



Future foundations for giving

Draft report

This is a draft report prepared for further public consultation and input. The Commission will finalise its report after these processes have taken place.

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.

Further information on the Productivity Commission can be obtained from the Commission's website (www.pc.gov.au).

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Opportunity for comment

The Commission thanks all participants for their contribution to the inquiry and now seeks additional input for the final report.

You are invited to examine this draft report and comment on it by written submission to the Productivity Commission, preferably in electronic format, by 9 February 2024. If you are unable to make a written submission, you can make a submission by phone or you can provide a video submission.

Further information on how to provide a submission is included on the inquiry website: www.pc.gov.au/inquiries/current/philanthropy.

The Commission will prepare the final report after further submissions have been received and it will hold further discussions with participants. Public hearings will be held in February 2024. Further details on locations, dates and registering for hearings can be found on the inquiry website.

Commissioners

For the purposes of this inquiry and draft report, in accordance with section 40 of the *Productivity Commission Act 1998* the powers of the Productivity Commission have been exercised by:

Alex Robson	Presiding Commissioner
Julie Abramson	Commissioner
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, and an Adjunct Industry Fellow at the Centre for Social Impact, Swinburne University of Technology. Until May 2023, he had a part-time role as the Policy and Regulatory Specialist at Philanthropy Australia.

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Acknowledgments

The Commissioners would like to thank those who contributed to this inquiry. They would like to thank the team and acknowledge the Australian Charities and Not-for-profits Commission, the Australian Taxation Office and Treasury for providing secondees to the team for 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 receive lower quality, 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.

- ✳ **The Productivity Commission's draft recommendations would establish firm foundations for the future of philanthropy, so that the benefits of giving can continue to be realised across Australia. The proposals would enable greater donor choice and ensure that regulation continues to support trust and confidence in charities.**

- ✳ **The Commission's proposed reforms aim to make the deductible gift recipient (DGR) system simpler, fairer and more consistent.**
 - All Australian taxpayers co-invest in charities through the DGR system, but the arrangements that determine which entities can access DGR status are not fit for purpose – they are poorly designed, overly complex and have no coherent policy rationale.
 - 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. If adopted, the Commission's draft recommendations would mean that more charities overall would be able to access tax-deductible donations.
 - In contrast, the personal income tax deduction for giving does not need substantive reform. Preliminary estimates by the Commission show the personal income tax deduction is likely to be an effective mechanism for encouraging donations of money and other assets.

- ✳ **The Australian Government should support the establishment of an independent philanthropic foundation controlled by – and for the benefit of – Aboriginal and Torres Strait Islander communities to enhance the arrangements linking philanthropic and volunteer networks and funding to Aboriginal and Torres Strait Islander organisations.**

- ✳ **The regulatory framework for charities is complex and reforms to enhance the role, powers, functions and enforcement tools of the Australian Charities and Not-for-profits Commission (ACNC) are needed to support the high level of public trust and confidence in charities now and in the future.**
 - The Australian Government should establish a National Charity Regulators Forum with state and territory regulators to create a more formalised regulatory architecture.

- ✳ **The Australian Government should create more value for the public from the data collected about charities by improving the ACNC charity register, and collecting and publishing additional data on ancillary funds, corporate giving, volunteering and charitable bequests.**

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 supporting people experiencing disadvantage, advancing medical research, promoting arts and culture, or caring for the environment. People do this in many ways – donating money to support causes, such as assisting people affected by natural disasters, or volunteering their time and skills to benefit others, such as being on the board of a local art gallery.

These acts of giving are philanthropy – the giving of money, time, skills, assets or lending a voice to people and communities that would otherwise receive lower quality, or have less access to, goods and services.

Over \$13 billion was donated to charities in Australia in 2021, an increase of 26% in real terms since 2017. The Productivity Commission estimates that total giving to all registered charities will be about \$26.5 billion in 2029-30 if the average nominal growth rate (7.9%) of this measure of giving continues. This is just one scenario that the Commission examines.

A large part of giving in Australia takes the form of tax-deductible donations by individuals – this was worth \$4.4 billion in 2020-21, which represents more than a tripling in the value of giving (in real terms) since 2000-01. The increase in giving is largely driven by people who earn a high income – people who earn more than \$180,000 accounted for almost two-thirds of the increase. 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.

Volunteering is widespread in Australia. However, the proportion of people volunteering with an organisation (formal volunteering) declined over the decade or so before the COVID-19 pandemic. The pandemic was disruptive to charities and volunteers, but broader social, economic and demographic changes also contributed to the decline.

The decline in the formal volunteering rate has coincided with a rise in informal volunteering, where people support non-family members outside their household. Although the informal volunteering rate declined slightly in 2020, reflecting the effects of the COVID-19 pandemic, it had mostly recovered by 2022.

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

The Commission examined trends and motivations for giving, analysed existing policy arrangements and proposals for change, and assessed the expected benefits and costs to the community of different forms of government involvement in philanthropy. This work has been shaped by extensive stakeholder engagement and informed by diverse perspectives and evidence.

This draft report proposes a package of practical reforms to improve the policy settings that govern, support and incentivise philanthropy, to enhance outcomes for donors, charities, taxpayers, people who receive goods and services from charities, and the community as a whole. The Commission welcomes feedback on its proposed reforms, including on how they could be implemented, through submissions, consultations, roundtables and public hearings.

Philanthropy contributes to a better society

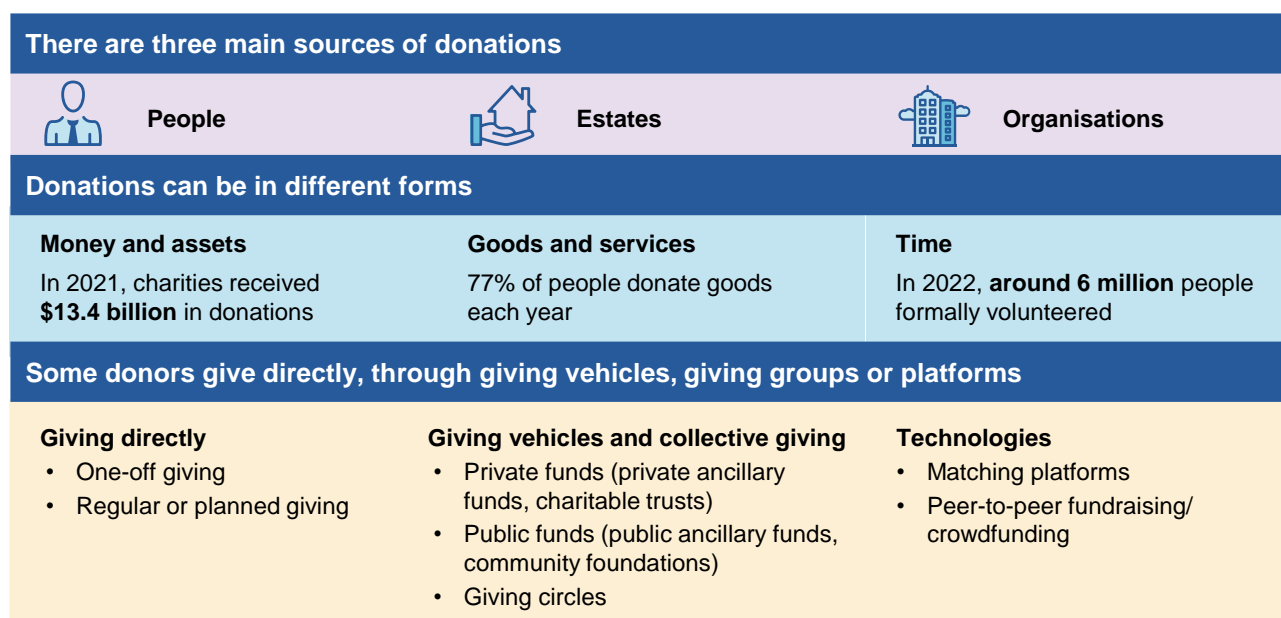
While markets are characterised by exchanges between a buyer and seller of a good or service, philanthropy does not involve such an exchange and donors do not expect to receive a financial or other direct benefit in return for their gift. In conventional markets, prices convey information to producers 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.

Many people who give money or time may not consider themselves as philanthropists and may not use or identify with the term. Philanthropists 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 philanthropic traditions or practices of giving embedded in their belief systems or ways of life.

There are many ways people can give (figure 1). They can give directly to another person or charity through online platforms, including peer-to-peer giving; they can use giving vehicles, such as ancillary funds; they can sign up to workplace giving programs; they can give as a customer when they pay for groceries through a ‘roundup’ nudge at the supermarket checkout; or they can volunteer with a charity in their local community. Organisations can also donate money, goods, staff time or a voice on behalf of their owners.

Figure 1 – Different ways people in Australia give



People and organisations can have complex and multifaceted reasons for giving or not giving – and these reasons can change over time (figure 2). Some motivations for giving are highly personal, such as those associated with an individual or family experiences, or connection to faith or culture. Other motivations are broader, such as wanting to make a difference.

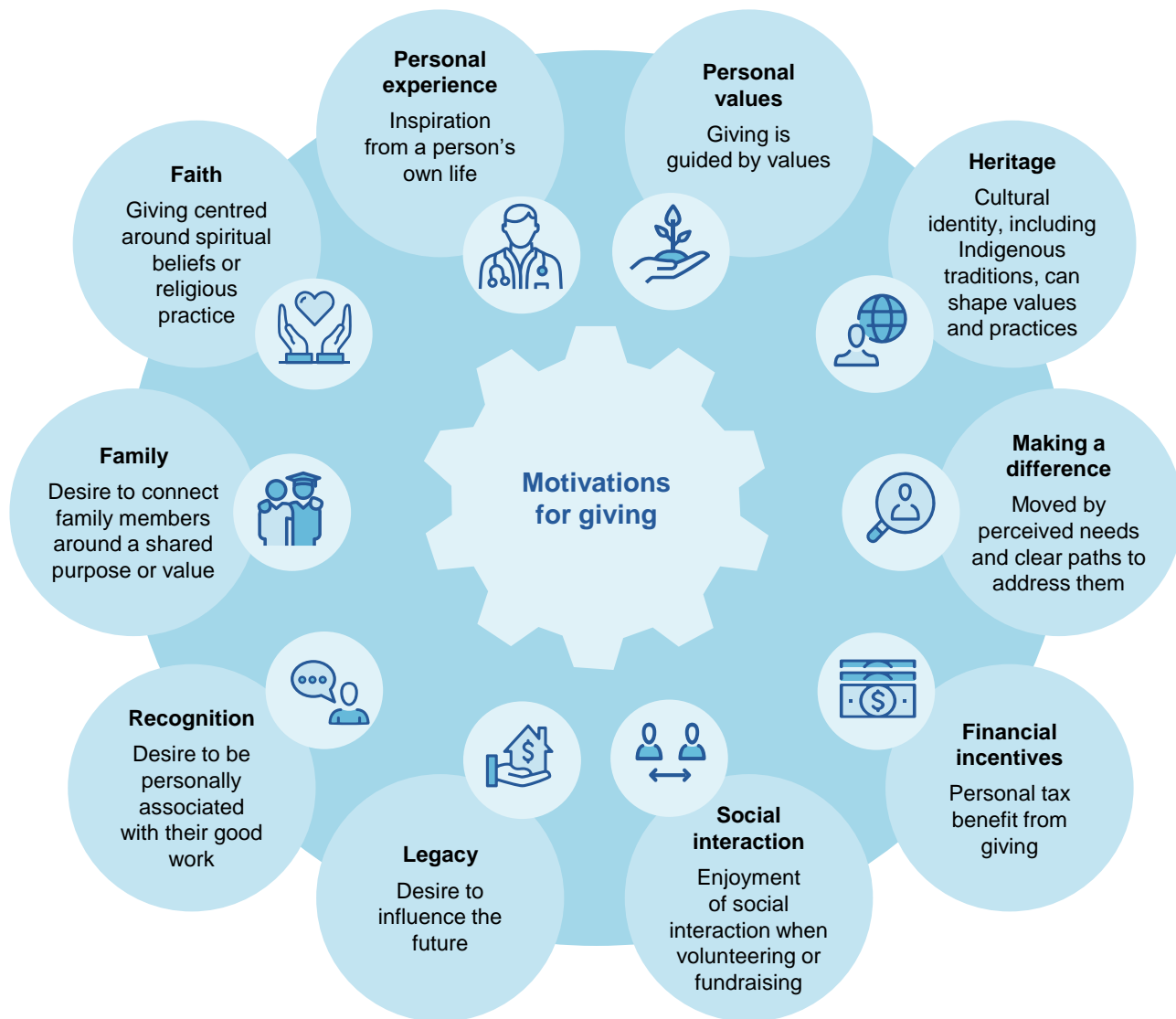
Motivations can also change over a person’s life. For example, volunteering with sport organisations peaks for people aged between 35 to 54, coinciding with parental support of activities around children, whereas people aged 65 and over tend to volunteer with organisations providing health and social services.

Broad conclusions can be drawn from patterns of giving behaviour.

- 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 private ancillary funds).
- Many businesses use high-visibility giving, including pro bono work, to bolster their reputation and social license, and attract and retain employees and customers.
- A lack of financial resources is one of the main reasons people do not give money, and work and family commitments are the main barrier to volunteering.

Figure 2 – 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

Philanthropy supports a vast array of activities

Some services, such as health care and suitable housing, are fundamental to a person's social and economic participation and inclusion, while cultural institutions can help connect people to their community. The protection of the natural environment is also valued by current and future generations.

Competitive, open and 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 certain 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 constitutes 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. But direct government provision to address market gaps can also fail to meet community expectations. Another approach is for governments to provide indirect support, by steering giving toward charitable activities valued by the community. Charities play a key role in facilitating philanthropy, acting as intermediaries between donors and the beneficiaries of goods and services.

Small charities in Australia are heavily reliant on donations (as opposed to grants or selling goods and services) and volunteers – charities with revenue under \$250,000 receive 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. More than half of all charities operate without paid staff.

In addition to funding goods and services for people who need them, philanthropy – particularly volunteering – creates indirect benefits for society by contributing to social networks, building trust within communities, and diffusing knowledge and innovations. For example, volunteering at an aged care home or in a local conservation group may contribute to social norms, networks and trust that facilitate co-operation within or between groups and promote co-operative behaviour. These are some of the ways in which philanthropy can help build social capital.

Philanthropy can have strengths and weaknesses

Both government funding *and* philanthropic funding can have strengths and weaknesses (figure 3). Donors and charities can bring specific skills, relationships or experience working with communities receiving services or networks that the government cannot access. These skills and networks may allow donors and charities to achieve better and more valued outcomes, like higher quality, more accessible, or more timely service delivery at lower cost compared with direct government provision or grants.

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, NSW. 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 in their community.

Inquiry participants have commented that philanthropy can also enable innovation by providing 'patient capital' through long-term untied funding, which government often cannot do. For example, it is common for government grants to be linked to short-term funding cycles. Philanthropic funding also has 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, for example. 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 which are different from the government or the wider public.

For example, the Alannah and Madeline Foundation commented that:

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)

A donated dollar can have different value to a charity, depending on how it can be used. When donations are untied, they can enable charities to be more innovative and independent by, for example, trialling new initiatives or approaches to service delivery. Untied donations can cover administration costs – those fixed, core expenses that enable a charity to operate, but which are often not fully covered by grants. Although some donors may believe that low administration costs mean that a charity is more efficient and effective, the Commission’s analysis shows that this measure is likely to be an inaccurate reflection of a charity’s performance and can lead to underinvestment in key capabilities and capacity.

Figure 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 

Like private and government provision, philanthropic giving can also fail to meet the efficiency and equity goals or expectations of the community. Donors can be deliberately scammed by people trading on the good name of charities when they do not have enough information (for example, due to information asymmetries). Similarly, a donor cannot easily observe how their donation has been used, including whether it 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.

Some charities do not draw on certain kinds of philanthropy. As part of its engagement for this inquiry, the Commission heard that some Aboriginal and Torres Strait Islander organisations may be less willing to interact and engage with philanthropy, for example, where in their view philanthropists ‘obtained their wealth at the detriment of First Nations people’ (Jumbunna Institute, pers. comm., 3 October 2023).

Other Aboriginal and Torres Strait Islander organisations would like to access the networks and information that are so vital for obtaining philanthropic funding, but can face barriers. A report by the Centre for Social Impact and Jumbunna Institute for Indigenous Education and Research (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.

Many of the organisations that face barriers to accessing philanthropic networks are small, work in remote areas or provide services that are unfamiliar to many donors.

Working with Aboriginal and Torres Strait Islander organisations to strengthen their capacity to access philanthropic networks – where doing so aligns with their values and interests – would potentially contribute to government policy commitments to Aboriginal and Torres Strait Islander people under the National Agreement on Closing the Gap, such as supporting a stronger community-controlled sector.

In principle, philanthropy can (and should) support the goals and ambitions of Aboriginal and Torres Strait Islander communities. However, the Commission heard that the approaches of some philanthropic funders may not suit the aspirations, priorities and needs of Aboriginal and Torres Strait Islander communities.

There are examples of initiatives led by Aboriginal and Torres Strait Islander people which have enabled Aboriginal and Torres Strait Islander communities to build effective partnerships with philanthropy and provide grant funding for projects or geographical areas. There is an opportunity for more communities to be empowered and further their goals and ambitions through engagement with different sources of philanthropy.

The Commission proposes that the Australian Government provide funding to support the establishment of a foundation led by – and for the benefit of – Aboriginal and Torres Strait Islander people. The 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.

The purpose of the foundation would be to enhance the arrangements linking philanthropic networks and funding to Aboriginal and Torres Strait Islander organisations. The objective would be to complement rather than absolve governments of their responsibilities and commitments to enhance outcomes for Aboriginal and Torres Strait Islander people through other programs that strengthen outcomes important to the rights, wellbeing and quality of life of Aboriginal and Torres Strait Islander people.

A concern with government programs is the potential to ‘crowd out’ (or substitute for) initiatives undertaken by non-government organisations. To reduce this risk, the foundation’s mandate and functions would be specifically focused on strengthening the capacity of Aboriginal and Torres Strait Islander communities to build and support partnerships, as well as supporting new and existing giving vehicles that are led by or support Aboriginal and Torres Strait Islander people. It would be able to administer grants programs to fulfill these functions.

Appropriate governance arrangements will be necessary to ensure that its functions do not duplicate the roles and responsibilities of other bodies, including government agencies, and to report on the outcomes of the foundation’s activities. This should include an evaluation of the foundation’s impact after five years of operation.

Why do governments encourage philanthropy?

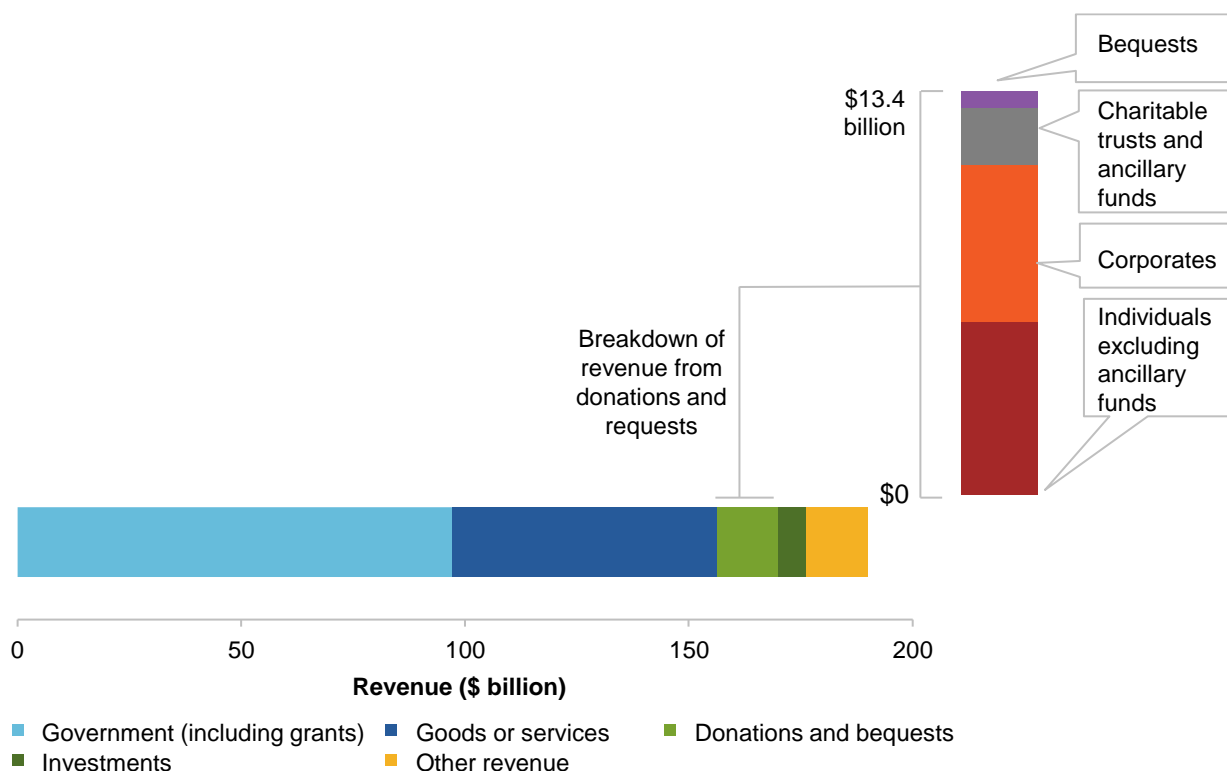
Growing philanthropy has long been a goal of governments, supported by a range of policy instruments. For example, when Tasmania was the first colony in Australia to introduce tax on some income in 1880, it

exempted ‘any Hospital, Benevolent Asylum, or other building used solely for charitable purposes’ from land tax (Martin 2017, p. 197).

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 support charities. Together, Australian, state, territory and local governments provided \$97 billion in 2021 in direct funding to charities through grants and contracts – the largest source of revenue for charities (figure 4).

There is a clear role for government in supporting philanthropy. Philanthropy can provide funding for activities that the community values and constraints on governments mean it would otherwise be underfunded, or not funded at all. This enables governments to focus on other priorities. The funding provided by philanthropy has different benefits (and costs) to government support and so can be a complement to, or substitute for, direct government funding. For example, medical research institutes attract substantial donations, which provide ‘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’ (AAMRI, sub. 91, p. 4).

Figure 4 – Most charity revenue comes from government grants and contracts^a



a. Commission estimates of the breakdown of bequests and other types of donations uses a mix of 2020 and 2021 data.

Support from government can be in the form of encouraging giving through financial incentives and a regulatory framework that maintains the public’s trust and confidence that individual charities, as well as the broader charitable sector, will use donations to further charitable purposes for the benefit of the community.

However, if government provides financial support to encourage philanthropy, this means that less funding is available for other purposes (there is an opportunity cost). Donations that attract a tax deduction result in less revenue collected by the Australian Government through income tax, which could otherwise be used to fund core government services, such as health care and education, or fund charities directly through grants.

These policy trade-offs cannot be ignored, and they 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).

Governments also need to be agile in responding to broader trends. The ways that people give are changing, largely spurred by technological advances. The use of cash is rapidly declining. People are increasingly moving toward using digital payments and online platforms for giving, such as PayPal Giving Fund or Facebook. The Australian Government is also phasing out cheques, which used to be a common way of donating for some people. As the way people give changes, the risks donors need to be aware of also change. Government regulation needs to keep pace with – or stay ahead of – these changes.

This inquiry is one further step in the evolution of government support for philanthropy in Australia. The inquiry differs from previous reviews in that its focus is on the full breadth of philanthropy – of which charities are an important part – rather than a review of the not-for-profit sector as a whole.

This inquiry assessed the policy settings that support philanthropy in Australia and the Commission’s draft recommendations provide practical ways governments can improve outcomes for donors, charities and the community. In coming to these draft findings and recommendations, the Commission was informed and guided by the contributions of inquiry participants through 275 submissions, 106 consultations and 7 roundtables, as well as previous government reviews and the academic literature.

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 equity and efficiency outcomes. The framework also considers that the policy settings to encourage philanthropy require trade-offs.

Policies to encourage giving should align with people’s motivations

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 policies to encourage giving.

- Giving tends to increase with income. Rising disposable income and wealth are therefore likely to be one of the major reasons why giving has increased over the last two decades.
- Formal volunteering, while widespread in Australia, is declining. Volunteering is predominantly influenced by people’s capacity to donate their time, so it is affected by long-term trends including increasing real wages, increasing labour force participation and an ageing population. The COVID-19 pandemic also disrupted volunteering.

Where people chose not to give, tax incentives may be ineffective either because the financial incentive they offer is too weak (particularly for people on lower incomes) or because they do not address an underlying impediment (for example, a lack of information about charities).

There are three main areas where policy changes to encourage philanthropy are likely to increase the wellbeing of the Australian community – the personal income tax deduction to incentivise giving, the regulatory framework for charities and public information for donors.

The deductible gift recipient system needs reform

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 (charities and government entities that conduct charitable-like activities) in Australia can receive tax-deductible donations.

People who give more than \$2 to an entity with deductible gift recipient (DGR) status and have taxable income can claim a 100% tax deduction for their donation. While all entities with DGR status must be based in Australia, most can provide support to people and communities overseas. Preliminary estimates by the Commission found that a deduction is likely to be an effective mechanism for encouraging donations of money and does not need to substantively change. This does not mean everyone who gives is motivated by a tax incentive.

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.

The economic benefits (or incidence) of the tax deduction are broad. The DGR system benefits taxpayers who claim a personal tax deduction, charities and some government entities, and ultimately the people and communities that receive goods and services from eligible entities. All Australian taxpayers co-invest in charities through the DGR system. Reforms are needed so the DGR system is fairer, simpler and more transparent. The DGR system should focus on where funds are needed most and direct donations toward charitable activities that are likely to provide the greatest net benefits to the final beneficiaries of the goods and services and the community as a whole.

Income tax deductions can encourage giving

Depending on a person's motivations for giving, people may be more likely to give or decide to give more than they otherwise would, if the price of giving (or the cost of donating an extra dollar) is lowered, all else being equal (box 1). The price of giving is commonly lowered by governments through tax incentives like a tax deduction or tax credit. The question of whether – and if so, how much – a person's giving behaviour is affected by this price can be examined by estimating their 'price elasticity of giving'.

Box 1 – What is the price of giving?

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.

For example, if a person earns \$100,000 and donates \$2,000 to a charity with DGR status, their taxable income will decrease by \$2,000 and their tax paid will reduce from \$22,967 to \$22,317 (all else equal).

The effective 'price' of giving is reduced from \$1 (without a tax deduction) to about 68 cents per dollar through the deduction because, although the person donates \$2000, they pay \$650 less in tax.

In transferring \$2,000 to a charitable cause, this person paid only \$1,350 in net terms. Viewed another way, to acquire \$2,000 worth of charitable donations, an entity with DGR status only need convince a person to donate \$1,350, with the balance of \$650 covered by other taxpayers.

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. There is no free lunch.

In Australia, the design of the tax deduction for giving, the graduated personal income tax system and the tendency for giving to rise with income mean that higher income earners pay a large proportion of total income tax and accrue most of the direct benefit of the reduction in tax due to this deduction (box 2). 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. Within these limits, the more a person donates, the greater the dollar amount of their deduction. To the extent that the tax deduction induces additional giving, charities – and ultimately the beneficiaries of their goods and services – also benefit.

A taxpayer dollar that is used to encourage philanthropy cannot be spent on another government priority. If tax incentives result in a dollar of revenue being forgone, government should consider whether it encourages giving to increase by more than a dollar – noting that this is only one consideration when assessing a tax deduction for giving. Comparing the total value of giving relative to forgone revenue does not fully account for the costs and benefits of giving or the other uses of forgone revenue. Despite this, if a tax deduction is not encouraging additional giving compared to what would occur without the tax deduction, there may be other uses of taxpayer funding that would have greater community-wide benefits, after taking into account the deadweight costs of taxation.

Box 2 – Who claims an income tax deduction for giving and how much do they give?

As a snapshot, 4.4 million Australians claimed \$3.9 billion in tax deductions for donations in 2019-20. Over two decades, 90% of taxpayers claimed at least one donation as a tax deduction. However, snapshots of data at a fixed point in time can, by definition, mask important underlying dynamics (for example, year-to-year income mobility and demographic trends).

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.

The Commission undertook preliminary econometric modelling to understand how Australian taxpayers change their giving behaviour in response to tax incentives. The modelling addresses the limitations of the data snapshot above by drawing on Australian taxpayer panel data, which tracks taxpayers over time. This is the first time panel data has been used in Australia to generate estimates of elasticities for giving. Panel data can help adjust for effects that either vary across:

- different people, but generally do not change over time (like a person’s cultural background)
- time, but not across different people (like occurrences of natural disasters in Australia).

The Commission estimated the price elasticity of giving, which is how people change their giving behaviour in response to changes in tax incentives for giving. For example, if a person's marginal tax rate were to decrease by 1 percentage point, would they give less because they receive a smaller tax deduction for each dollar they give. The Commission also estimated the income elasticity of giving, which is how people change their giving behaviour in response to changes in their own income. For example, if a person's income rose by \$500, how much more might they give to a charity.

At a basic level, there are three ways a person could respond to a change in the price of giving and corresponding implications for government. If a taxpayer gives \$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.

However, as noted above, these measures are only one factor to consider when evaluating the effectiveness of tax incentives to give. For example, the government may spend \$1 on another program which has less benefit to the community than encouraging giving. 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.

The Commission's preliminary estimates show that if a taxpayer gives \$100 (and holding all other factors constant):

- a 1% decrease in the price of giving is associated with an increase of giving between 87 and 92 cents
- a 1% increase in disposable income is associated with an increase of giving between 55.5 and 56.4 cents. For example, if a taxpayer earning \$50,000 had their disposable income increase by \$500, and they already gave \$100, this modelling suggests they would give about 55 to 56 cents more than they otherwise would.

The results are consistent with previous overseas and Australian studies.

These estimates indicate that personal income tax deductions are likely to encourage people to donate more. However, in the absence of more detailed analysis, it does suggest that increasing the value of the tax deduction over 100% of the amount donated (as is the case in Singapore), is unlikely to be a cost-effective mechanism to encourage giving.

This modelling has limitations and the estimates above are an average across all taxpayer incomes. The Commission will work further on these estimates, including using different modelling methodologies, and analysing whether people with different incomes have different responses to a change in the price of giving. While the literature is limited, the available analysis indicates that people with higher incomes are more responsive to the price of giving. The extent to which people with low or high incomes in Australia behave differently in response to the tax deduction should inform the policy settings around tax incentives for giving. The Commission is planning to present this modelling and its implications in the final report. 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 (box 3).

Box 3 – Tax incentives for corporate giving

Corporations (and unincorporated businesses) can claim a corporate tax deduction for any donation to entities with DGR status. Businesses can also donate money or staff time to charities without DGR status and other not-for-profit organisations for the purpose of advertising, sponsorship, promotion or developing goodwill and claim a tax deduction as an ordinary business expense.

If a person has taxable income, their effective price of giving is the same whether they give directly to a charity in a private capacity or if an Australian resident company that they own shares in gives to a charity and distributes fully franked dividends. This is because under dividend imputation, company tax is effectively a withholding tax that is pre-paid on the Australian resident shareholders' behalf. When a person gives directly, they face the tax-price of their own decision to give; when a company donates on behalf of the shareholder, the tax-price relates to the decision of the resident company to give.

The Commission was not able to model the relationship between the amount given by businesses and the price of giving (elasticities for corporations) due to an absence of data on giving by corporations that is claimed through the tax system. The Commission is proposing that this data gap be rectified to improve transparency and accountability.

Government support for giving can be designed to target the total amount donated, increase participation in giving or to encourage particular types of giving, such as money, physical assets or time. Given this, the Commission examined whether the personal income tax deduction for giving should be changed – for example, to a tax credit or the government matching each dollar donated – and determined that a personal income tax deduction is likely to be the most effective mechanism to encourage giving.

Acts of volunteering create benefits for the volunteer, the person they are helping or the environment, and the broader community. Volunteering is also one way in which philanthropy generates social capital. However, whether a separate tax incentive for volunteering would encourage more people to give their time is highly uncertain. It would likely increase tax integrity risks and compliance costs given volunteer work and expenses are often undocumented or informal. Government grants for volunteering where there is a clearly identified need would likely generate greater net benefits to the community, if properly targeted and evaluated. Other actions that governments could take to minimise the barriers to volunteering are discussed further below.

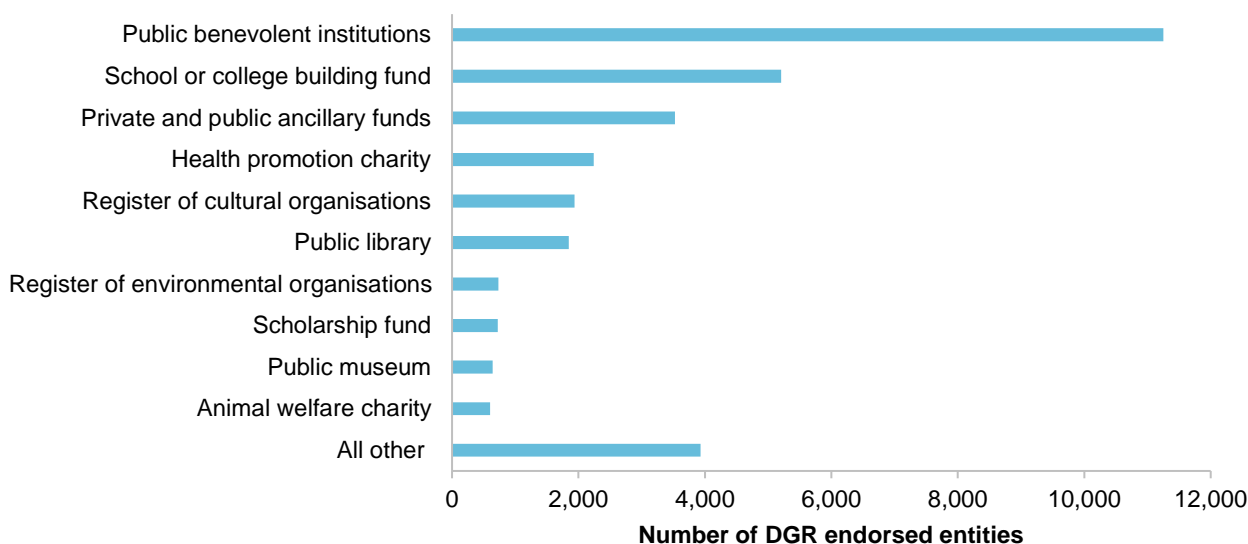
The deductible gift recipient system is not fit-for-purpose

The policy intent of the DGR system is to support certain forms of giving and the work of eligible entities with the goal of assisting the people and communities who benefit from goods and services provided by these entities. The DGR system deliberately seeks to steer donations and, with them, other resources toward certain charitable purposes and activities, and away from others. An indirect consequence of DGR status is that donors may interpret it as an indicator of a charity's 'legitimacy', quality or effectiveness. Another consequence of increased donations could be that it creates incentives for governments to withdraw support through direct funding (for example, grants).

The DGR system does not cover all charitable activities or all charities – and nor should it. Therefore, not all giving to charities by individuals is tax deductible. The activities for which a charity or government entity can acquire DGR status are mostly set via 52 endorsement categories in the *Income Tax Assessment Act 1997* (Cth) (figure 5). About 25,000 charities (or about 40% of charities) have DGR status for some or all of their activities. About 2,000 government entities also have DGR status.

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 from individuals. The scope of activities eligible for tax-deductible donations from individuals has evolved in an ad hoc way. The complexity of the system continues to increase as new DGR endorsement categories are added in a piecemeal manner.

Figure 5 – Deductible gift recipient endorsement is concentrated in a few categories^a



a. Number of endorsed entities includes both charities and government entities as at 5 October 2022.

There is no explicit policy rationale justifying why some charitable activities are within scope, but others are not (box 4). Inquiry participants were concerned about these inconsistencies. For example, 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 are also some charitable activities where the reasons for DGR status have lessened over time. School building funds – which are widely, but not exclusively, used by non-government schools – are a case in point. School building funds were given DGR status in 1954 when government support for non-government schools was very limited. Since then, government support for non-government schools has expanded considerably. Providing indirect government support through school building funds means government funding is not prioritised according to a systemic assessment of the infrastructure needs of different schools.

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.

The Commission made a draft recommendation that the specific listing mechanism should only be used in exceptional circumstances – as not all applicable circumstances can be foreseen. When it is used, the Australian Government should increase transparency about applications, how these are assessed, and the decision-making process to maintain confidence in the broader DGR system.

Box 4 – The scope of deductible gift recipient coverage is piecemeal and ad hoc

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

Many of the concerns focused on ineligible activities that are similar to activities that have DGR status.

- 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).
- 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 (Injury Matters 2023, pp. 2–3; PA, sub. 162, p. 19).
- Charities that relieve poverty or distress in the community are eligible for DGR status, but charities that focus on prevention face barriers to eligibility (Minderoo Foundation, sub. 270, p. 2; Saward Dawson, sub. 81, p. 2).

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 (AllIW, sub. 271, p. 2; Aurora Education Foundation and GiveOUT 2022, p. 27; Consumer Policy Research Centre, sub. 105, p. 1; Justice Connect, sub. 269, pp. 5–6; Marrie and Marrie 2013, pp. 3–7; The Foundation for Young Australians, sub. 128, p. 2). For example, the principal purpose of environmental organisations with DGR status must be the protection of the natural environment. Marrie and Marrie (2013, p. 4) 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.

Some charitable purposes and activities are clearly outside the current scope of the DGR system. This includes advocacy organisations and peak bodies (Anglicare Australia, sub. 125, p. 2; Animal Defenders Office, sub. 184, pp. 5–6; Justice Reform Initiative, pers. comm., 15 March 2023; Medical Association for Prevention of War, sub. 51, p. 2; Southern Youth and Family Services, sub. 72, p. 3). For example, the South Australian Council of Social Service (sub. 83, p. 4) is a registered charity but is not eligible for DGR status because they ‘do not provide welfare services directly to the people in need’.

The deductible gift recipient system should be fairer and simpler

Reform is needed to simplify the DGR system and to help donors direct support to where there is likely to be the greatest net benefits to 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 future developments in the DGR system. The reforms would establish firm foundations

for the future of philanthropy, so that the benefits of giving can continue to be realised across Australia. There should be three steps to determine whether a class of charitable activity should be 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 by the market.
- Second, 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 government should 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.
- Third, the activity is unlikely to be a material risk of converting tax-deductible donations to private benefits for donors. One indication of this can be charging fees – where fees are charged there should not be significant scope for substitution between donations and fees. However, if a charitable activity is funded partly by user fees this should not necessarily prevent DGR-endorsement nor the use of tax-deductible donations for that activity.

The Commission has 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 make tax-deductible gifts 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 attempted 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.

A more diverse set of charities would have deductible gift recipient 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. Where increasing access to DGR status attracts additional donations, supports new charities and spurs 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.

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 6). 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 animal welfare charities, charities focused on injury prevention and public interest journalism. Charities undertaking advocacy activities related to most charitable purposes would also become eligible for DGR status. This would include a range of charities which are currently ineligible, such as social welfare and human rights organisations that advocate for policy change.

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.

The proposed reforms would also increase access to DGR status for smaller charities if, for example, they have not had the resources to establish a public benevolent institution. This would include 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 deductible gift recipient 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. After applying the principles outlined above, the Commission's view is that in addition to expanding DGR status to a greater number of entities, a simultaneous refocusing toward greater community-wide benefits is also necessary (figure 6).

There are some classes of charitable activities where there is a material risk that donors could convert a tax-deductible donation into a private benefit. For example, where recipients of a good or service are charged (more than nominal) fees by a charity to access goods or services. 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 that activity within the scope of the DGR system would provide net community benefits.

The Commission's view is that converting a tax-deductible donation into a private benefit is, in principle, a substantial risk for primary and secondary education, religious education, and other forms of informal education, including school building funds. The potential for a donor to be able to convert a tax-deductible donation into a private benefit is especially apparent for primary and secondary education, particularly where students are charged fees. 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. 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.

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 childcare, is not warranted.





However, any classes of activities currently carried out through a public benevolent institution, including the provision of education, childcare or aged care, *would continue* to be eligible for DGR status. All activities undertaken by charities registered as public benevolent institutions should be in scope for DGR status because they provide services to groups of people that are in need. For example, many non-government schools in remote Aboriginal and Torres Strait Islander communities currently have DGR endorsement as a result of registration as a public benevolent institution and this would remain the case under the Commission's proposed reforms.

Religious organisations play an important role in many people's lives and communities across Australia. However, the Commission does not see a case for additional government support for the practice of religion through the DGR system, based on the first principle above.

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 so that schools can adjust would be required and are described below.

Figure 6 – 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 including advancing religion, advancing industry, as well as some aged care, childcare and education charities would remain outside the DGR system. 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 education in government schools. Less than 5,000 charities are in this group. 

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, whilst maintaining simplicity, with gift funds being an existing mechanism used by entities with DGR status. 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.

The Commission is not proposing to extend DGR status to activities which are not regarded as charitable in Australia, such as community sport. However, consistent with this draft report’s theme of refocusing taxpayer support toward activities with greater public benefits, a range of activities can be undertaken in furtherance or aid of a charitable purpose. This will remain the case under the proposed reforms – where sporting activities further another charitable purpose, such as advancing health, they may be eligible for support through the DGR system, as is currently the case.

These reforms, including the specific exclusions, will provide greater certainty and consistency for charities. They will also re-focus the system on activities that are likely to have a greater community-wide benefit.

Transition arrangements are needed, but the fiscal cost will be modest

Transition arrangements for implementing the proposed reforms to the DGR system are necessary, but the fiscal cost is likely to be modest. Implementing the proposed changes would require time and government resourcing. 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 (for example, three to five years) for charities that would no longer have DGR status to adjust their fundraising activities.

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, but 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. It is based on indicative analysis and the Commission is not able to anticipate some behavioural responses, such as whether the reforms would increase the share of giving that is tax deductible. There would be some upfront costs as new charities enter the DGR system and the transitional arrangements for school building funds are completed.

If the Commission's proposed approach to the DGR system is adopted, donors would have greater choice when supporting charities through the tax system and a broader range of charitable activities would receive government subsidised donations.

