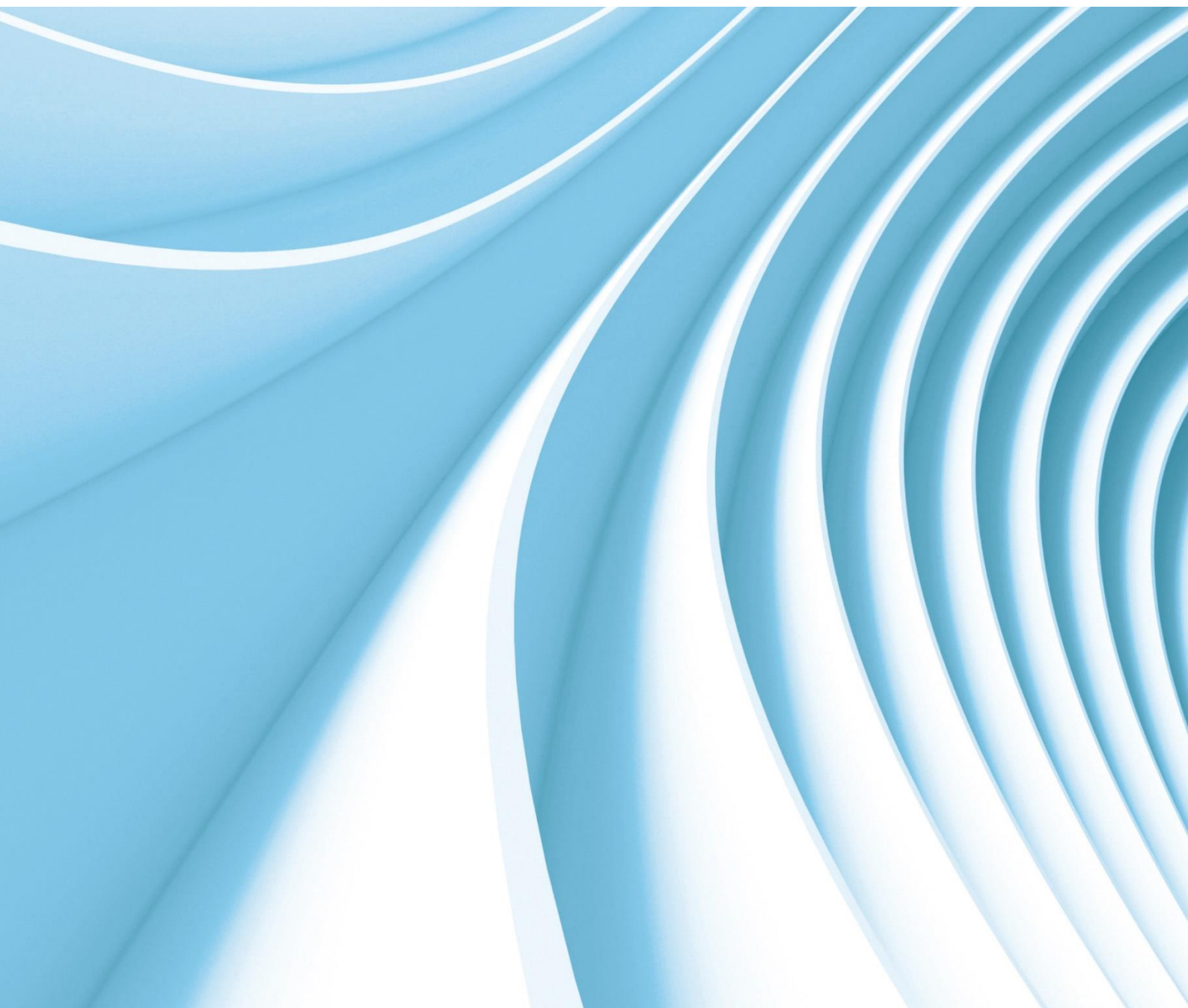




Future foundations for giving

Inquiry report



The Productivity Commission acknowledges the Traditional Owners of Country throughout Australia and their continuing connection to land, waters and community. We pay our respects to their Cultures, Country and Elders past and present.

The Productivity Commission

The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long term interest of the Australian community.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

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10 May 2024

The Hon Dr Jim Chalmers MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

In accordance with section 11 of the *Productivity Commission Act 1998*, we have pleasure in submitting to you *Future foundations for giving*, the Commission's final report for the philanthropy inquiry.

Yours sincerely,

Handwritten signature of Alex Robson in black ink.

Alex Robson
Presiding Commissioner

Handwritten signature of Julie Abramson in black ink.

Julie Abramson
Commissioner

Handwritten signature of Krystian Seibert in black ink.

Krystian Seibert
Associate Commissioner

Terms of reference

Review of Philanthropy

I, Jim Chalmers, pursuant to Parts 2 and 3 of the *Productivity Commission Act 1998*, hereby request that the Productivity Commission undertake an inquiry into philanthropy.

Background

Philanthropic giving underpins the crucial efforts of charities, not-for-profit organisations and community groups to support vulnerable Australians and build social capital and connectedness in Australian communities.

This has been highlighted by the challenges of recent years, with not-for-profits mobilising monetary donations, supplies, and volunteers to support those affected by the COVID-19 pandemic, natural disasters, and the rising cost of living. As we confront these and other challenges, not-for-profits will continue to play a vital role in strengthening and reconnecting our communities.

The Government is committed to taking this opportunity and will collaborate with the philanthropic, not-for-profit and business sectors to double philanthropic giving by 2030. Identifying and assessing opportunities and obstacles to increasing philanthropic giving will provide a roadmap to achieving this objective.

Scope of the inquiry/research study

The purpose of the inquiry is to understand trends in philanthropic giving in Australia, the underlying drivers of these trends, and to identify opportunities and obstacles to increasing such giving. The inquiry should make recommendations to Government to address barriers to giving and harness opportunities to grow it further.

In undertaking the inquiry/study, the Commission should:

1. Consider the tendencies and motivations for Australians' charitable giving, including through different donation channels such as workplace giving, bequests, private foundations, in-kind donations, and volunteering.
2. 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.
 - ii. Successful public strategies in other jurisdictions – across business, not-for-profits and philanthropic sectors – that have enhanced the status of giving or the level of philanthropic activity.
 - iii. The potential to increase philanthropy by enhancing the effectiveness and efficiency of the use of donations.
3. 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.
 - ii. The ability of donors to assess and compare charities based on evidence of effectiveness, including through impact evaluations and making comparisons across charities. In doing so, the Commission should consider the work of overseas impact evaluation comparison sites.

4. Consider the appropriateness of current sources of data related to philanthropic giving, and how databases could be enhanced in a cost-effective manner.
5. Examine the tax expenditure framework that applies to charities. In particular, assess the effectiveness and fairness of the deductible gift recipient framework and how it aligns with public policy objectives and the priorities of the broader community.
6. Identify reforms to address barriers or harness opportunities to increase philanthropy, and assess benefits, costs, risks, practicalities and implementation considerations. In doing so, the Commission should advise on priority areas for reform, having regard to:
 - i. The integrity of the taxation system and the current fiscal environment.
 - ii. The benefits that flow to not-for-profits from existing programs.
 - iii. The benefits that would flow from increased philanthropic giving.

Process

The Commission is to undertake an appropriate public consultation process including holding public hearings, inviting public submissions and releasing a draft report to the public.

The Commission should consult broadly, including with Commonwealth, state and territory governments, and the philanthropic, not-for-profit and business sectors.

In undertaking the inquiry, the Commission should have regard to previous inquiries where relevant, including the *Contribution of the Not-for-Profit Sector* inquiry concluded in 2010, and other reviews in train, including the Not-for-profit Sector Development Blueprint being delivered by the Community Services Advisory Group.

The final report should be provided within 15 months of the receipt of these terms of reference.

Dr Jim Chalmers

Treasurer

[Received 11 February 2023]

Disclosure of interests

Alex Robson declared that he is a Professor at Griffith University.

Julie Abramson declared her role on the board of a dual sector (vocational education and higher education) institution.

Krystian Seibert declared that he is the Chair of Mental Health First Aid Australia, an Adjunct Industry Fellow at the Centre for Social Impact, Swinburne University of Technology, and a member of the Bachelor of Politics, Philosophy and Economics Advisory Board at Deakin University. Until May 2023, he had a part-time role as the Policy and Regulatory Specialist at Philanthropy Australia.

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The Commission also thanks the Australian Charities and Not-for-profits Commission and the Australian Taxation Office for the data they provided to this inquiry.

Overview

Key points

- * Philanthropy contributes to a better society by providing money, time, skills, assets or lending a voice to people and communities who would otherwise have lower quality outcomes or have less access to goods and services.**

 - Many Australians give money, other assets or their time. Over \$13 billion was donated to charities in Australia in 2021 and 6 million people volunteered in 2022.
 - Philanthropy, particularly volunteering, can help build social capital by contributing to social networks, building trust within communities, and diffusing knowledge and innovations through communities.
 - Philanthropy can also provide untied, flexible or long-term funding for more innovative and riskier projects compared to what government funding can offer.
- * Philanthropy in Australia is increasing and government policies are supporting this growth. The Productivity Commission's recommendations reinforce the foundations for philanthropy in Australia, so that the benefits of giving can continue to be realised into the future.**
- * The deductible gift recipient (DGR) system is not fit for purpose and should be reformed.**

 - The arrangements that determine which entities can access DGR status are poorly designed, overly complex and have no coherent policy rationale.
 - All Australian taxpayers co-invest in charities through the DGR system, so reform is needed to simplify the DGR system and direct support to where there is likely to be the greatest net benefits to the community from subsidised philanthropy. If adopted, the Commission's recommendations would mean that more charities overall would be able to access tax-deductible donations.
- * An independent organisation should be established to strengthen relationships between Aboriginal and Torres Strait Islander organisations and philanthropic networks.**

 - Provisionally called 'Indigenous Philanthropy Connections', it should be led and controlled by Aboriginal and Torres Strait Islander people and be funded by an endowment provided by the Australian Government.
- * Reforms are needed to enhance the regulatory framework for charities and to support high levels of public trust and confidence in charities now and into the future.**

 - Establishing a National Charity Regulators Forum comprised of Australian, state and territory charity regulators would formalise the regulatory architecture to embed coordination and cooperation.
- * The Commission has designed policy principles to inform the minimum distribution that ancillary funds are required to make each year to charities for the benefit of the wider community.**

 - Guided by these principles, the Australian Government should set the minimum distribution rate for ancillary funds between 5% and 8%, following further consultation with the philanthropic and charitable sectors.
- * The Australian Government should create more value for the public from the data collected about charities and giving, including by publishing aggregate information on corporate giving and by requiring listed companies to be more transparent to stakeholders about their giving.**

Philanthropy literally means ‘the love of humanity’. Each day, millions of Australians express this sentiment in practical ways, seeking to improve the wellbeing and resilience of their communities by contributing to causes they care about.

People and organisations give for many reasons. Some are highly personal, such as those associated with a loved one or with their family experiences. Religious traditions and values provide an important source of motivation for many people and shape the ethos of many Australian charities. Other motivations can be broader, such as wanting to ‘give back’ to the community by helping those in need. Access to philanthropic networks and information also shape decisions to give.

Whatever our reasons for giving, Australians give generously. Over \$13 billion was donated to charities in Australia in 2021 and 6 million people volunteered in 2022. In real terms, the Productivity Commission expects giving to increase by \$6.4 billion or 48% by 2030 (box 1).

This once-in-a-generation inquiry comes at a key point in time. While the Australian Government has a goal to double giving by 2030, some of the most important policy settings that would underpin such an increase are not fit for purpose. This report therefore focuses on reforms to build firmer foundations for philanthropy in Australia, so that the benefits of giving can continue to be realised into the future.

The reforms proposed in this report focus on four main areas: improving the system that determines which charities have access to tax-deductible donations; improving access to philanthropic networks for Aboriginal and Torres Strait Islander people; enhancing the regulatory framework for charities and ancillary funds; and improving public information on charities and donations.

Policy choices come with trade-offs. Subsidising philanthropy through tax deductions can encourage giving, but it also means the Government collects less revenue through income tax, which could otherwise be used to fund core government services or fund charities directly. Regulation can provide benefits, but it can impose compliance burdens and require additional resources for regulators. The bottom line is: there is no free lunch.

With this in mind, the Commission developed a framework to assess where there is a role for government to support philanthropy and where policy changes are needed. This assessment was based on the expected benefits and costs to the community of different forms of government involvement in philanthropy. The Commission drew on the perspectives of donors, charities, philanthropic foundations, researchers and governments to analyse policy options to support giving, including their effect on equity and efficiency.

The Commission was informed and guided by the contributions of inquiry participants through 1,611 public submissions, 1,593 brief comments, over 120 consultations, 10 roundtables and 6 days of public hearings, as well as previous government reviews and the academic literature.

Box 1 – Trends in giving

Over \$13 billion was donated to charities in Australia in 2021, an increase of 26% in real terms since 2017. The Commission estimates that total giving to all registered charities will be about \$26.5 billion in 2029-30 if the average nominal growth rate of 7.9% remains.



While the total value of donations has increased over recent decades, a lower proportion of people who have taxable income are giving. In short, fewer people are claiming a tax deduction for giving, but those who do are giving more.

Box 1 – Trends in giving

Small charities in Australia are heavily reliant on donations (as opposed to government grants or trading activities) and volunteers – charities with revenue under \$250,000 receive about 40% of their total revenue from donations on average. However, donations are concentrated in a small number of large charities. In 2016, the largest 10% of charities (by annual revenue) received 94% of all donations and the 25 largest charities received almost 20% of total donations.

Volunteering is widespread in Australia – more than half of all charities operate without paid staff. However, since 2010, there has been a decline in the formal volunteering rate. The volunteering rate reached a historical high in 2010 at 36% and then fell to 25% in 2020, coinciding with the COVID-19 pandemic. The decline in the formal volunteering rate has coincided with a rise in informal volunteering, where people support non-family members outside their household.

Different ways people in Australia give

| There are three main sources of donations | Donations can be in different forms | Some donors give directly, through giving vehicles, giving groups or platforms |
|--|---|---|
|  People | Money and assets In 2021, charities received \$13.4 billion in donations | Giving directly <ul style="list-style-type: none"> • One-off giving • Regular or planned giving |
|  Estates | Goods and services 77% of people donate goods each year | Giving vehicles and collective giving <ul style="list-style-type: none"> • Private funds (private ancillary funds, charitable trusts) • Public funds (public ancillary funds, community foundations) • Giving circles |
|  Organisations | Time In 2022, about 6 million people formally volunteered | Technologies <ul style="list-style-type: none"> • Matching platforms • Online giving platforms |

Government’s role in supporting philanthropy

Governments support philanthropy in a variety of ways, including providing financial incentives to donors, providing grants to charities and maintaining a regulatory framework that supports public trust and confidence in charities. Income tax deductions are the main way that the Australian Government encourages giving to charities, but it is not the main way in which governments provide financial support to charities. Together, the Australian, state, territory and local governments provided \$97 billion in 2021 in direct funding to charities through grants and contracts. On average, this is about 50% of revenue for charities.

Policy settings to encourage giving should align with peoples’ motivations, but many of the reasons people give or do not give cannot be influenced by government policy. For example, income and wealth are major determinants of giving – almost half of all tax-deductible donations are made by people who are in the top 1% of income earners. Work and family commitments are the main reason people do not volunteer.







Not all efforts to increase giving depend on government – philanthropic organisations can shape the future of philanthropy and support giving in Australia. While only governments can make changes to regulation or the tax system, philanthropic organisations could, for example, collaborate to fund a public giving campaign.

How, and to what extent, governments support philanthropy should be informed by analysis of the benefits philanthropy creates that governments cannot deliver independently or deliver less effectively or efficiently.

Philanthropy provides different benefits than government

The funding provided by philanthropy has different benefits (and costs) to government support and can be a complement to, or substitute for, direct government funding (figure 1).

Figure 1 – The characteristics of government funding and philanthropic funding

| Government funding  | Philanthropic funding  |
|---|---|
| <ul style="list-style-type: none"> Accountable through democratic processes Scalable Transparent Might attract other funding  | <ul style="list-style-type: none"> Risk capital Patient capital Can be untied Flexible Responsive  |
| <ul style="list-style-type: none"> Inflexible Reporting burden  | <ul style="list-style-type: none"> Donors may be misaligned with a charity's values Reporting burden  |

Philanthropy can provide funding for activities that the community values and that would otherwise be underfunded or not funded at all due to constraints on governments.

Donors and charities can also have specific skills, relationships or experience working with networks or communities that government does not. These skills and networks may allow donors and charities to achieve better and more valued outcomes at lower cost compared with direct government provision or grant funding. Some types of giving, like volunteering, create indirect benefits for society by contributing to social networks, building social capital within communities, and diffusing knowledge and innovation.

The Maranguka initiative is an example of how a community has been able to build a trusting relationship with philanthropic partners to deliver tangible change in Bourke, New South Wales. The initiative is a First Nations community-led place-based model of justice reinvestment that redirects resources that would be spent on prisons back into the community. Philanthropic funding enabled the community to try innovative approaches that provide positive outcomes for the community.

Inquiry participants commented that philanthropy can also enable innovation by providing ‘patient capital’ through long-term untied funding, which governments often cannot do. For example, it is common for government grants to be linked to short-term funding cycles. Philanthropic funding can have a different risk profile from government funding and can have a greater tolerance for – and even expectation of – failure when trialling new models of service delivery. This can have important positive spillovers for government. Once philanthropy has funded initiatives that have demonstrated success, governments could provide funding on a larger scale and change policy settings more widely.

Philanthropy can also support advocacy that conveys the perspectives of communities, facilitating their input into democratic processes and policy outcomes. This can include expressing views on policy issues that are different from those of the government or the wider public.

The Alannah and Madeline Foundation commented on the value of philanthropy:

The characteristics of the philanthropy dollar in a charity's revenue mix are unique and precious. It is the only social change dollar that can be used as social risk capital: it is free to fund innovation, to pilot, to fail and try again ... diversity and freedom are core to [philanthropy's] success. It is free of government and political agenda and election cycles: it can fund activities and costs that are unattractive or 'out of bounds' to other revenue sources or funders; it can be multi-year and unrestricted in its use. (sub. 47, p. 4)

Like private and government provision, philanthropy can also fail to meet the efficiency and equity goals or expectations of the community. A donor cannot easily observe how their donation has been used and whether this aligns with their intentions. Using subsidised philanthropy to fund goods and services means government has less control over how those public funds are spent, which may be an issue if the interests and preferences of donors are not well aligned with those of the broader community.

The way philanthropic funding is provided is as relevant as the quantity of funding. Philanthropy can be 'practiced' in different ways and the decisions philanthropic organisations make about their funding approaches influence the effectiveness of philanthropy and can contribute to improved outcomes for the wider community. Ensuring that philanthropic practices continue to evolve, where necessary, to meet the changing needs and expectations of charities and the community is an essential part of a thriving philanthropic and charitable sector.

The deductible gift recipient system needs major reform

The deductible gift recipient (DGR) system underpins the Australian Government's financial support of giving in Australia. People who give more than \$2 to an entity with DGR status and have taxable income can claim a 100% tax deduction for their donation. The amount a person can claim as a deduction – and therefore the tax-deductible donations a charity can receive – is uncapped, but it is limited by a taxpayer's marginal tax rate, their taxable income, and their willingness and capacity to give.

The DGR system exists to support certain forms of giving and the work of eligible entities (charities and government entities that conduct charitable-like activities). It seeks to steer donations and other resources toward certain charitable purposes and activities. As such, the DGR system does not cover all charitable activities or all charities – and nor should it.

The design of the tax deduction for giving for individuals provided by the Australian Government has two components – a tax incentive to encourage people to donate and the system that determines which entities can receive tax-deductible donations.

The Commission found that the tax deduction increases giving and does not need to change. The extent to which it increases giving and the extent to which the subsidy flows to charities is not clear due to the difficulties in modelling giving behaviour (box 2). The modelling indicates that increasing the value of the tax deduction over 100% of the amount donated is unlikely to be a cost-effective way of encouraging additional giving.

However, the arrangements that determine which entities can access DGR status are poorly designed, overly complex and have no coherent policy rationale. This creates inefficient, inconsistent and unfair outcomes for charities, donors and the community.

All Australian taxpayers effectively co-invest in charities through the DGR system, so access to tax-deductible donations should:

- be fair, simple and transparent
- direct donations toward charitable activities that are likely to provide the greatest net benefits to the whole community from providing support through tax-deductible donations.

Any policy change that increases giving to entities with DGR status will come with a fiscal cost. Concerns about this trade-off were expressed to the Commission by various inquiry participants, with the South Australian Council of Social Service commenting that ‘tax revenue forgone needs to be a crucial calculation of any proposal to increase philanthropy’ (sub. 83, p. 2).

Box 2 – Income tax deductions increase giving

People may be more likely to give, or decide to give more, if the cost of donating an extra dollar (price of giving) is lowered through a tax deduction or their income increases. The price of giving varies depending on a person’s marginal rate of income tax – the higher a person’s marginal income tax rate, the lower the price of giving due to the tax deduction for giving.

A taxpayer dollar that is used to encourage philanthropy (through a tax deduction) cannot be spent on another government priority, so government must consider the extent to which that dollar encourages additional giving. However, this comparison is only one consideration when assessing a tax deduction for giving because it does not fully account for the costs and benefits of giving or the other uses of that revenue.

The Commission undertook econometric modelling to estimate:

- the price elasticity of giving, which is how people change their giving behaviour in response to changes in tax incentives for giving
- the income elasticity of giving, which is how people change their giving behaviour in response to changes in their own income.

Using two models and several different modelling specifications, the Commission’s estimates fall within the following range if a taxpayer gives \$100 and had disposable income of \$50,000 (holding all other factors constant):

- a 1% decrease in the price of giving increases giving between 48 cents and \$1.67
- a 1% increase in disposable income increases giving between 86 cents and \$1.17.

These estimates indicate that personal income tax deductions and higher incomes are likely to encourage people to donate more. However, there is less certainty about the amount giving increases due to the tax deduction and the cost to government of incentivising an additional dollar of giving. This modelling has limitations and the estimates above are an average across all taxpayers. An explanation of the Commission’s analysis and areas for further work are presented in appendix B.

The Australian Government also incentivises corporate giving through the corporate tax system and these incentives interact with Australia’s dividend imputation system. However, data limitations mean that the Commission has not been able to assess the effect of the tax deduction on corporate giving.

A fairer and simpler DGR system

The DGR system is not fit for purpose as a mechanism for determining which entities undertaking activities that benefit the community should be able to receive tax-deductible donations from individuals. The scope of the system has evolved in an ad hoc way and it is becoming more complex as new DGR endorsement categories are added in a piecemeal manner.

There is no explicit policy rationale justifying why some charitable activities are within scope, but others are not (box 3). Inquiry participants were concerned about these inconsistencies. For example, the Community Council for Australia commented that ‘the complexity of the current DGR arrangements make it an almost unworkable system, particularly for small charities’ (sub. 218, p. 6).

Specific listing in legislation can be used to gain DGR status for entities that do not neatly or easily fit into a single endorsement category and can be a way to address unforeseen or exceptional circumstances. However, the existing process lacks transparency, is time consuming for charities seeking endorsement and can lead to inconsistent outcomes. Access to decision makers can be an important factor in an entity being specifically listed.

Box 3 – The scope of DGR coverage is piecemeal and ad hoc

Many participants raised concerns about charitable activities that do not have DGR status.

- Charities that relieve poverty or distress in the community are eligible for DGR status, but charities that focus on prevention face barriers to eligibility.
- The health promotion charity category is available to charities promoting prevention or control of diseases in people and the community, but this does not include prevention of injuries.
- Many smaller grassroots and volunteer-run charities can be ineligible for DGR status, such as community gardens or neighbourhood houses.
- Participants highlighted that certain animal welfare charities are not eligible, particularly those focused on advocacy rather than direct short-term care of animals.

Some charities cannot easily access DGR status because they provide a broad range of support to a group of people or community and therefore do not neatly fit into one DGR endorsement category (as is required under current policy settings). This includes charities that support women, young people, Aboriginal and Torres Strait Islander people and communities, LGBTIQ+ people, or consumers. For example, the principal purpose of environmental organisations with DGR status must be the protection of the natural environment. Marrie and Marrie commented that:

This renders most Indigenous ranger services and “caring for country” organisations ineligible because the objects of their constitutions/rules of incorporation, in keeping with their holistic approach to culture and country, generally include cultural, as well as a range of other purposes, and thus are too broad to satisfy the criteria for an environmental DGR organisation. (2013, p. 4)

Many smaller community-based charities have less capacity to navigate these (and other) complexities.

Reform is needed to simplify the DGR system and refocus it on activities that are likely to generate the greatest net benefits for the community as a whole. This would create fairer and more consistent outcomes for charities, donors and the broader community.

The Commission proposed a comprehensive overhaul of the DGR system applying a principles-based framework to assess and improve the DGR system. This will simplify the current system, reduce the risk of distortions to giving due to different treatment of activities that offer very similar outcomes and provide guidance to underpin its future development. There should be three criteria to determine if a class of charitable activity is within the scope of the DGR system.

- First, there is a rationale for taxpayer support because the activity is expected to generate net community-wide benefits and would otherwise likely be undersupplied.
- Second, there are net benefits from providing government support for the activity through subsidising philanthropy (as opposed to other government funding mechanisms, like grants).
- Third, there is unlikely to be a material risk of converting tax-deductible donations to private benefits for donors.

The Commission assessed each ACNC charity registration subtype against these principles to determine which charity subtypes would be eligible for DGR status. Charities registered under most subtypes would be within the scope of the reshaped, refocused DGR system, including many that are not currently eligible. This would expand access to DGR status to more charities and give donors more choices about which charities they can make tax-deductible donations to.

In practice, making assessments about which classes of charitable activities should be within the scope of the DGR system is challenging, subjective and contestable. The Commission considered the trade-offs, including the fiscal cost involved in expanding the DGR system and, using the principles above, prioritised changes where government support of philanthropy is likely to have the largest net community-wide benefits. The Commission worked to balance the risk of including certain classes of activities in the DGR system (where this may not be warranted), against the risk of excluding certain activities that should be in scope.

In response to the draft report, there was widespread support for expanding DGR status to most classes of charitable activities. Many participants also expressed significant concerns that DGR status would be withdrawn from some classes of charitable activities (school building funds, and religious and ethics education in government schools) and not extended to charities with the sole purpose of advancing religion.

A more diverse set of charities would have DGR status





While simplicity, efficiency and fairness are the primary goals of the Commission's proposed reforms, one of the expected effects would be to make the set of charities with DGR status more diverse.

It is expected that the number of charities with DGR status would increase from about 25,000 charities to somewhere in the range of 30,000 to 40,000 charities.

Most charities that currently have DGR status would be largely unaffected by the proposed reforms (figure 2). For example, almost half of charities that currently have DGR status are public benevolent institutions and these charities would be unaffected.

The reforms would expand access to DGR status for many charities, including those that provide small-scale benevolent relief activities (but are not registered as public benevolent institutions). The reforms would also expand access to DGR status for charities that prevent disadvantage, charities that promote human rights or reconciliation, animal welfare charities, charities focused on injury prevention, and public interest journalism. Charities undertaking advocacy activities in furtherance of other included charitable purposes would also become eligible for DGR status, such as social welfare and human rights organisations that advocate for policy change.

Figure 2 – Likely outcomes for charities from reforming the DGR system

| The status quo is maintained for ... | Changes to DGR status for ... |
|--|--|
| <p>charities retaining DGR status</p> <ul style="list-style-type: none"> Most charities that currently do have DGR status, including public benevolent institutions, health promotion charities, animal welfare, environmental, cultural and formal higher education charities. More than 20,000 charities are in this group.  | <p>charities gaining DGR status</p> <ul style="list-style-type: none"> Charities that currently do not have DGR status, such as those focused on advocacy and prevention, a wider range of animal welfare charities and many charities run solely by volunteers. An estimated 10,000 to 20,000 charities could gain DGR status.  |
| <p>charities not gaining DGR status</p> <ul style="list-style-type: none"> Charities undertaking activities for advancing religion and advancing industry, as well as some aged care, early childhood education and care, and other education activities. About 15,000 to 20,000 charities are in this group.  | <p>charities with DGR status withdrawn</p> <ul style="list-style-type: none"> Mainly charities that have DGR status for school building funds or to provide religious and ethics education in government schools. Fewer than 5,000 charities are in this group.  |

Charities that pursue multiple eligible purposes would also find it easier to access DGR status because eligible entities would only need one DGR endorsement from the Australian Taxation Office (ATO), which would cover all eligible activities. This would assist charities that support groups of people rather than a single activity. For example, charities that support women, young people, Aboriginal and Torres Strait Islander people and communities, LGBTIQ+ people, or consumers. Community foundations – giving structures controlled and managed by members of the community to support local needs – would no longer need specific listing to access DGR status under the Commission’s proposed reforms.

The proposed reforms would also make it simpler for grassroots and smaller charities to access DGR status if, for example, they have not had the resources to establish a public benevolent institution. This would include neighbourhood houses, community gardens and many charities that are dependent on volunteers and have few or no paid staff. To illustrate, the Commission estimates that only a third of charities wholly dependent on volunteers have DGR status and about 6,000 additional volunteer-run charities would have easier access to DGR status under the Commission’s proposed reforms.

Most, but not all charities, would have DGR status

There are some classes of charitable activities where exclusions are warranted so that taxpayer support is directed to where the net community-wide benefits are expected to be largest from support through tax deductibility for donations (figure 2). These activities provide public benefits, but the Commission does not

consider that additional support for these activities through the DGR system is warranted. These charities would continue to be eligible for income and other tax exemptions they currently are entitled to.

Withdrawing DGR status from some activities means that donations directed to those charitable activities would no longer be tax deductible, but donors could continue to provide support through non-tax-deductible donations.

School education should be funded outside the DGR system

Most school education activities are already outside the scope of the DGR system, except when provided by public benevolent institutions or for school infrastructure, libraries and scholarships.

School education is a priority for governments and there are sound economic and social reasons for government support. Reflecting this, extensive government funding is provided outside the DGR system. For these services, tax-deductible donations are not the best mechanism for allocating government support to where it is needed. Government funding provided through tax-deductible donations would not be allocated on the basis of need, or even on a universal basis. Rather, because donations from people in higher marginal tax brackets receive a larger tax deduction, it would provide higher levels of indirect government support to schools servicing communities with a greater capacity to donate.

The Commission has similar concerns about school building funds. Tax-deductible donations are unlikely to be the best mechanism for allocating government support for school infrastructure. Of those primary and secondary non-government schools that receive donations for school building funds, half of these schools receive about 95% of the donations.

In addition, there is the potential for a donor to be able to directly or indirectly convert a tax-deductible donation into a private benefit. Potential donors are most likely to be people directly involved with the school and benefit directly from donations, such as students, their parents or alumni. Evidence from participants is that the share of parent contributions relative to those from alumni and other donors vary widely. The transaction here is closer to a market exchange of donations for lower fees and this could incentivise recipients to make tax-deductible donations to lower the non-tax-deductible price they are charged for the good or service. In these circumstances, it is unlikely that including school building funds or school education in general within the scope of the DGR system would provide net community benefits.

Many participants argued that parents and students do not gain a private benefit from donations to school building funds because fees are not reduced in an explicit *quid pro quo* or because the lead times for infrastructure mean that new facilities would be used by future students. However, there is little doubt that substitution – broadly defined – between donations and fees does occur. Indeed, many participants responded to the draft report by stating that withdrawal of DGR status for school building funds would create upwards pressure on costs for parents.

School building funds for primary and secondary schools and religious education would be the main entities that would no longer be eligible for DGR status under the Commission's proposals. There are currently about 5,000 DGR endorsements for school building funds. Of these, three-quarters are charities and the remaining quarter are government entities, such as public schools. Transitional arrangements would be required so that schools can adjust (described below).

Most other classes of activities in the education charitable subtype, including formal higher education and research activities, would remain within the scope of the DGR system.

Consistent with the overarching rationales for government support for school education, the Commission is proposing that charities should be able to obtain DGR status for activities that have an explicit equity objective. Any classes of activities currently carried out through a public benevolent institution, including the

provision of school education, *would continue* to be eligible for DGR status. For example, many non-government schools in remote Aboriginal and Torres Strait Islander communities currently have DGR status as public benevolent institutions and this would remain under the Commission's proposed reforms. This would also expand coverage to charities in the education subtype for activities that are analogous to those undertaken by public benevolent institutions.

Other classes of charitable activities with substantial risks of donors converting tax-deductible donations into a substantial private benefit are already outside the DGR system. These arrangements would not be changed. Specifically, extending DGR status to industry bodies, as well as aged care and early childhood education and care, is not warranted. However, any classes of activities currently carried out through a public benevolent institution *would continue* to be eligible for DGR status.

No strong case for government support of activities which have the sole purpose of advancing religion through the DGR system

Religious organisations play an important role in many people's lives and communities across Australia. Religious faith and values can also provide important inspiration for undertaking a range of charitable activities. For some people, undertaking activities such as helping those in need is how they put into practice their religious beliefs and values within the community.

For the purposes of the DGR system, it is important to distinguish between two broad kinds of valuable activities that religious organisations undertake:

- activities that help people in need – which are a core tenet of most, if not all – religious faiths
- activities that have the sole purpose of advancing religion.

On the first category, the Commission's recommended reform of the DGR system will make it easier for religious-based charities to access DGR status for their other eligible charitable activities. This could include activities for the purpose of advancing social welfare that are guided by a religious ethos, such as local community outreach to provide emergency food and accommodation to those in need. Religious-based charities could also access DGR status for activities for the purposes of advancing reconciliation or human rights. Activities for these purposes could include promoting religious tolerance and advocating for religious freedoms.

On the second category, charities that have the sole purpose of advancing religion are largely excluded under the current DGR system. The Commission does not see a case for expanding the DGR system to cover these charities. While religious practice provides benefits to the community, it is unlikely to be unsupplied in a way that would warrant additional support via the DGR system.

Religious education activities (other than those classified as formal higher education) should also be specifically excluded from the DGR system. Not doing so would risk creating an inconsistent approach to how activities related to advancing religion (and activities for advancing education) would be treated under the Commission's proposed reforms. In addition to the removal of access to DGR status for school building funds for religious education purposes, an implication of this proposal is that DGR status for religious education (as well as alternative ethics education) in government schools would be withdrawn. While the organisations with these DGR endorsements provide important services to the community, the way they operate and the costs they incur in doing so are largely driven by state and territory government policies and priorities, and may be more appropriately funded by those governments, rather than by the Australian Government via the DGR system.

Under the Commission's proposed reforms, a charity undertaking a combination of excluded and non-excluded activities could still apply for DGR status, with a 'gift fund' used to ensure that tax-deductible donations are only directed toward non-excluded activities, as currently occurs. This would provide some flexibility for charities, while maintaining simplicity. For example, charities (such as religious organisations)

that undertake excluded activities (advancing religion) would still be eligible for DGR status for any non-excluded charitable activities they undertake (for example, advancing social and public welfare services) using gift fund arrangements.

Transition arrangements are needed, but the fiscal cost is likely to be modest

Transition arrangements for implementing the proposed reforms to the DGR system are necessary. There should be a five-year transition for charities that would no longer have DGR status to adjust their fundraising activities. There should also be a further period to use those donations for their intended purposes. Given the long lead times that can apply to the use of donations for capital works, it would be unduly restrictive to require these funds to be used within the five-year transition period.

Where DGR status is withdrawn from school building funds and religious and ethics education in government schools, alternative government funding arrangements should be put in place.

The intent of the proposed DGR reforms is not to reduce government support for infrastructure in primary and secondary schools. The Australian Government should consider alternative, better arrangements as part of a broader consideration of school funding arrangements.

In the case of the withdrawal of DGR status for religious education or ethics in government schools, state and territory governments could consider providing funding or other assistance to support approved providers to comply with the obligations those governments impose on these school programs. It would be up to those governments to determine the form of that support – matched grant funding could be one approach if those governments wish to maintain incentives for giving as part of the funding allocation design.

While there is expected to be a significant increase in the number of charities that become eligible for DGR status under the proposed reforms, the effects on the overall level of giving are expected to be relatively modest, noting that this is difficult to predict with certainty. This is because charities with DGR status already receive about 80% of total giving to charities. The number of charities with DGR status would increase by between 5,000 and 15,000 – many of the charities entering the DGR system would be relatively small. Although small charities rely heavily on donations, most donations go to large charities. This means that even if donations to small charities with newly acquired DGR status increased substantially, this would likely only have a small effect on the total amount given to all charities.

In the medium term, the Commission estimated the net fiscal cost of the proposed reforms would be about \$70 million each year. However, there is substantial uncertainty about this estimate as it is difficult to anticipate behavioural responses.

Improve access to philanthropy for Aboriginal and Torres Strait Islander people

Philanthropy can and should support the goals and ambitions of Aboriginal and Torres Strait Islander people and communities. Initiatives led by Aboriginal and Torres Strait Islander people have enabled Aboriginal and Torres Strait Islander communities to build effective partnerships with philanthropy and provide grant funding for projects or geographical areas (for example, Koondie Woonga-gat Toor-rong, the First Peoples' Assembly of Victoria's Self-Determination Fund, Community First Development, and First Nations Futures).

There is an opportunity for more Aboriginal and Torres Strait Islander communities to further their goals and ambitions through philanthropic funding and networks. However, the Commission heard that some Aboriginal and Torres Strait Islander organisations may be less willing to receive philanthropic funding or interact and

engage with philanthropists who, in their view, 'obtained their wealth at the detriment of First Nations people' (Jumbunna Institute for Indigenous Education and Research, pers. comm., 3 October 2023).

Other Aboriginal and Torres Strait Islander organisations that would like to access philanthropic networks and funding have found the approaches of some philanthropic donors may create barriers for Aboriginal and Torres Strait Islander people and communities to access philanthropic funding. For example, a report by the Centre for Social Impact and the Jumbunna Institute (2023, p. 16) included the following perspective:

The philanthropic space is a very elitist and exclusive 'club' that makes it difficult for people without the right connections or right backgrounds to enter.

Strengthening the capacity of Aboriginal and Torres Strait Islander organisations to access philanthropic networks, where doing so aligns with the values and interests of those organisations, would potentially contribute to government policy commitments to Aboriginal and Torres Strait Islander people under the National Agreement on Closing the Gap. These include supporting a stronger community-controlled sector and building and strengthening structures that empower Aboriginal and Torres Strait Islander people to share decision-making authority.

The Commission recommends the Australian Government provide funding to support the establishment of a new organisation, provisionally called Indigenous Philanthropy Connections. The goals of Indigenous Philanthropy Connections should be to strengthen the capacity of:

- non-Indigenous philanthropic organisations to be more culturally safe and effective in their work with Aboriginal and Torres Strait Islander organisations
- Aboriginal and Torres Strait Islander organisations to build relationships and partnerships with philanthropic and volunteering networks
- Aboriginal and Torres Strait Islander communities by supporting the establishment and growth of new and existing Aboriginal and Torres Strait Islander philanthropic organisations.

It should not replicate or replace work already being done by Aboriginal and Torres Strait Islander organisations to improve access to philanthropy. To achieve these objectives, the detailed design of Indigenous Philanthropy Connections' remit and governance structure should be led by, and subject to further engagement with, Aboriginal and Torres Strait Islander people.

Establishing Indigenous Philanthropy Connections would not lessen the responsibility of governments to strengthen outcomes for Aboriginal and Torres Strait Islander people and communities.

Extensive engagement has informed this recommendation and it has been reshaped between the draft and final report based on the feedback from Aboriginal and Torres Strait Islander inquiry participants.

Indigenous Philanthropy Connections should operate for the benefit of Aboriginal and Torres Strait Islander people, led by a board comprised of a majority of Aboriginal and Torres Strait Islander people. The Government should provide lump-sum funding for an endowment and the Indigenous Philanthropy Connections board could choose to seek additional contributions to the endowment from philanthropic funders. The Australian Government endowment should be large enough to ensure that Indigenous Philanthropy Connections is financially sustainable and independent, without the need to seek further funding from either government or philanthropic organisations.

Appropriate governance arrangements will be necessary to ensure that its functions do not duplicate the roles and responsibilities of other bodies, including government agencies. Indigenous Philanthropy Connections would report on the outcomes of its activities and its impact should be independently evaluated after 10 years of operation.

Regulatory arrangements that support donor confidence

Effective and proportionate regulation of charities is essential to maintain the trust and confidence of donors, taxpayers and the beneficiaries of the goods and services that are provided by charities. Regulators should have a sufficient range of enforcement tools to adopt a graduated, risk-based approach to regulation and enable proportionate responses to misconduct.

Donors (as well as regulators) are largely unable to observe whether charities use donations for their intended purposes. While most charities take their obligations to donors, the public and governments seriously and act within the law, well-designed regulation can give the community confidence that funds are being used for charitable purposes. This can influence whether a person will donate and how much they donate.

Effective regulation is also essential due to the scale of funding charities receive from governments and donors to support their work in the community. In 2021, charities received \$190 billion in revenue – largely from government grants and contracts, selling goods and services, and donations. The net assets of charities were \$281 billion in 2021, almost 32% larger than in 2017.

The regulatory framework for charities has sound foundations, but the presence of multiple regulators creates inconsistencies, confusion and unnecessary regulatory burden. Strengthening the ACNC's information gathering powers, and embedding coordination and cooperation through formalised regulatory architecture would improve the regulation of Australian charities. While some reform is needed, the analysis presented in this inquiry should not be interpreted as suggesting the Commission found or is concerned about widespread non-compliance in the charitable sector.

Reforms to the Australian Charities and Not-for-profits Commission

Charities are subject to oversight from multiple national, state and territory regulators, each with their own institutional arrangements, responsibilities, powers, priorities and resources. The Australian Charities and Not-for-profits Commission (ACNC) is the national charities regulator. However, regulatory oversight is not consolidated at the national level because the Australian Parliament does not have the constitutional power to generally legislate for charities or the full range of structures a charity can adopt. Two effects of this are:

- charities found to have engaged in the same kind of misconduct can face different regulatory consequences
- the full scope of the ACNC's regulatory powers is limited to a small proportion of charities characterised as 'federally regulated entities' and charities that operate outside Australia.

A referral of powers by state parliaments is likely to be the best approach to address the constitutional limitations of the ACNC, but that would involve significant implementation challenges and costs. Variation across jurisdictions may still occur if some states decline to refer a matter to the Australian Parliament.

Given this, the Commission proposed a suite of recommendations that build on the existing collaborative approach to charities regulation that would strengthen the ACNC's information gathering powers and are proportionate to current and foreseeable risks. The Commission's recommendations include enabling the ACNC to:

- require a charity to provide information necessary to form an opinion on whether it is a 'federally regulated entity'
- require a charity undergoing revocation of its ACNC registration to evidence the distribution of its net assets to an eligible entity, unless the ACNC Commissioner waives that requirement
- have standing so it can seek orders in the Supreme Courts of all jurisdictions, where necessary, to protect charitable assets.

There are also technical issues in charities law that require further examination. In consultation with the Standing Council of Attorneys-General, the Australian Attorney-General should refer an inquiry to the Australian Law Reform Commission to examine:

- the scope and coverage of Australian, state and territory charities laws focused on opportunities to simplify and harmonise laws across jurisdictions
- the roles and responsibilities of state and territory Attorneys-General and other relevant regulators in relation to the oversight of charities, including charitable trusts.

As the behaviour of donors and charities evolves, a referral of powers may need further consideration by governments, should it become apparent that the current sharing of responsibilities for charities regulation is not sufficient.

A sound regulatory framework will only promote trust and confidence in the charitable sector if the ACNC exercises its powers when the need arises. ACNC data suggests that it has made limited use of its formal enforcement powers. The Commission was not asked to assess the effectiveness of the ACNC as a regulator and acknowledges there are several explanations for why the ACNC may not have used its formal enforcement powers more routinely. As the ACNC progresses through its second decade of operation, it may have greater ability to assume a more assertive enforcement and compliance posture, where necessary, to support trust and confidence in the charitable sector.

The role, powers and functions of the ACNC would be expanded if these recommendations were adopted. The reforms the Commission is proposing to strengthen the ACNC are more likely to be successful if the ACNC is able – and resourced – to adopt a more assertive regulatory posture, while retaining its emphasis on supporting charities to meet their obligations through education and guidance.

A national, cooperative approach to charities regulation

Most charities act with integrity and seek to comply with their regulatory obligations. However, when there is misconduct, those adversely affected, including the public, expect proportionate action to be taken by regulators or law enforcement agencies against those responsible. The roles, responsibilities and interactions between relevant regulators should be clear so the public knows where to turn if there is actual or alleged misconduct by a charity.

Regulators of the charitable sector frequently collaborate. For example, some regulators have memorandums of understanding in place to clarify the circumstances in which they will work together or share information. The Commission did not hear evidence that arrangements between regulators to deal with misconduct are inadequate and the current level of cooperation is encouraging. Rather, it is a question of whether those arrangements would be sufficiently robust in the event of major or systemic misconduct that requires clear lines of responsibility and coordination to protect public trust and confidence in the sector.

In the Commission's view, a more formal and comprehensive approach is needed to embed coordination and cooperation amongst regulators given the complexity of the regulatory system and the limits of the ACNC's enforcement powers. This would represent a shift toward a 'joint stewardship' approach to charities regulation, which recognises that charities regulation in Australia is implemented through a network of regulators at different levels of government. The ACNC has a key role within this network, but state and territory regulators and Attorneys-General also have significant responsibilities.

Establishing a National Charity Regulators Forum (Forum) would build the necessary regulatory architecture for this network of regulators. It would clarify roles and responsibilities, facilitate closer collaboration and information sharing, progress charities law and regulation reform, support the identification and management of regulatory risks, and enable coordination of responses in the event of large-scale misconduct. Other regulatory

forums, such as the Council of Financial Regulators, would serve as a useful model. The terms of reference and governance arrangements for the Forum should be set out in an intergovernmental agreement.

State and territory governments are working to progress reforms to fundraising authorisation and nationally-harmonised fundraising conduct requirements to reduce regulatory burden for charities. It is important that these reforms are fully delivered. The Council on Federal Financial Regulators, which agreed to these reforms, should commission an independent review of outcomes of the fundraising harmonisation process and options to maintain regulatory consistency over time within 12 months of the tabling of this report in Parliament. This review and the response from the Council on Federal Financial Relations should be made public.

Enhancing transparency and regulatory consistency

To enhance regulatory consistency and public transparency, the Commission is also proposing to remove the concept of a basic religious charity and associated exemptions, so that all charities are subject to the same ACNC regulatory framework, including principles-based governance standards and financial reporting requirements proportionate to their size.

Most basic religious charities are small and like other small charities would only be required to provide basic annual financial information to the ACNC, without having it independently audited or reviewed. It would also mean the ACNC would be able to act in response to an actual or likely breach of its governance standards by a basic religious charity.

Participants had mixed views on whether additional reporting requirements for some religious charities were unduly burdensome and whether they could contravene the free exercise of religion under the Australian Constitution or Australia's obligations under international law.

Based on evidence from submissions, consultations and analysis of relevant judicial decisions the Commission's view is that removing the concept of a basic religious charity and related exemptions from ACNC legislation would, on its face, comply with section 116 of the Constitution.

Minimising unnecessary regulatory barriers to volunteering

Volunteering is widespread in Australia and volunteers may be subject to a range of screening checks to determine whether they pose a risk to the people they work with. The benefits of screening checks are well established and they help to protect beneficiaries, including people who may be at-risk or vulnerable, from those who may cause them harm.

Inquiry participants expressed concern about unnecessary duplication – between different types of screening checks and across jurisdictions – and the costs this creates for volunteers and charities. For example, Volunteering WA (sub. 64, p. 6) submitted that 'volunteer screening is the most frequently cited barrier and administrative burden on the sector'.

Some work is underway to progress working with children checks reforms as part of a national strategy for preventing and responding to child sexual abuse. However, this work is limited to one type of check and does not consider the implications of government policies affecting volunteer participation more broadly.

The Commission proposed that governments explicitly consider how changes to policies and programs affect volunteers. Governments should, for example, consider from the outset how major reforms (such as the NDIS) may affect the need for – and availability of – volunteers (like in the disability sector) and what steps could be taken to support or 'crowd in' volunteer contributions, rather than crowding them out. For example, the effects of policy changes on volunteers could be included in regulatory impact analysis processes.

Structured giving vehicles could be enhanced

Just as people's motivations for giving vary, *how* people give also reflects their personal preferences and circumstances. Some people adopt a longer-term approach to giving by using structures that allow them to commit to giving in the future, either as a once-off gift (such as a charitable bequest) or through regular distributions, including through structures such as ancillary funds.

Ancillary funds are trusts established for the purpose of providing money, property or benefits to eligible entities with DGR status, where donors receive a tax deduction for donations into the fund (box 4).

Box 4 – What are public and private ancillary funds?

Private ancillary funds are trusts established for private philanthropic giving and are largely used by family groups or businesses.

Public ancillary funds are trusts that collect donations from the public and are typically used by community and corporate foundations, wealth management providers, and as fundraising vehicles. A 'sub-fund' in a public ancillary fund can be used instead of a private ancillary fund.

There are exceptions for the first years of operation, but in general, public ancillary funds must distribute the greater of 4% of net assets or \$8,800 each year and private ancillary funds must distribute the greater of 5% of net assets or \$11,000 each year.

The benefits of ancillary funds to the community could be bolstered

Government policy encouraging the formation of private ancillary funds has coincided with a noticeable increase in individual giving. Giving into private and public ancillary funds has grown both in value (from \$692 million in 2011-12 to \$2.4 billion in 2020-21) and as a share of giving by individuals (donations to private ancillary funds have grown from 15% to 27% of individual giving). As a result, ancillary funds have accumulated a pool of net assets that has grown from \$4.6 billion in 2011-12 to \$16.4 billion in 2020-21.

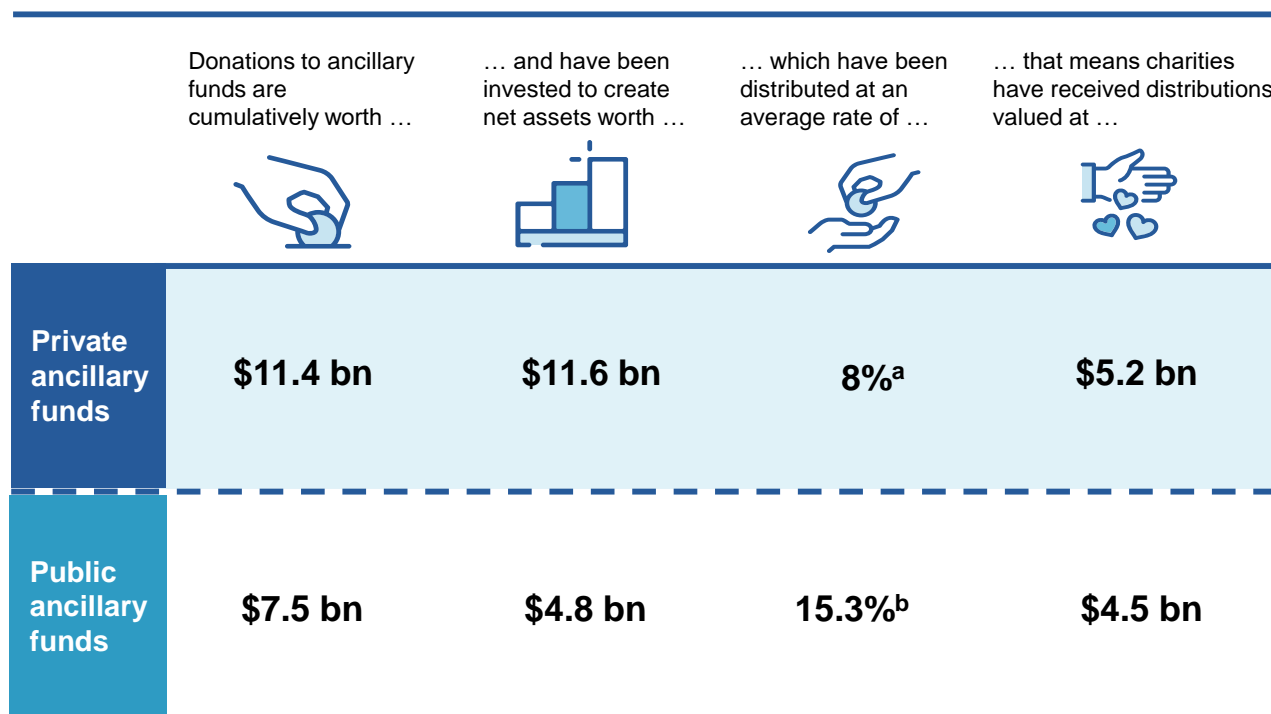
By design, ancillary funds can create a timing gap between the initial act of a person or family donating into the fund, and the point or points in time when money is distributed from the fund to eligible entities with DGR status. This means there can also be a gap between the revenue cost from income tax deductions for the donations and the flow of benefits to the community.

This upfront revenue cost is offset by larger amounts of distributions flowing to the community (figure 3). The point in time that this happens depends on many factors, including:

- how much and how frequently people give into a fund
- the earnings of the fund and administration costs
- the preferences of donors providing, and charities receiving, funds now or later (the discount rate).

Ancillary funds must make a minimum distribution to eligible charities each year (box 4). The minimum distribution rate is the main policy lever available to the Government to ensure a reasonable and steady flow of funds to charities from ancillary funds for the benefit of the wider community.

Figure 3 – Pathway of ancillary fund donations reaching beneficiaries



a. Private ancillary funds is cumulative total from 2000-01 to 2020-21. The distribution rate is the average rate for 2011-12 to 2020-21. **b.** Public ancillary funds is cumulative total from 2011-12 to 2020-21 due to data availability.

Analysis conducted by the Commission on a sample of private ancillary fund data found that of the approximately 50% of private ancillary funds that distributed 5%–6% of their net assets in 2020-21, 66% of these private ancillary funds distributed between 5%–6% every year between 2017-18 and 2020-21. This suggests that for a significant proportion of funds, the minimum distribution rate is a consistent binding constraint.

Currently, there is no explicit or widely held rationale or principles-based framework that explains the minimum distribution rates for ancillary funds. The Commission has identified three principles to determine the minimum distribution rate for ancillary funds and other supporting regulation.

- Ancillary funds should operate for the purpose of supporting entities with DGR status to further their charitable purposes and provide benefit to the community.
- The minimum distribute rate should be set to facilitate the desire of some ancillary funds to operate in perpetuity without *guaranteeing* that all ancillary funds do so or incentivising that particular outcome.
- The minimum distribution rate should be appropriately targeted so that charities receive funding when they need it most.

Determining the minimum distribution rate should be informed by policy principles, and the available data on the behaviour of donors and preferences of charities. However, choosing a rate entails trade-offs and is subject to a degree of judgement.

To illustrate, if the distribution rate for private ancillary funds increased from 5% to 6%, about an extra \$60 million would be expected to flow to the community each year. For public ancillary funds, if the distribution rate increased from 4% to 5%, an extra \$5 million would be expected to flow to the community each year. However, the trade-off would be that less money would be available to distribute from these funds in the future.

The Commission recommends that the Australian Government should set the minimum distribution rate at between 5% and 8% for ancillary funds. The exact rate should be based on the Government’s assessment of

the trade-off between distributions to charities now versus the future, potential impacts of future inflows into ancillary funds and further consultation with the philanthropic and charitable sectors.

There should be a five-year period before any new rate applies to allow existing ancillary funds to make any necessary changes to their investment strategies. Going forward, the minimum distribution rate should be reviewed every 10 to 15 years to decide whether the rate should be adjusted, informed by the views of ancillary funds and charities.

In addition, ancillary funds should be required to develop and maintain a 'distribution strategy'. Individual ancillary funds would determine the content of their strategy, prompting them to think about how they provide support for charities. Distribution strategies could include the causes funds give to, the ways they provide support and how they evaluate their own effectiveness.

The Commission also recommends greater flexibility around ancillary fund distribution rates, by smoothing the distribution rate over a period of up to three years, subject to some conditions that would ensure the distributions are at least equal to (or higher than) the amount that would have otherwise been required under the minimum distribution rate. To improve the transparency of ancillary funds, the Commission recommends the ATO publish additional aggregate information on distributions by ancillary funds, including information on sub-funds within public ancillary funds.

No case to change taxation of superannuation charitable bequests

While it is currently possible to provide a bequest from superannuation to a charity, the arrangements are relatively complex. The restrictions on who can receive benefits from superannuation after someone has passed away means that if someone wishes to leave excess superannuation to a charity directly (their superannuation death benefit), they must complete a binding death nomination directing funds to be distributed to their estate. They must then specify in their will the amount or percentage of their estate to be donated to charity.

The Commission agrees in principle with the arguments put forward by participants that it should be as simple as possible to make a bequest to a charity, including from superannuation. However, it is essential that any new arrangements are consistent with the purpose of superannuation, including the sole purpose test – which requires superannuation funds to be maintained solely for the provision of retirement benefits or death benefits – and any legislated objective of superannuation. For these reasons, simplifying the process for making a bequest to charity from superannuation would be best progressed as part of wider reforms to the binding death nomination process.

The Commission does not agree with the case for greater tax concessions for bequests from excess superannuation. The current tax arrangements for superannuation treat a donation to a charity in the same way as a payment to any other non-dependant beneficiary. Superannuation is concessionally taxed throughout its life cycle, so adding further concessions at the time of death may be a relatively costly way (in terms of any increase in giving per dollar of revenue forgone) for the Australian Government to incentivise giving.

Supporting donor choice and public accountability

While markets are characterised by exchanges between a buyer and seller of a good or service, philanthropy does not involve such an exchange and donors do not expect to receive a financial or other direct benefit in return for their donation. In conventional markets, prices convey information to producers and consumers regarding changes in preferences, opportunity costs and relative scarcity. The absence of price signals in the

market for charitable donations means that other sources of information tend to play a greater role to inform decision making by donors and charities.

It can be difficult for donors to navigate which charities align with their preferences and motivations to give. Charities have strong incentives to publish information that could attract donations or volunteers, or promote the sector, but may be less likely to publish information that does not benefit them directly. This means that governments have a role in providing the public with reliable information based on data they collect from charities to achieve their policy and regulatory goals. This information can inform people's decisions about whether and how to give, as well as promote trust and confidence in the charitable sector.

Improving information that is available to donors and the public

The Commission is proposing that the ACNC enhance information on charities and giving for donors and the public by:

- collecting and presenting data in ways that are more meaningful and accessible to donors and the wider public
- raising public awareness of the ACNC charity register.

There is scope to enhance the ACNC charity register. For example, the Commission heard that DGR status is an important consideration when donors are deciding whether to support a charity and this information should be included on the register.

Evaluations enable charities to better understand what initiatives work, why, when and for whom. However, the benefits of governments requiring charities to make standardised effectiveness evaluations publicly available is unlikely to outweigh the costs and risks. The Commission also found that administrative expenses are not an accurate reflection of a charity's performance and should not be over-emphasised by donors and other stakeholders. Work is underway within the charitable sector to change narratives about these expenses.

Enhancing public data on giving, including volunteering

There is little detailed public information on giving, aside from tax-deductible donations by individuals. Better public information about giving could help policy development and could increase giving by making it more visible. But collecting additional information also creates costs and other practical barriers that must be considered.

The transparency of corporate giving and accountability to shareholders, consumers, employees and the broader public could be increased by requiring listed companies to publicly report itemised information on their donations of money, goods and time to entities that have DGR status. Additionally, the ATO should require listed companies to report charitable donations of money and assets as an item in their company tax return, allowing the ATO to regularly publish aggregated data on corporate giving.

The ABS should be resourced to gather data on informal volunteering and time spent in formal and informal volunteering in the Census and annually through a survey such as the General Social Survey. In instances where volunteering has different cultural meanings, the ABS should also develop methodologies to reduce underreporting of volunteering by Aboriginal and Torres Strait Islander communities and culturally and linguistically diverse communities, in consultation with these communities.

Recommendations and findings

Chapter 3: Philanthropy in Australia



Finding 3.1

Rising income and wealth are the major reasons behind rising tax-deductible donations

Tax-deductible donations by individuals made directly to charities have increased in value, but fewer people are making such donations. From 2000-01 to 2020-21, tax-deductible donations tripled (in real terms) despite the number of taxpayers increasing by only 38%. The available evidence indicates that this coincided with individuals' financial capacity to donate increasing.

The Australian Government also made policy changes that provided additional or more flexible financial incentives to give, which likely also played a role in increasing giving. Giving into private and public ancillary funds has grown in value (from \$692 million in 2011-12 to \$2.4 billion in 2020-21). The relative importance of private ancillary funds has also grown from 15% to 27% of individual giving.



Finding 3.2

Volunteering is widespread in Australia, but the formal volunteering rate has declined

In 2022, about one in four people in Australia (about 6 million people) volunteered for an organisation. Nearly twice as many people volunteered informally (that is, assisting people other than family members, outside of the context of an organisation or group).

However, the formal volunteering rate fell from 36% in 2010 to 25% in 2020. Data indicates that by 2022, the volunteering rate had recovered slightly to 26.7% following the COVID-19 pandemic.

These figures likely understate total volunteering given official data sources use language and definitions that may result in underreporting of such giving because of different cultural meanings of volunteering.



Finding 3.3

People give or do not give for a range of personal reasons

People give for a range of complex and multifaceted reasons that can change over time. Specific events can also prompt people to give. Common patterns of giving behaviour include:

- people affected by natural disasters are likely to donate more to help others in their own community
- some people with high net worth use giving vehicles (such as ancillary funds or trusts) to connect with family through giving, to leave a legacy or to teach skills to the next generation
- many businesses use high-visibility giving, including pro bono work, to bolster their corporate reputation, and to attract and retain employees and customers.

People choose not to give for a variety of reasons. A lack of financial resources is one of the main reasons people do not donate money and common reasons people do not volunteer are work and family commitments. A lack of trust in how charities will use donations and financial constraints on volunteering are also common reasons people choose not to give.

Chapter 4: How governments can incentivise giving



Finding 4.1

People respond to incentives, with those on a higher income more likely to give

Modelling undertaken by the Commission indicates that people give more than they otherwise would because of the personal income tax deduction for donating to entities with deductible gift recipient status. The modelling draws on Australian taxpayer panel data and is the first time panel data has been used in Australia to estimate how people respond to personal income tax deductions for donations.

The Commission used two models to estimate the price elasticity of giving – which is how people change their giving behaviour in response to changes in tax incentives for giving – and the income elasticity of giving, which is how people change giving behaviours in response to changes in their own income.

The Commission's estimates fall within the following ranges for:

- price elasticity of giving in Australia: from -1.67 to -0.48, meaning a 1% increase in the tax deduction for giving is associated with a 0.48% to 1.67% increase in giving
- the income elasticity of giving in Australia: from 0.86 to 1.17, meaning a 1% increase in income is associated with a 0.86% to 1.17% increase in giving.

However, these estimates are only one factor to consider when evaluating the effectiveness of tax incentives to give.

The share of taxpayers claiming a deduction for giving increases with income. Most of the tax benefits from giving that accrue to people in the lowest taxable income decile go to people who had high incomes before claiming any tax deductions.

**Recommendation 4.1****Remove the \$2 threshold for tax-deductible donations**

The Australian Government should amend the *Income Tax Assessment Act 1997* (Cth) to remove the \$2 threshold for tax-deductible donations to entities with deductible gift recipient status.

**Finding 4.2****A personal income tax deduction is likely to be an effective way to encourage giving**

Tax incentives can be designed to target the total amount donated, increase the number of people participating in giving or to encourage particular types of giving, such as money, physical assets or time. The current design of the personal income tax deduction is likely to be the most cost-effective way for the Australian Government to encourage giving.

A flat tax credit would likely incentivise more people to give, but the total amount given overall would likely fall if people who have a high income faced a higher price of giving than they currently do. Adjustments to a tax credit to account for the likely fall in overall giving, including a hybrid approach – a tax deduction for some income cohorts and a tax credit for others – would add complexity and the effect on total donations would be uncertain.

Whether a tax deduction or tax credit would encourage more people to volunteer is highly uncertain, but they would likely increase tax integrity risks and compliance costs given volunteer work and expenses are often undocumented or informal. Government grants to support volunteering where there is a clearly identified need would likely generate greater net benefits to the community than tax incentives for volunteering, if properly targeted and evaluated.

Chapter 5: An assessment of the deductible gift recipient system

**Finding 5.1****The deductible gift recipient (DGR) system is poorly designed, overly complex and has no coherent policy rationale**

The DGR system is not fit for purpose as a mechanism for determining which entities should be eligible to receive indirect government support through tax-deductible donations. There is no coherent policy rationale for why certain entities are eligible for DGR status and others miss out. The complexity of the system continues to increase as new DGR endorsement categories are added in a piecemeal manner.

The DGR system creates inefficient, inconsistent and unfair outcomes for donors, charities and the community. It needs reform.

Chapter 6: Reforming the deductible gift recipient system



Recommendation 6.1

A simpler, refocused deductible gift recipient (DGR) system that creates fairer and more consistent outcomes for donors, charities and the community

The Australian Government should amend the *Income Tax Assessment Act 1997* (Cth) to reform the DGR system to focus it on activities with greater community-wide benefits. The scope of the reformed system should be based on the following principles.

- There is a rationale for Australian Government support because the activity has net community-wide benefits and would otherwise be undersupplied.
- There are net benefits from providing Australian Government support for the activity through subsidising philanthropy.
- There is unlikely to be a close nexus between donors and beneficiaries, such as the material risk of substitution between fees and donations.

In applying these principles, the Australian Government should:

- extend eligibility for DGR status to most classes of charitable activities, drawing on the charity subtype classification in the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) to classify which charitable activities are eligible for DGR status and which are not
- expressly exclude the following classes of charitable activities or subtypes:
 - primary, secondary, religious and informal education activities, with an exception for activities that have a specific equity objective (such as activities undertaken by a public benevolent institution)
 - the activities of early childhood education and care and aged care (other than activities undertaken by a public benevolent institution)
 - all activities in the subtype of advancing religion
 - activities in the other analogous purposes subtype that are for the purpose of promoting industry or a purpose analogous to an exclusion in another subtype
 - activities in the law subtype that further another excluded subtype
- only grant DGR status to government entities where they are analogous to a charity and undertake activities that would be eligible for DGR status if undertaken by a charity
- continue to limit the scope of the DGR system to registered charities and equivalent government entities
- only use the specific listing mechanism in exceptional circumstances. When it is used, the Australian Government should increase the transparency of applications, how these are assessed, and the decision-making process to maintain confidence in the broader DGR system.

**Recommendation 6.2****Supporting reforms to improve the deductible gift recipient (DGR) system**

To facilitate the implementation of reforms to the DGR system, and provide greater clarity to both charities and the Australian Charities and Not-for-profits Commission (ACNC), the Australian Government should:

- amend the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) to require the ACNC to register new and existing charities with all applicable charitable subtypes where a charity has endorsement as a DGR or has indicated they will be seeking such endorsement. This should include any necessary amendments to enable the ACNC to compel the provision of necessary information to assess eligibility for subtype registration where that registration has not been applied for by an entity. Charities should continue to be able to seek review of subtype registration decisions through the Administrative Appeals Tribunal or its successor
- develop a legislated definition of what constitutes a public benevolent institution to delineate its scope more clearly.

**Recommendation 6.3****Transition arrangements to support reform of the deductible gift recipient (DGR) system**

In implementing reforms to the DGR system, the Australian Government should also provide a transition period of five years, during which time entities with DGR status (largely, school building funds and entities that provide religious and ethics education in government schools) can maintain their existing DGR endorsements and receive tax-deductible donations.

Subsequently, there should also be a further period in which these entities can use those donations for their intended purposes. The length of this period should be determined by balancing the potential constraints imposed on entities with the benefits of simplifying the DGR system over the longer term.

In the context of the proposed withdrawal of DGR status for school building funds, the Australian Government should concurrently develop and put in place other funding mechanisms for primary and secondary school infrastructure outside the DGR system.

Chapter 7: A sound regulatory framework

**Recommendation 7.1****A more transparent and consistent approach to regulating charities**

The Australian Government should amend the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) to remove the concept of 'basic religious charity' and associated exemptions, so all charities registered with the Australian Charities and Not-for-profits Commission are regulated in a consistent manner. This should include obligations to comply with principles-based governance standards and reporting requirements proportionate to size.



Recommendation 7.2 **Strengthening the Australian Charities and Not-for-profits Commission**

The Australian Government should:

- amend the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (the Act) to enable the Commissioner of the Australian Charities and Not-for-profits Commission (ACNC) to require a charity to provide the information necessary to assess whether the charity is likely to be a ‘federally regulated entity’
- amend the Act to enable the Commissioner of the ACNC to require a charity undergoing revocation of its ACNC charity registration to evidence the intended or actual distribution of its net assets to an eligible entity unless that requirement is waived by the Commissioner
- work with state and territory governments to ensure the Commissioner of the ACNC has the necessary enforcement powers to fulfil their role within the regulatory framework for charities. This should include implementing or reforming laws, where necessary, to confirm that the Commissioner of the ACNC has standing to make applications in a state or territory Supreme Court for orders regarding the administration of charities, including the protection of assets held in trust for charitable purposes, regardless of a charity’s structure.



Recommendation 7.3 **Review of charities law by the Australian Law Reform Commission**

The Australian Government should refer an inquiry to the Australian Law Reform Commission to examine:

- the scope and coverage of Australian, state and territory charities laws focused on opportunities to simplify and harmonise laws across jurisdictions
- the roles and responsibilities of state and territory Attorneys-General and other relevant regulators in relation to oversight of charities, including charitable trusts.



Recommendation 7.4 **Increasing certainty about Australian Charities and Not-for-profits Commission regulation**

The Australian Government should:

- provide test case funding for the Australian Charities and Not-for-profits Commission (ACNC) to distribute to charities in specific circumstances for the purpose of developing the law
- amend the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) to introduce a rulings scheme for the ACNC, modelled on part 5-5 of schedule 1 of the *Taxation Administration Act 1953* (Cth), to support certainty in regulatory outcomes.



Recommendation 7.5

Regulatory architecture to improve coordination and information sharing among regulators

The Australian Government should:

- establish a permanent National Charity Regulators Forum comprised of Australian, state and territory charity regulators
- develop and agree to an intergovernmental agreement to, among other things:
 - give effect to the National Charity Regulators Forum and determine its terms of reference, how the chair is selected and the corresponding secretariat support, frequency of meetings, and any other operational matters
 - clarify roles, responsibilities and information sharing arrangements between the Australian Charities and Not-for-profits Commission, relevant Australian, state and territory regulators, and Attorneys-General through the development of memorandums of understanding, including in relation to referrals, joint compliance approaches, appointments of a lead regulator, non-operating charities and processes to protect charity assets
 - progress charities law and regulation reform
 - identify any regulatory risks in the sector and collaborative approaches for managing, mitigating and responding to these risks, including the development of legislative or policy responses where needed.



Recommendation 7.6

Review of nationally consistent fundraising regulation reforms

The Council on Federal Financial Relations should:

- continue to monitor the implementation of nationally consistent fundraising registration, reporting and conduct requirements by state and territory governments
- commission an independent review of the outcomes of the fundraising harmonisation process and options to maintain regulatory consistency over time within 12 months of the tabling of this report in Parliament. This review and the response from the Council on Federal Financial Relations should be made public.



Recommendation 7.7

Explicitly consider the effects on volunteers when designing policies and programs

To support volunteering, Australian, state, territory and local governments should consider how changes to policies and programs would affect volunteers. This includes adopting measures that may mitigate any adverse effects on volunteer participation and identifying opportunities for volunteers as part of policy or program design.

Chapter 8: Structured giving vehicles



Recommendation 8.1

Improving the effectiveness and performance of ancillary funds for the whole community

The Australian Government should amend the private ancillary fund and public ancillary fund guidelines to:

- set the minimum distribution rate at between 5% and 8% for ancillary funds, based on:
 - the Government’s assessment of the trade-off between bringing forward the funds that are distributed to charities and a lower amount distributed in the future
 - available information
 - further consultation with the philanthropy and charitable sectors
- require that ancillary funds develop a ‘distribution strategy’ outlining how they will support eligible entities to further their charitable purpose.

The Australian Government should also:

- change the name of ancillary funds to Private and Public Giving Funds to make their philanthropic purpose clearer
- provide a five-year period of notice before any new minimum distribution rate applies to allow existing ancillary funds to make any necessary changes to their investment strategies
- conduct a periodic review of the minimum distribution rate every 10 to 15 years to decide whether the rate should be adjusted
- conduct and publish a survey of charities on their preferred minimum distribution rate for ancillary funds and how money is distributed to charities each time the minimum distribution rate is reviewed.



Recommendation 8.2

Enabling distributions of funds to be smoothed over three years

The Australian Government should increase the flexibility of the regulatory regime by amending the private ancillary fund and public ancillary fund guidelines to enable smoothing of the distribution rate over a period of up to three years, with integrity measures to ensure the resulting distributions are at least equal to (or higher than) the amount that would have otherwise been payable under existing rules.



Recommendation 8.3

Improving public information on ancillary funds

The Australian Taxation Office should:

- publish additional aggregate information on distributions by ancillary funds
- collect and publish additional information on sub-funds within public ancillary funds
- raise public awareness of information on ancillary funds, including by collaborating with the Australian Charities and Not-for-profits Commission to include additional information in the Australian Charities Report.

**Finding 8.1****There is no case for reducing superannuation taxes for bequests**

The current tax arrangements for superannuation treat a donation to a charity in the same way as a payment to any other non-dependant beneficiary. The tax system is not neutral in death and provides a larger tax benefit for the superannuation component of an estate. Adding further concessions at the time of death would be a relatively costly way for the Australian Government to incentivise philanthropic giving.

Chapter 9: Public information about charities and giving

**Finding 9.1****Administrative expenses are not an accurate reflection of the performance of a charity**

An overemphasis, amongst donors and other stakeholders, on the amount of revenue that charities spend on administrative expenses can lead to incorrect conclusions about charity effectiveness and create perverse incentives for charities. For example, it can result in the underreporting of administrative costs or underinvesting in core capabilities and capacity, such as staff training, which undermines long-term capacity to further charitable purposes and benefit the community.

Charities have incentives to provide information about effectiveness to donors and this information is shared in various ways. Introducing additional requirements, such as standardised effectiveness measures, would be impractical and may lead to significant unintended consequences.

**Recommendation 9.1****Enhance information published by the Australian Charities and Not-for-profits Commission**

The Australian Charities and Not-for-profits Commission (ACNC) should enhance the usefulness of the information it provides on charities and giving for donors and the public. The ACNC should:

- present data on the ACNC charity register in ways that are more meaningful and accessible to donors and the public based on stakeholder consultation
- publish the DGR status of charities on the ACNC charity register
- raise public awareness of the ACNC charity register and other government sources of information on charities.

**Recommendation 9.2****Introduce enhanced disclosure and reporting of corporate giving**

The Australian Government should introduce a requirement for listed companies to publicly report itemised information on their donations of money, goods and time (volunteering) to entities with deductible gift recipient status. This would enhance accountability to shareholders, consumers, employees and other stakeholders within the community.



Recommendation 9.2

Introduce enhanced disclosure and reporting of corporate giving

The Australian Taxation Office (ATO) should amend the company tax return to require listed companies to report donations of money and assets to entities with deductible gift recipient status as a distinct line item in deductions, similar to what is required for individuals.

The ATO should regularly publish aggregate information on corporate giving in Australia (for example, in the Australian Taxation Statistics) including, at a minimum, donations by company size, taxable status and industry.



Recommendation 9.3

Improve data on charitable bequests

To provide more information about giving through charitable bequests, including trends over time, the Australian Charities and Not-for-profits Commission should require registered charities to separately report income from bequests in their annual information statement and publicly report the aggregate data.



Recommendation 9.4

Improve the usefulness of public information sources on volunteering

The Australian Bureau of Statistics (ABS) should improve the usefulness of public information sources on volunteering. It should amend the questions on volunteering in the Census to capture:

- whether respondents engaged in informal volunteering (in addition to whether they engaged in formal volunteering with an organisation)
- the amount of time the respondent engaged in formal or informal volunteering (for example, hours each week).

The ABS should also collect more detailed information on volunteering annually through a survey such as the General Social Survey. At minimum, the survey should collect information on whether respondents engage in formal and informal volunteering, and the time spent engaged in these activities. However, the ABS should strongly consider including additional questions to improve information on volunteering, in consultation with relevant stakeholders.

Following engagement with communities, the ABS should develop methodologies that enable better measurement of volunteering by Aboriginal and Torres Strait Islander communities and culturally and linguistically diverse communities.

Chapter 10: Increasing participation in giving



Recommendation 10.1 Establish Indigenous Philanthropy Connections

The Australian Government should establish an independent organisation, provisionally called Indigenous Philanthropy Connections, controlled by – and for the benefit of – Aboriginal and Torres Strait Islander people and communities.

The goals of Indigenous Philanthropy Connections should be to strengthen the capacity of:

- non-Indigenous philanthropic organisations to be more culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people and organisations
- Aboriginal and Torres Strait Islander people and organisations to build relationships and partnerships with philanthropic and volunteering networks
- Aboriginal and Torres Strait Islander communities by supporting the establishment and growth of new and existing Aboriginal and Torres Strait Islander philanthropic organisations.

Indigenous Philanthropy Connections should:

- have governance arrangements that support self-determination, including a board comprised by a majority of Aboriginal and Torres Strait Islander people
- not replace or replicate existing Aboriginal and Torres Strait Islander philanthropic organisations
- be funded by an endowment from the Australian Government that is large enough to guarantee that it is financially sustainable and independent, without need to seek further funding from either government or philanthropy.

The Australian Government should also fund an independent evaluation of Indigenous Philanthropy Connections, to be conducted 10 years after its establishment.



Finding 10.1 A government-funded public campaign could help broaden participation in giving, but there is insufficient evidence to conclude that such an intervention would be effective

More evidence is needed, including through rigorous evaluations from Australia or overseas, to demonstrate that a government-funded campaign would be effective at increasing giving and yield net benefits to the community.

Governments could maximise the chances of a successful public campaign (and opportunities for learning) by ensuring any public campaigns that involve public resources (whether it be a campaign run by a government agency or public funding of a sector-led campaign) adhere to sound program design, evaluation and transparency principles.

1. About the inquiry

1.1 Background

Philanthropy supports a variety of causes valued by the community

Each day, people across Australia seek to improve the wellbeing and resilience of the community by contributing to causes they care about, whether it be helping the vulnerable, enhancing our cultural and artistic landscape, advancing medical research or caring for animals. There are many ways people support causes they care about including donating money to charities that assist people affected by natural disasters or directly to people in need, or by volunteering their time and skills to benefit others, such as taking a position on a local art gallery board.

These acts of giving are philanthropy – the giving of money, time, skills, assets or lending voice to people and communities that would otherwise receive lower quality, or have less access to, goods and services. In a typical market, a financial exchange occurs between a buyer and a seller for a good or service, but philanthropy does not involve such an exchange. Donors do not expect to receive a financial or other direct benefit in return for their gift.

Many people who give may not consider themselves to be philanthropists and may not use or identify with the term. People who donate their time or assets can come from any part of society – young or old, wealthy or less financially well off, from metropolitan or regional areas. Some cultural or religious communities also have traditions or practices of giving embedded in their belief systems or ways of life.

There are many ways people can give. They can give directly to another person or organisation through peer-to-peer online platforms; they can give by ‘rounding up’ at customer checkouts; they can use giving vehicles, such as ancillary funds; they can sign up to workplace giving programs; or they can give directly to not-for-profit (NFP) organisations that serve the community (box 1.1). Many publicly listed companies have corporate giving programs, providing an indirect way for shareholders to give to charity.

NFP organisations undertake a range of activities. They can deliver goods and services to people in the community, conduct research or provide advice, and advocate for policy change. The areas in which NFP organisations undertake their activities are varied and include the arts, health, education, scientific and policy research, religion, overseas aid, participation in sport, promotion of human rights and environmental protection. These activities often have benefits that, in the absence of philanthropy, would need to be provided or funded by government, or may not be provided at all.

Philanthropy may also generate benefits to society more generally, not just for beneficiaries (the people who directly receive the goods and services provided). For example, volunteering with a community organisation or joining a local conservation group may contribute to creating social norms, networks and trust, facilitating cooperation and promoting cooperative behaviour. Volunteering can also diffuse knowledge and innovations (PC 2003); for example, people volunteering to protect the environment may be able to share knowledge on how best to re-introduce or attract new fauna to the area, or re-plant native vegetation following a natural disaster.

Box 1.1 – ‘Not-for-profit’ captures a range of organisations

A NFP organisation ‘does not operate for the profit, personal gain or other benefit of particular people’ (ACNC, sub. 238, p. 5). NFP organisations can earn revenue in a range of ways, for example, through trading activities. An NFP organisation’s resources, including any surpluses, must be used to fund activities and functions to further its purposes, rather than distributed for the private benefit of members. Although they are not able to distribute earnings, NFP organisations can be influenced by financial incentives – effective and successful NFP organisations must still, over the long run, raise enough revenue to break even to fund the core services they deliver.

There is no statutory definition of an NFP organisation but specific laws can apply that confer benefits, such as certain tax concessions or governance obligations, including winding up clauses if the organisation comes to an end.

A charity is a specific type of NFP organisation. At the Australian Government level, there is a specific legal definition of a charity that requires an NFP organisation to:

- have only charitable purposes that are for, or to advance, the public benefit
- not be an individual, a political party or a government entity
- not have a disqualifying purpose.

A charity's purpose is considered to be for the public benefit if achieving that purpose would be of benefit to the general public, or to a 'sufficient section of the general public', such as a local community, followers of a particular religion, people with a particular disability, refugees or young people (ACNC 2024q). Under section 7 of the *Charities Act 2013* (Cth), certain charitable purposes are presumed to be for the public benefit. A charity can register with the Australian Charities and Not-for-profits Commission (ACNC) with specific charitable subtypes based around their charitable purpose. Charities undertake activities that further their charitable purpose (box 5.1). Public benefit is related to – but different from – the concept of net community wide benefit discussed below and in chapter 6.

Disqualifying purposes are: the purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy; and the purpose of promoting or opposing a political party or candidate for political office (*Charities Act 2013* (Cth), s.11). State and territory governments have their own definitions of a charity, often in their revenue legislation. The ACNC estimated that the term charity is defined in over 40 separate pieces of legislation across jurisdictions (ACNC, sub. 238, p. 16).

Many NFP organisations will seek to be registered as a charity under the Commonwealth definition, as this is a prerequisite to be eligible for a range of benefits including various tax concessions. To become a registered charity with the ACNC under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (ACNC Act), NFP organisations must demonstrate they meet the definition of charity as defined in the *Charities Act 2013* (Cth) and other entitlement criteria set out in the ACNC Act, such as compliance with the ACNC governance and external conduct standards. An organisation can still refer to itself as a charity if it meets these requirements but chooses not to register as a charity with the ACNC. An NFP organisation does not have to be a charity to receive donations.

NFP organisations that are not charities include amateur and community sporting clubs, unions, and many community organisations and groups. Data limitations make it difficult to estimate how many NFP organisations there are in Australia that are not charities registered with the ACNC. The Productivity

Box 1.1 – ‘Not-for-profit’ captures a range of organisations

Commission (2010, p. 58) estimated there were about 600,000 NFP organisations in Australia in 2008-09. There are currently approximately 60,000 registered charities in Australia (based on ACNC 2023).

Government entities are not eligible to be registered charities with the ACNC, but some may act like a charity and receive philanthropic donations. Examples of charitable-like government entities include public hospitals and certain cultural institutions, such as public art galleries, libraries and museums.

The Australian Government’s commitment to grow philanthropy ...

In recognition of the benefits philanthropy can provide to society, the Australian Government has committed to working with the philanthropic, NFP and business sectors to double philanthropic giving by 2030. The Government’s policy objective is based on a view that:

- philanthropic giving underpins the activities of NFP organisations and the percentage of taxpayers who donate has fallen
- people are less likely to join community groups, less likely to volunteer and that a decline in social capital has broad implications for wellbeing, health and social connectedness
- the charitable sector is under pressure as it struggles to support those affected by the COVID-19 pandemic, natural disasters and the rising cost of living (Leigh 2023b).

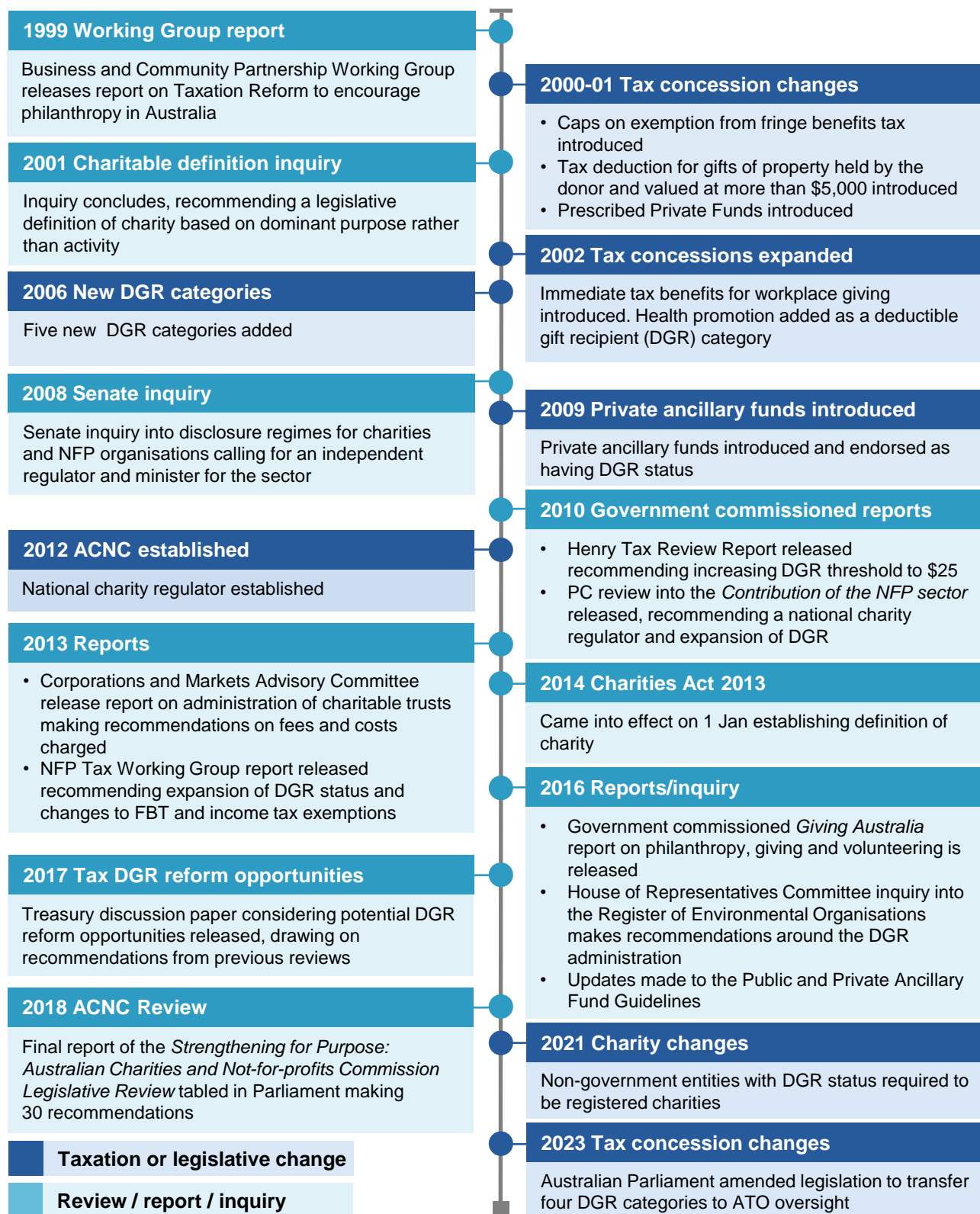
The Government has not specified baseline (or target) figures in the terms of reference for this inquiry.

... is in keeping with a long history of government support

Growing philanthropy has long been a goal of governments and has been supported through a range of policy instruments. In early 1600s England, one of the objectives for the introduction of the *Statute of Charitable Uses* was to foster an enabling environment for private giving (Dal Pont 2021, pp. 81–82). The Australian and state and territory governments also have long histories of supporting giving and the NFP sector. Tax exemptions for NFP organisations have their origins in colonial governments. In New South Wales, hospitals, ‘benevolent institutions’ and certain buildings used exclusively for charitable purposes were exempted from local property taxes. Similarly, the Tasmanian Government exempted ‘any Hospital, Benevolent Asylum, or other building used solely for charitable purposes’ from land tax when it was the first colony in Australia to introduce tax on some income in 1880 (Martin 2017, pp. 196–197, 199).

The ability of donors to make deductions for gifts to charities also has its origins with state governments – first with Victoria in 1907 where it was argued the deduction would encourage giving. The Australian Government’s first income tax legislation in 1915 included an exemption for religious, scientific, charitable or public education institutions and a deduction for gifts exceeding £20 to ‘public charitable institutions’ (Martin 2017, pp. 202, 206). This legislation forms the origins of what eventually became today’s deductible gift recipient (DGR) system, noting it has since undergone several amendments and iterations (figure 1.1).

Figure 1.1 – Select policies for supporting philanthropy since 1999



Sources: ACNC (2024b); ATO (2023d, 2024a); CAMAC (2013); Equity Trustees (2021); House of Representatives Stand Committee on the Environment (2016); McGregor-Lowndes et al.(2017); McGregor-Lowndes and Marsden (2006, pp. 6, 18, 29); O’Connell (2008, pp. 17, 34); PC (2010); Senate Standing Committee on Economics (2008); Tax Laws Amendment (2009 Measures No. 4) Bill 2009; Treasury (2005, 2009, p. 60, 2013, 2017, 2018b).

There have been many reviews into aspects of the NFP sector over the past 25 years – be it tax concessions available to NFP organisations, how NFP organisations are regulated, or its contribution to society (box 1.2). These reports tended to focus specifically on NFP organisations and charities rather than philanthropy, although the exception is the 2005 and 2016 Giving Australia research reports, which examined trends and motivations in giving behaviours in Australia.

This inquiry differs from previous reviews in that its focus is on the full breadth of philanthropy (of which NFP organisations and charities are an important part), covering topics considered in previous reviews (taxation and regulation, for example) as well as additional policies for consideration, including the need for, and availability of, data and other public information, and the effectiveness of foundations in supporting the charitable sector.

Box 1.2 – Many reviews have examined the NFP sector and philanthropic giving

Governments have acted on some key recommendations of past reviews

Prescribed private funds (PPFs) were introduced in 2001 in response to the 1999 report by the Business and Community Partnership Working Group on Taxation Reform to improve philanthropy in Australia (O’Connell and Emerson 2024, p. 282). These funds enabled people to receive an upfront tax deduction for donations placed into the funds, which were then distributed to eligible charities. PPFs were the precursor to private ancillary funds, which were introduced to replace PPFs in 2009 alongside a new regulatory framework. Similar to PPFs, private ancillary funds are a giving vehicle that donors can use to structure their pattern of giving over time. They provide an upfront tax deduction for money or assets transferred into the fund and have legislated guidelines that stipulate a minimum annual distribution rate to charities with item 1 DGR status, as well as other governance rules (chapter 8).

A series of regulatory reforms occurred in 2012-13, most notably the establishment of the ACNC following the Commission’s recommendation to consolidate Australian Government regulatory oversight of charities and NFP organisations. The ACNC’s remit includes NFP organisations that are charities, rather than NFP organisations in the broad sense (box 1.1). Other Australian, state and territory government regulators continue to have regulatory responsibilities related to charities, depending on the organisation’s legal structure, activities (for example fundraising) and jurisdiction in which they operate (chapter 7). A further development was the establishment of a Commonwealth statutory definition of charity through the *Charities Act 2013* (Cth), as outlined in box 1.1.

Several reports have recommended a nationally consistent approach to fundraising regulation (Australian Government 2019b, pp. 83–84, 2020b, p. 44; PC 2010, p. 142). State and territory governments are developing implementation plans for reforms to streamline and harmonise fundraising rules across jurisdictions (Leigh and Pearson 2023) (chapter 7).

Other recommendations have not been addressed

Substantive reforms have not been made to the DGR system, despite reviews recommending changes, including expanding the scope of eligible entities (PC 2010; Treasury 2013) and increasing or removing the minimum deductible threshold (currently \$2) (Henry et al. 2010; IC 1995b; Treasury 2013). Instead, changes to the DGR system have focused on its administration and the inclusion of additional categories, including five in 2006 (for Australian and international disaster relief, animal welfare, war memorial repair funds and health promotion/prevention).

Box 1.2 – Many reviews have examined the NFP sector and philanthropic giving

There was no Government response to the report from the Corporations and Markets Advisory Committee on the administration of charitable trusts (chapter 8). The recommendations included stewardship audits of a cross-section of charitable trusts focusing on sole trustee trusts; amendments to Chapter 5D of the *Corporations Act 2001* (Cth) to adopt fair and reasonable fees and costs charged to clients; and the introduction of legislation to resolve disputes concerning charitable trusts.

The NFP Sector Tax Concession Working Group was tasked with identifying improvements to how support is provided to the NFP sector through tax concessions. The recommendations relating to the income tax exemption, which included changes to the scope of entities exempt and raising the income threshold, have not been implemented. Replacing fringe benefits tax concessions relating to salary packaging with an alternative support payment, along with several other changes to fringe benefits tax that were recommended by the group, also have not been implemented (Treasury 2013).

Several recommendations made to improve NFP regulation have also not been adopted. These include specific amendments to the ACNC Act that were identified in the 2018 Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislative Review (chapter 7).

Tax incentives are the main policy instrument used to encourage giving

Personal and corporate income tax deductions are the main way that the Australian Government encourages giving to charities, but it is not the main way that governments support charities. Together, Australian, state, territory and local governments provided \$97 billion in direct funding to charities through grants and contracts in 2021 – on average, this is about 50% of revenue for charities. Charities also received \$13.4 billion in donations and bequests in the 2021 reporting period (ACNC 2023g, p. 31), some of which was subsidised by the Australian Government through the DGR system.

Today, the DGR system (set out in the *Income Tax Assessment Act 1997* (Cth) (ITAA97)) is the main policy instrument to incentivise giving. It determines which organisations people can give to and receive a personal income tax deduction (chapter 5). The DGR system enables taxpayers to make income tax-deductible donations of money or other assets to registered charities and ‘charity-like government entities’ (or funds operated by such entities) in one of the 52 endorsement categories in the ITAA97 or where an entity has been specifically listed by name in the ITAA97. Certain giving vehicles, such as ancillary funds, are required to distribute their funds only to charities (or certain charitable-like government entities) with DGR status. Obtaining DGR status is therefore considered essential to many organisations wanting to access philanthropy in Australia (Martin 2018, p. 2).

While the primary purpose of DGR status is to enable donors to receive a tax deduction for their gift, the benefit of the DGR system goes beyond individual taxpayers. First, to the extent that the DGR system encourages additional giving, it benefits entities with DGR status, as well as the final beneficiaries of those charities. Second, during consultations, the Commission heard that DGR status can be perceived by some as a ‘stamp of approval’ showing that a charity has undergone a process of scrutiny by regulators, including the ACNC and the Australian Taxation Office (ATO), signalling that a charity is of a certain quality standard (Buddhist Society of Western Australia, trans., p. 410; Croakey Health Media, sub. DR720, p. 3; Educate Plus, sub. 133 p. 4).

In addition, corporations (and unincorporated businesses) can claim a corporate tax deduction for any donation to entities with DGR status. Businesses can also ‘donate’ to charities without DGR status and other

NFP organisations for the purpose of advertising, sponsorship, promotion or developing goodwill and claim a tax deduction as an ordinary business expense.

Australian, state, territory and local governments also provide substantial support to charities through a range of other tax exemptions and concessions that reduce the cost of operating a charity. This includes fringe benefit tax exemptions and partial rebates, income tax exemptions, goods and services tax (GST) concessions, land tax exemptions, stamp duty exemptions, payroll tax exemptions and rates exemptions. Tax concessions can also support volunteers, with benefits or payments to volunteers exempt from tax where it is provided to them in their capacity as volunteers (ATO 2022).

Some tax concessions to NFP organisations can be reasonably measured by estimating forgone revenue compared to a situation with no tax concessions. For example, exemptions from fringe benefits tax for some charities, including public benevolent institutions and health promotion charities, were estimated to cost the Australian Government \$2.4 billion in 2021-22 (Treasury 2023d, pp. 139, 141). This figure excludes exemptions for NFP hospitals, certain employees of religious institutions and meal entertainment exemptions. Further, exemptions from payroll tax for charities in New South Wales were estimated to cost the NSW Government \$1.4 billion in 2021-22 (NSW Government 2023, pp. A2-10).

The cost of other tax concessions is not so easily measured in terms of forgone revenue. For example, NFP organisations are exempt from income tax. In this case, the counterfactual of the tax concession being removed or not existing does not necessarily make conceptual sense. A principle of being an NFP organisation is that either there are no shareholders, and therefore no one to distribute earnings to, or where there are shareholders there must be a non-distribution clause. That is, there is no income generated that could be taxed. However, Australian charities also undertake a wide range of 'commercial-like' activities to further their charitable purpose, which would be taxed if the activity were performed by a for-profit entity. Even in this case, estimating the revenue the Australian Government forgoes because of the income tax exemption for NFP organisations is not straightforward.

Significant policy developments have changed the role of philanthropy

Notwithstanding the recommendations of past reviews and current review processes (box 1.2), many policy settings affecting NFP organisations, particularly charities, and philanthropy are similar to those that applied ten years ago. During this time, the role and nature of philanthropy, and of NFP organisations, has changed substantially.

The role of NFP organisations – and the environment in which they operate – has fundamentally changed in recent decades. Charities typically relied on donations to fund the delivery of services prior to the 1970s. Since the 1970s, government funding of the sector has grown. More competitive government funding models were adopted from the 1980s, including government 'purchasing' services through competitive contract processes and adopting commissioning approaches to stewardship of services (PC 2010, p. 14). This coincided with the emergence of New Public Management – public sector reforms that adopted management approaches typically found in the private sector, including the use of incentives to achieve desired outcomes, and competition and disaggregation to drive public sector efficiency and effectiveness (ANZSOG 2020). These reforms often changed the way government contracted NFP organisations to deliver services and the incentives used to encourage effective service delivery.

More recently, social services traditionally provided by NFP organisations, including in disability and aged care, have undergone significant funding reform with the introduction of consumer directed care (for example the National Disability Insurance Scheme). This sees funding placed in the hands of the service user or consumer (rather than government), who then chooses which provider and services they will purchase.

Where NFP organisations previously dominated service provision, consumer directed models of care have also led to for-profit organisations operating and competing alongside NFP organisations to deliver core social services (or taken over by an NFP aged care provider in the case of Japara Healthcare, which was a listed company until 2021) (Cavalry 2021).

The role for philanthropy in supporting NFP service delivery within consumer-directed care funding models is now different – policy reforms have fundamentally changed the incentives under which NFP organisations operate. The policy changes have shifted control for care from government to those who are receiving the services. As a result, NFP organisations and other service providers are now directly responsible to the people whose care they provide, rather than government.

For services using consumer-directed care models, governments are limited in their ability to use financial incentives to reward or penalise good or poor service providers and they cannot determine the price paid for services (although there are some exceptions). These changes may also influence the relative merits of NFP organisations working with government compared to philanthropy.

Government approaches to public policy have also changed; Governments have made policy commitments to develop policies in partnership with the individuals and communities that policies affect, including commitments under the *National Agreement on Closing the Gap* and *Australia's Disability Strategy 2021–2031*. Such commitments seek to improve how governments engage with service providers and recipients of goods and services.

The philanthropic and volunteering landscape will continue to evolve ...

Increases in charitable donations (chapter 3) mean it is likely more money and other assets will flow into, and out of, charities. Donors today have more options about who to give to and new transaction technologies are influencing how they give.

Technological changes are facilitating new ways of giving, including the use of QR codes and peer-to-peer giving platforms. Social media is used to drive fundraising campaigns. Charities now compete for the donor dollar with people who use peer-to-peer giving platforms to fundraise for their own purposes. Websites that match people or organisations seeking support with those looking to help have provided an alternative avenue for people to pursue volunteer opportunities. The use of cash is declining and the Australian Government is phasing out cheques, a payment method from which some charities reported they still receive over 50% of their donations (Mulqueeney and Livermore 2023; Treasury 2023e; Fundraising Institute of Australia, sub. 134, p. 5) (chapter 3).

Many older Australians have accumulated considerable wealth over their lifetime, buoyed by increases in property prices and growth in superannuation balances. Transfers of this wealth are large and growing, and predominantly made in the form of bequests to adult children and spouses (PC 2021, p. 11). This has implications for philanthropy – both in terms of how the act of philanthropy adapts to changing preferences and motivations, as well as how giving behaviours change between generations (chapters 3 and 8).

Policy makers are examining alternative models for achieving social or environmental objectives, such as social impact investing (which intends to provide a financial return to an investor), and how these might complement or substitute philanthropic giving. While private capital and philanthropy previously had different purposes, and operated in distinct spheres, they are increasingly working together toward achieving common goals by providing 'risk capital' for innovations that have a social benefit (Braemer 2015).

Broader social, economic and demographic changes have also shaped volunteering participation. Increases in real wages and labour force participation have over the last couple of decades also increased the

opportunity cost of volunteering. People are remaining in the workforce for longer, and female labour force participation has increased (chapter 3).

Corporate philanthropy can act as an additional source of funds for NFP organisations and beneficiaries. Corporate social responsibility has been a mainstay for businesses for some time, with many organisations contributing time, knowledge, support or advocacy, goods, services, assets or money to NFP organisations. The increasing profile of environmental, social and governance (ESG) issues over recent years has created even greater impetus for businesses to prioritise their social, governance and environmental footprint and contribution (Longo 2023). However, the credibility of some corporate ESG actions has recently been questioned. The Australian Competition and Consumer Commission and the Australian Securities and Investments Commission have released reports and developed guidance on ‘greenwashing’ (a term used to describe businesses making misleading environmental claims) and corporate transparency to address concerns that businesses overstate their claims, including on websites and corporate social responsibility statements (ACCC 2023b; ASIC 2023). A Senate inquiry on greenwashing is due to report in June 2024 (Parliament of Australia 2023).

... which has implications for NFP organisations

NFP organisations face new challenges, including meeting donor expectations around transparent reporting of the effects donations have on outcomes for the people and communities they provide goods and services to, and adapting their fundraising and marketing activities to retain and attract new donors. Cost of living pressures may increase demand for some goods and services provided by NFP organisations at a time when people, who otherwise would do, may be less able to donate financially or to volunteer due to changes in their own circumstances.

There are also donors (and the organisations they created) and NFP organisations whose past actions are subject to new scrutiny because of changing community expectations and standards. This can include a focus on the sources of wealth used for philanthropy, the beliefs or actions of a founder, or the way NFP organisations have interacted with people and communities when providing services for them. Where these issues arise, some donors and NFP organisations are seeking to acknowledge their past and what this means for their future. For example, Australia’s oldest foundation, the Wyatt Trust, has embarked on a truth-telling project that includes the voices and perspectives of First Nations peoples to understand its founder’s legacy, treatment of First Nations people and the sources of the wealth used to establish the trust (Caruso 2022). The Centre for Social Impact and Jumbunna Institute for Indigenous Education and Research also noted:

Philanthropy and charity have a historical legacy for Aboriginal and Torres Strait Islander people as part of white settlement. The use of missions and reserves were implemented as a way of ‘protecting’ First Nations peoples, however resulted in family separation, illness, and separation from language and Country. The impacts of this enforced assimilation continue to be experienced today. There is a fundamental disconnect and power imbalance between Indigenous organisations and philanthropists, exacerbated by longstanding misconceptions and cultural imbalances rooted in colonisation. (2022, p. 11)

With more choices, and more information to make those choices, donors can also now give in a way that aligns with their preferred purpose, how that purpose is achieved and by whom. Similarly, NFP organisations can make choices including, for example, to decline support from donors who create wealth in a way that does not align with the values or purpose of the NFP organisation.

1.2 The Commission's approach to the inquiry

The Government's agenda to support philanthropy

The Australian Government has, in the context of its goal of doubling giving by 2030, asked the Commission to undertake an inquiry to analyse motivations for philanthropic giving in Australia and identify opportunities to grow it further.

The inquiry coincides with other government policy development processes related to the NFP sector and philanthropy.

- The Australian Government Department of Social Services is working with sector stakeholders to develop a *Not-for-profit Sector Development Blueprint* and exploring opportunities to develop *A Stronger, More Diverse and Independent Community Sector*. Both processes have released an issues paper and conducted a consultation period (DSS 2023b).
- The *Treasury Laws Amendment (Refining and Improving Our Tax System) Act 2023* (Cth) to reform administration of four DGR categories came into effect on 1 January 2024 (chapter 5).
- State and territory governments are developing implementation plans for reforms to streamline and harmonise fundraising rules across jurisdictions (Leigh and Pearson 2023) (chapter 7).
- The Australian Government is working with jurisdictions to develop options for national reform to enhance child safety and reduce regulatory barriers around working with children checks (National Office for Child Safety nd) (chapter 7).
- The Department of Social Services is providing funds to Volunteering Australia to coordinate implementation of the sector-led *National Volunteering Strategy 2023–2033* (Rishworth 2023).
- The Australian Government has introduced the *Treasury Laws Amendment (Support for Small Businesses and Charities and Other Measures) Bill 2023* to provide a pathway for up to 28 community foundations to be endorsed as deductible gift recipients (Leigh 2023a).

The Commission took these policy development processes into account when developing its findings and recommendations and the findings of other reviews including the Commission's 2010 contribution of the not-for-profit sector inquiry.

The Commission examined various forms of giving

There are different definitions, perspectives and attitudes toward giving, shaped by a person's culture, values and experiences, all of which contribute to views on what governments should or should not do to encourage giving. The Commission examined views and information on what philanthropic activities should fall within the scope of this inquiry. Where activities lie at the boundaries of conventional definitions of philanthropy, the Commission was guided by the terms of reference, and participant input and feedback to determine the scope of the inquiry.

One area some participants asked the Commission to include within the scope of the inquiry was social impact investing (Minderoo Foundation, trans., p. 379). The Commission heard that social impact investing is becoming an increasingly popular tool to fund and deliver social outcomes, and often achieves similar objectives, and operates in similar contexts, to philanthropy (Grant Thornton Australia, sub. 157, p. 2; Philanthropy Australia sub. 162, p. 38).

The Commission is interested in the ways conventional forms of philanthropy and social impact investing are likely to interact in the future – and particularly whether social impact investing may crowd in or crowd out philanthropy. However, based on feedback received on its call for submissions paper, the Commission chose to focus on philanthropic activities by donors who do not expect a direct financial return to their giving,

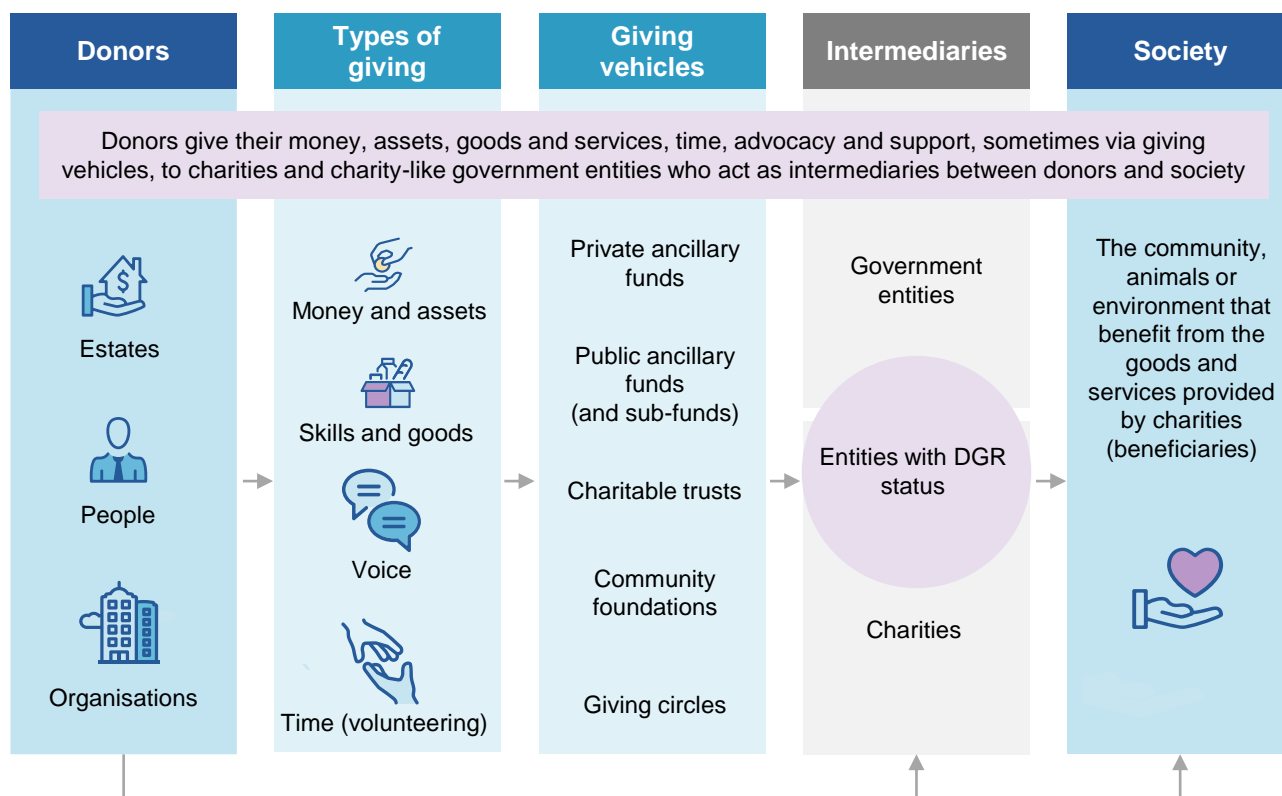
thereby excluding social impact investing from the direct scope of this inquiry. The Commission notes that following the release of its draft report, there have been other Australian Government processes focused exclusively on social impact investing, including the release of the Final Report of the Australian Social Impact Investing Taskforce and the Treasurer’s Investor Roundtable session on Social Impact Investing, both of which occurred in December 2023.

Some participants also asked the Commission to identify broader opportunities to strengthen the capacity of charities and the environment in which they operate, in a similar vein to the Commission’s 2010 inquiry into the Contribution of the Not-for-profit sector (Fundraising Institute of Australia, sub. 134, p. 4; Philanthropy Australia, trans., p. 440; The Balnaves Foundation, sub. DR620, p. 6; The Funding Network, sub. DR691, p. 2). The focus of these two inquiries is different, the 2010 report had a wider focus on the NFP sector, while this inquiry had a more specific focus on philanthropy. As such, the Commission was of the view that charitable sector capacity strengthening was not within the scope of this inquiry, nor was it encompassed within the terms of reference. Further, there are other government processes underway that focus on these issues, as mentioned above.

This inquiry focused on three types of donors (people, organisations and estates) giving their money, time, skills, assets or lending a voice to people, communities or causes (figure 1.2). The giving of time through volunteering is included as a form of philanthropy in this inquiry. However, the Commission heard that volunteering is often considered by organisations relying on volunteers, and by volunteers themselves, as being distinct from what is commonly regarded as ‘philanthropy’. The Commission sought to understand the differing characteristics of volunteering compared with other forms of philanthropy and reflected this in the analytical approach.

Figure 1.2 – Components of philanthropy

Aspects of philanthropy that are within the inquiry’s scope



Source: Adapted from Philanthropy Australia 2009, sub. 62 to the Commission’s inquiry into the Not-for-profit sector.

The Commission mainly considered the flow of different forms of giving via charities and charity-like government entities that act as intermediaries between donor and beneficiary. The inquiry focused on charities as defined in the *Charities Act 2013* (Cth), including those with and without DGR status. Charity-like government entities that receive DGR status, for example museums, art galleries and libraries were also within scope. However, NFP organisations that are not charities were not generally within the scope of the inquiry, except where recommendations may have broader implications for NFP organisations (box 1.3 explains the terminology used in this inquiry).

The reason for this focus is that government's role influencing giving is centred on registered charities and organisations with DGR status – these are the entities generally used to promote, receive and distribute philanthropic donations.

The Commission has analysed giving trends, motivations, and policy implications for different types of donors, including individuals, organisations and estates. The Commission also examined the many vehicles through which donors can give, including private ancillary funds, public ancillary funds (and sub-funds), bequests, charitable trusts and workplace giving programs (chapters 3 and 8).

Box 1.3 – Terminology used in this inquiry

This inquiry uses the terms registered charities and charities interchangeably to refer to charities that are registered with the ACNC, including those with and without DGR status. NFP organisations is a term used to describe organisations that do not use their profits for private benefit of certain people, such as members, and may include charities (those registered or not registered with the ACNC) and non-charities.

Some charities have DGR status – the Commission uses the term 'entities with DGR status' to refer to organisations and government entities with DGR status. Government entities with DGR status includes some public hospitals, museums and art galleries, for example (chapter 5). Ancillary funds are able to give to most, but not all, entities with DGR status.

The term 'structured giving vehicle' (also referred to as 'giving vehicle') is used to describe a structure in which donors can place assets for future distribution to eligible charities. Charitable trusts are an example of a structured giving vehicle and may be used to facilitate certain forms of giving, including some charitable bequests. Ancillary funds – comprising private ancillary funds and public ancillary funds (and their sub-funds) – and certain community foundations, are structured as charitable trusts.

Some giving vehicles adopt the name 'foundation', for example a business may use a public ancillary fund for its 'corporate foundation', or a family may use a charitable trust or private ancillary fund for their family foundation. A 'community foundation' can commonly comprise both a public ancillary fund and also a separate charitable trust. Since a foundation is not a specific type of entity with a distinct legal meaning in Australia, the term foundation is used in this report in its broad sense and could refer to any giving vehicle that refers to itself as a foundation (McGregor-Lowndes and Williamson 2018, p. 1760).

The Commission acknowledges the difference between the Commissioner of the ACNC, who has general administration of the ACNC Act, and the powers and functions imposed or conferred by that Act, and the ACNC which includes the Commissioner of the ACNC and staff assisting the Commissioner in the performance of their functions. For readability purposes, this inquiry refers to the ACNC to encompass both the Commissioner of the ACNC and the ACNC, except where it is making specific findings and recommendations in relation to the powers and functions of the Commissioner of the ACNC.

The Commission assessed policy reforms from a community-wide perspective

The terms of reference assign the Commission three broad tasks:

- analyse trends in philanthropic giving in Australia and the drivers of these trends
- identify opportunities for, and obstacles to, increasing philanthropic giving in Australia
- recommend ways to respond to these opportunities and obstacles.

The terms of reference also ask the Commission to examine the effectiveness and fairness of the DGR framework and the ability of donors to assess and compare charities.

The Commission identified aspects of current arrangements that are not fit for purpose, and that may impede giving that benefits society, including:

- regulations that impose unnecessary restrictions and regulatory burdens on charities (chapter 7)
- regulatory gaps that may deter donors or impede donations being used for intended purposes (chapter 7)
- lack of information or data that inhibits donors' (and other stakeholders') ability to make informed decisions about giving (chapter 9)
- policy settings, such as the DGR system, that are poorly designed, or overly complex, which creates unfair and/or inconsistent outcomes for donors and charities (chapter 5).

The Commission also examined opportunities for governments to address these deficiencies (and potentially increase philanthropy) through new or amended policies. The Commission sought to make recommendations so that the *foundations for giving* are in place to support peoples' giving practices into the future and the Australian Government's goal to double giving by 2030.

The Commission's recommendations are informed by consultation and engagement with people and organisations that receive or provide philanthropic giving and its analysis considered the practical aspects of how recommendations may be implemented.

The Commission considered the expected costs and benefits of reform options to the community, and distributional effects (that is, the extent to which particular individuals or groups would likely be better or worse off following a policy change) (chapter 2). The Commission's view is that philanthropy policies should seek to improve the wellbeing of the community as a whole, noting that certain policies may affect people (donors/beneficiaries/taxpayers) and types of charities differently. The Commission's recommendations and findings are based on an assessment of possible changes which could meaningfully increase the amount of giving, and influence how philanthropy is undertaken in Australia, which the Australian Government can consider in the context of its target to double giving.

The Commission benefited from extensive engagement

The Commission drew on a variety of sources to inform this report, including data from the ATO (such as donations claimed as tax deductions and the Australian Taxation Office Longitudinal Information Files dataset), the ACNC, academia, industry expertise (such as JBWere's estimate of the value of donations not claimed as an income tax-deduction), inquiry participants and surveys (box 3.1).

The Commission engaged widely, including with the Australian, state and territory governments, the philanthropic, NFP and business sectors, people who have technical and subject matter expertise, and the community more broadly. The Commission engaged with Aboriginal and Torres Strait Islander organisations and people and sought to reflect their perspectives on philanthropy.

The Commission held over 120 consultations, received 1,611 public submissions and 1,593 brief comments, and held six public hearings to discuss feedback on its proposed reforms, including how they could be implemented (appendix A).

In addition, the Commission held three roundtables to discuss Aboriginal and Torres Strait Islander people and organisations' interaction with philanthropy, reforms to regulation and the DGR system, and the approach used to analyse how people may respond to tax incentives for giving. The Commission would like to thank all participants for their contributions to the inquiry, including those who provided data and information to assist our analysis.

The Commission provided the final report to the Australian Government in May 2024.

2. Philanthropy and the role of government

Key points

- ✳ **Philanthropy can help fill gaps in market and government provision of goods and services.**
 - Some services, such as health care and housing, are fundamental to a person's social and economic participation, while others like arts and cultural institutions can help connect people to their community and promote social inclusion.
 - Competitive, well-regulated markets mostly work well to supply the level and quality of goods and services valued by the community, but gaps can emerge and some people, or people in some locations, will miss out. Outcomes from market exchanges do not always meet the community's expectations about what goods and services should be provided or what is a just and fair distribution of wealth, income or access to goods and services. In these cases, there may be a role for government to intervene directly.
- ✳ **In principle, governments can play a role in supporting philanthropy to help improve efficiency and equity when markets or governments fail to deliver socially-desirable outcomes.**
 - To address market gaps, governments can directly provide goods and services, but this can fail to meet community expectations. In these instances, there may be a case for government to intervene indirectly by supporting philanthropic giving or by directing philanthropic giving toward activities valued by the community.
 - Philanthropy can contribute to the cost of providing goods and services which either markets or government underprovide or do not provide at all.
- ✳ **Philanthropy can also contribute to the building of social capital where relationships form between donors, between donors and not-for-profit organisations, or between donors and beneficiaries. These relationships can become networks of connected people that facilitate trust and co-operation within or between groups that can be drawn upon, including in times of crisis or to disseminate knowledge.**
- ✳ **Designing policies to support philanthropy involves understanding trade-offs. Subsidising philanthropy can encourage giving that benefits the community, but also contributes to tax expenditures. Governments have less direct control over how public funds are spent when subsidising philanthropy, but philanthropy can support different activities to meet diverse needs within a pluralist society.**
- ✳ **Charities have preferences on the mix of revenue received from government and from philanthropic donors, based on the relative strengths and limitations of different sources. For example, philanthropic donors may be more willing than government to fund trials of innovative initiatives.**

The Australian Government asked the Productivity Commission to identify and assess opportunities to increase philanthropic giving. The Commission developed an economic framework to examine the potential benefits and costs to the community of different forms of government involvement in philanthropy (figure 2.1). This framework has been used to consider the respective roles of various policy levers to influence philanthropic giving.

Philanthropic giving is not a conventional market with price signals, where goods and services are exchanged for financial benefit; nor would it be well-served by a narrow analysis focused solely on achieving economic efficiency. However, efficiency – broadly conceived – and equity remain important principles, and a sufficiently broad economic framework can, and should, consider both objectives. When applied, the framework can be used to identify policy problems and assess which policy tools might be suited to the goal of supporting – and eliminating barriers to – philanthropic giving, and which may not.

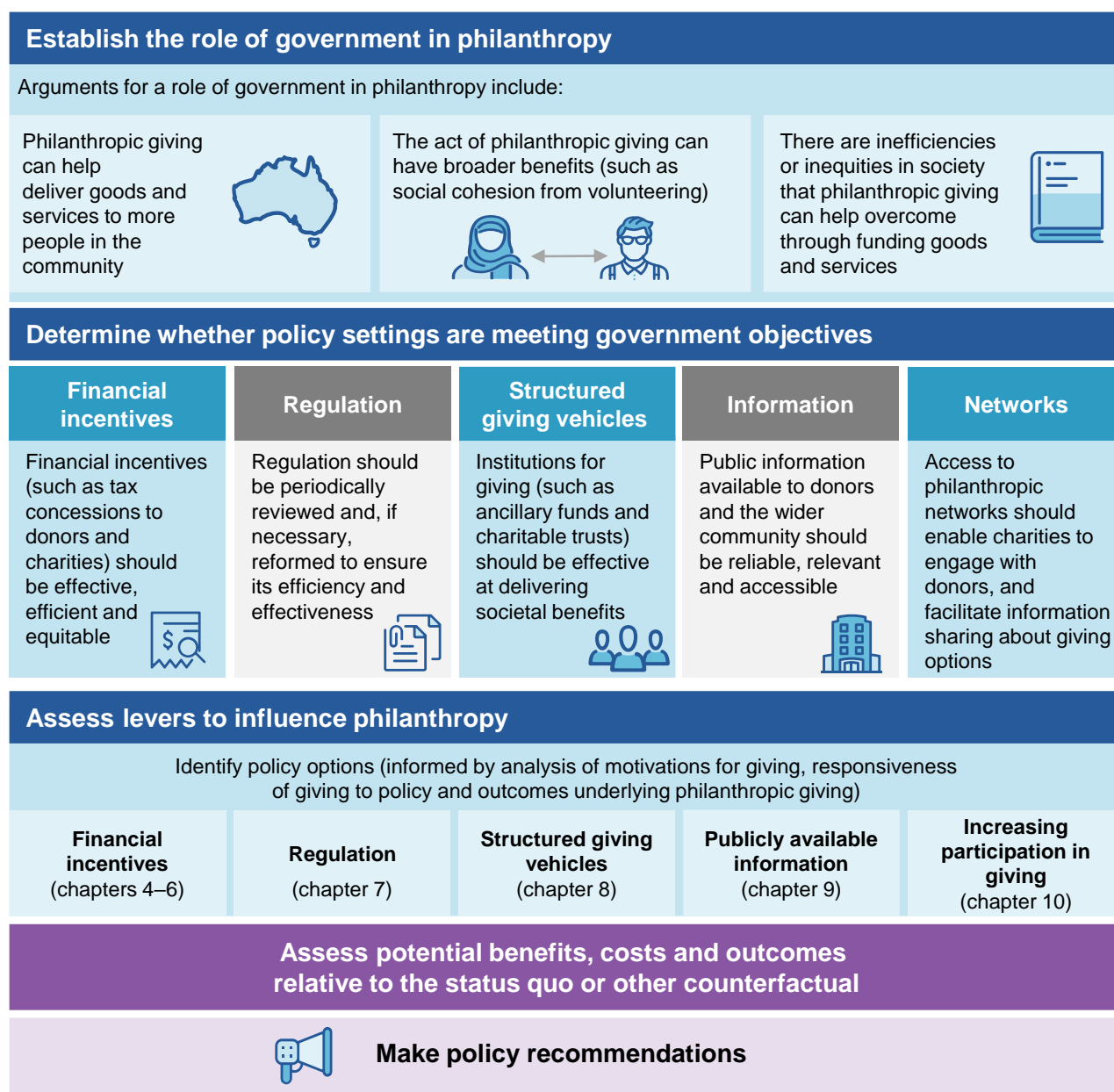
The framework also considers any benefits to the community that are attributable to improvements in social capital, which can be broadly described as the value derived from social connections and networks. Social capital can take different forms – it can include the social norms developed through groups of people, the trust and obligations arising from people's interactions, and information flows between people. These different forms of social capital can encourage (or deter) people from acting in certain ways (Coleman 1988, pp. S102-105).

The Commission's application of the framework accounts for incentives, motivations and outcomes underlying philanthropic giving – factors that in many cases are unlikely to be reflected in a typical market exchange of goods and services. This includes the role of information and donors' motivations (such as altruism) to reduce perceived levels of inequality through better access to goods and services, such as those provided by charities or, in some cases, the transfer of wealth to others.

The Commission has drawn upon the perspectives of people who donate their money or time, academics, organisations, including charities, and representatives of peak bodies and government agencies, to inform its views on whether governments *should* act to increase philanthropic giving, and the equity and efficiency benefits and costs of policy options to meet that objective. To determine whether government *should* act, the Commission has considered the trade-offs from government involvement including the potential relative costs and benefits of policy options, and the risk of any unintended consequences (positive or negative) that may arise. For example, government may want to increase philanthropy, but doing so through expanded tax incentives can involve forgoing tax revenue that can be used to directly fund the provision of other goods and services.

Governments have various policy levers to influence philanthropic giving (figure 2.1). The levers include the deductible gift recipient (DGR) system, which allows donors to eligible entities to claim a deduction from their taxable income (chapters 4, 5 and 6), regulation (chapter 7), structured giving vehicles including bequests from superannuation (chapter 8), providing information (chapter 9) and enhancing access to philanthropic networks (chapter 10). Keeping the status quo is also an option available to government, and it is likely that giving, particularly donations by individuals, will continue to grow under the status quo (chapter 3).

In applying the framework, the Commission also considered the motivations and drivers for giving, which can be influenced by factors including culture, identity and people's preferences to giving or not give.

Figure 2.1 – Approach to assessing the role of government in philanthropic giving

2.1 The role of government in philanthropy

Governments have a long history of supporting giving and the not-for-profit (NFP) sector. For example, tax concessions for NFP organisations and the ability of donors to make tax deductions for gifts to charities have existed in Australia for over 100 years (chapter 1). The Commission is in a unique position to review the full breadth of government policies related to philanthropy and to determine whether policies are meeting the Australian Government's objectives. The starting point for this discussion is to determine what the role of government is in relation to philanthropy.

Philanthropy can help government respond to market failures

While markets mostly work well in supplying goods and services to the Australian community, gaps sometimes emerge in private sector provision which mean some goods and services are of poor quality, are underprovided or some people miss out altogether, given production costs and household budgets and preferences. Further, outcomes generated by markets do not always meet individual or community preferences or expectations. People can have different preferences over the outcome of market exchanges, particularly with respect to the distribution of income and wealth, the overall quantity or quality of goods and services provided, or the accessibility of goods and services to some people or in some locations. The reasons why markets can fail to generate the efficiency or equity outcomes expected by the community are set out in box 2.1.

Box 2.1 – Reasons why governments may intervene in markets

Where the market fails to deliver the best allocation of resources for the community, one option is for governments to intervene to support economic efficiency and equity objectives.

Externalities occur when there are broader benefits (or costs) from someone purchasing a good or service that are not considered or compensated for in the market exchange. For example, driving a car may create an uncompensated cost or negative externality to society as it pollutes, but a person may still decide to drive a car and not factor this societal cost into their own decision. In some extreme cases, externalities or information asymmetries may be so strong that governments may judge that people should consume more (in the case of merit goods, for example, public transport that produces less air pollution than use of private cars) or less (in the case of demerit goods) than they otherwise would.

A **public good** is one where a person cannot be excluded from using it (non-excludability) and where its use by one person does not reduce availability to other people (non-rivalrous). These features can lead to public goods being underprovided by markets because users are able to benefit, but do not have to pay for them, known as the free rider problem. National defence is an example of a pure public good.

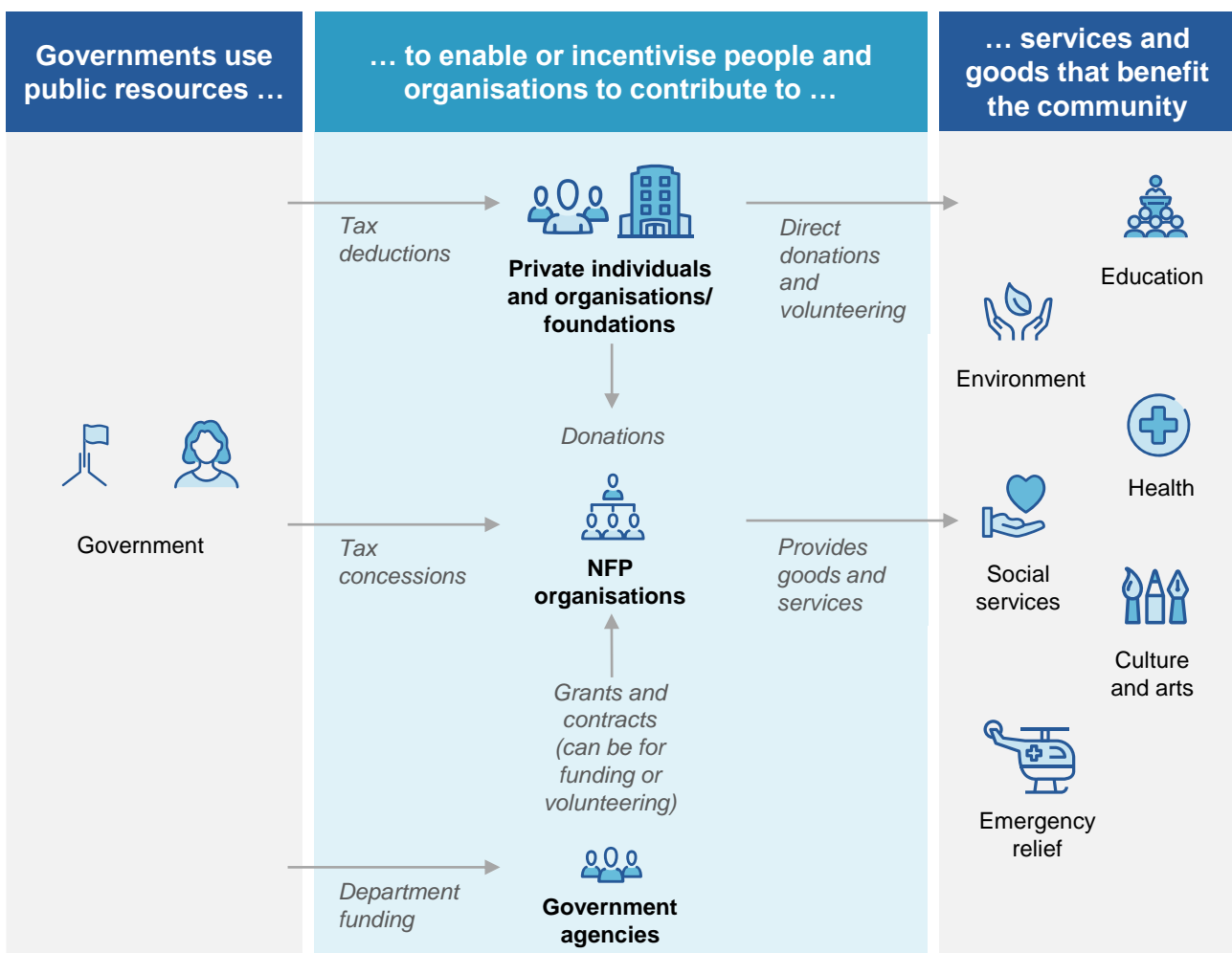
Although most market transactions involve parties making decisions based on different levels of information, a major **imbalance of information** (or information asymmetries) can allow one party to gain a significant advantage at the expense of others. For example, in social services such as health care, it may be difficult for patients to assess the quality of service providers or know what services they need.

A **lack of effective competition** between firms can give rise to one provider (or a small number of providers) having market power. A firm merely possessing market power is not necessarily a concern; rather, it is if the firm *uses* their market power to the detriment of the community that there may be a case for government intervention. A firm using their market power could charge unduly high prices and/or undersupply the good or service. For example, a single dental service in a sparsely populated area could have market power, raise prices and/or reduce the quantity of services it supplies below efficient levels.

Equality of opportunity and the fairness of the distribution of resources across society are considered by many to be important components of community wellbeing. Governments may seek to address various forms of inequality. For example, often markets for social services such as hospital or dental care will not deliver an appropriate distribution of services across the community because there are people with limited incomes, or in particular locations, who are excluded from certain services. The tax and transfer system is one mechanism the government uses to redistribute resources.

There are many ways government can act to address market failures or inequality to shape outcomes for the benefit of the community. It may not always choose to, but where it does, government can participate directly as a provider of goods and services or fund other people or organisations, including NFP organisations, to do so. Many social services, such as health and education, are provided by government and non-government organisations, with a mix of public, private and philanthropic funding (figure 2.2), and often utilising the work of volunteers. So too are some environmental services, such as wildlife conservation, and cultural institutions. In many cases government will provide a base level of what is expected by the community. For example, governments fund health care, the public schooling system for education and a system of social services to help those in need.

Figure 2.2 – Government policies to support the provision of goods and services



Government can fund goods and services for the community through taxation or borrowing money. There are certain factors that may influence how government seeks to fund a good or service, and some approaches may be more efficient than others. For example, there may be sectors where there is a direct relationship between public spending and private spending – increases in government spending on a service such as disability services may reduce or ‘crowd out’ private spending for the same cause or vice versa. It may also depend on the nature of the good or service itself. Something like national defence is referred to as a pure public good in economic terms (box 2.1), whereas mixed goods such as health care may have components of private (or rivalrous) consumption (Roberts 1987, p. 435). Further, the choice of funding instrument can depend on the relative efficiency of government and private provision, and the

responsiveness of private spending to various tax and subsidy incentives (Feldstein 1980; Roberts 1987). The responsiveness of giving to tax incentives is considered in chapter 4. These factors can all influence how government most efficiently funds a good or service.

In other cases, government will seek to control or influence behaviour through regulation. For example, it may mandate minimum standards for participants operating in a market and/or can require public reporting of quality and performance measures. It can also use taxes and subsidies to create disincentives or incentives which influence how goods and services are provided.

Government can and does intervene in markets, but it cannot, or sometimes fail to, fill all the gaps that emerge in markets. Government is also subject to information asymmetries and may not have the knowledge or expertise to provide services in certain locations or to meet the needs of people receiving services. It is often the case that government is not best placed to provide a particular service – it can be higher cost, more risk averse and without the incentives to innovate compared to the private or NFP sectors.

Government also faces its own constraints. The reality is that ‘resources are scarce in government: political capital, ministerial time, public attention, public tolerance for reform, bureaucratic resources, and money’ (Daley et al. 2020, p. 6). These constraints mean that government regularly (and quite appropriately) makes trade-offs between what to provide or fund, and how much. This inevitably creates gaps compared to what might be more efficient, or what might be expected by the community or a section of the community.

Philanthropic giving can help overcome some of the reasons government fails to provide an efficient and equitable distribution of goods and service (OECD 2020, pp. 23–24; Salamon 1987, p. 39). Inquiry participants suggested that one of the primary functions of philanthropy is that it seeks to – and, in fact, does – fill gaps in government provision (Philanthropy Australia, sub. 162, p. ii; Royal Flying Doctor Service, sub. 126, p. 6). This includes contributing to funding gaps – \$13.4 billion was donated to charities in 2021 – but philanthropic giving can also overcome some of the other failures inherent in government provision by unlocking the benefits to the community of NFP organisations as providers of goods and services (ACNC 2023g, p. 8).

Philanthropic giving can also facilitate the voluntary redistribution of goods and services to people for whom access would otherwise be unaffordable or who are in locations that would otherwise be poorly served. This voluntary redistribution may promote more equitable access to goods and services, such as food, clothing, housing, disaster relief, certain types of health services and some education services. Some charities directly redistribute donations of cash and goods to people who are facing hardship. Philanthropy can also lower the cost of accessing cultural institutions, such as art galleries and theatres, that may otherwise have only been available in metropolitan centres.

The role of philanthropy can be broader than simply substituting for, or complementing, actions taken by governments. Giving can provide a form of oversight and accountability to NFP organisations through their funding requirements. For example, some donors focus on particular types of NFP organisations, such as those that provide specific services or provide services to specific cohorts of people. Other donors assess NFP organisations prior to granting support, and work with them over the life cycle of funding agreements, including through impact evaluations, to help ensure they deliver outcomes in line with their priorities. However, this can also impose a burden on NFP organisations – in some cases philanthropy from foundations can impose a similar level of grant application and acquittal requirements as government.

Philanthropic donors can also indirectly provide information to government, including signals regarding the goods and services that are valued by the community. Typically, where available and observable, price signals for goods and services purchased provide information about communities’ values and preferences. However, market prices are only one indicator of a community’s values and might not capture some aspects

of the needs and preferences of a community. There may not even be a market price for some services, such as advocacy for public policy changes. Philanthropy allows donors to voluntarily act on their preferences alongside the market system, regarding who receives goods and services, income and wealth, rather than relying solely on market outcomes or government. It can also enable particular groups of donors, such as people from culturally and linguistically diverse communities, to provide support that reflects the needs and priorities of those communities.

These features of philanthropy improve the wellbeing of the community and provide a *prima facie* role for government to support philanthropic giving. Philanthropy, including in some cases the act of giving itself, can also provide benefits to the community that are additional to the monetary value of the cash, goods, services and time donated. For example, philanthropy can contribute to building networks of connected people that facilitate trust and co-operation. Such social capital can foster social cohesion and wellbeing and can be drawn upon in times of crisis. These wider benefits also need to be accounted for when government is considering whether and how it should support philanthropy.

Philanthropy has some strengths that government funding does not

Philanthropy can provide flexible funding that facilitates innovation

In a range of economic, social and environmental settings, the concept of opportunity cost and considerations of comparative advantage (relative opportunity costs) are key for both the private and public sectors. The same is true for NFP organisations. They – and in some cases the donors themselves – may be more effective and efficient than either market or government provision when they have specific skills, relationships or experience working with communities (including in partnership) receiving services or networks that the government cannot access. These skills and networks may allow NFP organisations and donors to achieve better and more highly valued outcomes, such as by enabling higher quality, more accessible, or more timely service delivery, at lower cost compared with direct government provision or grants.