Regulatory arrangements that maintain donor confidence

Public trust and confidence in the charitable sector influence the likelihood a donor will give and how much they will give. There is a strong case for governments to regulate charities to maintain the trust and confidence of donors, taxpayers and the beneficiaries of the goods and services that are provided by charities. 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. It also assures charities that do comply with the law and regulatory requirements that the same is expected of their peers and is being monitored by effective regulators.

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.

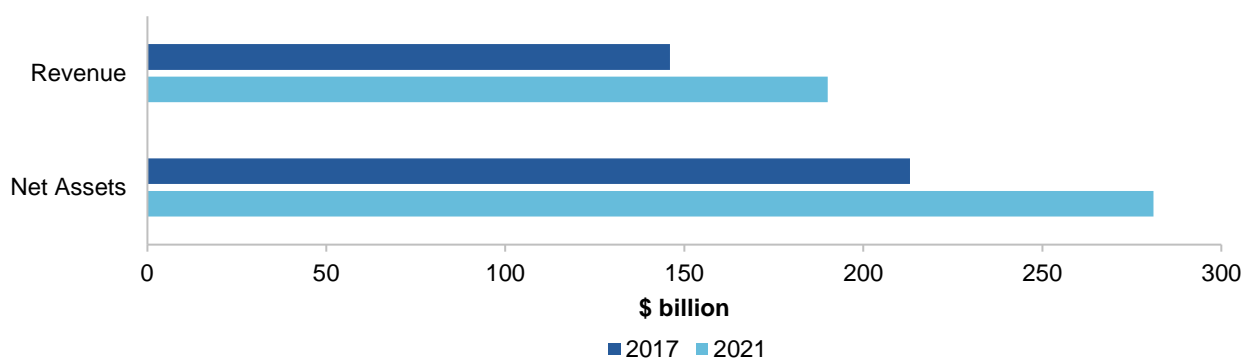
Charities are the stewards of a large pool of assets and receive billions of dollars in funding from governments and donors to support their work in the community. In 2021, charities received \$190 billion in revenue – largely from government grants and contracts, selling goods and services, and donations. The net assets of charities were \$281 billion in 2021, almost 32% larger than in 2017 (figure 7). If current trends continue, combined with the Australian Government's commitment to double giving, it is likely that the revenue and assets held by the charitable sector will also grow.

In Australia, governments support the work of charities directly (through grants) and indirectly (through tax concessions). Under the Commission's proposed reforms, there will also be a greater number of charities

with DGR status that will receive indirect government support through the tax system. The ways that people give are also changing, largely spurred by technological advances.

This makes effective and proportionate regulation of charities to protect donors and beneficiaries, and provide public accountability, essential. Regulation must also continue to meet community expectations as donor behaviour changes so that emerging risks are managed.

Figure 7 – Charity revenue and net assets are both growing



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.

Multiple regulators of charities across both levels of government creates inconsistencies, confusion and regulatory burden for donors and charities (box 5). For example, the ACNC must obtain legal advice from the Australian Government Solicitor confirming that a charity is a 'federally regulated entity' before it is able to exercise its enforcement powers to respond to actual or potential misconduct by a charity. This legal advice may require a nuanced assessment of financial information or activities undertaken by the charity and the ACNC lacks power to obtain necessary information from a charity to support that assessment.

One consequence of multiple regulators is that not all charities are subject to the same regulatory response in instances of misconduct, including the enforcement actions taken by a regulator. In addition, different regulators will have different priorities.

Legislation should give regulators a sufficient range of enforcement tools to adopt a graduated, risk-based approach to regulation. This means regulators can take proportionate action in response to instances of misconduct, and effectively and efficiently deter future instances of misconduct. However, constitutional constraints limit the full scope of the ACNC's enforcement powers to a small proportion of charities characterised as 'federally regulated entities' or that operate outside Australia. 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 by Australian, state and territory governments.

Box 5 – The regulatory system for charities is complex

The structure of a charity, the jurisdiction(s) it is headquartered and otherwise operates in, the taxation arrangements which apply (such as access to tax concessions), and the nature and beneficiaries of its work determine which legislation and regulation applies to the charity, and which regulator(s) oversee its governance and conduct on behalf of the public. These examples illustrate some of the differences.

- A registered religious charity is structured as an incorporated association under New South Wales (NSW) law. It operates ‘opportunity shops’ in NSW and Queensland, and transfers its net profits to NSW charities that advance religion. It does not fundraise or have DGR status. It is regulated by NSW Fair Trading (legal structure), ACNC (charity registration), ATO (Australian Government tax concessions), and the Australian Securities and Investments Commission (to conduct business outside NSW).
- A registered charity is structured as an Indigenous corporation, it has DGR status, and fundraises and undertakes activities in Western Australia to advance Aboriginal culture. It is regulated by the Registrar of the Office of Indigenous Corporations (legal structure), ACNC (charity registration), ATO (Australian Government tax concessions and DGR status) and the Western Australian Department of Mines, Industry Regulation and Safety (fundraising).

A charity may want to change its structure and therefore the regulators it is accountable to if its purpose changes. For example, a charity established as an incorporated association may seek to restructure as a company limited by guarantee to help people and communities in multiple states (as incorporated associations are generally restricted to conducting business in the jurisdiction they were established in). This restructuring would involve a transfer of registration from a state- or territory-based regulator to the Australian Securities and Investments Commission.

Different regulators have different responses to the same conduct by charities. For example, a charity that makes false statements during a once-off fundraising appeal in South Australia could face a financial penalty under Victorian 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.

A referral of powers by state parliaments is likely to be the best approach to address the constitutional limitations of the ACNC that result in charities being treated differently for the same misconduct and to improve oversight of charity assets. However, there are significant implementation challenges and costs associated with referring powers from the states to the Australian Parliament. Variation across jurisdictions may still occur if some states decline to refer a matter to the Australian Parliament.

Given the complexities involved with progressing a referral of powers and the need for a high degree of evidence to prioritise such a course of action, the Commission proposed a number of other reforms which can build on the existing collaborative approach to charities regulation and can be achieved without a referral of powers. The draft recommendations propose a suite of changes to strengthen the ACNC’s information gathering and reporting powers, underpinned by the provision of test case funding and the introduction of a binding rulings scheme, that are proportionate to current and foreseeable risks. These draft recommendations include enabling the ACNC to:

- require a registered charity to provide information necessary to form an opinion on whether it is a ‘federally regulated entity’

- require a registered charity undergoing revocation of its ACNC registration to provide evidence that its assets have been transferred to another registered charity unless an exemption is granted. This would require co-operation between the ACNC, state and territory regulators, and Attorneys-General
- have standing so it can seek orders in the Supreme Courts of all jurisdictions, where necessary, to protect charitable assets.

Changes in giving motivations and practices, including the greater use of online platforms and peer-to-peer giving, means new risks may emerge. These changes, coupled with the large and increasing pool of funds managed by charities, means 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 charity sector if the ACNC exercises its powers when the need arises and the public has access to relevant information about its regulatory activities. The Commission notes that ACNC data suggests that it has been limited in its use of formal enforcement powers. Secrecy provisions have also limited the information it can make public on actual or potential non-compliance, and the steps taken by the ACNC and charities to address it.

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. One explanation is that the ACNC focuses on educating and guiding charities to meet their obligations. It may also reflect the ACNC's evolution as a regulator. Since it was established in 2012, the ACNC has registered tens of thousands of charities, developed information collecting mechanisms and worked with other regulators to streamline reporting requirements. As the ACNC moves into 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 ACNC's ability to disclose information, including on the ACNC charity register, about the actions it has taken to address actual or potential misconduct by a charity is constrained by the *Australian Charities and Not-for-profits Commission Act 2012 (Cth)* (ACNC Act). While all regulators need to maintain the trust of their regulated entities when handling sensitive information, there are circumstances where increased public disclosure of information by the ACNC would enhance transparency and accountability of charities and the public's knowledge of and confidence in the ACNC's regulatory activities. For example, the ACNC is unable to disclose details of voluntary compliance agreements to address concerns regarding a charity's compliance with ACNC obligations, such as governance and financial management requirements.

The ACNC should have the powers to:

- publish details of recommendations given to a charity to address actual or potential non-compliance with the ACNC Act or Australian Charities and Not-for-profits Commission Regulations 2022 (Cth)
- publish circumstances and reasons for referrals made to other Australian government agencies (including state and territory regulators), in instances where possible harm caused by the disclosure does not outweigh the public benefit of that disclosure.

The Commission is also proposing to remove the concept of a basic religious charity and associated exemptions, so that these charities are subject to the same ACNC governance and reporting requirements as other charities to enhance public transparency and accountability. As with other charities, reporting should be proportionate to the size of the charity (based on revenue). The majority of basic religious charities are small and like other small charities would be required to provide basic annual financial information to the ACNC without having it independently audited or reviewed. It would also mean if basic religious charities breach governance standards, the ACNC would be able to act.

The role, powers and functions of the ACNC would be expanded if these draft 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 compliance through education and guidance.

The need for a more formalised regulatory architecture

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 the people and/or organisation(s) responsible. The roles, responsibilities and interactions between relevant regulators should be clear so the public knows who to turn to if there is actual or alleged misconduct by a charity. Meeting these expectations are at the core of an effective regulatory framework and maintaining broader public and donor trust and confidence in the sector.

Currently, regulators in the charity 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 to deal with misconduct are inadequate and the current level of co-operation 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 sector.

In the Commission's view, a more formal and comprehensive approach is needed to sharing information, and assessing and mitigating risk, given the complexity of the regulatory system and the limits of the ACNC's enforcement powers. Establishing a National Charity Regulators Forum (Forum) would build the necessary regulatory architecture so relevant regulators can easily collaborate to help prevent and manage regulatory issues, and coordinate their response in the event of large-scale misconduct. There are examples of other regulatory forums, such as the Council of Financial Regulators, that would serve as a useful model.

The terms of reference and governance arrangements for the Forum should be set out in an intergovernmental agreement. The intergovernmental agreement should set out how regulators plan to work together to maintain trust and confidence in the charity sector by outlining:

- how joint compliance actions would be undertaken, including how charity assets would be protected
- how to improve information sharing
- the process for the ACNC to exercise standing in each jurisdiction's Supreme Court
- how any current or emerging regulatory risks would be identified and managed.

The Forum could also be leveraged to manage and deliver outcomes for the fundraising reforms underway, given many regulators work across both charity governance and fundraising.

Minimising unnecessary regulatory barriers to volunteering

Volunteering is widespread in Australia. In 2022, about one in four people (about 6 million people) volunteered for an organisation (formal volunteering). However, over the past decade or so, there has been a decline in the formal volunteering rate. The volunteering rate for people was a historical high in 2010 at 36% and since then it has fallen to 25% in 2020, with a sharp decline coinciding with the COVID-19 pandemic.

Volunteers are essential to the operations of Australian charities. Volunteers may be subject to a range of background checks to determine whether they pose a risk to the people they work with. The benefits of volunteering checks are well established. For example, the Royal Commission into Institutional Responses to Child Sexual Abuse made clear the case for working with children checks. Background checks protect beneficiaries, including people who may be at-risk or vulnerable, against those who may cause them harm.

Inquiry participants expressed concern about unnecessary duplication – between different types of volunteer checks and between 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 implement national standards for working with children checks. This aims to establish nationally consistent parameters for the screening of persons who propose to engage in child-related work. 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 Government is also implementing a National Strategy for Volunteering through until 2025 to address the increasing demand for volunteers and create a rewarding experience for volunteers. The Government also facilitates volunteering in a range of other ways, such as through the Aged Care Volunteer Visitors Scheme which, for over 30 years, has supported volunteers to provide friendship and companionship to older people to help them to develop social connections and reduce social isolation.

The Commission is proposing that Australian, state, territory and local governments more actively consider how changes to policies and programs would affect volunteers. Governments should, for example, consider from the outset how major reforms (such as the NDIS) may affect the demand for – and supply of – volunteers (like in the disability sector), and what steps could be taken to facilitate or ‘crowd in’ volunteer contributions, rather than crowding them out.

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).

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. 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 6). Many family, community and corporate foundations use ancillary fund structures to facilitate their 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 will be offset by larger amounts of distributions flowing to the community (figure 8). 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).

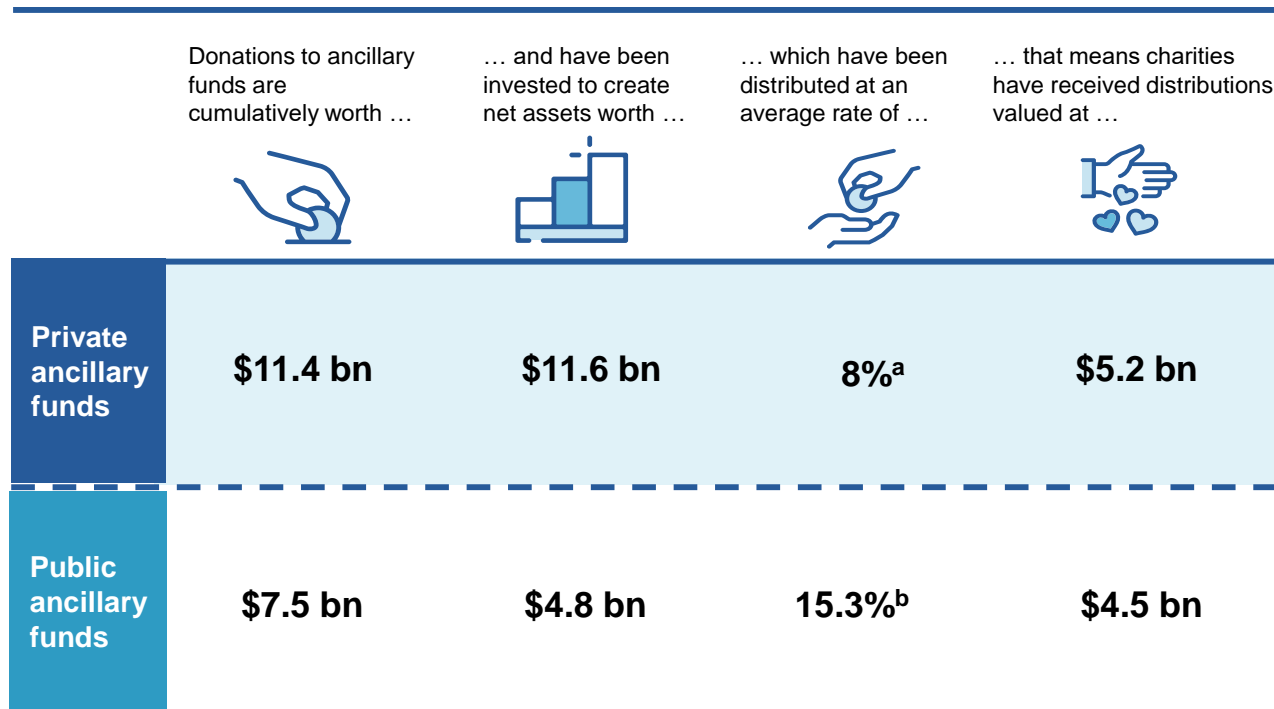
Box 6 – What are public and private ancillary funds?

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.

Figure 8 – 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.

The Australian Government can influence how rapidly money is distributed from ancillary funds to the community through the minimum distribution rate. Applying some basic assumptions, 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–\$15 million would be expected to flow to the community each year.

The Commission is considering whether the distribution rate for private ancillary funds is appropriate. It welcomes evidence on the benefits and costs of changes to the distribution rate, including whether this would result in people:

- deciding not to give, or not giving as much

- deciding to give directly to charities instead of using an ancillary fund
- using a charitable trust or setting up a charity instead of an ancillary fund as a giving vehicle
- using another tax effective structure.

The Commission is also proposing 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 donors cannot be better off.

No case to change taxation of superannuation charitable bequests

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 toward inheritance and supporting surviving family. For example, a person with a surviving spouse or child is less likely to make a charitable bequest, and if they do, it is likely to be a smaller amount compared to those without surviving dependants.

It is possible to provide a bequest from superannuation to a charity, but 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.

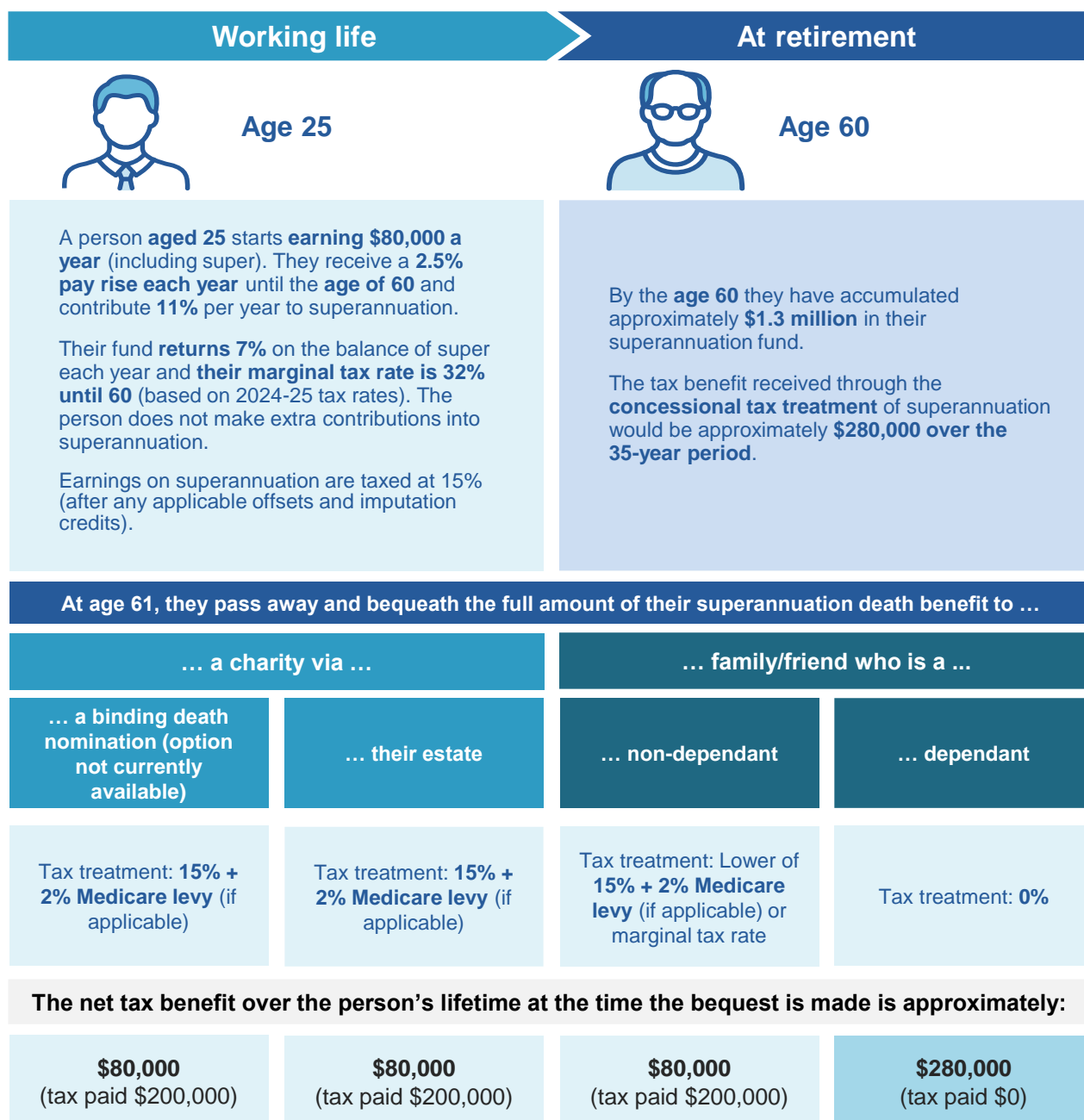
The Commission is seeking information from donors, charities and superannuation funds on options to allow people to nominate excess superannuation to a charity directly, rather than via their estate.

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. Bequests of excess superannuation to charities are generally taxed at 15% (plus the 2% Medicare levy, if applicable). This is the same as the tax treatment of excess superannuation at death that is distributed to people who are not dependants, such as an independent adult child.

Some submissions argued that removing the tax on excess superannuation donated to charities after death would increase the amount given to charities and support the Government's goal of doubling philanthropy.

The Superannuation (Objective) Bill 2023 (Cth) defines the objective of superannuation as 'to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way'. Money placed in superannuation receives a significant net tax benefit over its life cycle – that is, the amount of tax someone would have paid in the absence of receiving a tax concession through the superannuation system (figure 9).

Figure 9 – Taxation of charitable bequests from excess superannuation



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

The case for greater tax concessions for bequests from excess superannuation has not been made. The current taxation 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

There are 60,000 registered charities in Australia and tens of thousands more charities internationally. 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 also have a role to provide the public with reliable information based on data they collect from charities to achieve their policy and regulatory goals. This can inform a person's decision about whether and how to give, as well as promote trust and confidence in the charitable sector.

Information provided by charities and the government is an important part of the exchanges that take place in the charitable sector. There are instances where government information on charities and giving should be enhanced so it is better tailored to promote informed donor decisions and public accountability. However, this does not imply that more information would necessarily lead to more giving. More information may help donors make choices that are more aligned with their preferences, but a person's capacity to give is influenced by many other factors including income, cultural background and life experiences.

Improving information that is available to donors and the public

The ACNC and the ATO should create more value from the data they collect about charities for donors and the public.

Participants had two broad concerns about government information on charities, which is largely published by the ACNC and the ATO (figure 10). First, governments provide insufficient information to assess and compare the effectiveness of charities and inadequate public disclosure of information about charities' activities (particularly distributions by ancillary funds). Second, some participants commented that public accountability of charities should be improved. This includes reducing inconsistencies in information reported to the ACNC by charities and improving the accessibility of public data. About one in five people were aware of the ACNC charity register in 2017.





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

- collecting and presenting data in ways that are more meaningful and accessible to the public (such as providing more aggregate information about sub-funds within public ancillary funds, and differentiating between bequests and other types of donations to charities in the ACNC annual information statement)
- raising public awareness of the ACNC charity register.

This provides an indication of the ways in which the Australian Government should create more value from the data it collects from and publishes about charities, but it is not intended to be an exhaustive list.

A possible impediment to the ACNC being responsive to the perspectives of donors and the public could be real or perceived limits on its legislative responsibilities and mandate. While the purpose of the regulatory system is to help the public understand the work of charities, perspectives of donors appear less evident in the ACNC objectives, consultation processes and regulatory performance measures, compared to the perspectives of registered charities. For example, the composition of ACNC stakeholder groups and expert panels, appears on its face to be largely drawn from regulated entities or people who advise them.




Figure 10 – Limitations of Government provision of public information on charities

<p>Lack relevance to giving decisions </p> <ul style="list-style-type: none"> • Overemphasis on financial information • Insufficient information on charity effectiveness 	<p>Inadequate public disclosure </p> <ul style="list-style-type: none"> • Data on distributions by ancillary funds lack sufficient detail of benefits to community • Secrecy provisions that prevent the public being informed about actions against charities • Unjustified reporting exemptions (basic religious charities)
<p>Lack reporting consistency </p> <ul style="list-style-type: none"> • Inconsistencies in how charities report information and what they report (such as financial information) 	<p>Lack of data accessibility </p> <ul style="list-style-type: none"> • Databases that are difficult to navigate • Low awareness of information • Difficulties extracting data

Engagement processes that capture the views of donors and the public are a key enabler to improve the charity register and other government sources of information (figure 11). The Commission is proposing that the ACNC embed donor and public views in its regulatory approach and that the charity register should collect and present information with the needs of donors and the public more clearly in mind. This should be shaped by research on the information donors and the public would find valuable and evaluation of future changes to the charity register should inform its content and presentation. The ACNC should also include more perspectives from donors and volunteers when:

- forming consultative or expert committees
- making decisions about whether to withhold or remove information from the charity register.

Figure 11 – Ways to improve the ACNC charity register

There appears to be limited understanding of:		
<p>which cohorts of donors do and do not access the charity register </p>	<p>why people do and do not access the register </p>	<p>how the information on the register could be made easier to access </p>

Although there is scope to enhance public information sources, such as the charity register, mandating standardised measures or metrics of charity effectiveness across all charities would be impractical, could lead to unintended consequences and may not increase giving. While there is evidence that some people do not give because they lack information necessary to verify whether a charity is effective, it is unclear whether the proportion of people who do not give for this reason is sufficiently significant to warrant such a change, particularly when other organisations outside of government can publish assessments of charity effectiveness.

Enhancing public data on giving and volunteering

Total giving in Australia is worth billions of dollars each year. Despite this, there is little detailed public information on giving aside from tax-deductible donations by individuals. For example, it is uncertain how

much charities receive each year from corporate donations or 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). The Australian Bureau of Statistics (ABS) should improve the usefulness of its data collections by amending the Census to include or improve questions on informal and formal volunteering.

Good information plays an important role in developing and evaluating government policies to incentivise giving and volunteering. 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 it needs to be balanced against costs and other practical limits to collecting further information on giving.

Increasing the transparency of corporate giving

Corporate giving in Australia is significant. An Australian study estimated that corporate giving – in the form of donations, non-commercial sponsorships and partnerships – was \$17.5 billion dollars in 2015-16, with donations alone worth \$6.2 billion. However, the precise value and make up of corporate giving is highly uncertain because many businesses report giving as an expense and do not separately report it to the ATO.

There is scope to increase the transparency of – and improve accountability for – corporate giving.

First, the Australian Government should require 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. This would increase the accountability of boards and management of large companies to their shareholders, consumers, employees and the broader public.

Second, the ATO should require listed companies to report charitable donations of money and assets as a distinct line item in their company tax return. The change would enable the ATO to regularly publish aggregated data on corporate giving and enhance the information available to researchers. This would inform policy and regulatory work on corporate giving.

Better measuring the contribution of volunteering to the community

Over the past decade the ABS – in consultation with other government agencies and Volunteering Australia – has sought to improve how it collects and reports on volunteering data, recognising the evolving and broadening understanding of the role volunteering plays in the community. Participants to this inquiry, and in earlier consultations undertaken by the ABS, identified several opportunities to further enhance how governments measure volunteering in Australia which have not been implemented.

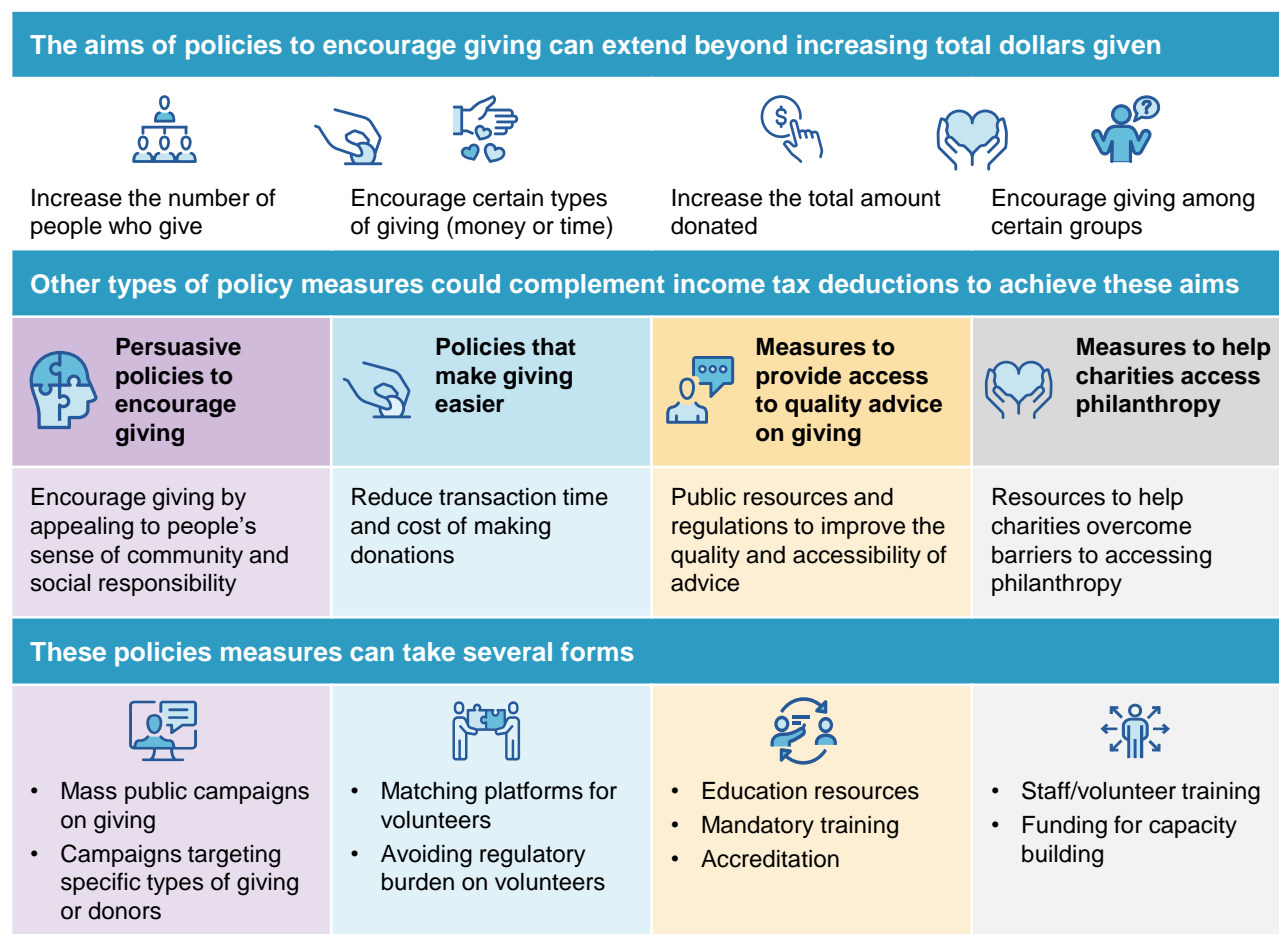
The ABS should improve the usefulness of public information sources on volunteering by gathering data on informal volunteering and time spent in formal and informal volunteering in the Census. Collecting informal volunteering data could provide a more nuanced understanding of volunteering in Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse communities, and the country as a whole. Collecting data on the frequency of (formal and informal) volunteering will help inform policies that aim to increase volunteering and recognise the contribution it makes to the community.

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 instances where volunteering has different cultural meanings, in consultation with these communities.

Assessing mechanisms that could complement tax incentives

The Commission assessed a range of complementary measures for increasing people’s participation in giving, recognising that tax deductions for donations do not encourage all types of givers or all types of giving (figure 12). Addressing these barriers will often entail the government working with the charitable sector and professional organisations to develop solutions. In some cases, the sector and professional organisations should play a leading role rather than government.

Figure 12 – Governments can encourage giving using more than tax incentives



Several participants to this inquiry argued for the government to invest in public information campaigns for giving. A public campaign, supported by government, could help broaden participation in giving, but there is insufficient evidence to conclude that it would be effective or that it would produce net benefits for the Australian community in the context of support that is already provided. The Commission did not recommend that governments undertake such a campaign. More evidence is needed, including through rigorous evaluations from Australia or overseas to demonstrate whether a government-funded campaign would be effective at increasing giving and would produce net benefits for the community.

Notwithstanding this lack of evidence, should such a campaign be undertaken, governments could maximise the chances of success (and learning opportunities) by ensuring any public campaigns that involve government funding (whether it be a campaign run by a government agency or public funding of a sector-led campaign) adhere to basic principles of program design, evaluation and transparency.

During consultations, several participants raised concerns about the availability of quality professional advice on giving. The Commission is seeking further information on whether the inability to access good-quality professional advice on philanthropy is preventing some people from identifying giving opportunities or making decisions that align with their preferences.

Practical reforms to support philanthropy

This is the first government-commissioned review that examines all aspects of philanthropy in Australia. The Commission's analysis takes the perspective of collectively improving outcomes for donors, charities, taxpayers, people who receive goods and services from charities, and the community as a whole.

The Commission's draft recommendations are designed to provide a package of practical reforms to improve the policy settings that govern, support and incentivise philanthropy.

If the Commission's proposed approach to the DGR system is adopted, donors would have greater choice when supporting charities through the tax system. This means access to relevant, trustworthy information – so that people can make donations that align with their preferences and motivations – will become more important. It is also incumbent on governments and the charitable sector to support donors' trust and confidence in the sector as these changes occur.

The regulatory burden for volunteers should be eased and data on volunteering published by the ABS should be improved to provide a more nuanced understanding of formal and informal volunteering, particularly in Aboriginal and Torres Strait Islander communities and culturally and linguistically diverse communities.

More charities would have access to tax-deductible donations, including smaller charities. This would also include many charities that are dependent on volunteers and have few or no paid staff. The Commission's draft recommendations are designed to improve the regulatory environment for charities to provide greater certainty and reduce any unnecessary regulatory burden. While most charities act with integrity and within the law, increased access to tax-deductible donations creates a greater need for charities and regulators to keep the maintenance of trust and confidence front of mind.

If adopted, this suite of draft recommendations would establish firm foundations for the future of philanthropy, increase the wellbeing of the Australian community and support the Australian Government's commitment to double giving by 2030.

Draft recommendations and findings

Chapter 3: Philanthropy in Australia



Draft 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.



Draft 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.

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 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.



Draft 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. Conclusions can be drawn from patterns of giving behaviour.

- 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 to connect with family through giving, leave a legacy or teach skills to the next generation.
- Many businesses use high-visibility giving, including pro bono work, to bolster their corporate reputation, and 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



Information request 4.1
Data on giving that is not tax deductible

While there are estimates of the proportion of people who have given, but do not claim an income tax deduction, more complete and recent data would inform the Commission's final recommendations on policy options that seek to improve incentives to give. The Commission is seeking information, such as survey or other data, about instances where people make donations, but do not claim a tax deduction for reasons including they:

- do not have taxable income
- choose not to claim the deduction
- donate to entities that do not have deductible gift recipient status and therefore the donations are not eligible for a tax deduction.

The Commission is also seeking information on the reasons why people choose not to claim a tax deduction for giving if they *do* have taxable income and the donations are eligible for a tax deduction.



Draft finding 4.1

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

Preliminary 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 estimated 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 preliminary estimates for:

- price elasticity of giving in Australia ranges from -0.87 to -0.92, meaning a 1% increase in the tax deduction for giving is associated with a 0.87% to 0.92% increase in giving
- the income elasticity of giving in Australia ranges from 0.555 to 0.564, meaning a 1% increase in income is associated with a 0.555% to 0.564% 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.

The Commission will present final estimates, using different modelling approaches, of the price elasticity of giving and the income elasticity of giving in the final report.



Draft 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.



Information request 4.2 **Government policies to support giving**

The Commission is seeking feedback on the advantages and disadvantages of using alternative government policies to support giving, including a tax credit and matched giving, as opposed to a tax deduction.

- How would donors likely change their giving behaviour under different types of tax incentives, such as a tax credit, and what would drive those changes?
- What would be the effect on charities of moving to a tax credit if more people were likely to give smaller amounts, but the overall amount of giving decreases?
- If it were to be adopted, how should a tax credit be designed?
- What would be the effect on donations of moving to a matched giving scheme, like Gift Aid, given it does not provide a direct personal benefit to encourage all taxpayers to give?
- Would such a matched giving scheme be an improvement compared to a tax deduction and, if so, how should it be designed?



Draft 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



Draft 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



Draft 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 other 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 childcare and aged care in the social welfare subtype (other than activities undertaken by a public benevolent institution)
 - all activities in the subtype of advancing religion



Draft recommendation 6.1

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

- 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 transparency about applications, how these are assessed, and the decision-making process to maintain confidence in the broader DGR system.



Information request 6.1

Improving the specific listing mechanism

The Commission expects that, under its proposed reforms of the deductible gift recipient system, specific listing would be used only in exceptional circumstances, but welcomes further feedback on:

- what role it should play, if any
- how applications should be assessed
- how transparency could be improved, including what further information should be published about the entities that apply for specific listing, how applications are assessed and decision-making processes about why or why not an application is approved
- whether specific listing should be done through regulation rather than legislation.



Information request 6.2

Reporting obligations for entities that have deductible gift recipient (DGR) status

The Commission invites feedback on the costs and benefits of changing reporting obligations for entities that receive donations through the DGR system.

- Is there a case to require charities to provide information that disaggregates donations received for activities that are eligible for DGR status and activities that are excluded?
- How large would the compliance costs of this reporting requirement be? How would it vary between different sized charities?
- What reporting, if any, should be required of government entities with DGR status? How should this be enacted and administered?
- How would these additional reporting obligations improve the integrity of the DGR system or inform policy settings?
- Are there any other areas where the benefits of additional reporting would outweigh the costs?



Draft 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 all new and existing charities with all applicable charitable subtypes. 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.



Information request 6.3

Transition arrangements for reforming the deductible gift recipient (DGR) system

The Commission's proposed reforms seek to simplify the DGR system and help donors direct support to where there is likely to be the greatest net benefits to the community as a whole, but there would be transition costs. The Commission invites feedback on transition arrangements to minimise the costs of reforming the DGR system.

- The Commission is considering how long the transition period should be for the proposed arrangements to come into force. What are the pros and cons of a transition period for activities where existing eligibility for DGR status is withdrawn? How long should the transition period be?
- Is there a case for other transition arrangements, such as grandfathering, or a gradual reduction of tax deductibility that would provide a glide path from current arrangements to the new arrangements? If so, in what circumstances and how would the complexities of two different DGR systems be managed?
- Are there likely to be any consequences for the operation of ancillary funds that should be considered in implementing the proposed reforms?
- Are there any other factors that should be considered in designing and implementing transition arrangements?



Information request 6.4

How expanded access to deductible gift recipient (DGR) status would change giving

The Commission is seeking information, including survey and data information, on how people would change their giving behaviour if DGR status is expanded to most charitable activities (subject to the exclusions described in draft recommendation 6.1).

- Would the expansion in the scope of the DGR system likely result in additional giving overall? If so, by how much?
- Would donors give less to entities with existing DGR status and more to those that gain DGR status under the proposed reforms? If so, by how much?

Chapter 7: A sound regulatory framework



Draft recommendation 7.1

A more transparent and consistent approach to regulating basic religious 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 have the same governance obligations and reporting requirements proportionate to their size.



Draft recommendation 7.2

A suite of reforms to strengthen 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 registered 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 registered charity undergoing revocation of its ACNC charity registration to provide evidence that its assets have been transferred to another registered charity unless an exemption is granted. This will require co-operation between the ACNC, state and territory regulators, and Attorneys-General, which should be outlined in the intergovernmental agreement as set out in draft recommendation 7.4
- 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.

**Draft recommendation 7.2****A suite of reforms to strengthen the Australian Charities and Not-for-profits Commission**

To improve transparency for donors, the Australian Government should amend the Act to enable the Commissioner of the ACNC to:

- publish details of recommendations given to a charity to address actual or potential non-compliance with the Act or the Australian Charities and Not-for-profits Commission Regulations 2022 (Cth)
- publish circumstances and reasons for referrals made to other Australian government agencies (including state and territory regulators) under section 150-40 of the Act, in instances where harm caused by the disclosure does not outweigh the public benefit of that disclosure.

**Information request 7.1****Building a stronger regulatory framework**

The Commission is seeking information on options that would support implementation of draft recommendation 7.2.

- What changes would be needed to enable the Australian Charities and Not-for-profits Commission (ACNC) to direct a registered charity undergoing revocation of its ACNC registration to transfer surplus assets to another registered charity, without impinging or duplicating the powers available to state and territory regulators? For example, should it be done through an administrative power or by specifying co-operation in the intergovernmental agreement (draft recommendation 7.4)?
- Whether providing the ACNC standing in each jurisdiction's Supreme Court should be in relation to charitable trusts only or other charity structures and, if so, what legislative changes would be necessary to give effect to this?

The Commission is also seeking further information about options for ensuring that the assets of dormant charities are directed toward benefiting the public, including what test may be appropriate for determining whether a charity is 'dormant' and what steps could be taken in response.

**Draft recommendation 7.3****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 for the purpose of developing the law in matters of public interest
- amend the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) to introduce a binding 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.



Draft recommendation 7.4

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 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 (ACNC) and relevant state and territory regulators, and Attorneys-General, through the development of memorandums of understanding, including in relation to joint compliance approaches, appointments of a lead regulator and processes to protect charity assets
 - set out the circumstances and process for the Commissioner of the ACNC to exercise standing in each jurisdiction's Supreme Court, in relation to seeking orders regarding the administration of charities and the protection of charitable assets (draft recommendation 7.2)
 - 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.



Draft recommendation 7.5

Explicitly consider the effects on volunteers when designing policies and programs

To support volunteering, Australian, state, territory and local governments should give greater consideration to 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.



Information request 7.2

Regulation to strengthen donor protection through online giving platforms

Online giving platforms have changed how people donate and can create new risks and challenges for donors and charities. The Commission is seeking further information and evidence on the costs, benefits and need for changes to regulation of online giving platforms, for example requiring:

- a regulator to be notified of fundraising appeals once a certain threshold of donations is met
- online giving platforms to make reasonable efforts to notify a charity of appeals being conducted in their name
- online giving platforms or a regulator to halt a fundraising appeal being conducted in the name of a registered charity upon that charity's request.

Chapter 8: Structured giving vehicles



Information request 8.1

Effect of changes to the minimum distribution rate for ancillary funds

The Commission is considering whether the current minimum distribution rate for ancillary funds maximises the net benefit to the community. The Commission is seeking views on the likely response to a change in the minimum distribution rate (higher or lower) for public or private ancillary funds, including how it would affect:

- decisions faced by donors about whether to use a structured giving vehicle, which giving vehicle to use including alternatives, such as setting up or donating to an existing charity or giving vehicle, and whether to donate at all
- decisions made by trustees of existing public and private ancillary funds about how much to distribute and when.

The Commission welcomes views on how the distribution rate for public and private ancillary funds should be determined and the advantages and disadvantages of different methods.



Draft recommendation 8.1

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.



Information request 8.2

Timely distributions of donated funds for charitable purposes

The Commission is seeking views on whether, and in what circumstances, the regulatory framework for entities that have deductible gift recipient status should encourage timely distributions for charitable purposes, and whether there should be regulatory consistency between giving vehicles to encourage distributions.



Information request 8.3

Regulatory arrangements for charitable trusts by licensed trustee companies

The Commission is seeking further evidence regarding the administration of charitable trusts by trustee companies, given changes over the past 10 years that have led to further concentration in the market for licenced trustee services. This includes information about arrangements for switching providers or charging fees, particularly for funds held in perpetuity.

The Commission invites views on whether there is a need for policy reforms in relation to the administration of charitable trusts by licensed trustee companies, and if so:

- the nature and rationale for any proposed changes
- accompanying evidence, such as data or case studies
- any potential role or implications for Australian regulators.



Information request 8.4

Making bequests through superannuation easier

The Commission is seeking information, including from donors, charities and superannuation funds, on options to allow people to nominate their superannuation death benefit to a charity. The Commission welcomes further information on the:

- potential design of a mechanism to enable people to direct a portion of their superannuation death benefit to nominated charities, including the roles and responsibilities of parties such as trustees and estate executors
- benefits, costs, risks, necessary safeguards, and potential unintended consequences of policy options enabling a person to direct their superannuation death benefit to nominated charities
- factors, such as family or financial circumstances, that would contribute to a person deciding whether to take up the option to direct their superannuation death benefit to nominated charities.



Draft finding 8.1

There is no case for reducing superannuation taxes for bequests

The current taxation 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.

**Information request 8.5**
Barriers and opportunities for innovative giving vehicles

The Commission invites evidence such as data or case studies on the use of innovative giving vehicles. The Commission is seeking further evidence on the extent to which the existing regulatory framework and tax arrangements impose barriers or facilitate the development of innovative giving vehicles.

Chapter 9: Public information about charities and giving

**Draft 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, including standardised quantitative measures, would be impractical and may lead to significant unintended consequences.

**Draft recommendation 9.1**
Creating more value from the data held by Australian Government agencies

The Australian Charities and Not-for-profits Commission (ACNC) and the Australian Taxation Office (ATO) should work together to enhance the utility of Australian Government sources of information 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 (such as more prominently presenting charities' deductible gift recipient status), where it is enabled to do so by the Australian Government.

The ACNC and the ATO should work together to:

- publish additional information on distributions by ancillary funds, including collecting and publishing additional information by sub-funds within public ancillary funds
- raise public awareness of government sources of information on charities, including the ACNC charity register.

The Australian Government should:

- implement reforms to enable the ACNC to publish circumstances and reasons for referrals made to other government agencies (draft recommendation 7.2)
- address regulatory impediments to the ACNC presenting more meaningful information on the ACNC charity register, where necessary.



Draft recommendation 9.2
Embedding donor and public views in the Australian Charities and Not-for-profits Commission's (ACNC) regulatory approach

To provide clarity on how the ACNC balances the views of charities, donors, volunteers and the wider public in its regulatory approach, the responsible Australian Government minister should issue a statement of expectations that sets out 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.

The design of the ACNC charity register should be shaped by research on the information needs of donors of all sizes, and evaluation of the charity register should inform its content and presentation.



Draft recommendation 9.3
Introducing 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 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.



Draft recommendation 9.4
Improving 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.

**Draft recommendation 9.5****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 by amending 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).

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

**Draft 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.



Draft recommendation 10.1

Establishing an Aboriginal and Torres Strait Islander philanthropic foundation

The Australian Government should support the establishment of an independent philanthropic foundation controlled by Aboriginal and Torres Strait Islander people.

The foundation would focus on strengthening the capacity of Aboriginal and Torres Strait Islander communities to build partnerships with philanthropic and volunteering networks, and supporting new and existing Aboriginal and Torres Strait Islander giving vehicles. It would be able to administer grants programs to fulfill these functions.

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.



Information request 10.1

Supporting charities to engage with different sources of philanthropy

Some charities may face greater challenges accessing philanthropy because of their size, location or the nature of their services. The Commission is seeking information on possible measures to assist charities to access philanthropy.

- Examples of government-funded programs in Australia or overseas that help charities access philanthropy or volunteer networks, and any related evaluations.
- The role of intermediaries, such as community foundations, and opportunities to enhance this role.
- What additional support governments could provide to help charities access philanthropy or volunteer networks, and the reasons why this support is needed.
- Further ideas and perspectives on options to support Aboriginal and Torres Strait Islander organisations that are seeking to access philanthropy, where they wish to do so, including feedback on draft recommendation 10.1.



Information request 10.2 **Accessing professional advice on philanthropy**

The inability to access high-quality professional advice on philanthropy could prevent some people from identifying giving opportunities or making decisions that align with their preferences. The Commission is seeking information on professional advice on philanthropy.

- Evidence that people who use professional financial services would value and are willing to pay for professional advice on philanthropy, but are unable to source that advice.
- Information on specific regulatory or other impediments (if any) to people accessing advice on philanthropy and ways to address them.
- Evidence that an inability to access professional advice is materially affecting giving or resulting in harm to donors.

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 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 as 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 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 would 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 to coach a child’s sport team, 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 not-for-profit (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 restrictions, 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:

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

Disqualifying purposes include activities that are unlawful or contrary to public policy, or purposes that promote or oppose a political party or candidate for political office (*Charities Act 2013* (Cth) Part 3, Division 1). State and territory governments have their own definitions of charity, often in their revenue legislation. The Australian Charities and Not-for-profits Commission (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 pre-requisite 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 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 2023d).

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 has not specified baseline (or target) figures in the terms of reference for this inquiry. The Government's policy objective is based on a view that:

- philanthropic giving underpins the activities of NFP organisations and the percentage of taxpayers donating 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 charity 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).

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

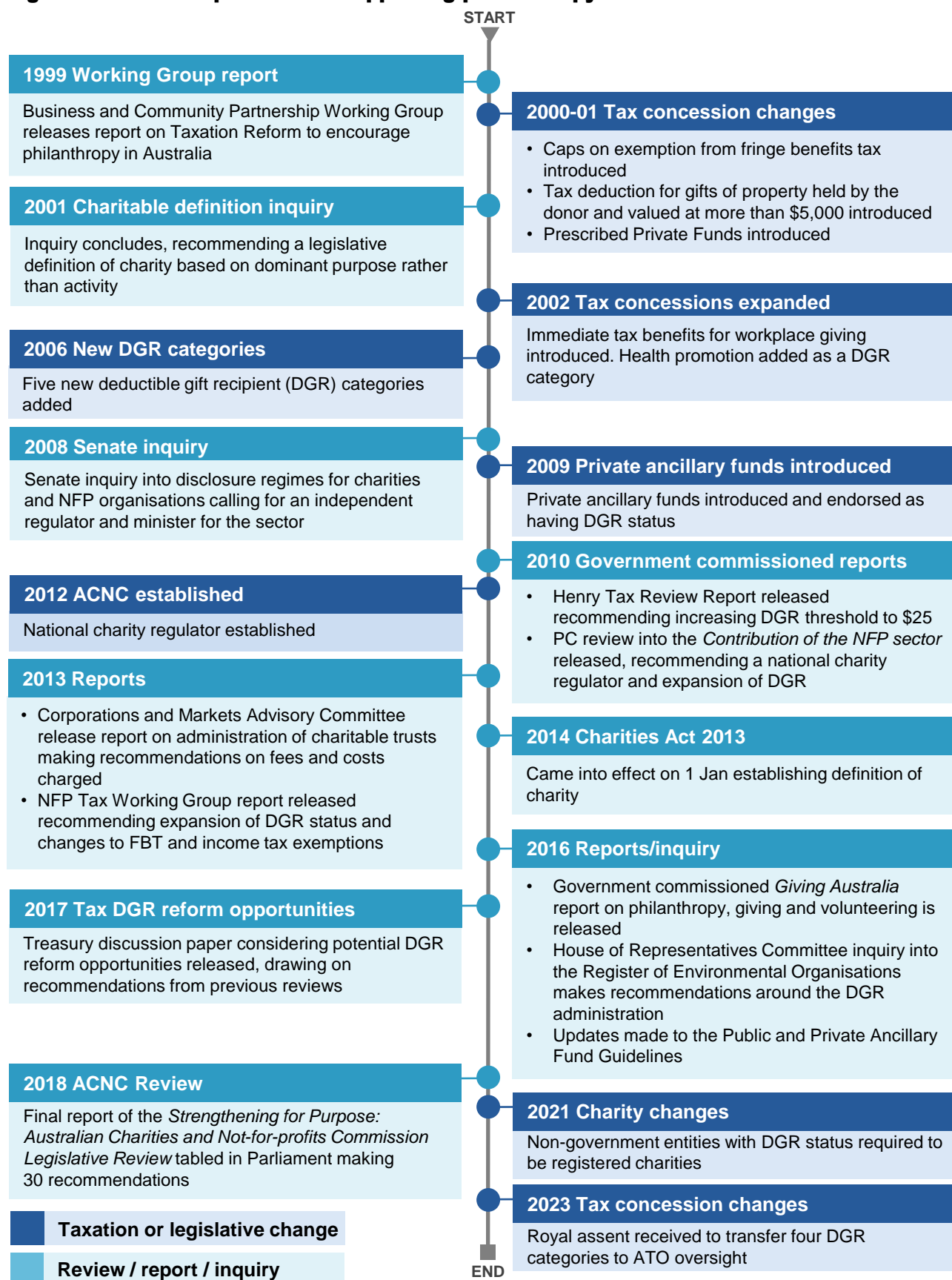
Growing philanthropy has long been a goal of governments and has been supported through a range of policy instruments. In early 1600s England, one of the objectives for the introduction of the *Statute of Charitable Uses* was to foster an enabling environment for private giving (Dal Pont 2021, pp. 81–82). The Australian and state and territory governments too have long histories of supporting giving and the NFP sector. Tax exemptions for NFP organisations have their origins in the colonies. In New South Wales, hospitals, 'benevolent institutions' and certain buildings used exclusively for charitable purposes were exempted from local property taxes (Martin 2017, p. 199). 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).

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 (Martin 2017, p. 204). 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).

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 subsequent 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.

Figure 1.1 – Select policies for supporting philanthropy since 1999



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 2020, p. 321). 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 as a replacement for 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 deductible gift recipient (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 Australian Charities and Not-for-profits Commission (ACNC) following the Productivity Commission’s recommendation to consolidate Australian Government regulatory oversight of charities and NFP organisations. The ACNC’s remit includes not-for-profit (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 2019, p. 84, 2020b, p. 44; PC 2010, p. 142). State and territory governments are currently developing implementation plans for reforms to streamline and harmonise fundraising rules across jurisdictions (Leigh and Pearson 2023) (chapter 7).

... but did not address others

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) (chapter 5).

Recommendations from the Corporations and Markets Advisory Committee on the administration of charitable trusts have not been implemented or revisited (chapter 8). This body’s recommendations included stewardship audits of a cross-section of charitable trusts, with a particular focus 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 (chapter 8).

The NFP Sector Tax Concession Working Group was tasked with identifying improvements to how support is provided to the NFP sector through tax concessions. Their 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

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

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 (chapter 5).

Several recommendations made to improve NFP regulation have also not been adopted. These include specific amendments to the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) that were identified in the 2018 *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislative Review*, and recommendations to resolve certain interactions between the *Australian Charities and Not-for-profits Commission Act (2012)* (Cth) and *Corporations Act 2001* (Cth) (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 – the largest source of revenue for charities. Charities also received \$13.4 billion in donations and bequests in 2021 (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 and 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 which have 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 Productivity 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), with an implication that a charity is of a certain quality standard.

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, 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) (chapter 4 and chapter 5).

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. 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; Treasury 2023d, pp. 139, 141).

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 difficult.

Significant policy developments have changed the role of philanthropy

Notwithstanding the recommendations of past reviews and current review processes (box 1.1), 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. 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. 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.

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 government engages with service providers and recipients of goods and services.

The role for philanthropy in supporting NFP service delivery within these 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 these 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 (chapter 2).

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

Increases in charitable donations (chapter 3), coupled with the Australian Government's goal to double philanthropic giving by 2030, 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 individuals 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 (Mulqueeny and Livermore 2023), and the Australian Government is phasing out cheques, which used to be a common way of donating (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). This has implications for philanthropy – both in terms of how the act of philanthropy adapts to changing preferences and motivations, as well as giving behaviours between generations (chapter 3 and chapter 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.

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). 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. 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 where people may have less disposable income to donate.

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 (chapter 2). 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 to receive support from donors who create wealth in a way that does not align with the values or purpose of the NFP.

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 Productivity 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 leading the development of the *Not-for-profit Sector Development Blueprint*, and has released an issues paper and summary vision for public consultation.
- The *Treasury Laws Amendment (Refining and Improving Our Tax System) Act 2023* (Cth) to reform administration of four DGR categories has received Royal Assent and will take effect from 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 (Australian Government Department of Finance 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 2023d).

The Commission took these policy development processes into account when developing its draft 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 ...

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). These acts of philanthropy seek no financial return for the donor. Funding from government to support social or environmental purposes that intend to provide a financial return to the donor, such as impact investing, have not been a focus of this inquiry.

The giving of time through volunteering is included as a form of philanthropy in this inquiry, but the Commission heard that volunteering is often considered by organisations relying on volunteers, and by volunteers themselves, as 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 our analytical approach.

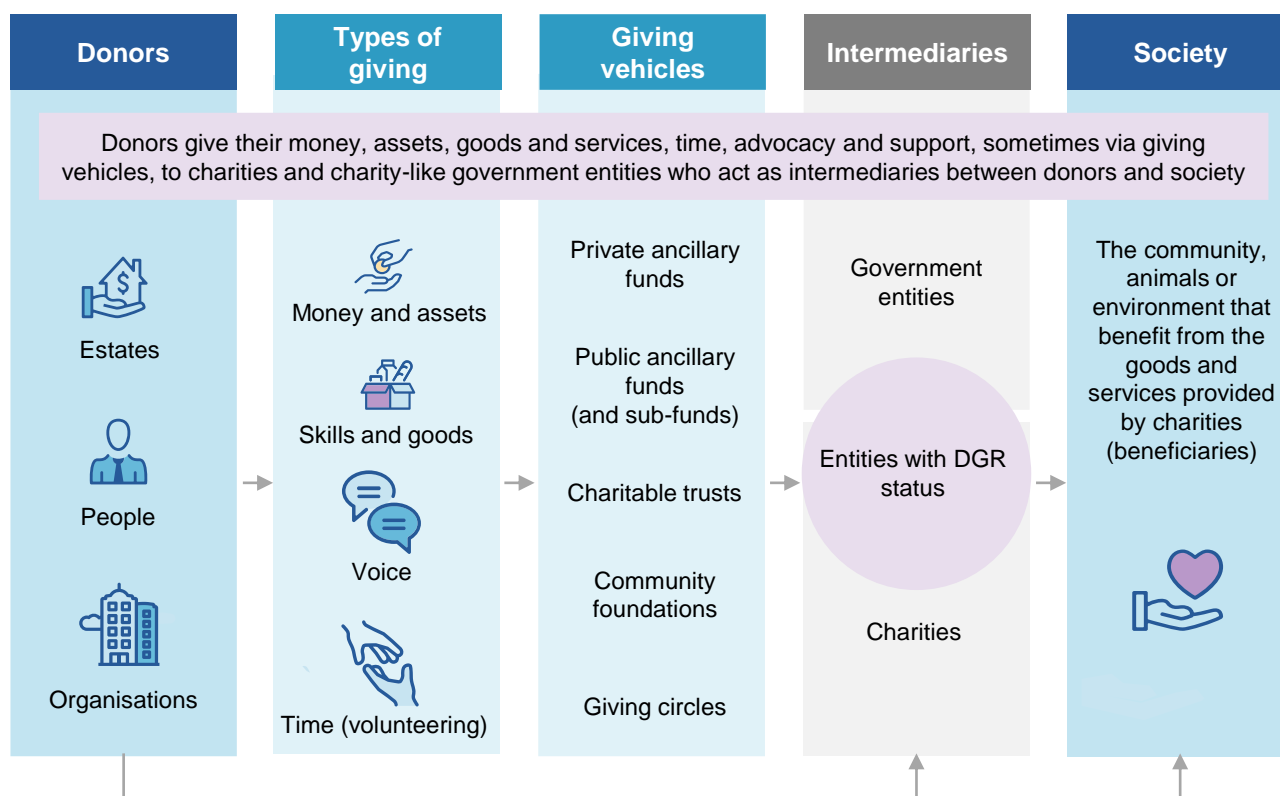
The Commission mainly considered the flow of different forms of giving via charities and charity-like government entities that act as intermediaries between donor and beneficiary. The inquiry focused on charities as defined in the *Charities Act 2013* (Cth), including those with and without DGR status.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

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 (chapter 3). 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, community foundations and workplace giving programs (chapter 8 and chapter 10).

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 Productivity Commission inquiry into the Not-for-profit sector.

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 Australian Charities and Not-for-profits Commission (ACNC), including those with and without deductible gift recipient (DGR) status. Not-for-profit (NFP) organisations is 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, such as 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.

Ancillary funds are a type of structured giving vehicle (also referred to as giving vehicle) – a term used in this inquiry to describe a structure through which people are able to place assets for future giving. Ancillary funds refers to both private ancillary funds and public ancillary funds (and their sub-funds). Ancillary funds are a type of charitable trust. Charitable trusts that are not ancillary funds are another example of a structured giving vehicle. Some types of giving, such as collective giving, community foundations and charitable bequests, are established using ancillary fund and charitable trust structures.

Box 1.3 – Terminology used in this inquiry

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. Since a foundation is not a specific type of entity with a distinct legal meaning in Australia (McGregor-Lowndes and Williamson 2018), 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.

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 draft findings and recommendations in relation to the powers and functions of the Commissioner of the ACNC.

... and 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 has 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 or intermediaries (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 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 new and amended policies are informed by consultation and engagement with people and organisations that receive or provide philanthropic giving. The Commission’s analysis considered the practical aspects of how draft recommendations may be implemented. 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 draft 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 draft 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 received 275 submissions and 74 brief comments in response to the call for submissions paper and held 106 consultations with participants including donors, charities of varying size, scale, structure and sector focus, international experts, academics, representatives of peak bodies, and regulatory and government agencies (appendix A). The Commission participated in 14 events or webinars about the inquiry, including one hosted by the Commission, and held seven roundtable discussions on specific topics.

The Commission would like to thank all participants for their contributions to date, including those who provided data and information to support our analysis.

The Commission welcomes feedback on its proposed reforms, including on how they could be implemented, through submissions, consultations, roundtables and public hearings. Submissions are due by 9 February 2024. Public hearings will also be held in February, the details for which (including dates, locations and venues) will be provided on the Commission's website.

The Commission will provide a final report to the Australian Government by 11 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 suitable housing, can be 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.**
 - Direct government provision to address market gaps can also 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, for a variety of reasons, 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 on, including in times of crisis or to disseminate knowledge.**
- * **Any approach government takes to supporting philanthropy will need to consider that government – and philanthropy itself – can also fail to meet community expectations. Government has less direct control over how public funds are spent when subsidising philanthropy, and this has both benefits and costs. It means that philanthropy can be a more agile and flexible form of support, but it can be problematic if donors' interests and preferences are not aligned with those of the broader community.**
- * **Charities have preferences on the mix of revenue received from government and from philanthropic donors. Philanthropic donors may be able to provide untied, flexible funding for more innovative and higher risk projects compared to what government funding can offer, which some charities may prefer.**

The Australian Government asked the Productivity Commission to identify and assess opportunities to increase philanthropic giving. The Commission approached this task using an economic framework to examine the potential benefits and costs to the community of different forms of government involvement in philanthropy (figure 2.1).

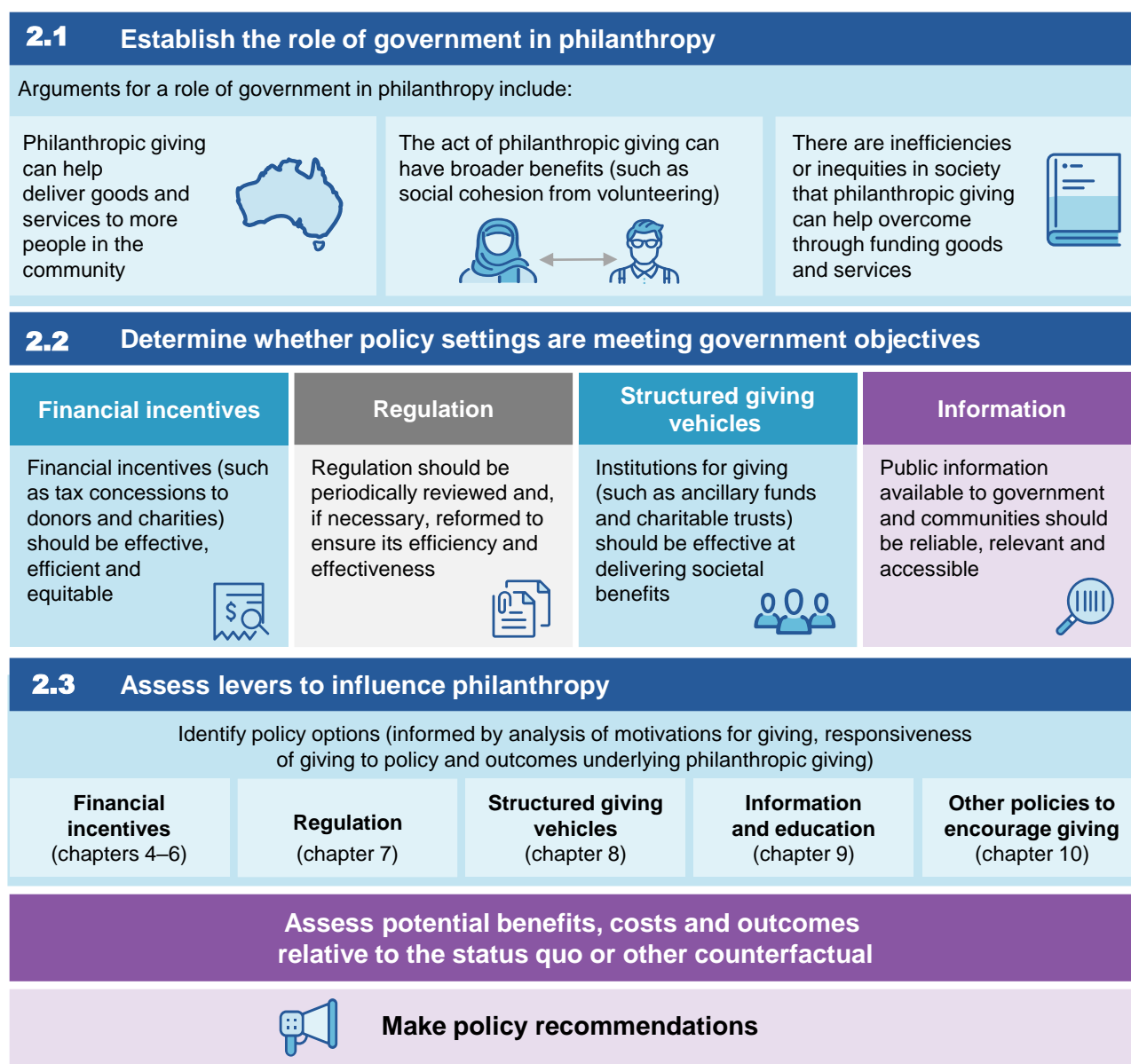
Philanthropic giving is not a conventional market with price signals, or where goods and services are exchanged for financial benefit; nor would it be well-served by a narrow analysis focused solely on achieving economic efficiency. However, efficiency – broadly conceived – and equity remain important principles and a sufficiently broad economic framework can, and should 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 Commission's analysis 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 analysis 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 (Coleman 1988, pp. S102–104). These different forms of social capital can encourage (or deter) people from acting in certain ways (Coleman 1988, p. S105).

The Commission has drawn on 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.

Governments have various policy levers to influence philanthropic giving and the Commission considered their respective roles using the framework set out in figure 2.1. The levers include the deductible gift recipient (DGR) system, which allows donors to eligible organisations to claim a deduction from their taxable income (chapter 4, chapter 5 and chapter 6), regulation (chapter 7), structured giving vehicles (chapter 8), providing information (chapter 9) and other tools such as public campaigns to encourage giving (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). The framework also considers that the government might have a number of objectives, some of which may be competing, such as wanting philanthropic donors to fund the provision of additional goods and services for the community but not wanting to forgo tax revenue that can be used by the government itself to directly fund goods and services.

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 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

Whilst 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. Further, outcomes generated by markets do not always meet individual or community preferences or expectations. People can have different preferences over the realised 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 intervene in markets

- **Externalities.** 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.
- **Public goods.** 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.
- **Information asymmetries.** Although most market transactions involve parties making decisions based on different levels of information, a major imbalance of information 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.** 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 to below efficient levels.
- **Merit and demerit goods.** 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) or less (in the case of demerit goods) than they otherwise would.
- **Inequality.** 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 will not deliver an appropriate distribution of services across the community because there are people with limited incomes, or in particular locations, being excluded from certain services, such as hospital or dental care. The tax and transfer system is one mechanism the government may use to try to redistribute resources.

There are many ways government can act to address market failures or inequality. 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, the Australian Government has Medicare to fund health care, the public schooling system for education, and a system of social services to help those in need.

Government can fund goods and services for the community through taxation, borrowing money or subsidising private spending (figure 2.2). 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 consumption (Roberts 1987, p. 435). Further, the choice of funding instrument can depend on the relative efficiency of government and private provision, and how responsive private spending is 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 services.

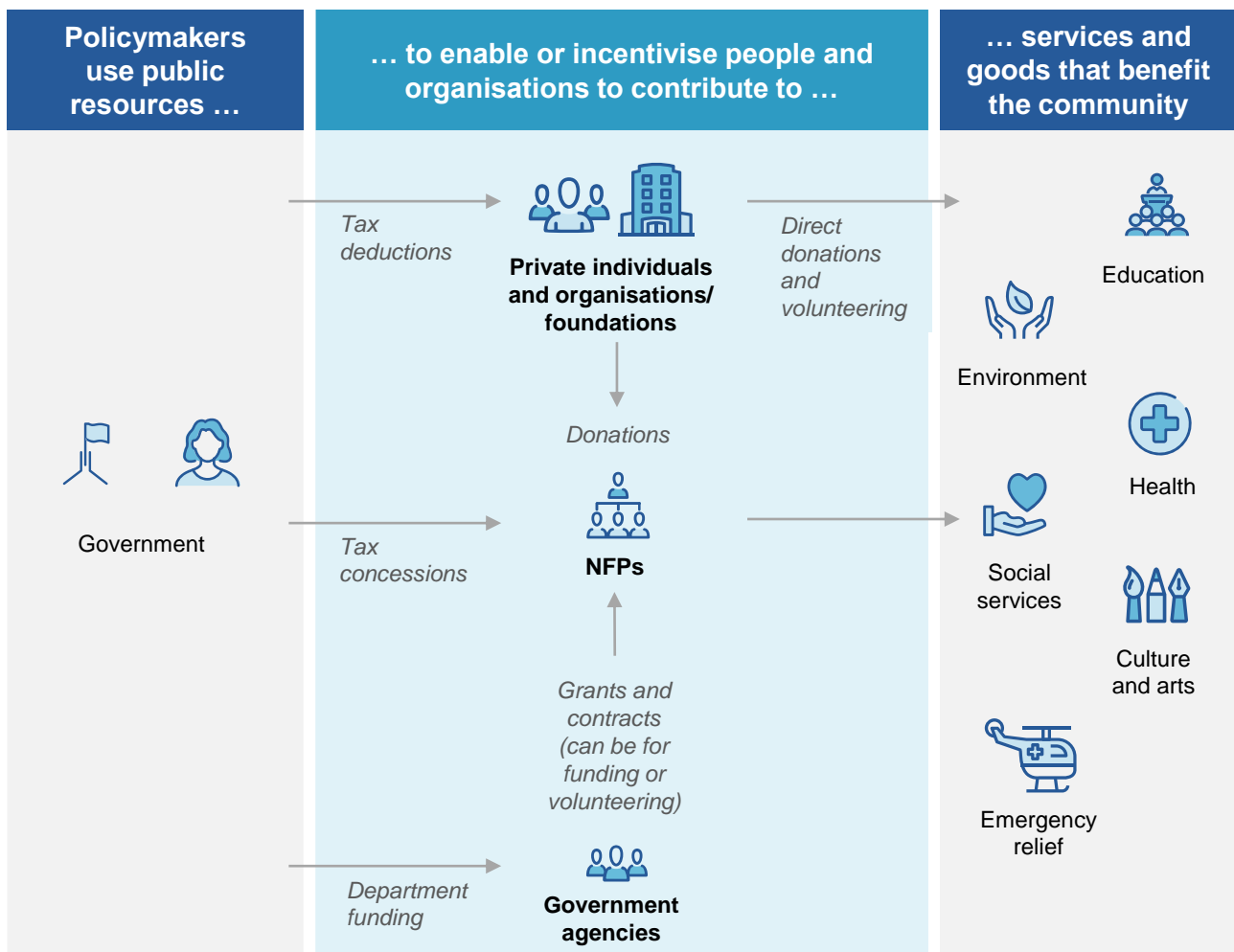
In other cases, government will seek to control or influence market exchanges through regulation, including by mandating public reporting of certain performance measures. Government can also use taxes and subsidies to influence change in a person’s behaviour.

Government can and does intervene in markets, but it cannot, or sometimes fails to, fill all the gaps that emerge in markets. It is 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, inevitably creating 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 on behalf of the government (discussed further below) (ACNC 2023g, p. 8).

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



Philanthropic giving can also facilitate the voluntary redistribution of goods and services to people for which access would otherwise be unaffordable or 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, 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, 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 own preferences alongside the market system, regarding who receives goods and services, income and wealth rather than relying solely on market outcomes or government.

These features improve the wellbeing of the community and provide a *prima facie* role for government to support philanthropic giving. But philanthropy, including in some cases the act of giving itself, can provide benefits to the community that are additional to the monetary value of the cash, goods, services and time donated. These benefits also need to be accounted for when government is considering whether and how it should support philanthropy.

Philanthropy has some strengths government funding does not

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 Commission heard that providing project-specific funding accompanied by conditions is a common approach adopted by larger philanthropic funders. But, where it is untied, donations may also be preferred to government funding because they enable NFP organisations to be more innovative by, for example, trialling new initiatives or approaches to service delivery (box 2.2) (Grant Thornton Australia, sub. 157, pp. 6–7). Most mass donations are untied. Donations like these, especially when large numbers of people give small amounts, can be allocated to new, untested models of delivery that may not receive grants from governments or large philanthropists. Government can (quite legitimately) be risk averse when funding goods and services by limiting funding to a short timeframe or specific activities. Charitable donations can act as a form of 'risk capital' where funding is allocated to new, untested models of delivery that have the potential to generate benefits, perhaps over a term longer than standard grant agreements with government (Paul Ramsay Foundation, sub. 234, p. 3).

Box 2.2 – Philanthropy can encourage innovation

Philanthropy can be used to support innovative approaches to service delivery that are supported by evidence, but government may be unwilling to fund. This benefit of philanthropy over government funding can be realised across a range of sectors in which charities work, including social services, medical research and support services for children and young people. This was highlighted by inquiry participants.

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

Box 2.2 – Philanthropy can encourage innovation

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 philanthropists give long-term funding, which government often cannot do, to an NFP. The International Women's Development Agency (IWDA) 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)

Royal Flying Doctor Service also gave an example of the benefits of patient capital.

A prime example is the mobile dental service currently operating in several states that was initiated in Queensland. 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)

The benefits of philanthropic giving are highlighted by the case study of the Maranguka initiative (box 2.3). Maranguka is an example of how philanthropy can provide patient capital that supports risk taking and innovation, enabling new approaches to be trialled in a way that can be difficult for government to do.

Government may add their support to programs that have proven approaches to improving outcomes for the community. If philanthropy has funded an initiative that has demonstrated evidence of working, government may look to these examples and consider whether it can be scaled up or replicated elsewhere.

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

Box 2.3 – Case study: Maranguka initiative

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.

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).

Donors and NFP organisations can also be more responsive to community need, 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.

Although well-intentioned, donors might not always provide exactly what the community needs – sometimes goods are provided when donations of cash would be more beneficial to the community or requests by NFP organisations for specific goods, such as clothing suitable for office workplaces, are not met. 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, the same way as government grants and prefer untied donations from many smaller donors.

- Another case in point is funding that is tied to cover variable costs, versus funding that can be used to cover fixed costs or overheads.

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.

There are some NFP organisations that will prefer not to receive government funding and others that would 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 (box 2.4) and maintain 'greater freedom to advocate in relation to current government policies' (ACOSS, sub. 263, p. 2).

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 

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 2023d, p. 9)

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)

Box 2.4 – 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 2023h). 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 (ICAN, sub. 44, p. 2; CPRC, sub. 105, p. 1).

Advocacy by charities has 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 (CPRC, sub. 105), can face collective action problems when seeking to organise to advocate for their collective interests (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.

However, advocacy by charities can sometimes be controversial, reflecting disagreement with 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.

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.

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. Other 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. This discrepancy in views highlights that each NFP will have different funding priorities and different perspectives on the pros and cons of each funding source.

Philanthropy can contribute more than a donated dollar

Another argument for government playing a role in 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 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 *for* others, social capital is unlikely to be developed (Putnam 2000, p. 117).

For example, the act of giving through volunteering at a child’s sports team or at a local conservation group or historical society 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).

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.

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 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). This reflects the point made by the Centre for Social Impact (sub. 191, p. 3) that ‘... there remain opportunities to both increase – and enhance – giving. Growth in philanthropy must be about not just more, but also better, philanthropy’.

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.

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 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 is in part informed by the how someone contributes to building social capital.

Figure 2.4 – Ways giving might contribute to social capital



Philanthropy also has limitations

Like private sector and government provision, philanthropic giving can also fail to meet the efficiency and equity goals or expectations of the community (Salamon 1987, p. 39), including for the reasons outlined in box 2.1. 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 in which 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 less represented by the NFP sector.
 - 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 that may not have the specific skills, background or expertise required to provide that support (referred to as philanthropic amateurism). The Commission has heard that there has been a professionalisation of philanthropy, and so this issue may be less relevant – although not necessarily absent – in today’s society.

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 other programs. 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 somewhat indirect, through criteria set out in the DGR system (chapter 5 and chapter 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.

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). Some 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:

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)

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. Thus, it could equally be argued that the fact that giving does not reflect broader views is a benefit, rather than a cost. 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.

The Government's objective of doubling philanthropic giving

There is a role for government to support philanthropy

As noted in chapter 1, the Australian Government has committed to doubling philanthropic giving by 2030. 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 failures. Philanthropy can also help people achieve their own vision of a more just and fair society through a voluntary redistribution of wealth and income.

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.

Second, acts of philanthropy can contribute to social capital – capital that benefits the community but would otherwise be underprovided. Social capital can have public good characteristics (box 2.1). Government support for philanthropy can help address this problem of under-provision.

There are trade-offs for government 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 them to provide, and should provide, according to the reasons for government involvement outlined in box 2.1.

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).

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.

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).

The Commission has been mindful of this trade-off when making draft recommendations. For example, chapter 6 outlines the economic principles that should be applied when granting DGR status to certain activities (as opposed to providing other forms of public support).

The way 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.

Further, inquiry participants have noted it is important not to lose sight of the outcomes philanthropy seeks to achieve when assessing government support for philanthropy. That is, it should be focused on providing a benefit to people, through supporting the work of charities and providing positive outcomes in the community. The act of giving is the first step in this process – in some cases initially through a structured giving vehicle and subsequently onto a charity. The benefit from these funds should ultimately flow to those causes the charity seeks to further, so the lives of people, places and society at large are improved. In this sense the act of giving is the first step in a process in which 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.

Supporting philanthropy is a worthy policy objective, but government intervention in markets to do so should be underpinned by the principles of sound 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 (sub. 187, p. 1) suggests that whilst 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 (chapter 1):

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.

In light of this, there may need to be consideration of how government and philanthropy can coordinate their respective investments more effectively to enhance outcomes for the community, especially given the different characteristics of government and philanthropic funding, as discussed earlier in the chapter.

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 modernised paid professional workforce in these areas, this will affect volunteers. The way in which these policies are designed and implemented could lead to crowding out – but it could also lead to ‘crowding in’ of philanthropic donations of time and money under some circumstances.

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 and the Colman Education Foundation and other philanthropic funders (Colman Education Foundation, sub. 190, p. 2). The Australian Government has also recently commenced an ‘Investment Dialogue for Australia’s Children’ collaboration with a group of philanthropic funders and charities, focused on placed-based approaches to supporting children’s wellbeing and addressing intergenerational disadvantage (ARACY 2023).

The trends and motivations underpinning giving are discussed in chapter 3 and donors’ responsiveness to policies designed to change the price of giving are examined in chapter 4 and appendix B.

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 and information flows, 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 other tax concessions to 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.

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. For example, in times of crisis Australians readily give to those 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
- the actions that NFP organisations take after they receive a donation
- NFP performance and the quality of outputs recipients receive – in many cases, it is not clear what an objective set of measures of NFP performance should be.

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, however, 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 receiving healthcare.

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’). In other cases, donors or governments may 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.

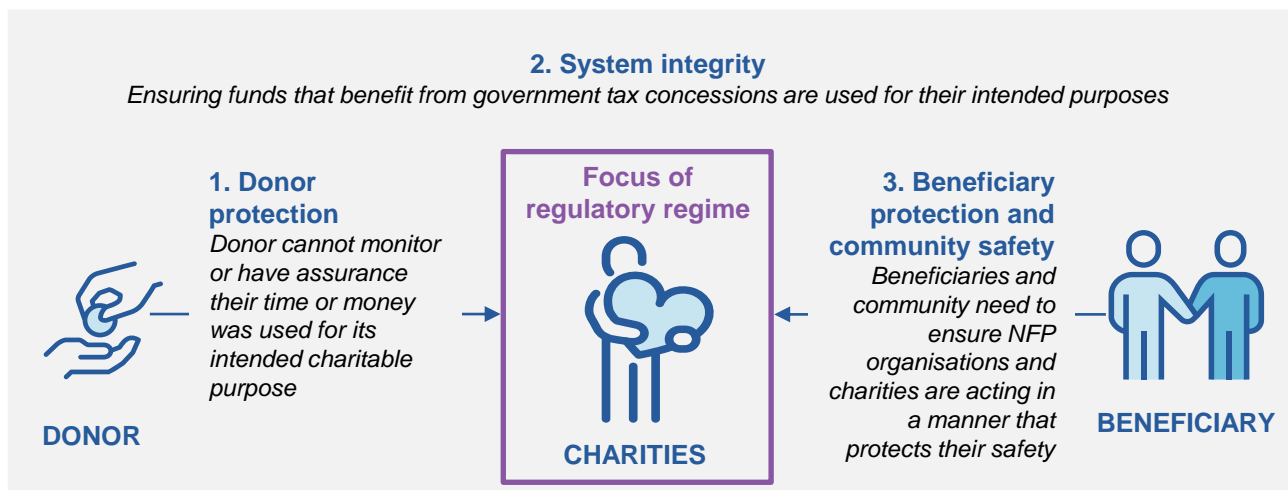
Where governments provide or mandate information, there remains scope for government failure, whereby donors and the public may not make well-informed decisions if the mandated or publicly provided information is incomplete, unreliable or inaccessible. Hence, there is a need to periodically review public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

Regulation

There is similarly an information imbalance between donors and charities after a donation is made – donors cannot easily observe how donations are used and whether charities have used them as the donor intended. The charity acts on behalf of the donor – using the money donated to benefit those who need it. 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 societal benefits, people hold them to high 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 promote the reduction of unnecessary regulatory obligations on the sector (ACNC 2023n; 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 firms 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 NFP organisations) 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.

Government provides an incentive to use ancillary funds through tax concessions but, as with other types of giving, it 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 in the form of a licensed trustee company, will oversee and manage the giving vehicle, and may also have imperfect information about the donor's wishes.

To enable ancillary funds to provide donors with tax incentives, along with ensuring funds flow to the benefit of society, they are governed by rules set out in legislation or regulation. These rules stipulate how giving vehicles are governed, who they can give to, and the minimum amount they must give. 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 performance of structured giving vehicles are discussed in chapter 8.

Other policies to encourage giving

A range of other policy settings are available to support government objectives.

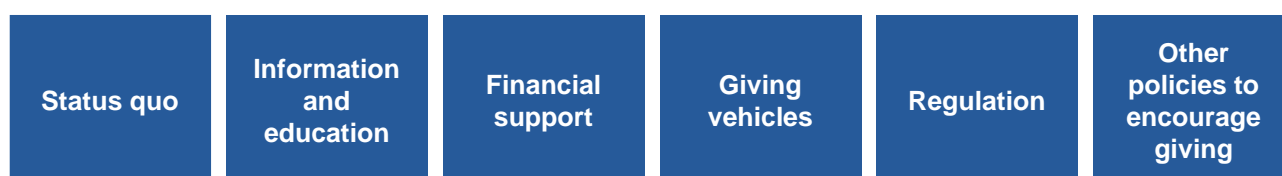
- Suasive policies, such as public campaigns, have been successful in public health settings such as sun protection and wearing seatbelts. They are a form of non-price competition, encouraging people to change their behaviour.
- Policies that make giving easier, including through the use of behavioural economic approaches. This could include, for example, technology that more quickly matches prospective volunteers with opportunities for volunteering.
- Regulation and training of professional advisors, which could be done through a variety of means such as education resources, mandatory training or education or accreditation.
- Policies of funding to improve capacity to access philanthropy, which could be targeted at particular sectors or population groups, such as Aboriginal and Torres Strait Islander people and organisations.

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 for the Commission to identify the range of feasible policy options available to address why this is the case. There are a range of 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 building for organisations to access philanthropy, public campaigns or behavioural economic approaches designed to influence behaviour to name a few.

Figure 2.6 – Options available to government



The costs and benefits of policy options

Each policy option will have potential costs and benefits and the Commission will recommend the option it considers to be the most effective at addressing the identified issue and likely to have the greatest expected net benefit. 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 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 has 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'). Although this is not the only factor in making an assessment about tax incentives. The DGR system is treasury efficient if a 1% decrease in the price of giving (from the tax deduction) results in a more than 1% increase in giving to charity (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).

Costs and benefits 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 draft recommendation changes an existing policy, the Commission has considered the implication 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 has considered the importance of evaluation and 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 a prerequisite for assessing whether existing policies are effective. It is also a prerequisite for assessing whether policies that aim to support giving will likely 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.
- * Available data on giving only provides a partial picture of overall giving, but various policy insights emerge. 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%.**

 - People who have a high income 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 a fall in the proportion of all taxpayers making tax-deductible donations.
 - The expansion of tax incentives for giving (particularly the introduction of prescribed private funds, the predecessor to private ancillary funds, in 2001) contributed to this trend; however, the precise contribution of these policy changes is difficult to disaggregate from other drivers of giving, such as growth in income and wealth.
- * If the trend in 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.**
- * 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 gifts 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).