The way NFP organisations are funded matters and different sources can have advantages over government funding. Government faces various constraints which can result in them being more risk averse when funding goods and services which can result in funding being limited to shorter timeframes or to specific activities. In contrast, most mass donations are ‘untied’ – the NFP organisation has flexibility over how the funds can be used. Flexible or untied philanthropic support can provide a form of ‘risk capital’, enabling NFP organisations to innovate by, for example, trialling new initiatives or approaches to service delivery and evaluating their effectiveness (box 2.2) (Colman Education Foundation, sub. 190, p. 2; Grant Thornton Australia, sub. 157, pp. 6–7; Paul Ramsay Foundation, sub. 234, p. 3).

Box 2.2 – Participant perspectives on philanthropy encouraging innovation

Alannah and Madeline Foundation:

The characteristics of the philanthropy dollar in a charity's revenue mix are unique and precious. It is the only social change dollar that can be used as social risk capital: it is free to fund innovation, to pilot, to fail and try again ... There has been a plethora of research on what 'effective' philanthropy looks like, and its diversity and freedom are core to its success. It is free of government and political agenda and election cycles: it can fund activities and costs that are unattractive or 'out of bounds' to other revenue sources or funders; it can be multi-year and unrestricted in its use. (sub. 47, p. 4)

Association of Australian Medical Research Institutes:

As registered charities, [Medical Research Institutes (MRIs)] attract substantial philanthropy into the sector. This stream of funding is a vital component of an MRI's revenue as it provides funding (often more discretionary) to support researchers and develop new and innovative blue-sky research where they may not yet be competitive for larger government grant schemes. (sub. 91, p. 4)

Lord Mayor's Charitable Foundation:

The Foundation regards itself as risk capital for the charitable sector, often going in early to back a new idea to address a tough challenge and then, if the project is proven, enabling the charity to receive government grants or impact investment to scale up or complete the project. (sub. 106, p. 7)

Philanthropy can also enable innovation by providing 'patient capital' where philanthropic donors give long-term funding, which government often cannot do, to an NFP organisation. The International Women's Development Agency argued that philanthropy:

... tends to be more values-aligned. Philanthropy Australia found that most individual giving is motivated by the desire to support a specific cause or charity. This values-led approach means philanthropic funding has the potential to be long-term, or 'patient capital', where the investor (giver) is willing to invest in an outcome that may be in the distant future and not see immediate returns. (sub. 77, p. 2)

The Maranguka initiative is one example of how philanthropy can provide patient capital that supports the priorities of the community, enabling new approaches to be adopted in a way that can be difficult for government to do (box 2.3).

Box 2.3 – Case study: Maranguka initiative

The Maranguka initiative is a First Nations, community-led place-based model of justice reinvestment in Bourke, New South Wales. The intention of the initiative is to redirect resources that would be spent on prison back into the community, to address the underlying causes of imprisonment, and provide support to children and families. The Maranguka initiative was the first major justice reinvestment project in Australia. An impact evaluation found that this all-of-community collaboration had reduced family violence, increased participation in schooling at Year 12 and reduced the number of days a person spends in custody.

From the perspective of Maranguka ...

The local community of Bourke decided to step away from working with government, since the approach government adopted was not aligned with how the community wished to work, nor was it producing the outcomes they were seeking. During this time, Maranguka was able to attract the support of philanthropy, including from the Dusseldorp Forum, the Vincent Fairfax Family Foundation and Lendlease. The relationship between Dusseldorp Forum and Maranguka was based on trust – the foundation only acted with the permission of the community represented through the Bourke Tribal Council.

After working with philanthropy and demonstrating the benefits of the justice reinvestment approach, including through impact evaluation, the community of Bourke was able to return to all levels of government and invite them to be involved in Maranguka, this time on the community's terms. By demonstrating to government the success of the community-led model, the Bourke Tribal Council was now able to position itself as an equal partner involved in designing solutions – an approach that worked for their community.

The partnership approach, first between Maranguka and its philanthropic partners, then government, is an important feature of the model, with each party bringing their respective expertise and experience. The partnership model is supported by a governance ecosystem that brings together all decision-makers to provide transparency, accountability and support collaboration.

From the perspective of the Dusseldorp Forum ...

Dusseldorp Forum and Vincent Fairfax Family Foundation partnered with Maranguka and provided both financial and capacity-building support. For Dusseldorp Forum, the work of Maranguka aligned with their foundation's principles of respecting First Nations self-determination and working alongside communities driving long-term systemic change.

Dusseldorp Forum is aiming to demonstrate better ways foundations can work to improve outcomes for communities including Aboriginal and Torres Strait Islander communities. They adopt a partnership-based approach to working with communities, recognising the different experiences each party brings to the partnership. In the example of Maranguka, Dusseldorp Forum's role was both a funder and a 'filter' or 'bridge' between Maranguka and philanthropy, by helping to manage and coordinate broader philanthropic support for Maranguka. For example, they identified suitable philanthropic partners that aligned with Maranguka's purpose, ensured that support was provided on the community's terms through untied funding, and that philanthropists did not impose a major reporting burden on Maranguka. This approach enabled Maranguka to focus on practical implementation of the model in the community in a manner that supported a community-led approach to change, rather than diverting resources away from core service delivery toward seeking out philanthropy.

Box 2.3 – Case study: Maranguka initiative

Dusseldorp have used this partnership-based model elsewhere, for example in supporting the Colman Education Foundation's expansion of the *Our Place* place-based approach to schools across 10 locations in Victoria. This illustrates how philanthropy can play a role disseminating ways of working and effective models for social change to significantly improve outcomes for children and their families.

Sources: Alister Ferguson and Teya Dusseldorp, pers. comm., 6 October 2023; Australian Indigenous HealthInfoNet (2023); Just reinvest NSW (2023).

In addition to the Maranguka example, the Royal Flying Doctor Service gave an example of the benefits of philanthropy providing an initiative with risk and patient capital and which was subsequently supported by government.

A prime example is the mobile dental service currently operating in several states that was initiated in Queensland. [Royal Flying Doctor Service (RFDS)] Qld Section had identified a health need – the doctors at the remote clinics were concerned that for so many individuals their general health could not be managed until their oral health was improved.

A philanthropist offered to provide the RFDS Qld Section with a substantial donation of \$1 million per annum for three years to provide a mobile dental service; this support established a semi-trailer with two dental chairs and an x-ray unit to visit communities that do not have any access to dental services.

The data collected over the three years evidenced the improved health outcomes for these communities and provided the Commonwealth Government with the necessary data to fund the ongoing operation of the truck in Queensland as well as establishing a second truck in Western Australia. (sub. 126, p. 5)

Where evaluations demonstrate that innovative approaches to service delivery provide enhanced outcomes, this information can be used to shape the way government services are provided more widely. In this respect, philanthropy can contribute to enhancing outcomes for the wider community through the provision of risk and patient capital. However, the Minderoo Foundation has warned 'there is the very real prospect' that philanthropy could lose motivation to play a role in funding innovation if it continues 'to take the risk, prove it up and then the service is stopped' (sub. DR505, p. 15).

Philanthropy could do more to support innovative work undertaken by charities

Despite charities from a range of sectors outlining how philanthropy could play an important role in providing risk and patient capital, some participants noted a stark contrast between what philanthropy says about funding innovation and what it does in practice:

While we note the potential of the sector for investment in this area, we would suggest the proportion of philanthropic investment in innovation is actually quite modest ... in our overall pot of money, it's relatively small that innovation piece and we suspect, looking around the sector, that that might also be the case. So we've actually – we don't have quantifiable data for the sector but I think it's what you hear in the mantra perhaps more than is actually the case in reality. (The Smith Family, trans., pp. 8–9)

The Commission heard that providing project-specific funding accompanied by conditions is a common approach adopted by larger philanthropic donors. For example, a 2017 survey of 50 philanthropic funders in Australia found that over 67% of respondents rarely supported applications for untied support and capital support (Gillies et al. 2017, pp. 6, 39). Perpetual discussed the professionalism of philanthropy and the flow-on effects this has had on how people make donations in a manner that may ultimately be overly burdensome for charities:

I think philanthropy as it has become more professional has, kind of, taken on this isomorphic approach, and that is that we've looked at the big foundations and how they undertake due diligence, and how they assess applications, and the type of high touch that they want with regards to the impact that those foundations can demonstrate that they're having through their giving. And it's filtered down into every level of philanthropy now that we – you know, we have to ask for paperwork in order to be sure in the distributions that we're making. I've definitely seen that, you know, and its professionalism perhaps and due diligence, you know, that's dressed up as, you know – that ultimately is perhaps overreach in many instances. (trans., p. 634)

While the Commission has heard examples of philanthropy funding new and innovative approaches and initiatives which illustrate the unique value philanthropy can provide charities in this regard, the extent to which this is manifested in practice more broadly is unclear. As a result, some participants suggested that more could be done by philanthropic organisations to take risks, be bold and fund innovation – and if these were proven to work, they could subsequently be scaled up by government. When making decisions about supporting philanthropy, governments too may look to whether philanthropy is contributing to funding trials of new initiatives.

In this context, it is important for donors to reflect upon their funding approaches, the ways in which they meet the needs of charities and contribute to improved outcomes for the wider community and consider how to evolve their practices where necessary. The Centre for Social Impact emphasised the importance of this, commenting that 'there remain opportunities to both increase – and enhance – giving. Growth in philanthropy must be about not just more, but also better, philanthropy' (sub. 191, p. 3).

Aligning giving approaches with the preferences of charities may contribute to better outcomes for society, while also enhancing a philanthropic organisation's own 'social licence to operate'. That is, the level of acceptance or approval a philanthropic organisation receives from the public more generally, which could have flow-on effects for government perceptions of philanthropy, and whether and how to support it (Seibert 2019a, pp. 131–132).

Philanthropy can, and should, be responsive to community needs

On the one hand, donors and NFP organisations can also be more responsive to community need than government, especially in times of crisis, when focused 'just-in-time' donations of time, money, and particular goods and services are needed (Baptist Care Australia and the Baptist social service agencies, sub. 152, p. 9; Jesuit Social Services, sub. 165, p. 3; Lord Mayor's Charitable Foundation, sub. 106, p. 6). Philanthropy can raise funds in response to events to fill gaps in government provision quickly during times of crisis and respond to a community's need (Royal Flying Doctor Service, sub. 126, p. 5). Examples include providing essential supplies of health and trade services, food, medicines, shelter and animal welfare in the aftermath of, and recovery from, events such as bushfires and cyclones. NFP organisations can also be well-placed to mobilise volunteers to provide care and support to people in emergency situations. The Commission heard several examples of philanthropy activating in times of crisis, and that community foundations, which are often place-based, enable a quick response to local needs (box 2.4).

Box 2.4 – Philanthropy helping communities in times of crisis

Australian Red Cross:

The 2019/2020 bushfires and subsequent emergencies have seen the rise of reactive giving and opportunity responders. These donors tend to give when they hear about a need and opt-out of hearing from the charity again, choosing to give on their terms usually in response to the next emergency or disaster. Younger donors (Gen Z and Gen Y) prefer to give in this way compared to older donors. (sub. 235, p. 11)

Lord Mayor's Charitable Foundation:

Community foundations stand ready to hold funds ready for times of crisis, they can hold funds that are place-based or focused on key issues of the day. They can use their knowledge of local needs and local charities to make grants with great efficiency in local communities. (sub. 106, p. 4)

Fremantle Foundation:

In early 2020 in the first weeks of the COVID-19 pandemic, we were inundated by charities seeking funds to assist with those most vulnerable in our local communities. With the impact of COVID-19 becoming clear, we launched the WA Relief and Recovery Fund, which successfully raised \$318,000 over a three-month period, which all went directly to local charities providing much needed help to those affected by the pandemic. Since then, combined with major grants from the Paul Ramsay Foundation and community donors, the WA Relief Recovery Fund has raised \$1.15 million to support communities affected by COVID-19, by bushfires, and by floods. (trans., p. 414)

On the other hand, although well-intentioned, donors might not always provide exactly what the community needs – for example, sometimes certain goods are provided in situations where donations of cash would be more beneficial to the community or where requests by NFP organisations for specific goods, such as clothing suitable for office workplaces, are not met. The volume of goods donated can surpass demand, and the nature of the goods provided may be misaligned with what is needed, issues which can lead to situations where efforts are diverted away from priority areas to manage donations. One example of this occurring is during the 2009 Victorian bushfires where there were more than 40,000 pallets of goods from across Australia that took up more than 50,000 square metres of storage space. Donations arrived without warning which led to services in the fire affected areas becoming severely stretched as they had to store and distribute donations (Government of South Australia and Attorney-General's Department 2011, p. 6).

Examples such as these show that, at times, philanthropic giving can also fail to meet the expectations of the community (discussed further below).

Different funding sources have pros and cons

The NFP sector is diverse – some are long-standing multi-million-dollar operations, while others have annual revenue in the tens of thousands of dollars. The main revenue source for charities with annual revenue of more than \$1 million tends to be government grants, while smaller charities tend to rely more on donations and bequests (ACNC 2022b, p. 20).

These high-level figures disguise the diversity in the preferences of different NFP organisations – each dollar of funding, either government or philanthropic, has different *characteristics* which NFP organisations may designate different prices (in economic terminology referred to as ‘shadow prices’).







- For example, an NFP organisation might ‘discount’ one dollar from a government grant because there are costs involved with making the grant application, how the grant can be used might be inflexible or tied to specific purposes, or reporting on how the grant was spent and the outcomes achieved (acquittal processes) may be cumbersome and costly.
- An NFP organisation may also view tied philanthropic funding, typically provided by foundations, in the same way as government grants and prefer untied donations from many smaller donors.
- Another case is funding that is tied to cover variable costs versus funding that can be used to cover fixed costs or overheads.

Community Information and Support Victoria, a peak body for local community information and support services, discussed the preferences for untied funding for many of their members, most of which are small charities with a large volunteer base:

... our experience is that particularly like a trust that’s been a bequeathment, that people have been very prescriptive about how the money’s going to be used, and for what exact purpose. We don’t find that there’s a lot of wiggle room when we’re applying philanthropic funding to do anything that might be related to operational costs, and it often has to be about innovation rather than funding to do – continue to do and build on the good work that we’re doing. I think that for us is a real challenge. (trans., p. 584)

It can be the case that, depending on the constraints that an NFP organisation faces, a dollar of funding from philanthropy may be more or less costly to an NFP organisation than a dollar of grant funding from government. This means an NFP organisation may value funding from government and philanthropy (or even different philanthropists or sources of philanthropy) differently (figure 2.3). The way NFP organisations weigh up the pros and cons of these characteristics may change over time.

Figure 2.3 – Each dollar of funding can have different characteristics

| Government funding  | Philanthropic funding  |
|--|--|
| <ul style="list-style-type: none"> • Accountable through democratic processes • Scalable • Transparent • Might attract other funding  | <ul style="list-style-type: none"> • Risk capital • Patient capital • Can be untied • Flexible • Responsive  |
| <ul style="list-style-type: none"> • Inflexible • Reporting burden  | <ul style="list-style-type: none"> • Donors may be misaligned with a charity’s values • Reporting burden  |

There are some NFP organisations that will prefer not to receive government funding, whereas others may prefer to rely on income sources other than donations. NFP organisations have histories and relationships with different donors and with different government agencies, which may influence their decisions on where to source their revenue. For example, some NFP organisations might be advocating against government policy and choose not to receive government funding so they can retain their independence or appearance of independence (box 2.5) and maintain ‘greater freedom to advocate in relation to current government policies’ (ACOSS, sub. 263, p. 2).

Other NFP organisations might avoid government funding because of the inflexibility it gives the organisation. The Commission heard during engagement in the *Review of the National Agreement on Closing the Gap* that some Aboriginal and Torres Strait Islander community-controlled organisations have chosen not to receive government funding for this reason.

Several Aboriginal and Torres Strait Islander organisations said they are now saying no to programs and funding if they do not fit with their priorities and models of care. If they can find other funding sources, they are avoiding government funding with its paperwork and strings attached, or being more strategic about which grants they select to avoid too many small grants that can end up costing more to apply for and report against than the funds they receive. (PC 2023b, p. 9)

Box 2.5 – Advocacy and government support

Advocacy by charities involves promoting or opposing a change to any matter of law, policy or practice in Australia or overseas, in furtherance of a charitable purpose (ACNC 2023i). In *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA 42, the High Court of Australia recognised the public benefit associated with the generation of public debate, where this is linked to another charitable purpose.

The *Charities Act 2013* (Cth) includes a charitable purpose of advancing public debate and provides that a registered charity cannot have a ‘disqualifying purpose’, such as promoting or opposing a political party or candidate for political office. Registered charities undertaking advocacy may be eligible for an income tax exemption and other tax concessions. They may also be eligible for DGR status, however they can also face barriers to eligibility which can limit their ability to attract philanthropic support (CPRC, sub. 105, p. 1; ICAN, sub. 44, p. 2).

Advocacy by charities can have spillover benefits. It assists with conveying the perspectives of communities on issues that affect them, facilitating their input into democratic processes. In addition, large or dispersed groups, such as consumers, can face collective action problems when seeking to organise to advocate for their collective interests (CPRC, sub. 105; Olson 1971, pp. 1–2; Seibert 2015, pp. 202–203). Charities can reduce transaction costs and play a role in conveying the perspectives of such groups, contributing to better public policy outcomes. Advocacy activities that further charitable purposes contribute to democratic processes, including when this conflicts with government policies, such as advocating for changes to government policy to advance human rights. An undersupply of such forms of advocacy could result in policies not reflecting the needs of different communities and some communities having worse outcomes. The Australian Catholic Bishops Conference (sub. DR706, p. 34) commented that:

... systemic issues and failures in the social welfare system are often addressed and changed by concerted advocacy efforts on behalf of civil society. Advocacy is important as an

Box 2.5 – Advocacy and government support

educative and pastoral means to raising public awareness and gathering support in order to influence public policy for the betterment of the Australian community.

However, advocacy by charities can sometimes be controversial, reflecting disagreement within the community about particular issues. In the past, there have also been calls for charities to undertake more ‘on the ground’ activities in order to maintain eligibility for tax concessions (House of Representatives Standing Committee on the Environment 2016, p. 46). In the United States and elsewhere, there is a debate about so called ‘dark money’ and the role of NFP organisations that undertake lobbying and campaigning to further the positions of special interest groups (Irvin 2023). The concern is that this kind of rent-seeking activity could result in valuable economic resources being redistributed to such groups and to the well-off, rather than creating new wealth or genuinely assisting the marginalised or disadvantaged (Krueger 1974; Tullock 1967). Lowering the costs of rent-seeking and lobbying could, in principle, result in more of that activity, and impose economic costs on the community.

In some instances, it can be more efficient and effective to invest in early intervention initiatives that seek to *prevent* adverse outcomes for people and communities, rather than acting only once an adverse outcome has already arisen. Preventing harm in such a manner can often cost less and contribute to better outcomes. For example, the Commission previously examined the role of advocacy in relation to law reform as part of its Access to Justice Arrangements inquiry (2014), identifying benefits associated with law reform advocacy activities that seek to identify and remedy systemic issues and so reduce demand for frontline services.

For some, philanthropic giving of uncertain or harmful origin can hurt the reputation of NFP organisations and may even lead to mistrust from beneficiaries and cynicism from the broader community. The concept of a ‘tainted donor’ refers to instances where there may be concerns around the behaviour or reputation of a particular donor or group of donors (whether it be a person or a corporation), thereby reducing the subjective value of their donation. Money itself can also be ‘tainted’ if it is perceived to be generated from activity that runs counter to the values or objectives of an NFP organisation (or final recipients of goods and services).

Philanthropic funding also comes with reputational risks for organisations when considering the ethics of different funding sources. Not-for-profits may need to be alert to the sources of philanthropic funding when they are associated with foundations backed by private sector companies whose sources of wealth generation are from industry creating social harm, such as climate change, weapons, gambling, pornography, tobacco, land-grabbing or breeches of human rights or other obligations. (IWDA, sub. 77, p. 4)

To address these risks, some NFP organisations have donation policies that outline from whom they may or may not accept donations. For example, the Australian Red Cross (2022) does not accept donations for its everyday work from tobacco companies. Aurora Education Foundation (2023) also has an ethical fundraising statement that guides its view on the source of donations. Some NFP organisations seek to form long-lasting relationships with donors they trust, which helps to reduce the cost and risk of screening new funding sources. Reforms regarding the transparency of corporate donations is addressed in chapter 9.

NFP organisations, beneficiaries and communities may be less willing to interact and engage with philanthropy when there are perceptions of power imbalances, trust deficits or perceptions regarding historic injustices.

There can also be a difficulty around philanthropy for Aboriginal and Torres Strait Islander people and organisations, related to philanthropists who obtained their wealth at the detriment of First

Nations people. This can create tensions in relationships and whether organisations choose to accept or apply for philanthropic funding. (Jumbunna Institute, pers. comm., 3 October 2023)

One area where inquiry participants had differing views was whether government funding or philanthropic giving was more likely to provide long-term funding. As noted earlier, IWDA argued that values-led philanthropy meant that funding was more likely to be long term (sub. 77, p. 2). This is not a universal view, however, as the Royal Flying Doctor Service (sub. 126, p. 5) argued an advantage of government funding was that it was 'potentially sustainable funding into the future' and Southern Youth and Family Services (sub. 72, p. 2) noted that reliance on philanthropy can expose service providers to unnecessary risks. The difference in views highlights that each NFP organisation will have different funding priorities and different perspectives on the pros and cons of each funding source.

Further, there can be misalignment between the preferences of donors and charities in terms of providing long-term funding. A 2017 survey found most philanthropic funders responding to the survey had a strong preference for funding either on an annual basis or for periods of between one and three years, whereas NFP organisations had a strong preference for longer term granting relationships of five years or more (Gillies et al. 2017, p. 8).

Philanthropy can contribute more than a donated dollar

Another argument for government playing a role in encouraging philanthropy is that philanthropy can contribute to social capital.

Social capital relates to the social norms, networks and trust that facilitate co-operation within or between groups. There are several benefits linked to improvements in social capital, such as improving social cohesion, reducing transaction costs and promoting co-operative behaviour (figure 2.4).

However, this does not necessarily mean that all social capital is good. There is a normative judgment involved in determining whether the growth of particular norms, networks and associated levels of trust is beneficial for society as a whole (PC 2003, p. 20). While social capital within a group will generally provide benefits to the members of that group, its translation into benefits for the broader community depends in part on the group's goals. Certain norms of entrenched modes of behaviour may reduce the wellbeing of some people or groups in society. High levels of social capital within a particular group also have the potential to undermine broader social capital within a community. In some instances, social capital may even provide some people with an advantage over others based on the initial endowment of social capital they are born into, for example the economic and societal networks, and characteristics of their parents (Loury 1989, pp. 272–273).

Philanthropic giving can – but does not automatically – build positive social capital. The isolated act of giving by itself may provide benefits to a donor, such as a feeling a sense of influence and ownership that they can help make a difference in relation to a particular issue (Mission Australia, sub. 61, pp. 1–2), however, in the absence of any further social interaction, it would be unlikely to contribute to the accumulation of social capital.

Figure 2.4 – Ways that giving might contribute to social capital

The essence of social capital is that it is about building bonds between people and communities – it is not about the isolated act of making financial transfers. Notwithstanding the benefits of those transfers, the ability of philanthropy to contribute something extra – the building of social capital – depends on *how* it is provided. When philanthropy, be it financial or non-financial giving, is provided to do good *together with* others, it can build societal bonds. However, when provided in isolation from others, social capital is unlikely to be developed (Putnam 2000, p. 117).

For example, the act of giving through volunteering at a local neighbourhood house or with a community conservation group may contribute to social connections and cohesion, which in turn enhances the wellbeing of people living in those communities. Some financial giving, for example, which occurs through community foundations, giving circles or other collaborative processes, involves collective decision-making and social interaction with other donors and the organisations and groups they support (James Boyd, sub. 56, p. 1). Community foundations often operate at a local level and can contribute to social capital by enabling knowledge sharing and fostering stronger connections within the community. For example, the Fremantle Foundation said:

... we also enable real access to collaboration and participation for our community. We run Impact 100 Fremantle, have done for 10 years. That model involves having 100 donors with \$1,000 each pooling that money to \$100,000. They vote on which charity would be served the best and have the most impact from that step change model. And that model is a really exemplary example of the power of true collective giving. So feeling like you can really make a difference with a relatively

small amount of money. And joining together with everyone to have that shared experience, it's quite an addictive thing for a lot of people. So it's one way to really harness the power of philanthropy and get people invested in it on a personal level. (trans., 19 February 2024, p. 414)

The Commission also heard that philanthropic giving is not like other forms of funding for service provision. It can form the basis of relationships between the people who are giving, people in the organisations who collaborate with donors and those who receive services or benefit from services provided by NFP organisations. These relationships can extend and grow to become networks of connected people through which social capital is built. People who are well connected socially are more likely to directly know someone who possesses relevant knowledge or skills to support an NFP organisation or cause, making it less costly to find them when needed. They may be more able to mobilise others in times of crisis or to draw on resources to act on opportunities for new services or facilities valued by the community.

For these reasons, philanthropic giving can be less transactional than government grant allocation processes and is more likely to be based on relationships between donors and NFP organisations and, in some cases, between donors and the final beneficiary of the funding. There are many examples of donors who have well established and long associations with specific types of services or community facilities, such as cultural institutions or emergency equipment like rescue helicopters. The Arts Centre Melbourne (2023), for example, lists donors who have contributed over a long period of time, sometimes over many decades or family generations.

The way philanthropy is practiced, and the context in which giving occurs, will affect how it contributes to social capital, and some approaches will make more of a contribution than others in this regard. For example, 'trust-based philanthropy' seeks to overcome the inherent power imbalances between funders, NFP organisations and the communities they serve by adopting grant-making practices that promote transparent, and two-way communication and feedback, provide support beyond the financial donation, and provide flexible funding (Powell et al. 2023, p. 2).

Not all donors generate social capital benefits directly through the act of giving – many donors give without building relationships with NFP organisations, with other donors or with the beneficiaries of the goods and services provided by charities. However, such donations may still have an instrumental role, by indirectly contributing to social capital through funding NFP organisations which themselves build social capital. Community Gardens Australia provided an example of the type of social capital donations can build:

... there's a fabulous community garden called ECOSS [ecological and social sustainability] in the Yarra Valley in Victoria. And they do some incredible [work] in the community. They're supporting some social enterprise, they are working with children, they've got a fabulous community garden, and they've really got their finger in a whole lot of community pies, so to speak. (trans., p. 300)

Measuring social capital can be challenging because it can have a range of outputs, and these outputs may not always be easily identifiable. Reflecting this, many organisations use social impact measurement to evaluate the effectiveness of their activities. This can involve articulating a 'theory of change' which:

... presents a visual representation of how a program or initiative should work by linking inputs (the resources that go into a program), activities (what the program does), outputs (the number of people, places, supports, activities the program has produced), outcomes (what changes have occurred) and impact (long term change). (Muir and Bennett 2014, p. 13)

Social capital tends to have public good characteristics (box 2.1) – a more connected society benefits us all (it is non-rivalrous – there are essentially no limits on who benefits) and it is usually difficult or impossible to prevent people from accessing the benefits of a more connected society (non-excludability). The benefits to others created by giving might not be considered by donors, resulting in lower levels of donations – and lower investment in social capital – than what the community would prefer. However, some forms of social

capital (families, some religions, clubs) are largely excludable and are also subject to diminishing returns to participation (there will be no benefits to people beyond a certain point or it may be possible to prevent people from benefitting). Whether, and how, governments should support philanthropy should be, in part, informed by the how the act of giving contributes to building social capital and who would benefit.

Philanthropy also has limitations

Like private and public sector provision, philanthropic giving can also fail to meet the efficiency and equity goals or expectations of the community, including for the reasons outlined in box 2.1 (Salamon 1987, p. 39). For example, at one extreme, information asymmetries can mean donors risk being scammed (including by those taking advantage of the term ‘charity’) or that a person working at a charity acts fraudulently. There have been cases in Australia and overseas where a person has collected or raised money for supposed charitable purposes and subsequently used the donations for personal expenses. High-profile cases of financial misconduct can contribute to a decline in public trust and subsequent drops in donations. Regulation to maintain trust and confidence in philanthropic giving, including protection for volunteers, is discussed in chapter 7.

Similarly, information asymmetries mean that donors cannot easily observe how donations have been used, including whether it aligns with the donor’s intentions. For example, donors may expect their donation to be used to fund direct support services, but to achieve better outcomes the NFP organisation needs to undertake a range of activities, including funding core operations, that might not be what the donor envisioned their money going toward. Whether, and in what circumstances, government should intervene to provide information to help donors make decisions is discussed in chapter 9.

Salamon (1987, pp. 39–42) identifies specific areas where philanthropy may fail.

- Philanthropy may be unable to generate adequate resources to provide charities with a reliable source of stable income (referred to as philanthropic insufficiency). This issue may be exacerbated during times of economic hardship – donors may have less disposable income to give during downturns, which may coincide with increased demand for services provided by charities, such as food or housing support.
- There are distortionary effects of philanthropy.
 - NFP organisations may focus on particular issues or population groups, which may not always be the areas of the greatest need or be equally distributed across all facets of society (referred to as philanthropic particularism). Some population groups may miss out or receive less support than others if their interests are not well understood by donors or well represented by the NFP sector (chapter 10). For example, GiveOut (trans., p. 181) mentioned this experience for the LGBTIQ+ community.
 - Donors themselves influence which causes receive philanthropy based on their interests. This can place power and influence in the hands of the wealthy, and often privileged (referred to as philanthropic paternalism).
- There can be shortcomings in relying on support from those who may not have the specific skills, background or expertise required to provide that support (referred to as philanthropic amateurism). Philanthropic donors may have their own views about what works and what they wish to fund, which may or may not align with the needs and preferences of the community. The Commission heard that this can often occur in the context of philanthropy engaging with Aboriginal and Torres Strait Islander people and communities, and that the outcomes philanthropy is seeking to fund or their ways of working may not align with those the community is seeking (Roundtable participants, pers. comms. 6 March 2024).

In addition, Buchanan (1975) coined the concept of the ‘Samaritan’s dilemma’. This describes a situation where providing certain forms of philanthropy can lead to a detrimental situation of moral hazard where, over time, recipients may rely too heavily on charity, leading to suboptimal social and economic outcomes.

There are other aspects of philanthropic giving that government should consider when deciding whether and how to support philanthropic giving to fund goods and services that benefit the community.

For example, using philanthropy to fund goods and services means government has less control over how public funds are spent, compared to direct sources of government support, such as grant funding. This is because donors, through their choice of who or what to support, determine where forgone taxation revenue is allocated. The amount of forgone revenue is determined by the marginal tax rate of the donor but the government’s only control over who or what cause is supported is indirect, through criteria set out in the DGR system (chapters 5 and 6). This is the flip side of a point discussed above – philanthropic giving allows a person, not government, to determine where public funds are allocated on a relatively small scale.

On the one hand, this loss of control by government might be important where there are concerns that donors’ interests and preferences are not well aligned with those of the broader community (IWDA, sub. 77, p. 4; SynergyWorks Consulting, sub. 65, p. 11).

Philanthropic funding is inherently undemocratic as the direction of giving is controlled by the interests and practices of the giver, regardless of whether those interests represent the needs or desires of those intended as beneficiaries. (IWDA, sub. 77, p. 4)

On the other hand, some participants and researchers have argued that tax concessions could give donors a disproportionate influence over which organisations and causes receive indirect government support, and set agendas in the absence of other forms of policy formation and public deliberation (Horvath and Powell 2016). For example:

Unlike government funding which is based on decisions made in public processes with accountability ultimately back to parliament, private philanthropic funding has much less accountability. The expenditure reflects the preferences and ideological views of those with the disposable funds to make donations. This group, and particularly those with the largest sums to give, do not necessarily reflect the demographics, views or preferences of Australian society. (SACOSS, sub. 83, p. 2)

There are counterpoints to these arguments. Concerns about donors’ interests not aligning with society’s would still exist even in the absence of tax concessions because people are free to donate to the causes they want to. Also, as discussed above, a common motivation for philanthropic giving is that it fills perceived gaps in government provision which means giving reflects a judgment by people that the outcomes of certain market and political processes do not accord with their own preferences or those of certain groups and segments within the community. It could equally be argued that the fact that giving does not reflect broader views is a benefit, rather than a cost, as it may illustrate a role for philanthropy to support different activities that meet diverse needs within a pluralist society.

In addition, although philanthropic giving is not subject to the same democratic accountability mechanisms as government funding, this does not necessarily mean that it is not subject to any accountability. For example, as discussed above, some charities have established requirements in relation to who they receive gifts from, and under what circumstances. Communities too, can push back against unwanted acts of philanthropy, for example if a relationship of trust has not been established between philanthropic funders, charities and the community.

Government and philanthropy can support giving

There is a role for government to support philanthropy

The Commission's view is that there is a *prima facie* role for government to support philanthropy. There are two reasons for this.

First, philanthropy can contribute to funding the cost of providing goods and services, including through volunteering, that would otherwise be funded by the compulsory contributions of taxpayers. Government is constrained and cannot address all market failures, and philanthropy plays an important role with helping address these market failures and gaps in government funding. Philanthropy can also help people achieve their own vision of a more just and fair society through a voluntary redistribution of wealth and income, enabling donors, communities, NFP organisations and others to work together to develop and implement new and different approaches to addressing social and environmental challenges.

Additionally, philanthropy can help support the operation of NFP organisations to provide goods and services to the community that would otherwise be provided by government. This can also be beneficial because NFP organisations often have advantages over government as providers of goods and services, including by providing risk and patient capital that can facilitate innovation.

Second, acts of philanthropy can contribute to social capital – capital that benefits the community. Social capital can have public good characteristics (box 2.1), meaning it would likely otherwise be underprovided, and government support for philanthropy can support its cultivation.

There are trade-offs for government when supporting philanthropy

While there is a role for government to support philanthropy, there are limits to *the extent to which it should* support philanthropy. Inquiry participants, including charities providing social services, emphasised that philanthropy should supplement, rather than be a substitute for, government funding (Centre for Social Impact, sub. 191, p. 9; Jesuit Social Services, sub. 165, p. 6; UnitingCare Australia, sub. 74, p. 3). Growing philanthropy should not be done at the expense of government funding for core services that society expects governments to provide, and should provide, according to the reasons for government involvement outlined in box 2.1. People may, however, have different views as to which services government should fund, and how much support it should provide.

-- While the aim of doubling philanthropic giving by 2030 is laudable, it is essential this does not result in a shifting of responsibility from the public sector to the philanthropic sector, as is noticeable in some international jurisdictions including the United States. (Jesuit Social Services, sub. 165, p. 6)

Government has primary responsibility for ensuring that there is sufficient funding for the services provided to support disadvantaged people and communities. Any additional philanthropic funding derived through the outcomes of this review should be regarded as supplementary funding and not a substitute for government funding of these important support services. (Southern Youth and Family Services, sub. 72, p. 3)

One thing that's really important to our members, which they say over and over again, is that philanthropic giving cannot, and should not, replace adequate government funding. The state of urgency of the climate crisis means that government philanthropy and private sector funding must all increase. (AEGN, trans., p. 471)

The government relies on tax revenue to fund core services, including those delivered by charities. This is where government faces a trade-off – any donations that allow a donor to claim a tax deduction means less revenue collected by the Australian Government through income tax, which could then be used to fund core government services, such as health care and education, or fund charities directly through grants and contracts. As highlighted in chapter 1, charities received \$97 billion in direct funding through grants and contracts in 2021 across all levels of government. If tax deductible giving were to double, this would also increase forgone tax revenue, which otherwise could be used to directly fund the provision of goods and services.

The first and most obvious cost of philanthropic funding is that the tax concessions available mean that any increase in philanthropy would come at some expense to the federal government's revenue base. Given the government's key (majority) role in funding social services, *the tax revenue forgone needs to be a crucial calculation of any proposal to increase philanthropy.* (SACOSS, sub. 83, p. 2)

... we agree there's no free lunch, you know, it's got to be community-wide welfare. You can't just lift giving and impose big taxes and all sorts of costs that leaves a net detriment. (Philanthropy Australia, trans., p. 437)

All government support ultimately derives from taxpayers, including when it comes to policy options for supporting philanthropy. Designing policies to support philanthropy involves being upfront about the presence of such trade-offs. The resources available to provide support for philanthropy are scarce and limited, which requires judgements to be made about how this support should be prioritised. The Commission has been guided by these trade-offs when engaging with inquiry participants, and when assessing policy options and making recommendations. This involves understanding what those trade-offs look like, and how to improve the terms of those trade-offs to maximise the welfare of the Australian community as a whole.

The way in which government supports philanthropy matters

In addition to considering the extent to which government should support philanthropy, it also matters *how* government approaches this objective. For example, government could target high net worth individuals to increase their financial contribution to charities, but this could have adverse implications if this giving was seen as paternalistic or accompanied by undue influence on recipient behaviour or on public policy more generally.

On one hand, as discussed above, if large donors provide effective monitoring and oversight of NFP organisations, this may provide a quality signal to smaller donors and 'crowd in' more widespread support. On the other hand, an increase in financial donations from a small number of wealthy individuals may lead to the broader community 'free-riding' (not donating) and failing to bring with it the contribution to social capital that might come with, say, an increase in different types of giving, such as volunteering, or if more people donate financially or in-kind – even if those gifts are relatively small.

Government should ensure the foundations for giving deliver positive community outcomes

As noted in chapter 1, the Australian Government has committed to doubling philanthropic giving by 2030. Many participants to this inquiry support this goal.

Probably the biggest thing we'd like to see is a suite of practical high-impact options for the government to lift giving in the [Commission's] final report, and to try to achieve a step change increase in the culture and practice of giving in Australia. Our view of the terms of reference were that the primary purpose was the government saying we want to turbocharge giving, we want to fundamentally shift giving and volunteering in society. And we've got a double-giving pledge and we want you to give us options and a roadmap to achieve it. And we see Dr Leigh's double-giving

commitment, it's a lightning rod, it's not just a numerical commitment, it's a person saying, 'We want a step change increase here. We want to make an enormous difference. (Philanthropy Australia, trans., p. 437)

The ABS report that over 5 million people in Australia volunteered their time formally in 2020. The doubling of this level of participation, in line with the Australian Government's policy objective, would deliver significant and lasting social, economic and environmental benefit. (VolunteeringWA, sub. 64, p. 4)

Increasing the amount of giving means more resources are directed toward charities. The benefits of these additional resources should ultimately flow to those causes the charity seeks to promote, so the lives of people, places and society at large are improved. In this sense, the act of giving is just the first step in a process whereby philanthropy can contribute to a better society – and increasing giving is one way for more funds to flow to the causes and people who would benefit from them.

However, inquiry participants differed in their views on what doubling philanthropy means and how to measure it, and noted it is important not to lose sight of the outcomes philanthropy seeks to achieve when assessing government support for philanthropy. That is, philanthropy should ultimately be focused on providing a benefit to people, through supporting the work of charities and providing positive outcomes in the community.

Simply doubling charitable donations does not guarantee that we will reduce inequality or strengthen social cohesion. It only guarantees that more funds will go to charities, not what will happen with those funds. Doubling donations focuses on the inputs. We need to have just as much focus on the outputs – doubling impact (Sydney Children's Hospitals Foundation, sub. DR457, p. 4)

Government's key motivation for being more involved in impact evaluation should be to get value for money for its subsidies of charities and to improve the net benefit to society. (Effective Altruism Australia and Effective Altruism Australia: Environment, sub. DR428, p. 12)

And yet, as analysed throughout this report, the policy settings for philanthropy are inadequate. On the whole they deliver positive community outcomes, but there is substantial room for improvement. In the context of the government's goal of doubling giving there is a material risk that the current system could perpetuate – and perhaps worsen – existing inequities. Any objective of increasing giving would therefore be well served by also focusing on improving the system in which philanthropy operates.

... doubling giving under the status quo will only reinforce existing inequalities. The current philanthropic landscape does not provide equitable access to and distribution of funding. While over 10 per cent of Australians identify as LGBTIQ+ and our communities are over-represented across many areas of disadvantage, our communities receive only five cents to every 100 philanthropic dollars ... Doubling philanthropic giving in the same manner would only reinforce existing dynamics and disparities. (GiveOut, trans., pp. 180–181)

For this reason, the Commission's proposed reforms focus on building firm foundations for the future of philanthropy in Australia. In the context of the Government's goal to double philanthropic giving by 2030, the Commission's proposals will help to ensure that the benefits of giving can be realised across more cohorts of people and locations, contributing to better outcomes for the community as a whole over the longer-term.

Unintended consequences from government supporting philanthropy should be considered

Supporting philanthropy is a sound policy objective, but government intervention in markets to do so should be underpinned by the principles of robust cost-benefit analysis, where those costs and benefits are broadly considered. A key element of this analysis should be examining trends and motivations for giving to

understand the counterfactual or baseline scenario and whether – and how – government policies to influence giving will work (and which may not). For example, one important strand of the economic literature examines givers who care only about the aggregate funds that a cause receives, rather than their own giving or the source of those funds (Andreoni 1990). In the extreme, if giving from one source (whether private or public) rises by one dollar, one of these givers would reduce their own contribution by the same amount – there can be total crowding out.

Thus, in their decision making, government will have to consider the potential for government funding to ‘crowd out’ philanthropic funding and vice versa. For example, Aruma Disability Services suggested that while the introduction of the National Disability Insurance Scheme has provided significant benefits, there have also been consequences in terms of the loss of philanthropic support for disability charities.

The arrival of the National Disability Insurance Scheme (NDIS) has all but ended philanthropy within the charitable disability sector, and significantly reduced charitable engagement in the lives of people with disability. (sub. 187, p. 1)

The need for governments to pay attention to the possibility of direct and indirect crowding out – and the trade-offs that are involved – is likely to be particularly important in the case of volunteering in general, and in the care economy in particular. The historical experience in Australia and elsewhere is that many care services have been provided by volunteers or unpaid carers. To the extent that government policies increasingly direct taxpayer dollars toward service provision via a paid professional workforce in these areas, this will affect opportunities for volunteers. The way in which these policies are designed and implemented could lead to crowding out, and indeed this may be a conscious policy choice. But even in this context, there can be opportunities for ‘crowding in’ of philanthropic donations of time and money, in recognition of the different qualities of such donations compared with paid employees and government funding (chapter 7).

Government and philanthropy can collaborate to further shared objectives

Just as government and philanthropy can act alone to support giving (see discussion below), they can also work together to address complex social and environmental problems. There is an incentive for government to engage with philanthropy, as it can ‘crowd in’ funding for activities that government may not be able or willing to fund alone. Conversely, philanthropy has an incentive to engage with government to leverage its ability to deliver programs at scale.

In light of this, government and philanthropy should consider how they can coordinate their respective contributions more effectively to enhance outcomes for the community, especially given the different characteristics of government and philanthropic funding, as discussed earlier in this chapter.

Although collaboration between government and philanthropy has so far generally been limited in Australia (Centre for Social Impact, sub. 191, p. 9), there are examples of longer-term strategic collaborations such as the ‘Our Place’ partnership between the Victorian Government, the Colman Education Foundation and other philanthropic funders (Colman Education Foundation, sub. 190, p. 2).

In 2023, the Australian Government commenced an ‘Investment Dialogue for Australia’s Children’ collaboration with a group of philanthropic funders and charities, focused on place-based approaches to supporting children’s wellbeing and addressing intergenerational disadvantage (ARACY 2023). This initiative aims to ‘support greater collaboration and coordination of government and philanthropic investments to improve outcomes for communities’ (Chalmers and Rishworth 2023).

Some inquiry participants suggested government and philanthropy should collaborate more often, and do so in a manner that builds on what has been learnt from previous collaborative experiences:

There have been a suite of important examples where philanthropy and government have each played a role in creating impact ... The challenge now is to find ways to make this more frequent and systemic, so more substantial impact is achieved from the collective investment. Social innovation could 'roll off the production line' more consistently through structured collaboration, rather than emerge in an ad hoc manner through serendipity. (Philanthropy Australia, sub. DR595, pp. 19–20)

For example, the Australian Environmental Grantmakers Network suggested early engagement to shape initiatives together is an enabler of effective collaboration between government and philanthropy that can improve outcomes for beneficiaries:

So working early on shared vision for climate and environmental outcomes, which we both have, I think, is just a really fantastic way of moving forward, but it's got to be a genuine, early collaboration. (trans., p. 476)

Adopting approaches to learn from previous collaborative experiences has also occurred in the United States through the establishment of Offices of Strategic Partnerships:

Bridging the institutional differences between philanthropy and government are at the heart of the work of [Offices of Strategic Partnerships]. By learning from experience, they help to lower the costs of exploring and initiating partnerships as well working around the institutional barriers between government and philanthropy. (Ferris and Williams 2014, p. 27)

Government should articulate and follow principles for how and when it collaborates with philanthropy to enable it to avoid crowding out philanthropy and facilitate it crowding in. Clear principles would also enable government to adopt a more strategic approach to how it engages with philanthropy over the long-term, rather than starting anew for each initiative. Similarly, principles could provide more certainty for philanthropy when it engages with government. While there will be no one-size-fits-all approach to different collaborations, there may be certain overarching principles that can guide and inform engagement between government and philanthropy. Box 2.6 provides an example of how the Victorian Government used guiding principles to support collaborative relationships and adopt a strategic approach to collaboration with philanthropy. Similar to principles, the Investment Dialogue for Australia's Children is underpinned by a 'Working Together Agreement' outlining the shared commitment of the parties.

Regular evaluation of collaborative partnerships would enable people to embed what they have learnt from past experiences into future practices. This would enhance the effectiveness of government and philanthropic collaborations, so that once established, they have more prospect of providing better outcomes for the community while also furthering government's policy objectives. Further, embedding evaluation mechanisms that focus on the effectiveness of a collaboration's governance arrangements can provide useful insights that can be drawn upon in other instances where government and philanthropy may have an interest in working together.

Box 2.6 – The Victorian Government’s principles for collaboration with philanthropy

In 2013, the Victorian Government developed a document of Guiding Principles for government and philanthropic grant-makers that were considering partnership. It was developed drawing on desktop research and consultation with philanthropic grant-makers that jointly funded NFP organisations with government. The document outlines four guiding principles and their associated tasks:

1. creating the environment (project planning) by engaging early, clarifying roles and responsibilities and developing shared values and principles
2. shaping partnerships and building relationships (project initiation) by developing trust, mutual respect and agreed approaches and developing a statement of intent
3. decision making management practices (project execution) including agreeing to processes for selecting organisations to fund, communicating frankly and documenting the collaboration
4. evaluation and sustainability (monitoring and evaluation) to monitor progress from the outset and develop a funding plan.

The guidance also highlights the different levels of collaboration (coordination, collaboration and compromise) that may be required by funding partners while working through different stages of a project.

Source: Victorian Department of Health and Human Services (2017).

Others, including philanthropy, can also support giving

Governments have unique policy levers they can use that philanthropy does not have access to. For example, governments are uniquely placed to shape incentives and collect funds for goods and services for the community through taxation and use regulation to influence behaviour.

Philanthropy can in many instances closely replicate certain aspects of government policies or programs. There may be situations where there are no barriers for philanthropy – or indeed the charitable sector itself – to support charitable work in collaboration with, or without, government support. In instances where the charity and/or philanthropic sector consider government involvement to be inadequate, it can (and does), mobilise to address sector concerns or fill gaps on its own. For example, parts of the charitable sector have voluntarily adopted Fundraising Institute of Australia’s code of conduct (chapter 7) and the charitable sector is also working collectively to change norms and expectations regarding administrative costs (chapter 9).

To the extent that funding is the main barrier to an action, philanthropy itself has resources available to contribute towards enhanced outcomes for the community. For example, StartGiving is an NFP organisation fully funded by its founder with the goal of supporting philanthropic giving among start-up founders and technology executives by changing giving culture among this cohort so that giving is both expected and the norm. The organisation advocates to government for policy changes where there are specific changes only government can enact (such as taxation valuation rules – see chapter 8), that would make giving easier among its target giving cohort (StartGiving, sub. 90, p. 1). Similarly to government, philanthropy also faces trade-offs as to how it chooses to spend its money and what to prioritise at both a grant level, and/or to support the charitable sector as a whole, by encouraging giving.

Any approach government takes to supporting philanthropy will need to consider the role of public, private and philanthropic provision of resources. In assessing potential reforms, including those suggested by inquiry participants, the Commission has prioritised recommending solutions to policy problems where government is best or uniquely placed to support philanthropy. There may be other initiatives raised in this

report that do not require direct government involvement to be implemented, but which the charitable or philanthropic sectors can undertake themselves to contribute to efforts to encourage giving.

2.2 Are policy settings meeting government objectives?

Having determined there is a role for government to support giving, the next step in the assessment framework is for the Commission to look at the arrangements for philanthropy and assess whether there are inefficiencies or inequities – such as those outlined in box 2.1. The main government policies underpinning philanthropic giving are financial incentives, regulation, giving vehicles, information flows, and access to networks, each of which can be subject to inefficiencies or inequities, discussed below. The starting point is to define the policy problem that the arrangements are designed to address and assess whether they are fit for purpose. This provides a basis for understanding whether the policy is achieving its intended objective and allows the Commission to determine whether the objective of that policy aligns with the role of government in philanthropy.

Financial incentives

Financial incentives include taxes, penalties and government payments which influence the behaviour of people and organisations. As noted in chapter 1, tax incentives are the main way that government encourages the giving of money and assets to NFP organisations.

- Government supports philanthropy through the DGR system which allows donors to entities with DGR status to claim a deduction from their taxable income for eligible donations.
- Government provides tax concessions to eligible NFP organisations.

In assessing the design and operation of the DGR system, and tax concessions for NFP organisations, the Commission has taken an economy-wide view using a principles-based approach drawing on established tax principles: efficiency, equity, simplicity, accountability and transparency. The DGR system and a short assessment of tax concessions for NFP organisations are discussed in chapter 5 and proposed reform directions for the DGR system are presented in chapter 6.

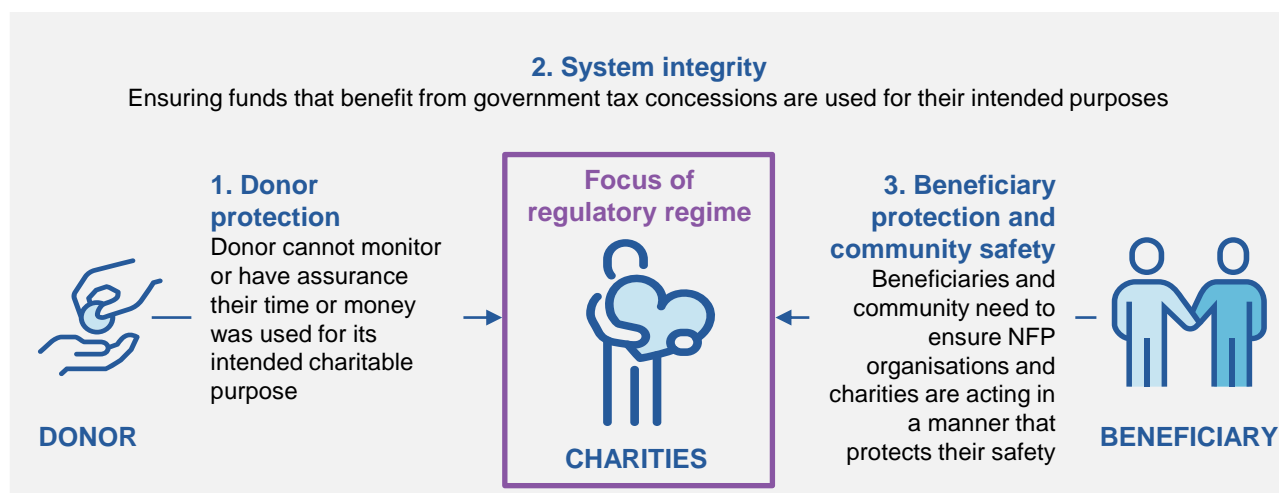
Regulation

The number and diversity of participants involved in philanthropic giving, and the presence of information asymmetries, generates risks associated with 'principal-agent problems', which are not uncommon in economic interactions. One party (the donor or principal) has less information than the agent (the charity) and after donating, effectively asks the agent to act on their behalf (for example how the donation can best be used).

There is a possibility that the charity provides low-quality goods or services or will act in a way that is inconsistent with the preferences of the donor after the donation has been made. For example, a donor may give to a charity supporting people experiencing homelessness and expect the funding to be used in a particular way, such as covering the cost of accommodation for a night. However, the charity may have a different perspective and consider it more important the funding be used to support someone to receive healthcare. Beneficiaries too may not be able to fully observe whether charities are acting in a way that protects their safety and wellbeing (figure 2.5). Given charities' purpose is to deliver benefits for the community, people may hold them to higher standards of conduct and judge them harshly when they breach the public's trust.

Combined, these qualities of the NFP sector create a paradox: trustworthy conduct of the sector is unusually pivotal for its survival, and yet there are institutionalized features that may increase the potential for trust to be breached and make trust recovery harder. (Gillespie et al. 2023, p. 2)

Figure 2.5 – The rationales for charity regulation



Regulation can be used to address principal-agent problems, providing mechanisms that seek to ensure that donated funds are used for charitable purposes and that the sector is acting in accordance with community expectations (chapter 7). Regulation may restrict how donors, charities or structured giving vehicles operate to manage risks, such as misuse of donations or tax concessions, or unethical fundraising practices. Regulation can also impose obligations, such as data reporting or financial compliance actions.

Over the past 10 years, governments have implemented regulatory reforms focused on charities and other NFP organisations (chapter 1). For example, the Australian Charities and Not-for-profits Commission (ACNC) was created to promote trust and confidence in the charitable sector, but also to help reduce unnecessary regulatory obligations on the sector (ACNC 2023r; ANAO 2020, p. 7).

Regulation that does not have a clear purpose or is disproportionate to the risks it seeks to manage can limit the potential benefits of giving for society and create unnecessary costs. Regulation can result in:

- regulatory error – costs that arise due to inherent uncertainties faced by regulators, as they are required to make decisions with imperfect information about changes in the market and how the affected parties may respond
- compliance costs – direct costs incurred by entities in complying with the regulatory arrangements
- administration and enforcement costs – costs incurred by the regulator for compliance with regulation
- implementation and transition costs – costs associated with implementation of and transition to different regulatory arrangements (PC 2019, p. 84).

Government has an ongoing role in ensuring regulation (including those affecting giving vehicles, donors and charities) is effective and proportionate. That is, whether regulation is achieving its stated policy objectives at least cost to the community (including the regulated entity) and continues to do so.

Structured giving vehicles

People give in different ways – sometimes as a once-off donation, other times regularly to the same or different charities. Giving vehicles are a way for people to plan for and structure their giving, and in many cases receive an upfront tax deduction. In this way, they are like a pre-commitment device – providing a mechanism (and often financial incentive) for donors to put money aside to give into the future. Different giving vehicles exist, including ancillary funds (private and public) and other charitable trusts (which may be established through a bequest).

These giving vehicles have unique features. They create a timing gap between when people place assets into them for future giving and when the money reaches the charity receiving the funds, and ultimately, the beneficiary. In doing so, it also means there is a lag between when the donor gives (and with it, often receives an income tax deduction) and when someone or something benefits from that donation. That is, the amount donated into the vehicle today has a different value to the amount received by the receiving charity and beneficiary in the future. This timing gap will depend on the giving structure and how the donor wishes it to operate.

The Australian Government provides an incentive to use ancillary funds through tax concessions but, as with other types of giving, the Government – acting on behalf of taxpayers – may have different preferences around when those funds are used to provide goods and services to beneficiaries, and by which eligible charities. In addition, a trustee, which could be a licensed trustee company, will oversee and manage the giving vehicle, and may also have imperfect information about the donor's wishes.

Ancillary funds are governed by rules set out in legislation or regulation. These rules ensure that funds flow to the benefit of the community and also enable donors to access the tax incentives associated with ancillary funds. The rules stipulate who they can give to and the minimum amount they must give each year. Government can review and adapt these rules, to better align incentives with the intended purpose of the giving vehicle – to encourage philanthropic giving to eligible entities with DGR status to benefit society. The role and effectiveness of structured giving vehicles are discussed in chapter 8.

Information flows

Information flows are critical to philanthropic giving, but there can be major imbalances of information between people and organisations in the system, both before and after a donation is made. For example, donors are imperfectly informed about:

- the needs and characteristics of beneficiaries of the goods and services provided by NFP organisations before giving occurs (generally referred to as 'adverse selection')
- the actions of NFP organisations after giving occurs (generally referred to as 'moral hazard').

These issues can manifest in different ways. As discussed above, in times of crisis Australians readily give to people experiencing hardship, but how this giving occurs is not always aligned with what is needed. The *Royal Commission into National Natural Disaster Arrangements* found that:

The donation of physical goods, including food and material, by the community and charities plays a significant role in individual and community recovery. However, despite the best intentions, this often results in unsolicited donations of goods, which may be inappropriate or do not meet the specific needs of the community. (2020, p. 440)

In addition, final beneficiaries may not have access to information about potential donors (who wants to give, their motives for giving and how much they would like to give).

NFP organisations sit in the middle, acting as intermediaries between potential donors and final beneficiaries. However, donors are imperfectly informed about the:

- quality of NFP organisations
- actions that NFP organisations take after they receive a donation
- performance of NFP organisations and the quality of outputs recipients receive – in many cases, it is not clear what an objective set of performance measures for NFP organisations should be.

In some cases, NFP organisations (or private providers of information services) will have sufficient incentive to make certain information available themselves (generally referred to as 'signalling'). Donors or

governments may also impose their own up-front conditions on the potential charities they decide to support (generally known as ‘screening’). In other cases, the market may lack sufficient incentives or capacity to provide the information, or the government instead may hold the information.

Where governments provide or mandate information, there remains scope for government failure, where donors and the public may not make well-informed decisions if the mandated or publicly provided information is incomplete, unreliable or inaccessible. This means there is a need to periodically review public sources of information. The government’s role in information provision is discussed in chapter 9.

Other policy options, including enhancing access to networks

For charities to access philanthropy, they must have access to philanthropic networks to convey information to prospective donors. This could take the form of a relationship developed over time between a philanthropic foundation or business, knowing which grants to apply for from certain philanthropic foundations, or access to the general public for promoting their organisation.

- There are a range of policy settings that can support government objectives, including to improve the connections between charities and philanthropy to make the flow of funds from one to the other more accessible. Policies of funding to strengthen capacity to access philanthropy could include a focus on particular sectors or population groups, such as Aboriginal and Torres Strait Islander people and organisations.
- Public campaigns have been successful in public health settings such as sun protection and wearing seatbelts. They are a form of non-price competition, encouraging people to change their behaviour.
- Policies that make giving easier, including using behavioural economic approaches. This could include, for example, technology that more quickly matches prospective volunteers with opportunities for volunteering.
- Regulation and training of professional advisers, which could be done through a variety of means such as education resources, mandatory training or education or accreditation.

These options can be explored in the context of philanthropy – and whether changes are likely to yield solutions to any identified policy problem.

2.3 Assessing reform options

If arrangements supporting philanthropic giving are found to be inefficient or ineffective, the next step is to identify the range of feasible policy options available to address why this is the case. There are numerous policy options available, with varying degrees of intention and control from government to address issues with philanthropic giving (figure 2.6). Even within a policy option, there are varying degrees of government involvement. For example, regulation can include self-regulation with little to no government involvement or a regulatory framework outlined in legislation overseen by government regulators. Other policies may include capacity strengthening to make it easier for organisations to access philanthropy, public campaigns or behavioural economic approaches designed to influence behaviour.

Some participants suggested broadening the framework to include reform options underpinned by institutional economics (such as a giving campaign and bequests from superannuation), behavioural economics (such as nudges in tax returns) and governance arrangements including government-philanthropy collaboration (Philanthropy Australia, sub. DR595, p. iv). These are mostly captured within the policy levers shown in figure 2.6. For example, within its analysis of giving vehicles (chapter 8), the Commission has considered bequests from superannuation, while giving campaigns and nudges are considered as other potential policy options to encourage giving (chapter 10).

Figure 2.6 – Options available to government

As noted in chapter 1, participants also suggested the inquiry consider opportunities to strengthen the capacity of charities, and the environment in which they operate, which was a focus of the Commission's 2010 inquiry into the Contribution of the Not-for-profit sector. The Commission acknowledges that the broader policy environment and government policy settings – such as the way in which government grant programs are designed and implemented – can affect the operation of charities and their ability to contribute to the community. However, the focus of this inquiry was on policies that have a direct link to philanthropic giving, rather than the broader NFP sector which is the focus of other government processes including the development of a *Not-for-profit Sector Development Blueprint* (chapter 1).

The costs and benefits of policy options

Each policy option will have potential costs and benefits and the Commission recommended the option it considers to be the most effective at addressing the identified issue and likely to have the greatest expected net benefit, informed by an understanding of the various trade-offs involved with making policy choices, as discussed earlier in this chapter. Policy options are assessed relative to the counterfactual scenario, which may or may not be, the status quo (for example, philanthropic giving may grow over time even in the absence of any policy changes). In some cases, the most cost-effective option will be no policy change. In other cases, additional government action may be unlikely to influence behaviour or may have unintended consequences. Alternatively, it may simply be that the costs of policy change are expected to outweigh the benefits. In addition, as mentioned above, the Commission has focused on solutions where government involvement is required to address the policy problem and others, such as the charitable or philanthropic sectors, are unable to take action themselves.

In all cases, policy options are assessed relative to the no policy counterfactual scenario (which may or may not be the status quo). When advising on the design of policies and programs, the Commission also considered existing processes, policies and regulations to see whether these can be adopted to minimise costs and address the policy problem. For example, leveraging existing volunteer-related checks rather than creating new ones to reduce barriers to volunteering, while providing appropriate safeguards for beneficiaries.

The potential costs and benefits may be financial. Changes to tax concessions and the DGR system all have financial implications for government. Part of the Commission's analysis of changes in tax concessions is whether tax concessions would motivate donations greater than the value of the revenue forgone (that is, it is 'treasury efficient'), noting that this is not the only factor in making an assessment about tax incentives (chapter 4).

The potential costs and benefits of policy changes can also be non-financial. For example:

- policies that increase philanthropic giving might increase social capital
- if a policy change meant the scope of the DGR system better reflected the needs of the community, for example, by including a broader range of organisations that better represented the diverse population groups and issues affecting communities, then community wellbeing would improve. If the reverse were true, this would be detrimental to community wellbeing

- public information about charities helps donors make informed decisions that align with their values and preferences and promotes accountability. However, providing public information about charities involves costs to taxpayers and to charities, and can lead to unintended negative outcomes if not well designed (chapter 9).

The costs and benefits of a policy option depend on the characteristics and preferences of donors, NFP organisations and beneficiaries (chapter 3). As noted above, NFP organisations and beneficiaries may have different preferences for funding which will affect the potential costs and benefits of policy options.

How the preferred policy could be implemented

The Commission's approach to policy recommendations also considers how policies could be implemented, as outlined in the terms of reference.

Part of policy implementation is ensuring that governance structures are in place to achieve desirable outcomes. Uncertainty about the roles and responsibilities of organisations can lead to inaction and, in some cases, conflict over responsibilities. Many organisations have responsibilities with philanthropic giving – the Australian Taxation Office administers tax concessions that are applicable to charities and other NFP organisations. Organisations must be registered as a charity with the ACNC (except for some government entities) to be eligible for DGR status and some tax concessions. Good governance involves establishing clear expectations of organisations which helps minimise ambiguity and increase accountability.

If a recommendation changes an existing policy, the Commission considered the implications this has for those affected by the existing policy and the transition to the new policy. This is applicable to any recommended changes to the DGR system. The Commission has also considered implications of a change in one policy area on another policy area. For example, any changes to the scope of the DGR system may affect which organisations ancillary funds can give to or expectations regarding the acceptable level of regulation.

Finally, the Commission considered the importance of evaluating policies to ensure they continue to meet their objectives over time. Ongoing monitoring of data and outcomes helps identify emerging trends which can lead to expansion, contraction or modification of policies.

3. Philanthropy in Australia

Key points

- * Understanding the diverse ways people give, their reasons for giving (or not giving) and how giving has changed over time, is necessary for assessing whether existing or proposed government policies that support giving are, or will be, effective.**

 - Understanding giving trends also helps identify barriers to giving that government could address through new or improved incentives for giving or better targeted and designed regulation. It helps identify areas where risks to donors or the public are growing and warrant closer scrutiny and transparency, such as newer forms of giving like online platforms for peer-to-peer giving.
- * The available data only provides a partial picture of overall giving – with tax-deductible giving by individuals the most complete data set. The real value of tax-deductible donations by individuals (one of the main sources of giving) tripled from 2000-01 to 2020-21, despite the number of taxpayers increasing by only 38%.**

 - High income earners have driven a major increase in tax-deductible donations. People with an annual income above \$180,000 accounted for over two-thirds of the increase from 2010-11 to 2019-20, despite representing 4% of taxpayers. This increase has more than offset the fall in donations due to the overall proportion of taxpayers making tax-deductible donations declining.
 - The expansion of tax incentives for giving (particularly the introduction of prescribed private funds, the predecessor to private ancillary funds, in 2001) has contributed to this trend. However, the precise contribution of these policy changes is difficult to disentangle from other drivers of giving, such as growth in income and wealth.
- * If the trend in individual tax-deductible donations observed over the past decade continues, this form of giving would increase to \$8 billion by 2030. This would represent an 84% or \$3.7 billion increase in nominal terms compared to the \$4.4 billion donated in 2020-21. In real terms, the Productivity Commission expects giving to increase by \$1.6 billion or 36% by 2030.**
- * Understanding the reasons people give or do not give can inform the choice and design of policies.**

 - Common reasons people cite for not giving include financial and time constraints, not being asked and concerns that some charities will not put donations to effective use.
 - Existing tax incentives may be ineffective in addressing these barriers either because the financial incentive they offer is too weak (particularly for people on a lower incomes) or because they do not address an underlying impediment (for example, a lack of information about charities).

Understanding the diverse ways people give, their reasons for giving (or not giving) and how giving has changed over time, is necessary for assessing whether policies to support philanthropy are effective.

- Understanding the main sources of giving, where giving is growing and where giving has stagnated, is key to assessing whether existing policies to increase giving have been effective.
- Understanding the relative size and growth in different forms of giving helps identify barriers to giving and identifies opportunities and areas where regulatory risks may be more material and warrant closer regulatory or public scrutiny.
- Understanding the diversity of charities that receive donations, in terms of the goods and services they provide, size, resourcing, reliance on philanthropy and approaches to fundraising, can help identify barriers to attracting philanthropy (such as skills and capacity), assess the effect of regulations on the sector (such as public reporting obligations), and identify emerging challenges and regulatory issues (such as greater use of online platforms for fundraising).

The reasons people give or do not give can help inform the choice and design of instruments that seek to increase giving. It also increases understanding of emerging opportunities and risks for donors and charities (such as those associated with the presence of social influencers in fundraising). This analysis feeds into ways in which the Australian Government can directly encourage philanthropy, including by allowing people to claim an income tax deduction for donations to approved entities (chapters 4, 5 and 6). Governments also use regulation to promote public trust in charities and influence how charities operate, including how they raise and use donated funds. Additionally, governments require charities to publicly report information about their operations and activities, to assist with donor decision making and provide accountability to the community more broadly (chapters 7, 8 and 9). How these different policies are designed requires understanding donor behaviour and motivations.

3.1 Giving patterns in Australia

Australians seek to improve the wellbeing and resilience of others by giving money, goods, services or time to charities or directly to recipients. They give in a personal capacity and as members of organisations. Rather than giving directly to charities, donors may elect to give through giving vehicles (such as private and public ancillary funds) and collective giving groups or via online crowdfunding platforms (figure 3.1).

Figure 3.1 – Different ways people in Australia give

| There are three main sources of donations | Donations can be in different forms | Some donors give directly, through giving vehicles, giving groups or platforms |
|--|---|---|
|  People | Money and assets In 2021, charities received \$13.4 billion in donations | Giving directly <ul style="list-style-type: none"> • One-off giving • Regular or planned giving |
|  Estates | Goods and services 77% of people donate goods each year | Giving vehicles and collective giving <ul style="list-style-type: none"> • Private funds (private ancillary funds, charitable trusts) • Public funds (public ancillary funds, community foundations) • Giving circles |
|  Organisations | Time In 2022, about 6 million people formally volunteered | Technologies <ul style="list-style-type: none"> • Matching platforms • Online giving platforms |

Sources: ACNC (2023g, p. 6); Biddle et al. (2022, p. 10); McGregor-Lowndes et al. (2017, p. 76).

Donations of money and assets

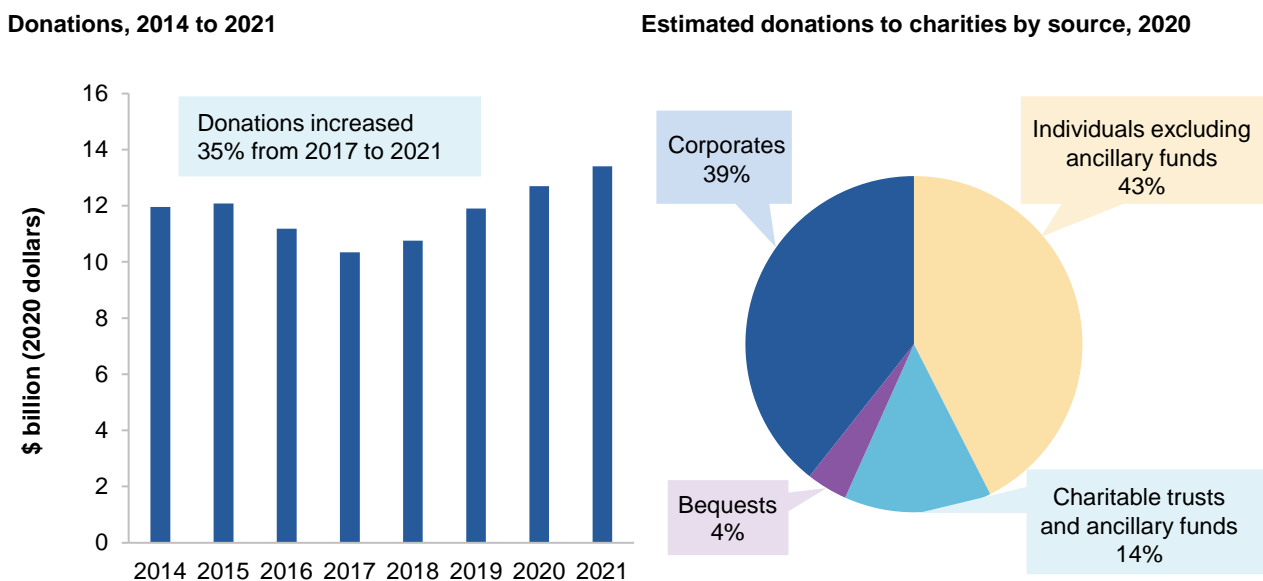
Australians donate billions of dollars in money and assets to charitable causes each year. This includes donations to registered charities, which includes organisations whose primary function is to distribute philanthropic funds through giving vehicles, such as ancillary funds. Individuals who give money or assets to a charity endorsed by the Australian Taxation Office (ATO) as a deductible gift recipient (DGR) may be eligible to claim a tax deduction for their donation.

Australians donated about \$13.4 billion to registered charities in 2021, an increase of 35% (26% in real terms) from 2017 (ACNC 2019b, 2023g). If the historical 4-year average growth rate (7.9%) of total giving to all charities continues, the Productivity Commission estimates that total giving would reach approximately \$26.5 billion in 2029-30. In real terms, the Commission expects total giving to increase by \$6.4 billion or 48% by 2030.

In 2020, the largest source of donations were people giving directly to charities (43%), followed by corporate donations (39%), distributions from funds and trusts (14%), and bequests (4%) (figure 3.2). This is the most recent year for which an estimated breakdown of donations to registered charities is available. The estimated shares of corporate donations, bequests, and donations that people did not claim as income tax reduction are highly uncertain due to data gaps (box 3.1).

There is little information on donations of money and assets to organisations that are not registered charities or to individuals in Australia. For example, many people give money through crowdfunding platforms to assist families affected by personal hardship (such as illness) or communities affected by natural disasters.

Figure 3.2 – Sources of donations of money or assets to registered charities^a



a. Bequests excludes distributions from charitable trusts that people established in their will.

Sources: ACNC (2014c, 2015b, 2016c, 2017b, 2019b, 2020c, 2021c, 2022b, 2023g); McLeod (2020).

Box 3.1 – Limitations of existing data on giving in Australia

The Australian Charities and Not-for-profits Commission (ACNC) commenced operation in December 2012. Their objective is, in part to oversee charity registrations and help the public understand the work of the not-for-profit (NFP) sector through providing information, guidance, advice and other support (chapter 1). Participants noted that, due to the establishment of the ACNC, and their introduction of annual information statement reporting from 2014, available data on charities and giving has improved dramatically (JBWere, sub. 249, p. 4).

Despite these improvements, inquiry participants noted there are still data gaps on giving, including on corporate giving and volunteering, private ancillary funds, sub-funds within public ancillary funds, bequests and peer-to-peer giving (CPA Australia and Chartered Accountants Australia and New Zealand, sub. 123, pp. 9-10; Fundraising Institute of Australia, sub. 134, pp. 12-13; Seibert 2019b, p. 1; Strive Philanthropy and GivingLarge, sub. 119, p. 14).

Data gaps mean estimates of certain types of giving are uncertain

Data gaps can arise because of practical issues associated with monitoring and reporting on certain types of giving. For example, past survey data on giving often fails to capture informal giving (such as someone providing a friend or neighbour with money to help pay for their bills or for driving them to appointments each week). While efforts have been made in recent years to enhance how governments collect and measure volunteering information in Australia, the future of some key data collections, such as surveys that include questions about informal volunteering, is uncertain (box 9.5). There are multiple different surveys on giving, which vary in the way in which they frame questions, response options and in the populations they sample. Consequently, surveys often produce results that conflict with each other,

Box 3.1 – Limitations of existing data on giving in Australia

or that are not comparable with other surveys. There can also be a significant time lag before publication of data, making it harder to analyse trends in real time (JBWere, sub. DR600, p. 5).

Another issue is that respondents to surveys on giving may have a bias toward choosing response options that are more socially acceptable, in order to appear more prosocial to the interviewer or to reinforce their own positive self-identity (Brenner and DeLamater 2016). Such biases may lead to survey results that overstate respondents giving. Alternatively, people may overstate the significance of certain barriers to giving as a justification for why they do not give more. To address the first issue, the Commission places more weight on surveys that had larger and more representative samples and that included a variety of response options.

Data gaps on giving also reflect government decisions on how to prioritise resources and balance the benefits of public transparency with the cost of public reporting. This involves considering the reporting burdens on NFP organisations, and donor and recipient privacy. Government agencies might not collect detailed information on certain forms of giving because there are no specific regulatory reason to justify the associated cost to government or NFP organisations. This is often the case for donations to NFP organisations that are not eligible for tax deductions. For example, there is limited data on people giving to NFP organisations that operate internationally unless the organisation is registered with the ACNC (such as people who give directly to overseas charities that have no Australian presence).

Another challenge relates to the accessibility of data. Obtaining detailed national data on bequests to charities is notoriously difficult as it requires accessing and reviewing individual probate records, which are held by different agencies in each state (Baker 2014). Participants also raised concerns about limitations relating to giving and gender. For example, methodologies for collecting and reporting data often fail to enable analysis on giving by women (AIIW, sub. 271, p. 2).

There may also be legislative constraints on what information can be collected and/or published. For example, the ACNC cannot publish a registration number that a charity may have with another regulator (ACNC, sub. 238, p. 9), nor can they publish the DGR status of a registered charity (chapter 9).

As a result of these data gaps, the Commission drew on estimates of certain types of giving, such as the value of giving that is not claimed as an income tax deduction and giving through sub-funds (McLeod 2020; Seibert 2019b). The Commission obtained data on corporate giving, bequests and donations that people have not claimed against their income tax from the private sector and academia. These sources can have different collection methods and underpinning assumptions, which renders estimates of each type of giving and the overall estimate of giving, somewhat uncertain.

Approaches to collecting data may underestimate giving among Aboriginal and Torres Strait Islander people and culturally and linguistically diverse communities

Another limitation of government data sources relates to the underreporting of giving within Aboriginal and Torres Strait Islander and culturally and linguistically diverse communities. For example, approaches to collecting and reporting on giving, including volunteering, may use language that is unfamiliar to some people in multicultural and linguistically diverse communities (chapter 9).

Donations by individuals are expected to grow in the longer term

People may not decide to give at all, but they have a range of options if they do. These options broadly include donating to a charity or directly to a beneficiary, donating to a fund or giving group which then distributes the donation on the donor's behalf, or making a charitable bequest of money or assets in their will.

Since 2000, the Australian Government has expanded tax incentives for giving to registered charities (chapter 1). These changes included the introduction of prescribed private funds (the precursor to private ancillary funds) in 2001, simpler workplace giving arrangements in 2002, and various minor additions to the range of entities to which individuals can make direct donations and claim a tax deduction. The effects of these specific policy changes on giving have varied.

Tax-deductible donations to charities have increased, but fewer people are donating

Most public commentary on giving focuses on tax-deductible donations. This is because ATO data on tax-deductible donations by individuals is detailed (in terms of individual donor characteristics), accessible, highly reliable, and because these tax deductions directly affect tax revenue.

A commonly observed trend in tax-deductible giving over recent decades is increasing donations despite a lower proportion of people, with taxable income, giving to eligible entities (Leigh 2023b). In 2020-21, Australians contributed \$4.4 billion in tax-deductible donations to eligible charities. This represents a 217% increase or tripling in the value of giving (in real terms) since 2000-01, despite the number of taxpayers increasing by only 38%. The Commission estimates that tax-deductible donations will be approximately \$8 billion in nominal terms by 2029-30, based on the historical 10-year average growth (7.0%) in tax-deductible donations from individuals (figure 3.3). In real terms, the Commission expects giving to increase by \$1.6 billion or 36% over this period.

Utilising ALife taxation records, the Commission analysed the probability of individuals making subsequent donations within three years of their initial contribution. Our findings reveal that among those who donated between 2005-06 and 2019-20 (and filed an income tax return for at least four years), only 63% donated in the following year, 57% in the second year and 54% in the third year. These figures underscore that nearly half of taxpayers claiming a tax-deductible donation cease contributing within three years of their initial donation.

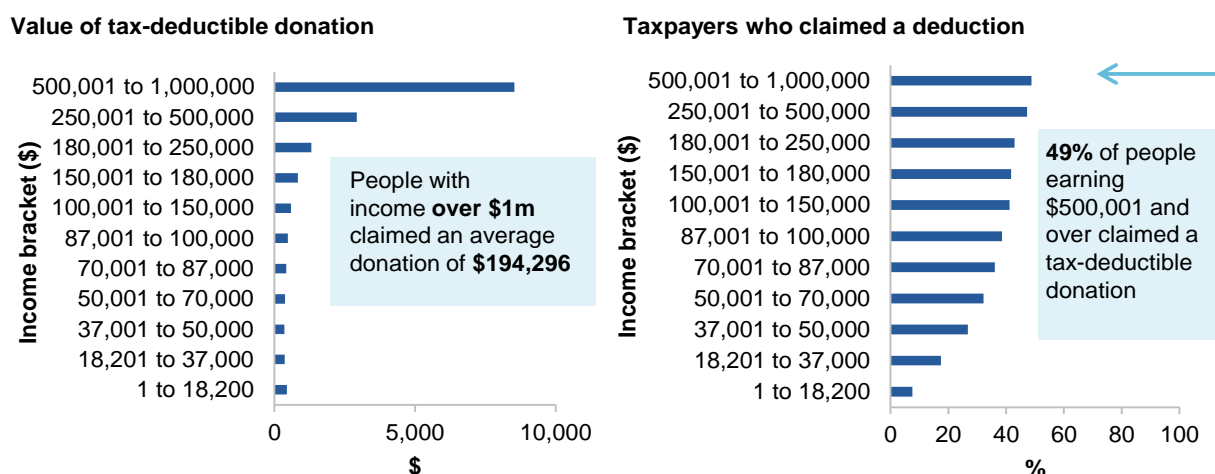
Most of the increase in tax-deductible giving is attributable to high income earners tending to give more, noting that Australians move in and out of income brackets over their life cycle. People earning an income above \$180,000 accounted for over 70% of the growth from 2010-11 to 2018-19 despite representing only 3.5% of taxpayers.¹ Over this same period, the average donation by people earning over \$120,000 increased from \$565 to \$782. The median donation in 2019-20 for people who donated in the top two highest tax brackets was \$180 and \$444 respectively.

However, the ATO data also suggests that the proportion of Australian taxpayers claiming tax-deductible donations fell from 33% to 28% over the 20-year period to 2020-21 (figure 3.3).

¹ Commission estimates using ATO data.

Figure 3.3 – Tax-deductible donations of money by people

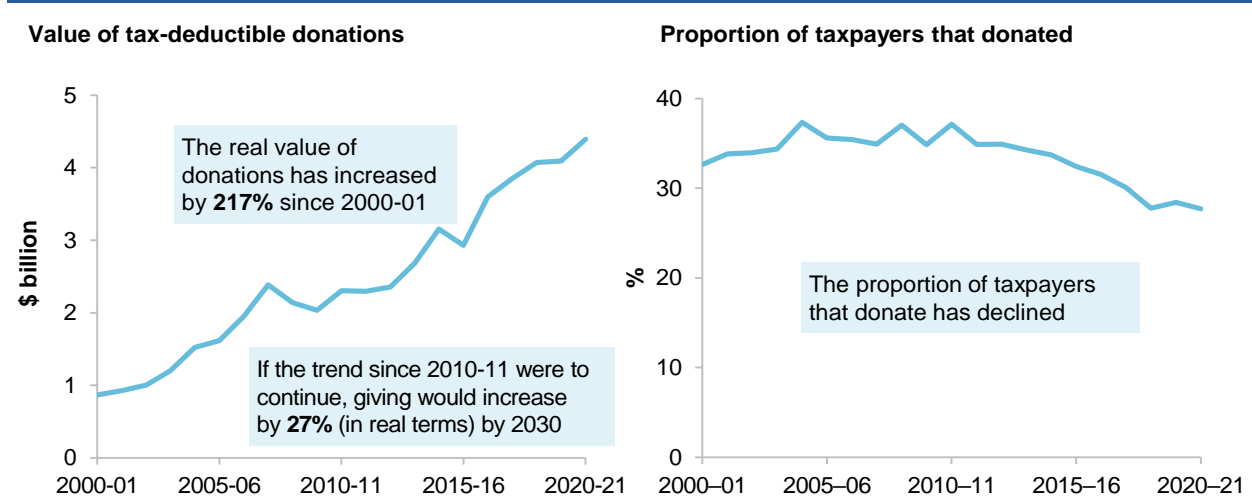
In 2020-21, the likelihood and size of tax-deductible donations increased with income



Tax-deductible donations also varied by gender, age and location

- Women** were more likely to donate than men
- Men** made larger donations on average than women
- The likelihood and average size of donations increased with **age**
- The likelihood and average size of donations were higher in **states with higher income levels**

From 2000-01 to 2020-21, donations increased in real terms



People who give regularly tend to give more

From 2015-16 to 2019-20

- 55%** of taxpayers donated in at least one year
- 14%** of taxpayers made a tax-deductible donation in every year
- \$304** is the average donation of taxpayers that donated in one year
- \$1,145** is the average donation of taxpayers that donated in every year

Sources: ALife (2020); ATO (2023a).

There are many suggested reasons for why the proportion of people making tax-deductible donations has been declining, including:

- a perception that taxpayer funded services in Australia have been improving, which may ‘crowd out’ some private donations (Aruma Disability Services, sub. 187, p. 2)
- the rising cost of living, which is putting pressure on household budgets and people’s capacity to donate (Mercy Works, sub. 60, p. 1; National Seniors Australia, sub. DR708, p. 1; St Vincent de Paul Society National Council, sub. 82, p. 1; Wade et al., sub. 199, p. 2).

Similar giving trends have been observed in other countries. For example, in the United States and the United Kingdom donations in recent years have increasingly come from fewer people who give more (CAF 2023a, p. 13; CCS Fundraising 2022, p. 11).

Macroeconomic factors are likely to explain much of the observed trends in tax-deductible donations

Rising incomes are likely to have played a significant role in the observed increase in tax-deductible donations by individuals (figure 3.4). For example, almost half of all tax-deductible donations are made by people who are in the top 1% of income earners.²

From 2009-10 to 2019-20, the average weekly disposable household income increased by \$90 across all households and by \$155 across households with the highest income levels (top 20%). This suggests that individuals’ financial capacity to donate (and particularly those with high incomes) increased (ABS 2020c). The Commission’s estimates of the income elasticity of giving (chapter 4) suggests that everything else being equal, increases in income tend to increase giving. In addition, there was an increase in the proportion of people in the highest tax bracket (from 2% in 2010-11 to 4% in 2020-21). To the extent that people respond to a lower ‘tax price’ of giving, more people had a stronger financial incentive to make a tax-deductible donation.




Growth in wealth is also likely to have contributed to increased giving by people who have a heightened sense of financial security. From 2009-10 to 2019-20, the average household net wealth for all households increased by 19% (ABS 2020d). The increase in average household net wealth was even higher among the wealthiest households (top two quintiles).

International evidence suggests that there is a relationship between the stock market, market cycles and charitable giving. Individual donations tend to be more responsive to stock market upturns than downturns (List and Peysakhovich 2011). Giving is affected by market fluctuations but donations tend to be more sensitive to economic booms than recessions (Smith 2022; Blackbaud Institute 2022).

² Commission estimates using ATO (2023g).

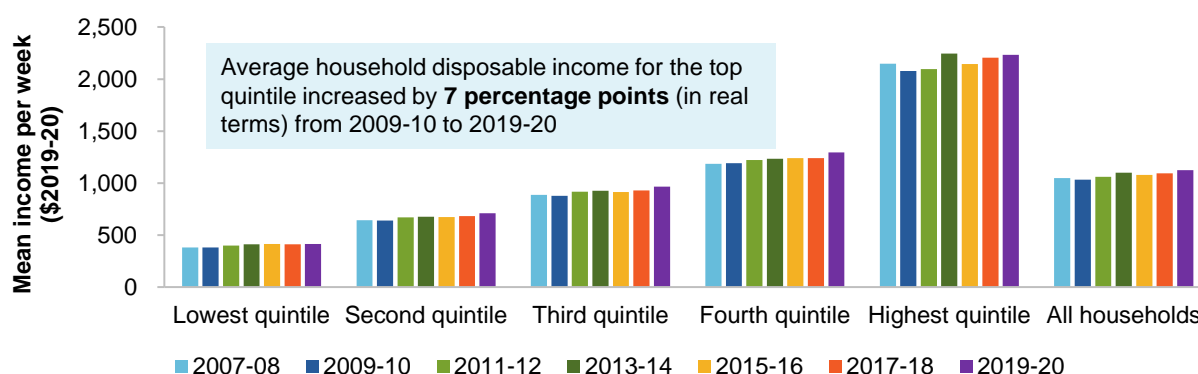
Figure 3.4 – Factors that likely contributed to increased giving

A range of factors have likely affected giving

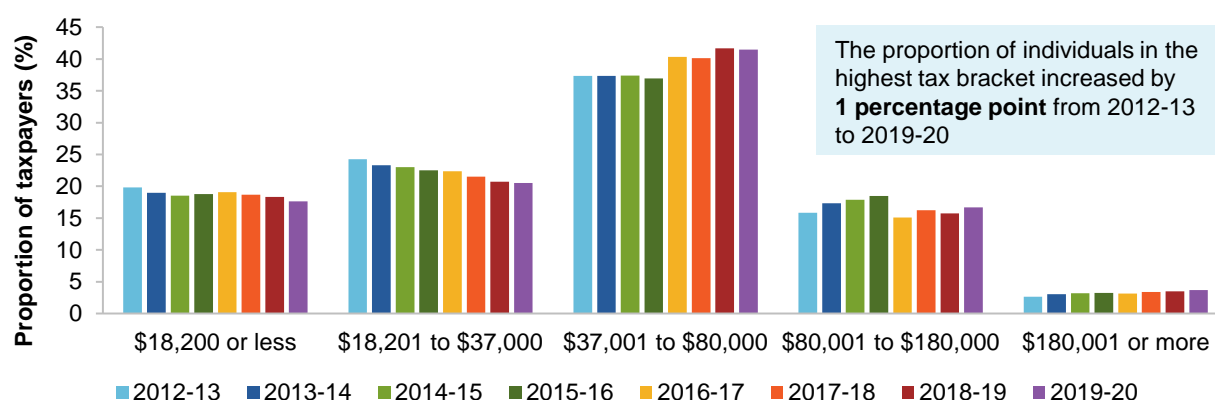
| | | |
|--|--|--|
| <p>Policies to encourage giving</p> <ul style="list-style-type: none"> Private ancillary funds (2001) Expansion of DGR status (various years)  | <p>Rising incomes</p> <ul style="list-style-type: none"> Long term growth in average disposable income  | <p>Specific events</p> <ul style="list-style-type: none"> COVID-19 pandemic (2019 to 2023) Global Financial Crisis (2007 to 2009)  |
|--|--|--|

Rising incomes have increased people's capacity and incentives to make donations ...




Equivalised disposable household income



Taxpayers in each tax bracket



Policies seem to have affected tax-deductible giving to varying degrees

| | | |
|---|---|--|
| <p>The introduction of various tax incentives in 2000 coincided with an uptick in the long run trend in tax-deductible giving</p>  | <p>The growth in donations to private ancillary funds (it accounted for 27% of donations in 2020-21) suggest they played an important part in this result</p>  | <p>The effects of workplace giving policies on giving is more modest (it accounted for 1% of individual tax-deductible donations in 2020-21)</p>  |
|---|---|--|

Note: Equivalised disposable household income is disposable household income adjusted to facilitate comparison of income levels between households of differing size and composition.

Sources: ABS (2020c); ATO (2002, 2023a).

The introduction of ancillary funds has likely increased giving but their precise effect is uncertain

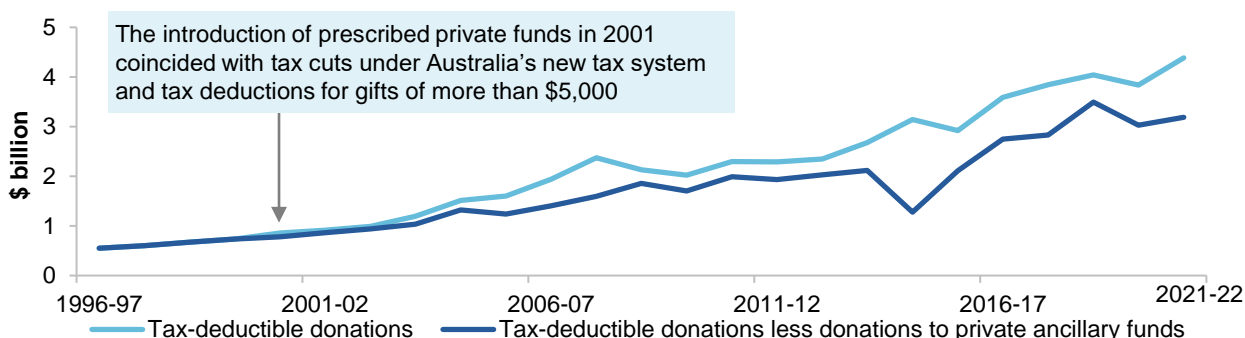
Rather than give directly to charities, some donors elect to give through structured giving vehicles, such as private ancillary funds and public ancillary funds (chapter 8). These structures differ in terms of whether they can receive donations from the public and the discretion of the trustee in distributing funds (figure 3.5).

Figure 3.5 – Ancillary funds are becoming an increasingly important mode of giving^a

| Donors commonly give money and assets through funds or trusts | | | |
|---|---|---|---|
| | Charitable trusts | Private ancillary funds | Public ancillary funds |
| Number | 5,260 (2023) | 2,035 (2023) | 1,172 (2023), with 1,995 operating sub-funds in (2017) |
| Total assets | \$26.7 billion (2020-21) | \$12.1 billion (2020-21) | \$5.7 billion (2020-21) |
| Annual amount received | - | \$1.2 billion (2020-21) | \$1.2 billion (2020-21) |
| Annual amount distributed | \$925 million (2020-21) | \$511 million (2020-21) | \$626 million (2020-21) |
| Main recipient charities | - | Welfare and rights (16%) Multiple purposes (9%) Cultural organisations (6%) | Welfare and rights (18%) Multiple purposes (10%) Health (9%) |
| Donor appeal | Those not needing a tax deduction or those wanting to give to a wider range of charities including those without DGR status | Typical users of private ancillary funds are high-net-worth individuals | Sub-funds of public ancillary funds provide an alternative to private ancillary funds, including for those donating smaller amounts |

Introducing private ancillary funds possibly increased giving but there were other factors

Tax deductible donations



a. Total tax-deductible donations less donations to private ancillary funds is not a precise proxy for tax-deductible giving into private ancillary funds because it does not account for other giving that does not attract an income tax deduction (such as bequests).

Sources: ATO (2023a); ACNC (2023g); Seibert (2019b).

Structured giving vehicles account for 14% of all registered charities. Of the 11,427 grant-making charities in 2021, 10% were public ancillary funds, 18% were private ancillary funds, 46% other trusts and the remaining 26% were other types of charities that made grants (ACNC 2023g, p. 37).

Each fund type tends to appeal to different types of donors. For example, the set-up cost and recommended minimum capital for private ancillary funds and charitable trusts mean that they are less accessible to people who wish to donate smaller amounts. Public ancillary funds can also have sub-funds, which are a type of 'giving account' that can be an alternative to establishing a private ancillary fund. Assets held in sub-funds are invested collectively, and donors can make recommendations for grants to be made from their sub-fund. This structure tends to require less financial commitment and fewer administrative obligations compared to a donor establishing a private ancillary fund (Seibert 2019b).

In Australia, there is currently no requirement to report information on sub-funds within public ancillary funds to the ACNC and ATO. Therefore, it is difficult to determine their prevalence in Australia and any changes over time. In the United States, the equivalent of sub-funds (known as 'donor advised funds') have seen significant growth in recent years, prompting debate on the appropriateness of regulatory arrangements (Ian Murray, sub. 206, p. 2; Perpetual, sub. 254, p. 4).

The Australian Government introduced prescribed private funds (the precursor to private ancillary funds) in 2001 and public ancillary funds have been a longstanding feature of the tax laws. The introduction of prescribed private funds in 2001 coincided with a noticeable increase in overall giving (figure 3.5). As this change occurred roughly at the same time as major changes to Australia's tax system (including personal income tax cuts), it is difficult to attribute a precise value to the increase in giving due to the introduction of private ancillary funds. As public funds have been around since the 1960s the effects of this incentive on giving would have been reflected in the data in figure 3.5.

Since 2011-12, overall giving into private and public ancillary funds has grown both in value (from \$692 million to \$2.4 billion in 2020-21) and as a share of giving by individuals (donations to private ancillary funds have grown from 15% to 27% of individual giving from 2011-12 to 2020-21). Over the same period, total net assets in ancillary funds have also grown significantly – from \$4.6 billion to \$16.4 billion.

Some participants commented on the benefits of ancillary funds as an option for undertaking a structured approach to philanthropy. However, other participants raised concerns on the accumulation of assets by ancillary funds over the past decade which may delay benefits reaching end recipients (chapter 8). Some participants noted concerns about the transparency and reporting burden of reporting obligations imposed on charitable trusts and funds. Chapter 9 discusses public reporting by charities in more detail.

The introduction of workplace giving has had a negligible effect on overall giving

Workplace giving enables people to donate a proportion of their pre-tax salary to a charity each payday through a joint relationship between employers, employees and charities. The ATO introduced arrangements to simplify and facilitate workplace giving in 2002 (ATO 2002). Only a small proportion of employees who have access to workplace giving arrangements use them (figure 3.6). Some workplaces also offer complimentary incentives to encourage giving such as matching staff donations. The effect of this matching is an important driver of giving from employees (Good Company, trans., p. 491; The Smith Family, trans., p. 50).

Workplace Giving Australia suggested that few people participate in workplace giving which is due to a lack of awareness.

Around 4 million have access to a workplace giving program. Of these, less than 5% elect to avail themselves of its benefits ... At the same time, over 65% of Australians are actively donating to charities each year and over 70% of businesses do likewise. Hence, the problem for the

workforce is the disconnect it has with their employers (and vice versa) ... This disconnect is in large part due to a lack of awareness on both the availability of programs for workplace giving, and/or on the positive impact on charities and causes. (sub. 175, p. 5)

Further, Workplace Giving Australia research conducted in 2024 indicates that one barrier to adopting payroll giving is that the sign-up process is too complex (noting the most common reason is the lack of knowledge as to the existence of workplace giving programs). (sub. DR618, p. 6)

Figure 3.6 – Workplace giving

| The introduction of workplace giving has had a negligible effect on overall giving | | |
|---|--|---|
| In 2020-21 | | |
| Workplace giving accounted for 1% of tax-deductible donations (0.4% of total donations to charities) | Workplace giving accounted for \$53 million in donations | 207,000 employees used workplace giving |
| Some workplaces offer complimentary incentives to encourage uptake and donations | | |
| \$23 million was contributed by employers through donation matching in 2018 | Workplace giving donations increased by 77% from 2010-11 to 2020-21 | Uptake of workplace giving by employees increased by 32% from 2010-11 to 2020-21 |

Sources: ATO (2023b); Workplace Giving Australia (2020).

It is unclear how the introduction of simpler workplace giving arrangements has changed overall giving. People participating in the program might have reduced how much they give in other ways (for example, if they have a fixed budget for donations) or increased how much they are giving in other ways (for example, if it reinforced their self-identify as a giver and encouraged further prosocial behaviour). There is insufficient data to test whether either of these effects exist.

Chapter 10 examines public campaigns to encourage giving, drawing on lessons from other contexts (and a previous campaign targeting workplace giving in Australia).

Less is known about people who donated directly to charities and did not claim a deduction

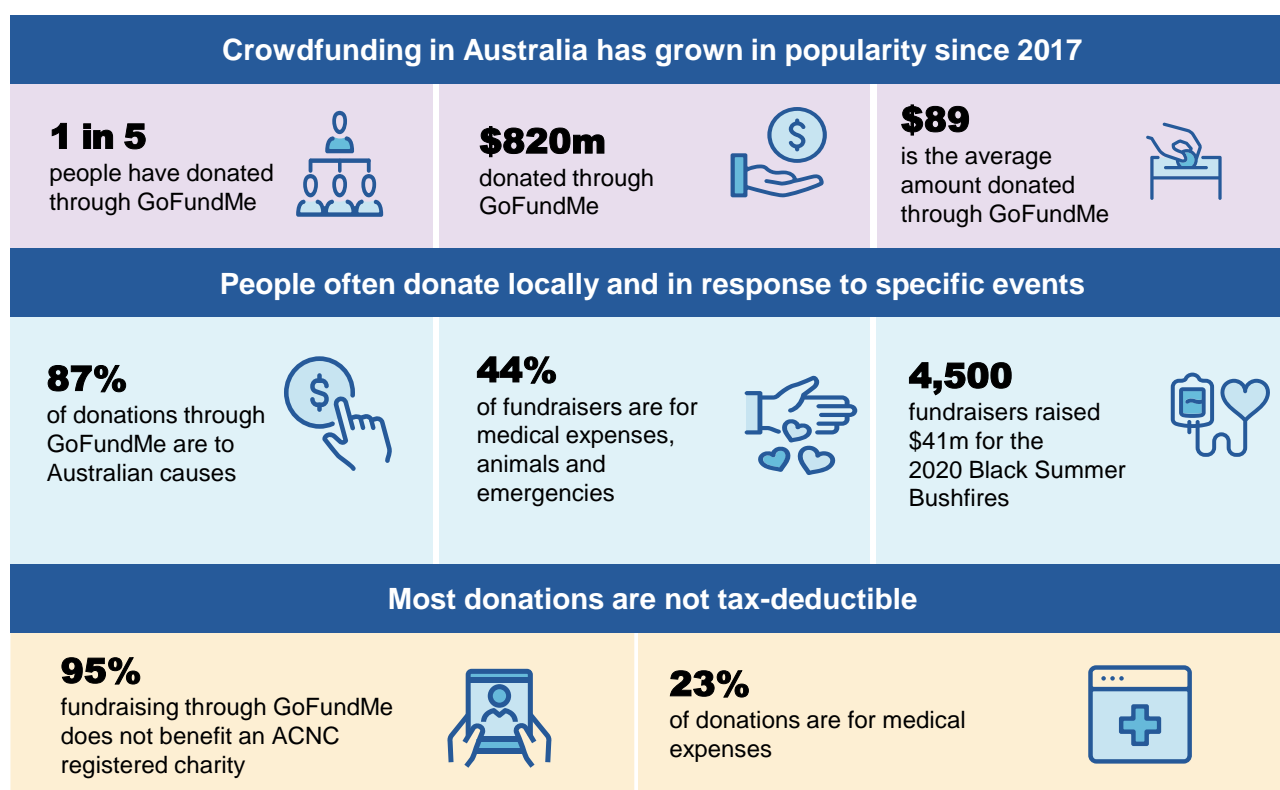
There are numerous reasons why an individual or business may donate to a charity and not claim a tax deduction. These include a taxpayer being under the tax-free threshold and not lodging a tax return, the taxpayer did not receive a receipt, the donation was less than \$2 or the taxpayer could not substantiate their deduction – for example, if they lost or did not a record of their receipt (BDO, sub. DR718, p. 5).

There are a range of estimates for the value of donations to registered charities that people do not claim as a tax deduction. JBWere estimated that the value of these donations was approximately \$3.8 billion in 2020 (McLeod 2020). This is much higher than the Australian Institute of Health and Welfare’s (AIHW) estimate of \$2.1 billion in 2015-16, which included gifts and donations to ‘family or friends’ (AIHW 2021a, p. 3). Excluding this category of donations reduces the AIHW’s estimated value of donations not claimed as tax deductions to about \$400 million (ABS 2017). The Commission was unable to verify the profile of these donors and the accuracy of these estimates.

There is also limited information on donations of money and assets to people or charities that are not registered charities. For example, people may give through online peer-to-peer platforms, such as the donation-based crowdsourcing platform GoFundMe. Unpublished data from GoFundMe shows 95% of

fundraisers on the platform are not registered charities (figure 3.7). Crowdfunding is part of a newer trend where donors can provide funds to beneficiaries in a direct way that bypasses the traditional role of charities as intermediaries by receiving, pooling and then distributing funds through service provision (McGregor-Lowndes et al. 2017, p. 127).

Figure 3.7 – Giving by Australians through the crowdfunding platform GoFundMe



Source: GoFundMe (2023).

Research commissioned in 2021 by GoFundMe and More Strategic showed that women aged between 19 and 45 were most likely to both donate to and organise peer-to-peer fundraisers (GoFundMe 2023, p. 11).



Finding 3.1

Rising income and wealth are the major reasons behind rising tax-deductible donations

Tax-deductible donations by individuals made directly to charities have increased in value, but fewer people are making such donations. From 2000-01 to 2020-21, tax-deductible donations tripled (in real terms) despite the number of taxpayers increasing by only 38%. The available evidence indicates that this coincided with individuals' financial capacity to donate increasing.

The Australian Government also made policy changes that provided additional or more flexible financial incentives to give, which likely also played a role in increasing giving. Giving into private and public ancillary funds has grown in value (from \$692 million in 2011-12 to \$2.4 billion in 2020-21). The relative importance of private ancillary funds has also grown from 15% to 27% of individual giving.

Bequests are a small proportion of donations

Some people decide to leave a bequest or a donation to a charity in their will, which may be a specific sum of money, a percentage of their estate or a specific asset. Charitable bequests of money do not typically benefit from any form of specific tax incentive (such as a tax deduction, excluding the super estate component). This is in contrast to donations of money a person makes during their lifetime which may receive a tax deduction. However, a charity with DGR status receiving a bequeathed asset (for example, shares) may be exempt from capital gains tax.

While data on bequests in Australia are patchy and often dated, they suggest bequests account for a relatively small proportion of total donations (although some sources have suggested that they have been growing). Chapter 9 considers options for enhancing the available data on bequests.

The average bequest in Australia is estimated to be between \$40,000 and \$65,000. Nationally, charities receive between \$450 million and \$490 million annually from bequests (F&P 2019; McLeod 2018, p. 14; Philanthropy Australia 2021, pp. 7–11). A 2019 fundraising benchmarking study estimated that charity incomes from bequests had grown by 10% over the previous decade, which was faster than many other types of donations (Dy 2019; IVE Group 2021).

Studies conducted over the past decade or so have also found:

- less than 1 in 10 Australians have a will that makes provisions for a charitable bequest. Wills with charitable gifts are on average, signed 5.6 years prior to the end of life (Baker 2014, pp. 39–40, 58)
- charitable bequests tend to give to a single charity (43%), and rarely give to more than three (less than 20%) (MoreStrategic and Fundraising Institute Australia 2023, p. 47)
- bequests tend to be a fixed amount (53%), rather than a proportion of an estate (27%) (MoreStrategic and Fundraising Institute Australia 2023, p. 47)
- the value of charitable bequests tends to be much higher when people leave the residual of their estate to a charity (for example, after bequests to family) compared with when they leave a specified amount to a charity. For example, one study found median residual bequests are nearly 30 times that of specified bequests (\$7,000 compared with \$200,000) (Baker 2014, p. 6).
- estates without surviving children are seven times more likely to include a charitable bequest. Median charitable bequests are 10 times greater when there are no children beneficiaries included in the will (Baker 2014, p. 52)
- the most significant bequest donations in recent years have tended to be gifted by women (Noble Ambition, sub. 131, p. 4).

Several participants argued that the rate of giving through bequests in Australia is below that of other countries because Australia lacks the same culture and history of giving (figure 3.9).

We currently sit at half the rate of the US and UK due to several factors with only an estimated 7% of wills leaving a bequest to charity ... Two of the main reasons are our culture and history for giving this way not being strong or long enough plus the lack of financial incentives to act this way. (JBWere, sub. 249, p. 5)

Others identified giving through bequests as a major opportunity for increasing giving in Australia because of the increasing amount of intergenerational wealth transfer over the coming years. However, the lack of community awareness of bequests must be overcome as a barrier to this type of giving (The Smith Family, sub. 216, pp. 11–12). Alternatively, others suggested an option to give out of excess superannuation after someone dies (Philanthropy Australia, sub. 162, p. 13). Chapter 8 considers potential policy changes in relation to bequests of excess superannuation. Chapter 10 examines public campaigns to encourage people to give.

Billions are donated by corporations, but there is a lack of detailed public data

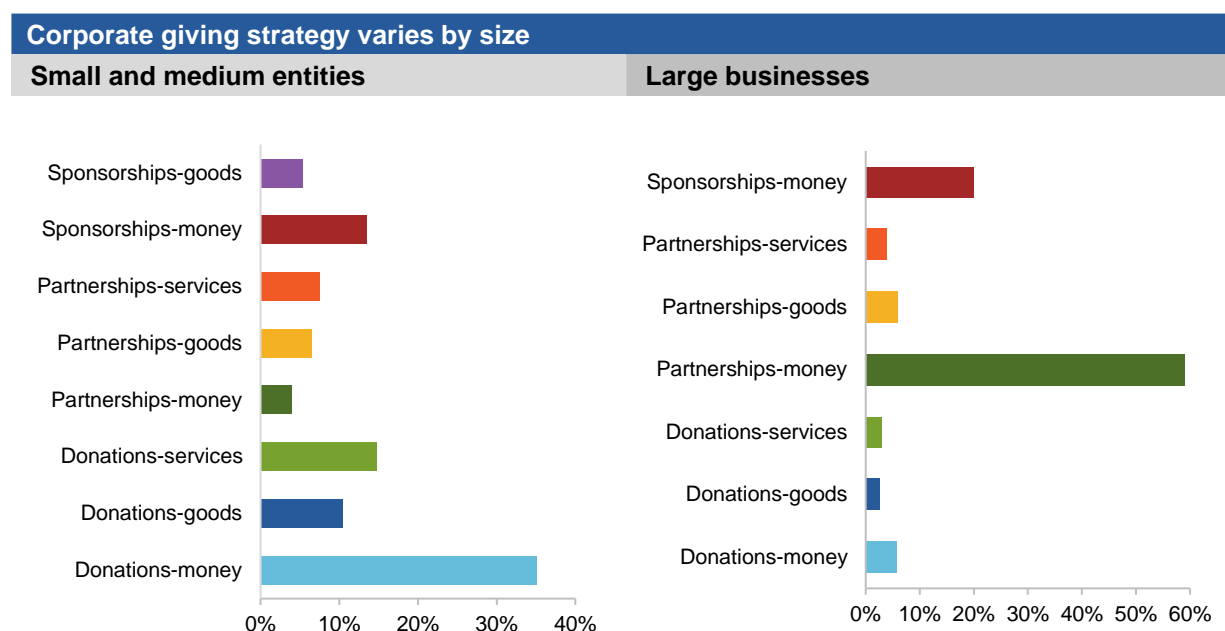
As businesses do not report disaggregated donations to the ATO when submitting a tax return, there is limited detailed data on corporate giving. However, multiple studies have estimated that corporate donations are worth \$5 billion per year or more. McLeod (2020), for example, estimated corporate donations to charities were about \$5 billion (or almost 40% of total donations to charities) in 2020. This is comparable to the \$6.2 billion in donations in 2015-16 estimated by the 2016 Giving Australia study (Burns et al. 2017, p. 19).

The 2016 Giving Australia study found that such donations represent a fraction of total corporate community support when compared to non-commercial sponsorships and partnerships. The study noted monetary donations accounted for 35% of corporate giving by small and medium size entities and as low as 6% of corporate giving by large business (figure 3.8). The study also found that over half of corporate giving is by large businesses (such as ASX listed companies), although these represented 0.2% of all Australian businesses (Burns et al. 2017, pp. 20–21).

Several studies have highlighted that business giving is often driven by an imperative to establish a social licence by giving to the community in which the business operates; to promote employee recruitment, to improve retention and engagement; and meet shareholder expectations about corporate social responsibility (BCA, sub. 252, pp. 4–5; Strive Philanthropy and GivingLarge, sub. 119, p. 27) (discussed further in section 3.3). Some businesses are incorporating nudges to increase donations to charitable causes (box 10.1).

Participants noted the benefits of capturing better data on corporate philanthropy (Strive Philanthropy and GivingLarge, sub. 119, pp. 30–31). Options for increasing the transparency of corporate reporting on giving to better meet the expectations of shareholders, consumers, employees and the broader community, and to provide better data on corporate giving are discussed in chapter 9.

Figure 3.8 – Corporate giving strategies by size



Source: Burns et al. (2017, p. 21).

Cross-country comparisons of giving have limitations

Each day, people seek to give to, engage in, and support the community in various ways. The social norms, habits and expectations around giving are often referred to as a 'culture of giving'. The Commission received submissions which stated that giving in Australia is below that of other countries (figure 3.9) (McDonald and Scaife 2011, p. 312; Philanthropy Australia 2021, p. 5; Workplace Giving, sub. 175, p. 5). According to the Charities Aid Foundation World Giving Index, Australia currently ranks 14th out of 142 countries, with Indonesia ranking 1st, the United States 2nd, Canada 8th, New Zealand 10th and the United Kingdom 17th (CAF 2023b).

Some participants suggested governments could do more to promote a culture of giving in Australia, such as through public campaigns. For example, Philanthropy Australia (2021, p. 5) noted that 'while comparisons with other nations should be made with caution, given the varying political and social contexts and philanthropic traditions across nations, there is room for Australia to enhance our culture of giving'.

There are good reasons to believe that social and cultural norms play an important role in attitudes towards expected giving and actual giving outcomes. However, to be analytically useful and policy relevant, the notion of a culture of giving should be well defined and precise. Some ways of measuring a culture of giving include examining whether (controlling for other factors):

- there is a strong geographical clustering in giving data, which could be a sign that some people are more likely to give because their neighbours do and that peer effects influence giving
- people are more likely to give when they gave in a previous year, which could also be a sign that once people give, they form a habit of giving, which can manifest itself as a culture of giving within households (figure 3.3)
- children are more likely to give if their parents or siblings do, or if they are from a culturally diverse or religious background.

The Commission has explored some aspects of this analysis in cases where there is available data. People who give regularly tend to give more (figure 3.3), people tend to give locally through peer-to-peer platforms (figure 3.7) and people affected by natural disasters are likely to donate more to help people in their own community. Proposals related to changing community attitudes and norms in relation to giving, including using public campaigns, are considered in more detail in chapter 10.

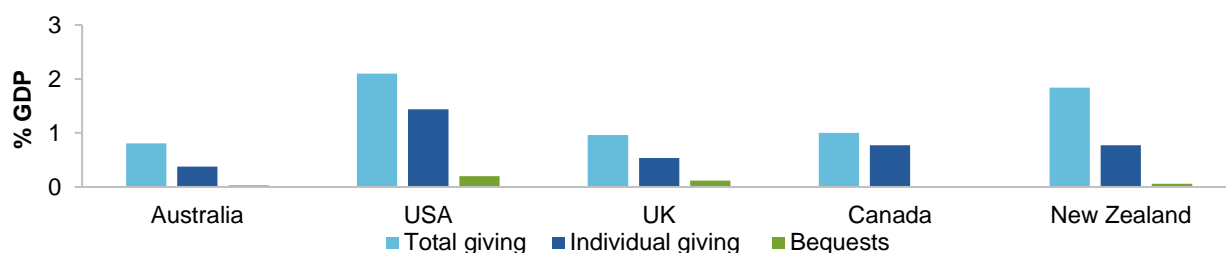
Figure 3.9 illustrates why relying on measures of private giving (as a share of GDP) as a narrow proxy for how much different societies care about social causes does not provide the full picture. There can be inconsistencies in terms of what is counted as 'giving' in different countries, and the available data can often relate to different years. Giving can encompass many forms, including tax-deductible individual giving, non-tax-deductible individual giving, corporate giving and partnerships, bequests, in-kind donations of goods and services, giving to charities not registered with the ACNC and volunteering. There is no single estimate for all types of giving in Australia, which makes like-for-like international comparisons difficult and potentially problematic for policy development. Comparisons also leave out how society is supported through the tax and transfer systems in each country, and the extent to which the existence of a social safety net may influence private giving.

Figure 3.9 – International benchmarks of giving only tell part of the story^a

Giving as a share of GDP varies across countries

Available estimates suggest giving in Australia (% GDP) is lower than other countries such as the United States of America (USA).

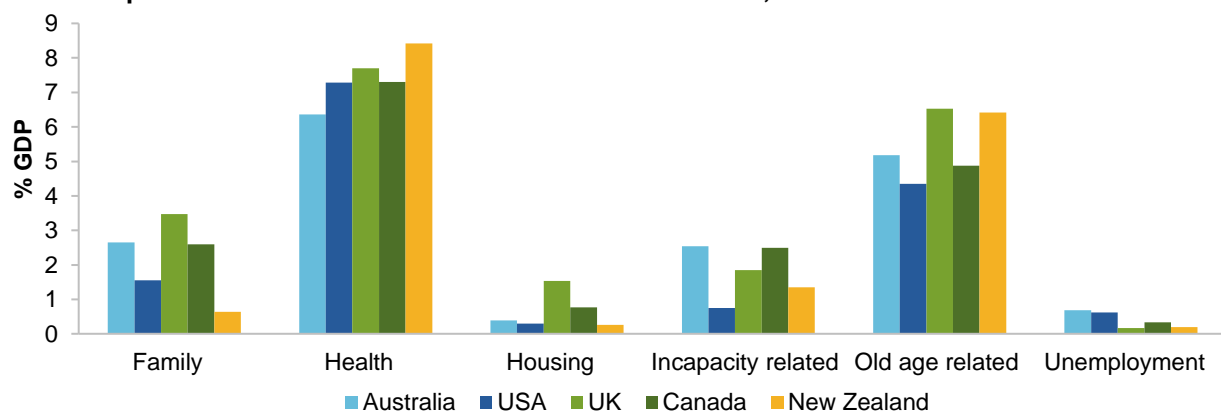
Giving in selected countries, 2013 to 2018



But so does public expenditure on different types of social services

In 2015, Australia spent more (% GDP) than the USA in areas such as family, incapacity and unemployment

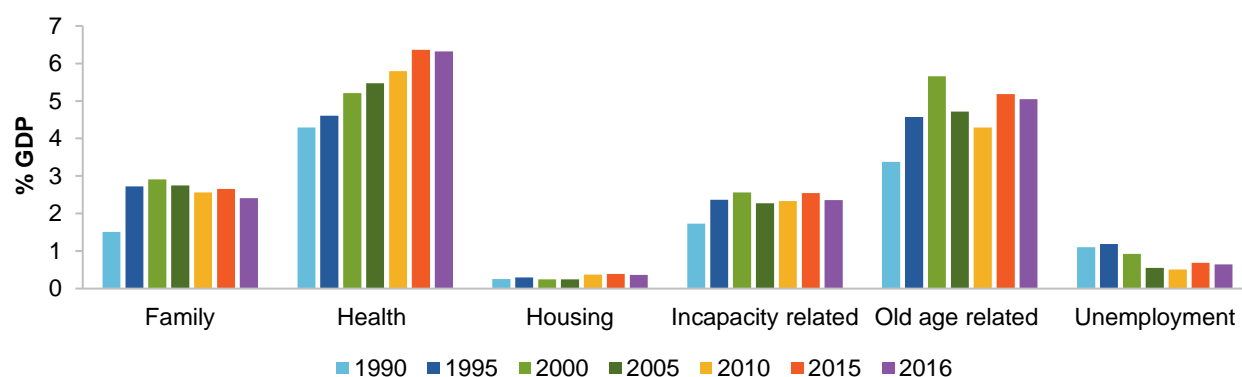
Public expenditure on selected social service and countries, 2015



Public expenditure on social services in Australia as a share of GDP has grown over time

Public expenditure (% GDP) in areas of health, old age and family increased substantially between 1990 and 2016

Public expenditure for selected social services in Australia, 1990 to 2016



a. Bequest giving data for Canada is unavailable.

Sources: OECD (2017); Philanthropy Australia (2021, p. 5).

Volunteering

Volunteering is time willingly given for the common good and without financial gain. It includes formal volunteering that takes place within organisations, as well informal volunteering to support non-family members outside of the household (Volunteering Australia 2015b).³

Volunteering is widespread in Australia

In 2023, about one in three people (or about 6.6 million people) volunteered for an organisation (Biddle and Gray 2023, p. 7). In 2022, nearly one in two people (47%) undertook informal volunteering (Biddle et al. 2022, p. 10). A 2019 benchmarking study found that 78% of companies that participated in the survey have a volunteering program, with 15% of employees participating in corporate volunteering (Volunteering Australia 2019, p. 4). Volunteering was estimated to have an imputed value of \$17.3 billion (1% of GDP) in the 2012-13 (ABS 2015a). Today, 1% of GDP is worth around \$24 billion (ABS 2024). Volunteering WA (sub. DR319, p. 3) recently commissioned work to understand, among other issues, the size of the volunteer workforce in WA. The findings demonstrated the replacement value of volunteer labour in Western Australia (and avoided by governments) is \$16.5 billion per annum. They also show that the size of the volunteering sector is more than twice that of the entire public sector in WA, and over half of the size of the private sector. Several studies and participants highlighted limitations in reporting on volunteering among Aboriginal and Torres Strait Islander people and culturally and linguistically diverse communities (chapter 9). Conventional approaches to collecting and reporting on giving, including volunteering, can use language and definitions that may result in underreporting or underappreciation of giving.

Formal volunteering rates have declined over the past decade ...

People with certain characteristics are more (or less) likely to volunteer (figure 3.10). For example, the 2016 Giving Australia study found that volunteering rates were:

- highest among people aged between 35 and 44 and lowest among people aged between 25 and 34
- highest among people earning an income over \$156,000 and lowest among people earning an income less than \$15,600
- higher among people who work in a part-time, casual or self-employed basis rather than people who work full time (McGregor-Lowndes et al. 2017, pp. 79–82).

People with certain characteristics are also more likely to volunteer more (or less) hours. For example, the same survey found that individuals who are older (aged 65 and older) volunteered the most hours on average, while people aged between 25 to 35 volunteered the least hours (McGregor-Lowndes et al. 2017, pp. 80–82).

Volunteers most commonly contribute to sport and physical recreation, religious, education and community organisations (ABS 2021a). The most common activities performed include fundraising or sales (23%), teaching and instruction (15%), food preparation (14%) and coaching and refereeing (14%) (ABS 2015b; Volunteering Australia 2022, p. 15).

³ The following section considers volunteering in Australia drawing on multiple sources including official statistics (such as the Australian Bureau of Statistics), academia and industry research. Findings from different sources sometimes conflict or are not directly comparable because they may cover different time periods and populations, and use different methodologies, definitions, or categories.

The characteristics of Australians who volunteer, and the nature of volunteering, raise several issues for the design of policies to encourage more giving through volunteering, including the extent to which:

- specific volunteering activities, such as volunteering for religious, education and coaching organisations, provide wider public benefits that might warrant government support
- people would volunteer more if the government provided them with an incentive (motivations are discussed in section 3.3 and tax incentives are discussed in chapter 4)
- there are regulatory barriers to volunteering that can be time consuming and complicated, such as requirements to complete screening checks (chapter 7).

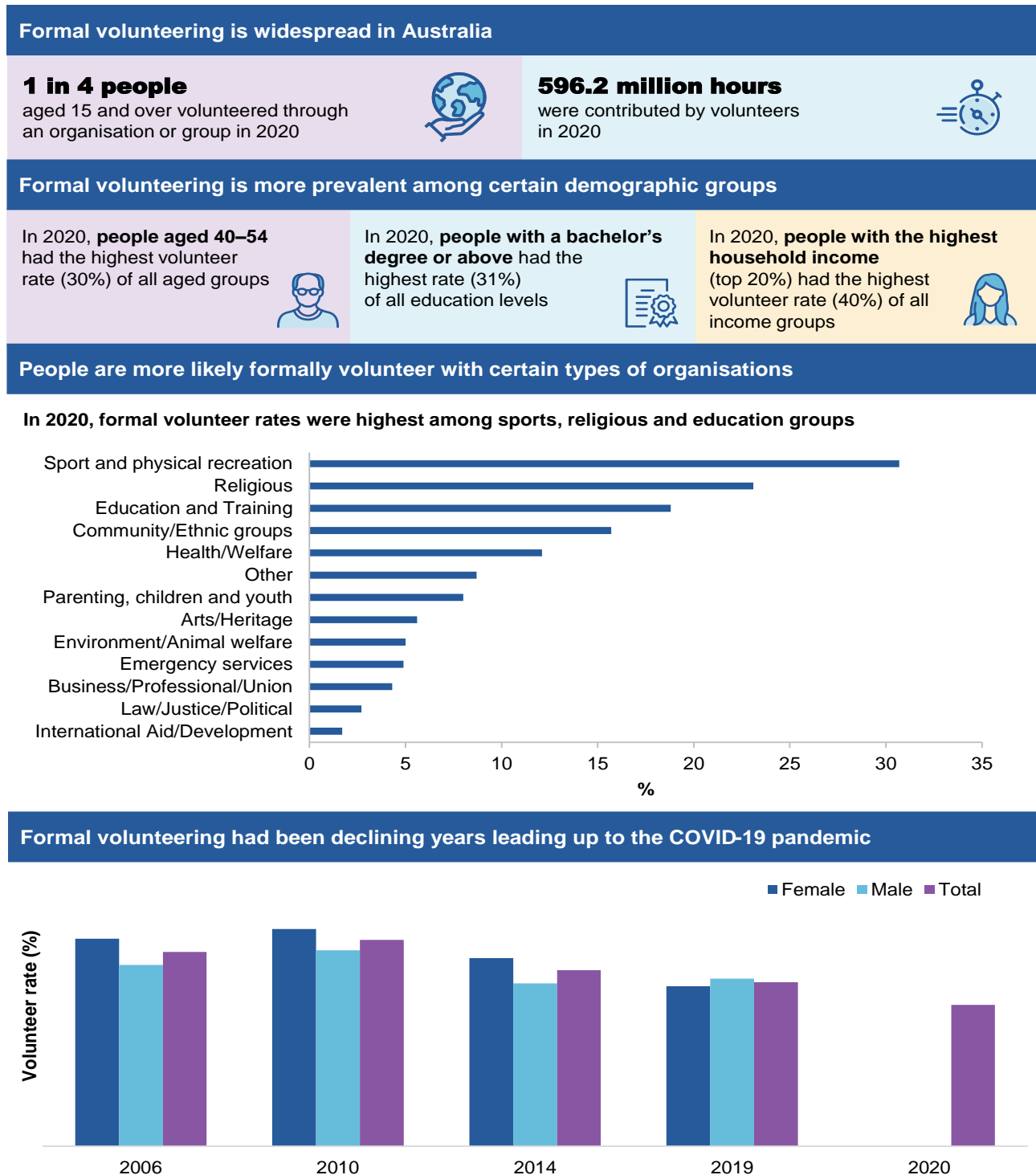
Over the past decade or so, there has been a decline in the formal volunteering rate (figure 3.10). The volunteering rate in 2010 was at a historic high, and rates of volunteering prior to 2010 were similar to or below the volunteering rate prior to the COVID-19 pandemic. The volunteering rate fell from 36% in 2010 to 25% in 2020, with a sharp decline coinciding with COVID-19 (ABS 2021a). Another study indicates that volunteering rates slightly recovered by 2022 (Biddle and Gray 2023).

Several factors have likely contributed to a decline in volunteering rates. These include:

- the disruptions of COVID-19 on volunteer availability and NFP operations (Biddle et al. 2022; Biddle and Gray 2021; Volunteering Australia 2021; Zhu 2022)
- broader social, economic and demographic changes that limit the amount of time or energy people have to participate in formal volunteering and/or the increasing opportunity cost of volunteering (such as the gains from paid employment and the attractiveness of other uses of leisure time, including the benefits of time spent with family and friends). Demographic changes include the rise in female labour force participation and people remaining in the paid workforce for longer (ABS 2023; Biddle et al. 2022, pp. 37–38; Grünwald et al. 2020; Kragt and Holtrop 2019, p. 355; McLeod 2018, p. 8; Mpconsulting 2018; Zhu 2022).

The National Strategy for Volunteering 2023–2030 and past studies have identified various ways charities and government can address the challenges associated with declining formal volunteering rates, including greater acknowledgement of the work volunteers do, reshaping public perception of volunteering, developing a monitoring and evaluation framework and the co-design of a three-year action plan (Volunteering Australia 2023b).

Figure 3.10 – Formal volunteering in Australia^a



a. The highest formal volunteer age range in figure 3.10 differs to the range used in the text above because figure 3.10 uses 2020 ABS data compared to the section above that uses Giving Australia 2016 data.

Sources: ABS (2007, 2011a, 2015b, p. 20, 2021a, 2021a); AIHW (2023); Volunteering Australia (2022).

... but rates of informal volunteering may have increased

The most common type of informal volunteering (or volunteering that takes place outside of an organisational setting) in Australia is 'providing emotional support' to others (54%). Other common forms of informal volunteering involve helping others with chores and daily tasks, such as 'providing transport or running errands' (38%) and 'domestic work' (37%) (ABS 2021a). About 90% of people who volunteer informally, volunteer less than 20 hours per week (ABS 2021a).

Available data suggests that informal volunteering rates increased by 4 percentage points from 2010 to 2019 (ABS 2011b, 2021a; AIHW 2023). The increase in informal volunteering rates was evident for both males and females. Although the informal volunteering rate declined slightly in 2020 (reflecting the effects of the COVID-19 pandemic), by 2022 informal volunteering rates had mostly recovered. Given that the ABS made changes to how it collects this information in 2019, changes in informal volunteering rates over time in Australia should be interpreted with caution (chapter 9).



Finding 3.2

Volunteering is widespread in Australia, but the formal volunteering rate has declined

In 2022, about one in four people in Australia (about 6 million people) volunteered for an organisation. Nearly twice as many people volunteered informally (that is, assisting people other than family members, outside of the context of an organisation or group).

However, the formal volunteering rate fell from 36% in 2010 to 25% in 2020. Data indicates that by 2022, the volunteering rate had recovered slightly to 26.7% following the COVID-19 pandemic.

These figures likely understate total volunteering given official data sources use language and definitions that may result in underreporting of such giving because of different cultural meanings of volunteering.

In-kind donations of goods and services

In-kind donations are contributions of goods, services or time instead of money. These contributions can include goods like equipment, clothing, computers, furniture, or supplies, as well as office space at reduced rental rates or support for back-offices services, such as payroll. In-kind donations may be once-off support to individuals, such as providing supplies to victims of natural disasters, providing professional legal advice to refugees, or ongoing support to NFP organisations. For some NFP organisations, in-kind giving forms the basis of their regular operations, like the reliance of opportunity shops on community clothing donations.

There is limited visibility of the patterns of giving and the value of in-kind donations by individuals. An Australian study found that 77% of individuals donate goods per year (McGregor-Lowndes et al. 2017, p. 76). As noted above, corporate giving through partnerships, which some estimate to be worth hundreds of millions of dollars, often includes in-kind giving, such as pro-bono legal and financial advice, rent-free office space and free administrative services.

3.2 Recipients of giving

While people sometimes give money or time directly to others, NFP organisations play a key role in facilitating philanthropy as an intermediary between donors and the beneficiaries of goods and services. This might involve collecting and using financial donations to provide services (such as health services, animal protection or medical research), training and coordinating volunteers (such as for emergency services) or using their networks to distribute donated goods (for example, to support people facing financial hardship).

The NFP sector

The NFP sector is a major component of the Australian economy. While all registered charities must be an NFP organisation (they do not operate for the profit, personal gain or other benefit of particular people), not all NFP organisations are charities. Some NFP organisations, such as sporting clubs, are not eligible for charitable status (chapter 1).

Australia's charitable sector received \$190 billion in revenue (about 9% of GDP) and employed 11% of the Australian workforce in 2021 (ACNC 2023g). There are 60,000 registered charities in Australia, ranging from small operations that rely on volunteers to organisations with professional staff and annual revenue in the millions (ACNC 2023g). While a considerable number of charities open or cease operations in any given year, the number of charities has increased by 9% over the past 5 years (ACNC 2022d, 2023g, p. 6).

The largest charities receive the vast majority of donations

The number and size of charities in the charitable sector has implications for the nature and intensity of competition for donations (box 3.2). In 2016, the largest 10% of charities received 94% of all donations and the 25 largest charities received almost 20% of total donations (McLeod 2018, p. 24). Several participants highlighted that a lack of resourcing, paid staff, brand recognition and awareness of the work of small charities compared to larger charities was a barrier to accessing philanthropic support (Centre for Social Impact, sub. 191, p. 9; FRRR, sub. 149, p. 13; Jesuit Social Services, sub. 165, pp. 8–9).

Participants suggested a range of options for overcoming these barriers, including simplifying the DGR system to make it more accessible (FRRR, sub. 149, p. 13; Stronger Charities Alliance, sub. 121, pp. 4–5). These options are discussed in chapters 6 and 10.

Box 3.2 – Competition among charities: Is it a good thing?

Charities often expend considerable resources marketing their services and causes to existing and potential donors. Competition between charities for available funds can be fierce. Several participants noted that fundraising costs of all kinds have been steadily increasing over time, with the respective returns steadily reducing (Alannah and Madeline Foundation, sub. 47, p. 2).

A diverse and competitive charitable sector brings benefits, such as allowing donors to select charities that best align with their values and preferences and encouraging innovation. The ability of new entrants to establish themselves quickly and at a low cost can be particularly important if community values are changing rapidly over time and new charitable causes emerge in response to changing social attitudes and economic realities. Small charities can also play an important role in servicing rural, regional or

Box 3.2 – Competition among charities: Is it a good thing?

remote communities, engaging local networks and volunteers, and providing new, local specialised or place-based solutions.

While enabling donor choice among charities has benefits, there are sometimes concerns about a large number of charities ‘doing the same thing, duplicating efforts and competing for the same donations and funding’ (ACNC 2024i). Some of these concerns are borne out in international academic literature, with some studies finding that greater competition among charities increases aggregate fundraising costs and branding, reduces average donations per organisation and leads to lower public good provision (Casale Mashiah 2019; Lange et al. 2017; Schmitz 2021; Stride and Lee 2007).

If there are high fixed costs associated with running a charity, then there may be efficiency gains to be secured from mergers and consolidation. The ACNC recognises that having charities serve the same beneficiaries in the same area and competing for the same donations can be inefficient. But they consider it the role of charities to regularly assess their efficiency and effectiveness, in addition to considering the merit of collaborating or merging to best fulfil their purpose (ACNC 2024i). ACNC data for 2021-22 shows that 213 charities sought voluntary revocation of charity registration as a result of a merger and a recent study of NFP directors found that that 19% of respondents were planning to discuss a merger within 12 months, with 5% currently undertaking a merger (ACNC 2023f, p. 53; AICD 2023c, p. 27). The proportion of all voluntary revocations due to mergers more than halved from the previous year, decreasing from 32% to 13%. The proportion of voluntary revocations due to mergers increased as the size of the charity increased (ACNC 2023f, p. 53).

Smaller charities raised concerns about their ability to compete in fundraising, noting the high concentration of donations among large charities. Submissions suggested that a charities ability to raise funds depends on their networks or capacity to market themselves, which disproportionately favours larger, high-profile charities (Centre for Social Impact, sub. 191, p. 10; Southern Youth and Family Services, sub. 72, p. 2). Participants also noted that obtaining DGR status can be a resource intensive process, particularly for smaller charities. It can also be harder for charities to compete for funds if they do not have DGR status (Centre for Social Impact, sub. 191, p. 10; FRRR, sub. 149, p. 13; Jesuit Social Services, sub. 165, pp. 8–9) (chapter 5).

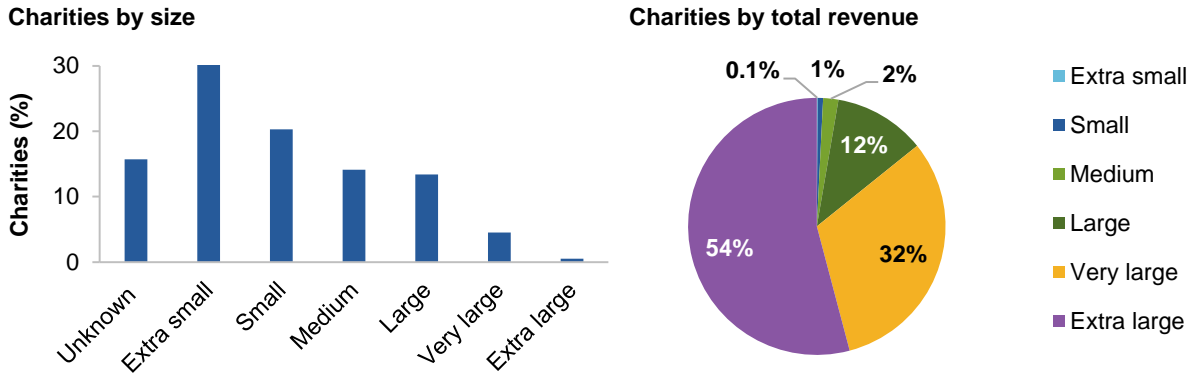
Smaller charities tend to be more reliant on donations and volunteers

The extent charities rely on philanthropy ranges from organisations that are entirely dependent on donations to charities for which donations are a small percentage of revenue. On average, donations are much more significant for smaller charities than larger charities. In 2021, donations represented 40% of revenue for small charities, compared with the sector average of 7% (figure 3.11). Religious, public benevolent institutions and education charities received the most donations (chapter 5) (ACNC 2023g, p. 67).

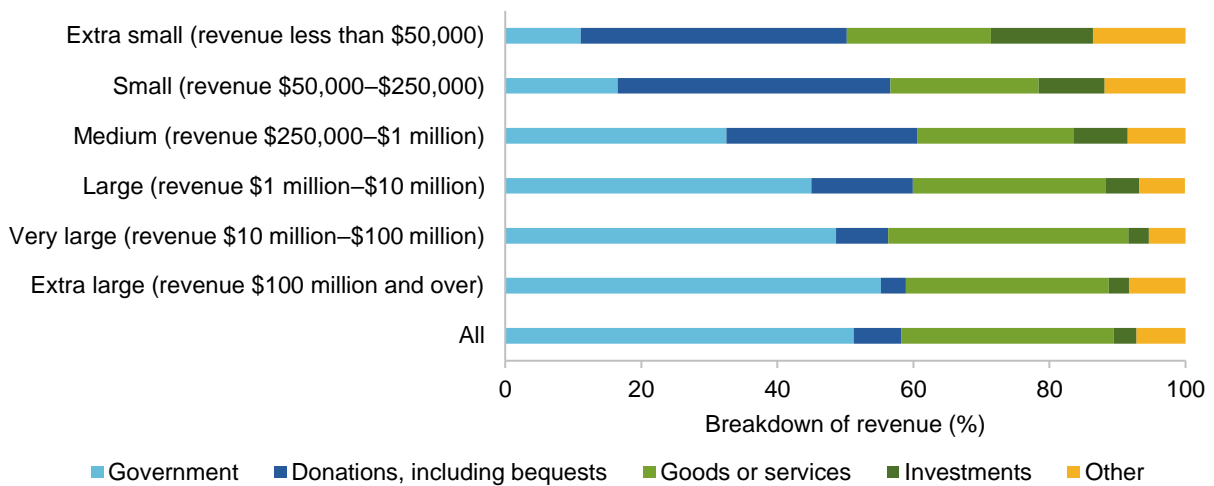
Despite their reliance on philanthropy, several smaller charities noted that pursuing philanthropic funding can mean that limited resources (including staff) must be diverted away from other activities, such as service provision and that they often do not have the in-house capacity, networks and skills to access philanthropic donorship (chapter 10).

Figure 3.11 – Recipients of donations

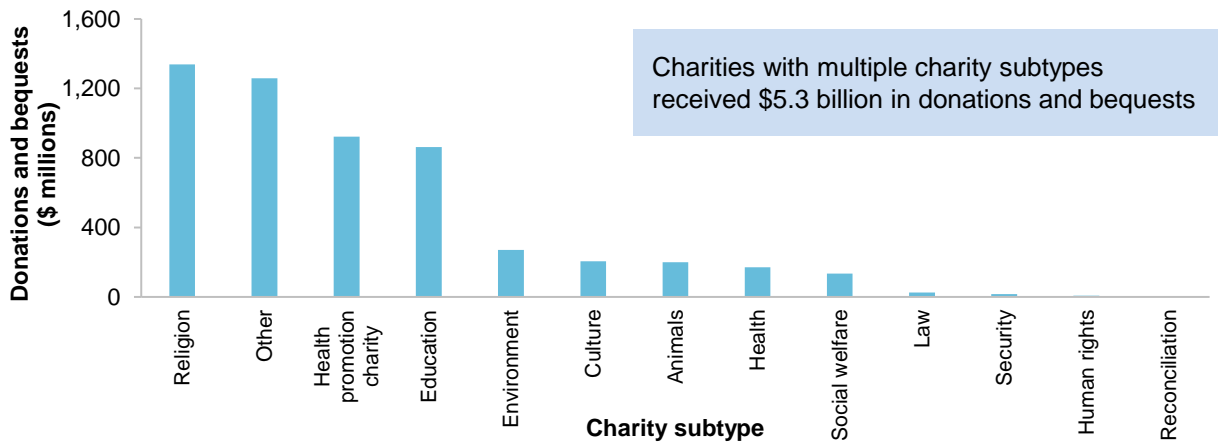
Larger charities represent a small proportion of charities, but receive most funding to charities



Donations are a small part of funding to all charities, but are more important for smaller charities



Multiple charity types, religion, health promotion, and education charities receive the most donations



Charity size refers to these revenue ranges: Extra small: less than \$50,000; Small: \$50,000 to \$250,000; Medium: \$250,000 to \$1 million; Large: \$1 million to \$10 million; Very large: \$10 million to \$100 million; Extra-large: \$100 million and over.

Source: ACNC (2023g).

There is a lack of data on philanthropic funding for Aboriginal and Torres Strait Islander organisations, reflecting wider data gaps (Centre for Social Impact and Jumbunna Institute for Indigenous Education and Research 2022, p. 10, 2023, pp. 17–19) (box 9.5). However, analysis from 2016 shows that only 4.6% of giving vehicles (such as ancillary funds and charitable trusts) included Aboriginal and Torres Strait Islander people as a specific beneficiary group (ACNC 2017b, p. 75). Geographic factors, in addition to size and other factors, can create additional barriers for Aboriginal and Torres Strait Islander organisations accessing philanthropic funding (International Funders for Indigenous Peoples 2021). Options for addressing these barriers are also examined in chapter 10.

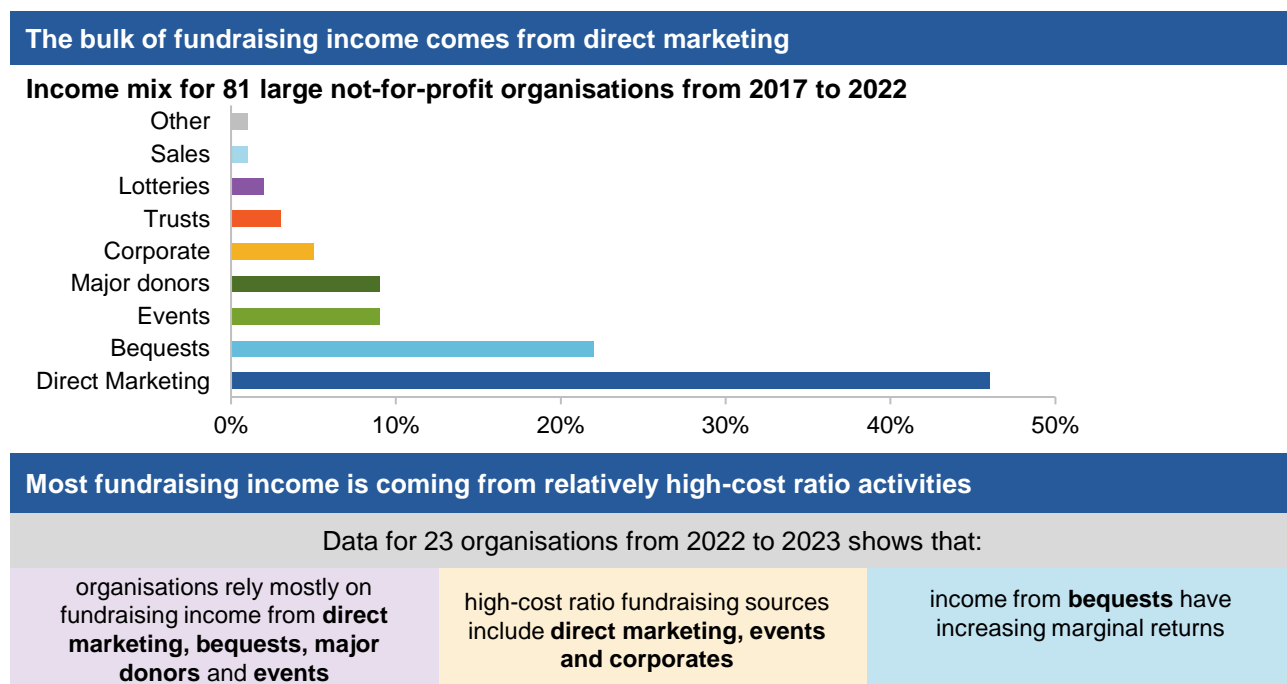
Many charities focus on structured giving to improve funding certainty

Charities employ a mix of strategies to attract donations. These strategies can include mass market fundraising, targeted campaigns in response to an event (such as a natural disaster) or approaching high-net-worth individuals to be involved in structured giving (McLeod 2018). A 2023 benchmarking survey of 81 large NFP organisations (receiving a combined \$6.1 billion in fundraising income from 2017 to 2022) found that these NFP organisations mostly rely on income from direct marketing and bequests (figure 3.12).

In recent years, and particularly since the start of the COVID-19 pandemic, many charities have faced significant challenges raising funds through philanthropy. A recent survey found that COVID-19 has exacerbated donor fatigue, with many organisations targeting the same people across an increasing number of channels such as digital fundraising, peer-to-peer giving and emergency appeals (More Growth Pty Ltd, sub. 202, p. 7). NFP organisations also face ongoing challenges attracting people with skills to lead fundraising programs.

- Analysis of 34 large NFP organisations found that the average return on investment from fundraising was about 400% (\$4 raised for each \$1 spent) in 2022 and has remained relatively stable over the past decade (More Growth Pty Ltd, sub. 202, p. 20). This return on investment is comparable to that found in an earlier study of 15 of the largest international aid organisations in Australia by JBWere which estimated a \$5 return for each \$1 spent (McLeod 2018, p. 27).
- The return on investment from fundraising varies across charities and fundraising activities. For example, the Alannah and Madeline Foundation (sub. 47, p. 4) estimated that it generates a return of \$6.43 for each \$1 spent securing revenue from corporates and partnerships, compared to a return of only \$1.11 from community fundraising. More Growth Pty Ltd estimated that income from bequests, major donors, trusts and foundations, and corporates yield the highest return for investment (figure 3.12).
- As noted above, charities and participants also identified giving through bequests as a major opportunity for growing planned giving in Australia.

Figure 3.12 – Income raised by charities from different fundraising activities



Source: More Growth Pty Ltd (sub. 202, pp. 21–22).

Donor expectations about charities demonstrating outcomes from giving

Some participants noted that donors can often have high expectations about the amount and sophistication of information that charities provide about the outcomes they will achieve through their programs. These participants noted that a lack of expertise and resources to undertake proposals and impact evaluations can prevent them from accessing philanthropy (Mercy Works, sub. 60, p. 3). Other participants highlighted that many grant makers and corporates want evidence of effectiveness, such as the expectation that charities employ an evidenced based program (The Smith Family, trans., p. 9). Meeting these expectations can be particularly difficult for small or newly formed charities that have limited resources and for charities that employ innovative techniques or models of service delivery.

Policy rationales and measures for addressing some of the barriers small charities face in accessing philanthropy (such as those related to reporting burdens) are considered in chapter 10, while chapter 9 examines the usefulness of measurement indicators to demonstrate charity effectiveness.

New technologies for giving provide opportunities and challenges for charities

The emergence of new technologies that facilitate giving, such as online payment platforms, social media, and crowdfunding platforms, present new opportunities for charities to attract philanthropy. Social media allows charities to raise their profile, connect with their clients and supporters and reach more people when charities partner with celebrities and well-known entities such as banks and supermarkets to capture new donors.

These developments have created challenges for some charities to meet donor expectations on their online and payment experience. A 2022 survey found less than half (47%) of NFP organisations are satisfied with the way they use technology, and 33% felt staff capability was one of their biggest challenges (Infoxchange 2022, pp. 11–21). Some participants noted concerns regarding technological capability, including the management of cybersecurity risk (Mercy Works, sub. 60, p. 2). New technology also presents new sources of competition for donations (peer-to-peer giving), can create reputational risks (for example, if

a high-profile fundraising partnership breaks down) and may test the adequacy of regulatory protections for donors (chapter 7).

The use of cash is declining, and the Australian Government is phasing out cheques with government use to be phased out by the end of 2028 (chapter 1). A 2023 survey of 1,010 people shows that the main payment method used for donations was cash (55%), followed by credit card (44%), mobile payment systems (such as Apple Pay, Google Pay, BPay and Tap) (34%) and direct debit (26%). Of those surveyed, only 4% donated by cheque, however for these donors the phasing out of cheques will affect their ability to donate either somewhat (20%) or significantly (51%) (MoreStrategic and Fundraising Institute Australia 2023, p. 35).

Several charities still rely heavily on cheques as a method of receiving donations. A survey of 122 charities found that 12% of the participating charities receive over 50% of their annual donations via cheques. Donors most likely to give through the cheque system are older donors that lack digital literacy or lack of trust in online payment methods (Fundraising Institute of Australia, sub. 134, p. 5). For example, The Smith Family (trans., p. 8) 'received over 22,000 cheques which provided over \$10 million in funding to our organisation' in 2022-23.

Some participants raised concerns around the winding down of the cheques system, including challenges arising from the short transition period.

We expect there will be a drop in revenue once cheques cease, and given the only alternatives are digital, we are exploring these but feel there may be an education gap in usage of PayID and other digital payment options that needs to be addressed. (The Smith Family, pers. comm., 26 February 2024)

The ACNC submission to Treasury's Winding Down Australia's Cheque System December 2023 consultation paper highlighted the effects the closure of the cheque system will have on charities. The ACNC in their submission stated that the removal of cheques is likely to be significant for some charities.

Some charities may find it difficult to implement appropriate online fundraising platforms to support donors to migrate from cheques to alternative payment methods.

Infoxchange's 2023 survey into how not-for-profit organisations use digital technology found that 15% of respondents rated their organisation's technology environment as 'challenged' and 37% rated theirs as 'basic'. Therefore, there may be a need to build capacity amongst employees and volunteers of charities, to support their transition.

An increase in online donations will mean that charities will hold ever growing amounts of personal information regarding donors. To protect this data, charities may need further, targeted support to improve their cybersecurity. (ACNC 2024r, pp. 1–2)

Most states and territories have their own fundraising laws, some of which require that funds raised be deposited into an account operated by two signatories and in some cases require that the account be operated partially or wholly by cheque (ACNC 2024r, p. 2). This may present barriers to reducing the use of cheques. The Australian Government and financial institutions should work together to provide transitional support to charities in the context of winding down Australia's cheques system.

Volunteers are crucial to charities, but the interests of volunteers and charities do not always align

Volunteers often play a crucial role in the operation of charities. More than half of all charities operate without paid staff (ACNC 2023g, p. 7). An Australian survey found that 83% of organisations need volunteers immediately or soon (Holmes et al. 2022, p. 9).

In addition to the challenges associated with declining volunteer rates and the widespread existence and effect of broader informational asymmetries within the charitable sector, Volunteering Australia (2023b) has identified substantial mismatches between the types of activities that current volunteers undertake and the types of activities that non-volunteers would consider.

Animal welfare was the most common type of organisation people were interested in volunteering for (29.4%) followed by environmental organisations (23.0%) and children and youth (22.7%).

Demand for volunteers appears to be greatest among mental health, emergency services, and health organisations. (2023b, p. 19)

With 83 per cent of volunteer involving organisations indicating they need more volunteers, and a long-term trend of declining rates of formal volunteering, the future of volunteering relies on a reformed approach to volunteer involvement. This reform must balance the needs of organisations with the experience of their volunteers. (2023b, p. 43)

The National Strategy for Volunteering 2023–2033 includes actions to better engage volunteers and allow them to participate in ways that suit them and meet their motivations, and to reposition volunteering as an important consideration in the design and execution of government services, programs and policies. For example, the Australian Government has provided funding for a volunteer matching platform to help match potential volunteers to areas they have an interest in.

3.3 Why do people choose to give?

Understanding why people give – or do not give – can help explain why the Australian charitable sector has evolved the way it has and why charities use different marketing and fundraising strategies. It can also help to identify opportunities to enhance policies that aim to encourage giving that benefit the community, such as tax deductions for donations to charities that provide public services or campaigns to highlight the benefits of giving and raise awareness.

Motivations for giving

People and organisations can have complex and multifaceted reasons for giving – and these reasons can change over time. Some motivations for giving are highly personal, such as those associated with an individual or family experiences or connection to faith or culture; while others are broader, such as wanting to make a difference or out of a sense of obligation (figure 3.13).

Some giving can occur out of a sense of pure altruism or concern for the well-being of others. This idea has a long history in economics. For example, Adam Smith wrote:

... to feel much for others and little for ourselves, that to restrain our selfish, and to indulge our benevolent affections, constitutes the perfection of human nature; and can alone produce among mankind that harmony of sentiments and passions in which consists their whole grace and propriety. (1759, p. 30)

Motivations for giving can have a degree of self-interest as far as the person giving expects to derive some benefit (other than financial benefit) from the act of giving – the so-called warm inner glow motive (Andreoni 1989). There are also other possible motives that are more associated with self-interest than with altruism. Given the choice, for example, people may prefer to:

- use high-visibility giving for the prestige and public recognition or to inspire others to give
- volunteer (rather than donate money) for the personal connections and satisfaction

- donate in ways that allow them to reduce their taxable income (analysis of ATO data by the Commission suggests that 1% of taxpayers choose their tax-deductible donations at a level to move themselves into a lower specific tax bracket).

Motivations can also change over a person's life. For example, volunteering for sport organisations peaks for people aged between 35 to 54 which coincides with parental support of activities around children. While people aged over 65 tend to volunteer with organisations that provide health and social services (McGregor-Lowndes et al. 2017, p. 101).

Some motivations appear more prominent in particular contexts and groups

Some motivations appear more important in some contexts and among groups (figure 3.13).

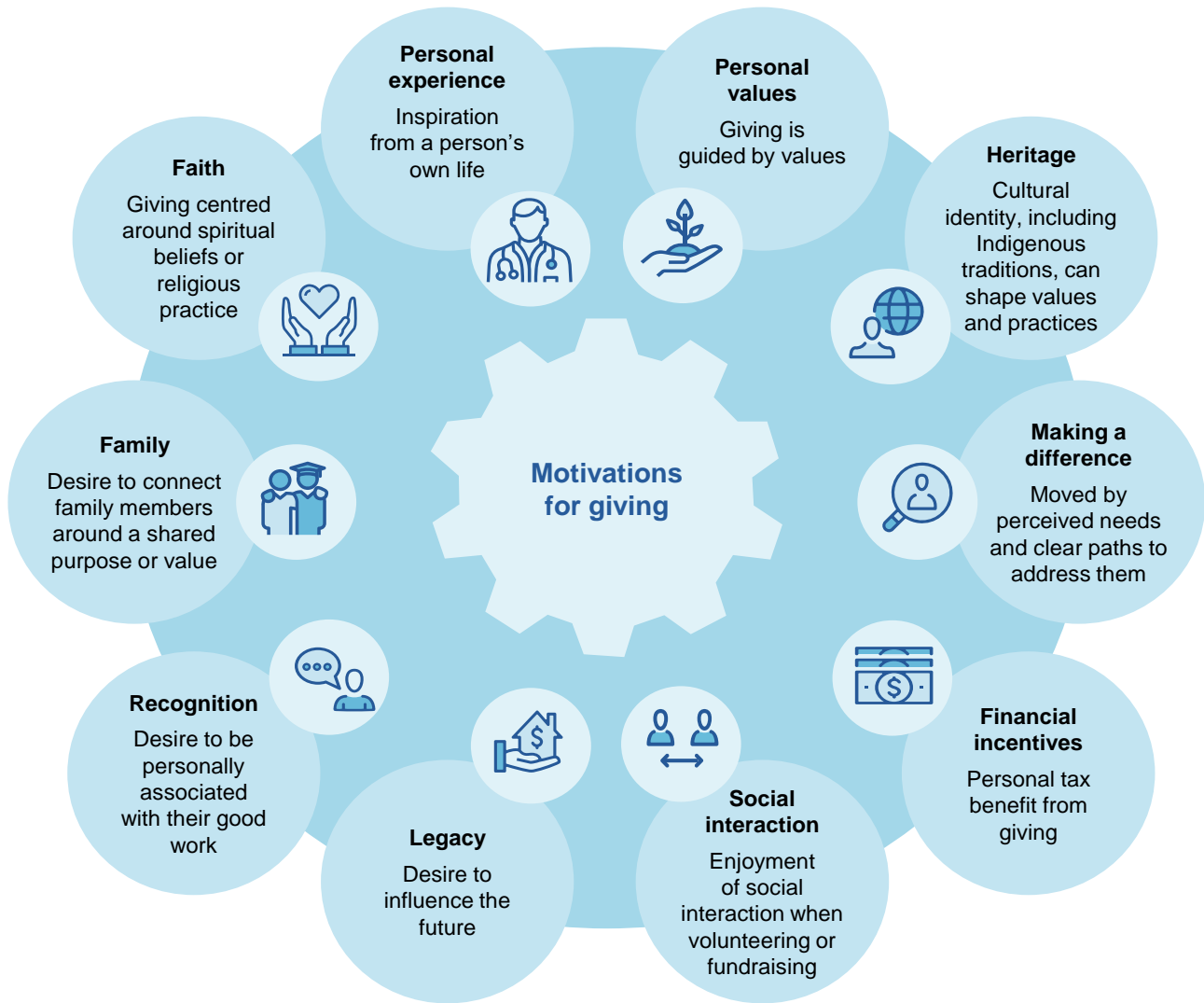
For example:

- people may be motivated to give for reasons related to their spiritual beliefs, religious practices or cultural background (Korus Connect, sub. DR576, pp. 2–3; Moore Theological College, sub. DR381, pp. 1–2; National Catholic Education Commission, sub. DR714, p. 2)
- many wealthy individuals are attracted to giving vehicles (rather than making direct donations) because of a desire to connect with family through giving, leave a legacy, or to use it as a teaching opportunity for the next generation to learn skills that might benefit the family business (as discussed in chapter 9, many people who donate through giving vehicles desire a degree of privacy which has raised debates around how much information should be disclosed to the public about these activities)
- many businesses use high-visibility giving, including pro bono work, to bolster their corporate brand, and attract and retain employees and customers (box 3.3)
- some donors are aligned with the effective altruism movement, which emphasises using formal evidence and metrics to work out how to benefit others. For these donors, information on the relative effect of charities, generally measured using quantitative approaches, influences giving decisions (chapter 9).

These insights into the range of motivations for giving could inform how government agencies design and administer measures to support giving.

Figure 3.13 – Motivations for giving

People can have complex and multifaceted personal reasons for giving



But some motivations appear more important in particular contexts or among groups

| | | |
|--|--|--|
| Effectiveness is a strong motivator for giving among high-net-worth people | Many people volunteer through an organisation for social contact | Many large businesses give to bolster their brand and 'social licence' |
|--|--|--|

Specific events can also prompt people to give and affect how they give

| | | |
|--|---|---|
| Changes in personal circumstance, such as a financial windfall | Being prompted by a financial adviser or employer | Fundraising events, such as for disaster relief |
|--|---|---|

Box 3.3 – Corporate giving is driven by expectations of employees and shareholders

Motivations for giving by businesses can be related to strategic outcomes, such as greater employee engagement, staff recruitment and retention, reputation, publicity or to contribute to shareholder value and profits by attracting socially responsible consumers (Bagnoli and Watts 2003). Businesses can also give for altruistic reasons, such as wanting to have a positive social impact as part of their wider contribution to society, or to deliver ‘shared value’, with benefits for the community also leading to gains for the business (Porter and Kramer 2002).

The objectives for giving tend to vary depending on factors such as the business size, type, governance structure and how a business engages with the broader community. The decision to give, and the types of causes supported by small businesses tend to reflect the personal preferences of the owner or senior management, whereas large business giving tends to be influenced by shareholders, customers, employees and other stakeholders (Burns et al. 2017, p. 29). The 2016 Giving Australia study found that while businesses recognise that giving is ‘a good thing to do, irrespective of the returns for us’, small businesses tend to give to demonstrate ‘commitment to our local community’ (50%) and ‘the personal and business values of the owner’ (44%). In contrast, large businesses give for the purpose of ‘bolstering the employer brand’ (78%) or social license to operate (47%) (Burns et al. 2017, pp. 26–27).

Large businesses are increasingly engaging with philanthropy, improving reporting of giving, and focusing on environmental, social and corporate governance (Burns et al. 2017; Good Company, sub. 84, p. 2; Strive Philanthropy and GivingLarge, sub. 119, p. 11). This is due to shifts in community and employee expectations. Corporate giving can also be used as a form of reputation insurance, a risk management tool or to offset negative activities caused by a business (Hogarth et al. 2018). Businesses in industries that have significant effects on the environment, such as mining, are among the largest contributors to philanthropy (Miles 2023, pp. 18–33)

Strive Philanthropy and GivingLarge (sub. 119, p. 28) argue that there is compelling evidence that demonstrates that corporate giving benefits ‘corporate culture, employee morale, reputation, alignment with conscious consumers and shareholder value’.

Workplace Giving Australia (sub. 175, pp. 2–3) stated that:

... strong workplace giving programmes unite the workers in a common cause by encouraging events and activities designed to uplift the fundraising success. This in turn builds community and enhances the work environment, providing benefits to the individual and their mental wellbeing, to the business in productivity and profitability, and to the community more broadly.

Specific events can prompt people to give and affect how they give

While personal motivations for giving might mean people are predisposed to give in a certain way (such as to their local community – box 3.4), specific events can also prompt them to give and affect how they give. These events can include:

- a change in personal circumstances or major life event, such as receiving a financial windfall, like an inheritance or the sale of a significant asset (Macquarie 2021)
- a professional adviser prompting a client to consider giving when preparing their tax return or planning their will
- disaster fundraising events, such as the bushfire fundraising campaign established by Celeste Barber (chapter 7)
- major news stories that draw attention to a specific area of need (for example, a 2019 study found that 40% of respondents reported were more likely to give when they heard about a need or issue) (McCrimble 2019, p. 14)
- a charity or employer asking someone to give money or time (such as pro bono work).

Conventional economic arguments around free riding suggest that when people observe others giving, they may give less. However, there is evidence that people may be moved to donate *more* because of peer or signalling effects (Smith et al. 2013). Observing others giving to a particular cause might boost a person's regard for that cause; and seeing others give can appeal to a sense of shared values or social norms, such as helping others. Social media influencers and celebrities can be powerful in drawing attention to specific causes or raising funds. Betar (2012) has noted the influence of 'conspicuous giving' (the highly visible act of giving money or time for charity) has taken on a new dimension in a media-saturated society, with increasing pressure on 'middle-class people' to get involved in diverse types of giving, such as volunteering or donating money.

An important policy question is whether the influence of social media, influencers and other techniques induces more giving overall, or whether it simply induces the existing pool of givers to shift a relatively fixed amount of money from one cause to another (or to bring forward giving from the future to the present). In addition – particularly for people who are 'emotional' givers – if information provided by influencers, celebrities or professional advisors is ill-informed or misleading it has the potential to negatively affect charities, recipients of services, and donor trust and confidence to give. Chapter 7 discusses some of the regulatory issues that may arise in these contexts.

Box 3.4 – People are likely to donate more to help people in their own community

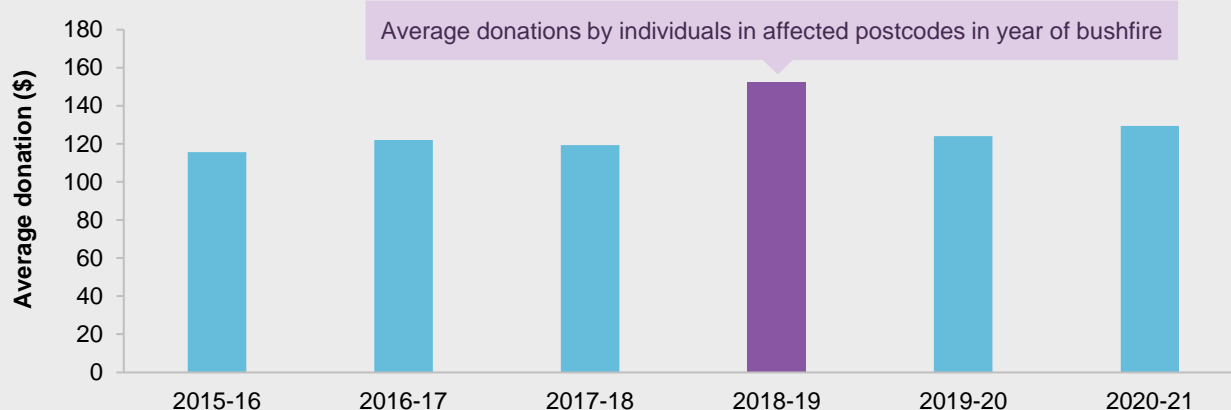
The voluntary provision of natural disaster relief is a form of ex-post social insurance and can be an important motivator for giving. To examine whether people are more likely to donate to help people in their own community, the Commission examined donations in postcodes which experienced disasters (the Tathra bushfires in 2018, the ACT and NSW south coast bushfires in 2019–2020 and the Black Saturday bushfires in 2008–2009).

In these three cases, donations in the affected communities increased in the same year as the disaster. In the wake of the 2018 Tathra bushfires, for example, donations by locals increased 28% compared with the previous year (national donations only grew by 6%), even though many donors would have been directly affected by the fires themselves. Giving then fell to usual levels in the subsequent year. Similarly, total donations in postcodes affected by the ACT and NSW south coast bushfires in late 2019 and early 2020 increased by 15% compared to no increase in national donations. Average donations in postcodes

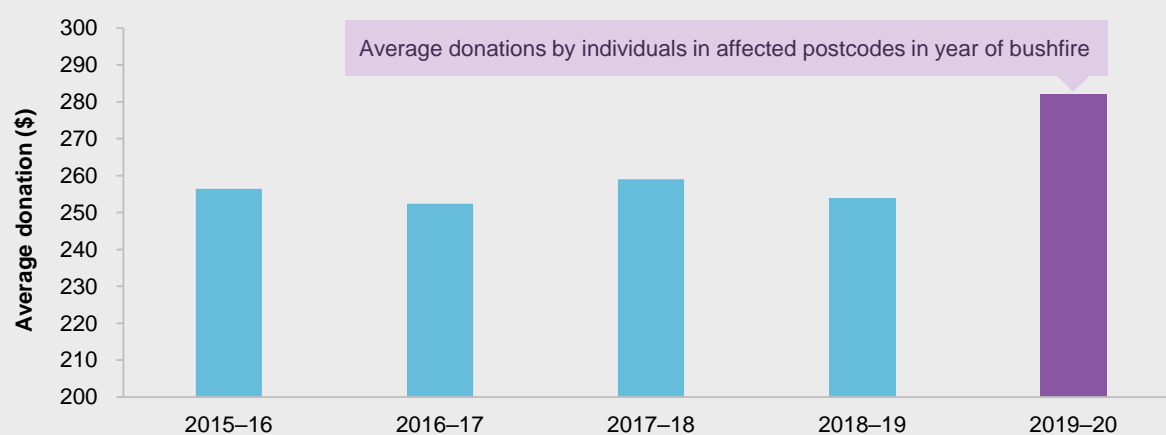
Box 3.4 – People are likely to donate more to help people in their own community

affected by the Black Saturday bushfires in 2008 increased by over 20% (national donations excluding areas affected by the bushfires only grew 1%). Giving then fell the subsequent year by 11% compared to national donations increasing 6%.

Tathra bushfires



ACT and NSW South Coast Bush Fires



Source: ATO (2023).

3.4 Why do people choose not to give?

To be effective, policies to increase giving need to either encourage existing givers to give more or encourage people who currently do not give to start giving. For those that currently do not give, policy makers need to understand and address the reasons why they do not give. These reasons may differ depending on an individual's personal circumstances or stage in life, and whether the donation is money or time.

Affordability and trust are common obstacles to people giving money

A substantial proportion of people who do not give say it is because they cannot afford it. The 2016 Giving Australia study (which included over 6,000 people) found that most respondents (56%) identified affordability (or lack of financial incentive) as the main reason they did not give an organisation (McGregor-Lowndes et al. 2017, p. xxii).

Taxation data and cost of living studies suggest affordability is more likely to be an obstacle to giving for people on lower incomes. In 2020-21, low and middle-income earners were less likely than high-income earners to make a tax-deductible donation (figure 3.14). Analysis by the Reserve Bank of Australia found cost of living rises and pressures on discretionary spending are most pronounced among lower income households, including renters (RBA 2023) (section 3.2).

The Commission heard that charities have observed changes in how people give in response to cost-of-living pressures.

What we're definitely seeing is few people giving, giving higher amounts. So those that still have the capacity are giving higher. I think that the nice flow through here is they realise and fully appreciate those doing tougher are doing tougher because of cost living. (The Smith Family, trans., p. 26)

I think, too, [due to] the cost of living at the moment, some companies are promoting volunteering over donation because they don't want to ... [be] in a position where they're being asked to donate when they might not have that sort of disposable income. Over the last 12 months, whereas companies usually would promote a few fundraising events during the year, they've really quietened down on that front. (Good Company, trans., pp. 491–492)

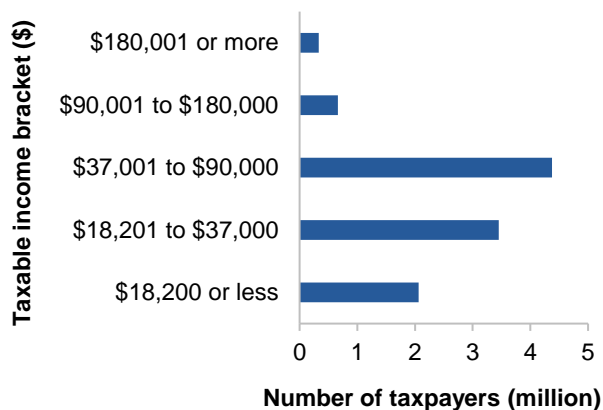
The extent to which a person's income acts as a barrier to them giving will vary across people and over time. For some people, giving may be a family decision, rather than an individual decision, and thus they may give even when their individual income is low. Also, if a person's income grows over their working lives (which generally happens as wages rise with experience and wealth accumulates over time) they may be more likely to give when they are older; the fact that they do not give when they are younger could be both individually rational and socially optimal.

Changes in people's income, wealth and propensity to give over their life have implications for policy. Viewing giving solely through a cross-sectional lens – as a one-off snapshot in time rather than from a broader dynamic perspective – raises the risks of policy errors. For example, changing the tax price of giving to induce more giving by those on lower incomes could come at the cost of reducing giving later in life. Policy options for reducing the cost of giving, such as tax incentives and voucher schemes are addressed in chapter 4.

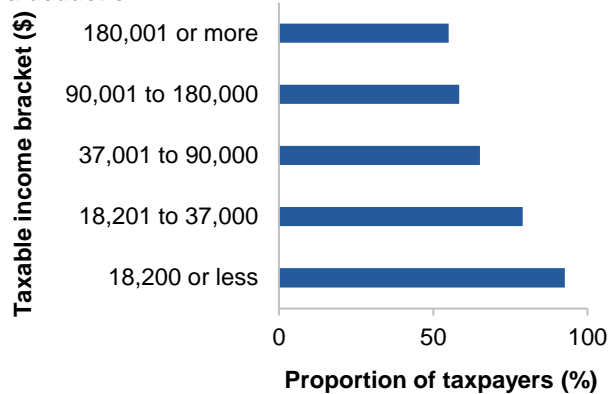
Figure 3.14 – Reasons for not giving money or assets

In 2020-21, individuals that did not donate tended to be medium- or low-income earners ...

Number of taxpayers who do not claim a deduction



Percentage of taxpayers who do not claim a deduction



Age and occupation also played a role

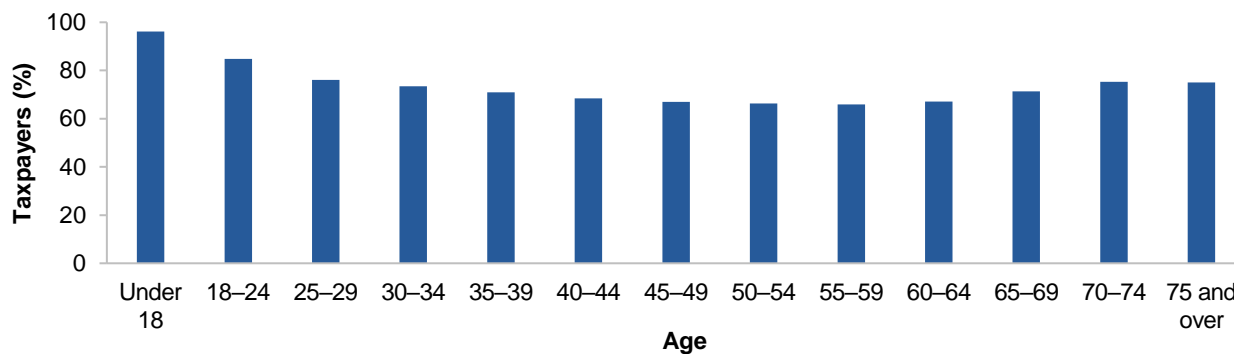


People that are younger or in retirement are less likely to make tax-deductible donations



People in occupations such as being an apprentice, trainees, or workers in hospitality tend to not make donations

Taxpayers that do not claim a deduction



The top reasons for not giving in specific ways varies

Workplace giving

- Not enough money
- Not interested
- Already give in other ways
- Do not like commitment



Bequests

- Concerns around family
- Cultural sensitivities associated with death
- Wanting to see impact personally
- Limited expertise by advisers



Sources: ATO (2023); McGregor-Lowndes et al. (2017).

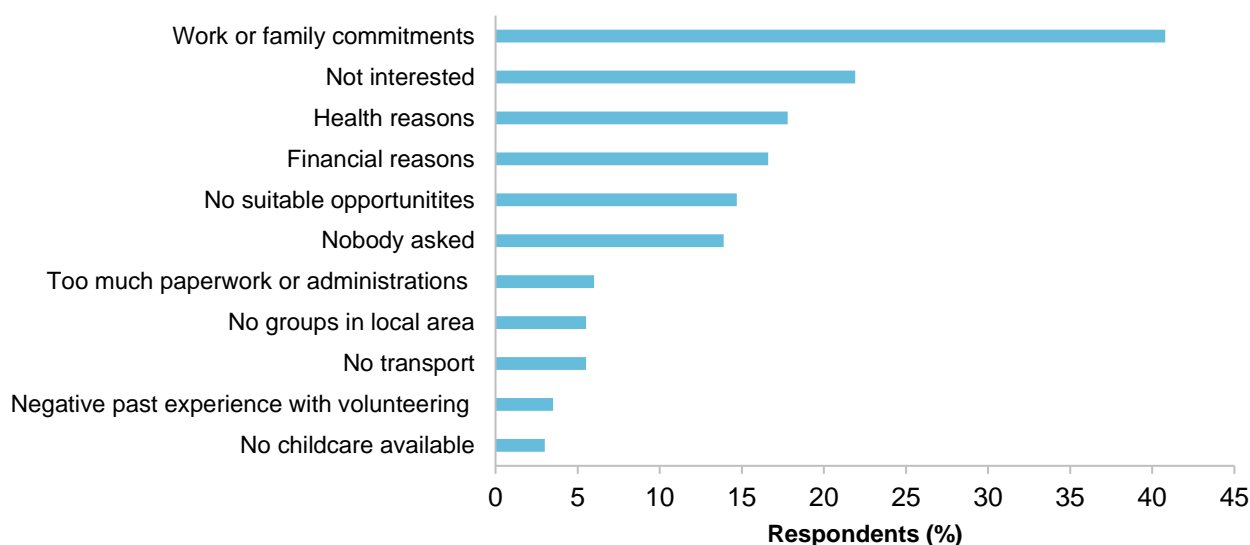
Another common reason people do not give is they do not trust that the money would be put to effective use. In the 2016 Giving Australia study, a sizeable proportion of respondents said they did not give because of concerns about where the money would be used (34%), too much money being used on administration (33%), or doubting ‘that the money would reach those in need’ (32%) (McGregor-Lowndes et al. 2017, p. 26). Designing regulatory frameworks and providing information about charities so that people can give with confidence is discussed in chapters 7 and 9.

Other reasons people do not give could relate to attitudes toward philanthropy (for example, the view that governments should be funding certain services or that aid is counterproductive). Another reason for not giving is that people have not been asked to give. Some have suggested public campaigns or increasing awareness and education about giving may play a role in changing attitudes towards – and awareness of – philanthropy (chapter 9).

Lack of time and financial incentives

Many people cite everyday financial and family pressures as an obstacle to volunteering (figure 3.15). For example, a 2022 survey by Biddle (2022) found two of the main reasons people do not volunteer were work and family commitment (41%) and financial reasons (17%). A study found that 41% of volunteers who incurred expenses through their volunteering role indicated that reimbursement was not available or offered (Biddle et al. 2022, p. 62).

Figure 3.15 – Reasons people gave for not volunteering



Source: Biddle et al. (2022, p. 35).

The nature of obstacles to volunteering can vary across various parts of the community. For example, a 2016 study found challenges to participation in volunteering among Aboriginal and Torres Strait Islander people included, among other things, lack of cultural appropriateness in volunteering organisations and limited resources in Indigenous volunteer-involving organisations (Cultural and Indigenous Research Centre Australia 2016). Policy responses to address these challenges, suggested by inquiry participants, include financial incentives and public campaigns (chapters 4 and 10).



Finding 3.3

People give or do not give for a range of personal reasons

People give for a range of complex and multifaceted reasons that can change over time. Specific events can also prompt people to give. Common patterns of giving behaviour include:

- people affected by natural disasters are likely to donate more to help others in their own community
- some people with high net worth use giving vehicles (such as ancillary funds or trusts) to connect with family through giving, to leave a legacy or to teach skills to the next generation
- many businesses use high-visibility giving, including pro bono work, to bolster their corporate reputation, and to attract and retain employees and customers.

People choose not to give for a variety of reasons. A lack of financial resources is one of the main reasons people do not donate money and common reasons people do not volunteer are work and family commitments. A lack of trust in how charities will use donations and financial constraints on volunteering are also common reasons people choose not to give.

3.5 Implications for policies to increase giving

To be as effective as possible, new or revised policies to increase giving will need to appeal to people's motivations for giving and address the barriers for not giving or not giving more. In some cases, making giving more financially attractive through tax incentives could be the answer. In other cases, the key may be better regulations and public disclosure that fosters trust and confidence in charities, or public campaigns that raise awareness of giving options. In some cases, government will have little control over the factors that influence giving, such as wealth, personal faith or broader societal changes and dynamics within the community.

Governments have a role to ensure that the policy framework supporting giving is fit for purpose. However, government is just one actor with a role in shaping giving in Australia. Charities themselves have an important role, as organisations that engage with existing and potential donors, with opportunities to trial and test new and different ways to motivate donors. Advisers and other intermediaries also engage with people about their giving decisions, and in doing so they also contribute to increase giving. Philanthropic organisations have resources that they can employ to bolster initiatives aimed towards increase giving.

The Australian Government has a stated goal of doubling giving by 2030. However, some of the most important policy settings which would underpin such an increase are not fit for purpose. This report therefore focuses on ensuring that government policies provide firm foundations for philanthropy in Australia, so that the benefits of giving can continue to be realised into the future.

One challenge that may arise in this context is determining the baseline for this goal. As highlighted in this chapter, giving can encompass many forms including tax deductible individual giving, non-tax-deductible individual giving, corporate giving and partnerships, government support, bequests, in-kind donations of goods and services, and volunteering. There is no single estimate for all types of giving in Australia, with the ACNC providing the best available estimate of around \$13.4 billion in 2021. However, these estimates do not encompass all types of giving, including giving to not-for-profit organisations or charities that are not registered with the ACNC.

It is important to account for different types of giving and the different contribution they might make to the Australian community in the future, including the different ways in which various kinds of giving may create

additional social capital. In line with this, an alternative way of thinking about such targets is that they represent a more general objective of substantially increasing giving in its various forms, rather than being a specific numerical target to be met.

There are also trade-offs associated with increasing giving. However, the benefits of increased giving needed to be weighed against the costs and risks. For example, depending on the type of giving and elasticities associated with that giving (chapter 4), significant increases in giving may also increase tax expenditures. This can mean that there is less government revenue to fund services directly. Therefore, increasing giving should not be viewed in isolation but must be considered within the wider context.

This chapter has highlighted several trends in giving. Potential policy issues from these trends are discussed further in subsequent chapters. These include:

- tax incentives to encourage giving are examined in chapters 4, 5 and 6
- regulation of, and public reporting by, charities, ancillary funds, and other structures to promote trust and confidence in the sector are examined in chapters 7, 8 and 9
- the increasing role of structured philanthropy, including ancillary funds, as a vehicle for donating and the appropriateness of the minimum distribution rate in chapter 8
- other policies to support giving, such as public campaigns on giving and ways to enhance access to philanthropy are examined in chapter 10.

4. How governments can incentivise giving

Key points

- ✳ **A person's decision to give, and how much to give, is a very personal one and could be influenced by many factors – including whether the price of giving is lowered by government policies such as a personal income tax deduction.**
 - Under Australia's graduated tax system, in which people on higher incomes face higher average and marginal tax rates, the design of the tax deduction for giving means that people who earn a higher taxable income receive a larger tax deduction from donating.
 - To the extent that the tax deduction induces additional giving, charities – and ultimately the beneficiaries of goods and services provided by charities – also benefit from the tax deduction.
- ✳ **The Productivity Commission has generated price elasticity of giving estimates which show that the personal income tax deduction increases giving. However, due to the wide variation in estimates, it is not possible to determine to what extent the deduction increases giving.**
 - The wide variation in the Commission's estimates of the size of the effect on giving is due to data and econometric limitations. These limitations include the absence of a large tax shock that can be used to model changes in giving behaviours, the effect of people moving between tax brackets (for example, due to capital income) and how changes in income affect people's giving behaviour.
 - The point where the increase in giving induced by the tax deduction offsets the loss in revenue arising from tax deductions is challenging to determine due to the uncertain relationship between the level government funding for charities and a person's decision to give (the 'crowding' effects of government funding).
 - As such, the range of elasticities estimates provides no strong evidence to either increase or reduce the personal income tax deduction.
- ✳ **Different tax policy settings, such as a flat tax credit across all income tax brackets, would likely incentivise more people to give. However, such settings may decrease the total amount given overall because it could reduce aggregate giving by high-income earners who comprise most of the value of tax-deductible giving.**
- ✳ **There are gaps in the tax incentives provided to people to give in Australia. People who volunteer and people who do not pay personal income tax are not incentivised to give through the tax system.**
 - It is uncertain whether giving would change substantially if additional tax incentives were introduced.
 - The costs of introducing tax incentives to encourage these cohorts of people to give more likely outweigh the benefits.

People choose to support charitable causes for many reasons, and these reasons can be complex and change over time. Some people will donate their money or time because of the personal value they get from giving. Other people are purely altruistic and give because they believe it will increase the well-being of others. Many people are motivated by religious or cultural factors, a belief in a particular cause, a personal connection with a friend or family member, or in response to a crisis such as a natural disaster. Other people will choose not to give – they could face barriers, including the financial capacity to give, or may simply place lower value on giving. The reasons a person chooses not to give can also change over time (chapter 3). Some people give in certain years, but not in others.

Depending on a person's motivations for giving – and all else being equal – they may be more likely to give, or decide to give more than they otherwise would, if the price of giving (or the cost to the donor of donating an extra dollar) is lowered through tax incentives. How people respond to changes in the price of giving can be quantified by estimating their 'price elasticity of giving'. The price elasticity of a particular activity, like giving, is a measure of how much a person responds to a change in price, holding all other factors constant. Both the sign (negative or positive) and the value (the size) of the elasticity are important to inform policy. Higher prices tend to motivate people to do less of something and the higher the value of the elasticity, the greater this response.

To encourage donations of money and other financial assets in Australia, the Australian Government provides a tax deduction for donations to some entities. Among them are charities and government entities that undertake charitable-like activities that have deductible gift recipient (DGR) status. This deduction provides a direct incentive for people to give, providing more revenue to charities with DGR status, but with the trade-off of reducing government tax revenue. Chapter 5 outlines which entities are eligible to receive tax-deductible donations while chapter 6 discusses how the DGR system should be reformed.

The effect of tax incentives on giving – and how taxpayer responses vary across the population – have not been extensively examined in Australia. The Productivity Commission found the personal income tax deduction does increase giving. However, because of the wide range of estimates in the modelling, it is not possible to determine the extent to which the tax deduction increases giving. As such, there is not strong evidence to either increase or decrease the personal income tax deduction. (A more detailed explanation of the Commission's modelling is presented in appendix B.) The design of the tax deduction for giving in Australia is nonetheless likely to be more effective at encouraging donations compared to other potential mechanisms, such as tax credits, which risk reducing donations from people with higher incomes (who comprise most of the total value of tax-deductible donations).

4.1 How does the Australian Government incentivise giving?

The Australian Government seeks to encourage charitable donations by allowing a person who donates over \$2 to DGR-endorsed entities to claim a tax deduction against their personal income tax. Eligible donations can be given directly to entities with DGR status, including ancillary funds (which then distribute money to eligible entities with DGR status). The tax deduction is the same for money and other assets, such as real estate, shares or artworks, although the latter may also be subject to additional thresholds and capital gains tax concessions.

In Australia, the dollar amount a person can claim as a deduction is uncapped. However it is limited by their marginal tax rate, their taxable income and their willingness and capacity to give. This means the more a person donates, the greater their deduction. Every person will have limits on how much of their income they

are willing to give, and so this is the largest constraint on giving and the main determinant of the cost to government of the tax deduction. Unlike some countries, a person can choose to spread the tax deduction over a period of up to five years if the deduction would be more than their taxable income in one year.

Individuals who have an annual taxable income above \$100,000 account for between 52% and 56% of tax-deductible donations, despite only comprising only 14% to 16% of taxpayers.⁴ The design of the tax deduction, Australia's graduated tax system and the tendency for giving to rise with income mean that higher income earners accrue most of the direct benefit of the reduction in tax (box 4.1). However, to the extent that the personal income tax deduction induces additional giving which would not have occurred without the tax incentive, the benefits of the income tax deduction flow broadly across the community, not just to the person claiming the deduction. This is because the goods and services provided by charities benefit a range of people and causes – for example, environmental protection or promoting economic and social participation for people facing hardship.

Box 4.1 – Who claims the personal income tax deduction for donations?

As a snapshot, 4.4 million Australians claimed \$3.9 billion in tax deductions for donations in 2019-20, the latest year for which data is available. About 90% of taxpayers (who were aged between 25–30 years old in 2000-01) who lodged a return each year between 2000-01 to 2019-20, claimed a donation in at least one of these years.

People with higher taxable incomes receive most of the tax benefits – defined as the reduction in tax payable from giving. This is because they make most of the tax-deductible donations and have higher marginal tax rates. Over half of the tax benefits accrue to people in the highest taxable income decile (figure below).

People with high taxable incomes make the most tax-deductible donations

| Income measure | Share of taxable income (%) | Share of total tax paid (%) | Share of donations (%) | Share of reduction in tax due to donations ^a (%) |
|--|-----------------------------|-----------------------------|------------------------|---|
| Taxable income above the median (over \$47,800) | 82 | 95 | 79 | 86 |
| Highest taxable income decile (over \$122,100) | 34 | 49 | 47 | 55 |
| Taxable income more than \$1 million | 4 | 7 | 17 | 21 |

a. Reduction in tax revenue is calculated as the difference in tax payable between i) taxable income before deductions for donations and ii) final taxable income, after the inclusion of tax, using basic income tax rates.

Source: Commission estimates using 2019-20 ALife data.

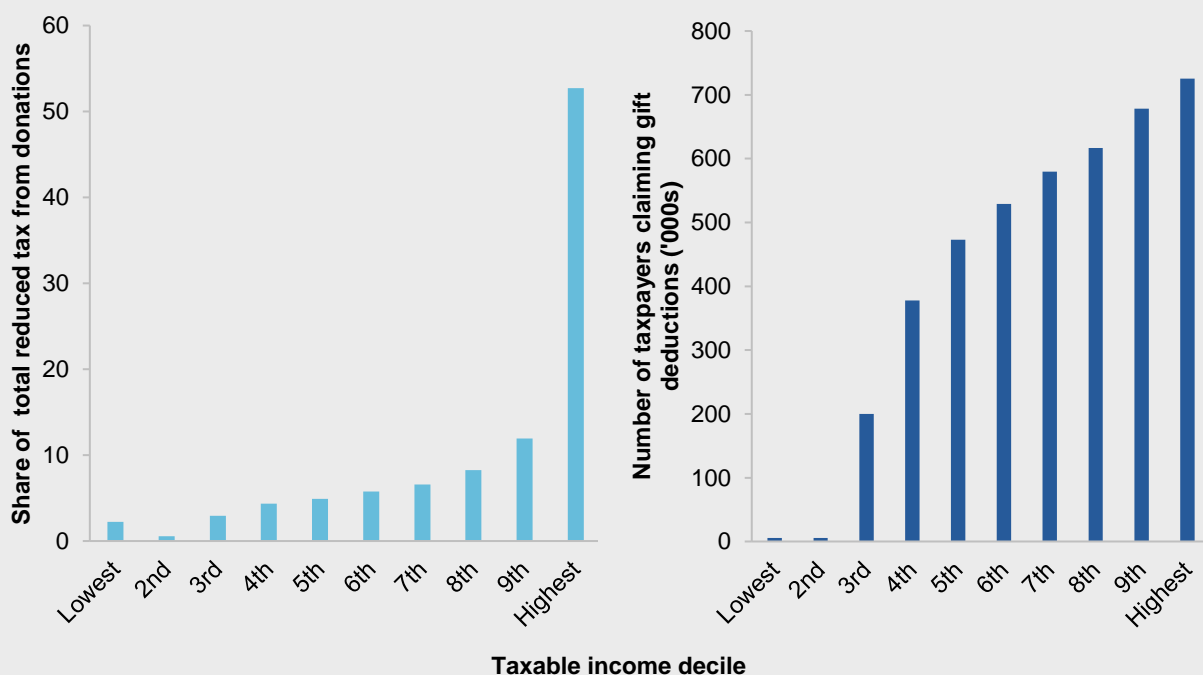
However, focusing only on taxable income may understate the proportion of people who earn a high-income that benefit from a reduction in tax due to donating. Some taxpayers substantially reduce

⁴ Commission estimates using ATO ALife data for 2015-16 to 2019-20. The value of taxable income and tax-deductible giving has been adjusted for inflation using CPI.

their taxable incomes using a range of tax deductions – for gifts and other types of deductions – and therefore would not be counted as high-income in this data.

For example, in the *lowest* taxable income decile, most of the tax benefits went to people with high pre-tax income, but low taxable income. That is, in the lowest income decile, about 74% of the tax benefits went to individuals who would otherwise be in the top 20% of taxpayers for pre-tax income.^{b,c}

The reduction in tax from giving mostly goes to people with high taxable incomes
2019-20 data



Source: Treasury (2023d).

- b. Reduction in tax revenue is calculated as the difference in tax payable between i) taxable income before deductions for donations and ii) final taxable income, after the inclusion of tax, using basic income tax rates.
- c. Commission estimates using 2019-20 ALife data.

Tax incentives are not the only reason people give. Some people would still donate even if there were no tax incentives. This means there is a cost to taxpayers associated with subsidising some giving that would have occurred anyway. Of the people in 2019-20 with taxable incomes of \$18,200 or less before gift deductions, about 186,000 (or 6.5%) donated, even though they would receive no reduction in tax payable (discussed further below). Also, not all people who are able to claim a personal income tax deduction will do so, adding further complexity to understanding people’s motivations for giving or not giving.

Not all charities are eligible for DGR status and so not all giving to charities by individuals is tax-deductible. As such, there is little insight into giving to entities without DGR status. This means little is known about the demographics or behaviour of people who give without the incentive provided through the tax system.

Tax deductions reduce the price of giving

How does the tax system reduce people’s price of giving?

A tax deduction for giving means that the amount of tax a person pays is reduced by their marginal tax rate for each dollar they donate. For example, if in 2022-23 a person who earns \$100,000 donated \$2,000 to a

charity with DGR status, they would decrease their taxable income by \$2,000 and their tax payable from \$22,967 to about \$22,317 (all else being equal). Their effective price of giving reduces from \$1 to about \$0.68 per dollar through the deduction because, although the person donates \$2,000, they pay \$650 less in tax (box 4.2). In other words, to give \$2,000 to a charitable cause, this person paid only \$1,350 in net terms once they receive their tax deduction at the end of the financial year.

The tax price of giving generally declines as income increases: this is because people with higher incomes are more likely to claim a tax deduction and because they have higher marginal tax rates before they claim any tax deductions (Steinberg 2021, p. 180).

Box 4.2 – The price of giving for an individual taxpayer

Under the DGR system, eligible gifts of money and property to entities with DGR status can be claimed as deductions that reduce a person's taxable income. The graduated income tax scale means that this indirect government subsidy is larger for individuals who would otherwise have a higher assessable income. To illustrate this, for a taxpayer who has:

- taxable income in the top marginal tax bracket (above \$180,000), their tax payable will be reduced by 45 cents for each dollar they claim as a donation
- mid-range taxable income (\$45,001–\$120,000), the reduction is 32.5 cents
- low taxable income (\$18,201–\$45,000), the reduction is 19 cents
- no taxable income (up to \$18,200) has no change in their tax payable.

High-income earners face higher marginal tax rates and a lower price of giving^a

| Taxable income (before donation) (\$) | 18,000 | 40,000 | 100,000 | 150,000 |
|---|--------|--------|---------|---------|
| Donation | 2,000 | 2,000 | 2,000 | 2,000 |
| Tax payable (before donation) | 0 | 4,142 | 22,967 | 40,567 |
| Tax payable (after donation) | 0 | 3,762 | 22,317 | 39,827 |
| Tax savings | 0 | 380 | 650 | 740 |
| Price of donating \$2000 (donation-tax savings) | 2,000 | 1,620 | 1,350 | 1,260 |
| Price of giving per dollar | 1 | 0.81 | 0.68 | 0.63 |

a. Assumes a single resident taxpayer in 2021-22, no deductions other than for tax-deductible giving, excludes Medicare Levy, Medicare Levy Surcharge and any rebates and offsets. Results are rounded to the nearest cent.

Source: Commission estimates using the ATO simple tax calculator.

Viewed another way, to acquire \$2,000 in donations, the charity only needed to convince the person to give up \$1,350 and the balance of \$650 was covered by other taxpayers. In this way, all Australian taxpayers effectively have a stake in the funding of DGR charities, and the activities for which those funds are used. However, drawing \$650 from other taxpayers to encourage \$1,350 to be given to a charity is not costless. It necessarily means the government will have \$650 less to spend on other priorities. The tension this trade-off brings should not be ignored.

The higher a person's marginal income tax rate, the lower the price of giving from the tax deduction. However, the price of giving may not be constant across the entire amount donated. If a person drops from one marginal tax bracket to a lower one only because of their giving, the additional benefit from the deduction would be less for the last dollar donated than it was for the first dollar donated.

How does the tax system reduce businesses' price of giving?

The tax price of giving for business' donations vary depending on their size and whether they distribute earnings. For Australian resident corporations that are not distributing earnings, the tax price of giving is \$0.75 per dollar for a small business paying the 25% corporate tax rate and \$0.70 per dollar for larger businesses paying the 30% corporate tax rate in 2021-22. Once a company distributes earnings, the price of giving changes and the shareholder's marginal tax rate (and therefore price of giving) becomes the relevant perspective.

The tax price of giving for Australian shareholders with taxable income is their marginal tax rate once the effects of dividend imputation are included. This is because under dividend imputation, company tax is effectively a withholding tax that is pre-paid on an Australian resident shareholder's behalf (box 4.3). A person with no taxable income would have a lower price of giving when a company donates on their behalf as a shareholder than they would when donating as a private individual.

Box 4.3 – The price of giving for an Australian company with resident shareholders

With dividend imputation, if a person has taxable income, the price of giving to a charity is the same whether a person gives directly from income from a fully franked dividend whether a company gives directly on behalf of the Australian resident shareholder. This is because under dividend imputation, company tax is effectively a withholding tax that is pre-paid on the Australian resident shareholders' behalf. Here are three scenarios to illustrate this point where the company pays a 25% tax rate and the shareholder has taxable income.

- Scenario 1: a company has a taxable income of \$1 million, resulting in a net profit of \$750,000 after tax. The company pays 100% of the net profit as a dividend to the shareholder who then donates \$20,000 to a charity with DGR status, giving the shareholder the option to claim a deduction at their marginal tax rate of 45%.
- Scenario 2: a company has a taxable income of \$1 million before tax and donating. They donate \$20,000 to a charity with DGR status which results in a taxable income of \$980,000 and an after-tax profit of \$735,000. The company pays 100% of the net profit as a dividend to the shareholder who pays tax on that dividend distribution at their 45% marginal tax rate.
- Scenario 3: a company has a taxable income of \$1 million before tax and donating. They donate \$20,000 which results in a taxable income of \$980,000 and an after-tax profit of \$735,000. The company pays 100% of the net profit as a dividend to the superannuation shareholder who pays tax on that dividend distribution at their 15% tax rate.

The tax price of giving in scenario 1 and scenario 2 is the same. The key difference is in scenario 1 the individual is directing where their \$20,000 donation goes, whereas in scenario 2 and scenario 3 the company chooses where to donate. Individual shareholders may have different preferences as to where that \$20,000 should go – and whether it should be donated at all. Measures to increase the transparency of donations by publicly listed companies and accountability to shareholders are discussed in chapter 9.

Box 4.3 – The price of giving for an Australian company with resident shareholders

There are also scenarios where a company does not pay dividends or they pay unfranked dividends, or where the shareholder cannot use a franking credit. In this case the price of giving for that year will be \$1 minus the applicable company tax rate.

The price of giving by companies is the same as a shareholder's tax rate^a

| | Scenario 1: Company donates \$0. Shareholder donates \$20,000 from dividend. Shareholder pays tax on dividend at top marginal tax rate | Scenario 2: Company donates \$20,000. Shareholder donates \$0. Shareholder pays tax on dividend at top marginal tax rate | Scenario 3: Company donates \$20,000. Shareholder donates \$0. Superannuation shareholder pays tax on dividend at 15% tax rate |
|--|---|--|--|
| Company taxable income (before donation) (\$) | 1,000,000 | 1,000,000 | 1,000,000 |
| Company donation (\$) | 0 | 20,000 | 20,000 |
| Profit after donation (\$) | 1,000,000 | 980,000 | 980,000 |
| Company tax payable (before donation) (\$) | 250,000 | 250,000 | 250,000 |
| Company tax payable (after donation) (\$) | n/a | 245,000 | 245,000 |
| Company tax savings (\$) | n/a | 5,000 | 5,000 |
| Price of donating (donation-tax savings) (\$) | n/a | 15,000 | 15,000 |
| Price of giving per dollar (\$) | n/a | 0.75 | 0.75 |
| Net profit after tax (\$) | 750,000 | 735,000 | 735,000 |
| Dividend paid to shareholder (\$) | 750,000 | 735,000 | 735,000 |
| Franking credit to shareholder (\$) | 250,000 | 245,000 | 245,000 |
| Total income to shareholder (\$) | 1,000,000 | 980,000 | 980,000 |
| Shareholder donation (\$) | 20,000 | - | - |
| Marginal tax rate for shareholder (%) | 45 | 45 | 15 |
| Tax paid without the donation (\$) | 450,000 | 450,000 | 150,000 |
| Tax paid (combined corporate and individual tax paid) (\$) | 441,000 | 441,000 | 147,000 |
| Tax savings (\$) | 9,000 | 9,000 | 3,000 |
| Price of giving (\$) | 11,000 | 11,000 | 17,000 |
| Price of giving per dollar under imputation to the shareholder (\$) | n/a | 0.55 | 0.85 |
| Price of giving if shareholder directly donated to charity per dollar (\$) | 0.55 | n/a | n/a |

a. Assumes shareholder has taxable income. Also assumes an Australian resident company, no prior year losses, and does not include the effect of any tax rebates and offsets (other than the tax concession for giving). Assumes 100% payout ratio of profit after tax to Australian resident shareholders. Assumes individual receives a fully franked dividend from the company. Assumes the individual would have earned \$1 million in dividends had the company not donated to a charity. Excludes Medicare Levy and Medicare Levy Surcharge. The scenarios do not apply to non-resident companies, or non-resident shareholders.

Source: Commission estimates.

Corporations may also claim a deduction for payments to entities without DGR status and other not-for-profit organisations, such as sponsorship or advertisements, purely for business purposes, as an ordinary business expense. The Commission was not able to model the relationship between the amount given by businesses and the price of giving (elasticities for corporations) because there is no comprehensive government-aggregated data on giving reported by corporations. Chapter 9 makes a recommendation to require listed companies to publicly report itemised information on their donations of money, goods and time (volunteering) to fill this data gap (recommendation 9.2).

Some people still give without a tax deduction

While tax deductibility lowers the price of giving for most taxpayers, the price of giving is only one of many factors that affect why people give. For example, about 142,000 individuals whose total income before deductions was below the tax-free threshold of \$18,200 claimed \$62 million in donations in 2019-20. In this case, their price of giving was \$1, and was not reduced by the tax concession. Using taxation and Australian Bureau of Statistics population data, the Commission estimated that there were 4.4 million people over the age of 18 who did not need to lodge a tax return in 2021, including 2.6 million people over the age of 65.

It is difficult to know how much is donated in Australia and not claimed through the tax system. The reasons these donations may not be present in tax data include:

- the donor does not need to lodge a tax return and therefore is unable to claim a tax deduction
- the donation was to a charity that does not have DGR status, making the donation ineligible for a tax deduction
- the donor gave less than \$2, making the donation ineligible for a tax deduction
- a donor is eligible to claim a tax deduction but chooses not to or forgets to.

Giving Australia estimated that 80% of people donated to charities in 2016, which is the most recent year data is available (Australian Centre for Philanthropy and Nonprofit Studies 2023). Little is known about why people give and subsequently choose not to claim an eligible tax deduction. If these people were initially incentivised to give based on the expectation they would later claim a tax deduction – but then in fact did not claim that deduction – this represents a very effective incentive that ‘works for free’. That is the inducement to give occurs with zero cost to other taxpayers. The Royal Flying Doctor Service (sub. DR406, pp. 6–7) suggested that some of their donations come from those drawing on tax-free superannuation pensions – in which case a donor’s income would be below the tax-free threshold – or who benefit from rebates associated with the Aged Pension. However, some donors may still make use of tax-deductible donations. For example, the Royal Flying Doctor Service (p. 7) stated:

We have observed some of these individuals who have minimal income for many years and then have a CGT event and are able to increase their donation in that year.

Some people may not claim a tax deduction because they are unable to substantiate their donation. This may happen where an individual loses their receipt, where a receipt was unavailable or if the donation was less than \$2 (BDO, sub. DR718, pp. 4–5). Another reason for not claiming a tax deduction is a donor’s belief about the merits of subsidising their donations. For example, one participant, who gave thousands of dollars per year to entities with DGR status, stated:

I have seldom claimed tax deductions because I feel that the donation is my choice, and I should not require all Australians to subsidise my choice.

When I have claimed, it is because I felt that the needs that my donations supported should be supported through government direct expenditures – for example when I have donated to food

banks providing meals in everyday circumstances (not in extraordinary emergency situations) to people on basic benefits or in intermittent employment (Barbara Preston, sub. DR469, pp. 5–6).

Some donors may choose to give to charities that do not have DGR status and these donations are ineligible for tax deductions. There is also little data on how people's giving behaviour would change if the scope of charities that had access to DGR status were different. At the margin, it is reasonable to expect that extending DGR status to additional entities would increase the funds received by those entities, but possibly at the expense of existing entities with DGR status. For example, a person with limited disposable income may choose to reallocate their 'donation budget' to another charity with newly acquired DGR status, rather than increase overall giving in response to more charities gaining eligibility to DGR (chapter 6). However, in principle, there are good economic reasons to expect that most people only donate to one charity (Landsburg 1997). In practice, little is known about the extent to which Australians give to multiple charities and, if they do, whether they split their donations between charities with and without DGR status.

Calculating the cost of revenue forgone from the personal income tax deduction is complex

The revenue cost of the personal income tax deduction for giving was estimated to be \$2 billion in 2021-22 (Treasury 2023d, p. 28). Treasury's estimates of tax expenditures compare the difference between the revenue the Australian Taxation Office (ATO) collects and what would be collected under a hypothetical 'benchmark' tax treatment (for example, a situation with no personal income tax deductions for giving).

However, estimating forgone revenue or tax expenditures is not a straightforward task. First it is heavily influenced by the choice of benchmark. Second, published values of tax expenditures are in general not estimates of the revenue that the Government would receive if the income tax deduction were to be removed. A key reason for this is that the income tax deduction changes a person's behaviour and developing a reliable benchmark tax treatment would require knowledge of how people's behaviour would change if the policy settings changed. These behavioural changes cannot be known in advance with certainty, so neither can the effect on tax revenue.

Further, to the extent that an income tax deduction interacts with other taxed or subsidised activities or other Government spending programs, these interactions will also affect the Government's net budget position. For example, if a charity receives additional donations because of the income tax deduction, and then provides services which reduce demand for government services, this will not be reflected in the revenue cost of the deduction (partly because such changes are difficult to measure). Conversely, government decisions to directly provide a good or service, or to provide a grant to a charity may change the level of giving received by a charity (referred to as 'crowding in' or 'crowding out') and therefore change the amount of revenue forgone through the personal income tax deduction (Steinberg 2021, pp. 181–182).

This suggests that the actual cost to government revenue from the existence of the current personal income tax deduction will very likely be different to what is reported in the tax expenditure and impact statement. For example, taxpayers may choose to alter the giving behaviour or structure their tax affairs differently in response to a change in personal income tax settings. As a general proposition, published estimates of tax expenditures would only be equal to forgone revenue if taxpayer *and* government behaviour were completely unchanged in the absence of the tax deduction – a situation which is highly unlikely.

Concessional tax treatment occurs for various reasons, and the mere existence of concessional tax treatment is not proof of poor policy, inefficiency or inequity. Indeed, the opposite is likely to be true in the case of tax deductions for eligible donations. Under current arrangements, the Government is deliberately choosing to forgo some revenue with the aim of encouraging a greater volume of voluntary redistribution of income, from those on higher incomes toward a subset of charitable causes, relative to what the situation

would be without the tax deduction (CCA, sub. 218). The choice between direct government spending on the one hand and using the tax system to support private giving on the other, has been examined in detail by Feldstein (1980), Driessen (1987) and Roberts (1987, 1992).

4.2 People respond differently to incentives for giving

One way to understand how individual donors behave is by examining the relationship between the tax price of charitable donations to a person and how much they give. This can help inform decisions about how governments could support charities and achieve the social outcomes valued by the community, especially given the choice between:

- direct government funding to charities through, for example, matched or unmatched grants
- government using the tax system to support charities and their work (Andreoni and Payne 2013)
- government directly providing services.

These trade-offs were discussed in various submissions (Social Ventures Australia, sub. 262, p. 4; ACOSS, sub. 263, p. 2).

The Commission has estimated how donors have responded to changes in the price of giving and changes in their income, and how they *could* behave under different tax deduction settings, using longitudinal tax return data from the ATO. In technical terms, the Commission estimated the price elasticity of giving and the income elasticity of giving (box 4.4). To the best of the Commission's knowledge, while there is a wealth of literature examining tax incentives internationally, including in the United States, the only other study investigating the price elasticity of giving in Australia is an unpublished Deloitte Access Economics report (box 4.6).

Box 4.4 – What is the price and income elasticity of giving?

The **price elasticity of giving** and the **income elasticity of giving** provide information on how taxpayers adjust their giving when faced with a change in the value of tax incentives for giving or a change in their income, holding all other factors constant.

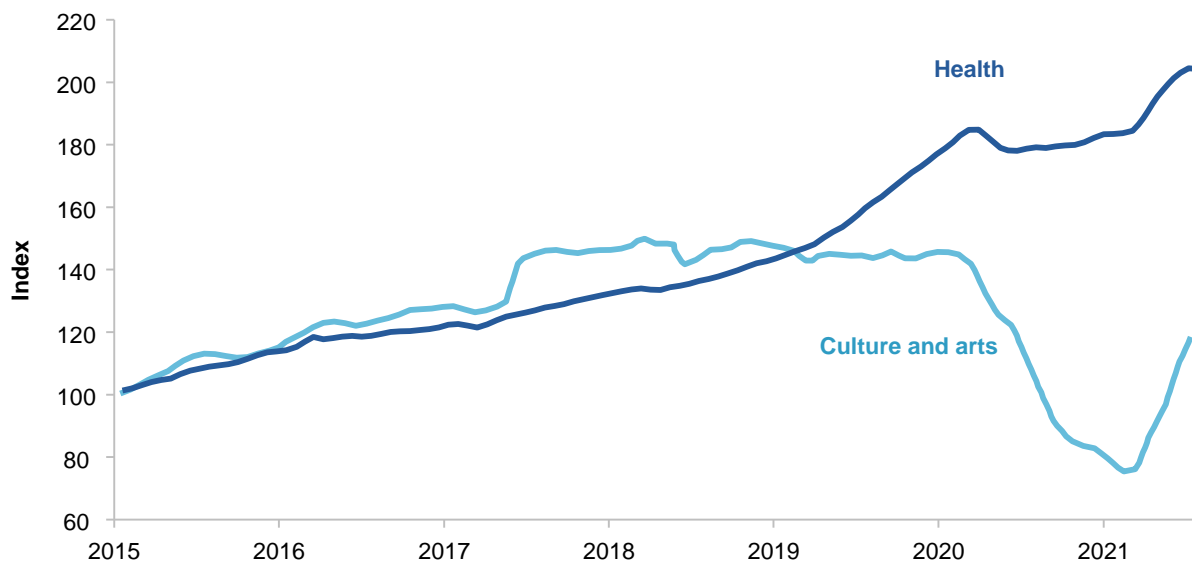
The **price elasticity of giving** refers to how donors respond to a 1% change in the **price of giving**. The price of giving is the cost of donating a dollar (box 4.2). The price of giving will generally be less than a dollar because a person can claim a tax deduction for eligible giving, provided they have taxable income to claim against. There is some evidence that people who have a higher income are more responsive to the same changes in tax incentives for giving, compared to taxpayers who have a lower income (Almunia et al. 2020; Pelosa and Steel 2005).

The **intensive price elasticity of giving** refers to changes in the amount donated, by people who are already donating, while the **extensive price elasticity of giving** refers to changes in the number of people who choose to donate.

The **income elasticity of giving** refers to how a person's giving behaviour changes in response to a 1% change in a person's **income**. Generally, an increase in a person's income will lead to more giving, assuming all other factors, including the price of giving, remain unchanged. In economic terms, this means that giving is a normal good. For some people, giving could also be a luxury good, where giving increased by more than any increase in income.

Other factors will also influence how much a person gives and which causes they give to. Among these are taxpayer demographics, such as age and gender, the charitable cause, and the design of the tax incentive for giving. For example, a person may still give to a cause, such as disaster relief, if a person they know is directly affected, regardless of whether they can access a tax deduction. There is evidence that a person will respond differently to changes in the price of giving for health, education, and arts and culture causes, but the *relative* changes in giving are not consistent across studies (for example, Feldstein (1975), Reece (1979), Brooks (2007), and Yetman and Yetman (2013)). During the COVID-19 pandemic, donations to culture and arts declined significantly compared to health causes (figure 4.1). This means that estimates of taxpayer responsiveness to tax deductions, including responsiveness estimates produced by the Commission, are unlikely to be uniform across different taxpayers and across charitable causes, and should not be assumed to be so.

Figure 4.1 – Giving to culture and arts declined significantly compared to health during the COVID-19 pandemic



Source: McLeod and McDonald (2021).

This type of evidence is relevant for the Australian Government's goal of doubling giving by 2030 as incentives to give, and the total and marginal social benefits of giving, are likely to vary from cause to cause. Policy measures, such as taxes and regulation can affect broad incentives to give, although outside of setting criteria for DGR eligibility, the Government has less control over encouraging giving toward specific causes. Thus, while policy changes can in principle change *total giving*, the Government may have less control over how giving is distributed. For example, if an increase in giving were predominantly from people with higher incomes, additional giving could favour certain causes, like arts and culture (Vallely 2020, p. 608). Different people may have different views on whether this is socially desirable.

Treasury efficiency is only one measure of effective tax incentives

Tax deductions come at the cost of revenue that would otherwise have been collected by government (forgone revenue). One way to assess the effectiveness of a tax deduction for incentivising donations is by assessing whether it is 'treasury efficient'. This is where the incremental increase in donations for the marginal dollar in revenue is compared against the revenue a government forgoes through the deduction.

For example, if a taxpayer initially gave \$100, a 1% decrease in the price of giving could lead to a taxpayer giving:

- more than \$1. This means it costs the government \$1 to encourage more than \$1 to be given to a charity.
- approximately \$1. This means it costs the government \$1 to encourage about \$1 to be given to a charity
- less than \$1. This means it costs the government \$1 to encourage less than \$1 to be given to a charity. If the amount given per dollar of government subsidy was close to zero, this would raise concerns about the effectiveness of using a tax incentive to encourage giving.

Under the traditional definition, the personal income tax deduction is treasury efficient if the price elasticity of giving is equal or greater than 1. However, some suggest that the ‘tipping point’ (as in the required size of the price of elasticity in order to satisfy the criteria of treasury efficiency) may not be equal to 1 if the amount of government spending directly affects the amount that people give (Steinberg 2021, pp. 181–182).

For example, suppose that the alternative to forgoing tax revenue is for government to fund goods and services directly or to provide grants to charities for this purpose. If increased government spending directly:

- reduces how much people give (crowding out), then the elasticity ‘tipping point’ for treasury efficiency will be less than 1
- increases how much people give (crowding in), then the elasticity ‘tipping point’ for treasury efficiency will be more than 1.

Crowding out of giving might occur when a charity receives a government grant and decides to scale back its fundraising activities because the cost of a project is now funded by the grant. Crowding out also arises if donors determine that, as a result of government funding, their own contributions are less necessary and therefore they decrease their giving. If crowding out leads to less giving, then this also can lead to reduced tax expenditures associated with a deduction for such giving.

Conversely, crowding in might occur when a government grant spurs a charity to seek more philanthropic funding to achieve its aims, for example as a result of having more resources available for fundraising (which otherwise may have needed to be directed towards providing goods and services).

However, it is not easy to determine is the exact value the ‘tipping point’ for treasury efficiency as it will depend on the price elasticity of giving and an estimate of the crowding out or crowding in effect for a given charitable good or service. To the best of the Commission’s knowledge, the data required to make this assessment does not exist in Australia. However, a meta-analysis of studies of crowding out concluded that around two thirds of the studies found crowding out and one third found crowding in (De Vit and Bekkers, 2017).

Irrespective of what the tipping point for treasury efficiency is, whether a tax deduction for giving is treasury efficient or inefficient is not the only factor to consider when designing a policy to incentivise giving. This is because treasury efficiency only considers the total value of giving relative to forgone revenue – it does not account for the costs and benefits of giving or the other uses of forgone revenue.

- In some cases, the efficacy of delivering support through government grants – as an alternative to a tax deduction – may be reduced by government having imperfect information and the administrative costs to government and charities of managing grants programs.
- It does not consider the benefits that may flow from additional philanthropic giving that is incentivised by the tax deduction, including improved social capital (chapter 2).
- Giving to some organisations or programs will generate greater net benefits to the community than others (although assessing this can be highly subjective).
- Some forms of philanthropic giving may also be counterproductive, to the extent that they are poorly targeted or overly paternalistic in their design and implementation (Salamon 1987, p. 40).

- It does not consider that governments cede some control over where resources are directed, including governments' ability to direct funds 'to the communities, programs, or people who most need assistance, or the programs and services which are most effective' (ACOSS, sub. 263, p. 4).
- Conversely, philanthropic giving that is incentivised by the tax deduction enables donors to 'vote with their feet' and have a greater degree of choice as to where to direct what would otherwise be tax revenue (Levmore 1998). In this respect, philanthropy can support pluralism.

Outside of increasing the size of the tax deduction or adopting a different incentive, such as a tax credit, there may also be other ways to increase giving (which are assessed in chapters 9 and 10).

The Commission's estimates of elasticities of giving in Australia

The Commission has used two separate models to estimate the price and income elasticity of giving in Australia (box 4.5). The models clearly show that more is given than would have been without the tax deduction. However, the range of results across the two models mean it is not possible to determine to what extent the deduction increases giving. The **price elasticity of giving in Australia** ranges from -1.67 to -0.48 (box 4.5). This means a 1% decrease in the price of giving results in an increase of giving between 0.48% to 1.67%, all else being equal.

This is a wider range of results compared to estimates by Deloitte Access Economics which estimated the elasticity of giving for Australia to be between -0.83 and -1.19 in 2018.

The Commission also found that the income elasticity of giving in Australia ranges from 0.86 to 1.17. This means that a 1% increase in disposable income – measured before any donations – is associated with an increase of giving by 0.86% to 1.17%, all else being equal.

This is the first published Australian study where price and income elasticity of giving have been estimated using panel data. The Commission used panel data in the ATO's ALife dataset that follows the same taxpayers over three decades. This is a deidentified tax and superannuation dataset, comprising a 10% sample of annual tax returns. The dataset covers 1990-91 to 2019-20.

Panel data can help remove the effects of unobserved (unmeasurable) factors that either vary across different people, but generally do not change over time (like cultural background) or vary across time, but not across different people (like natural disasters in Australia). Full details of the Commission's modelling are presented in appendix B.

The estimates the Commission has generated of the price and income elasticity of giving are subject to data and econometric limitations. Two important caveats are that:

- the ALife dataset does not capture all tax-deductible giving, even from those that do file personal income tax returns. For example, it will not capture tax-deductible giving that is made by sole traders through their businesses or that made by taxpayers through family offices or other structured vehicles to manage their tax affairs. This means estimates using the ALife dataset may not capture giving by (ultra) high-net-worth individuals
- the ALife dataset used by the Commission does not have spousal linkages, except for spousal income. For couples, giving is often determined at a household level – in America, 6 out of 10 couples did so (Mesch and Osili 2021).

Further, these results are affected by people who have low incomes in some years, but significantly higher incomes in others.

Box 4.5 – The Commission’s modelling results

Using two models, the Commission has generated estimates of how people in Australia change their giving behaviour in response to changes in the price of giving (the price elasticity of giving) and changes in their disposable income (the income elasticity of giving). The models were:

- a fixed effects model, which used the first dollar price of giving directly as a regressor
- a negative binomial model, which used the first dollar price of giving directly as a regressor

For each model, the Commission used two different sets of specifications. This is because using the full sample from ALife on the fixed effects model resulted in large and unrealistic estimates for the price elasticity of giving. For both models including income observations below \$10,000 appeared to be causing the unrealistic results (discussed further below).

For the **fixed effects model** (excluding income observations below \$10,000) respectively, on average, holding all else constant:

- a 1% decrease in the price of giving was associated with a 0.87% increase in giving
- a 1% increase in a person’s income was associated with a 0.57% increase in giving.

For the **negative binomial model** (excluding income observations below \$10,000), on average, holding all else constant:

- a 1% decrease in the price of giving was associated with a 0.48% increase in giving
- a 1% increase in a person’s income was associated with a 1.17% increase in giving.

For the **negative binomial model** (using the full sample), on average, holding all else constant:

- a 1% decrease in the price of giving was associated with a 1.67% increase in giving
- a 1% increase in a person’s income was associated with a 0.86% increase in giving.

Across all models, the magnitude of the price elasticity of giving decreased and the income elasticity of giving increased when observations with low income were removed from the data set, compared to the same model run using the full sample. The methodology and limitations of these estimates, as well as the full results under different specifications and robustness tests are outlined in appendix B.

There is also some evidence to suggest people without positive net capital gains in a year have different giving behaviour to people with positive net capital gains. For the negative binomial model (excluding income observations below \$10,000), on average, holding all else constant and excluding observations with positive net capital gains:

- a 1% decrease in the price of giving was associated with a 1.03% increase in giving
- a 1% increase in a person’s income was associated with a 1.08% increase in giving.

This shows a larger magnitude in the price elasticity of giving and a slightly smaller magnitude for the income elasticity of giving, when excluding observations with positive net capital gains.

Methodology

The Commission estimated the price elasticity of giving and the income elasticity of giving for both models using panel data from 2009-10 to 2018-19. Inputs into the model included the ‘first dollar price of giving’ – how much it cost a person to donate \$1, assuming they did not previously claim gift deductions during that financial year – and a person’s disposable income, before deductions for donations. The Commission also included control variables to isolate the variables of interest (price of giving and

Box 4.5 – The Commission’s modelling results

income): gender; age; occupation; location; disposable income; marital status; and whether an individual had sufficient private health insurance for tax purposes. The Commission also estimated a specification which excluded anyone from the sample who had positive net capital gains, to consider the potential effect of capital gains on the estimates.

The **negative binomial model** is used because the ALife data is ‘over-dispersed’, meaning the variance of the data is greater than its mean because many people do not claim a tax deduction for giving and because there are a small number of taxpayers with very large donations.

The Commission also examined the results from both models when observations with a total income less than \$10,000 were excluded. People who earn a low income tend to have the highest price of giving because they have a low tax rate. Including people in this situation in the models produced unrealistic estimates for the fixed effects models. Taxpayers with less than \$10,000 in average total income comprised 6.9% of taxpayers and 0.45% of giving in the sample used in the Commission’s modelling. The Commission also tested different income thresholds to be excluded from the model. The results of the different tests are provided in appendix B.

Complexities of modelling the price elasticity of giving

The main limitation of the Commission’s modelling is that it is difficult to distinguish between the price and income effect on giving. This is a well-known issue in the literature: the price of giving is affected by a taxpayer’s marginal tax rate which, in turn, is affected by their taxable income and any deductions that are claimed, including deductions from giving. In addition, modelling the price elasticity of giving is most effective when there are substantial changes in effective marginal tax rates during the sample period. In Australia, the personal income tax changes over the last decade have been minimal. However, the stage 3 tax cuts may provide an opportunity to better distinguish between price and income effects on giving, as the legislated changes will increase the price of giving (due to lower marginal tax rates) for taxpayers with a taxable income above the tax-free threshold.

During the process of estimating the price and income elasticity of giving, the Commission found that the presence of capital gains income (either large capital gains or losses); having a low income; and the linearity of the model could result in unrealistic values for the price elasticity of giving.

The complexities of giving behaviour limit the explanatory power of any model. People are motivated to give for many reasons and the presence of a tax deduction is just one factor in this decision. As with other papers in the literature, the models the Commission used have a low R-squared, which may be because of the high variance in the amounts that people overall donate.

However, it is not possible to address the issue of inaccurate reporting – unintentional or otherwise – as there are no other public data sources which the Commission could compare the accuracy of reported deductions to. Some taxpayers may have made donations that would be eligible for a tax deduction but did not claim the deduction for giving on their tax return. Similarly, some taxpayers may not have donated but falsely claim that they have or claim more or less than the donation they made.

Effect of capital gains on the price elasticity of giving

Depending on the dataset, if taxpayers have large capital gains or losses, they could appear to have very high incomes or low incomes in a dataset, affecting estimates of the price elasticity of giving. For example, in

Hickey (2023), the authors observe that some taxpayers may appear to have low incomes if they have large employment income as well as large capital losses. In the ALife dataset, this does not pose an issue as net capital gains is either equal to the difference between capital gains and capital losses; or to zero, if capital losses exceed capital gains – as such, a person that has large employment income and large capital losses will still appear to have high income.

Nonetheless, the Commission tested the effect of capital gains on the price elasticity of giving by running a specification where anyone with positive net capital gains is excluded, and where only salary and wages income is used as an income measure. Under this specification, the magnitude of the price elasticity of giving under all income cutoffs is larger than when taxpayers with a positive net capital gain are not excluded, suggesting that there is a difference in giving behaviour between those with and without positive net capital gains during a given year. While the Commission has not done so, future studies also could investigate the effect on giving of an additional dollar in capital gains, separate to the income elasticity of giving, which uses disposable income as its reference point, and timing effects of capital gains and losses.

Effect of people with low income

For people with low *average* incomes across the ALife dataset sample (say, less than \$10,000 in total income), minute decreases in the price of giving were associated with large *percentage* increases in giving, but from a small initial base value of giving. People with low average incomes were more likely to be retirees filing for wealth reasons; young people who file tax returns, or more broadly, people with similarly volatile income streams. The Commission estimated regressions removing these individual sub-groups and did not find evidence that they individually drove the results. Instead, it appears that it is the existence of low-income observations themselves that led to high elasticity estimates.

Other estimates of the price and elasticity of giving

The Commission's estimates have broadly similar values to other studies, although they have been done using different methodologies and use data from different jurisdictions. Selected estimates of the price and income elasticity of giving are outlined in box 4.6.

Box 4.6 – Selected studies of taxpayers' responses to tax incentives

Many studies have investigated the effect of tax incentives on giving, although they mostly use data from the United States. Studies generally find that tax incentives increase giving by lowering the tax price, although the size of the measured effect varies. Comparing international estimates of price and income elasticity estimates with Australian estimates is not straight forward, given differences in how tax concessions for giving are designed, as well as broader tax settings – for example, whether giving is subsidised through a tax deduction, matching scheme or tax credit – and social norms relating to giving.

To the best of the Commission's knowledge, the only Australian estimates of price and income elasticities are from the unreleased Deloitte Access Economics study using cross-sectional data commissioned by Philanthropy Australia.

Box 4.6 – Selected studies of taxpayers’ responses to tax incentives**Selected studies about the price and income elasticity of giving**

| | Price elasticity of giving estimates | Income elasticity of giving estimates | Jurisdiction |
|---|---|---|--|
| Pelozo and Steel (2005) | -1.44 with a standard deviation of 1.21 | No estimates calculated | A meta-analysis of studies, mostly published before 1990, from the United States |
| Bakija and Heim (2011) | Federal persistent price elasticity: -0.39 State persistent price elasticity: -1.16 | 0.43 | United States |
| Deloitte Access Economics (2018) | Model 1 (negative binomial): -1.19 with a 95% confidence interval of between -1.39 to -0.99 Model 2 (Heckman selection model): -0.83 with a 95% confidence interval of between -0.97 and -0.69 | Model 1: 0.70, no confidence interval reported. Model 2: 0.58, no confidence interval reported | Australia |
| Almunia et al. (2020) | Intensive-margin elasticity of between -0.16 and 0.28, depending on specification Extensive-margin elasticity of -0.09 | Between 0.195 and 0.201, depending on specification | United Kingdom |
| Hickey et al. (2023) | -1.9 with the price elasticity of giving varying significantly across the income distribution | No estimates calculated | Canada |

Based on the Commission’s estimates and other studies, people respond to tax incentives for giving in a way that is broadly predicted by standard economic principles: a lower price of giving is associated with more giving. But the size of the effect depends on the data used and the exact model specification (finding 4.1). As such, the range of elasticities estimates provides no strong evidence to either increase or reduce the personal income tax deduction.



Finding 4.1

People respond to incentives, with those on a higher income more likely to give

Modelling undertaken by the Commission indicates that people give more than they otherwise would because of the personal income tax deduction for donating to entities with deductible gift recipient status. The modelling draws on Australian taxpayer panel data and is the first time panel data has been used in Australia to estimate how people respond to personal income tax deductions for donations.

The Commission used two models to estimate the price elasticity of giving – which is how people change their giving behaviour in response to changes in tax incentives for giving – and the income elasticity of giving, which is how people change giving behaviours in response to changes in their own income.

The Commission's estimates fall within the following ranges for:

- price elasticity of giving in Australia: from -1.67 to -0.48, meaning a 1% increase in the tax deduction for giving is associated with a 0.48% to 1.67% increase in giving
- the income elasticity of giving in Australia: from 0.86 to 1.17, meaning a 1% increase in income is associated with a 0.86% to 1.17% increase in giving.

However, these estimates are only one factor to consider when evaluating the effectiveness of tax incentives to give.

The share of taxpayers claiming a deduction for giving increases with income. Most of the tax benefits from giving that accrue to people in the lowest taxable income decile go to people who had high incomes before claiming any tax deductions.

4.3 Design of the tax incentive for giving

The preferred design of a tax incentive for giving depends on three main factors: the type of behaviour the government wants to encourage, people's response to the incentives the government creates and principles of good tax design (box 4.7).

There are four behavioural outcomes the government may want to achieve:

- increasing the total amount donated within the government's fiscal parameters and accounting for the total government expenditure on goods and services provided by charities
- increasing the number of people who give
- encouraging particular types of giving (for example, money, physical assets or time)
- encouraging particular cohorts of people to give (for example, younger or older people, or people on a higher or lower income).

The Australian Government's use of an uncapped, 100% tax deduction for giving is not the only method the Government could incentivise giving but is likely to be the most cost-efficient. Other options explored in this section include removing the threshold for tax-deductible donations; making the tax deduction more generous; replacing the tax deduction with a tax credit; matching donations, contribution schemes or vouchers; extending a tax credit to volunteers; and other taxation arrangements that may affect incentives to donate.

Box 4.7 – Design principles for the tax system

The Commission has drawn on a well-established literature on good-practice tax design as outlined in the Henry Tax Review (2010, p. 17), the Australia Taxation Review Committee Report (Asprey and Parsons 1975, p. 47) and the Not-for-profit Sector Tax Concession Working Group (Treasury 2013, pp. iii–iv) to assess the design of the current tax deduction for giving, entities that are eligible for DGR status and potential alternatives.

The Commission has used four principles to examine the design of tax incentives for giving.

- **Efficiency:** the tax and transfer system should raise and redistribute revenue at the least cost to economic efficiency and with minimal administration and compliance costs.
 - In relation to encouraging giving, this includes whether the charities that receive the subsidised donation provide sufficient public benefit (O’Connell 2023, p. 268).
- **Equity:** the tax and transfer system should treat individuals with similar economic capacity in the same way, while those with greater capacity should bear a greater burden.
 - In relation to encouraging giving, this includes treating entities that are similar in a similar way and directing the benefits of the tax deduction to entities with purposes or activities where there are the greatest net benefits to the community (O’Connell 2023, p. 268).
 - Another equity consideration is whether all donors, regardless of income, should receive the same incentive to give.
 - Last, whether the tax deduction encourages a greater volume of voluntary redistribution of income – from those on higher incomes toward activities and causes that benefit the community as a whole or sections of the community that experience high levels of disadvantage – than would otherwise occur.
- **Simplicity:** the tax system should be simple to understand and comply with.
 - If individuals, businesses and charities understand the system, they are more likely to act in their best interests and respond to intended policy signals. A simpler system will generally also involve lower administrative and compliance costs.
- **Accountability and transparency:** are essential for tax concessions so that the integrity of the tax system is maintained both as a whole and as a mechanism specifically to encourage philanthropy and support the work of charities.
 - The tax deduction for giving has a cost in terms of forgone tax revenue, which could be spent on other purposes. Given this trade-off, there is a reasonable expectation that donors and charities that access the tax deduction and other tax concessions should adhere to specific standards of accountability and transparency.

The threshold for tax-deductible donations should be removed

Individual taxpayers can claim a tax deduction when they give \$2 or more to entities with DGR status. This threshold is a product of history. When income tax deductions for giving were introduced in 1915, the minimum threshold was relatively high – £5 for donations to the war effort and £20 for charitable donations (\$578 and \$2,313 respectively in 2022 dollars). In 1927, the threshold was reduced to £1 (O’Connell 2021, pp. 176–180). The threshold has not changed in nominal terms since then, although decimalisation of the Australian currency

in 1966 meant the minimum threshold was converted to \$2. The real value of the \$2 minimum threshold has steadily eroded. For example, \$2 in 1966 is equivalent to almost \$30 in 2022 dollars.⁵

Entities with DGR status are not required to provide receipts for donations, although where they do provide a receipt, it must contain certain details such as the charity name and ABN. Donors can use other evidence as a record of their donation to claim a tax deduction, including bank statements, credit card records, employer statements or retail receipts where donations are collected by third parties at the point of sale. Donors can also claim individual donations of \$2 or more without evidence (such as to bucket appeals) up to a total of \$10 (ATO 2023e).

Previous reviews and participants had mixed views on changing the threshold

Previous reviews have recommended different approaches to changing the minimum deductibility threshold.

The Henry Tax Review (2010) recommended increasing the deductibility threshold from \$2 to \$25. The Review argued that it would reduce the reporting burden for donors through needing to retain fewer receipts. It would also reduce the need for entities with DGR status to issue a large number of receipts for small donations. However, since then, advances and increases in uptake of technology have reduced the costs of generating and keeping receipts.

In contrast, the Not-for-profit Sector Tax Concession Working Group recommended removing the threshold for reasons of simplicity and estimated that removing the threshold would have a negligible revenue cost (Treasury 2013). Similarly, the Industry Commission (1995a) recommended removing the threshold and allowing organisations to make their own determinations on when to issue receipts to donors.

Participant views relating to the \$2 threshold varied. For instance, BDO (sub. DR718, p. 4) supported the removal of the threshold to resolve legal doubt about the tax treatments of certain donations – for example, whether a weekly \$1 donation, under accounting law, was a \$52 donation made in weekly payments, or whether it was 52 donations, each under the \$2 threshold. Other participants supported the removal of the \$2 threshold in principle but had concerns about administration costs relative to the donation, particularly where an organisation manually generated receipts (Creative Australia, sub. DR696; Order of Australia Association Foundation, sub. DR531). The Sydney Children’s Hospital Foundation (sub. DR457, p. 4) was sceptical about removing the threshold, raising the possibility that removing the threshold could result in ‘increased administrative costs for charities (for example, issuing receipts that cost more than the donation itself)’.

Changes to the threshold might change incentives for donors to give. For example, the \$2 threshold may be causing clustering of small donations around this value and raising the threshold could incentivise an increase in the size of these small donations. Given the rise of new giving approaches, such as ‘round up’ donations at the supermarket checkout, removing the threshold may possibly provide a small additional incentive to make such ‘micro-donations’ if a donor is aware that they could then claim them as a deduction.

The Balnaves Foundation (sub. DR620, pp. 4–5) raised concerns that the removal meant businesses offering round up donations to their customers would ‘be required to provide a tax-deductible receipt for small donations, thus requiring the business to achieve and maintain DGR status or coordinate with their charity partners on issuing a tax-deductible receipt’. However, entities with DGR status are not required to issue a receipt under law, unless they wish to do so. The ATO also accepts other methods for substantiating a donation (where necessary), such as bank statements or internet banking transfer confirmations (ATO 2024b).

Given this, removing the tax deductibility threshold would be unlikely to materially change compliance costs for charities given there is no requirement to issue receipts to donors. Where compliance costs are high,

⁵ Commission estimates using Reserve Bank of Australia calculator (2015).

charities can choose to only issue receipts for donations above a certain amount. As such, the \$2 threshold for tax-deductible donations should be removed (recommendation 4.1).



Recommendation 4.1

Remove the \$2 threshold for tax-deductible donations

The Australian Government should amend the *Income Tax Assessment Act 1997* (Cth) to remove the \$2 threshold for tax-deductible donations to entities with deductible gift recipient status.

There is no evidence that the rate of the tax deduction should be changed

In principle, given that the Commission's estimates of the elasticity of giving are negative, the rate of the tax deduction could be changed to further incentivise giving. For example, Singapore has a 250% tax deduction for gifts to eligible organisations until 31 December 2026 (Inland Revenue Authority of Singapore 2024).

However, the Commission's estimates of the income elasticity of giving are positive, and giving in Australia is increasing without changes to government incentives. Tax-deductible giving has tripled over the last 20 years (in real terms) without major change to the design of the tax concession (chapter 3). Noting the uncertainties and caveats associated with estimates of treasury efficiency, the results of the price elasticity modelling also suggest that, on average, increasing the deduction rate over 100% may not be a cost-effective mechanism to encourage giving, because the net gain may be negative – such a change would increase giving, but the revenue cost to government would, depending on the estimate, likely exceed the change in giving.

Another consideration is that, compared to many other countries, the tax deduction in Australia is already relatively high, because there is no cap on how much an individual person can claim as a tax deduction. It is essentially only limited by a person's willingness and capacity to give, and a person's taxable income over five years. In contrast, in the United States, taxpayers can only claim up to 60% their income as a tax deduction (with lower thresholds in some circumstances). That said the types of charities that can receive tax-deductible donations in Australia is relatively narrow compared to OECD countries (chapter 5).

A flat tax credit could decrease the amount given overall

Like a tax deduction, a tax credit for giving also reduces the price of giving. A common design feature of tax credits is that all taxpayers receive the same concession for each dollar they give, regardless of their income or marginal tax rate. That is, a flat tax credit would provide similar incentives to all taxpayers, regardless of their income level or tax bracket.

In principle, one way to ensure this would be to completely alter Australia's graduated tax system and instead introduce a flat income tax system. Another way would be to apply a flat tax credit within the current graduated system. This is the approach taken in New Zealand, which has a flat tax credit rate of 33.33 cents for each dollar donated (box 4.8). In this instance, a person who donates \$500 in a financial year would receive a credit of \$166.65 whether they had a taxable income of \$60,000 or \$250,000. If the same approach and credit rate were applied in Australia, a person with a lower income would have a lower price of giving than under the current tax deduction, while people on higher incomes would face a higher price of giving.

Box 4.8 – Design of tax credits in other countries

Some countries, like New Zealand and Canada, use a tax credit to encourage donations to eligible organisations.

In New Zealand, taxpayers can claim 33.33% of their total donations over \$5 as a tax credit. The total value of donations must be lower (or the same) as their taxable income. The cap on donations (of NZ\$1,890) was removed in 2009. If donations are more than a person's taxable income, they can split the donation with the spouse or partner (Cruickshank 2022, pp. 6, 11; NZ Inland Revenue 2023).

Cruickshank (2022) estimated that the price elasticity of giving in New Zealand was about -0.7 to -0.4 (meaning that a 1% increase in the tax concession was associated with an increase in giving of 0.4% to 0.7%). This means that donations are estimated to increase by less than the cost of the tax credit to the government (that is, the credit is not treasury efficient). Cruickshank also found substantial 'bunching' around the thresholds when there were donations caps in place.

In Canada, taxpayers can claim tax credits for donations both at a federal and provincial level. Tax credits are capped at 75% of a taxpayer's net income, although there are some exceptions. Generally, at both the federal and level, the tax credit rate used for donations under CAD\$200 is the lowest marginal tax rate for personal income tax and the tax credit rate used for donations over CAD\$200 is the highest marginal tax rate. For example, at the federal level donations under CAD\$200 receive a tax credit of 15% and donations over CAD\$200 receive a tax credit of 29%. Donations are also transferrable between spouses or partners. This means there is an incentive for one person in a couple to claim all donations if they rise over the CAD\$200 threshold and attract a higher tax credit. Like in Australia, Canadian taxpayers can claim the credit for up to five years from when the donation was made (Canada Revenue Agency 2016; Hickey et al. 2023, pp. 8–9).

Hickey et al. (2023) estimated that the price elasticity of giving for the Canadian federal and provincial schemes was about -1.9 (meaning that a 1% increase in the tax concession was associated with an increase in giving of 1.9%) and that the households in the lowest and second lowest income quintiles were most responsive to tax concessions.

A comparison of the current tax deduction and a theoretical non-refundable tax credit scheme under two scenarios is presented in table 4.1. Under a tax deduction scheme, the amount refunded increases with a person's marginal tax rate. Under a tax credit scheme, the amount refunded is constant. In both cases this is under the assumption that there is enough taxable income to offset.

Under these scenarios, a person with low income – say a person whose income falls under the 19% tax bracket – would receive a larger tax reduction under a tax credit, as the tax credit rate is larger than their effective marginal tax rate. Conversely, a person with high income – say, a person whose income falls under the 45% tax bracket – would receive a smaller tax reduction under a tax credit, as the tax credit rate is smaller than their effective marginal tax rate.

A tax credit can be non-refundable or refundable. A non-refundable credit can only be credited against a tax liability. With a refundable credit, taxpayers receive a refund even when the value of the credit exceeds their tax liability. That is, a person who had no net taxable income, but submitted a tax return would still receive a credit for their donation. However, there are doubts whether a refundable tax credit to incentivise giving for people who have no taxable income would be constitutional (*Pape v The Commissioner of Taxation* [2009] HCA 23).

Table 4.1 – Tax concession from a \$500 donation under a simple non-refundable tax credit system^a

| Taxable income before a deduction | Tax deduction at current marginal tax rate | 33.33% tax credit | 45% tax credit |
|-----------------------------------|--|-------------------|----------------|
| \$15,000 | Nil | Nil | Nil |
| \$40,000 | \$95.00 | \$166.65 | \$225.00 |
| \$60,000 | \$162.50 | \$166.65 | \$225.00 |
| \$130,000 | \$185.00 | \$166.65 | \$225.00 |
| \$250,000 | \$225.00 | \$166.65 | \$225.00 |

a. Assuming the taxpayer claims no other tax deductions. Excludes Medicare Levy, Medicare Levy Surcharge and any rebates or offsets.

Source: Commission estimates.

Inquiry participants had different views on changing to a tax credit (also known as a tax rebate) in Australia.

Some participants argued that changing to a tax credit would lead to a more equitable system (Barbara Preston, sub. DR469, p. 2) or that a tax credit could be used to incentivise more giving from people with low income. For example, the Australian Council of Social Services (sub. 263, p. 5) commented that it 'is important that the tax regime operates equitably in relation to lower income donors' and UNICEF (sub. 172, p. 1) suggested having a 'set rate of tax deduction for all donors which would be at a higher rate for low income earners'.

However, other participants raised concerns that a tax credit would reduce incentives for people with high incomes to give (Australian Philanthropic Services, sub. 441; BDO, sub. DR718; Council for Advancement and Support of Education, sub. DR593; Duncan and Margot Bailie, sub. DR625). For example, the Royal Flying Doctor Service (sub. 126, p. 9) submitted that it 'is confident that a tax rebate rather than an income tax deduction would act as a disincentive for all donors whose marginal rate of tax was higher than the rebate level'.

The Royal Flying Doctor Service (sub. 126, pp. 9–10) also noted that moving to a tax credit for donations made by individuals would introduce an inconsistency with other entities that can claim a tax deduction for giving. For example, a donation of the same value from an individual would be treated differently compared to when a sole trader directs giving from their own business, rather than claiming it as a personal income tax deduction. This would add further complexity to the tax system.

Moving to a tax credit could increase small donations ...

One benefit of tax credits is that they are generally simple to understand and calculate. There could also be benefits to charities if a flat tax credit encouraged more people to give, including those who have a low taxable income. As discussed in chapter 2, this type of giving can make a difference to charities. For example, many people regularly giving small amounts (mass giving) can be highly valued by charities because this money is untied, unlike many grants from government or large philanthropic organisations that have conditions on what donations can be used for. This can give charities flexibility to spend these donations where they are most needed or on activities (like administration costs) that can be difficult to fund through other processes (Baptist Care Australia, sub. 152, p. 9; Future Generation Companies, sub. 118, p. 6; Grant Thornton Australia, sub. 157, pp. 6–7), noting that donors who contribute to mass giving can also be hesitant to fund administration costs (chapter 9).

... but at the expense of large donations, which comprise most of donated funds

But a tax credit could have a large effect on the total amount given to charities each year, particularly if high income earners are highly responsive to changes in the price of giving (that is, have a high price elasticity of giving). In Australia, a small number of people who have a high-income give a very large proportion of tax-deductible donations. In 2019-20, taxpayers who claimed tax-deductible donations of greater than \$6,600 (1% of total taxpayers with gift deductions) made half of total tax-deductible donations (table 4.2).

Some studies suggest that overall donations would fall under a flat tax credit as the increase in donations by people with lower incomes would be more than offset by the reduction in donations by people with higher incomes (IC 1995a; Johnson 1981; PC 2010, p. 175). This would be dependent on how people with different incomes respond to changes in the price of giving.

Adjustments could be made to a tax credit scheme to address the possibility of overall donations decreasing, but this would increase the cost and complexity of the design of the credit. For example, one option would be to increase the deduction for people on low incomes, while maintaining the current size of the deduction for people on a higher income. Alternatively, the credit could be attached to the amount a person gives rather than their income to incentivise very large donations. For example, donations over \$10,000 could receive a larger tax credit than smaller donations. The effect that these adjustments may have on total donations is uncertain without more empirical evidence that quantifies the responses of people in different income brackets.

Some participants also highlighted the importance of economic conditions in whether a donor chooses to give or not – for example, BDO (sub. DR718, p. 6) suggested that ‘for most individuals and businesses donations are discretionary expenditure’.

A tax system where all individual taxpayers face the same marginal tax rate would also mean they would face the same tax-price of giving under a deduction or a credit, but would fail to meet important design principles, including that people with greater capacity should bear a greater burden (box 4.7).

Table 4.2 – About 1% of donating taxpayers give about half of all tax-deductible donations

| Value of donation | Proportion of taxpayers who donate that gave this amount or less (%) | Proportion of donations given by taxpayers who donate that gave this amount or less (%) |
|-------------------|--|---|
| \$20 | 12 | 0.2 |
| \$100 | 43 | 2.5 |
| \$1,000 | 90 | 24.3 |
| \$2,000 | 96 | 34.3 |
| \$6,600 | 99 | 49.9 |

Source: Commission estimates using ATO 2019-20 2% sample data.

On the available information, the Commission’s position is that a personal income tax deduction is likely to be the most cost-effective way to encourage giving and the Australian Government should not change the incentive to give by moving to a tax credit (finding 4.2).

Matched giving and vouchers create different giving incentives

Some countries do not provide a direct personal incentive to encourage people to give. Instead, these countries give people the option to direct a small amount of tax revenue to a charity of their choice independent of a person’s marginal tax rate. The design of matched giving schemes differs, including the amount or rate

matched by government. For example, in the UK, the government matches 25% of the value of each private donation to an eligible charity and only provides a personal incentive to give for higher income earners. In Italy, taxpayers can choose to contribute 0.5% of their income tax to an eligible charity (box 4.9).

Box 4.9 – Other models for government support of philanthropy

Matched giving

The UK operates a matched giving scheme called Gift Aid where eligible organisations can claim an extra 25 pence from every pound that is donated by a taxpayer. Taxpayers who do not pay tax or who are in the first tax bracket (known as the basic rate of 20%) do not receive a direct personal incentive to give. Taxpayers in the top two tax brackets can claim a tax concession on their donation of the difference between their tax bracket and the basic rate. For example, a taxpayer in the highest tax bracket of 45% could claim a deduction of 25% for every dollar they donate. Like tax deductibility schemes, the price of giving faced by a taxpayer in the top two tax brackets is 1 less their effective marginal tax rate (Almunia et al. 2020).

For an organisation to claim the matched gift of 25 pence from the UK Government, they must receive a Gift Aid declaration from the donor and the donation must not be 4 times greater than the taxpayer's tax paid during that tax year.

The price elasticity of giving for an individual under Gift Aid was estimated to be about -0.25 to -0.37. This means that a 1% increase in the tax concession was associated with an increase in giving for a person by on average 0.25% to 0.37%. (Almunia et al. 2020). A report from the UK's National Audit Office (2013) suggested that there were compliance issues associated with the Gift Aid scheme, particularly around small-scale tax avoidance, though this information is now somewhat dated.

Further, the UK's Gift Aid scheme is very dependent on the basic rate of income tax – as this directly determines the amount of money a charity can claim back from the UK Government. The lower the income tax rate, the lower the amount of money that is claimable, holding donations constant. As such, in 2024, the UK Government introduced temporary transitional arrangements which would allow charities to claim Gift Aid at the old basic income tax rate of 20%, despite the income tax rate decreasing to 19% (Government of the United Kingdom 2022).

Contribution schemes

Italy operates a voluntary contribution scheme called the 'cinque per mille' (five per thousand) where taxpayers can choose to reserve 0.5 per cent of their income tax to be allocated to not-for-profit organisations (Agenzia Delle Entrate 2022).

Digital charity vouchers

Charity vouchers and charity gift cards are becoming increasingly popular in Australia, with a number of private sector examples like MyCause (2023). Under these private sector gift voucher schemes, the giver purchases a voucher (and receives a tax deduction) and the receiver redeems the voucher for a charity of their choice.

A government could leverage the popularity of these existing vehicles (which also have the advantage of being purely digital and not requiring cash or cheques) and introduce a public digital charity voucher scheme. Under such a scheme, there would be no tax deduction for giving. Instead, the government would allocate a pool of public funds to the scheme and electronically distribute that pool equally among the

Box 4.9 – Other models for government support of philanthropy

population as a digital charity voucher. People could then choose which eligible charity they wish to direct their voucher toward (including choosing to not direct it at all). Registered charities would then redeem the vouchers they had received with the government in exchange for funds equal to the face value of the voucher (Schaeffer 2010). People could still choose to donate additional amounts to their preferred cause or causes, and the government could choose whether there was also a tax deduction for these donations.

This type of scheme would not incentivise philanthropic giving directly and would create incentives more akin to an income effect, as opposed to a price effect, unless there was a tax deduction attached. As with government support through tax-deductible giving, it would also give individuals the opportunity to choose where government funding to charities is directed. This may ‘crowd out’ some donations. To the best of the Commission’s knowledge, such a scheme has not been tried anywhere in the world. There may be merit in a trialling and rigorously evaluating a carefully designed pilot charity voucher scheme in Australia.

Moving to a matched giving scheme or voucher scheme presented in box 4.9, would be a large change from the current system in Australia, as these schemes do not provide the same direct personal incentives to give as a tax deduction.

Some participants submitted that governments matching gifts made by donors would be valuable (Surf Life Saving Australia, sub. 99, p. 2; UNICEF, sub. 172, pp. 1–2). UNICEF suggested that because many donors do not claim a deduction against taxable income, such a scheme could increase the amount going to charities. It is likely a refundable matched giving scheme – in which the government matches gifts, regardless of a person’s taxable income – would increase the amount of revenue to charities where people’s giving decisions are not influenced by the ability to claim a tax deduction (for example, because they are retired and no longer earning taxable income). However, the effects on giving by people who do claim a tax deduction, and by extension the overall effects on giving are difficult to assess.

As discussed in chapter 10, philanthropy itself can, under some circumstances, replicate some of the incentives that governments might trial. Matched giving programs are a good case in point, and some philanthropic funders have entered matched giving arrangements with charities and governments also use this approach in some specific areas. Matched giving can also play a role encouraging workplace giving, with employers matching employee donations, with the Commission hearing that such matching can provide a stronger incentive for employees to participate in workplace giving (GoodCompany, trans., p. 491). Support for matched giving initiatives by philanthropic funders and corporates provide an example of how non-government actors can use their own resources to reshape and influence the incentives for others to give, as a complement to the government support that is indirectly provided to the original philanthropic funding for such schemes through existing conventional tax incentives.

Some participants submitted that these types of matched giving programs, if used more widely by governments, could increase overall donations (ACFID, sub. 242, p. 4; ASF, sub. 197, p. 10; Aruma, sub. 187, p. 3; Go8, sub. 213, p. 9; Office of the Arts, sub. 251, p. 2). According to the Australian Environmental Grantmakers Network (trans., p. 472) an example of how a matching arrangement was used effectively was the National Reserve System ‘where the Federal Government contribute[d] a one-third purchase price for higher conservation than private land, providing the remainder that was secured from other sources, particularly from philanthropy’.

Matched giving arrangements implemented by governments can target clearly defined causes or charities, with a fixed duration of time during which donations are eligible for matching or with a cap imposed on the

total amount of donations that will be matched. These arrangements are another way governments could provide more focused incentives to donate to priority causes. However, the costs and benefits of such an approach would need to be assessed on a case-by-case basis.

One consideration is that giving behaviour in the UK could indicate that matched giving by governments may have a smaller effect on encouraging giving than tax deductions or tax credits – with modelling showing smaller magnitudes of elasticity results in the UK compared to the United States and Canada (box 4.6 and box 4.9). However, this could be because of the complexity of the UK matched giving arrangements, where donors are required to give a declaration to each charity they donate to before the charity can claim the matched contribution from the government, rather than matched giving as a concept. For example, Almunia et al. (2020, p. 13) estimated that it costs each donor £47 to declare their donations and the Charities Aid Foundation (2021, 2021) estimated that about half of donors do not use Gift Aid.

The Commission sees no strong case to change the personal income tax deduction to a matched giving, voucher or contribution scheme because these do not provide the same direct personal incentive to encourage people to give. However, as discussed in chapter 6, government matched giving programs may in some cases, have a role to play within a reformed DGR system.

Some donors do not receive a tax incentive to give

The design of Australia's tax deduction means a government incentive for giving is only available for people who give financially and pay personal income tax. There is no direct government incentive for people who give time, as opposed to money, or for people who do not pay personal income tax. This is because volunteers do not earn an income when volunteering, and in general, in the tax system, expenses are to be deducted against their related income.

This means many people are excluded from policies that lower their price of giving. In 2022, 6 million people volunteered through a group or organisation (formal volunteering) (Biddle et al. 2022, p. 10). There were also 4.4 million people who were aged 18 and over who did not pay personal income tax in 2020-21 (Commission estimate based on tax and population data).

It is unknown whether a tax incentive to encourage volunteering would work

The proportion of people in Australia who volunteer has declined and the extent to which the volunteering rate will recover after the COVID-19 pandemic remains unclear. The available data shows the proportion of people 18 and over who volunteer through a group or organisation declined from 36% in 2010 to 25% in 2020, with a sharp decline coinciding with the COVID-19 pandemic (ABS 2021a). Another study indicated volunteering rates recovered slightly by 2022, though some inquiry participants reported that volunteering rates have yet to recover from the effect of the pandemic (Biddle and Gray 2023; Volunteering Australia, sub. 222, p. 6). For example, 83% of organisations that engage volunteers said that they needed more volunteers immediately or soon (Volunteering Australia 2023b, p. 19).

There is also a connection between volunteering and other types of giving. People who volunteer more also tend to give more financially (McGregor-Lowndes et al. 2017). However, it is not clear whether this link is causal – that the act of volunteering induces people to give more – or there is a 'shared factor' that makes people more likely to volunteer and to give (Hill 2012).

Some inquiry participants advocated for a tax deduction for volunteering. The Commission has been presented with a range of models, including a capped tax deduction or flat tax credit for a given number of hours or value of work spent volunteering in a financial year, or a tax deduction for expenses incurred while

volunteering (East Gippsland Community Foundation, sub. 103, p. 3; GoodCompany, sub. 84, p. 5; Volunteering Australia, sub. 222, p. 12).

Most OECD countries do not offer a tax concession for volunteering. Two exceptions are the United States and the Netherlands. In both countries, volunteering expenses can be deducted against income tax (OECD 2020, p. 92). In New Zealand, a tax credit for volunteering was proposed, but not adopted (NZ Government 2006, pp. 15–20).

There is a *prima facie* case for government support for volunteering (a donation of time) for many of the same reasons there is a case for government to support other types of giving, because of the contribution volunteering makes to social capital and the diffusion of innovation and knowledge (chapter 2). A person may volunteer less than is socially desirable because volunteering involves the cost of forgone work or leisure time. For example, rather than volunteering, if a person worked in paid employment and donated their entire earnings for the equivalent period, the donation would be deducted from their taxable income.

A similar argument applies to the out-of-pocket expenses that volunteers incur while volunteering. These expenses can be a barrier to volunteering (Volunteering Australia, sub. 222, pp. 11–12). The expenses would be tax deductible if a person donated the same amount of money to an eligible entity. But if they simply incur those expenses themselves it is not tax deductible even if they are volunteering for an entity that has DGR status.

Volunteering peak bodies supported introducing a tax incentive for volunteering (The Centre for Volunteering, sub. DR581; VolunteeringACT, sub. DR724; Volunteering Australia, sub. DR686). However, there needs to be careful consideration of the reasons why formal volunteering has declined over time; the extent to which a tax incentive is an efficient and cost-effective way of encouraging more volunteering; and what types of volunteering would be encouraged under a tax deduction.

There are also questions about the likely benefits of tax incentives for volunteering. In the context of recent trends in volunteering, it is unclear how many people would volunteer additional hours or begin to volunteer if there were a financial incentive from the government. The presence of extensive volunteering in the community indicates many people are motivated to volunteer for various non-financial reasons. Research into motivations for volunteering in Australia in 2022 indicated that about 16% of people surveyed who had not volunteered in the previous 12 months cited financial reasons as a cause. However, this was a much less common reason than work and family commitments, which was cited by about 40% of respondents. The same research also found that over half of volunteers incurred out-of-pocket expenses associated with their volunteering role in the previous 12 months, which averaged almost \$600, among those who reported out-of-pocket expenses (Volunteering Australia, sub. 222, pp. 11–12).

Introducing tax incentives could lead to substitution between different volunteering activities. Since different forms of volunteering activity would have different costs, not all forms of volunteering would be equally incentivised. For example, some volunteering activities may have a high social value but may not be time intensive. To the extent that a tax incentive encouraged less of these activities, this would not be desirable.

Similarly, if the tax incentive provided a tax deduction for travel or other expenses associated with volunteering activities, such a deduction could encourage a switch from some volunteering activities with low travel costs and other expenses, toward those with high travel costs and other expenses, without necessarily changing the overall level of volunteering.

The uncertainty about the additional volunteering that tax incentives would induce means that the cost to government through forgone revenue may be relatively high for each additional person that volunteers, particularly if only small numbers of additional people were encouraged to volunteer because of the tax incentive. This is because the government would also be providing a payment to people who currently

volunteer without a financial incentive. Although the same argument could be made against tax deductions for financial giving.

There are also potential tax integrity risks and compliance cost issues, given volunteer work and expenses may be undocumented when the arrangements are informal. The costs of completing the documentation required to receive a financial incentive from the government would need to be balanced against the administrative burden for volunteers and charities.

Another consideration is many existing volunteers (or potential new volunteers) may have low or zero taxable income (for example, because they have retired from the workforce). If the incentive was provided through a tax deduction for associated expenses, it would not provide an additional financial incentive to volunteer to these people.

Finally, philanthropy itself could replicate such a tax deduction by trialling such a scheme for individual charities. Private funds could be used to directly offset volunteers' costs in exactly the way described above. Again, assuming that the volunteering organisation had DGR status, existing conventional tax incentives would apply to the original philanthropic donation – so these kinds of solutions would receive indirect government support. This would be another example of philanthropy itself reshaping existing tax incentives to influence giving or volunteering, in a way that could be valuable to many organisations.

Given these considerations, if there is to be any role for government in this case, it is likely to be more efficient, effective, and equitable for government to give grants for the purposes of directly covering some of the costs associated with volunteering, or to employ paid staff to facilitate the contributions of volunteers. Some government grants are already available to support volunteering. For example, the Australian Government has a volunteer grants program that provides funding of between \$1,000 and \$5,000 to eligible not-for-profit organisations to support their volunteers and can be spent on expenses such as small portable equipment, volunteer training, background screening checks and reimbursement of fuel costs for volunteers (DSS 2023a). There are also other government programs designed to facilitate volunteering, such as the Australian Government's Aged Care Volunteer Visitors Scheme. Governments should more actively consider how changes to policies and programs would affect volunteers so unintended barriers to volunteering are not created (chapter 7).

On balance, the Commission considers that a government tax incentive for volunteering should not be adopted given the extent to which this would encourage more volunteering per dollar of revenue forgone is uncertain. Government grants to support volunteering where there is a clearly identified need would likely generate greater net benefits to the community than tax incentives, if properly targeted and evaluated.



Finding 4.2

A personal income tax deduction is likely to be an effective way to encourage giving

Tax incentives can be designed to target the total amount donated, increase the number of people participating in giving or to encourage particular types of giving, such as money, physical assets or time. The current design of the personal income tax deduction is likely to be the most cost-effective way for the Australian Government to encourage giving.

A flat tax credit would likely incentivise more people to give, but the total amount given overall would likely fall if people who have a high income faced a higher price of giving than they currently do. Adjustments to a tax credit to account for the likely fall in overall giving, including a hybrid approach – a tax deduction for some income cohorts and a tax credit for others – would add complexity and the effect on total donations would be uncertain.

Whether a tax deduction or tax credit would encourage more people to volunteer is highly uncertain, but they would likely increase tax integrity risks and compliance costs given volunteer work and expenses are often undocumented or informal. Government grants to support volunteering where there is a clearly identified need would likely generate greater net benefits to the community than tax incentives for volunteering, if properly targeted and evaluated.

Most people have access to tax deductions for a large portion of their life

There are two main cohorts of adults who do not pay personal income tax at a given point in time and would fall outside the scope of current government incentives to give to charities through the DGR system.

- People who are working age and do not earn income over the tax-free threshold for a variety of reasons including working a small number of hours, being unemployed, being in education or having caring responsibilities. In 2021, there were 1.7 million people who were aged between 18 and 64 who did not pay income tax.
- People in retirement are also less likely to pay personal income tax, including people who receive the age pension and people who are fully reliant on superannuation. However, many people who are retired do lodge a tax return and pay income tax – for example, income earned regularly through dividends or one-off capital gains. The Commission estimates there were 2.7 million people aged 65 and over who did not pay income tax in 2021.

Some people in these two cohorts will be supported in full or in part through government payments, such as the age pension. Those in receipt of such payments can and do give in various ways, including through volunteering, and there are some interactions between the design of payment policies and the giving of money. For example, the income and assets tests used for determining eligibility for Australian Government payments allow a person to donate a certain amount of money without this being deemed as part of their income or assets. Such provisions are appropriate and can avoid creating disincentives to giving by those on government payments. However, they must also be balanced with the objectives of government payments policies and consider the possibility that those who may be incentivised to give may also be the direct or indirect beneficiaries of tax-supported philanthropic giving.

The current tax deduction applies to measures of current income, not to wealth or permanent or lifetime income. People who are fully reliant on income from superannuation may be in a financial position to give in terms of their wealth. However, providing additional tax incentives to encourage giving from people in this situation may run counter to the Government's proposed purpose of the superannuation system 'to preserve

savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way' (*Superannuation (Objective) Bill 2023* (Cth)). The extent to which there are barriers to making bequests from superannuation to charities is considered in chapter 8.

While some people in these two groups may never pay income tax across their life, or only pay it sporadically or in small amounts due to low incomes, most people spend a large portion of their life paying income tax. Most people who are 65 and over and are no longer paying income tax were part of the tax system before retirement. While the current settings limit incentives for giving to years when people have taxable income, most people in this situation would have had access to the tax deduction for giving for many years during their working life.

There are many reasons why people have no taxable income and therefore have nothing to deduct a donation against. Designing policy to alter incentives for people who do not have taxable income is complex – they will have multifaceted reasons for giving or not giving, their wealth (and their ability to give) may not be reflected by their taxable income, and less is known about how they would respond.

On balance, a separate scheme to encourage donations for people who do not pay income tax is not justified given most people will pay income tax and have access to the tax deduction for giving while they work.

Other taxation issues that could influence giving

Capital gains tax exemptions could alter giving incentives

Capital gains tax (CGT) concessions for donations apply where CGT assets are bequeathed to entities with DGR status (although these gifts cannot also be claimed as a tax deduction against assessable income). Property donated under the Cultural Gifts Program is also exempt from CGT. In other cases, where a donor gifts property subject to CGT to an entity with DGR status, the donor must pay the CGT liability created by the disposal of that asset. However, they may be able to claim the market value of the gifted property as a deduction against their assessable income (as they would for a monetary donation).

Some participants suggested that broadening the exemption from CGT for gifts of property to entities with DGR status beyond the current exemptions (along the lines of the exemptions provided in the UK and Canada) would encourage more giving (for example, Alexandra Dimos, sub. 200). The Minderoo Foundation submitted that such an exemption would:

... create a strong incentive for Australians to increase the donation of property assets to charities providing a long-term source of annuity income, as well as capital appreciation which can underpin the long-term financial viability of Australian charities. (sub. 270, p. 3)

Expanding CGT exemptions for gifts to entities with DGR status (while also maintaining the ability to claim the market value as a tax deduction) could affect giving behaviour by increasing incentives – through reducing the price of giving – when donating CGT-liable assets, relative to other types of property or cash. Under the current system, the price of giving for eligible tax-deductible gifts is effectively reduced by the income tax amount that the donor would otherwise pay. If the CGT liability was also removed, the price of giving for donations of CGT-liable property would be further reduced by the amount of CGT that would have been due. This means that for donors with the option to donate CGT-liable assets, there would be an incentive to donate these to eligible organisations, compared with an equivalent amount of cash or other types of property. Introducing additional CGT exemptions would treat capital gain income used to make a donation more favourably than equivalent salary income, especially as there is already a CGT discount for capital gains for assets owned for at least 12 months.

Inquiry participants argued that incentivising gifts of property would be particularly beneficial to charities because it could provide them with ongoing annual income that would provide financial stability. In some cases, there may be a rationale for providing incentives for donations of property over monetary donations where the characteristics of the property beside its financial value is important. For example, this could be true for items of cultural significance. However, monetary gifts of the same magnitude could also be invested by a charity to achieve the same outcome.

The key questions are whether additional CGT exemptions would incentivise additional giving and whether there are any unintended consequences of incentivising gifts of property over financial donations.

Beyond these specific types of gifts, the case for additional incentives for CGT-liable assets is less compelling. There might be a case to provide an exemption where the value of the asset is not used as a deduction against other taxable income – similar to the current arrangements for donations through bequests. This means that a person without other income to offset would not potentially incur a tax liability as a result of gifting a CGT-liable asset to an entity with DGR status. Providing this exemption would mean a donor would not need to wait until death to gift the asset to avoid CGT, which could bring forward giving in some cases. However, it is not clear whether such a change would have much effect on total giving in practice as this issue has not been raised by participants.

Some donors may want to transfer ownership of shares to ancillary fund ownership rather than make a cash donation equal to the value of the shares. This allows the ancillary fund to decide how it manages the shares as part of its broader investment strategy. Removing the CGT on these shares would intuitively provide an incentive to the donor to donate shares in this way, rather than liquidating them and donating an equal cash amount.

From a taxation policy perspective there does not appear to be a strong rationale for this change. It would effectively allow an individual to claim a tax deduction on income that they have not paid tax on. This is because under the change, capital gain income *would not* be considered taxable income, despite a taxpayer being able to generate a tax deduction from donating that same capital gain income. This would mean that income from labour and capital gains are treated differently in the context of the tax deduction for giving. For example, a person donating a package of shares could receive more of a tax saving as a result of their donation, compared with another person making a donation of the same value but using their salary income. This would add unnecessary complexity and introduce new inequities and inefficiencies into the design of the tax deduction.

Participants noted that some countries, including the UK and Canada, have this CGT exemption in place (Alexandra Dimos, sub. 200). The Commission notes that it is difficult to accurately compare these types of policy settings across countries as there are often differences in the underlying tax deduction (separate to the CGT exemption) or related policy settings. For example, in Canada, deductions are capped at 75% of net income and the top marginal tax rate is far lower than in Australia (33% compared to 45%).

There are some barriers in the tax system to donations of financial assets

Atlassian Foundation Australia and Pledge 1% (sub. 48) raised concerns with tax barriers that make it difficult for a company to donate equity in their company to charity due to value shifting rules in Division 725 of the *Income Tax Assessment Act 1997* (Cth).

The value shifting rules are designed to address arrangements that shift value out of assets, distorting the relationship between their market value and their value for tax purposes. When a direct value shift occurs, the ATO recognises that one entity has lost value while the other has gained value. The ATO then adjusts the tax value of the interests accordingly to effectively nullify the value shift.

An issue with equity being donated by founders of a company is that due to subsequent capital raisings by the company, over time the percentage of the company equity pledged may be diluted. To overcome this

potential dilution, a company (rather than the founder) could pledge to issue a percentage of capital to an Australian charity with DGR registration, effectively for nil consideration under a legally binding agreement through a deed of equity gift. However, the ATO (2021a) in a private ruling concluded that the value shifting rules would apply in such a scenario where a company issues a deed of equity gift.

While value shifting rules are necessary to address potential income tax avoidance, there is less of a rationale for these rules applying to donations to a DGR charity as donations to a charity must be used for a charitable purpose, and generally cannot be returned to the donor company.

Improving the valuation certainty for tax deductible donations to entities with DGR status

Currently if a person provides a gift of property (including unlisted shares) valued at more than \$5,000 and they purchased the property more than 12 months before donating, the person can claim a tax deduction for the amount the ATO valued the property (ATO 2024d). Therefore, donors who are gifting unlisted shares over \$5,000 in value are required to have gifted their shares to a private ancillary fund or to an entity with DGR status before the ATO undertakes the valuation and when they can claim a deduction on their tax return.

This creates uncertainty and concern that there may be a mismatch between the market valuation of the shares and the ATO's valuation (StartGiving, sub. 90). If there is a dispute in valuation between the donor and the ATO, the donor would have already transferred legal title to the shares without the ability to retrospectively unwind the transaction. This is especially relevant where the donor's shares are in an unlisted company and the value of those shares are not easily known as the value is not referable to any stock exchange or listed market.

StartGiving suggested a standardised valuation method to reduce uncertainty and encourage unlisted equity donations to charities within ATO powers.

Using a standardised valuation method that is captured, shared, and applied across similar situations can improve integrity, assist the market, reduce compliance costs, provide certainty, and increase philanthropy. (sub. 90, p. 3)

They also suggested that by contributing shares sooner, the cost to government revenue is likely to be lower than it would be when a later liquidity event occurs (sub. 90, p. 2).

As the ATO provides guidance on valuing property greater than \$5000, the suggested change would require legislative change with appropriate integrity rules to ensure the institutional funding round was a market driven price and that the company does not expect a valuation downgrade over the foreseeable future.

5. An assessment of the deductible gift recipient system

Key points

- * **The deductible gift recipient (DGR) system provides a tax deduction for giving to certain entities. The system benefits both taxpayers that make donations and recipient charitable entities by providing a government subsidy or contribution through an income tax deduction. It is the Australian Government's primary policy lever to incentivise giving *and* to influence where those donations go.**
 - Getting the DGR policy settings right underpins the efficiency and effectiveness of the tax deduction as a way of increasing giving and providing indirect government support to the activities that provide the greatest net benefits to the final beneficiaries of the goods and services and to the community as a whole.
- * **Since a tax deduction for donations was introduced in 1915, the scope of activities eligible for deductible donations has evolved in an *ad hoc* way. Not all charitable activities are eligible for DGR status – nor should they be – but there is no explicit policy rationale justifying why some charitable activities are within scope, but others are not. The complexity of the system continues to increase as new DGR endorsement categories are added in a piecemeal manner.**
 - Many smaller grassroots and volunteer-run charities are currently ineligible for DGR status. Charities that provide a range of charitable activities – for example, Aboriginal and Torres Strait Islander charities – can face difficulties accessing DGR status. Some charities have multiple DGR endorsements, which can require complex organisational structures involving additional compliance costs.
- * **Entities that do not fit into one of the 52 DGR endorsement categories can gain access to DGR status through specific listing and auspicing arrangements. However, these arrangements can be difficult to access, costly and lack transparency.**
- * **As it stands, the DGR system is not fit for purpose as a mechanism for determining which entities undertaking activities that benefit the community should receive tax-deductible donations.**
 - The DGR system is poorly designed, overly complex and has no coherent policy rationale. This creates inefficient, inconsistent and unfair outcomes for charities, donors and the community.

The policy intent of the deductible gift recipient (DGR) system is to support certain forms of giving and the work of eligible entities, including charities and government entities that undertake charitable-like activities, with the goal of increasing the benefits from the activities of these entities to final beneficiaries. The system incentivises donations to DGR-endorsed entities, including through ancillary funds, by reducing the cost of

making a gift to these entities through a government subsidy provided by an income tax deduction for individual and corporate taxpayers (chapter 4).

These incentives deliberately seek to steer donations and, with them, other resources toward certain charitable purposes and activities⁶ and away from others. That is, the DGR system seeks to encourage people to donate to charitable causes, rather than making market purchases or choosing to save, as well as steering people to give to entities that have DGR status. The DGR system, therefore, not only affects overall giving, but also the allocation of giving between entities with DGR status and other organisations.

The more responsive a person is to the cost of giving, the more influence the government can have over how much *additional* giving can be generated by the tax deduction (chapter 4). The government can influence *where* those donations, and indirect government support through forgone tax revenue, go through the policy settings that determine which entities are eligible to receive tax-deductible donations. Policy settings affecting eligibility for DGR status are the focus of this chapter and chapter 6.

Getting the policy settings for DGR eligibility right has implications beyond donations by individuals. DGR status can often be a formal requirement for eligibility for grants from government and from the not-for-profit sector, including from ancillary funds (LCSA, sub. 188, p. 9; Medical Association for Prevention of War, sub. 51, p. 1; SACOSS, sub. 83, p. 4).

DGR status also has a signalling role and donors may interpret it as an indicator of a charity's legitimacy, trustworthiness, quality or effectiveness (Buddhist Society of Western Australia, trans., p. 410). This means DGR status may also influence support provided outside the DGR system, such as corporate sponsorship or donations by people outside the tax system.

Another consequence of providing DGR status for donations could be that it creates incentives for governments to withdraw support through direct funding, such as grants.

The DGR system does not cover all charitable activities or all charities – and nor should it. Tax law sets out the activities and types of organisations that are eligible for tax-deductible donations. Currently about 25,000 charities (about 40% of charities) and about 2,000 government entities have DGR status for some or all their activities (ATO provided data).

The DGR system as a whole is complex and it is especially complex for entities that do not fit neatly into just one endorsement category. Eligibility for DGR status has been reviewed by others, as well as by the Productivity Commission in 2010 (chapter 1). Each review has approached this task differently.

The Commission took a new approach in this inquiry. It developed a principles-based approach to assessing which charities should have DGR status and proposed a reform package to broaden and simplify the DGR system so that it directs support to where there are likely to be the greatest net benefits to the community (chapter 6). The Commission also briefly examined the other tax concessions for not-for-profit organisations and made some observations about their operation.

⁶ Throughout this report, the term 'activities' is used when discussing the scope of the DGR system and the eligibility of particular classes of charities with common areas of focus. This is because governments subsidise activities rather than purposes. The Commission recognises that the *Charities Act 2013* (Cth) and registration with the Australian Charities and Not-for-profits Commission is primarily based around an entity's charitable purpose and an entity's activities must further its purpose (ACNC 2023k). Current DGR categories can be based on an entity's purpose and/or activities.

5.1 The operation of the DGR system

The DGR system provides a donor with an income tax deduction for donations made to entities with DGR status. Charities do not automatically get access to DGR status and can only qualify to receive tax-deductible donations in certain circumstances. There are three broad aspects that determine which entities can obtain DGR status:

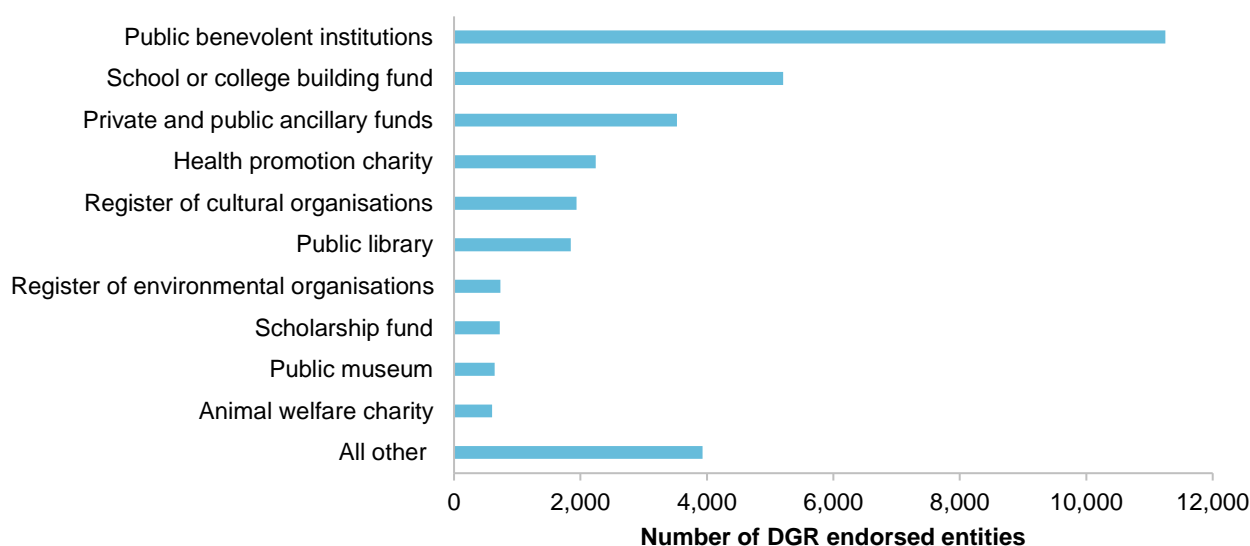
- the **type** of entity – that is, whether it is a registered charity or a government entity
- the **scope** of activities undertaken by an entity that can receive government support through DGR status
- the **eligibility criteria** that entities undertaking activities within scope must meet to qualify for DGR status.

What charitable activities are currently in the DGR system?

The activities for which a charity or government entity can acquire DGR status are mostly set via endorsement categories in Division 30 of the *Income Tax Assessment Act 1997 (Cth)* (ITAA97). Government entities that have DGR status typically undertake charitable-like activities – for example, public libraries, public art galleries and public hospitals. There are 52 DGR endorsement categories, allocated into 12 groups. In total, there are about 32,000 DGR endorsements for charities and government entities. However, some charities and government entities may have multiple DGR endorsements.

While there are 52 different endorsement categories, DGR endorsements tend to be concentrated in a small number of categories. For example, the public benevolent institution (PBI) category – which covers charities that undertake activities intended to help a specific group of people in need – makes up over a third of all DGR endorsements (figure 5.1).