In Australia, governments directly encourage philanthropy. The main way they do this is allowing people to claim an income tax deduction for donations to approved entities (chapter 1, chapter 4, chapter 5 and chapter 6). Australian, state, territory and local governments also provide substantial support to charities through a range of tax concessions and direct funding.

Governments also use regulation to promote public trust in charities and support giving. These regulations include rules about how charities operate – such as those governing how charities raise funds and how giving vehicles distribute funds on behalf of donors – as well as requirements to publicly report information about their operations and activities (chapter 8 and chapter 9).

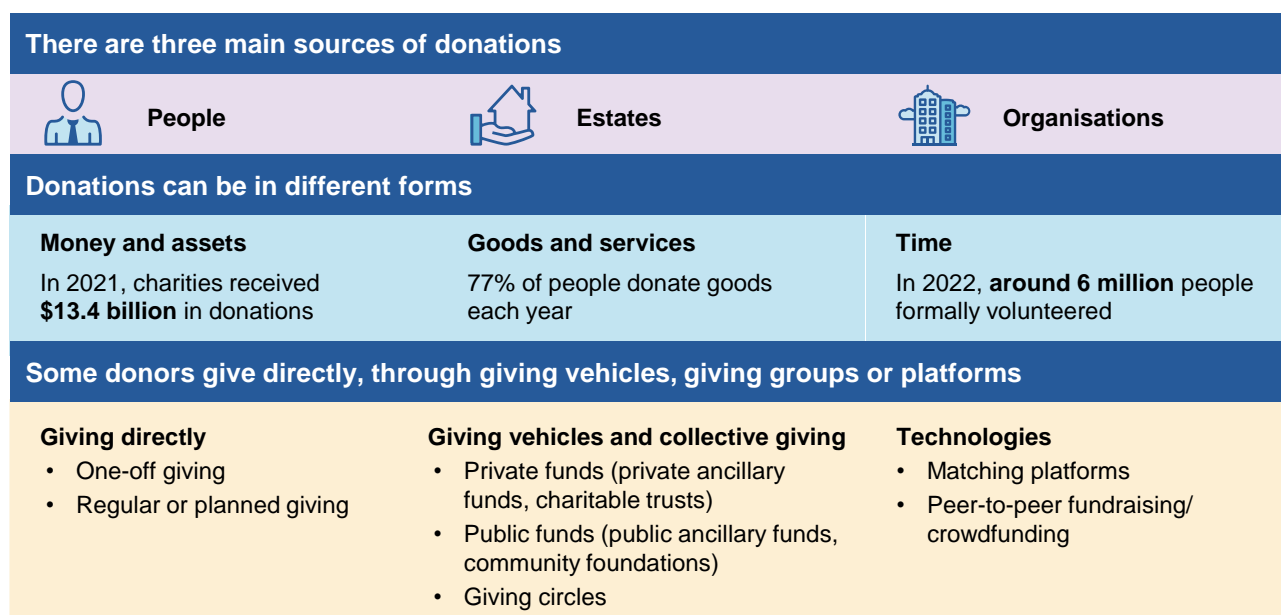
Understanding the diverse ways people give, their reasons for giving (or not giving) and how giving has changed over time, is a prerequisite for assessing whether existing policies to directly or indirectly support philanthropy are effective.

- 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, reform 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 their services, 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).
- Understanding the reasons people give or do not give can inform the choice and design of instruments to increase giving, as well as understanding emerging opportunities and risks for donors and charities (such as those associated with the presence of social influencers in fundraising).

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 to recipients directly. 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 give in Australia



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

Gifts of money and assets

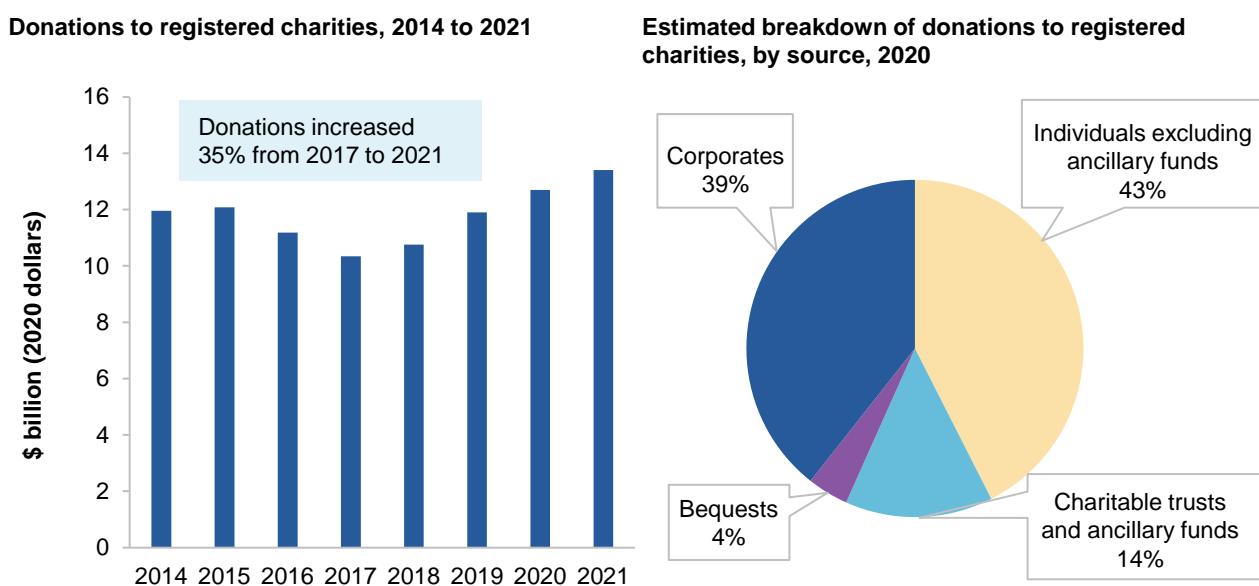
Australians donate billions of dollars in money and assets to charitable causes each year. This includes donations to registered charities, which includes organisations whose primary function is to distribute philanthropic funds through giving vehicles, such as ancillary funds. Individuals who give money or assets to a charity endorsed by the Australian Taxation Office (ATO) as a deductible gift recipient 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 2019, 2023g). If the historical 4-year average growth (7.9%) in total giving to all charities continues, the Productivity Commission estimates that total giving would nominally be about \$26.5 billion in 2029-30.

In 2020 (the most recent year for which an estimated breakdown of donations to registered charities is available) donations by people directly to charities were the largest source of donations (43%), followed by corporate donations (39%), distributions from funds and trusts (14%) and bequests (4%) (figure 3.2) (McLeod 2020, p. 2). Data gaps on corporate donations, bequests and donations that people did not claim as an income tax deduction mean the estimated shares for these types of donations are highly uncertain (box 3.1).

Donations of money and assets also include donations to organisations that are not registered charities or to individuals. 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. However, there is little information on this type of giving in Australia.

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

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, 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, as a result of the establishment of the ACNC, available data is considerably better now compared with when the Productivity Commission examined the NFP sector in 2010. JBWere (sub. 249, p. 4) observed that data sources on giving have improved dramatically since the ACNC introduced annual information statement reporting from 2014.

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

Data gaps mean estimates of certain types of giving are uncertain

Data gaps on giving can arise because of practical issues associated with monitoring and reporting on certain types of giving. For example, past survey data on giving often does not capture giving that involves someone providing a friend or neighbour with money to help pay for their utility bills or groceries or 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 9.4). There are often multiple different surveys, which vary in how they frame questions and response options and in the populations they sample. Consequently, surveys often produce results that conflict or are not comparable with other surveys.

Another issue is that respondents to these surveys on giving may have a bias toward choosing response options that are more socially acceptable, so they appear more prosocial to the interviewer or to reinforce their own positive self-identity (Brenner and DeLamater 2016). Such biases may result in survey results that overstate the significance of barriers to giving. To address the first issue, the Commission sought to put more weight on surveys that had larger and more representative samples and included a variety of response options.

Data gaps on giving also reflect government decisions about how to prioritise resources and balance the benefits of public transparency with the cost of public reporting, including reporting burdens on NFP organisations, and donor and recipient privacy. Government agencies might not collect detailed information on some giving because there is no specific regulatory reason to justify the associated cost to government or NFP organisations, such as 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 they are registered with the ACNC (such as people who give directly to overseas charities that have no Australian presence).

There may also be limits in legislation on what can be published. For example, the ACNC indicated that it cannot publish information provided in response to optional questions in the Annual Information Statement that charities complete each year (ACNC, sub. 238, p. 9). Obtaining detailed national data on the 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 have raised

Box 3.1 – Limitations of existing data on giving in Australia

concerns about limitations relating to giving and gender. Some participants have raised that approaches to collecting and reporting data often do not allow for analysis on giving by women (AIIW, sub. 271, p. 2).

As a result of these data gaps, the Commission has had to draw on estimates of certain types of giving, such as the value of giving not claimed as an income tax deduction and giving through sub-funds (McLeod 2020; Seibert 2019). It has 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 means estimates of each type of giving, and the overall estimate of giving, are somewhat uncertain.

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

Another limitation of government data sources relates to 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 does not resonate with some people in multicultural and linguistically diverse communities (box 3.2).

Donations by individuals include structured or unstructured giving

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 beneficiary directly (unstructured giving)
- donating to a fund or giving group which then distributes the gift on their behalf (structured giving)
- leaving money or assets in their will as a charitable bequest (structured giving).

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, and highly reliable, and because these tax deductions directly affect tax revenue.

A commonly observed trend in tax-deductible giving over recent decades is the increase in the value of donations despite a lower proportion of people who have taxable income giving (Leigh 2023b). According to ATO data, Australians contributed \$4.4 billion to eligible charities in tax-deductible donations in 2020-21. 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 nominally be approximately \$8 billion by 2029-30 based on the historical 10-year average growth (7.0%) in tax-deductible donations from individuals (figure 3.3).

Noting that Australians move in and out of income brackets over their life cycle, most of the increase in tax-deductible giving is attributable to high income earners tending to give more. People earning an income above \$180,000 accounted for over two-thirds of the growth from 2010-11 to 2019-20 (and two-fifths of the growth if giving data for 2020-21 – the first year of the COVID-19 pandemic – is included) despite representing only 4% of taxpayers (Commission estimates from ATO data). Over this same period, the average donation by people in the top two highest marginal tax brackets 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 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).

There are many suggested reasons why the proportion of people making tax-deductible donations is declining including:

- a perception that the taxpayer funded safety net in Australia has been improving, which may crowd out some private donations
- the rising cost of living, which is putting pressure on household budgets and people's capacity to donate (Dr Matt Wade, Assoc. Prof. Kevin Filo, Dr Nicholas Hookway, Prof. Catherine Palmer, sub. 199, p. 2; St Vincent de Paul Society National Council, sub. 82, p. 1; Mercy Works Ltd, sub. 60, p. 1)
- social and cultural norms around giving, with many observing giving in Australia is below that of other countries (figure 3.4) (Workplace Giving, sub. 175, p. 5; McDonald and Scaife 2011, p. 312; Philanthropy Australia 2021, p. 5).

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

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 and supporting the community are often referred to as a 'culture of giving'. Some participants have suggested government 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 expect 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 (controlling for other factors):

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

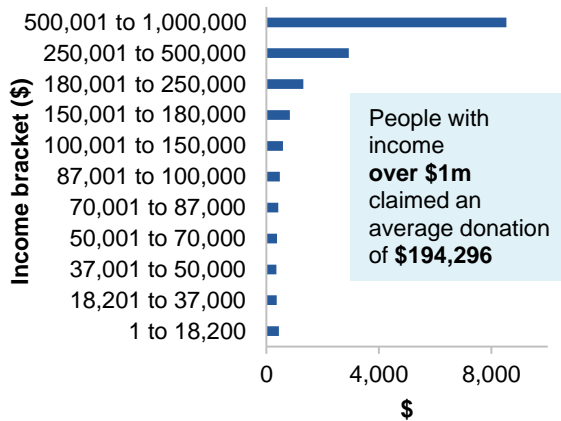
The Commission has explored some aspects of this analysis in cases where there is available data. People who give regularly tend to give more (figure 3.3), people tend to give locally through peer-to-peer platforms (figure 3.5) and people affected by natural disasters are likely to donate more to help people in their own community (box 3.3). 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 3.4 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. Such comparisons also leave out contributions to social causes 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.

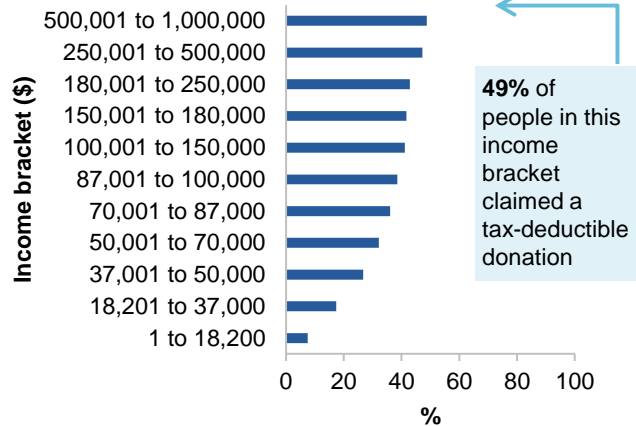
Figure 3.3 – Tax-deductible donations of money by people

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

Value of tax-deductible donation



Taxpayers who claimed a deduction



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**

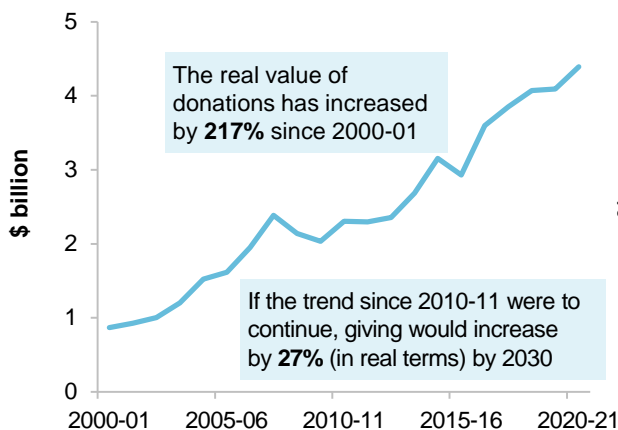


The likelihood and average size of donations were higher in **states with higher income levels**

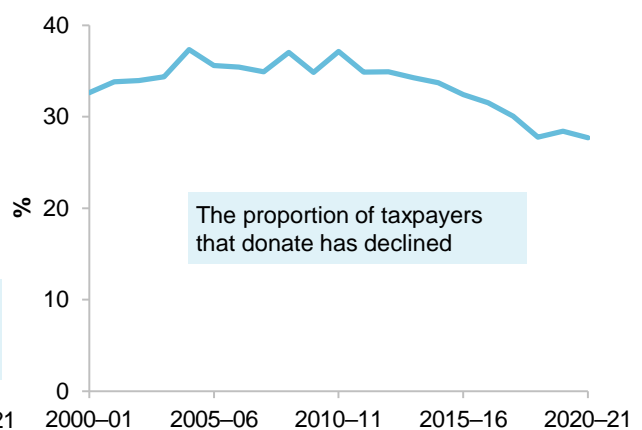


From 2000-01 to 2020-21, donations increased in real terms

Value of tax-deductible donations



Proportion of taxpayers that donated



People who give regularly tend to give more

From 2015-16 to 2019-20

55% of taxpayers made a donation in one year

15% 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

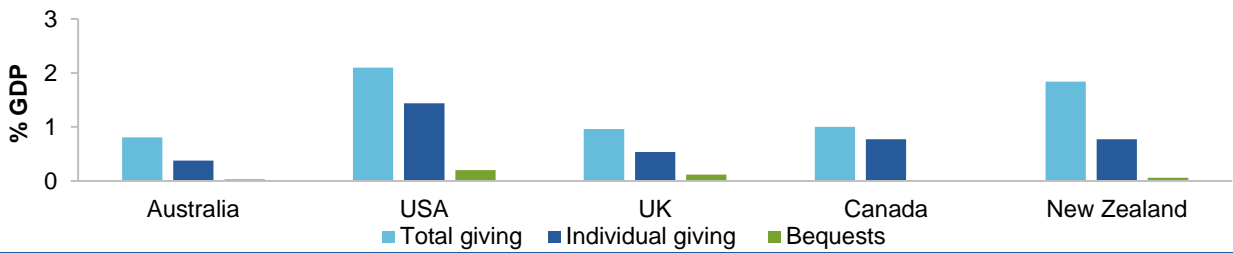
Sources: Commission estimates using ALife data; ATO (2023a).

Figure 3.4 – How international benchmarks of giving only tell part of the story

Giving as a share of GDP varies across countries

Available estimates from the 2010s suggest giving in Australia (% GDP) is lower than other countries such as the United States of America

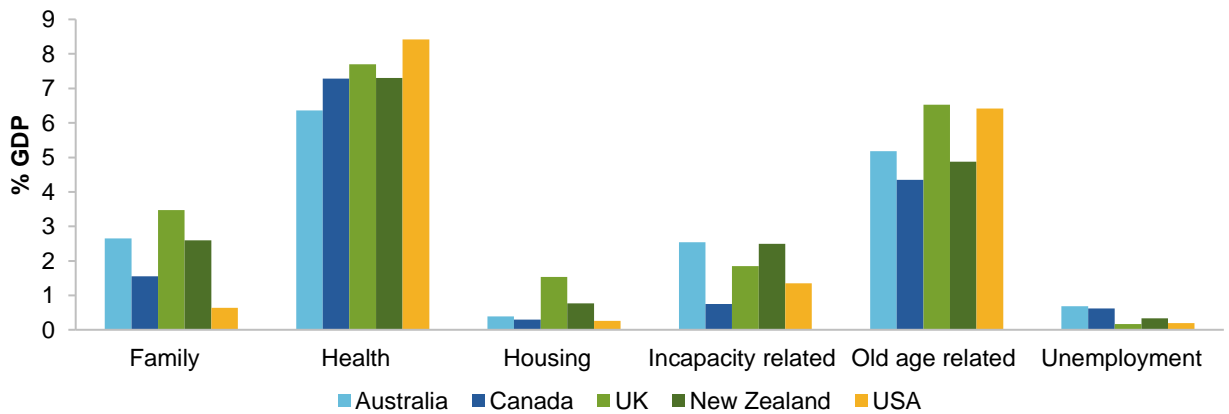
Giving in selected countries, 2013 to 2018



But so does public expenditure on different types of social services

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

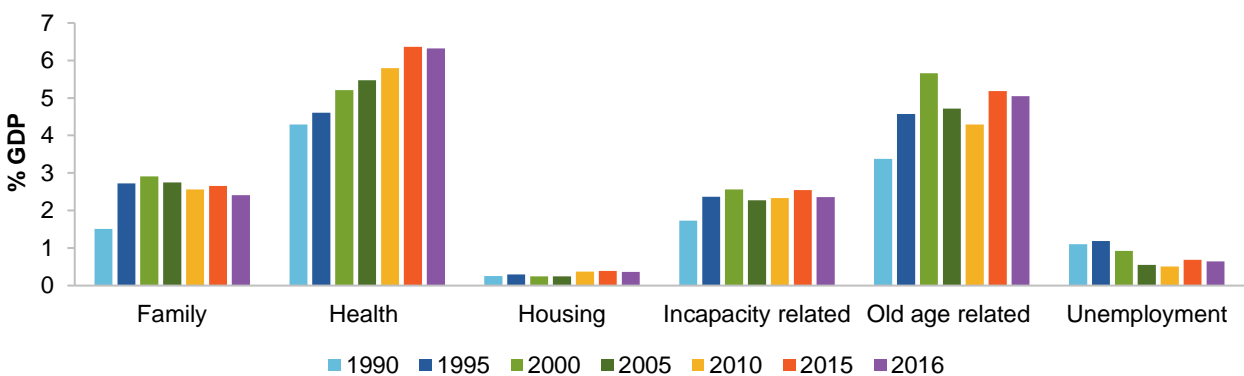
Public expenditure on selected social service and countries, 2015



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

Public expenditure (% GDP) in areas like health, old age and family had the largest increases between 1990 and 2016

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



Sources: Philanthropy Australia (2021, p. 5); Our World in Data (2017).

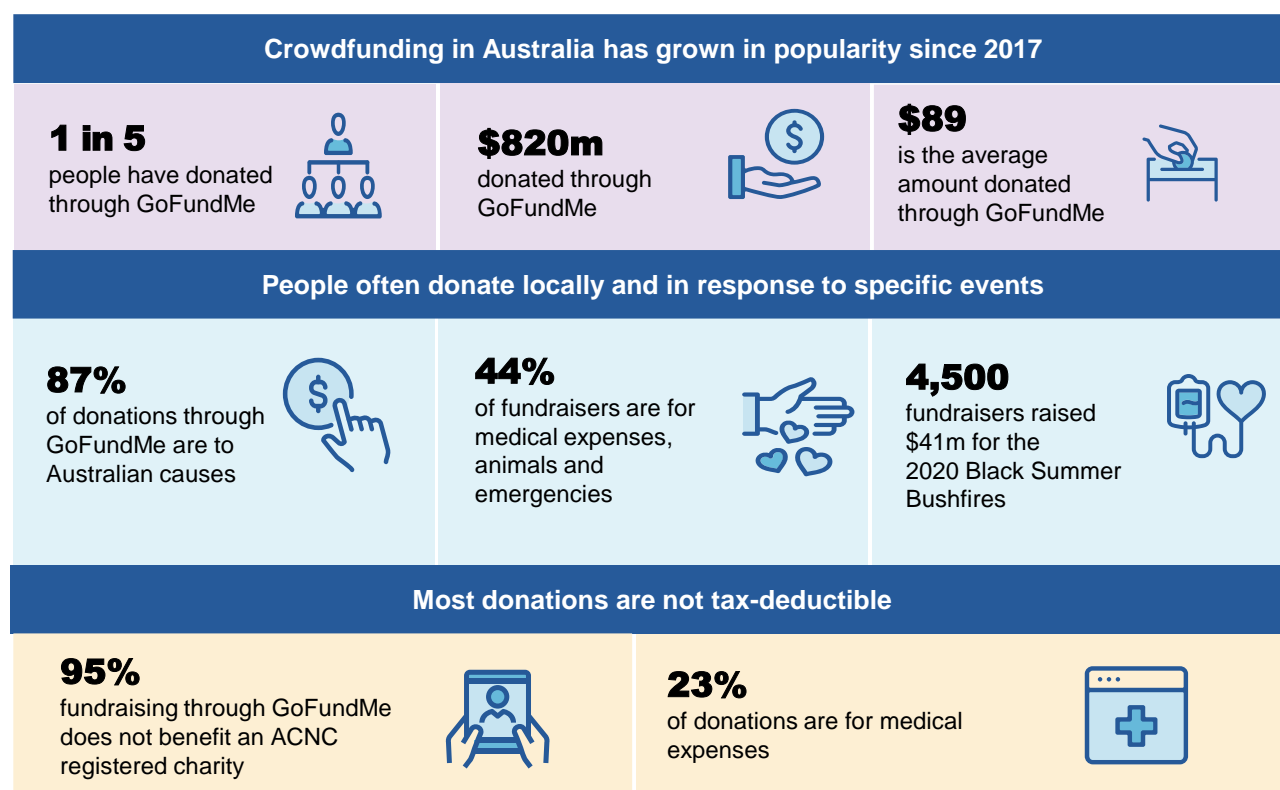
Less is known about people who donated directly to charities and did not claim a deduction

There is a range of estimates for the value of donations to registered charities that people do not claim as a tax deduction. According to JBWere estimates, the value of these donations was about \$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 gifts 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 donation-based crowdsourcing platform GoFundMe. According to unpublished data from GoFundMe, the vast majority of fundraisers (95%) on the platform are not registered charities (figure 3.5). Crowdfunding is part of a newer trend whereby donors prefer to 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).

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).

Figure 3.5 – Giving by Australians through the crowdfunding platform GoFundMe



Source: GoFundMe (2023).

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

Rising incomes are likely to have played a role in the observed increase in tax-deductible donations by individuals (figure 3.6). 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 individuals' financial capacity to donate (and particularly those with high incomes) increased (ABS 2020b). In addition, there was an increase in the proportion of people on 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 2020c). The increase in average household net wealth was even higher among the wealthiest households (top two quintiles).

International evidence suggests there is a relationship between the stock market and 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).

Expansion of tax incentives also likely played a role

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




The effects of introducing specific policy changes on giving have been mixed.

The introduction of workplace giving has had 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 Australian Taxation Office 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 3.7). Some workplaces also offer complimentary incentives to encourage giving such as matching staff donations.

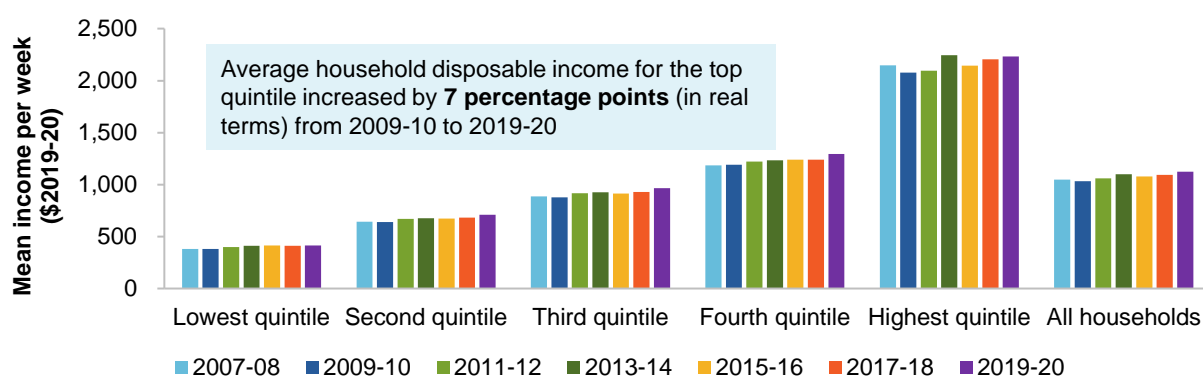
Figure 3.6 – Factors that likely contributed to increased giving

A range of factors have likely affected giving

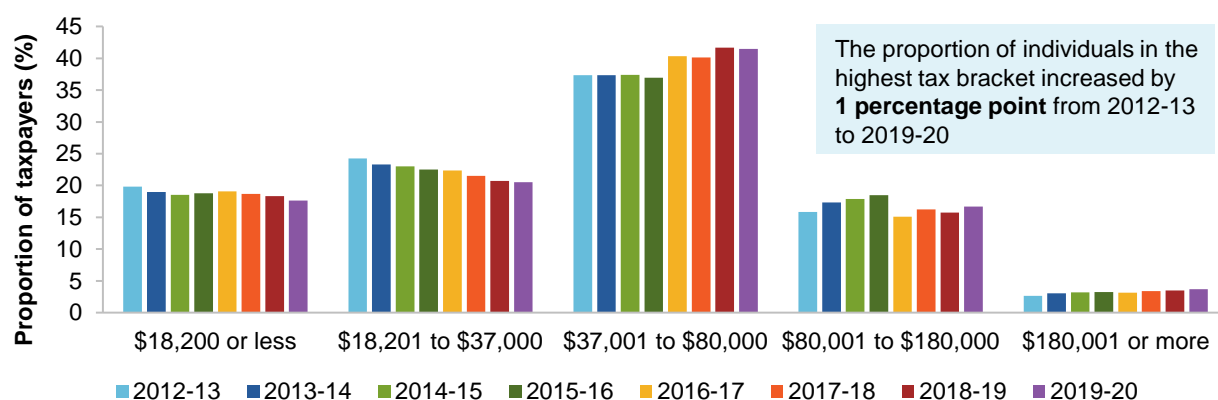
<p>Policies to encourage giving</p> <ul style="list-style-type: none"> Private ancillary funds (2001) Expansion of DGR (various years) Workplace giving (2002) 	<p>Rising incomes</p> <ul style="list-style-type: none"> Long term growth in average disposable income 	<p>Specific events</p> <ul style="list-style-type: none"> COVID-19 pandemic (2019 to 2023) Global Financial Crisis (2007 to 2009) 
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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> 
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Note: Equivalised disposable household income is disposable household income adjusted to facilitate comparison of income levels between households of differing size and composition.

Source: ABS (2020); ATO (2023).

Figure 3.7 – 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 (2023); Workplace Giving Australia (2020).

Workplace Giving Australia suggested few people participate in workplace giving because of 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)

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 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).

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

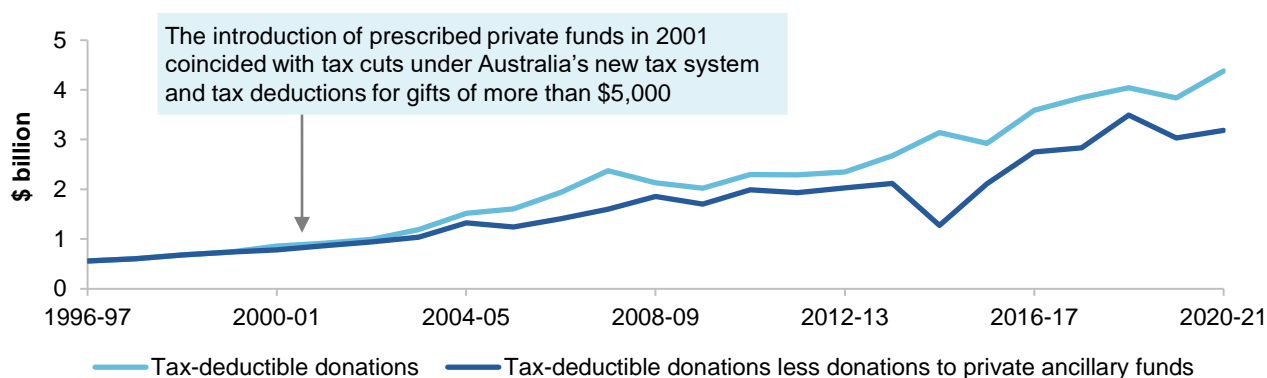
Rather than give directly to charities, some donors elect to give through structured giving vehicles, such as private ancillary funds and public ancillary funds. These different structures differ in terms of whether they can receive donations from the public and the discretion of the trustee in distributing funds (figure 3.8).

Many structured giving vehicles are registered charities. Structured philanthropy accounts for 14% of all 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% 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 fund for private ancillary funds and charitable trusts mean they are less accessible to people who wish to donate smaller amounts. In contrast, 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 generally tends to require less financial commitment and fewer administrative obligations compared with a donor establishing a private ancillary fund (Seibert 2019).

Figure 3.8 – 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 operating sub-funds (at least 1,995 in 2017)
Total assets	\$26.7 billion (2020-21)	\$12.1 billion (2020-21)	\$5.7 billion (2020-21)
Annual funds received	-	\$1.2 billion (2020-21)	\$1.2 billion (2020-21)
Annual funds 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 intending to gift to charities without DGR status	Typical users of private ancillary funds are high-net-worth individuals	Sub-funds of public ancillary funds enable small donations from the public

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 (2019).

In Australia there is currently no requirement to report information on sub-fund returns to the ACNC and ATO. Therefore, it is difficult to properly determine their prevalence in Australia and any change 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 about the appropriateness of regulatory arrangements (Perpetual, sub. 254, p. 4; Ian Murray, sub. 206, p. 2).

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 3.6). As this

change occurred at roughly the same time as major changes to Australia's tax system (which included personal income tax cuts), it is difficult to attribute a precise value to the increase in giving from the introduction of private ancillary funds. As public funds have been around since the 1960s the effects of this incentive on giving would have already been reflected in the data in figure 3.6.

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 about the benefits that ancillary funds have provided as an option for undertaking a structured approach to philanthropy. However, other participants raised concerns around the accumulation of assets by ancillary funds over the past decade delaying benefits to 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.



Draft 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 gift 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 typically do not benefit from any form of specific tax incentive (such as a tax deduction, excluding the super estate component) unlike 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 they have been growing). Chapter 9 considers options for enhancing the available data on bequests.

According to industry estimates, the average bequest in Australia is between \$40,000 and \$65,000 and that 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 (IVE Group 2021; Pearl 2019).

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 (Baker 2014, pp. 39–40)
- where people do have a will with a charitable bequest, they most commonly 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 7 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)
- wills with charitable gifts are on average, signed 5.6 years prior to the end of life (Baker 2014, p. 58).

Several participants argued the rate of giving through bequests in Australia is below that of other countries (figure 3.4) because it lacks the same culture and history of giving.

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 growing giving in Australia because of the amount of intergenerational wealth transfer likely to occur in coming years, if the lack of community awareness could be overcome as a barrier to this type of giving (The Smith Family, sub. 216, pp. 11–12). Alternatively, others suggested options to give from excess superannuation after someone dies (Philanthropy Australia, sub. 162, p. 13). Chapter 10 examines public campaigns to change attitudes toward financial advisors (section 10.3) and giving, including bequests (section 10.1). Chapter 8 considers potential changes to the tax treatment of excess superannuation.

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

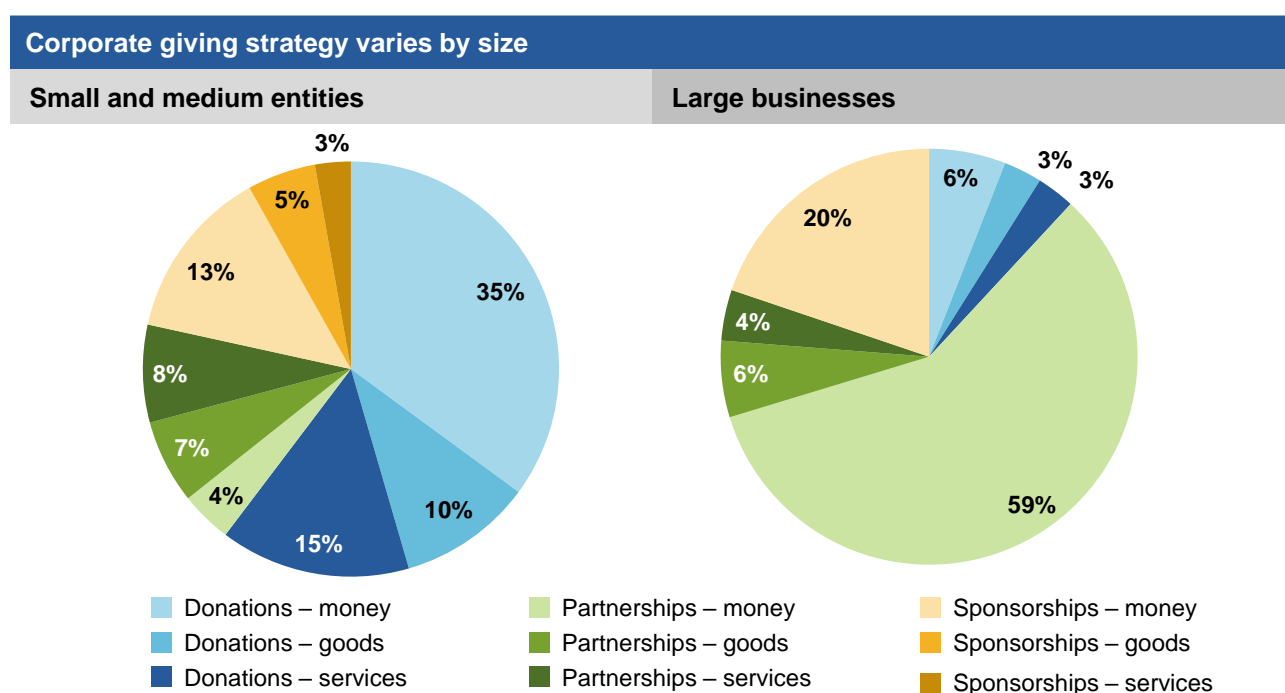
As businesses do not report disaggregated donations to the ATO when submitting a tax return, there is limited detailed data on corporate giving. However, multiple studies have estimated that corporate donations are worth \$5 billion per year or more. McLeod (2020), for example, estimated corporate donations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

According to the 2016 Giving Australia study on corporate giving, such donations represent a fraction of total corporate community support when compared to non-commercial sponsorships and partnerships (figure 3.9). The study noted donations of money accounted for 35% of corporate giving by small and medium size entities and as low as 6% of corporate giving by large business (Burns et al. 2017, p. 21) (figure 3.9). The study also found that over half of corporate giving is by large businesses (such as ASX listed companies) even though these represented 0.2% of all Australian businesses (Burns et al. 2017, p. 20).

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; promote employee recruitment, retention and engagement; and meet shareholder expectations about corporate social responsibility (BCA, sub. 162, 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 have 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 3.9 – Corporate giving strategies by size



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

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).¹

Volunteering is widespread in Australia

In 2022, about one in four people (27% of the population or about 6 million people) volunteered for an organisation. Nearly twice as many (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

¹ 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. Their results from different sources sometimes conflict or are not directly comparable because they often cover different time periods and populations, and use different methodologies, definitions, and categories.

program, with 15% of employees participating in corporate volunteering (Volunteering Australia 2019, p. 4). Estimates of the economic value of formal volunteering vary significantly depending on the valuation method used. One study estimated that the annual economic and social contribution of volunteering in Australia is \$290 billion (Volunteering Victoria 2018, p. 13) or more than one and a half times the amount of tax-deductible donations and bequests to charities (McLeod 2018, p. 5). Volunteering was estimated to have an imputed value of \$17.3 billion (1% of GDP) in the 2012-13 National Accounts (ABS 2015a).

Several studies and participants have highlighted limitations in reporting on volunteering among Aboriginal and Torres Strait Islander people and culturally and linguistically diverse communities (box 3.2). They highlight that conventional approaches to collecting and reporting on giving, including volunteering, use language and definitions that may result in underreporting or underappreciation of such giving. For example, the Commission heard from participants that young people often consider volunteering as community participation.

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 that 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).

Box 3.2 – Reporting on giving among Aboriginal and Torres Strait Islander people and culturally and linguistically diverse communities

For many people in Australia, giving or sharing of time, belongings, food and money is intrinsic to their culture or traditions. However, studies and submissions 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; Centre for Social Impact and Jumbunna Institute for Indigenous Education and Research 2022, 2023, pp. 17–18; Chau and Fitzgerald 2018, p. 5; Cultural and Indigenous Research Centre Australia 2016, p. 48; SynergyWorks Consulting, sub. 65, p. 5; Dr Alia Khan, sub. 27, p. 1).

Participants to this inquiry and participants in a separate consultation process undertaken by the Australian Bureau of Statistics (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. The ABS made changes to how it collects this information in 2019 to capture informal volunteering.

Box 3.2 – Reporting on giving among Aboriginal and Torres Strait Islander people and culturally and linguistically diverse communities

However, practical difficulties with further enhancing giving data remain including sampling a large enough sample size to represent characteristics of smaller populations (box 9.4). JBWere notes 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)

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 and 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. 76)

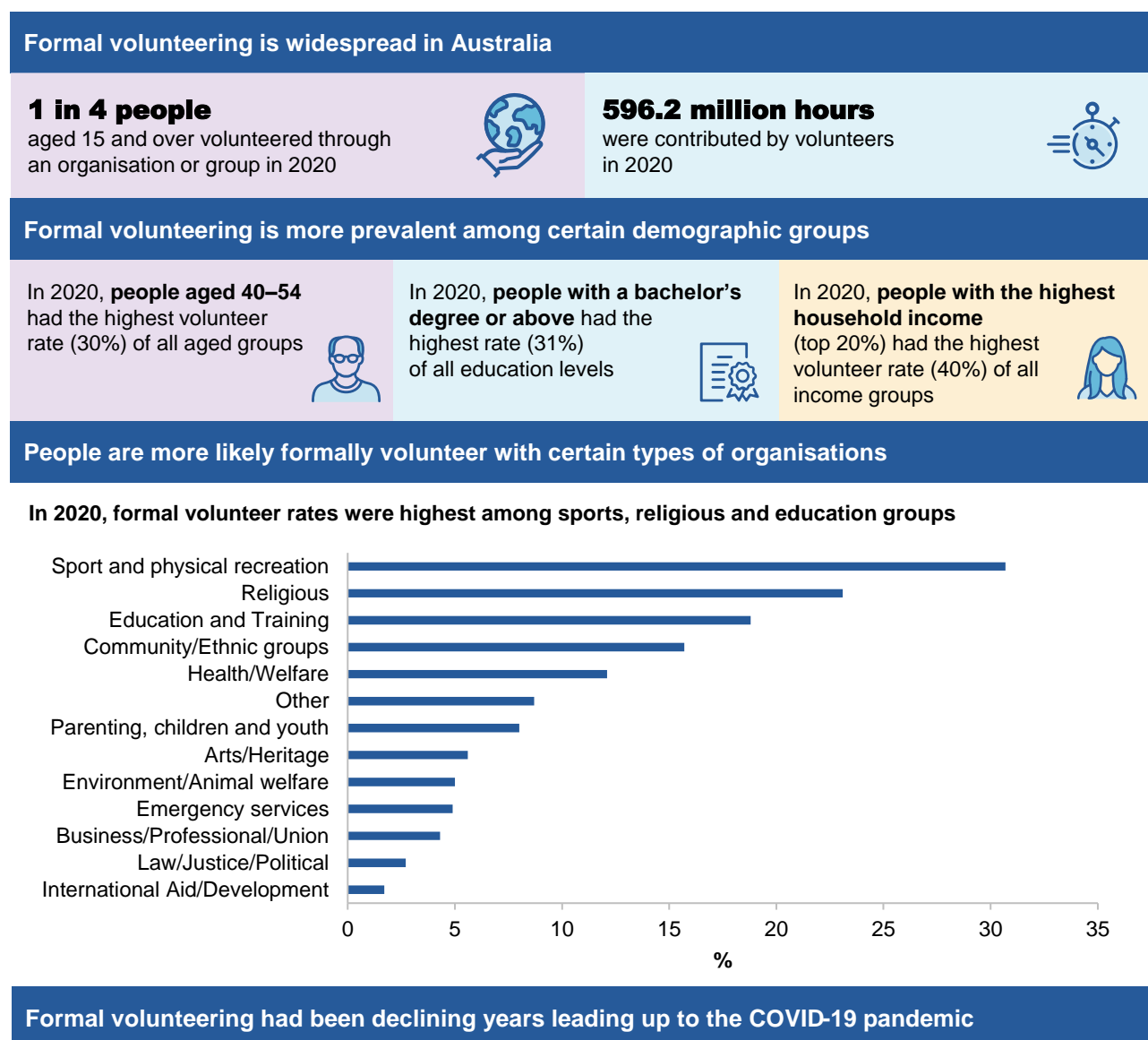
The authors suggested changing the way that data collections, including the ABS Census, ask questions about volunteering to include a clear definition of volunteering (and what it includes and excludes). This could assist in collecting data that is more representative of volunteering in culturally and linguistically diverse and Indigenous communities.