Figure 5.1 – DGR endorsement is concentrated in a few categories^a



a. Number of endorsed entities includes both charities and government entities and is as at 5 October 2022.

Source: ATO (2023h).

Entities seeking DGR endorsement must meet eligibility criteria

Entities that seek DGR endorsement are subject to eligibility conditions. These are mainly integrity measures so that tax-deductible donations are used for their intended purposes. However, the conditions vary between DGR endorsement categories (ATO 2021b).

DGR endorsement categories apply to entities in one of two ways. For the first group, DGR status is applied to the entity as a whole, while for the second group, it is for a particular *activity* that the entity undertakes.

Categories (or sub-categories) where endorsement is for the entity as a whole include public universities, public hospitals, animal welfare charities, health promotion charities and PBIs. Eligibility conditions for these endorsement categories include the following.

- The entity needs to fit wholly within the endorsement category. For most categories, the activities within scope are defined within the legislation that sets up the DGR system (Division 30 of the ITAA97).
- Some DGR endorsement categories are subject to 'gift conditions' that limit the use of donations. For example, under the 'approved research institute' category, tax-deductible gifts can only be used for the purposes of scientific research in the field of natural or applied science.
- If an entity with DGR endorsement as a whole is wound up or its DGR endorsement is revoked, it is required to transfer any surplus gifts and deductible contributions (or money received because of those gifts and contributions) to another entity with DGR status that has similar objects. If the entity is a charity, this transfer must be to another charity with DGR status and similar objects under charity law.

For all other DGR endorsement categories, endorsement is for the 'operation of a fund, authority or institution'. Under these categories, DGR endorsement is for a particular activity that the entity undertakes, not the entity as a whole (although in some cases an entity's activities may be sufficiently narrow that all its activities fit within one endorsement category). For example, a school could have DGR endorsement for a 'school building fund' and it could receive tax-deductible donations to use for this purpose, but not for its broader activities (the school could still seek donations for these other activities, but they would not be tax deductible). However, an entity can have more than one DGR endorsement. To extend the example, in addition to a school building fund, a school might also be endorsed for a scholarship fund or a public library fund. Endorsements for the operation of a fund, authority or institution have different eligibility conditions.

- DGR endorsement for the operation of a fund, authority or institution has a gift fund requirement (except where the entity already has DGR endorsement as a whole).
 - Under this requirement, a fund must be set up and maintained to receive deductible gifts (and money received because of those gifts, such as investment earnings) and ensure funds are only used for the purpose of the DGR endorsement.
 - The gift fund must have wind-up provisions, in the event that DGR endorsement is revoked or it ceases to operate, that provide for the surplus assets to be transferred to another gift fund. For charities, it needs to be transferred to another charity with a similar charitable purpose.
- Many categories (such as school building funds, overseas aid funds and necessitous circumstances funds) have 'public fund' requirements, which include: inviting the public to make contributions to the fund; control by a committee comprising a majority of 'responsible persons', who by virtue of their profession, 'have a degree of responsibility to the community as a whole'; and a separate bank account. A public fund can also satisfy the gift fund requirement if it only receives gifts and deductible contributions and has complying wind-up rules (ATO 2016).
- Some DGR endorsement categories also have gift conditions. For example, an 'Australian disaster relief fund' can only receive gifts within two years from the declaration date of the disaster.

Entities with DGR endorsement are also subject to an 'in Australia' condition, requiring them to be established and operate in Australia. However, the purposes and beneficiaries of a DGR-endorsed entity do not have to be in Australia, except for nine of the public fund DGR endorsement categories (including necessitous circumstances funds and scholarship funds). The practical effect of this is that for entities endorsed under most DGR categories, donations can be used to fund activities outside of Australia.

Until recently, another source of variation in eligibility requirements was different administration arrangements for some endorsement categories. While most endorsement categories have been administered by the Australian Taxation Office (ATO), four categories – the Register of Cultural Organisations, the Register of Environmental Organisations, the Register of Harm Prevention Charities and the Overseas Aid Gift Deductibility Scheme – were administered by other agencies, with applications subject to ministerial approval. However, legislative amendments to abolish these registers and transfer administration of these four categories to the ATO took effect on 1 January 2024 (*Treasury Laws Amendment (Refining and Improving Our Tax System) Act 2023* (Cth)).

DGR endorsement is not time limited, but there are review mechanisms

In most cases, once an entity obtains DGR endorsement it is ongoing, but there are some review mechanisms in place.

Most non-government DGR entities are subject to the condition of maintaining charity registration. To maintain their registration, charities are subject to a range of requirements, including keeping records, annual reporting, and compliance with governance and external conduct standards (chapter 7; ACNC 2023p). The Australian Charities and Not-for-profits Commission (ACNC) reviews DGR-endorsed charities to ensure their eligibility for charity registration, with about 500 charities reviewed each year. The ACNC prioritises these reviews, focusing on charities registered prior to the establishment of the ACNC in 2012 or charities not subject to a high degree of oversight by another regulator (ACNC 2023t).

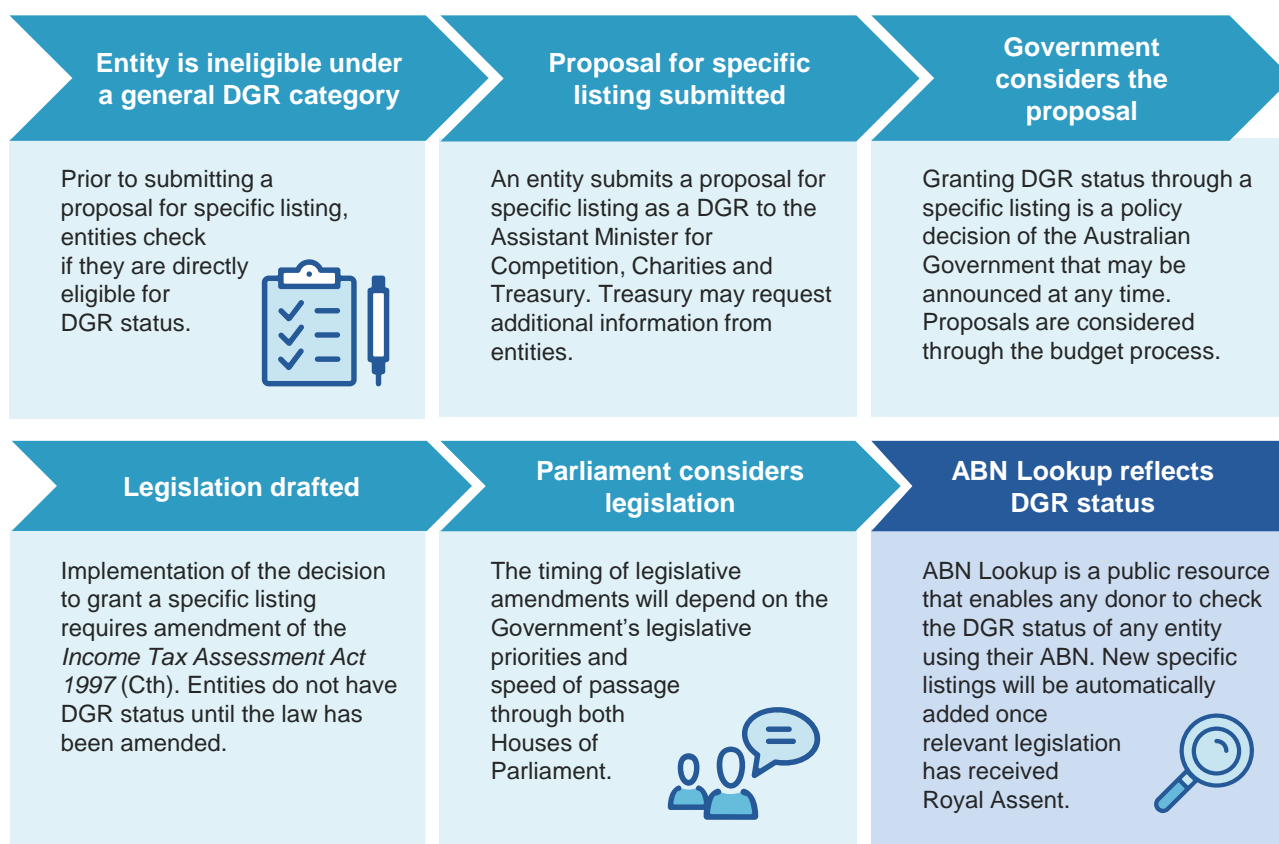
The ATO, which administers DGR endorsements, reviews charities' eligibility for DGR endorsement using a risk-based assessment approach. The ATO also revokes DGR endorsements where charities are deregistered by the ACNC, including due to voluntary deregistration where a charity is wound up. The result of these two processes, along with new DGR applications, including from newly-formed charities, results in considerable turnover in the stock of DGR-endorsed organisations. For example, over the past four years, the ATO issued an average of about 1,400 new endorsements per year and revoked an average of about 1,000 existing endorsements per year (ATO provided data).

Other options for accessing the DGR system

Entities can gain access to DGR status through specific listing

Entities that do not fit into one of the 52 endorsement categories can seek DGR status by being listed by name in tax law (referred to as 'specific listing'). A specific listing is intended to be used only by exception and requires the Australian Government to propose an amendment to the ITAA97 that must pass the Parliament (figure 5.2). In submitting a proposal, entities are expected to provide their governing document that clearly describes the principal purpose of the entity to Treasury as well as an estimate of expected donations and their source (individuals, business and ancillary funds) for the next five years if granted DGR status.

Figure 5.2 – The specific listing process



Source: adapted from Treasury (2023b).

Another distinguishing feature of specific listing is that it can be granted for a limited period of time. By contrast, DGR status granted under an endorsement category is generally not time limited – disaster relief funds being exceptions. It is now the default for specific listings to be granted for three or five years (Jones 2023, p. 34). The time period can be shorter for specific events or requirements (for example, the granting of DGR status in relation to the referendum on the Voice to Parliament). Specific listings can also be subject to other conditions.

Specific listings have been granted to about 200 organisations, compared with the approximately 32,000 DGR endorsements provided through the 52 endorsement categories.

An organisation might seek a specific listing for a few reasons, including: its purpose does not align with any of the endorsement categories; its activities span across multiple endorsement categories; or the organisation’s activities extend beyond those that would be eligible under the DGR category.

Auspicing is another way that the bounds of the DGR system are stretched

Auspicing is a funding arrangement between an organisation without DGR status and an entity with DGR status. Under the arrangement, the DGR-endorsed entity seeks funds (either from ancillary funds or from individual donors) on the other organisation’s behalf for a particular project or activity. Entities that provide auspicing arrangements often charge a fee (usually between 5% and 10% of donations) (ASF nd; O’Connell 2021, p. 273; Perpetual, sub. 254, p. 3). The DGR-endorsed entity is responsible for the process and the use of funds has to be consistent with their DGR endorsement.

There are strict requirements governing auspicing arrangements, so that a donation remains eligible for a tax deduction. The ATO requires that an entity with DGR status have absolute discretion over whether (or not) to distribute a donation to another organisation without DGR status, even when the preferences of the donor are clear (TR 2005/13). That is, the preferences of a donor cannot bind the actions of an entity that is providing auspicing arrangements. If an entity with DGR status provides assurances that the donation will be passed on to another organisation without DGR status, it could result in the gift not meeting the requirements to be tax deductible.

Examples of entities which provide auspicing arrangements include the Australian Cultural Fund, Australian Schools Plus, Australian Sports Foundation and the Foundation for Rural and Regional Renewal. These organisations have a specific role to act as intermediaries to provide opportunities for donors to make tax-deductible donations to support other charities without DGR status (or in some cases other organisations or individuals) of their choosing, subject to some eligibility conditions.

Some of these organisations – the Australian Cultural Fund, Australian Sports Foundation and the Foundation for Rural and Regional Renewal – also provide opportunities for eligible organisations (and, in some cases, individuals) that do not have DGR status to submit fundraising projects. The auspicing organisation hosts the fundraising campaign, collects tax-deductible donations and then remits an amount equivalent to funds raised (less administration fees) to the recipient organisation or individual as a grant (ACF 2023; ASF 2023; FRRR 2023).

Auspicing organisations can provide opportunities for small organisations that have limited capacity to access additional funding. For example, the Foundation for Rural and Regional Renewal submitted that:

... the limited capacity of many remote, rural and regional community-based organisations to meet the compliance obligations that may come with such expectations of co-funding. Trusted organisations like FRRR can act as the intermediary and make it possible for these organisations to access such funding. FRRR often responds to community enquiries seeking such support, and regularly submits proposals where FRRR can act as a partner to inject funding into community-led initiatives that respond to current challenges, build capacity for the future, or are enablers to active opportunities. (sub. 149, p. 7)

Fewer than half of all charities have DGR status

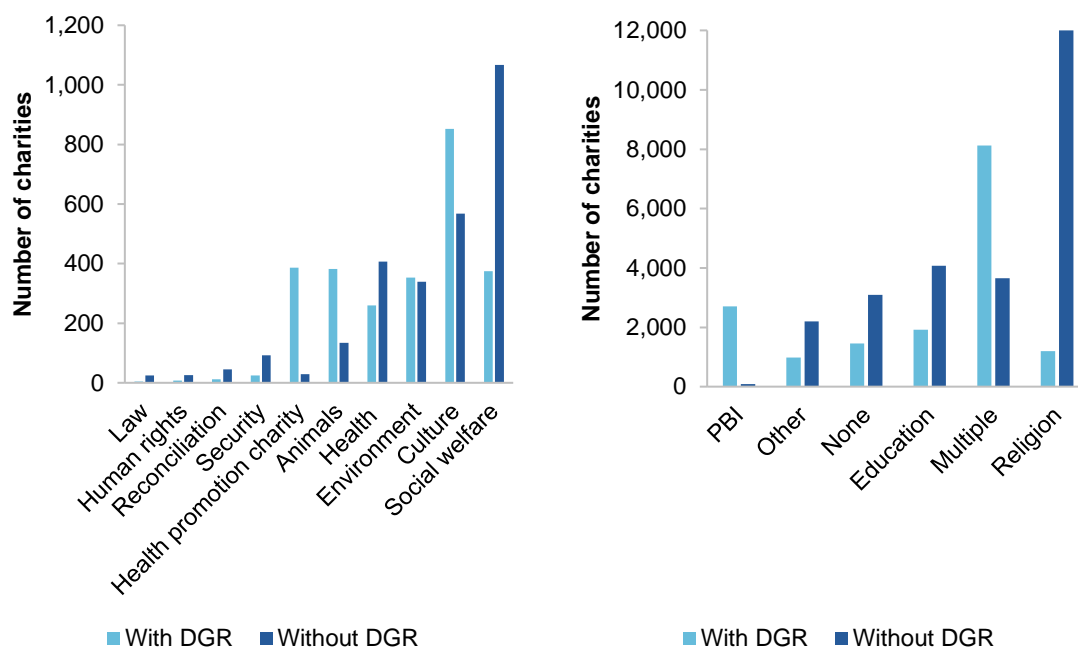
Donations are an important source of revenue for some charities, particularly those that do not have other substantial sources of revenue such as grants or sales of goods and services. Donations are particularly important for smaller charities. For example, charities with revenue under \$250,000 receive 40% of total revenue from donations on average, whereas larger charities are less reliant on donations. For example, for charities with revenue of \$10 million or more donations only make up 5% of total revenue on average. Donations are important to many charities, but make up only a small proportion of total revenue for all charities (7% of total revenue) and not all donations are tax deductible (ACNC 2023g; chapter 3).

Overall, about 40% of registered charities have DGR endorsement, although this varies by charity size – from 36% of extra small charities (revenue of less than \$50,000 per year) to 77% of very large charities (revenue of \$10 million – \$100 million per year) (ACNC 2023g). Charities dependent on volunteers are less likely to have DGR status. For example, almost half of charities reported only having volunteer staff in the 2021 ACNC annual information statement, but only a third of these charities had DGR status. (This was calculated based on charities that reported a full-time equivalent level of staff of zero and at least one volunteer.)

The prospect of having DGR status also varies depending on the purpose and activities of charities. Almost all PBIs and health promotion charities have DGR status, while most charities that only have a purpose of advancing religion do not (figure 5.3).

DGR status is different from charitable status. A charity must have one or more charitable purposes to be registered by the ACNC and these purposes must be for the ‘public benefit’. The public benefit test can be met whether a charity’s purposes are meant to benefit the public generally or are aimed at a particular group of people, although the organisation may not qualify as a charity if the group it benefits is too restricted. Some purposes are presumed to have public benefit under the *Charities Act 2013* (Cth) – for example, preventing and relieving sickness, disease or human suffering (s. 7) (the public benefit test is discussed further in chapter 6).

Figure 5.3 – Proportion of charities with DGR status varies by charity subtype, 2021^a



a. Categories are for charities that are registered with only one (or no) subtype. Charities that have more than one subtype are included in the ‘multiple’ category.

Source: ACNC (2023g).

Charities are classified into 14 charity subtypes depending on a charity’s purpose. The charity subtypes are set out in the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (which include the 12 charitable purposes set out in the Charities Act and the additional categories of health promotion charities and PBIs). Charities can be registered with more than one charity subtype and may elect not to be allocated a subtype at all. The types of charities in each subtype and factors affecting the proportion of charities with DGR status for activities within that subtype are set out in table 5.1.

Table 5.1 – The proportion of charities with DGR status varies across charity subtypes

| Charity subtype ^a | What the subtype covers and how it aligns with existing DGR endorsement categories |
|------------------------------|---|
| Health | <ul style="list-style-type: none"> Includes hospitals, ambulance services, medical research and associations or support groups for people with certain illnesses. Relatively low proportion of charities registered only with this subtype have DGR status, but charities may access DGR status through qualifying as health promotion charities or PBIs. |
| Education | <ul style="list-style-type: none"> Includes formal education institutions and vocation training, less formal education organisations, Scouts and Guides, and organisations offering academic scholarships. The largest number of DGR endorsements that align with this charity subtype are school building funds. However, by number of employees and by revenue, universities are among the largest charities in the country (ACNC 2023g, pp. 22, 26). |
| Social welfare | <ul style="list-style-type: none"> Includes poverty relief, international aid, childcare, aged care and other services and activities for the elderly, disability services and guide dogs, and disaster relief. Relatively low proportion of charities registered only with this subtype have DGR status. Many charities with social welfare purposes access DGR status through qualifying as a PBI. |
| Religion | <ul style="list-style-type: none"> Includes religious worship, religious education and maintaining religious buildings. Little alignment with DGR endorsement categories, although some religious charities (including charities that only have this subtype) have DGR endorsements including for school building funds, libraries, higher education, and religious instruction in government schools. |
| Culture | <ul style="list-style-type: none"> Includes promotion of Aboriginal and Torres Strait Islander culture, creative and performing arts, galleries, museums and libraries. Relatively high proportion of charities in this subtype have DGR status. Main DGR category is the cultural organisation category (this was formerly the Register of Cultural Organisations, but the Register was abolished on 1 January 2024 when this function was transferred to the ATO). There are also libraries and museums in education and religious institutions, so there is some crossover with the education and religion subtypes. |
| Reconciliation | <ul style="list-style-type: none"> Includes promoting harmony, reducing discrimination and promoting equality between groups of people in Australia. Little alignment with DGR endorsement categories. Some charities with these purposes may access DGR status through qualifying as a PBI. |
| Human rights | <ul style="list-style-type: none"> Includes monitoring and research, providing education and raising awareness about human rights, as well as support and relief for victims of human rights abuses. Some alignment with DGR endorsement categories (for example, overseas aid funds), but proportion of charities with DGR status that only have this subtype is relatively low. |
| Security | <ul style="list-style-type: none"> Includes neighbourhood watch, organisations promoting and researching national defence, support services for welfare of defence personal and dependants, and organisations providing volunteer emergency services such as surf lifesaving. There are some DGR endorsement categories that align with this charity subtype but they can be narrow in scope (for example, a war memorial repair fund) so overall proportion of charities in this subtype with DGR status is relatively low. |
| Animals | <ul style="list-style-type: none"> Includes animal protection societies, animal refuges and shelters, organisations protecting endangered species, animal hospitals and scientific bodies studying animal behaviour. |

Charity subtype^a What the subtype covers and how it aligns with existing DGR endorsement categories

| | |
|--------------------------------------|--|
| | <ul style="list-style-type: none"> Relatively high proportion of these charities have DGR status, but there are restrictions on the types of activities covered. |
| Environment | <ul style="list-style-type: none"> Includes protecting, preserving, caring for and educating the community about the environment, rescuing and caring for native animals, conservation bodies and societies, and landcare groups. Access to DGR status through a mix of the environmental organisations endorsement category (formerly the Register of Environmental Organisations prior to transfer to administration by the ATO on 1 January 2024) and the animal welfare endorsement category. |
| Other | <ul style="list-style-type: none"> Includes a diverse range of charities, including industry peak bodies, Returned Services League clubs and public interest journalism organisations. A substantial minority of charities currently have DGR status. |
| Law | <ul style="list-style-type: none"> Includes covers charitable advocacy that promotes or opposes laws or policies, in furtherance of another charity subtype. Little alignment with DGR endorsement categories, however charities undertaking advocacy to further their purposes will be endorsed under various DGR categories. For example, a mental health charity that undertakes advocacy regarding mental health policies may be registered under the health promotion charity subtype and endorsed under the associated DGR category. |
| Health promotion charity | <ul style="list-style-type: none"> Includes the prevention or control of diseases in people. Aligns with a DGR endorsement category so a high proportion of charities in this subtype have DGR status. |
| Public benevolent institution | <ul style="list-style-type: none"> Includes welfare, aged care, housing and disability services among others, but has to have a purpose of ‘benevolent relief’, that is for a particular group of people in need, not just broad public benefit. Aligns with a DGR endorsement category so a high proportion of charities registered with this subtype have DGR status. |

a. These are the shortened names of these subtypes.

Sources: ACNC (2023k) and Commission analysis.

5.2 The DGR system is not fit for purpose

Since a tax deduction for donations was introduced in 1915, the scope of activities eligible for deductible donations has evolved in an ad hoc way. This means that the DGR system does not have a clear overarching policy rationale that explains why certain types of charitable activity receive DGR status and other charitable activities do not. Charities that undertake similar activities and/or have similar purposes can be treated differently, creating anomalous outcomes. This can create uncertainty for charities about their eligibility for DGR status, and complexity in obtaining it (particularly where not all a charity’s activities are in scope). The system also lacks clarity for donors (who claim the tax deduction) because of the anomalous treatment of similar charities.

The scope of activities covered by the DGR system is arbitrary

The DGR system has expanded over time as successive governments made policy choices to provide tax-deductible donations to a subset of charitable purposes and activities. Throughout this expansion, the

difference between charitable activities and the activities that are eligible for DGR endorsement has remained (box 5.1).

Box 5.1 – The origins and evolution of the DGR system

The DGR system has evolved over time in what has been described as an ‘ad hoc’ way (Martin 2017, p. 195; Treasury 2013, p. 22). This has contributed to many of the inconsistencies and anomalies in the scope and eligibility criteria for charities to gain DGR status.

The personal income tax deduction for donations to certain activities and organisations dates back to the introduction of income taxes in Australia, reflecting British precedents. When the Australian Government introduced income tax under the *Income Tax Assessment Act 1915* (Cth), the initial coverage of tax deductibility for donations reflected the priorities of the time, including the Australian Government’s need for revenue that motivated the introduction of income tax. Accordingly, deductions were initially limited to gifts to public funds established for the war effort and ‘public charitable institutions’, which were institutions that treated the sick or assisted the poor. In 1927, the term ‘public benevolent institution’ was introduced to the tax legislation as a subset of public charitable institutions, which also included public hospitals and public funds for providing money to PBIs, public hospitals and the relief of persons in necessitous circumstances (Martin 2017, pp. 206–216).

The meaning of PBI has never been defined in legislation. Therefore, what constitutes a PBI has evolved over time through judicial interpretation in various court decisions which, in turn, have influenced the scope of the DGR system. Under its current interpretation, a charity has to be an institution with a main purpose of ‘benevolent relief’ – that is relieving poverty or distress for people in need – for it to be classed as a PBI (ACNC 2023q).

The creation of additional DGR endorsement categories over time by governments has also broadened the scope to a greater number of charitable activities. Two categories highlight this.

- Tax-deductible status for school building funds was introduced in 1954. At the time of its introduction, the intent of the measure, as expressed by the then Treasurer was that the ‘concession, considered in conjunction with the deduction of expenses incurred by parents in the education of their children, is an earnest of the Government’s endeavour to assist in the advancement of learning in this country’ (Fadden 1954, p. 883). The change occurred against a backdrop of rapidly expanding school enrolments, opposition to government funding of non-government schools and uncertainty about the constitutional basis for Australian Government involvement in education (O’Connell 2023, p. 294). DGR status for school building funds has been characterised as part of a social compact to co-fund education in non-government schools in partnership with churches and parents (NCEC, pers. comm., 15 August 2023). There are now about 5,000 school building funds with DGR status (ATO 2023h).
- In 1992, environmental organisations were added as an DGR endorsement category. Prior to this, only a handful of environmental organisations had DGR status through specific listing. Some environmental organisations used auspicing arrangements to benefit from tax-deductible donations (Department of the Environment 2015, pp. 4–5). There are now over 700 environmental entities with DGR status (ATO 2023h).

Smaller categories have also been added from time to time. These are two recent examples.

Box 5.1 – The origins and evolution of the DGR system

- The ‘public fund for ethics education in government schools’ endorsement category was introduced in 2013 as a secular alternative to the religious education in government schools category (Bradbury 2013).
- The community sheds category was added in the 2019-20 Budget. Some of these organisations had received DGR endorsement under the health promotion charity category (Australian Men’s Shed Association 2020). This was considered too restrictive and a new category was added to cover a broader array of organisations, provided they have a dominant purpose of advancing mental health and preventing or relieving social isolation (Sukkar 2020, p. 53; Treasury 2020a, p. 4).

Governments have continued to expand the DGR system over time by adding new categories and by adding individual organisations through specific listing. When expanding the system, governments have often not articulated why particular entities or classes of entities merit inclusion relative to other entities or classes of entities.

A further illustration of changes in the scope of the DGR system is that the Australian Government announced its intention to create a new DGR endorsement category for pastoral care in schools in the 2021-22 Mid-Year Economic and Fiscal Outlook. This change did not proceed following a change of government in 2022 (Australian Government 2021, p. 185, 2022, p. 19).

In 2023, the Australian Government introduced legislation to add a new DGR category for community foundations. However, this proposed category has unique features that make it a hybrid between a standard endorsement category and specific listing. There is an additional requirement for community foundations to be specified by name in a ministerial declaration to receive DGR status which provides the Commissioner of Taxation with additional oversight powers (Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023). This is a variation from the initial proposal, which was to specifically list the nominated community foundations for a period of five years (Treasury 2023a).

As noted above, the DGR system does not cover all charitable activities or all charities – and nor should it. However, there is no explicit policy rationale justifying why some charitable activities are within scope, but others are not. These inconsistencies are a key concern raised about the DGR system by inquiry participants.

Despite the additions that have been made over time, participants had concerns that there are unwarranted exclusions from the DGR system – either because existing categories are too narrowly defined or restrictive, or because there are no categories for particular activities.

Another indicator that the scope of the DGR system in Australia may be too narrow is that the range of activities that qualify for personal income tax concessions for giving in other countries is often broader (box 5.2). In New Zealand, the United Kingdom, Canada and the United States, the eligible activities and organisations that qualify for deductions tend to include all charitable activities (subject to varying exclusions and constraints). In some of these countries, various additional activities are also in scope, including donations to community sport and tax deductions for volunteering expenses. However, approaches used elsewhere may not work well in an Australian context if they reflect other factors that limit their transferability to Australia, including how welfare and social services are funded and provided.

While a smaller proportion of charities are eligible for tax-deductible donations in Australia, tax concessions in other countries are often less generous than they are here (chapter 4).

Box 5.2 – The DGR system in Australia is narrower than in some other countries

Tax concessions for donations to eligible organisations are a common feature of tax systems in countries comparable to Australia. In these countries, a wider range of charities can be supported through tax concessions for donations than in Australia.

- In New Zealand, eligible organisations include most registered charities, but to qualify as a recipient organisation funds must be ‘wholly or mainly’ applied to purposes conducted in New Zealand (except where the organisation has been granted approval). Most schools are approved recipient organisations, although claims are not allowed for things such as school fees. More broadly, claims are not permitted where there is any ‘direct benefit’ to the donor or their family, or for bequests or debt forgiveness (Charities Services 2022; NZ Inland Revenue 2023).
- In the United Kingdom, eligible organisations include all charities and community amateur sports clubs. Donations to schools are not eligible if they are linked to the provision of services (such as tuition fees) even if they are described as voluntary contributions, but donations for building or equipment appeals would usually qualify (HM Revenue & Customs 2019; UK Government 2023).
- In Canada, organisations that can issue qualifying charitable tax receipts include all registered charities, registered national arts service organisations, registered amateur athletic associations, registered journalism organisations, registered municipalities and municipal or public bodies performing a function of government, Canadian governments, the United Nations and its agencies, and some foreign charities and universities (Canada Revenue Agency 2023).
- In the United States, organisations eligible to receive tax-deductible contributions include: organisations for charitable, religious, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals; certain amateur sports competitions; war veteran organisations; and contributions to US governments for public purposes. Deductions are also available in certain circumstances for contributions to Canadian, Mexican or Israeli charities. To claim deductions, contributions need to be given to qualified organisations and not set aside for use by a specific person. Out-of-pocket expenses incurred in volunteering can also be claimed as a charitable deduction (IRS 2023).

More widely, the OECD observed many countries allow a broad scope of charitable activities to qualify for tax concessions (whether directly or to incentivise giving). However, some countries (including South Africa, Singapore and Malta) provide tax incentives to a narrower scope of activities, compared to Australia (OECD 2020).

Participants raised concerns about the scope of DGR coverage

Many participants and other stakeholders raised concerns that certain activities are currently out of scope for DGR status (or only potentially in scope only through specific listing). The Australian Council of Social Service (sub. 263, p. 4) commented that there ‘is a broad consensus that current DGR categories are archaic, overly complex, inaccessible and not reflective of the work of contemporary charities’.

There is no explicit and consistent rationale for how the current scope of DGR endorsement categories have been determined, so many of the concerns about the scope of coverage focus on ineligible activities that are similar to activities that are in scope of DGR status. This issue particularly affects many smaller grassroots and volunteer-run charities, such as community gardens or neighbourhood houses. These charities can often be ineligible for DGR status, resulting in inconsistent outcomes compared to other organisations with similar activities (ANHCA 2017; Community Gardens Australia, trans., pp. 299-303). Examples include the following.

- Charities that *relieve* poverty or distress are eligible for DGR status (as a PBI), but charities that focus on *prevention* of poverty or distress face barriers to eligibility (Minderoo Foundation, sub. 270, p. 2; Seward Dawson, sub. 81, p. 2).
- The health promotion charity category is available to charities promoting prevention or control of diseases, but this does not include prevention of injuries (Injury Matters 2023, pp. 2–3; Philanthropy Australia, sub. 162, p. 19).
- Participants highlighted that certain animal welfare charities are not eligible, particularly those focused on advocacy rather than direct short-term care of animals (Coalition of Animal Welfare Charities, sub. 109, pp. 2–4; EAA and Effective Altruism Australia: Environment, sub. 32, p. 8; World Animal Protection Australia, sub. 111, pp. 1–3).

Participants also raised concerns about the lack of clarity about what charities can qualify as a PBI (box 5.3).

Box 5.3 – ‘Public Benevolent Institution’ has not been defined in legislation

The PBI category is the most subscribed category of DGR endorsement and enables entities to access fringe benefit tax exemptions that are not available to most other charities (section 5.3). Despite being in use since 1927, the definition of what constitutes a PBI has never been set out in legislation. Some participants noted that this creates complexity and uncertainty about whether or not certain charities are PBIs (ALLFED Australia, sub. 95, p. 1; EAA and Effective Altruism Australia: Environment, sub. 32, pp. 9–11). Justice Connect (sub. 269, p. 4) commented that PBI requirements ‘can only be fully understood by reference to 90 years’ worth of case law and a lengthy ACNC Commissioner’s Interpretation Statement’.

In the absence of a legislated definition, what constitutes a PBI has evolved over time through judicial interpretation in various court decisions. As one participant expressed it, ‘the PBI concept is a concept whose common understanding changes, evolves and expands over time’ (Carroll & O’Dea Lawyers, sub. DR739, p. 3). There has been particular focus on the extent of connection required between the activities of an entity and the ‘benevolent’ ends it seeks to achieve. For example, in 2014, the Full Federal Court decided that an institution does not have to directly provide relief in order to be a PBI, when previously the ATO had included ‘directness’ within the definition of a PBI (ACNC 2014a).

Some participants called for the definition of PBIs to be expanded (ALCA, sub. 226, p. 3; HRA, sub. 34, p. 2; Law Council of Australia, sub. 255, p. 7). The Australian Red Cross submitted:

The current definition of a PBI is focussed on reactive response to needs only, but there is a growing understanding that proactive and preventative activities are an equally important aspect of humanitarian and social services delivery. ... Broadening the definition will allow a greater scope of work, including preventative humanitarian activities, to be readily funded, and hence increase philanthropic opportunities. (sub. 235, p. 9)

The ACNC, which assesses applications for PBI status, provides guidance to applicants through Commissioner interpretation statements, which is updated periodically (most recently in August 2023) to reflect the Commissioner’s understanding of the law as it has developed to that date (ACNC 2023I). The ACNC submitted that there is opportunity for further clarification of the common law definition of a PBI. The differing views within the sector about what constitutes a PBI can increase the complexity of the assessment process and may distort behaviour by charities in order to obtain classification as a PBI (sub. 238, pp. 3–4).

Inquiry participants raised concerns about different types of charities that do not have access to DGR status and advocated for these activities to be eligible for support through the DGR system.

Some charities do not easily fall into a DGR endorsement category because their purposes and activities cut across a range of areas, some of which may be eligible for DGR status and some which may not. This includes charities that support women, young people, Aboriginal and Torres Strait Islander people and communities, LGBTIQ+ people or consumers (AllIW, sub. 271, p. 2; Consumer Policy Research Centre, sub. 105, p. 1; Justice Connect, sub. 269, pp. 5–6; Marrie and Marrie 2013, pp. 3–7; The Aurora Group and GiveOUT 2022, p. 27). The Foundation for Young Australians submitted that ‘youth led organisations may work in intersecting fields, or in areas that don’t necessarily fit within any of the DGR endorsement categories’ and that ‘the process of reaching DGR status requires an involved and complex process to seek a ‘specific listing’ in the tax laws’ (sub. 128, p. 2).

In other cases, purposes and activities are clearly outside the current scope of DGR endorsement categories. This includes public interest journalism – about 40% of registered charitable news organisations have DGR status (AAP, sub. 244; PIJI, sub. 192, p. 4), but this has been obtained through meeting the various criteria of different DGR endorsement categories, such as a PBI or the Register of Cultural Organisations, or through seeking specific listing.

Other examples include organisations involved in advocacy, human rights and reconciliation activities (Anglicare Australia, sub. 125, p. 2; Animal Defenders Office, sub. 184, pp. 5–6; Australian Reconciliation Network, sub. DR642, pp. 2–3; Justice Reform Initiative, pers. comm., 15 March 2023; Medical Association for Prevention of War, sub. 51, p. 2; Reconciliation Council of Tasmania, sub. DR674, pp. 1–2; Southern Youth and Family Services, sub. 72, p. 3). The International Campaign to Abolish Nuclear Weapons commented that:

... we are registered as a charity under the *Charities Act 2013*, but the lack of a suitable category for us to obtain DGR status is a major stumbling block in almost all areas of our fundraising. (sub. 44, p. 2)

Peak bodies and other charities that provide supporting activities, rather than the direct provision of services can also be excluded from eligibility for DGR status. For example, the South Australian Council of Social Service (sub. 83, p. 4) are not eligible for DGR status because they ‘do not provide welfare services directly to the people in need’ and the national organisation (Australian Council of Social Service) is only eligible through specific listing. The NSW Rural Fire Service Association (sub. DR571, pp. 1–2) raised a similar example that it is not eligible for DGR status for the support services it provides, even though the direct fire fighting services it supports are in scope for DGR status.

Advancing religion is also outside the scope of the DGR system with some exceptions, notably for some religious education activities (including though school building funds and religious education in government schools), which has been a concern raised by some participants (Anglican Church Diocese of Sydney, sub. DR294, pp. 9–11; Uniting Church in Australia – Synod of Victoria and Tasmania, sub. 161, pp. 7–8).

Some participants also raised concerns that the DGR system is restricted to Australian charities registered with the ACNC. This included concerns about:

- the ATO (TR 2019/6) ruling that tax deductibility is limited to charities where the operational or strategic decisions occur mainly in Australia and that DGR status is not available to overseas charities (APT Travel Group, sub. 227, pp. 3–4; Dawn Wade Foundation, sub. 87; Natalie Silver, sub. 260, pp. 1–2)
- activities that are beyond the legal definition of a charity. For example, community sport does not fit into the definition of a charity and therefore those organisations do not have access to DGR status. Community sport organisations have some access to subsidised giving through auspicing arrangements with the Australian

Sports Foundation (ASF, sub. 197, pp. 10–12, sub. DR565; CAS, sub. 49, pp. 3–4, sub. DR548, pp. 1–6; Law Council of Australia, sub. 255, p. 9; Lord Mayor’s Charitable Foundation, sub. 106, p. 9).

There have been previous proposals to broaden the scope of the DGR system

In response to the differences in access to charitable and DGR status, previous reviews and participants in this inquiry have suggested reforms to the DGR system.

In 2010, the Commission recommended progressively widening the scope of the DGR system to include all endorsed charitable institutions and funds (PC 2010). In 2013, the Not-for-profit Sector Tax Concession Working Group proposed a more restricted expansion, recommending that:

DGR status should be extended to all charities that are registered with the ACNC, but use of tax deductible donations should be restricted to purposes and activities that are not solely for the advancement of religion, or the advancement of education through child care and primary and secondary education, except where the activity is sufficiently related to advancing another charitable purpose. (Treasury 2013, p. 26)

Many participants in this inquiry proposed expanding the DGR system to include additional charitable activities or even for activities of other not-for-profit organisations. A common proposal has been to extend DGR status to all registered charities. The Minderoo Foundation submitted:

If you’re doing charitable work, you should have DGR status. ... Enabling all registered charities to access DGR status will also drive giving rates, better aligning Australia with other jurisdictions we have already noted such as the UK, the US and New Zealand, where giving as a percentage of GDP is higher. (sub. DR505, p. 6)

Similarly, the Community Council for Australia submitted:

It makes good policy sense that all donations made to registered, complying charities should be tax deductible. This is the practice in comparable countries like the UK and Canada. It also makes sense to consider changing circumstances that might inform new definitions of charity and public benefit, including areas like media and public interest journalism.

Australia has a well-functioning regulator determining charitable status through an effective process, and the definition of charitable status is now clearly embedded in the notion of public benefit. DGR should be directly associated with charitable status, not a separate process that actively discriminates against smaller charities. (sub. 218, p. 6)

Other proposals have suggested expansion to a greater subset of charitable activities, but with some exceptions. For example, the Australian Council of Social Service (sub. 263, pp. 4–5), Justice Connect (sub. 269, p. 3) and the Law Council of Australia (sub. 255, p. 6) endorsed the approach recommended by the Not-for-profit Sector Tax Concession Working Group.

Eligibility requirements can be unduly burdensome

To obtain DGR status, entities are subject to various eligibility requirements, which are mainly integrity measures designed to ensure that tax-deductible donations are used in accordance with the purpose for which DGR status has been granted. However, in some cases, the eligibility requirements for DGR status can be unduly burdensome, particularly where an entity’s activities do not neatly align with a single endorsement category.

The process for obtaining DGR status can be complex

The process for obtaining DGR status is relatively straightforward for entities that clearly and neatly fit within an endorsement category. For other entities applying for DGR status can be complex and time consuming. This can occur when it is uncertain if an entity's activities are within the scope of an endorsement category, including where it involves contesting if the entity is eligible to be registered as a PBI. This complexity is a particular barrier that faces many grassroots and community-based charities, which are often small and predominantly or entirely run by volunteers, and therefore have less capacity to navigate these complexities. For example, the Community Council for Australia submitted that:

... the complexity of the current DGR arrangements make it an almost unworkable system, particularly for small charities. (sub. 218, p. 6)

In some instances, an entity may be able to become eligible for DGR status not by changing the basic nature of the activities it undertakes, but by amending its constituted objectives to emphasise a particular purpose or focus. For example, Community Gardens Australia noted that most community gardens do not have DGR status, but that in one instance a garden had obtained DGR status by amending its constitution to have a mental health focus. This change enabled it to qualify for DGR status under the community sheds endorsement category (trans., p. 300). In theory, this approach could be possible for many organisations, including ones that are not currently registered as charities. But because these organisations are often small and/or run by volunteers, it is often not practicable given the time, effort and cost involved.

Beyond this, there can be additional and/or duplicative eligibility requirements for DGR endorsement above those required for charity registration, which raise some concerns about why the charity requirements are considered insufficient. These include the:

- wind-up provisions, which are more specific than those for charities more generally
- additional requirements to establish a public fund (including the need to nominate a 'responsible person')
- requirement to meet the 'in Australia' condition, which requires DGR-endorsed charities to be established and operate in Australia, in addition to complying with the ACNC's external conduct standards.

Some of these issues may be more significant for existing entities where they would need to amend their existing structure or governing documents to meet eligibility requirements for DGR endorsement. For new organisations seeking charity registration and DGR endorsement these can be streamlined in one application. Both the ACNC and ATO provide guidance on set-up requirements, including legal structures and governing document requirements (ACNC 2023o; ATO 2021c).

Entities with multiple purposes face additional complexity

A key issue with the DGR eligibility requirements is how they apply to organisations with broad or multiple purposes that do not neatly fit into a single DGR category. This is because the DGR system has evolved as an array of discrete endorsement categories and individual categories have eligibility requirements to ensure that the activities of the entity align with the purpose of the endorsement category.

In practice, many organisations have broad or multiple purposes that cut across multiple DGR categories, which can lead to organisations seeking separate DGR endorsements under multiple endorsement categories. This means that an organisation might have multiple DGR funds (such as a school building fund and a scholarship fund), or that it sets up subsidiary entities that meet the specific DGR endorsement category requirements, such as those for a PBI.

Another potential outcome is that an entity may not obtain DGR status for the part of their organisation that fits into an endorsement category if the eligible purpose is not sufficiently high priority or a large enough part

of their work to justify the costs. For example, an entity (such as a church) may undertake additional social welfare activities in response to needs as they arise (Baptist Care Australia, sub. 152, pp. 3–4). These activities are analogous to those that could be undertaken by a PBI (and hence within scope for DGR status), but the scale of activities may not be sufficient to justify establishing a separate entity that would meet the PBI criteria. A further complication raised by some participants is that these activities can be difficult to separate. For example, where social welfare or broader community activities are undertaken as a manifestation of religious faith it may not be possible to separate these activities from the practice and advancement of that faith (Anglican Church Diocese of Sydney, trans., p. 189).

These responses either restrict access to tax-deductible donations for activities that would otherwise be eligible or increase the administrative burden on charities and charitable-like government entities. Many participants raised concerns about this issue (Minderoo Foundation, sub. 270, pp. 2–3; Paul Ramsay, sub. 234, pp. 7–8). For example, for environmental organisations, the principal purpose in their constitution must be the protection of the natural environment. Marrie and Marrie (2013, p. 4) have commented that:

This renders most Indigenous ranger services and “caring for country” organisations ineligible because the objects of their constitutions/rules of incorporation, in keeping with their holistic approach to culture and country, generally include cultural, as well as a range of other purposes, and thus are too broad to satisfy the criteria for an environmental DGR organisation.

Inquiry participants proposed reforms to alleviate this compliance burden, including being able to combine eligible categories into a single DGR endorsement. The Minderoo Foundation submitted that:

The ability to subsume all activities into one single DGR would maximise the charity’s impact, while reducing administrative and compliance burdens and their associated costs. (sub. 270, p. 3)

Specific listing is a way that some organisations with broad purposes have sought to work around this constraint and streamline their activities under a single DGR listing. For example, specifically-listed entities include large philanthropic foundations such the Paul Ramsay Foundation and Minderoo Foundation. However, specific listing is neither a widely-accessible nor practical solution to this problem.

Specific listing and auspicing are not efficient solutions

Specific listing can be used to gain DGR status for entities that do not neatly or easily fit into single endorsement categories and can be a way to address unforeseen or exceptional circumstances that may arise in the future. There are concerns, including those raised by participants to this inquiry, about the specific listing process, including that it is difficult to access and lacks transparency (Consumer Policy Research Centre, sub. 105, p. 1; Justice Connect, sub. 269, p. 4; Law Council of Australia, sub. 255, pp. 7–8; Martin 2018; Not-for-profit Project 2012, p. 22; Philanthropy Australia, sub. 162, p. 20; The Foundation for Young Australians, sub. 128, pp. 2–3).

The specific listing process has three main limitations. First, there are no criteria to decide which organisations should be specifically listed and, therefore, no consistency in decisions or transparency around eligibility (O’Connell 2021, p. 338). Each proposal must be considered by the Australian Government and then by the Parliament. This is inefficient for the organisations seeking specific listing (as organisations need to be aware of the process and it can take years to obtain DGR status) and inefficient for the Parliament because valuable drafting resources and parliamentary time are expended on what is essentially an administrative decision. For entities that achieve specific listing, on average it takes about 18 months from submitting a proposal to being specifically listed in the ITAA97 (analysis of unpublished Treasury data, 2018-19 to 2023-24).

Second, there is no compliance infrastructure attached to specific listings (Jones 2023, p. 34). Because there are no eligibility standard conditions (although special conditions may be imposed on an individual entity-by-entity

basis), specifically-listed organisations are potentially subject to less regulatory oversight than entities that obtain DGR status under a DGR endorsement category (Martin 2018). Unlike the DGR endorsement categories, there is not a specific requirement for non-government entities to be a registered charity (although many are), and so may not be subject to the on-going regulatory requirements that apply to charities. Similarly, they are not bound by the same wind-up conditions as DGR-endorsed charities, so there may not be any mechanism to appropriately transfer surplus donations if DGR status ceases or the entity is wound up.

Third, the Commissioner of Taxation's powers are limited to seeking information from specifically-listed entities and therefore there is no recourse for unacceptable behaviour (Jones 2023, p. 34). DGR status can only be removed via an amendment of the ITAA97.

Participants submitted concerns about the consistency, uncertainty and complexity of the specific listing process (box 5.4).

Box 5.4 – The specific listing process can be opaque and difficult to navigate

The specific listing process can be time-consuming, complex and bring a high degree of uncertainty for organisations. The Public Interest Journalism Initiative (PIJI) noted that news-oriented charities that do not fall within a DGR endorsement category might seek specific listing, but submitted that it:

... is a time-consuming and complex process. It requires agreement from the Treasurer and other cabinet ministers (presumably including the Communications Minister, in the case of news organisations) and the passage of a legislative amendment to add the organisation's name to the Income Tax Assessment Act 1997, therefore, limiting the viability of this pathway as a broad-based option for most news organisations. (sub. 192, p. 5)

PIJI also provided some case studies that illustrate the arbitrariness of the process:

The Conversation, a research dissemination site, was specifically listed under the education category in 2016, following "extensive lobbying" of the Commonwealth Treasurer by a network of supporters. The Conversation produces news and journalism as its core activity, however, Chief Executive Officer Lisa Watts commented that their submission to the Treasury would likely have been unsuccessful had it "been positioned as a media company rather than a research outcome disseminator and knowledge platform".

The Judith Neilson Institute for Journalism and Ideas and the Alliance for Journalists' Freedom both achieved DGR status through specific listings in income tax law in 2020. The Australian Associated Press (AAP) was specifically listed to similar effect in 2021 but for a fixed period of 5 years. (sub. 192, p. 5)

Martin (2018, pp. 11–15) commented on the differences in origin and oversight over entities with specific listing. For example, the Bourke Street Fund came about:

... because of negotiations between the Prime Minister and representatives of the Victorian Government [this] demonstrate[s] that it has gained its DGR status through political dialogue and not necessarily because it is any more worthwhile than other [not-for-profit] organisations that assist people in crisis. Nor is there anything in the statements in the explanatory memorandum that indicate why this catastrophe is more deserving of DGR status than other tragic incidents. (2018, p. 14)

Box 5.4 – The specific listing process can be opaque and difficult to navigate

The Foundation for Young Australians (sub. 128, p. 2) commented that accessing specific listing can be difficult for ‘grassroots organisations [that] do not often have the expertise, resources or ability to lobby government for the change, locking them out of the process’.

Consumer Policy Research Centre (sub. 105, p. 1) stated that the specific listing process ‘can take significant time and resources to engage decision makers’.

Some participants also raised concerns about the constraints imposed on entities that receive a specific listing. The main concern is about the time limits on some specific listings, which is now the default approach. Australians Investing in Women, which has a specific listing because they do not fit within a DGR endorsement category, submitted that the five-year timeframe is ‘unsatisfactory, frustrating and costly’ (sub. 271, p. 2). In hearings, AAP said that it was ‘very grateful to have been granted its DGR status via special listing for a period of five years’, but also noted that applying for specific listing was a long process and that with their existing listing expiring on 30 June 2026, they would ‘probably have to start [the reapplication process] midway through next year’ (trans., pp. 54–57).

Another specific concern was raised by Australian Schools Plus about a condition of its specific listing. (Australian Schools Plus was set up with the intent of being specifically listed because of a government policy decision following the Gonski review.) In this instance, once Australian Schools Plus has received more than \$15 million in donations during a year, it is no longer permitted to ‘actively’ fundraise (Australian Schools Plus Ltd 2013; Australian Schools Plus, sub. 108, pp. 4–5).

The specific listing process is deficient – it is not accessible in an equitable way and decisions are not consistent, transparent or contestable. The limits imposed on recipients of specific listing, especially the more recent, arbitrary five-year time limit, are indicative of the deficiencies of the specific listing process but are imperfect remedies that impose additional costs and uncertainty on recipients. Reforming the specific listing process to address these deficiencies could improve its effectiveness and provide a better balance between maintaining the flexibility to grant DGR status for new activities or respond to specific events on the one hand, and providing greater consistency and transparency about how decisions are made on the other (chapter 6).

Auspicing arrangements are one way for a broader range of entities to gain access to tax-deductible donations. However, participants also commented that using these arrangements is administratively costly and the value of tax-deductible donations that an entity without DGR status receives can be reduced where there are fees for the service (LCSA, sub. 188, p. 9). Boundless Earth (sub. 253, p. 2) commented that ‘while auspicing arrangements are commonly used, it creates additional red tape, cost, double-handling and, often, a sub-standard outcome for all parties’. Similarly, the Fay Fuller Foundation (sub. DR501, p. 1) submitted that smaller organisations are often those most reliant on donations and the least likely to have DGR status, and that consequently ‘many community-based organisations are forced into auspicing or partnering arrangements that are costly in terms of time and money’.

Smaller charities can also find the DGR system difficult to navigate. Jesuit Social Services submitted that:

This sometimes results in complicated auspice arrangements where a larger organisation such as Jesuit Social Services will support a smaller organisation to obtain a grant or other funding. While such arrangements can have benefits for both organisations, including encouraging collaboration on areas of mutual interest, in general we do not believe this is an efficient way to channel

funding/benefits to where they may be best used. On the other hand, it is essential to ensure that only organisations who are genuinely contributing to the public good and are doing so in an effective and efficient way, receive favourable tax treatment to support their work. (sub. 165, p. 9)

Further, auspicing arrangements can be counterproductive to other policy aims and societal goals. Greater self-determination for Aboriginal and Torres Strait Islander people and organisations underpins the National Agreement on Closing the Gap (PC 2024, p. 5). The Paul Ramsay Foundation (sub. 234, pp. 7–8) commented that ‘widespread auspicing of Aboriginal and Torres Strait Islander-led organisations by non-Indigenous led foundations and trusts is a practical response to DGR complexity, however, these arrangements conflict with self-determined funding and increasing the representation of First Nations people in philanthropy leadership and workforce’.

The DGR system is poorly designed

In summary, the DGR system is poorly designed, overly complex and has no coherent policy rationale. This creates inefficient, inconsistent and unfair outcomes for charities, donors and the community (finding 5.1).

The DGR system needs reform. The Commission has developed a principles-based approach to assessing which charities should have DGR status and proposed a simpler, refocused DGR system that creates fairer and more consistent outcomes for donors, charities and the community (chapter 6).



Finding 5.1

The deductible gift recipient (DGR) system is poorly designed, overly complex and has no coherent policy rationale

The DGR system is not fit for purpose as a mechanism for determining which entities should be eligible to receive indirect government support through tax-deductible donations. There is no coherent policy rationale for why certain entities are eligible for DGR status and others miss out. The complexity of the system continues to increase as new DGR endorsement categories are added in a piecemeal manner.

The DGR system creates inefficient, inconsistent and unfair outcomes for donors, charities and the community. It needs reform.

5.3 Tax concessions for charities

In addition to government-subsidised donations, charities also receive a range of tax concessions from Australian, state, territory and local governments. The availability and design of these concessions vary between jurisdictions. In many instances, the concession is available to other not-for-profit organisations and eligibility is not limited to charities. The use of tax concessions to support charities occurs across almost all OECD countries (OECD 2020, p. 3). Inquiry participants also commented that these concessions are used by many charities to support the work they do in the community and are a core part of their operating costs, including salaries (Community Industry Group, sub. 93, p. 9; Royal Flying Doctor Service, sub. 126, p. 11; Salvation Army, sub. 117, p. 6). Surf Life Saving Australia submitted that:

Crucial to all charities is the exemption from paying income tax. Whilst SLSA does not generate large surpluses as most of our funds are spent on its purpose(s), surpluses that are generated can be reinvested into capital or allocated to future program costs. Additionally, the tax system can be quite

complicated at times and there are additional costs of tax accounting that would be incurred by charities should they be subject to income tax as are for-profit organisations. (sub. 99, pp. 2–3)

The effect of tax concessions for charities is to indirectly reduce their operating costs. That is, the absence of a tax liability is a form of indirect government support for the activities of charities. For example, the fringe benefits tax (FBT) exemption for some charities means that employees pay less personal income tax than paid by someone earning an equivalent salary in the for-profit sector. This enables eligible charities to offer a competitive after-tax salary at a lower cost than other businesses and organisations (ACFID, sub. 242, p. 2; Anglicare Australia, sub. 125, p. 3; Mercy Works, sub. 60, p. 3; Southern Youth and Family Services, sub. 72, p. 2).

There are arguments for and against supporting the work of charities through tax concessions. Tax concessions provide a baseline government subsidy to charities where eligibility is broad and the costs to charities of gaining this support are low. This form of government support may also be a more secure source of support than government or philanthropic grants because it is long-term, it does not require an application (or reapplication) to be approved, and it may be less likely to change because of budget constraints or a change in government or donor preferences. However, the amount of support provided to each charity through a tax concession will depend on what the activities and structure of each charity would have been in the absence of a tax concession. This allocation of government support may not align with the relative needs of a charity, the value of the goods and services they provide to beneficiaries, or the priorities of the community.

Tax concessions may also be more administratively efficient than government grants because they prevent the double handling of resources. That is, to provide an equivalent level of support to charities as is provided through tax concessions, a government would have to collect the tax charities are currently exempt from and then reallocate it back to the same charities (for example, through grants). However, tax concessions for charities mean there is a greater tax burden on others or fewer government services (NZ Government 2001, p. 7; OECD 2020, p. 23; Treasury 2013, p. 2).

Charities have different advantages and limitations compared to for-profit businesses. JBWere (sub. 249, p. 9) observed that the operating margin for charities can be considerably lower than in the for-profit sector, which can affect their capacity to innovate. A not-for-profit structure means it is not possible to raise equity finance and charities may also face barriers accessing debt finance (Social Ventures Australia, sub. 262, p. 8). These limitations, as well as the work charities do in the community, are some of the reasons that governments provide direct and indirect support to charities. Structuring government support so it is effective, efficient, fair and simple seeks to balance the needs of the people and communities that charities support, relative to the cost to taxpayers.

The tax concessions available to Australian charities have been examined extensively elsewhere and so the Commission has not duplicated that analysis here (Henry et al. 2010; PC 2010; Treasury 2013). This includes FBT exemptions and partial rebates, income tax exemption, franking credit refunds, GST concessions, land tax exemptions, stamp duty exemptions, payroll tax exemptions and rates exemptions.

The Commission sees no case to change the income tax exemption for charities provided by the Australian Government. An income tax exemption for charities is appropriate as they produce no taxable income. Even when a charity generates income through commercial activities which are not intrinsically charitable, any funds raised in this manner must be directed towards furthering charitable purposes and cannot be distributed to the owners or members of a charity (ATO, TR 2011/4). The Commission (2010, pp. 203–205) and the Henry Tax Review (2010, p. 209) have also found that charities still have an incentive to maximise outputs and minimise costs (the equivalent of profit maximising), so there are no competitive advantages created by the income tax exemption.

There is also no case to change GST concessions provided by the Australian Government to charities. The concession is for administrative simplicity (small charities are treated in a similar manner to small businesses) and reflects the design of the GST as a tax on 'value added' (subject to certain thresholds, non-commercial income is treated as GST free – where the charity does not collect GST on sales and can claim GST credits on the inputs they purchase). The Henry Tax Review (2010, p. 210) found that GST concessions do not appear to provide charities with a competitive advantage as most commercial activities undertaken by charities will be subject to GST.

Most input tax concessions (including FBT and most state, territory and local government tax concessions) create distortions and are more likely to confer a competitive advantage to an entity with a concession. Input tax concessions have the greatest risk of distorting resource allocation in the economy because the tax concession creates a substantial difference between the price paid for inputs by an eligible charity and the cost of the same inputs to other actors in the market. This confers a competitive advantage and is particularly distortionary where charities compete with for-profit businesses or other organisations that do not have access to same concessions. Even where charities are not 'competing' with other firms, input tax concessions can distort resource allocation decisions. For example, two charities that are the same in every respect other than one owns the land it operates on and one rents the land it operates on receive different levels of implicit government support because of state land tax exemptions. This creates an incentive for charities to structure their organisations to minimise their tax burden (for example, buying rather than renting the land a charity uses).

Previous reviews, including the by the Henry Tax Review, Industry Commission and the Not-for-profit Sector Tax Concession Working Group, have concluded that input tax concessions, particularly for FBT, are not an appropriate way to provide government support for the charitable sector, with recommendations for their removal, subject to transition periods and alternative arrangements (Henry et al. 2010, Recommendation 43; IC 1995b, Recommendation 12.4; Treasury 2013, Recommendation 12). The Commission concurs with these conclusions.

6. Reforming the deductible gift recipient system

Key points

- ✳ **The deductible gift recipient (DGR) system should be reformed to create fairer and more consistent outcomes for donors, charities and the broader community. The design of the DGR system should be principles based, with classes of charitable activities included within the system based on whether:**
 - there is a rationale for taxpayer support because the activity is expected to generate net community-wide benefits and would otherwise likely be undersupplied by the market
 - there are net benefits from providing government support for the activity through subsidising philanthropy using a tax deduction for giving (as opposed to other government funding mechanisms, like grants)
 - the activity is unlikely to create a material risk that tax-deductible donations can be converted to private benefits for donors.
- ✳ **The reforms would refocus the DGR system to address the inefficiencies and inequities of the current system.**
 - Most classes of charitable activity would be in scope for DGR status, but some classes should be excluded where they do not align with the principles proposed by the Productivity Commission.
 - The excluded classes of charitable activities are: all activities for the purpose of advancing religion; and activities related to aged care; early childhood education and care; and primary, secondary, religious and informal education. There should be an exception where the activities are undertaken by a public benevolent institution or for education activities that have an explicit equity objective. This maintains the status quo for most charities.
 - The reforms are expected to increase the number of charities with DGR status from about 25,000 to between 30,000 and 40,000 charities.
- ✳ **The reforms represent a significant structural change to the key pillar of government support for philanthropy in Australia, reinforcing the foundations for philanthropy to support giving into the future.**
 - A more diverse range of charities with DGR status means a wider range of causes and beneficiaries could benefit from philanthropy and co-investment from Australian taxpayers, providing donors with more choice.
 - The reforms to the DGR system could contribute to a more vibrant charitable sector, and benefit the broader community, to the extent that the reforms support the establishment of new charities, the scaling up of existing charities and innovation to address social challenges and generate social capital.
 - Overall, giving in Australia is increasing. The reforms are only likely to make a small addition to overall giving and as such the fiscal cost of the proposed reforms is expected to be modest. However, there is some uncertainty over the behavioural responses to the reforms, such as the formation of new charities.

The deductible gift recipient (DGR) system is structurally flawed. It is not fit for purpose as a mechanism for determining which entities undertaking activities⁷ that benefit the community should be eligible to receive tax-deductible donations. There is no coherent policy rationale for why certain entities are eligible for DGR status and others miss out. The complexity of the system continues to increase as new DGR endorsement categories are bolted on in a piecemeal manner (chapter 5).

Reform is needed to simplify and focus the DGR system to where there are likely to be the greatest net benefits to the community as a whole from providing support through tax deductibility for donations. This would create fairer and more consistent outcomes for charities, donors and the community in accordance with a coherent policy rationale. To do this, the Productivity Commission has developed a principles-based approach to inform the design of the DGR system and proposed a reform package to improve the way the DGR system operates.

Developing reforms to the DGR system is challenging, subjective and contestable. The Commission sought to provide a clear proposal in the draft report to test the approach and seek the views of participants. Participants provided many submissions and brief comments. The Commission also engaged extensively with participants through public hearings and other forums, including a Charity Law Association of Australia and New Zealand roundtable (appendix A).

The views and responses to the proposed reforms presented in the draft report have been diverse. In general, there was support for the adoption of a principles-based approach for the DGR system, but some disagreement over how these applied to different activities. For example, Ian Murray submitted:

Few would disagree that the current DGR system is complex and inconsistent and that it has arisen via ad hoc political processes without the rigorous application of eligibility principles. The Commission is to be commended for calling this out and seeking to put principles in place.
(sub. DR640, p. 2)

Many participants strongly supported the expansion of DGR status to a wider range of charitable activities and changes to simplify access to DGR status (AEGN, sub. DR728, p. 8; Community Gardens Australia, trans., p. 299; Stronger Charities Alliance, sub. DR442, p. 1; The Funding Network, sub. DR691, p. 2). The Community Council for Australia commented that:

We would say very strongly, as we have said for over a decade, the DGR system is an absolute mess, it's dysfunctional, it's counterproductive, it favours the wealthy over the poor, the politically connected and powerful over the disadvantaged, and it's not understood, it's not well administered, and it doesn't, I think, provide the kind of benefit that it could was it more effectively established and eligibility was clearer, and the processes around DGR were more transparent and equitable. And I think the measures that you've put forward are certainly a big step in that direction. So we applaud the report, we applaud what we see is the key recommendation. (trans., p. 286)

However, other participants disagreed with the Commission's approach to determining which activities should be excluded from the scope of the DGR system. In particular, the Commission received many submissions and brief comments expressing concern about the proposed withdrawal of DGR status for school building funds and for religious education in government schools (Independent Schools Australia, sub. DR572; Inter-Church Commission on Religious Education in Schools, sub. DR587; International

⁷ The Commission has used the term 'activities' throughout the report when discussing the scope of the DGR system because governments subsidise activities not purposes. However, activities are undertaken by charities to further their charitable purposes, and it is these purposes that determine which Australian Charities and Not-for-profits Commission subtypes a charity can be registered with.

Network of Churches, sub. DR704; National Catholic Education Commission, sub. DR714; and 846 submissions from individuals focused on DGR status for schools, sub. DR278). Concerns put forward in submissions and the Commission's analysis of them are discussed below.

In this chapter, the Commission has provided its reasoning for the recommendations, focussing on how the principles have been applied to determine those activities that should be included or excluded from the DGR system. Ultimately these are questions of judgement. The Commission appreciates and values all the perspectives that participants shared, even where those views have not led to a change in this final report.

6.1 How should access to DGR status be determined?

The DGR system benefits taxpayers, recipient entities and ultimately the people and communities those entities support. As outlined in chapter 5, there is a compelling case for reforming the DGR system so that it is focused on classes of charitable activities where support through tax deductibility for donations is likely to generate the greatest net benefits to the Australian community.

Under section 6 of the *Charities Act 2013* (Cth), all registered charities must have purposes for the public benefit. These benefits must be available to the general public, or a sufficient section of the general public. Charities must also have regard to possible detriment on the general public (or a section of the general public) from achieving their charitable purpose.

The scope of activities undertaken by registered charities is broad and has increased over time, including as a result of judicial decisions that have expanded and clarified the definition of charity. As a result of these developments, many entities have access to the range of tax concessions set out in chapter 5. Even though registered charities must have purposes that are for the public benefit, this does not necessarily mean that those same entities should be eligible for additional government support provided through DGR status. Whether an entity is a charity and whether it should be eligible for DGR status are related but separate questions.

The Commission has been asked to examine how the DGR system aligns with public policy objectives and the priorities of the broader community. The current DGR system lacks any coherent policy underpinning, and the Commission has sought to address this by developing a principles-based framework which should be used to determine which classes of charitable activities are within the scope of the DGR system. Charities undertaking these classes of activities would then be eligible for DGR status.

The outcome of this approach would be that most, but not all, registered charities would be eligible for DGR status.

Charities benefit from a range of funding sources, of which tax-deductible donations are just one. Further, people can and do donate to a range of organisations and causes, some of which have DGR status and some of which do not. Although DGR status is important for attracting donations, the Commission has also heard that tax deductions are not always the primary driver of giving behaviour (chapters 3 and 5). There is a substantial amount of giving to charities that is not claimed as a tax deduction. The Commission has analysed the effect of the reduction in the price of giving through the income tax deduction. There is considerable uncertainty surrounding these estimates, but a common result is that it appears to increase giving by an amount similar to the value of the tax deduction (chapter 4).

The proposed reforms set out in this chapter would not limit which charities can receive donations, government grants or other forms of taxpayer support. Rather the reforms seek to delineate the boundaries of which charities receive donations that are tax-deductible. If a charity is not eligible for DGR status, this does not imply that the activities it undertakes to further its charitable purpose are not valuable to the community – and the

Commission recognises that all charities must have purposes for the public benefit. However, determining which classes of charitable activities are within the scope of the DGR system should be subject to an additional threshold to prioritise activities where there are likely to be the greatest net benefits to the community as a whole from providing additional taxpayer support through tax deductibility for donations.

A principles-based approach to determine eligibility for DGR status

The scope of the DGR system should be based on principles that steer indirect government support via the personal income tax deduction to classes of charitable activities where there are the greatest net benefits to the community. A principles-based approach would simplify and refocus the DGR system, provide guidance for future policy developments, and could help to reduce the risk of policy-induced distortions to giving – for example, different treatment of activities that offer the same potential outcomes or the exclusion of activities that should receive government support and vice versa.

The Commission has used the assessment approach set out in chapter 2 and good-practice tax design principles (box 4.7) to develop a framework to determine whether an activity should be eligible for DGR status. It is not the Commission's intention that the Australian Taxation Office (ATO) would apply these principles on an entity-by-entity basis to assess eligibility for DGR status. Rather, the framework is intended to be used as a guide for determining the overall scope of the DGR system, which would be reflected in amendments to Division 30 of the *Income Tax Assessment Act 1997* (Cth) (ITAA97). The goal is to clarify, simplify and refocus the DGR system.

These significant structural reforms to the key pillar of government support for philanthropy in Australia would reinforce the foundations for philanthropy, so that the benefits of giving can continue to be realised across Australia into the future.

The Commission's principles seek to align the eligibility criteria for DGR status with conventional rationales for government intervention to incentivise philanthropy, so that granting DGR status for those activities would likely generate net benefits to the community. In other words, this approach would help donors direct government support, through the granting of DGR status, to activities that have a sound role for government involvement *and* where a tax deduction is an efficient way for government to provide that support, compared with other forms of support.

There are three steps in the principles-based assessment criteria for determining whether a class of charitable activity should receive DGR status (figure 6.1).

The **first step** is that the activity must have a rationale for government support. Tax deductions for giving to charities with DGR status amount to indirect government support – other taxpayers are effectively making a co-contribution to the donations equal to the tax rate that the donor would otherwise have paid.

Governments fund an array of activities for various reasons but, in general, arguments for government support rest on one of two reasons. First, the broad community-wide benefits of the activity, which would be undersupplied in the absence of government support – people benefit from the activity even where they are not directly paying for it. Second, the equity and redistributive objectives of an activity – helping people in need or improving access to goods and services in, say, remote parts of Australia.

Meeting this first step does not require an activity to be explicitly aligned with the policies and priorities of the government of the day. For example, there can be broad community-wide benefits associated with charities undertaking advocacy activities, including when this conflicts with government policies, because this is a contribution to democratic policy making processes (chapter 2).

Figure 6.1 – Assessment criteria for determining the scope of the DGR system

Under the **second step** there should be net benefits from providing government support of philanthropy through a tax deduction for giving (as opposed to other government funding mechanisms, like grants). Subsidising philanthropy must be an efficient way for government to support that activity. Governments have different ways of meeting the needs and expectations of the community, including direct provision of goods and services by government entities, contracting to not-for-profit or for-profit organisations, or through the provision of grants. Subsidised giving needs to be assessed against these alternatives, noting that many charitable activities currently receive both government grants and tax-deductible donations – and would continue to do so.

One assessment criterion under the second step is whether subsidised philanthropy enhances productive efficiency – whether it is likely to generate additional activity at the same or lower cost compared to other

forms of government support. If it does so, it can free up government resources to spend in other areas, including those not conducive to funding through philanthropy.

A further argument is that government support for philanthropy can generate additional charitable activity more efficiently overall relative to other forms of government support, taking into account community preferences. Philanthropy can be a better way of allocating funding to activities, either because it harnesses the preferences of donors in determining where to direct funding to activities (Fleischer 2010), or because it provides certainty or flexibility in funding for charities, particularly charities that would otherwise be heavily reliant on government funding. Participants also noted that philanthropy can allow for increased innovation compared to what might be possible under a government grant program (Mission Australia, sub. 61, p. 1).

However, even where there is a broad case for government support for an activity under the first step above, a tax deduction for donations will not always be a good way of providing that support. In some instances, this could be because of the way that a tax deduction operates, where people on higher incomes receive a larger tax saving than people on lower incomes when they give the same amount. Or it could be because tax-deductible donations may not be an effective or efficient way to address the problem. For example, if the overarching rationale for government support is to improve access to goods or services for a particular cohort of people or location, but the scope of activities eligible for deductions is set more broadly, there is a risk that government resources will be misallocated to areas that do not require additional government support, or concentrated in particular types of activities or locations where fundraising appeals are most successful.

DGR status may also have unintended effects on the charitable sector and distort decision making if the scope of the DGR system is not well designed. For example, by encouraging charities to undertake DGR-eligible activities in preference to non-DGR-eligible activities that might have greater net benefits to the community as a whole.

The government should also take into account the alternative uses of the taxpayer funds that are supporting philanthropy, which could be more (or less) valuable to the community as a whole – there are opportunity costs to subsidising philanthropy. The need for caution about government support for philanthropy was emphasised by the Australian Council of Social Service, which submitted:

While tax concessions encourage donations by individuals or organisations, they come at a budget cost to governments and mean governments cede some control over where resources are directed. This means that governments have little capacity to ensure the philanthropic funds are directed to the communities, programs or people who most need assistance, or the programs and services which are most effective. This must be considered in determining the respective roles of government and philanthropic funding, and government support for and regulation of philanthropic giving. The goal of higher donations must also be balanced with the risks of:

- Government funding being withdrawn in response to increased donations;
- significant loss of revenue through tax deductions and use of private trusts by high wealth individuals;
- wealthy donors establishing foundations that influence public policy processes in a way that is not consistent with government transparency and accountability; and
- complex legal and tax structures and rules, that reduce transparency and increase inequity in tax and other financial benefits between different donors. (sub. 263, pp. 3–4)

The **third step** above examines the likelihood of being able to convert a tax-deductible donation into private benefits for the donor. This step acts as a further filter to the second principle, which already covers the assessment of DGR status as an allocation mechanism for government funding. The intent is to exclude classes of activities where the characteristics of the activity creates a material risk that a donor (or their

families, close relatives or other associates) could capture a substantial share of the benefits of a donation. If donors are themselves the primary beneficiaries of a donation, then the transaction is more akin to a purely private one, and is therefore less likely to be susceptible to market failure and less likely to warrant government support. In these circumstances, it is unlikely that including that activity within the scope of the DGR system would provide net benefits to the community.

There are two key (not mutually exclusive) characteristics that can give rise to the potential for private benefits to donors.

- One characteristic that can create a material risk that tax-deductible donations could be converted to private benefits is where recipients of a good or service are charged (other than nominal) fees by the charity to access the goods or services it provides. The transaction here is closer to a market exchange. Because the receipt of donations can create scope to charge lower fees, this could, in theory, incentivise recipients to make tax-deductible donations to lower the non-tax-deductible price they are charged for the good or service. The likelihood of this problem is dependent on the nature of the activity and characteristics of the beneficiaries and likely donors, and will be greater where beneficiaries or recipients are likely to comprise a larger share of the donor pool. However, the issue of fees is not always straightforward – in principle, a total absence of fees (or the presence of a nominal fee) could be because donations have been used to completely (or almost completely) subsidise what are purely private activities.
- Another characteristic where the risk arises of the donor capturing the private benefits of an activity is where benefits are excludable and restricted only to members (effectively akin to a private ‘club’). Here, there may be an incentive for members to make a tax-deductible donation to the organisation because they (and a limited number of other members) stand to benefit from the activities of the organisation that may effectively represent a purely private activity.

An important point to clarify is that this can encompass a broad concept of substitution and private benefit. In feedback on the draft report, many participants disputed the possibility of a private benefit arising, noting that there are rules in place which prohibit the donors receiving direct benefits, such as reduced fees, as a result of a donation (Educate Plus, sub. DR735, p. 2; Natalie Silver, sub. DR504, pp. 1–3). For example, Arnold Bloch Leibler submitted:

The Commission first contemplates that where a charity both charges fees and accepts tax deductible donations a donor could theoretically make donations with the hope that this would keep their fees lower. However, contrary to the Commission’s speculation here, it is explicitly prohibited in Taxation Ruling TR 2005/13 (**the Gift Ruling**) for a tax deductible donation to be a proxy for fees. (sub. DR585, pp. 2–3)

While the potential risks to the integrity of the tax system are a relevant consideration in the context of the design of the DGR system, the Commission’s approach has focused on the potential for donations to provide private benefits to donors in indirect but still material ways. This can occur even when there is no contractual switch between donations and fees. If an activity is funded by a mix of donations and fees, it follows that if donations increase then fees can be lower. And where people who pay fees are a significant source of donations there can be an implicit incentive to donate, in part to maintain downward pressure on fees.

However, an activity that is funded partly by user fees could also still be within the scope of the DGR system. There are some instances where charities charge fees to beneficiaries that the nexus between donors and beneficiaries is likely to be weak. One instance is where the charitable activity has an equity objective and donations act as a kind of equity-based cross-subsidy, where donations from people with the capacity to make them are used to reduce the prices of goods or services provided to people in need. Another potential instance is where there are broad community-wide benefits and the fees are charged to cover specific costs

– for example, admission fees charged to cover the additional costs of visitors where the activity generates net benefits to the wider community, as well as the benefits to fee-paying visitors.

Similarly, a principled case for including a member-based activity within the scope of the DGR system could be made if the nexus between the benefits and the donations is weak – for example, if the entity also engages in activities that generate *uncompensated* public (that is, external) benefits (notwithstanding that members also enjoy private benefits). This could include organisations that use a member-based structure as an organisational tool to mobilise volunteers and other resources to enable it to deliver services to the broader community.

It is important to note that the third criterion is only used to determine the overall scope of the DGR system by applying the third principle to classes of charitable activities where a class of activity is more susceptible or at risk of conversion of donations into fee reductions. It would not be practical to assess the eligibility of specific entities for DGR status based on an examination of their individual fee charging practices and this is not the Commission's intent.

6.2 The proposed scope of the DGR system

In practice, making assessments about which purposes or classes of charitable activities (that is, activities that are used either to further a particular charitable purpose or that share common characteristics) should be within the scope of the DGR system is challenging, subjective and contestable. This has been evidenced by the wide range of views that participants provided in response to the proposals in the draft report. The Commission considered the trade-offs, including the fiscal cost involved in expanding the DGR system and, using the principles above, prioritised changes where government support of philanthropy is likely to have the largest net community-wide benefits. The Commission also sought to balance the risks of 'type 1' and 'type 2' errors. That is, the risk of including certain classes of activities in the scope of the DGR system (where this may not be warranted), should be weighed against the risk of excluding certain activities that should be in scope.

In assessing which type of error is likely to be more acceptable, the Commission notes that charities are subject to a range of regulatory and governance arrangements (chapter 7) and differ from private businesses in several crucial respects. In particular, the activities in question must be provided by registered charities (or government entities that undertake charitable-like activities) and must not generate profits that are distributed to private individuals. Many entities also have access to other forms of taxpayer support – so excluding certain activities from the DGR system would not mean that government support would not or could not be provided in other ways.

The DGR system should cover most charitable activities

At a high level, most classes of charitable activities are likely to align with a rationale for government support through the DGR system. Charities registered with the Australian Charities and Not-for-profits Commission (ACNC) are currently classified by their charitable purposes into 14 subtypes and this classification provides a relatively simple basis for identifying classes of activity (either by subtype, or a class of activity within a subtype). Similarly, there will be very few instances where government subsidised philanthropy is likely to be a demonstrably inappropriate way to allocate government support to charitable activities. However, the risk of converting tax-deductible donations into private benefits to donors should be minimised because it reduces the likelihood of broader benefits to the community being realised.

Setting the scope of which charities should have access to tax-deductible donations through DGR status is a trade-off between simplicity and clarity on one hand, and focusing eligibility on activities where additional taxpayer support through the DGR system is likely to have the greatest net benefits on the other. Many of the gains from reforming the DGR system would come from removing complexity and the distortions created by arbitrary differential treatment between classes of charitable activity where there is no clear or consistent principles-based rationale for these differences. However, specifically excluding some activities from the scope of the DGR system would refocus the system toward activities where allocating taxpayer support through tax-deductible donations is likely to generate greater community-wide benefits.

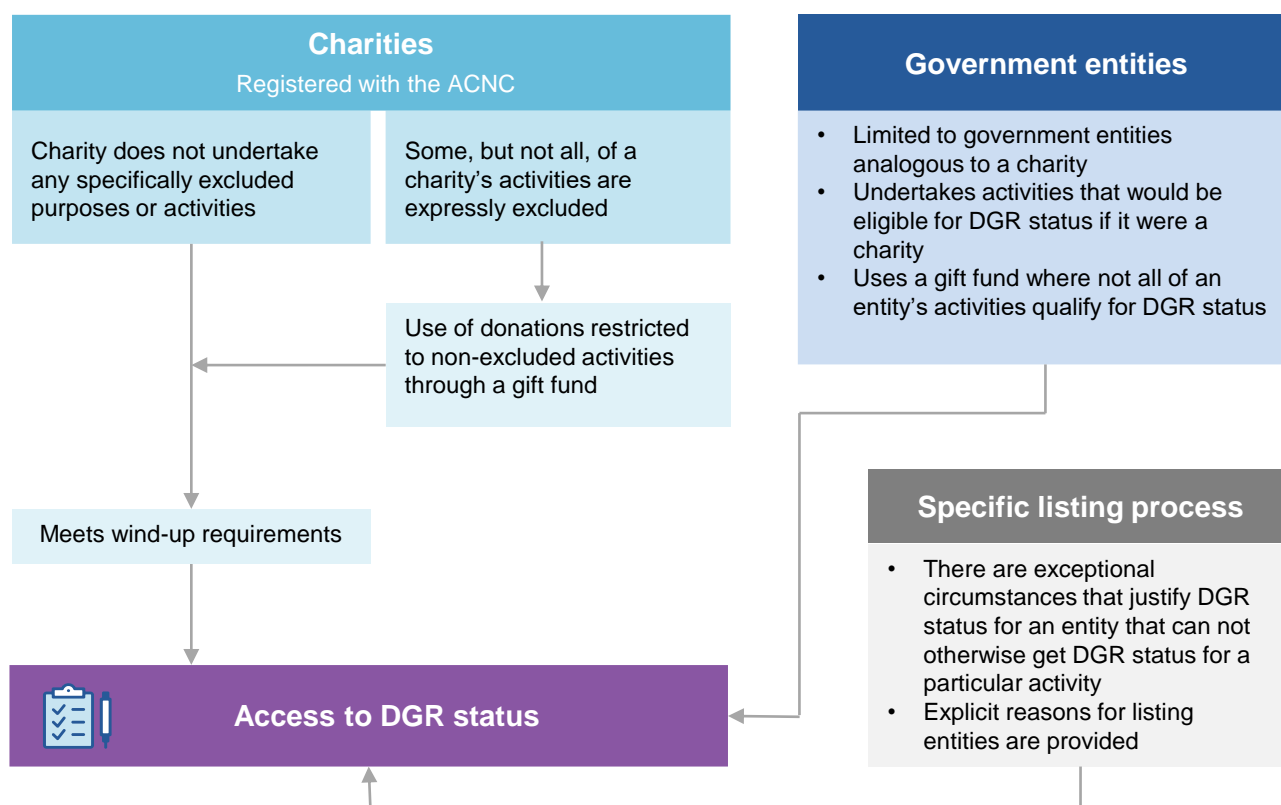
In this inquiry, the Commission has concluded that the DGR system should be simplified and refocused to create fairer and more consistent outcomes for donors, charities and the community (recommendation 6.1). Under this proposal, the scope of charitable activities that should have DGR status would be somewhat narrower than the last time the Commission examined this question in the 2010 *Contribution of the Not-for-profit Sector* study, and closer to the approach proposed in the final report of the Not-for-profit Sector Tax Concession Working Group. To summarise, the key elements of the Commission's proposed approach are as follows.

- The scope of the DGR system should be limited to a subset of charities registered with the ACNC and government entities that are analogous to the types of charities that are in scope for DGR status. It should not generally be extended to other classes of non-government entities, for example community sport (discussed below).
- Most classes of charitable activities would be in scope for DGR status, including activities that have been largely excluded from the DGR system to date, such as community-based activities by social welfare charities that do not meet the criteria to be a public benevolent institution (PBI), advocacy in furtherance of another charitable purpose, public interest journalism, and a more diverse range of animal welfare and health promotion charities.
- In applying the principles in figure 6.1 there are some classes of activity that should be excluded from the DGR system. The Commission has reached the view that the most practicable approach to applying the principles is to exclude discrete classes of charitable activity where there is a clear case that those classes of activity do not accord with the principles for providing access to the DGR system because of the common characteristics of these classes of activity. Importantly, charities that undertake excluded activities would still be eligible for DGR status for the non-excluded charitable activities they undertake or if they are a PBI.
- Charities would only need one DGR endorsement by the ATO, which would cover all eligible activities. There should be standardised eligibility criteria, including to ensure DGR-related funds are not used for excluded activities, such as where a charity undertakes a mix of activities that are in and out of scope for DGR status (section 6.3).
- Ancillary funds would not be subject to any charity subtype criteria and would continue to be eligible for DGR status (chapter 8). For instance, there are proposed changes to create a DGR endorsement category for community foundations (Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023 (Cth)) and such entities would also be eligible for DGR status under the proposed reforms.
- DGR status for government entities should be restricted to those that are analogous with charitable activities that are in scope for DGR status, including taking into account the likely nexus between donors and beneficiaries. It is noted that expanding the scope of the DGR system, may mean that there are also more government entities undertaking activities analogous with activities within the expanded scope of the DGR system. This may require either the ACNC or the ATO to make determinations in relation to government entities, which could have resourcing implications.

- If the scope of charitable activities covered by DGR status is reformed according to this principles-based framework, there should be much less need for a specific listing process. There is a case to retain the specific listing process to account for unforeseen exceptional circumstances. However, there should be greater transparency and disclosure regarding the reasons for approving specific listing, including an assessment of the costs and benefits of approval, and how the approved listed entities align with the principles for the broader DGR system.

These criteria for accessing DGR status are illustrated in figure 6.2.

Figure 6.2 – The Commission’s proposed process for accessing DGR status



Some charitable activities should not be eligible for DGR status

Most charitable purposes and activities should be in scope for access to DGR status, but there are some classes of activity that should be excluded from the DGR system. This is because these classes of charitable activity predominately do not meet the principles discussed above to justify support through the DGR system. This is not an assessment of the public benefit or social good of these activities, but rather that there is not a case for providing taxpayer support for these activities through the DGR system, including because it may be better to provide support in other ways. Specifically excluding charities from having DGR status for these activities would refocus the system toward generating community-wide benefits and would provide greater simplicity, certainty and consistency for charities, donors and the community over what the DGR system covers.

The Commission’s proposed approach is as follows and is explained in further detail below.

- Using the ACNC charity subtype classifications, charitable purposes or activities that are excluded in table 6.1 would not be in scope of the DGR system.

- If a charity undertakes a combination of excluded and non-excluded activities, it could still apply for DGR status for non-excluded activities. This could be done via a gift fund – which are already used in the DGR system where an entity has DGR endorsement for a fund, authority or institution (chapter 5) – to restrict the use of DGR funds to non-excluded activities. For example, a charity with subtypes of both religion and health would need a gift fund to demonstrate that tax-deductible donations are only used on activities to further its purpose of advancing health, not those for advancing religion.
- Charities that, to date, have not nominated a charity subtype would not be in scope to obtain DGR status. These charities would need to apply for registration under one or more charity subtypes as a prerequisite for eligible activities to obtain DGR status.

Table 6.1 – Activities to be excluded from the DGR system by charity subtype

| Charity subtype | Proposed exclusions |
|------------------------------------|--|
| Health | No exclusions |
| Culture | No exclusions |
| Reconciliation | No exclusions |
| Human rights | No exclusions |
| Security | No exclusions |
| Animals | No exclusions |
| Environment | No exclusions |
| Health promotion charity | No exclusions |
| Public benevolent institution | No exclusions |
| Education | Exclusions for the activities of early childhood education and care, primary and secondary education, religious education and informal education, except for activities where charities have an explicit equity objective (for example, where charities are registered as public benevolent institutions (PBIs), or for scholarships or education programs for specific cohorts of students) |
| Social welfare | The activities of aged care and early childhood education and care are excluded (unless the charity is registered as a PBI) |
| Religion | All activities within this subtype are excluded |
| Other analogous purposes | Excluded if the charity has a purpose of promoting industry or a purpose analogous to an exclusion in another subtype |
| Law | Advocacy must be in relation to promoting or opposing a law or policy regarding an activity that is not excluded under another subtype |
| Charity with no registered subtype | Excluded |

As noted above, determining which classes of activity should be excluded (or included) is subject to a degree of judgement. Attempting to provide relatively bright lines about what activities are in or out of scope is important for making the DGR system clearer and simpler, but it means that some activities that remain in scope for DGR status may still have a material risk of not fulfilling the principles in figure 6.1 in all instances. For example, for cultural activities such as performing arts, audience members may be motivated to make donations, which could over time make ticket prices lower for all audience members. Similarly, some health charities (including not-for-profit hospitals) charge fees to patients and raising revenue through donations could reduce the need to charge fees.

However, in these cases, while there remains a material risk the donors convert donations to a private benefit, the nexus between donors and beneficiaries is unlikely to be as strong compared with other activities, such as schools or early childhood education and care. Donations to activities that tend to have a

large, diffuse pool of beneficiaries (such as cultural activities, not-for-profit hospitals and formal higher education institutions), are less likely to present a material risk of being converted into private benefits for donors. In addition, the benefits to immediate recipients of the charity's activities are more difficult to discern from the broader community-wide benefits of those activities. This is, in part, because these activities are often larger scale and are less geographically concentrated. Use by individual beneficiaries may also be less regular or predictable. Therefore, there may be less concern about the allocational consequences – where donations are concentrated in some areas or charities based on capacity of donors to contribute rather than on the basis of need – from DGR-based support compared with other government funding mechanisms.

DGR status should be maintained for some, but not all, education activities

To focus the DGR system toward activities where there are likely to be the greatest net benefits to the community as a whole from providing support through tax deductibility for donations, some specific exclusions in the education subtype are required. Specifically, the activities of early childhood education and care, primary and secondary education, religious education, and forms of informal education should be excluded. However, in line with the Commission's goal of refocusing the DGR system, notwithstanding these exclusions, most activities in the education subtype would remain within the scope of the DGR system – including formal higher education and research activities.

The most substantial change from current arrangements for these charities is the proposed removal of eligibility (subject to transition arrangements) for school building funds. Based on the application of the principles, the Commission does not consider that DGR status should be retained for school building funds in their current form. There is a case for government supporting school infrastructure, and so school building funds meet the first principle. However, school building funds do not meet the second and third principles. School building funds do not meet the second principle because there are potential alternative policy approaches that would better allocate funding in line with rationales for taxpayer support. Given the existence of better alternatives, it therefore immediately follows that DGR status is unlikely to be the best way of achieving these objectives. School building funds do not meet the third principle because there is a material risk that donors could convert a tax-deductible donation into private benefits for the donor, that is, they are a substitute for fees.

Withdrawing DGR status from activities, such as school building funds, would not prevent private donations for these activities from being made. While the Commission's modelling suggests that while DGR status affects the level of donations, it is highly unlikely that donations would fall to zero without it (chapter 4).

Most school activities are already outside the scope of the DGR system

Currently, DGR status is available for very limited types of primary and secondary school activities. DGR status can be accessed for school infrastructure, libraries and scholarships. Some schools may also have other endorsement categories, such as a necessitous circumstances fund. However, with some exceptions (such as where a school is registered as a PBI), DGR status is not available to cover other costs associated with the day-to-day operation of schools, such as teacher salaries. These and other recurrent costs are funded by fees and other private contributions or government funding.

The Australian Government's overall approach to school funding is not the subject of this inquiry. This inquiry has therefore only analysed school funding at a high level, and in the particular context of how it relates to the DGR system. However, in assessing which activities related to school education should be in scope for DGR status, the Commission has considered not just those activities that currently qualify for DGR status, but the broader range of school education activities that charities undertake.

School education is a priority for governments and there are sound economic and social reasons for government support for both recurrent and capital costs, including school infrastructure. In the 2011 review chaired by David Gonski AC, funding for schools was considered against a set of principles (box 6.1). These principles covered a range of factors, including choice and diversity, transparency and accountability, and value for money. They also have an overriding objective of needs-based funding with the aim that educational outcomes should not be determined by differences in socio-economic advantage. Against this additional framing, it is clear that school education would meet the first principle for DGR status in figure 6.1 – there should be government support for efficiency and equity reasons. However, for the reasons discussed below, DGR status is not the likely to be the best way to provide government support, given the overarching objective for government funding of school education. This is the case for both recurrent spending (which is currently largely outside the DGR system) and infrastructure spending.

Box 6.1 – Principles for school funding set out in the Gonski review

The 2011 review of school funding articulated the following principles to guide the design of its recommended school funding model.

- Public funding should be allocated in a fair, logical and practical way so that schools with similar characteristics and student populations have similar access to public funding, taking into account, in the non-government sector, the capacity for a contribution from private resources.
- Funding should be allocated to schools and students on the basis of need, in particular to ensure that differences in educational outcomes are not the result of differences in wealth, income, power or possessions.
- Funding from all sources should be sufficient to ensure that all Australian students have the opportunity to receive a high standard of schooling.
- Funding should support a diverse range of school provision and allow choice by parents alongside their responsibility (in most cases) to make a more substantial private contribution when electing to enrol a child in a non-government school.
- Funding arrangements should complement and help to drive broader school reform so that the educational outcomes of all students improve over time, particularly the outcomes of students from disadvantaged backgrounds.
- Funding arrangements should embody the partnership that has developed between Australian governments and the non-government school sector in funding and delivering schooling in Australia.
- Funding arrangements should be more transparent.
- Public funding should provide demonstrable value for money and recipients should be accountable for the proper use of public funds. (Gonski et al. 2011, p. 149)

How schools are currently funded

Government funding for schools is typically classified as being for either recurrent or capital purposes, although there is some overlap.

Funding for recurrent spending in schools (which covers operational costs, including staff costs) is covered by a mix of Australian, state and territory government funding, as well as funding from fees and other private contributions.

Government funding uses the Schooling Resource Standard (SRS), which is based on the recommendations of the 2011 review. The SRS is an estimate of a school's government funding requirements to meet its students' education needs. It is made up of a base amount and six additional needs-based loadings. Australian Government recurrent funding in 2024 is estimated at \$29.1 billion and is weighted toward the non-government school sector, with the Australian Government providing about 20% of SRS funding for government schools and 80% for non-government schools. The Australian Government provided an estimated \$9.8 billion for Catholic schools and \$8.0 billion for independent schools in recurrent funding in 2024 (Department of Education 2024). A key difference in the funding arrangements between government and non-government schools is that this funding cannot be used for new capital projects by most non-government schools. However, it can be used for the maintenance of existing buildings.

A key feature of the SRS model for non-government schools is the Capacity to Contribute (CTC), which is a measure of the capacity of parents to contribute to the school's operational costs. The amount of base SRS funding to non-government schools is reduced by between 10% and 80%, using the CTC calculated for each school. There are no reductions based on the CTC for some schools including special schools and majority Aboriginal and Torres Strait Islander schools (Department of Education 2024). An important observation about the CTC model is that government funding for non-government schools is not affected by the actual level of funds schools receive through fees, donations and/or other private contributions (this approach was explored with the National Catholic Education Commission in public hearings, trans., p. 241).

Government funding for capital expenditure is more ad hoc. While governments clearly fund the majority of capital expenditure in government schools (notwithstanding that some of these schools do raise funds through donations), direct government funding tends to be through grant-based programs for non-government schools.

For example, the Australian Government administers a smaller capital grants program for non-government schools. Eligibility for funding under the program is subject to demonstration of a financial need for the grant, that the project is consistent with the objectives of the grant program (which include improving infrastructure for the most disadvantaged students) and that the project is consistent with sound educational planning. The Australian Government allocated \$194 million under the program in 2022 (Department of Education 2022).

Other Australian Government capital funding arrangements for non-government schools have been intermittent. For example, the Building the Education Revolution program provided \$14.7 billion, as part of broader economic stimulus measures, to build or upgrade buildings in each of the then 9,540 government and non-government Australian schools (Rudd and Swan 2009). Another example is the School Upgrade Fund, which was a 2022 election commitment intended to provide grants for small scale capital projects in response to the disruptions caused by COVID-19 (Department of Education 2023).

Beyond these grant programs, the indirect support through tax deductibility for school building funds is main other form of Australian Government support for capital expenditure in schools.

Extending DGR status to all school education activities would not be an effective way to provide government support for recurrent expenditure

Some participants suggested that DGR status should form part of the funding mix for general school expenses. Educate Plus submitted that:

To elevate giving to primary and secondary education, and signal that society values our schools (and our educational industry), we ask that whole of organisation DGR status be automatically given to all NFP schools, and that consideration also be given to create a mechanism for extending this to Government schools, to enable them to receive donations directly. (Educate Plus, sub. 133, pp. 4–5)

However, the Commission's view is that this would not be an effective way to provide additional government support, in light of both the objectives of government funding and the existing broader approaches to school funding. Applying the principles in figure 6.1, the key concern is that (without additional restrictions) tax deductible donations would not meet the second principle and be a relatively poor way of allocating support to where it is needed (on both efficiency and equity grounds). This is because:

- the preference of many donors would be to donate to schools with which they are closely affiliated and for projects they can personally see the benefit of, rather than where funds are most likely to generate broader community benefits. That is, these donations are not at arm's length from schools more generally (Educate Plus, trans., p. 353). While there is nothing wrong with such donations, the question is whether subsidising them is the best way to further governments' broader goals of efficiency and equity. Some schools, such as in the Catholic system, operate as part of a network that has features of an arm's length system that reduces the nexus between donors and beneficiaries. In such situations there is scope to use donations as a system-wide pool and directly address equity concerns by redistributing that pool of funding between schools as required. In contrast, in the independent sector, schools tend to operate as autonomous entities and the scope for addressing equity concerns and redistributing donations between schools is limited.
- the capacity of schools to raise donations varies widely, depending on the wealth and income of the school community, which form the main pool of potential donors. Not only does the capacity to give increase with income, but the design of the tax system means that higher income donors receive a larger tax deduction and face a lower price of giving, which can encourage them to donate larger amounts and increases the indirect taxpayer contribution (chapter 4).

The combination of these features means that government funding provided through the mechanism of tax-deductible donations would not be allocated on the basis of either efficiency or equity, or even on a universal basis.

Rather, there is a material risk that higher levels of indirect government support to schools through tax deductible donations would benefit communities with higher socio-economic advantage. This would be in contrast to the current approach for recurrent funding. The CTC approach is an implicit acknowledgement that, while funding for non-government schooling facilitates parental choice, parents should contribute to the cost of this choice, commensurate with their financial capacity to do so. This comes back to the equity objective underpinning the rationale for government funding of school education – it is not just the quantum of government support that matters, but how it is allocated that is important in determining the effectiveness of government spending against the intended objective.

Expanding DGR status to school activities more broadly would also increase the potential for donations to substitute for fees, presenting a risk under the third principle in figure 6.1. The receipt of donations directly affects the level of fees (or the level of service provided for a certain fee), because revenue sources are fungible. For example, a school's revenue is made up of direct government funding, donations, other income and fees. If other sources of funding are fixed, then fees would need to be adjusted to provide sufficient revenue to fund the chosen level of service. If expanded DGR settings increase the receipt of donations, then all else being equal, lower fees would need to be charged to provide the same level of service. Alternatively, a higher level of service could be provided for the same fee. Either way, the fee payers benefit from the receipt of tax-deductible donations. Where the primary source of donors is the fee payers themselves, there is material risk of donations being converted to private benefits.

Expanding DGR status to school activities more broadly has also been considered previously by the Not-for-profit Sector Tax Concession Working Group, which also recommended against an extension to all school education activities:

As a result of the private benefits provided by charities for the advancement of education through childcare or primary or secondary education, the unlimited extension of DGR status to all donations to these charities would generate significant integrity issues. For example, it would be difficult to distinguish between the payment of fees and voluntary donations. (Treasury 2013, p. 24)

While broader school funding approaches were not assessed in this inquiry, the Commission's view is that there is not a case for extending DGR status to cover school activities more broadly, and that school education activities are better funded through mechanisms that can ensure minimum levels of government funding are met, and that funding is targeted to areas of disadvantage and cohorts of students with additional needs. The status quo of broadly excluding school education from the DGR system should be maintained.

Funding school infrastructure through the DGR system raises similar issues to those that would apply to school activities more broadly

Most participant concerns in response to the draft report focused on the proposed withdrawal of existing DGR endorsement categories (especially school building funds) for schools, rather than the proposal to not extend DGR status to school activities more broadly. However, notwithstanding that existing government funding has a recurrent focus, and there are restrictions on how it can be used by non-government schools, providing DGR status for school infrastructure raises the same broad concerns that would be realised if DGR status were extended to school activities more broadly.

The Commission considers that there is a role for government in supporting school infrastructure, and that currently school building funds can be an important way of funding the infrastructure improvements necessary for delivering education outcomes in school communities. Peak bodies for schools which have school building funds emphasised the importance of indirect government support for the schools they represent (ACS, sub. 92, p. 2; NCEC, sub. 224, pp. 4–5). Independent Schools Australia (sub. 250, p. 3) estimated that across independent schools, fees and donations make up 82% of funding for capital works.

School building funds first became eligible for DGR status in 1954 (box 5.2), at a time when government support for non-government schools was very limited (O'Connell 2023). However, overall government support for non-government schools has expanded considerably since that time.

The change in overall government funding arrangements for non-government schools (notwithstanding the focus on recurrent expenditure) compared with when tax deductibility for school building funds was introduced does raise the question of whether the rationale for DGR status for school building funds continues to apply or would apply in the future. For example, O'Connell (2023, p. 296) concluded:

... we have gone from the position in the 1950s when many non-government schools needed assistance, to the current position where there is significant direct support for these schools from the national and sub-national governments as well as indirect support via the [school building fund] gift deduction. It can be argued that, like the deduction for private school fees, this position is no longer justified.

Currently, there are about 5,000 DGR-endorsed school building funds, making it the second most common category of DGR endorsement. They are used by many – but not all – non-government schools, as well for some public schools. The focus of the analysis in this chapter is on non-government schools, reflecting both that school building funds are more commonly used by non-government schools (approximately three-quarters of school building funds are maintained by non-government entities) and that this has been the focus of submissions to the inquiry. However, many of the same issues in relation to school building funds in non-government schools (both secular and religious) also apply in government schools, and in other education settings outside primary and secondary education where school building funds are also now used. The scope of the school building fund endorsement category has been widened through the interpretations

of recent court decisions (ATO 2023c), meaning that it is also used by other types of education providers, including for religious education, even though that is arguably beyond the original policy intent for the category (box 5.2).

Given the current design of the tax deduction for charitable giving in Australia, applying the principles for DGR status to capital expenditure leads to the same broad conclusions as those that apply to schooling more broadly. While adequate infrastructure is an important part of delivering education outcomes and there is a clear case for government support, providing such support through DGR status for school building funds is not the most effective or efficient mechanism.

DGR status for school building funds is unlikely to allocate support to areas of greatest need

A key reason that DGR status for school building funds is not the most effective or efficient way to allocate government funding is that DGR status for school building funds is unlikely to deliver support to the areas of greatest need in a way that aligns with the broader equity-based objectives and priorities of the education funding system. That is, the design of the tax deduction for donations means that support may be determined by factors such as the pool of likely donors (parents, alumni and the local community) and their motivations and capacity to donate, which is affected by income (chapter 4). Given this, the capacity of schools to raise funds through donations may not align with where the need for new or upgraded infrastructure is more acute. This includes servicing students with higher rates of socio-economic disadvantage and in growth areas where new schools and infrastructure are required.

In response to the draft report, there has been widespread support for retaining DGR status for school building funds (sub. DR278-001 to 846). Some participants also emphasised that school building funds are important to schools that do not charge high fees, including schools in suburban growth areas and regional Australia. For example, the Association of Independent Schools of NSW submitted that:

In NSW, the majority of enrolment growth for the past decade has occurred in low-fee Islamic, Anglican and general Christian schools in Sydney's growing western, southwestern and northwestern suburbs. Many of these schools were established during the past 40 years through the generous support of past parents who were able to provide tax deductible donations.

These schools, communities and future students would suffer disproportionately if DGR status were to be removed for school building and scholarship funds. (sub. DR680, p. 6)

However, the available data indicates that donations for school building funds in primary and secondary non-government schools are relatively concentrated among a limited number of schools (box 6.2). This supports the expectation that many schools servicing communities with greater socio-economic disadvantage are less likely to benefit from DGR endorsement for school building funds, because their potential pool of donors has less capacity to contribute voluntary donations.

Box 6.2 – Donations to school building funds are concentrated in a relatively small number of non-government primary and secondary schools

The Commission's analysis of donations to school building funds and how they are used is constrained, due to a number of factors. First, it is difficult to determine which DGR endorsement categories a charity has. Second, charities only report aggregated amounts for donations. Where charities have multiple DGR endorsements or collect donations for other purposes there is no systemic way to apportion these donations between different activities. Finally, the flexibility provided by donations, also means that that

Box 6.2 – Donations to school building funds are concentrated in a relatively small number of non-government primary and secondary schools

there is no systemic reporting of how donations are used. For example, in the case of donations for school building funds, these could be used for current capital projects, retained and invested for future works, or used for ongoing building maintenance (instead of recurrent funding sources).

Following the draft report, the Commission further analysed the available data to understand the characteristics of which charities have school building funds and the amount of donations they receive. This required a manual assessment of which charities have DGR status for school building funds, and for those that do have school building funds, whether they are used for a primary or secondary school, or another type of education activity.

Overall, there are about 5,000 endorsements for school building funds, of which three quarters (or approximately 3,500 endorsements) are for non-government entities, that is registered charities. However, the Commission's analysis indicates that the number of active school building funds (those that received a donation in 2020-21 based on the ACNC annual information statement) used by charities that appear to be primary or secondary schools is considerably smaller.

Analysis indicated that there were about 700 primary or secondary school charities with a single DGR endorsed fund that received donations in 2020-21 totalling about \$69 million. It was also estimated that there were 350 charities operating primary and secondary schools with multiple DGR endorsed funds. This includes both schools that have multiple DGR endorsements (such as combinations of school building funds, scholarship funds and library funds) and single entities that operate funds for multiple schools (which is a common feature of school building funds for Catholic schools). The Commission has estimated that the 350 charities with multiple funds covers a population of over 700 schools. Total donations reported by this subset was about \$162 million in 2020-21 (although this would include donations for scholarships and libraries, not just school building funds).

Even among these smaller subsets of school that received donations in 2020-21, donations to each school are not evenly distributed across schools, but are skewed towards a small subset of schools (table below).

Overall, total donations to school building funds (less than \$230 million in 2020-21) used in non-government primary and secondary schools are relatively small compared with the total annual revenue of these schools. Similarly, the level of Australian Government support indirectly provided to non-government primary and secondary schools through tax deductibility for school building funds is estimated to be less than \$100 million per year, which is small compared with other funding provided to non-government schools. However, this taxpayer support is concentrated among a relatively small subset of non-government schools.

The remainder of school building fund endorsements for charities, which account for about 2,000 endorsements, or more than half of endorsements for non-government entities, are held by primary and secondary schools that did not receive donations, or for other types of education activity.

Box 6.2 – Donations to school building funds are concentrated in a relatively small number of non-government primary and secondary schools

Distribution of donations to school building funds in primary and secondary non-government schools, 2020-21^a

| | Total donations (\$ million) | Average donation per school (\$ million) | Median donation per school (\$ million) | Share of total (%) |
|---|---------------------------------|--|---|-----------------------|
| School building fund only (719 schools) | | | | |
| Top 1% | 24.6 | 3.1 | 2.0 | 36 |
| Top 10% | 58.0 | 0.8 | 0.4 | 83 |
| Top 20% | 63.6 | 0.4 | 0.1 | 92 |
| Top 50% | 68.3 | 0.2 | 0.1 | 98 |
| Bottom 50% | 1.2 | 0.003 | 0.003 | 2 |
| Total | 69.4 | 0.1 | 0.01 | 100 |
| Multiple funds (adjusted for multiple schools – 736 schools)^b | | | | |
| Top 1% | 31.6 | 4.5 | n/a | 20 |
| Top 10% | 113.9 | 1.5 | n/a | 71 |
| Top 20% | 133.8 | 0.9 | n/a | 83 |
| Top 50% | 151.8 | 0.4 | n/a | 95 |
| Bottom 50% | 8.7 | 0.02 | n/a | 5 |
| Total | 160.6 | 0.2 | n/a | 100 |

a. Charities that received a donation in 2020-21 and were assessed as likely to be for a school building fund in a primary or secondary school. b. Charity assessed to be operating a primary or secondary that had multiple funds. Total donations may include donations for other activities such as scholarships or libraries. Median values can not be determined because where entities operate multiple schools, it was assumed that donations are evenly spread across schools.

Source: Commission estimates.

There are better alternatives for government support for school infrastructure

The intent of the proposed reform to DGR is not to withdraw government funding from the education sector, but it is clear that alternative funding arrangements could provide greater net benefits to the community by targeting support to the areas of greatest need.

To illustrate that DGR status for school building funds is unlikely to be the best way to support school infrastructure, the Commission has briefly canvassed some alternative approaches that could be used to provide government support for infrastructure in schools (table 6.2). Some of these options were discussed with inquiry participants during the hearings. While not being definitive about what approach would be the best, it is clear from these options that alternatives could incorporate design features that better align the allocation of taxpayer support with the rationales for providing that support.

Table 6.2 – Potential options for funding school infrastructure

| | |
|---|--|
| 1. Project-based competitive government grants | |
| How might it work? | Apply to government for project funding, allocated through competitive grant funding rounds. |
| Allocative effects on funding | Can be allocated based on need, depending on eligibility criteria and the capacity of potential applicants to meet criteria and timeframes of funding rounds. |
| Effects on giving | Parents could still make non-tax-deductible donations for additional infrastructure funding, but there may be some crowding out of private donations. |
| 2. Regular block-style capital funding | |
| How might it work? | Regular funding provided to schools for infrastructure based on criteria for capital resourcing needs, analogous to the SRS approach for recurrent funding. |
| Allocative effects on funding | Funding would be allocated using a needs-based approach, but with some certainty and flexibility for school managers. |
| Effects on giving | Parents could still make non-tax-deductible donations for additional infrastructure funding, but there may be some crowding out of private donations. |
| 3. ‘Arm’s length’ entities that receive tax-deductible donations | |
| How might it work? | Tax-deductible donations could only be made to arm’s-length charitable entities, who would then distribute funds to schools according to set equity or population growth criteria. |
| Allocative effects on funding | This would depend on the criteria (noting that entities with equity criteria would fit within the scope of the DGR system under the proposed reforms). |
| Effects on giving | Would remove the nexus between donors and beneficiaries, and substantially reduce (if not totally eliminate) the possibility of direct and indirect substitution between fees and donations. |
| 4. Matched grants, where government funding matches philanthropic donations | |
| How might it work? | Government would (partially or fully) match donations for eligible building projects. The implicit subsidy to donations would be more flexible and could be better targeted, relative to the current system (matched giving schemes, in general, are discussed in chapter 4). |
| Allocative effects on funding | Eligibility criteria (and therefore the implicit subsidy to giving) could be designed to better target a more diverse range of community needs (for example, population growth, regionality, gender and other socioeconomic factors). Projects in communities with less capacity to give may be less able to raise the necessary matching funds, but the implicit subsidy could be larger for these communities. |
| Effects on giving | Could encourage and perhaps crowd in additional giving depending on design and the implicit subsidy involved in the matching, and the extent to which eligible projects align with donor preferences. |
| 5. A new flat, capped tax deduction for donations into school building funds | |
| How might it work? | Individual tax-deductible donations would be capped and with a deduction applied at a flat rate, rather than based on the donor’s marginal income tax rate (chapter 4). |
| Allocative effects on funding | The distribution would be less skewed by removing scope for larger tax-deductible donations by higher-income people. |

| | |
|--------------------------|---|
| Effects on giving | Giving would change as a result of the flat rate, but likely decline overall due to the cap. Giving by lower-income people may increase, but higher-income people would still be more likely to give. |
|--------------------------|---|

6. Community access obligations for school building funds

| | |
|---------------------------|--|
| How might it work? | School building funds can still receive tax deductible donations, but with additional obligations to allow community access to facilities supported by such donations. |
|---------------------------|--|

| | |
|--------------------------------------|--|
| Allocative effects on funding | No change in distribution, but potential increase in wider benefits to the community from school infrastructure funded using tax deductible donations. |
|--------------------------------------|--|

| | |
|--------------------------|---|
| Effects on giving | May increase motivations to give for some donors. |
|--------------------------|---|

DGR status for school building funds also creates the potential for private benefit

Another reason that DGR status for school building funds is problematic is that it creates the potential for private benefit through the substitution between fees and donations.

The Commission has observed that some schools include voluntary contributions to school building funds on fee invoices, alongside tuition fees. Caulfield Grammar School submitted:

More than 99% of building fund donations are \$100 donations from parents via fee invoices.
(sub. DR682, p. 2)

The solicitation for donations from the people who are also charged fees is strongly indicative that the main beneficiaries from an organisation's service are likely to be the individual recipients of the service and that any broader community-wide benefits are likely to be incidental.

Of course, the practice of including voluntary donation amounts on invoices, or otherwise signalling suggested donation amounts is not a universal practice and approaches to fundraising vary. Independent Schools Victoria submitted that that only 'a minimum of schools include references to voluntary donations on fee invoices' (sub. DR514, p. 19). Some individual schools also submitted that they do not include donations on invoices (Geelong Grammar School and Geelong Grammar Foundation, sub. DR460, p. 2; Melbourne Grammar School, sub. DR422, p. 2; Ruyton Girls' School, sub. DR614, p. 1).

Some non-government schools – including both Catholic and independent schools – also impose compulsory building levies (Catholic Education, Diocese of Wollongong 2024; Christian Brothers' High School Lewisham 2024). The compulsory nature of these levies means they are not tax deductible and do form part of their fee structure for students.

Long lead times for new buildings does not remove scope for private benefit

One argument put forward for why the donations for infrastructure do not provide scope for private benefit was that the long lead times in building new infrastructure means that donations would typically be used for infrastructure that would benefit future students rather than current students, which was articulated as 'paying it forward'. For example:

Fundraising campaigns often pre-date actual planning and construction by many years, further removing current families from any likely benefit. Families recognise that their children are enjoying the fruits of previous capital works that pre-date them by many years, and their contributions are as much about 'paying it forward' much like the previous generations or school cohorts. (Scotch College (Western Australia), sub. DR351, p. 2)

However, this does not necessarily remove the likelihood of private benefit; rather it demonstrates intertemporal reciprocity between donors. Essentially, the benefit enjoyed by current students from the donations of their predecessors invokes an implicit compact that encourages donations by the current generation.

Donations from alumni and other community members do not entirely remove private benefit either

Participants also commented that donations are not just received from parents but from alumni and the broader school community. Estimates of the share of parent contributions relative to those from alumni and other donors vary widely from about 5% up to 100% (Australian Council of Jewish Schools, sub. DR452, p. 8; Caulfield Grammar School, sub. DR682, p. 2; Korowa Anglican Girls' School, sub. DR347, p. 3; Melbourne Grammar School, sub. DR422, p. 2; Wesley College, sub. DR489, p. 3). As a further example, Educate Plus cited a survey of their members and submitted that:

On average, between 30 – 56% of donors to the Building Fund were current parents. The majority were Alumni or friends who have no immediate and personal involvement in the school ...
(sub. DR735, p. 3)

The Commission acknowledges that a broader donor pool can reduce the extent of private benefit. However, other donors such as alumni may still be motivated to donate by private benefit, whether this is an element of the reciprocity noted above, or a private incentive to maintain the reputation of the school they attended. There is also little transparency about overall donor profiles or how donations are solicited, so while some entities may source donations largely from donors other than current fee payers, this is not universal nor a necessary requirement of the current DGR system.

Participants also noted that infrastructure can have wider community benefits, such as where infrastructure is made available for community groups and weekend sporting competitions (Edmund Rice Education Australia, sub. DR738, pp. 1–2; Independent Schools Victoria, sub. DR514, pp. 14–15; Lauriston Girls' School, sub. DR692, p. 1; Our Schools, sub. DR624, p. 1; Scotch College Adelaide, sub. DR328, p. 3). Providing sufficiently open access to infrastructure could provide additional justification for supporting these activities through the DGR system, as the nexus between donors and beneficiaries would be far weaker.

However, there are some counterarguments to this. The first is that in practice it is likely that an arrangement where school infrastructure is made available for community use would be difficult for the government to implement and enforce on an ongoing basis. A requirement that activities and infrastructure that are funded through tax-deductible donations are used for broader community purposes on an ongoing basis may also necessitate high compliance burdens for entities engaging in these classes of activity. Another factor is that the allocation deficiencies under the second DGR principle still arise. That is, even if infrastructure is made accessible to the wider community, it will not necessarily be of the type or in the locations where there is the greatest need.

Whatever the motivation, receipt of donations puts downward pressure on fees

There is little doubt that substitution between donations and fees in the revenue mix used to meet school costs, including for infrastructure, does occur, given the inherent fungibility of revenue sources.

Indeed, many participants responded to the draft report by stating that withdrawal of DGR status for school building funds would have upwards pressure on costs to parents (sub. DR278-001 to 846). Some examples are illustrated in box 6.3.

Box 6.3 – The effect of removing DGR status for school building funds on fees

Navigator College submitted:

Removing DGR status for non-government school building funds will shift more financial burden onto families, who already make significant sacrifices to support their children's education and are doing their best to manage the ever-increasing cost of living pressures. (sub. DR415, p. 2)

Scotch College Melbourne submitted:

If the recommendation to remove tax deductibility for donations to building funds is adopted one immediate implication is that more of the financial burden of not just the recurrent expenditure, but also capital expenditure, will be borne by fee paying families already trying to deal with cost-of-living pressures. (sub. DR549, p. 2)

St Joseph's College Hunters Hill submitted:

... removing the incentive of tax deductibility is likely to greatly diminish the level of philanthropic support we currently receive and result in much greater pressure on school fees to fund future capital works. (sub. DR736, p. 1)

These responses, coupled with the fact that some schools do charge compulsory building levies (presumably where voluntary donations are insufficient to cover infrastructure costs) strongly indicate that the receipt of donations does result in lower fees for students and therefore creates a material risk of donations being indirectly converted to private benefits for fee payers. As discussed above, this indirect form of substitution is not dependent on an explicit acceptance of donations in lieu of fees that would be in breach of donation rules.

Given the overarching rationales for government support for education, including as articulated in the funding principles developed in the Gonski review, there is not a compelling case for facilitating fee reductions via this particular mechanism, except where it is explicitly designed to achieve equity objectives to provide support for those in need.

Removing DGR status for school building funds would be a substantial change from the status quo. The Commission has proposed transition arrangements (discussed below), which would provide time for schools and potential donors to adapt. The Australian Government should also develop alternative capital funding arrangements concurrent with the transition to withdraw access to DGR status for school building funds (recommendation 6.3). It should also be noted that under the Commission's proposed reforms tax-deductible donations could still be used to fund school buildings in certain cases, such as where the institution is a PBI or where other equity criteria are met (discussed below).

DGR status for school education should have an equity focus

Consistent with the overarching rationales for government support for education, the Commission is proposing that education charities should be able to obtain DGR status for activities that have an equity objective.

Currently, some education charities are registered as PBIs and have DGR status that covers all of their activities. All activities undertaken by charities registered as PBIs should be in scope for DGR status – and this includes schools and other education providers that are directed at groups of the community in need. For example, many non-government schools in remote Aboriginal and Torres Strait Islander communities

currently have DGR endorsement as a result of PBI registration and this would remain the case under the Commission's proposed reforms.

The Commission is also proposing that DGR status should be widely available to education charities (including those that are not PBIs) for activities that have an explicit equity objective. This would expand coverage to charities in the education subtype for activities that are analogous to those undertaken by PBIs. It is expected that this would cover activities focused on cohorts of students facing socio-economic disadvantage, or that are otherwise identified as priority cohorts of students. The criteria used to define if an activity has an equity objective should be set with reference to existing measures, such as those used for SRS student-based loadings and Index of Community Socio-educational Advantage (ICSEA) values. Setting these criteria will require further judgement about what the thresholds for eligibility should be (such as how low an ICSEA score would need to be to qualify for DGR status for all of a school's activities). However, it is not envisaged that a school would qualify for DGR for all its activities simply by virtue of a below average ICSEA score.

Adopting this approach means that DGR status for education activities would be focused in a way that is consistent with the broader rationale for government support and which would incentivise philanthropy where there are likely to be greater community-wide net benefits. Requiring an equity focus also provides an additional integrity measure because there is less likely to be a close nexus between donors and beneficiaries.

The activities that would be covered would include providing scholarships to assist disadvantaged students access education opportunities. This would be narrower than the current scholarship endorsement category, which means that some existing scholarships, such as those without any needs-based criteria, would need to be refocused to remain within the scope of the DGR system. DGR status could also be accessed to fund programs and facilities that specifically assist disadvantaged cohorts of students. This would be accessible even where a school or other charity is not a PBI and the activity is only a part of the entity's total activity. Where such activities only constitute part of a charity's activities, the charity would need to meet the gift fund requirements to quarantine tax-deductible donations to the specific equity activity.

More generally, the equity objective requirements could mean 'arms length' charities with DGR status that have specific equity objectives are used to make grants for school infrastructure. An arms length entity could sever the nexus between donors and beneficiaries and, in doing so, address the material risk that donations are converted into a private benefit. For example, Australian Schools Plus (sub. 108), which currently has DGR status through a specific listing, would likely become eligible for DGR status under the Commission's proposed reforms.

Focusing DGR support to primary and secondary education activities that have an equity objective would help direct taxpayer support towards those activities that are likely to have a greater community-wide benefit.

Some other education activities should be excluded

DGR status should also not be extended to other education activities, including early childhood education (including in conjunction with care services) and various forms of informal education (as distinct from the public dissemination of information, such as public research), including where this is supported through a school building fund. Such activities are likely to pose many of the same risks of not meeting the principles in figure 6.1 due to the material risk of converting tax-deductible donation into private benefits. Excluding these activities will create a more consistent approach to the treatment of charitable activities in the education subtype.

Religious education activities (other than those classified as formal higher education) should also be specifically excluded to maintain consistency with the approach for the advancing religion subtype (discussed below). Not doing so would risk creating an inconsistent approach to how activities related to the advancement of religion would be treated under the Commission's proposed reforms.

The implication of this is that DGR status for religious education in government schools (and alternative ethics education) should be withdrawn. Participants raised considerable concern about this outcome and expressed the view that such activities have significant positive outcomes for students and social cohesion (ECAJ, sub. DR547, p. 4). The Commission is not questioning the value of these programs or the importance of faith more broadly; on the contrary, the Commission acknowledges faith is an important motivator of charitable activities that benefit the wider community. The question is one of policy, and whether the DGR system is an appropriate way to provide taxpayer support for these activities. Participants also noted that there can be considerable compliance burdens imposed on providers by state and territory authorities as a condition of operating in schools and that donations are the primary revenue source available to providers to meet these costs. These compliance burdens reflect that religious education in government schools is largely driven by state and territory government policies (box 6.4).

Box 6.4 – Religious education in government schools subject to state and territory arrangements

The arrangements for organisations to provide religious education in government schools vary across jurisdictions because of differences in legislation and policies. Examples of these differences include the following.

- In New South Wales, under the *Education Act 1990* (NSW) regular time is made available (during the school day) for the delivery of special religious education (SRE) or alternative ethics education by approved external providers (NSW Department of Education 2024).
- In Queensland, there is a similar approach to that in New South Wales. Up to 1 hour per week is made available during the normal school day for ‘religious instruction’ by approved external faith organisations. One notable difference is that ethics cannot be delivered as an alternative (Queensland Department of Education 2022).
- In Victoria, the approach is markedly different. Schools can offer up to a maximum of 30 minutes per week of special religious education, but it can only be offered as an extra curricular activity either at lunchtime, or before or after school (Victorian Department of Education 2023).

Approved providers are subject to a range of obligations to operate in schools. These obligations have both child protection and content elements. For example, in New South Wales these obligations include: being approved as a provider of SRE and completing an annual assurance process; developing a curriculum scope and sequence that is made available to parents and schools; recruiting training and authorising teachers (including ensuring teachers over 18 years have Working with Children Check clearances); and having a process in place to manage any complaints made about the provider (NSW Department of Education 2024).

Providers of SRE in New South Wales reported that there is no state government funding provided to approved providers they are reliant on donations to fund their activity, including compliance with the obligations to operate in schools (Inter-Church Commission on Religious Education in Schools (NSW), trans., p. 122; Catholic Archdiocese of Sydney and Catholic Diocese of Broken Bay, trans., p. 201).

The differences in policies about religious education in government schools have resulted in considerable apparent differences in the scale of this activity between jurisdictions. This is evidenced by the concentration of participants concerned about the proposed removal of this DGR endorsement category from New South Wales, where religious education by external providers is more embedded.

Box 6.4 – Religious education in government schools subject to state and territory arrangements

One consequence of these differences is that the use of tax-deductible fundraising (and hence the provision of Australian Government support) for religious education in government schools is governed by the different approaches adopted by individual state and territory governments.

Formal higher education should remain within the DGR system

Formal higher education activities, including public universities, TAFEs and approved higher education institutions under Division 16 of the *Higher Education Support Act 2003* (Cth), would remain within the scope of the DGR system under the Commission's proposal.

Some participants have questioned the distinction between the treatment of higher education and the proposed approach for primary and secondary activities (Independent Schools Victoria, sub. DR514, pp. 7–8; St Hilda's Anglican School for Girls Foundation, trans., pp. 422–424), but the Commission considers that there are sufficient distinct differences to justify maintaining the status quo for higher education activities.

There are some similarities between school education and higher education. For example, these institutions also typically charge fees and alumni may have similar incentives to donate in order to gain career benefits by maintaining the reputation of the institution.

However, there are some sufficiently distinct differences, which mean there is less likelihood of donations being used in a way that provide scope for a substantive private benefit to the donor. One is that student populations tend to be larger, meaning the benefits from an individual donation are diffused across a larger population. Greater government control over fee setting for these institutions is another factor that mitigates the risk of private benefits (for example, many students pay set fees through the Higher Education Loan Program). The typically larger size and smaller number of these institutions also means that there are likely to be fewer allocation problems with providing taxpayer support through the DGR system.

These institutions also tend to be involved in public research and it is not the intention of the reforms to restrict access to DGR status for education activities that disseminate public research and information to the general public.

There are some other charitable activities where the status quo should be maintained and DGR status should not be extended

There are some classes of charitable activities that are currently broadly excluded from the DGR system where the status quo of not providing access to DGR status for these activities should be maintained.

Extending DGR status to early childhood education and care and aged care risks misallocating government support

The activities of early childhood education and care (which can fall within the charity subtypes of advancing education and/or advancing social welfare) and aged care (that falls within the charity subtype of advancing social welfare) should continue to be excluded. Expressly excluding these activities provides greater clarity about the types of activities that should and should not be supported through subsidised philanthropy. However, it is important to note that as per the Commission's proposed approach for other education activities, PBIs undertaking early childhood education and care or aged care activities would continue to be eligible for DGR status.

As with school building funds, this exclusion is based on a concern that where the main activities of a subtype of charities is charging fees to provide services to beneficiaries, there are material risks that donors would convert a tax-deductible donation into a substantial private benefit. A further reason for excluding these charitable subtypes from the DGR system is that there are other extensive government funding arrangements in place for both aged care and early childhood education and care activities. Extending DGR status to these activities risks inequitable and allocatively inefficient provision of additional government support that would overlap with those other funding arrangements.

No strong case for government support of activities with the sole purpose of advancing religion through the DGR system

Religious organisations and the practice of religion plays an important role in many people's lives and in a range of communities across Australia, although there are different perspectives on the personal value of religion. Some researchers have found that religious beliefs are associated with higher economic growth (McCleary and Barro 2019; Weber 1905). Religious faith and values can also provide important inspiration for undertaking a range of charitable activities. For some people, undertaking activities such as helping those in need is how they put into practice their religious beliefs and values within the community.

Many participants in this inquiry have highlighted the community benefits of religious activities and the interconnectedness of religious practice (activities for the purpose of advancing religion) and other charitable activities (Baptist Care Australia and the Baptist social service agencies, sub. 152, p. 3; Mark Fowler, sub. 268, pp. 38–45; Publica, sub. 55, pp. 2–6). This point was also reemphasised in response to the draft report (Anglican Church Diocese of Sydney, trans., p. 189).

Some participants also raised concerns regarding the proposed limitations to the scope of the DGR system set out in the draft report, and the exclusion of charities with the purpose of advancing religion (Australian Catholic Bishops Conference, sub. DR706, pp. 26–27; Church of Scientology Australia, sub. DR603, p. 11; ECAJ, sub. DR547, pp. 1–2; Freedom for Faith, sub. DR606, p. 5; HRLA, sub. DR485, p. 2).

Charities that have a sole charity subtype of advancing religion comprise about 25% of ACNC registered charities – charities registered with this subtype largely provide worship services to their communities. A further 3% of registered charities combine the subtype of advancing religion along with one or more other charity subtypes. Currently, activities that advance religion are largely excluded from the DGR system, with some exceptions, including for school building funds and providing religious instruction in government schools (discussed above). In addition, many charities with DGR status do have a religious connection, including where a charity has multiple purposes or where charities are established as separate entities by a religious organisation to do charitable work. In these cases, DGR status has been granted with respect to those activities (for example, homelessness, health and disaster response services) rather than activities specifically for the purpose of worship (advancing religion) – this should continue.

However, applying the principles in figure 6.1, the Commission does not consider that there is a strong rationale for expanding the scope of the DGR system to include charitable activities that are specifically for the purpose of worship (advancing religion). As emphasised above, this is not based on a view that religious practice does not provide a benefit to the community. Faith is important to many people and matters greatly. Even so, there is no clear rationale for government support through the DGR system to influence the extent to which activities solely for the purpose of advancing religion are provided in Australia, above and beyond that which would occur in the absence of that support.

There is also a material risk of a nexus between donors to religious organisations and beneficiaries. Donations to a religious institution for purely religious activities tend to benefit the people who regularly participate in the activities of the institution. This is in contrast to other services that religious institutions may

provide, guided and inspired by their religious ethos and values, such as relief for those experiencing hardship and other activities that benefit the broader community. Under the Commissions proposed reforms, it would be easier to obtain DGR status for such activities.

Given these considerations, there is not a strong case for changing current arrangements and extending DGR status to charities solely for the purpose of advancing religion.

It is important to note that the Commission is not the first body to recommend reform of the DGR system to expand its scope but to exclude charities solely for the purpose of advancing religion. The Not-for-profit Sector Tax Concession Working Group came to a similar conclusion in its final report, albeit for different reasons:

In the case of charities for the advancement of religion, it is the view of the Working Group that given the pluralist nature of our society, additional support through deductible donations is not warranted. (Treasury 2013, p. 24)

Similarly to the Not-for-profit Sector Tax Concession Working Group's proposal, the Commission's approach will enable religious charities to access DGR status for other charitable activities that do not have specific exclusions. This could include activities for the purpose of advancing social welfare (such as providing emergency food and accommodation) and would support these important community outreach activities that build social capital. This was viewed as a worthwhile expansion in the DGR system by participants such as the Anglican Church Diocese of Sydney (sub. DR294, pp. 7–8) and the Australian Catholic Bishops Conference, which submitted:

As demonstrated by recent interest in 'place-based initiatives', the effectiveness of local knowledge and initiative in meeting local benevolent need cannot be understated. The Commission is to be commended for having regard to the contribution that small-scale local relief may play in encouraging philanthropy and social cohesion. (sub. DR706, p. 28)

Religious-based charities could also potentially access DGR status for activities for the purposes of advancing reconciliation or human rights. Activities for these purposes could include promoting religious tolerance and advocating for religious freedoms.

Some participants proposed removing the advancement of religion as a charitable purpose within the Charities Act (Humanists Victoria, sub. 220; Rationalist Society, sub. 219). The effect of doing so would remove access to other tax concessions for these charities, such as the income tax exemption. Although the Commission is not proposing to extend access to DGR status to charities that have a sole charity subtype of advancing religion, it is not recommending any changes to the Charities Act, nor changes to the existing eligibility for the income tax exemption for charities outside the scope of the DGR system.

Certain activities in the 'other analogous purposes' subtype should be excluded

The 'other analogous purposes' subtype includes charities with any other purpose beneficial to the public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes mentioned in the other subtypes.

Charitable activities covered by the other analogous purposes subtype that are similar to the excluded activities in other subtypes should also be excluded to maintain the consistency of the coverage of the DGR system. This is an integrity measure designed to ensure that a person could not register a charity with the subtype of 'other analogous purposes', rather than an excluded subtype, to obtain DGR status.

Activities that have the charitable purpose of 'advancing industry' should also be excluded. The Commission has previously been critical of granting charity status (and the associated tax concessions) to agricultural trading companies such as Co-operative Bulk Handling Limited and Queensland Sugar Limited, and recommended that the Australian Government should legislate to exclude agricultural commodity trading

companies from being granted charity status and receiving the associated tax concessions (PC 2016, p. 510). Based on the principles outlined in this chapter, the Commission remains of the view that there is a case for specifically excluding all charities that advance industry from the DGR system. The Commission has also recommended a review of charities law and regulation by the Australian Law Reform Commission (recommendation 7.3), which could consider broader questions regarding the scope of the definition of charity, including whether the definition should extend to advancing industry and related matters.

Expanded eligibility for advocacy activities, except where they further an excluded activity

Under the Commission's proposed reforms, charities undertaking advocacy activities in furtherance of most charitable purposes would become eligible for DGR status. This proposal was supported by many participants (Australian Alliance for Animals, trans., p. 281; AIDN, sub. DR699, p. 3; Reconciliation Council of Tasmania, sub. DR674, p. 1; Stronger Charities Alliance, sub. DR442, p. 1).

Advocacy activities in furtherance of another charitable purpose can provide public benefits associated with the generation of public debate and contribution to democratic policy making processes (box 2.5). This can include where charities have different perspectives on issues. Such advocacy can also be an integral part of the way that many charities seek to undertake their mission and pursue their charitable purpose, and are often difficult to distinguish from their broader activities, particularly where activities have a prevention focus.

For example, a social welfare charity may argue for policy reform based on the lived experience of those they work to support in the community, seeking to reduce the need for the front-line services they provide. In other cases, advocacy activities can provide benefits by encouraging robust debate and enabling groups within the community to convey their perspectives on issues that affect them, facilitating their input into democratic processes and policy outcomes (where that input is in furtherance of another charitable purpose). The importance of this type of advocacy was raised by ACOSS, which commented that:

It's really important from a democratic and equity perspective in part to balance the otherwise often dominant voices of other much more powerful and well-resourced interest groups.

And it's a necessary kind of – and I think it's a useful adjunct to service delivery work for organisations to be resourced to translate what they observe and identify in terms of patterns, problems and solutions from service delivery into policy research and practice. (trans., p. 551)

There are constraints on advocacy activities that charities can undertake, including that charities cannot have a 'disqualifying purpose' such as engaging in, or promoting, activities that are unlawful, or promoting or opposing a political party or candidate for political office. The Commission considers that these are necessary and appropriate limitations designed to preserve the independence of charities and avoid charities being used for partisan political purposes. These limitations sit alongside the various other regulatory obligations and reporting requirements charities, in general, are subject to under the ACNC regulatory framework (chapter 7), which are designed to ensure a minimum level of transparency and accountability. Charities may also be subject to other obligations, such as those governing electoral expenditure and disclosure (AEC 2022). However, it is important to note that these constraints specifically do not restrict charities from expressing views on policy issues which are different from the government of the day or the wider public.

The only exception to this expansion would be charities registered with the ACNC under the law subtype whose activities are to further another subtype or class of activity that is specifically excluded under the Commission's proposals. For example, a charity registered under the law and advancing religion subtypes would currently be ineligible for DGR status and this would stay the same. That said, a charity registered with the advancing human rights subtype that had a particular focus on protecting religious freedom would likely

be eligible for DGR status. For the avoidance of doubt, the Commission does not expect any instances where a charity focused on advocacy that is currently eligible for DGR status would become ineligible on the basis of the Commission's proposals.

No proposed changes to the scope of charitable purposes

The Commission has not made any recommendations about changes to the scope of charitable purposes. The implication of this is that DGR status would not be extended beyond activities that further a current charitable purpose (or analogous activities undertaken by a government entity). However, if new charitable purposes and corresponding charity subtypes were to be added in future, these would need to be assessed against the principles adopted in this chapter in determining if they should be eligible for DGR status.

Activities like sport should only be eligible for DGR status if furthering a charitable purpose

Participants advocated that community sport be included within the scope of the DGR system on the basis that it provides public benefits analogous to those that are considered charitable and within the scope of the DGR system (CAS, sub. 49, pp. 3–4, sub. DR548, pp. 1–6).

Community sport has many positive economic and social benefits and has parallels with other purposes that are considered charitable. For example, many community sporting activities may have the consequence of promoting physical health and fitness, improving mental health or relieving social isolation. A point emphasised by the Confederation of Australian Sport:

Community sport also plays a critical role in providing a welcoming, inclusive, supportive environment – to improve mental health and/or relieving social isolation.

Further – involvement in the inclusive club environment focusses the attention of potentially 'distracted/at-risk' individuals towards a positive use of their time and ensures they are not focussing unduly on negative pursuits of alcohol, drugs, violence and anti-social behaviours which are all drivers of crime. (sub. DR548, p. 2)

The Commission does not consider that there is a case for changing current arrangements and extending the scope of the DGR system to cover activities undertaken by non-government entities that are not currently registered as charities with the ACNC, including community sport. Without status as registered charities, sports organisations are not subject to the same regulatory oversight. This means that the governance structures and objectives of sports organisations are likely even more diverse than for registered charities and there may not always be the same public benefit considerations that apply to registered charities under the Charities Act.

Participants advocated that sport should be recognised as a charitable purpose in its own right (ASF, sub. 197, sub. DR565; CAS, sub. 49, sub. DR548; Law Council of Australia, sub. 255, p. 9; Lord Mayor's Charitable Foundation, sub. 106, p. 9).

This issue was considered in the 2001 Charities Definition Inquiry, which recommended that sport for the purposes of amusement or competition *not* be considered charitable, but should be considered charitable where used to further another charitable purpose (Sheppard et al. 2001, pp. 200–201). The Commission shares this view.

Irrespective of the issue of charitable status, there are other factors that suggest DGR status may not be the best way of providing government support for community sporting organisations, following the principles in figure 6.1.

It is not apparent that DGR status is likely to be a better alternative for providing government support for community sport compared with the alternative approaches already used by governments, such as grants or the direct funding of sporting infrastructure. Financial cost is just one of the potential barriers to participation in community sport and is not always the main consideration. The time commitment can also be a motivating factor that can encourage substitution to less structured activities (Clearinghouse for Sport 2023). As such, the effect of extending DGR status to certain types of non-charitable sporting activities may not have a substantial effect on participation in sport, meaning that the additionality that could arise from providing government support in this way is uncertain.

Further, organised sport undertaken for recreation or competition commonly involves fees for participants. In these instances, there is a material risk of converting tax-deductible donations into lower fees for the participants.

As such, there is not a compelling case for expanding the DGR system beyond the scope of registered charities. However, this does not mean that sporting activities would not receive any private support or support from taxpayers. Sporting activities would still be able to receive private donations, but they may not be tax deductible. There are also auspicing arrangements through the Australian Sports Foundation, which would continue to provide an option for accessing tax-deductible donations for sporting activities that participate. The Commission acknowledges that there are concerns that this option does not work well enough for community sport (CAS, sub. DR548, p. 3), and that because sport is not a recognised charitable purpose, there are restrictions on access to donations from ancillary funds (ASF, sub. DR565, p. 4).

Sporting activities would also still qualify for DGR status where used by a charity to further a charitable purpose (such as promoting fitness or improving mental health). This is consistent with the broader principle that charities can undertake a range of activities in furtherance of a charitable purpose, even if those activities themselves may not be intrinsically charitable (*Commissioner of Taxation v Word Investments* [2008] HCA 55). This principle would be unchanged by the proposed reforms to the DGR system.

No strong case for defining public interest journalism as a charitable purpose

The Commission's proposed reforms to the DGR system would expand access to DGR status for public interest journalism organisations. This expansion has been supported by participants (Croakey Health Media, sub. DR720, p. 3; PIJI, sub. DR643, p. 5; The Pineapple Association, sub. DR309, p. 2).

Expanding DGR status to public interest journalism raises questions about the need to define the scope of public interest journalism activities that would be eligible. For example, whether there is a need to consider requirements about the engagement of professional journalists, criteria for editorial independence and freedom from commercial or partisan influence (AAP, trans., pp. 58–59; Croakey Health Media, sub. DR720, pp. 3–4; PIJI, trans., pp. 464–469).

Some participants also argued that there should be changes to create a specific charitable purpose of public interest journalism, which would then need to be defined. Calls for a specific charitable purpose are based on views that public interest journalism does not neatly fit into an existing charitable purpose, and hence charity subtype (AAP, trans., p. 54). A specific charitable purpose is also considered as a way to signal the importance of public interest journalism to the community. For example, Croakey Health Media submitted:

Making public interest journalism a standalone DGR category would send a very important signal of support for the growth of this sector, and would also align with Government policies aimed at supporting a more diverse media landscape. It would also send a strong signal to the philanthropic sector and wider community about the significance of not for profit journalism. (sub. DR720, p. 3)

The current arrangements do not offer a single consolidated option for journalism activities and charities that undertake journalism activities can be registered with a range of charity subtypes, including education, social

welfare, culture and the other analogous purposes category. While this flexible approach may not provide the clarity or signalling that participants sought, it nevertheless appears that there is sufficient flexibility in the existing charitable purposes to enable not-for-profit journalism entities to register as charities. That is, it is not clear there are substantive barriers to the establishment of charities for the purposes of public interest journalism.

Further, under the proposed reforms to the DGR system, it is anticipated that journalism activities undertaken by entities that meet the criteria for charitable status would qualify for DGR status regardless of which charity subtypes the charity is registered with. While the Commission has proposed some exclusions in the education subtype, including for informal education activities, it is not intended that this would exclude the public provision of journalism that is more akin to public research activities than direct education services provided to discreet cohorts of students.

Given this assessment, the Commission has not found a case for adding an explicit purpose of journalism to the list of charity subtypes in the absence of a broader review of charitable purposes, which is beyond the scope of this inquiry.

A consistent approach to government entities and charities

DGR status for government entities should be determined in a manner consistent with the operation of the DGR system for charities. While government entities cannot be registered as charities, government entities should be restricted to DGR status for charity-like activities that that would be eligible for DGR status if they were undertaken by a charity. That is, it should not be for activities that are analogous to those charitable activities that have been specifically excluded. Such an approach would ensure consistency in the treatment of activities whether they are undertaken by charities or government entities and make the DGR system simpler and easier to understand for donors.

This approach is consistent with the recommendation of the Not-for-profit Sector Tax Concession Working Group that there should be a separate DGR category for entities that would be charities but for their connection with government (Treasury 2013, p. 26).

Taking a consistent approach to DGR status for government entities means that DGR status for some government entities should be removed, in particular, school building funds. School building funds in government schools pose similar risks in terms of allocating government funding as those in non-government schools. In part, they duplicate other government sources of funding, and given the primary role of state and territory governments in funding government schools could encourage cost-shifting between governments.

There is also a possibility that expanding the scope of the DGR system could mean that there are more government entities undertaking activities analogous with activities within the expanded scope of the DGR system.

There are various options for implementing and administering a consistent approach to government entities and charities. One option could be for the ACNC to assess government entities and determine that they are 'charity-like government entities', with the ATO then administering the rest of the process for granting DGR status. This would be analogous to the approach for charities, although these entities would not necessarily be subject to other requirements of charity registration. Depending on the approach taken to setting the scope for DGR status for government entities and how this is administered and determined, there could be additional resourcing requirements for regulators.

Increasing transparency of the specific listing process

As discussed in chapter 5, in exceptional circumstances the specific listing process can have a role to provide DGR status for new activities that may arise that are outside the general scope of the DGR system

and where there would be benefits from providing government support through subsidised philanthropy. However, the existing process lacks transparency, is time consuming for entities seeking specific listing and can lead to inconsistent outcomes. Access to decision makers can be an important factor in an entity being specifically listed. The process also lacks any ongoing regulatory oversight of specifically-listed entities. The response to this has been to grant new specific listings for fixed periods, typically five years, but this raises concerns for specifically listed entities, because of the uncertainty of their future access to DGR status and the additional cost of seeking relisting.

The proposed reforms to the DGR system would broaden access for charities to DGR status based on their activities and reduce the compliance burdens on charities that undertake broad activities that cut across different DGR endorsement categories. Accordingly, the role for the specific listing process should be greatly reduced.

However, the Commission acknowledges that circumstances may arise in the future, such as one-off events, that may not fit neatly into the proposed principles-based framework and that this warrants the retention of the specific listing process, albeit in a modified form.

Some participants have submitted that the specific listing mechanism should be retained in its current form and that consideration by the parliament is sufficient to address any risks from a lack of transparency (BDO Services, sub. DR718, p. 13; RFDS, sub. DR406, p. 17). However, other participants did see a need for additional transparency (NSWCCL, sub. DR616, p. 4; SVA, sub. DR716, p. 3).

The Commission agrees that the specific listing process should be refined to make it more transparent, which would increase sector confidence that it is used only in genuinely exceptional circumstances.

At present there is some transparency for the process once the Australian Government has revealed which entities it intends to specifically list. Details about proposed specific listings, including expected costs to the Government, are contained in explanatory memoranda of bills and the Budget or Mid-Year Economic and Fiscal Outlook, and bills are subject to parliamentary scrutiny. However, there is no transparency regarding the process before this point, and the assessment of the benefits of the activity relative to the costs. That is, there is no available information about:

- how many entities submit proposals for specific listing or the identity of these entities
- the process and criteria for assessing the relevant merits of proposals
- the reasons for selecting certain entities for specific listing but not others.

A more formalised process to assess specific listing proposals could be one way to overcome some of the current shortcomings and perceptions of politicisation of the selection process, reduce the submission of proposals that are unlikely to be successful and improve overall transparency.

One option for providing this advice could be to establish an independent panel to assess proposals and provide advice to the relevant minister. This option has previously been proposed as a means to improve the current system (Philanthropy Australia 2017, pp. 12–13). There are questions about how such a panel might be constituted and supported, and it would involve time and expense to establish and maintain. It is not clear that this would be warranted given the Commission's proposed reforms should materially reduce the need for the specific listing process.

The Commission's view is that there is scope to make the current process more transparent. Treasury already provides advice on specific listing proposals to the Government, although this advice is not made public. At present, there is little guidance for applicants on the assessment criteria, beyond asking an applicant to detail the unique characteristics of the entity and the broad public benefit of the proposal. Comprehensive guidance about how proposals will be assessed is difficult because specific listing should only be used in exceptional circumstances where entities have unique characteristics. However, general

guidance could be provided, including that proposals will be assessed with reference to the general principles for the scope of the DGR system (figure 6.1) and that the applicant should provide detailed reasons for why DGR status is warranted despite the entity not being eligible for DGR status through the standard endorsement process.

When the Government announces which entities it intends to specifically list, it should also provide more information about how it determined that specific listing was warranted, based on the activities an entity will undertake. This should include publishing details about the entire pool of entities that have applied for specific listing and explain the reasons why or why not each application has been approved. These reasons should reference the principles for the scope of the DGR system proposed by the Commission and explain why an entity should be listed given it not eligible for DGR status though the standard endorsement process. Specific listing is ultimately a matter for ministerial discretion and the exceptional circumstances that may arise to warrant it are difficult to foresee and hence provide guidance about. Nevertheless, improved processes, including providing information about why proposals were rejected could provide more rigour around specific listing and reduce perceptions of political bias.

Currently, specific listings require a legislative amendment to be passed by the parliament to give effect to a decision to grant DGR status. Although this provides additional oversight, it should be balanced against the resources used for such a process. Some degree of oversight is warranted and there have previously been proposals to make specific listings through regulation instead of legislation (Costello 2002). A change to enable prescribing an entity as a DGR by regulation could simplify the process of specifically listing new entities. It could also simplify the process for the subsequent removal of specific listing where an entity is no longer active or there are other reasons to withdraw DGR status.

DGR status granted to charities through specific listing should be subject to the same eligibility requirements applying to other entities granted DGR status, including the need for wind-up provisions and gift funds where the specific listing is for a particular activity rather than the entity as a whole (chapter 5). This would ensure that DGR-related funds were only used for the purposes for which the status was granted, there is some degree of regulatory oversight and there is a mechanism in place for redistributing DGR-related funds if the entity's specific listing expires or the entity is wound up.

Better processes and conditions on specifically listed entities could also enable alternative approaches to the five-year listing approach where there is not a particular case for a time-limited listing. The five-year limit has been raised by participants as a concern about the current process (chapter 5). Where specifically listed entities are charities and have gift funds with wind-up rules, it may be appropriate for those charities to retain DGR status while they remain registered charities. Consideration could also be given to periodical assessment of specifically listed entities, with amendments made to remove listings where appropriate. For example, the ATO is currently undertaking a process to review the DGR status of specifically listed entities (ATO 2023f). Intermittent reviews, such as every five years, could inform regular legislative amendments (or changes to regulation if that change was made) to remove specific listings where the reasons for providing DGR status no longer apply. This approach would likely be just as effective in addressing the risks of specific listing, but with lower burdens on specifically listed entities that continue to pursue the broad activities and purposes that warranted their initial listing than a time-limited approach. It would provide a form of regulatory oversight akin to that of the hybrid approach that is currently being implemented for community foundations and the broader DGR system, although it would be the responsibility of the Minister and Parliament to act on this advice.



Recommendation 6.1

A simpler, refocused deductible gift recipient (DGR) system that creates fairer and more consistent outcomes for donors, charities and the community

The Australian Government should amend the *Income Tax Assessment Act 1997* (Cth) to reform the DGR system to focus it on activities with greater community-wide benefits. The scope of the reformed system should be based on the following principles.

- There is a rationale for Australian Government support because the activity has net community-wide benefits and would otherwise be undersupplied.
- There are net benefits from providing Australian Government support for the activity through subsidising philanthropy.
- There is unlikely to be a close nexus between donors and beneficiaries, such as the material risk of substitution between fees and donations.

In applying these principles, the Australian Government should:

- extend eligibility for DGR status to most classes of charitable activities, drawing on the charity subtype classification in the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) to classify which charitable activities are eligible for DGR status and which are not
- expressly exclude the following classes of charitable activities or subtypes:
 - primary, secondary, religious and informal education activities, with an exception for activities that have a specific equity objective (such as activities undertaken by a public benevolent institution)
 - the activities of early childhood education and care and aged care (other than activities undertaken by a public benevolent institution)
 - all activities in the subtype of advancing religion
 - activities in the other analogous purposes subtype that are for the purpose of promoting industry or a purpose analogous to an exclusion in another subtype
 - activities in the law subtype that further another excluded subtype
- only grant DGR status to government entities where they are analogous to a charity and undertake activities that would be eligible for DGR status if undertaken by a charity
- continue to limit the scope of the DGR system to registered charities and equivalent government entities
- only use the specific listing mechanism in exceptional circumstances. When it is used, the Australian Government should increase the transparency of applications, how these are assessed, and the decision-making process to maintain confidence in the broader DGR system.

6.3 Integrity measures to support the DGR system

A key element of simplifying the DGR system is making eligibility requirements the minimum necessary to maintain integrity and direct government-subsidised donations toward entities that provide the greatest community-wide benefits. As discussed in chapter 7, charity regulation underpins the integrity requirements governing the use of funds raised through tax-deductible donations because DGR status is primarily directed to registered charities. Regulatory arrangements governing ancillary funds, which can also be charities, are discussed in chapter 8. Any additional arrangements needed to maintain the integrity of the DGR system should be limited to those that complement or fill specific gaps in general charity regulation.

Charities that operate across multiple activities can face larger compliance burdens under the current DGR system. This can require multiple DGR endorsements and, in some cases where a charity undertakes activities with mixed objectives, this can push an activity out of scope of the current DGR system. For example, a charity that is focused on improving outcomes for Aboriginal and Torres Strait Islander people may not qualify for DGR endorsement under the environmental category if it undertakes an activity combining environmental and cultural objectives (chapter 5). The cost of these burdens on charities is highly variable and difficult to quantify. Some charities pursue specific listing as a solution, but many charities are unable to undertake the structural changes required to qualify for DGR status.

The legal costs to apply for DGR status vary depending on the circumstances of a particular charity's case, but also on the type of DGR endorsement being sought. The average legal cost estimates for different DGR endorsement categories range from less than \$5,000 (for categories such as necessitous circumstances funds and scholarship funds) to more than \$30,000 (for categories such as an approved research institute). Estimates of legal costs for the PBI category average about \$7,500 but are variable and can be substantially higher (Prolegis Lawyers, pers. comm., 24 October 2023). As a further example, the Community Council for Australia submitted that it was told it would take 'at least 12 months of work and a legal bill of \$30,000 to obtain DGR status' (sub. 218, p. 6).

Under the Commission's proposed reforms, charities and eligible government entities should be able to use deductible contributions freely across their all their charitable activities that are not excluded classes of activity. To facilitate this, the main eligibility criteria for charities with excluded activities should be the establishment and maintenance of gift funds as a relatively simple means to ensure that tax-deductible donations are only used for permitted charitable activities without requiring charities to have multiple DGR endorsements or establish multiple entities.

Other eligibility requirements that are required to ensure the integrity of the DGR system under the Commission's proposed reforms are wind-up requirements if an entity's DGR status is revoked as is currently the case.

Gift funds are needed to maintain integrity of the DGR system

Gift fund requirements are currently used for DGR endorsements where some, but not all, of an entity's activities are eligible for DGR status so that tax-deductible donations are only used for permitted activities and not for other purposes (chapter 5).

Under the Commission's proposed approach, gift funds would continue to facilitate DGR status for those charities that undertake a mix of charitable activities that qualify for DGR status and activities that do not. Gift funds provide a simpler approach for charities than having to set up separate charitable entities to split off charitable activities that would be in scope for DGR status. For example, a charity that primarily focuses on religious worship, but also undertakes some social or public welfare activities to support people in need in the local community could establish a gift fund and be endorsed as a DGR, with tax-deductible donations it receives only permitted to be directed toward eligible social or public welfare activities. A clear benefit of the Commission's proposed approach is that such a charity would not need to establish a PBI or necessitous circumstances fund in such a situation, as is the case now.

While there is still a role for gift funds, there is not a compelling case for the additional public fund requirements, particularly the requirement for control by 'responsible persons', that apply to many of the existing DGR endorsement categories under the ITAA97 (chapter 5). In 2013, the Not-for-profit Sector Tax Concession Working Group found them to be an unnecessary integrity measure, given the requirements for charities to be registered with the ACNC, and recommended they be abolished (Treasury 2013, p. 30). In

2017, the Australian Government also announced a proposal to remove certain parts of the public fund requirements, although these have not been enacted (Treasury 2018a).

In light of previous recommendations and proposals, the Commission does not see a role for incorporating public fund requirements within its proposed new DGR system.

Wind-up provisions are required so that donations are used as intended

To be eligible for DGR status, charities must have arrangements so that tax-deductible donations are reallocated to another charity with DGR status if the organisation is wound up or has its charity registration and/or DGR endorsement revoked. This is an important integrity measure to guard against the misuse of donations.

Under the proposed approach, there would remain a distinction, albeit reduced, between the scope of activities eligible for DGR status and the broader scope of activities undertaken by charities. This means that there will still need to be mechanisms in place to deal with instances where DGR status is revoked but the charity continues to operate and is not wound up – for example, because the charity’s purpose is changed to an excluded activity, or because it no longer requires DGR status. Wind-up requirements to ensure that surplus DGR-related funds are transferred to another entity with DGR status on revocation of DGR status should be maintained under the Commission’s proposed reforms.

The ‘in Australia’ condition is redundant

Charities with DGR status are currently subject to the ‘in Australia’ condition under the ITAA97. The condition requires an entity with DGR endorsement to be established and operate in Australia.

However, under the Commission’s proposed reforms, the need for this additional condition is weak. There are integrity reasons to require entities with DGR status to operate and report in Australia. There could also be policy arguments for limiting access to DGR status for activities conducted in Australia on the basis that there would be greater net benefits to the Australian community as a whole. However, the presence of Australian Government funding for aid programs and related activities overseas also reflects that governments recognise the wider benefits of providing such support, which can be extended to support provided through the DGR system.

Also, the 2019 ATO taxation ruling (TR 2019/6) on the ‘in Australia’ requirement adopts an expansive interpretation of the condition and ACNC regulation has been increased through the development of external conduct standards (Natalie Silver, sub. 260, pp. 1–2).

Currently, charities that ‘operate outside Australia’ are required to comply with the ACNC’s external conduct standards, which govern how charities manage their activities and resources outside Australia. These apply even where the overseas activity is a minor part of its work or the charity only sends a small amount of money overseas (ACNC 2023c).

Given the suite of regulatory requirements that apply to ACNC registered charities, including the external conduct requirements, the additional ‘in Australia’ requirements in the ITAA97 are unnecessary and should not be retained under the proposed reforms. This would simplify the DGR system while presenting minimal integrity risks, given existing charity regulations and the inherent lower risks posed by Australian government entities given the oversight associated with government control. This proposal has been supported by inquiry participants (Anglican Church Diocese of Sydney, sub. DR294, pp. 21–22; Australian Catholic Bishops Conference, sub. DR706, p. 35; Natalie Silver, sub. DR504, p. 5).

There are gaps in information about tax deductible donations, but no additional reporting is proposed

There are some gaps in the available information about the distribution of government support provided to organisations through the DGR system. While data on the value of deductions claimed by donors is available, it is not clear which charities receive these donations. This is because, while charities report their total revenue from donations and bequests to the ACNC, these total amounts do not necessarily reflect donations that were eligible for a tax deduction. This is mainly an issue where a single charity raises funds for activities that are eligible and ineligible for DGR status. For example, a religious charity may raise funds to enable its religious activities and for other charitable activities, such as health or social welfare programs. The amount of tax-deductible donations to government entities is even more unclear, as there is currently no centralised reporting, as there is for charities.

Increasing reporting requirements on charities with DGR status – particularly where DGR status is just for a subset of a charity’s activities – could assist in maintaining the integrity of the DGR system by providing greater transparency on donations, which could allow better targeting of compliance activity. It could also aid assessment of the effectiveness of the DGR system by providing more information about the characteristics of recipient organisations, which may inform policy decisions to refine the DGR system or other forms of government support, such as grants.

Increased reporting obligations would impose additional costs on charities and there would need to be a clear case that further reporting obligations are necessary. Currently, larger charities are subject to more extensive reporting obligations than smaller charities. Medium and large charities are required to submit an annual financial report, but this is optional for small charities (those with annual revenue under \$500,000), although small charities are still required to submit some financial information in their annual information statement. Making reporting obligations more detailed about the receipt of donations for DGR-eligible activities could impose a disproportionate change from the status quo on small charities that currently have fewer reporting obligations.

An alternative approach could be to increase the reporting obligations on donors and require them to itemise their claimed donations on their tax returns and identify individual recipients. This has previously been the case. For example, donations to school building funds were previously separately reported to the ATO on income tax returns (ATO 1988). Such an approach would provide much richer data, both to assess the effectiveness of the DGR system and to increase the integrity of the tax system. However, it would increase the burden of submitting tax returns, particularly in the absence of streamlined ways to include the additional data – such as pre-filing or the ability to select recipients from a list. Without these additional aids, there may also be deficiencies in the quality of data that would be submitted.

Increased reporting obligations would also increase the administrative burden on regulators. This would be larger if reporting obligations were also increased for government entities with DGR status. Doing so would require the establishment and administration of a new data collection process.

While there are some information gaps about the receipt of donations for DGR-eligible activities, the balance of costs and benefits from increasing reporting obligations for entities with DGR status is unclear. There is not a strong case to change reporting requirements at this time.

6.4 Implementation arrangements to support reform

Defining public benevolent institutions and greater charity subtype registration requirements would support DGR reform

Complementary reforms could also assist with implementation of reforms to the DGR system. Currently, charities are not required to be allocated to a charitable subtype. Under the Commission's proposed reforms, this would be a prerequisite for obtaining DGR status. Amending the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) to require charities to be registered with all applicable subtypes would be necessary to maintain the integrity of the DGR system if it were to base access to DGR status on the charity subtype classification as outlined in recommendation 6.1. This could also provide more information about the purposes of registered charities and help identify where charities are undertaking specifically excluded activities. Charities should be able to seek a review of the ACNC's decision on its applicable subtypes through the Administrative Appeals Tribunal or its successor (as is the case now for refusals by the ACNC to register a charity with a particular subtype).

Some participants raised concerns that requiring registration of all applicable subtypes could be burdensome on both the regulator and the charity (Arnold Bloch Leibler, sub. DR585, p. 5). Implementing this requirement would require additional resourcing for the ACNC and may increase the burden on charities where their purposes do not neatly fit in one subtype. The Commission considers this process a necessary condition for access to DGR status under the proposed reforms. That said, to minimise the administrative burden on charities that are not eligible, or do not wish to apply for DGR status, these charities should not be subject to this requirement.

There should also be greater clarity about what constitutes a PBI. The ACNC raised concerns about the current lack of clarity and submitted that there is a case for further clarification of the common law definition of a PBI (sub. 238, pp. 3–4). The lack of clarity about the definition scope of a PBI:

- increases the complexity of the ACNC's role in assessing PBI status
- leads to charities incurring additional costs contesting the ACNC's decisions in the Administrative Appeals Tribunal and the courts
- results in the definition evolving over time without reference a clearly articulated policy rationale.

Under the Commission's proposed reforms, registration as a PBI could become less critical as a pathway for charities to access DGR status. A key benefit of the Commission's proposed reforms is that charities with social welfare purposes will be eligible to access DGR status without needing to meet the requirements for PBI registrations.

However, registration as a PBI will still be sought by many charities. All PBIs will be eligible for DGR status, including where they undertake activities that would otherwise be outside the proposed scope of the DGR system, including aged care, early childhood education and care, and other education activities. Registration as a PBI also provides access to fringe benefits tax concessions (chapter 5).

The definition of a PBI will remain an important concept that determines eligibility for indirect government support by way of tax concessions. However, the definition lacks policy parameters or guidance from the legislature to underpin its scope. Therefore, a legislated definition to provide greater certainty about what purposes and activities would qualify for PBI registration is warranted (recommendation 6.2).

Some participants either opposed or questioned the need for legislating a definition of PBI. For example, Arnold Bloch Leibler (sub. DR585, p. 5) submitted that there is a clearly articulated High Court definition and that legislating at the Commonwealth level risks creating inconsistencies with common law concepts applied

at a state level. Ian Murray (sub. DR640, p. 5) also raised concerns, noting that defining the status quo would be complex, lose the benefit of the common law system that has enabled gradual change over time, and would require policy choices about where to draw boundaries.

A legislated definition of a PBI would require choices to be made about boundaries, but this would ensure that the scope of entities eligible for indirect government support through PBI registration is based on a principled policy rationale. The courts would retain their role interpreting the definition, in the context of the legislated parameters, providing some flexibility.

Other participants argued that the scope of PBIs should be expanded (Australian Red Cross, sub. 235, p. 9; Coalition of Animal Welfare Charities, sub. 109, pp. 9–11; Law Council of Australia, sub. 255, p. 7).

The Commission does not see a compelling reason for expanding the scope of what can constitute a PBI, noting the proposed reforms will expand access to the DGR system for a more diverse range of charitable activities. PBI eligibility should be restricted to charities ‘organised, conducted or promoted’ to provide benevolent relief to people in need (ACNC 2023I) and not extended to other purposes for the benefit of the public.



Recommendation 6.2

Supporting reforms to improve the deductible gift recipient (DGR) system

To facilitate the implementation of reforms to the DGR system, and provide greater clarity to both charities and the Australian Charities and Not-for-profits Commission (ACNC), the Australian Government should:

- amend the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) to require the ACNC to register new and existing charities with all applicable charitable subtypes where a charity has endorsement as a DGR or has indicated they will be seeking such endorsement. This should include any necessary amendments to enable the ACNC to compel the provision of necessary information to assess eligibility for subtype registration where that registration has not been applied for by an entity. Charities should continue to be able to seek review of subtype registration decisions through the Administrative Appeals Tribunal or its successor
- develop a legislated definition of what constitutes a public benevolent institution to delineate its scope more clearly.

Transition arrangements for the proposed reforms

There are sound reasons for reforming the DGR system. The Commission’s proposed reforms would generate net benefits to the community through a fairer, simpler and more transparent system. But implementing the proposed changes to the DGR system will require time and resourcing.

Transition arrangements for implementing the proposed reforms would be necessary, particularly for charities that currently have DGR status that would no longer be eligible, or where they would need to undertake changes or restructuring to retain DGR status, including registering with additional charitable subtypes. For example, where a charity is currently registered only under the subtype of advancing religion, but has DGR status for a library, higher education institution or other activity that would potentially advance a different purpose, such as culture or education, the charity would need to amend its charity subtype registrations to retain DGR status for those eligible activities.

The Commission does not see a compelling case for grandfathering existing DGR endorsements as it would entrench complexity and inequitable treatment within the DGR system.

However, there would be merit in having a transition period of up to five years for charities to retain their existing DGR endorsement arrangements (recommendation 6.3). This would provide time for entities to adjust their structures or charity subtype registrations where necessary and provide time to adjust their fundraising activities and revenue sources where entities would no longer have DGR status.

There should also be a further period to use those donations for their intended purposes. Given the long lead times that can apply to the use of donations for capital works, it would be unduly restrictive to require these funds to be used within the five-year transition period. This additional period should be determined by balancing the potential constraints on recipients against the benefits of simplifying the DGR system over the longer term.

Charities without DGR status (or where DGR status would be more expansive) should be able to apply for DGR status under the new arrangements as soon as practicable, but charities should be able to elect to retain existing DGR endorsements until the end of the transition period.

The proposed reforms to the DGR system could also affect the incentives to establish and contribute to ancillary funds (chapter 8). The Commission has proposed that the minimum distribution rate should be reviewed every 10–15 years and the next review should also examine any interactions with the recommended DGR reforms and implications for the regulation of ancillary funds and other grant-making charities (recommendation 8.1). Administration responsibilities would be largely unchanged under the new arrangements: the ACNC registers charities, including assessing that they are registered with the correct charity subtypes; and the ATO would assess applications for DGR status, including checking that they meet eligibility criteria such as gift fund and wind-up requirements.

However, there would likely be some increase in the demands on the ACNC and ATO, primarily due to the expected expansion in the number of charities that would be eligible to apply for DGR status and potential changes to the way that eligibility for DGR status is assessed, including new arrangements for granting DGR status to government entities. In addition to more charities applying for DGR status, including a potential influx of new charities because of the altered incentives to establish one, it will also be more critical to ensure that charities are registered with the correct subtypes, and that all relevant subtypes are applied.

While the additional administrative burdens on regulators are not expected to be unduly large, the ACNC and ATO will need to be appropriately resourced to regulate the DGR system, including managing the transition to an expanded system. A transition period for implementing the reforms should also help with smoothing the administration burden on regulators and provide additional time to fully implement the new arrangements.

Alternative arrangements where DGR status is withdrawn

The proposed reforms would lead to changes in the activities for which DGR status would be available. While this would extend the range of activities covered, in some cases it would lead to the withdrawal of DGR status for certain activities. The main activities for which support is expected to be withdrawn is for religious and ethics education in government schools and for school building funds. DGR status may also be withdrawn for some library funds used by schools and scholarship funds that do not have a sufficient equity focus.

With the exception of school building funds, there is no case for alternative arrangements provided by the Australian Government, beyond the transition to provide time for charities to adjust. In the case of the withdrawal of DGR status for religious education or ethics in government schools, state and territory governments could consider if there is a case for funding or other assistance to support approved providers comply with the compliance obligations they impose. It would also be up to those governments to determine the form of that support – matched grant funding could be one approach if those governments wish to maintain incentives for giving as part of the funding allocation design.

However, in the context of the proposal to withdraw DGR status for school building funds, there is a case for the Australian Government to consider either adjustments to other existing funding arrangements, or potential new initiatives to provide support for infrastructure in primary and secondary schools. The intent of the proposed DGR reforms is not to reduce government support for infrastructure in primary and secondary schools, noting that there is uncertainty about how much indirect government support to schools is provided through the DGR system. Rather, the Commission's view is that the current DGR arrangements are not an appropriate way to provide that support. The amount of any additional funding provided through these alternative arrangements should be determined as part of a broader consideration of school funding architecture and funding priorities. These alternative arrangements should be implemented concurrent with the five-year transition for withdrawal of support through the DGR system (recommendation 6.3).

There are many different approaches that the Government could adopt as an alternative, each with pros and cons. The different options listed in table 6.2 above give an indication of some options, but there are many permutations. Some options are likely to better align with the objective of allocating government support to where there is the greatest benefit from providing that support. Likewise, some options are more likely to support giving. Whatever the chosen approach for alternative funding arrangements, its design should reflect and support the overarching objectives for government support for school infrastructure and be allocated according to an assessment of need, community priorities and net community benefits.

Funding arrangements should also not be unduly complex, with appropriate flexibility and proportionate compliance burdens. However, there should be sufficient transparency and accountability about levels of funding, how it is allocated and how it is used. Funding should also be considered as part of the broader school funding arrangements by all levels of government for both government and non-government schools.

Finally, while some approaches might leverage or be contingent on donations, government funding that is not tied to donations should not preclude or inhibit schools from initiatives to raise (non-tax-deductible) funds for school infrastructure from parent and community contributions.



Recommendation 6.3

Transition arrangements to support reform of the deductible gift recipient (DGR) system

In implementing reforms to the DGR system, the Australian Government should also provide a transition period of five years, during which time entities with DGR status (largely, school building funds and entities that provide religious and ethics education in government schools) can maintain their existing DGR endorsements and receive tax-deductible donations.

Subsequently, there should also be a further period in which these entities can use those donations for their intended purposes. The length of this period should be determined by balancing the potential constraints imposed on entities with the benefits of simplifying the DGR system over the longer term.

In the context of the proposed withdrawal of DGR status for school building funds, the Australian Government should concurrently develop and put in place other funding mechanisms for primary and secondary school infrastructure outside the DGR system.

6.5 The expected effects of reforming the DGR system

An increased number of charities will be eligible for DGR status





The proposed reforms to the DGR system are expected to lead to a substantial net increase in the number of charities that can obtain DGR endorsement. The set of charities with DGR status would become more diverse, supporting a broader set of donor options for tax-deductible giving, which would encourage greater inclusivity of final beneficiaries. To the extent that increasing access to DGR status attracts additional donations, supports new charities to be established and spurs broader innovation and dynamism, it would also lead to a more vibrant charitable sector, providing further benefits to donors and beneficiaries over the medium to longer term.

This expansion is likely to occur both because of the broader range of charitable activities that would be in scope and simplified eligibility processes that will make it easier for some charities to obtain DGR status, particularly charities where their activities do not neatly align with one of the current DGR endorsement categories. In some cases, DGR status would also be removed for certain entities, such as for school building funds (following a five-year transition). The reforms are anticipated to significantly reduce the demand for specific listing.

The effects of the reforms on other entities are less clear. It is not expected that there will be significant changes in the scope or number of government entities that have charitable-like purposes with DGR status. However, aligning DGR status for government entities with the approach for charities could lead to the removal of DGR status in some instances, including for school building funds in government schools.

Focusing back on the effect of the proposed reforms on charities, it is expected that the number of charities with DGR status would increase from about 25,000 charities (or about 40% of charities) to between 30,000 and 40,000 charities. There is considerable uncertainty around this estimate because it is unclear what proportion of charities would come within the scope of the DGR system under the proposed reforms and would then seek DGR status. To approximate the subset of charities that would either not gain DGR status or would have DGR status withdrawn, the Commission has used charities registered with the subtypes of religion and/or education and no other subtypes (except for the law subtype in some cases), with some adjustment to account for charities such as universities. These estimates are indicative only, but the broad effects on charities can be characterised in terms of four possible outcomes (figure 6.3).

Figure 6.3 – Four possible outcomes for charities from reforming the DGR system

| The status quo is maintained for ... | Changes to DGR status for ... |
|--|--|
| <p>charities retaining DGR status</p> <ul style="list-style-type: none"> • Most charities that currently do have DGR status, including public benevolent institutions, health promotion charities, animal welfare, environmental, cultural and formal higher education charities. • More than 20,000 charities are in this group.  | <p>charities gaining DGR status</p> <ul style="list-style-type: none"> • Charities that currently do not have DGR status, such as those focused on advocacy and prevention, a wider range of animal welfare charities and many charities run solely by volunteers. • An estimated 10,000 to 20,000 charities could gain DGR status.  |
| <p>charities not gaining DGR status</p> <ul style="list-style-type: none"> • Charities undertaking activities for advancing religion and advancing industry, as well as some aged care, early childhood education and care, and other education activities. • About 15,000 to 20,000 charities are in this group.  | <p>charities with DGR status withdrawn</p> <ul style="list-style-type: none"> • Mainly charities that have DGR status for school building funds or to provide religious and ethics education in government schools. • Fewer than 5,000 charities are in this group.  |

Most charities would retain or gain DGR status

Charities that would be eligible for DGR status under the proposed reforms comprise both charities that currently have DGR status and would retain that status, and those that currently do not have DGR status but would come within scope under the reforms.

Most charities that currently have DGR status would still be eligible under the proposed reforms. For many of these charities there would be little effect from the proposed reforms. Many charities have DGR status for all of their activities already and that would continue. For example, almost half of the charities that currently have DGR status are PBIs and these charities would retain that status under the proposed reforms.

Some charities that have a DGR endorsement would benefit from having DGR status for more of their activities or would have greater freedom in how they use funding from tax-deductible donations than under the current system. They would not be subject to the principal purpose restrictions that apply to some DGR endorsement categories. For example, animal welfare charities would not be restricted to having a principal purpose of short-term direct care or rehabilitation of animals.

The charities that would gain access to DGR status cut across a broad range of purposes.

- The reforms will give many more charities the opportunity to apply for DGR status. The Commission estimates about 10,000 to 20,000 additional charities would be in scope under its proposed reforms to the DGR system.
- The types of charities that would become eligible for DGR status are diverse.

- Many charities that undertake activities similar to PBIs, but do not meet the requirements for endorsement as such could also become eligible for DGR status under advancing social or public welfare. This could include charities whose activities are focused on prevention of disadvantage and charities that undertake benevolent relief activities (such as emergency food relief) in the community alongside their other activities, such as advancing religion.
 - Likewise, charities that undertake activities similar to health promotion charities, but do not meet the requirements for endorsement as such, could also be eligible. For example, charities focused on the prevention of injuries or organisations that undertake mental health support activities (including where these occur alongside other activities such as advancing religion).
 - Advocacy activities to promote or oppose a law or policy to further another eligible charitable purpose, such as social welfare, would become eligible. This would expand DGR access to a range of charities that are currently ineligible for DGR status, such as those advocating for policies they believe are necessary to avert major global catastrophes, as well as social welfare and human rights organisations. This would avoid the need for such charities to seek specific listings or pursue registration as a PBI.
 - Charities promoting human rights or reconciliation would also become eligible for DGR status. This could include activities such as promoting religious tolerance and advocating for human rights, including religious freedom.
 - Various other types of charities, such as those focused on public interest journalism, would also become eligible.
- Charities that pursue multiple purposes would also find it easier to access DGR status, including charities that support groups of people rather than a single activity. For example, women, young people, Aboriginal and Torres Strait Islander people and communities, LGBTIQ+ people, or consumers.
 - The reform would also increase access to DGR status for grassroots and small charities, for example, because they have not had the resources to establish a PBI or another eligible charity. This would include charities that are dependent on volunteers and have few or no paid staff. To illustrate, only a third of charities wholly dependent on volunteers had DGR status. (This was calculated based on charities that reported in the 2021 ACNC annual information statement a full-time equivalent level of staff of zero and at least one volunteer.) The Commission estimates there are about 6,000 charities wholly dependent on volunteers that could more easily access DGR status under the proposed reforms. (This excludes charities that are registered with the subtypes of religion and/or education and no other subtypes, except for the law subtype in some cases.)

Charities that do not have access to DGR status would remain broadly similar

Not all charitable activities would be in scope of the DGR system under the proposed reforms and charities that only undertake excluded activities would not be eligible for DGR status. However, for the majority of charities in this situation, this would not represent a change from the current system.

The main cohort of charities (by number) that will remain outside the DGR system is charities with the sole purpose of advancing religion, of which there are about 15,000 charities (or about 25% of all charities). Other charities that would not gain DGR status include those undertaking early childhood education and care or aged care activities that are not registered as a PBI. Charities promoting industry and charities undertaking education activities that do not have a specific equity objective and do not qualify for DGR status under the current system would also not gain DGR status under the proposed reforms.

Some charities that currently have DGR status would no longer be eligible. The main activity that would be affected by the withdrawal of DGR status under the reforms are school building funds, which are primarily used for primary and secondary schooling, and religious and ethics education in government schools. There are currently about 5,000 endorsements for school building funds, of which about three quarters are for

charities and a quarter for government entities, such as public schools (analysis of unpublished ATO data). Some other DGR endorsements, such as for religious and ethics education in government schools, libraries and scholarship funds that do not have equity criteria would also have DGR status withdrawn in the advancing education and advancing religion subtypes. Charities (and government entities with DGR endorsement for corresponding activities) would lose these endorsements, following a five-year transition. However, education charities would retain DGR status for these activities (and potentially gain it for other activities) where they meet equity criteria.

The effects on subsidised giving are likely to be modest

There is expected to be a significant increase in the number of charities that become eligible for DGR status under the proposed reforms. Giving is expected to increase in the coming years, and although more giving may occur in response to these reforms, substantial increases in giving over and above what is already likely, are not expected as a direct result of the changes. This is because charities with DGR status already receive about 80% of total giving to charities even though they only account for about 40% of all charities. Most of the charities that would gain DGR status are relatively small. Although small charities rely heavily on donations, most donations go to large charities. This means that even if donations to small charities with newly acquired DGR status increased substantially, this would still only have a relatively small effect on the total amount given to all charities. However, there is considerable uncertainty about the effects of the reforms in practice.

Previous findings from the Not-for-profit Sector Tax Concession Working Group support this expectation (Treasury 2013, pp. 24–25). The Working Group estimated that their reform proposal to extend DGR status to all charities except for activities that are solely for the advancement of religion, or the advancement of education through childcare and primary and secondary education, and not affecting access to school building, library or scholarship funds would have a fiscal cost of about \$120 million each year. For context, the Working Group noted that extending DGR status to all charities without restriction would have fiscal costs in excess of \$1 billion each year. While these estimates are from more than 10 years ago, the similarities in excluded classes of activity between the Working Group’s proposal and the Commission’s proposed reforms suggest that the fiscal costs of the Commission’s proposal would be similarly modest.

To illustrate, the Commission has estimated how the changes could affect giving to charities (table 6.3). The effects are presented as a static annual comparison for the four groups of charities discussed above. The results ignore the effects of the transition arrangements, so are reflective of the medium term once transition arrangements have concluded. In aggregate, the changes are estimated to have a relatively small impact on total giving and the fiscal cost of the DGR system. On one hand, there would be an increase in giving to charities that gain DGR status. But on the other hand, there would be a reduction in giving to charities where DGR status is withdrawn. An important point to reiterate is that giving to charities where DGR status is withdrawn would not be expected to go to zero, and this analysis does not assume that donations would be redirected between these groups of charities. In the short term, the giving and the fiscal cost would likely be higher because of transition arrangements for charities where DGR status is withdrawn, which means there would likely be a continued fiscal cost of donations to these entities during the transition period. Key assumptions underpinning the analysis include the following.

- The Commission allocated total giving to charities of \$13.4 billion (from the 2021 ACNC annual information statement data) across the four categories of charities outlined in figure 6.3. Data provided by the ATO indicates that 81% of this giving was to charities with DGR status and 19% was to charities without DGR status. Based on analysis of the 2021 ACNC annual information statement data, the Commission assumed that: the 81% of donations to charities that presently have DGR status is split as 75% for charities that would retain DGR status and 6% for charities where DGR status would be

- withdrawn; and the 19% of donations to charities that do not have DGR status under the current system is split as 9% for charities that would gain DGR status and 10% for charities that would not gain DGR status.
- Tax-deductible giving in 2020-21 was \$4.4 billion. Not all tax-deductible giving goes to charities, as DGR status also applies to some government entities. The information about the share of tax-deductible giving to government entities is limited, so the Commission assumed the share to charities is 95%, which means that DGR-eligible donations account for about 39% of total giving to charities with DGR status. It is assumed that this share would remain the same for charities that retain or gain DGR status under the reform scenario.
 - The Commission estimated the effect of changes in DGR status using an average marginal tax rate of 32%. It is assumed the price effect of DGR status is '-1', that is, out-of-pocket costs to donors are unchanged so that total DGR donations rise or fall by the value of the tax deduction where DGR status is gained or removed.

Table 6.3 – Estimated effects of the proposed reforms on donations to charities
Static annual comparison based on 2020-21 giving, \$ billion

| | DGR status retained | DGR status gained | DGR status not gained | DGR status withdrawn | Total |
|--|------------------------|----------------------|--------------------------|-------------------------|-------|
| Base case under existing DGR system | | | | | |
| Total donations | 10.05 | 1.21 | 1.34 | 0.80 | 13.40 |
| DGR donations | 3.87 | 0.00 | 0.00 | 0.31 | 4.18 |
| Fiscal cost of DGR donations | 1.24 | 0.00 | 0.00 | 0.10 | 1.34 |
| Reform scenario | | | | | |
| Total donations | 10.05 | 1.38 | 1.34 | 0.70 | 13.47 |
| DGR donations | 3.87 | 0.53 | 0.00 | 0.00 | 4.40 |
| Fiscal cost of DGR donations | 1.24 | 0.17 | 0.00 | 0.00 | 1.41 |
| Change from reforms | | | | | |
| Total donations | 0.00 | 0.17 | 0.00 | -0.10 | 0.07 |
| DGR donations | | | | | 0.22 |
| Fiscal cost of DGR donations | | | | | 0.07 |

Source: Commission estimates.

Under these assumptions, the increase in total donations to charities that gain DGR status is estimated to be \$170 million per year. This is partially offset by a \$100 million decrease in total donations to charities that have DGR status withdrawn, meaning that the net increase in total donations to charities would be about \$70 million per year.

There are some clear limitations to this indicative analysis, including some additional potential effects of the reforms that have not been included.

- There could be some substitution effects due to the reforms. The granting of DGR status to additional charities could draw donations away from other organisations. To the extent this is from organisations without DGR status it would be expected to increase total giving to charities with DGR status and increase the fiscal costs of the reforms. This could include organisations not currently registered as charities seeking charity registration to access DGR status. It could also affect the composition of tax-deductible donations by drawing donations away from entities that retain DGR endorsement toward entities with

newly acquired DGR status. This would have no fiscal effect, but it could alter the net benefits from the DGR system. The increased competition from small charities gaining DGR status has been raised as a concern. For example, the Sydney Children's Hospitals Foundation (sub. DR457, p. 4) was concerned that a proliferation of small charities with overlapping objectives would increase inefficiency and lessen the 'impact of charitable donations'. However, other participants commented that a charity's size is not a good indicator of effectiveness (Community Council for Australia, trans., p. 289).

- The reforms could increase the share of giving that is tax deductible. Currently only 39% of total giving to DGR-endorsed charities is claimed as a tax deduction by individuals under the DGR system. This is because some giving is from businesses (that can generally claim donations as business expenses irrespective of DGR status) or the donation is not tax deductible because the giver has no taxable income to offset (including bequests). However, the low share may also partially reflect that some charities only have DGR status for specific activities and not all the giving they receive is for a tax-deductible activity. To the extent that the reforms broaden the activities for which charities can use tax-deductible donations, the share of donations to charities with DGR status that are claimed as a tax deduction may increase above the current 39%.
- The price effects of the tax deduction may vary, including by the income levels of donors and for different classes of activity. The Commission has undertaken analysis of the price effects of subsidising giving (chapter 4). The modelling is complex and there is considerable uncertainty about the results. Different price elasticities would change the magnitude of the effects, but there is not a compelling case to move away from -1, which is likely to be reasonably indicative of the expected effects.

Despite the uncertainty around the effects of reforming the DGR system, the likely additional giving that would arise from the reform would be modest. The more important contribution of the reforms is to refocus and simplify the DGR system to focus on activities where providing taxpayer support through tax deductibility for donation will have the greatest net benefits to the community given the expected growth in donations over time.

The fiscal costs of the reform are also likely to be modest (\$70 million each year under the scenario presented in table 6.3). However, assuming transition arrangements result in DGR status being available to new entities relatively quickly, but the withdrawal of DGR status from activities like school building funds is deferred to give time to adjust their fundraising options, there would be higher fiscal costs during any transition period. The overall fiscal costs would also be affected by any adjustments to alternative funding arrangements for infrastructure in primary and secondary schools undertaken concurrently with the removal of tax deductibility for school building funds.

7. A sound regulatory framework

Key points

- * **Regulation can contribute to enhanced public trust and confidence in the charitable sector, including by helping to ensure that donations are used for intended charitable purposes. Trust and confidence influence the likelihood a donor will give and how much they will give.**
- * **Good regulation has appropriate coverage of entities, enables proportionate enforcement to effectively manage risks and avoids unnecessary duplication between regulators.**
- * **The regulatory framework for charities has sound foundations and has expanded as a result of the establishment of the Australian Charities and Not-for-profits Commission (ACNC) in 2012. However, the framework must keep pace with societal trends and developments, including technological changes.**
 - Most charities meet their obligations and act with integrity. However, access to a large and growing pool of donated funds, and tax concessions from the Australian Government, comes with a community expectation of a reasonable degree of public accountability and transparency.
 - The growing use of online giving platforms may create new regulatory risks, which should be proactively monitored to maintain trust and confidence.
- * **Reforms are needed to improve the regulatory framework, as the presence of multiple regulators creates inconsistencies, confusion and unnecessary regulatory burden.**
 - To strengthen the capacity of the ACNC to undertake proportionate enforcement, it should be empowered to collect necessary information from charities to inform certain regulatory activities.
 - A National Charity Regulators Forum, underpinned by an intergovernmental agreement, should be developed to improve coordination and information sharing among regulators, including in relation to the protection of charitable assets and enforcement referrals.
 - ‘Basic religious charities’ should be subject to the same ACNC governance standards and financial reporting requirements as other charities to improve regulatory transparency and consistency.
 - The Council on Federal Financial Relations should continue to monitor the implementation of reforms to harmonise fundraising regulation and commission an independent review into the outcomes of this process and options for maintaining consistency over time.
 - The Australian Law Reform Commission should be tasked with reviewing the scope and coverage of charities laws across jurisdictions, and identifying options for further simplification and harmonisation.
- * **Effects on volunteer participation should be explicitly considered when designing government policies and programs, recognising that volunteer contributions are distinct from those of paid employees.**

7.1 There is a role for governments to regulate charities

There is a strong case for governments to regulate charities, to support trust and confidence and deliver outcomes in line with the expectations of donors, taxpayers and the beneficiaries of the goods and services provided by charities.

Donors make gifts with the expectation a charity will use these contributions for intended charitable purposes but, as noted in chapter 2, it is not always easy for donors or others to observe how donations have been used. In economic terms, this is referred to as the ‘principal-agent’ problem (Edmund Flack, sub. 19, p. 5; Prakash and Gugerty 2010, p. 24). Governments, acting on behalf of taxpayers, also want assurances that tax concessions have been used for their intended purposes. Government regulation can be used to manage risks that arise due to the principal-agent problem. There is also a community expectation that those in need can safely access the goods and services they seek from not-for-profit (NFP) organisations.

Most charities seek to – and do – act in accordance with community expectations and meet their regulatory obligations. The majority submit their annual information statements to the charity regulator, the Australian Charities and Not-for-profits Commission (ACNC), on time and only 738 (fewer than 1.5% of all registered charities) had their charitable status revoked by the ACNC in 2022-23 for non-compliance with their registration requirements and obligations (ACNC 2021a, 2023e, pp. 22, 37). Accordingly, the analysis presented in this chapter should not be interpreted as suggesting the Productivity Commission found or is concerned about widespread non-compliance in the charitable sector.

A sound regulatory framework matters (box 7.1). It can improve accountability and transparency of those being regulated and, in doing so, promote trust and confidence in the charitable sector. A regulatory framework that promotes trust and confidence in the charitable sector should also be considered in the context of the Australian Government’s goal of doubling giving by 2030 – Government is placing its trust in the sector as a steward of people’s donations and provider of goods and services to the community.

Box 7.1 – Characteristics of a sound regulatory framework

A sound regulatory framework typically includes:

- institutional arrangements that establish the regime, for example legislation, regulations or guidelines
- an entity (or group of entities) responsible for overseeing the regime (regulator), whose roles and powers are articulated in the institutional arrangements and are commensurate with the risks they seek to mitigate or manage
- requirements for information collection, analysis and publication
- mechanisms for reviewing decisions and enforcing the regulatory regime with a credible threat of consequences.

Source: PC (2019, pp. 83–84).

A sound regulatory framework must also keep pace with broader societal trends and developments, so it remains fit for purpose and effective at mitigating and responding to risks over time. Chapter 3 highlights three trends that should be considered when determining whether the regulatory framework is fit for purpose in the current and future giving landscape.

- Motivations and methods for giving change over time. Society is increasingly adopting digital payments and using online giving platforms, such as GoFundMe or Facebook.
- The use of giving vehicles is growing, and this may change the dynamics between donors and charities in various ways. Larger donors have stronger incentives to undertake additional due diligence and often have the resources to do so.
- The charitable sector is responsible for a significant amount of money – revenue was \$190 billion in the 2021 reporting period, up from \$146 billion in the 2017 reporting period. The net assets of charities were \$281 billion in the 2021 reporting period, almost 32% greater than in the 2017 reporting period. The revenue and assets of charities will grow if current trends continue (ACNC 2019b, pp. 17, 20, 2023g, pp. 25, 29).

For a regulatory framework to achieve its policy objective and operate efficiently, it should:

- provide regulatory coverage proportionate to the risks, including covering the appropriate scope of entities
- be administered by agencies that are equipped with the optimal suite of enforcement powers, and the capacity, authority and resources to use them
- assign clear regulatory roles, responsibilities and functions of different regulatory agencies that avoids unnecessary duplication and costs on those being regulated
- have open and transparent regulatory processes, including reviews of regulatory decisions, that promote impartiality and accountability, and help build community confidence
- be reviewed regularly to assist in maintaining fit-for-purpose regulation over time, informed by consultative policy-making processes (adapted from PC 2020b, pp. 22, 91, 99).

The Commission analysed the regulatory framework for charities against these features to assess whether it is delivering on the policy rationale for regulation – to support trust and confidence in charities in line with the expectations and interests of donors, taxpayers and beneficiaries. Any proposed policy change must focus on whether the benefits of the changes outweigh any costs, relative to other options, including the status quo. It must also consider any consequences, for example, unwarranted negative effects that increased regulation may have on attracting volunteers. Many aspects of charities regulation are the responsibility of state and territory governments and the Commission considered constitutional limitations between levels of government when determining preferred reform options.

A sound regulatory framework underpins giving

The Commission was asked to examine the regulatory framework for giving and how this affects donors' giving decisions, which first requires understanding the link between regulating charities and giving of financial assets and time.

While a rationale for government regulation is to overcome the principal-agent problem to protect donors, beneficiaries and taxpayers, an outcome of this is increased donor and public confidence in the charitable sector, which can influence giving. People with higher levels of trust in charities are more likely to donate and give more generously (Chapman et al. 2021a, p. 443). A meta-analysis assessing the relationship between trust and giving found a positive relationship between the two, with giving more strongly associated with trust in an organisation or sector (such as the NFP sector) than 'a donor's general propensity to trust' (Chapman et al. 2021b, pp. 1276, 1289, 1295).

Conversely, misconduct and scandals within charities may contribute to a decline in trust, particularly among people aged over 54 (nfpSynergy and ACEVO 2019, pp. 4–5). Misconduct by one charity may negatively affect trust and confidence in other parts of the sector, including in charities that are meeting their regulatory obligations. The possibility of such negative spillover effects may deter people from donating to worthy charities, for fear their donation may be misused. There is evidence of this having occurred in Ireland between 2013 and 2016, where several high-profile cases of charity misconduct contributed to a decline in

public trust in charities, coinciding with a reported decline in the proportion of people giving to charities, from 74% in 2012 to 61% in 2018 (nfpSynergy and MoreStrategic 2019, pp. 6–7).

One way to maintain and enhance public trust and confidence in charities is through good governance (Langford and Anderson 2023, p. 536). Effective and robust governance processes, including policies, procedures and financial controls, can act as a protective mechanism to prevent breaches of trust (Gillespie et al. 2023, p. 18). While regulation cannot guarantee strong governance processes and board effectiveness, it can play a role promoting minimum standards and setting expectations. There are several examples where charity conduct that contributed to a breakdown in public trust relate back to failures in organisational governance (Langford and Anderson 2023, p. 535; Langford and Webster 2022, pp. 75, 82–83, 88, 95).

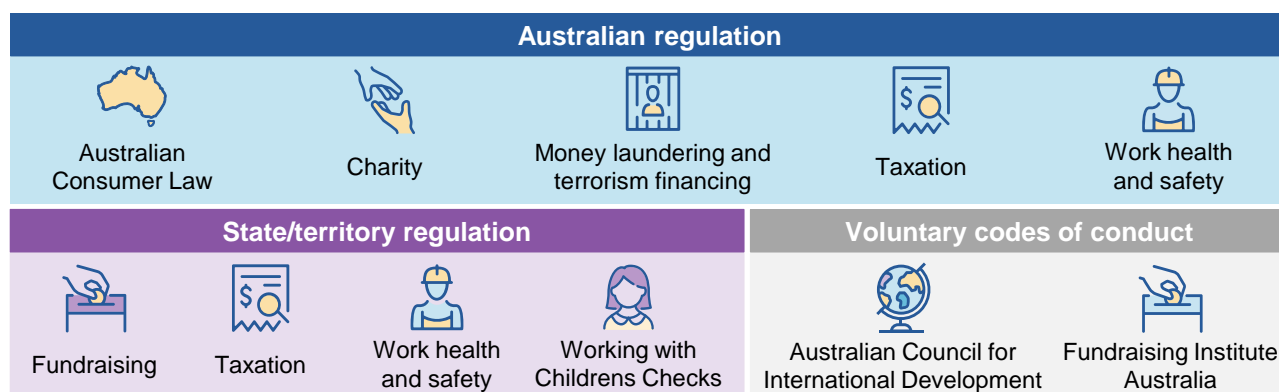
As trust and confidence are linked to motivations to donate, an organisation has a financial incentive to demonstrate that it is accountable and acts with integrity so that it can both attract (and avoid losing) donor support. Registering as a charity and complying with ongoing ACNC and other applicable obligations, and engaging in self-regulation through voluntary codes of conduct, are ways of signalling this to donors. As is the case in other sectors, financial incentives by themselves may not sufficiently motivate a charity to conduct its affairs, and deliver outcomes, in line with the expectations of donors.

Incentives for a charity to use funds as the donor intended depend on how people respond to changes in information on how donations are spent. For example, if a donor is motivated by the act of giving itself and less so by the outcomes of a charity’s activities, then the charity may face weak incentives to perform well. Similarly, if someone gives to a particular charity due, for example, to cultural reasons or social norms, or because the charity is one of few with a specific purpose, that charity may have a weaker incentive to perform well compared to one that faces more competition to attract donations.

7.2 The regulatory framework for charities is complex

Regulation exists on a spectrum, from self-regulation where government has a minimal role, to legislated frameworks with considerable government enforcement (McGregor-Lowndes and Fremont-Smith 2016, pp. 176–177). In Australia, direct government regulation of charities is complemented by self-regulatory voluntary codes of conduct for specific sectors in which a charity operates, or activities it undertakes (figure 7.1).

Figure 7.1 – Examples of regulation that may apply to charities



There are many regulators with different roles and responsibilities

There are multiple charity regulators across the Australian and state and territory governments, each with their own institutional arrangements, responsibilities, powers, priorities and resources.

The structure of a charity, the jurisdiction(s) it is headquartered and operates in, the tax arrangements that apply (such as income tax concessions), and the nature and beneficiaries of its work determine which legislation and regulation apply to the charity – and consequently, which regulator(s) oversee its governance and conduct (figure 7.2).

The features of each structure will make a particular form more attractive to a given charity than its alternatives. These features include whether the structure is incorporated or not, is subject to establishment costs, its permissible operating locations and activities, and whether and what ongoing obligations are owed to an administering regulator. As a charity matures, the relative benefits of an alternative structure may incentivise a change to its structure and therefore its relevant regulator(s). For example, a charity established as an incorporated association may seek to restructure as a company limited by guarantee to conduct business nationally (as incorporated associations are generally restricted to conducting business in the jurisdiction they were established). Restructuring, in this example, would involve a transfer of registration from a state- or territory-based regulator to the Australian Securities and Investments Commission (ASIC) (*Corporations Act 2001* (Cth), s. 601BC).

Most structures, other than unincorporated associations, are regulated by legislation at either the Australian Government level, or state or territory level (figure 7.2). Regulatory oversight is not consolidated in the Australian Government because the Australian Parliament does not have the constitutional power to generally legislate for charities or the full range of structures a charity may adopt (Murray 2018, p. 2).

Figure 7.2 – Regulatory requirements from the perspective of a charity

| 1 ESTABLISH ENTITY | | |
|---|--|---|
| <p>Co-operative</p> <p>Regulator: State and territory fair trading/consumer affairs regulators (table 7.2)</p> <p>Legislation: Co-operatives National Law legislation in that jurisdiction</p> | <p>Corporation</p> <p>Regulator: ASIC</p> <p>Legislation: Corporations Act</p> | <p>Indigenous Corporation</p> <p>Regulator: Office of the Registrar of Indigenous Corporations</p> <p>Legislation: <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth)</p> |
| <p>Incorporated Association</p> <p>Regulator: State and territory fair trading/consumer affairs regulators</p> <p>Legislation: State and territory 'associations incorporation' Acts</p> | <p>Trust</p> <p>Regulator: None</p> <p>Legislation: State and territory trust legislation</p> | <p>Unincorporated Association</p> <p>Regulator: None</p> <p>Legislation: None</p> |
| <p>Legend: Australian government State/territory government</p> | | |
| 2 APPLY FOR AUSTRALIAN BUSINESS NUMBER, CHARITY STATUS AND TAX BENEFITS | | |
| <p>Apply for an Australian Business Number</p> <p>Regulator: Australian Business Register</p> <p>Legislation: <i>A New Tax System (Australian Business Number) Act 1999</i> (Cth)</p> | <p>Apply for ACNC registration</p> <p>Regulator: ACNC</p> <p>Legislation: <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth), <i>Australian Charities and Not-for-profits Commission Regulations 2022</i> (Cth), <i>Charities Act 2013</i> (Cth)</p> | <p>Apply for tax concessions and Deductible Gift Recipient status</p> <p>Regulator: Australian Taxation Office</p> <p>Legislation: <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth), <i>Fringe Benefits Tax Assessment Act 1986</i> (Cth), <i>Income Tax Assessment Act 1997</i> (Cth), <i>Taxation Administration Act 1953</i> (Cth)</p> |
| 3 AUTHORISATION TO FUNDRAISE | | |
| <p>Fundraising authorisation is regulated at the state and territory level, excluding in the Northern Territory which does not have specific fundraising regulation (table 7.2). Australian Consumer Law, administered by states and territories and the Australian Competition and Consumer Commission, also applies to certain fundraising conduct (box 7.3).</p> | | |

The Australian Government oversees some aspects of charities regulation

The Australian Government regulates approximately 60,000 registered charities through the ACNC (box 7.2) (based on ACNC 2023d). Other Australian Government regulators also have a role overseeing the structures adopted, benefits accessed and activities undertaken by charities. These include the Australian Taxation Office (ATO), ASIC, the Office of the Registrar of Indigenous Corporations (ORIC), the Australian Competition and Consumer Commission (ACCC), and the Australian Transaction Reports and Analysis Centre (AUSTRAC).

The ACNC consists of:

- the Commissioner of the ACNC, who has general administration of the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (ACNC Act) and the powers conferred and functions imposed by that Act
- staff assisting the Commissioner of the ACNC in the performance of their functions (box 1.3).

Box 7.2 – Establishment of an independent, national regulator of registered charities

Legislation to establish the ACNC was introduced in 2012 following multiple reviews and inquiries into the regulation and taxation of the sector, including the 2010 Productivity Commission *Report on the Contribution of the Not-for-profit Sector*. When established, the ACNC was framed as a ‘one-stop-shop’ for the NFP sector. It was intended to maintain, protect and enhance the public trust and confidence that underpins the sector by administering a regulatory system designed to promote good governance, accountability and transparency of registered charities.

This initially meant that the ACNC would be the regulator through which NFP organisations would apply for charity registration – a precondition for accessing certain Australian Government benefits, including tax concessions. Despite the Australian Government’s general aspiration when establishing the ACNC, the ACNC’s remit has not extended to the regulation of non-charitable NFP organisations.

Source: Revised Explanatory Memorandum, Australian Charities and Not-for-profits Commission Bill 2012, paras. 1.10, 1.31–1.43, 15.3.

Registered charities, other than ‘basic religious charities’, are required to adhere to the principles-based ACNC governance standards (box 7.6; discussed further below). Principles-based regulation is not uncommon – for example a similar approach is used to regulate higher education institutions to protect the interests of students and the reputation and standing of Australian higher education (TEQSA nd).

External conduct standards were introduced in 2019 to bring certain overseas activities by charities under the oversight of the ACNC (Australian Charities and Not-for-profits Commission Amendment (2018 Measures No. 2) Regulations 2018 (Cth)). These standards govern how a charity must manage certain activities and resources outside Australia (Australian Charities and Not-for-profits Commission Regulations 2022 (Cth) (ACNC Regulations), div. 50). They require charities to take reasonable steps to guard against fraud and corruption, and to protect vulnerable people, overseas. Charities must also maintain certain controls over their funds and resources, including compliance with applicable anti-money laundering obligations in relation to flows of funds (including purported donations) into and out of Australia. AUSTRAC monitors transactions which may indicate money laundering and terrorism financing risks and can take enforcement action where required. AUSTRAC and the ACNC have worked together to assess the charitable sector’s vulnerability to these risks (ACNC and AUSTRAC 2017).

The ATO administers Australian Government tax concessions and deductible gift recipient (DGR) endorsement (chapters 4, 5 and 6). ACNC registration may be a prerequisite to accessing certain benefits. Ancillary funds (chapter 8), a type of structured giving vehicle that can be adopted by a charity, are also regulated by the ATO under relevant guidelines.

The Australian Government also has responsibility for the governance and conduct of corporations, which can operate nationally (approximately 24% of charities use a corporate structure) (ASIC, pers. comm. 17 November 2023; ACNC 2023g, pp. 8, 51). Most of these charities use a corporate structure that is regulated by ASIC under the Corporations Act, such as a ‘a company limited by guarantee’. Recognising the unique characteristics of Aboriginal and Torres Strait Islander organisations, the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (CATSI Act) offers an alternative corporate structure for an organisation with a specified proportion of membership and board representation by Aboriginal and Torres Strait Islander people (ss. 29-5, 141-10, 246-5). Indigenous Corporations are regulated by ORIC.

The ACCC oversees Australian Consumer Law (ACL) and has scope to regulate fundraising activities that occur ‘in trade or commerce’ (box 7.3).

State and territory regulators oversee other aspects of regulation, such as fundraising

State and territory governments have primary regulatory responsibility for charitable trusts, co-operatives and incorporated associations, the latter of which is the most common structure adopted by charities (accounting for at least 37% of charities registered with the ACNC) (ACNC 2023g, p. 51). Charitable trusts are regulated under the law of equity (enabling courts and Attorneys-General to intervene) and under state and territory legislation. The governance of an unincorporated association can be subject to the general jurisdiction of state and territory Attorneys-General (in relation to assets held in trust for charitable purposes) and charities legislation, although this can vary by jurisdiction.

State and territory revenue regulators assess a charity’s entitlement to concessions and exemptions from taxes and duties ordinarily payable under their jurisdiction’s laws, such as land transfer duty and payroll tax. State and territory governments are not bound by the Australian Government’s legislated definition of ‘charity’ set out in the *Charities Act 2013* (Cth), which may lead to differential treatment due to variances in entitlement criteria in legislation within and across jurisdictions (ACNC 2016a, p. 10).

State and territory governments have lawmaking power to regulate fundraising activities in their jurisdictions (table 7.2). Certain fundraising activities conducted ‘in trade or commerce’ may also be regulated by state or territory regulators, or the ACCC, through the ACL (box 7.3). Through the Council on Federal Financial Relations, the Australian, state and territory governments (excluding the Northern Territory, which does not have jurisdiction-specific fundraising regime) agreed to adopt a cross-border recognition model to harmonise charitable fundraising laws and a set of national fundraising principles for fundraiser conduct (section 7.5) (Frydenberg and Seselja 2020; Leigh and Pearson 2023).

State and territory regulators also oversee checks for volunteers. This includes national police checks conducted by each jurisdiction’s police service, National Disability Insurance Scheme volunteer screening checks, and state- and territory-specific Working with Children Checks.

Box 7.3 – Application of Australian Consumer Law to charities’ fundraising activities

The ACL is a cooperative reform that arose in 2010 through the Council of Australian Governments to replace the eight different frameworks that previously applied. It is enshrined in Schedule 2 of the

Box 7.3 – Application of Australian Consumer Law to charities' fundraising activities

Competition and Consumer Act 2010 (Cth) and sets out nationally consistent rules in relation to conduct occurring 'in trade or commerce'. It covers unfair contract terms, minimum product safety standards and consumer rights.

The ACL is administered and enforced through a multi-regulator model. For constitutional reasons, the Australian Government regulator (the ACCC) generally enforces the ACL as it relates to corporations and overseas activities that affect Australian consumers, while state and territory regulators enforce the ACL in most other contexts. Therefore, while the rules are harmonised, there may be practical differences in how the rules are applied when state and territory regulators have different priorities, resources and make different policy decisions.

The ACL applies to fundraising where it is undertaken 'in trade or commerce'. Its applicability is determined on a case-by-case basis but, in practice, generally applies to professional fundraising activities that involve organised repetitive fundraising activities rather than one-off donations for causes. It also applies to activities of businesses run by an NFP organisation (for example, opportunity shops advertising products to consumers) and businesses partnering with NFP organisations to raise funds.

If a fundraising activity falls under the ACL, then the fundraiser is prohibited from misleading or deceiving the donor (even unintentionally). In general, ACL regulators can issue infringement notices against fundraisers who have breached the ACL and, in some cases, may take court action against the entity and seek a monetary penalty. A court may also order enforceable undertakings and corrective advertising.

An example of a regulator pursuing a case for breaches of the ACL for fundraising misconduct occurred in 2016 in Victoria. The Director of Consumer Affairs Victoria initiated court proceedings against Belle Gibson and her company, Inkerman Road Nominees Pty Ltd (since liquidated), for alleged breaches of the *Australian Consumer Law and Fair Trading Act 2012* (Vic), which adopts the ACL into Victorian law. This followed claims about Gibson's medical history and the intended donation of sale proceeds to charities, that were used to promote the sale of a book and app. The court ordered Gibson and a related company to pay penalties totalling \$410,000 after finding that they had engaged in misleading and deceptive conduct, and unconscionable conduct.

Sources: ACCC (sub. 153, p. 2); Commonwealth of Australia (2017), *Director of Consumer Affairs Victoria v Gibson* [2017] FCA 240; *Director of Consumer Affairs Victoria v Gibson (No 3)* [2017] FCA 1148.

Courts, tribunals, Attorneys-General and law enforcement also have a role

Although not government regulators, the judiciary, administrative tribunals, state and territory government Attorneys-General, and law enforcement agencies also have a role to play in regulating charities.

- Courts and administrative tribunals are responsible for independently reviewing certain decisions by regulators. For example, an entity may apply to the Administrative Appeals Tribunal (AAT) for a review of the ACNC's decision to refuse its registration as a charity (ACNC Act, s. 30-35; part 7-2). Many of the principles which underpin the regulation of charities were developed because of judicial decisions.
- State and territory Attorneys-General, as chief law officers of the Crown, have a 'parens patriae' (meaning 'parent of the state') power to ensure the due administration of charities and the proper application of funds for charitable purposes in their jurisdiction (Cheung and Chandra 2021, pp. 54, 56; Dal Pont 2021,

p. 351). Depending on the jurisdiction, these powers can be limited to charitable trusts or extend to charities more broadly.

- Law enforcement agencies (for example, state police services) are responsible for responding to allegations of criminal offences committed by a charity or those that run it (for example, fraud).

Charities are also subject to regulation that is uniform across all organisations

Charities are also subject to other general regulatory obligations, such as work health and safety regulation or sector-specific regulation (figure 7.1). For example, the ACNC identified that 2.6% of charities that submitted a 2021 ACNC annual information statement operated non-government schools and had reporting obligations to the (now) Australian Government Department of Education, and that 1% of charities were aged care providers with reporting obligations to the Australian Government Department of Health (2023g, p. 51).

Charities also engage in self-regulation

Self-regulation tailors standards to the specific risks relevant to the sector in which a charity operates. In some instances, charities can voluntarily opt to become a member of a sector organisation. Once a member, they are obliged to comply with the organisation's code of conduct. Self-regulation can signal to donors a charity's intention to act with integrity (box 7.4).

Box 7.4 – Self-regulatory codes in the charitable sector

Two major self-regulatory codes in the charitable sector are the Australian Council for International Development (ACFID) code of conduct and the Fundraising Institute Australia (FIA) code of conduct. Both codes of conduct are mandatory for members of each body, contain a set of standards, and embed monitoring and compliance activities. Membership of both bodies is voluntary.

ACFID is the peak body for NFP organisations involved in international development and humanitarian action. ACFID requires its full members to comply with its code of conduct which 'aims to improve international development and humanitarian action outcomes and increase stakeholder trust by enhancing the transparency, accountability, and effectiveness of signatory organisations' (ACFID, sub. 242, p. 1). The code encompasses 9 quality principles, 33 commitments and 92 compliance indicators that set standards for program effectiveness, fundraising, governance and financial reporting. Members' compliance with the code is monitored through annual reporting, spot checks and an independent complaint handling process. It also complements government regulation. For example, the Department of Foreign Affairs and Trade has partnered with ACFID to enhance policy and dialogue with Australian international development non-government organisations (ACFID nd). Additionally, the ACNC recognises that a charity that meets ACFID's code of conduct will likely meet ACNC governance standards 1-5 (box 7.6) (ACNC 2023b).

FIA requires its members engaging in charitable fundraising activities to adhere to their code of conduct. The code is informed by the International Statement of Ethical Principles in Fundraising and outlines how members are expected to act in their fundraising practices, behaviours and interactions with donors. Compliance is undertaken by FIA 'mystery shopping' the fundraising activity of its members and providing feedback to them to encourage ongoing improvement. Since 2019, FIA has undertaken over 12,000 monitoring interactions and 'mystery shopped' approximately 700 members (FIA, sub. 134, pp. 7–9).

In addition, charities can be subject to other more 'decentred' forms of regulation which extend beyond the regulation imposed by governments (Black 2001, p. 103). These various sources of incentives or disincentives for acting in particular ways contribute to creating the broader regulatory context in which charities operate. For example, larger donors may impose certain expectations on grantees, such as outcome reporting obligations. The media can also scrutinise the actions of charities, thereby affecting their reputation among donors and within the community.

7.3 Coverage of the regulatory framework

As outlined in section 7.1, the scope and coverage of a regulatory framework is an important consideration when assessing whether the framework is achieving its policy objectives. Given the objective of the ACNC regulatory framework to maintain, protect and enhance the public trust and confidence that underpins the charitable sector, and the link between trust and giving (chapter 3), it is necessary to consider whether the scope of entities covered by the ACNC regulatory framework is appropriate and proportionate.

An important area where the coverage of the ACNC regulatory framework is inconsistent is in relation to 'basic religious charities' (box 7.5).

Box 7.5 – Basic religious charities

Basic religious charities are a subset of charities that meet specific legislative criteria. A charity is a basic religious charity if it is registered with the advancing religion subtype of charity and is not entitled to be registered with another subtype of charity. However, a charity is not a basic religious charity if it is a body corporate under the Corporations Act, or a corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or *Companies Act 1985* (NI), or incorporated under any of the state or territory 'associations incorporation' Acts. The ACNC estimates that this condition precludes several thousand charities from basic religious charity status (ACNC, pers. comm., 14 November 2023).

A charity is also not a basic religious charity if:

- it is an entity with DGR status, unless it is endorsed in part for the operation of one or more funds, authorities or institutions, and total revenue derived from that operation for the financial year is less than \$250,000
- the ACNC has allowed it to form part of a reporting group for the year
- the total of the grants it receives (if any) from Australian Government agencies in a financial year exceeds \$100,000 in the financial year or the previous two financial years
- it has been identified as being involved in the abuse of a person in an application for redress under the National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (Cth) (Redress Act), or in a response to a request for information from the National Redress Scheme Operator under the Redress Act, and it has failed to join the National Redress Scheme for Institutional Child Sexual Abuse by not being a 'participating non-government institution' within six months, and the application for redress relating to it has not been withdrawn.

Source: ACNC Act, s. 205-35.

Seventeen per cent of charities (8,280 charities) that submitted a 2021 ACNC annual information statement self-identified as a basic religious charity (ACNC 2023g, p. 12). Basic religious charities are not subject to the ACNC's governance standards (box 7.6) and financial reporting requirements meaning, based on available data, about one in six charities are not subject to important elements of the regulatory framework.

Box 7.6 – Charity governance obligations

The ACNC governance standards are principles-based, meaning each charity has flexibility to determine what reasonable steps to take in its circumstances to meet its obligations under those standards. If the ACNC reasonably considers that a charity – other than a basic religious charity – has not complied or is unlikely to comply with a governance standard, the ACNC may respond by exercising its enforcement powers or by revoking the charity's registration. Certain conditions and review rights are attached to these regulatory responses (for example, the revocation of a charity's registration (ACNC Act, s. 35-20)).

The ACNC governance standards require a charity, that is not a basic religious charity, to:

1. operate on a not-for-profit basis and work toward its charitable purpose
2. take reasonable steps to be accountable to its members and provide them with a reasonable opportunity to raise concerns about how the charity is governed
3. not act in a way that could be dealt with as an indictable offence, or breach a law that has a civil penalty of a certain magnitude
4. take reasonable steps to ensure that the persons responsible for governing the charity (for example, its directors or trustees) are not disqualified from managing a corporation under the Corporations Act, or disqualified by the ACNC from being a Responsible Person of a charity
5. take reasonable steps to ensure that its responsible people understand and carry out certain duties, for example, act with reasonable care and diligence and disclose conflicts of interest
6. take reasonable steps to participate in the National Redress Scheme if involved in past conduct related to institutional child sexual abuse.

Source: ACNC Regulations (Cth), div. 45.

Several inquiry participants stated that the basic religious charity concept and related exemptions were not within the scope of the inquiry's terms of reference (Carroll and O'Dea Lawyers, sub. DR739, p. 3; Human Rights Law Alliance, sub. DR485, p. 2; Plymouth Brethren Christian Church, sub. DR456, p. 1). The Commission's view is that the regulation of basic religious charities is a relevant consideration when assessing whether the regulatory framework for charities is fit for purpose. Religious values and traditions are an important motivator for giving (chapter 3) and several inquiry participants emphasised the role of religious charities in contributing to Australia's culture of giving (Korus Connect, sub. DR576, pp. 1–2; Moore Theological College, sub. DR381, p. 2).

Inconsistent treatment of basic religious charities lacks a policy rationale

All charities that are not basic religious charities, including those that are small in size, volunteer-run and/or motivated by faith, are required to meet ACNC's governance standards and financial reporting requirements

to maintain ACNC registration and access associated benefits (ACNC 2023p).⁸ These benefits include tax concessions and the ACNC registered charity tick (which charities can use to signal their compliance with their ACNC obligations to donors and the public) (ACNC 2022e, 2024s, 2024l).

On the one hand, religious organisations said exemptions for basic religious charities are important.

... the rationale for excepting a [basic religious charity] from certain reporting requirements is explicable by reference to the lower risk and impacts of such risk which are associated with a [basic religious charity]. (Australian Catholic Bishops Conference, sub. DR706, p. 13)

It is a matter of religious freedom that appropriate governance standards of a religious organisation are determined by the applicable theology and accepted practices of the relevant religion and not by secular standards of the ACNC Commissioner. (Plymouth Brethren Christian Church, sub. DR456, p. 3)

On the other hand, several inquiry participants said that different governance and reporting requirements for basic religious charities lack a principles-based rationale and contribute to a lack of transparency and accountability (Atheist Foundation of Australia Incorporated, sub. DR685, p. 3; Luke Beck, sub. DR742, p. 3; Phil Saj, sub. DR762, p. 1; Rationalist Society of Australia, sub. 219, p. 5; Say Sorry, sub. 266, p. 13).

... I am not persuaded that there are principled grounds (eg human rights-related arguments) for the [basic religious charity] category. (Pauline Ridge, sub. DR732, p. 1)

The Commission carefully considered the submissions and evidence provided at public hearings in support of current exemptions afforded to basic religious charities, but could not identify a policy rationale that justifies retaining them. Basic religious charities should be subject to the same ACNC governance standards and financial reporting requirements as other charities, through the removal of the concept of 'basic religious charity' and related exemptions from the ACNC Act (recommendation 7.1). These changes are reasonable, proportionate and necessary given community expectations around the transparency and accountability of all charities, and the benefits associated with the collection and publication of financial information of a significant proportion of the charitable sector.

These proposed reforms would not affect the recognition of 'advancing religion' as a charitable purpose, or that this purpose is presumed to be for the public benefit (in the absence of evidence to the contrary) under the Charities Act (ss. 7(e), 12). The status quo would also be maintained for religious charities that do not meet the criteria of basic religious charity (box 7.5), including those with purposes *additional* to advancing religion, such as advancing social public welfare or advancing education.

What would changes to governance obligations and financial reporting requirements mean for basic religious charities?

Requiring basic religious charities to meet the ACNC's governance standards and financial reporting requirements may affect the administration of some religious institutions, such as certain local congregations, but would provide for a more transparent and consistent approach to regulating charities.

⁸ The ACNC classifies a charity's size by its annual revenue. Before the 2022 reporting period, a 'small' charity had revenue less than \$250,000 and a 'medium' charity had revenue of \$250,000 or more, but less than \$1 million. From the 2022 reporting period onwards, small charities have revenue less than \$500,000 and medium charities have revenue of \$500,000 or more, but less than \$3 million. A charity is classified as 'large' if it is not small or medium (ACNC 2023j). Indigenous Corporations (figure 7.2) that meet their obligations under the CATSI Act are treated as meeting their obligations under the ACNC Act (ACNC 2024a).

The ACNC governance standards are intended to provide a minimum level of assurance that charities are meeting community expectations in relation to how a charity should be managed, including the use of donations and volunteer time, and how the charity demonstrates that it is operating transparently.

As with other charities, basic religious charities would not be routinely required to demonstrate their compliance with each of the ACNC governance standards, but would need to keep operational records relevant to meeting them (such as policies and procedures) (ACNC 2024h, 2024o, 2024p; ACNC Act, s. 55-5(2)). In the event of a compliance concern, the ACNC would need to consider matters including the size, purpose and activities of the charity when assessing if it had taken reasonable steps to comply with its obligations under those principles-based standards (ACNC 2024h; ACNC Regulations, s. 45.1).

To reduce administrative burden and increase compliance certainty for charities, the ACNC may recognise a third-party's standards, such as a code of conduct, where it agrees that a charity that meets those standards it is highly likely to also meet the ACNC governance standards (which nevertheless would continue to apply) (ACNC 2019c). The ACNC noted the potential for 'mapping' the governance models of religious groups to the ACNC governance standards and has done this in at least one instance (ACNC, sub. DR729, p. 7; ACNC 2024m). This may benefit basic religious charities already subject to comparable governance standards as part of their relationship or affiliation with other entities, as they may not need to develop distinct policies or procedures to meet the ACNC governance standards.

Broadly, ACNC financial reporting requirements are intended to strike a balance between charities' administrative burden, and appropriate accountability and transparency (Revised Explanatory Memorandum, Australian Charities and Not-for-profits Commission Bill 2012 (ACNC Bill), para. 6.6). However, unlike most other charities, the ACNC does not require basic religious charities to answer financial questions within the annual information statement that they are required to submit to the ACNC each year (ACNC 2023m, para. 15; ACNC Act, s. 60-5). There is no express legislative constraint on the financial information that the ACNC can require basic religious charities to provide in the ACNC annual information statement. Only 6% of basic religious charities (537 charities) voluntarily provided financial information in their 2021 annual information statement (ACNC 2023a, p. 12). Approximately 76% (410) of these charities were small, 20% (105 charities) were medium and 4% (22 charities) were large (ACNC, pers. comm., 14 November 2023). Medium and large basic religious charities are legislatively exempted from a separate obligation to submit a financial report to the ACNC for each financial year of registration (ACNC Act, s. 60-60).

Some religious organisations were concerned about the additional administrative burden for basic religious charities in meeting ACNC financial reporting requirements, particularly very small charities with limited administrative capacity (Australian Catholic Bishops Conference, sub. DR706, pp. 14–17; Australian Christian Lobby, sub. DR302, p. 9; Baptist Association of NSW and ACT, trans., p. 108; Freedom for Faith, sub. DR606, p. 17). The Commission also heard that some smaller parishes could have difficulty preparing a profit and loss statement (Australian Catholic Bishops Conference, trans., p. 305). This, however, highlights the importance of applying the ACNC financial reporting framework to all charities to facilitate an appropriate level of accountability and transparency in line with community expectations.

Overall, requiring basic religious charities to meet ACNC financial reporting requirements is anticipated to generally represent low administrative burden for most affected charities. In the 2021 reporting period, most basic religious charities were small (83%), meaning the only additional reporting requirement for these charities would be the provision of basic financial information through the ACNC annual information statement, largely informed by existing financial records that all charities are required to keep under separate record-keeping obligations (ACNC 2023g, p. 12; ACNC Act, s. 55-5(1)). From the 2022 reporting period, a greater proportion of basic religious charities would likely be classified as small because this classification now applies to charities with less than \$500,000 revenue (rather than \$250,000) (ACNC 2022f, 2023j). The

annual guidance published by the ACNC to assist charities prepare for – and meet – their reporting obligations would assist basic religious charities to understand specific ACNC financial reporting requirements (for example, ACNC 2023a).

Basic religious charities would also be able to apply to the ACNC to report as part of a group (a charity that participates in group reporting is precluded from self-assessing as a basic religious charity) (ACNC Act, ss. 60-95, 205-35(4)). This may reduce administrative burden for reporting group members, for example by allowing them to submit a joint ACNC annual information statement (ACNC 2022c; ACNC Act 60-95(1)).

Small basic religious charities would not be required to separately submit a financial report and most remaining basic religious charities, classified as ‘medium’, would only be required to obtain a review (not an audit) of the financial report that they submit to the ACNC (in addition to the ACNC annual information statement).

ACNC regulation of basic religious charities and the free exercise of religion

The removal of the concept of ‘basic religious charity’, and related exemptions, from ACNC legislation would enable the Commissioner of the ACNC to exercise their existing powers to suspend or remove a responsible person of any charity that is a federally regulated entity in relation to an actual or likely contravention of the ACNC Act, or actual or likely non-compliance with the ACNC governance standards (box 7.7). These powers may also be used to respond to actual or likely non-compliance with the ACNC external conduct standards. Currently, this power cannot be used in relation to a charity that is a basic religious charity, even if it is a federally regulated entity (ACNC Act, s. 100-5(3)). The Commissioner of the ACNC is also empowered to appoint a responsible person to act in the place of a responsible person that has been suspended or removed, but only where the appointment is necessary to enable the related charity to continue functioning (ACNC Act, s. 100-1, subdivision 100-C).

The scope of the Commissioner of the ACNC’s power can be contrasted with the powers available to other Australian Government regulators, such as ASIC (Aroney and Turnour 2017, p. 448). For example, under the Corporations Act, there are several circumstances where a person may be disqualified from managing a corporation (Corporations Act, part 2D.6). However, many of the grounds for disqualification are limited to *actual* misconduct and require ASIC to apply to a court for an order disqualifying the relevant person (and ASIC is not empowered to appoint a replacement director) (for example, s. 206C).

Several participants raised concerns that an intervention by the Commissioner of the ACNC into the governance of a religious charity, through the suspension, removal or replacement of a responsible person, would infringe on the free exercise of religion in breach of protections provided by section 116 of the Australian Constitution. Participants were also concerned that such an intervention by the Commissioner would breach Australia’s obligations under international law (such as Article 18(1) of the International Covenant on Civil and Political Rights) (Alex Deagon and Mark Fowler, sub. DR276, pp. 7–16; Carroll and O’Dea Lawyers, sub. DR739, p. 3; Human Rights Law Alliance, sub. DR485, pp. 3–4; Nicholas Aroney, Mark Fowler and Joel Harrison, sub. DR502, pp. 2–4; Plymouth Brethren Christian Church, sub. DR456, pp. 2–3). Conversely, the Commission also heard that the proposed change would be unlikely to infringe any such freedom under section 116 of the Australian Constitution, given the narrow construction of that protection by the High Court (Luke Beck, sub. DR742, p. 4).

The Commission's response to participant concerns

Based on evidence from submissions, consultations and analysis of relevant judicial decisions, the Commission's view is that removing the concept of a basic religious charity and related exemptions from ACNC legislation would, on its face, comply with section 116 of the Australian Constitution.

In *Kruger v Commonwealth*, the High Court held that to attract invalidity under section 116 of the Australian Constitution, a law made by the Australian Parliament must have a *purpose* of achieving an object that the section forbids (such as prohibiting the free exercise of religion) ((1997) 190 CLR 1). The Commission's proposed change does not have such a purpose. Rather, the purpose of recommendation 7.1 is the consistent application of the ACNC's regulatory framework – including governance standards and reporting requirements – to all charities. Similarly, the identified regulatory mechanisms (such as the ACNC governance standards) do not have a purpose of prohibiting the free exercise religion.

Additionally, the voluntary nature of ACNC registration is a further reason why recommendation 7.1, if implemented, would not impose obligations that are inconsistent with section 116 of the Australian Constitution (Luke Beck, sub. DR742, pp. 3–4, 6; Pauline Ridge, sub. DR732, p. 4). Registration as a charity is not compulsory, although it may be a prerequisite for accessing certain benefits, such as an income tax exemption (for example, ACNC Act, s. 20-5). In return for accessing such benefits, there is a reasonable requirement to comply with regulatory obligations. However, if an organisation was of the view that these benefits do not outweigh the associated costs, it has the choice not to register as a charity (or to deregister if already registered).

The Commission also notes there are religious charities that do not meet the criteria of a basic religious charity and are therefore not afforded the same exemptions from ACNC regulatory obligations as basic religious charities. There does not appear to be a reasonable basis for treating religious charities differently depending on whether they meet the criteria of a basic religious charity (box 7.5). The Statement of Compatibility with Human Rights that accompanied the Revised Explanatory Memorandum to the ACNC Bill also did not identify risks with subjecting religious charities to certain (or different) regulation under the ACNC Bill in terms of compatibility with human rights recognised under the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) (Luke Beck, sub. DR742, p. 3).

Further safeguards could be considered

However, should there be continuing concerns about the Commissioner of the ACNC's power to suspend or remove a responsible person (subject to the constitutional constraints on the powers of the Commissioner of the ACNC), then consideration could be given to additional safeguards in relation to the use of this power. For example, by:

- specifying additional criteria in the ACNC Act that the Commissioner of the ACNC must consider when exercising this power
- modifying review rights in relation to the use of this power.

Such provisions should, however, be of general application to all charities, so as not to create new inconsistencies within the regulatory framework.



Recommendation 7.1

A more transparent and consistent approach to regulating charities

The Australian Government should amend the Australian Charities and Not-for-profits Commission Act 2012 (Cth) to remove the concept of ‘basic religious charity’ and associated exemptions, so all charities registered with the Australian Charities and Not-for-profits Commission are regulated in a consistent manner. This should include obligations to comply with principles-based governance standards and reporting requirements proportionate to size.

7.4 Assessing the powers and capacity of the ACNC reveals a mixed scorecard

Some aspects of the regulatory framework for charities are working well, while others need improvement. The Commission did not seek to review every aspect of the ACNC regulatory framework – other recommendations from past or future reviews beyond the scope of this inquiry, such as the Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review 2018 (ACNC Legislation Review), may further support the Commissioner of the ACNC in their role (Treasury 2018b). This section considers several aspects of the regulatory framework, and ways to improve them.

Constitutional constraints limit the ACNC’s enforcement powers ...

Regulators should be equipped with a sufficient range of enforcement tools to adopt a risk-based approach to regulation (PC 2013b, p. 125, 2020b, p. 101). This helps regulators take proportionate action in response to misconduct (Black and Baldwin 2010, p. 182), while reinforcing the incentive for other entities in scope of the regulation to comply with their obligations. However, constitutional constraints limit the full scope of the ACNC’s enforcement powers to a small proportion of charities characterised as ‘federally regulated entities’ (box 7.7) and those whose conduct is captured by the external conduct standards (approximately 6% of charities operate outside Australia) (ACNC 2023g, p. 14). The ACNC said:

Not having the full suite of regulatory powers for all ACNC regulated charities means any enforcement action we can take is constrained, and that different approaches need to be considered for similar types of non-compliance. (sub. DR729, p. 1)

This means that charities that engage in similar misconduct could be subject to different regulatory responses because of the nature of their activities or the location of their misconduct, rather than the nature of the misconduct itself (ACNC, sub. DR729, p. 2).

Overcoming constitutional constraints on the ACNC’s ability to use regulatory and enforcement powers in relation to all charities, including their assets, would require legislative changes at the Australian and state levels of government. Options for reform include a mirror scheme (where one jurisdiction enacts a law in the same or similar terms as other jurisdictions), a complementary/applied law scheme (where a law enacted by a jurisdiction is ‘applied’ by each of the other jurisdictions participating in the scheme as a law of that jurisdiction), or a state referral scheme. Section 51(xxxvii) of the Australian Constitution confers on the Australian Parliament power to make laws with respect to ‘matters’ referred to it by states, that are otherwise outside the scope of Commonwealth legislative power. States have referred powers to the Commonwealth a number of times – an

example is the scheme which underpins the regulation of corporations under the Corporations Act and *Australian Securities and Investments Commission Act 2001* (Cth) (French 2003, pp. 27–29).

Box 7.7 – Federally regulated entities

A federally regulated entity is:

- a constitutional corporation (meaning a body corporate incorporated in a territory, a foreign corporation, or a trading or financial corporation formed within the limits of the Commonwealth)
- a trust, all of the trustees of which are constitutional corporations
- a body corporate that is taken to be registered in a territory under section 119A of the Corporations Act
- a trust, if the proper law of the trust and the law of the trust’s administration are the law of a territory
- an entity, the core or routine activities of which are carried out in or in connection with a territory (ACNC Act, s. 205-15).

The Commonwealth can regulate a federally regulated entity by relying on its power to regulate under paragraph 51(xx) of the Australian Constitution (the ‘corporations power’), or under section 122 of the Australian Constitution (the ‘territories power’) (Revised Explanatory Memorandum, ACNC Bill, para. 2.7).

Whether a charity is a federally regulated entity because it is a foreign corporation or because of its connection to a territory is generally a straightforward question. However, determining whether an entity is a trading or financial corporation formed within the limits of the Commonwealth is more nuanced. For example, the Royal Society for the Prevention of Cruelty to Animals (RSPCA) was found to be a trading corporation because it earned a substantial income from trading activities, whereas the Children’s Medical Research Institute was found not to be a trading corporation because its trading activities were insubstantial and peripheral to its central activity of medical research (*Hardeman v Children’s Medical Research Institute* [2007] NSWIRComm 189; *Orion Pet Products Pty Ltd v Royal Society for the Prevention of Cruelty to Animals (Vic)* [2002] FCA 860).

Only a minority of charities would be federally regulated entities; the proportion cannot easily be quantified (ACNC, pers. comm., 14 November 2023). Whether a charity is a federally regulated entity involves constitutional interpretation and consideration of a range of factors. To assess whether a charity is likely to be a federally regulated entity, the ACNC is bound by government processes to obtain the advice of the Australian Government Solicitor (AGS) and the endorsement of the Attorney-General’s Department of that advice (ACNC, sub. 238, p. 12; Legal Services Directions 2017 (Cth), para. 2.1). This adds a financial and time cost for the ACNC. There are no scenarios in which the ACNC can itself make a preliminary determination that a charity is a federally regulated entity and use its enforcement powers on that basis.

A referral of powers by state parliaments is likely to be the best approach for addressing the constitutional limitations of the ACNC, and to improve regulatory oversight of a charity’s assets in the event its status as a charity is revoked. In addressing this matter, the ACNC Legislation Review concluded that:

... in the long term, there is a need for a national scheme based on a referral of powers by the States to the Commonwealth. Just as it took time for the national schemes relating to corporations and consumer protection laws to evolve, it may take time for a national scheme for charities and not-for-profits to develop. (Treasury 2018b, p. 2)

There are, however, significant challenges and costs associated with states referring powers to the Commonwealth. Variation in regulation across jurisdictions may arise if some states decline to refer a matter, but the Australian Parliament nevertheless implements reforms that are enforceable in the other states. The question is therefore whether the benefits of a state referral of powers outweigh the potential costs, and whether this is a proportionate response to current policy problems and consequential risks.

The Commission acknowledges there are inconsistencies in the ACNC's powers to regulate registered charities, and the ideal of the national regulator having the full suite of powers over all charitable bodies remains a desirable policy objective. Recently agreed fundraising conduct reforms reflect a common desire and collaborative approach among governments in relation to aspects of charities regulation. For example, the Victorian Government expressed its vision that, by 2025, regulators would 'be able to take joined up approaches to enforcement, particularly for fundraising conduct that occurs nationally or across borders' (CAV 2024b, p. 10).

Given the complexities involved with progressing a referral of powers, and the need for sufficient evidence that such a course of action is a proportionate response, there are several other reforms which can build on the existing collaborative approach to charities regulation and be achieved without the need for a referral of powers.

However, changes in giving motivations and practices, including the greater use of online platforms, means that new risks may emerge. These changes, coupled with the large and increasing pool of funds managed by charities, mean a referral of powers may need further consideration by governments, should it become apparent that the current (and proposed) sharing of responsibilities for charities regulation is insufficient to manage emerging risks. Assessing and managing the risks to trust and confidence in the sector posed by the limitations of the ACNC's regulatory powers should be a primary role and responsibility of the proposed National Charity Regulators Forum set out in recommendation 7.5.

The Commission's recommendations include a suite of incremental reforms intended to strengthen the ACNC's information gathering and disclosure powers, underpinned by test case funding and a binding rulings scheme, that are proportionate to current and foreseeable risks faced in the sector (recommendations 7.2 and 7.3). The role, powers and functions of the ACNC would be expanded if these recommendations were adopted.

... but the ACNC has been modest in its use of the powers it does have

A sound regulatory framework (based on the features set out in section 7.1) will only promote trust and confidence in the charitable sector if donors, charities, governments and the public are confident the ACNC will exercise its functions when the need arises. The Commission is not questioning the enforcement decisions taken by the ACNC – these can be complex matters – but simply notes that, since its inception, the ACNC data suggests that it has been modest in its use of the regulatory powers and penalties available to it (table 7.1).

The Commission was not tasked with assessing the effectiveness of the ACNC as a regulator. There are several reasons why the ACNC may not have used its formal powers more routinely in instances of actual or suspected non-compliance, including that:

- there is general good conduct within the sector which has not required a strong regulatory response
- the ACNC's risk-based regulatory approach focuses primarily on educating and guiding charities to meet their obligations (ACNC 2020a, paras. 24–27)
- the ACNC must seek legal advice (at a time and financial cost) from the AGS each time it wishes to use its powers against a charity, to confirm whether the charity is a federally regulated entity (box 7.7) (ACNC, sub. 238, p. 12)

- the number of instances when the ACNC has the full suite of enforcement powers open to use has been limited because most charities are not a federally regulated entity
- the ACNC's loss of oversight of assets held by a charity, including donations, when charity status is revoked may discourage it from using that power if it believes the public interest would be better served by keeping the charity's assets within its purview (ACNC, sub. 238, p. 12; sub. DR729, p. 1)
- the resources, capabilities and capacity the ACNC has to pursue enforcement action are used elsewhere, given there are likely competing priorities
- the requirement to balance its object, 'to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector' against a more assertive regulatory posture using its enforcement powers (ACNC Act, s. 15-5).

Table 7.1 – Regulatory powers and penalties available to the Commissioner of the ACNC

| Powers and penalties | Federally regulated entity / ACNC external conduct standards apply | Non-federally regulated entity / ACNC external conduct standards do not apply | Number of times power exercised by ACNC ^a |
|---|--|---|--|
| Revocation of charity status for non-compliance/non-entitlement (other than a failure to lodge two or more annual information statements) | ✓ | ✓ | 154 |
| Revocation of charity status for failure to lodge two or more annual information statements | ✓ | ✓ | 13,714 |
| Issue a direction | ✓ | ✗ | 6 |
| Issue a warning | ✓ | ✗ | 3 |
| Accept an enforceable undertaking | ✓ | ✗ | 6 |
| Suspend or remove a responsible person | ✓ | ✗ | 0 |
| Apply to a court for an injunction | ✓ | ✗ | 0 |
| Apply administrative penalty for false or misleading statements | ✓ | ✓ | 0 |
| Apply administrative penalty for failure to lodge documents on time | ✓ | ✓ | 170 |

a. Totals do not include the ACNC's exercise of two, unspecified, enforcement powers in the 2019-20 reporting period. Sources: ACNC (2013, 2014b, 2015a, 2016b, 2017a, 2018, 2019a, 2020b, 2021b, 2022a, 2023e).

Additionally, what appears to be a limited use of powers may also reflect the ACNC's evolution as a regulator. Established in 2012, the ACNC has registered tens of thousands of charities, developed information collecting mechanisms while working with other regulators to streamline reporting requirements, and established the ACNC charity register among other activities.

Responding to the Commission's draft report, the ACNC explained:

When there are risks needing to be addressed, and the enforcement powers are not available, we will negotiate with the charity to make necessary changes. If they are unwilling or unable to do so,

we may decide to revoke, where that is proportionate to the risk as it exists at that point in time.
(sub. DR729, p. 1)

The Commission recognises that the ACNC's collaborative approach to working with charities can lead to good outcomes for the charity, and for the community, in many instances. However, now in its second decade of operation, the ACNC may have greater ability and buy-in to assume a more assertive enforcement and compliance posture, where necessary, to support trust and confidence in the charitable sector.

The combination of existing powers of the Australian and state and territory regulators, those proposed for the ACNC, and a more formal regulatory architecture through a National Charity Regulators Forum should provide a more comprehensive and robust regulatory framework to support trust and confidence in the charitable sector.

Given the cumulative effect of the various recommendations proposed by the Commission in relation to the powers and functions of the ACNC (including recommendations 6.2, 7.2, 7.3 and 9.1), the ACNC will need to be appropriately resourced to perform its expanded role at the centre of a more comprehensive and robust regulatory framework for charities.

The ACNC's limited powers are a proportionate response to certain behaviour

The constitutional corporations power, and the territories power, are relied upon for empowering the ACNC to exercise its full suite of enforcement powers against a charity that is a federally regulated entity (box 7.7). These powers are the ability to give formal warnings, make directions, seek injunctions, accept enforceable undertakings and suspend or remove responsible people (for example, board directors or committee members) in response to an actual or likely contravention of the ACNC Act, or actual or likely non-compliance with the ACNC governance standards (box 7.6) (ACNC Act, part 4-2). These enforcement powers can also be used in response to actual or likely non-compliance with the ACNC external conduct standards by any charity. Where these conditions are not met, the ACNC's powers to address such contraventions or non-compliance are limited to administrative penalties (for false or misleading statements, or for failure to lodge documents when required) or revoking a charity's registration (table 7.1).

Further, the ACNC prioritises educating charities on their obligations and how to meet them, and has implemented informal compliance tools, such as voluntary compliance agreements modelled on an undertaking (ACNC 2021d, paras. 20, 37). However, these lack the deterrent effect and transparency of the ACNC's formal enforcement powers which it can use in relation to a charity that is a federally regulated entity.

The ACNC's current powers (administrative penalties and revocation) are proportionate to address non-compliance by a charity that is not a federally regulated entity, with certain ACNC governance standards. Specifically, revoking a charity's ACNC registration is a proportionate response for:

- refusing to participate in the National Redress Scheme (ACNC governance standard 6), which was established in response to a recommendation in the Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA) final report, to help people who have experienced institutional child sexual abuse gain access to counselling, a direct personal response, and a redress payment (DSS nd).
- addressing non-compliance with ACNC governance standard 4 where a charity's members do not remove a responsible person despite being aware of the ACNC's reasonable concerns about that individual's suitability to govern the charity.

No strong case to increase accountability for individual responsible people

Governance duties owed by the responsible people of a charity, such as board directors or committee members, differ depending on the charity's legal structure.

The responsible people of approximately half of all registered charities are personally subject to governance duties under the legislation that regulates their charity's legal structure (affecting, for example, Indigenous Corporations, co-operatives and most incorporated associations). These duties operate in addition to the duties under ACNC governance standard 5 (box 7.6). Regulators administering this legislation may apply financial penalties in response to breaches of these duties (for example, a responsible person's failure to exercise their powers and discharge their duties in good faith in the best interests of their charity and for a proper purpose). ORIC can also seek a court order to disqualify an individual from managing an Indigenous Corporation in certain circumstances (for example, a breach of their directors' duties) (CATSI Act, s. 279-15). These sanctions help promote compliance with applicable governance duties.

In contrast, statutory governance duties are not imposed personally on individuals for:

- unincorporated associations (approximately 14,100 charities) (ACNC, pers. comm., 14 November 2023)
- Tasmanian incorporated associations (approximately 800 charities) (ACNC, pers. comm., 14 November 2023)
- corporations where individual civil directors' duties have been switched off in favour of the ACNC governance standards (approximately 13,300 charities) (ASIC, pers. comm., 17 November 2023). Criminal offences for a breach of certain directors' duties, such as the duty to prevent insolvent trading under section 588G of the Corporation Act, continue to apply (ASIC nd).

Governance standard 5 requires charities to take reasonable steps to ensure that its responsible people are subject to, and comply with, certain duties under that standard (ACNC Regulations, s. 45.25(2)). The ACNC may only take action against a charity for a breach of governance standard 5 where it fails – or is likely to fail – to take such reasonable steps (Ramsay and Webster 2017, p. 129). This means that the conduct of individual responsible people is only *indirectly* regulated by the ACNC under this standard (Langford and Anderson 2023, p. 537).

The ACNC (sub. DR729, p. 3) said that the 'switching off' of certain directors' duties for corporations registered under the Corporations Act may cause confusion for individuals that are directors of both charitable and non-charitable companies, and that switching these duties back 'on' would address this issue and provide an alternate accountability mechanism to address governance misconduct concerns where the ACNC is unable to act.

The Commission could not find, and did not hear, evidence of a strong case to make responsible people of charities personally subject to the ACNC governance standards, or that certain directors' duties under the Corporations Act should be 'switched on'.

In written responses to information requests, state and territory regulators of incorporated associations and co-operatives that responded uniformly reported low numbers of governance misconduct concerns in their jurisdictions in the past five years. As most charities rely on voluntary responsible people (such as board directors), it is important that any proposed changes to regulation do not have a chilling effect that could undermine the ability for charities to attract and retain suitable responsible people (Ian Murray, sub. DR640, pp. 1–2).

The 'switching on' of certain directors' duties under the Corporations Act (for example, changes to part 1.6 of that Act) would also undo reforms at the Australian Government level intended to minimise regulatory

duplication and simplify and tailor governance obligations for the NFP sector (Revised Explanatory Memorandum, ACNC Bill, paras. 15.69–15.70).

The ACNC should have powers to compel necessary information from charities

As discussed above (box 7.7), the ACNC must seek legal advice, at a time and resource cost, from the AGS to form an opinion on whether a charity is a federally regulated entity or not. The ACNC will typically conduct its own assessment of a charity's potential federally regulated entity status before seeking advice from the AGS. This internal assessment may require the ACNC to consider the charity's activities, including reviewing financial information that is not routinely collected from a charity through the ACNC annual information statement.

The ACNC Act currently lacks a mechanism to enable the Commissioner of the ACNC to compel a charity to provide it with additional information required to inform its assessment. The Commissioner of the ACNC should be empowered to compel a charity to provide information necessary to assess whether it is a federally regulated entity (recommendation 7.2). This power would be constrained and could only be used in circumstances where the Commissioner of the ACNC reasonably believes that they may need to use an enforcement power to respond to an actual or likely contravention of the ACNC Act or non-compliance with the ACNC governance standards.

Certain misconduct can be addressed by other agencies

In other instances of alleged misconduct, the limited powers of the Commissioner of the ACNC may preclude a proportionate response by the ACNC to a charity's conduct. However, as the legal structure, operating location(s) and activities of a charity determines which regulators have oversight of its governance and conduct, other regulators may have powers to act where there are limitations in the ACNC's powers. To the extent that charities understand the availability of these powers and they are used by regulators, this may mitigate concerns about the limits of the ACNC's powers. That is, even in instances where the ACNC cannot use their full suite of enforcement powers, the charity could still be investigated and have action taken against it by one or more regulators. For example, in New South Wales (NSW), some entities from the Returned and Services League were investigated by the ACNC for breaches of its governance standards, by NSW police in relation to allegations of fraud, and by NSW Fair Trading and through the independent Bergin Inquiry in relation to alleged breaches of the *Charitable Collections Act 1991* (NSW) (Bergin 2018).

In all situations, law enforcement agencies can be involved in cases where Australian laws have been breached, for example, fraudulent activity or trading while insolvent (ACNC governance standard 3).

A multi-regulator landscape can lead to regulatory inconsistencies

The multi-regulator landscape, including the laws they enforce, can contribute to situations where charities engaged in similar misconduct could experience different regulatory responses. For example, a Victorian charity that makes false statements during a once-off fundraising appeal in South Australia could face a financial penalty under South Australian law. However, the charity would not face a similar penalty if it engaged in the same conduct in the Northern Territory, as the Northern Territory does not regulate fundraising activities. In both instances, the conduct may not meet the 'in trade or commerce' threshold requirements, such as repetitive fundraising activities, to attract the application of the Australian Consumer Law (box 7.3).

Where the ACNC becomes aware of a concern beyond its regulatory coverage, it may seek to refer the concern to another regulator that it believes is better positioned to respond. Variations in receiving agencies' powers, policy objectives, resourcing and approaches to risk profiling are among factors that will influence if a

particular regulator chooses to act in response to a referral from the ACNC, and what action that regulator will take in response to identified concerns (ACNC, sub. 238, p. 11). For example, state and territory regulators of incorporated associations may not have a graduated suite of powers akin to those available to the ACNC with respect to charities that are federally regulated entities. Generally, these regulators are empowered to apply financial penalties for breaches of the legislation that regulates those associations, for example, for a failure to notify the regulator of changes to certain association details, or a failure to hold a general meeting within a required timeframe. However, these regulators have not identified their lack of such powers as an impediment to performing their functions or furthering their legislative objects. State and territory parliaments could seek to reform laws if it was thought desirable to give their regulators a consistent suite of graduated powers to respond to governance misconduct, such as the ability to issue directions or warnings.

There is little evidence that existing inconsistencies are resulting in harm to donors or the public, charities or the broader charitable sector at this time. The Commission's proposal for more formal regulatory architecture (recommendation 7.5) would support regulators to clarify roles, responsibilities and information sharing arrangements – including in relation to the management of referrals – which may help to mitigate any effects of these inconsistencies.

Reforms to improve oversight of charitable assets

Enhanced oversight of charitable assets when revoking ACNC registration

The ACNC may revoke the registration of a charity on several grounds, including in response to a voluntary revocation application from the charity or the charity's noncompliance with its obligations under the ACNC Act (ACNC Act, s. 35-10(1)). While the ACNC must consider a charity's assets when deciding whether to revoke its registration, it generally does not confirm the veracity of a charity's financial position (for example, ACNC 2023n, para. 34; ACNC Act, s. 35 10(2)(c)). For example, the ACNC does not routinely require a charity seeking voluntary revocation of its registration to provide evidence on the value, or actual or intended distribution, of its net assets.

The ACNC has no oversight of a charity once its ACNC registration is revoked (either voluntarily or involuntarily) and has no specific powers to protect the charitable assets of such entities – ACNC legislation does not require the assets of former charities to remain within the charitable sector (ACNC, sub. 238, pp. 10–11). This means that if a formerly registered charity continues to operate after its ACNC registration is revoked, the assets that it accumulated because of its status as a registered charity (for example, from donations), could be used for noncharitable purposes or in a manner that would not be consistent with the ACNC governance standards or external conduct standards. In the case of charities structured as proprietary companies limited by shares, there is an additional risk that these assets could be used for the private benefit of shareholders if these companies remove any constraints from their constitutions requiring them to operate on an NFP basis.

In 2021-22, the ACNC revoked the registration of 15 charities in relation to registration compliance concerns. These charities reported that they held approximately \$10.5 million in assets in the most recent annual information statement submitted prior to the revocation of their ACNC registration, but the value of assets held at the date of revocation is unknown (ACNC 2023g, p. 53). In 2021-22, approximately 800 charities were revoked for failure to submit two or more annual information statements, and approximately 1,700 charities were revoked after voluntarily applying; however the value of their assets as reported in their most recent annual information statement is unknown, nor is the value of assets held at the date of revocation (ACNC 2022a, p. 30, 2023g, p. 55). It is also not known how many charities seek voluntary revocation to avoid ACNC compliance interventions.

Other regulators may have certain responsibilities and powers to protect the assets of former charities however, as detailed elsewhere in this chapter, their regulatory objectives may differ from those of the ACNC.

- Where an incorporated charity is wound up, its surplus assets may vest in the regulator of its legal structure (for example, ASIC for corporations). However, that regulator may not be required to ensure that assets accumulated because of the organisation's former charity status are applied to other registered charities with similar purposes.
- A charity endorsed as a DGR by the ATO is required to distribute certain surplus funds to another entity with DGR status if it winds-up, or its DGR endorsement is revoked (whichever occurs first) (*Income Tax Administration Act 1997* (Cth), s. 30-125(7)). The ATO assesses a charity's compliance with this requirement at the point of endorsement, and the extent to which this requirement is enforced would be influenced by the ATO's regulatory priorities and available powers with respect to acquiring assets from entities (*Income Tax Administration Act 1997* (Cth), s. 30-125(1)(c)).
- Regulators may also have powers under state or territory fundraising legislation to protect assets raised in an appeal (ostensibly) held to benefit charitable purposes. For example, mechanisms under the *Collections Act 1966* (Qld) (Collections Act) were used in 2023 by the Queensland Office of Fair Trading (OFT) to freeze bank accounts to protect monies donated as part of appeals not sanctioned nor authorised under that Act. Individuals involved in conducting the appeal later pleaded guilty to breaching provisions of the Collections Act and approximately \$148,000 from the frozen bank accounts was vested in the Queensland Public Trustee for distribution for suitable charitable purposes (OFT 2023, 2024; Collections Act, ss. 34-35; OFT, pers. comm., 6 November 2023; Queensland Government 2023b, p. 281).

State and territory Attorneys-General may also have a role to protect assets contributed for charitable purposes in their jurisdiction in certain instances. This includes situations where an Attorney-General acts on their own motion or in response to a request by another person to seek the proper administration of a charitable trust. However, like government regulators, their capacity (and willingness) to perform this role may depend on matters including the resources available to them and other priorities.

To improve the regulatory oversight of the flow of charitable assets to entities within and outside of the charitable sector, the ACNC Act should be amended to enable the ACNC to require charities undergoing revocation of their ACNC registration to provide evidence of their intended or actual distribution of net assets to eligible entities, unless the ACNC agrees to waive that requirement (recommendation 7.2). The ACNC should routinely collect this information in circumstances where it would not inappropriately delay the revocation of charities' ACNC registration. Improved regulatory architecture (recommendation 7.4) could help clarify how and in what circumstances the ACNC and other regulators will respond to a charity's refusal to provide such evidence.

Assets may be sitting unused in, or continue to be collected by, non-operational charities

A charity may generally hold and accumulate assets (for example, from donations) provided this is in furtherance of its charitable purposes (chapter 8). Issues can arise when a charity, in effect, ceases to operate. Approximately 3–4% of charities that submitted an annual information statement in the 2017–2021 reporting periods indicated that they did not operate in one or more of those periods (based on ACNC 2024g, 2024c, 2024d, 2024e, 2024f). One reason given for this during the 2020 and 2021 reporting periods was the COVID-19 pandemic.

Regulators of certain charity structures, such as Western Australian and New South Wales incorporated associations, have varying powers to wind-up or cancel the registration of an entity that has suspended or

ceased its operations. The ACNC, however, lacks a specific power to revoke the registration of a charity that it believes has ceased operating.

Additionally, there are complexities associated with ‘repurposing’ the assets of charities. Ian Murray said:

Repurposing charitable assets held by dormant charities often involves changing the purposes of those charities. In Australia, that is not an easy thing to achieve and, other than for small charities in certain circumstances in some jurisdictions, requires an application to the relevant Supreme Court, with all the costs and complications that brings. (sub. DR640, p. 5)

There are examples of regulation overseas that supports the repurposing of assets in certain circumstances to further charitable purposes. Reforms were enacted in England and Wales in 2022 to facilitate charities changing their purposes to permit their assets to be applied for other charitable purposes (*Charities Act 2022* (UK); Ian Murray, sub. DR640, pp. 5–6). The Queensland Law Society (sub. 223, p. 3) highlighted the ‘Revitalising Trusts Project’, run as a joint working agreement between the Scottish Charity Regulator and Foundation Scotland, which repurposed \$2.3m from lost or forgotten charity accounts, as one possible approach to ensuring the assets of dormant charities are directed towards benefiting the community (Scottish Charity Regulator and Foundation Scotland 2021).

The Queensland Law Society (sub. DR711, pp. 3–4) also recommended that the ACNC be resourced to investigate the prevalence and reasons for non-operating charities, and support these charities to either reinvigorate their operations or wind up.

One inquiry participant expressed concerns about potential overreach by the state if the ACNC were to ‘step into the Attorney-General’s role’ to transfer the assets of a dormant charity to another entity (PA Research Foundation, sub. DR516, p. 12), with other participants stating that existing regulatory powers are sufficient to address risks associated with dormant charities (BDO Services, sub. DR718, pp. 18–19; Royal Flying Doctor Service, sub. DR406, pp. 22–23).

The Commission did not propose any changes to legislation or regulation in relation to the management of non-operating charities. However, this is an area where cooperative approaches between regulators could yield benefits, in terms of ensuring that charities are operating for purpose. Improvements to regulatory architecture (recommendation 7.4) could support joint efforts by regulators to engage with charities that have ceased operating and – in appropriate circumstances, where such powers are available to regulators – take necessary action to ensure charitable assets are used to further charitable purposes and provide benefit to the community.

The availability and use of alternative enforcement mechanisms should be expanded

Legislation in certain jurisdictions allows applications to be made to their Supreme Courts for orders regarding the proper administration of (certain) charities, including the protection of their assets. However, the ACNC’s standing in these courts is unclear, meaning it may be unable to use these mechanisms to respond to certain compliance concerns.

In jurisdictions such as Queensland and the Australian Capital Territory, an application may be made by any person that satisfies the relevant court that they have a relevant interest in the relief sought in their application (*Trustee Act 1925* (ACT), s. 94A; *Trusts Act 1925* (Qld), s. 106). This would appear, on its face, to include the ACNC. In NSW, the ACNC would appear to require the authorisation of the NSW Attorney-General or the Supreme Court to initiate such proceedings (*Charitable Trusts Act 1993* (NSW), s. 6).

Under these state and territory laws, differing definitions of ‘charitable trust’ may affect the availability of these relief mechanisms, depending on a charity’s structure. For example, Queensland’s *Trusts Act 1925* (Qld)

(s. 106) extends coverage to any property held in trust for charitable purposes, whereas New South Wales's *Charitable Trusts Act 1993* (NSW) (s. 3) is limited to a trust established for charitable purposes and subject to the control of the Supreme Court in the exercise of its general jurisdiction with respect to charitable trusts.

The ACNC Legislation Review noted that section 110-15 of the ACNC Act gives the Commissioner of the ACNC 'the power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions' and stated that this likely extended to relying on the common law, equity and state and territory legislation to carry out the objects of the ACNC Act (Treasury 2018b, p. 34). However, the ACNC Legislation Review also noted that the ACNC had not yet 'tested any of the powers of the courts to make orders in relation to charitable assets available under common law, equity and state and territory legislation' (Treasury 2018b, p. 36).

The Commissioner of the ACNC would benefit from clarity and consistency regarding their standing in the Supreme Courts of all jurisdictions, so this alternative mechanism can be used, where necessary, to protect charitable assets. This includes clarity about:

- the Commissioner of the ACNC's standing to make applications for relief and how the Commissioner will interact with state Attorneys-General where required
- whether the Commissioner of the ACNC is sufficiently empowered (for example, by section 110-15) to seek orders for relief in a Supreme Court where they otherwise have standing under state legislation.

These standing provisions may potentially also be used as an enforcement mechanism in other matters, for example in relation to governance, where a charity is not a federally regulated entity and the ACNC is therefore unable to use its enforcement powers.



Recommendation 7.2 **Strengthening the Australian Charities and Not-for-profits Commission**

The Australian Government should:

- amend the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (the Act) to enable the Commissioner of the Australian Charities and Not-for-profits Commission (ACNC) to require a charity to provide the information necessary to assess whether the charity is likely to be a 'federally regulated entity'
- amend the Act to enable the Commissioner of the ACNC to require a charity undergoing revocation of its ACNC charity registration to evidence the intended or actual distribution of its net assets to an eligible entity unless that requirement is waived by the Commissioner
- work with state and territory governments to ensure the Commissioner of the ACNC has the necessary enforcement powers to fulfil their role within the regulatory framework for charities. This should include implementing or reforming laws, where necessary, to confirm that the Commissioner of the ACNC has standing to make applications in a state or territory Supreme Court for orders regarding the administration of charities, including the protection of assets held in trust for charitable purposes, regardless of a charity's structure.

A wider review of charities law in Australia

The Queensland Law Society (sub. DR711, p. 2) said that it remains appropriate for state and territory Attorneys-General to have standing to make applications in state or territory Supreme Courts for orders regarding the administration of charities (including protection of certain charitable assets), but that improved

coordination could help to improve information sharing between Attorneys-General and the ACNC to identify cases of concerns and support joint appearances where appropriate.

There are complex legal and jurisdictional questions in this area, including in relation to the development of the law over time, as well as interaction between laws, including between different levels of government.

As noted above, the scope of existing state and territory laws and associated oversight mechanisms for charities, can vary. Some jurisdictions, such as Queensland and New South Wales, limit oversight to trusts for charitable purposes. The decision by the New South Wales Supreme Court in *Grain Technology Australia Limited v Rosewood Research Pty Ltd (No 5)* [2023] NSWSC 1141 highlights challenges associated with ascertaining whether such a trust exists, potentially creating issues in relation to the protection of charitable assets where a trust does not exist (McGregor-Lowndes and Hannah 2024). Other jurisdictions, such as Victoria, provide wider scope for the oversight of charities, including seeking orders from the Supreme Court for the removal of trustees (*Charities Act 1978* (Vic), part. II).

The operation of these oversight mechanisms is also relevant in the case of charitable trusts, such as those administered by licensed trustee companies, including in relation to matters such as fees for the provision of trustee services, whether provided by a licensed trustee company or another provider (chapter 8).

The role of Attorneys-General within the regulatory framework can also vary in terms of the scope and use of their powers (Cheung and Chandra 2021, p. 59). For example, when Western Australia established its Charitable Trusts Commission in 2022, it changed the supervisory role of the Attorney-General in that jurisdiction, which included giving the Ombudsman of Western Australia capacity to receive and deal with complaints relating to charitable trusts, including expansive investigative powers comparable to those of a Royal Commission (*Charitable Trusts Act 2022* (WA); Murray 2022, pp. 197–198).

The definition of charity can also vary across jurisdictions, given that the Charities Act only applies at the Australian Government level. The ACNC and the ACNC Legislation Review have noted that different definitions of ‘charity’ in various legislation may create compliance burdens for charities and administrative complexities for regulators, potentially leading to inconsistent treatment of entities across jurisdictions (ACNC 2016a, p. 10; ACNC, sub. 238, p. 16; Treasury 2018b, p. 112).

It is beyond the scope of this inquiry to undertake detailed analysis of these technical legal issues, including potential areas for reform. However, further holistic examination of these matters is warranted, informed by legal expertise and close engagement with state and territory governments. The Australian Government should refer an inquiry to the Australian Law Reform Commission, with the terms of reference developed in consultation with the Standing Committee of Attorneys-General (recommendation 7.3). This inquiry should consider issues including the scope and coverage of Australian, state and territory charities laws focused on opportunities to simplify and harmonise laws across jurisdictions, and the roles and responsibilities of state and territory Attorneys-General and other relevant regulators in relation to the oversight of charities, including charitable trusts.



Recommendation 7.3

Review of charities law by the Australian Law Reform Commission

The Australian Government should refer an inquiry to the Australian Law Reform Commission to examine:

- the scope and coverage of Australian, state and territory charities laws focused on opportunities to simplify and harmonise laws across jurisdictions
- the roles and responsibilities of state and territory Attorneys-General and other relevant regulators in relation to oversight of charities, including charitable trusts.

Test case funding and binding rulings could enhance certainty

The ACNC Act allows an entity to object to certain decisions made against it under that Act by the Commissioner of the ACNC, such as a refusal to register it as a charity (ACNC Act, s. 30-35). The entity may subsequently seek a review in the AAT or appeal to a designated court if it is dissatisfied with the Commissioner's decision in relation to that objection (ACNC Act, s. 160-25). However, proceedings in the AAT or a designated court may be cost prohibitive to an entity, and the ACNC is not currently resourced to provide financial assistance to entities to meet part or all of its reasonable costs in disputing certain ACNC decisions (Treasury 2018b, pp. 82–83). This may prevent certain ACNC decisions (in the first instance or in relation to an objection) from being independently affirmed (Effective Altruism Australia and Effective Altruism Australia: Environment, sub. 32, p. 11).

The ACNC should be resourced to develop an ongoing 'test case funding' scheme, to enhance regulatory certainty for the benefit of donors, charities and the ACNC as the administrator of the law (recommendation 7.4). The ACNC should make financial assistance available to charities (or entities seeking ACNC registration) to support their application for review or appeal of a decision by the Commissioner of the ACNC, where:

- there is uncertainty or contention in the law
- the review or appeal of the decision is likely to have precedential value
- the entity is otherwise unable to meet its costs
- a grant of financial assistance by the ACNC is in the public interest (ACNC, sub. DR729, p. 8).

As with the test case litigation program operated by the ATO, public guidance should detail the roles, responsibilities and expectations of the ACNC in administering the scheme, and those relevant to entities that apply for – and receive – test case funding (ATO 2023i). This guidance should clarify any variances in the availability or conditions of financial assistance to support applications made to the AAT compared with those made to a designated court. The ACNC should undertake periodic review of scheme eligibility criteria and guidance to maintain the integrity and currency of the scheme.

The ACNC also lacks legislative mechanisms to provide public, private or oral rulings (forms of binding advice) to charities – including classes of charities – about how it will apply the law in certain circumstances. While it uses Commissioner's Interpretation Statements to explain how it understands and will apply certain areas of the law to a charity's circumstances, these statements are not binding and charities lack a formal pathway to obtain clarification from the ACNC (ACNC 2024n). Providing such rulings 'has the potential to materially reduce uncertainty around the activities that can be funded by philanthropy' (Ian Murray, sub. 206, p. 2). The Australian Government should introduce a rulings scheme for the ACNC that is modelled on the scheme operated by the ATO under part 5-5 of schedule 1 of the *Taxation Administration Act 1953* (Cth) (recommendation 7.4). Commissioner's Interpretation Statements may provide a foundation for initial rulings to be published by the ACNC. As with the proposed test case funding scheme, the ACNC should develop

public guidance dealing with matters including the availability, scope and coverage of different types of rulings. ATO rulings guidance may be a useful model in the development of these resources (ATO 2021d).

The ACNC's development and maintenance of public registers listing the status and details of test case funding and public and private rulings matters would expand and support the suite of guidance materials available to charities and applicants for charity registration. ATO registers may be useful models for those proposed for the ACNC (ACNC, sub. DR729, p. 9; ATO 2024e, nd).

Several participants supported the introduction of either or both schemes (Carroll and O'Dea, sub. DR739, pp. 3–4; Ian Murray, sub. DR640, p. 6; Queensland Law Society, sub. DR711, p. 2). The Australian Catholic Bishops Conference said:

The Conference supports these proposals for test case funding for the ACNC and for amending the ACNC Act to provide for a binding ruling scheme, as a way of providing clarity and certainty to entities subject to the ACNC's jurisdiction. This would be similar to the way that the Australian Taxation Office was able to operate when it was the primary regulator of charities via its independent assessment of eligibility for tax concessions. (sub. DR706, p. 32)

The ACNC (sub. DR729, pp. 9–10) supported the proposed test case funding scheme, while noting design considerations and resource implications associated with the proposed rulings scheme. The ACNC would need to be appropriately resourced to deliver the proposed schemes (ACNC, sub. DR729, p. 10; Chartered Accountants Australia and New Zealand and CPA Australia, sub. DR737, p. 5).



Recommendation 7.4

Increasing certainty about Australian Charities and Not-for-profits Commission regulation

The Australian Government should:

- provide test case funding for the Australian Charities and Not-for-profits Commission (ACNC) to distribute to charities in specific circumstances for the purpose of developing the law
- amend the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) to introduce a rulings scheme for the ACNC, modelled on part 5-5 of schedule 1 of the *Taxation Administration Act 1953* (Cth), to support certainty in regulatory outcomes.

The need for more formalised regulatory architecture

Most charities act with integrity and comply with their regulatory obligations. However, when there are instances of misconduct, those adversely affected – including the public – expect proportionate action to be taken by regulators or law enforcement agencies. The roles, responsibilities and interactions between relevant regulators should be clear so the public knows where to turn to if there is a problem with a charity. Meeting these expectations are core to the effectiveness of the regulatory framework and to maintaining broader public and donor trust and confidence in the sector.

Currently, government regulators in the charitable sector regularly collaborate. For example, some regulators have memorandums of understanding in place to clarify the circumstances in which they will work together or share information.

The Commission did not hear evidence that arrangements between regulators operating across different governments are inadequate to deal with misconduct, and the current level of co-operation and networks

among regulators is encouraging. Rather, it is a question of whether those arrangements would be sufficiently robust in the event of major or systemic misconduct that requires clear lines of sight to protect public trust and confidence in the charitable sector, particularly in the context of the Australian Government's goal to double giving. The current suite of recommendations, including those set out in chapter 6, which would expand DGR status to a wider range of charities, provide further impetus for a robust regulatory architecture to be in place to support coordination and information sharing between regulators.

A more formal and comprehensive approach is needed to sharing information, and assessing and mitigating risk, including those associated with the complexity of the regulatory system and the limitations to the ACNC's enforcement powers. The establishment of a National Charity Regulators Forum (Forum) would help the Australian and state and territory governments identify areas of regulatory intersection, prevent and manage regulatory issues, co-ordinate their response in the event of large-scale misconduct (such as which jurisdiction would lead a response) and plan for the future (recommendation 7.5). As noted above, the Forum could be a mechanism to support collaborative efforts by regulators in relation to potentially non-operating charities. This would represent a shift toward a 'joint stewardship' approach to charities regulation, which recognises that charities regulation in Australia is implemented through a network of regulators at different levels of government.

There are examples of other regulatory forums, such as the Council of Financial Regulators, that would serve as a useful model (Council of Financial Regulators nd). The terms of reference and governance arrangements (including how the chair is selected and the frequency of meetings) for the Forum should be set out in an intergovernmental agreement between the Australian and state and territory governments (recommendation 7.5). This agreement should clarify how regulators plan to work together to maintain trust and confidence in the charitable sector by outlining:

- the roles, responsibilities and information sharing arrangements for participating parties including the ACNC, ATO, relevant state and territory regulators, Attorneys-General and any other parties that may have an interest, such as ASIC and ORIC
- how joint compliance actions would be undertaken, including how charity assets would be protected
- the process for the ACNC to exercise standing in each jurisdiction's Supreme Court in relation to seeking orders regarding the administration of charities
- how any current or emerging regulatory risks would be identified and managed.

The Australian Government issued a Statement of Expectations to the ACNC in January 2024, which includes an emphasis on collaboration and engagement with other regulators and agencies (Treasury 2024). Reflecting this, the ACNC's participation in the proposed Forum would assist with:

- engaging and working collaboratively with other Australian, state and territory government agencies
- coordinating regulatory activities with other agencies to avoid duplication, including through sharing information where possible.⁹

⁹ The ACNC's corresponding Statement of Intent was not released prior to the finalisation of this report.



Recommendation 7.5

Regulatory architecture to improve coordination and information sharing among regulators

The Australian Government should:

- establish a permanent National Charity Regulators Forum comprised of Australian, state and territory charity regulators
- develop and agree to an intergovernmental agreement to, among other things:
 - give effect to the National Charity Regulators Forum and determine its terms of reference, how the chair is selected and the corresponding secretariat support, frequency of meetings, and any other operational matters
 - clarify roles, responsibilities and information sharing arrangements between the Australian Charities and Not-for-profits Commission, relevant Australian, state and territory regulators, and Attorneys-General through the development of memorandums of understanding, including in relation to referrals, joint compliance approaches, appointments of a lead regulator, non-operating charities and processes to protect charity assets
 - progress charities law and regulation reform
 - identify any regulatory risks in the sector and collaborative approaches for managing, mitigating and responding to these risks, including the development of legislative or policy responses where needed.

7.5 Is the regulatory framework overly burdensome?

A regulatory environment with multiple regulators can create overlap and duplication. Not all duplication is unnecessary or wasteful – some degree of overlap can be an important and unavoidable part of a sound regulatory framework, particularly in a federated system of government. However, complex and overlapping regulation can place an undue burden on those being regulated, and may inhibit the effectiveness of the regulatory framework (PC 2016, p. 136).

Charity regulators have worked together to reduce unnecessary reporting duplication and burden through:

- memorandums of understanding to share data between the ACNC and other regulators to streamline reporting requirements for charities where duplication would otherwise occur. These enable approximately 37% of charities (those structured as incorporated associations), to satisfy annual reporting obligations to the state or territory regulator responsible for their legal structure when they submit their annual information statement to the ACNC
- the Charity Passport, which enables authorised government agencies to access certain ACNC data, such as charity contact details and financial information, to reduce the amount of information that must be separately reported by charities themselves (ACNC 2023r)
- legislated changes to reporting requirements (based on charities' annual revenue) from the 2022 reporting period to better balance red tape reduction for charities with transparency (Australian Government 2020a, p. 12).

Duplicative reporting requirements remain

Despite efforts to reduce regulatory red tape and reporting burden, charities that participated in this inquiry remained concerned that the existence of multiple regulators creates an unnecessary compliance burden that results in administrative costs, including time spent on reporting requirements and training staff.

Participants reported funding rarely encompasses, or sufficiently covers, these costs (Mercy Works Ltd, sub. 60, p. 3; Stronger Charities Alliance, sub. 121, p. 6; St Vincent de Paul Society, sub. 641, pp. 2–3).

Reporting burden issues arise due to:

- inconsistent reporting requirements between regulators, for example different approaches to accounting standards for financial reporting (ACNC, sub. 238, p. 17; CPA and Chartered Accountants ANZ, sub. 123, p. 11)
- duplication in reporting between regulators, for example charities structured as co-operatives must submit separate and inconsistent annual reports to two regulators
- requirements to notify multiple regulators of changes to certain details, such as directors, contact information or governance documents such as a constitution
- information not being able to be shared between regulators. For example, corporations registered with the ACNC are required to update their details with the ACNC, but not ASIC. While the ACNC routinely shares information with ASIC, it does not include information on responsible people, resulting in ASIC's register potentially not reflecting up-to-date information. The ACNC (sub. 238, p. 10) said it had heard from the sector that in some instances this has contributed to charity bank accounts being suspended or charities being unable to secure funding
- additional regulatory requirements based on the sector the charity works in and jurisdiction of its operations. For example, Kim D Weinert and Damian Topp (sub. 113, p. 12) noted that the PA Foundation, a public foundation established by statute in Queensland, reports annually to the ACNC, the Queensland Audit Office and the Department of the Premier and Cabinet. It also provides regular reports on overseas travel and consultancies to the Department of the Premier and Cabinet, reports to the Office of the Information Commissioner, and to the Office of Health Statutory Agencies.

Participants expressed concern about the burden created by state- and territory-based fundraising regulation – the ACNC reported fundraising regulation has been raised at every Sector Forum and Adviser Forum it has held over the past 18 months (sub. 238, p. 22). Seven different regulators (the Northern Territory does not have specific fundraising legislation) apply different frameworks and policy positions, for example they have different definitions of 'charity', 'charitable purposes' and 'fundraising' (Justice Connect, sub. 269, p. 8).

Not-for-profit organisations face numerous regulatory barriers and compliance costs that do not apply to business. Fundraising regulation is one of greatest sources of regulatory burden for charitable organisations. (#FixFundraising Coalition, sub. 261, p. 1)

The current regulatory system applying to charities engaged in fundraising is broken. Separate jurisdictional fundraising regulatory regimes in Australia is not justifiable, especially given the diminishing relevance of geographical boundaries. Fundraising regulations need to be workable, efficient and fit-for-purpose. Current regulations fail this basic test. (Community Council for Australia, sub. 218, p. 6)

Differences in fundraising licensing requirements, application and approval processes between jurisdictions increases complexity and can create uncertainty and confusion for charities (Philanthropy Australia, sub. 162, p. 33). In 2016, the associated annual compliance burden for the sector was estimated at approximately \$13.3 million (DAE 2016, p. 2). The ACNC reported it received 215 enquiries over a six-month period in relation to charity fundraising, many of which were from charities confused about – or seeking

assurance they were compliant with – the framework, or from people wanting to start a fundraising campaign (ACNC, sub. 238, p. 19).

Participants argued the time and resources used ensuring compliance disproportionately affects small to medium-sized charities, that tend to be more reliant on donations as a source of revenue yet have fewer staff and resources to spend time understanding and complying with regulation (IWDA, sub. 77, p. 2; Justice Connect sub. 269, p. 9). Spending time and resources meeting overly burdensome compliance requirements means charities have less time to focus on the causes for which they were created to support, or less ability to respond quickly to calls for assistance. For example, in relation to its BizRebuild Trust, which was established to respond to natural disasters in any jurisdiction, the Business Council of Australia noted the regulatory barriers and higher compliance costs of complying with the fundraising laws of each jurisdiction.

This creates a situation where it can be difficult to track the progress, status and expiry of each fundraising licence. This also contributes to slower and inefficient disaster response. (sub. 252, p. 4)

Raise Foundation similarly noted unnecessary regulatory burden affects its ability to focus on service delivery:

Raise works in seven jurisdictions across Australia. The different regulatory environments within each jurisdictions create considerable and unnecessary regulatory burden for us and impose additional administrative costs which takes away from our ability to use our donated funding to provide services and deliver impact. (sub. 245, p. 2)

Governments should fulfill commitments to harmonise fundraising regulation

Governments have committed to deliver reforms to introduce a consistent fundraising regulatory framework across Australia. These reforms involve streamlining of authorisation for charities to fundraise across Australia, and harmonising conduct requirements for fundraisers.

NSW, Victoria, Queensland, South Australia and the Australian Capital Territory have legislated reforms to deem that a charity registered with the ACNC is authorised to fundraise in those participating jurisdictions, without being required to obtain or maintain a specific fundraising license under a jurisdiction's fundraising laws (table 7.2).¹⁰ Under these 'deemed authorisation' models, a charity satisfies any related reporting obligations to a jurisdiction's regulator by meeting its annual reporting obligations to the ACNC (for example, *Collections Act 1966* (Qld), s. 32; *Collections Regulation 2008* (Qld), s. 30). This means that a charity can fundraise in most Australian jurisdictions without being required to register or report to local fundraising regulators.

Table 7.2 – Fundraising requirements for charities across Australian jurisdictions

| Jurisdiction | Fundraising authorisation requirements |
|-------------------|---|
| NSW | Authorisation method: Notify NSW Fair Trading of intention to fundraise ^a Legislation: <i>Charitable Fundraising Act 1991</i> (NSW) |
| Victoria | Authorisation method: Notify Consumer Affairs Victoria of intention to fundraise (charities newly fundraising) or of ACNC registration (charities with existing fundraising registration) Legislation: <i>Fundraising Act 1998</i> (Vic) |
| Queensland | Authorisation method: Notify Queensland Office of Fair Trading of intention to fundraise Legislation: <i>Collections Act 1966</i> (Qld) |

¹⁰ NSW's reforms, made through the *Customer Service Legislation Amendment Act 2024* (NSW), had not commenced prior to the finalisation of this report.

| Jurisdiction | Fundraising authorisation requirements |
|--------------------|--|
| South Australia | Authorisation method: Notify SA Consumer and Business Service of intention to fundraise Legislation: <i>Collections for Charitable Purposes Act 1939 (SA)</i> |
| Western Australia | Authorisation method: Apply to WA Consumer Protection for fundraising license Legislation: <i>Charitable Collections Act 1946 (WA)</i> |
| Tasmania | Authorisation method: Apply to Tasmanian Consumer, Building and Occupational Services for fundraising license (excluding Tasmanian incorporated associations and corporations with a principal office in Tasmania) Legislation: <i>Collections for Charities Act 2001 (Tas)</i> |
| Northern Territory | Northern Territory does not have specific fundraising legislation |
| ACT | Authorisation method: ACNC-registered charities are not required to obtain an ACT fundraising license Legislation: <i>Charitable Collections Act 2003 (ACT)</i> |

a. This reflects reforms made through the *Customer Service Legislation Amendment Act 2024 (NSW)*, which had not commenced prior to the finalisation of this report.