Other opportunities highlighted by the Cultural and Indigenous Research Centre Australia study included:

- supporting and encouraging organisations who rely on volunteers to acknowledge culturally and linguistically diverse and Indigenous volunteers through, for example, the awarding of certificates or formal announcements, at both an individual and organisation level
- supporting partnerships and collaborations that promote better understanding, communication, relationship building and culturally sensitive approaches among volunteer-involving organisations
- implementing cultural competency training for staff and volunteers to enhance the capacity of NFP organisations
- developing of specific strategies to encourage culturally and linguistically diverse and Indigenous participation in NFP organisations (chapter 10).

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) (chapter 10).

Figure 3.10 – Formal volunteering in Australia



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

Volunteers most commonly contribute to sport and physical recreation, religious, education and community organisations (ABS 2021). 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).

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)
- there are regulatory barriers to volunteering that can be time consuming and complicated, such as requirements to complete background 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 historically high and rates of volunteering prior to 2010 were similar to or below the volunteering rate prior to COVID-19. The volunteering rate fell from 36% in 2010 to 25% in 2020, with a sharp decline coinciding with the COVID-19 pandemic (ABS 2021). Another study indicates 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 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). These include the rise in female labour force participation, and people, including older 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).

Australia's National Volunteering Australia strategy 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). These policy options are examined in chapter 10.

... but this has coincided with a possible increase in informal volunteering

The most common type of informal volunteering, or volunteering that takes place outside of an organisational setting in Australia is simply '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 2021). Most people who volunteer informally, volunteer less than 20 hours per week (90%) (ABS 2021).

Available data suggests informal volunteering rates increased by 4 percentage points from 2010 to 2019 (ABS 2011b, 2021; AIHW 2023). The increase in volunteering rates was evident for both males and females. Although the informal volunteering rate declined slightly in 2020 (reflecting the impacts of the COVID-19 pandemic), by 2022 informal volunteering rates had recovered most of the decline. Given 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).



Draft 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 volunteered informally.

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 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.

Gifts 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, and 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 receiving clothing for opportunity shops.

There is limited visibility on the patterns of giving and 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 NFP (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.

Australia's charity 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 2022c, 2023g, p. 6).

The largest charities receive the vast majority of donations ...

The number and size of charities in the charity sector has implications for the nature and intensity of competition for donations (box 3.3). In 2016, the largest 10% of charities received 94% of all donations and the 25 largest charities almost 20% of total donations (McLeod 2018, p. 24). During consultations, 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 them accessing philanthropic support (Centre for Social Impact, sub. 191, p. 9; FRRR, sub. 149, p. 13; Jesuit Social Services, sub. 165, pp. 8–9; chapter 10).

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, att. 1, p. 1). These options are discussed in chapter 6 and chapter 10.

Box 3.3 – Competition among charities: Is it a good thing?

In Australia, charities often expend considerable resources marketing their services and causes to existing and potential donors. Despite growth in the value donations to charities over the past two decades, the donor base is becoming more concentrated (ATO 2023a). Competition between charities for available funds can be intense. 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 charity 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 remote communities, engaging local networks and volunteers and providing new, local and 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 nd). 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 considers it the role of charities to regularly assess their efficiency and effectiveness and consider the merit of collaborating or merging to best fulfil its purposes (ACNC nd). 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 2023, p. 27). The proportion of all voluntary revocations due to mergers dropped by more than half from the previous year, decreasing from

Box 3.3 – Competition among charities: Is it a good thing?

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 the ability for a charity to raise funds depends on a charity's networks or capacity to market themselves, disproportionately favouring larger high-profile charities (Southern Youth and Family Services, sub. 72, p. 2; Centre for Social Impact, sub. 191, p. 10) (chapter 10). 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).

... and smaller charities tend to be more reliant on donations and volunteers

The extent to which 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) (ACNC 2023g, p. 31). Religious, public benevolent institutions and education charities received the most donations (chapter 5) (ACNC 2023g, p. 67).

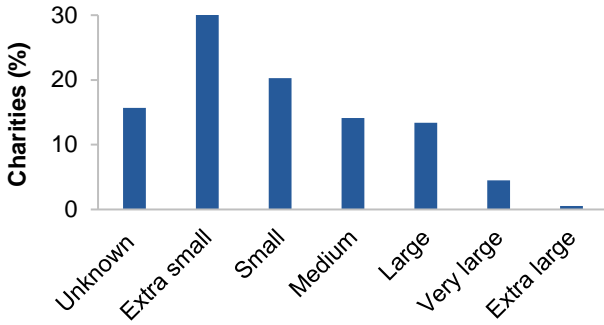
Despite their reliance on philanthropy, several smaller charities noted that pursuing philanthropic funding can mean that limited resources (including staff) must be diverted away from other activities, such as service provision and that they often do not have the in-house capacity, networks and skills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

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 3.2). 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, 2017, p. 75). Geographic factors, in addition to size and other factors, can create additional barriers to Aboriginal and Torres Strait Islander organisation accessing philanthropic funding (International Funders for Indigenous Peoples 2021). Options for addressing these barriers are also examined in chapter 10.

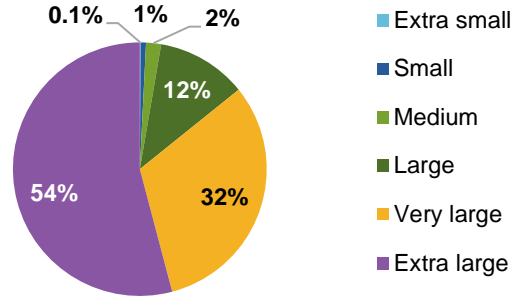
Figure 3.11 – Recipients of donations

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

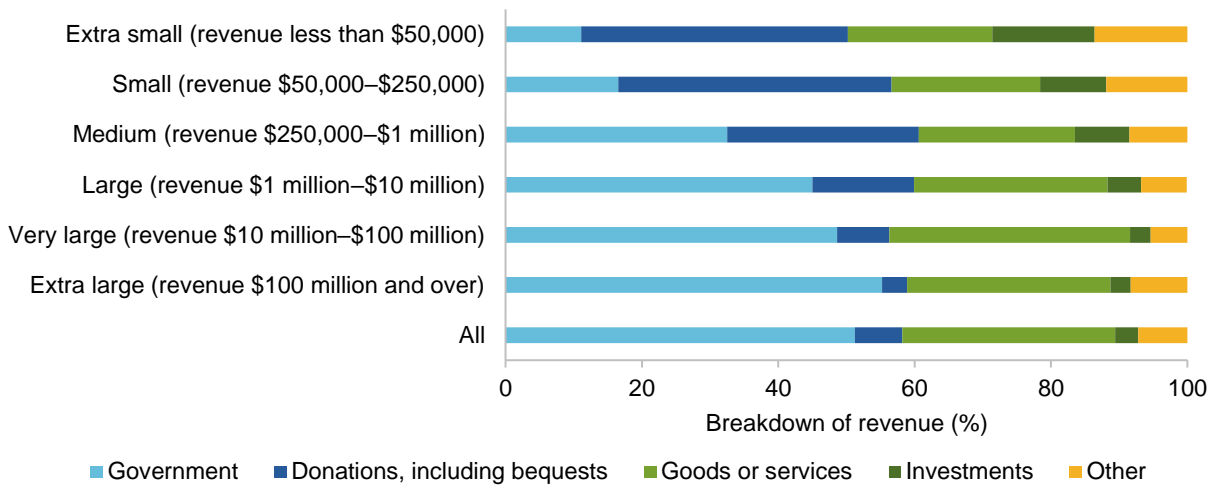
Charities by size



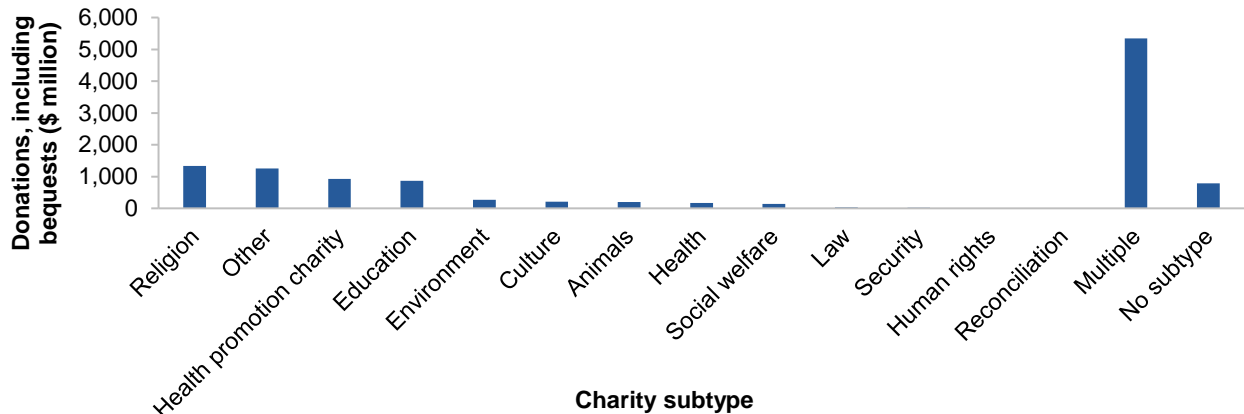
Charities by total revenue



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



Religion, health promotion, and education charities receive the most donations



Source: ACNC (2023g).

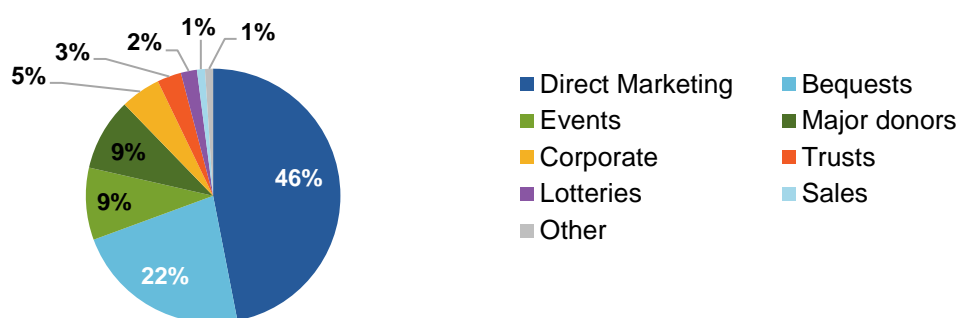
Many charities focus on structured giving to improve funding certainty

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).

Figure 3.12 – Income raised by charities from different fundraising activities

The bulk of fundraising income comes from direct marketing

Income mix for 81 large not-for-profit organisations from 2017 to 2022



Most fundraising income is coming from relatively high-cost ratio activities

Data for 23 organisations from 2022 to 2023 shows that:

organisations rely mostly on fundraising income from **direct marketing, bequests, major donors and events**

high-cost ratio fundraising sources include **direct marketing, events and corporates**

income from **bequests** have increasing marginal returns

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

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 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. 29). 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 in 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 (sub. 202, p. 22) (figure 3.12).
- As noted above, charities and participants have also identified giving through bequests as a major opportunity for growing planned giving in Australia.

Donor expectations about charities demonstrating outcomes

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. They noted lack of expertise and resources to undertake proposals and impact evaluations can prevent them from accessing philanthropy (Mercy Works Ltd, sub. 60, p. 3). 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) with are considered in chapter 10.

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 (box 10.1). Payment systems are improving donors' payment experience. A 2023 survey of 1010 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 the phasing out of cheques will affect a person's ability to donate either somewhat (20%) or significantly (51%) (MoreStrategic and Fundraising Institute Australia 2023, p. 35).

However, these developments have also created challenges for some charities to keep pace with donor expectations on their online and payment experience. A recent 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).

They also present new sources of competition for donations (peer-to-peer giving), 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).

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 demonstrating the widespread existence and effect of broader informational asymmetries within the charitable sector, Volunteering Australia (2023b) 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. (Volunteering Australia, 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. (Volunteering Australia 2023b, p. 43)

The National Strategy for Volunteering includes actions to better engage volunteers and allow them to participate in ways that suit them and meet their motivation, 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 to a volunteer matching platform, to help match potential volunteers to areas they have an interest in. Policies to encourage social norms around giving, including broadening participation in volunteering (chapter 7 and chapter 10).

3.3 Why do people choose to give?

Understanding why people give – or do not give – can help understand 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 benefits the community, such as tax deductions for donations to NFP organisations that provide public services or public 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 writes:

And hence it is, that 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. (Smith 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, coinciding with parental support of activities around children, whereas people aged over 65 tend to volunteer with organisations providing health and social services (McGregor-Lowndes et al. 2017, p. 101).

Motivations appear more important in certain contexts or among certain groups

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

- 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 – who tend to be in their twenties, highly educated and male (Moss and Slegers 2023) – information on the relative impact of charities, generally measured using quantitative approaches, influences giving decisions (chapter 9)
- many wealthy individuals 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 create funds to give still desire a degree of privacy which has raised debates around how much information private ancillary funds should disclose to the public)
- many businesses use high-visibility giving, including pro bono work, to bolster their corporate brand and attract and retain employees and customers (box 3.4).

Such insights could inform how government agencies design and administer measures to support giving.

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

While individual motivations for giving might mean people are predisposed to giving in a certain way, specific events can also prompt them to give and affect how they give. These events can include:

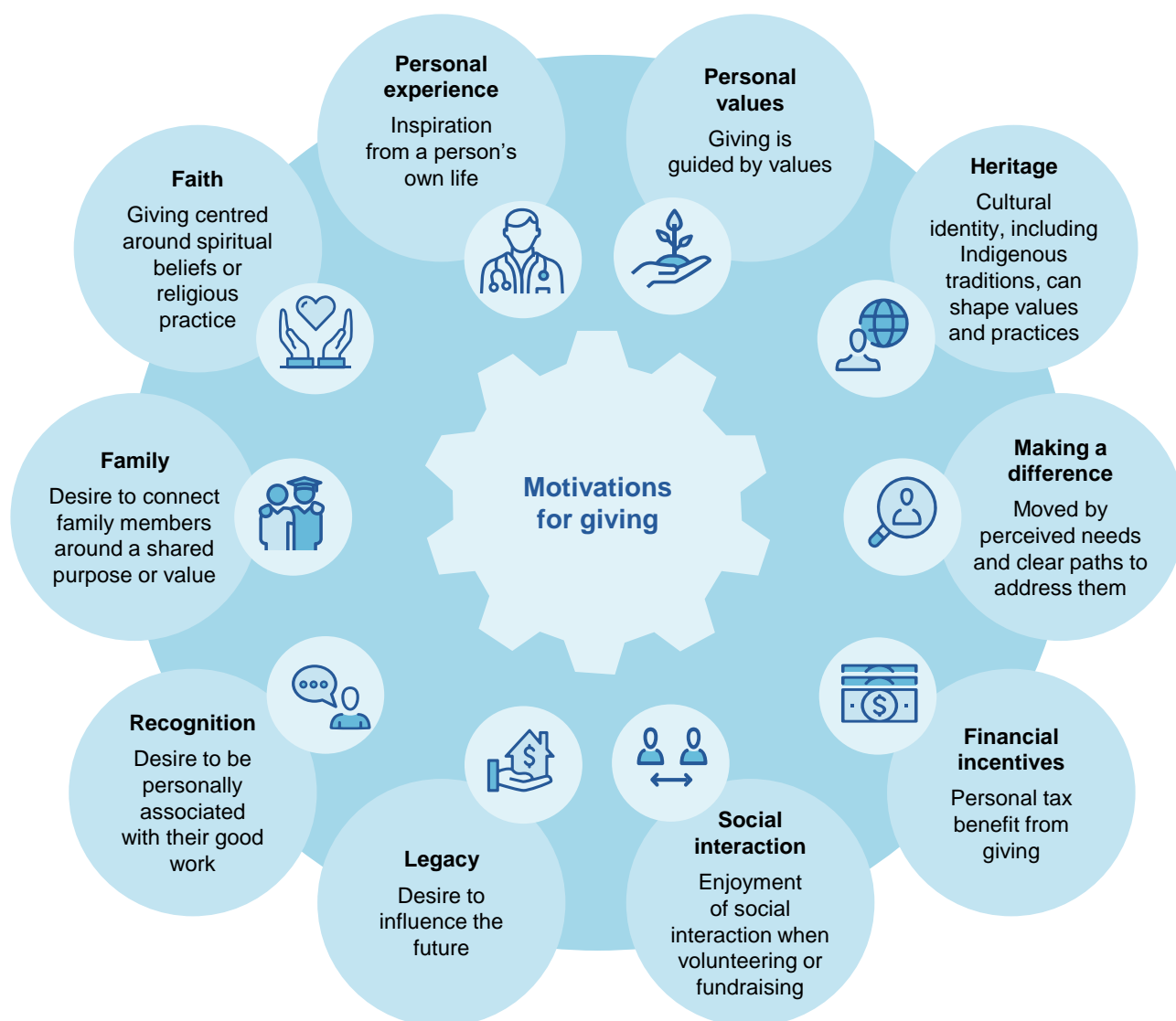
- a change in personal circumstances or major life event, such as receiving a financial windfall, such as an inheritance, or the sale of a significant asset (Macquarie 2021)
- a professional adviser prompting a client to consider giving when preparing their tax return or planning their will
- disaster fundraising events, such as the bushfire fundraising campaign established by Celeste Barber (box 3.5)
- 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 out 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 fixed amount of money from one cause to another (or to bring forward giving from the future to the present). In addition – and this is particularly apposite for individuals who are 'emotional' givers – if information provided by influencers, celebrities or professional advisors is ill-informed or misleading it has the potential to negatively impact 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.

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

 <p>Effectiveness is a strong motivator for giving among high-net-worth people</p>	 <p>Many people volunteer through an organisation for social contact</p>	 <p>Many large businesses give to bolster their brand and 'social licence'</p>
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Specific events can also prompt people to give and affect how they give

 <p>Changes in personal circumstance, such as a financial windfall</p>	 <p>Being prompted by a financial adviser or employer</p>	 <p>Fundraising events, such as for disaster relief</p>
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Box 3.4 – 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 in relation to factors such as the business size, type, governance structure, and how a business engages with the broader community. The decision to give, and 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 stakeholders and employees (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 (Good Company, sub. 84, p. 2; Strive Philanthropy and GivingLarge, sub. 119, p. 11; Burns et al. 2016). This is due to shifts in community and employee expectations. Corporate giving can also be used as a form of reputation insurance or 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 around corporate giving benefits ‘to corporate culture, employee morale, reputation, alignment with conscious consumers and shareholder value’.

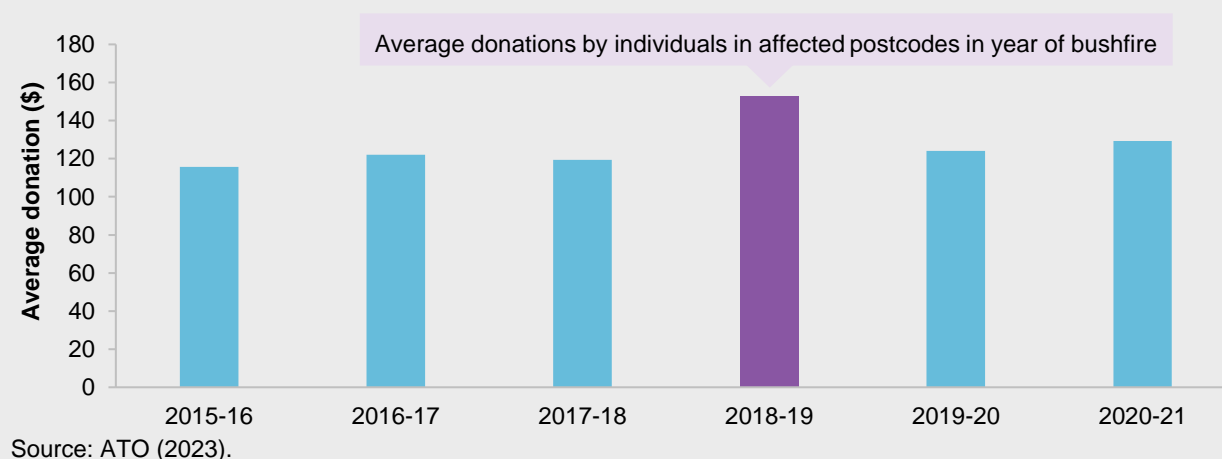
Workplace Giving Australia (sub. 175, pp. 2–3) states that:

... 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.

Box 3.5 – 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 (Tathra bushfires and the Black Saturday bushfires). In all 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% (national donations only grew by 6%) compared with the previous year, even though many donors would have been directly affected by the fires. Giving also fell the subsequent year. Similarly, donations in postcodes affected by the Black Saturday bushfires increased more than national averages and medians.

Tathra bushfires



3.4 Why do people choose not to give?

To be effective, policies to increase giving need to address the reasons why people do not give. These reasons may differ depending on an individual's personal circumstances or stage in life, and whether the gift is money or time.

Barriers to giving money and assets

The main way studies on giving determine why people do not give is through surveys (box 3.1).

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 extent to which a person's individual income acts as a barrier to them giving will vary across people and over time. Some people may give with their family, rather than as an individual, and thus they may give even when their individual income is low. 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.

Changes in people's individual 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.

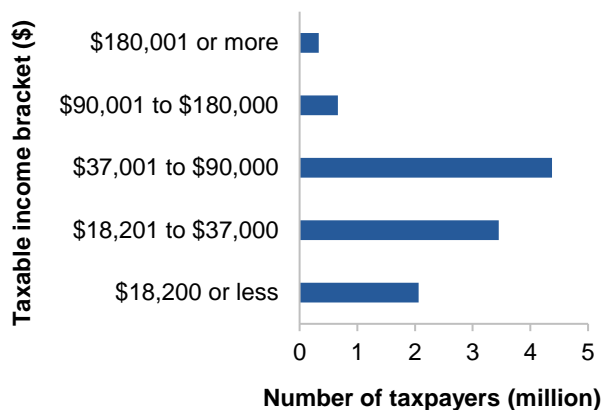
Another common reason people do not give is they do not trust that the money would be put to effective use. In the same 2016 survey cited above, for example, a sizeable proportion of respondents said they did not give because of concerns about where the money would be used (34%), too much money being used on administration (33%), or '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 chapter 7 and chapter 9.

Other reasons people do not give could relate to attitudes toward philanthropy (such that governments should be funding certain services or that aid is counterproductive) and lack of knowledge about structured giving. Some have suggested public campaigns or increasing awareness and education about giving may play a role in changing attitudes towards philanthropy (chapter 8 and chapter 9).

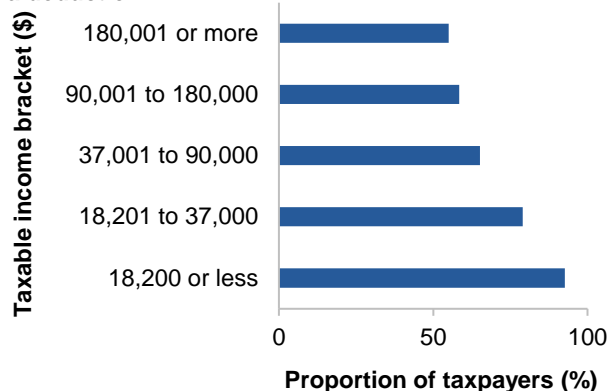
Figure 3.14 – Reasons for not giving money or assets

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

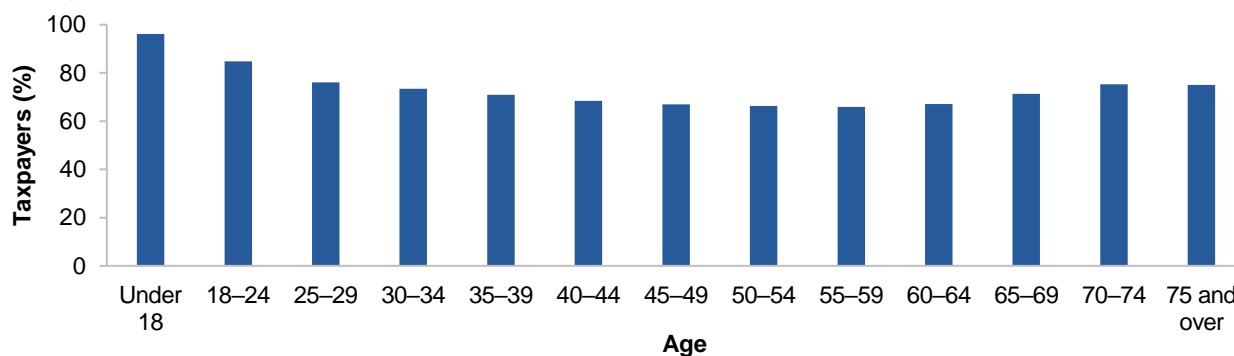


Individuals that are younger, or in retirement are less likely to make tax-deductible donations



Individuals 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



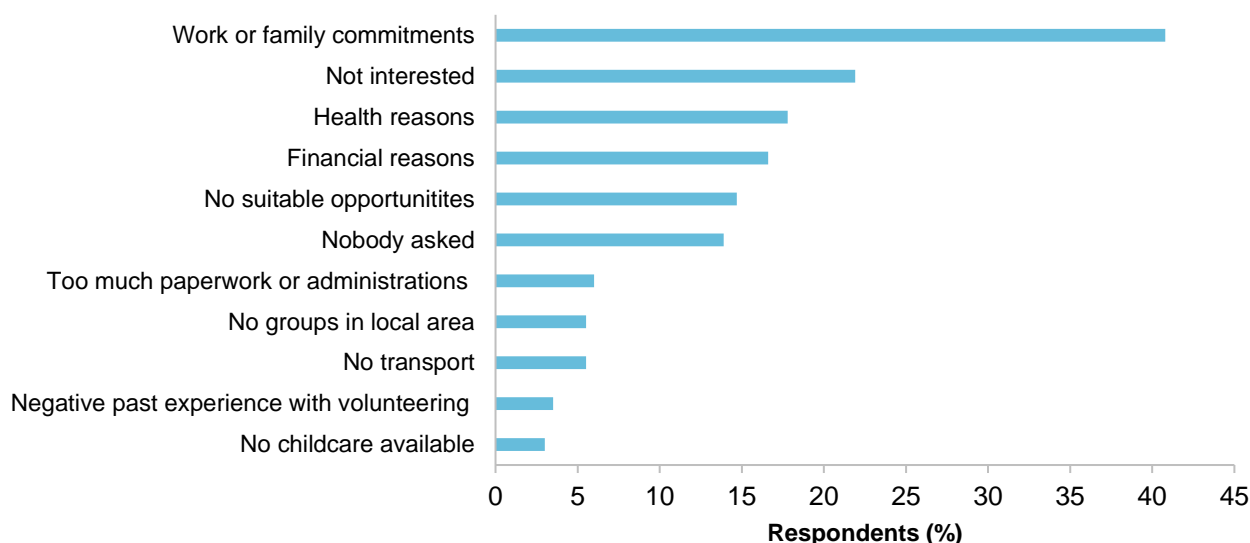
Sources: ATO (2023); McGregor-Lowndes et al (2017).

Obstacles to people volunteering

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 the main reasons people do not volunteer were work and family commitment (41%) and financial reasons (17%). Volunteers often also incurred out-of-pocket expenses and not being offered reimbursement for expenses (41%) (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). Inquiry participants have suggested policy responses to address these challenges include financial incentives and public campaigns (chapter 4 and chapter 10).



Draft 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. Conclusions can be drawn from patterns of giving behaviour.

- 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 to connect with family through giving, leave a legacy or teach skills to the next generation.
- Many businesses use high-visibility giving, including pro bono work, to bolster their corporate reputation, and attract and retain employees and customers.



Draft finding 3.3

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

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. 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.

However, increasing giving is not the only consideration. The benefits of increased giving need to outweigh the costs and risks.

This chapter has highlighted several policy issues:

- the decline in the proportion of taxpayers making donations, and the low levels of giving in Australia compared to other countries, and the appropriateness of new tax incentives or other policy measures in this context
- the increasing role of structured philanthropy, including ancillary funds, as a vehicle for donating and what this means for the regulatory framework for such structures, including distribution requirements and transparency expectations
- the growth of online giving, including through crowdfunding platforms, and whether this presents new regulatory challenges
- the benefits of additional data from more recent policy changes, such as the establishment of the ACNC, as well as reporting requirements for ancillary funds
- the gaps in public information and data about certain forms of philanthropy, including volunteering, corporate giving and bequests, and possible policy responses.

This draft report examines these policies in more detail.

- Tax incentives to encourage giving are examined in chapter 4, chapter 5 and chapter 6.
- Regulation of, and public reporting by, charities and ancillary funds to promote trust and confidence in the sector are examined in chapter 7, chapter 8 and chapter 9.
- 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, 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 preliminary estimates that show a personal income tax deduction is likely to encourage more financial giving than would otherwise occur.**
 - In addition, a person on a higher income is more likely to donate more.
- ✳ **Different tax policy settings, such as a flat tax credit across all income tax brackets, would likely incentivise more people to give, but may decrease the total amount given overall because it could reduce aggregate giving by high-income earners.**
- ✳ **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 behaviour would change substantially if additional tax incentives were introduced.
 - The costs of introducing tax incentives to encourage these cohorts of people to give more than they already do are likely to 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 may simply place lower value on giving or face barriers, including the financial capacity to give. 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. The question of whether – and if so, how much – a person's giving behaviour is affected by this price can be examined by estimating their 'price elasticity of giving'. The price elasticity of a particular activity, like giving, is a quantitative 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 decisions. 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, including charities and government entities that undertake charitable-like activities that have deductible gift recipient (DGR) status. This provides a direct incentive for people to give more than they otherwise would and provides more revenue to charities with DGR status than those charities would otherwise receive. Which entities are eligible to receive tax-deductible donations is outlined in chapter 5 and how the scope of the DGR system should be reformed is discussed in chapter 6.

The questions of whether and by how much tax deductions incentivise giving behaviour – and how responses vary across the population – have not been extensively examined in Australia. This chapter presents the Productivity Commission's preliminary analysis on whether the income tax deduction influences a person's decision to give, and the characteristics of people who are more likely to give and claim a tax deduction. A more detailed explanation of the Commission's analysis is presented in appendix B. This chapter also discusses whether the design of the tax deduction for giving in Australia is likely to be an efficient and effective way to encourage donations compared to other mechanisms, such as tax credits, that are used overseas.

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 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, but 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. However, every person will have limits on how much of their income they are willing to give, and this is the largest constraint on giving and 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 14% to 16% of taxpayers.¹ 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). The benefits of the income tax deduction flow broadly across the community, not just to the person claiming the deduction, because the

¹ 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.

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.

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 of encouraging giving that would have occurred anyway. In 2019-20, of the people with taxable incomes of \$18,200 or less before gift deductions – about 186,000 (or 6.5%) still donated, even though they would receive no reduction in tax payable. Conversely, 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.

Box 4.1 – Who claims the personal income tax deduction?

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 at least one donation as a tax deduction.

People with higher taxable incomes make a disproportionately large share of donations and therefore receive a higher share of the reduction in taxes due to the deduction.

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 ALife 2019-20 data.

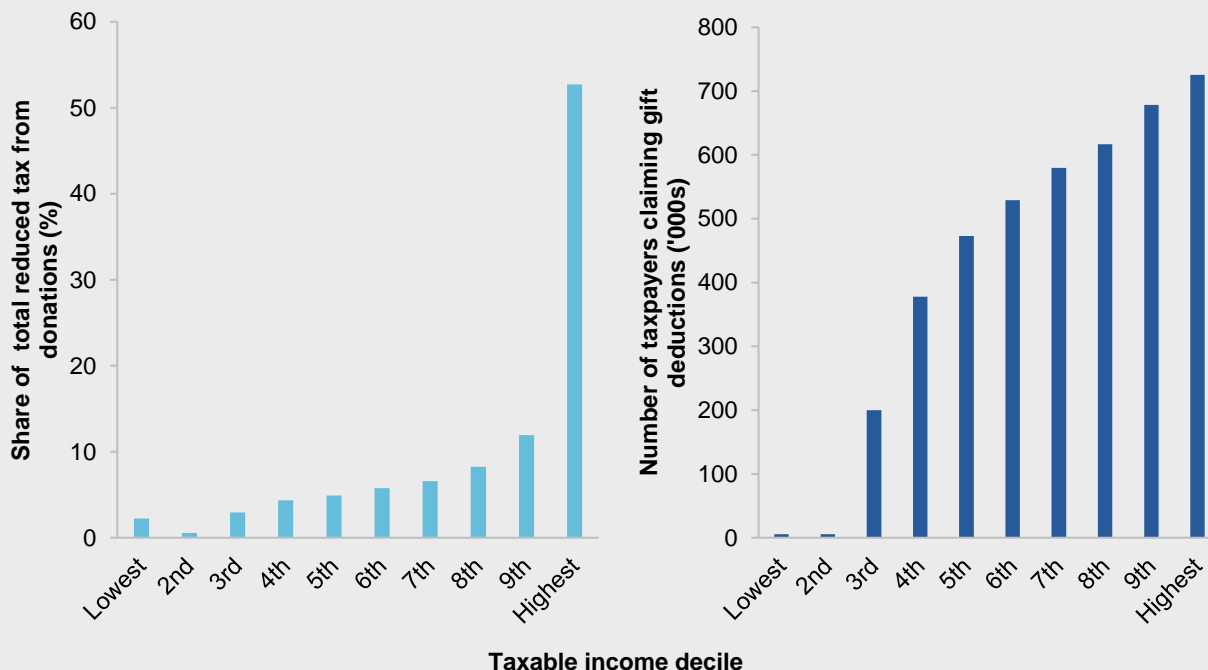
The number of taxpayers who claimed a deduction for donations increases by taxable income decile. Over half of the tax benefits – defined by Treasury as being the reduction in tax due to donations – accrue to people in the highest taxable income decile.

However, only looking at taxable income may understate the proportion of high-income earners that benefit from a reduction in tax due to donating. Some taxpayers substantially reduce their taxable incomes using gift 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 reductions from giving went to people with high pre-tax income, but low taxable income. That is, in the lowest income decile, about 74% of the tax reduction from giving 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 ALife data from 2019-20.

Not all charities are eligible for DGR status. Therefore, not all giving to charities by individuals is tax deductible. The list of activities that determines eligibility for DGR status is piecemeal, having evolved for over 100 years in response to changes in community norms and government policy priorities. Currently, an entity can apply for endorsement under one of 52 DGR categories. The largest category is public benevolent institutions, which can include welfare organisations, aged care and disability services with the purpose of 'benevolent relief' for a particular group of people in need (chapter 5).

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 about \$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.

Viewed another way, to acquire \$2,000 in donations, the charity only needed 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.

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 for a taxpayer who has:

- taxable income in the top marginal tax bracket (above \$180,000), their tax liability 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 liability.

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.

The higher a person's marginal income tax rate, the lower the price of giving due to 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 due solely to their giving, the additional benefit from the deduction would be less for the last dollar donated than it was for the first dollar donated.

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.

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 public data on giving reported by corporations. Chapter 9 makes a draft recommendation to fill this data gap.

While tax deductibility lowers the price of giving for most taxpayers, it is only one of many factors that affect why people give. For example, about 142,000 individuals whose total income 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 not reduced by the tax concession. Using taxation and ABS 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. A proportion of this population may have donated to a charity but did not claim a tax deduction for their donation.

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.

Box 4.3 – The price of giving for an Australian resident company with shareholders

With dividend imputation, if a person has taxable income, the price of giving is the same whether a person gives directly from income from a fully franked dividend to a charity or whether a company gives directly to a charity 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 resident company with 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) (\$)	na	245,000	245,000
Company tax savings (\$)	na	5,000	5,000
Price of donating (donation-tax savings) (\$)	na	15,000	15,000
Price of giving per dollar (\$)	na	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 (\$)	na	0.55	0.85
Price of giving if shareholder directly donated to charity per dollar (\$)	0.55	na	na

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.

Giving Australia estimated that 80% of people donate to charities in 2016, the most recent year data is available (Australian Centre for Philanthropy and Nonprofit Studies 2023). From a policy perspective, the lack of comprehensive data on people who give but do not claim a tax deduction, and how much they give, means the number of additional people who would donate if they were incentivised by a tax deduction is unknown. It also means that people who give, but do not claim a tax deduction, do not need to be incentivised through the tax system to do so.

Little is known about why people give and subsequently choose not to claim an eligible tax deduction. To the extent that these people were, at the time of giving, 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.

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).

In principle, there are good economic reasons to expect that individuals 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.

The Commission would welcome data or insights on donations made by people who do not or cannot claim a tax deduction for various reasons (information request 4.1).



Information request 4.1 Data on giving that is not tax deductible

While there are estimates of the proportion of people who have given, but do not claim an income tax deduction, more complete and recent data would inform the Commission’s final recommendations on policy options that seek to improve incentives to give. The Commission is seeking information, such as survey or other data, about instances where people make donations, but do not claim a tax deduction for reasons including they:

- do not have taxable income
- choose not to claim the deduction
- donate to entities that do not have deductible gift recipient status and therefore the donations are not eligible for a tax deduction.

The Commission is also seeking information on the reasons why people choose not to claim a tax deduction for giving if they *do* have taxable income and the donations are eligible for a tax deduction.

The revenue cost of the personal income tax deduction for giving was estimated to be \$2.0 billion in 2021-22 (Treasury 2023d, p. 28). Treasury 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. It is heavily influenced by the choice of benchmark and, in general, published values of tax expenditures are 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 as a result of the income tax deduction, and then provides services which have the effect of reducing demand for government services, this will not be reflected in the revenue cost of the deduction, in part because such changes are very difficult to measure.

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, grants
- government using the tax system to support charities and their work (Andreoni and Payne 2013)
- government directly providing services.

These trade-offs was discussed in various submissions (Social Ventures Australia, sub. 262, p. 4; ACOSS, sub. 263, p. 2).

A tax deduction for giving seeks to encourage taxpayers to donate more than they would otherwise, but little is known about how the size of the tax incentive in Australia affects the total amount a person donates (the 'price elasticity of giving'). In 2018, Philanthropy Australia commissioned Deloitte Access Economics to estimate the price and income elasticities of giving in Australia. The unpublished study estimated how people responded to tax deductions using data from 2013-14 and two models: a negative binomial model and a Heckman selection model. After evaluating the results of the two models, Deloitte Access Economics (2018,

p. 35) concluded that a 1% increase in the tax incentive to give, which lowered the price of giving, was associated with an increase in the amount donated by between 0.83% and 1.19%.

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. In technical terms, the Commission estimated the price elasticity of giving and the income elasticity of giving (box 4.4).

Box 4.4 – 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.

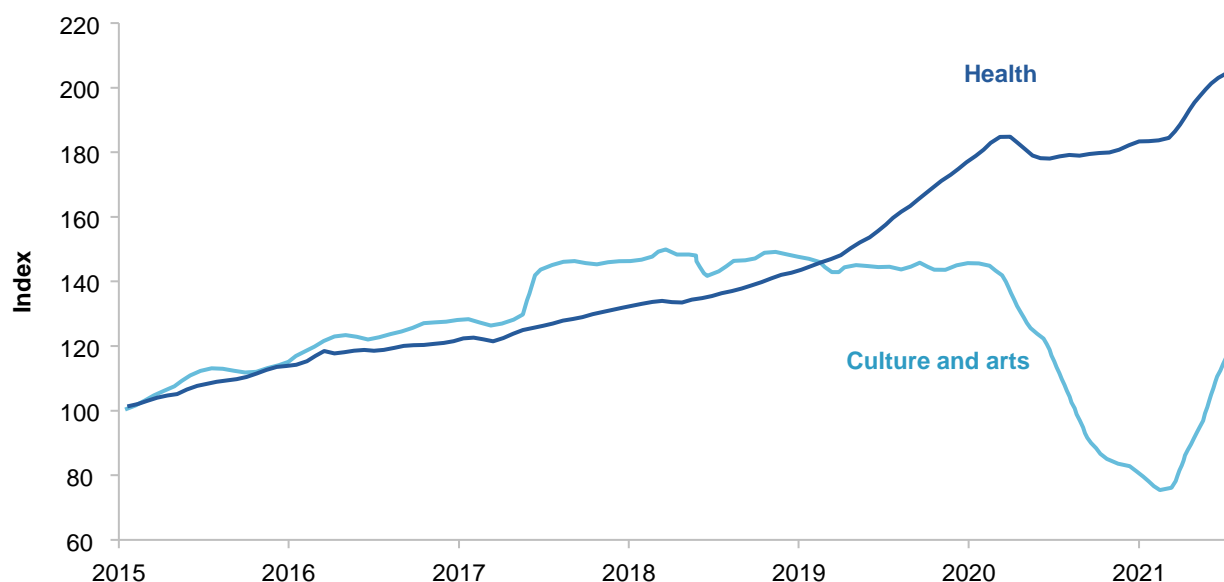
The **price elasticity of giving** refers to how donors respond to a 1% change in the **price of giving**. The price of giving is the cost of donating a dollar (box 4.2). The price of giving will generally be less than a dollar because a person can claim a tax deduction for eligible giving, provided 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; Pelozo and Steel 2005).

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 or luxury good.

Other factors, including taxpayer demographics, such as age and gender, the charitable cause and the design of the tax incentive for giving will also influence how much a person gives, and which causes they give to. 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 concession. 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)). For example, 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.

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, but do not – and cannot – account for variation among 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.

Figure 4.1 – Giving to culture and arts declined significantly compared to health during the COVID-19 pandemic



Source: McLeod and McDonald (2021).

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 to measure the incremental increase in donations for the marginal dollar in 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 and the tax deduction is considered 'treasury efficient'
- 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.

However, 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. 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.

- 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).
- 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.
- 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, such as through public awareness campaigns, behavioural nudges and better information for donors to assess how effective a charity is at providing goods and services to the community (chapter 9 and chapter 10).

Preliminary estimates of elasticities of giving in Australia

The Commission's preliminary finding is that across all incomes people are likely to give more than they otherwise would because of the personal income tax deduction for giving to eligible entities with DGR status. Preliminary analysis suggests the price elasticity of giving in Australia is -0.89 with a 95% confidence interval of -0.87 and -0.92 (box 4.5). This means a 1% decrease in the price of giving results in an increase of giving between 0.87% to 0.92%, all else being equal. These results are similar to estimates by Deloitte Access Economics which estimated the elasticity of giving for Australia to be between -0.83 and -1.19 in 2018.