The states and territories maintain some flexibility in conditions associated with their deemed authorisation models. For example, a charity that had a Victorian fundraising license prior to the commencement of Victoria's deemed authorisation reforms is required to notify Consumer Affairs Victoria of its ACNC registration (CAV 2024a). In South Australia, a charity must notify Consumer and Business Services of its intention to fundraise (which it can do via the ACNC registration form or an annual information statement) (*Collections for Charitable Purposes Act 1939 (SA)*, s. 6(3)). If a charity's ACNC registration is revoked, so too is the deemed authority for the charity to fundraise (for example, *Fundraising Act 1998 (Vic)*, s. 23AC(2)).

Some participants indicated their support for the development of a single, national fundraising framework to reduce risks of further or future fragmentation across jurisdictions (Australian Catholic Bishops Conference, sub. DR706, p. 34; English Family Foundation, sub. DR753, p. 4; yourtown, sub. DR610, p. 5). Governments and regulators should remain focused on delivering agreed reforms. Other options to harmonise fundraising regulation could be considered in future if a review of reform outcomes (recommendation 7.6) finds that they have not met their objective.

Following a decision of the Council on Federal Financial Relations, state and territory governments are also working toward reforms to harmonise fundraising conduct requirements across jurisdictions through the adoption of national fundraising principles (Leigh and Pearson 2023). These principles outline fundraisers' obligations in relation matters including record-keeping and what information should be provided to potential donors (such as how to end an ongoing donation). Inquiry participants expressed their desire for this national approach to fundraising regulation to be fully and properly implemented, to reduce the regulatory burden for charities (and any third-party fundraisers that they engage), while maintaining appropriate donor protections. Several submissions emphasised the importance of having a single set of rules and single point for registration and reporting (#FixFundraising Coalition, sub. 261, p. 3; ACOSS, sub. 263, p. 7).

There is the potential for these reforms to save charities hundreds of hours of unnecessary administrative time but to realise this benefit, the reforms must be implemented quickly and in a consistent way across jurisdictions to ensure the key aims - simplification and harmonisation - are achieved. (Justice Connect, sub. 269, p. 10)

Despite agreeing to publish implementation plans for the adoption of the national fundraising principles by July 2023, only four out of seven state and territory governments that regulate fundraising have released

their plans (CAV 2024b; Leigh and Pearson 2023; Queensland Government 2023a; Tasmanian Government 2023).¹¹ Victoria's implementation plan also outlines its vision for further collaboration with other states and territories toward the development of additional national fundraising reforms (CAV 2024b, p. 10). South Australia is the only jurisdiction to have implemented its plan, adopting the principles without amendment (South Australian Government 2024). There may be reasons for this delay, for example complexity arising from updating or implementing principles, such as legislative processes. Nonetheless, participants in this inquiry remain concerned that progress is slow, given the urgency to ease the regulatory burden on charities arising from multiple regulatory regimes (Coalition for Fundraising Reform 2024; The Smith Family, sub. DR395, p. 4).

It is vital these reforms are completed so charities can benefit from harmonised conduct requirements, with reporting directed through the ACNC. Once harmonisation has been achieved, it will be important for state and territory governments to ensure consistency is maintained, to avoid jeopardising harmonisation through fragmented and uncoordinated policy changes by jurisdictions over time.

For these reasons, the Council on Federal Financial Relations, which agreed to the adoption of the deemed recognition model of fundraising registration and the national fundraising principles, should undertake two tasks.

- First, it should continue to monitor the implementation of nationally consistent fundraising registration, reporting and conduct requirements by state and territory governments.
- Second, it should commission an independent review of the outcomes of the harmonisation process (recommendation 7.6). This should occur in 2025, to allow further time for jurisdictions to fulfil their reform commitments. The review should assess each jurisdiction's implementation of reforms and recommend any further necessary steps to ensure the harmonisation outcome is achieved and then maintained over time. The review and the response from the Council on Federal Financial Relations should be made public. The Commission's proposed intergovernmental agreement (recommendation 7.5) should address how regulators will progress any related regulatory reform arising from this review.

During the period of ongoing implementation, jurisdictions should also publicly report progress, to signal to stakeholders that reform delivery is progressing.



Recommendation 7.6

Review of nationally consistent fundraising regulation reforms

The Council on Federal Financial Relations should:

- continue to monitor the implementation of nationally consistent fundraising registration, reporting and conduct requirements by state and territory governments
- commission an independent review of the outcomes of the fundraising harmonisation process and options to maintain regulatory consistency over time within 12 months of the tabling of this report in Parliament. This review and the response from the Council on Federal Financial Relations should be made public.

¹¹ The Charities and Associations Law (Miscellaneous) Amendment Bill 2023 (Tas) lapsed at prorogation of parliament on 14 February 2024 (Tasmanian Government 2023).

Policy and program design should consider effects on volunteers

Volunteers are essential to the charitable sector. In the 2021 reporting period, approximately 3.2 million volunteers helped to deliver charitable services, and 50% of charities relied solely on volunteers to conduct their activities (ACNC 2023g, p. 19).

The contribution of volunteers is distinct from those of paid employees. Volunteering makes an important contribution to society and provides many benefits for the community as a whole, those who receive services, and for volunteers themselves, as recognised by governments through support for programs such as the Aged Care Volunteer Visitors Scheme (box 7.8).

Box 7.8 – Aged Care Volunteer Visitors Scheme

The Aged Care Volunteer Visitors Scheme (ACVVS) aims to provide friendship and companionship to older people and help them to develop social connections and reduce social isolation – concerns that may be more prevalent in some older people from particular linguistic, cultural and complex vulnerability backgrounds. ACVVS does this by funding community organisations to screen, recruit, train and support volunteers to visit older people who are in receipt of government-subsidised residential aged care or home care packages. The scheme has been running for over 30 years and was previously known as the Community Visitors Scheme.

The ACVVS National Guidelines outline the aims of the program and the roles and responsibilities of involved parties. These responsibilities include:

1. security and reference checks that volunteers must undergo before commencing visits with care recipients
2. requirements for volunteers to sign a statutory declaration confirming that they have never been convicted of certain offences (such as murder or sexual assault) in Australia or overseas
3. training requirements to be provided by the auspiced community organisation to volunteers.

Sources: Australian Government Department of Health and Aged Care (2023a, 2023b).

Volunteers may be subject to a range of screening checks to determine whether they pose a risk to the people with whom they are working. The benefits of screening checks are well established (for example the Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA) made clear the case for Working with Children Checks (RCIRCSA 2015, p. 20). They protect people who may be at-risk or vulnerable, against those who may cause harm.

Notwithstanding these clear benefits, inquiry participants expressed concern about unnecessary duplication – both between different types of screening checks and between jurisdictions – and the costs this creates for volunteers and charities alike. Volunteering WA said:

... there is no nationally standardised approach to the imposition of charges, process for application, approval or portability of volunteer screening across jurisdictions or volunteer organisations. Volunteer screening is the most frequently cited barrier and administrative burden on the sector. (sub. 64, p. 6)

Regulatory processes that are unnecessarily onerous or bureaucratic may act as a barrier to people pursuing volunteer opportunities and/or limit the capacity of volunteer programs (Volunteering Victoria, sub. 110, p. 3). For example, Surf Life Saving Australia noted:

... volunteers, particularly after the challenges posed by the COVID-19 pandemic, already experience challenges around increasing paperwork, compliance, time demands and they are at risk of burnout. Introducing additional reporting requirements and expanding existing ones may exacerbate this issue, leading to a potential exodus of volunteers from our movement and ultimately beach patrols. (sub. 99, p. 5)

Additionally, some submissions raised concerns that the complexity of duplicative requirements can inadvertently create risks of gaps occurring that undermines protecting the very people the checks seek to safeguard.

With up to 2,600 mentors to recruit and screen this year, across seven separate working with children regulatory environments, this create substantial administrative and cost burden for Raise. Without a national based system there is also an increased risk of gaps being created in the protection of children and young people, given complexity of navigating the system as well as different approaches in management across state borders. (Raise Foundation, sub. 245, pp. 2–3)

It is important that in conducting this review the Commission makes itself familiar with the quantum of regulatory obligations charities are required to comply with, especially those working with vulnerable people and communities. (UnitingCare Australia, sub. 74, p. 6)

Governments have demonstrated their support for addressing some of these issues. For example, following recommendations from the RCIRCSA, state and territory governments agreed to establish nationally consistent parameters for the screening people who propose to engage in child-related work (Australian Government 2019a, p. 2; RCIRCSA 2015, pp. 48–51). Broader considerations about working with children checks reforms are now being progressed under the National Strategy to Prevent and Respond to Child Sexual Abuse 2021-2030, which provides a nationally coordinated, strategic framework for preventing and responding to child sexual abuse (Australian Government Response to the Royal Commission into Institutional Responses to Child Sexual Abuse 2023; National Office for Child Safety nd, nd). Streamlining existing checks would go some way to reducing unnecessary regulatory burden on volunteers, and on charities that draw on volunteers to support their work. The Commission heard support for the introduction of a national volunteer passport program to streamline volunteer screening checks (including Working with Children Checks), on-boarding processes and mobility of volunteers across organisations (Volunteering Victoria, sub. DR499, p. 5). A similar tool was offered as part of Volunteering Victoria's weVolunteer initiative, which was established 'to help mobilise volunteers to assist with community recovery following the impact of COVID-19 and other emergencies' (Volunteering Victoria 2021, p. 9; weVolunteer 2024a, 2024b).

Screening checks are only part of the problem though and will not necessarily address the broader problem of a seeming lack of consideration of the effects of government policy changes on a person's incentives and capacity to volunteer. When weighing up the costs (financial and time) and benefits associated with undertaking a screening check, paid employees are likely to have a greater incentive than volunteers to complete them, particularly in instances where volunteers incur a personal cost for checks. Volunteering Australia said:

Government policies can have a significant influence on volunteering activity. In particular, regulatory requirements can affect the capacity of volunteer involving organisations to involve volunteers and the willingness of volunteers to engage. Alignment of regulation, with the aim of reducing red tape and increasing volunteer engagement, could greatly improve efficiency across the volunteering ecosystem. (sub. 222, p. 10)

The Australian Government offers guidance for completing a 'regulatory impact analysis' (formerly known as a 'regulatory impact statement'), which is intended to help policymakers estimate the effect of policy changes on certain stakeholders (Office of Impact Analysis nd; PM&C 2023). Under this guidance, the Australian Government requires that an impact analysis accompany:

Any policy proposal or action of government, with an expectation of compliance, that would result in a more than minor change in behaviour or impact for people, businesses or community organisations. (PM&C 2023, p. 8)

However, this guidance does not specifically refer to the possible impacts of policy proposals on volunteers. Volunteering Australia (sub. DR686, p. 4) suggested that volunteering be explicitly considered in such impact analysis guidance. Similar changes to state and territory governments' policy impact analysis guidance would promote consistency for volunteers and volunteer-involving organisations throughout Australia.

Government policies can crowd-in or crowd-out charitable donations of both time and money. Given this, governments should explicitly consider how policy and program changes could affect the need for – and availability of – volunteers and what steps could be taken to facilitate or 'crowd in' volunteer contributions rather than crowding them out (recommendation 7.7). Inquiry participants representing volunteers and volunteer-involving organisations supported this recommendation (The Centre for Volunteering, sub. DR581, p. 3; Volunteering WA, trans., p. 329).



Recommendation 7.7

Explicitly consider the effects on volunteers when designing policies and programs

To support volunteering, Australian, state, territory and local governments should consider how changes to policies and programs would affect volunteers. This includes adopting measures that may mitigate any adverse effects on volunteer participation and identifying opportunities for volunteers as part of policy or program design.

7.6 Is the regulatory system fit for the future?

Online giving can present regulatory challenges

A sound regulatory framework is one that is fit for purpose for current, emerging and future giving channels and behaviours. Online giving – including crowdfunding appeals promoted through social media – is becoming increasingly common. However, it is not clearly captured in the current regulatory framework; nor is it captured within the Australian Government's current focus on digital platform regulatory issues through mechanisms such as the ACCC's digital platform services inquiry 2020–25 or the Digital Platform Regulators Forum (ACCC 2023a; Digital Platform Regulators Forum 2022).

There may be regulatory gaps where individuals raise funds for a beneficiary through an online platform, as the regulatory framework is currently focused on charities and not the donor or online platform. The Commission heard from GoFundMe that only about 5% of fundraising appeals conducted in Australia using its online platform are organised to benefit registered charities, and that most appeals are instead organised to cover individual causes, such as personal medical or funeral expenses. Social media sites (such as Facebook) and crowdfunding platforms (such as GoFundMe) use PayPal Giving Fund Australia (PPGF Australia) to collect and distribute donated funds (box 7.9).

Box 7.9 – How PayPal Giving Fund Australia works

PPGF Australia is a public ancillary fund that is a DGR-endorsed charity. Online platforms such as Facebook and GoFundMe use PPGF Australia to facilitate the collection and distribution of donations made to charitable fundraising appeals promoted through those platforms.

Rather than donating directly to the charity that is the intended beneficiary of a particular appeal, donors instead donate to PPGF Australia, with a recommendation that the donated amount be subsequently granted to the charity they have nominated. PPGF Australia does not charge donors fees for these services, but providers of the online platforms that donors use to make their donation, such as GoFundMe and Twitch, may charge a fee. PPGF Australia releases funds to eligible charities via a PayPal business account, which can then be transferred to the charity's chosen bank account.

PPGF Australia will attempt to obtain a new recommendation from the donor if their original nomination is invalid (for example, because the nominee is ineligible to receive tax-deductible gifts from an ancillary fund). Donations are not typically refundable.

Source: PayPal Giving Fund Australia (2020, nd).

There may be similarities and differences in the regulatory challenges experienced – or exacerbated – by online giving platforms and their users, and any separate entities that facilitate the collection and distribution of donated funds (such as public ancillary funds (chapter 8)).

- The use of online platforms can accelerate giving and appeals can accumulate funds rapidly, including in-excess of what is needed by a charity.
- Charities can be unaware who is conducting an appeal on their behalf or be unable to cease an appeal they do not wish to occur.
- Knowledge gaps among fundraisers and donors that result in funds being applied inefficiently or inconsistently with donors' intentions may undermine donor confidence and support (Matthew Wade, sub. DR494, pp. 1–2).
- There is potential for fraudulent activity.
- Limited transparency on fees charged or time taken for funds to be transferred to the charity.
- Donors can be unaware they are only making 'recommendations' to the trustee of an ancillary fund about which charities should ultimately receive their donation.
- If the trustee of a public ancillary fund makes representations that a donor's recommendations will be complied with, this may create obligations that may affect whether a donation is tax deductible.¹²

Some of these issues were highlighted in the example of crowdfunding for the NSW Rural Fire Service & Brigades Donation Fund in the wake of the 2019-20 Australian bushfires (box 7.10).

¹² Taxation Determination TD 2004/23 states that, for donations to a public ancillary fund to be tax deductible, the trustee cannot be subject to a binding obligation to comply with a donor recommendation regarding how a donation must be used. If such an obligation arises, it may prompt the creation of a new and separate fund which is not endorsed as a DGR, meaning the donation would not be tax deductible (ATO 2023).

Box 7.10 – Crowdfunding for the NSW Rural Fire Service & Brigades Donation Fund

During the 2019-20 Australian bushfire season, approximately 40 million hectares were burned, much of which occurred in New South Wales and Victoria. In January 2020, entertainer Celeste Barber launched a charitable crowdfunding appeal to support the NSW Rural Fire Service & Brigades Donation Fund (the RFS Fund), a DGR-endorsed charitable trust. The appeal was promoted on Facebook, with payments facilitated through PPGF Australia (box 7.9), according to its donor terms of service and obligations under tax law. These terms meant that the intended recipient of the funds, as nominated by the donor, was a 'recommendation' and that PPGF Australia retained exclusive legal control over funds.

At the conclusion of the appeal, more than \$51 million had been raised, well in excess of the initial \$30,000 target. Based on public statements by Barber, there was uncertainty about whether some donors interpreted the appeal to mean funds would be distributed to the RFS Fund and other organisations, including those working to fight fires or protect wildlife, and those affected by the fires in Victoria.

The application of funds transferred by PPGF Australia to the RFS Fund was constrained by the purposes expressed in RFS Fund's trust deed, which were:

- assisting Brigades in purchasing and maintaining firefighting equipment and facilities
- providing training and resources and/or administrative expenses associated with their volunteer-based fire and emergency service activities
- meeting the reasonable costs of management of the trust.

This permitted application of funds was more restrictive than some donors, including Celeste Barber, may have envisaged – it would not allow, for example, some of the raised funds to be applied to other charities, other rural fire services or for the welfare of individuals or animals impacted by the bushfires. The trustees of the RFS Fund sought advice and direction from the Supreme Court of NSW as to the proper interpretation of the RFS trust deed and distribution of the funds.

The court determined that the money transferred by PPGF Australia to the RFS Fund was required to be used consistently with the terms of the RFS trust deed. Intentions envisaged or stated by Barber or others (for example, donors), could not bind the trustees of the RFS Fund. Accordingly, donations could not be applied to other charities, rural fire services, or the welfare of individuals or animals impacted by the bushfires.

Source: McGregor-Lowndes (2023, pp. 121–125).

Most online platform providers charge donors a payment processing fee and, in some cases, charge an additional transaction fee. Some platform providers reduce or waive fees for donations to appeals organised to benefit charities. Transparency about fees may influence donors' confidence about whether donated funds are being used consistently with their expectations (Creative Australia, sub. DR696, p. 6). Where fees incorporate a fixed-cost component, the interests of the donor and beneficiary charity may compete with those of the platform provider. For example, the platform provider may derive greater benefit from appeals funded by a larger number of donors, as this will result in a greater number of fixed fees, whereas a charity may benefit from a smaller number of donors contributing a greater amount. Some platform providers offer tools to help explain the impact of these fees on donations.

Where platform providers derive revenue from facilitating donations and/or appeals on their platform, they will have a commercial interest in regulating conduct that could pose a risk to their revenue, including harm to their brand and platform. In this way, platform providers, while typically for-profit entities, face similar

incentives to charities that solicit donations. That is, they rely on trust and confidence in online giving, including through their platform, for their business model to succeed, and any case of fraudulent activity by someone collecting donations on a platform has the potential to cause reputational – and as a result, financial – damage to their business.

This can create an incentive for platform providers to self-regulate to some extent, though their capacity to do so may depend on factors such as their platform's size, market share and revenue. For example, GoFundMe offers a money-back guarantee that donors can access if they believe their donation is being misused (GoFundMe 2022). While some platform providers have developed their own policies to protect donors, these have been criticised by some as inadequate and are not universal or consistent across online platforms (Mayer 2022, p. 1414). Given the growing number and value of donations being made through online platforms, regulatory gaps may be exacerbated, particularly where platform providers based outside of Australia are slow or unwilling to respond to local challenges or changes.

Policy options to address these challenges must be proportionate

Governments in overseas jurisdictions have adopted solutions to address some issues associated with online giving. In California, for example, legislation to regulate online charitable fundraising platforms began to take effect from 1 January 2023. The Californian legislation includes requirements for online platforms and charities (and their trustees) that use such platforms to:

- ensure a beneficiary charity is not prohibited from fundraising in California and has not had its tax-exempt status revoked by the US Internal Revenue Service
- obtain a charity's consent before fundraising on its behalf (limited exceptions apply)
- implement protections to prevent diversion or misuse of funds
- disclose certain information to donors to prevent deception or confusion, before accepting a donation (for example, about fees, fund distribution times, and circumstances where a charity may not receive funds) (State of California Department of Justice, Office of the Attorney General 2022).

The Uniform Law Conference of Canada is Canada's oldest law reform body and provides independent analysis and resolutions for the harmonisation and reform of law in Canada. In 2020 – namely in response to the growth of crowdfunding – it updated its model legislation for informal public appeals (that is, fundraising efforts carried out on an ad hoc – not permanent or continuing – basis) (ULCC 2020b, 2020a, nd). The model legislation:

- contains provisions to ensure the even application of trust law to public appeals
- provides guidance on dealing with surplus donations (including distribution to other charities with similar purposes)
- allows the organiser to revise certain terms of an appeal (for example, to provide information about the appeal's goals)
- allows a court to halt an appeal conducted without a charity's consent (ULCC 2020b).

The benefits of a policy response must exceed the costs, including dampening any efforts to fundraise for charitable purposes, and be proportionate to the risk posed. To achieve this balance, Mayer (2022, pp. 1419, 1428) argued that crowdfunding platforms should be subject to two requirements, namely that they notify:

1. charities (or beneficiaries) of appeals that are being run on their behalf and provide them with the ability to end the appeal
2. regulators where appeals exceed a high value threshold or scale so responses can be developed specific for any problems to that particular appeal.

The Queensland Law Society (sub. DR711, pp. 4–5) indicated its support for a regulator to be notified about certain appeals and for online platforms or a regulator to be able to halt a fundraising appeal being conducted on behalf of a charity, at that charity’s request. However, it noted that it was paramount for a charity’s consent to be obtained by fundraisers before conducting an appeal in that that charity’s name, as early engagement with the charity could assist with matters such as budgeting and managing potential reputational risks. PayPal Giving Fund Australia (sub. DR412, pp. 4–5) said that charities may request to be removed from its directory at any time, and that any requirement to notify a regulator of certain appeals should not impede fundraising activities or create unnecessary administrative burden.

Other regulatory options include a code of practice, either through self-regulation or co-regulation, to clearly bring online platforms into the regulatory regime. However, Matthew Wade (sub. DR494, p. 6) noted that allowing crowdfunding platforms to undertake their own auditing and risk assessments of certain contentious campaigns may be inadequate. Alternatively, Grant Thornton (sub. 157, p. 13) suggested applying caps or limits on crowdfunding amounts by unregulated entities or requiring online platforms to include charity identification registration details for charities using their platforms to fundraise.

Regulation will continue to be tested by changes in giving preferences and the development of new ways of giving. Digitalisation has changed how people give and may continue to do so as payment methods such as cheques and cash are phased out or otherwise decline in use (Chalmers 2023). Emerging technologies may further test the effectiveness of the regulatory framework in supporting charities and protecting beneficiaries and donors, particularly as some donors who are less familiar with digital technologies may be more vulnerable to misconduct by others.

For example, cryptocurrency is a type of asset that can be donated to charities. Accepting, managing and investing in cryptocurrency may be less transparent and more complex for charities than traditional financial donations, including when converting it to traditional currency (ACNC 2024j). Charities may be exposed to risks, including to brand reputation, should it be determined the cryptocurrency funds were acquired in ways that do not meet community standards or the standards it sets for itself. While inquiry participants did not raise the regulation of cryptocurrency as a barrier that affects philanthropic giving decisions, this example highlights that as new ways of giving develop, new challenges, gaps and inconsistencies may emerge in the regulatory system. Regulation should continue to be reviewed, including when action is taken to avoid the sunset of legislative instruments, to ensure the regulatory framework remains fit for purpose over time.

Current and potential risks associated with online giving may necessitate it being clearly brought within the regulatory framework. However, the Commission has not recommended specific reforms to address potential issues, such as appeals being conducted in a charity’s name without its consent, given that approximately 95% of online giving is not for the benefit of charities. The Digital Platform Regulators Forum shares information about, and collaborates on, cross-cutting issues and activities involving the regulation of digital platforms, including consumer protection and online safety. Its members are the ACCC, the Australian Communications and Media Authority, the eSafety Commissioner and the Office of the Australian Information Commissioner (Digital Platform Regulators Forum 2022). The Digital Platform Regulators Forum may be better suited to thoroughly analysing current and potential regulatory issues within the scope of an online giving regulatory framework and evaluating whether reforms are required to address any identified risks.

8. Structured giving vehicles

Key points

- ✳ **Giving vehicles enable donors to structure their giving over time.**
 - Donors can obtain an upfront tax deduction for a donation into certain giving vehicles, with a timing gap between the donation and the associated revenue cost of income tax deductions to the Government, and the distribution of funds to charities and the flow of benefits to the community.
- ✳ **Assessing the effectiveness of structured giving vehicles involves examining trade-offs regarding the amount of funds flowing to charities and the timing of these flows.**
 - Trustees, rather than charities or government, decide when and how funds are distributed to eligible charities. Trustee decisions may or may not reflect what is beneficial to the community at any point in time.
 - For example, it may be more beneficial from a community perspective if charities receive funding sooner, rather than receive more funding overall but spread out over a longer period.
- ✳ **The Australian Government could enhance the regulation of ancillary funds, so they more effectively encourage giving that benefits the community.**
 - Currently there is no explicit or widely understood rationale or principles-based framework that underpins the current minimum distribution rates for ancillary funds.
 - Applying a principles-based approach, the Government should set the minimum distribution rate between 5% and 8%.
 - The manner in which ancillary funds provide support is also relevant and ancillary funds should develop and maintain a 'distribution strategy' to help enhance the effectiveness of distributions.
 - Allowing 'smoothing' of distributions over three years would enhance flexibility for ancillary funds.
 - To more clearly reflect their purpose, ancillary funds should be renamed Private and Public Giving Funds.
- ✳ **There is scope to make the process of donating superannuation death benefits to charity less cumbersome, but current taxation of charitable superannuation bequests is appropriate.**
 - The process for making a charitable bequest from superannuation should be simplified, where possible.
 - The current tax arrangements for superannuation treat a donation to a charity in the same way as a payment to any other non-dependant beneficiary. There is no case for further concessions.
- ✳ **The administration and regulation of charitable trusts should be reviewed holistically as part of an Australian Law Reform Commission inquiry into charity law and regulation.**
 - This should include assessing the appropriateness of state laws in relation to the regulation of trustee fees and processes for changing trustees.

8.1 Role for government in supporting giving vehicles

Giving vehicles enable people to structure their giving ...

There are a range of ways a person or organisation can give. They can donate directly to a charity, through fundraising vehicles, including via online platforms, or they can donate their assets to a structure that enables eligible charities to receive distributions at a future date, either as a once-off lump sum or at regular intervals. Structured giving refers to donations that are often large-scale and distinct from mass-market forms of giving (Philanthropy Australia 2022). A variety of legal structures can be used for giving vehicles (table 8.1). A donor's preferred giving vehicle will depend on when, how and how much they want to give, as well as who the giving vehicle will receive donations from, for example whether it will receive donations from the public or from a restricted set of people.

The most common types of legal structures that allow people to put assets aside to give later are private and public ancillary funds and other types of charitable trusts, including testamentary trusts. Some charitable bequests can also be made from someone's superannuation death benefit, via their estate.

- Ancillary funds are trusts established for the purpose of providing money, property or benefits to entities eligible to receive tax-deductible gifts, or for the establishment of such entities (*Income Tax Assessment Act 1997* (Cth), s. 30-15). Although ancillary funds have deductible gift recipient (DGR) status, they act as an intermediary between donors and other entities with DGR status that undertake charitable work (referred to in this chapter as eligible entities with DGR status), rather than directly undertaking this work themselves. There are two types of ancillary funds.
 - Private ancillary funds are established for private philanthropic giving, largely used by families or businesses.
 - Public ancillary funds must regularly invite donations from the public and are typically used by community groups, corporate and community foundations, wealth adviser foundations and as fundraising vehicles, including for individual charities (Williamson et al. 2021, p. 235). Public ancillary funds may have sub-funds within them, which are a form of giving account that can be used as an alternative option to establishing a private ancillary fund.
- Charitable trusts hold and distribute funds to other charities. Trusts can be set up while the donor is living (inter vivos) or set up through a bequest in a will (testamentary). Charitable trusts are sometimes adopted in the settlement of Native Title claims in Australia.

Donors who use structured giving vehicles may be eligible for an upfront income tax deduction for a donation into the giving vehicle and, if it is a charity itself, the giving vehicle may be eligible for a range of other tax concessions. Many people refer to their giving vehicle as a 'foundation', however this term is not a specific legal structure in Australia. Rather, it is a general term that often (though not exclusively) describes a giving vehicle (chapter 1). Others may also refer to ancillary funds and other charitable trusts as 'grant-making' charities (Cortis et al. 2018).

Many structured giving vehicles are themselves registered charities. Structured philanthropy accounts for 14% of all charities (ACNC 2023g, p. 37). Of the 11,400 grant-making charities in 2021, 10% were public ancillary funds, 18% were private ancillary funds, 46% were other trusts and the remaining 26% other types of charities that made grants (ACNC 2023g, p. 37) (chapter 3).

Table 8.1 – Types of giving vehicles

| | Charitable trusts ^b | Private ancillary fund | Public ancillary fund (and sub-funds) |
|---|--|---|--|
| What is it? | Trust set up for any charitable purpose. Can be: inter vivos (set up while the donor is living) or testamentary (set up through a will or bequest) | Trusts established for private giving | Trusts established for public giving |
| Does the trust have DGR status? | Some – eligibility for DGR status depends on the purpose of the individual trust deed. Around 26% of charitable trusts had DGR status in 2016 | Yes – all are eligible for DGR status | Yes – all are eligible for DGR status |
| Who can donate to them? | Anyone – it is determined by the individual trust deed | Specified donors (founders or relatives, associates or employees of the founders). Others can only donate up to 20% of funds | The public |
| Who can they distribute or grant to? | Varies – must distribute in accordance with its charitable purposes and trust deed | Item 1 DGRs (where in accordance with its trust deed) | Item 1 DGRs (where in accordance with its trust deed) |
| Minimum distribution rate | None | Yes – greater of 5% net assets or \$11,000 each financial year | Yes – greater of 4% net assets or \$8,800 each financial year |
| Governance and decision making | Trustee (no restrictions on composition, but must comply with trust deed) | Trustee (must include at least one responsible person that is not a founder or donor) | Trustee (must include majority responsible persons with responsibility to the community) |
| Charity registration^a | Yes (currently about 9% of charities) | Yes (currently about 3% of charities) | Yes (currently about 2% of charities) |
| Reporting | Public – same as other charities | Exemption from public disclosure available from the ACNC, if criteria are met | Public – same as other charities |
| Other regulatory requirements | State and territory trust law | State and territory trust law <i>Taxation Administration Act 1953 (Cth)</i> Taxation Administration (Private Ancillary Fund) Guidelines 2019 | State and territory trust law <i>Taxation Administration Act 1953 (Cth)</i> Taxation Administration (Public Ancillary Fund) Guidelines 2022 |

a. Figures sourced from ACNC (2023g, p. 38). b. The non-ancillary fund charitable trusts with DGR include necessitous circumstance funds, school building funds, environmental and arts trusts, and other DGR charities that have chosen a trust structure rather than limited guarantee company.

Source: Adapted from Philanthropy Australia (2021, p. 8).

... and commit to a future stream of distributions

Unlike other forms of philanthropy where, for example, cash may be directly transferred to a charity for immediate use, there can be multiple steps before donations into a structured giving vehicle reach a

beneficiary. Giving decisions are split into two distinct components: the initial commitment (by the donor) to donate funds into the giving vehicle; and the future decision(s) (made by the trustee) to distribute funds from the giving vehicle to eligible charities. Following this, a charity may also hold donated funds for other reasons, such as accumulating reserves to support their financial sustainability.

By design, giving vehicles create a timing gap between donating into a giving vehicle and distributing the donation to a charity. This means a stock of assets is irrevocably set aside to finance a future stream of giving. Giving vehicles can be a way for donors to commit to giving up front and distribute funds over time, which may help establish long-term relationships between donors and charities. Some donors commit to 'spending down' a foundation over a set period, while others choose to have them operate in perpetuity and seek to maintain the value of the corpus (the initial asset invested into the trust) over time.

For any type of giving vehicle, there can be uncertainty about when the funds will reach a charity. For example, when someone commits to a charitable bequest in their will, they cannot be certain when this gift will occur. While ancillary funds distribute over several years, those distributions might be to the same or different eligible charities year-to-year. A charity may not know the value of distributions ahead of time, even where it expects to receive a bequest or distribution from an ancillary fund.

A trustee's distribution decisions may – or may not – match the preferences of the charitable sector or maximise community benefit. On the one hand, if funds are being held in giving vehicles there will be fewer opportunities for charities to respond to current needs. On the other hand, giving sooner results in fewer funds available to meet future needs. Aligning the preferences of donors, trustees and charities is difficult. This is due, in part, to principal-agent problems where one party has imperfect information about the other actors' or the community's preferences. For example, considered in isolation, a decision by a charity to hold on to funds can be an efficient way of managing their operations because, as not-for-profit organisation, they are unable to access capital markets for an injection of funds to (say) expand into other service areas. But this decision may not be efficient from the community's perspective if that charity would be well-placed to provide immediate support to people affected by a natural disaster and was no longer able to do so because it decided to hold onto the funds to use in the future.

There is a role for government to support structured giving vehicles

The terms of reference ask the Productivity Commission to look at the effectiveness of foundations. The Commission applied its framework (chapter 2) to two of the most common structured giving vehicles – ancillary funds and charitable trusts – to assess whether:

- there is a role for government in supporting the giving vehicle due to market failures
- subsidising philanthropy through the tax system is an appropriate way to support these giving vehicles.

The framework has been applied to the structures themselves, and their supporting architecture, including licensed trustee companies. This chapter also considers other forms of structured giving, including charitable bequests and potential opportunities for new giving vehicles.

Giving vehicles can contribute to building social capital ...

Many families and businesses use giving vehicles to combine and coordinate their giving. Giving vehicles, including private ancillary funds, can contribute to social capital if they work in collaboration with the people and communities they are supporting to solve problems together and drive innovation or diffuse knowledge. For example, the CAGES Foundation, a family foundation structured as a private ancillary fund, changed how they provide philanthropic giving so that they worked alongside Aboriginal and Torres Strait Islander community-controlled organisations, learning from their expertise and providing them with flexible funds to

create change (CAGES Foundation 2022). Public ancillary funds are also well-equipped to bring donors together and build social capital through networks of giving (box 8.1).

Box 8.1 – Community foundations and giving circles contribute to social capital

Community foundations are giving structures controlled and managed by members of the community to support local needs. They collect donations and make grants to eligible organisations. There are currently 38 community foundations registered with the peak body, Community Foundations Australia, along with several community funds nested within other foundations as sub-funds. In 2021, community foundations held \$500 million funds under management and made annual grants worth \$40 million (CFA and PA, sub. 273, p. 6). Most community foundations comprise an incorporated trustee with one or two trusts, one of which is typically a public ancillary fund (CFA and PA, sub. 273, p. 13).

Community foundations can also host collective giving groups or giving circles, which allow donors to come together to pool their donations (sometimes through a public ancillary fund sub-fund) and make collective decisions on grant making. The Melbourne Women’s Fund, a sub-fund within the Lord Mayor’s Charitable Foundation (which is Australia’s oldest and largest community foundation), is an example of a giving circle that builds social capital through its funders. It pools members’ resources (primarily through membership fees) and brings together members to decide how to distribute its grants with a focus on charities assisting vulnerable women and families in Melbourne (Christine Darcas, sub. 154).

Community foundations and collective giving contribute to building social capital because:

- they are typically place-based, support local organisations, and draw on local donor knowledge and experience (chapter 10)
- they can broaden participation in giving and enable communities to take action on issues of importance to them (South West Community Foundation, sub. DR594, p. 1)
- donors often volunteer to manage the community foundation, including governance, community engagement and stewardship of funds (Fremantle Foundation, sub DR503, p. 2. CFA and PA, sub. 273, pp. 8–9)
- they direct funding to charities, organisations or individuals that may not receive government support and can trial innovative practices that benefit the community
- they can build donor’s knowledge, engagement and learning in areas of civic engagement, community demand for services delivered by charities and philanthropy (Boyd and Partridge 2017, p. 29).

... but the interests of donors, trustees and governments may be misaligned

Peoples’ motivations for giving are varied and the interests of governments may not align with that of donors and trustees regarding when and how the funds are distributed. This can create a ‘principal-agent’ problem, whereby the interests of government (principal) as the provider of tax concessions and trustee (agent) as decision maker of how donated funds are distributed may differ. Taxpayers are co-investors in the tax deduction for giving that increases funding for charities. These funds can then be used to benefit the community. Both the value and opportunity cost of a dollar distributed from an ancillary fund are uncertain and can vary over time, depending on community needs and donor preferences. A dollar that is distributed today will not be available to be distributed in future. This trade-off should not be ignored. The timing gap between when donors contribute to the giving vehicle and when funds ultimately flow to the community means that, in the absence of any regulation, there may also be uncertainty about whether a trustee will

distribute a minimum amount of funds to charities over time, consistent with the government's rationale for providing tax concessions.

Additionally, a trust held in perpetuity or established through a charitable bequest may be administered entirely by a trustee with no relationship to the initial donor. This can create another form of principal-agent problem, where the trustee (agent) is acting on behalf of the donor (principal). The trustee may have imperfect information about the donor's wishes and even with this information, the trustee must exercise discretion in accordance with their duties under the law of equity and applicable legislation in a relevant state or territory.

The extent to which these principal-agent problems are an issue likely depends on how involved the donor is as a trustee and the gap between when the donation is made into an ancillary fund or charitable trust and when it is subsequently distributed to a charitable organisation. The information and monitoring gap between the donor and trustee may be particularly large for funds held in perpetuity, and where community preferences and recipient needs have evolved. These principal-agent issues underpin the case for regulation so that giving vehicles meet their philanthropic purpose – supporting the provision of goods and services to beneficiaries and providing benefit to the community.

8.2 Assessment of ancillary funds

What are ancillary funds?

The two types of ancillary funds – private and public – in the *Income Tax Assessment Act 1997* (Cth) (s. 30-15) have a distinct DGR category (sometimes referred to as Item 2 DGR), meaning they can accept tax-deductible gifts and donors can claim an income tax deduction. The arrangements for personal income tax deductions described in chapter 4 also apply to ancillary funds.

The regulatory guidelines for private ancillary funds (Taxation Administration (Private Ancillary Fund) Guidelines 2019) (PAF Guidelines) and public ancillary funds (Taxation Administration (Public Ancillary Fund) Guidelines 2022) (PuAF Guidelines) stipulate, among other things:

- the structure and purpose of ancillary funds
- how much ancillary funds are required to distribute to eligible entities with DGR status each year
- reporting and governance requirements.

Ancillary funds contribute to giving in unique ways

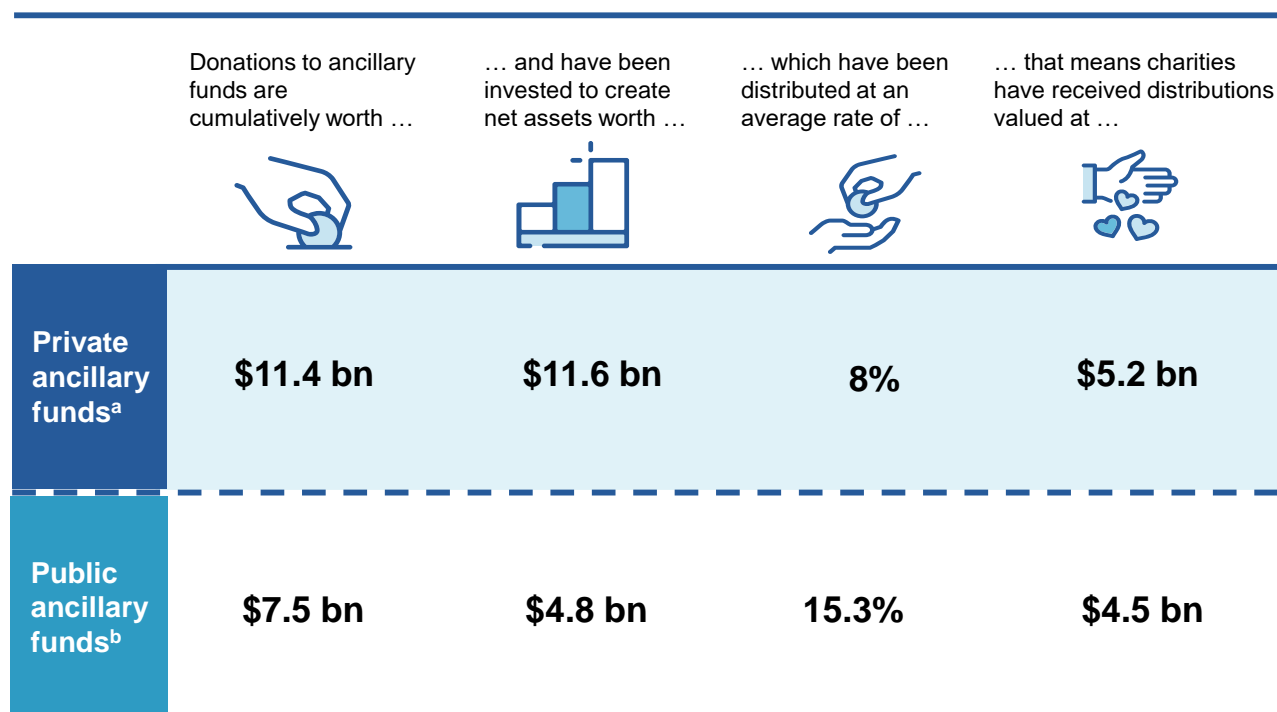
Giving to ancillary funds is significant and continues to grow

Donors to ancillary funds have contributed billions of dollars to charities and accumulated assets for future distributions (chapter 3). Figure 8.1 describes how giving through ancillary funds contributes to philanthropy and charitable activities.

The introduction of private ancillary funds as a legal structure coincided with a noticeable increase in the overall level of individual giving in Australia (figure 3.5). While the precise amount of increase attributable to ancillary funds is difficult to discern, ancillary funds are growing in size and relative importance as a source of giving. The overall number of ancillary funds increased from 2,400 in 2011-12 to 3,300 in 2020-21 with the annual value donated into ancillary funds increasing from \$692 million in 2011-12 to \$2.4 billion in 2020-21 (figure 8.2).

Figure 8.1 – Cumulative contribution of ancillary funds

Donations, distributions and benefits occur at different times



a. Total donations and net assets for private ancillary funds are the cumulative totals from 2000-01 to 2020-21. The distribution rate is the average rate for 2011-12 to 2020-21. **b.** Total donations and net assets for public ancillary funds are the cumulative totals from 2011-12 to 2020-21 due to data availability. The distribution rate is the average rate over the same period.

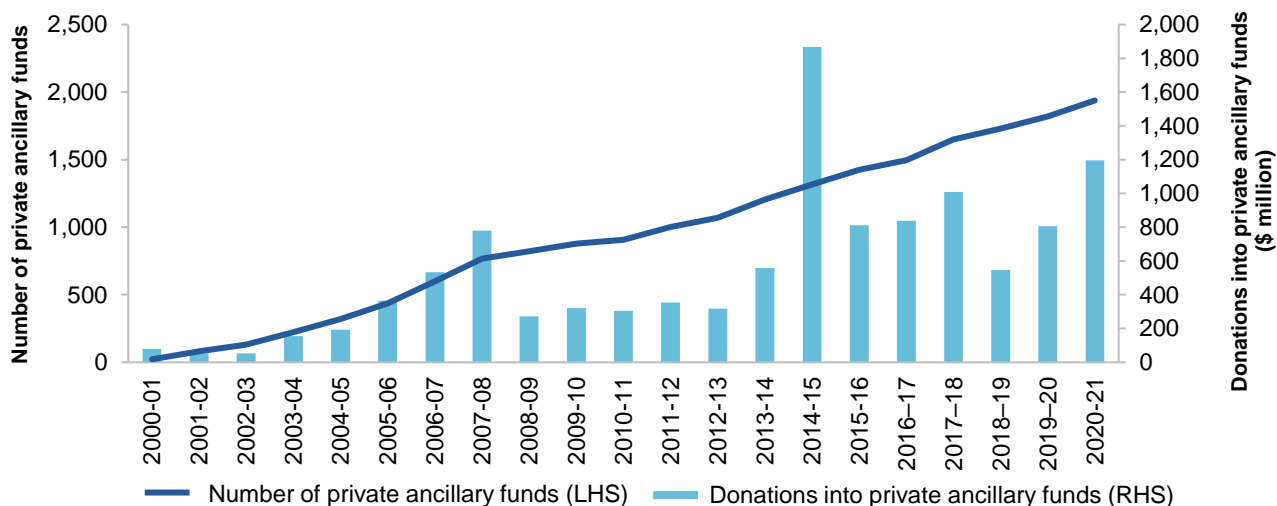
Source: Commission analysis of ATO Taxation Statistics (2023).

The pool of assets in ancillary funds is growing through investment returns

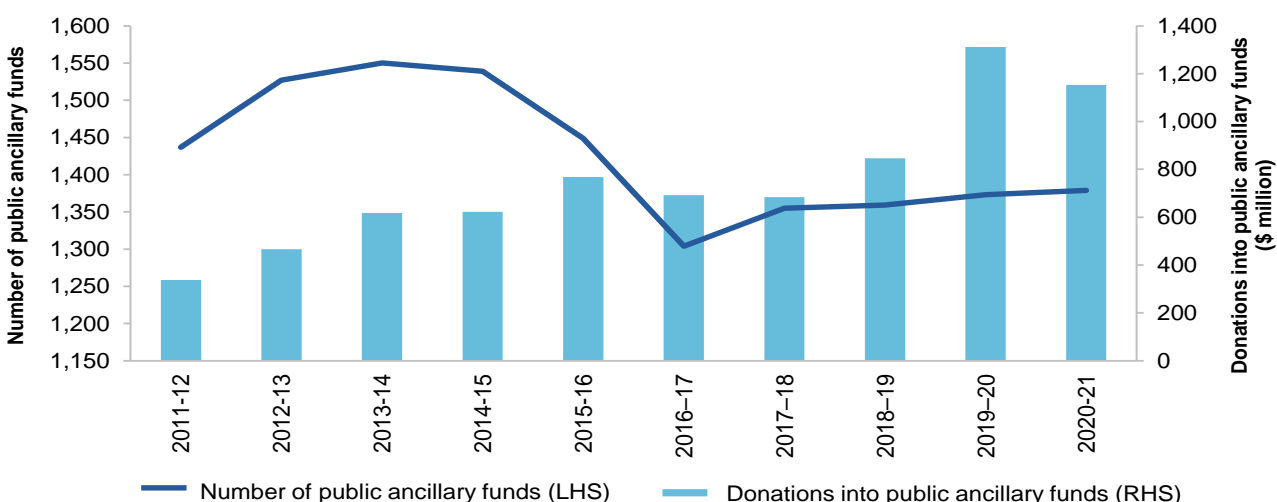
The trustees of ancillary funds are responsible for managing the fund's assets and implementing an investment strategy to finance a future stream of giving. Depending on market conditions, investing the assets of the fund is likely to increase the corpus available for distribution to charitable organisations in the future. At the same time as the investment grows, expenses associated with administering the ancillary fund, such as paying trustees, reduce the asset pool.

The aggregate pool of assets in ancillary funds has grown since their introduction. Private ancillary funds hold about 70% of those net assets (\$11.6 billion in 2020-21) and have contributed over 75% of the growth in ancillary fund net assets in the past five years (\$3.2 billion of the \$4.3 billion increase in net assets since 2015-16) (figure 8.3).

Figure 8.2 – Trends in the number of ancillary funds and donations into these vehicles
Private ancillary funds^a



Public ancillary funds



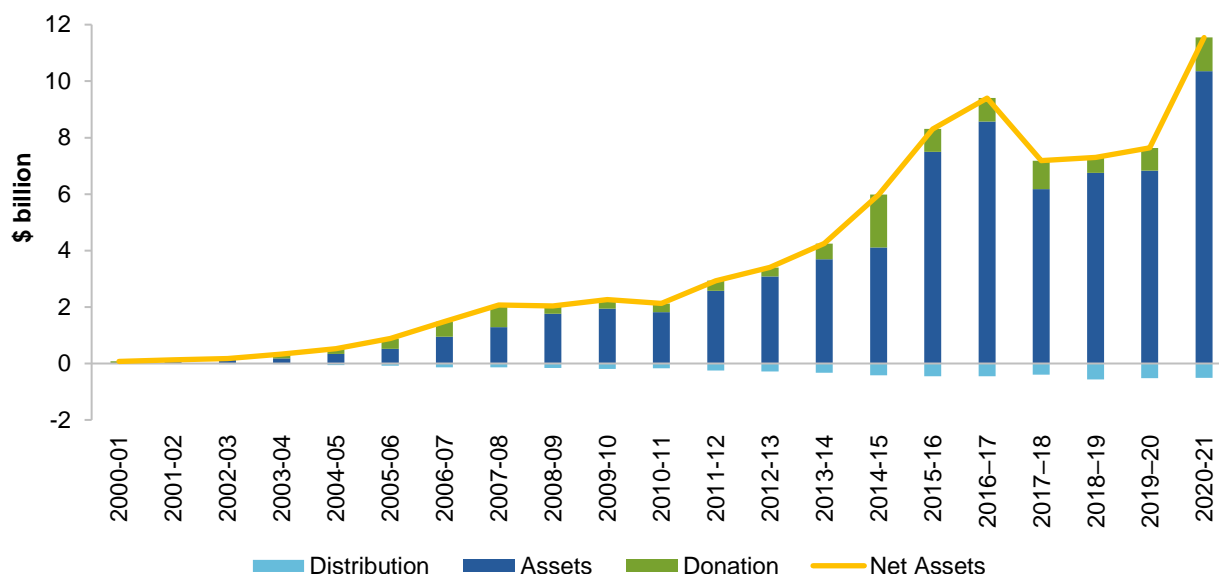
a. The increase in 2014-15 private ancillary fund donations was likely the result of a large bequest into the Paul Ramsay Foundation ancillary fund (Gardner 2014).

Source: Commission analysis of ancillary fund data published in ATO Taxation Statistics (2023).

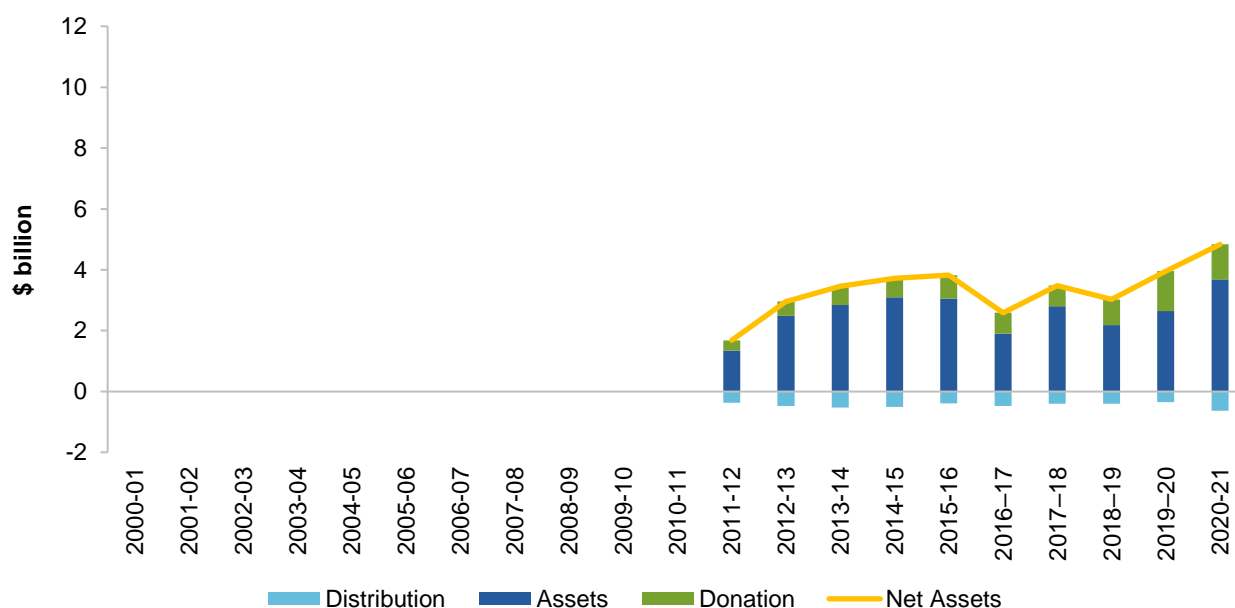
Unlike a donation that goes directly to the charity, trustees of ancillary funds have a corpus of funds available to distribute to charitable causes and have greater flexibility to provide different forms of support to eligible charities over a longer timeframe, such as loans and guarantees. This type of support can benefit charities by providing income with different characteristics than that provided by government, including potentially providing untied funds that could be used to fund general operations (chapter 2). The motivations, preferences and distribution decisions, including any conditions of funding placed on a charity, will differ across trustees and funds. So too will the mix of charities or programs trustees choose to support – some will take more risks on innovative or start-up charities and others will give to the more well-known charities and service models. The quantity of support provided by ancillary funds and the manner in which it is provided are relevant for charities and policy makers. For example, a dollar of support tied to a specific project may be less valuable to a charity compared with a dollar of support that can be used by the charity for general operations.

Figure 8.3 – Ancillary fund donations, distributions and net assets^a

Private ancillary funds



Public ancillary funds



a. Assets refers to residual asset stock, calculated as net assets less donations into the ancillary fund for that financial year. Net Assets refer to the total asset value at the end of the financial year.

Source: Commission analysis of ancillary fund data published in ATO Taxation Statistics (2023).

The minimum distribution rates are key policy levers

While the trustee has broad discretion over distribution decisions, the regulatory arrangements for ancillary funds prescribe minimum annual distribution rates for funds so that ancillary funds meet their philanthropic purpose (Explanatory Statement, PAF Guidelines). Although the concept of ‘philanthropic purpose’ is not specified in legislation or ancillary fund guidelines, Treasury (2008, p. 3) has stated that donors to ancillary funds and their associates should not benefit from their ancillary fund and that ancillary funds should provide

more funding to eligible entities than if the government had used any revenue forgone from tax concessions and given it directly to those entities.

The ancillary fund guidelines require a fund to distribute a minimum amount of their assets to eligible entities with DGR status each financial year. Ancillary funds cannot distribute to other ancillary funds, except in limited circumstances. There are exceptions to the minimum distribution required in the first years of operation (which depend on the time of year a fund is established) – up to 12 months of operation for private ancillary funds and up to five financial years for public ancillary funds. In general, public ancillary funds must distribute the greater of 4% of assets or \$8,800 and private ancillary funds must distribute the greater of 5% of assets or \$11,000. The Commissioner of Taxation can also approve a fund to distribute at a lower rate. Ancillary funds can also choose to distribute above the minimum required – and many do.

The minimum distribution rates are key policy levers available to government to influence the timing of amounts that flow from ancillary funds to eligible organisations with DGR status, and ultimately, the community. They determine how much of the remaining ‘stock’ of assets is distributed at any given point in time, making them tools that can be used to mitigate the potential risks of divergence between the interests of governments, trustees of ancillary funds, charities and the wider community. In doing so, the minimum distribution can help maintain the community’s confidence in giving vehicles (Philanthropy Australia 2016, p. 18).

The minimum distribution arrangements can be changed to increase or decrease the flow of funds to charities. For example, during the COVID-19 pandemic, the Australian Government introduced an incentive for ancillary funds to increase their distributions. This was done to provide more support for charities given heightened demand for some of their services in the short-term, with ancillary funds allowed to reduce their distribution rate in future years (implemented through the Taxation Administration (Coronavirus Economic Response Package—Ancillary Funds) Amendment Guidelines 2020 (Cth)).

Many ancillary funds converge to their minimum distribution rate

To assess the extent to which the minimum distribution rates affect the distribution strategies of ancillary funds, the Commission used data from the Australian Taxation Office (ATO) to analyse how many ancillary funds distributed at their minimum rate and how often they did so.

Based on a static cross-sectional sample of ATO data,¹³ about 62% of public ancillary funds distributed above their minimum distribution rate in 2020-21, compared to 44% of private ancillary funds (figure 8.4). Further, about 49% of private ancillary funds distributed between 5–6% of their net assets (the minimum distribution rate is 5%), while 17% of public ancillary funds distributed between 4% and 5% of their net assets (the minimum distribution rate is 4%). These percentages are similar over a five-year period.

Importantly, the Commission’s analysis of a sample of private ancillary fund data also found that of the approximately 50% of private ancillary funds that distributed 5%–6% of their net assets in 2020-21:

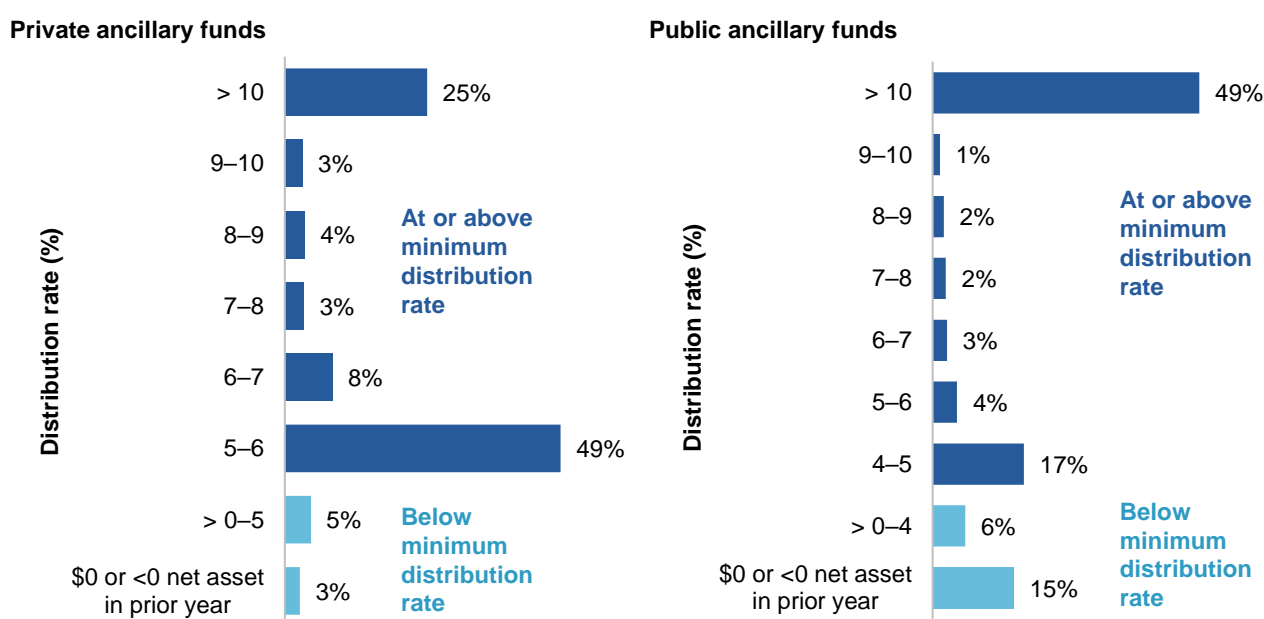
- 66% distributed between 5%–6% *every year* between 2017-18 and 2020-21
- 28% donated between 4.9% and 5.2% *every year* between 2017-18 and 2020-21.

This suggests that for a significant proportion of funds, the minimum distribution rate is a consistent binding constraint.

¹³ This sample includes ancillary funds that have \$0 assets or made a distribution in 2020-21. The sample excludes data for a subset of ancillary funds, for example new ancillary funds that are not distributing because they are not yet subject to the minimum distribution rate and those that have received privacy exemptions.

There are also limits on the effectiveness of minimum distribution rates as a policy tool. Minimum distribution requirements for public ancillary funds apply at the fund-level only and do not apply to each sub-fund that may be contained within a public ancillary fund (Ian Murray, sub. 206, p. 2).

Figure 8.4 – Proportion of ancillary funds that distributed below, at and above the minimum distribution, 2020-21



Source: Commission analysis of ATO data (2023).

Assessing the effectiveness of ancillary funds

The trade-off between ancillary funds giving more now or giving more over time

Ancillary funds are intended to be philanthropic in character (PAF Guidelines, s. 8; PuAF Guidelines, s. 8).

This philanthropic purpose is recognised and supported by government, through the provision of a full tax deduction for any amount contributed to an AF [ancillary fund], an income tax exemption for assets within an AF, and other concessions such as the availability of refundable franking credits (for those with taxable income) (Philanthropy Australia 2016, p. 14).

In return, there is an expectation from both the community and government that ancillary funds will provide regular and ongoing distributions to support eligible entities with DGR status. The Commission analysed whether the tax concession provided to ancillary funds is an effective use of tax expenditures, rather than the effectiveness of the specific funding provided by ancillary funds to charities.

The policy trade-off for ancillary funds revolves around two factors – timing and the most effective use of funds. Ancillary fund assets do not sit in a ‘lockbox’ account where they are completely idle – they are invested in economically productive assets that generate a rate of return, which is available for spending on future charitable purposes. But these returns need to be weighed against the potential rate of return the assets could have generated if used by a charity (Andreoni 2018, pp. 2019–2020).

Trustees, government, and the community more broadly may have different preferences around how these two factors are balanced. This is more relevant if community preferences regarding the timing of distributions

differ from a donor's or trustee's preferences. While there is no data available on the preferences of different charities, the issue was raised in submissions to the inquiry:

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. (The Ian Potter Foundation, sub. 173, p. 4)

There are pressing needs that need to be addressed today, and left unaddressed, the magnitude of the problems and the cost of addressing the problems will increase over time. The [public/private ancillary fund] guidelines need to ensure that there are incentives to get funds into charities today. By increasing the fund distribution requirements, the risk of society making a - net-loss from philanthropic tools is substantially reduced. While there is an increased likelihood that the capital value of the fund will be depleted, this is not an adverse outcome if it leads to an increased likelihood that the scheme provides net public benefit in a shorter time-frame. (Seedling Giving, sub. 236, p. 8)

In some instances [private ancillary funds] and [public ancillary funds] have become perpetual accumulators of wealth in their own rights rather than effective vehicles of giving ... A critical recommendation from this inquiry should be to review the minimum distribution rate mechanisms currently in place, as, much like DGR frameworks, they no longer serve the best intentions of the community. (Fay Fuller Foundation, sub. DR501, p. 1)

In addition, there are other costs and benefits of a timing gap between the revenue cost to government when the donation is made into an ancillary fund and distributions being made to eligible entities with DGR status. A person may donate into an ancillary fund (and receive an upfront tax deduction) with the intention that the fund exists in perpetuity. If those donations were to be distributed to a charity 50 years in the future, then, depending on realised rates of return and discount rates, those donations could have a lower real value when the charity receives them, compared to when they were first donated into the ancillary fund.

Illustrative examples of the trade-off between the benefit for donors (in the form of a tax deduction), and the benefit to the community (measured by the present value of distributions received by eligible entities with DGR status) are presented in box 8.2. It shows that the net benefit to the community (and the number of years until the value of tax deduction received by the donor is equal to the amount distributed to charities) depends on several factors, including the size of the initial donation, the frequency of any subsequent donations and the number of years the ancillary fund has been operating. The larger the initial donation, the longer it will take for the fund to generate a net benefit to the community.

The extent to which the tax deduction donors receive exceeds the present value of distributions is a function of the distribution rate, the discount rate and the rate of return. The implication is that government policy may be able to influence the timing of a net benefit for the community being realised through changing the minimum distribution rates. The higher the distribution rates, the more likely the present value of distributions will exceed the initial tax deduction donors receive at a particular point in time. This 'tax revenue payback' period is only one factor to consider in thinking about the choice of minimum distribution rates.

Box 8.2 – Illustrative examples of the costs and benefits of ancillary funds

Comparing the net present value (NPV) of the tax deduction the donor receives and distributions out of the fund is one way to assess the support provided through the tax system for donations into ancillary funds. The Commission examined the NPV of the tax deduction to the donor under three scenarios where donations are one off (scenario 1) or made over 10 years (scenario 2 and scenario 3).

The NPV in this analysis is the current value of a future sum of annual distributions from a hypothetical private ancillary fund, given an 8% discount rate. Meanwhile, the net benefit or cost to the community is the difference between the NPV of donations into the private ancillary fund, compared to the NPV of distributions from the private ancillary fund to charitable organisations over a 10-, 20- and 40-year period. The trade-off is influenced by the amount distributed annually, which is generally a minimum of 5% of the asset base each year for private ancillary funds.

This analysis examines three scenarios to demonstrate the different potential outcomes for a given level of investment (the initial donation into the fund and any subsequent donations). As noted above, there is no typical ancillary fund, so the actual trade-off will vary fund-to-fund.

Net present value of scenarios of donations into a private ancillary fund^{a,b}

| | Scenario 1 | Scenario 2 | Scenario 3 |
|--|---------------------|-------------------------|---|
| Donation | One-off \$1 million | \$100,000 over 10 years | Initial \$500,000 then \$50,000 for ten years |
| Tax rate assumption | 47% | 32% | 32% |
| Present value of the tax deduction | \$470,000 | \$214,700 | \$247,600 |
| Present value of the benefit of distributions over | | | |
| 10 years | \$362,000 | \$131,800 | \$240,200 |
| 20 years | \$565,000 | \$298,800 | \$412,700 |
| 40 years | \$742,000 | \$427,700 | \$545,800 |
| Net benefit over | | | |
| 10 years | -\$108,000 | -\$83,000 | -\$7,400 |
| 20 years | \$95,000 | \$84,000 | \$165,100 |
| 40 years | \$272,000 | \$212,960 | \$298,200 |
| Benefits equal to or greater than costs (distributions equal or exceed tax deduction) | 15 years | 15 years | 11 Years |
| Distribution rate necessary for total distributions to equal tax deduction after 10 years | 7.0% | 9.0% | 5.2% |

Box 8.2 – Illustrative examples of the costs and benefits of ancillary funds

| | | | |
|---|-----------------------|----------|----------|
| Time taken for total distributions to equal tax deduction using a 15% discount rate and 5% distribution rate | Greater than 40 years | 24 years | 14 years |
| Distribution rate necessary for total distributions to equal tax deduction after 10 years using 15% discount rate | 10.5% | 10.6% | 6.7% |
| Time taken for total distributions to equal tax deduction using a 5% discount rate and a 5% distribution rate | 12 years | 13 years | 10 years |
| Distribution rate necessary for total distributions to equal tax deduction after 10 years using 5% discount rate | 5.8% | 8.4% | 4.8% |

a. The Commission's estimates are based on a discount rate of 8% and a 5% distribution rate, with sensitivity analysis of a 15% and 5% discount rate. The analysis is highly dependent on the discount rate used and there are different views on what discount rate that should be for not-for-profit organisations. Further background on other discount rates proposed for application to not-for-profit organisations can be found later in the chapter. b. Where the table presents the distribution rate or period of time necessary for total distributions to equal the size of the initial tax deduction, the NPV of distributions and the tax deduction have been used. As outlined above, the NPV has been calculated using a discount rate of 8%.

Source: Commission estimates.

A principles-based rationale for the minimum distribution

When the minimum distribution rates were first decided for the purposes of the initial PAF Guidelines and PUAFA Guidelines, no clear rationale was articulated for selecting the respective minimum distribution rates. To date, there is still no explicit or widely understood rationale or principles-based framework that explains the current minimum distribution rates for ancillary funds.

There should be a clearly stated rationale underpinning the minimum distribution rates. The minimum distribution rates are the primary mechanism used to balance the preferences of government, trustees, charities and the wider community around the flow of support from ancillary funds to charities. This is particularly important given that donations to ancillary funds are tax deductible.

The Commission has identified three principles that should be used to determine the minimum distribution rates for ancillary funds and other supporting regulation.

Principle 1: the purpose of ancillary funds is charitable

Ancillary funds operate for the purpose of supporting eligible entities to further their charitable purposes and provide benefit to the community.

Ancillary funds are vehicles for acts of philanthropy by donors and benefit from significant tax concessions on that basis. Ancillary funds hold their assets in trust, in order to further charitable purposes and benefit the community. Once a donation enters a private ancillary fund, it is no longer strictly private money, even though decisions around the investment and distribution of this money rest with the trustees of the fund. Ancillary funds operate with the purpose of supporting eligible entities to further their charitable purposes. Donors to ancillary funds and fund managers should not benefit from their ancillary funds.

Ancillary funds are not a private savings or financial investment vehicle. The objective should not *exclusively* be to increase the total amount of money in a particular fund; rather, the ultimate objective should be to improve flows from philanthropy to charities. Part of having a charitable purpose is that distributions from ancillary funds should reflect charities' preferences. While there is little or no data on charities' preferences, some charities will prefer more immediate funding that allows them to address current issues or begin a longer-term project. Others will require support in the future. The minimum distribution rates should enable ancillary funds to support charities in all their diversity in the way best suited to charities' operations.

Principle 2: enable, but not guarantee, that funds can operate in perpetuity

The minimum distribution rates should facilitate ancillary funds to operate in perpetuity (where trustees want this to occur) without *guaranteeing* that all ancillary funds will actually do so or incentivising that outcome.

Whether a fund operates in perpetuity or not is determined by the levels of inflows (through investment returns and donations) against outflows (distributions) over time. Therefore, the minimum distribution rates are an important (but not the only) determinant the lifespan of ancillary funds, including how much they give now and in the future.

Many donors want their ancillary fund to operate in perpetuity, and their donations and investments are structured to achieve that goal. While there are benefits to this, it necessarily means that a large corpus of funds may never flow to the charitable sector. The minimum distribution rate should be set to ensure that flows from the philanthropic sector to the charitable sector are maximised over time – rather than ensuring that all ancillary funds can operate in perpetuity. Funds may operate in perpetuity by earning returns at or above the minimum distribution rate. The principle deliberately does not seek to encourage or prevent this outcome.

It is also important that while maximising flows to the charitable sector, the minimum distribution rates should not encourage imprudent investment strategies, such as high-risk, high-return investment strategies that may significantly jeopardise charitable assets.

Principle 3: distributions should reflect charity funding needs

The minimum distribution rates should be appropriately targeted so that charities receive funding when they need it most.

Some charities require funding immediately to deliver short- and long-term projects, and some charities will prefer funding in the future to allow them to respond to emerging issues. The minimum distribution rates should balance these different needs and preferences. One way of approximating the time value of money for charities is to use a social discount rate, which is the rate at which the societal benefits from a project fall over time (discussed below). Funding certainty is also key to allowing charities to deliver projects and activities. The framework for minimum distributions should allow ancillary funds to provide funding certainty

to beneficiary charities. It is important that any provisions to allow smoothing of distributions are carefully designed to avoid volatile changes in annual funding (Perpetual, sub. DR498, p. 7).

The minimum distribution rates should be reviewed periodically to ensure that they achieve this principle. To provide certainty and predictability to ancillary funds and charities, these reviews should be done over consistent and relatively long-term periods (for example a review every 10 or 15 years).

The Commissioner of Taxation should retain the existing power to reduce the minimum distribution rate for individual funds in exceptional circumstances.

Applying the principles to reform the regulation of ancillary funds

Determining the minimum distribution rates should be informed by these policy principles and the available data on the behaviour of donors and preferences of charities. However, picking a rate (or a range of rates) is subject to a degree of judgement. Determining the minimum distribution rates is not entirely scientific, nor is the decision to encourage larger flows to charities now as compared to later. In addition to the principles above, the following factors should inform the minimum distribution rates for ancillary funds.

- Maintaining the integrity of the tax system, given the purpose of ancillary funds is to provide funds to benefit eligible charities rather than to accumulate assets.
- The investment strategies of ancillary funds and their average rates of return, how volatile those returns are and other characteristics of different investment options (for example, autocorrelation of returns).
- The causes or charities a donor wants to support and the manner in which they provide that support.
- The preferences of charities, including the quantum of support provided by ancillary funds, whether grants are tied or untied, and whether grants are one-off or ongoing.
- The benefits of stability and certainty in the regulatory framework.

Assessing a reasonable rate of return for ancillary funds is one factor

Under the principles, the distribution rates should be based on (but not necessarily equal to) a 'reasonable rate of return', less 'reasonable administrative costs'. This would mean that on average, on a risk-adjusted basis, over time real fund outflows meet real fund inflows from investments. This would generally allow ancillary funds to maintain the real value of the fund in perpetuity if that is what donors wish. The size of the fund would increase where returns exceed the rate and decrease where returns fall below the rate. Noting that living donors can always decide to increase the corpus of a fund by making additional donations. A 'reasonable rate of return' would be the return an ancillary fund might generate on its investments without taking a high or unnecessary level of risk.

One approach would be to calculate an inflation- and risk-adjusted rate of return for a balanced investment portfolio, averaged over time. For example, a balanced portfolio would typically invest in a mix of defensive assets (cash, bonds and fixed interest) and growth assets (infrastructure, listed property and shares). As registered charities endorsed for an income tax exemption, another relevant factor is that ancillary funds are eligible to receive refunds of franking credits from the ATO. This can have the effect of increasing inflows into ancillary funds, depending on the extent to which they invest in Australian equities.

To provide context, table 8.2 includes the average nominal annual return (not adjusted for risk) for several asset classes between 2000-01 to 2019-20, and 2016-17 to 2020-21. For ancillary funds we only have data for the financial years between 2016-17 and 2020-21.

Table 8.2 – Average nominal annual returns for different asset classes

| | Average nominal annual returns (%) 2000-2001–2019-2020 | Average nominal annual returns (%) 2016-17–2020-21 |
|---|--|---|
| Australian shares^a (S&P/ASX All Ordinaries Accumulation Index) | 7.4 | 11.5 |
| Australian shares dividend yield^b | 4.1 (with an average franking credit yield of 1.4) | 3.9 (with an average franking credit yield of 1.3) |
| Superannuation funds^c | 6.4 | 8.9 |
| Australian property^a (S&P/ASX Listed Property Trust Accumulation Index) | 6.1 | 5.8 |
| Cash^a (UBS Warburg Australia Bank Bill Accumulation Index) | 4.1 | 1.3 |
| Australian bonds^a (UBS Warburg Australia Composite Bond Accumulation Index) | 6.0 | 3.2 |
| Private ancillary funds return on net assets^{d,e} | n/a | 6.3 (6.9 excluding those that earned no investment income) |
| Public ancillary funds return on net assets^{e,f} | n/a | 3.9 (5.0 excluding those that earned no investment income) |
| Inflation rate | 2.6 | 1.8 |

a. Vanguard (2024). **b.** ATO (2022). **c.** Superannuation funds data based on the median annual financial year performance of an growth superannuation fund using Superguide (2024). **d.** Calculated using a sample of 720 private ancillary funds of the 1,939 private ancillary funds registered with the ATO, excluding any private ancillary fund with net asset value of less than \$20,000 or funds that are suppressed entities. These calculated returns may be unrepresentative of returns of suppressed entities. **e.** For both private ancillary funds and public ancillary funds, average returns include interest, dividends and distributions from investments such as shares and units in managed funds. Returns also include dividend franking credit amounts. Returns also include 'all other income', including net gains or losses from the sale of an asset, forgiveness of a liability or debt, gains on foreign currency transactions, rental income (if not earned as part of your charity's ordinary activities) and changes in the fair value of investments. Actual returns may vary if asset values change significantly within a year, as returns are based on the net asset value at the end of the financial year. **f.** Public ancillary fund returns are based on a sample of 655 public ancillary funds of the 1,379 public ancillary funds registered with the ATO, excluding any private ancillary fund with net asset value of less than \$20,000 or that are suppressed entities.

Sources: ATO (2022); Superguide (2024); Vanguard (2024).

Based on available ACNC data, the average 5-year nominal return from private ancillary funds between 2016-17 and 2020-21 was 6.3%. The average nominal return on for public ancillary funds was 3.9% (it is possible that these returns are affected by the flow-through nature of some public ancillary funds). Excluding private ancillary funds that had no income, the nominal return on assets for private ancillary funds was 6.9% over a 5-year period, with public ancillary funds averaging a return of 5%.

Operating costs should also be considered in the minimum distribution calculation. The ATO model trust deed for private ancillary funds recommends that these costs be capped at 1.056%. Based on ACNC data

the median operating costs of private ancillary funds were 0.7% between 2017 and 2021, while the median operating costs of public ancillary funds were around 1% in 2020-21.

In theory, it is possible that the presence of a minimum distribution rate could influence a fund's investment strategy – funds may structure their investment strategies in such a way as to target or just meet their minimum distribution rate. The Commission tested this hypothesis by examining whether the rate of return a private ancillary fund earns affects their distribution rate. Table 8.3 highlights that the average distribution rate for private ancillary funds does not change significantly based on investment returns. All else being equal, if the targeting hypothesis held, funds with lower distributions would have lower investment returns, but this does not appear to be the case. The Commission also examined whether the size of a private ancillary fund's net asset base and their median returns affects the distribution rate in table 8.4.

Table 8.3 – Average distribution and return on assets for private ancillary funds 2017–2021^a

| Average distribution rate | Number of private ancillary funds | Returns from investment and other income (%) ^b |
|---------------------------|-----------------------------------|---|
| <5% | 84 | 6.5 |
| 5%–6% | 308 | 6.6 |
| 6%–7% | 54 | 6.6 |
| 7%–8% | 31 | 5.1 |
| 8%–9% | 27 | 5.5 |
| 9%–10% | 24 | 6.2 |
| Above 10% | 200 | 6.4 |

a. Excludes private ancillary funds with net assets less than \$20,000 in 2020-21. b. 'Returns from investment and other income' includes interest, dividends and distributions from investments such as shares and units in managed funds, net gains or losses from the sale of an asset, forgiveness of a liability or debt, gains on foreign currency transactions, rental income (if not earned as part of the ancillary fund's ordinary activities) and changes in the fair value of investments.

Source: Commission estimates based on ACNC Ancillary fund data ACNC (2023).

Table 8.4 – Median distribution and return on assets for private ancillary funds based on asset size 2017–2021^a

| Net asset size (\$) | Number of private ancillary funds | Median distribution (%) | Average return on assets (%) |
|----------------------|-----------------------------------|-------------------------|------------------------------|
| 20,000–100,000 | 36 | 41.0 | 3.5 |
| 100,001–500,000 | 121 | 9.6 | 4.9 |
| 500,001–1,000,000 | 117 | 5.9 | 6.3 |
| 1,000,001–5,000,000 | 287 | 6.8 | 6.8 |
| 5,000,001–10,000,000 | 74 | 5.2 | 6.9 |
| 10 million plus | 90 | 5.1 | 7.0 |

a. Excludes private ancillary funds with net assets less than \$20,000 in 2020-21. Median distribution for those private ancillary funds in the \$20,000 to \$100,000 net asset size range is impacted by i) private ancillary funds who had distributions greater than net assets at the end of the previous year, typically as a result of donations into and out of the private ancillary fund in the same year ii) private ancillary funds winding down their net asset base.

Source: Commission estimates based on ACNC Ancillary fund data (2023).

This data indicates that the minimum distribution rates may affect ancillary fund behaviour and may be acting as an ‘anchor’ or ‘focal point’ for distributions by ancillary funds, while the rate of return has less of an influence (as funds may receive additional donations to increase corpus at any time to allow further giving). In general:

- there is no clear link between minimum distribution rate and average returns (table 8.3) with, on average, funds distributing more than 10% having a similar return to funds distributing 5%-7%
- the smaller the asset size of the fund, the higher the median distribution rate (table 8.4)
- funds with higher net assets have a higher median return on assets than smaller funds (table 8.4).

Determining the social discount rate is complex

Another approach to determine the minimum distribution rates is to use a social discount rate, which measures society’s willingness to trade off social benefits and costs at different points in time. Using the social discount rate can assist with the evaluation of long-lived public infrastructure projects as well as broader policy issues, including policies aimed at reducing emissions and mitigating the impacts of climate change, where costs are incurred today in order to secure future benefits.

In 2010, the Commission published a research paper that concluded the real social discount rate should be 8%, based on the long-term average of the marginal rate of return on private capital investments, less tax distortions and foreign borrowing (Harrison 2010), while the Office of Best Practice Regulation guidelines (Australian Government 2007, pp. 129–132) suggested a real social discount rate of 7% should be used.

The Commission notes that there has been significant debate around the appropriate social discount rate to inform government policy decisions. In addition to the rates proposed by Harrison and the Office of Best Practice Regulation:

- Jansen and Katz (2002) suggested a social discount rate of 15%
- Abelson and Dalton (2018) concluded that based on the opportunity cost of capital the appropriate real discount rate in Australia was 6.5%
- the *Building Up & Moving Out* inquiry recommended that the Government adopt a 4% real discount rate for infrastructure projects, noting the then historically low interest rates (House of Representatives Standing Committee on Infrastructure, Transport and Cities 2018, p. 406).

Distribution strategies could enhance the effectiveness of ancillary funds

One way to embed a clearer focus on the first principle within the regulatory framework would be to require ancillary funds to develop a ‘distribution strategy’ setting out how they intend to distribute funds to support eligible entities. Funds are not currently required to do this. Developing such a strategy would involve an ancillary fund setting out the approach it takes to ‘practising’ philanthropy, providing a prompt for ancillary funds to think about how to improve their grant-making.

Ancillary funds are currently required to prepare and maintain an investment strategy setting out the investment objectives of the fund and the investment methods the trustee will adopt to achieve those objectives. A requirement for a distribution strategy would be modelled on and complement the requirement for an investment strategy, providing a more holistic regulatory approach and recognising that the effectiveness of ancillary funds is also dependent on how they distribute funds to eligible entities. The Commission tested this idea during public hearings and received some positive feedback from participants, including comments that many ancillary funds already have a similar strategy in place (Australian Environmental Grantmakers Network, trans., p. 480; John Palermo, trans., p. 392; Perpetual, trans., p. 635).

The requirement for ancillary funds to develop a distribution strategy should not be prescriptive – the trustee of individual ancillary funds should have discretion to determine their strategy and how it is best presented. Allowing ancillary funds flexibility to interpret the requirement would ensure the strategies are aligned with the funds' vision and operating context, and minimise compliance burdens. For some ancillary funds, the distribution strategy could be a brief document setting out the causes they are giving to and the ways they will give. For others it may include a 'theory of change' or take the form of a more detailed strategy document. The key benefit of the requirement is that it would prompt further thinking about how to engage in effective philanthropic practices, which would be especially beneficial for ancillary funds that do not already produce a document like this (Perpetual, trans., p. 635).

Ancillary funds which elect to develop a more detailed strategy document may choose to include a target distribution rate (above their required minimum distribution rate) and an explanation of how this rate balances the trade-off between distributing more funds in the short-term versus over the longer-term, which could include 'intergenerational justice' considerations (Ian Murray, trans., pp. 360–361). Examples of other details trustees may choose to insert in their distribution strategy include:

- how funding decisions are made, by whom, and based on what information and input
- whether a fund provides project specific funding, general operating support, and/or multi-year funding (chapter 2), and how it contributes towards the administrative costs of eligible entities (chapter 9)
- whether a fund adopts a particular approach to inform funding priorities and decisions, such as applying a 'gender lens' (Australians Investing in Women, sub. 271) or supporting Aboriginal and Torres Strait Islander organisations (chapter 10)
- how the fund evaluates its own effectiveness, including how it seeks to understand the preferences and perspectives of the eligible entities it supports
- a fund's approach to information sharing and transparency.

Given that the requirement would be to develop and maintain a distribution strategy, neither the ATO nor the ACNC would have a role 'approving' such a document. There would also be no requirement to make a distribution strategy publicly available, although many ancillary funds currently choose to publish such strategy documents as a way of communicating with stakeholders about their activities.

The name of ancillary funds should be clearly linked to their purpose

Re-naming ancillary funds would make them more accessible to a broader audience of potential donors and more clearly show the link with principle 1 (recommendation 8.1). The term 'ancillary' means the provision of help or support, which reflects the role of ancillary funds as existing to support the work of other charities. However, the term may not be widely understood and may send a signal that ancillary funds are peripheral entities. Changing the name to 'Private Giving Funds' and 'Public Giving Funds' would more clearly communicate their purpose and emphasise that their role is central to supporting the work of other charities.

Aligning private and public ancillary funds

Currently public and private ancillary funds face different minimum distribution rates. Although the reason for this policy setting has not been explicitly stated by government, it may be because public ancillary funds generally face less certainty around inflows from donors and greater administration costs.

However, analysis on current distribution rates shows that on average, public ancillary funds often distribute more than private ancillary funds (15% vs 8%) with a median distribution rate of 7% compared to private ancillary funds of 5.6%. This suggests that public ancillary funds would likely be able to comply with the same minimum distribution rate as private ancillary funds. Aligning the rates would also simplify the

arrangements for ancillary funds. Given this the Commission recommends aligning the minimum distribution rates for public and private ancillary funds (recommendation 8.1).

Public ancillary funds also have access to a longer exemption before minimum distributions apply. The Commission considers that this provision should be maintained, in recognition that the funding uncertainty and administration costs faced by public ancillary funds are likely to be greater during the initial period of operation.

Potential effect of increasing the minimum distribution rate

A change in the minimum distribution rates is likely to directly influence the behaviour of a subset of ancillary funds – those consistently operating around the minimum distribution. As table 8.5 shows, increasing the minimum distribution would likely increase the amount charities receive today. All else being equal, this would come at the cost of lower future distributions since the corpus of funds would be depleted faster than would otherwise be the case. It is also possible that raising the rates could deter people from using structured giving vehicles, potentially reducing the amount charities receive over time. The consequences of this could be that those people do not donate at all, use a different type of giving (for example, giving directly to a charity or charitable trust) or set up a charity instead. If a change were to encourage a donor to set up a charitable trust instead of an ancillary fund, this charitable trust would not be bound by the same regulatory requirements as ancillary funds, including the minimum distribution rules (section 8.4).

Individual donor motivations and preferences vary, so it is difficult to precisely identify the tipping point where minimum distribution requirements reach a level that deters people from establishing or donating into ancillary funds or choose a different mechanism to give. Tax incentives likely play a role, as donors have alternate ways to donate. For example, a person who sells a business could invest those assets on the share market to generate a rate of return and then donate an amount to an entity with DGR status, receiving a tax deduction for the donation. It is not clear, from a community-wide perspective, which choice would generate the greatest net benefits. This makes assessing the costs and benefits of changing the distribution rules challenging.

Feedback on the minimum distribution rates from participants was mixed and ultimately inconclusive in determining how a change in the current distribution rates would affect behaviour. Many participants supported the current distribution rates on the basis that increasing the rate may deter people from creating new ancillary funds and undermine certainty in the regulatory regime (Australian Philanthropic Services, sub. DR441, p. 7; JBWere, sub. DR600, p. 4; Philanthropy Australia, sub. DR595, p. 21). Others noted the rates could be increased in recognition that donations today allow charities to tackle both current and long-term issues now (Ian Murray, sub. DR640, p. 6) and that ancillary funds could earn sufficient returns to maintain perpetuity at higher distribution rates (Philanthropy Australia, sub. DR595, p. 21). Another perspective was from submissions that specifically argued for the minimum distribution for private ancillary funds to be raised (Advancement Network, sub. 178, p. 2; Griffith Business School, sub. 212, p. 11; Seedling Giving, sub. 236, p. 8).

There is also uncertainty about the minimum distribution rates that charities would prefer. Given that ancillary funds exist to provide funding to charities, in order to further charitable purposes and provide benefit to the community, there is value in better understanding the preferences of charities regarding distributions from ancillary funds.

Table 8.5 – Potential effect of increasing the minimum distribution rates

| Additional distributions to eligible entities with DGR status each year if the minimum distribution were raised from the current level to ... | | | | | | |
|---|-----|------|-------|-------|-------|-------|
| | 5% | 6% | 7% | 8% | 9% | 10% |
| Private ancillary funds (\$m) | n/a | \$60 | \$120 | \$190 | \$260 | \$335 |
| Public ancillary funds (\$m) | \$5 | \$15 | \$25 | \$35 | \$50 | \$65 |

Note: Assumes the number of ancillary funds remains constant – that is, there are no new or behavioural changes to existing ancillary funds, and no ancillary funds are withdrawn. It applies 2020-21 distribution rates as a percentage of assets.

Source: Commission estimates using ACNC and ATO data.

Transition arrangements if the minimum distribution rate is changed

Changes to the minimum distribution rates could have implications for the investment strategies of ancillary funds that currently distribute at or below their minimum distribution rate.

One option would be to grandfather any changes to the minimum distribution rates because if money has already been invested under one set of rules, changes should not apply retrospectively. However, this brings the risk of a system with multiple tiers where the rules that apply depend on when a fund was set up. A split system would create substantial legislative and administrative complexity. It could also potentially result in the increasing creation of sub-funds within existing public ancillary funds, rather than new ancillary funds, to avoid being subject to the new rate. This would limit the effectiveness of the reform. Given these issues, the Commission’s view is that the costs of grandfathering any change would outweigh the benefits.

Under principle 1, once money has been donated to the private ancillary fund, it is no longer ‘privately owned’ but is held on trust in order to further charitable purposes and provide benefit for the community. It is the Government’s role to determine a minimum distribution rate that optimises flows of this money from the ancillary fund to charities. However, the Government should provide a significant period of notice before the new minimum distribution rate applies to allow funds to transition their investment strategy.

Improving the effectiveness and performance of ancillary funds

The Government should set a minimum distribution rate at between 5% and 8% for public and private ancillary funds, with the Government deciding the final rate using the evidence accumulated by the Commission and through further consultation with the philanthropy and charitable sectors.

This recommendation reflects the fact that the principles established by the Commission – as well as evidence gathered during this inquiry – has ultimately been inconclusive in determining what the precise minimum distribution rate should be. A judgement call must be made on what is a reasonable rate of return for ancillary funds to generate, the social discount rate of the funds and the trade-offs between funds flowing to the community now or later.

Where ancillary funds cannot meet their higher minimum distributions, they should still have the option to apply, under the ancillary fund guidelines, to the Commissioner of Taxation to reduce the minimum annual distribution rate.

The Commission also recommends that the Government commit to periodically reviewing the minimum distribution rate every 10 to 15 years. The next review would also examine any interactions with the recommended DGR reforms and implications for the regulation of ancillary funds and other grant-making charities (discussed further in section 8.4).

The initial review could be informed by a survey of charities on their distribution preferences. While being mindful of compliance burden for charities, the survey could measure perceptions of how ancillary funds provide funds to charities, including whether funding is sufficiently predictable, the proportion of funding that is tied or untied, and the reporting and other compliance obligations associated with such funding.



Recommendation 8.1

Improving the effectiveness and performance of ancillary funds for the whole community

The Australian Government should amend the private ancillary fund and public ancillary fund guidelines to:

- set the minimum distribution rate at between 5% and 8% for ancillary funds, based on:
 - the Government’s assessment of the trade-off between bringing forward the funds that are distributed to charities and a lower amount distributed in the future
 - available information
 - further consultation with the philanthropy and charitable sectors
- require that ancillary funds develop a ‘distribution strategy’ outlining how they will support eligible entities to further their charitable purpose.

The Australian Government should also:

- change the name of ancillary funds to Private and Public Giving Funds to make their philanthropic purpose clearer
- provide a five-year period of notice before any new minimum distribution rate applies to allow existing ancillary funds to make any necessary changes to their investment strategies
- conduct a periodic review of the minimum distribution rate every 10 to 15 years to decide whether the rate should be adjusted
- conduct and publish a survey of charities on their preferred minimum distribution rate for ancillary funds and how money is distributed to charities each time the minimum distribution rate is reviewed.

There would be benefits from greater flexibility of the distribution rate

The regulatory requirements for the minimum distribution rate should balance the need for simplicity, accountability and integrity with the policy objective to facilitate giving in a way that meets the preferences of donors, charities and the beneficiaries of the goods and services they provide.

In initial consultation on the inquiry, participants raised instances where it is desirable and preferable for ancillary funds to accumulate funds over a longer time horizon (A New Approach, sub. 102, p. 10; The Ian Potter Foundation, sub. 173, p. 4). For example, distributions made to a charity undertaking capital works may have more value to the charity and the community more broadly if given as a lump sum in one year

instead of a series of smaller distributions over several years (with equal present value). In its submission, the Lord Mayor's Charitable Foundation said:

We support allowing ancillary funds greater scope to 'spread' their minimum distributions over five years. This is relevant to affordable housing capital works projects, which require significant amounts of philanthropic, government and often commercial or impact funding. Capital works also require a commitment of funds while waiting for planning processes to be undertaken by local and state governments so the spread of distributions allows for the normal delays of capital works projects. (sub. 106, p. 9)

Some inquiry participants considered that larger one-off distributions from ancillary funds may not occur without an ability to smooth minimum annual distributions (JBWere, sub. 249, p. 7). For example, The Ian Potter Foundation (sub. 173, p. 4) commented that foundations may find it challenging to make larger donations if they were aiming to grow their corpus to enable them to operate in perpetuity. However, the Commission also heard of foundations collaborating to fund large-scale initiatives, without any need for regulatory change. In May 2022, the Bryan Foundation, Hand Heart Pocket Foundation, the John Villiers Trust and the Paul Ramsay Foundation announced combined funding of \$7.7 million over three years to support the Thriving Queensland Kids Partnership, working to improve the wellbeing of children and families in Queensland (The Bryan Foundation 2022).

Participants were largely supportive of recommendation 8.2 in the draft report to enable smoothing of the distribution rate over a period of up to three years. Some participants noted that the reform would enhance the ability of ancillary funds to provide funding to particular causes or in particular scenarios (Group of Eight Advancement Network, sub. DR719, p. 2; Order of Australia Association Foundation, sub. DR531, p. 2; The Balnaves Foundation, sub. DR620, p. 2; The Jack Brockhoff Foundation, sub. DR653, p. 2). There was also support for safeguard measures to ensure the flow of funds to eligible entities (Australian Philanthropic Services, sub. DR441, p. 6). Perpetual noted that ancillary funds already have numerous tools available to them to smooth distributions and raised concerns that the proposed provisions may lead to funding volatility for charities (trans., p. 631).

The Commission recognises there would be benefits to increasing the flexibility of distribution rate (recommendation 8.1). There is also a need to ensure distributions are maintained over time. In addition to more flexibility, the Commission recommends that, where minimum distributions are permitted to be 'deferred' or 'smoothed' over a period of up to three years, the adjustments to the distribution rate should include a 'premium' to ensure the resulting distributions are at least equal to the amount payable under the existing rules. For example, fund trustees could elect to smooth the total distributions over three years, and the total nominal amount distributed over those three years should exceed the amount that would have otherwise been payable under existing rules.



Recommendation 8.2

Enabling distributions of funds to be smoothed over three years

The Australian Government should increase the flexibility of the regulatory regime by amending the private ancillary fund and public ancillary fund guidelines to enable smoothing of the distribution rate over a period of up to three years, with integrity measures to ensure the resulting distributions are at least equal to (or higher than) the amount that would have otherwise been payable under existing rules.

Ancillary funds should only distribute to eligible entities with DGR status

Currently, ancillary funds are limited to making grants to eligible entities which are 'Item 1' DGRs, meaning that grants cannot be made to other ancillary funds. The rationale for this requirement is to ensure that distributions are made to entities that will use the funds to provide benefits to the community, rather than 'cycling' between ancillary funds. Some inquiry participants suggested a loosening of these restrictions to enhance flexibility (Philanthropy Australia, sub. 162, p. 29). Other participants highlighted the risks involved with such a change (Perpetual, sub. 254, p. 4). If the restrictions were loosened, some integrity measures would likely still be necessary to manage the risks of 'cycling', which would add further complexity without necessarily providing significant benefits in terms of added flexibility. Therefore, the rationale for making such a change in the context of the current DGR system is not strong.

However, under the Commission's proposals to reform the DGR system (chapter 6), the number of entities eligible for DGR status would increase and therefore the range of entities which ancillary funds can distribute to would also increase. Simplification of the system may mean that the Item 1 and 2 categories for DGRs are no longer necessary. If that occurred, one unintended consequence could be potential for 'cycling' between ancillary funds. This risk could be monitored through reporting by ancillary funds. There may also be a need to monitor other behavioural changes, including whether changes to the DGR system lead to a shift away from establishing ancillary funds, towards 'standard' charities endorsed for DGR status across multiple sub-types, which are used for similar purposes as ancillary funds but without being subject to a minimum distribution and other regulatory controls. This is discussed further below.

The current tax deduction for donations into ancillary funds is appropriate

An alternative policy lever available to government is to adjust the tax settings for ancillary funds to reduce the cost to government (revenue forgone).

The Australian Government's use of an uncapped, 100% tax deduction for donations to ancillary funds is only one way to incentivise giving. The design of tax deductions for giving and an assessment of potential implications of other tax incentives are discussed in chapter 4.

International experience suggests that introducing different rates for donations to different types of structured giving vehicles creates tax arbitrage risks. For example, in the United States the tax concessions available for donations into a private foundation are lower than for donations made to a public charity. Donor advised funds (which are similar to a public ancillary fund sub-fund) have more generous tax concessions and are now the fastest growing recipients of charitable donations in the United States (Murray 2023). The effectiveness of the current tax settings in incentivising giving – coupled with the benefits of the simplicity of the current tax deduction for all donations – lead the Commission to conclude that if any changes could be made to improve the effectiveness of ancillary funds, it would be preferable to do so through adjustments to the minimum distribution rate, rather than by adjusting the tax deduction for giving.

8.3 Public information on ancillary funds

Ancillary funds have comprehensive reporting requirements, which includes reporting information to a level beyond that required of other charities. For example, as part of their annual reporting to the ACNC (which is then provided to the ATO), ancillary funds must provide details of all of their distributions in the reporting period as well as investment returns and other information.

The Australian Charities and Not-for-profits Commission Regulations 2022 specifically allow private ancillary funds to seek an exemption from the ACNC from having their information publicly disclosed on the ACNC

charity register. The exemption was introduced when the ACNC was established and applies to information that is likely to lead to the identification of an individual donor. The practical effect of this is that while private ancillary funds must still report to the ACNC, many funds do not have information about them made publicly available on the ACNC charity register.

Deciding whether to disclose information about private ancillary funds involves balancing the right to privacy of individual donors with the benefits of public transparency and accountability.

The main arguments for governments requiring the public disclosure of information about ancillary funds are that this:

- provides accountability to Australian taxpayers who subsidise donations to both public and private ancillary funds (for example, Australia and New Zealand Third Sector Research, sub. 174; The Foundation of Young Australians, sub. 128)
- enables taxpayers (and in the case of public ancillary funds, donors) to understand whether ancillary funds are being used for intended purposes, such as providing a steady flow of distributions of funds to charities (Williamson et al. 2018, 2019)
- enables charities to identify potential sources of funding (Australia and New Zealand Third Sector Research, sub. 174; The Foundation of Young Australians, sub. 128)
- provides incentives for ancillary funds to adopt good governance practices and procedures (Australia and New Zealand Third Sector Research, sub. 174; The Foundation of Young Australians, sub. 128).

The main counterarguments against requiring public disclosure about ancillary funds, especially private ancillary funds, are that this could:

- subject donors to unwelcome solicitation for donations
- pose risks to the safety of donors and their families
- discourage philanthropic giving and volunteering
- cause donors to give in other ways to maintain their privacy
- be inequitable, as people making donations directly to charities do not have the same disclosure obligation (Australian Philanthropic Services, sub. 112, p. 8).

In its examination of the public disclosure exemption for private ancillary funds, the ACNC Legislation Review commented that ‘the publication of information may discourage philanthropy and volunteering, or otherwise inhibit the provision of charitable goods or services’ (2018b, p. 75).

The ATO should report more information on ancillary fund distributions

On balance, there are sound reasons for retaining the existing ACNC public disclosure exemption for private ancillary funds on the basis that removing the exemption may discourage philanthropy and noting that private ancillary funds are still accountable to the community *through* the oversight of the ACNC and ATO. There are at least two ways government agencies could publish more information about ancillary funds that would promote public transparency and accountability, while limiting potential privacy risks (as discussed above) as well as costs to donors and ancillary funds.

Several participants noted that public information on distributions by ancillary funds from the ATO does not enable sufficient scrutiny of the value to the community provided by ancillary funds (Australia and New Zealand Third Sector Research, sub. 174; The Foundation of Young Australians, sub. 128).

- The ATO only reports sufficient information to calculate average distributions by ancillary funds. Information on average distributions does not reveal how distribution rates vary across ancillary funds.

Average distributions can also be misleading if ancillary funds with large distributions skew the data. Information on how distribution rates vary across ancillary funds could be valuable when analysing how many private ancillary funds are providing a steady flow of funds to charities in the community.

- Neither the ATO nor the ACNC collect or report information on sub-funds within public ancillary funds. This means that there is very little data available on sub-funds and it is difficult to understand their role as a giving vehicle (chapter 3). Although public ancillary funds must distribute a minimum amount each year, this only applies at the fund level. It is possible that some individual sub-funds may be distributing at low levels even if the distribution of the public ancillary fund as a whole is still at least 4%. In the United States, concerns have been raised that the increasingly popular donor advised funds are accumulating excessive assets and making inadequate distributions (Andreoni 2018; Mittendorf 2024). Without improved reporting it is difficult to understand whether similar trends are emerging in Australia.

In its draft report, the Commission proposed two measures to address these information gaps.

- The ATO should publish additional data or measures that would give people a much better picture of the spread of distributions from ancillary funds. For example, it could report on the median, 25th and 75th percentile distribution rates. It should also present information about ancillary funds (number, net assets) that make distributions (as a percentage of assets) for different distribution ranges (for example, below 5%, each 1% percentage point from 5% to 10%, above 10%).
- Collect information on sub-funds as part of public ancillary fund returns and present aggregate data in the ATO's Taxation Statistics or the ACNC's Australian Charities Report. This could include the number of sub-funds in a public ancillary fund and the assets held within them, as well as data on the spread of distributions from sub-funds within a public ancillary fund.

Participants largely supported the draft recommendation, noting concerns and frustrations with the current gaps in transparency (Equity Trustees, trans., p. 518; Minderoo Foundation, sub. DR505, p. 9) and the potential educational benefits of enhanced public reporting (JBWere, trans., pp. 544–545). Australian Philanthropic Services supported additional information being made available about public ancillary funds, including on the use of sub-funds, but questioned the need for detailed information on sub-funds, noting that public ancillary funds 'often distribute significantly above the minimum rate' and many public ancillary fund sub-funds are of 'modest size' (sub. DR441, p. 10). The Commission has not proposed detailed reporting of information on individual sub-funds within public ancillary funds.

Some support for the proposal was conditional on minimising additional reporting requirements (Perpetual, trans., pp. 635–636) and it was noted that some public ancillary funds already publicly report on sub-funds (Equity Trustees, trans., p. 518). Australian Philanthropic Services also noted that there could be discussions with stakeholders to agree standards around what is included in marketing material by providers of sub-funds, including fees and portability arrangements (sub. DR441, p. 10).

Considering the feedback received through the inquiry, the Commission recommends that the ATO should publish and raise public awareness of information on ancillary funds and collect and publish additional information on sub-funds within public ancillary funds. These reforms would allow greater understanding of the use of ancillary funds, providing crucial insights and education to sector participants, while acknowledging the importance many donors place on the privacy of their giving.



Recommendation 8.3 Improving public information on ancillary funds

The Australian Taxation Office should:

- publish additional aggregate information on distributions by ancillary funds
- collect and publish additional information on sub-funds within public ancillary funds
- raise public awareness of information on ancillary funds, including by collaborating with the Australian Charities and Not-for-profits Commission to include additional information in the Australian Charities Report.

8.4 Assessment of charitable trusts

What are charitable trusts?

Entities that use a trust structure to make charitable grants (other than ancillary funds) are typically referred to as charitable trusts. Trusts are a legal structure designed to hold and distribute money according to the rules of the trust deed. Charitable trusts are regulated under equity (enabling Supreme Courts and Attorneys-General to intervene in their administration in certain circumstances) and under state and territory legislation. State and territory attorneys-general and Supreme Courts can have differing oversight roles in relation to charities, including charitable trusts (chapter 7). Where a trust is created for a charitable purpose, it may be eligible for registration as charity and the associated tax concessions. Depending on the purpose of the charitable trust, some may also be eligible to receive tax-deductible donations. In 2016, it was estimated that about 26% of charitable trusts had DGR status (Cortis et al. 2018, p. 28). Charitable trusts currently comprise about 9% of registered charities in Australia (ACNC 2023g, p. 38).

Distribution expectations vary across different forms of giving

Although charities, including charitable trusts, can accumulate assets (in a way consistent with their charitable purposes), they are not subject to any of the regulatory requirements imposed on ancillary funds. It is also possible for a donor to use a non-ancillary fund charity structure as an alternative to an ancillary fund. For example, a donor seeking to establish a foundation focused on preventing an illness could, in theory, establish a health promotion charity for this purpose. The entity would be eligible for DGR status, but would not be subject to a minimum distribution or any of the other requirements imposed on ancillary funds. This section considers the distribution requirements for charities that are not ancillary funds, including charitable trusts, but which may act as a substitute.

There are reasons charities accumulate assets

Decisions regarding whether a charity accumulates assets or spends them involve careful and difficult judgments. Accumulating assets can support the financial sustainability and independence of charities, as well as enable long-term planning. Managing reserves is an important aspect of the financial management of a charity, which is a crucial element of good charity governance (ACNC 2024k). Charities cannot access equity markets and may face difficulties accessing debt markets. Therefore, creating reserves can be an efficient way for a charity to manage their balance sheet. Charities can, and do, withhold and carry over ('save') donated funds for a range of reasons, including:

- to manage increased expenditure arising from fluctuations in demand for their services, for example, changing needs and preferences of beneficiaries due to joblessness over the business cycle or in the case of natural disaster funding
- as a form of precautionary saving, self-insurance or hedging against future cost increases (for example, unexpected wage or other input price increases)
- to smooth donations, where the timing of donations may be lumpy due to seasonal effects or fundraising patterns.

However, the accumulation of assets also means that benefits provided by the charity's activities are deferred which can 'raise issues of fairness between different generations and efficiency as to the distribution of the public benefits' (Murray 2021, p. 38).

To maintain eligibility for an income tax exemption under section 50-50(2)(b) of the *Income Tax Assessment Act 1997* (Cth), charities are required to apply income and assets solely for the purposes for which the entity was established. In interpreting this requirement, the Commissioner of Taxation has ruled that an 'entity that accumulates most of its income over a number of years will need to show on a year by year basis that the accumulation is consistent with the purpose for which the entity is established' (Taxation Ruling TR 2015/1). Although this condition does not impose a minimum distribution requirement on charitable trusts or other charities, it has generally been interpreted to require a relatively direct and active use of funds (Murray 2021, p. 164).

Charities are not subject to minimum distribution rates

Charities, including charitable trusts, are not subject to minimum distribution requirements and, as noted above, they can be an alternative to people establishing a private ancillary fund. Charities that are most likely to be a substitute for ancillary funds are those that make grants to other organisations. For example, the Paul Ramsay Foundation, is a large philanthropic foundation registered with the ACNC that has DGR status through a specific listing. It was initially established as a private ancillary fund, but later restructured to a company limited by guarantee (Paul Ramsay Foundation, sub. 234, p. 2). Murray (2021, p. 31) found that in 2017, 85% of philanthropic intermediaries and charities that support or promote volunteering, which includes grant-making foundations, held net assets in excess of five years' expenditure and about 59% increased their net assets annually. This was in contrast to charities overall, in which 40% had net assets worth less than six months' expenditure and 22% had net assets exceeding five years' expenditure.

Other jurisdictions have considered how to encourage distributions from charities, including charitable trusts. In Canada, a so called 'disbursement quota' applies to charities, in addition to public and private foundations, requiring them to spend a minimum amount on their own charitable activities or other qualifying disbursements. The size of the quota depends on several factors, including the value of the property not used for the entity's charitable activities or administration (Government of Canada 2017).

Participants generally did not support increased regulation to encourage more timely distribution by charities, including charitable trusts.

- The Royal Flying Doctor Service (sub. DR406, p. 22) and BDO Services (sub. DR718, pp. 18–19) stated that existing legislation and regulatory controls are adequate.
- Australian Philanthropic Services (sub. DR441, p. 8) stated it considered that current annual returns to the ACNC should be sufficient for regulators to form a view whether charity resources are being sufficiently applied.
- PA Research (sub. DR516, p. 15) stated that when donated funds are distributed is a matter for a charity's board or trustees and that transparency based on self-regulation is appropriate in this context.

Creative Australia did, however, say it supported the proposal for regulatory consistency to ensure that funds donated via giving vehicles are disbursed in a timely manner. It said this would ‘discourage the accumulation of interest earned by for-profit fundraising platforms’ (sub. DR696, p. 7).

Minimum distribution rates for charities should be reviewed amongst changes to the broader system

A change in the minimum distribution rate for ancillary funds, as a result of recommendation 8.1, may incentivise donors to use a non-ancillary fund charity structure as an alternative. In such a situation, a donor would receive an up-front tax deduction for the donation but without a requirement to regularly distribute a proportion of the assets to other charities (in contrast to the arrangements applying to ancillary funds). This may ultimately slow the rate at which donations are converted into charitable activities.

If the Commission’s proposed reforms to the DGR system were implemented (chapter 6), donors will have more choice about how they structure their giving. Under the proposed expansion of the classes of activities which would be within scope of the DGR system, ancillary funds would have more charities to which they could distribute funds. The reforms would also provide charities more flexibility to have DGR status for a range of activities and a charity structure could be used for the purpose of providing grants, instead of establishing a private ancillary fund. If there was a change to the minimum distribution rate for ancillary funds, there may be further incentives for using other charity structures in this situation.

Given the possibility of such substitution between different ways of giving – that are subject to different regulatory requirements – there may also need to be a set of criteria introduced as part of the reform of the DGR system, in which a charity whose main activity involves making grants to another charity is required to be registered as an ancillary fund and comply with ancillary fund guidelines. Alternatively, this could be a case for requiring all charities to have a minimum distribution rate. Any such changes should be subject to further consultation and only be introduced following careful consideration of integrity risks and unintended consequences.

As discussed above, there are already safeguards in place to ensure charities accumulate funds in a manner consistent with furthering charitable purposes. Registered charities are also subject to annual reporting requirements designed to allow the ACNC to assess whether they are meeting their obligations as a charity. In chapter 7, the Commission also proposed that the National Charity Regulators Forum (recommendation 7.5) could examine non-operating charities. This would help to identify where charities are not actively pursuing their charitable purpose and whether any actions are needed to ensure that assets are being used to further charitable purposes.

The Commission has therefore not recommended immediate policy action in this area given current safeguards and the uncertainty about the potential substitution between ancillary funds and other charity structures in the future, including as a result of the proposed reforms to the DGR system. However, if the Government decides to change the minimum distribution rate for ancillary funds (recommendation 8.1) or expand access to DGR status (recommendation 6.1), the flow-on effects of such a change should be examined in a future review, including for any unintended consequences. The review should consider whether there is a need to strengthen regulatory requirements in relation to the distribution of funds by other charities and charitable trusts, particularly those with DGR status which may be substitutes for ancillary funds (recommendation 8.1).

Administration of charitable trusts

There are unique features of the administration of charitable trusts that could affect consumer choice and fee arrangements

Donors can appoint trustees to oversee and manage charitable trusts. Trustees can include individuals, public trustees or a licensed trustee companies (trustee companies that hold an Australian financial services licence issued by the Australian Securities and Investments Commission (ASIC)). Licensed trustee companies are major providers of fund management services for charitable trusts, ancillary funds and other charities. Donors may also adopt co-trustee arrangements, where trustees include both a licensed trustee company and another trustee such as a family member of the donor.

In 2012-13, the Corporations and Markets Advisory Committee (CAMAC) examined issues relating to licensed trustee companies in its report *The Administration of Charitable Trusts* (CAMAC report) (box 8.3). The CAMAC report's recommendations have not been implemented and a number of submissions to this inquiry have advocated for their implementation (ANZTSR, sub. DR493; Charitable Alliance, sub. DR743; Morgans, sub. DR419; Peter Winneke, sub. DR654).

Box 8.3 – Corporations and Markets Advisory Committee (CAMAC)

In September 2012, the Parliamentary Secretary to the Treasurer, the Hon. Bernie Ripoll MP, requested CAMAC examine various matters concerning fees and replacement of trustees for those charitable trusts that are administered by licensed trustee companies. The scope of the review did not extend to charitable trusts more generally or other charities. Among its recommendations were:

- amendments to Chapter 5D of the Corporations Act to adopt 'fair and reasonable' requirement for all fees and costs charged by licensed trustee companies
- a standardised approach to the disclosure of services and fee schedules to help donors compare prices
- expansion of the jurisdiction of the court when dealing with allegations of excessive fees being charged to encompass all fees and costs charged to clients
- enhanced juridical procedure, via legislation, for dispute resolution for charitable trusts administered by licensed trustee companies, including whether they should be replaced as a trustee
- undertaking stewardship audits for a cross-section of charitable trusts administered by license trustee companies to increase information on the administration of charitable trusts, the findings of which could be used to inform any future regulatory change.

There has been no government response to the CAMAC report.

Source: CAMAC (2013).

Although the focus of the CAMAC inquiry was on licensed trustee companies, some of the issues raised in relation to the administration of charitable trusts, including the oversight of fee arrangements and the ability to change trustees, could arise in contexts where an entity other than a licensed trustee company has been appointed a trustee of a charitable trust. For example, where an individual or a company has been appointed as the trustee of a charitable trust created through a will. To date there has been no broader review of the

administration of charitable trusts, which goes beyond the role and practices of licensed trustee companies, to examine these issues more broadly and holistically.

Competition in the licenced trustee sector

High rates of market concentration increase the risk that competition will be muted. This can create situations where fees for services are higher or the quality of service is lower than would be the case if there were greater price competition. The *Competition and Consumer Act 2010* (Cth) contains provisions which are enforceable by the regulator the Australian Competition and Consumer Commission (ACCC) in relation to mergers and acquisitions that have detrimental effects on competition and hence the potential to harm consumers.

The long-term nature of these structures means that for funds held in perpetuity, there is sometimes limited ability to change trustee service providers once the donor is deceased. Where a licensed trustee company has been used, the licensed trustee company is essentially 'locked in', although the Supreme Court is able to remove a trustee in instances where they have not acted in accordance with their obligations. This is relatively rare and requires an application to be made to the Court, which can involve significant costs.

Since the CAMAC report, the number of major licensed trustee companies has further consolidated to two major providers (Perpetual Limited and Equity Trustees), following the acquisition of the Trust Company Limited by Perpetual Limited in 2013 and the acquisition of both ANZ Trustees and Australian Executor Trustees by Equity Trustees in 2014 and 2022 respectively. In its Public Competition Assessment of the Trust Company Limited acquisition, the ACCC found there was unlikely to be 'substantially lessening competition' (ACCC 2013). Its reasoning included that in the market for private trust services, there was competition for trustee companies in the form of bank subsidiaries, other parties including solicitors, financial advisors and accountants and public trustees (noting their offer and focus differs) (ACCC 2013, p. 5,16). The licensed trustee companies that participated in this inquiry stated that these mergers contributed to efficiency gains, for example by building economies of scale for grant applications (Equity Trustees, sub. DR461, p. 6; Perpetual, sub. DR498, p. 2).

Fees charged by licensed trustee companies for the administration of charitable trusts

Fees charged for the administration of charitable trusts influence the level of funds available for distributing towards charitable purposes. If fees are higher, all else equal, this can reduce the amount of funds available. However, trustees also add value through their activities by ensuring that legal obligations are fulfilled, managing grant application processes and seeking to distribute funds effectively. This involves costs, which are met through fees.

The Commission heard different views on how fees are charged by licensed trustee companies and whether there are sufficient mechanisms in place to protect the interests of donors and the broader community. Fees charged by licensed trustee companies must be paid from trust income (*Corporations Act 2001* (Cth) (Corporations Act), s. 601TBE(3)(a)). Licensed trustee companies argued fees charged should be brought in line with other trust structures by allowing them to be taken from either capital or income, where it does not significantly affect the capital of the trust, under section 601TBE(2) of the Corporations Act (Perpetual, sub. 254, p. 5; Equity Trustees, sub. 259, p. 4). Although not specifically referring to licensed trustee companies, Seedling Giving (sub. 236, p.7) argued the commission-based approach to charging fees on funds under management creates a disincentive for funds to be distributed to charities. The Charitable Alliance also argued against allowing fees to be paid from capital on the basis that it would materially erode trust capital and would materially impact the ability of the trust to achieve the primary impact of the donor (sub. DR743, p. 3).

A related question is how trustee and investment services are structured, which CAMAC identified as an area that would benefit from more clarity. When administering a charitable trust, a licensed trustee company may provide both trustee services and investment management services, with the assets of all administered charitable trusts

placed in a 'common fund' that is invested to generate a return. There is a question as to whether these services need to be delivered together and it may be appropriate for a trustee to adopt an arms-length process to decide upon the provider of investment management services. This could be the investment management arm of the licensed trustee company, or it may be another company. It is unclear what arrangements are currently used in this regard and what steps are adopted so that that value for money is provided.

A holistic examination of the oversight arrangements for charitable trusts

The CAMAC report identified issues with the administration of charitable trusts by licensed trustee companies. In the draft report, the Commission sought further information about the administration of charitable trusts by licensed companies. This included information regarding competition issues that adversely affect donors and arrangements for switching providers or charging fees, particularly for funds held in perpetuity. A number of submissions addressed this information request and it was also the subject of evidence at the public hearings.

Licensed trustee companies stated that they are focused on fulfilling the charitable purposes of the trusts they administer, as provided by the settlor of the trust, and are subject to adequate governance controls and extensive regulatory requirements (Equity Trustees, sub. DR461, Perpetual, sub. DR498). Perpetual commented that the market for trustee services 'has likely never been more abundant' (sub. DR498, p.1).

The Charitable Alliance (sub. DR743, p.1) stated that charitable trusts administered by licensed trustee companies are 'materially compromised by governance issues' and supported the implementation of the CAMAC report's recommendations. Morgans (sub. DR419) also supported the implementation of those recommendations, with ANZTSR (sub. DR493, p. 5) asking that the ACNC be resourced to conduct audits of charitable trusts for which licensed trustee companies are the sole trustee.

Only one foundation provided a submission which commented on the fees charged to them by a licensed trustee company, which they considered 'to be reasonable in the context of the considerable professional services to deliver to the purposes of the trust'. They did however suggest:

... an informed discussion of this subject would be beneficial for Australia, but this could only be undertaken with full transparency over services provided and fees charged by all Trustees across the sector. (The individual Trustees of the William Buckland Foundation, sub. DR400, p. 4)

While the Charitable Alliance presented a substantial amount of anonymised evidence and case studies which the Alliance argued provided evidence of unreasonable fee charging by licensed trustee companies (sub. DR743).

Since the CAMAC Review there have been significant changes to the market for trustee services, including consolidation of the licensed trustee sector, as well as major changes to the regulation of charities, including charitable trusts administered by the licensed trustee companies. The commencement of the ACNC in late 2012, just prior to the CAMAC report's completion in May 2013, introduced new reporting requirements which increased the level of transparency applying to charities, including charitable trusts administered by licensed trustee companies.

The CAMAC report only examined issue related to charitable trusts administered by licensed trustee companies. However, many of these issues, such as those concerning fees and the replacement of trustees, could arise more broadly in relation to charitable trusts, regardless of whether they are administered by a licensed trustee company or not. It would therefore be less than optimal to recommend changes which would apply only to one category of charitable trusts with a particular type of trustee. Rather, it is important to examine oversight arrangements for the administration of charitable trusts holistically, in order to achieve consistent outcomes for all charitable trusts. In addition, there are complex legal questions, involving the

interplay of state and federal laws, derived both from statute as well as equity. Appropriate caution is therefore needed when considering changes, to avoid unintended consequences.

The Commission recommended that the Australian Law Reform Commission undertake a review of charities law and regulation, which would include examining the roles and responsibilities of state and territory Attorneys-General and other relevant regulators, including in relation to oversight of charitable trusts (recommendation 7.2). Given that charitable trusts are generally regulated under state law, this review could conduct a holistic examination of relevant matters, including the adequacy of state laws in relation to regulating fees charged by all types of trustees of charitable trusts and whether the provisions about changing trustees are appropriate. As part of this, the review could consider the interaction of these laws with the regulation of licensed trustee companies by the Australian Government.

The Commission also notes that there are existing regulators who have roles monitoring various aspects of licensed trustee companies. Licensed trustee companies are governed by the Corporations Act and have regulatory obligations to ASIC and to the ACNC (as mentioned above). In addition, should evidence of any issues emerge that are a direct result of market concentration in the trustee company market in future, the ACCC is able to investigate.

8.5 Other giving vehicles

The factors that influence giving through bequests are unique

The decision to leave a bequest is a highly personal one, involving many sensitivities. When deciding whether to leave a charitable bequest, people are heavily influenced by their sense of family obligation and their attitudes, beliefs and social norms towards inheritance and supporting surviving family (Baker 2014, p. 26, 2016, p. 32). People with a surviving spouse or child are less likely to make a charitable bequest and, if they do, it is likely to be a smaller amount compared to those without surviving children (Baker 2014, pp. 42, 47–48). For example, a study on a sample of Australian probate files found that 6.5% of all probate files made some form of charitable bequest, but this increased to 7.6% for the 2,661 estates that had a will and no surviving spouse (Baker 2014, pp. 3–4). Data on charitable bequests is limited, with available data outlined in chapter 3.

The presence of a surviving family member may not fully explain people's decisions about leaving a charitable bequest – even when people do not have children, they are unlikely to leave money to a charity. For example, a 2014 study of Australian probate files found 70% of estates with no children did not include a charitable bequest (Baker 2014, p. 5). Other barriers to leaving a charitable bequest may include:

- information barriers, including that people are unaware they are able to include a charity in their will
- structural barriers where people perceive or assume the process is likely to be challenging or costly
- behavioural barriers including uncertainty around their financial position (BETA 2019, pp. 1–2).

The role of bequests in transferring wealth between generations

As outlined in chapter 1, Australia is on the cusp of a significant intergenerational transfer of wealth. The Commission estimated that in 2018, \$107 billion (90% of wealth transfers) was in the form of inheritances, with about 2% of that wealth transfer estimated to be going to charities. The total value of inheritances passed on to the next generation is projected to increase nearly four-fold between 2020 and 2050 (PC 2021, pp. 4, 8, 22). If charitable bequests remain at the current 2% level, this would result in a significant increase in giving by 2050 – close to \$8.5 billion in total.

In light of this projected transfer of wealth, many submissions identified charitable bequests as an opportunity to increase philanthropic giving and suggested changes to encourage people to give their superannuation death benefit to charities (Advancement Network, sub. 178, p. 1; Alexandra Dimos, sub. 200, p. 8; Foundation SA, sub. 164, p. 3; JBWere, sub. 249, p. 2; Mission Australia, sub. 61, p. 2; Natalie Silver, sub. 260, p. 3; Philanthropy Australia, sub. 162, p. 13; Save the Children, sub. 246, p. 3). Philanthropy Australia's submission, supported by many other organisations (Alannah and Madeline Foundation, sub. 47, pp. 6–7; Australian Schools Plus, sub. 108, p. 5; Centre for Social Impact, sub. 191, p. 4; Fundraising Institute of Australia, sub. 134, p. 10; Lord Mayor's Charitable Foundation, sub. 106, p. 12) argued for two components:

1. allowing Australians to direct some of their unspent superannuation to a nominated charity directly by:
 - a. amending legislation to allow superannuation funds to provide the option for members to nominate charities to receive unspent superannuation
 - b. mandating that superannuation funds provide this option to their members
2. allowing charitable bequests from unspent superannuation to be exempt from the current 15% tax rate plus 2% Medicare levy (Philanthropy Australia, sub. 162, p. 13).

There should be a high threshold for changes to superannuation arrangements

In November 2023, the Government introduced a Bill to Parliament to legislate the objective of superannuation. The proposed objective is 'to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way' (Superannuation (Objective) Bill 2023 (Cth)). With a few exceptions, superannuation is compulsory for people in the workforce, meaning the modern system largely exists because of government regulation. Employers must pay contributions equivalent to a minimum percentage of their employees' wages into the employees chosen or default superannuation fund. Members are unable to withdraw from their superannuation until they reach, or are close to, retirement age, except in limited circumstances. In return, superannuation receives favourable tax treatment (PC 2018, pp. 79, 82).

The superannuation system is highly complex – it is supported by many pieces of primary and delegated legislation, three regulators (the Australian Prudential Regulatory Authority is the prudential regulator of the sector, with ASIC and the ATO also having roles) and has been subject to several reviews, including by the Commission, to enhance competition and efficiency for the benefit of all Australians. In addition, changes to superannuation rules can involve decisions that have already been taken, or that will be made irreversibly and locked in over a period of many years. There should therefore be a high evidence threshold for any changes to superannuation legislation or the tax treatment of superannuation.

Any policy change needs to consider potential unintended consequences, including the possibility that changes in one rule interact with other rules elsewhere in the system, and that changes in rules may induce people to substitute away from giving now, and instead give in the future. Charities rely on government grants (approximately 51% of total revenue) as well as philanthropic funding (ACNC 2023g, p. 32). Any reduction in tax revenue could feasibly have flow-on implications in the form of less revenue available to be provided in the form of direct government funding (chapter 2).

Superannuation bequests have unique regulatory arrangements and incentives

Superannuation represents the second largest share of average net household wealth for Australians aged 55 to 74 (Treasury 2020b, p. 76). Generally, superannuation falls outside of the regulatory regime for

bequests and does not automatically form part of a person's estate. Instead, the regulatory regime for superannuation provides mechanisms to distribute superannuation death benefits. Projections suggest that the average death benefit (in 2019 dollars) for people aged 65 and over could grow from \$190,000 to more than \$480,000 over 40 years from 2019, or from about \$17 billion to just under \$130 billion in aggregate terms (Treasury 2020b, pp. 369, 435).

The *Superannuation Industry (Supervision) Act 1993* (Cth) provides a mechanism that enables a member of a superannuation fund to direct how their superannuation death benefits are treated. The governing rules of a superannuation fund may permit a member to complete a notice nominating a legal personal representative and/or dependant(s) as the recipient(s) of the member's superannuation death benefits and the trustee of the fund must comply with this notice if it is valid (s. 59(1A)). Box 8.4 outlines the types of nominations someone can complete and how they differ.

Box 8.4 – Nomination process for superannuation death benefit

There are four types of nominations that a superannuation fund trustee may be bound to comply with, if valid at the time of the superannuant's death.

- **Binding death benefit nomination:** this is a written direction from a member to their superannuation fund trustee detailing how they wish some or all their superannuation death benefits to be distributed. A nomination is valid for a maximum of three years and lapses if it is not renewed.
- **Non-lapsing death benefit nomination:** this is similar to a binding death benefit nomination, but is permanent unless cancelled by the member or replaced with a new nomination.
- **Reversionary beneficiary:** a member in receipt of a superannuation income pension can nominate a dependant to whom the payment will automatically revert upon the death of the member.
- **Non-binding death benefit nomination:** a member can provide a written guide about how they wish some or all their superannuation death benefits to be distributed after their death. However, the trustee of the superannuation fund retains discretion to distribute the superannuation death benefits to the deceased's dependant(s) or legal personal representative, despite any contrary intention in the nomination.

Source: Treasury (2019, pp. 3–4).

Under all scenarios except the non-binding nomination, the trustee is bound by law or the fund's trust deed to follow any valid nomination (Treasury 2019, p. 3). The non-binding death nomination indicates to the trustee the member's preference for distributing their superannuation death benefit. In the absence of the deceased having a valid binding nomination, the trustee generally has discretion (within defined parameters) to distribute a superannuation death benefit. Complaints can be made to the Australian Financial Complaints Authority (AFCA), which assesses whether the trustee's decision was fair and reasonable. In 2022-23, AFCA received about 7,000 complaints in relation to superannuation, of which about 600 (8.6%) related to death benefits, which included issues such as identification of dependants, allocation of the death benefit, the validity of binding or non-lapsing nominations, delays in death benefit distribution decisions and insured death cover (AFCA 2023, p. 86).

The purpose of the death benefit is to ‘provide for those dependants of a superannuation fund member who would have continued to rely on the member for financial support, but for the member’s untimely death’ (AFCA 2022, p. 3). Under superannuation legislation, a ‘dependant’ is defined as:

- the deceased’s spouse (including de-facto relationships or a person with whom the deceased was in a registered relationship)
- the deceased’s child or children of any age
- any person with whom the deceased had an interdependency relationship (as defined by legislation) (*Superannuation Industry (Supervision) Act 1993* (Cth), s. 10A).

Assessing the case to change regulatory arrangements

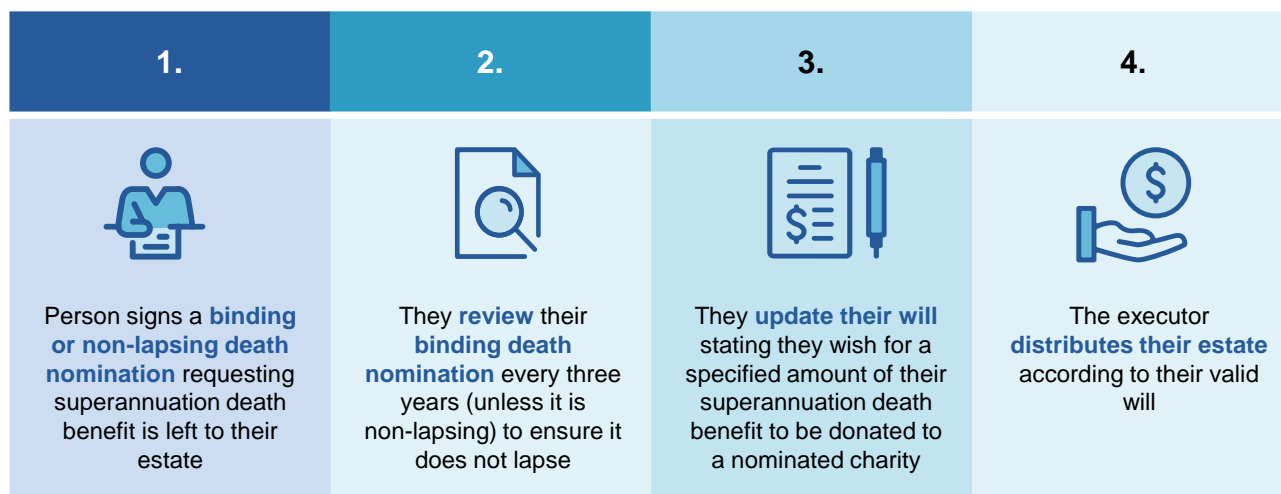
Death nominations are an important mechanism for protecting the member of a superannuation fund and upholding the integrity of the superannuation system. It allows members to direct how they wish their superannuation death benefit to be distributed upon death, while upholding the intent of superannuation to be used to support members during retirement. Further, where applicable, the three-year review mechanism for binding death nominations serves to protect donors so that their intent and wishes are kept up-to-date, and any superannuation death benefit that is transferred to the estate goes through the probate system which has been established to provide adequate safeguards for a person’s estate.

The restricted classes of dependants of a member’s superannuation death benefits means that, under the current system, if someone wishes to leave their superannuation death benefit to a charity, they must nominate their legal personal representative (usually the executor of an estate), to receive some or all their superannuation death benefit through a binding or non-lapsing death nomination, to then distribute any charitable donations from their estate in accordance with their will (figure 8.5). The Commission heard this process is complex since it involves a multi-step process – a person cannot directly nominate a charity to receive a superannuation death benefit. The argument for change is to make the process simpler and easier by reducing any unnecessary regulatory barriers – and that this would enable more superannuation death benefits to be directed to charities upon death compared with the status quo (Natalie Silver, sub. 260, pp. 3–4).

Regulation imposes costs (chapter 2), and in some instances may unnecessarily restrict donor choice. Assessing a proposal for regulatory change involves considering the policy rationales for current arrangements and balancing the potential benefits of change with potential costs. It is also necessary to consider the risks of unintended consequences, and whether there are ways to manage these risks.

Many participants supported making it easier to make a bequest to charity from superannuation (Philanthropy Australia, sub. DR595). Participants noted the complexities of the current system and the potential to reduce compliance and transaction costs (Chartered Accountants Australia and New Zealand, sub. DR737, p. 6; The Fred Hollows Foundation, sub. DR566, pp. 2–3). Participants also suggested this reform may have other benefits, such as ‘helping to mitigate the impact of increasing intergenerational wealth transfers’ (Paul Ramsay Foundation, sub. DR590, p. 4)

Figure 8.5 – Process for giving superannuation death benefit to a charity



However adequate safeguards need to be established to protect fund members and their dependants, with AFCA (2022, p. 3) noting that the purpose of superannuation death benefits is to provide for those who relied on the member for financial support. Philanthropy Australia (sub. 162, p. 13) suggested limiting the proportion of a superannuation death benefit that can be provided to charity to 10% of balances up to \$1 million, or up to 20% for balances in excess of \$1 million, as one way to provide safeguards.

Section 62 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act), referred to as the sole purpose test, requires superannuation funds to be maintained solely for the provision of retirement benefits or death benefits. This is a crucial principle that underpins the regulatory framework for superannuation funds and any reforms to this framework. Superannuation death benefits are specifically designed to provide for the financial dependents of deceased members. Allowing death benefits to go to charities may mean that less or no benefits might go to financial dependents (Super Members Council, sub. DR402, p. 1), which would likely be inconsistent with the SIS Act and therefore require legislative amendments (BDO, sub. DR718, p. 20).

Participants also noted that majority of superannuation funds are governed by the terms of their trust deed, which align with the sole purpose test and may present a barrier to death benefit nominations to charities even if the SIS Act was amended (Association of Superannuation Funds of Australia, sub. DR730, p. 3; Natalie Silver; sub. DR504, p. 4).

Any changes also need to consider alignment with the broader policy intent of superannuation. The explanatory memorandum to the Superannuation (Objective) Bill 2023 (Cth) (which is not yet law) notes that enshrining the objective of superannuation in legislation means any future policy changes to superannuation legislation would need to be compatible with the legislated objective and be accompanied by a statement of compatibility unless an exception applies. Impact Economics (2023, pp. 5, 13) argued changes to the death nomination process would be consistent with the policy objective of superannuation.

State-based estate and succession laws provide an important safety net in the event a beneficiary of an estate dies, as well as protecting the wishes of the donor and their estate, and providing other safeguards such as those related to testamentary capacity. These laws, which allow for an executor to deal with disputes or failed bequests, would not generally apply to a benefit being paid directly to a charity from superannuation. The reforms proposed could expose the trustees of superannuation funds to a greater number of disputes involving dependents or create complications if the charity that is the subject of a nomination has ceased to exist. In such cases, the costs involved with trustees managing such matters would ultimately be borne by superannuation fund members (Super Members Council, sub. DR402, p. 1). There could also be flow-on implications for AFCA, given their dispute resolution role in relation to death benefits.

The Commission agrees in principle that it should be as simple as possible to make a bequest to a charity using arrangements that are consistent with the sole purpose test and any legislated objective of superannuation. For these reasons, improvements to the process for making bequests to charities from superannuation would be best progressed through improvements to the overall regulatory framework for and administration of binding death nominations, to minimise any unintended consequences. The Commission is aware that other issues with the binding death nominations process have been raised previously. This includes the issue of restrictions regarding who is eligible to be a recipient of a nomination – the Financial Services Royal Commission heard these structures may not recognise the kinship structures of Aboriginal and Torres Strait Islander people which can make it difficult for them to access superannuation entitlements (Treasury 2019, p. 2). The Commission anticipates that reforms to address issues with the broader binding death nominations process will have flow-through benefits for charitable super bequests to charities and that specific reform to allow charitable binding death nominations should be considered at that time.

There is no case to change tax arrangements for superannuation bequests to charities

The current tax settings incentivise giving while living. People who place money into superannuation receive a range of tax concessions as a way for the Government to encourage people to support themselves in retirement and to recognise the compulsory nature of the superannuation scheme and the restrictions on access until retirement. These include a reduced tax rate of 15% (plus 2% Medicare levy if applicable) on concessional (that is, 'before tax') contributions and superannuation investment income, and tax-free withdrawals if the superannuant is aged 60 or older. Figure 8.6 demonstrates that money placed in superannuation already receives net tax benefits over its life cycle.

The tax treatment of money as it exits the superannuation system depends on a range of factors, including whether the recipient is a dependant under tax law and timeframe for the payment (box 8.4). Bequests of superannuation death benefits to charities are generally taxed at 15% (plus the 2% Medicare levy, if applicable). This is the same as the tax treatment of superannuation death benefit that is distributed to people who are not dependants. A distinction between the definition of a dependant under superannuation legislation compared to tax legislation is that the former includes a child of any age, whereas for the latter the child must be under 18 years old.

Some submissions argued that removing the tax on superannuation death benefits that are donated to charities would increase the amount provided to charity and support the government's goal of doubling philanthropy.

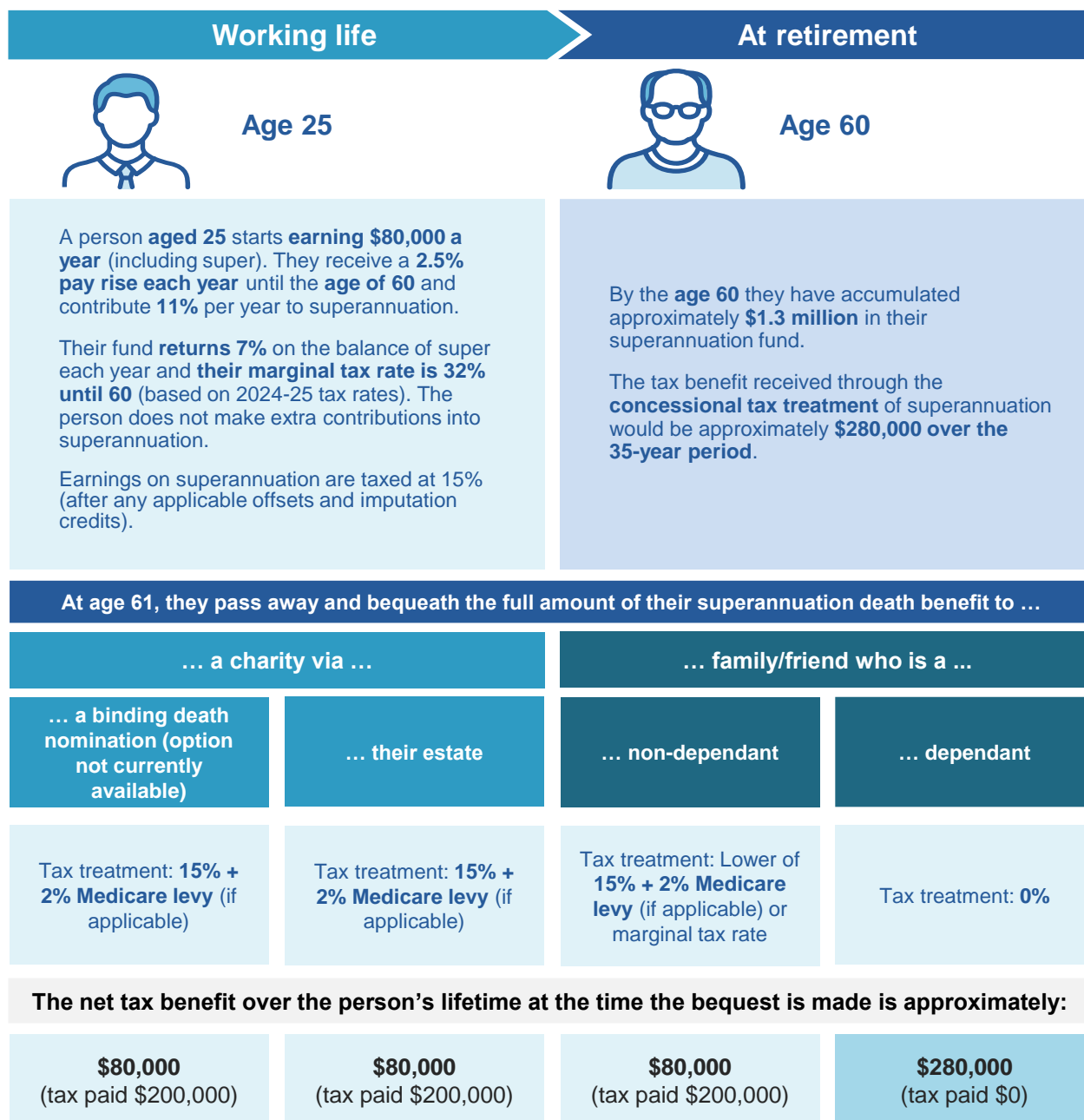
With super balances at death set to reach at least \$130 billion by 2059 (in 2018-19 dollars), giving Australians the choice through their super arrangements to leave some money to charity when they die (and abolishing the tax penalty for doing so) would unleash tens of billions for charity. This reform is by far the most powerful lever to lift giving. (Save the Children, sub. 246, p. 3)

There are however trade-offs between forgone tax revenue – which can also be used to benefit society, including through grants to charities to provide goods and services – and providing deductions for charitable giving (chapter 2).

ACOSS cautions against allowing tax benefits on donations of superannuation from deceased estates. Excess superannuation funds are taxed at 17 per cent following death. This tax should not be avoided through donations as it directly conflicts with the purpose of superannuation to fund retirement. (sub. 263, p. 5)

Figure 8.6 – Taxation on superannuation death benefit

Case study of tax treatment and benefit when donating superannuation death benefit to charity, dependants or non-dependants



If they had instead bequeathed the same amount of money from their estate not using the superannuation death benefit, the net tax benefit would have been \$0

Note: Currently people donate their superannuation death benefit to a charity via a binding death nomination to their estate (figure 8.5). This figure outlines the tax treatment if they could do it directly to the charity via a binding death nomination, which is not currently possible.

Source: Commission estimates.

Tax concessions for superannuation will have a revenue cost to government and adjusting the tax treatment of donations made through the superannuation system cannot be considered in isolation. This means the cost to government should reflect the cost over the life cycle of superannuation, rather than just the point at which the funds exit the superannuation system. This is reflected in the inclusion of the term 'sustainable' in the Explanatory Materials to the Superannuation (Objective) Bill 2023 – Exposure draft (Cth):

Tax concessions have a role in incentivising Australians to save for retirement but come at a significant and growing cost to the revenue required to fund services, so they need to be targeted at where they are needed most. Policy-makers will need to weigh up these types of factors when assessing future superannuation policies against the objective of superannuation. (Treasury 2023c, p. 9)

Figure 8.6 shows that there is neutrality in the treatment of donations to charities and distributions to non-dependants. The Commission does not consider that a case has been made as to why donations to charities should receive preferential treatment compared to transfers to other non-dependants. Although, as discussed above, the process for people wanting to donate their superannuation death benefit to a charity can be complex, it is not apparent that the current tax arrangements create an additional barrier to giving from superannuation death benefit. They may result in less funds being directed to a charity compared to government through taxation, but that does not mean that the imposition of a tax creates an additional barrier. There are variations in the size of the net tax benefit, depending on how and to whom the money is paid. The Commission has not sought to examine the effectiveness or appropriateness of these broader superannuation tax arrangements as these fall outside the terms of reference of this inquiry.

Participants to the inquiry suggested that the tax treatment of donations should be policy neutral, that donations made during life should be subject to the same tax consequences as those made upon death. There are several considerations to consider when thinking about whether a change is policy neutral, including whether the amount of tax paid by a donor is different depending on when and how they give to charity. Box 8.5 provides different scenarios of when and how someone might give, and the different tax implications.

Donations made during life are not subject to the same tax as those made after death (box 8.5). The current tax settings incentivise giving while living by enabling deductions against income. As there is no income in death, there can be no deduction for a donation. This suggests that in considering any change to superannuation tax arrangements, the potential for substitution of giving at different points in the life cycle would need to be considered and examined with a great deal of care.

People who receive a bequest from an estate are not initially taxed on any money or property received. Bequests of superannuation assets have already benefitted from tax concessions over the life cycle of superannuation. Consequently, giving to a charity from one's superannuation on death has a bigger tax benefit than giving from the non-super component of one's estate. The tax system is not neutral with respect to death and provides a larger tax benefit for the superannuation component of one's estate.

Considering the level of concessionality that is currently provided through the tax system for superannuation, there is no case for further subsidisation through additional concessions at the point of superannuation exiting the superannuation system, as the cost to government would likely be higher than for donations through other mechanisms (finding 8.1).

Box 8.5 – Net tax consequences of donating in life and in death

A person has multiple choices to give to charity during the lifetime and in death, namely donating:

- a component of salary or savings to charity during their working phase (ages 25–60)
- in retirement phase from either:
 - superannuation which has been concessional tax
 - other income which is taxed at the marginal tax rate or capital gains
 - savings
- from superannuation from their estate at death
- from non-superannuation from their estate at death
- a combination of the above.

The table below provides a stylised example on these different options and the effect on the tax benefit. It assumes a person is earning \$80,000 a year, is being taxed at 32.5% marginal tax rate, they have \$100,000 to give through the various mechanisms and options, and when they work, retire and die. It shows that the tax and superannuation system incentivises people to give while alive.

The tax applicable on a superannuation death benefit depends on:

- whether you were a dependant of the deceased under tax law
- whether it is paid as a lump sum or income stream
- whether the super is tax-free or taxable and whether the provider already paid tax on the taxable component
- your age and the age of the deceased person when they died (for income streams).

Stylised example of tax consequences for donations to a charity at different points in time and through different mechanisms

| Phase | Mechanism | Donation tax consequences | Tax benefit on donation of \$100,000 (includes income tax and super tax benefits) |
|-----------------------------------|--|---|---|
| Working phase (ages 25–60) | Donate throughout life from income or savings. | Deduction against income at marginal tax rate of 32.5% plus Medicare levy | \$34,500 |
| Retirement (ages 60–75) | Withdraw super (after preservation age) and donate to charity. Generally, no tax on withdraws after preservation age | Taxpayer has no other assessable income and cannot claim a deduction on the donation | \$19,500 |
| | | Taxpayer has other assessable income at marginal tax rate of 32.5% plus Medicare levy | \$54,000 |
| | Give from other income or savings | Deduction at tax rate of 32.5% plus Medicare levy | \$34,500 |
| After death (aged 76) | Donate to a charity through a binding-death nomination, were this to be permitted | Donation taxed at 15% plus Medicare levy (if applicable). Tax paid by superannuation fund | \$4,500 |
| | Donate to a charity through an estate | Donation taxed at 15% plus Medicare levy (if applicable). Tax paid by person's estate | \$4,500 |

Box 8.5 – Net tax consequences of donating in life and in death

| | | |
|---|--|--|
| Provide super death benefit of \$100,000 to dependant | No tax on distribution to dependant | \$19,500 |
| Provide super death benefit to non-dependant | Taxable component taxed at marginal tax rate or 17% (15% tax plus Medicare levy), whichever is lower Tax-free component taxed at 0% The untaxed element is subject to a non-dependants marginal tax rate or 32% (30% plus Medicare levy), whichever is lower | \$4,500 depending on superannuation tax components |
| Donate \$100,000 from estate to charity (non-super component) | | No tax cost or benefit |

Source: Commission estimates using tax treatment information of superannuation on ato.gov.au.

The Commission assessed the tax treatment over a donor's entire lifetime. That is, the Commission's assessment considers the rationale for the policy proposal given current tax concessions for superannuation over a person's entire life and concludes there is no basis for additional tax concessions. Philanthropy Australia (sub. DR595, p. 26) suggested that this conclusion was flawed, arguing that current arrangements create inconsistencies between the taxation of donations during life and after death and that the revenue foregone by waiving the 17% tax on superannuation bequests would be less than that currently foregone on similar donations deducted at the top marginal tax rate.

Impact Economics and Policy (2023, p. 5) took a different approach than the Commission when it assessed the policy. It focused on estimating additional income generated to charities to 2060, relative to forgone government revenue over the forward estimates. However, the Commission considers that the counterfactual policy scenario – changes to charity income and uses of forgone revenue in the absence of the proposed reforms – has not been comprehensively established, meaning it is difficult to compare the relative benefits and costs of the proposed reforms (box 8.6). Further, the forgone revenue estimates of Impact Economics' analysis are only computed to the forward estimates period ending 2026-27 (when additional giving and forgone revenue is relatively low), meaning such estimates of forgone revenue are likely to be unrepresentative during the medium to long-term. For a more accurate analysis, 'at maturity' revenue estimates should be provided.

Box 8.6 – Impact Economics and Policy's modelling on changing tax arrangements for superannuation bequests

Philanthropy Australia commissioned Impact Economics and Policy to model the combined effect on giving of i) allowing charitable bequests from excess superannuation to be exempt from the current 15% tax plus 2% Medicare levy and ii) allowing charities to be directly nominated in binding death nominations. The modelling uses a range of assumptions on the effect of these reforms. For example, reforms that make it easier for people to donate through their superannuation compared to a will or prompting people about giving to encourage behavioural change.

Box 8.6 – Impact Economics and Policy’s modelling on changing tax arrangements for superannuation bequests

The analysis finds that these reforms would:

- generate between \$64.6 billion and \$260.3 billion in additional income for charities to 2060 in current dollars
- cost government (in forgone revenue) between \$6.4 million and \$20.7 million from 2023-24 to 2026-27 (Impact Economics and Policy 2023, p. 5).

Impact Economics and Policy analysis focused on changes in charity income, over the long-term, and forgone revenue over the forward estimates (four financial years), *after* policy reforms are introduced. This is different to the approach adopted by the Commission, which has examined the relative cost of such a change over the lifetime of a person’s superannuation account. In addition, the Commission adopts a different approach on several methodological issues.

1. Assessing the incremental benefit of reforms

The counterfactual needs to be well established. More giving through superannuation death benefits does not necessarily mean this will all be *additional* income that charities they would not have otherwise received. Any adverse behavioural changes also need to be considered. These factors mean the benefits may be overestimated.

- Under a status quo option, some revenue from the taxation of superannuation could be used by government to fund charities, for example through grants or to meet other social, environmental or economic policy objectives. Removing this revenue may mean charities receive less government funding, which represents on average 51% of charity income (ACNC 2023g, p. 32).
- Some people may choose to substitute from giving while alive, to giving upon death through their superannuation. This means that giving from a superannuation death benefit may not always be additional charity income, but a change in the timing of when giving occurs. The current tax arrangements create incentives for people to donate while alive.
- Some superannuation bequests to charities would occur even if there were no changes to current tax arrangements for superannuation.
- Broader economic benefits can be difficult to estimate and have not been included. These broader economic benefits are not necessarily equivalent to the additional income charities would be estimated to receive and depend on the type of programs that would otherwise be funded. Government may be better placed to assess which charities would generate greater net benefits to the community than others and target funding accordingly. Existing data on giving shows that the total value of giving to charities of different cause areas is highly variable (ACNC 2023g).

2. Assessing the cost of reforms

Forgone government revenue from the tax exemption will be lowest over the forward estimates to 2026-27 and highest toward 2060 – since forgone revenue increases with the value of charitable bequests from superannuation death benefits. The published estimates of forgone revenue over the forward estimates are unlikely to be representative of costs over the long-term. Calculating the cost of the policy should consider the tax treatment of superannuation assets that would not have been bequeathed to a charity without the proposed changes to tax arrangements.

Box 8.6 – Impact Economics and Policy’s modelling on changing tax arrangements for superannuation bequests

For instance, suppose that in the extreme, all charitable bequests from superannuation death benefits would have been distributed to a non-dependant and subject to 15% tax plus 2% Medicare Levy. Then *additional* forgone revenue from giving – in the optimistic modelling scenario for giving – would steadily increase to about \$3.6 billion per year in 2060, as giving increased, a much larger value than that of \$20.7 million over the four years from 2023-24 to 2026-27.^a

a. This estimate represents 15% tax and the 2% Medicare Levy imposed on Impact Economics and Policy’s estimates of an additional annual \$20.9 billion in giving in 2060, in the optimistic modelling scenario (Impact Economics and Policy 2023, p. 20).

Source: Impact Economics (2023).



Finding 8.1

There is no case for reducing superannuation taxes for bequests

The current tax arrangements for superannuation treat a donation to a charity in the same way as a payment to any other non-dependant beneficiary. The tax system is not neutral in death and provides a larger tax benefit for the superannuation component of an estate. Adding further concessions at the time of death would be a relatively costly way for the Australian Government to incentivise philanthropic giving.

Alternative giving structures

The Commission received suggestions for new giving vehicles designed to address barriers to philanthropy. Some inquiry participants suggested that the current suite of giving vehicles (as outlined in this chapter) is too limited, and not reflective of the range of donors’ giving preferences:

Australia is lagging behind in the breadth of innovation we have applied to the products and structures available for philanthropists to practice giving. Compared to world leaders in facilitating philanthropy, such as the US; Australians are limited in the ways they can convert their assets into philanthropic funding or support. (Equity Trustees, sub. 259, p. 4)

Inquiry participants also reflected that uptake of ancillary funds is relatively low given the number of people with significant wealth in Australia, and that they are not as widely adopted as they could be (Perpetual appendix sub. 254, p. 5; Grant Thornton, sub. 157, p. 10). Participants identified a number of non-regulatory barriers which may prevent people from adopting available giving vehicles, including ancillary funds.

- Uncertainty of future financial position: potential donors may be concerned about how much money they will need later in life and may not want money locked away in an ancillary fund (Perpetual, sub. 254, p. 2).
- Initial outlay: the minimum distribution requirements and average investment returns means ancillary funds often require an initial donation that may be out-of-reach for many people (for example, Perpetual and Equity Trustees require a minimum donation of \$20,000 into their endowment foundations and \$500,000 to establish a private ancillary fund) (Equity Trustees 2023; Perpetual 2023).

- Donor preferences: some participants argued there are few giving structures that support younger people to engage with philanthropy, who may have different preferences for how they give (including through the use of technology) (Australian Communities Foundation, sub. 100, p. 6; Equity Trustees, sub. 259, p. 2).

To overcome these barriers, submissions proposed the creation of alternative giving vehicles, or ways of innovating existing giving vehicles (box 8.7). Equity Trustees (sub. DR461, p. 2) noted that reducing barriers to innovation through increased access to effective technology supported structured giving could improve giving participation rates.

Box 8.7 – Alternative or new ways of leveraging existing giving vehicles

The Commission received submissions outlining a range of giving vehicles – either new or innovations utilising existing giving vehicles, that are, or could be, adopted.

- **Living Legacy Trust** – allows a donor to place an asset on trust for the benefit of a charity when the donor passes. The asset is irrevocably locked into being given to the beneficiary, but the donor (or their surviving spouse) can continue to use and/or generate an income from the asset while they are alive. Any income they receive is taxed at their marginal tax rate. Where the asset is real estate, the donor may continue to live in the property or rent it on commercial terms. Comparable giving structures are used in the United States and Canada and attract some level of tax concession. Several submissions supported the idea of additional concessionally to support these structures in Australia (Advancement Network, sub. 178, p. 1; Community Council of Australia, sub. 218, p. 10; Perpetual, sub. 254, p. 2, Philanthropy Australia, sub. 162, pp. 35–37).
- **Philanthropy Portal** – Equity Trustees has developed a portal to attract younger donors and meet their preferences for digital and real-time philanthropy. While not a new giving vehicle, it leverages technology to market ancillary funds to new clientele. The portal provides donors with giving, investment performance and fee information, real-time grant balances and the ability to make donations directly. It provides a range of fee options, including those with lower trustee and investment fees, to create a giving pathway for those with smaller amounts of seed funding.
- **Community development trusts** – an idea put forward by Perpetual (sub. 254, Appendix) would allow people to establish an ancillary fund for a fixed period, such as 10 years, with the option of having the capital returned when the period lapses. Annual minimum distribution requirements would apply. The concept overcomes a reason some people may choose not to use an ancillary fund: if they are concerned they may need the funds in the future.

Although some participants proposed the creation of alternative giving vehicles, Australian Philanthropic Services submitted that the scope of giving vehicles is substantial and sufficient:

Consistent with the Commission's overall finding APS [Australian Philanthropic Services] believes current regulatory framework and tax arrangements provide significant and sufficient encouragement to giving and philanthropy. (sub. DR441, p. 9)

Australian Philanthropic Services added that improving awareness and understanding of the current framework for giving would likely facilitate greater giving by those not currently engaged:

We continuously find that many potential donors have no idea of the flexibility inherent in the current framework, particularly Public Ancillary Funds, the options for portability between structures and the capacity to spread a donation across multiple tax years. Making more

information more widely available we believe will facilitate greater giving by those currently not engaged. (sub. DR441, p. 9)

The Commission considers that the current range of giving options sufficient to facilitate and incentivise philanthropy in Australia and, therefore, has not recommended reforms to introduce new giving vehicles. Increased promotion and awareness raising of the available structured giving options, which would be assisted by enhancements to the public information available on ancillary funds (recommendation 8.3) as well as reforms to the DGR system (chapter 6), would provide strong foundations for increasing philanthropy in Australia.

9. Public information about charities and giving

Key points

- ✳ **Publishing information on charities and giving can assist donors, charities and public accountability.**
 - High quality information on charities and their performance can enable donors to make decisions that are aligned with their preferences and shape more practical and realistic expectations of how charities spend donated funds to provide public benefit.
 - Information on giving can help governments make evidence-based public policy decisions and charities make informed decisions, for example on their operations or fundraising practices.
 - Government requires the collection and publication of information about charities and giving to achieve policy and regulatory goals, to help promote public trust and confidence in the charitable sector.
- ✳ **In some cases, government sources of public information about charities do not promote informed donor decisions and public accountability as well as they could.**
 - Issues raised by participants included difficulty accessing data, a lack of relevant indicators of charity performance and a lack of consistency in reported data, and inadequate information on charities' activities.
- ✳ **The Australian Charities and Not-for-profits Commission (ACNC) could make the information it publishes more useful to donors and the public.**
 - Where practicable, the ACNC should disclose more information on charities, present data in ways that are more meaningful and accessible to donors and the public, and raise awareness of government sources of information on charities.
 - Requiring charities to provide additional data so government can publicly report on standardised measures of effectiveness would impose costs and risks on charities with little benefit to the community.
- ✳ **There is sufficient public information about tax-deductible donations by individual donors but inadequate information on other forms of giving, notably volunteering and giving by listed companies.**
 - Better information would enhance governments' ability to assess whether policies to increase giving are effective and efficient. Better public information about different forms of giving, and their benefits, could also help establish social norms which may lead to increases in giving.
 - More transparent reporting on giving by publicly listed companies would improve accountability to shareholders, consumers and the public.

9.1 The role of public information on charities and giving

Public information on philanthropy can inform donor and government decision-making

Information can help overcome the absence of price signals in philanthropy

In conventional markets, prices send signals to buyers and sellers about the relative scarcity of goods and services. Interactions between buyers and sellers result in a market clearing price, whereby the quantity that buyers are willing and able to buy (demand) is equal to the quantity that sellers are willing and able to produce (supply). Prices act as a source of decentralised knowledge, offering consumers relevant information about their purchasing decisions (Hayek 1945). As Cowen and Tabarrok (2009, p. 120) put it, ‘a price is a signal wrapped up in an incentive’, as firms seek to maximise their profits and consumers seek to allocate their budgets towards the goods and services they prefer.

Notwithstanding the role played by the income tax deduction as an incentive for giving (chapter 4), in the context of philanthropic giving there are no prices involved in the transactions between donors, beneficiaries, or charities.

The absence of such price signals means that other sources of information, such as public reporting by charities, play an important role in informing decisions by donors, charities and governments. For example, some donors may seek information on a charity’s priorities or performance to choose where to donate or volunteer, while charities may want information on which philanthropic foundations to approach depending on whether their values and cause areas are aligned.

But both charities and donors have mixed incentives regarding transparency

‘Principal-agent’ problems (chapter 2) may also lead to less sharing of information than what is necessary for public accountability or informed decision-making (Edward Flack, sub. 19, p. 5). In the context of charities, the donor (the principal) has less information than the charity (the agent) and after donating, effectively asks the charity (the agent) to act on their behalf. Where the availability or quality of information on charities’ past and expected future performance is deficient, it can prevent donors from making giving decisions that align with their preferences and values. And a lack of adequate information about corporate giving can make it difficult for stakeholders (shareholders, customers and employees) to make judgements about a company’s wider contributions to the community and – in the case of shareholders – how shareholder funds are being used by the company.

Charities have an incentive to publish certain types of information ...

In the context of charities, transparency means making relevant, unbiased, information easy for the public to find and understand, including evidence that demonstrates social impact (Horton 2015, p. 5).

Charities will typically have a strong incentive to collect and publish information about their activities where it can help attract and retain donors, including volunteers. For example, raising public awareness about a charity, its purpose and the effectiveness of its programs can result in more revenue from financial donations or more people wanting to volunteer for them.

Charities share different types of information, in various ways, and often complement factual publications about their activities with campaigns that aim to persuade people to give by appealing to their emotions and values. The ways government and charities use information to persuade others are discussed in chapter 10.

... but less incentive to publish information that does not help them directly

Charities may have less incentive to invest in or publish information that does not directly help their organisation (or may even reduce donations) but nonetheless would have wider benefits for donors and the public. This type of information includes evaluations of initiatives which show they were less effective than envisaged, or disclosures related to meeting regulatory obligations or other benchmarks of good governance. Just like all organisations, charities may seek to present information about their organisation in a positive light.

In some cases, third-party organisations may fill information gaps (for a fee or with philanthropic funding from donations) by aggregating and analysing data about charities from various sources. However, there are limits to these responses, such as when a government agency holds the information (data on regulatory compliance by the charity), or when incentives for ‘free riding’ mean potential third-party providers of public information on charities are unable to develop a financially sustainable business model to operate.

Most charities act with integrity, but a minority of organisations or individuals may have an incentive to withhold or even misrepresent information about their activities to donors or the public. Although there are regulatory consequences for false and misleading conduct, including financial penalties for breaches of the Australian Consumer Law (box 7.3), some people may seek to exploit the information asymmetries that arise because donors and the public are unable to easily verify the accuracy of information about charities (chapter 2). Misconduct by one charity (or an organisation purporting to be a charity) can create negative spillovers and affect the charitable sector more broadly if it contributes to a decline in public trust and confidence (chapter 7).

Charities can and do act collectively to promote transparency and accountability using self-regulation (chapter 7). For example, the Australian Council for International Development (ACFID) code of conduct has provisions regarding the sharing of information with donors and other stakeholders through annual reporting and other mechanisms (ACFID 2019, p. 8).

Governments also play a regulatory role by setting minimum standards, with Cordery et al. (2013, p. 836) noting that:

Regulation requires charities to disclose financial and also non-financial information about the difference they make within communities to meet users’ needs for accountability and for information to make decisions about future donations and relationships with charities.

Similarly, transparency of corporate giving could be improved

Similar dynamics can exist when corporations publish information about their donations of time, money and goods to charitable causes. The transparency of corporate giving could be improved. Currently, businesses are not required to report publicly on their giving to specific charities or include details of deductible donations within the ‘all other expenses’ section on their income tax return. However, there is a growing trend of firms voluntarily reporting their progress towards non-financial targets and metrics. This commonly takes the form of corporate social responsibility reporting, including, Environmental, Social and Governance reporting. Even so, the way that corporations communicate their philanthropic contributions and engagement still lacks consistency, making it difficult to compare organisations’ contributions (Workplace Giving Australia, sub. 175, p. 8).

Companies may benefit from publicly associating themselves with charitable causes. For example, the use of cause marketing, linking a business or a specific product with a charitable cause, has been demonstrated to positively influence customer attitudes towards the business and purchasing intentions (Rego et al. 2021, pp. 443–444). These benefits may create an incentive for some companies to communicate about their charitable contributions in an ambiguous or overstated manner, despite the potential consequences for misleading conduct under Australian Consumer Law (box 9.4).

Improving the transparency of corporate giving would increase accountability and help maintain and build public trust. It may also increase overall levels of corporate giving by highlighting it to the public and encouraging competition between businesses regarding the amounts they give.

There are other areas where public information about giving is lacking

Total giving in Australia amounts to billions of dollars each year. Although the availability of information on charities and giving has increased over the past 10 years (JBWere, sub. 249, p. 4), there are still information gaps. For example, it is uncertain how much funding charities receive each year from donations that are not tax deductible (including bequests). Until 2019, official data on volunteering only captured whether people formally volunteered with an organisation (and excluded informal volunteering).

Governments and charities have several uses for information about charities and giving. High-quality information about charities and giving plays an important role in developing and evaluating government policies to incentivise giving, including volunteering. Where this information is made public, it can also be used by charities to inform their operations or fundraising practices.

Better public information about different forms of giving could also help increase giving by making it more visible and establishing social norms around giving. But these benefits need to be balanced against the costs and practical limits to collecting and disseminating further information on giving.

Government has a role in supporting access to information

The Australian Charities and Not-for-profits Commission (ACNC), the Australian Taxation Office (ATO) and the Australian Bureau of Statistics (ABS) collect and publish information on charities and giving. In this chapter, 'government provision' of public information about charities and giving means the various arrangements that government agencies like the ACNC and the ATO use to make information about charities and giving publicly available. These arrangements include regulatory reporting obligations for charities or other entities as well as government-funded surveys, websites, databases, reports and educational material about charities or giving. To the extent that charities (or other non-government entities such as aggregators analysing data) may underprovide high quality and reliable information about their activities and giving, government provision of this information can help achieve policy and regulatory goals.

Government provision of public information about charities and giving can serve three goals.

- **Promote informed** donor decisions – helping donors make giving decisions, such as whether to give at all and which charity to give to, that are well informed and aligned with their values and preferences.
- Promote effective decision making by charities and government – including more efficient use of donations to charities that are subsidised by taxpayers through the deductible gift recipient (DGR) system (chapter 5). Information on charities and giving also supports more effective government policies to incentivise giving, including volunteering.
- Promote confidence in the charitable sector – helping maintain the social licence which charities hold within the wider community (McCrindle 2023).

Government sources of public information on charities complement regulations that prescribe how charities and structured giving vehicles operate, such as rules relating to fundraising and minimum distribution rates for ancillary funds. They also complement regulations that guard against people using tax incentives for purposes for which they are not intended, including rules limiting which charities are eligible for tax-deductible donations, and the charities to which ancillary funds may distribute funds to (chapters 6 and 8).

Government provision of information must be proportionate to the problem

Like all government interventions, government collection and provision of public information on charities and giving comes at a cost. A requirement from government for more information can result in additional reporting obligations and burdens, which can reduce the resources charities have available for other work. Governments need to ensure that the benefits charities and the public receive from the collection of information on charities and giving outweigh the costs (Cordery 2013, p. 837). Requiring charities to make information publicly available is likely to have little benefit if people do not use the information because it is not relevant to their decision-making, or if they are unaware the information exists. Onerous public reporting requirements on charities may worsen outcomes for recipients of goods and services and the wider community because the cost of gathering and supplying information reduces the pool of funds that can be used.

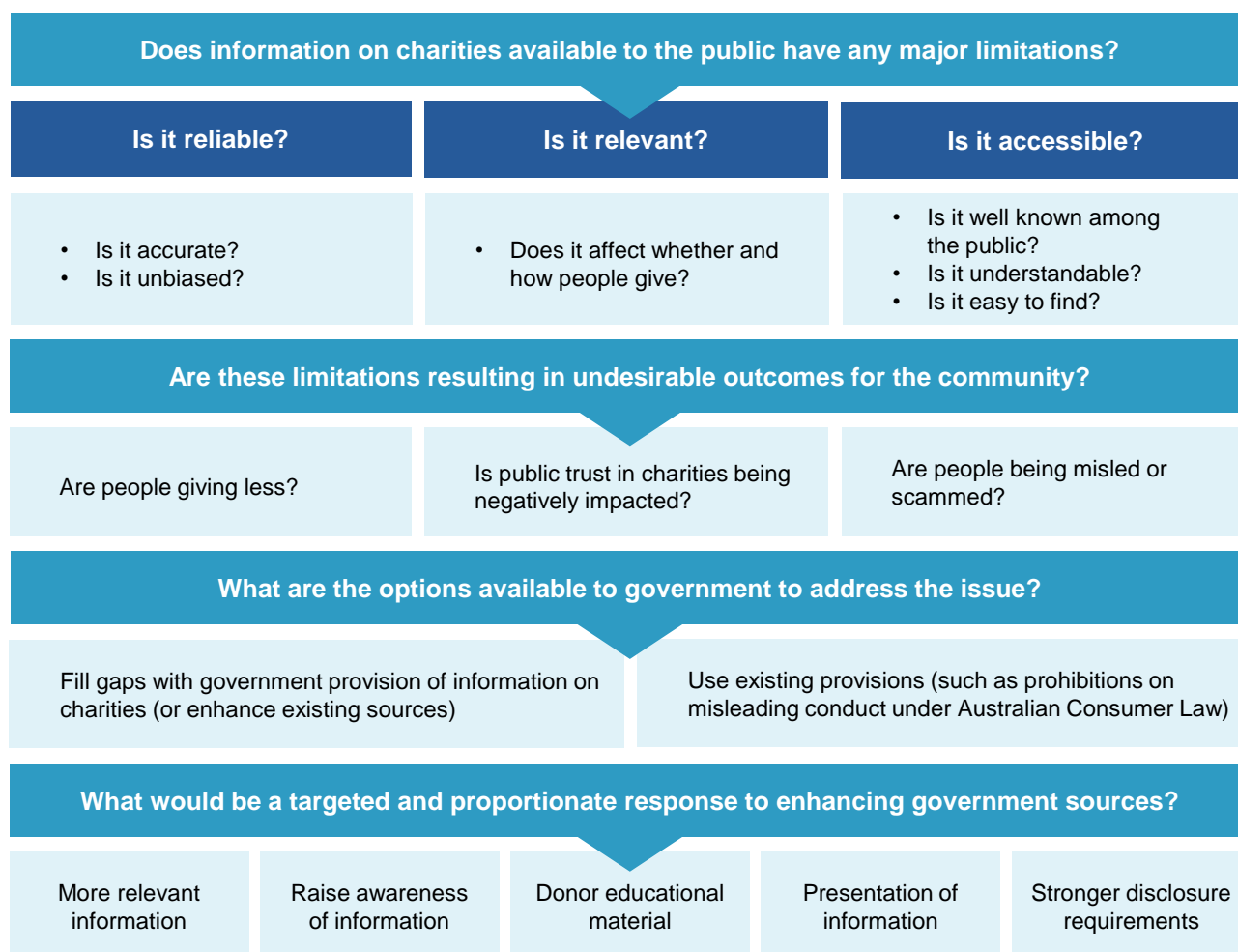
The Commission has adopted a community-wide perspective in assessing the role of government in providing public information on philanthropy

The Productivity Commission applied the framework set out in chapter 2 and took a community-wide perspective to assess the role of government in improving public information about charities and giving. This includes consideration of the inquiry terms of reference:

Examine current barriers to philanthropic giving, including: The ability of donors to assess and compare charities based on evidence of effectiveness, including through impact evaluations and making comparisons across charities. In doing so, the Commission should consider the work of overseas impact evaluation comparison sites.

The Commission examined whether enhancing the information that government agencies currently publish about charities' activities and donations encourages additional giving, improves public accountability, or improves the effectiveness of decision-making by government or charities. To determine this, the Commission sought to clarify whether there are limitations in current public information, the effect of these limitations and the appropriate government response, if any (figure 9.1). It also considered whether the benefits from providing information for these purposes would likely outweigh the costs to the community.

Figure 9.1 – Assessing public sources of information on charities^a

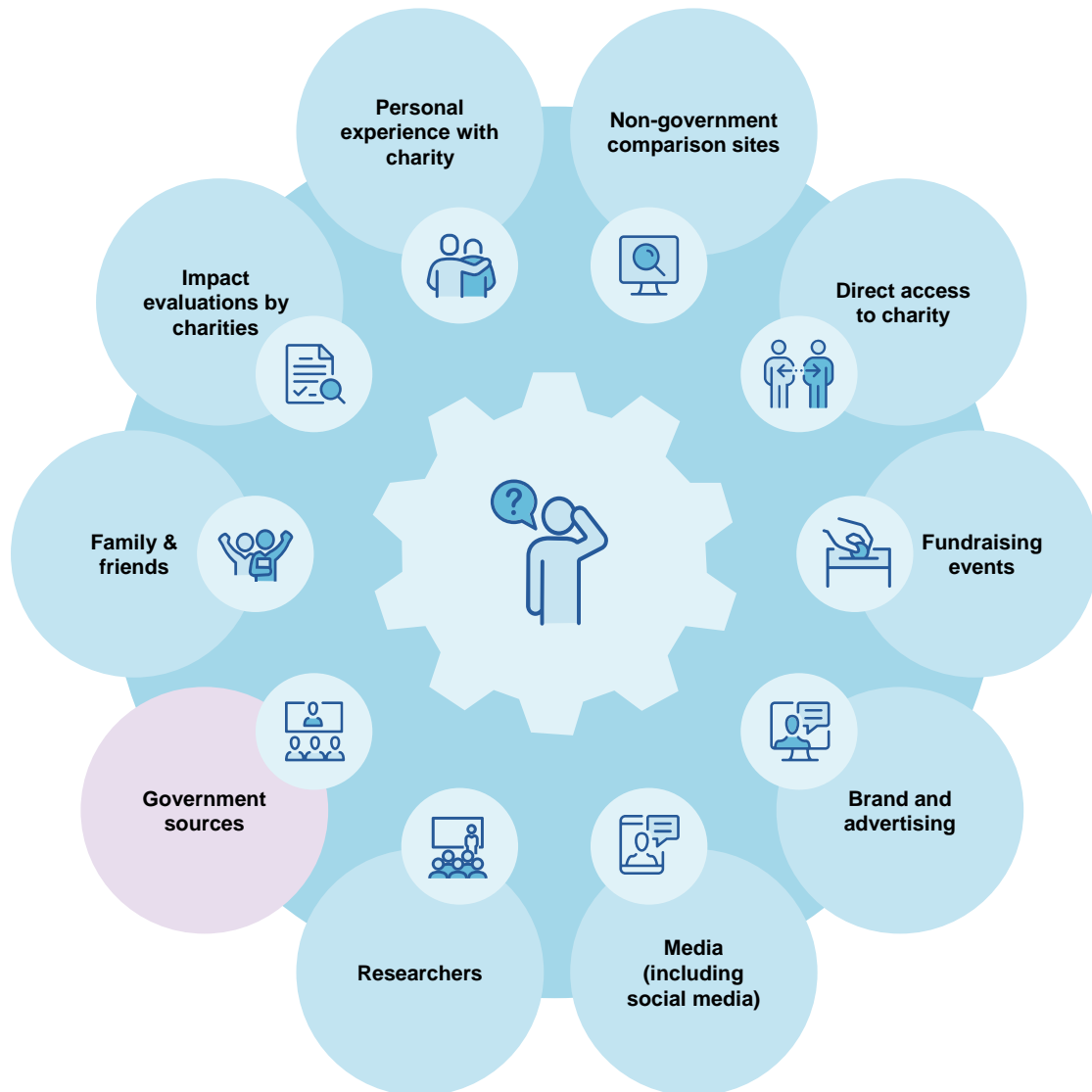


a. The questions are illustrative and not meant to be exhaustive.

9.2 Public sources of information on charities and giving

There are many sources of public information about charities

People obtain information about charities from a variety of sources, including word of mouth from friends, family or social media, or through charity marketing and communication campaigns. Sources of information about work that charities undertake include annual reports, charity websites, impact evaluations and comparison websites. People making large donations or charitable bequests may seek specialist advice, directly approach a charity for more information, or invite a charity to submit a funding application (figure 9.2).

Figure 9.2 – Government is only one source of information about charities

Government is the main source of public information on charities and giving

The ACNC is the main government provider of information about charities

Since 2012, the ACNC has maintained a public register of charities in Australia, of which there are about 60,000. The ACNC charity register was intended to be:

... a single source of easily accessible public information to increase transparency, enable NFP entities to demonstrate appropriate levels of accountability and governance, provide information to the public about registered entities and promote public confidence, informed choices and philanthropy. (Revised Explanatory Memorandum, Australian Charities and Not-for-profits Commission Bill 2012 (Cth) (ACNC Bill), para. 4.8)







A motivation for creating the ACNC charity register was that a 'lack of information available to the public acts as a barrier to the optimal allocation of resources, thus undermining philanthropic engagement and

potentially weakening the generosity of donors’, and ‘currently there is no single source of standardised information where the public can easily obtain information about not-for-profit (NFP) entities’ (Revised Explanatory Memorandum, ACNC Bill, paras. 1.30 and 4.7).

For most charities, the ACNC charity register includes:

- a profile (charity details, summary of activities)
- financial information (except for basic religious charities) and governing documents
- the names of responsible people (such as board and committee members or trustees)
- history (registration status and whether the ACNC has undertaken any enforcement actions, revoked a charity’s registration or issued a notice to a charity for not meeting certain reporting obligations, such as when a charity’s reporting is overdue by over six months) (figure 9.3).

Figure 9.3 – The ACNC publishes information on charities^a

| Coverage | General exemptions | Intended uses |
|---|--|--|
|  <p>ACNC registered charities (approximately 60,000)</p> |  <p>Where publishing information would:</p> <ul style="list-style-type: none"> • endanger public safety • be commercially sensitive • be confusing or misleading • cause offense |  <ul style="list-style-type: none"> • Enable public to learn about charities and ways they can support them • Provide transparency to general public |
| Content | Specific exemptions | Outputs |
|  <ul style="list-style-type: none"> • Profile • Financial documents • People • History (including any actions) |  <p>Reporting arrangements for some types of charities affect what information is provided on the charity register:</p> <ul style="list-style-type: none"> • Indigenous Corporations • Basic religious charities • Non-government schools • Private ancillary funds (chapter 8) |  <ul style="list-style-type: none"> • ACNC charities register database • Annual information statements • Annual charities report |

a. Reporting requirements vary by charity size. In the 2021 reporting period, charity sizes and reporting requirement were as follows: small charities (with annual revenue under \$250,000); medium charities (with an annual revenue of \$250,000 or more, but under \$1 million) needed to provide an audited or reviewed financial report; large charities (with annual revenue of \$1 million or more) needed to supply an audited financial report. Charity sizes changed from the 2022 reporting period onwards, with thresholds increasing. Charities that are also registered with the Office of the Registrar of Indigenous Corporations (ORIC) report directly to ORIC instead of the ACNC. Charities that operate non-government schools may benefit from an agreement between the ACNC and Department of Education that allows them to only report financial information to the latter, rather than including it in their ACNC annual information statement submission.

Source: ACNC (2023g).

The ACNC publishes analysis of the information that charities send in their annual information statements in the annual ‘Australian Charities Report’. Charities registered with the ACNC must submit a statement about their operations and finances every twelve months, with some exceptions (figure 9.3). The ACNC website also includes general educational resources for the public, such as steps to follow to check whether a charity is legitimate and how to interpret information, such as administrative costs.

The ACNC charity register will sometimes include a link to a charity’s website that hosts more material about the charity, which can include impact evaluations where available. In this sense, the ACNC charity register is

a conduit for directing people to public information that they could have potentially searched for themselves (albeit with independent confirmation that the charity has registered with the ACNC). The ACNC allows a registered charity to display an ACNC charity tick on its own website and in digital and print media, provided that it is compliant with all ACNC reporting requirements (ACNC 2022e).

The ACNC charity register does not capture some information about certain types of charities or activities

Reporting arrangements for certain types of charities can affect what information is provided about them on the ACNC charity register.

- About 1.9% of charities are **Indigenous corporations** registered with ORIC and do not submit annual information statements to the ACNC. Data from annual reports submitted to ORIC cannot be viewed on, or accessed via, the ACNC register and is not included in ACNC datasets (ACNC 2023g, p. 51).
- About 17% of charities are **basic religious charities**, which do not have to provide financial information to the ACNC (2023g, p. 12) (recommendation 7.1).
- 2.6% of charities are **non-government schools**. These charities must submit a financial questionnaire to the Australian Government Department of Education and do not have to provide financial information in the ACNC annual information statement. The Department of Education then provides the information it collects from these charities to the ACNC (2023g, p. 51, 2023s). This information is then made available on the ACNC charity register.
- 5.3% of charities are **ancillary funds** (both private and public) (ACNC 2023g, p. 51). Private ancillary funds can apply to have information withheld or removed where the publication of that information would identify an individual donor or create an unreasonable administrative burden on the charity.

Other government agencies also publish data on charities and giving, including volunteering

The ATO publishes data on charities

The ATO publishes information on charities contained on the Australian Business Register (ABR). For each entity on the charity register, the ACNC provides a link to the relevant ABR entry. Charities can be searched for via the 'ABN Lookup' webpage using an Australian Business Number, Australian Company Number or business name(s). The ABR lists a charity's:

- ACNC registration
- DGR status
- public benevolent institution or health promotion charity status
- income tax exemptions
- goods and services tax concessions
- fringe benefits tax concessions.

The Australian Bureau of Statistics publishes data on volunteering

Over the past decade, the ABS has collected data on volunteering by including questions in its broader social surveys and the Census. The frequency, coverage and detail on volunteering varies across sources.

- Every four years since 2002 the ABS has conducted the **General Social Survey (GSS)** (with exceptions of 2019 and 2020 when the ABS conducted the survey in consecutive years as a response to the COVID-19 pandemic). Past GSSs have included questions about whether people had volunteered, how much time they spent volunteering and the type of volunteering activity they undertook. Since 2019, the GSS has included a specific question on informal volunteering (ABS 2020b).

- Every five years the ABS conducts the **Census of Population and Housing (Census)**, which aims to capture the whole population of Australia. The Census has previously included a question on whether the person did any voluntary work for an organisation or group in the last 12 months (ABS 2021b).
- Every three to six years since 1998, the ABS has conducted the **Survey of Disability, Ageing and Carers** which includes information on whether people have undertaken voluntary or community service activities in the last three months. This survey covers people with a disability or people aged 65 years and over, and primary carers (ABS 2020a).
- The ABS conducted **How Australians Use Their Time (time use surveys)** in 1992, 1997, 2006 and 2021. They capture how people used their time in the previous 12 months, including: voluntary work, helping a friend or neighbour and travel associated with voluntary work. The survey records the proportion of time people spend on activities on average, rather than volunteering rates (ABS 2022a).

Other government agencies, such as the Australian Institute of Health and Welfare, use information from the ABS and ATO in published reports on giving trends. For example, the Australian Institute of Health and Welfare's publication *Welfare in Australia* has a section on philanthropy and charitable donations, including volunteering (AIHW 2021b). The Australian Government has also contributed to funding once-off or periodic reports on giving, such as a 2016 Giving Australia study into individual giving and volunteering (McGregor-Lowndes et al. 2017).

Standards for financial reporting aim to promote transparency

The Office of the Australian Accounting Standards Board (AASB) is the Australian Government agency responsible for making accounting standards.

Medium and large charities are required to prepare financial statements consistent with the accounting standards, and therefore the AASB has a role in determining what information about charities is publicly available.

There are no specific accounting standards setting out how businesses in Australia must report on charitable giving in their organisational reporting.

9.3 Should public information on charities be enhanced?




The ACNC charity register is a natural starting point in considering opportunities for government to enhance publicly available information about charities, and the ability of donors to assess and compare charities based on evidence of effectiveness.

Many participants noted public information on charities and giving has improved because of the establishment of the ACNC (chapter 3). But for some people, government sources of public information about charities, including the ACNC charity register, do not promote informed donor decisions as well as they could. Concerns raised by participants included:

- lack of performance indicators that are relevant to giving decisions
- lack of reporting consistency
- lack of data accessibility (figure 9.4).

The absence of accessible, evidence-based, measures of charity effectiveness was highlighted as a particular issue, as it may result in funders (both philanthropic and government) relying on inappropriate proxy measures of success, such as proportion of revenue spent on administrative costs (Centre for Social Impact, sub. 191, p. 11).

Figure 9.4 – Participants’ views on limitations of public information on charities from government sources^a

| Lack relevance to giving decisions  | Lack of reporting consistency  | Lack of data accessibility  |
|--|--|--|
| <ul style="list-style-type: none"> • Insufficient information on charity effectiveness • Funders rely on inappropriate proxy measures, such as proportion of revenue spent on administrative costs | <ul style="list-style-type: none"> • Inconsistencies in how charities report information and what they report (such as financial information) | <ul style="list-style-type: none"> • Databases that are difficult to navigate • Low awareness of information • Difficulties extracting data |

a. Some limitations identified in figure were raised in roundtables and other consultations.

Sources: Australia and New Zealand Third Sector Research, sub. 174; Centre for Social Impact, sub. 191; Rationalist Society of Australia, sub. 219; Saward Dawson, sub. 81.

A case for government publishing charity effectiveness evaluations?

Charities have limited resources available for furthering their purposes and achieving positive social impact. Evaluations (or impact assessments) can help NFP organisations to deploy these resources more effectively, contributing to enhanced outcomes for the community.

Evaluation is the systematic process of making a judgment about the merit or worth of a policy or program. It is about assessing the effectiveness of policies and programs and identifying the factors that drive or undermine their effectiveness (box 9.1) (PC 2020a, p. 4). If they are published, evaluations can also provide valuable information to donors and the broader public.

The NFP sector is highly diverse, and how each NFP organisation defines its purpose and measures its impact can vary widely. As observed by the Australian Institute for Company Directors:

Not-for-profit (or for-purpose) organisations exist to achieve meaningful impact. They might target a group or community, or an outcome, such as animal welfare, environmental protection or improvement. Impact measurement enables organisations to show evidence of their work and demonstrate the result. (2023b, p. 4)

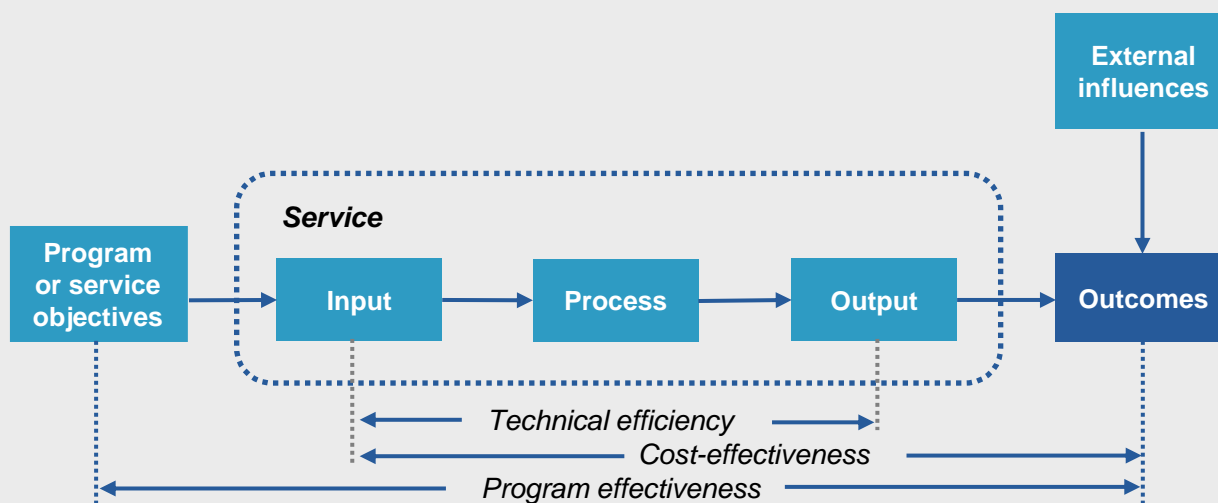
Box 9.1 – Charity effectiveness and cost-effectiveness

Effectiveness can be defined as the extent to which a charity’s stated objectives are achieved. The goal can be as broad or as narrow as is relevant to the context – a continuum exists, ranging from achieving very specific outputs, such as ‘increasing the number of households with malaria prevention nets’, to very broad outcomes, such as ‘increasing the quality of life or life expectancy in a particular country’.

Organisations and policymakers sometimes use performance measures related to effectiveness for assessing the performance of services.

- Program effectiveness indicators aim to reflect the extent to which the objectives of expenditure are achieved (a service would be judged to be more effective in achieving its objective if, for example, it provided better quality services or better access to clients).
- Cost-effectiveness indicators measure the unit costs of producing a well-defined outcome or output.

The idea of having standard performance measures is that donors can compare charities based on their effectiveness. However, this assumes the activities undertaken by charities, as well as the contextual factors affecting their work, are sufficiently similar that their effectiveness can be compared. In a sector as diverse as the charitable sector, this assumption will often not hold.



Source: PC (2013a).

Evaluations can benefit both NFP organisations and their stakeholders

Evaluations enable NFP organisations to better understand what initiatives work, why, when and for whom, thereby informing improvements and supporting a learning by doing approach (PC 2020a, p. 4). NFP organisations can use evaluations to strengthen their capacity to deliver fit-for-purpose services, improve their financial sustainability and engage more deeply with funders, clients, employees, volunteers and other stakeholders (CA ANZ 2023).

Evaluations can also support accountability to stakeholders such as donors and beneficiaries. Making evaluations available to the public can help build trust in NFP organisations, by demonstrating how resources have been utilised to meet the needs of beneficiaries and how the organisation has learned and improved over time. Building trust by demonstrating positive impact and continuous improvement is

particularly important for organisations working with Aboriginal and Torres Strait Islander communities, in light of Australia's colonial history and its ongoing effects (PC 2020a, p. 4).

Many NFP organisations recognise the benefits of monitoring and evaluation and can use self-regulation to promote minimum standards. For example, under the quality and effectiveness principle of the ACFID code of conduct (box 7.4), organisations make the following commitments:

- we articulate clear strategic goals for our work
- we analyse and understand the contexts in which we work
- we invest in quality assessment of our work
- we reflect on, share and apply results and lessons with stakeholders. (ACFID 2019, p. 9)

Participants to this inquiry and other relevant stakeholders have highlighted several benefits associated with charity evaluation from a donor, charity and broader accountability perspective.

- **More** informed donor choices: there is significant variation in the effectiveness of different charity interventions. This can be counterintuitive for donors, who expect similar success rates between initiatives. In the most extreme case, some interventions may be inadvertently causing harm. Impact evaluation provides donors with the information necessary to make decisions that maximise positive impact and minimise potential harms (EAA and Effective Altruism Australia: Environment, sub. DR428, p. 10).
- Improved understanding of what 'good' looks like: if more comprehensive evaluations are made available to donors, beneficiaries and the public, this will likely lead to better understanding of the reality of delivering impact in the field. Seeing impact being measured in different contexts enhances donor decision-making, as it presents a more accurate picture of the charitable sector as a whole. It would also help to reduce the focus on problematic metrics such as administrative costs (finding 9.1) (Paul Ramsay Foundation, sub. 234, p. 6; Minderoo Foundation, sub. DR505, p. 12).
- Enhanced charity decision-making and resource allocation: evaluating the effectiveness of programs allows charities to identify successful strategies and areas for improvement, guiding future changes. Collection and analysis of performance data allows for a deep understanding of the beneficiaries of charitable programs and the impact of a program for different cohorts, allowing for changes to be made for specific sub-groups if required (Salvation Army 2023, p. 13).
- Inform government policy and investment: philanthropy can enable charities to trial new approaches in ways that can be difficult for government to do (for example, over a longer time horizon or with less certainty than governments typically require) (chapter 2). Evaluations of these new approaches allow charities to demonstrate their benefits, which may encourage governments to scale up or replicate initiatives that have demonstrated evidence of working (Alister Ferguson and Teya Dusseldorp, pers. comm., 6 October 2023; Royal Flying Doctor Service, sub. 126, p. 5).
- Supporting effective **charity governance and accountability to stakeholders**: impact evaluation is increasingly becoming a requirement for good governance in the not-for-profit sector, as stakeholder and community expectations of transparency and accountability grow. Impact evaluation facilitates good governance by informing the prioritisation of work and risk management approaches (AICD 2023a, p. 3).

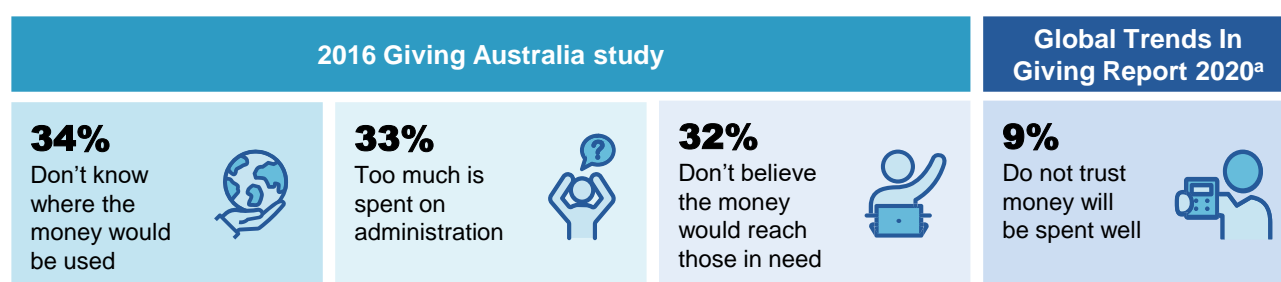
Information for comparing charity effectiveness is influential for some donors ...

One way to make charity evaluations more widely available for donors could be for a government agency to collect and publish data on charity effectiveness. A core question when considering the role for government in charity evaluation would be whether information on effectiveness from government sources would improve outcomes for the community. There is evidence that some people do not give because they lack information necessary to verify whether a charity is effective. For example, the 2016 Giving Australia study into individual giving and volunteering found one in three people (34%) do not give because they did not know where the

money would be used, with a similar proportion (32%) of respondents not giving because they did not believe the money would reach those in need (McGregor-Lowndes et al. 2017) (figure 9.5).

There is also academic research that suggests some people will shift their giving behaviours if provided with information about charity effectiveness. For example, a US study examining donor responses to aid effectiveness information found large donors were more likely to donate if the flyer mailed to them included a paragraph that indicated scientific studies supported the program’s effectiveness, but adding impact information had no effect on average likelihood of giving or average donation amount (Karlan and Wood 2017).

Figure 9.5 – Reasons people cited for not giving that better information might address^a



a. Global average. Global trend report did not disaggregate result for Australia.

Sources: Global Trends in Giving Report (2020); McGregor-Lowndes et al. (2017, p. xxii).

... but may not influence others, and may not affect overall levels of giving

Motivations for giving and not giving vary greatly among people (chapter 3) and it is unclear that a significant proportion of people would change the way they give or give more than they otherwise would if presented with information on charity effectiveness. As indicated in one submission, ‘individual donors typically make donations decisions quickly based on affinity and trust and do not attempt to identify the most effective not-for-profit organisations’ (Matthew Hall, Yuki Guo, Ralph Kober, Richard Pucci, Paul Thambar, Leona Wiegmann, sub. 116, p. 2).

Surveys on why people do not give have several limitations for drawing inferences about the effects of providing these people with information about charity effectiveness.

- **Surveys provide conflicting evidence on the extent of the problem.** Different surveys often produce different results about the proportion of people who do not give for certain reasons. For example, the Global Trends in Giving study (2020, p. 30) found 9% of people do not give because they ‘don’t trust money will be spent well’, in contrast to the one in three people who chose a similar response in the 2016 Giving Australia study (didn’t believe the money would reach those in need) (figure 9.5).
- **A person’s decision not to give cannot be directly attributed to them lacking information.** Responses do not directly reveal the underlying reasons why respondents held concerns about how money would be spent and whether additional information would convince them to give.
- **Some people may have answered questions in a way that they considered more socially acceptable.** Survey results (in general) can be subject to errors arising from participants choosing response options due to social desirability bias, which includes a desire for impression management (to look better to others) and to self-deceive (feel good about themselves) (Larson 2019, p. 534).

Results from behavioural experiments examining how information on charity effectiveness influences giving are mixed. While some behavioural experiments suggest information on charity effectiveness can positively affect giving, others suggest it often has no effect on giving, or can even decrease giving.

- In an experiment testing the impact of providing effectiveness metrics on giving decisions between three hypothetical charities, King et al. (2022) found that providing comparable metrics led to an 80% increase in the number of people selecting the most effective charity, compared to providing descriptions only.
- An experiment by Caviola et al. (2020, pp. 170–171) demonstrated that informing non-experts about charities' effectiveness increased donations towards those charities, but approximately 60% of those non-experts continued to give 'ineffectively'.
- In an experiment examining impediments to effective altruism, Berman et al. (2018, pp. 836–837) found that providing information on charity effectiveness had a limited influence on subjects' decision about which charity to give to. Charity effectiveness was generally a secondary consideration after subjects selected a cause based on personal preference.
- Metzger and Günther (2019, pp. 25–27) conducted an experiment examining the demand for information on aid impact and its effects on giving. They found there was low demand for information on aid impact, that it does not significantly change average donations and donors are often unwilling to pay for information on aid impact.

These findings are consistent with broader literature about motivations for giving, which suggests many people give out of emotional or personal connections to a cause (chapter 3).

In addition, these studies do not shed much light on the reasons why – if additional information is valuable to (some) donors – individual charities do not provide that information, nor do they examine the extent to which additional information would increase overall giving (versus existing donors changing who they give to).

Publishing the results of standardised effectiveness evaluations would have costs and risks

Despite the potential benefits of charity impact evaluation and assessment of effectiveness, there are also risks associated with standardised approaches to such evaluation and assessment, particularly if it is a mandatory requirement set by government. As expressed by Social Ventures Australia:

... we strongly believe that there is no single set of measures that can comprehensively assess the effectiveness of charities in a comparative way. Measuring effectiveness well requires a focus on outcomes relevant to the purpose of the organisation, not a generic set of criteria. We also know that rigorously measuring effectiveness can require a significant investment of time and resources which ... are not easy for NFPs to access. For these reasons we are concerned that, if not well-designed, an Australian charity comparison site could introduce perverse incentives for charities that may *decrease* the effectiveness of philanthropic giving. (sub. 262, p. 9)

Feedback from participants in this inquiry and others reflects some of the key issues and risks of requiring charities to conduct standardised effectiveness evaluations.

- **Creating comparable effectiveness or impact metrics is unrealistic.** Views on success are highly subjective, limiting the comparability of evaluation metrics between charities and even between initiatives. For example, a charity that provides meals to people who are homeless could be evaluated simply based on the number of days per year they operate, or how many meals were served, or how many people were assisted into accommodation because of engaging with the charity. Even charities engaging in similar activities may have very different views on success, making comparisons between them fraught (Salvation Army, sub. 117, p. 3).
- **Effectiveness metrics are often overly narrow considering the diversity of the sector.** Many charity interventions operate in complex environments where outcomes are highly influenced by external factors, which is difficult to capture in standard effectiveness metrics. There is also a risk that simple quantitative metrics do not align with outcomes valued by beneficiaries or are ill-suited to measuring certain types of

outcomes (Salvation Army, sub. 117, p. 3; Social Ventures Australia, sub. 262, p. 9). This is particularly relevant for charities working with Aboriginal and Torres Strait Islander people and organisations. Western conceptions of ‘success’ may preference certain knowledges and structures of power, without acknowledging what measures of success are meaningful to the communities affected (Roundtable participants, pers. comm., 6 March 2024). Charities vary widely in terms of:

- **the number of outputs they produce.** Some charities provide a range of services and outputs, and focusing on any one output would provide an incomplete or potentially inaccurate picture of their overall performance
 - **the nature of outputs they produce.** For example, a program that involves taking Aboriginal and Torres Strait Islander children on Country can be enriching and highly valuable. But that value is not as tangible as the value derived from a program in which outcomes are easier to measure quantitatively (such as the number of immunisations provided by an immunisation program)
 - **the time and scale over which they produce outputs.** For example, work that requires longer horizons of systems change can take a lot of time and require advocacy with different jurisdictions, while outputs of other charities, such as food provision, might be specific to an individual or group in need at a particular time and scale (Paul Ramsay Foundation, sub. 234, pp. 6–7).
- **Outcomes measurement is resource intensive and charities’ capacity may be limited.** The cost to a charity of trying to comply with effectiveness reporting requirements can be significant and may be prohibitive, particularly for smaller charities. Charities often have few or no resources to devote to outcomes measurement and often lack the relevant skills to conduct evaluations, even if the relevant data is collected. It is also challenging to attract funding for meaningful evaluations (Alannah and Madeline Foundation, sub. 47, p. 7; Salvation Army, sub. 117, p. 3; Social Ventures Australia, sub. 262, p. 9).

Imposing a standardised approach to evaluation across the charitable sector risks biasing donors towards certain types of charities and interventions that are well suited to standardised evaluation approaches (for example, charities with more tangible outputs or that target short-term outcomes). It also risks biasing donors towards larger charities that are more likely to have the funding and capability to conduct evaluations. This could then exacerbate the difficulties faced by charities that are already struggling for resources, as the Paul Ramsay Foundation noted:

Evaluation inequity hampers the ability of under-resourced NFPs to measure, evaluate and report on their impact in a way that enables them to keep funding, or attract new donors. (sub. 234, p. 6)

A standardised approach to evaluation could also create incentives for charities to shift their activities towards initiatives that appear more successful against the standard, rather than focusing on the actual needs of beneficiaries (Social Ventures Australia, sub. 262, p. 9). Although the risks of these perverse incentives would be more prominent if standardised approaches to evaluation were mandated, the risks still exist in an opt-in system, as such a system would create a ‘government-endorsed’ differentiator for the charities that have the ability to opt-in.

Non-government sources can provide effectiveness information for donors






Donors already have access to some information on charity effectiveness via non-government sources. As noted above, charities have an incentive to publish impact reports to attract donors. There are non-government sites that publish analysis of charity effectiveness for specific causes or make existing information on charities more accessible to donors. Large donors to a particular cause can also more easily monitor charities’ activities and act as an indirect source of information for other donors, providing a ‘quality signal’ to other donors that they have performed the requisite due diligence on the charity’s effectiveness (Karlán and List 2020).

The presence or absence of public information about charities will, in part, reflect donors' demand for certain information on charity effectiveness. For example, donors aligned with the effective altruism movement tend to highly value information on charity effectiveness and there are at least two non-government sites (The Life You Can Save and GiveWell) that help meet this demand by identifying 'highly impactful charities' in the specific areas favoured by the effective altruism movement (such as health).

The availability of non-government sources of such information means that some of the potential increase in giving associated with making information on charity effectiveness available to donors may already have been realised.

However, the Commission notes there is limited effectiveness information on Australian charities currently available via non-government sources. Figure 9.6 gives examples of three prominent charity evaluation websites: ChangePath, The Life You Can Save and GiveWell. Of these, only ChangePath offers information on a range of Australian charities, with the other websites largely focussing on initiatives in low-income countries. ChangePath does not conduct its own charity evaluations or source expert evaluations, instead relying on data sourced from the ACNC website and charities' self-reporting. At the time of writing, fewer than 0.1% of the more than 38,000 Australian charities on ChangePath offered information about their evaluation methodology and outcomes (ChangePath 2024).

Figure 9.6 – Non-government charity comparison websites

| ChangePath | | |
|--|--|---|
| 5-star rating across transparency, finances and outcomes  | | Data sourced from ACNC website and charities |
| Transparency <ul style="list-style-type: none"> Up to date on ACNC register Financial reports available Assets to liabilities Annual reports on website Privacy policy | Financial <ul style="list-style-type: none"> Asset coverage Year made a loss Outcomes (charity-reported) <ul style="list-style-type: none"> Outcome measurement method Outcomes measured | Allow charity search by: <ul style="list-style-type: none"> state tax deductibility religious/non-religious volunteer activities beneficiaries  |
| The Life You Can Save and GiveWell | | |
| Provide cost-effectiveness analysis and recommends 'cause fund' indices of highly impactful charities  | Analysis sourced from: <ul style="list-style-type: none"> charities researchers experts  | Provides a list of 'highly impactful charities':  <ul style="list-style-type: none"> with deductible gift recipient status which have cause areas measured by cost effectiveness |
| In 2023, cause funds included: <ul style="list-style-type: none"> save lives education economic opportunity | Provides updates on disbursements to donors | |

Sources: ChangePath (2023); GiveWell (2023); The Life You Can Save (2023).

The Commission also acknowledges that the information on charity effectiveness provided by these non-government sources is subject to several of the issues highlighted in the above section, including limitations to the comparability of metrics and overly narrow notions of success. This has particular relevance for charities working with Aboriginal and Torres Strait Islander people and organisations, as these websites determine what

they consider ‘impactful’ charities, and do not consider what success might look like for Aboriginal and Torres Strait Islander people and organisations (Roundtable participants, pers. comm., 6 March 2024).

The availability of non-government charity comparison websites internationally – and the foundations of an Australian option via ChangePath – suggest there is scope for growth in an Australian context. Charity comparison websites with a presence in Australia can be eligible for DGR status, which enables them to receive government support via tax-deductible donations. Reforms to the DGR system proposed in this inquiry may also make it easier for these organisations to access support via DGR status (chapter 6).

As discussed in chapter 2, to the extent that funding is the main barrier to an action, there is also an opportunity for philanthropy to contribute resources to achieve outcomes that have community benefit. It is currently difficult for non-government charity comparison and evaluation websites to attract the kind of support that is available to comparable organisations overseas. For example, Effective Altruism Australia indicated:

We've tried to fundraise to do work of this kind, and have managed to raise a few tens of thousands of dollars, but certainly not the million dollars or several hundreds of thousands of dollars that are required to make a meaningful difference in this space. (trans., p. 253)

International charity comparison websites function successfully without government funding and often receive philanthropic support. For example, The Life You Can Save receives a variety of financial and in-kind philanthropic contributions, such as pro-bono app development and marketing, which it credits with making its work possible (The Life You Can Save 2024).

The benefits of governments publishing effectiveness evaluations do not outweigh the costs and risks

In response to the inquiry terms of reference, the Commission evaluated the costs and benefits of a government agency collecting and publishing data on charity effectiveness, and existing public sources of this information. There are benefits to evaluations, for both not-for-profit organisations and their stakeholders. However, access to effectiveness information is likely to only be influential for a subset of donors and may not influence overall giving levels. Requiring charities to make information publicly available is therefore not likely to yield significant benefits from the perspective of increasing giving.

The Commission also considered the obligations and burdens that would be placed on charities if they had to provide effectiveness information to a government agency and how standardised evaluations could create unintended consequences. Inquiry participants commented that measuring effectiveness is resource intensive and charities’ capacity for evaluation is limited. The Commission also heard that there are significant risks to requiring effectiveness information to be published. It risks biasing donors toward certain types of interventions, which are more easily measured and toward charities that can afford to conduct evaluations. There is also a risk that this information would create perverse incentives for charities to shift the types of activities they engage in to appear more successful against certain metrics, rather than focusing on the needs of their beneficiaries (finding 9.1).

Administrative expenses are not an accurate measure of charity performance and should not be over-emphasised in donor decisions

The Commission heard that people often focus on the proportion of revenue charities spend on administrative expenses or overheads. Administrative expenses are costs incurred by an organisation that cannot be easily attributed to a specific program, such as costs associated with information technology, communications, fundraising and training (Pay What It Takes Charity Consortium 2024, p. 5). As expressed by The Balnaves Foundation:

There is overwhelming public opinion on how charities utilise the funds they raise and how the public expect charities to spend the donor dollar. These do not align. Unfortunately, this will not change until the broader public view the not-for-profit sector in the same lens as the commercial sector; as organisations who need to hire the best staff, and train and resource them accordingly to deliver the best result, rather than organisations who should operate on less than 10% administration expenses. (sub. DR620, p. 2)

Participants noted this focus on administrative expenses can result in donors being unwilling to give to charities that have a ratio of costs to revenue that they deem 'too high' or only providing donations to cover the administrative cost attributable to specific programs (Australian Red Cross, sub. 235, p. 6; Centre for Social Impact, sub. 191, pp. 8, 11; Paul Ramsay Foundation, sub. 234, p. 6; Social Ventures Australia, sub. 262, p. 9).

There are also difficulties with classifying and reporting administrative expenses consistently, which means that making accurate comparisons between charities or over time can be difficult (Australian Alliance for Animals, sub. DR690, p. 14; Edward Flack, sub. 19, p. 10). Some members of the public also conflate staff-related expenses with administrative expenses, which is not necessarily accurate considering the role many staff in not-for-profits play in program delivery (NSW Rural Fire Service, sub. DR571, p. 3).

An overemphasis on administrative costs as an indicator of effectiveness can create perverse incentives for charities to engage in strategies to make their administrative costs seem lower than they really are to attract donors, but which undermine their capacity to deliver quality service in the longer term (Goggins Gregory and Howard 2009, p. 52). These strategies can include underreporting their administrative costs or underinvesting in core capabilities and capacity, such as staff training, to reduce administrative costs in the short term. This can have a compounding effect in that donors can develop increasingly unrealistic expectations about what constitutes efficient expenditure of administrative costs, leading to what is sometimes referred to as a 'starvation cycle'.

... in which funders having inaccurate expectations of how much overhead is needed to run a NFP means these organisations underrepresent their costs. This leads to a sector starved of the necessary core funding required to create resilient NFPs delivering long-term impact on complex social issues. (Social Ventures Australia, sub. 262, p. 6)

The 'Paying What It Takes' research undertaken by Social Ventures Australia and the Centre for Social Impact found evidence of the NFP 'starvation cycle' in Australia (Social Ventures Australia, sub. 262, p. 6; Centre for Social Impact, sub. 191, p. 8). An example of misaligned public expectations regarding administrative costs in Australia was during the 2019–2020 'Black Summer' bushfires (box 9.2).

Box 9.2 – Administrative costs for charity responses to the Black Summer bushfires

In response to the ‘Black Summer’ bushfires, Australians donated more than \$600 million to charities to provide a variety of disaster relief services. In the weeks and months after the bushfires, there was significant public criticism and negative media attention regarding the proportion of funding that charities spent on administrative costs. For example, the Australian Red Cross came under significant criticism for indicating that administrative expenses could be up to 10% of donations (Henriques-Gomes 2020). In response to the ‘significant gap between public expectation of how bushfire donations should be spent and how rapidly the money could be distributed and the reality for organisations responding to the disaster’ (ACNC 2020d), the ACNC conducted a review into three charities: the Australian Red Cross; the NSW Rural Fire Service Trust; and the Wildlife Information, Rescue and Education Service. The ACNC concluded that the behaviour of all three charities was appropriate, including use of donations for administrative expenses (ACNC 2020d).

Change is needed from both the charitable sector and donors to improve how administrative costs are viewed and funded

Studies suggest the charitable sector itself can help create change, by not seeking to compete for donor dollars on the basis of lower spending on administrative costs and thereby undermining the capabilities of charities more broadly (Goggins Gregory and Howard 2009, p. 51). Participants commented that:

The concept of “pay what it takes”, or in other words the full costs associated with running a not-for-profit and their services, is an urgent conversation the sector must have, both as a way of addressing resource disparities and promoting equity. (Minderoo, sub. DR505, p. 11)

[as] a funding source, philanthropy in Australia has not yet evolved to adequately support the true cost of impact. (Centre for Social Impact, sub. 191, p. 8)

There are also examples of charities and donors trying to change their own approaches and practices. These include the ‘Reframe Overhead’ initiative, which is a coalition of charities and fundraising professionals working together to raise awareness about the issues created for the charitable sector when administration costs are used as a proxy for effectiveness (box 9.3). Some philanthropic funders are also seeking to embed ‘pay what it takes’ approaches into their funding practices and ensure that they adequately fund the indirect costs as part of their grant making. For example, the Paul Ramsay foundation has:

...adopted an interim standard of 30% for indirect costs for NFPs with flexibility for lower or higher indirect costs on a case-by-case basis. The Foundation has committed to reviewing this policy every 12 months as a demonstration of our commitment to sustaining partner resilience and strengthening the sector. (sub. 234, p. 3)

The Commission recommended that ancillary funds be required to develop and maintain a distribution strategy setting out their approach to distributing funds (recommendation 8.1). Although it would be for individual ancillary funds to determine the content of their strategy, it would provide an opportunity to outline their approach to funding indirect costs.

Box 9.3 – Charities are working together to reframe perceptions of administrative costs

Charities are working together to raise awareness about the issues created for the charitable sector when administrative costs are used as a proxy for effectiveness and to change some of the approaches within the sector that can contribute to this perception among donors and the broader community.

The Reframe Overhead initiative aims to raise awareness and educate charities on best practices for communicating about administrative expenses. The initiative recognises that charities themselves have also contributed to the narrative that as little as possible should be spent on overhead costs, in the context of a competitive environment for attracting and retaining donors.

Lisa Allan (head of fundraising at The Smith Family and co-founder of the Reframe Overhead initiative) noted that charities' desire to be transparent, rather than donors' concerns about overheads, may be an underlying cause of undue focus on administrative costs.

We've done some research in this space funded by [the Paul Ramsay Foundation]. That's helped us to better understand the practices that charities are doing and the way donors perceive those practices ... a lot of the narrative that we, as an industry, are perpetuating is because of the transparency. I think, because we're trying to be accountable as organisations and show that the money goes where we want it to go, there is this very unhelpful narrative into minimising that cost ... (trans., p. 18)

A survey of Australian donors commissioned by Reframe Overhead found that 98% who give a first donation do not know how much is spent on administration and 80% do not search for administrative costs when donating to a new charity (Pay What It Takes Charity Consortium 2024, p. 6). Some charities provide data on administrative costs when seeking to attract donors although most surveyed donors do not search for it, which can create or reinforce a perception among donors that low administration costs are desirable and an indicator of effectiveness. This can contribute to the so called 'starvation cycle', resulting in an under-investment in the core capabilities and capacity needed to operate an effective charity.

Reframe Overhead has also released a guide that encourages charities to communicate differently to donors about administrative expenses. The guide includes suggestions on reframing language, visuals and reporting to explain the positive effects of proper investment. They include, for example, explaining the impact of effective investment in accountability, organisational effectiveness and strengthened governance (Pay What It Takes Charity Consortium 2024).

In addition to charities and donors changing their own approaches and practices, government bodies such as the ACNC can also play a role. This can include giving appropriate consideration to how information they share with the public may be used or perceived by donors, but also through providing education and guidance that can contribute to shaping the perspectives of donors and the broader community. For example, the ACNC has issued guidance on charities and administration costs, which states the 'effectiveness and impact of charities is important. However, it can be misleading to use administrative costs as a measure' (2023h).



Finding 9.1

Administrative expenses are not an accurate reflection of the performance of a charity

An overemphasis, amongst donors and other stakeholders, on the amount of revenue that charities spend on administrative expenses can lead to incorrect conclusions about charity effectiveness and create perverse incentives for charities. For example, it can result in the underreporting of administrative costs or underinvesting in core capabilities and capacity, such as staff training, which undermines long-term capacity to further charitable purposes and benefit the community.

Charities have incentives to provide information about effectiveness to donors and this information is shared in various ways. Introducing additional requirements, such as standardised effectiveness measures, would be impractical and may lead to significant unintended consequences.

More value could be created from existing government information

The ACNC register could provide more information to donors

As mentioned above, websites that compare charity effectiveness could be developed without involvement from government. In contrast, government is unique in its ability to enhance the information made available on the ACNC charity register.

The Commission does not support the adoption of mandatory charity effectiveness measures as part of charities' annual information statements or other reporting requirements for the reasons outlined above. However, there are other incremental and modest enhancements to the ACNC charity register that could help donors inform their giving decisions. Although it would be very difficult to consistently measure effectiveness across charities (box 9.1), it may be worth considering including some information on the ACNC charity register about charities' evaluation approaches (which would reaffirm the importance of evaluating effectiveness and reporting on it).

One option would be for the ACNC charity register to include some basic information on whether a charity:

- has adopted an impact evaluation framework, with an option for the charity to provide a link to its website where this framework and any impact evaluations are made publicly available
- is subject to a voluntary code which promotes transparency and accountability of outcomes, such as the ACFID code of conduct (box 7.4)
- has Aboriginal and Torres Strait Islander people on their board or staff, especially for those charities working with Aboriginal and Torres Strait Islander people.

Another option is allowing charities to provide general descriptive information about their approach to impact evaluation on the ACNC charity register.

It is unlikely that providing such information would impose significant additional compliance costs, especially if it is not a mandatory requirement but rather a voluntary option provided to charities when completing their annual information statement.

In addition, the ACNC has highlighted that they receive regular requests for specific items to be added to the ACNC register, which would also help inform donor decision-making (ACNC, sub. 238, p. 9):

- whether a charity has DGR endorsement
- legal structure and relevant registration numbers (to understand which other regulators the charity has obligations to)

- more comprehensive information about formerly registered charities
- grounds for revocation of charity status
- whether a charity has entered into a compliance agreement
- date of lodgement of the annual information statement and Annual Financial Report.

At a minimum, there is a compelling argument for the ACNC charity register to provide information about whether a charity has DGR status, avoiding the need to consult the Australian Business Register. The Commission has heard evidence of how important DGR status is for many donors (chapter 5) and considers that obtaining information about whether a charity has DGR status should be simplified by centralising data from the Australian Business Register on the ACNC charity register.

There may be scope to enable the sharing of information, such as the above examples, through the ACNC charity register, but regulatory impediments may constrain what the ACNC can collect and publish on the register (ACNC, sub. 238, p. 9). Where considered necessary, the Australian Government should amend the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and/or the *Australian Charities and Not-for-profits Commission Regulations 2022* (Cth) to enable the ACNC to collect and present more useful information on the ACNC charity register.

The design of the ACNC charity register should reflect the needs of users, including donors

It is important to understand the information needs of donors and the wider public when determining whether to provide more public information on charities, including how this information is provided. Any changes to the design of the ACNC charity register should be informed by research on the information needs of donors of all sizes and the wider public, and evaluation of the charity register should inform its content and presentation.

Specific areas where there appears to be limited evidence on donor and public perspectives include:

- which cohorts of donors access the ACNC charity register
- which cohorts of donors do *not* access the ACNC charity register
- the information needs of those that already access the ACNC charity register and those who wish to but do not
- how those accessing the ACNC charity register would like information presented
- how those accessing the ACNC charity register use the information they obtain
- the information needs of the wider potential audience for the ACNC charity register.

The ACNC should undertake market research to clarify the information that donors and the wider public value most when using the ACNC charity register and then present such information in a way that responds to these needs.

There is also an opportunity to grow the public's awareness of the register. While recent information is not available, a 2017 survey commissioned by the ACNC (Kantar Public 2017, p. 2) found that one in five people were aware of the ACNC charity register (figure 9.7) (recommendation 9.1).

Figure 9.7 – Awareness of the ACNC 2017



Source: Kantar Public (2017).

The Government is making ACNC investigations into charities more transparent

A lack of public information about the ACNC’s regulatory undertakings may undermine accountability and adversely affects public trust and confidence in the sector.

Secrecy provisions in the ACNC Act currently prevent the ACNC from disclosing to the public whether it is investigating alleged misconduct by a charity, the outcomes of any investigations and the reasons for revoking the registration of a charity. For example, the use of the ACNC’s revocation power is not transparent and they are unable to disclose information regarding finalised investigations, including reasons why registration was revoked (ACNC, sub. DR729, p. 2).

The constraints that the secrecy provisions placed on the ACNC have the potential to diminish public trust in the sector and undermine confidence in the ACNC (ACNC, sub. 238, p. 15). For example, if alleged misconduct by a charity resulted in widespread media reporting, the secrecy provisions would prevent the ACNC from responding to public concerns by confirming that it was investigating the matter. A perceived lack of action by the ACNC may then undermine public confidence, even where compliance action is taken (Treasury 2018b, p. 72). Enabling the ACNC to have greater transparency with the public regarding its regulatory actions should strengthen public confidence in the regulator and the sector more broadly (Social Ventures Australia, sub. DR716, p. 4).

In 2023 the Australian Government has introduced legislative amendments to Parliament to amend the secrecy provisions in the ACNC legislation to allow greater disclosure of certain regulatory activities (Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023). The reforms would enable the ACNC to make disclosures describing an ongoing or proposed investigation, where disclosure would prevent or minimise the risk of significant harm, subject to a public harm test as a safeguard. The Government has also announced it will enable the ACNC to publish information on finalised compliance investigations that did not result in formal compliance action, where disclosure is in the public interest, and summary reasons for revocations of a charity’s registration (Leigh 2023c). These reforms will require further amendments to ACNC legislation.

The Commission supports the Australian Government’s reforms to increase the transparency of certain regulatory activities, to facilitate greater public trust and confidence in the charitable sector and the ACNC regulatory framework.

The AASB’s ongoing work on not-for-profit service performance reporting

The AASB is seeking to standardise the way that non-profits report services performance information via its Service Performance Reporting project. In 2015, the AASB released an exposure draft accounting standard which would have required NFP organisations to report service performance information, including by

defining and reporting on measures for effectiveness in delivering outputs (AASB 2015). The AASB stated that participant feedback on their proposal indicated general agreement with the objectives and principles of service performance reporting. However, there were also concerns including:

- the costs of implementing the proposed standard outweighing the benefits of the information provided, particularly for small and medium sized entities
- the proposed mandatory status of the draft standard
- the overlap between the standards in the exposure draft and existing reporting frameworks and government reporting requirements (AASB 2016).

In 2018, the Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislative Review suggested that the ACNC and the AASB undertake further work on the financial reporting framework for charities, including potential reporting on service and social performance, resulting in the AASB project being paused (Treasury 2018b, pp. 59–60).

In 2022, the AASB reinitiated the Service Performance Reporting project, undertaking further research and consultation to develop a nationally standardised approach for NFP entities, including charities (AASB, sub. DR306, p. 3).

The AASB has decided to use, at least initially, the New Zealand Public Benefit Entity Financial Reporting Standards 48 Service Performance Reporting as the primary point of reference. This standard came into effect in New Zealand for annual financial reports covering periods beginning on or after 1 January 2022. The AASB intends to collaborate with academics to monitor and learn from New Zealand's experience of implementing these changes (AASB, sub. DR306, p. 3).

The Commission recognises that there can be benefits to enhancing the quality and comparability of how charities report on their performance, but also notes that any additional reporting requirements would place a burden on charities, particularly smaller charities. Therefore, the introduction of any further requirements should be based on evidence that the benefits of additional reporting requirements would exceed the costs, including the benefits to donors.

As discussed above, charities already have incentives to provide information about effectiveness to donors, and this information is shared in various ways. Research undertaken by Matthew Hall et al provides useful insights into the information needs to donors. They, concluded that:

...individual donors typically prefer qualitative information about beneficiary impacts, organisation-specific measures of effectiveness, and providing more information could confuse donors and not necessarily encourage more giving. (sub. 116, p. 2)

Given that accounting standards generally relate to how information is presented within the financial statements of an entity, careful consideration should be given to what non-financial information about effectiveness is required, so that that it reflects donor preferences. For example, one participant commented that donors 'tend to have a strong preference for stories, videos and other qualitative information' (Matthew Hall, Yuki Guo, Ralph Kober, Richard Pucci, Paul Thambar, Leona Wiegmann, sub. 116, p. 1).

The Commission also notes initiatives that seek to support NFP organisations to measure and report outcomes and impact through voluntary approaches, such as Chartered Accountants Australia and New Zealand's recent 'Measuring social impact for better reporting' guidance (CA ANZ 2023). Such initiatives provide useful resources that can enhance the reporting of performance information, but without the costs involved of mandating additional reporting requirements across all organisations.

There are also opportunities for philanthropic funders and organisations to enhance public information on charities

One of the core issues raised by participants when discussing charity evaluations was resourcing this type of work. Conducting meaningful evaluations requires significant resources and it is very difficult or impossible for charities to secure funding for evaluations (Alannah and Madeline Foundation, sub. 47, p. 7; Salvation Army, sub. 117, p. 3). Charities often rely on existing funding to conduct evaluations, which generates a form of 'evaluation inequity'. Charities that are already under-resourced are unable to conduct evaluations, which then further limits their ability to keep funding, or attract new donors (Paul Ramsay Foundation, sub. 234, p. 6).

While several participants indicated that government should make resources available for evaluations and assessments, philanthropic funders can also have a role to provide charities with adequate resources to measure their impact. Evaluation can be linked to specific initiatives and projects funded through a grant, but it is also part of the core operations of a charity. This underlines the importance of philanthropic funders 'paying what it takes' (Social Ventures Australia, sub. 262, p. 6), so that charities have the capacity to embed evaluation into their work.

Suggestions from participants on what could be funded to improve evaluation in the charitable sector included: improvements to data management and analysis capabilities, such as purchasing new software or training staff, sector-wide initiatives such as shared data platforms or sector-specific research studies, and appropriately validated evaluation tools (Centre for Social Impact, sub. 191, p. 12; St Vincent de Paul Society National Council 2022).



Recommendation 9.1

Enhance information published by the Australian Charities and Not-for-profits Commission

The Australian Charities and Not-for-profits Commission (ACNC) should enhance the usefulness of the information it provides on charities and giving for donors and the public. The ACNC should:

- present data on the ACNC charity register in ways that are more meaningful and accessible to donors and the public based on stakeholder consultation
- publish the DGR status of charities on the ACNC charity register
- raise public awareness of the ACNC charity register and other government sources of information on charities.

Embedding donor and public views in the ACNC's regulatory approach

One of the ACNC's three objects is to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector (*Australian Charities and Not-for-profits Commission Act 2012* (Cth), s. 45.1). However, the perspectives of donors appear much less evident in the ACNC objectives, consultation processes and regulatory performance measures, compared to the perspectives of charities. For example, the composition of ACNC stakeholder groups and expert panels are largely drawn from the entities regulated by the ACNC or people who advise them.

The environment in which the ACNC now operates is different from that which prevailed a decade ago. The ACNC's primary focus since its establishment has been setting up key regulatory infrastructure, for example, its registration processes, reporting streamlining capability and the ACNC charity register (chapter 7). The

ACNC may have greater ability to assume a more assertive enforcement and compliance posture, where necessary to maintain public trust and confidence, as it moves into its second decade of operation. Recommendations 7.1 and 7.2 would improve regulatory transparency and oversight, through more consistent governance obligations and financial reporting requirements for charities, and enhanced information gathering powers for the ACNC. In addition to these proposed changes, the Government could take steps to encourage the ACNC to embed a stronger focus on donors and public accountability.

In January 2024, the Assistant Minister for Competition, Charities and Treasury issued a Statement of Expectations to the ACNC (Treasury 2024). When this statement is next reviewed, the Commission suggests that it includes guidance on how the ACNC balances the views of charities, donors, volunteers, beneficiaries and the wider public in its regulatory approach. This could include how these views should be balanced when:

- designing the content and the presentation of the ACNC charity register and other public resources
- making decisions about what information to collect through the annual information statement
- making decisions about whether to withhold or remove information from the charity register
- forming consultative committees.

Such suggested changes to the statement of expectations would help to refocus the ACNC on the information needs of donors and the broader public. However, the Government would need to consider if legislative changes were needed to expand the information published on the ACNC charity register as well as sufficient resourcing for the ACNC to support any new functions and activities.

9.4 Enhancing public information on giving

Australia's annual charitable giving amounts to billions of dollars and despite considerable improvements in public information on giving over the last 10 years, some notable gaps remain. For example, there is limited data available on the amount of donations received by charities each year from corporate contributions, bequests and volunteering. Until recently, official data on volunteering only captured whether people have formally volunteered with an organisation – and it excluded informal volunteering. Even today, methods for collecting data on volunteering may not fully capture the contribution volunteering makes to the community.

Information on giving plays an important role in facilitating more informed government policy and effective charity decision-making. Data on giving will support the Australian Government's objective of doubling giving in Australia by 2030 (chapter 2). Relevant and reliable information enables government agencies to determine whether measures to increase certain types of giving are effective or result in substitution between different forms of giving without increasing giving overall. Better public information about different forms of giving could also help increase giving by making it more visible and establishing social norms. Data on giving will also support charities to make more targeted decisions about fundraising and assess the impact of different campaigns to optimise their strategies.

More transparent information on corporate giving can also improve public accountability, particularly in the context of publicly listed companies, who give on behalf of their shareholders. Consumers, employees and the broader public may also have an interest in the transparency of corporate giving as an element of companies' corporate social responsibility.

However, there are costs, trade-offs and practical limits to collecting more information on giving. Collecting information and publishing data on giving can impose costs on charities and government agencies. For example, adding questions about giving to existing general purpose surveys, such as those undertaken by the ABS, can mean that other questions covering information of benefit to governments and other

stakeholders cannot be asked, with such surveys also becoming more burdensome for respondents and the government agencies administering them.

The transparency of corporate giving should be improved

The amount of corporate giving in Australia is significant, but there is little detailed public information about who gives and to which charities, aside from tax-deductible donations by individuals through workplace giving (JBWere, sub. 249, p. 8; Queensland Law Society, sub. 223, p. 2). A 2016 Australian study estimated that corporate giving – in the form of cash, non-commercial sponsorships and partnerships – was worth \$17.5 billion in 2015-16, with cash donations alone making up \$6.2 billion (Burns et al. 2017, p. 19). More recent analysis estimated corporate cash donations were \$4.5 billion in 2020 (McLeod 2020, p. 5).

However, the precise value and composition of corporate giving is uncertain because businesses report on giving under the 'all other expenses' section of their income tax return, so do not report separate donations to the ATO. It is difficult for the public to ascertain which charities companies have donated to and how much, without reporting on separate donations. Further, there is no central source of data on corporate giving, which makes it difficult for the public to get a complete picture of corporate giving without collecting it from thousands of corporate reports (although there are some organisations that aggregate this information for some businesses) (Strive Philanthropy and GivingLarge, sub. 119, p. 7).

The lack of comparable data on corporate giving makes it difficult for shareholders, employees and customers to compare a company's giving (where this information is available) to industry benchmarks (such as average giving levels). It also limits the ability of policy makers to analyse trends on corporate giving and understand the effect of policies to increase giving.

At the entity level, businesses often have incentives to publicise certain kinds of corporate giving to employers, shareholders, clients and the general public (chapter 3), but public reporting on corporate giving by individual businesses often lacks consistency and comparability (Strive Philanthropy and GivingLarge, sub. 119, p. 19; JBWere, sub. DR600, p. 5). For example:

There are no consistent naming conventions or reporting requirements for reporting corporate philanthropic activity. This has led to a rise in labelling that tends to mean something but is unclear or at times misleading to the community, donors, and workers. (Workplace Giving Australia, sub. 175, p. 7)

Giving publicly to charitable causes can have reputational and financial benefits for companies. Corporate giving can be leveraged for marketing and reputation-building, improving the company's public image and meeting community expectations. Linking a business or a specific product with a charitable cause (cause marketing), has been demonstrated to positively influence customer attitudes towards the business and purchasing intentions (Rego et al. 2021, pp. 443–444). Corporate giving can also improve the value proposition for employees and has been found to reduce employee turnover (Rice and Schiller 2022, p. 28).

The benefits of associating with charitable causes may also create an incentive for some companies to communicate about charitable contributions in an ambiguous or possibly misleading manner, although this conduct could be covered by Australian Consumer Law (box 9.4).

Box 9.4 – There are penalties under Australian Consumer Law for false and misleading claims regarding charitable donations and affiliations

Misleading claims in trade or commerce about charitable donations and affiliations is covered by Australian Consumer Law and the courts may impose penalties for contraventions of the prohibition. For example, in 2020 Australian eyewear brand Oscar Wylee was found to have made false and misleading claims regarding its corporate giving. The company falsely claimed that for every pair of glasses sold, it would donate a pair to someone in need. It also made false or misleading representations that it was closely affiliated with Rose Charities from 2014 to 2018, when it had only given a single donation to the charity in 2014. The Australian Competition and Consumer Commission (ACCC) commenced proceedings against Oscar Wylee which resulted in the Federal Court ordering the business to pay \$3.5 million in penalties (ACCC, sub. 153, p. 2).

Without public information that breaks down corporate giving by charity, it is difficult for the public to identify whether businesses' charitable donation and affiliation claims are accurate. As expressed by the ACCC Deputy Chair Delia Rickard:

Oscar Wylee promoted its charitable activities as a core reason why consumers should buy Oscar Wylee glasses, but its claims were false and were made in circumstances where consumers could not easily verify these claims for themselves. (ACCC 2020)

Introducing enhanced disclosure and reporting of corporate giving would improve accountability and could encourage giving

More transparent reporting on corporate giving would enable the public to assess corporates' giving for themselves. It would foster more meaningful engagement with shareholders and stakeholders including employees, customers and the wider community (Minderoo, sub. DR505, p. 16). As expressed by Workplace Giving Australia:

There is a need to ensure that the trust in charities that inspire the general public is not inadvertently eroded. The way corporates communicate to the broader public and how they understand the information, including the terms used, should be tightened to avoid unintentionally misleading statements. (sub. DR618, p. 4)

Increased transparency should also help maintain and build public trust in corporate giving, reducing the impact of instances of misconduct on consumer confidence when supporting businesses that genuinely contribute to charitable causes.

Public information on corporate giving would also 'place a spotlight on giving by business and encourage the sector to lift its philanthropic contribution' (Philanthropy Australia, sub. DR595, p. 18). The ability to compare corporate giving more easily and accurately may encourage competition between businesses (Centre for Corporate Public Affairs, trans., p. 44). This includes encouraging employers to support philanthropic efforts within the workplace as part of their employee value proposition, including facilitating volunteering (Workplace Giving Australia, sub. DR618, p. 3). Volunteering Australia commented that 'improved data on corporate volunteering would be greatly beneficial to the development of employee volunteering programs in the future.' (sub. DR686, p. 5)

Having publicly available information on corporate giving in aggregate form would also allow policy makers to analyse trends in corporate giving and understand the effects of policies to increase giving. It could also

inform charities' fundraising initiatives, enabling them to better position themselves to attract support (Philanthropy Australia, sub. DR595, p. 18).

For these reasons, many inquiry participants from the charitable and philanthropic sectors were supportive of the Commission's recommendations in its draft report to increase transparency of corporate giving (recommendation 9.2).¹⁴

Introducing entity-level reporting for giving by publicly listed companies would increase transparency of corporate giving

The Commission proposes the Australian Government introduce a requirement for listed companies to publicly report itemised information on their donations of money, goods and time to entities that have DGR status using a consistent approach and methodology (recommendation 9.2).

The Commission has limited the scope of the recommendation to publicly listed companies because they are in the unique position of giving or not giving to charities on behalf of their shareholders. Although Australian resident shareholders receive the value of the tax deduction when a company gives directly to a charity on their behalf, owing to Australia's dividend imputation system (chapter 4), they do not necessarily know which charities the company donated to, or how much, unless the company voluntarily discloses this information. Shareholder acceptance of donations is influenced by the cause donated to, as well as the size and type of donation (UNSW 2020). Therefore, transparency about these aspects of donations would enable shareholders to more accurately form a view on the company's philanthropic activities, thereby enhancing accountability to shareholders. Recommendation 9.2 is consistent with the more rigorous regulatory oversight and transparency requirements public companies are already subject to (ASIC 2024).

The case for large private companies also reporting on their giving in a standardised manner is not as strong. Any changes for private companies would need to consider the relative administrative burden of implementation for different sizes of organisations (Workplace Giving Australia, sub. 618, p. 3). Companies that are medium or larger (over \$10 million in annual business income) would likely be less affected by any associated administrative burden, given they would likely already have the data necessary to report on their charitable activities. The Centre for Corporate Public Affairs supported this perspective and commented that:

... in a way this is ticking the box for most corporations because they've got the data anyway. The board demands the data and if they [are] reporting it's because they are part of voluntary reporting (trans., pp. 46–47)

The Commission has received limited feedback indicating that the regulatory burden for public companies would outweigh any benefits. However, Chartered Accountants Australia did express concern, indicating that disclosing donations would be complex and the costs of mandatory reporting of such information would outweigh the benefits (sub. DR737, p. 7).

There are several ways the Australian Government could implement this disclosure requirement for listed companies. These include adding provisions to the *Corporations Act 2001* and/or prescribing regulations under the Corporations Act (s. 295 (3)) that financial statements of listed disclosing entities include itemised information on the donation of money, goods and time to entities with DGR status.

¹⁴ Centre for Corporate Public Affairs, trans., pp. 44–47; Group of Eight Advancement Network, sub. DR719, p. 4; JBWere, sub. DR600, p. 5; Minderoo, sub. DR505, pp. 15–16; Philanthropy Australia, sub. DR595, p. 18; Social Ventures Australia, sub. DR716; p. 6; Volunteering Australia, sub. DR686, p. 5; Workplace Giving Australia, sub. DR618, p. 2.

Collecting and publishing aggregated data on corporate giving would help inform public policy initiatives and charity decisions

The ATO should also amend the company tax return to require all listed companies to report donations to entities with DGR status as a distinct line item in deductions similar to that required for individuals. The ATO should, at a minimum, publish information on such donations by company size, taxable status and industry (recommendation 9.2).

The change would allow the ATO to regularly publish aggregated data on corporate giving through the Australian Taxation Statistics. This central source of public data on corporate giving would complement the information on corporate giving available in individual company reports, which would also be enhanced by the Commission's proposal.

The change to the company tax return would impose some administrative costs to businesses. However, these costs would be relatively low and making the information publicly available would likely result in net benefits to the community. This change would also generate administrative costs to the ATO, which should be considered as part of implementing this recommendation.



Recommendation 9.2

Introduce enhanced disclosure and reporting of corporate giving

The Australian Government should introduce a requirement for listed companies to publicly report itemised information on their donations of money, goods and time (volunteering) to entities with deductible gift recipient status. This would enhance accountability to shareholders, consumers, employees and other stakeholders within the community.

The Australian Taxation Office (ATO) should amend the company tax return to require listed companies to report donations of money and assets to entities with deductible gift recipient status as a distinct line item in deductions, similar to what is required for individuals.

The ATO should regularly publish aggregate information on corporate giving in Australia (for example, in the Australian Taxation Statistics) including, at a minimum, donations by company size, taxable status and industry.

Limited data on bequests reduces the ability of charities and government to make evidence-based decisions in this space

There is limited public information on how much Australians donate to charities each year through bequests (JBWere, sub. 249, p. 8). The most widely cited estimates of charitable bequests in Australia are from 2014, so are now more than 10 years old (Baker 2014). The lack of more recent data partly reflects the highly labour-intensive nature of gathering information on bequests from individual probate records (chapter 3).

Lack of information on bequests limits the ability of charities and government to make informed decisions. For example, if a charity ran a fundraising campaign to encourage donations from bequests and over the next ten years they experienced a 5% increase in donations from bequests, this could appear to reflect a successful result of the campaign. However, without data on overall trends in donations from bequests to act as a benchmark the charity would be unable to assess if their campaign was effective or if the increase was in line with bequest trends. The impact of fundraising campaigns on bequests is difficult to ascertain due to the time lag between an individual's decision to donate in their will and the funding being received. However,

understanding trends in bequests over time is particularly important given the expected intergenerational wealth transfer in coming years (chapter 8).

The ACNC collects aggregated information on donations and bequests from charities. One way to obtain regular information on bequests would be to separate out the reporting of this information from other types of donations in charities' annual information statement (Fundraising Institute Australia, sub. 134, p. 13; JBWere, sub. 249, p. 8) (recommendation 9.3). This information would provide policy makers, charities and the public with a source of consistent, ongoing and up to date information to understand the size of bequests to charities in Australia. If implemented with recommendation 9.2, this information would also improve understanding of the overall composition of financial gifts to charities. JBWere commented:

The collection of bequest data through the annual information statements provided by charities to the Australian Charities and Not-for-profits Commission (ACNC) is an important addition, particularly as Australia progresses through the intergenerational wealth transfer period of the next two decades. (sub. DR600, p. 5)

The Commission expects the impost on charities of collecting and reporting information on bequests to the ACNC would be relatively modest, as they already provide this information combined with other types of income but may require a change to the regulations prescribing what information that is made available on the ACNC charity register.

To collect information on bequests from charities, the ACNC could request that charities separate the reporting of bequests from other donations in their annual information statements. If this was considered an additional data request, a process of legislative or regulatory amendment would likely be necessary, as indicated in the ACNC's submission (sub. DR729, p. 11). If separating out bequest data is not considered an additional data request, as the data is currently being provided in aggregate form, no such change would be required.



Recommendation 9.3 **Improve data on charitable bequests**

To provide more information about giving through charitable bequests, including trends over time, the Australian Charities and Not-for-profits Commission should require registered charities to separately report income from bequests in their annual information statement and publicly report the aggregate data.

Volunteering

The definition and nature of volunteering in Australia has evolved over time

In Australia, the community's perceptions and understanding of volunteering have evolved over time. In July 2015, Volunteering Australia updated its definition of volunteering to be: 'time willingly given for the common good and without financial gain' replacing a narrower definition based on formal volunteering (an activity which took place through not-for-profit organisations or projects). Volunteering Australia (2015a) noted the need for updated definitions because:

The way Australians are choosing to volunteer has altered since Volunteering Australia's definition of volunteering was formed back in 1996. When the definition of volunteering was first agreed upon, it was expected that volunteers worked in not-for-profit organisations in a long term and face to face capacity.

There are many different ways that volunteers actively contribute to society that were not considered to be volunteering under the past definition, including:

- corporate volunteering
- micro volunteering
- digital or virtual volunteering
- episodic and spontaneous volunteering.

Data improvements have enhanced public understanding of volunteering

In April 2017, the ABS launched a national consultation on statistics for volunteering and giving, inviting the public to submit proposals on the future collection of volunteering and giving data. The ABS noted Volunteering Australia's new definition of volunteering was a major driver for the consultation. The ABS incorporated feedback from the national consultation (and earlier government consultation) into a review of the methods and scope of collecting volunteering and giving data. The ABS review identified a range of suggestions relating to motivations for volunteering, barriers to volunteering, time spent volunteering, informal volunteering, costs of volunteering, and under reporting and cultural sensitivity.

As a result of the consultations, the ABS changed the volunteering question modules in the 2019 GSS to include new questions on volunteering (extensively modifying and adding to the existing 'unpaid help' question) (ABS 2020b). In particular, the 2019 and 2020 GSS included additional questions about informal volunteering, with detail on:

- whether the respondents undertook informal voluntary work in the last four weeks
- the type of volunteering activity (for example, domestic work, unpaid teaching, coaching or practical advice)
- the recipient of the voluntary activity (for example whether volunteered for a friend or different household)
- how many hours the respondent engaged in informal volunteering in the last four weeks.

As illustrated in chapter 3, more comprehensive information on volunteering collected through the GSS has improved public understanding of the contribution of volunteering in the community, particularly informal volunteering.

Reporting on volunteering among Aboriginal and Torres Strait Islander and culturally and linguistically diverse communities needs improvement

For many people in Australia, giving or sharing of time, belongings, food and money is intrinsic to their culture or traditions. However, submissions to this inquiry and other studies have identified conventional approaches to collecting and reporting on giving, including volunteering, use language and definitions that may result in underreporting or underappreciation of such giving (ABS 2018; Cultural and Indigenous Research Centre Australia 2016, p. 75; Chau and Fitzgerald 2018, p. 5; Alia Khan, sub. 27, p. 1). For example, JBWere notes even the word 'philanthropy' can be inaccessible:

It is not a common term in non-western cultures and societies ... what may be considered altruistic in modern Anglo-centric cultures, is accepted as obligations/duties to family and community. (sub. 249, p. 4)

Participants to this inquiry and participants in a separate consultation process undertaken by the ABS have raised concerns about the underrepresentation of groups of people in data collected by governments, including those from Aboriginal and Torres Strait Islander and culturally and linguistically diverse communities (ABS 2018). The ABS made changes to how it collects information from people in Aboriginal and Torres Strait Islander communities in 2019 to capture informal volunteering. However, practical

difficulties with further enhancing giving data remain, including surveying enough people to represent characteristics of smaller populations.

In 2016, Cultural and Indigenous Research Centre Australia conducted a study on giving and volunteering in culturally and linguistically diverse and Indigenous communities, drawing on interviews. The study found traditional definitions and measurements are inadequate to capture the extent of spontaneous and planned giving, including volunteering, within different culturally and linguistically diverse and Indigenous communities.

The informal contributions of [culturally and linguistically diverse] and Indigenous community members in both giving and volunteering to support their communities appears to be significantly underestimated, unsupported and unrecognised. (Cultural and Indigenous Research Centre Australia 2016, p. 15)

The authors suggested changing the way that data collections, including the ABS Census, ask questions about volunteering to include a clear definition of volunteering (and what it includes and excludes). This could assist in collecting data that is more representative of volunteering in culturally and linguistically diverse and Aboriginal and Torres Strait Islander communities. Similarly, Community First Development indicated in its submission:

There is a clear need to decolonise the concept of volunteering and how volunteering is measured, to better reflect and recognise the contributions of Aboriginal and Torres Strait Islander peoples and communities. The concept of volunteering needs to encompass and equally value both organisation-based volunteering and grassroots/self-determined volunteering. (sub. DR747, p. 19)

Efforts are underway as part of the National Strategy for Volunteering 2023–2033 to improve knowledge and understanding of different cultural interpretations and expressions of volunteering for the purposes of collecting accurate data, informing relevant policy, ensuring equity in access to funding and other support, and to dispel myths about volunteering (Volunteering Australia 2023b, p. 48).

While the ABS (2018) noted it would ‘continue to monitor this area of interest and assess how volunteering rates for culturally and linguistically diverse and Aboriginal and Torres Strait Islander populations can best be captured’, there is limited public information on specific actions under consideration. Following engagement with communities, the ABS should develop methodologies that enable better measurement of volunteering by Aboriginal and Torres Strait Islander people and culturally and linguistically diverse communities (recommendation 9.4).

The Government should improve publicly available volunteering data

High-quality information plays an important role in developing and evaluating government policies to incentivise giving, including volunteering. The Australian Government has a policy goal of doubling giving by 2030 and funded the sector-led National Strategy for Volunteering 2023–2033, which among other things, aims to improve collection of information on volunteering, so that the public recognises and respects volunteering that is already happening in culturally-specific contexts and to find ways to better support diverse expressions of volunteering (Volunteering Australia, sub. 222, p. 4).

However, there is some uncertainty regarding the future of data collection on volunteering. The ABS has not conducted a GSS since 2020 and has not announced when the next GSS will be conducted. Without the GSS, there are no ongoing sources of detailed information on volunteering including:

- informal volunteering rates and activity in Australia
- time spent volunteering (other than the share of time spent volunteering from the time used survey)
- how many organisations people volunteered with

- the type of organisation people volunteered for
- how many weeks of formal volunteering people participated in during the last year
- reasons for participating (or not participating) in volunteering.

Participants to this inquiry have argued that at minimum, information should be collected on formal and informal volunteering, in a frequent and reliable manner, with data validity at both a national and state and territory level (Volunteering WA, sub. DR319, p. 3; Volunteering Victoria, trans., p. 535; Volunteering Australia, sub. DR686, p. 6). There are several options that the ABS could use to collect this data (box 9.5).

Box 9.5 – Options for ABS data collection on volunteering

There are several ways the ABS could collect data on volunteering, including through the Census, the GSS, the Multipurpose Household Survey (MPHS), or a standalone volunteering survey. Each option has associated costs and benefits, which make it more (or less) suitable.

The Commission has heard from inquiry participants that the Census is not appropriate as the sole vehicle for collecting official volunteering data (Volunteering Australia, sub. DR686, p. 6; Volunteering WA, sub. DR319, p. 3; VolunteeringACT, sub. DR724, p. 8). The value of the Census is in its breadth of coverage: it can be used to understand different behaviour and trends at the local level (Volunteering Australia, sub. DR686, pp. 5–6). It also aims to capture information about smaller populations, such as Aboriginal and Torres Strait Islander peoples, which is generally not possible without targeted surveys. However, there are limitations to the accuracy of the data it collects on volunteering. The purpose of the Census is very broad, so the number of questions about volunteering are necessarily limited and there is limited scope to explain what constitutes volunteering, resulting in under-reporting. The frequency of reporting is also considered inadequate as a sole source of official volunteering data (Volunteering WA, sub. DR319, p. 3).

To date, detailed volunteering data has been collected by the ABS via the GSS. As volunteering is an established part of this survey, collecting volunteering data via the GSS would not require any changes or re-prioritisation to occur. As an interview-based survey with more detailed questions than the Census, it is designed to elicit more accurate responses and therefore offers higher quality information on volunteering. As indicated by Volunteering Australia:

The general social survey [GSS] is really the only official data that gives useful information on volunteering ... It gave very rich data on volunteering, less so in recent years, although there was a very useful addition in 2019 around informal volunteering so we now do have formal and informal volunteering in the official data. (trans., p. 295)

However, the GSS only has a sample of 5,300 households, which limits the ability to produce insights on volunteering at a state and territory level. As expressed by Volunteering WA, 'we don't get the data at state level that we need to be able to actually use it in the way that it's useful in a policy setting' (trans., p. 330). The ABS has historically conducted the GSS at four-year intervals, but it conducted the survey two years in a row during the COVID-19 pandemic (2019 and 2020) and has not conducted it since. At the time of writing, the ABS has not announced its future plans for the GSS.

The MPHS is an annual survey that supplements the monthly Labour Force Survey (LFS). One person per household in the LFS is selected at random to participate and complete a personal interview. The LFS has a responding sample size of approximately 26,000 households, and is weighted to the most recent population figures, thereby providing a representative picture of the whole population

Box 9.5 – Options for ABS data collection on volunteering

(ABS 2022b). However, the MPHS may not be able to accommodate a volunteering module every year, meaning volunteering data may not be collected with the desired frequency and reliability. MPHS has a rolling program, with modules being added and removed based on changing priorities, making it difficult to guarantee the inclusion of volunteering.

A single-purpose volunteering survey may appear desirable, as it would be able to capture detailed information on volunteering (Volunteering WA, sub. DR319, p. 3). However, the costs associated with this approach do not seem proportionate given the existence of other options for the collection of this information.

The ABS should be adequately resourced to enable it to regularly collect sufficiently granular volunteering data. This includes improving the information it collects on volunteering through the Census and collecting more detailed volunteering information through an annual survey (recommendation 9.4). These changes would create a source of ongoing, reliable and suitably detailed information to inform and advance the government's policy goals related to giving.

The ABS should collect Census data on the key aspects of volunteering in Australia.

- Formal volunteering: knowing which individuals engage in voluntary work for an organised group remains an essential component of volunteering information.
- Informal volunteering: without data on informal volunteering, it will not be possible for governments to fully understand and recognise a key aspect of giving in Australia. This is particularly relevant among Aboriginal and Torres Strait Islander communities and culturally and linguistically diverse communities, whose giving is less likely to be captured by definitions of formal volunteering (Cultural and Indigenous Research Centre Australia 2016, pp. 2–3). It may also undermine efforts under the National Strategy for Volunteering to improve knowledge and understanding of different cultural interpretations and expressions of volunteering (chapter 3).
- The amount of time people engaged in formal or informal **volunteering**: only knowing whether someone volunteers, and not how much, could reduce the usefulness of data in understanding how people respond to policies designed to promote giving.

The ABS should also, at minimum, collect the above information via a module on volunteering in an annual survey that allows for the collection of more detailed and accurate volunteering information, such as the GSS or MPHS. However, it should also consider including additional questions that would improve public information on volunteering, subject to consultation with relevant stakeholders, for example:

... the type of organisation people volunteer for, the kinds of activities undertaken, motivations for volunteering, barriers to volunteering, time spent volunteering, informal volunteering activity, costs of volunteering, mode of volunteering activities, who people volunteer with, and other data as needed to inform policy and program design. (Volunteering Australia, sub. DR686, p. 6)

If the GSS is re-commenced annually, this appears to be the most appropriate choice for the collection of detailed volunteering information, as there is greater certainty regarding the inclusion of volunteering questions. If this does not occur, an ongoing volunteering module should be implemented in a suitable alternative, such as the MPHS.

The above list of ideas for improving volunteering data is not intended to preclude other options should further investigations show these would have net benefits. For example, linking volunteering data with other

government data sets could supply more nuanced insights into the effects of various government policies on incentivising giving. However, the Commission has not examined the costs and benefits of this option in detail.

The ACNC could potentially complement the work by ABS to enhance public volunteering data by using the annual information statement submitted by charities to list hours contributed as well as to the number of volunteers in the financial year.



Recommendation 9.4

Improve the usefulness of public information sources on volunteering

The Australian Bureau of Statistics (ABS) should improve the usefulness of public information sources on volunteering. It should amend the questions on volunteering in the Census to capture:

- whether respondents engaged in informal volunteering (in addition to whether they engaged in formal volunteering with an organisation)
- the amount of time the respondent engaged in formal or informal volunteering (for example, hours each week).

The ABS should also collect more detailed information on volunteering annually through a survey such as the General Social Survey. At minimum, the survey should collect information on whether respondents engage in formal and informal volunteering, and the time spent engaged in these activities. However, the ABS should strongly consider including additional questions to improve information on volunteering, in consultation with relevant stakeholders.

Following engagement with communities, the ABS should develop methodologies that enable better measurement of volunteering by Aboriginal and Torres Strait Islander communities and culturally and linguistically diverse communities.

10. Access to and participation in giving







Key points

- ✳ **Like private and government funding, philanthropic funding can also fail to meet the efficiency and equity goals or expectations of the community. There are barriers to giving and receiving donations that extend beyond tax and regulatory settings.**
 - Where information asymmetries exist between donors and charities, a charity's reputation or brand and their long-term record of stability and durability can provide a signal to donors about likely future performance.
 - While reputation can be a signal of quality, it can also distort patterns of giving. Some donors may rationally base giving decisions on historical performance and other factors, rather than directly on the needs of current and future recipients who may be more in need. This may perpetuate some existing inequalities.
 - Some smaller or new charities find it difficult to access philanthropic funds, particularly if some donations 'crowd-in' philanthropic support for large charities which have built up a reputation over long periods of time. Charities can also incur specific direct or indirect costs to accessing philanthropy.
- ✳ **Philanthropy involves voluntary, highly personal choices, and individuals make their own value judgements on which cause to give to. Therefore, assessing the extent to which patterns of giving perpetuate existing inequalities may also involve making value judgements. In some instances, there will be a role for government to overcome barriers to giving or receiving philanthropic funds, particularly if government judges that there are distortions or important equity issues at stake.**
- ✳ **The philanthropic sector has a role to play in encouraging giving and influencing how donors give and who they give to.**
- ✳ **In some instances, the ways in which donors engage with Aboriginal and Torres Strait Islander organisations could better support Aboriginal and Torres Strait Islander people and communities.**
 - The Australian Government should support the establishment of an independent (non-government) entity, provisionally called Indigenous Philanthropy Connections, to improve access to philanthropy for Aboriginal and Torres Strait Islander communities. Indigenous Philanthropy Connections should be controlled by Aboriginal and Torres Strait Islander people, with an Aboriginal and Torres Strait Islander majority board that would determine the details of its design, governance, operations and intended outcomes.
- ✳ **A government-funded public information campaign could help broaden participation in giving, but there is insufficient evidence it would be effective or produce net benefits. Philanthropic funding could be used to run and evaluate a campaign, and add to the evidence base for these interventions.**

The focus of this inquiry is on building firmer foundations for giving to support the delivery of community-wide benefits, so that more people, communities and organisations can benefit – in a shared and equitable manner – from the Government’s goal of doubling giving by 2030. Previous chapters focused on tax and regulatory policy measures that governments can use to support giving behaviour. But barriers that prevent people from giving, or charities from receiving, donations may extend beyond any issues that are created by, or can be resolved by, the tools governments use to shape behaviour, such as taxation and regulation.

Philanthropy involves voluntary, highly personal choices, and individuals make their own value judgements on which cause to give to. This chapter focuses on policies that seek to change donors’ motivations and/or giving practices by, for example, making it easier to give (figure 10.1). Just like private or government funding, philanthropic funding can fail to meet the efficiency and equity goals or expectations of the community. In some instances, there will be a role for government to overcome barriers to giving or receiving philanthropic funds, particularly if governments judge that there are distortions or important equity issues at stake. The aim behind the policies in this chapter is to provide a more equitable distribution of philanthropic funding. There is a value judgement to what an equitable distribution of philanthropic funding looks like, and this differs from person to person and government to government. The Productivity Commission has approached this analysis by considering if there are additional barriers facing some population groups and how these barriers could best be overcome.

Figure 10.1 – Policies to improve access to and participation in philanthropy

| Measures to help charities access philanthropy  | Measures that make giving easier  | Persuasive policies to encourage giving  |
|--|---|--|
| Resources to help charities overcome barriers to accessing philanthropy | Reduce transaction costs of making donations and volunteering Measures to provide access to quality advice on giving | Encourage giving by appealing to people’s sense of community and social responsibility |
| These policies and measures can take several forms | | |
|  <ul style="list-style-type: none"> • Training for staff and volunteers • Funding for capacity building |  <ul style="list-style-type: none"> • Avoiding regulatory burden on volunteers • Training for advisers |  <ul style="list-style-type: none"> • Public campaigns on giving (mass or targeting specific types of donors/giving) • Behavioural approaches |

10.1 Measures to improve access to philanthropy

It can be more challenging for smaller or newly established charities to access donor networks

Information flows and networks are an important factor in determining overall patterns of giving. Depending on its fundraising strategy, a charity's ability to access donor networks (such as groups of high-net-worth donors with personal connections to each other or philanthropic organisations) can influence its capacity to attract donations. Access to donor networks enables a charity to raise awareness and educate large donors about its activities, provide donors with compelling reasons why they should give to them, and learn more about the donors. For example, interactions between a charity and donors enable each party to convey their respective priorities and better understand whether their interests, expectations and preferences align.

Some charities likely have an advantage when it comes to accessing large donor networks and conveying information to donors. A charity's reputation or brand and their record of stability and durability over long periods of time can provide a signal to donors about likely future performance. Larger charities, and those with a well-established reputation, often have the advantages of having more overall resources to spend on fundraising (including dedicated professional staff) and greater access to donor networks. In contrast, lack of resources, skills and relationships with donors can constrain the ability of smaller or newly formed charities to reach and convey information to donors (and vice versa). In addition, large donations and donations from high-profile philanthropic donors may act as a potential quality signal for other donors who do not have the time or resources to investigate the effectiveness of different charities. In this way, large donations can 'crowd in' or attract even more donations for the charity.

While reputation can be a signal of quality, it can also distort patterns of giving in a certain direction. Some donors may rationally look at a charity's track record and base giving decisions entirely on historical factors, rather than on the characteristics of current and emerging recipients who may be more in need. This may perpetuate some existing inequalities. The Commission heard from participants that the time, costs and capabilities associated with attracting philanthropy, such as applying for deductible gift recipient (DGR) status, accessing pro bono services and meeting donor reporting requirements, are often very challenging for small charities.

... many grassroots organisations are not of sufficient size, nor do they have the capacity, to seek out and access either government or philanthropic funding. (FRRR, sub. 149, p. 6)

... it's crucial to acknowledge that smaller and volunteer run charities often experience significant limitations and expenses in accessing donations. It would cost a lot to chase a dollar. This difficulty is compounded by a philanthropic market that tends to favour more visible charities ... leaving smaller entities at a greater disadvantage. (Community Information and Support Victoria, trans., p. 582)

It makes us as a small organisation really hard to get our foot in the door, particularly when [philanthropic donors have] already decided who they want to support. And often, they come through invitation only, which automatically excludes us as well. (Centre for Social Impact and Jumbunna Institute for Indigenous Education and Research 2023, p. 17)

Others noted that large donors can have high expectations on reporting and accountability, which can impose a disproportionate burden on small charities (Centre for Social Impact, sub. 191, p. 8; Mercy Works, sub. 60, p. 3; Raise Foundation, sub. 245, p. 3).

Participants highlighted that the barriers to accessing philanthropy, such as lack of donor awareness and resource constraints, can also be greater for smaller charities that:

- are newly established, as they may lack experience, knowledge or a proven track record
- are based in rural or remote areas, where there may be limited access to the internet and people who can provide advice tailored to their needs, and to philanthropic networks operating in remote areas (Mercy Works, sub. 60, p. 3; FRRR, sub. 149, p. 2).

Community foundations can help smaller charities to access philanthropy

Community foundations can play an important role in helping local grassroots initiatives access philanthropic funds – for example, charities in rural or remote areas (box 10.1). Community foundations are giving structures controlled by community members. They are community owned and managed, and make grants to support the needs of their local community over the long term (CFA and PA, sub. 273, p. 3). As Community Foundations Australia noted, community foundations enable a community to ‘draw resources together, identify it[s] own priorities, and advance those priorities’ (trans., p. 270).

The community foundation model has had success globally as a means of supporting local community-led initiatives. For example, in Canada, governments have supported the establishment and growth of community foundations by providing a sound and robust regulatory environment and a simple tax-deductibility system, among other policies (Community Foundations Australia, trans., p. 270). These policies have helped the Canadian-community foundation sector to flourish – it now has about \$8 billion in assets across 200 community foundations (Community Foundations Australia, trans., p. 270).

The Australian Government is currently implementing reforms to enable community foundations to more easily access DGR status, and community foundations will also benefit from the Commission’s proposed overhaul of the DGR system (chapter 6).

Box 10.1 – Community foundations contribute to social capital by building community-controlled philanthropic infrastructure

Community foundations can help provide a vital link between donors and the needs and aspirations of local communities.

By facilitating community-led decision making, community foundations can allow smaller, local initiatives to seek funding at lower cost, and reduce the risk that community-specific or niche initiatives are excluded due to lack of donor familiarity or understanding, as there is a depth of local understanding informing grant allocation. For example, the Inner North Community Fund encourages participation in decision-making processes through the use of community advisory panels to recommend grants to the board.

... since 2015 local people have volunteered their time to assess grants and go through a process, meaning that community resources that have come from the community are decided by community members. (Inner North Community Foundation, trans., p. 503)

In addition, community foundations can target specific local needs because of their ability to directly engage with communities on the ground. For example, Foundation SA told the Commission how it was able to lead a targeted initiative after severe flooding of the Murray River in 2022. After consultation with

Box 10.1 – Community foundations contribute to social capital by building community-controlled philanthropic infrastructure

stakeholders on the ground, including community groups and local councils, it found that the main gaps were around community mental health and wellbeing, as ‘they had this really stressful period watching the water rise over weeks and weeks, and they’d been isolated from school and work and all their social activities’ (Foundation SA, trans., p. 271). The foundation’s community-level focus and access allowed it to target a gap that was not being fully addressed by government or other organisations, delivering unique value to the community in a time of need. Another example is the Fremantle Foundation which helped provide access to philanthropic funding where there were gaps in response to the COVID-19 pandemic. Fremantle Foundation explained that it did this by setting up a fund which people could give to, the fund then distributed donations to local charities (trans., p. 414).

Through the mechanisms discussed above, community foundations offer a model to overcome the challenges smaller or lesser-known organisations face when attempting to accessing donations.

Work is currently underway within the Australian Government to develop capability for implementing place-based approaches for addressing entrenched disadvantage. This includes a focus on exploring innovative funding models and enabling better coordination of investment priorities (APSC 2024, pp. 122–123). There could be benefits to further considering the role of community foundations in the context of this work.

Direct costs can also create barriers to volunteering

In addition to barriers to accessing funding and understanding community needs, the Commission also heard that organisations can face direct costs that prevent them from accessing philanthropy. For example, the ability for volunteer organisations to provide appropriate insurance was raised as a barrier by inquiry participants (ACS, sub. 92, p. 4; Publica, sub. DR510, p. 4; Volunteering Victoria, sub. 110, p. 5).

Volunteer involving organisations have various legal obligations to ensure the safety of their volunteers and the members of the public those volunteers interact with (Justice Connect 2021, pp. 10–11). However, unlike workers’ compensation insurance for employees, it is not mandatory that organisations take out personal accident insurance for volunteers, meaning volunteers can be left without cover for accidental injury, disability or death that occurs while they are volunteering (Volunteering Victoria, sub. DR499, pp. 1–2). This can mean that volunteer involving organisations do not purchase insurance for their volunteers because they may be:

- unaware that it is necessary or assume their existing insurance covers volunteers sufficiently
- unable to afford the costs of volunteer insurance
- not legally required to provide this insurance (Volunteering Victoria, sub. DR499, p. 2).

Volunteers are rarely covered by an organisation’s insurance policies if they are injured while performing their role, unless the organisation has purchased specific insurance for this purpose. This is because volunteers are not employees and they are generally not covered by workers’ compensation insurance. Public liability insurance, which many organisations have, generally covers any injuries caused by a volunteer to others (for example, a member of the public) but not injuries incurred by volunteers themselves (Volunteering Victoria, sub. DR499, pp. 1–2).

Volunteer involving organisations are facing increasing costs for insuring volunteers and many small organisations find these costs prohibitive (Volunteering Victoria, sub. 110, p. 5). Consequently, small

organisations may forgo insurance, since the ‘very small not-for-profits just don’t have the money to go and purchase the volunteer insurance’ (Volunteering Victoria, trans., p. 529). Not providing insurance can generate significant liability risks for the organisation and volunteer directors, and offers inadequate protections for volunteers and the public in the event of an incident (Volunteering Victoria, sub. DR499, p. 2).

There are models in some jurisdictions where governments have provided support to overcome affordability issues for NFP organisations seeking volunteer insurance. In Victoria, NFP organisations that receive government funding can access insurance for volunteers through the Victorian Managed Investment Association. This includes peak body organisations (such as Neighbourhood Houses Victoria and Community Information Service Victoria) that have the primary membership, but the insurance can cover their members (Community Information and Support Victoria, trans., p. 586; Volunteering Victoria, trans., p. 529).

Access to volunteering insurance appears to be a barrier to volunteering for some organisations. But this is primarily an affordability issue, rather than due to a poorly functioning insurance market. In other words, insurance is available, but at a cost that many organisations, particularly small organisations, consider to be unaffordable.

There would, however, be merit in looking further into the affordability issues raised by inquiry participants. An ideal forum for doing so would be the review of Australia’s risk protection and social insurance arrangements, recommended by the Commission in 2023 (PC 2023a, p. 29). In undertaking such a review, the Australian Government could also examine charities’ access to insurance coverage for injuries caused or incurred by their volunteers.

Attitudes and structural barriers may also prevent some groups from accessing philanthropy

Charities compete with one another for donations, and some charities will have a comparative advantage over others in attracting funding. This may be due to donor preferences, a charity’s reputation and historical performance, brand recognition and marketing ability, size, income devoted to fundraising, or because donors are for some other reasons more aware of the plight of the people and communities’ whose interests the charities serve.

However, this also means there may be some population groups or causes that face barriers to attracting funding for the people and causes they represent. For some population groups, historical or structural barriers can affect donors’ awareness of particular causes. The Commission heard evidence from certain groups – including the LGBTIQ+ community, people with disability, Aboriginal and Torres Strait Islander people, culturally and linguistically diverse people, and women and girls – that they face additional barriers to accessing philanthropy, as the result of geographic, historical, social and other factors (The Achieve Foundation, sub. 232, p. 2; AIW, sub. 271, p. 4; GiveOut, trans., p. 181). These barriers may stem from individual preferences and attitudes towards giving, which themselves may be influenced by historical or social factors.

... [ableist] attitudes can also influence philanthropic giving, where people with disability are rarely represented in leading organisations or programs, leading to insufficient funding for disability and a focus on ‘charitable’ giving that reinforces stereotypes and perpetuates existing power imbalances. By addressing and recognising ableist attitudes, philanthropists can gain a better understanding of the needs of individuals with disabilities, and work towards creating a more inclusive and equitable society. (The Achieve Foundation, sub. 232, p. 2)

We need to ensure that increased giving is not just channelled in the same way into the same places it currently is; for example, which is extra medical research and the arts have historically been a major focus of philanthropy, compared to surging population groups such as LGBTIQ+

communities and others such as refugees and other issues such as climate change. Despite the high demand for services and a proven effectiveness of the LGBTI community sector, our sector is young and small, chronically under-funded and unable to meet demand. (GiveOut, trans., p. 181)

As noted above, the decision to give involves voluntary, highly personal choices and people make value judgements on which cause to give to. Determining the extent to which observed aggregate patterns of giving perpetuate existing inequalities and whether such inequalities can and should be addressed by policy changes also involves making value judgements. In some instances, there will be a role for government to overcome barriers to giving or receiving philanthropic funds, particularly if government judge that there are distortions or important equity issues at stake.

Some of the recommendations made in other chapters of this report may assist with addressing barriers facing certain population groups. For example, requiring ancillary funds to develop a 'distribution strategy' outlining how they will support eligible entities to further their charitable purposes (recommendation 8.1) could also prompt more philanthropic donors to consider the causes they give to and how this support is provided.

Further, to the extent that the Commission's proposed changes to the DGR framework broaden access to tax-deductible donations (recommendation 6.1), this should make it easier for advocacy and human rights organisations to obtain DGR status.

GiveOUT strongly supports the recommended changes to overhaul the DGR system to enable greater access, particularly for those currently excluded, such as organisations supporting specific population groups and those conducting advocacy work. With limited [access to DGR status] across LGBTI space, we cannot contribute actively in growing the donor dollar in this country and ultimately we cannot improve the life outcomes for over 10 per cent of our population. If the purpose of growing giving is about creating healthier communities, then this must be an important issue that needs addressing. (GiveOut, trans., p. 181)

A common theme from participants was that there is a role for the philanthropic sector to adopt more inclusive giving practices. For example, Australians Investing in Women said:

We've currently got legislation, the Federal Sex Discrimination Act that prevents discrimination on the basis of gender. We've got regulation around measuring the gender pay gap through the Workplace Gender Equality Act. We don't have any sort of authority or regulation that says in philanthropy, 'You should really look at gender equality as a core issue'. (trans., p. 450)

Australians Investing in Women also suggested that philanthropy should elevate applying a gender lens to giving as best practice, and that the corporate sector is generally better at doing this than other types of donors such as foundations (trans., p. 453).

Philanthropic practices are preventing Aboriginal and Torres Strait Islander people and communities from accessing philanthropy

The Commission heard that some Aboriginal and Torres Strait Islander organisations are interested in attracting more philanthropy, but that the approaches of some philanthropic donors may create barriers for Aboriginal and Torres Strait Islander communities to access philanthropic funding (box 10.2).

Box 10.2 – What the Commission heard about obstacles to Aboriginal and Torres Strait Islander organisations accessing philanthropy

Over the course of the inquiry, Aboriginal and Torres Strait Islander people and organisations told the Commission that many donors interact with them, or impose requirements, in ways that reduce or prevent their access to philanthropic funds. Examples included:

- limited access to philanthropic social networks, which make it difficult to build and sustain relationships with philanthropic donors
- limited resources and lack of awareness of funding opportunities available compared to other charities
- cultural load imposed on Aboriginal and Torres Strait Islander people by donors including donor expectations that Aboriginal and Torres Strait Islander people undertake advocacy for Aboriginal and Torres Strait Islander people regarding cultural safety or how services should be delivered in communities
- charities using exclusionary grant application processes, for example language and terminology that is inaccessible, lengthy application processes and a lack of meaningful feedback on unsuccessful applications
- some donors adopting a non-participatory approach to grant-making, whereby Aboriginal and Torres Strait Islander communities are not engaged from the beginning to design project approaches and ensure alignment with their aspirations, priorities and needs
- narrowly defined measures of success that limit the ability of Aboriginal and Torres Strait Islander people and communities to tell their story in their own way and languages
- difficulties competing for funding against large organisations that are not Aboriginal and Torres Strait Islander organisations but are often better-resourced or known, and deliver programs in the same communities.

Government systems and processes, such as the complexity of setting up a charity and obtaining DGR status, can also impede Aboriginal and Torres Strait Islander people and organisations from accessing philanthropy (chapter 5).

Sources: Centre for Social Impact and Jumbunna Institute for Indigenous Education and Research (2023, pp. 12–18); Cultural and Indigenous Research Centre Australia (2016, p. 56); Community First Development (sub. DR747, p. 12); Paul Ramsay Foundation (sub. 234, pp. 7–8); Roundtable participants, pers. comm., 6 March 2024.

Inquiry participants suggested that Aboriginal and Torres Strait Islander organisations were underrepresented in terms of the amount of philanthropic funding they receive (Roundtable participants, pers. comm., 6 March 2024). In addition:

- a 2018 report commissioned by the Australian Charities and Not-for-profits Commission (ACNC) showed that 4.7% of giving vehicles (such as ancillary funds and charitable trusts) provided assistance to Aboriginal and Torres Strait Islander people (Cortis et al. 2018, p. 75)
- a 2017 study found that NFP organisations outside of metropolitan areas and those serving Aboriginal and Torres Strait Islander communities were among the organisations least likely to receive donations (Cortis 2017, p. 816).

Additional challenges to accessing philanthropy can arise when Aboriginal and Torres Strait Islander organisations are small, operate in remote or regional areas, or provide services or support causes that donors or the public are less familiar with.

We continue to see instances of impersonal funding practices, onerous reporting requirements and frustrating application forms. This can be off-putting for some organisations, especially those that are small, with only a few staff, and can even lead to the abandonment of the process. (Woor-Dungin 2024a)

Research by the Centre for Social Impact and Jumbunna Institute for Indigenous Education and Research also found that philanthropy is not an environment in which all Aboriginal and Torres Strait Islander people feel welcome.

The philanthropic space is a very elitist and exclusive ‘club’ that makes it difficult for people without the right connections or right backgrounds to enter. (2023, p. 16)

There can sometimes be power imbalances between funders, NFP organisations and the communities they serve (chapter 2). The Commission heard that this is particularly true of the balance of power between certain donors and certain Aboriginal and Torres Strait Islander people and organisations receiving funding.

A power imbalance exists between large donors or philanthropic organisations and organisations seeking funding. Many employees of the former do not appear to be aware of the negative impact this unequal engagement has on First Nations’ organisations. (Community First Development, sub. DR747, p. 12)

Some Aboriginal and Torres Strait Islander organisations said that they have chosen not to receive funding because the potential donors imposed their own agenda or unwieldy reporting requirements. For example, the Centre for Social Impact and Jumbunna Institute for Indigenous Education and Research found that about 6 in 10 philanthropic funding recipients who represent or support culturally diverse people, community and organisations do not apply for certain funding because the values of their organisation are incompatible with the values of the funding body (2023, p. 34).

Aboriginal and Torres Strait Islander participants also expressed concern that even when funding flows to *causes* affecting Aboriginal and Torres Strait Islander people and communities, it is often not directed to Aboriginal and Torres Strait Islander led or controlled *organisations* (Roundtable participants, pers. comm., 6 March 2024). This is despite evidence that Aboriginal and Torres Strait Islander community-controlled organisations (ACCOs) often provide better outcomes for their communities as they are able to provide culturally safe services and have strong connections to communities. The Commission’s Review of the National Agreement on Closing the Gap noted that ACCOs:

... are well-placed to design and deliver culturally safe and effective services. This is in part because ACCOs employ more Aboriginal and Torres Strait Islander people, have greater cultural expertise, skills and knowledges, and have stronger ties to the community ... The Commission heard many examples where outcomes for communities were improved when services were designed and delivered by ACCOs. (2024, p. 49)

The Paul Ramsay Foundation commented on the low levels of philanthropic funding flowing to Aboriginal and Torres Strait Islander organisations, proposing that as part of the efforts to double philanthropy by 2030, there should be:

... clear targets to grow self-determined funding to First Nations-led organisations and the number of First Nations-led philanthropic funds ... (sub. 234, p. 1)

Giving overall is expected to increase in coming years, including through giving vehicles such as ancillary funds, and some of this may flow to Aboriginal and Torres Strait Islander communities (chapter 3). However, Aboriginal and Torres Strait Islander communities may not benefit from this increase in giving if philanthropic donors – even when they seek to support Aboriginal and Torres Strait Islander people – continue to use funding approaches that create barriers for Aboriginal and Torres Strait Islander organisations and communities in accessing philanthropic funding.

Aboriginal and Torres Strait Islander people and organisations are working to make philanthropy more accessible ...

In response to the challenges facing Aboriginal and Torres Strait Islander organisations accessing philanthropy, intermediaries have been established to support culturally appropriate access to philanthropy. Many of these have been initiated and are being led by Aboriginal and Torres Strait Islander people (box 10.3). These intermediaries develop trusting relationships with local communities, helping them to access philanthropic funding in a manner that is safe for the community. Such initiatives demonstrate the important role of self-determined philanthropic organisations in supporting the aspirations and priorities of Aboriginal and Torres Strait Islander people and communities.

Aboriginal and Torres Strait Islander giving vehicles and philanthropic organisations vary in terms of their purpose, governance, and how and where they operate, which reflects the diversity of communities they are working with. Some models support communities in specific geographical areas (for example Koondie Woonga-gat Toor-rong (KWT) and First Peoples' Assembly of Victoria Self-Determination Fund), others focus on sectors, and others aim to support work with philanthropic donors to better partner with ACCOs. For example, some initiatives such as Karrkad Kanjdji Trust (KKT) have a focus on supporting Indigenous communities to manage their natural and cultural heritage, while others, such as Agency Projects, have a stewardship and due diligence role connecting local artists and art centres with funding and creative opportunities. Woor-Dungin which works with Aboriginal and Torres Strait Islander organisations in Victoria to access philanthropic resources for projects in their communities.

Box 10.3 – Self-determined Aboriginal and Torres Strait Islander philanthropic organisations

There are a number of examples of Aboriginal and Torres Strait Islander people delivering philanthropic funding and support to Aboriginal and Torres Strait Islander people and communities. While not an exhaustive list, the examples below provide evidence of the breadth of approaches and models being adopted.