There are limitations to the Commission's preliminary modelling and therefore only the estimates presented in the final report should be relied upon. The Commission is intending to use improved model specifications for the final report which can better distinguish between price and income effects on giving.

The Commission also found that the income elasticity of giving in Australia is 0.56 with a 95% confidence interval of 0.555 and 0.564. This means that a 1% increase in disposable income – measured before any donations – is associated with an increase of giving by 0.555% to 0.564%, 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 occurrences of natural disasters in Australia). Full details of the Commission's preliminary modelling are presented in appendix B.

One area the Commission is working on further is whether people with different incomes have different responses to a change in the price of giving. While the literature is limited, the available analysis indicates that people with higher incomes are more responsive to the price of giving. The extent to which people with low or high incomes in Australia behave differently in response to the tax deduction should inform the policy settings around tax incentives for giving. The Commission is planning to present this modelling and its implications in the final report.

Box 4.5 – The Commission’s preliminary modelling results

The Commission has generated preliminary 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). These estimates have limitations, which are detailed further below and in appendix B.

The Commission’s preferred preliminary model specification showed:

- a price elasticity of giving of -0.89 with a 95% confidence interval of -0.87 and -0.92
- an income elasticity of giving of 0.56 with a 95% confidence interval of 0.555 and 0.564.

This means that if a taxpayer gives \$100 (and holding all other factors constant):

- a 1% decrease in the price of giving is associated with an increase of giving between 87 and 92 cents
- a 1% increase in disposable income is associated with an increase of giving between 55.5 and 56.4 cents. For example, if a taxpayer earning \$50,000 had their disposable income increase by \$500, and they already gave \$100, this modelling suggests they would give about 55 to 56 cents more than they otherwise would.

Methodology

The Commission estimated the price elasticity of giving and the income elasticity of giving using a fixed-effects model and 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 income): age; occupation; location; disposable income; whether an individual had a spouse, and whether an individual had sufficient private health insurance for tax purposes.

In the preferred preliminary model specification, the Commission excluded taxpayers with an average income of \$10,000 or below. 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 model produced unrealistic estimates. 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.

Limitations of the Commission’s modelling

The main limitation of the Commission’s modelling is that there are likely to be model specifications which better distinguish between the price and income effect on giving, including accounting for people who have a low-income and the share of people who do not give. 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.

Further, the model has a low R-squared – meaning the model does not predict the complexities of giving behaviour very well. This result aligns with other papers in the literature and may be because of the high variance in the amounts that people donate.

While the Medicare Levy Surcharge is not included in this preliminary modelling, the Commission intends to include it when calculating tax rates for the final model specification.

Box 4.5 – The Commission’s preliminary modelling results

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 actually made.

More detail about how the Commission addressed these challenges, where possible, is in appendix B.

The Commission also notes the legislated changes to tax rates in 2024-25 will give researchers and the Australian Government an opportunity to directly study how tax rate changes and an increase in after-tax personal income influence giving. The legislated changes will increase the price of giving (due to lower marginal tax rates) for people earning more than \$45,000 each year.

The Commission’s preliminary estimates have similar values to other studies, although they have been done using different methodologies. 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 – 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.

Selected studies about the price and income elasticity of giving

	Price elasticity of giving estimates	Income elasticity of giving estimates	Jurisdiction
Pelozza 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)	Between -1.16 and -0.39, depending on specification	0.43	United States
Deloitte Access Economics (2018)	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	Australia

Box 4.6 – Selected studies of taxpayers’ responses to tax incentives

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 preliminary estimates and other studies, people respond to tax incentives for giving, although the size of the effect depends on the data used and the exact model specification (draft finding 4.1). The final report will present the Commission’s final estimates for the price and income effect on giving in Australia.

**Draft finding 4.1****People respond to incentives, with those on a higher income more likely to give**

Preliminary 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 estimated 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 preliminary estimates for:

- price elasticity of giving in Australia ranges from -0.87 to -0.92, meaning a 1% increase in the tax deduction for giving is associated with a 0.87% to 0.92% increase in giving
- the income elasticity of giving in Australia ranges from 0.555 to 0.564, meaning a 1% increase in income is associated with a 0.555% to 0.564% 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.

The Commission will present final estimates, using different modelling approaches, of the price elasticity of giving and the income elasticity of giving in the final report.

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, the population'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
- 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, people on a higher or lower income, women (who are more likely to give than men) or men (who are more likely to give more money than women)).

The Australian Government's use of an uncapped, 100% tax deduction for giving is not the only way the Government could incentivise giving. If the government wished to increase the total amount donated, it could also make the tax deduction more generous (that is greater than 100%), like occurs in Singapore, to provide a larger incentive to give.

Another option is to use a differently designed tax incentive – for example a tax credit (like in New Zealand and Canada) or to cap the tax deduction received as a share of income (like in the United States).

Other policies include governments matching donations, contribution schemes (like in Italy) or vouchers that enable a person to direct a defined amount of government funding to an eligible organisation. Unlike a tax credit or deduction, these options do not provide a direct personal financial incentive to the donor, but they still have the feature of allowing donors to direct government funding to charities of their choice. They are also independent of individual marginal tax rates, which has both advantages and disadvantages. The United Kingdom (UK) takes a hybrid approach – under the GiftAid program, the Government matches taxpayers' donations to charities and also provides a tax saving for higher-income donors.

The design of the tax deduction for giving in Australia means that people who have a higher income receive a larger tax deduction from donating than those who have a lower income because of their higher marginal tax rate before the deduction. One way to address this would be to change the design of the tax incentive itself by, for example, using a flat tax credit – where all taxpayers received the same deduction for each dollar donated. 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).

While the tax system is a useful administrative tool for governments to provide an incentive for people to give, it also means that people who do not pay tax do not receive a tax benefit incentive to give. Donations of time (volunteering) are also not incentivised through the tax system.

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 towards 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. The \$2 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.²

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.

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 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 2023d).

The issue of the \$2 minimum threshold has not been a substantive concern for participants in this inquiry. 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. 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. As such, the \$2 threshold for tax-deductible donations should be removed (draft recommendation 4.1).



Draft 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.

... but there is no need to change the rate of the tax deduction

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.

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 caveats associated with estimates of treasury efficiency, the results of the price elasticity

² Commission estimates using Reserve Bank of Australia calculator (2015).

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 likely exceed the change in giving.

Another consideration is that, compared to many other countries, the tax deduction in Australia is 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 the United States, taxpayers can only claim up to 60% their income as a tax deduction (with lower thresholds in some circumstances). In contrast, the types of charities that can receive tax-deductible donations in Australia is relatively narrow compared to OECD countries (chapter 5 and chapter 6).

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, irrespective 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

Box 4.8 – Design of tax credits in other countries

spouses or partners and so there is an incentive for one person in a couple to claim all donations if that means it rises over the CAD\$200 threshold and attracts 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 tax credit scheme under two scenarios is presented in table 4.1. For example, for a person with an income of \$40,000 that donates \$500 their tax would be reduced by \$95 under the current tax deduction, by \$166.65 under a 33.33% tax credit and \$225 under a 45% tax credit. In contrast, for a person with an income of \$250,000 that donates \$500 their tax would be reduced by \$225 under the current tax deduction, by \$166.65 under a 33.33% tax credit and \$225 under a 45% tax credit.

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 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 tax credit system

Taxable income before a deduction	Tax deduction at current marginal tax rate	33.33% tax credit	45% tax credit
\$15,000	Nil	\$166.65	\$225.00
\$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

Source: Commission estimates. Excludes Medicare Levy, Medicare Levy Surcharge and any rebates or offsets.

Inquiry participants had mixed views on changing to a tax credit in Australia. 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’. In contrast, 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 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.

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 that have conditions on what they 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).

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). Therefore, a policy that changed the price of giving for this group of donors 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).

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. The Commission will use final modelling results discussed in section 4.2 to explore the likely implications of such a change in Australia in the final report.

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 modelling to estimate the responses of people in different income brackets.

Table 4.2 – A very small number of people 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.

While it is possible to estimate the behaviour of donors in response to different designs of a tax incentive (for example, moving to a tax credit or changing the tax deduction rate) for giving, less is known about how different options would affect charities. The Commission would need more information, including from charities, and the elasticities of giving by income ranges, to support a recommendation to change the design

of the tax incentive in its final report. The Commission would welcome information on how charities view the possibility of more donors with a lower average donation compared to fewer donors with a higher average donation, particularly if the overall outcome was that total giving is likely to fall (information request 4.2).

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 (draft 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 and instead 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. For example, in the UK, the government matches 25% 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, although this was some time ago.

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 which is 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

Box 4.9 – Other models for government support of philanthropy

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 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 matched giving scheme 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.

Some private philanthropic funders have entered matched giving arrangements with charities and governments also use this approach in some specific areas. Some participants submitted that these types of matched giving programs, if used more widely by governments, could increase donations (ACFID, sub. 242, p. 4; Go8, sub. 213, p. 9; ASF, sub. 197, p. 10; Aruma, sub. 187, p. 3; Office of the Arts, sub. 251, p. 2). These matched giving arrangements can be focused on 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. This is one way governments could provide more targeted incentives to donate to priority causes, although the costs and benefits of such an approach would need to be assessed on a case by case basis.

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 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.

At this time, 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. The Commission would welcome views from inquiry participants to inform its final report.



Information request 4.2 **Government policies to support giving**

The Commission is seeking feedback on the advantages and disadvantages of using alternative government policies to support giving, including a tax credit and matched giving, as opposed to a tax deduction.

- How would donors likely change their giving behaviour under different types of tax incentives, such as a tax credit, and what would drive those changes?
- What would be the effect on charities of moving to a tax credit if more people were likely to give smaller amounts, but the overall amount of giving decreases?
- If it were to be adopted, how should a tax credit be designed?
- What would be the effect on donations of moving to a matched giving scheme, like Gift Aid, given it does not provide a direct personal benefit to encourage all taxpayers to give?
- Would such a matched giving scheme be an improvement compared to a tax deduction and, if so, how should it be designed?

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 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 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 2021). 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 with studies showing that 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 have 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 that do 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, including 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 a cost – they must give up 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.

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.

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 choose to volunteer if they currently do not, 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, although 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.

Given these considerations, it may be more efficient, effective, and equitable for the 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 2023). 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.



Draft 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.



Draft finding 4.2

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

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 take into account the possibility that those who may be incentivised to give may also be the direct or indirect beneficiaries of tax-supported philanthropic giving.

People who are fully reliant on income from superannuation may be in a financial position to give. 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 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.

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 that is used to make a donation more favourably compared to equivalent salary income, especially as there is already a CGT discount for capital gains for assets owned for at least 12 months.

As noted above, inquiry participants have argued that incentivising gifts of property would be of particular benefit to charities because it could provide them with ongoing annual income that would provide financial stability. 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. Possible unintended consequences include that some charities may prefer the flexibility of cash compared with property and that the change would create a level of inequity in the incentive provided to donors seeking to gift different types of assets.

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 the case for items of cultural significance.

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 particular issue has not been raised by participants.

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 charitable entities. 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 helps to ensure those donations are directed toward activities that provide the greatest net benefits to the final beneficiaries of the goods and services and 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.
 - DGR eligibility requirements can inadvertently limit access for some smaller charities, which also tend to be more reliant on volunteers. Some charities have multiple DGR endorsements, which can require complex organisational structures, with some organisations seeking specific listing to overcome this limitation.
- * 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 a person's gift to these entities through personal income tax deductions (chapter 4).

These incentives deliberately seek to steer donations and, with them, other resources toward certain charitable purposes and activities¹ 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 giving to entities that have DGR status. The DGR system, therefore, not only affects overall giving, but also potentially affects 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 go through other elements of the DGR system, such as 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 eligibility also has a signalling role – even if DGR status is not a formal requirement for grants, donors may interpret it as an indicator of a charity's 'legitimacy', quality or effectiveness. This means DGR status may also influence support provided outside the DGR system, such as corporate sponsorship. Another consequence of increased donations could be that it creates incentives for governments to withdraw support through direct funding (for example, 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 has taken a new approach for this inquiry. It has 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 is 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.

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

¹ 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. 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 2023i). Current DGR categories can be based on an entity's purpose and/or activities.

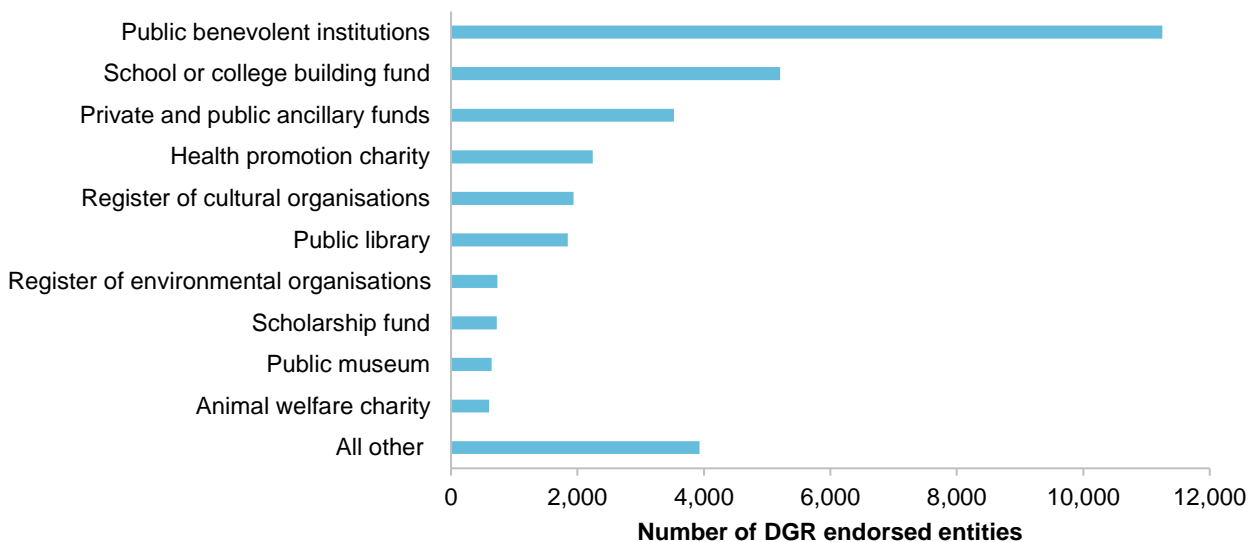
- the **eligibility criteria** that entities undertaking activities within scope must meet to qualify for DGR status.

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, although 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 – accounts for 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 (2023e).

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 2021a).

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 what donations can be used for. 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. 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.

Another source of variation in eligibility requirements is different administration arrangements. While most endorsement categories are administered and assessed by the Australian Taxation Office (ATO), four of the categories – the Register of Cultural Organisations, the Register of Environmental Organisations, the

Register of Harm Prevention Charities and the Overseas Aid Gift Deductibility Scheme – are 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 have passed the Parliament and are due to take 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

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 2023l). 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 2023p).

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

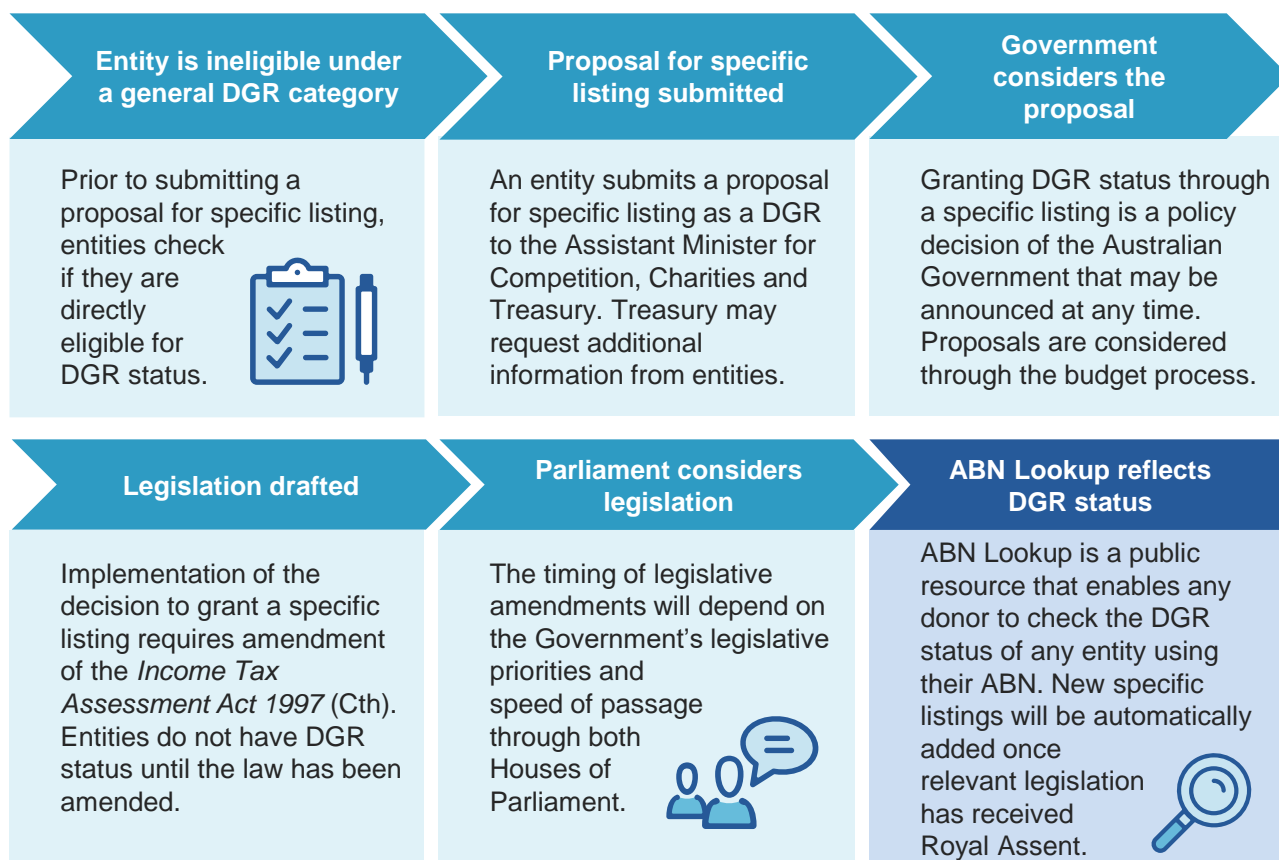
Entities that do not fit into one of the 52 endorsement categories can seek DGR status by being listed by name in tax law (referred to as 'specific listing'). A specific listing is intended to be used only by exception and requires the Australian Government to propose an amendment to the ITAA97 that 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.

Another distinguishing feature of specific listing is that it can be granted for a time limited period. 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.

Figure 5.2 – The specific listing process



Source: adapted from Treasury (2023b).

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 it 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

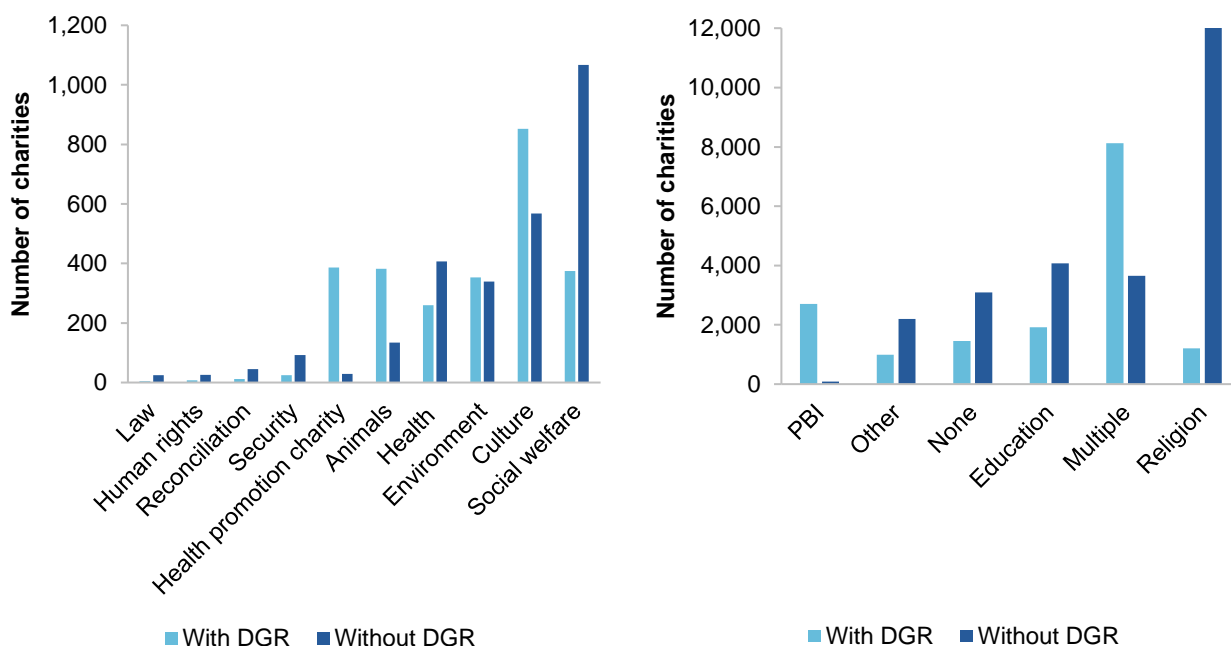
Donations (as opposed to grants or selling goods and services) are an important source of revenue for some charities. Donations are particularly important for smaller charities. For example, charities with revenue under \$250,000 receive 40% of total revenue from donations on average, whereas larger 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. Overall, 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).

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–\$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 activity 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 likelihood of having DGR status also varies widely 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) (Charities Act) – 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 social welfare charities access DGR status through qualifying as a PBI.

Charity subtype^a What the subtype covers and how it aligns with existing DGR endorsement categories

Religion	<ul style="list-style-type: none"> Includes religious congregations, religious education and maintaining religious buildings. Little alignment with DGR endorsement categories, although some religious education activities may qualify (such as religious instruction in government schools and some school building funds).
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 Register of Cultural Organisations. (The Register will be abolished on 1 January 2024 when this function is transferred to the ATO.) Many public libraries are in schools, so there is some crossover with the education subtype.
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, organisations providing volunteer emergency services such as surf lifesaving. There are a number of 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 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. 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 Register of Environmental Organisations and the animal welfare endorsement category. The Register of Environmental Organisations will be abolished on 1 January 2024 when this function is transferred to the ATO.
Other	<ul style="list-style-type: none"> This subtype 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"> This subtype 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"> Covers 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.

Charity subtype^a What the subtype covers and how it aligns with existing DGR endorsement categories

Public benevolent institution	<ul style="list-style-type: none"> • Can include 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.
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a. These are the shortened names of these subtypes.

Sources: ACNC (2023i) 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 with similar purposes can be treated differently, creating anomalous outcomes. The system also lacks clarity for donors (who claim the tax deduction) and certainty for charities (which may not have all of their activities covered).

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’ (PBI) 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

Box 5.1 – The origins and evolution of the DGR system

purpose of ‘benevolent relief’ – that is relieving poverty or distress for people in need – for it to be classed as a PBI (ACNC 2023m).

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, school enrolments were rapidly expanding, there was 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 2023e).
- 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 2023e).

Smaller categories have also been added from time to time. These are two recent examples.

- 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 endorsement category for community foundations. (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).)

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 have 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, such as how welfare and social services are funded and provided, that limit their transferability to Australia.

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 (for example, South Africa, Singapore and Malta) provide tax incentives to a narrower scope of activities, compared to Australia (OECD 2020).

Participants have raised concerns about the scope of DGR coverage

Many participants and other stakeholders have raised concerns that certain activities are currently out of scope for DGR status (or only potentially in scope only through specific listing). For example, 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. Examples include the following.

- Participants have highlighted that certain animal welfare charities are not eligible, particularly those focused on advocacy rather than direct short-term care of animals (for example, 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).
- 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).
- 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; Saward Dawson, sub. 81, p. 2).

Participants have 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 have noted that this creates complexity and uncertainty about whether or a not certain charities are PBIs (ALLFED, sub. 95, p. 1; EAA and Effective Altruism Australia: Environment, sub. 32, pp. 9–11). For example, 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. 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’ as one of the requirements of PBIs (ACNC 2014a).

Some participants have 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). For example, 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

Box 5.3 – ‘Public Benevolent Institution’ has not been defined in legislation

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 2023j). 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 (AIW, sub. 271, p. 2; Aurora Education Foundation and GiveOUT 2022, p. 27; Consumer Policy Research Centre, sub. 105, p. 1; Justice Connect, sub. 269, pp. 5–6; Marrie and Marrie 2013, pp. 3–7). For example, 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).
- Some charitable 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. Another example is advocacy organisations or peak bodies (Anglicare Australia, sub. 125, p. 2; Animal Defenders Office, sub. 184, pp. 5–6; Justice Reform Initiative, pers. comm., 15 March 2023; Medical Association for Prevention of War, sub. 51, p. 2; Southern Youth and Family Services, sub. 72, p. 3). 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 International Campaign to Abolish Nuclear Weapons (sub. 44, p. 2) 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’.

Some participants also raised concerns that the DGR system is restricted to Australian charities registered with the ACNC. This includes:

- 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; Dr 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; CAS, sub. 49, pp. 3–4; Law Council of Australia, sub. 255, p. 9; Lord Mayor’s Charitable Foundation, sub. 106, p. 9).

Reform proposals have suggested broadening 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 have proposed expansion of 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. For example, 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. 128, 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 processes 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 mainly occurs 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.

For many entities, all activities undertaken by an entity may not fall within the scope of a DGR endorsement category. This can cause complexity when entities must determine if their entire organisation is within scope

and, if it is not, whether they can reorient or restructure their entity to bring some or all of their activities within scope of the DGR system.

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
- the additional requirements to establish a public fund (including the need to nominate a ‘responsible person’)
- requirements to meet the ‘in Australia’ condition, which require 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 2023k; ATO 2021b).

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
- an entity deciding not to 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.

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 have proposed reforms to alleviate this compliance burden, including being able to combine eligible categories into a single DGR endorsement. For example, the Minderoo Foundation said:

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 auspicings 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). This makes the process inefficient. 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 example, 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 also submitted concerns about the consistency, uncertainty and complexity of the specific listing process (box 5.4).

Other participants raised concerns about the time limits on some specific listings. For example, Australians Investing in Women has a specific listing because they do not fit within a DGR endorsement category but raised the concern that the five-year timeframe is 'unsatisfactory, frustrating and costly' (sub. 271, p. 2).

Australian Schools Plus raised concerns about restrictions that may be imposed as a result of specific listing (noting that 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. 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.

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. For example, 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)

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’.

Participants have also commented that while using auspicing arrangements is one way for a broader range of entities to gain access to tax-deductible donations, these arrangements are administratively costly and reduce the tax-deductible donations that an entity without DGR status can receive if there are fees for the service (LCSA, sub. 188, p. 9). For example, 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’.

Smaller charities can also find the DGR system difficult to navigate (CCA, sub. 218, p. 6). 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 2023c, p. 20). 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 (draft 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 deductible gift recipient (DGR) system that creates fairer and more consistent outcomes for donors, charities and the community (chapter 6).



Draft 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 have 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 (sub. 99, pp. 2–3) commented 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.

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, a tax concession that benefits some parts of the community may 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. For example, JBWere (sub. 249, p. 9) observed that the operating margin for charities can be considerably lower than the for-profit sector and this 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 is particularly distortionary where charities compete with for-profit businesses. 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) and confers a competitive advantage if they compete with organisations that are not eligible for the tax concession.

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; childcare; 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.
 - 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.

- ✳ **These reforms would simplify the DGR system and help donors direct support toward activities with the greatest net benefits to the community as a whole.**
 - 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 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 and the reforms are only likely to make a small addition to overall giving. The fiscal cost of the proposed reforms is expected to be modest.

The deductible gift recipient (DGR) system is structurally flawed. It is not fit-for-purpose as a mechanism for determining which entities undertaking activities 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 the DGR system and focus support on where there are likely to be the greatest net benefits to the community as a whole. 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.

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 likely to generate the greatest net benefits to the Australian community.

Under section 6 of the *Charities Act 2013* (Cth) (Charities Act), 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 due to judicial decisions which 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 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 that tax deductions are not always the primary driver of giving behaviour (chapter 3 and chapter 5). 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 their activities are of no value 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 a higher threshold, so that those activities where there are likely to have the greatest net benefits to the community as a whole are prioritised.

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 current 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 reforms would establish firm foundations for the future of philanthropy, so that the benefits of giving can continue to be realised across Australia.

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 and put it on firmer foundations so the benefits of giving continue to be realised across Australia.

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 (or partially provide) that support, compared with other forms of support.

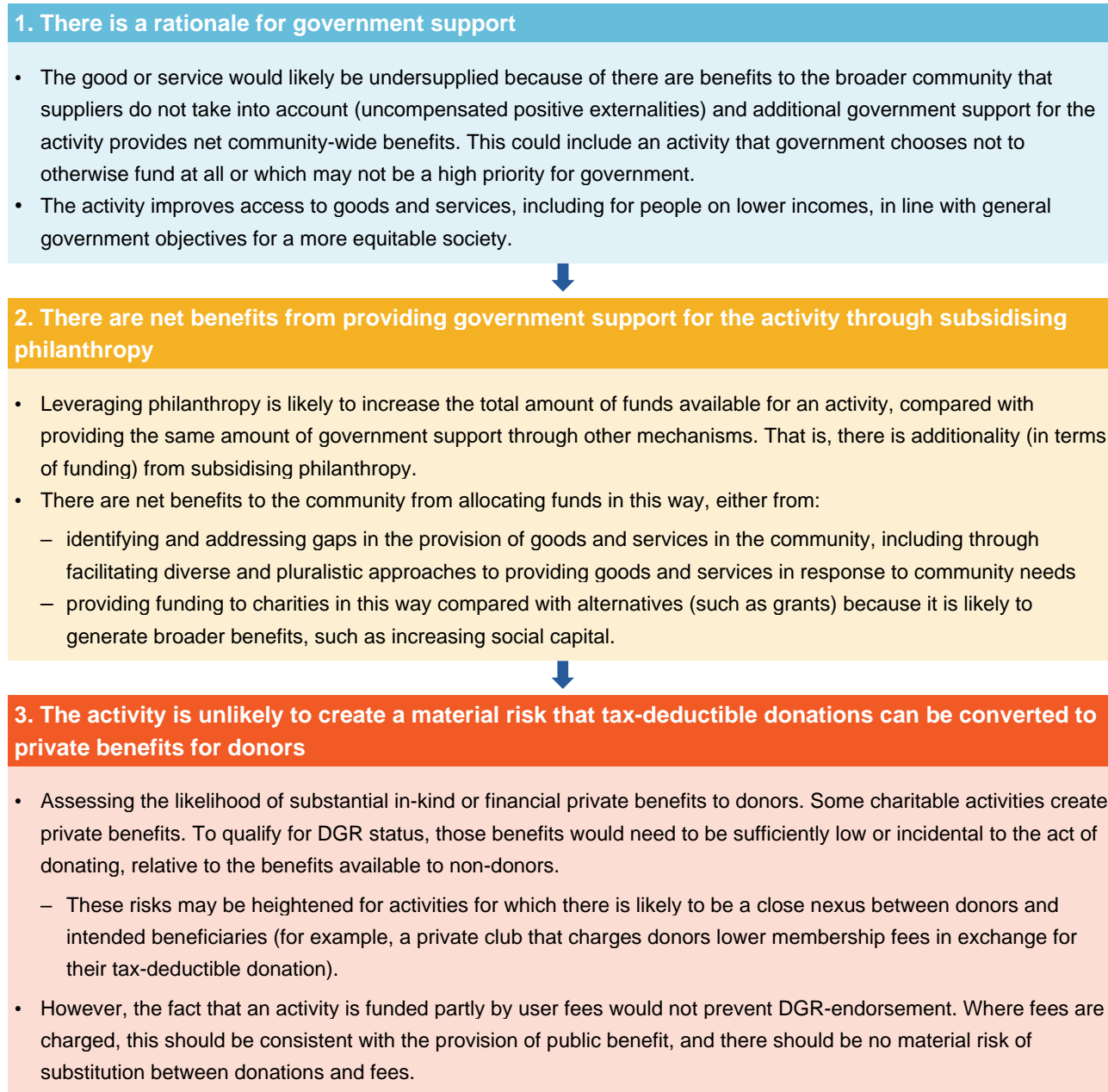
There are three steps in the principles-based assessment criteria for determining whether a class of charitable activity should receive DGR status (figure 6.1).

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 to not-for-profit organisations. 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 for government support for philanthropy is that it generates 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 some certainty or flexibility in funding for charities, particularly charities that would otherwise be heavily reliant on government funding. Participants have also noted that philanthropy can allow for increased innovation than 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 of an activity under the first step above, a tax deduction for donations will not always be a good way of providing some support. This could be because it 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 community-wide net benefits.

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. It acts as a final filter to exclude classes of activities where there is a material risk that a donor (or their families, close relatives or other associates) could directly capture a substantial share of the benefits of a donation, in exchange for their donation. If donors are themselves the primary beneficiaries of a donation, then the transaction is 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 community benefits. In addition, these situations could pose a risk to the integrity of the tax system.

One situation where there is 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 of donations for lower fees and 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. However, the issue of fees is not always straightforward – in principle, the presence of a low fee (or the total absence of a fee) could be because donations have been used to completely (or almost completely) subsidise what are purely private activities.

Another situation 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, in exchange for the promise of lower membership fees (or no fee). For high-income earners, this could effectively lower the cost of membership by the marginal tax rate of 45%, with the remainder funded by other taxpayers for what is effectively a purely private activity. As in the case of charging fees discussed above, a principled case for including the 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).

An activity that is funded partly by user fees could also still be within the scope of the DGR system. There are some instances, for example, where charities charge fees to some beneficiaries but 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 goods or services are provided to a group of people in need (for example, providing people in financial distress with subsidised accommodation). Another potential instance is where there are broad community-wide benefits and the fees are charged to cover particular costs – for example, admission fees charged to cover the additional costs of visitors where the activity generates net community benefits as well as the benefits to fee-paying visitors.

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. The Commission therefore considers that it is vital 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 support would 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 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 that are 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 that generate greater social benefits.

In this inquiry, the Commission has come to the preliminary conclusion that the DGR system should be simplified and refocused to create fairer and more consistent outcomes for donors, charities and the community (draft 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 in this inquiry are as follows.

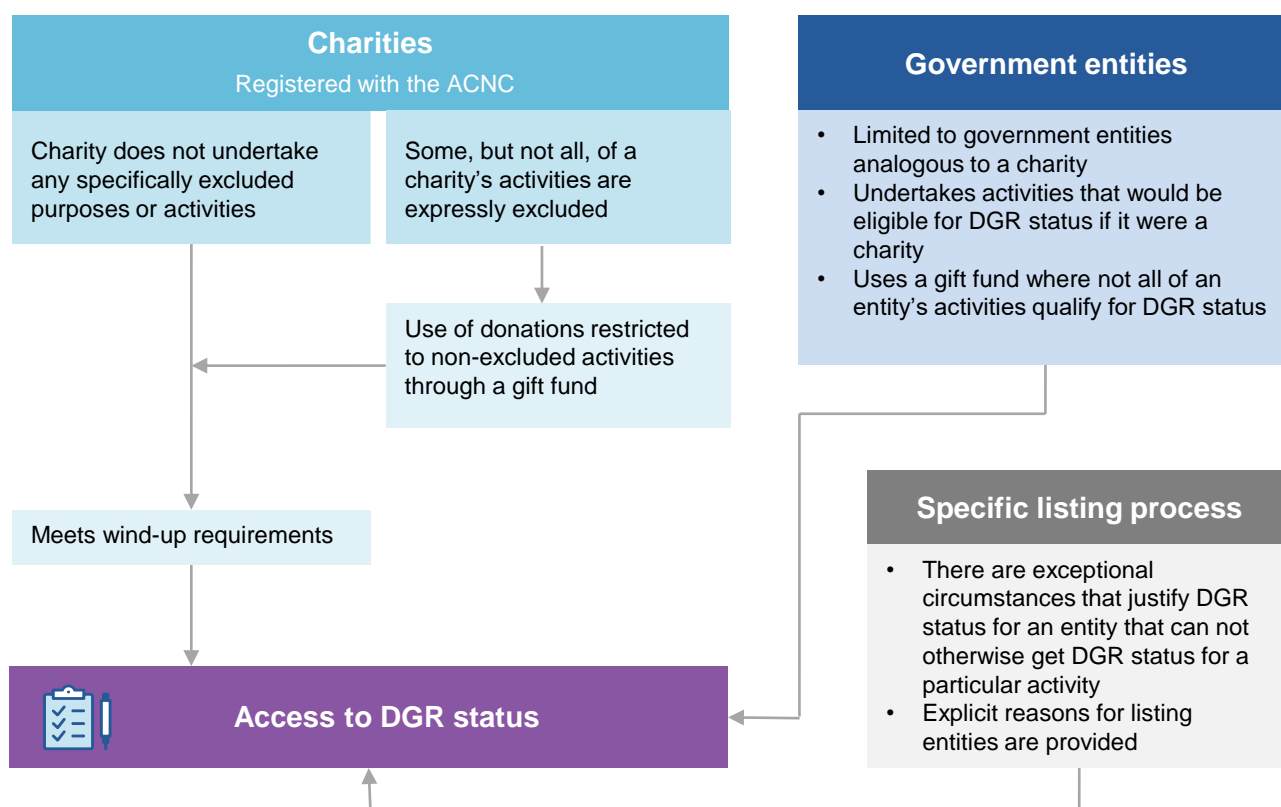
- The scope of the DGR system should be limited to a subset of charities registered with the Australian Charities and Not-for-profits Commission (ACNC) and government entities that are analogous to the types of charities that are in scope for DGR status. It should not generally be extended to other classes of non-government entities.
- 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 advocacy in furtherance of another charitable purpose, public interest journalism, smaller social welfare charities that do not meet the criteria to be a public benevolent institution, 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.
- 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 continue to be eligible for DGR status as per the current arrangements (chapter 8). However, the restrictions placed on ancillary funds that are also registered charities could be changed. 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.
- 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. 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.

- 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 primary, secondary, religious and other forms of 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 childcare and aged 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 an activity that is not excluded under another subtype
Charity with no registered subtype	Excluded

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 substitution between donations and fees or generally enable donors to convert donations to a private benefit. 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 private hospitals) charge fees to patients and raising revenue through donations could offset some of the need to charge fees.

However, in these cases the nexus between donors and beneficiaries is unlikely to be as direct compared with activities, such as schools or childcare. Activities that tend to have a large pool of beneficiaries, like cultural activities and private hospitals, are less likely to have a less direct link between a donation and a benefit to a particular individual. In addition, the benefits to direct beneficiaries of the charity are more difficult to discern from the broader community-wide benefits of the activities.

DGR status should be maintained for some, but not all, education activities

In order to refocus DGR donations toward activities with the greatest net community-wide benefits, the Commission considers that there is a need for some specific exclusions in the education subtype for the activities of primary and secondary education, religious education, and other forms of informal education. 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 potential for a donor to be able to convert a tax-deductible donation into a private benefit is especially apparent for primary and secondary education activities, particularly where students are charged fees. While such donations undoubtedly provide benefits, the likelihood that they generate broader community-wide benefits is reduced. Potential donors are most likely to be those directly involved with the organisation, such as students, their parents or alumni. This could lead to tax-deductible donations being directly converted into lower fees.

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 Commission has observed the practice of schools including voluntary contributions to school building funds on fee invoices, alongside tuition fees. Such direct 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.

School education is a priority for governments and there are sound economic and social reasons for government support. But certain forms of subsidised philanthropy may not be an effective or efficient way to direct that support to where it is needed most. As such, current arrangements for school building funds are difficult to justify under the principles outline in this chapter (box 6.1).

The likelihood of a close nexus between fees and donations means that there is a case for expressly excluding education activities related to primary, secondary and religious education, and other forms of informal education *unless* the activity has an explicit equity objective. This means that some school or informal education activities would still be eligible for support through the DGR system.

Where a school is registered as a PBI, it would maintain eligibility for DGR status, as is currently the case. 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.

Box 6.1 – The rationale for school building funds accessing DGR status is weak

School building funds can be an important way of funding the infrastructure improvements necessary for delivering education outcomes in school communities. School building funds first became eligible for DGR status in 1954, at a time when government support for non-government schools was very limited (O'Connell 2023). However, government support for non-government schools has expanded considerably since that time, which has reduced the rationale for school building funds to have DGR status. 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.

Notwithstanding the fact that infrastructure improvements are an important part of delivering education outcomes, the Commission considers that government support for school building funds through the DGR system is no longer an effective or efficient mechanism for delivering government support to the areas of greatest need, and that current arrangements do not obviously align with the broader objectives and priorities of the education funding system.

It can also duplicate or cut across other funding arrangements. To illustrate, the Australian Government administers a 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).

In contrast, government support through DGR-eligible school building funds is currently not prioritised according to a systemic assessment of the need for the funding between different schools. The level of indirect government support through DGR-eligible donations is instead determined by the contributions made by donors and the projects that these donors wish to support in particular school communities, rather than through an education system-wide process of assessment and prioritisation of infrastructure needs and priorities. School building funds are now also used beyond primary and secondary schools with other types of education providers, including for religious education, using school building funds because of how the endorsement category is defined and has been interpreted in recent court decisions (ATO 2023b).

Peak bodies for schools which have school building funds emphasised the importance of indirect government support for the schools they represent in their submissions (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.

Commission analysis of the 2021 ACNC activity information statement data indicates that there were about 3,500 charities registered with the subtypes of religion and/or education and no other subtypes (except for the law subtype in some cases) that had DGR status. The Commission has assumed that most of these DGR endorsements would be for school building funds. Excluding donations to a small number of identifiable universities and other institutions, total donations to this subset of charities was almost \$800 million, although this would include donations that charities received for other purposes (such as advancing religion). While a single year of data only provides a snapshot and does not reveal

Box 6.1 – The rationale for school building funds accessing DGR status is weak

dynamic data trends, it is noteworthy that donations in 2021 were concentrated amongst a small share of these charities, with 10% receiving about 80% of total donations (noting that some of these charities distribute donations to multiple schools). The median amount of donations received across these 3,500 charities with DGR status was about \$5,000.

This suggests that many schools servicing communities with greater socio-economic disadvantage are less likely to benefit from DGR endorsement for school building funds. It also highlights a circumstance where governments may wish to have more control over which activities and which schools receive taxpayer support for capital works, so government support can be allocated in a more equitable manner based on need. 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 objectives are met.

The Commission is also proposing that education charities should be able to obtain DGR status for specific activities that have an equity objective, without the need to be registered as a PBI. Adopting this approach means that activities such as providing scholarships to assist disadvantaged students access education opportunities, or education programs that specifically assist disadvantaged students would be in scope for DGR status. Where such activities only constitute part of a charity's activities – for example where a school funds a scholarship program – 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 proposal, is an example of this approach.

The Commission has also considered the case where school infrastructure is made available for use by the broader community, not just enrolled students. In the context of the principles-based framework outlined in this chapter, there could be a case for supporting such activities through the DGR system, as the nexus between donors and beneficiaries would be far weaker. However, in practice it is likely that such an arrangement would be difficult 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.

Expressly excluding these primary and secondary education activities (except where these have an equity objective) would refocus taxpayer support toward other activities that are likely to have a greater community-wide benefit. It would also provide an additional integrity measure to minimise the incentive to restructure charities that undertake education activities to maintain DGR status in a way that can still create a close nexus between donors and beneficiaries.

Religious education activities 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 and could cause integrity problems.

DGR status should also not be extended to other forms of informal education, 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.

Formal higher education activities (including universities and TAFEs) would remain within the scope of the DGR system under the Commission's proposal. While these institutions also tend to charge student fees, there is less likelihood of donations being used in a way that provide scope for a substantive private benefit to the donor. This is because student populations are larger, meaning the benefits from an individual donation are diffused across a larger population. A higher degree of government control over fee setting for these institutions is another factor that mitigates this risk.

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 could also consider whether its alternative funding arrangements, including the current grant program for capital works in non-government schools, should be revised in light of these changes. Funding provided through such a grants program can be more effectively targeted based on the needs of particular schools or community. For example, it can prioritise supporting schools that are expected to see significant increases in student numbers due to their location in a suburban growth area.

DGR status should not be extended to certain charitable activities

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 childcare and aged care risks misallocating government support

The activities of childcare and aged care that fall within the charity subtype of advancing social and public 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 activities such as education, PBIs undertaking childcare and 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 there are other extensive government funding arrangements in place for childcare and aged care. 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 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 may be 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; Webber 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 to this inquiry have highlighted the community benefits of religious activities and the

interconnectedness of religious practice 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).

Charities that have a sole charity subtype of advancing religion comprise about 25% of ACNC registered charities. 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 except, in some cases, for school building funds and providing religious instruction in schools. 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 advancing religion – this should continue.

However, applying the principles in figure 6.1, the Commission does not believe there is a strong rationale for expanding the scope of the DGR system to include charitable activities that are specifically for the purpose of advancing religion. As emphasised above, this is not based on a view that religious practice does not provide a benefit to the community, but rather that the additional net community benefits from extending the DGR system to include the purposes of purely advancing religion are not apparent.

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 (as opposed to other services that religious institutions may provide, such as relief from hardship) primarily benefit the people who regularly participate in the activities of the institution.

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. The Not-for-profit Sector Tax Concession Working Group (Treasury 2013) came to a similar conclusion. Importantly, this will not inhibit religious-based charities from being granted DGR status for other charitable activities that do not have specific exclusions.

Some participants have proposed the removal of 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). On the basis of the principles outlined in this chapter, the Commission remains of the view there is a case for specifically excluding all charities that advance industry from the DGR system.

Expanded eligibility for advocacy activities, except where they further an excluded activity

Under the Commission's proposed reforms, charities undertaking advocacy activities related to most charitable purposes would become eligible for DGR status. Such advocacy activities 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 a charitable purpose). This can include expressing views on policy issues which are different from the government or the wider public, noting that charities cannot have a 'disqualifying purpose' such as promoting or opposing a political party or candidate for political office, which is an appropriate limitation designed to preserve their independence (chapter 2).

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. 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.

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.

The Commission has not yet formed a view about how a consistent approach to government entities and charities should be implemented and administered. 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.

Activities like sport should only be eligible for DGR status if furthering a charitable purpose

Some participants have called for extending the DGR system beyond charities and government entities that undertake charitable-like activities. The main activity participants would like to include within the scope of the DGR system is community sport (The Australian Sports Foundation, sub. 197, pp. 10–12; CAS, sub. 49, pp. 3–4).

Community sport can have positive community benefits and has parallels with some of the purposes that are considered charitable. For example, many community sporting activities may have the consequence of promoting fitness, improving mental health or relieving social isolation.

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.

First, sport in and of itself is not considered a charitable purpose, although some inquiry participants have advocated that it should be (CAS, sub. 49; 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.

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.

Second, 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.

Last, organised sport undertaken for recreation or competition commonly involves fees for participants and in these instances DGR status is unlikely to be appropriate in situations where 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, noting that auspicing arrangements through the Australian Sports Foundation would continue to provide an option for accessing tax-deductible donations for sporting activities that participate. 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.

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 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 warrant consideration through a specific listing process. The process should be refined to make it more transparent, which would increase sector confidence that specific listing 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 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 apply for specific listing or the identity of these entities
- the process and criteria for assessing the relevant merits of applications
- the reasons for selecting certain entities for specific listing but not others.

A more formalised process to assess specific listing applications could be one way to overcome some of the current shortcomings and improve overall transparency. One option for providing this advice could be to establish an independent panel to assess applicants 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.

However, there is scope to make the current process more transparent. Treasury already provides advice on specific listing applications 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 applications 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 applications 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 outlined in this chapter and explain in detail why, in light of these principles, the entity was not eligible for DGR status though the standard endorsement process.

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). The Commission would welcome views on whether the legislative approach should continue, or alternatively, whether a power to make regulations prescribing an entity as a DGR by regulation should be introduced.

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.

The Commission invites further feedback on the specific listing process, including the role it should play and how the process could be refined (information request 6.1).



Draft 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 other 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 childcare and aged care in the social welfare subtype (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

**Draft recommendation 6.1****A simpler, refocused deductible gift recipient (DGR) system that creates fairer and more consistent outcomes for donors, charities and the community**

- only use the specific listing mechanism in exceptional circumstances. When it is used, the Australian Government should increase transparency about applications, how these are assessed, and the decision-making process to maintain confidence in the broader DGR system.

**Information request 6.1****Improving the specific listing mechanism**

The Commission expects that, under its proposed reforms of the deductible gift recipient system, specific listing would be used only in exceptional circumstances, but welcomes further feedback on:

- what role it should play, if any
- how applications should be assessed
- how transparency could be improved, including what further information should be published about the entities that apply for specific listing, how applications are assessed and decision-making processes about why or why not an application is approved
- whether specific listing should be done through regulation rather than legislation.

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 simply discouraged from undertaking 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. The Commission is also requesting feedback on whether there is a case for some additional reporting requirements.

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, the need for this additional condition under the Commission’s proposed reforms 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 (Dr 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.

Are changes to reporting requirements needed?

There are some gaps in the available information about the distribution of government support provided to organisations through the DGR system. While data is available on the amount of deductions claimed by donors, 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.

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.

There are some information gaps about the receipt of donations for DGR-eligible activities, but the balance of costs and benefits from increasing reporting obligations for entities with DGR status is unclear. The Commission is seeking feedback on these costs and benefits (information request 6.2).



Information request 6.2

Reporting obligations for entities that have deductible gift recipient (DGR) status

The Commission invites feedback on the costs and benefits of changing reporting obligations for entities that receive donations through the DGR system.

- Is there a case to require charities to provide information that disaggregates donations received for activities that are eligible for DGR status and activities that are excluded?
- How large would the compliance costs of this reporting requirement be? How would it vary between different sized charities?
- What reporting, if any, should be required of government entities with DGR status? How should this be enacted and administered?
- How would these additional reporting obligations improve the integrity of the DGR system or inform policy settings?
- Are there any other areas where the benefits of additional reporting would outweigh the costs?

6.4 Implementation arrangements to support 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 could 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 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).

There should 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 education, childcare and aged care activities. Registration as a PBI also provides access to fringe benefits tax concessions (chapter 5). A legislated PBI definition to provide greater certainty about what purposes and activities would qualify for PBI registration is warranted (draft recommendation 6.2).

Some participants have 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 2023j) and not extended to other purposes for the benefit of the public.



Draft 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 all new and existing charities with all applicable charitable subtypes. 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.

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 (for example, three to five years) for charities that would no longer have DGR status to adjust their fundraising activities. 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 till 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 welcomes further feedback about the possible effects of the reforms to the DGR system on ancillary funds.

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.

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.

The Commission invites feedback on the transition arrangements for implementing changes to the DGR system (information request 6.3).



Information request 6.3

Transition arrangements for reforming the deductible gift recipient (DGR) system

The Commission's proposed reforms seek to simplify the DGR system and help donors direct support to where there is likely to be the greatest net benefits to the community as a whole, but there would be transition costs. The Commission invites feedback on transition arrangements to minimise the costs of reforming the DGR system.

- The Commission is considering how long the transition period should be for the proposed arrangements to come into force. What are the pros and cons of a transition period for activities where existing eligibility for DGR status is withdrawn? How long should the transition period be?
- Is there a case for other transition arrangements, such as grandfathering, or a gradual reduction of tax deductibility that would provide a glide path from current arrangements to the new arrangements? If so, in what circumstances and how would the complexities of two different DGR systems be managed?
- Are there likely to be any consequences for the operation of ancillary funds that should be considered in implementing the proposed reforms?
- Are there any other factors that should be considered in designing and implementing transition arrangements?

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 suitable transition period). 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. However, 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 including advancing religion, advancing industry, as well as some aged care, childcare and education charities would remain outside the DGR system. • 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 education in government schools. • Less 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 current 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.

- Advocacy activities to further a 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.
 - Similarly, 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.
 - 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.
 - 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 smaller 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 activity 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 childcare or aged care 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 education. 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). Charities (and government entities) would lose these endorsements (following a suitable transition period), although some education charities may retain DGR status for activities with explicit equity objectives.

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 6.2). The effects are presented for the four groups of charities discussed above. In aggregate, the changes are estimated to have a relatively small impact on total giving and the fiscal cost of the DGR system; the increase in giving to charities that gain DGR status would be partially offset by the withdrawal of DGR status from other charities in the medium term. In the short term, the fiscal cost would likely be higher because of transition arrangements for school building funds, 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 activity 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 activity 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 is gained or removed.

Table 6.2 – 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 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 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) and that giving 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 some analysis of the price effects of subsidising

giving and will develop this work further for the final report (chapter 4). Different price elasticities would change the magnitude of the effects, but -1 is likely to be reasonably indicative of the expected effects, pending completion of further analysis.

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 help donors direct support toward activities with 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 6.2). Even with some uncertainty about the effects, the fiscal cost relative to the status quo is expected to be in the order of \$100 million per year. 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 alternative funding arrangements that might arise in response to a refocusing of the DGR system.

The Commission invites further feedback on the proposed reforms and their effects to inform the final report (information request 6.4).



Information request 6.4

How expanded access to deductible gift recipient (DGR) status would change giving

The Commission is seeking information, including survey and data information, on how people would change their giving behaviour if DGR status is expanded to most charitable activities (subject to the exclusions described in draft recommendation 6.1).

- Would the expansion in the scope of the DGR system likely result in additional giving overall? If so, by how much?
- Would donors give less to entities with existing DGR status and more to those that gain DGR status under the proposed reforms? If so, by how much?

7. A sound regulatory framework

Key points

- ✳ **The regulatory framework for charities has sound foundations but it must keep pace with societal trends and developments.**
 - Most charities seek to meet community expectations and act with integrity. However, access to a large and growing pool of gifts from donors, and tax concessions from government, comes with a community expectation of a reasonable degree of public accountability and transparency.
 - Regulation can help ensure that donated funds are used for intended charitable purposes, which can encourage donors to give with confidence. Changing societal trends, such as greater use of online platforms, mean that regulation must remain fit-for-purpose into the future.
- ✳ **There is also a relationship between regulation and philanthropic giving. Regulation can contribute to enhanced public trust and confidence in the charity sector. Trust and confidence influence the likelihood a donor will give and how much they will give.**
- ✳ **Good regulation provides coverage proportionate to risks, avoids unnecessary duplication between regulators, provides regulators with enforcement powers commensurate with the risk and is fit-for-purpose both now and into the future.**
- ✳ **More should be done to improve the regulatory framework. The presence of multiple regulators creates inconsistencies, confusion and unnecessary regulatory burden, which may affect trust and confidence overall in the charitable sector and affect outcomes for donors, taxpayers and beneficiaries. It may also deter volunteers.**
 - ‘Basic religious charities’ are not subject to the same governance and reporting standards as other charities, creating a gap in the regulatory framework.
 - The Australian Charities and Not-for-profits Commission is unable to use the full suite of its regulatory powers for most registered charities, meaning some enforcement responses may not be proportionate or consistent.
 - There is limited oversight of charitable assets once an organisation’s charity registration is revoked.
 - It is important current reforms to implement nationally-consistent fundraising conduct principles are completed so charities can benefit from a simplified set of conduct requirements across all jurisdictions.
 - Broader implications on volunteer participation should be considered when designing government policies and programs. This includes volunteer checks that unnecessarily duplicate other checks or jurisdictions.
 - The growing popularity of online platforms may give rise to new challenges and issues in protecting donors.

7.1 There is a role for government 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 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 too want an assurance that any contributions that benefit from tax concessions have been used for the purposes for which those tax concessions have been provided. 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. Government regulation can be used to manage risks that may arise due to principal-agent problems.

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. On the contrary, most charities seek to 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 had their charitable status revoked by the ACNC in 2022-23 for non-compliance with their registration requirements and obligations (ACNC 2023e, pp. 22, 37). To put this in context, there are currently approximately 60,000 registered charities in Australia (based on ACNC 2023d).

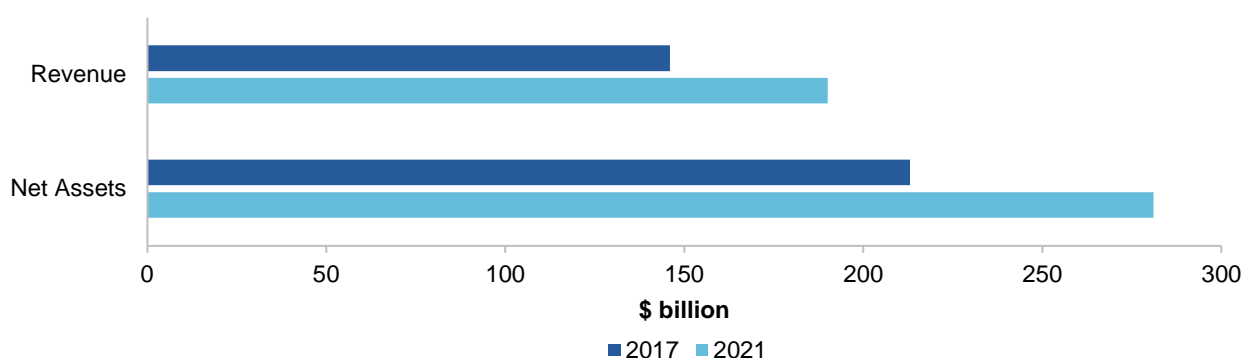
A sound regulatory framework matters – it can improve accountability and transparency of those being regulated and, in doing so, promote trust and confidence in the charity sector. A regulatory framework that promotes trust and confidence in the charity sector should also be considered in the context of the Government’s goal of doubling giving by 2030 – government itself is placing its trust in the sector as a steward of people’s donations and provider of goods and services to the Australian community.

A sound regulatory framework typically has the following characteristics:

- institutional arrangements that establish the regime, for example legislation, regulations or guidelines
- an entity or 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 (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 relevant trends that affect the regulatory framework for charities, and whether it is fit-for-purpose in the current and future giving landscape.

- The reasons why people give change over time, as does how they give. Society is increasingly moving toward digital payments; and the role of online platforms, such as GoFundMe or Facebook, is growing.
- The use of giving vehicles is increasing and accounting for a larger segment of giving, 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 and other assets (net assets were \$281 billion in 2021, almost 32% larger than in 2017), and this will grow if current trends continue (figure 7.1).

Figure 7.1 – Charity revenue and net assets are both growing

Sources: ACNC (2019, 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
- be administered by agencies that are equipped with the optimal suite of enforcement powers, and the resources and authority to use them
- assign clear regulatory roles, responsibilities and functions of different regulatory agencies that avoids unnecessary duplication and costs on those being regulated
- has 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 2020, 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 of increased regulation may have on attracting volunteers. Many aspects of charity 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 both money or other financial assets and time.

While the 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 of studies assessing the relationship between trust and giving found a positive relationship between the two, with trust in an organisation and a sector (such as the not-for-profit sector) having the strongest relationship to giving (Chapman et al. 2021b, p. 1289).

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 has 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).

Since trust and confidence are linked to motivations to donate, a charity, despite being an NFP organisation, has a financial incentive to demonstrate to prospective donors that it is accountable and acts with integrity. Registering as a charity with the ACNC or engaging in self-regulation through the use of 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 itself, and deliver outcomes, in line with the expectations of donors.

Incentives for a charity to use funds as the donor intended depends 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 activity, then the charity may face weak incentives to perform well. Similarly, if a donor is expected to give to a particular charity due, for example, to cultural reasons or social norms, or a 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.

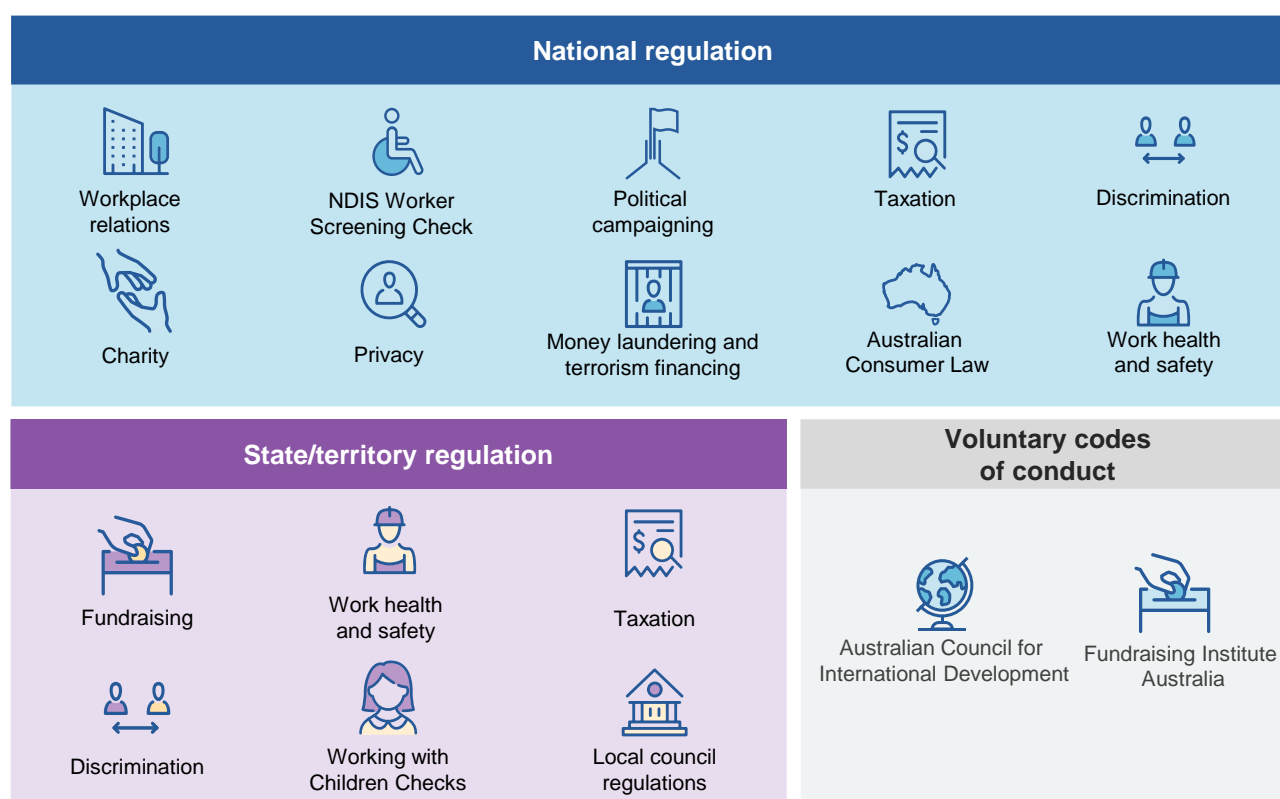
Further, misconduct by one charity may negatively affect trust and confidence in other parts of the sector, including charities that are meeting their obligations. The possibility of such negative spillover effects may deter people from donating to worthy causes, for fear their donation may be misused for private or other non-charitable purposes. This was demonstrated 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 charity (nfpSynergy and MoreStrategic 2019, pp. 6–7).

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 2016, pp. 176–177). In Australia, direct government regulation of charities is complemented by self-regulatory codes for specific sectors in which a charity operates, or activities it undertakes (figure 7.2).

There are many regulators with different roles and responsibilities

Charities are regulated by multiple regulators across the Australian and state and territory governments, each with their own institutional arrangements, responsibilities, powers, priorities and resources (figure 7.2).

Figure 7.2 – Many regulators are responsible for different aspects of charity conduct

The structure of a charity, the jurisdiction(s) it is headquartered and otherwise operates in, the taxation 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 7.3).

The benefits and limitations of each structure will make a particular structure more attractive than its alternatives. These benefits and limitations include whether the structure is incorporated or not, is subject to establishment costs, its permissible operating locations, and whether and what ongoing obligations are owed to an administering regulator. As a charity matures, the relative benefits of an alternative structure may sufficiently incentivise a change to its structure causing it to come under the oversight of another regulator or regulators. 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 in). Restructuring, in this example, involves a transfer of registration from a state or territory-based regulator to Australian Securities and Investments Commission (ASIC) (*Corporations Act 2001* (Cth) (*Corporations Act*), s. 601BC).

Most structures, other than unincorporated associations, are regulated by legislation at either the Australian Government level, or state or territory level (figure 7.3). 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 7.3 – Regulatory requirements from the perspective of a charity

1 ESTABLISH ENTITY STRUCTURE			
<p>Incorporated Association</p> <ul style="list-style-type: none"> • Regulator: State and territory fair trading/consumer affairs regulators (see (3), below) • Legislation: state- and territory-based Association Incorporations Acts 	<p>Co-operative</p> <ul style="list-style-type: none"> • Regulator: State and territory fair trading/consumer affairs regulators • Legislation: Co-operatives National Law legislation in that jurisdiction 	<p>Trust</p> <ul style="list-style-type: none"> • Regulator: None • Legislation: State- and territory-based trust legislation 	
<p>Indigenous Corporation</p> <ul style="list-style-type: none"> • Regulator: Office of the Registrar of Indigenous Corporations • Legislation: <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)</i> 	<p>Corporation</p> <ul style="list-style-type: none"> • Regulator: Australian Securities and Investments Commission • Legislation: <i>Corporations Act 2001 (Cth)</i> 	<p>Unincorporated Association</p> <ul style="list-style-type: none"> • Regulator: None • Legislation: None 	
2 APPLY FOR CHARITY STATUS AND TAX BENEFITS			
<p>Apply for Australian Business Number</p> <ul style="list-style-type: none"> • Regulator: Australian Business Register • Legislation: <i>A New Tax System (Australian Business Number) Act 1999 (Cth)</i> 	<p>Register with the ACNC</p> <ul style="list-style-type: none"> • Regulator: ACNC • Legislation: <i>Charities Act 2013 (Cth), ACNC Act 2012 (Cth), ACNC Regulations 2022 (Cth)</i> 	<p>Apply for tax concessions and DGR status</p> <ul style="list-style-type: none"> • Regulator: ATO • Legislation: <i>Income Tax Assessment Act 1997 (Cth), Taxation Administration Act 1953 (Cth), Fringe Benefits Tax Assessment Act 1986 (Cth), A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> 	
3 APPLY FOR FUNDRAISING LICENCE			
Australian Consumer Law regulated by states and territories and the Australian Competition and Consumer Commission			
<p>NSW</p> <ul style="list-style-type: none"> • Licence: Yes • Renewal: every 5 years • Legislation: <i>Charitable Fundraising Act 1991 (NSW)</i> • Regulator: NSW Fair Trading 	<p>Vic</p> <ul style="list-style-type: none"> • Licence: No* • Renewal: N/A • Legislation: <i>Fundraising Act 1998 (Vic)</i> • Regulator: Consumer Affairs Victoria 	<p>Queensland</p> <ul style="list-style-type: none"> • Licence: No* • Renewal: N/A • Legislation: <i>Collections Act 1966 (QLD)</i> • Regulator: Queensland Office of Fair Trading 	<p>South Australia</p> <ul style="list-style-type: none"> • Licence: No# • Renewal: N/A • Legislation: <i>Collections for Charitable Purposes Act 1939 (SA)</i> • Regulator: Consumer and Business Services
<p>Western Australia</p> <ul style="list-style-type: none"> • Licence: Yes • Renewal: N/A • Legislation: <i>Charitable Collections Act 1946 (WA)</i> • Regulator: Western Australia Consumer Protection 	<p>Tasmania</p> <ul style="list-style-type: none"> • Licence: Yes^ • Renewal: N/A • Legislation: <i>Collections for Charities Act 2001 (Tas)</i> • Regulator: Consumer, Building and Occupational Services 	<p>Northern Territory</p> <ul style="list-style-type: none"> • Licence: No* • Renewal: N/A • Legislation: None • Regulator: None 	<p>ACT</p> <ul style="list-style-type: none"> • Licence: No • Renewal: N/A • Legislation: <i>Charitable Collections Act 2003 (ACT)</i> • Regulator: Access Canberra

Legend:

State or territory regulator
Australian Government regulator

* Must notify the regulator that the entity is registered with the ACNC

Must notify the regulator of an intention to fundraise

^ Excludes incorporated associations and corporations registered in Tasmania

The Australian Government oversees some aspects of charity regulation ...

The Australian Government currently regulates approximately 60,000 registered charities, through the ACNC (based on ACNC 2023d). As identified in box 1.3, the ACNC consists of:

- the Commissioner of the ACNC, who has general administration of the 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.

When it was established, the ACNC was framed as a ‘one-stop-shop’ for the NFP sector that would maintain, protect and enhance the public trust and confidence that underpins the sector through the administration of a regulatory system designed to promote good governance, accountability and transparency of registered charities (Revised Explanatory Memorandum, Australian Charities and Not-for-profits Commission Bill 2012, para. 1.10). This initially meant that the ACNC would be the regulator through which NFP organisations would apply for charity registration, Australian Government tax concessions, access to other Australian Government services and concessions, and satisfy their general reporting obligations (proportionate to their relative size, determined by annual revenue). Despite the Government’s general aspiration when establishing the ACNC, its remit has not extended to the regulation of non-charitable NFP organisations.

Registered charities (except for ‘basic religious charities’) are required to adhere to the ACNC governance standards (box 7.1). These standards do not prescribe specific behaviour on charities – it is up to each charity to determine what steps to take to meet compliance requirements. 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 into the ACNC Regulation 2013 (Cth) 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 require charities to take reasonable steps to guard against fraud and corruption and to protect vulnerable people, overseas, and be aware of anti-money laundering obligations in relation to flows of funds (including purported donations) into and out of Australia. The Australian Transaction Reports and Analysis Centre (AUSTRAC) monitors suspicious transactions and can take enforcement action where required.

The Australian Taxation Office (ATO) administers Australian Government tax concessions and deductible gift recipient (DGR) endorsement (chapter 5 and chapter 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 fund guidelines.

The Australian Government also has responsibility for the governance and conduct of corporations. Certain corporation structures that are regulated by ASIC under the Corporations Act, including ‘a company limited by guarantee’, allow a charity to operate nationally. Recognising the unique characteristics of Aboriginal and Torres Strait Islander organisations, the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) offers an alternative corporation 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 the Office of the Registrar of Indigenous Corporations.

The Australian Competition and Consumer Commission (ACCC) oversees Australian Consumer Law (ACL) and has scope to regulate fundraising activities where it occurs ‘in trade or commerce’ (box 7.2).

Box 7.1 – Charity governance obligations and exemptions

ACNC governance standards

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 Persons 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.

Basic religious charities

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 a deductible gift recipient, 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.

Sources: ACNC Regulations 2022 (Cth), div. 45; ACNC Act, s. 205-35.

... and state and territory regulators oversee other aspects

State and territory governments have primary regulatory responsibility for charitable trusts, co-operatives and incorporated associations, the latter of which represent at least 37% of charities registered with the ACNC (ACNC 2023g, p. 51). Charitable trusts are regulated under equity (enabling courts and Attorneys-General to intervene) and under state and territory government 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 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', which may lead to differential treatment due to variances in entitlement criteria in legislation within and across jurisdictions (ACNC 2016b, p. 10).

State and territory regulators also oversee fundraising activities under legislation in their jurisdictions (excluding the Northern Territory, where charities are not subject to any specific fundraising regulation). Certain fundraising activities conducted 'in trade or commerce' may be regulated by these regulators through the ACL (box 7.2). The Australian, state and territory governments agreed in February 2023 to adopt the National Fundraising Principles, which will streamline and harmonise state and territory requirements on appropriate fundraiser conduct (Leigh and Pearson 2023). Separately, state and territory governments are working toward reforming their respective fundraising laws so that an ACNC-registered charity will be deemed as authorised to fundraise in each participating jurisdiction, subject to any conditions in a particular jurisdiction. Tasmania, for example, has reflected a deemed authorisation mechanism in its Charities and Associations Law (Miscellaneous) Amendment Bill 2023.

State and territory regulators also oversee checks for volunteers. This includes national police checks conducted by each jurisdiction's police service, NDIS volunteer screening checks, and state- and territory-specific Working with Children Checks (WWCC) – a screening process that an individual must pass to work or volunteer in certain child-involving organisations.

Box 7.2 – 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 *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

Box 7.2 – Application of Australian Consumer Law to charities' fundraising activities

organised repetitive fundraising activities rather than one-off donations for causes. It also applies to activities of businesses an NFP organisation establishes (for example, opportunity shops advertising products to consumers) and businesses partnering with NFP organisations to raise funds.

If a fundraising activity falls under the purview of 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.

A practical 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 that were relied on by the respondents to promote the sale of a book and app, including about Gibson's medical history and the intended donation of sale proceeds to charities. The court ordered the respondents to pay penalties totalling \$410,000 after finding that they had engaged in misleading and deceptive conduct, and unconscionable conduct, including donating only \$10,000 of the \$420,000 raised, and doing so in a sporadic, ad-hoc and, in some instances, opportunistic manner.

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 philanthropy.

- Courts and administrative tribunals are responsible for independently reviewing certain decisions by regulators, and many of the principles which underpin the regulation of charities were developed as a result of judicial decisions over time. For example, an entity may apply to the Australian Administrative Tribunal for a review of the ACNC's decision to refuse its registration as a charity or registration with a particular subtype of charity.
- State and territory Attorneys-General, as chief law officer of the Crown, have a 'parens patriae' (meaning 'parent of the state') prerogative power to ensure the due administration of charities (whether they take the form of a trust or incorporated body) and the proper application of funds for charitable purposes in their jurisdiction (Cheung and Chandra 2021, pp. 54, 56; Dal Pont 2021, p. 351).
- 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 subject to other regulation – some of which is uniform across all organisations whether they are profit-making or NFP organisations, such as occupational health and safety regulation (figure 7.2). For example, the ACNC reports that among registered charities, 2.6% have reporting obligations to the Australian Government Department of Education, Skills and Employment and 1% are aged care providers with reporting obligations to the Australian Government Department of Health (2023g, p. 51).

Charities also engage in self-regulation

Self-regulation can help provide tailored standards that are specific to the 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 (box 7.3). Self-regulation in this manner can signal to donors a charity's intention to act with integrity.

Box 7.3 – Self-regulatory codes in the charitable sector

Two major self-regulatory codes in the charities 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.

ACFID is the peak body for NFP organisations involved in international development and humanitarian action. While voluntary to join, ACFID requires its 130+ 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 nine 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 a suite of mechanisms including 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 practice will likely meet ACNC governance standards 1-5 (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, as Black (2001, p. 103) notes, extend beyond the regulation imposed by government. 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. Print, electronic and social media can also scrutinise the actions of charities and thereby affect their reputation amongst donors and within the community.

7.3 Does the regulatory framework support good governance and conduct by charities?

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, 2020, p. 101). This helps ensure regulators are able to 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 7.4) and those whose conduct is captured by the external conduct standards (approximately 6% of charities operate outside Australia) (ACNC 2023g, p. 14).

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 refer powers to the Commonwealth from time to time – 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. 28–29).

A referral of powers by state parliaments is likely to be the best approach for addressing the constitutional limitations of the ACNC that risk charities being treated differently for the same misconduct, 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 Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislative Review 2018 (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 the 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.

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, the Commission proposes 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 and peer-to-peer giving, means new risks may emerge. These changes, coupled with the large and increasing pool of funds managed by charities, means 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 not sufficient. 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 National Charity Regulators Forum set out in draft recommendation 7.4.

The Commission's draft 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 (draft recommendations 7.2 and 7.3). The role, power and functions of the ACNC would be expanded if these draft recommendations were adopted.

Box 7.4 – 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 Constitution of Australia (the 'corporations power'), or under section 122 of the Constitution of Australia (the 'Territories power').

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. In order 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 and the endorsement of the Attorney-General's Department of that advice. This adds a financial and time cost for the ACNC. There are no scenarios whereby the ACNC can itself make a preliminary determination that a charity is a federally regulated entity and use its enforcement powers on that basis.

The ACNC's use of its current enforcement powers

A sound regulatory framework based on the features set out in section 7.1 will only promote trust and confidence in the charity 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 has not been tasked with assessing the effectiveness of the ACNC as a regulator and acknowledges there are several explanations for why the ACNC may not have used its formal powers more routinely in instances of actual or suspected non-compliance. These explanations could include 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 Australian Government Solicitor (AGS) each time it wishes to use its powers against a charity, to confirm whether the charity is a federally-regulated entity (box 7.4)
- 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
- the resources, capabilities and capacity the ACNC has to pursue enforcement action, 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).

Draft recommendations to help overcome some of these impediments are presented below. The Commission has not sought to review every aspect of the ACNC regulatory framework – other recommendations beyond the scope of this inquiry may further support the Commissioner of the ACNC in their role.

Additionally, what appear to be a limited use of powers may also reflect the ACNC's evolution as a regulator. Established under the ACNC Act 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. 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 charity sector. The combination of existing powers in 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 draft recommendations proposed by the Commission in relation to the powers and functions of the ACNC (including draft recommendations 6.2, 7.2, 7.3 and 9.1), it will be necessary to ensure that the ACNC is appropriately resourced to perform its expanded role at the centre of a more comprehensive and robust regulatory framework for charities.

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. The number of times that the ACNC has exercised its powers was calculated from information provided in its 2012-13 – 2022-23 Annual Reports. These totals do not include the ACNC's use of two, unspecified, enforcement powers in the 2019-20 reporting period.

Assessing the regulatory framework reveals a mixed score card

Accountability and governance requirements differ by charity type

Regulation by the ACNC and other regulators seeks to ensure money and other financial assets, and donations of time, are used for their intended charitable purposes. Access to gifts from donors and tax benefits also comes with a community expectation of government oversight and transparency – charities must comply with ACNC governance, compliance and reporting obligations to meet this expectation.

The ACNC governance standards impose a set of core, minimum governance obligations on all charities, except basic religious charities (box 7.1). Basic religious charities are subject to lower levels of oversight and transparency compared to other charities, irrespective of their size (determined by annual revenue) or the value of assets held. Specifically, they are not required to comply with the ACNC governance standards; nor are they required to answer financial questions in the ACNC annual information statement – a form that asks questions about a charity's activities and programs, operations and finances in a reporting period (ACNC nd). This means that their revenue and assets are unknown to the regulator or to the public – compromising transparency and levels of understanding on giving trends. In 2021, 94% of basic religious charities (7,743) chose not to provide voluntary financial information in their annual information statement (ACNC 2023a, p. 12). Approximately 76% of basic religious charities that voluntarily provided financial

information (410 charities) were small, 20% (105 charities) were medium and 4% (22 charities) were large (ACNC, pers. comm., 14 November 2023).

There is no stated policy rationale for treating basic religious charities differently to other religious and non-religious charities. Some inquiry participants expressed concern these different governance and reporting requirements contribute to a lack of transparency and accountability (Rationalist Society of Australia, sub. 219, p. 5; Say Sorry, sub. 266, p. 13). While the responsible persons of basic religious charities may be separately bound by fiduciary duties, these are not a substitute for the ACNC governance standards.

The Commission's preliminary view is basic religious charities should be put on the same footing and subject to the same governance obligations and reporting requirements as other charities (draft recommendation 7.1). Charities without DGR status (including basic religious charities) can still access a range of tax concessions, including income tax exemption and fringe benefit tax rebate (chapter 5). A small number of basic religious charities may be eligible to benefit from tax-deductible gifts if they operate a DGR-endorsed fund and the total revenue of that fund is less than \$250,000 in the reporting period. For example, a basic religious charity might be endorsed as a DGR for the operation of a public fund for religious instruction in government schools. But there is no link between DGR status and governance requirements: nearly 58% of other charities do not have DGR status, but are nevertheless required to comply with the ACNC governance standards and reporting requirements based on their size (ACNC 2023g, p. 42). Religion is one of the largest recipients of donations (chapter 3), and the current system creates an incentive for charities to take costly steps to structure themselves to benefit from basic religious charity exemptions.

Any change to governance obligations and reporting requirements for basic religious charities may affect the administration of some religious institutions, such as certain local congregations. These changes would not have any effect on how advancing religion is recognised under the *Charities Act 2013* (Cth), as it is only concerned with ensuring that all charities are subject to the same governance obligations and reporting requirements. Charities with purposes *additional* to advancing religion, such as advancing social public welfare or advancing education, would not be affected as they do not meet the current definition of basic religious charity (box 7.1).

However, any changes would likely pose a low administrative burden, because most basic religious charities would likely be classified as a 'small' charity under the ACNC's reporting tiers. In 2021, 17% of charities (8,280) reported being basic religious charities of which approximately 83% were small, 14% were medium and 4% were large charities (ACNC 2023g, p. 12). From the 2022 reporting period, a greater proportion of basic religious charities would likely be classified as 'small' because this definition now applies to charities with less than \$500,000 revenue (rather than \$250,000) (ACNC 2022e).

Small charities are only required to provide basic financial information in their ACNC annual information statement and are not required to prepare a separate financial report or have their financial position independently audited or reviewed. Further, the ACNC considers matters including the size, purposes and activities of a charity when assessing if it has taken reasonable steps to comply with the ACNC governance standards (ACNC nd).

Effecting these changes through the removal of the concept of 'basic religious charity', and related exemptions, from the ACNC Act and the Australian Charities and Not-for-profits Commission Regulations 2022 (Cth) would also enable the Commissioner of the ACNC to exercise their existing power to suspend or remove a responsible person in relation to any charity that is a federally regulated entity. 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)). This power also enables the Commissioner of the ACNC to appoint a responsible person to act in the place of a responsible person that has been suspended or removed, to

enable the charity to continue functioning (ACNC Act, subdivision 100-C). The power to suspend or remove a responsible person has never been used (table 7.1).



Draft recommendation 7.1

A more transparent and consistent approach to regulating basic religious 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 have the same governance obligations and reporting requirements proportionate to their size.

Accountability and governance requirements differ among responsible persons

Governance duties owed by individuals responsible for governing a charity, such as board or committee members, also differ depending on the charity’s legal structure.

The responsible persons 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 7.1). 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). The Registrar of Indigenous Corporations 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). These potential 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).

Duties under ACNC governance standard 5 are only imposed on the charity, and therefore they are not a like-for-like substitute for duties imposed personally on individual responsible persons. This is because ACNC governance standard 5 only *indirectly* regulates the conduct of responsible persons by requiring a charity to take reasonable steps to ensure that its responsible persons are subject to, and comply with, those duties (Langford and Anderson 2023, p. 537). The ACNC may only take action against a charity for a breach of governance standard 5, and only where it failed to take such reasonable steps (Ramsay and Webster 2017, p. 129).

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 occurring in their jurisdictions in the past five years. Given many charities rely on voluntary board members, it is also important to ensure any potential changes to regulation do not have a deterrent effect that could undermine the ability for charities to attract board members. The Commission did not find evidence to suggest there is a need to make responsible persons of other – or all – types of charity personally subject to the ACNC governance standards but would welcome views to the contrary.

The ACNC should have powers to compel information from registered charities

As discussed above (box 7.4), 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. To inform whether it should seek this advice, the ACNC will typically conduct its own internal assessment of a charity's potential federally regulated entity status. This 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.

However, 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 Commission considers the Commissioner of the ACNC should be able to compel a registered charity to provide information necessary to assess whether it is a federally regulated entity (draft recommendation 7.2). This would not be a major impost on charities, as it would only be undertaken in circumstances where the Commissioner of the ACNC believes that they may need to use an enforcement power.

The ACNC's limited powers are a proportionate response to certain behaviour ...

The constitutional corporations power, and the Territories power, are relied upon as the basis for empowering the ACNC to exercise its full suite of enforcement powers against a charity that is a federally regulated entity (Revised Explanatory Memorandum, Australian Charities and Not-for-profits Commission Bill 2012 (Cth), paras. 2.9–2.10). These powers are the ability to give formal warnings, make directions, seek injunctions, accept enforceable undertakings and suspend or remove responsible persons (for example, directors or trustees) in response to actual or potential contraventions of the ACNC Act, or actual or potential non-compliance with the ACNC governance standards (box 7.1). For all other charities, the ACNC's powers to address such concerns 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).

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. 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. Publishing certain recommendations made by the ACNC to address concerns of actual or potential non-compliance with the ACNC Act or Regulations by a charity, regardless of whether it is a federally regulated entity, could enhance public trust and confidence in the sector (draft recommendation 7.2).

The Commission's view is the ACNC's current powers (administrative penalties and revocation) are proportionate to address non-compliance with ACNC governance standard 6 ('whether the charity has taken reasonable steps to participate in the National Redress Scheme') by a charity that is not a federally regulated entity. This scheme 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). The Commission considers that revoking the registration of a charity that refuses to participate in the scheme, despite having the means to discharge associated liabilities and obligations, is a proportionate response.