Community First Development is a First Nations'-led community development and research organisation. It undertakes social and economic development and research projects in partnership with First Nations communities at grassroots-level and has operated for over 20 years. Once invited by a community to work with them, Senior Community Development Officers from Community First Development engage with communities to identify their goals in a manner that maintains community control and ownership. They identify practical ways they can provide communities with specialised support aligned to the community's goals, for example connecting them to skilled volunteers, helping them to apply for DGR status, support with funding including grant and tender-writing processes, and other capacity strengthening projects such as branding, websites and governance activities.

Box 10.3 – Self-determined Aboriginal and Torres Strait Islander philanthropic organisations

First Nations Futures was launched in 2020 to help First Nations community-driven initiatives that centre the voices, aspirations and lived experiences of First Nations people that are experiencing difficulty accessing resources. Funds co-invested through First Nations Futures' platform go directly (and unrestricted) to First Nations Futures' partners to help them access funding and to overcome economic barriers, including short-term funding schemes, strict eligibility criteria and lengthy reporting that is misaligned with measures of effectiveness. Its strategy is to support long-term and unrestricted funding for First Nations initiatives, strengthen relationships and network building, influence philanthropy through advocacy and inclusion of First Nations voices, knowledges and processes, and deliver community-led evaluation that centres First Nations experiences and data sovereignty.

KWT is a First Nations-led philanthropic fund that means 'to give jointly, to share together' in Woiwurrung language. The fund was not originally Indigenous-controlled, with members of the former 'Towards a Just Society' sub-fund within the Australian Communities Foundation transferring power over the sub-fund to Aboriginal and Torres Strait Islander people. Each year it conducts two Community Grants rounds of up to \$10,000 and one NAIDOC Grant round of up to \$5,000. Grants are made to Aboriginal and Torres Strait Islander people in Victoria for community-driven projects that empower and address wellness, with grant decisions informed by discussions with applicants.

The **First Peoples' Assembly of Victoria Self-Determination Fund** is a charitable trust established by the First Peoples' Assembly of Victoria, the independent and democratically-elected voice for Victorian Traditional Owners and First Peoples living in Victoria. It was created to support future Treaty negotiations under Victorian law. It supports First Peoples' economic self-determination through two main purposes: 'support First Peoples to have equal standing with the State in treaty negotiations', and 'provide a financial resource independent from the State, that empowers First Peoples to build capacity, wealth and prosperity'.

Sources: *Advancing the Treaty Process with Aboriginal Victorians Act 2018 (Vic)*, s. 36(1); Community First Development (sub. DR747, pp. 2, 5, 8); First Nations Futures (2024); KWT (2023); First Peoples' Assembly of Victoria Self-Determination Fund (sub. DR745, pp. 2–3).

... and some partnerships have proven successful in meeting community aspirations

There are examples where philanthropic organisations have partnered with Aboriginal and Torres Strait Islander communities to deliver better outcomes (relative to conventional government funding approaches), by increasing community involvement in decision making. Partnership projects that have the potential to benefit Aboriginal and Torres Strait Islander communities tend to be collaborative, allowing local communities to have control of project ideas and development and implementation, and in doing so meet community needs (Cultural and Indigenous Research Centre Australia 2016, pp. 57–58).

There are examples from Australia and overseas – and in other policy contexts – where Indigenous communities have engaged with philanthropy to develop their own approach to address the challenges in their communities (box 10.4). In Australia, the Maranguka initiative (chapter 2) demonstrates the benefits of building empowering networks and creating trusting relationships with philanthropy. This is a form of social capital, with philanthropic funding supporting self-determination of Aboriginal and Torres Strait Islander communities. When

philanthropic funders work with Aboriginal and Torres Strait Islander communities in a manner that respects community autonomy, this can create long-term trusting relationships that lead to better outcomes.

One example from overseas is the Indigenous Peoples Resilience Fund – an Indigenous fund in Canada that uses local data and community knowledge alongside philanthropic capital to provide flexible, adaptive and crucial support where it is most needed within Indigenous organisations or communities. The Indigenous Peoples Resilience Fund pools funding to bring benefits to the organisations and funders involved. On the funder's side, it provided opportunities for developing new partnerships to collaborate on complex and large-scale issues that funders were unable to tackle independently. Flexibility around funding priorities (such as eligibility to access funding and reporting requirements) enabled a greater number of grass-root organisations to benefit from philanthropy, acting as an important mechanism to identify and address gaps in community infrastructure (Sidorovska 2020).

Box 10.4 – Partnerships with philanthropy

The Paul Ramsay Foundation's partnership with KWT is an example of philanthropy building trusted relationships with Aboriginal and Torres Strait Islander organisations. KWT receives operational support from the Paul Ramsay Foundation and funding that KWT redistributes to Aboriginal and Torres Strait Islander people and communities in Victoria. The Paul Ramsay Foundation also works to build KWT's capacity to develop their approach in a manner that is aligned with the principles of self-determination (Paul Ramsay Foundation 2024).

Another example is Woor-Dungin which is an NFP organisation that works with Aboriginal and Torres Strait Islander organisations in Victoria to access philanthropic resources (Woor-Dungin 2024b). Established and supported by partnerships with philanthropy, part of the strategic direction of Woor-Dungin is to empower community to access resources and achieve their goals, decolonise philanthropy and build relationships between Aboriginal and Torres Strait Islander communities and philanthropic organisations (Woor-Dungin 2022).

Philanthropy has a role to play in evolving its practices

While there are examples of Aboriginal and Torres Strait Islander organisations and philanthropy working to connect philanthropy with Aboriginal and Torres Strait Islander communities, this may not accurately reflect practices across the wider philanthropic sector. Philanthropy can be 'practiced' in different ways, and the choices philanthropic donors make about partnership approaches have the effect of shaping relationships with Aboriginal and Torres Strait Islander organisations.

Changing the approaches of philanthropic donors, and enhancing access to philanthropy for Aboriginal and Torres Strait Islander organisations seeking such resources, involves significant and ongoing effort within the philanthropic sector. Structural shifts in the practices of some philanthropic donors working with Aboriginal and Torres Strait Islander people may be necessary.

The philanthropic sector is not alone in needing to make changes to the way it works with Aboriginal and Torres Strait Islander people. Under the National Agreement on Closing the Gap, governments have committed to fundamentally rethinking their systems and cultures, to sharing decision-making and to recognising the value of the expertise and knowledges that ACCOs bring to developing service models and solutions that are culturally safe and suited to communities. Following these principles would enable the

philanthropic sector to keep pace with government funders, and to provide better access to philanthropy for Aboriginal and Torres Strait Islander communities.

The shift in the way some philanthropic donors work with Aboriginal and Torres Strait Islander people relies on them being willing to give up some control and to shift power to Aboriginal and Torres Strait Islander people.

I agree that there's a pressing need for better alignment within the philanthropic ecosystem to facilitate more equitable and effective giving, with a commitment to centering Indigenous self-determination, governance, and worldviews. This includes empowering Indigenous communities to develop their own solutions and directing resources accordingly, necessitating a shift in power and decision-making to Indigenous peoples from governments and funders. (Leah Armstrong, brief comment 1590)

This shift in power includes philanthropic donors giving up control over funding decisions and programs and moving away from inflexible agreements and prescriptive reporting requirements. Woor-Dungin outlined the benefits of such changes.

... where philanthropic foundations and trusts take a longer view, show greater willingness to be flexible about funding criteria and timelines, and work hard to establish the trust needed to build enduring, respectful relationships with Aboriginal community-controlled organisations, then the results for all parties are more effective and more satisfying. Most importantly, the outcomes are better for the Aboriginal communities the grants are allocated to assist. (2024a)

Community First Development echoed the importance of philanthropic organisations changing how they engage with Aboriginal and Torres Strait Islander organisations.

Philanthropic organisations should not fund in silos but provide flexible opportunities to address the diverse, self-determined needs and aspirations of First Nations' peoples. Reporting processes, including impact measurement, need to be flexible and provide opportunities for First Nations' organisations to define what they see as 'success' and/or align these processes with their internal reporting processes and approaches. Alternatives to written reports, such as videos, audio and/or face to face engagement, should be considered. (sub. DR747, p. 15)

The Fellowship for Indigenous Leadership, Philanthropy Australia, Woor-Dungin and Pro Bono Australia have been working to develop culturally safe and aware practices within the philanthropic sector, and provide guidance to philanthropic donors working with Aboriginal and Torres Strait Islander communities (box 10.5).

Box 10.5 – How philanthropy can work with Aboriginal and Torres Strait Islander communities

In 2016, the Fellowship for Indigenous Leadership, Philanthropy Australia, Woor-Dungin and Pro Bono Australia held events, such as presentations and webinars, that focused on barriers to building supportive partnerships with Aboriginal and Torres Strait Islander communities. An overarching theme from discussions about these events was:

Though philanthropic trusts and foundations are geared to want to 'do' rather than 'be', before anything can be 'done' in this space, a 'being' approach is paramount. A 'being' approach requires deep thoughtfulness, reflection, and awareness – a receptive rather than an action-oriented initial approach. Openness, transparency and receptivity begets trust, or at

Box 10.5 – How philanthropy can work with Aboriginal and Torres Strait Islander communities

least, helps sow the seeds towards it. With trust comes rapport; with rapport, strong relationships can be grown. (Fellowship for Indigenous Leadership et al. 2018, p. 27)

There were other key messages to come from discussions related to good first steps for philanthropic donors to take when working with Aboriginal and Torres Strait Islander communities.

- **Be aware, open, and consider perspective.** Good practice in philanthropy is where philanthropic donors are committed to learning about other cultures, and recognise how their upbringing could lead them to have specific views about the world.
- **Reach out.** Philanthropic donors should learn about the Aboriginal and Torres Strait Islander groups in their localities.
- **Listen deeply.** Philanthropic donors should listen deeply and try to understand the perspective of Aboriginal and Torres Strait Islander communities. Deeper listening helps to build trust.
- **Invest time.** One of the first things a philanthropic donor should do is to take time and build trust. Building trust and making change takes time and is a long-term commitment.
- **Hold vision and be flexible.** Philanthropic donors should remember how their actions affect the community and remember the broader picture.

Source: Fellowship for Indigenous Leadership et al. (2018, pp. 30–31).

The Commission’s approach to determining when and how government should be involved

Just as private and government funding and service provision can fail to meet community expectations or efficiency and equity goals, philanthropy can also fail to meet community goals and expectations (chapter 2). The case for government providing additional assistance to specific groups to access philanthropy, or to encourage more giving, depends on whether such measures would result in more efficient or equitable outcomes by correcting philanthropic failure. In this context, more efficient or equitable outcomes could involve increasing the total amount of giving or improving the ‘quality’ of outcomes, by redirecting existing giving from some entities to others.

Addressing barriers to access to philanthropic funding (such as those faced by Aboriginal and Torres Strait Islander organisations) will often entail government working with other organisations, including in the charitable sector, philanthropic and sectoral organisations to develop solutions. In some cases, the philanthropic and charitable sectors themselves, rather than government, can and should play a leading role in reducing such barriers. Indeed, many, if not all, government interventions in this area could be replicated by the sector itself, and such interventions would indirectly receive taxpayer support by virtue of the design of existing tax concessions. As such, the Commission assessed whether the benefits of government intervention outweigh the costs and the appropriate mix of government support versus involvement from others such as professional advisers, charities and the philanthropic sector more broadly.

Once the case for government involvement has been established, it is necessary to identify policy options and what is most likely to be effective at resolving the specific issue.

Government has a range of options to help charities to overcome barriers to access to philanthropic funding, such as:

- providing funding (including matched funding options) or resources to increase an organisation's capacity to fundraise from private sources
- funding or coordinating capacity strengthening activities (such as training or events) to help charities identify and access philanthropic networks
- establishing procurement rules that require Australian Government entities to consider providers' current and future pro bono activities. The Attorney-General's Department (2022, p. 14) noted this type of arrangement is already in place when Australian Government agencies determine which legal service provider to engage for particular purposes
- requiring ancillary funds to distribute a certain proportion of funds to specific types of charities, such as Aboriginal and Torres Strait Islander organisations
- providing funding or support to existing or new intermediaries, such as giving vehicles, that may act as a bridge between philanthropy and charities
- establishing entities to encourage donations to particular cause areas or for specific population groups (box 10.6).

Box 10.6 – Government support to overcome barriers to accessing philanthropy

The Australian Government, often with the support of philanthropy, has developed entities that help to overcome barriers to specific types of organisations accessing philanthropy. These barriers have typically arisen due to taxation rules, but their lessons may apply more broadly.

Within the arts sector, Creative Australia (formerly known as Creative Partnerships Australia and ArtSupport) was set up by the Australian Government to build the capacity of arts organisations to engage with philanthropy following a recommendation in the Mitchell Review (a review of private sector support for arts in Australia) (2011, p. 29). Creative Australia builds the capacity of arts organisations to engage with philanthropy by creating a partnership between government, philanthropy and commercial investment (Creative Australia, sub. DR696, p. 1).

The Government's approach to encouraging private sector support in the arts is two-fold. Firstly, it equips artists and arts organisations with the skills required to fundraise and build partnerships with supporters and investors. Secondly, the Government facilitates and incentivises giving and private investment through matched funding programs and taxation incentives. (Office for the Arts, sub. 251, p. 2)

The Australian Government, together with philanthropic funding, has also established the Australian Cultural Fund to better enable artists to access donations.

Other examples of the Australian Government supporting the establishment of bodies that assist with connecting certain organisations and communities to philanthropy include:

- the **Foundation for Rural and Regional Renewal (FRRR)** is a national foundation specifically focused on ensuring the social and economic wellbeing of remote, rural and regional communities. Established in 2000 with the Australian Government and The Sidney Myer Fund as members, the FRRR connects common purposes and funding from government, business and philanthropy with the local needs of rural people and places. The FRRR provides funding and capacity building support to

Box 10.6 – Government support to overcome barriers to accessing philanthropy

align funding to community-led solutions that build resilience of smaller remote, rural, and regional communities across Australia (FRRR, sub. 149, p. 1)

- **Schools Plus** which assists schools to engage with philanthropy. It was established following a recommendation from the Review of Funding for Schooling (Gonski et al. 2011, p. xxviii).

Government has a role in supporting Aboriginal and Torres Strait Islander organisations and communities to access philanthropy

Philanthropy can (and should) support the goals and ambitions of Aboriginal and Torres Strait Islander communities. However, as discussed above, the Commission also heard that the approaches of some philanthropic funders may create barriers for Aboriginal and Torres Strait Islander communities to access philanthropy.

There is a role for government to improve the distribution of philanthropic funding by helping Aboriginal and Torres Strait Islander organisations and communities to access philanthropy. A multi-faceted approach is required to overcome the barriers Aboriginal and Torres Strait Islander people and organisations experience when accessing philanthropy. Government can, and should play a role in supporting and growing existing and new Aboriginal and Torres Strait Islander philanthropic initiatives.

In signing the National Agreement on Closing the Gap, the Australian, state and territory governments have recognised the importance of self-determination. This:

... stems from the belief that when Aboriginal and Torres Strait Islander people have a genuine say in the design and delivery of services that affect them, better life outcomes are achieved.

(Joint Council on Closing the Gap 2020, p. 2)

Priority Reform 2 of the Agreement commits governments to strengthening the community-controlled sector to deliver high-quality, holistic and culturally safe services to Aboriginal and Torres Strait Islander people. While the reforms proposed in this inquiry align with the Government's commitments under the Agreement, any action that governments take to improve access to philanthropy for Aboriginal and Torres Strait Islander people does not absolve them of their responsibilities and commitments to enhance outcomes for Aboriginal and Torres Strait Islander people through other programs and initiatives.

Feedback has shaped the final recommendation

In its draft report, the Commission made a draft recommendation that the Australian Government should provide funding to support the establishment of a foundation controlled by – and for the benefit of – Aboriginal and Torres Strait Islander people to address the barriers that Aboriginal and Torres Strait organisations face in accessing philanthropy. The proposed purpose of the foundation was to strengthen the capacity of Aboriginal and Torres Strait Islander communities to build partnerships with philanthropic and volunteering networks, and support new and existing Aboriginal and Torres Strait Islander giving vehicles. The Commission proposed that the foundation would be able to administer grants programs to fulfill these functions.

The draft recommendation also stated that:

- the design of the foundation should be led by Aboriginal and Torres Strait Islander people

- the Australian Government should provide funding toward an initial endowment, with additional contributions to the endowment provided by philanthropic funders. The endowment should be of sufficient size to ensure that the foundation is financially sustainable and independent
- appropriate governance arrangements will be necessary to ensure that the foundation's functions do not duplicate the roles and responsibilities of other bodies, including government agencies, and to set out reporting arrangements on the outcomes of its activities. This should include an evaluation of the foundation's impact after five years of operation.

The Commission developed the draft recommendation as a result of engagement with Aboriginal and Torres Strait Islander organisations as well as philanthropic organisations which support Aboriginal and Torres Strait Islander people (appendix A). A concern raised by some inquiry participants was the extent to which there had been sufficient engagement with Aboriginal and Torres Strait Islander people to develop the draft recommendation (Creative Australia, sub. DR696, p. 10; The Balnaves Foundation, sub. DR620, p. 3). The Commission acknowledges that its engagement will not reflect the full diversity of views and voices of Aboriginal and Torres Strait Islander people and organisations across Australia. The Commission continued to actively encourage public participation in this inquiry and engage with Aboriginal and Torres Strait Islander people and organisations following the release of its draft report. Extensive input has informed the final recommendation, and it has been reshaped between the draft and final reports based on the feedback provided from Aboriginal and Torres Strait Islander inquiry participants.

Aboriginal and Torres Strait Islander organisations that engaged with the inquiry were supportive of the intent behind the draft recommendation to address barriers to Aboriginal and Torres Strait Islander organisations accessing philanthropy (Roundtable participants, pers. comm., 6 March 2024; First Peoples' Assembly of Victoria Self-Determination Fund, DR745, p. 4).

Many philanthropic organisations do not provide opportunities to amplify Indigenous voices in meaningful ways. This makes it difficult for Indigenous people to get ahead in the charitable sector and to present ideas in a safe environment. A new organisation along the lines of what the PC is proposing could play that role. (Jumbunna Institute, pers. comm., 19 March 2024)

Other inquiry participants were also supportive of the intent behind the draft recommendation (AEGN, sub. DR728, p. 9; Australian Catholic Bishops Conference, sub. DR706, p. 32; Equity Trustees, sub. DR461, pp. 2–3; Paul Ramsay Foundation, sub. DR590, p. 4; Philanthropy Australia, sub. DR595, p. i). But inquiry participants also had concerns (see below), which the Commission has sought to address in the final report.

At a roundtable of Aboriginal and Torres Strait Islander organisations, participants discussed an alternative option to establishing the 'foundation' proposed in the draft report (Roundtable participants, pers. comm., 6 March 2024). The alternative proposal was to create an entity (or multiple entities) with a specific focus on capacity strengthening for Aboriginal and Torres Strait Islander organisations seeking to partner with philanthropic organisations and providing support for new and emerging Aboriginal and Torres Strait Islander giving vehicles. This proposal would address the potential risks of establishing a new philanthropic 'foundation'. One of these risks is that such a foundation could overshadow or 'crowd out' existing Aboriginal and Torres Strait Islander philanthropic models and initiatives. It could also lead to philanthropic organisations more broadly perceiving that such a new foundation would take on the role of supporting Aboriginal and Torres Strait Islander initiatives, and that other philanthropic organisations could therefore direct their own funding elsewhere.

To reduce these risks of crowding out, the Commission considers that any new entity should support and amplify existing and emerging Aboriginal and Torres Strait Islander philanthropic models and initiatives. In addition to a focus on capacity strengthening for Aboriginal and Torres Strait Islander organisations seeking to access new sources of philanthropy, such an entity should also have a role in influencing approaches

within the wider philanthropic sector, bolstering the existing efforts described in box 10.3, 10.4 and 10.5. In doing so, it could provide a new source of accountability for the philanthropic sector, that can help shape better philanthropic practices, such as those discussed earlier in this chapter (Roundtable participants, pers. comm., 6 March 2024).

With this feedback in mind, the Commission recommends that the Australian Government establish an independent organisation, provisionally called Indigenous Philanthropy Connections, controlled by – and for the benefit of – Aboriginal and Torres Strait Islander people and communities (recommendation 10.1). The goals of Indigenous Philanthropy Connections should be to strengthen the capacity of:

- non-Indigenous philanthropic organisations to be more culturally safe and effective in their work with Aboriginal and Torres Strait Islander organisations
- Aboriginal and Torres Strait Islander organisations to build relationships and partnerships with philanthropic and volunteering networks
- Aboriginal and Torres Strait Islander communities by supporting the establishment and growth of new and existing Aboriginal and Torres Strait Islander philanthropic organisations.

These goals incorporate the views and perspectives shared with the Commission as part of our engagement:

The role of a First Nations entity should be twofold: to foster sustainable First Nations giving vehicles and foundations while bolstering the capacity of philanthropic organizations to engage effectively. Success for such an entity would be reflected in the proliferation of sustainable First Nations giving vehicles and foundations nationwide and more equitable giving to Aboriginal and Torres Strait Islander led-controlled organisations. (Leah Armstrong, brief comment 1590)

The detailed design of the organisation provisionally called Indigenous Philanthropy Connections should be led by Aboriginal and Torres Strait Islander people, and its ongoing operations should be reflective of the priorities of Aboriginal and Torres Strait Islander communities. Design considerations could include choosing a new name that better reflects its status as an Aboriginal and Torres Strait Islander led organisation. For example, the chosen name could be meaningful in an Aboriginal or Torres Strait Islander language.

Although the Commission has sought to engage extensively in order to develop this recommendation, it also recognises the importance of further engagement, as conveyed to us by inquiry participants.

We also note that our feedback on this reflects that of only one First Nations' organisation and we strongly urge the Commission to consult widely with First Nations' people, communities, and organisations on this proposal to see if this is what they need or want. (Community First Development, sub. DR747, p. 14)

We support a model that is truly representative of First Peoples' aspirations and needs, self-determined by First Peoples through a process that is representative of, and controlled by, First Peoples. This takes time and investment in ensuring that the establishment of any fund is First Peoples determined, designed and controlled. (First Peoples' Assembly of Victoria Self-Determination Fund, sub. DR745, p. 6)

Further consultation is required with First Nations peoples to determine the most appropriate approach, including with existing and emerging First Nations-led sub-funds and foundations. (Paul Ramsay Foundation, sub. DR590, p. 5)

The Commission's advice on aspects of Indigenous Philanthropy Connections' governance and funding approach is provided below. This advice is designed to help inform decisions, but is not meant to be prescriptive, as decisions about these matters should be determined by Aboriginal and Torres Strait Islander people.

Self-determination is a central principle to Indigenous Philanthropy Connections

Inquiry participants commented that a national organisation may struggle to support self-determination, and that self-determination is more likely to be achieved when local solutions are adopted that are aligned with the outcomes communities are seeking (Roundtable participants, pers. comm., 6 March 2024). Other inquiry participants were concerned that a national organisation might not reflect the diverse views and needs of Aboriginal and Torres Strait Islander communities.

Governance and representation at a national level can be difficult when decision-making structures and issues facing communities vary so widely across the country. Efforts will be needed to establish regional representation that is accepted locally and able to work nationally but be responsive to local needs. (AEGN, sub. DR728, p. 9)

The risks of the current proposed approach are that a ‘one size fits all’ approach does not adequately represent the diversity or address the distinct needs of First Nations communities. (Paul Ramsay Foundation, sub. DR590, p. 5)

Self-determination is a necessary component of Aboriginal and Torres Strait Islander policy and should be one of the guiding principles of Indigenous Philanthropy Connections. The Commission agrees with the First Peoples’ Assembly of Victoria Self-Determination Fund that a ‘set of principles with self-determination and empowerment as the central principles [be] developed in consultation with First Peoples’ organisations and bodies to guide the development’ of Indigenous Philanthropy Connections (sub. DR745, p. 1).

The Commission recognises the importance of self-determination and is recommending that Indigenous Philanthropy Connections have governance arrangements that support self-determination, including a board with a majority of Aboriginal and Torres Strait Islander people as members. Inquiry participants suggested factors to consider in determining governance arrangements.

- One inquiry participant suggested that Indigenous Philanthropy Connections could have two Aboriginal and Torres Strait Islander Chairpersons who would be responsible for determining the composition and structure of the board (Jumbunna Institute, pers. comm., 19 March 2024).
- Another suggestion was that board members be geographically dispersed, as this would help diversify the voices on the board and allow different Aboriginal and Torres Strait Islander communities to be represented (Jumbunna Institute, pers. comm., 19 March 2024).

All people involved in these functions, including in an advisory capacity, should be appropriately remunerated.

Indigenous Philanthropy Connections’ funding should reflect its independence

Indigenous Philanthropy Connections should be independent from government, and from the philanthropic sector. This has implications for its funding arrangements. The initial endowment for its establishment would come from the Australian Government. The Commission is proposing that the initial endowment should be of sufficient size to ensure that Indigenous Philanthropy Connections is financially sustainable and fully independent from government. The endowments given to similar organisations provide some guidance on the size of this initial endowment. For example, in establishing the First Peoples’ Assembly of Victoria Self-Determination Fund, the Victorian Government agreed to provide funding of not less than \$65 million over three years (First Peoples’ Assembly of Victoria and The State of Victoria 2022, p. 8).

An important factor in determining the size of the initial endowment is to ensure that Indigenous Philanthropy Connections also does not require philanthropic funding to fulfil its goals. It is necessary for Indigenous Philanthropy Connections to have independence from philanthropic organisations given it would have a role

within the philanthropic sector of shaping better philanthropic practices (see below) and providing a new source of accountability for the philanthropic sector.

However, there is a risk that Indigenous Philanthropy Connections would not be able to fulfil its goals without independence from government. This risk needs to be balanced against the benefits that could flow from additional funding provided in a manner that respects its independence, as such funding could enable it to expand its impact further. Therefore, the decision about whether or not to accept philanthropic funding to add to its initial endowment is one that should be made on a case-by-case basis by the Indigenous Philanthropy Connections board.

Another decision the board will be responsible for is whether Indigenous Philanthropy Connections should exist in perpetuity. Feedback on the draft report included questions about whether the Commission's proposed organisation would operate in perpetuity or until it has developed a sustaining market of Aboriginal and Torres Strait Islander philanthropic organisations. It would be up to the board to invest to achieve perpetuity, spend the endowment down or use the endowment to set up smaller place-based organisations each with a similar purpose to Indigenous Philanthropy Connections.

Shift and evolve practices within the wider philanthropic sector

As noted above, there is scope for the wider philanthropic sector to shift and evolve its practices to improve access to giving for Aboriginal and Torres Strait Islander people. To this end, the Commission is recommending that one of the goals of Indigenous Philanthropy Connections would be to strengthen the capacity of non-Indigenous philanthropic organisations so that they are more culturally safe for Aboriginal and Torres Strait Islander people and organisations. This means supporting philanthropic funders to acknowledge that Aboriginal and Torres Strait Islander people know what is best for their communities, and act on that knowledge. Inquiry participants were supportive of this goal and had suggestions for how it could be achieved.

There are a range of options available for supporting change to philanthropic culture, and the Commission is not prescriptive in the best approach – this should be determined by the board. Below are some examples.

- Information provision, for example guidance material for philanthropic donors, building on previous efforts such as those discussed in box 10.5 and of other organisations focused on change within the philanthropic sector such as Australians Investing in Women.
- Providing awards or quality symbols to help identify, recognise and promote culturally safe philanthropic organisations.
- Annual progress reports on the state of the philanthropic sector, its progress towards changing its practices and actions to improve cultural safety.
- Self-regulatory approaches, such as development and promotion of codes of conduct and/or philanthropic practice principles. This could include philanthropic organisations that abide by a code or principles reporting the proportion of funding that goes to Aboriginal and Torres Strait Islander organisations.

As part of these efforts, the board of Indigenous Philanthropy Connections would be able to work in partnership with existing organisations seeking to advance the shared goal of improving culturally safe practice in philanthropy. More than one mechanism may be needed and approaches could also change over time to reflect developments in the philanthropic sector and in the role of Indigenous Philanthropy Connections.

Build relationships and partnerships with philanthropic and volunteering networks

One of the goals of Indigenous Philanthropy Connections would be to support Aboriginal and Torres Strait Islander organisations and communities to build networks with philanthropy and to facilitate access to new forms of philanthropic funding that can be used for different purposes compared to government funding

(chapter 2). Accessing these networks gives Aboriginal and Torres Strait Islander communities the ability to direct how and where resources are allocated – it would enable Aboriginal and Torres Strait Islander communities to achieve outcomes in line with their priorities and aspirations.

This work could take many forms, including providing training and mentoring for fundraising professionals within Aboriginal and Torres Strait Islander organisations, and support with funding applications. Indigenous Philanthropy Connections may also adopt a more proactive ‘brokering’ to facilitate new relationships, including place-based initiatives that involve a range of organisations and partners. It could also play a role in identifying and promoting philanthropic funding sources that could be supplied to Aboriginal and Torres Strait Islander recipients that do not undermine self-determination of the recipients through attaching unnecessary or onerous conditions to the funding.

It is likely that a multi-faceted approach would be necessary, tailored to meeting the needs of different Aboriginal and Torres Strait Islander organisations and communities, and taking into account factors such as size and geographic location.

Establish and grow new and existing Aboriginal and Torres Strait Islander philanthropic organisations

Indigenous Philanthropy Connections should support the establishment and growth of a diversity of (new and existing) Aboriginal and Torres Strait Islander philanthropic organisations. Existing Aboriginal and Torres Strait Islander philanthropic organisations have relationships with the communities they have been built to help and are best placed to provide funding that suits local needs. Indigenous Philanthropy Connections would be able to support, grow and amplify existing self-determined initiatives, such as (but not exclusively) those in box 10.3. In doing so, it would build on the work of organisations which have sought to change philanthropic funding practices to support self-determination of Aboriginal and Torres Strait Islander people.

Indigenous Philanthropy Connections could also provide advice to Aboriginal and Torres Strait Islander communities seeking to establish new philanthropic initiatives. For example, if a community was seeking to establish a new place-based Indigenous led philanthropic organisation, Indigenous Philanthropy Connections could provide capacity funding to enable the community to examine different options, prepare a business plan and engage with potential philanthropic partners.

Determining the detailed operational approaches of Indigenous Philanthropy Connections will require further engagement, so that available resources are appropriately prioritised, based on a plan developed and set by the board.

Publish information and evaluate to facilitate learning about what works

Indigenous Philanthropy Connections should collect and publish information on its activities to facilitate learning about what works and to support its accountability to Aboriginal and Torres Strait Islander people. Transparency and public reporting about Indigenous Philanthropy Connections’ activities would have broader benefits to the community and the charitable sector. As one participant noted:

... I believe it is necessary to have regular monitoring and reporting on at least an annual basis to assess progress, reflect on positive and negative findings and for the foundation to be able to change aspects of its focus, governance and structure to make it more effective. (John Whittle, brief comment 1589)

For example, it could bring visibility to models of engagement built on a genuine commitment of philanthropic funders to enhance partnerships with Aboriginal and Torres Strait Islander communities to develop,

coordinate and deliver approaches which reflect the needs and aspirations of these communities. This could lead to wider shifts in philanthropic and government funding practices.

The Australian Government should also fund an independent evaluation of Indigenous Philanthropy Connections. Evaluation is an important step in improvement – any insights coming from an evaluation can inform the ongoing role and approach of Indigenous Philanthropy Connections, supporting it to fulfil its functions and mandate into the future. One way to incorporate evaluation into the establishment of Indigenous Philanthropy Connections would be by preparing an evaluation plan detailing a proposed engagement plan, a proposed evaluation approach and setting out the data required to assess Indigenous Philanthropy Connections' performance. These actions are in line with the Commission's Indigenous Evaluation Strategy (PC 2020a, p. 25).

The draft report recommended an evaluation after five years of operation. The Commission, however, heard that it can take time to grow a market or provide the enabling infrastructure for organisations, for example 7-10 years. As such, an evaluation in five years may be insufficient time to have allowed progress to occur (Roundtable participants, pers. comm., 6 March 2024). Therefore, Indigenous Philanthropy Connections should be evaluated after a period of 10 years of operation.

Indigenous Philanthropy Connections is intended to empower more communities to further their goals and ambitions through engagement with different sources of philanthropy. This recommendation should be seen as a step toward improving access to philanthropy for Aboriginal and Torres Strait Islander organisations and communities, and changing philanthropic practices. A multi-faceted strategy, focused on different aspects of philanthropy, is needed to effect necessary change over the long-term, which Indigenous Philanthropy Connections could help drive. This will require government and the philanthropic sector to work together, and to listen to Aboriginal and Torres Strait Islander people and organisations.



Recommendation 10.1 **Establish Indigenous Philanthropy Connections**

The Australian Government should establish an independent organisation, provisionally called Indigenous Philanthropy Connections, controlled by – and for the benefit of – Aboriginal and Torres Strait Islander people and communities.

The goals of Indigenous Philanthropy Connections should be to strengthen the capacity of:

- non-Indigenous philanthropic organisations to be more culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people and organisations
- Aboriginal and Torres Strait Islander people and organisations to build relationships and partnerships with philanthropic and volunteering networks
- Aboriginal and Torres Strait Islander communities by supporting the establishment and growth of new and existing Aboriginal and Torres Strait Islander philanthropic organisations.

Indigenous Philanthropy Connections should:

- have governance arrangements that support self-determination, including a board comprised by a majority of Aboriginal and Torres Strait Islander people
- not replace or replicate existing Aboriginal and Torres Strait Islander philanthropic organisations
- be funded by an endowment from the Australian Government that is large enough to guarantee that it is financially sustainable and independent, without need to seek further funding from either government or philanthropy.

The Australian Government should also fund an independent evaluation of Indigenous Philanthropy Connections, to be conducted 10 years after its establishment.

10.2 Policies to encourage giving

The preceding discussion in this chapter examined the different challenges that certain groups and organisations within the community may face when seeking to access philanthropy, and considered possible policy responses. This section considers policies that aim to encourage giving from those who do not give at all, and more giving from those who already give, using mechanisms other than tax incentives.

The decline in the proportion of taxpayers making donations, and measures of private giving (as a share of GDP) compared to other countries, has prompted calls for government to do more to promote a 'culture of giving' in Australia (chapter 3). Two types of policy initiatives were proposed by participants: public campaigns and behavioural nudges to increase giving.

Public campaigns aim to change behaviour through persuasion

Public information campaigns are a type of persuasive policy. Persuasive policies aim to change people's behaviour by sharing information and knowledge, making reasoned arguments or appealing to people's sense of morality, ethics or social responsibility (Eberhard et al. 2021, p. 4; Hreha 2023). Governments typically use persuasive policies to encourage prosocial behaviour, either by discouraging people from doing something that is detrimental to themselves or society (such as smoking or littering) or by encouraging people to do more of something that has benefits to themselves and society (such as getting vaccinated or staying active). Charities also use persuasive strategies (such as public campaigns) to attract donors, including volunteers for their organisation.

Several inquiry participants argued for the government to invest in public information campaigns to encourage giving (AEGN, sub. DR728, p. 6; Australian Philanthropic Services, sub. 112, p. 4; JBWere, sub. DR600, p. 2; Philanthropy Australia, sub. DR595, p. 8).

There is a need to support a cultural shift to a more giving mindset to boost philanthropic giving and meet the Australian Government's goal of doubling philanthropic giving by 2023. A national giving campaign has the capacity to help lead this cultural shift. (Creative Australia, sub. DR696, p. 9)

... we believe that a large-scale public campaign (or enhanced communications), led by the Government but supported by key NFP stakeholders including [Australian International Development Network], could have a significant impact on fostering the culture of philanthropic giving in Australia. (AIDN, sub. 143, p. 4)

... a National Giving Campaign to encourage a stronger culture and practice of giving in Australia. (Philanthropy Australia, sub. 162, p. 41)

In addition to campaigns aimed at the general public, participants suggested that the government fund campaigns specifically targeting:

- high-net-worth individuals and their advisers (Philanthropy Australia, sub. 162, p. 42)
- volunteering (Australian Red Cross, sub. 235, p. 7; Volunteering Australia, sub. 222, p. 13)
- workplace giving (ACFID, sub. 242, p. 3; Mission Australia, sub. 61, p. 3; Philanthropy Australia, sub. 162, p. 42; Workplace Giving Australia, sub. 175, p. 17)
- charitable bequests (The Smith Family, sub. 216, p. 12)
- an education program to promote the work of NFP organisations (St Vincent de Paul Society, sub. DR641, p. 2).

Public campaigns can work in tandem with financial incentives and regulation

Persuasive policies can complement or substitute other policy instruments, such as financial incentives and regulation. For example, in Australia, governments have sought to reduce the negative effects of farming practices on water quality through a mix of financial incentives (grants), persuasion (education) and regulation of farming practices (Eberhard et al. 2021).

The most effective policy instrument (or mix of policy instruments) to encourage a desired behaviour will depend on what motivates people's behaviour. For example, financial instruments (such as pollution taxes) will tend to be more effective in changing behaviour when people are responsive to changes in the relative financial costs and benefits of different options. Persuasive instruments may be more effective when people are open to changing their behaviour in response to more information and persuasion (such as information on alternative farming practices) (Eberhard et al. 2021, p. 5).

As with any policy intervention, government needs to weigh the benefits of persuasive policies against their costs. These costs can include the direct costs to government of paying for, designing and running campaigns, as well as the potential for unintended adverse behavioural responses or distributional effects. Alternatively, a campaign might lead to the intended behaviour change (such as increased use of bicycle helmets), but lead people to compensate for the behaviour change by engaging in undesirable behaviours (such as riskier cycling) (UK GCS 2021, p. 7). In addition, to the extent that such a campaign results in an increase in giving to DGR entities, it would have a cost to government revenue.

Government sponsored public campaigns for giving are uncommon

Australian and overseas examples of government sponsored campaigns to increase philanthropic giving are uncommon (table 10.1). Some Australian examples include the following.

- In 2014, the then Minister for Communications Malcolm Turnbull helped launch Workplace Giving Australia's 'One Million Donors' campaign for workplace giving which aimed to increase workplace giving to 1 million people by 2020 (One Million Donors 2016; Turnbull 2014).
- In 2002, the Australian Government, through the Australian Taxation Office (ATO), introduced changes to make it easier for individuals to contribute part of their pre-tax salary through their workplace to charity and receive the tax benefit immediately, rather than waiting until the end of the financial year (chapter 3).
- The Australian Government is contributing funding for the implementation of the sector-led *National Strategy for Volunteering 2023–2033* which includes a strategic goal to 'Reshape the Public Perception of Volunteering' so that a comprehensive understanding of volunteering is embedded in Australia's public consciousness (Volunteering Australia, sub. 222). Volunteering Australia has announced it will release an action plan for the strategy, which it is co-designing with the sector, by July 2024 (Volunteering Australia 2023a).

Table 10.1 – Public campaigns to encourage philanthropy^a

| Campaign | Country | Aims | Audience | Role of government | Publicly-available evaluation |
|----------------------------------|----------------|--|---------------------------------|--|---|
| My Giving Moment | Canada | Encourage Canadians to share and act on giving ideas | Canadian public | Government provided some funding | No |
| Big Help Out | United Kingdom | More people volunteer on National Volunteer Day | UK public | Campaign funded by donations and partnerships | No |
| Combined Federal Campaign | United States | Encourage and make it easier for public servants to donate | US Federal government employees | Coordinated by government. Costs deducted from donations | No. Campaign reports indicated program has raised nearly US\$8.7b over 60 years |
| One Million Donors | Australia | Increase workplace giving to one million donors | Large corporate employers | Government endorsement; tax support for workplace giving | No. Public data indicate workplace giving increased from 181,000 in 2017-18 to 211,000 by 2019-20 |

a. The Commission has included data on giving among the target audience of each campaign for context. This does not imply a causal relationship between the campaign in question and the observed trends in giving. A range of factors likely contributed to observed trends in giving.

Sources: ATO (2023b); Big Help Out (2020); Canada Helps et al. (2022); Combined Federal Campaign (2023); Governor-General of Canada (2013); One Million Donors (2016).

Public campaigns have been more common in other policy areas, including public health (for example, anti-smoking, vaccination and skin cancer awareness campaigns), road safety (for example, campaigns promoting the use of seat belts) and environmental protection and sustainability (for example, anti-littering campaigns) (table 10.2).

Table 10.2 – Australian public campaigns in other policy areas^a

| Campaign | Aims | Audience | Role of government | Publicly available evaluation |
|--|---|--|---|--|
| Life. Be in it. | To increase physical activity and general wellbeing | Victorians and later expanded by the Australian Government | Victorian and later Australian Government funding | No |
| National Tobacco Campaign | To reduce smoking rates | Changed overtime through effectiveness feedback | Australian Government funding | Yes. Between 1997 and 2002 adult smoking reduced by 3.7% and continued to decline |
| Cancer Council campaigns including the Slip! Slop! Slap! campaign | Skin cancer prevention | Targets specific demographics over time (such as children) | Some partnerships and projects with government agencies | No. However, Melanoma rate in Australian under 40 has been dropping |
| Don't be a Tosser | To reduce littering in New South Wales (NSW) | NSW residents and tourists | Funding provided by NSW Government | Yes. Helped reduce littering by 43% from 2013-14 to 2020 in NSW compared to 19% nationally |

a. The Commission has included data on the target audience for each campaign for context. This does not imply a causal relationship between the campaign in question and the observed trends.

Sources: Australian Geographic (2022); Cancer Council (2020, 2023); Department of Health and Aged Care (2023c); NSW Environmental Protection Agency (2023).

Assessing the case for taxpayer funded giving campaigns

When considering whether it should use public resources to support a public campaign on giving, the Government would need to assess:

- the policy problem and whether there is a market or regulatory failure that would warrant government intervention to improve outcomes for the community
- whether a campaign is likely to be an effective way to address the problem compared with other options
- whether it is possible to design a campaign that would both increase giving and have net benefits to the community (chapter 2).

In principle, a public campaign on giving satisfies the first two criteria. There are potential spillovers associated with giving, such as contribution to social capital, that means contributions to charitable organisations are likely to be underprovided (chapter 2). A public campaign is one way to address this, and for some people such a campaign is likely to be more effective in encouraging giving than income tax deductions for donations. However, predicting and estimating the expected benefits to the community of a government-funded campaign is difficult. Campaigns can have unexpected effects (Christiano and Neimand 2017) and many of their benefits, such as the increase in social capital that could come from an increase in giving, can be difficult to quantify. It is also unclear whether it is possible to design a campaign to encourage giving that is likely to both increase giving and result in net benefits to the community.

More successful public campaigns have common features

There are examples from Australia and overseas, and in other policy contexts, where public information campaigns have been successful in changing people's behaviour (table 10.2). For example, the Don't be a Tosser campaign in NSW helped reduce littering by 43% in NSW compared to 19% nationally (NSW Environment Protection Authority 2023).

Many other public campaigns, including those targeting giving specifically, have fallen short of expectations and/or have not undergone formal evaluation (table 10.1). For example, between 2014 and 2020, workplace giving in Australia fell well short of the target set in 2014 by the One Million Donors Campaign. Workplace giving increased from 181,000 employees in 2017-18 to 211,000 in 2019-20 – despite over four million employees being eligible to take part in workplace giving in 2020 (ATO 2023b) (table 10.1).

Public campaigns tend to be more successful when they have the following features:

- a clear target audience that is as well defined as possible (for example, teenage drivers)
- a clear message about the desired action or behaviour (for example, people over 50 years old should get vaccinated)
- a credible messenger (for example, quit-smoking campaigns featuring people who have developed cancer from smoking)
- a sustained effort over time (for example, the Victorian Transport Accident Commission's various road safety campaigns targeting young drivers)
- coordination with on-the-ground policies (for example, concessions for target cohorts to receive vaccinations)
- a tailored communication strategy that appeals to the values and preferences of the audience, such as that used in the Alaskan 'Pick.Click.Give' Campaign (box 10.7).

Conversely, campaigns can fail because:

- it can be difficult to craft universally persuasive appeals
- the target audience may perceive the campaign to be manipulative or moralistic, leading to the target audience becoming more entrenched in their existing beliefs or behaviours
- overemphasising individual responsibility can deflect attention from structural changes that may be necessary for meaningful progress
- they may lead to superficial compliance, with individuals or organisations making token gestures to appease public pressure without genuinely embracing the underlying values or making substantive changes (Christiano and Neimand 2017; Hreha 2023).

Understanding the target audience and developing effective communication strategies will often entail drawing on the views, specialist knowledge and ability of organisations closest to the target audience. In the case of philanthropy this may include sector groups, professional bodies, charities and donors.

Formally considering the potential for unintended consequences during campaign design could also help mitigate risks. For example, the UK Government Communication service has created the 'IN CASE: A behavioural approach to anticipating unintended consequences' that provides practical guidance for anticipating unintended consequences when designing a behaviour change policy or campaign (UK GCS 2021).

Box 10.7 – ‘Warm glow’ more motivating in the public campaign for the Alaskan Pick.Click.Give

The Alaskan ‘Pick.Click.Give’ Campaign illustrates the importance of tailoring each public campaign’s communication strategy to the motivations and values of the target audience. In Alaska, citizens receive a share of revenue (or dividend) from the state’s oil production each year. The ‘Pick.Click.Give’ is a public campaign that encourages Alaskans to donate a portion of their dividend to a charity.




To understand what motivates people to give, researchers ran an experiment during the 2014 ‘Pick.Click.Give’ campaign in which they randomly assigned over half a million Alaskans into three groups. They sent postcards to two of the groups encouraging them to give a percentage of their dividend to charity:

- one group received a postcard with a message that appealed to the reader’s sense of self by highlighting how donating would make them feel (‘Warm your heart’)
- the other group received a postcard with a message that highlighted how donating would help others (‘Make Alaska better for everyone’).

The third group was a control group and did not receive a postcard.

The researchers found that sending people a postcard that appealed to how giving makes them feel increased the likelihood of people giving, and the average amount given, compared to the control group. The postcard with the message that highlighted helping others had a negligible effect on giving compared with the control group.

Whether this finding is generalisable to other campaigns for giving is unclear. For example, behavioural studies suggest people’s decisions to give may vary by the source of income. In particular, they may be more willing to give when the money being given is considered a windfall compared with if they had earned the money (Li et al. 2019, p. 841).

| Control group  | ‘Warm your heart’ postcard group  | ‘Make Alaska better for everyone’ postcard group  |
|--|---|---|
| <ul style="list-style-type: none"> • Not sent postcards | <ul style="list-style-type: none"> • Encouraged to give % dividend to charity • Appealed to readers’ ‘warm glow’ | <ul style="list-style-type: none"> • Encouraged to give % dividend to charity • Highlighted helping others |
| <ul style="list-style-type: none"> • Average donations of \$4 | <ul style="list-style-type: none"> • 4.5% more likely to give than the control group • Average donations were 20% larger than the control group | <ul style="list-style-type: none"> • Negligible increase in giving compared with the control group |

Sources: Li et al. (2019, p. 841); List et al. (2021).

Effective public campaign design is challenging and requires managing risks

Even when governments follow good practice, designing public campaigns that change behaviour are inherently challenging even for government agencies working in policy areas where campaigns are common and have had the most success, such as public safety and health. A public campaign encouraging people in high-risk age cohorts to get vaccinated might have a clear message about what is required and could successfully play on a range of personal motivations and consequences, such as social responsibility, personal and family safety. The same campaign might be less effective persuading people who have lower levels of trust in government or that downplay the risks of an event happening to them. Campaigns can also lose their effectiveness over time if the approach is not varied. For example, a study of 'compassion fatigue' by Kinnick et al. (1996, p. 687) found that long-term, prolonged media coverage was linked to desensitisation and emotional burnout toward issues such as AIDS, homelessness, child abuse and violent crime.

As noted, campaigns can also have unintended consequences (either desirable or undesirable). For example, a study found that a breast cancer prevention message emphasising the need for women with a family history of breast cancer to have regular mammography might have led to less of these women adhering to recommended breast cancer screening guidelines due to the stress brought on by being told they are high risk (Lerman and Schwartz 1993).

These challenges and risks are likely to be even greater when designing a public campaign to promote giving, particularly given such campaigns would be something novel for the Australian Government. For example, little is known about how the likelihood of someone giving would change if the messenger was the government (as opposed to their favourite or well-known charities). A French study found 61% of people thought businesses that ask for donations on behalf of charities were acting out of self-interest (Manthé 2021, 2023). Similarly, the public may perceive appeals from government to donate to charities supplying social services as self-serving given the government could directly fund the charities.

Therefore, designing a public campaign that would both increase giving and have net benefits to the community would encounter several challenges. One challenge would be identifying the types of giving the campaign should target. To the extent social capital benefits or other positive spillovers associated with giving may be higher for certain types of giving (money, goods and time) or for certain types of charities, the campaign might focus on them. Another challenge would be identifying the target audience. The extent to which different audiences would be responsive to appeals to giving, particularly by government, may vary and some may even respond negatively. Finally, choosing the right communication channel would be challenging. Devising an effective communication strategy could be complex given different groups of donors have various motivations and interests. For example, communicating promotional messages through broadcast or social media may be less effective in encouraging more people with higher levels of income and wealth to engage in philanthropy than directly engaging with philanthropic networks, given research indicating large donors view their peers as their most trusted information source (Rosqueta et al. 2011, p. 96).

At a minimum, a campaign should encourage more giving than would have occurred otherwise (such as attracting new money donations or volunteers to charities that provide key services valued by the community). The additional giving from a campaign could, in theory, include increased giving that is not the target of the campaign (in that a positive experience from one form of giving, such as a donation, might increase the likelihood of the person giving in another way, such as volunteering).

The aim of increasing giving overall will be at risk if a campaign creates churn (such as people switching their existing donations to charities other than the focus of the campaign) or compensatory behaviour (such as people reducing forms of giving that are not the focus of the campaign).

Even when there is switching between charities or types of giving, a campaign could in theory increase the benefits to the community by increasing the 'quality of giving'.

Further, a campaign that encouraged a broader spectrum of the community to give in a variety of ways could also promote social capital benefits compared to a situation where giving is concentrated among a small number of donors.

Some proposals for campaigns on giving have a higher risk of being ineffective

Although it is not possible to predict with certainty whether a government-funded campaign would be effective or yield net benefits to the community, some proposals for a campaign appear poorly targeted to the reasons people give or do not give.

Some participants suggested a public campaign to target workplace giving (ACFID, sub. 242, p. 3; Philanthropy Australia, sub. 162, p. 42). A new government funded public campaign to promote workplace giving could be ineffective and duplicative. Overall take-up of workplace giving in Australia has been much lower than expected, despite the introduction of simpler arrangements for workplace giving and a national campaign seeking to promote this type of giving. Further direct taxpayer support for a campaign to promote workplace giving risks being ineffective if the main reason people do not take up workplace giving is because they prefer to give in other ways. Alternatively, it may cause people to simply substitute workplace giving for other forms of giving, without increasing giving overall. A potentially more effective way for government to increase workplace giving would be to focus on ensuring that employers have access to resources that enable their employees to participate in workplace giving. This could include government agencies providing additional or more accessible guidance to employees and employers on how workplace giving works, and government continuing to share research about the relative effectiveness of different approaches to engaging employees in workplace giving.

Another suggestion was a campaign targeting high-net-worth individuals and their advisers (Mission Australia, sub. 61, p. 3). Promoting philanthropy to advisers will not necessarily convince them to raise giving with high-net-worth individuals. A 2015 survey of professional advisers found many advisers viewed philanthropy positively (three in four) and indicated a desire to discuss giving with high-net-worth clients (one in two). However, many did not discuss philanthropy with their clients because they thought it was outside of their role (one in four), or because they were concerned the client would respond negatively (one in five). (figure 10.2). Unless carefully designed, a public campaign that aimed to increase giving by encouraging advisers to be more willing to discuss philanthropy with their clients could be ineffective because it does not address the reasons advisers do not advise on philanthropy in the first place. These reasons may relate to commercial considerations (the desire to retain clients) rather than an adviser having a particular view about philanthropy.

Figure 10.2 – Results from 2015 survey on advisers of high-net-worth individuals^a

a. Sample was 269 professional advisers. Professional advisers include people advising clients about issues such as tax, accounting, financial planning, legal matters, estate planning, trusts, banking, wealth management or other medium- to long-term financial matters. Professional advisers were people, usually holding a formal finance-related or legal qualification, who are paid by clients to assist in what is broadly described as planning, or medium- to long-term use or investment of assets.

Source: Crittall et al. (2016).

Maximising the effectiveness of government-funded campaigns on giving

A government funded public campaign could help broaden participation in giving, but there is insufficient evidence to conclude that such an intervention would be effective (finding 10.1). Governments can maximise the chances of success (and provide opportunities for learning) by ensuring public campaigns that involve public resources (whether it be a campaign run by a government agency or public funding to support a sector-led campaign) adhere to sound program design, evaluation and transparency principles, including by having:

- a statement of why the government support is necessary to achieve the benefits of the campaign
- a clear strategy that sets out how the campaign is expected to change behaviour, drawing on principles of effective policy design and informed by the affected sector
- an independent and publicly available evaluation against the stated aims of the campaign.

A government-sponsored public campaign on giving would also have direct and indirect costs for government and taxpayers. The direct costs would include design and advertising costs or, if the sector were to lead the campaign, the government's financial contribution to cover those costs. Indirect costs could include any reduction in tax revenue because of the campaign increasing tax-deductible gifts to charities.

The direct costs will depend on the specific strategy and context. In some cases, a campaign will be able to reach specific audiences at low cost because of existing communication channels (such as sector

newsletters or professional bodies). However, sharing messages with a broader audience to shift community norms more widely, through advertising can entail significant costs. The costs of campaigns will also include any unintended behavioural responses and adverse effects. For example, a campaign could inadvertently favour a well-known charity and disadvantage a newer charity that has an innovative and more effective model of service delivery, thereby forgoing benefits to the community.

Even if a public campaign supported by taxpayers increased giving, it would not necessarily result in net benefits to the community. When weighing up the potential costs and benefits, the Australian Government would need to consider the extent to which philanthropic organisations and charities already have the capacity and incentive to undertake a coordinated campaign on giving independent of government. Otherwise, the Government risks funding an activity that would have occurred without government support. Taxpayers are already co-investors in the sector’s activities by virtue of the DGR system.

As argued in chapter 2, where the main input needed is financial resources, especially on a smaller scale, government funding does not have unique traits that cannot be replicated by philanthropic funding. For example, philanthropic organisations could collaborate with a network of charities to design and fund a public giving campaign, without a need for government funding. By building in evaluation, the limited evidence base on the effectiveness of such interventions could also be expanded.



Finding 10.1

A government-funded public campaign could help broaden participation in giving, but there is insufficient evidence to conclude that such an intervention would be effective

More evidence is needed, including through rigorous evaluations from Australia or overseas, to demonstrate that a government-funded campaign would be effective at increasing giving and yield net benefits to the community.

Governments could maximise the chances of a successful public campaign (and opportunities for learning) by ensuring any public campaigns that involve public resources (whether it be a campaign run by a government agency or public funding of a sector-led campaign) adhere to sound program design, evaluation and transparency principles.

Nudges for giving could raise practical and ethical issues

Several participants suggested the government use behavioural nudges to encourage giving, like the prompt people receive at the supermarket to round up their purchases and donate the added funds to charity (box 10.8). One example the Commission heard is a proposal for the Australian Government to prompt taxpayers to donate when lodging their income tax return (Philanthropy Australia, sub. 162, p. 23). Such a nudge would come from the ATO. While nudges to give are commonplace among businesses and charities, the use of nudges among governments to increase giving through tax returns would be novel and is relatively untested. While certain behavioural nudges may be effective in increasing giving in the context of a purchasing decision or a charity’s fundraising website, there is no guarantee that the same nudges would be as effective or even relevant when someone interacts with government. Further, the sector itself – rather than government – is likely to be better placed to implement behavioural nudges most likely to increase overall giving.

Box 10.8 – What are behavioural nudges?

What are nudges?

Nudge theory is a concept in behavioural economics, and related social and behavioural sciences, that proposes adaptive designs of the environment in which people make decisions (also referred to as ‘choice architecture’) to influence their choice. The Commission has previously examined these questions in a range of contexts (PC 2008).

There are several types of nudges, including:

- making a desired behaviour the default choice in applications and forms (for example, the Australian Government made participation in My Health Record – a database of people’s health data – the default option, which means people needed to consciously opt-out)
- drawing on people’s tendency to observe the behaviour of others to help guide their own behaviour (for example, a coffee shop might promote the use of keep cups at the register to normalise their use and reduce paper cup waste) – known as social-proof heuristics
- increasing the salience of the desired behaviour (for example, a store owner might draw customers’ attention toward a specific food product by locating it close to the cash register) (Congiu and Moscati 2022, pp. 195–196).

Who uses nudges?

Many governments use behavioural insights and nudges to induce changes in behaviour. The Australian Government’s Behavioural Economics Team of Australia (2022, p. 5) nudging experiments have included a workplace giving trial between 2018 and 2021 that used nudging as a tool to increase giving at the Department of the Prime Minister and Cabinet. The trial found workplace giving increased when a curated list of charities is presented with carefully designed communication from management.

Charities also use nudges in fundraising. These nudges include creating default settings that automatically enrol a donor for continuous giving or prompts them to give every so often to encourage people to continue giving. Another strategy to increase donations is to make giving more enticing through rewards, personalised messages or focusing on their interests (Li et al. 2019).

Evidence for the effectiveness and efficiency of nudges is mixed

The effectiveness and efficiency of nudges is a complex area. Evidence is mixed and there is ongoing debate about their use and design.

In a meta-analysis of 200 studies examining the effects of nudging in contexts such as food outlets, financial and environmental choices, Mertens et al. (2022, p. 1) found that ‘choice architecture interventions overall promote behaviour change with a small to medium effect’, despite a moderate publication bias toward studies that found a positive effect. The study found that nudging was more likely to be effective in certain contexts, such as where subjects were making purchases in food outlets, and less likely to be effective in influencing financial decisions or (although undefined in the study) ‘pro-social decisions’. Later, Maier et al. (2022) found that, after correcting for this publication bias, there was no evidence that nudging would have any effect.

We conclude that the ‘nudge’ literature analyzed in [Mertens et al.] is characterized by severe publication bias. Contrary to Mertens et al., our Bayesian analysis indicates that, after correcting for this bias, no evidence remains that nudges are effective as tools for behaviour change. (2022, p. 2)

An equally important policy question is how to assess the implications for wellbeing of nudges within the conventional cost-benefit framework of standard microeconomic theory. Behavioural economics suggests estimating changes in individual consumer and producer benefits in a world in which economic actors are themselves assumed to misjudge those effects can lead to several conceptual and practical difficulties (List et al. 2023; Viscusi 2022; Weimer 2017). An additional practical complication for policy design and implementation is that policymakers may themselves be subject to a range of behavioural biases and anomalies (Viscusi and Gayer 2015).

It is unclear what the effectiveness of the Australian Government giving the option to donate while completing tax returns would be, or even whether such a tax return nudge would create additional giving. If individuals see their tax return refund as a windfall, this may increase giving as receiving a financial windfall can prompt people to give (chapter 3). Alternatively, a tax return nudge might simply change the timing of when people donate or the channel via which they give, but not increase the overall amount they donate.

A common reason why people make one-off tax-deductible donations to a charity (including at the end of the financial year) is that it enables them to reduce their taxable income, meaning they can pay less tax (chapter 3). However, offering an option for people to donate to charity when lodging their income tax return would mean the deduction would apply to the *next* financial year. This might not be attractive to people who cannot reliably predict their tax position a year in advance. A final complication is that tax returns can often be amended. If part of an initial return is donated but then the return is subsequently lowered and the donation could not be clawed back by the taxpayer, this could inadvertently put them in a disadvantageous financial position.

Questions on the ethics of government using nudges to increase giving

Ethicists have contemplated nudge theory and its ethical implications. Two core critiques of nudges are that they compromise individuals' autonomy in decision making and that they create an opportunity for excessive paternalism. Nudges may undermine autonomy as they can influence people's actions to the point that they no longer reflect their true preferences. Nudges may deliberately aim to influence irrational thought processes and biases. As nudges allow governments to impose their goals and values on citizens in an opaque manner, which could create paternalist policies (Schmidt and Engelen 2020, pp. 7–8).

A counterview is that nudges preserve people's rights to freely choose whatever option they like, while being designed to highlight the option deemed better for them in the long run. Thaler and Sunstein (2003, p. 175) note 'if no coercion is involved, we think that some types of paternalism should be acceptable to even the most ardent of libertarian'.

The use of nudges by the ATO seeking to increase giving is subject to these general ethical concerns and may also raise additional ethical issues. Some studies on the effects of nudges for giving, such as at supermarket checkouts, suggest they can cause feelings of anxiety or irritation for the people being asked to give (Manthé 2021, 2023). These concerns seem particularly salient considering the nudge in question would be in a compulsory interaction related to taxation, and that the nudge would be coming from a regulator. As expressed by CPA Australia and Chartered Accountants Australia and New Zealand:

... we consider that the government should be cautious about the risks and negative impacts associated with the potential for excessive requests and targeted behavioural and social campaigns that may be used by some charities and NFPs to increase philanthropy. (sub. 123, p. 16)

It is also possible that taxpayers would resent being asked to donate by government. In addition to the reputational risk to the ATO, a poor public reaction to this type of campaign could undermine other efforts to increase giving. Such proposals may also involve administrative costs for the ATO and so are unlikely to be a priority relative to other system changes.

10.3 Policies that make giving easier

There can be barriers that inhibit donors from giving, including concerns about a lack of good quality advice from professionals. This section outlines what the Commission has heard about these barriers and whether government intervention is required.

No clear rationale for governments intervening to address transaction costs

People can incur costs beyond the direct contribution of money or time when they donate money to a charity or volunteer, such as the cost of searching for a charity to give to, transferring funds or filling out donation forms. Where these transaction costs are high, they may reduce the amount of giving or the likelihood of giving, particularly smaller donations (Knowles and Servátka 2015). For example, one study examining fundraising campaigns that used mail solicitations and measured the responses of the recipients (potential donors) found a strong negative correlation between transaction costs and positive responses to the mail solicitations (Huck and Rasul 2010).

Governments have provided some modest, direct support for technologies to make giving easier (such as Go Volunteer, a platform that matches volunteers with charities to grow giving in Australia), but there is generally a limited role for government in this area.

Charities, fundraisers and private businesses generally have strong incentives to develop technologies that reduce the transaction costs of making donations themselves. Examples of strategies that fundraisers use to minimise transaction costs include mobile payment apps (such as Donorbox and PushPay App), text messaging and asking for donations at store check-outs as a means of making donations (Knowles and Servátka 2015, p. 62).

There is little evidence that donors and volunteers face high transaction costs associated with giving. Donors, including volunteers, and charities have access to a range of technologies that make the process of making and receiving gifts much easier than just a decade ago. While administrative and transaction costs associated with giving are sometimes cited as reasons people do not give (chapter 3), these costs often relate to things other than the transaction between the donor and charity, such as the time and costs people incur undertaking regulatory checks, before they give. The Commission has recommended changes that will help alleviate these other administrative and transactions costs associated with giving.

- Australian, state, territory and local governments should consider how changes to policies and programs would affect volunteers, including by adopting measures that may mitigate any adverse effects on volunteer participation and identifying opportunities for volunteers as part of policy or program design (recommendation 7.7). Avoiding unnecessary regulatory burdens on volunteers could reduce the time and effort they incur when offering their time to work with charities.
- The ACNC should enhance the usefulness of the information it provides on charities and giving for donors and the public (recommendation 9.1). User friendly public information about different charities' activities reduces the transaction costs potential donors and volunteers incur when gathering information about whether and how to give.

Greater adoption of regulatory technology by state and national regulators (such as interoperable databases) could also potentially contribute to a reduction in the costs people incur when giving, for example by reducing the wait times volunteers incur for regulatory checks. However, the Commission has not examined these options in detail.

Improving access to quality professional advice on philanthropy

Professional advisers, such as accountants, lawyers and financial advisers, are a source of legal and financial knowledge for millions of Australians who may wish to engage with philanthropy.

- Accountants issue advice on tax affairs such as income tax returns where deductible donations can be claimed as an expense.
- Lawyers advise on estates and wills which could include bequests to charities.
- Financial advisers issue advice on financial products and household financial planning which could include donations.

Advisers can help potential donors acquire information on:

- different options for giving, including more novel approaches, such as living bequests, and the pros and cons of different approaches
- how to set up different legal structures for giving, such as private ancillary funds
- the implications for giving on clients' tax liabilities and access to government support services.

Several participants raised concerns about the availability of quality advice on giving (Advancement Network, sub. 178, p. 3; Australian Philanthropic Services, sub. 112, p. 5). These concerns ranged from instances of advisers giving incorrect advice, to donors not being made aware of giving opportunities or having a false impression of the benefits and costs of giving, to a general sense that too few advisers have the capacity to advise on philanthropy. In 2015, a survey of professional advisers to high-net-worth individuals found one in four advisers reported they were 'unsure of how to offer advice in this area' (Crittall et al. 2016, p. 32).

Participants suggested a range of options to improve professional advice in the sector.

- Perpetual suggested adding training modules on charitable giving in general professional accreditations for advisers and establishing specific accreditations to highlight advisers or advisory businesses who have invested time in developing their capability in philanthropic advice (sub. 254).
- The Group of Eight Advancement Network proposed that the ACNC take on a greater role in the sector such as by expanding its guidance and tools, connecting and championing efforts of other agencies and leveraging professional networks to better understand and address perceived barriers (sub. DR719, pp. 3–4).

Steps are already being taken to improve the quality of advice on philanthropic giving. For example, Australian Philanthropic Services (2024) provides training and support services for advisers who have clients interested in philanthropy. And Philanthropy Australia (2024) provides guidance material for advisers, including an explanation about the most common structured giving vehicles in Australia.

Advising on philanthropic giving is a specialised skill that requires detailed knowledge of specific laws and regulations. Depending on their personal circumstances and client base, many professional advisers may consider that investing in these skills could become a higher priority for future clients and over time increase the amount of business they can attract or fees they can charge. The fact that only a small proportion of advisers currently advise on philanthropy (or other specialist areas) is therefore not a problem that needs to be resolved by government.

Based on existing evidence, there is currently no need for government to take any action to address concerns about the quality of professional advice on philanthropy. Regulations mandating standards or training relating to professional advice on philanthropy would be a disproportionate response that is unlikely to result in net benefits.

There could be a role for philanthropy itself to improve the quality of professional advice. For example, Creative Australia (sub. DR696, p. 12) argued for an approach where 'industry experts engage more comprehensively with wealth managers to raise donor understanding of the considerable level of social impact and potential in giving to arts and culture'. This suggestion points to a potential role for philanthropy itself in improving the quality of professional advice.

Appendices

A. Public consultation

This appendix describes the consultation process with participants undertaken for this inquiry.

Inquiry terms of reference

The terms of reference for the inquiry – reproduced in the preliminary pages of this report – was received from Treasury on 11 February 2023. The inquiry was advertised in *The Australian* (23 February 2023) and *The Koori Mail* (8 March 2023).

Consultations

Throughout the inquiry, the Productivity Commission held and benefited from the following consultations processes:

- 8 roundtables
 - Government support for financial giving by individuals (27 June 2023)
 - More efficient and effective giving vehicles (4 July 2023)
 - Public reporting on the effectiveness of charities, not-for-profits and foundations (5 July 2023)
 - Recipients of grants from the Minderoo Foundation (11 September 2023)
 - Western Australian not-for-profit academics (11 September 2023)
 - Charities that rely on volunteers (12 September 2023)
 - Donors to ancillary funds (12 September 2023)
 - Aboriginal and Torres Strait Islander (6 March 2024)
- 2 workshops
 - Charity Law Association of Australia and New Zealand (6 February 2024)
 - Technical experts (26 March 2024)
- 6 days of public hearings
 - Sydney (12 and 13 February 2024)
 - Canberra (14 February 2024)
 - Perth (19 February 2024)
 - Melbourne (21 February)
 - Online (22 February).
- The Commission received 1,611 public submissions (846 of these submissions focussed on the deductible gift recipient system) and 70 confidential submissions during the inquiry (table A.1). The inquiry also received 1,593 brief comments. All public submissions and comments are available on the inquiry website.
- Hearings were advertised in *The Australian* (19 January 2024) and through an email to registered inquiry participants.

- Over 120 consultations were held with representatives from charities of varying size, scale, structure and sector focus, international experts, academics, foundations, peak body, business groups, regulators, donors, and government agencies (table A.2). The Commission engaged with Aboriginal and Torres Strait Islander organisations and people and sought to reflect their perspectives on philanthropy.
- A public webinar was held on 4 December 2023 and a webinar with Australia and New Zealand Third Sector Research members was held on 5 December 2023 after the release of the draft report.

Documents produced by the inquiry

The following public documents were prepared by the Commission in this inquiry:

- Call for submissions – released 23 March 2023
- Draft Report – released 30 November 2023
- Final Report – delivered to Government on 10 May 2024 (to be publicly released within 25 parliamentary sitting days).

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| Audrey Argyle Ingram | 693 |
| Auspire - Australia Day Council WA | 660 |
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| Australian Charities and Not-for-profits Commission (ACNC) | 238, 729 |
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| Dawn Wade Foundation | 87 |
| Debbie Davis | 529 |
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| Derek Knox | 727 |
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| Dr Michael J Sutton | 101 |
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| Hayley Ablott | 468 |
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| Helen Jeges | 560 |
| Howard Cosier | 330 |
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| Kathryn Crossing | 426 |
| Katie Flannigan | 354 |
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| Linda Marshall | 628 |
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| Prof Nicholas Aroney, Assoc Prof Mark Fowler and Dr Joel Harrison | 502 |

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| Simon Best | 760 |
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| Sophie Chamberlain | 240 |
| Sophie Felice | 2 |
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| Susan Mary Sheldon | 615 |
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¹⁵ The Commission received 846 submissions which focused on deductible gift recipient status for school and the full listing is available from Philanthropy website (<https://www.pc.gov.au/inquiries/current/philanthropy/submissions-focussed-on-dgr-status-for-schools>).

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| The Smith Family | 216, 395 |
| The Trustee for The Chinmaya Mission (Charitable) Trust | 281 |
| The Tuggerah Lakes Christian Education Board | 582 |
| The Warden and Fellows of St Paul's College | 684 |
| The William Buckland Foundation | 63 |
| thepeopleproject institute | 85 |
| Therapeutic Horticulture Australia | 657 |
| Thomas Barrett | 399 |
| Thomas King | 536 |
| THREE16 Shoalhaven | 527 |
| Tim Knight | 678 |
| Timothy McDonald | 373 |
| Tom Marty | 10 |
| Tony Bretherton | 390 |
| Tree Shepherds | 389 |
| Trinity Anglican College | 450 |
| Trinity College Gawler Inc | 398 |
| Trust for Nature | 233 |
| Trustee of the Self-Determination Fund | 745 |
| UNICEF Australia | 172 |
| Uniting Church in Australia - Synod of Victoria and Tasmania | 161 |
| UnitingCare Australia | 74 |
| Universities Australia | 656 |
| University of Tasmania | 397 |
| University of Technology Sydney (UTS) | 256 |
| Valarie Johnstone | 758 |
| Vanathy Arudselvan | 346 |
| Vegan Australia | 239, 702 |
| Victor and Yvonne Matthews | 650 |
| Victor Smith | 477 |
| Vince Connelly | 627 |
| Volunteering Australia | 222, 686 |
| Volunteering Queensland | 710 |
| Volunteering Victoria | 110, 499 |
| Volunteering WA | 64, 319 |

| Participants | Sub no. |
|--|----------------|
| VolunteeringACT | 724 |
| Wattle Day Association Incorporated | 599 |
| Waverley College | 377 |
| Wesley College | 489, 717 |
| Westminster School Principal Simon Shepherd and Westminster School Chair of Council Craig Need | 632 |
| Wettenhall Environment Trust | 217 |
| William Hetherington and Deborah Taylor | 676 |
| Winston Newman | 670 |
| Wollondilly Schools Ministry Board | 715 |
| Workplace Giving Australia | 175, 618 |
| World Animal Protection Australia | 111 |

Table A.2 – Consultations

| Participants |
|--|
| Aboriginal Executive Council (AEC) |
| Adrian Appo |
| Alannah & Madeline Foundation |
| Alexandra Dimos |
| Alister Ferguson |
| Ann O'Connell, Prof |
| Anne Robinson AM |
| Assoc Prof Mark Fowler |
| Asylum Seeker Resource Centre |
| Aurora Education Foundation |
| Australian Accounting Standards Board (AASB) |
| Australian Banking Association (ABA) |
| Australian Bureau of Statistics (ABS) |
| Australian Centre for Philanthropy and Nonprofit Studies |
| Australian Charities and Not-for-profits Commission (ACNC) |
| Australian Communities Foundation First Nations Advisory Group |
| Australian Competition & Consumer Commission (ACCC) |
| Australian Council of Social Service (ACOSS) |
| Australian Environmental Grantmakers Network (AEGN) |
| Australian Financial Complaints Authority (AFCA) |
| Australian Government Solicitor (AGS) |

Participants

Australian Institute of Company Directors (AICD)

Australian Law Reform Commission

Australian Philanthropic Services

Australian Red Cross

Australian Securities & Investments Commission (ASIC)

Australian Taxation Office (ATO)

Australians Investing in Women (AIIW)

Beau Austin

Benevolent Society

Bryan Foundation

Business Council of Australia (BCA)

CAGES Foundation

Cassandra Chapman, Assoc Prof

Centre for Social Impact

Charity Law Association of Australia and New Zealand

Coalition of Peaks

Community Council for Australia (CCA)

Community Foundations Australia (CFA)

Consumer Policy Network and Regulatory Compliance Network

Consumer Policy Research Centre (CPRC)

Creative Australia

Department of Education

Department of Social Services

Department of the Prime Minister and Cabinet

Digital Platform Regulators Forum (DP-Reg)

Dusseldorp Forum

Equity Trustees

Financial Services Council

First Australians Capital

First Nations Futures

First Nations Philanthropy

Fundraising Institute Australia

GiveOUT

GoFundMe

Griffith Business School

Participants

Hon Dr Andrew Leigh MP

Ian Hamm

Ian Ramsay AO, Prof

Indigenous Allied Health Australia (IAHA)

James Boyd

Jason Franklin

JBWere

Jo Barraket AM, Prof

Jumbunna Institute for Indigenous Education and Research

Justice Connect

Justice Reform Initiative

Koondee Woonga-gat Toor-rong

Koorie Heritage Trust

Law Council of Australia - Charities and Not-for-profits Committee

Leah Armstrong

Lisa Paul AO PSM

Lord Mayor's Charitable Foundation

Lotterywest

Minderoo Foundation

National Catholic Education Commission (NCEC)

New South Wales Department of Customer Service

Ninti One

Not-for-profit Researcher Network

Office of the Registrar of Indigenous Corporations (ORIC)

OzHarvest

Paul Ramsay Foundation

PayPal Giving Fund Australia

Perpetual

Philanthropy Australia (PA)

Philanthropy Australia First Nations Funder Network

Philanthropy Australia Indigenous Funders Network

Pride Foundation

Public Interest Journalism Initiative (PIJI)

Queensland Department of Justice and Attorney-General

Research Australia

Participants

Robert Fitzgerald AM

Rosemary Langford, Prof

Save the Children Australia

Schools Plus

Self-Determination Fund Limited

Self-Managed Super Fund Association (SMSFA)

South Australian Attorney-General's Department

StartGiving

Tasmanian Department of Justice

The Achieve Foundation

The Smith Family

Thorne Harbour Health

Treasury

University of Western Australia (UWA)

Victorian Pride Centre

Volunteering Australia

Volunteering Victoria

Volunteering WA

Western Australian Department of Mines, Industry Regulation and Safety

WWF Australia

Table A.3 – Roundtables
Participants

27 June 2023 – Government support for financial giving by individuals

Australian Council for International Development

Community Council for Australia

Effective Altruism Australia (EAA)

Foundation for Rural and Regional Renewal (FRRR)

Independent Schools Australia (ISA)

Lavarch, Linda

Rationalist Society

Robinson AM, Anne

South Australian Council of Social Service (SACOSS)

The Australian Sports Foundation

Participants

4 July 2023 – More efficient and effective giving vehicles

Australian Communities Foundation

Australian Council of Social Service (ACOSS)

Australian National University (ANU)

Australian Philanthropic Services

Cham, Dr Elizabeth

Fundraising Institute of Australia

JBWere

Melbourne Women's Fund

Murray, Prof Ian

Perpetual

Philanthropy Australia (PA)

Williamson, Dr Alexandra

Woor Dungin

Workplace Giving Australia

5 July 2023 Public reporting on the effectiveness of charities, not-for-profits and foundations

Alannah & Madeline Foundation

Aurora Education Foundation

Barraket AM, Prof Jo

Consumer Policy Research Centre (CPRC)

Effective Altruism Australia

Hall, Prof Matthew

Jumbunna Institute for Indigenous Education and Research

Paul Ramsay Foundation

Social Ventures Australia (SVA)

The Salvation Army

11 September 2023 – Recipients of grants from the Minderoo Foundation

Anglicare WA

Black Swan Theatre Company

Fair Game

Perth Institute of Contemporary Arts

Perth Symphony Orchestra

Save the Children

St Patrick's Community Support Centre

Participants

Telethon Kids Institute

University of Western Australia (UWA)

11 September 2023 – Western Australian not-for-profit academics

Belyea, Dalveen

Feenan, Clare

Flatau, Prof Paul

Gilchrist, Prof David

Holmes, Prof Kirsten

Knight, Penny

Laurenson, Kamyra

McGaughey, Dr Fiona

Murray, Assoc Prof Ian

Perks, Ben

Vaskovic, Milos

Watson, Dr Moira

Wesson, Assoc Prof Murray

12 September 2023 – Charities that rely on volunteers

12 Buckets

Advocare

Chorus

Chung Wah Community and Aged Care

Country Women's Association

Dismantle

Fair Game

Good Samaritan Industries

Peel Volunteer Resource Centre

SES Volunteers Association

Silverchain

SportsWest

St John Ambulance

Teach Learn Grow

12 September 2023 – Donors to ancillary funds

Eastwood Family

Feilman Foundation

Participants

Fogarty Foundation

Fremantle Foundation

Gratia Australia

Philanthropy Australia

Rowley Foundation

6 February 2024 – Charity Law Association of Australia and New Zealand

Anne Robinson AM

Brigid Cowling

Elizabeth Shalders

Prof Ian Murray

Jae Yang

Jennifer Batrouney

Prof Jo Barraket AM

Joel Harrison

Josephine Heesh

Assoc Prof Mark Fowler

Murray Baird

Prof Myles McGregor-Lowndes OAM

Dr Natalie Silver

Prof Nicholas Aroney

Prof Pauline Ridge

Rebecca Lambert-Smith

Prof Rosemary Langford

Seak-King Huang

6 March 2024 – Aboriginal and Torres Strait Islander roundtable

Adrian Appo

Kade McDonald

Lauren Ganley

Leah Armstrong

Marie Murfet

Michelle Steele

Rachel Kerry

Terori Hareko-Avaivilla

Participants

26 March 2024 – Technical workshop

Nathan Deutscher

Assoc Prof Ross Hickey

Prof Jonathan Meers

Tim Murray

B. Technical paper

B.1 Do donors respond to changes in price and income?

A core policy question about individual giving in Australia is whether tax incentives for giving – which lower the price of giving – change a person’s giving behaviour. Taxpayers can claim a 100% tax deduction when they give \$2 or more to entities with deductible gift recipient (DGR) status, which means the price of giving incurred by a taxpayer for eligible donations will be less than the donated amount, assuming they have a positive taxable income. The tax benefit a person receives from donating is affected by the amount given *and* their taxable income (because of graduated marginal tax rates, people with higher taxable incomes tend to have a lower price of giving). This is relevant for policy settings as a small share of taxpayers, who make large donations, are responsible for most of the total amount of tax-deductible giving in Australia.

There are at least two ways the Productivity Commission could examine the effect of the tax incentives on giving behaviour.

- Examine data from individual taxpayers, using the variation in income and marginal tax rates across the population and over time.
- Examine data on donations received by individual charities, exploiting possible variations in a charity’s DGR status, controlling for changes in marketing and fundraising strategies, and the quality and characteristics of the services they provide.

The Commission adopted the first strategy and used the Australian Tax Office Longitudinal Tax Files (ALife) to examine how Australian taxpayers respond to tax deductions for giving by calculating values for price and income elasticity. The report provides estimates of how people are likely to respond to incremental policy changes associated with tax-deductible giving (chapter 4), although these estimates have some limitations.

The second strategy – to examine data on DGR-eligible donations received by individual charities – is not feasible, given insufficient data. The strategy is also methodologically challenging: eligibility for DGR status is not random, as charities must fulfill the requirements in the *Income Tax and Assessment Act 1997* (Cth) to be endorsed as a DGR entity. Even if there were data on donations to individual entities with DGR status, there would need to be data on other factors that affect donations, such as the quality and characteristics of the services they provide, so that the effect of the price of giving can be isolated.

To the best of the Commission’s knowledge, there has only been one other study that has investigated the price and income elasticity of giving in Australia – an unpublished report from Deloitte Access Economics (2018) for Philanthropy Australia. The Deloitte study used a 2% cross-sectional sample of taxpayer data. However, since the publication of this study in 2018, the Australian Tax Office (ATO) has released the ALife dataset, which can allow the Commission to better distinguish between the effects of price and income on giving and to control for the effects of unobserved variables on giving.

The Commission has generated price elasticity of giving estimates which show that the personal income tax deduction increases giving. However, due to the wide variation in estimates stemming from data and econometric limitations it is not possible to determine to what extent the deduction increases giving or the

extent to which the subsidy flows to charities. This paper also suggests improvements for future estimates of the price and income elasticity of giving in Australia.

The Commission thanks the attendees at our technical workshop for their comments on the modelling in this inquiry (appendix A).

What is the price and income elasticity of giving in Australia?

Analysing taxpayer data can shed light on how different factors, such as the price of giving, affect the level of giving. Of particular interest are the **price elasticity of giving** and the **income elasticity of giving**, which measure how changes in the price of giving and a taxpayer's income affect the amount that taxpayers claim in gift deductions. Most studies have found that:

- the price elasticity of giving is negative – an increase in the price of giving tends to reduce giving (Peloza and Steel 2005)
- the income elasticity of giving is positive – people who have a higher income tend to give more (table B.1).

The higher the magnitude of the elasticity, the more responsive giving will be in response to a change in the price of giving or taxpayer income.

Understanding the price elasticity of giving

The **price elasticity of giving** refers to the percentage change in giving associated with a 1% change in the **price of giving**, holding all other variables constant. For each person, the price of giving is the personal cost of donating a dollar – the net amount that the person must give up in order to give one dollar to the charity of their choice. In the absence of policy interventions, this price is one dollar: a person must give up a dollar for the charity to receive a dollar. However, people who have a taxable income to offset can claim a tax deduction for giving to eligible entities, which means the price of giving will be less than a dollar. The price of giving is directly affected by the tax deduction for giving, because it changes a taxpayer's effective marginal tax rate – that is, the tax rate a person pays on an additional dollar of income, considering all forms of income taxes and deductions, as well as any government transfer payments.

The price elasticity of giving may not be the same across different demographics, such as age or income. There is mixed evidence that people who have a higher income are more responsive to the same changes in tax incentives for giving, compared to taxpayers who have a lower income, holding their level of income constant (Almunia et al. 2020; Hickey et al. 2023; Peloza and Steel 2005).

If the price elasticity of giving does vary significantly for different groups (such as for people with different levels of income), this would be a valuable input into further discussions about how the tax deduction should be designed.

What is treasury efficiency?

The price elasticity of giving also determines whether a tax deduction is **treasury efficient**. This measures the difference between forgone tax revenue and additional giving induced by the tax deduction, assuming no other behaviour (by government or taxpayers) change.

Under a traditional definition of treasury efficiency, the personal income tax deduction is treasury efficient if the price elasticity of giving is equal or greater than one in absolute terms. This means the increase in giving more than offsets the financial cost of the tax deduction (box B.1) (Vickrey 1962, p. 54). However, Steinberg (2021, pp. 181–182) argues the 'tipping point' – the required size of the price of elasticity – for treasury efficiency may not be equal to or greater than one if the amount of government spending directly affects the amount that people give.

For example, suppose that the alternative to forgoing tax revenue is for government to fund goods and services directly or to provide grants to charities. If increased government spending directly:

- reduces how much people give (crowding out), then the minimum size of the price elasticity of giving required for treasury efficiency will be less than 1.
- increases how much people give (crowding in), then minimum size of the price elasticity of giving required for treasury efficiency will be more than 1.

Crowding out of giving might occur when a charity receives a government grant and decides to scale back its other fundraising work because the cost of a project is now fully funded by the grant. Conversely, crowding in might occur when a government grant spurs a charity to seek more philanthropic funding to achieve its aims.

However, it is not easy to determine the exact value required for treasury efficiency as it will depend on the price elasticity of giving and an estimate of the crowding out or crowding in effect for a given charitable good or service. The data required to undertake this exercise does not exist in Australia.

Treasury efficiency is not the only measure of policy effectiveness because treasury efficiency treats all forgone tax revenue and spending by entities with DGR status as equivalent, which is not necessarily the case (chapter 4).

Box B.1 – Tax-price elasticity and treasury efficiency, assuming no crowding out or crowding in

Why and how is the price elasticity of giving relevant for analysing changes to the tax incentives?

The *intensive* price elasticity measures how people change the amount they give – supposing they already give. In contrast, the *extensive* tax price elasticity of giving measures changes in whether people give or not give in response to a change in the tax price.

Let g be the amount an individual gives, and let $p = 1 - t$ be the tax price, where t is the individual's effective marginal tax rate. Assuming that giving is positive, the (intensive) tax-price elasticity of giving is defined as:

$$\epsilon_{INT} \equiv \frac{\partial \ln g}{\partial \ln p} = \frac{\partial g}{\partial (1-t)} \times \frac{(1-t)}{g}$$

where \ln is the natural logarithm.

Determining the conditions for treasury efficiency

Let θ be the percentage or share of the individual's charitable donation that is tax-deductible. (For example, under the current Australian system, $\theta = 1$, because eligible donations are 100% deductible.)

If the individual gives g , the forgone tax revenue from an individual is θtg . As such, the monetary difference between total giving and forgone tax revenue is equal to:

$$g - \theta tg = g(1 - \theta t)$$

Now consider the following thought experiment: suppose that the tax price $1 - t$ declines by a small amount (due to a small increase in the tax rate t). Then, giving will increase as the tax price falls, but more tax revenue will be forgone. If the increase in giving outweighs the decrease in forgone revenue, the tax deduction is *treasury efficient*.

Box B.1 – Tax-price elasticity and treasury efficiency, assuming no crowding out or crowding in

The change in the difference between total giving and forgone revenue in response to a small change in the tax price is:

$$\frac{\partial [g \times (1 - t)]}{\partial (1 - t)} = \left[\frac{\partial g}{\partial (1 - t)} \times (1 - t) \right] + g$$

This change has an opposite sign to the change in the tax price (that is, it is negative) if and only if (iff):

$$\left[\frac{\partial g}{\partial (1 - t)} \times (1 - t) \right] + g < 0$$

or iff:

$$\frac{\partial g}{\partial (1 - t)} \times \frac{(1 - t)}{g} < -1$$

which holds iff:

$$\epsilon_{INT} < -1$$

In words: reducing the tax price (increasing the tax rate) will only result in the increase in giving outweighing the change in forgone tax revenue if and only if the tax price elasticity of giving has an absolute value larger than one.

Similarly, if the tax price elasticity of giving has an absolute value less than one, then a lower tax price of giving would still increase giving, but revenue forgone would fall by a greater amount.

The price elasticity of giving is also useful for examining changes in the generosity of the tax deduction (changing θ). For example, if an individual was permitted to deduct a higher share of their donation (currently a taxpayer in Australia can deduct 100% of their donation). In the Australian tax system, this thought experiment would correspond to having a deduction marginally above 100% (corresponding to increasing the tax deduction parameter θ slightly above 1).

Now, the change in net giving in response to a small change in θ is:

$$\frac{\partial g}{\partial \theta} \Big|_{\theta=1} \times (1 - \theta t) - gt = \frac{\partial g}{\partial (1 - t)} \times (-t) \times (1 - t) - gt$$

This is positive if and only if (iff):

$$\frac{\partial g}{\partial (1 - t)} \times (-t) \times (1 - t) - gt > 0$$

or iff:

$$\frac{\partial g}{\partial (1 - t)} \times \frac{(1 - t)}{g} < -1$$

which again holds iff:

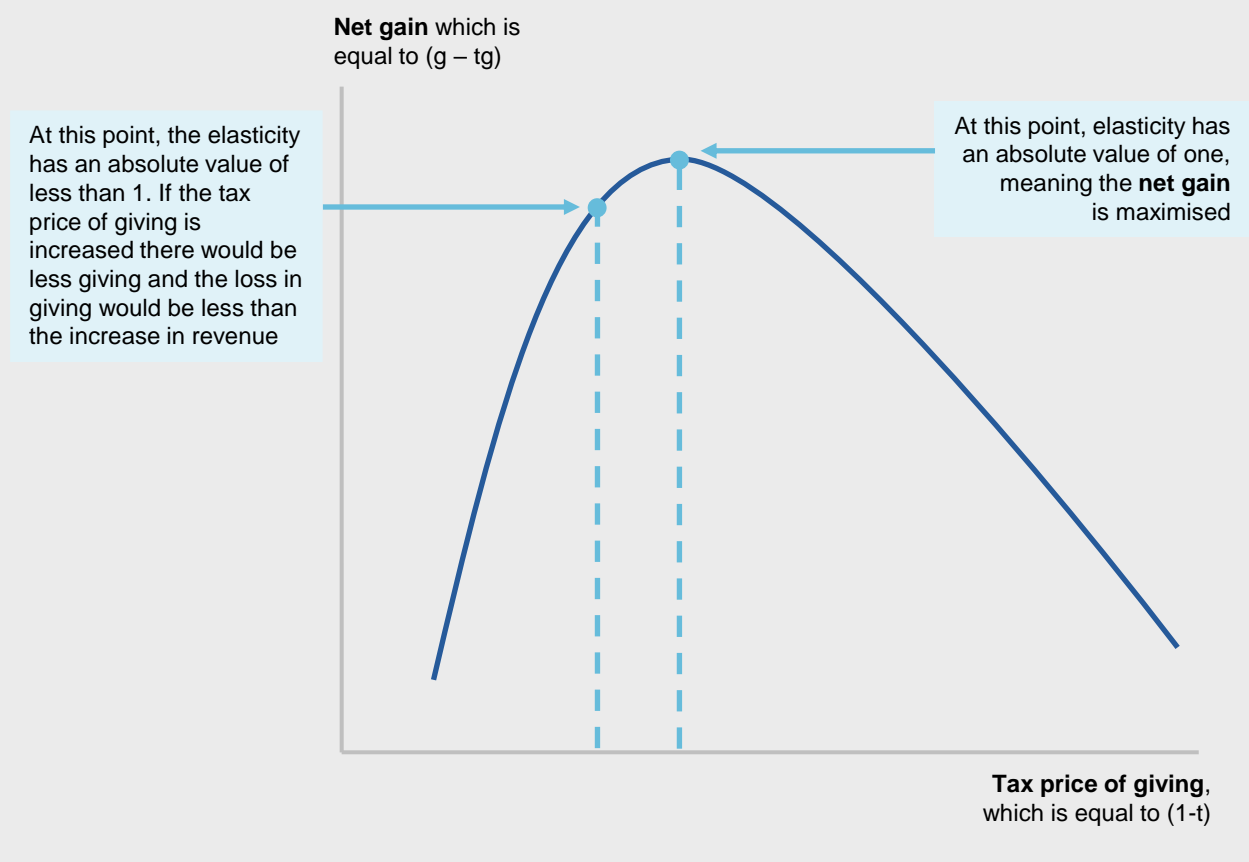
$$\epsilon_{INT} < -1$$

Box B.1 – Tax-price elasticity and treasury efficiency, assuming no crowding out or crowding in

In words: making the tax deduction slightly more generous will produce a positive net gain (that is, the increase in giving will outweigh the change in forgone tax revenue) if and only if the tax price elasticity of giving has an absolute value larger than one (figure below).

Similarly, if the tax price elasticity of giving is larger than an absolute value of one, making the tax deduction less generous will reduce the revenue forgone, but giving will fall by a greater amount.

Illustrative relationship between the net gain from giving and the price elasticity of giving



Understanding the income elasticity of giving

The **income elasticity of giving** is the percentage change in the level of giving following a 1% change in a taxpayer’s income, holding all other variables constant. This means excluding changes to income that are directly related to changes in marginal tax rates (box B.2).

Box B.2 – Income and substitution effects for giving

When people can claim an income tax deduction for giving, higher marginal tax rates result in a lower ‘tax price’ of giving. This means that for the same value donated, a person with a higher marginal tax rate would receive a greater tax deduction, compared to an individual with a lower marginal tax rate.

However, higher tax rates also reduce after-tax income. All else being equal, with a higher marginal tax rate, the:

- substitution effect induces *more* giving, because the relative price of donating is lower
- income effect induces *less* giving (assuming giving is either a normal good where giving increases with income, or a luxury good, where giving increases by more than any increase in income, all else being held constant).

Income effects are likely to be important. Empirically, the Commission found that people on a higher income tend to give more, both in absolute terms and as a share of their income. In elasticity form, the Slutsky equation shows the relationship between these two effects. It is:

$$\epsilon_{INT} = \epsilon_{INT}^c - s_g \epsilon_Y$$

where ϵ_{INT}^c is the compensated price elasticity of giving, s_g is net giving as a share of income, and ϵ_Y is the income elasticity of giving.

Literature review

There are many different model specifications that are used in the price elasticity of giving literature. Earlier papers have used simple cross-sectional ordinary least squares log-log models due to data limitations (for example, Feldstein and Taylor (1976)), while more recent papers have generally used panel data (for example, Bakija and Heim (2011) and Almunia et al. (2020)).

Many studies have investigated the effect of tax incentives of giving, although they mostly use data from the United States (table B.1). Such studies generally find that tax incentives increase giving, by lowering the price of giving, although the size of the measured effect varies. Comparing international estimates of price and income elasticity estimates with Australian estimates is not straight forward, given differences in tax frameworks – for example, whether giving is subsidised through a simple 100% tax deduction, matching or rebate schemes – and well as social norms relating to giving.

To the best of the Commission’s knowledge, the only Australian estimates of price and income elasticities are from the unreleased Deloitte Access Economics study using cross-sectional data commissioned by Philanthropy Australia.

Table B.1 – Selected price and income elasticity of giving estimates

| | Model | Price elasticity of giving estimates | Income elasticity of giving estimates |
|---|--|---|--|
| Pelozo and Steel (2005) | Meta-analysis of selected studies | Weighted mean of -1.44 with a standard deviation of 1.21 | No estimates calculated |
| Bakija and Heim (2011) | Permanent and transitory elasticities calculated using i) log-log model with predicted changes in taxes as instrumental variables and ii) Tobit model. The log-log and Tobit model include individual and time fixed effects | Federal persistent price elasticity: -0.39 State persistent price elasticity: -1.16 | 0.43 |
| Deloitte Access Economics (2018) | Negative binomial (model 1) and Heckman selection (model 2) | Model 1: -1.19 with a 95% confidence interval of between -1.39 to -0.99 Model 2: -0.83 with a 95% confidence interval of between -0.97 and -0.69 | Model 1: 0.70, no confidence interval reported Model 2: 0.58, no confidence interval reported |
| Almunia et al. (2020) | First-differenced log-log model with change in the first dollar price – holding income constant – as an instrumental variable. Includes individual and time fixed effects | Intensive-margin elasticity of between -0.16 and -0.28, depending on specification Extensive-margin elasticity of -0.09 | Between 0.195 and 0.201, depending on specification |
| Hickey et al. (2023) | Quantile regression | -1.9 with the price elasticity of giving varying significantly across the income distribution | No estimates calculated |

B.2 Estimating the price and income elasticity of giving

Using the ALife dataset for elasticity estimation

The Commission used the ALife dataset to estimate the price and income elasticity of giving. ALife is a longitudinal tax and superannuation dataset, comprising a 10% sample of taxpayer records. It is an improvement over previously available ATO 2% sample files, which were cross-sectional, sampled a smaller share of the population and did not allow for taxpayers to be followed over time. The ALife dataset uses annual longitudinally linked individual personal income and superannuation tax records. ALife follows individuals over time, tracked using their unique client identification number.

ALife data is released annually, with a two-year lag to allow for the lodgement cycle in tax returns. Because of technical limitations and the effect of the COVID-19 pandemic on giving, the Commission used data from 2010-2011 to 2018-19 to estimate the price and elasticity of giving, although the full dataset ranges from 1990-1991 to 2019-20.

Sampling and retention in the ALife dataset

The ALife sample follows the returns of almost 1.5 million taxpayers and provides 300 variables from the personal income tax return (including gifts and donations data) and over 100 superannuation variables. The dataset has a high level of retention: about 96.5% of people who lodge a tax file each year also lodge in the subsequent income year. After 10 years, the retention rate is about 65% of respondents who were in the original sample remain and lodged in each year, falling to about 50% after 20 years and about 40% after 30 years.

The variables from the personal income tax return cover all information required to assess an individual's income tax liability and include income, whether a person who lodges has a spouse, allowable deductions (including gifts and donations), tax offsets, higher education income contingent loans, capital gains and investment income, Medicare Levy and Medicare Levy Surcharge, and any credits or refundable tax offsets.

The data includes demographic information for people who lodge, such as age at 30 June of the financial year, gender, residential location coded at the Statistical Area level 4 (SA4), occupation and whether the person who lodges is a non-resident for tax purposes.

Overview of the Commission's models

For robustness, the Commission used two modelling approaches – a log-log fixed-effects model and a negative binomial model to estimate the intensive-margin price and income elasticity of giving using the ALife dataset (see table B.2 for a summary of the variables in the two models).

Since a large donation may move an individual into another tax bracket, there is an endogenous relationship between the price of giving and charitable giving that needs to be controlled for in both models. The two models use the first dollar price of donating – the variable for the price of giving – as a regressor to help control for the endogenous relationship between the price of giving and a taxpayer's income.

The Commission also tested a fixed-effects with instrumental variable model, where the first dollar price of giving is used as an instrumental variable for the last dollar price of giving but results were very similar to the fixed effects model *without* using instrumental variables. As such results from the fixed-effects with instrumental variable model are not included in this report.

Both models also contain a person's age, occupation, place of residence (coded to SA4 level) and spouse's taxable income in the control vector X_{it} (table B.2). The negative binomial model also includes a variable for gender in the control vector X_{it} as individual fixed effects is not present in this model.

Log-log fixed-effects model

The log-log fixed-effects model is the traditional model that is used to estimate elasticities in the literature. The equation used to estimate the log-log fixed-effects model is:

$$\ln(g_{it}) = \epsilon_{INT} \ln fp_{it} + \eta_{INT} \ln(y_{it}) + \delta_i X_{it} + \alpha_i + \alpha_t + u_{it},$$

where g_{it} is a person i 's donations at time t , ϵ_{INT} is the intensive tax-price elasticity of giving, fp_{it} is the first dollar price of giving, η_{INT} is the income elasticity of giving, y_{it} is a person i 's disposable income at time t (with donations equal to zero), X_{it} is a vector containing taxpayer characteristics for person i at time t , δ_i are

coefficients corresponding to each of the taxpayer characteristics variables, α_i are individual fixed effects, α_t are time fixed-effects and u_{it} is the error term.

The log transformation used is $\ln(x + 1)$, where x is the variable of interest. This avoids the situation of $\log(0)$ – for example, if a person does not donate anything – which results in an undefined value.

Negative binomial model

The negative binomial model is more suited to data that is over dispersed – that is, the variance is greater than the mean – as is the case with the ALife dataset, compared to the fixed-effects models which use linear regressions. The negative binomial model uses the first dollar price of giving as the variable for the price of giving, but does not use individual fixed effects. The equation used to estimate the negative binomial model is:

$$g_{it} = \epsilon_{INT} \ln fp_{it} + \eta_{INT} \ln(y_{it}) + \delta_i X_{it} + \gamma_t Y_t + u_{it},$$

where g_{it} is a person i 's donations at time t , ϵ_{INT} is the intensive tax-price elasticity of giving, fp_{it} is the intensive first dollar price of giving, η_{INT} is the income elasticity of giving, y_{it} is a person i 's disposable income at time t (with donations equal to zero), X_{it} is a vector containing taxpayer characteristics for person i at time t , δ_i are coefficients corresponding to each of the taxpayer characteristics variables, Y_t is a vector of year binary variables from 2011 to 2019, γ_t are coefficients corresponding to each of the year binary variables, in place of time fixed effects and u_{it} is the error term.

The dependent variable g_{it} is not log transformed for the negative binomial model as a log-link function is used.

Table B.2 provides a summary of the variables and parameters used in the Commission's two models.

Table B.2 – Variables and parameters

| Variable or parameter | Description | Fixed-effects model | Negative binomial model |
|-----------------------|---|---------------------|-------------------------|
| g_{it} | Value of gift deduction for taxpayer i , at year t , inflated to 2019 prices | ✓ | ✓ |
| ϵ_{INT} | First dollar price elasticity of giving | ✓ | ✓ |
| fp_{it} | First dollar price of giving for taxpayer i , at year t | ✓ | ✓ |
| η_{it} | Income elasticity of giving | ✓ | ✓ |
| y_{it} | Disposable income, inflated to 2019 prices | ✓ | ✓ |
| X_{it} | Vector of taxpayer controls for taxpayer i at year t , including their age (separated into brackets, with 60-64 as the reference year), whether they have a spouse, whether they have sufficient private health insurance for tax purposes, the log of spousal income inflated to 2019 prices, occupation (at a 1-digit ANZSCO level, with 'occupation unlisted' as the reference occupation), and place of residence at a state level (with the Australian Capital Territory as the reference state) | ✓ | ✓ |
| α_i | Individual fixed effects corresponding to taxpayer i | ✓ | |
| α_t | Individual time fixed effects corresponding to year t | ✓ | |
| Y_t | Vector of year controls (binary variables for each year from 2011 to 2019) | | ✓ |

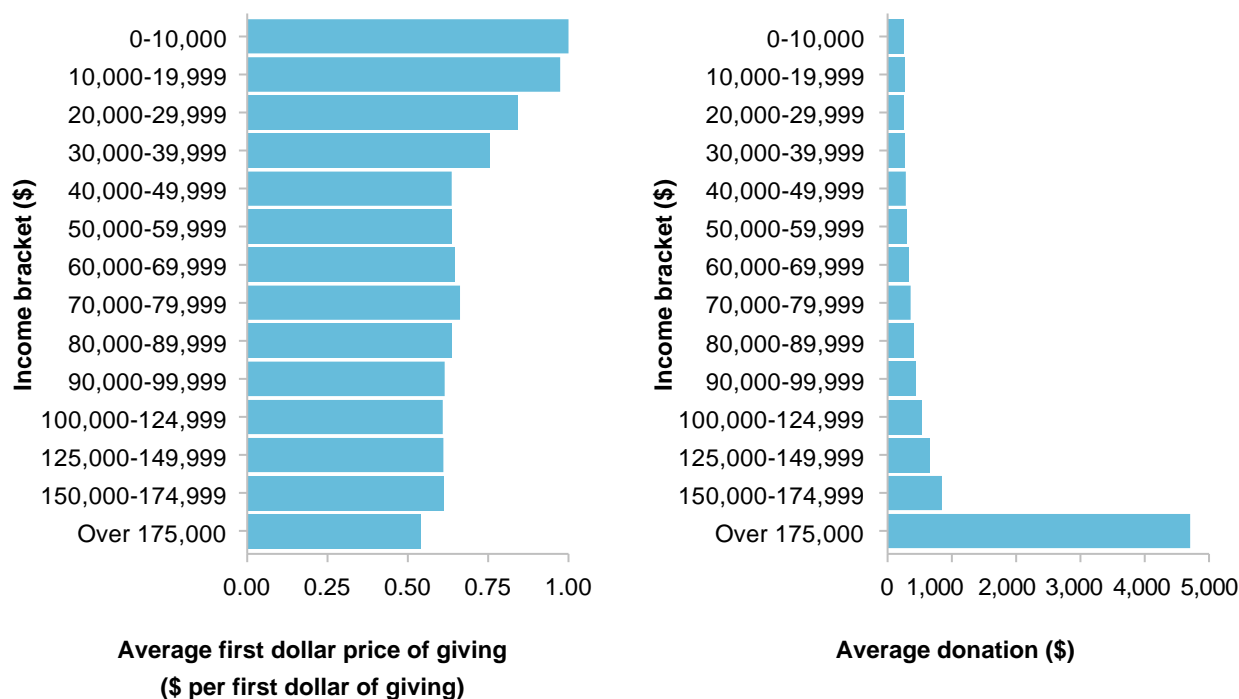
Estimating a taxpayer’s effective marginal tax rate for the price of giving

All model specifications involve the price of giving as an independent variable which, as set out in box B.1, will be equal to \$1 less the taxpayer’s effective marginal tax rate. To calculate a taxpayer’s effective marginal tax rate, the Commission incorporated the effects of the Low Income Tax Offset, the Low and Medium Income Tax Offset, the Medicare Levy, and the Seniors and Pensioners Tax Offset in addition to the basic income tax. However, the Medicare Levy Surcharge was not included. In addition, the Commission included the temporary budget repair levy for the relevant years.

The first dollar price was estimated using the R package *grattan* (Parsonage et al. 2023) to calculate the tax payable by a person given their taxable income, with and without the gift deductions. For each taxpayer, their effective marginal tax rate was then calculated using information about their tax payable. There are limitations: the package uses a simplified method for calculating the Seniors and Pensioners Tax Offset. The package does not distinguish whether a person lives together with their spouse or apart (for example, because of illness), which affects the total offset amount a person is eligible for.

Broadly, people with a higher income tend to have a lower first dollar price of giving – reflecting their higher marginal tax rates – while also having a higher average donation (figure B.1). The average first dollar price of giving is the lowest for people with average total income over \$175,000.

Figure B.1 – The average first dollar price of giving decreases and average donation increases with income for those who donate



a. Taxpayers are sorted into income brackets, with these income brackets calculated using average total income, uninflated, over the 2010–2019 sample. The average donation and first dollar price are calculated for all donations over \$0.

Source: Commission estimates using ALife data from 2010–2019.

Model specifications

For each model, the Commission used two different sets of specifications. This is because using the full sample from ALife resulted in large and unrealistic estimates for the price elasticity of giving for the fixed-effects model.

- **Specification 1:** estimating the model when removing observations with total income below \$10,000. This was done to test whether people with low incomes were driving the unrealistic results.
- **Specification 2:** estimating the model with all people who lodged a tax return.

Why did the Commission remove low-income observations in specification 1?

One challenge in the fixed-effects model was that running the model on the full sample of the people who filed tax returns resulted in large (in magnitude) elasticity values for the price of giving (table B.4). As the results were outside the expected range of results, the Commission conducted checks to investigate the issue. This involved:

- **Testing whether observations within certain income ranges significantly increased the magnitude of the price of elasticity of giving.** It became clear that removing people with low incomes resulted in smaller magnitudes for the price elasticity of giving.
- **Understanding the demographics that were more likely to have low incomes** and if these demographics did not affect the price elasticity of giving, examining why people with low incomes resulted in large (in magnitude) price elasticities of giving.

The Commission found that removing low-income observations generally decreased the price elasticity of giving. In the literature, a few studies have examined how the price elasticity of giving changes at different income levels with mixed results. Some studies find that low-income earners were most responsive to tax deductions (for example, Hickey et al. (2023)), while others have found the opposite (for example, Almunia et al. (2020) and Bakija and Heim (2011)). Mixed results may arise from differences between countries in how tax incentives for donations are structured: whether the system involves a tax credit (and a predetermined rebate rate), or whether the system involves a tax deduction.

The Commission also tested removing a taxpayer from the sample entirely if they had a low income in one year, but found that this caused the sample size to be too small.

Why did people with low incomes result in high elasticity estimates?

Low-income earners who fluctuate between a tax price of 1 and slightly below 1 (that is, between a non-taxable income and taxable income) and who donate are driving the high elasticity estimates. This is because in the ALife data, a small *decrease* in the price of giving was associated with large percentage increases in the amount donated, although the value of these donations still remained small (table B.3). When people with low incomes are removed, this reduces the fluctuations between tax prices, and therefore, reduces the average elasticity estimates.

If people are donating at a tax price of \$1, their reasons for donating – or not donating – may be significantly different to that of people who are incentivised by tax deductions. This is because when people face a tax price of \$1, they are not affected by tax incentives. That is, they may have altruistic reasons for donating. Conversely, a large *percentage* increase in the average donation with small changes in the tax price may suggest that people in this group are also very sensitive to the tax price. These results imply that altruistic reasons for giving and wanting a tax benefit are not necessarily mutually exclusive.

Table B.3 – Small decreases in the first dollar price of giving are associated with large relative increases in the average donation

| | Average donation (\$) | Average first dollar price of giving (\$) |
|----------------------|-----------------------|---|
| \$0 or less | 6.02 | 0.99 |
| \$1 to \$2,000 | 3.60 | 1.00 |
| \$2,001 to \$4,000 | 11.05 | 1.00 |
| \$4,001 to \$6,000 | 16.73 | 1.00 |
| \$6,001 to \$8,000 | 22.07 | 0.99 |
| \$8,001 to \$10,000 | 25.30 | 0.98 |
| \$10,001 to \$12,000 | 27.47 | 0.97 |
| \$12,001 to \$14,000 | 32.27 | 0.96 |
| \$14,001 to \$16,000 | 35.77 | 0.95 |
| \$16,001 to \$18,000 | 39.76 | 0.93 |
| \$18,001 to \$20,000 | 47.52 | 0.92 |

a. Average income is defined as average total income before deductions over 2010–2019. Donation values are adjusted for inflation.

Source: Commission estimates using ALife data from 2010–2019.

Who are the low-income population?

People with an income-level below \$10,000 do not have a taxable income as their income is below the tax-free threshold; that is, they would have a donation price of \$1.

The low-income observations population is an unusual cohort – despite having no taxable income they still submit a tax return. Breaking down this cohort by age and occupation shows that these people are more likely to be 60 and above and under the age of 20 (figure B.2). They are also more likely to be in an undefined occupation and, on average, donate less.

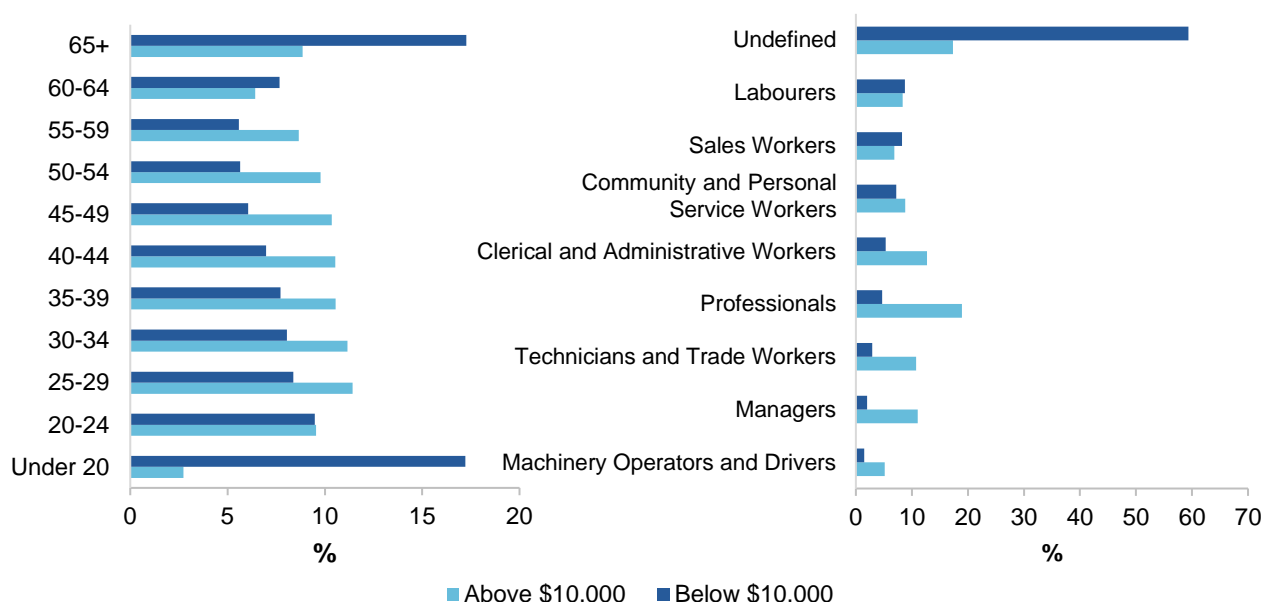
There are three potential sub-groups of the population that comprise low-income observations.

- Retirees who file tax returns for wealth reasons, such as for declaring dividends. These people may also be more likely to donate due to their wealth.
- Young people who file tax returns because they earn volatile incomes. For example, if a young person undertook full-time work for three months, they would lodge a tax return to recover taxes paid.
- Across the age profile, people who earn volatile income streams. For example, this could include casual workers, part-time workers, business owners, people in and out of employment, or market traders.

The Commission estimated regressions removing these individual sub-groups and did not find evidence that they individually drove the results. Instead, other factors that are common or more prevalent to this low-income population may be causing the high elasticity estimates.

Figure B.2 – Characteristics of people with low-income observations

Proportion of observations by age group (left) and occupation (right) that were below \$10,000, from 2009-10 to 2018-19



Source: Commission estimates using ALife data from 2010–2019.

Estimating price elasticity of donating at various income levels

For robustness, the Commission also investigated whether the exact value of the threshold for excluding observations from the model affected estimates for the price elasticity of giving and the income elasticity of giving. Across all models, the magnitude of the price elasticity of giving generally increased as the income threshold decreased, while the opposite was true for the income elasticity of giving (table B.7).

Hence, the results suggest that low-income observations were driving higher elasticities across the whole sample for all models.

Any decision to remove observations from the data is necessarily arbitrary. Given the results in table B.7, the Commission removed income observations below \$10,000 in specification 1.

How do capital gains affect estimates of the elasticity of giving?

Depending on the dataset, if taxpayers have large capital gains or losses, they could appear to have very high incomes or low incomes in a dataset, affecting estimates of the price elasticity of giving. For example, Hickey (2023) observed that some taxpayers may appear to have low incomes if they have large employment income as well as large capital losses. In the ALife dataset, net capital gains is equal to the difference between capital gains and capital losses; or zero, if capital losses exceed capital gains – as such, a person that has large employment income and large capital losses will still appear to have high income. However, the presence of capital gains or losses may still have an effect on the price elasticity of giving, other than by causing people with high employment income to appear to have low income.

The Commission tested the effect of capital gains on the price elasticity of giving by running a specification where observations with positive net capital gains were excluded (table B.8). Under this specification, the magnitude of the price elasticity of giving under all income cutoffs is larger in absolute terms than when taxpayers with a positive net capital gain are included (table B.4), suggesting that there is a difference in giving behaviour between those with and without positive net capital gains.

Challenges of estimating the price and income elasticity of giving

Key data limitations

Data does not include all giving, nor all tax-deductible giving

ALife only includes tax-deductible giving which is claimed on the personal income tax return form. For a donation to be included in this dataset, a person needs to submit a personal income tax return – for the most part, this will be people with taxable income – and the person needs to be eligible for and decide to claim a ‘gift or donation’ deduction. Donations are not included in the ALife dataset if a person does not file a personal income tax return or if a person knows their giving is ineligible for a tax deduction.

Moreover, not all eligible tax-deductible giving from people who do file personal income tax returns are included. For example, some taxpayers:

- can claim giving through their businesses, rather than through their tax return
- use family offices or other structured vehicles to manage their tax affairs. In practice, this will mean some forms of giving from (ultra) high-net-worth people will not be reflected in their individual tax returns.

Inaccurate reporting by taxpayers may affect estimates

Gift and donation tax deductions are self-reported. Some people may have made donations that would be eligible for a tax deduction but chose not to claim the deduction for it in their tax return; forgot to claim a tax deduction; or did not claim the correct value. However, there are no other available Australian datasets that the model can be run across to compare elasticity values.¹⁶

Data does not itemise giving

The ATO does not require individuals to itemise separate transactions or to list who they gave to or what the method of giving was.¹⁷ Even if an individual voluntarily itemises their donations, this information is not provided in the ALife dataset.

For policy purposes it would be interesting to know whether elasticities of giving vary by the particular cause to which donations are given. Unfortunately, this analysis is not possible: ALife data does not include a charity’s name or its main activities that correspond to each tax-deductible donation, meaning separate elasticities cannot be calculated for cause areas – for example, health, education or the arts.

Data cannot be linked at a household level

The ALife dataset does not include information about tax-deductible giving from a taxpayer’s spouse.¹⁸

Many couples make joint giving decisions: in America, one estimate is six out of ten couples did so in 2020 (Mesch and Osili 2021). For couples that pool financial resources together, giving – and claiming the tax deduction – under the partner with the highest marginal tax rate could provide the highest tax benefit. Given this, it may be more appropriate to analyse giving at a household level, rather than an individual level.

More information would be needed to estimate transfer payments

There are limitations to estimating the effective marginal tax rate paid by taxpayers (an input needed to estimate the price of giving) as ALife data does not include information about weekly or fortnightly income

¹⁶ Some banks may have transaction data for giving through electronic transactions. However, such datasets are unavailable for analysis given privacy concerns.

¹⁷ Field D9 on the Tax return for individuals 2023 form (ATO 2023).

¹⁸ The ATO is trialling a preliminary dataset called *ALife-Family* which will include spouse-spouse links (ATO 2024c).

before government transfer payments, which is necessary to accurately take into account taper rates for transfer payments in the estimates of the effective marginal tax rates.

The Commission's modelling does not include how effective marginal tax rates are affected by means testing of transfer payments because there is insufficient data to do so. For example, for a single person who is not a principal carer, the Jobseeker Payment reduces by 60 cents for every dollar earned above a certain threshold in a fortnight, affecting a person's effective marginal tax rate as their earnings and tax increase, and payments are withdrawn (Services Australia 2024). However, ALife data does not have information on whether a person receives a transfer payment.

Econometric challenges

Panel data means some omitted variable bias are addressed, but not all

Not all factors relevant to giving are included in the ALife dataset (for example, the causes or charities that a person donated to) or can be measured (such as a person's innate views towards giving). Using a panel dataset means that fixed effects can be used to address:

- individual factors that do not vary over time (using individual fixed effects). For example, a person's cultural background varies across individuals, but for the same individual does not vary across time.
- time factors that do not vary across individuals (using time fixed effects). One example of a variable that *does* vary across time but *not* across individuals could be the onset of a natural disaster.

However, omitting certain variables that vary *both* over time and across individuals *and* that are correlated with the value of giving and an independent variable may result in biased estimates. For example, if giving is also a function of wealth (an unobserved variable), estimates for the income elasticity of giving are likely to be skewed, as wealth may be positively correlated with both current income and the amount given. One important omitted variable is spousal giving, which cannot be determined through the version of the ALife dataset used by the Commission.

Distinguishing between price and income effects of giving

The price of giving is affected by a taxpayer's marginal tax rate, which is, in turn, affected by their taxable income and any deductions that are claimed, including deductions from giving. As such, a large donation could cause someone to drop into a lower marginal income tax bracket – if this is not considered, estimates may be biased.

The Commission used the **first dollar price of giving** (the price of giving faced, supposing that a person had not claimed any tax deductions for giving) instead of the **last dollar price of giving** (the price of giving faced after claiming their full tax deduction for giving) in the fixed-effects and negative binomial model, as commonly seen in the literature. ALife panel data allows the Commission to calculate changes in the price of giving as income tax rates change, which helps in distinguishing between price and income effects.¹⁹

An alternative approach – as seen in Almunia et al. (2020) – uses an instrumental variable drawing on the concept of a first dollar price of giving and lagged values of taxable income, to better distinguish between price of giving effects and income effects, following changes in income tax rates. This is because tax rates are themselves an input into the price of giving, so if income changes due to tax reforms, people will have more money – which tends to increase giving itself – and their price of giving will change. While the Commission did not replicate the Almunia model, it did test using an instrumental variable model where the first dollar price instrumented for the last dollar price. However, the approach of using the first dollar price to instrument for the

¹⁹ Such changes include the introduction of the Low and Medium Income Tax Offset and the temporary budget repair levy.

last dollar price may not fully address the collinearity between the tax price and income in the model (Feenberg 1987), and in general, produced similar results to the basic log-log fixed-effects model (table B.4).

High number of zeroes in dataset

Many taxpayers do not give or give and do not claim a tax deduction. For example, in 2019-20, only 29% of taxpayers claimed a deduction for giving. The presence of a large number of people who do not give can skew elasticity estimates if not otherwise accounted for. The Commission has accounted for the overdispersion caused by the large number of zeroes in the dataset by using a negative binomial model.

B.3 Results

Regression results

The results of the Commission's models found a negative and statistically significant coefficient for the price elasticity of giving and a positive and statistically significant coefficient for the income elasticity of giving.

Under **specification 1** (excluding people who had, at any time, income under \$10,000), for the **fixed-effects model** on average, holding all else constant:

- a 1% decrease in the price of giving was associated with a 0.87% increase in giving
- a 1% increase in a person's income was associated with a 0.57% increase in giving.

For the **negative binomial model**, on average, holding all else constant:

- a 1% decrease in the price of giving was associated with a 0.48% increase in giving
- a 1% increase in a person's income was associated with a 1.17% increase in giving.

The base year in all models is 2018-19.

Across all models, the magnitude of the price elasticity of giving decreased and the income elasticity of giving increased when observations with income under \$10,000 were removed compared to the same model run using the full sample.

Under specification 2, for the **negative binomial model**, on average, holding all else constant:

- a 1% decrease in the price of giving was associated with a 1.67% increase in giving
- a 1% increase in a person's income was associated with a 0.86% increase in giving.

Under specification 2, the negative binomial model gives a more realistic estimate (that is, under 2, which is in line with the literature), compared to the results of the fixed-effects model, which has a magnitude of 3.3. However, under specification 2, the elasticity estimates for the negative binomial model are still driven by low-income observations (discussed above). The full results of the Commission's regression analysis are presented in table B.4. The R-squared and adjusted R-squared are low in both the fixed-effects models, but this is typical of studies investigating the price elasticity of giving and could be explained by the high overall variance in the donation amounts within the data. The R-squared is not reported for the negative binomial model as there is no equivalent measure.

Table B.4 – Price and income elasticities of giving^a

| | Point estimate | 95% confidence interval |
|---|----------------|-------------------------|
| log-log fixed-effects model | | |
| Specification 1 (excluding anyone who had a total income less than \$10,000) | | |
| Price elasticity of giving | -0.87*** | (-0.90, -0.85) |
| Income elasticity of giving | 0.57*** | (0.57, 0.58) |
| R-squared | 0.03 | n/a |
| Specification 2 (full sample) | | |
| Price elasticity of giving | -3.32*** | (-3.34, -3.30) |
| Income elasticity of giving | 0.07*** | (0.07, 0.07) |
| R-squared | 0.04 | n/a |
| Negative binomial model | | |
| Specification 1 (excluding anyone who had a total income less than \$10,000) | | |
| Price elasticity of giving | -0.48*** | (-0.53, -0.44) |
| Income elasticity of giving | 1.17*** | (1.17, 1.18) |
| Specification 2 (full sample) | | |
| Price elasticity of giving | -1.67*** | (-1.71, -1.63) |
| Income elasticity of giving | 0.86*** | (0.86, 0.86) |

a. *p<0.1; **p<0.05; ***p<0.01. In Specification 1, income cutoffs exclude observations where a person had an uninflated income less than \$10,000. **n/a** indicates data is not available or not applicable.

Source: Commission estimates using ALife data from 2010–2019.

Regression results for higher income levels

The Commission also investigated how the price and income elasticity of giving estimates changed at higher income levels without excluding taxpayers on the basis of capital gains. This is because people with higher incomes contribute to the majority of giving in Australia. For example, about:

- 1% of donating taxpayers – each donating more than \$6,600 – contribute to about half of all tax-deductible donations
- 90% of donating taxpayers give less than \$1,000 and these taxpayers only contributed to about 24.3% of all tax-deductible donations (chapter 4).

To test whether the price and income elasticity of giving were different for people with higher incomes, the Commission ran the negative binomial model excluding income observations under \$100,000 or \$150,000. Only including observations with incomes over \$100,000 and \$150,000 led to a price elasticity estimate of -0.92 and -0.71, compared to a price elasticity estimate of -1.67 for the full sample (table B.5).

As the income threshold for exclusion is increased, the variation in the data is significantly restricted: that is, there is less movement in the donation price as there are fewer changes to a person's effective marginal tax rate as their income increases. Examining the elasticity estimates at higher-income levels should be further explored in an Australian context.

Table B.5 – Estimating elasticities at higher income levels^a

| | Full sample (specification 2) | Excluding total income under \$150,000 | Excluding total income under \$100,000 |
|--------------------------------|----------------------------------|---|---|
| Negative binomial model | | | |
| Price elasticity of giving | -1.67*** | -0.71*** | -0.92*** |
| Confidence intervals | (-1.71, -1.63) | (-1.05, -0.37) | (-1.21, -0.63) |
| Income elasticity of giving | 0.86*** | 1.52*** | 1.40*** |
| Confidence intervals | (0.86, 0.86) | (1.50, 1.55) | (1.38, 1.42) |

a. 95% confidence interval is listed in brackets. *p<0.1; **p<0.05; ***p<0.01. Income cutoffs exclude observations where a person had an uninflated income less than \$150,000 or \$100,000.

Source: Commission estimates using ALife data from 2010–2019.

Limitations of the analysis and further research directions

While the Commission addressed the model limitations where possible, there are limitations to this modelling that indicate areas for future research.

- There can be further improvements to better distinguish between the effects of price and income on giving. While the Commission has used individual fixed effects and time fixed effects to remove some omitted variable bias, the approach used in the Almunia paper could help remove other sources of endogeneity.
- The modelling relies on changes in the price of giving from tax cuts. The introduction of the Stage 3 personal income tax cuts will significantly increase the price of giving, as people’s marginal income tax rates, holding all else constant, will be lower. This ‘natural experiment’ will better distinguish between price and income effects on giving as there are larger changes in the price of giving through tax cuts. Tax brackets, which affect the price of giving through effective marginal tax rates, have mostly been constant throughout the sample period – bar the increase in the tax-free threshold in 2012 and the introduction of the temporary budget repair levy – which reduced the ability to distinguish between price and income effects.
- The analysis has only focused on the intensive-margin price elasticity and not the extensive-margin: that is, changes in the amount donated, rather than changes in the number of people who choose to donate. The extensive margin is also important for measuring the effect of tax incentives on giving.
- The analysis does not control for the quality, type or method of giving. The results assume that the value of a dollar’s worth of donations and a dollar’s worth of tax expenditure are the same – while this would not factor in administration and other government costs associated with using tax revenue to fund goods and services.
- The analysis does not include transfer payments which may be necessary to accurately estimate the effective marginal tax rates associated with taper rates from transfer payments.
- It is difficult to compare Australian results with other countries due to differences in the design of tax incentives and social norms related to giving.
- The analysis only focused on major taxes and tax offsets. For example, the Medicare Levy Surcharge was not considered when calculating the effective marginal tax rate – and therefore last dollar price and first dollar price – of a taxpayer, which could affect estimates of the price and income elasticity of giving. Given the small number of people affected by this Medicare Levy Surcharge, it is unlikely to majorly bias results.
- Further analysis could distinguish the effect on giving of an additional dollar in capital gains (as opposed to other forms of income) and investigate any timing effects of capital gains and losses.

However, some limitations cannot be addressed, namely potential inaccurate reporting of tax-deductible donations and any second-order effects from knowledge of how other tax decisions could affect a person’s tax bracket. For example, taxpayers may be aware that a small increase in taxable income may result in

larger tax liabilities – like incurring the Medicare Levy Surcharge – and seek to avoid the surcharge by further modifying their tax affairs. This second-order effect is not and cannot be accounted for in the Commission’s estimates of effective marginal tax rates.

B.4 Full results of the Commission’s analysis

Table B.6 – Results under specification 1 (excluding all observations under \$10,000)^a

| | Fixed-effects model | Negative binomial model |
|---|-------------------------------|----------------------------|
| Variables (confidence intervals in brackets) | | |
| Gender (reference = female) | | -0.18*** (-0.18, -0.17) |
| Has spouse | 0.0003 (-0.005, 0.005) | 0.07*** (0.06, 0.08) |
| Has sufficient private health insurance for the year | 0.11*** (0.11, 0.12) | 0.17*** (0.17, 0.18) |
| Log(spouse’s taxable income, inflated) | -0.002*** (-0.003, -0.002) | -0.01*** (-0.01, -0.01) |
| Price elasticity of giving | -0.87*** (-0.90, -0.85) | -0.48*** (-0.53, -0.44) |
| Income elasticity of giving | 0.57*** (0.57, 0.58) | 1.17*** (1.17, 1.18) |
| Age brackets (reference bracket = 60-64), confidence intervals in brackets | | |
| Under 20 | -0.42*** (-0.45, -0.39) | -1.83*** (-1.84, -1.81) |
| 20–24 | -0.225*** (-0.25, -0.20) | -1.12*** (-1.14, -1.11) |
| 25–29 | -0.042*** (-0.065, -0.019) | -0.88*** (-0.89, -0.86) |
| 30–34 | 0.006 (-0.015, 0.026) | -0.78*** (-0.79, -0.77) |
| 35–39 | 0.042*** (0.024, 0.059) | -0.69*** (-0.70, -0.68) |
| 40–44 | 0.072*** (0.057, 0.087) | -0.61*** (-0.62, -0.60) |
| 45–49 | 0.069*** | -0.53*** |

| | Fixed-effects model | Negative binomial model |
|---|---------------------|-------------------------|
| | (0.057, 0.082) | (-0.54, -0.52) |
| 50–54 | 0.039*** | -0.43*** |
| | (0.029, 0.048) | (-0.44, -0.42) |
| 55–59 | -0.006* | -0.29*** |
| | (-0.013, 0.001) | (-0.31, -0.28) |
| 65 and over | -0.074*** | 0.65*** |
| | (-0.083, -0.066) | (0.64, 0.66) |
| Occupation (reference = Occupation is unlisted), confidence intervals in brackets | | |
| Clerical and Administrative Workers | 0.31*** | 0.03*** |
| | (0.31, 0.32) | (0.02, 0.04) |
| Community and Personal Service Workers | 0.33*** | 0.01*** |
| | (0.32, 0.34) | (-0.00, 0.02) |
| Labourers | 0.24*** | -0.19*** |
| | (0.24, 0.25) | (-0.20, -0.18) |
| Machinery Operators and Drivers | 0.32*** | -0.15*** |
| | (0.31, 0.33) | (-0.16, -0.14) |
| Managers | 0.34*** | 0.01 |
| | (0.34, 0.35) | (0.00, 0.02) |
| Professionals | 0.39*** | 0.31*** |
| | (0.38, 0.40) | (0.30, 0.32) |
| Sales Workers | 0.26*** | -0.17*** |
| | (0.25, 0.27) | (-0.18, -0.15) |
| Technicians and Trade Workers | 0.30*** | -0.3*** |
| | (0.296, 0.311) | (-0.31, -0.29) |
| State level (reference = Australian Capital Territory), confidence intervals in brackets | | |
| New South Wales | -0.051*** | -0.16*** |
| | (-0.070, -0.032) | (-0.18, -0.15) |
| Victoria | -0.023** | -0.23*** |
| | (-0.043, -0.003) | (-0.25, -0.22) |
| Queensland | -0.066*** | -0.34*** |
| | (-0.086, -0.046) | (-0.35, -0.32) |
| South Australia | -0.087*** | -0.39*** |
| | (-0.11, -0.062) | (-0.41, -0.37) |

| | Fixed-effects model | Negative binomial model |
|-------------------------------|-------------------------------|----------------------------|
| Western Australia | -0.050*** (-0.073, -0.028) | -0.41*** (-0.42, -0.39) |
| Tasmania | -0.15*** (-0.18, -0.12) | -0.33*** (-0.35, -0.31) |
| Northern Territory | -0.017 (-0.045, 0.011) | -0.41*** (-0.43, -0.38) |
| Observations | 12,420,136 | 12,418,096 |
| R² | 0.026 | |
| Adjusted R² | -0.139 | |

a. 95% confidence interval listed in brackets. *p<0.1; **p<0.05; ***p<0.01. Income cutoffs exclude observations where a person had an uninflated income less than the specified income cutoff.

Source: Commission estimates using ALife data from 2010–2019.

Table B.7 – Including lower-income observations increases the magnitude of the price elasticity of giving for fixed-effects models, but not for the negative binomial model^a

| | Excluding total income under \$18,200 | Excluding total income under \$15,000 | Excluding total income under \$10,000 | Excluding total income under \$5,000 | Excluding total income under \$2,000 |
|------------------------------------|---|---|---|--|--|
| log-log fixed-effects model | | | | | |
| Price elasticity of giving | -0.69*** | -0.82*** | -0.87*** | -1.13*** | -1.54*** |
| Confidence intervals | (-0.72, -0.66) | (-0.85, -0.80) | (-0.90, -0.85) | (-1.15, -1.10) | (-1.57, -1.52) |
| Income elasticity of giving | 0.575*** | 0.58*** | 0.57*** | 0.49*** | 0.39*** |
| Confidence intervals | (0.570, 0.580) | (0.58, 0.59) | (0.57, 0.58) | (0.48, 0.49) | (0.38, 0.39) |
| Negative binomial model | | | | | |
| Price elasticity of giving | -0.35*** | -0.51*** | -0.48*** | -0.70*** | -1.29*** |
| Confidence intervals | (-0.40, -0.30) | (-0.56, -0.47) | (-0.53, -0.44) | (-0.75, -0.65) | (-1.34, -1.25) |
| Income elasticity of giving | 1.21*** | 1.20*** | 1.17*** | 1.07*** | 0.94*** |
| Confidence intervals | (1.20, 1.21) | (1.19, 1.20) | (1.17, 1.18) | (1.07, 1.08) | (0.94, 0.95) |

a. 95% confidence interval is listed in brackets. *p<0.1; **p<0.05; ***p<0.01. Income cutoffs exclude observations where a person had an uninflated income less than the specified income cutoff.

Source: Commission estimates using ALife data from 2010–2019.

Table B.8 – Elasticity estimates excluding taxpayers with positive net capital gains^a

| | Full sample | Excluding total income under \$18,200 | Excluding total income under \$15,000 | Excluding total income under \$10,000 | Excluding total income under \$5,000 | Excluding total income under \$2,000 |
|--------------------------------|----------------|---------------------------------------|---------------------------------------|---------------------------------------|--------------------------------------|--------------------------------------|
| Negative binomial model | | | | | | |
| Price elasticity of giving | -1.93*** | -0.70*** | -0.98*** | -1.03*** | -1.26*** | -1.79*** |
| Confidence intervals | (-1.97, -1.89) | (-0.76, -0.65) | (-1.04, -0.93) | (-1.09, -0.97) | (-1.32, -1.20) | (-1.84, -1.73) |
| Income elasticity of giving | 0.82*** | 1.10**** | 1.09*** | 1.08*** | 1.00*** | 0.88*** |
| Confidence intervals | (0.82, 0.83) | (1.09, 1.11) | (1.09, 1.10) | (1.08, 1.09) | (0.99, 1.00) | (0.87, 0.88) |

a. 95% confidence interval is listed in brackets. *p<0.1; **p<0.05; ***p<0.01. Income cutoffs exclude observations where a person had an uninflated income less than the specified income cutoff and where a person had positive net capital gains.

Source: Commission estimates using ALife data from 2010–2019.

Abbreviations

| | |
|---------------|---|
| AASB | Australian Accounting Standards Board |
| AAT | Administrative Appeals Tribunal |
| ABN | Australian Business Number |
| ABR | Australian Business Register |
| ABS | Australian Bureau of Statistics |
| ACCC | Australian Competition and Consumer Commission |
| ACCO | Aboriginal and Torres Strait Islander community-controlled organisation |
| ACFID | Australian Council for International Development |
| ACL | Australian Consumer Law |
| ACNC | Australian Charities and Not-for-profits Commission |
| ACVVS | Aged Care Volunteer Visitors Scheme |
| AFCA | Australian Financial Complaints Authority |
| AGS | Australian Government Solicitor |
| AIHW | Australian Institute of Health and Welfare |
| ALife | Australian Taxation Office Longitudinal Information Files |
| ANZSCO | Australian and New Zealand Standard Classification of Occupations |
| ASIC | Australian Securities and Investments Commission |
| ASX | Australian Securities Exchange |
| ATO | Australian Taxation Office |
| BETA | Behavioural Economics Team of the Australian Government |
| CAMAC | Corporations and Markets Advisory Committee |
| CGT | capital gains tax |
| DGR | deductible gift recipient |
| ECS | External Conduct Standards |
| ESG | environmental, social and governance |
| FBT | fringe benefits tax |
| FIA | Fundraising Institute of Australia |
| FRRR | Foundation for Rural and Regional Renewal |
| GDP | gross domestic product |
| GSS | General Social Survey |
| GST | goods and services tax |

| | |
|----------------|---|
| KKT | Karrkad Kanjdji Trust |
| KWT | Koondée Woonga-gat Toor-rong |
| LFS | Labour Force Survey |
| MPHS | Multipurpose Household Survey |
| NDIS | National Disability Insurance Scheme |
| NFP | not-for-profit |
| NI | Norfolk Island |
| NPV | net present value |
| OECD | Organisation for Economic Co-operation and Development |
| ORIC | Office of the Registrar of Indigenous Corporations |
| PAF | private ancillary fund |
| PBI | public benevolent institution |
| PPF | prescribed private funds |
| PPGF | PayPal Giving Fund |
| PuAF | public ancillary fund |
| RCIRCSA | Royal Commission into Institutional Responses to Child Sexual Abuse |
| RFS | Rural Fire Service |
| SDAC | Survey of Disability, Ageing and Carers |

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