Revocation may also be a proportionate response to address non-compliance with ACNC governance standard 4 where a charity's members vote to retain a responsible person despite being aware of the ACNC's concerns about that individual's suitability to govern the charity. In other instances of alleged misconduct, the limited powers of the Commissioner of the ACNC may not be a proportionate response to the charity's behaviour.

... and some instances of misconduct can be addressed by other agencies

Since the legal structure of a charity determines which non-ACNC regulator has oversight of its governance and conduct, other regulators may have powers to act where there are limitations in the ACNC's powers, thereby reducing concerns in relation to the limits of these 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, 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).

In all situations, law enforcement agencies can be involved in cases where Australian laws have been breached, for example, fraudulent or misleading activity or trading while insolvent (ACNC governance standard 3).

Different regulators will have different powers and priorities ...

Where the ACNC is notified of a concern falling outside of its regulatory scope, it may seek to refer it to another regulator that it believes is better positioned to respond. The ACNC Act includes an exception to its secrecy provisions, which allows the ACNC to disclose certain information to other Australian (but not foreign) government agencies where it is satisfied that:

- this disclosure will support the receiving agency to perform its functions or exercise its powers, and
- the disclosure is reasonably necessary to promote the ACNC's objects (ACNC Act, s. 150-40).

Receiving agencies, including state and territory regulators of legal structures adopted by registered charities, will have different priorities for responding to these referrals and undertaking related compliance activities. Variations in regulators' powers, policy objectives, resourcing and approaches to risk profiling are among factors that will influence if a regulator chooses to intervene based on a referral from the ACNC (ACNC, sub. 238, p. 11). The Commission proposes establishing a National Charity Regulators Forum (draft recommendation 7.4), which would provide an opportunity for regulators to manage emerging risks or allocate a lead regulator where required.

While state and territory governments have worked together to develop uniform law to regulate co-operatives, the same cannot be said about incorporated associations (which account for approximately 37% of registered charities) (ACNC 2023g, p. 51). Variances in legislation (including differences in regulatory powers) have, at least in part, developed in response to local events and pressures in different jurisdictions over time.

State and territory regulators of such legal structures may not have a graduated suite of powers akin to those in the ACNC Act. Generally, the regulators of these structures are empowered to apply financial penalties for breaches of the legislation that regulates those legal structures, for example, for a failure to notify the regulator of changes to certain organisation details, or a failure to hold a general meeting within a required timeframe. The evidence before the Commission does not suggest that these regulators have identified their lack of graduated powers as an impediment to performing their functions or furthering their legislative objects. We also note that 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.

... which can mean charities face different action for the same misconduct

A regulatory framework comprising different regulators and powers can contribute to situations where like charities engaging in the same misconduct could be subject to different responses depending on characteristics such as their legal structure (and therefore, who their regulator is), operating location, the

activities that they engage in, or the actions that regulators can take in response to certain misconduct. The risks and consequences of these differences in regulator powers may be clearer where charities (increasingly) operate in multiple jurisdictions – two associations that engage in the same type of misconduct in the same jurisdiction could be subject to different regulatory responses depending on powers available to the regulator in the ‘home’ jurisdiction in which they are registered.

For example, a charity that acts in a dishonest or deceptive manner whilst undertaking a once-off fundraising appeal in South Australia could face a financial penalty under South Australian law (*Collections for Charitable Purposes Act 1939* (SA), s. 15D). 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 would be unlikely to meet the threshold requirements to attract the application of the ACL (box 7.2).

Further, the Registrar of Indigenous Corporations can require a person to appear before them to answer questions about an Indigenous corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or its examinable affairs (s. 453-5). A similar power is not available to the Director of Consumer Affairs Victoria with respect to incorporated associations registered under the *Association Incorporation Reform Act 2012* (Vic). Instead, the Director would need to appoint an inspector, who could then apply to the Magistrates’ Court for an order to require a person to appear before them to answer questions (s. 158).

However, there is little evidence that this inconsistency in regulators’ powers with respect to certain charity structures is resulting in harm to donors or the public, charities, or the broader charity sector at this time.

Publishing details of certain ACNC referrals to other regulators would improve transparency

The ACNC Act generally prohibits the ACNC from disclosing or publishing details about information it has disclosed to other Australian government agencies, including relevant state and territory regulators (s. 150-25). This has the potential to diminish public trust and confidence where the ACNC is constrained from confirming how a concern has been dealt with, and by which regulator or other government agency. While the ACNC already notes the total number of referrals made in a financial year in its annual report, this is not presented by jurisdiction or nature of alleged misconduct.

Legislative reforms to enable the ACNC to disclose details of such referrals, where there is a substantial risk of public harm from not disclosing that information, would complement other secrecy reforms being progressed by government in relation to the ACNC’s ability to disclose information about certain new and ongoing investigations (Treasury 2023a) (draft recommendation 7.2).

Reforms are needed to protect a charity’s assets

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 entity’s former charity status, are applied to other registered charities with similar purposes. 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 desire) to perform this role may depend on matters including the resources available to them and other priorities.

A charity endorsed as a DGR by the ATO is required to distribute certain surplus funds to another DGR charity if it winds-up, or its DGR endorsement is revoked (whichever occurs first) *Income Tax Administration Act 1997*

(Cth), s. 30-125(7)). This requirement must be set out in a law, the document that establishes the charity (for example, legislation), or a rule in the charity's governing document (for example, its constitution) (*Income Tax Administration Act 1997* (Cth), s. 30-125(6)). The ATO assesses a charity's compliance with this requirement at the point of DGR endorsement (*Income Tax Administration Act 1997* (Cth), s. 30-125(1)(c)). The extent to which this requirement is enforced post-endorsement is unclear but would be influenced by the ATO's regulatory priorities and available powers with respect to acquiring assets from entities.

Further, there are instances where other regulators may also have powers under state or territory fundraising legislation to protect assets raised in an appeal (ostensibly) held to benefit charitable purposes. *Mechanisms under the Collections Act 1966* (Qld) (Collections Act) were recently used 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. The individuals involved in conducting the appeal later pled guilty to breaching that Act and approximately \$148,000 from the frozen bank accounts was subsequently vested in the Queensland Public Trustee (pers. comm., 6 November 2023; Queensland Government 2023, p. 281). The Collections Act provides the OFT with the power to subsequently direct these assets to be vested in suitable charitable recipients.

The ACNC does not have specific powers to protect charity assets accumulated during its charity registration and has no oversight of a charity's assets once its ACNC registration is revoked, either voluntarily or non-voluntarily. Whilst the ACNC must consider a charity's assets when deciding whether to revoke its registration, it is generally unable to determine a charity's true financial position or ensure that a charity's surplus assets remain within the charitable sector (for example, by requiring a charity to distribute its net assets to another charity with a similar purpose). This means that if a former 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, philanthropic donations), could be used for non-charitable 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 the constitution that require 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 this period, approximately 800 charities were revoked for failure to submit two or more annual information statements, and approximately 1,700 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 pre-empt or terminate ACNC compliance interventions.

Amendments to the ACNC Act should be made to enable the Commissioner of the ACNC to require a registered charity that is undergoing revocation to provide evidence that the charity's assets have been transferred to another registered charity, unless an exemption is granted (draft recommendation 7.2 and information request 7.1). Any changes must also be designed to promote integrity and mitigate against any unintended consequences that could arise from requiring assets to be transferred to another registered charity, such as phoenixing activities or an inadequately managed related party transaction.

Assets may be sitting unused in dormant charities

The ACNC also lacks a specific power to revoke the registration of a charity that has ceased undertaking activities to further its charitable purposes, in cases where its underlying entity continues to exist. That is, a charity has become 'dormant'. Instead, the ACNC must rely on the charity breaching its obligations under the ACNC Act,

such as failing to satisfy its annual reporting requirements or acting contrary to its purposes or NFP character (ACNC 2018, p. 58). The ACNC requires charities to confirm in their annual information statement whether they operated in a particular financial reporting period and detail any reasons for not doing so but does not routinely engage with charities about whether they intend to resume operations in subsequent reporting periods. In the 2017–2021 reporting periods, approximately 2–4% of charities that submitted an annual information statement reported that they did not operate in a particular reporting period, with ‘COVID-19’ frequently featuring in reasons provided by non-operating charities in the 2020 and 2021 reporting periods.

A charity may generally hold and continue to accumulate charitable assets (for example, from donations) indefinitely, without using them to further its charitable purposes. An exception to this is a charity structured as an ancillary fund, which will generally be subject to a minimum annual distribution requirement (chapter 8). Regulators of certain charity structures, such as Western Australian and NSW incorporated associations, have varying powers to wind-up or cancel the registration of an entity that has suspended or ceased its operations.

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 has re-purposed \$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 Commission is seeking information from participants on whether a regulatory response to issues created by dormant charities is needed, and the possible approaches that could be adopted (information request 7.1). If a regulatory response is warranted, it will be necessary to determine when a charity becomes ‘dormant’, as well as the types of interventions that may be appropriate.

The availability and use of alternative enforcement mechanisms could be expanded

Legislation in certain jurisdictions allows for applications to be made to the jurisdictions’ Supreme Courts for orders regarding matters including a breach of a charitable trust, or for the proper administration of a charitable trust. In jurisdictions such as Queensland and the ACT, the application may be made by any person that satisfies the relevant Supreme Court that the person has a relevant interest in the relief sought in their application (*Trusts Act 1925* (Qld), s. 106; *Trustee Act 1925* (ACT), s. 94A). 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 commence such proceedings (*Charitable Trusts Act 1993* (NSW), s. 6).

Under these laws, differing definitions of ‘charitable trust’ may affect the availability of these relief mechanisms, depending on a charity’s structure. For example, Queensland’s Act extends coverage to any property held in trust for charitable purposes, whereas NSW’s Act 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 (*Trusts Act 1925* (Qld), s. 106; *Charitable Trusts Act 1993* (NSW), s. 3).

The ACNC Legislation Review noted that 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 Commission believes that the Commissioner of the ACNC would benefit from clarity regarding their standing in the Supreme Courts of all jurisdictions, so this alternative mechanism can be used, where necessary, to protect charitable assets. It may also be able to 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 therefore other ACNC enforcement powers cannot be used. This may include a need for legislative change in states and territories (draft recommendation 7.2). The circumstances and process for the Commissioner of the ACNC to seek standing in a jurisdiction’s Supreme Court should be agreed on through an intergovernmental agreement (draft recommendation 7.4).



Draft recommendation 7.2

A suite of reforms to strengthen 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 registered 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 registered charity undergoing revocation of its ACNC charity registration to provide evidence that its assets have been transferred to another registered charity unless an exemption is granted. This will require co-operation between the ACNC, state and territory regulators, and Attorneys-General, which should be outlined in the intergovernmental agreement as set out in draft recommendation 7.4
- 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.

To improve transparency for donors, the Australian Government should amend the Act to enable the Commissioner of the ACNC to:

- publish details of recommendations given to a charity to address actual or potential non-compliance with the Act or the Australian Charities and Not-for-profits Commission Regulations 2022 (Cth)
- publish circumstances and reasons for referrals made to other Australian government agencies (including state and territory regulators) under section 150-40 of the Act, in instances where harm caused by the disclosure does not outweigh the public benefit of that disclosure.



Information request 7.1

Building a stronger regulatory framework

The Commission is seeking information on options that would support implementation of draft recommendation 7.2.

- What changes would be needed to enable the Australian Charities and Not-for-profits Commission (ACNC) to direct a registered charity undergoing revocation of its ACNC registration to transfer surplus assets to another registered charity, without impinging or duplicating the powers available to state and territory regulators? For example, should it be done through an administrative power or by specifying co-operation in the intergovernmental agreement (draft recommendation 7.4)?
- Whether providing the ACNC standing in each jurisdiction's Supreme Court should be in relation to charitable trusts only or other charity structures and, if so, what legislative changes would be necessary to give effect to this?

The Commission is also seeking further information about options for ensuring that the assets of dormant charities are directed toward benefiting the public, including what test may be appropriate for determining whether a charity is 'dormant' and what steps could be taken in response.

Test case funding and binding rulings could enhance certainty

The ACNC Act allows an entity to object to a decision of the Commissioner of the ACNC if it is dissatisfied with certain decisions made against it under that Act, such as a refusal to register a charity with a particular subtype. The entity may subsequently seek a review in the Administrative Appeals Tribunal (AAT), or appeal to a designated court, if it is dissatisfied with the Commissioner's decision in relation to that objection. However, proceedings in the AAT or a court may be cost prohibitive to an entity, preventing the ACNC's decision (in the first instance or in relation to an objection) from being independently affirmed (EAA and Effective Altruism Australia: Environment, sub. 32, p. 11).

The ACNC is not resourced to provide financial assistance to entities to meet part or all of their reasonable costs in disputing certain ACNC decisions (Treasury 2018b, pp. 82–83). The provision of 'test case funding' could be used to support an entity's review or appeal of a decision, where:

- there is uncertainty or contention in the law
- providing that funding is in the public interest
- the entity is otherwise unable to meet its costs.

Case outcomes would further inform the development of interpretation statements, which the ACNC uses to provide general guidance on its understanding of aspects of charity law (ACNC nd).

These outcomes would also provide support for public or private rulings – a form of binding advice about how the ACNC would apply the law in certain circumstances. The ACNC Act does not currently include a mechanism for public or private rulings. The provision of 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 ACNC's position can be contrasted with the ATO, which is resourced to provide test case litigation funding, and which can issue public and private rulings (ATO nd; *Taxation Administration Act 1953* (Cth), sch. 1, part 5-5).

The Commission's preliminary view is the ACNC should be provided with test case funding, that can be used by a charity to seek review or appeal of the Commissioner of the ACNC's decisions where it is in the public interest. Further, a binding rulings scheme for the ACNC should be introduced. Both these proposals should enhance regulatory certainty, for the benefit of donors, charities and the ACNC as the administrator of the law (draft recommendation 7.3).



Draft recommendation 7.3

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 for the purpose of developing the law in matters of public interest
- amend the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) to introduce a binding 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 a 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 who 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 public and donor trust and confidence in the sector.

Currently, government regulators in the charity 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 charity sector, particularly in the context of the Government's commitment to grow giving. The current suite of draft recommendations, including those set out in chapter 6, which will 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.

In the Commission's view, 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 would provide structural architecture to allow the Australian and state and territory governments to meet in a formal sense to help 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 (draft recommendation 7.4). There are examples of other regulatory forums, such as the Council of Financial Regulators, that would serve as a useful model.

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 (draft recommendation 7.4). This agreement should clarify how regulators plan to work together to maintain trust and confidence in the charity sector by outlining:

- the roles, responsibilities and information sharing arrangements for participating parties including the ACNC, relevant state and territory regulators, and Attorneys-General
- 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.

A National Charity Regulators Forum could also play a role in the fundraising regulation reforms underway, to ensure that harmonisation is achieved and that consistency is maintained, given many of the state and territory regulators also have responsibility for state and territory fundraising regulation frameworks (section 7.4).



Draft recommendation 7.4

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 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 (ACNC) and relevant state and territory regulators, and Attorneys-General, through the development of memorandums of understanding, including in relation to joint compliance approaches, appointments of a lead regulator and processes to protect charity assets
 - set out the circumstances and process for the Commissioner of the ACNC to exercise standing in each jurisdiction's Supreme Court, in relation to seeking orders regarding the administration of charities and the protection of charitable assets (draft recommendation 7.2)
 - 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.

7.4 Is the regulatory framework overly burdensome?

A regulatory environment with multiple regulators can create overlap and duplication, however 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).

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, structured as incorporated associations, to satisfy annual reporting obligations to the state or territory regulator responsible for their legal structure through their submission of an ACNC annual information statement
- 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 2023n)
- legislated changes to charity sizes from 2022 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 making submissions to this inquiry remained concerned that a consequence of multiple regulators is unnecessary compliance burden that results in administrative costs, including time spent on reporting requirements and training staff.

Charities reported funding rarely takes into account, or sufficiently covers, these costs (see for example, Mercy Works Ltd, sub. 60, p. 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 passed on 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 this information with ASIC, it does not include information on Responsible People, resulting in ASIC's register potentially not being up to date and containing incorrect information. The ACNC (sub. 238, p. 10) notes they have 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, Dr Kim D Weinert and Mr Damian Topp 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 (sub. 113, p. 12). 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.

Work is underway to harmonise fundraising regulation

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 they have held over the past 18 months (sub. 238, p. 22). Excluding the Northern Territory, which does not have specific fundraising legislation, seven different regulators 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)

States and territories have different licensing requirements, and application and approval processes (BCA, sub. 252, p. 4; Philanthropy Australia, sub. 162, p. vii). These differences create uncertainty and confusion for charities, which can reduce regulatory compliance. The ACNC reported it received 215 enquiries over a six-month period in relation to charity fundraising, many of which were from charities wanting to ensure they were compliant but were confused about 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, who 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 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 their BizRebuild Trust, which has been established to respond to natural disasters in any jurisdiction when they occur, the Business Council of Australia noted:

...the Trust must comply with the fundraising laws for each state and territory. This gives rise to regulatory barriers and higher compliance costs ... 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)

State and territory agencies are working with the ACNC to streamline fundraising license and reporting requirements. Several jurisdictions, including South Australia, Australian Capital Territory, Victoria and Queensland, have implemented deemed recognition models for charities registered with the ACNC in relation to fundraising. These models mean that a charity is deemed to be authorised to fundraise in a participating jurisdiction and satisfies any related reporting obligations to a jurisdiction's regulator, by submitting their annual information statement to the ACNC.

The states and territories maintain some flexibility in conditions associated with these models. For example, in Victoria, a charity must notify Consumer Affairs Victoria that it is registered with the ACNC. 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). Where ACNC charity registration is revoked, so too is the deemed authority for the charity to fundraise. The Tasmanian Government recently introduced legislation to adopt similar mechanisms, and similar reforms are being considered by the New South Wales Government.

State and territory governments are also developing implementation plans for reforms to harmonise fundraising conduct requirements across jurisdictions (Leigh and Pearson 2023). Participants are uniform in their desire for this national approach to fundraising regulation to be fully implemented, to reduce the regulatory burden for charities whilst 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; Justice Connect, sub. 269, p. 10).

It is important these reforms are completed so charities can benefit from a simplified set of conduct requirements across all jurisdictions, with reporting directed through the ACNC. Once harmonisation has been achieved, it will also be important for state and territory governments to ensure consistency is maintained.

Volunteering checks are important but can create barriers to volunteering

Many organisations rely on volunteers to conduct their charitable activities. Volunteers may be subject to a range of background checks to determine whether they pose a risk to the people with whom they are working (box 7.5). The benefits of volunteering 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 (WWCC) (RCIRCSA 2015, p. 20)). They protect people who may be at-risk or vulnerable, against those who may cause harm.

Inquiry participants expressed concern about unnecessary duplication – both between different types of volunteer checks and between jurisdictions – and the costs this creates for volunteers and charities alike. According to Volunteering WA:

... 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 considered 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, p. 2)

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)

Work is underway to address these issues. For example, following recommendations from the RCIRCSA (2015, pp. 48–51) state and territory governments are working toward implementing National Standards for WWCC, which aim to establish nationally consistent parameters for the screening of persons who propose to engage in child-related work (Australian Government 2012, p. 2). Work to streamline existing checks will go some way to reducing unnecessary regulatory burden on volunteers, and on charities who draw on volunteers to support their work.

This is 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. Volunteering makes an important contribution to society and provides many benefits for the broader community, those who receive services, and for volunteers themselves. 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 submitted that:

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)

It is not clear that regulatory impact statements, where they are done, always consider the effect of new policy proposals on volunteering, and any consequences for charities and the community. The Australian Government sets out general guidance for policy impact in the Australian Government Guide to Policy Impact Analysis. This guidance outlines estimating the effect of policy changes on the community more broadly but does not explicitly include the effect on volunteering (PM&C 2023).

In principle, government policies can crowd-in or crowd-out charitable donations of both time and money. Given this, the Commission proposes policy makers explicitly consider how policy and program changes could affect the demand and supply of volunteers and what steps could be taken to facilitate or 'crowd in' volunteer contributions rather than crowding them out. The Aged Care Volunteer Visitors Scheme (box 7.5) provides an example of how the Australian Government seeks to facilitate volunteer contributions in the context of aged care (draft recommendation 7.5).

Box 7.5 – 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 that 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 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 in Australia or overseas (such as murder or sexual assault)
3. training requirements to be provided by the auspiced community organisation to volunteers.

Sources: Australian Government Department of Health and Aged Care (2023a, 2023b).



Draft recommendation 7.5

Explicitly consider the effects on volunteers when designing policies and programs

To support volunteering, Australian, state, territory and local governments should give greater consideration to 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.

7.5 Is the regulatory system fit for the future?

Peer-to-peer giving and crowdfunding present new challenges

A sound regulatory framework is one that is fit-for-purpose for current, emerging and future giving behaviours. While peer-to-peer giving and crowdfunding, including giving through social media appeals, are increasingly common, they are not clearly captured in the current regulatory framework. 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 approximately 5% of peer-to-peer fundraising appeals conducted in Australia using its online platform are organised to benefit registered charities, and most appeals are organised to cover individual causes, such as personal medical or funeral expenses. Many social media sites (such as Facebook) and crowdfunding platforms (such as GoFundMe) use PayPal Giving Fund Australia (PPGF Australia), a DGR-endorsed charity and public ancillary fund (chapter 8) to collect and distribute funds (box 7.6).

Box 7.6 – How PayPal Giving Fund Australia works

PPGF Australia is a public ancillary fund that is endorsed as a DGR. It is used by several organisations to facilitate the payment of donations to charities, including those made through online platforms (for example, via Facebook and GoFundMe). Donors donate to PPGF Australia, with a recommendation that the amount be subsequently granted an entity nominated by the donor.

PPGF Australia is bound by its trust deed, the Taxation Administration (Public Ancillary Fund) Guidelines 2022, and conditions of its DGR endorsement to only distribute gifts (donations) to eligible entities that are DGRs. PPGF Australia will attempt to obtain a new recommendation from the donor if their original nomination does not meet these requirements. Donations are not typically refundable. PPGF Australia releases funds to eligible recipients via a PayPal business account, which can then be transferred to a charity's chosen bank account. 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.

Source: PayPal Giving Fund Australia (2020, nd).

There are potential issues that are unique to giving through these online platforms, or at risk of being exacerbated.

- 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.
- Crowdfunding platforms accelerate giving and can accumulate funds rapidly, including in-excess of what is needed by a 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 trustees of public ancillary funds make representations that donor recommendations will be complied with, this may create obligations that may affect whether donations are tax deductible.¹
- There is potential for fraudulent activity.
- Limited transparency on fees charged or time for funds to be transferred to the charity from the platform.

Some of these issues were highlighted in the example of crowdfunding for the New South Wales Rural Fire Service in the wake of the 2019-20 Australian bushfires (box 7.7).

Most providers of online platforms charge donors a fee to cover payment processing costs and, in some cases, charge an additional transaction fee. Some online platform providers offer a calculator to help appeal organisers and donors understand the impact of these fees on donations and may also reduce or waive fees for fundraising appeals organised to benefit charities. 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 online 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.

Where 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, online platforms, while typically for-profit entities, face similar incentives to charities that solicit donations. That is, they rely on trust and confidence in online fundraising, including through their platform, for their business model to work, 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 online platforms to self-regulate to some extent, though their capacity to do so may depend on factors such as the platforms size, market share and revenue. As an example, GoFundMe offers a money-back guarantee that donors can access if they believe their donation is being misused (GoFundMe 2022). While some online platforms have developed their own policies to protect donors, these have been criticised by some as inadequate and are not universal or consistent between online platforms (Mayer 2022, p. 1414). Given the growing number and value of donations being made through online platforms, gaps in regulatory responses may remain. These gaps may be exacerbated where operators of online platforms based outside of Australia are slow or unwilling to respond to local changes.

Box 7.7 – New South Wales Rural Fire Service

During the 2019-20 Australian bushfire season, approximately 40 million hectares were burned, much of which occurred in NSW 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 charity established as a trust. The appeal was promoted on Facebook, with payments facilitated through PPGF Australia (box 7.6), according to its donor terms of service and obligations

¹ According to Taxation Determination No. TD 2004/23, 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 7.7 – New South Wales Rural Fire Service

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 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 Celeste 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).

Policy options to address these challenges must be proportionate

Governments in other countries and jurisdictions are also grappling with policy responses to address the issues raised by peer-to-peer giving and crowdfunding and have adopted a range of solutions. In California, for example, legislation to regulate online charitable fundraising platforms took partial effect on 1 January 2023, with further provisions due to come into effect in January 2024. The provisions in effect include 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, it adopted model

legislation designed to reform benevolent and community crowdfunding laws (Uniform Law Conference of Canada nd). Some provinces have conducted consultation about proposed adoption of the model laws, however it is unclear whether any have adopted it. 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 (Uniform Law Conference of Canada nd).

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) argues that crowdfunding platforms should be subject to two requirements, 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.

Other regulatory options include a code of practice, either through self-regulation or co-regulation, to bring online platforms into the regulatory regime. Alternatively, Grant Thornton (sub. 157, p. 13) suggests 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 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. 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 emerge, 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.

Further evidence is required for the Commission to assess whether the benefits of imposing additional regulation to protect donors and charities from potential risks associated with new giving platforms (such as cryptocurrency and peer-to-peer platforms) outweighs any potential costs (information request 7.2). Regulation would also need to be designed so it addresses the specific problems or risks these new and emerging ways of giving create.

**Information request 7.2****Regulation to strengthen donor protection through online giving platforms**

Online giving platforms have changed how people donate and can create new risks and challenges for donors and charities. The Commission is seeking further information and evidence on the costs, benefits and need for changes to regulation of online giving platforms, for example requiring:

- a regulator to be notified of fundraising appeals once a certain threshold of donations is met
- online giving platforms to make reasonable efforts to notify a charity of appeals being conducted in their name
- online giving platforms or a regulator to halt a fundraising appeal being conducted in the name of a registered charity upon that charity's request.

8. Structured giving vehicles

Key points

- ✳ **Giving vehicles enable donors to structure their giving over time.**
 - Donors can obtain an upfront tax deduction for making a donation into certain giving vehicles, with a timing gap between the donation and the distribution of funds to charities.
 - The timing gap creates a lag between when the revenue cost of income tax deductions is borne by government and the flow of benefits to the community when charities use funds received to provide goods and services.
- ✳ **Assessing the effectiveness of structured giving vehicles involves trade-offs regarding the amount of funds flowing to charities and the timeframe for these flows.**
 - Trustees, rather than charities or government, decide when, how much, and to which eligible charity funding should be distributed. Trustee decisions may or may not reflect what would benefit the community the most in terms of the amount of funding provided 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 time period. The role of discounting is critical in assessing the effectiveness of giving vehicles as it helps account for the timing gap between the initial donation to the structure and when benefits flow to the community.
- ✳ **The Australian Government could enhance rules governing distributions by ancillary funds, so they more effectively encourage giving that benefits the community.**
 - Options to allow 'smoothing' of distributions over three years would enhance flexibility for funds.
 - Changing the minimum annual distribution rate for ancillary funds involves trade-offs – raising the minimum distribution rate could bring forward the funds that are distributed to charities, but lower the amount distributed in the future. It could also deter donors from using these vehicles if this did not match their motivations for giving.
- ✳ **The taxation and regulatory arrangements around estates and superannuation generally treat donations to charity in the same way as distributions to non-dependants, such as an independent adult child.**
 - Changing the tax treatment of superannuation assets upon death would be a relatively costly way to incentivise this type of giving, but there may be potential to make the process of donating superannuation death benefits upon death less cumbersome through changes to the binding death nomination process.

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 the 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 (figure 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) (referred to in this chapter as eligible entities with deductible gift recipient (DGR) status). Donors can claim an income tax deduction for donations into an ancillary fund. There are two types of ancillary funds.
 - Private ancillary funds are established for private philanthropic giving, largely used by family groups 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 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 registered charities. Structured philanthropy accounts for 14% of all charities (ACNC 2023g, p. 37). 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% other types of charities that made grants (ACNC 2023g, p. 37) (chapter 3).

Figure 8.1 – Types of giving vehicles

	Charitable trusts	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?	Anyone – as long as it is applied for a charitable purpose (in accordance with its trust deed)	Only Item 1 DGRs (in accordance with its trust deed)	Only Item 1 DGRs (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)	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).

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. While delayed disbursement of funds is not uncommon in other forms of giving, it is an explicit feature of structured giving. 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 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 may never deplete the corpus (the initial asset invested into the trust).

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 benefits. 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. 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.

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 taxation 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, 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, supporting local organisations and draw on local donor knowledge and experience
- they bring people together and can foster a giving culture
- donors often volunteer to manage the community foundation, including community engagement and stewardship of funds (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 government’s and donor’s or trustee’s interests 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, 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. These intertemporal trade-offs 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 in perpetuity, and where community preferences and recipient needs have evolved. These principal-agent issues underpin the case for regulatory guidance so that giving vehicles meet their philanthropic purpose – supporting the provision of goods and services to beneficiaries.

8.2 Assessment of ancillary funds

What are ancillary funds?

The two types of ancillary fund – 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:

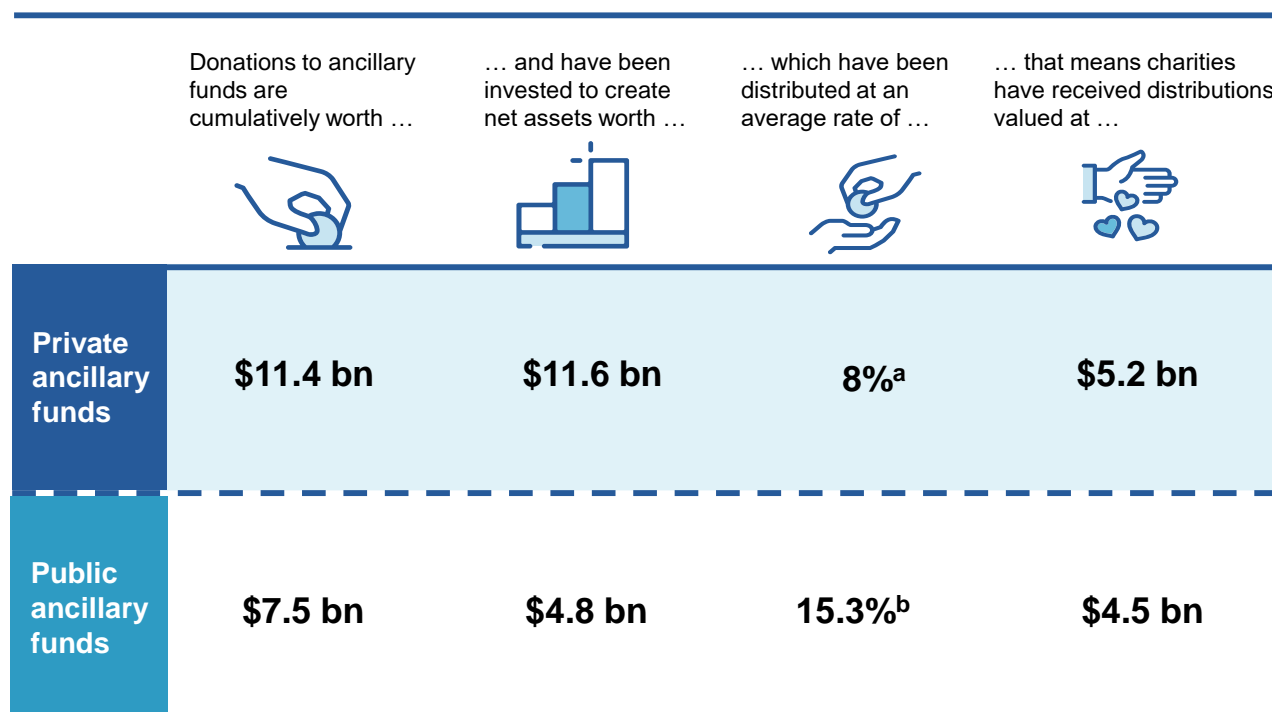
- the structure and purpose of ancillary funds
- how much ancillary funds are required to distribute to eligible entities with DGR status each year
- reporting and governance requirements.

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 8.2 describes how giving through ancillary funds contributes to philanthropy and charitable activities.

Figure 8.2 – Cumulative contribution of ancillary funds
Donations, distributions and benefits occur at different times



a. Private ancillary funds is the 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 the cumulative total from 2011-12 to 2020-21 due to data availability. Source: Commission analysis of ATO Taxation Statistics (2023).

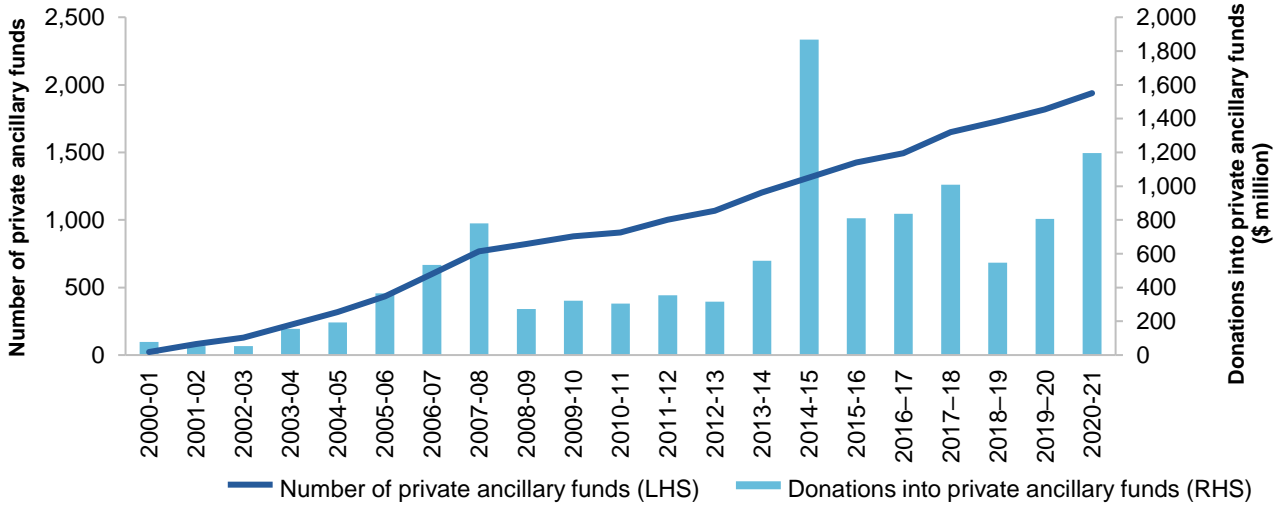
The introduction of private ancillary funds as a legal structure coincided with a noticeable increase in the overall level of individual giving in Australia (figure 3.7). While the precise amount of increase attributable to ancillary funds is difficult to discern, ancillary funds are growing in size 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 \$690 million in 2011-12 to \$2.4 billion in 2020-21 (figure 8.3).

The pool of assets in ancillary funds is growing through investment returns

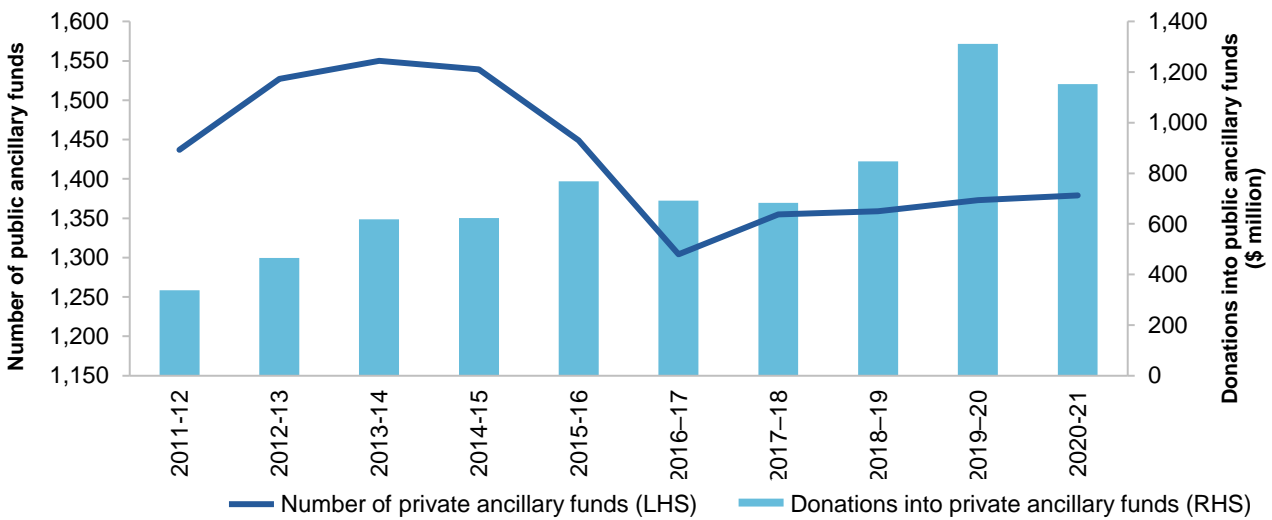
The trustees of ancillary funds are responsible for managing the fund’s assets and implementing an investment strategy to finance a future stream of giving (PAF Guidelines; PuAF Guidelines). Depending on market conditions, investing the assets of the fund is likely to increase the corpus available for 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 8.4).

Figure 8.3 – Trends in the number of ancillary funds and donations into these vehicles
Private ancillary funds



Public ancillary funds

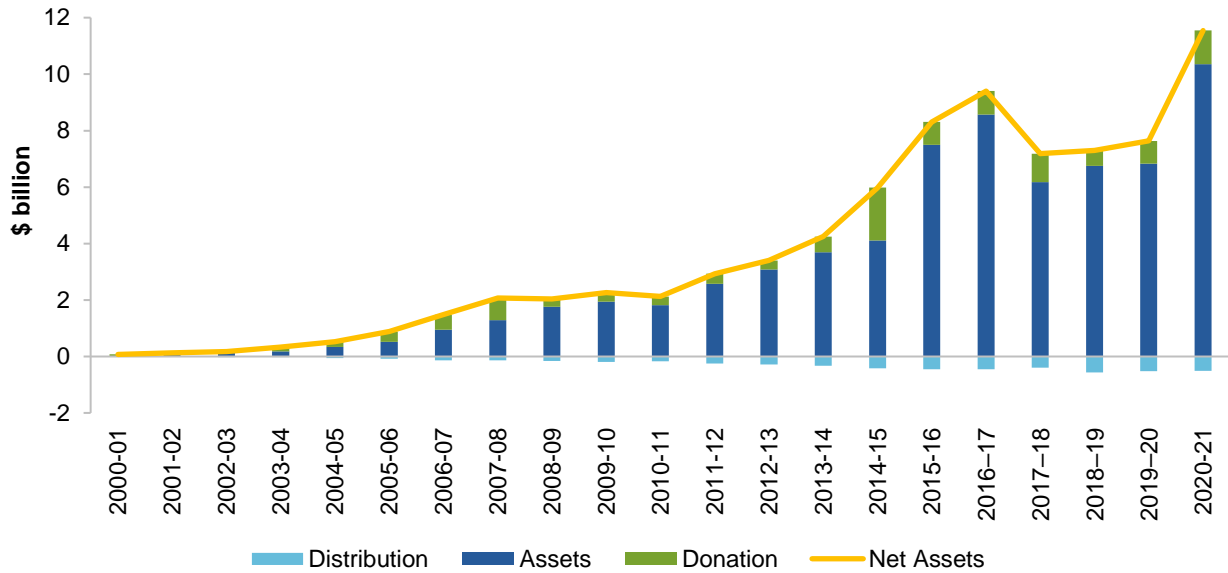


Source: Commission analysis of ancillary fund data published in ATO Taxation Statistics (2023).

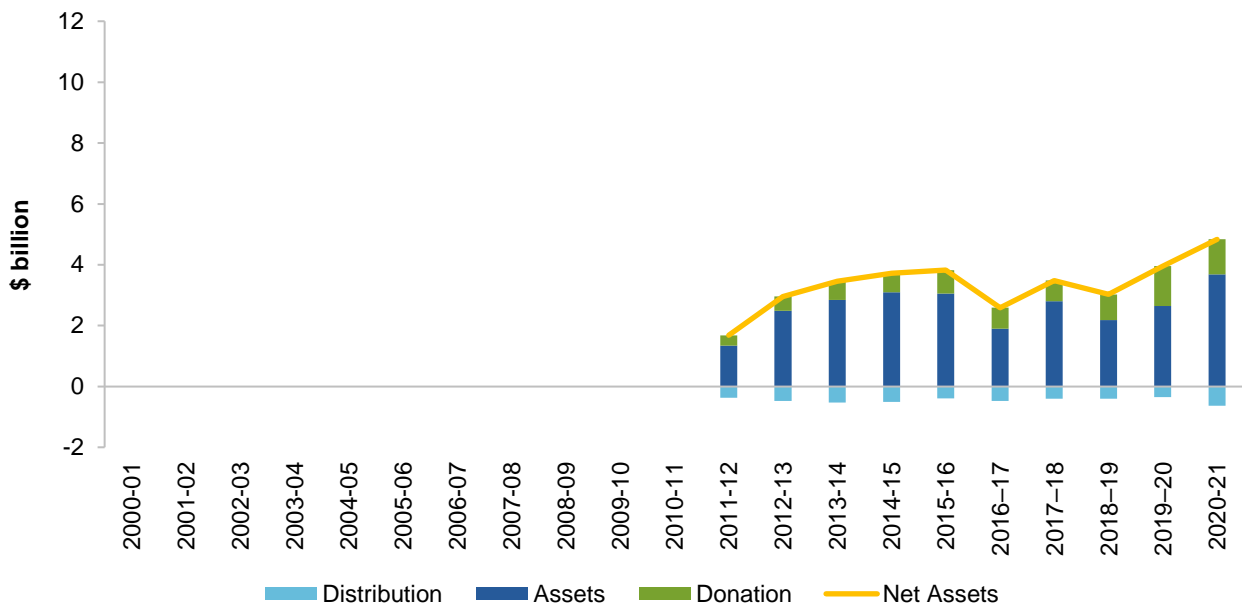
Unlike a donation that goes directly to the charity, trustees of ancillary funds have a corpus of funds available to invest in charitable causes and have greater flexibility to provide different forms of support to eligible charities over a longer timeframe, such as loans and guarantees. This type of 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.

Figure 8.4 – 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. Source: Productivity Commission analysis of ancillary fund data published in ATO Taxation Statistics (2023).

The minimum distribution rate is a key policy lever

While the trustee has broad discretion over distribution decisions, the regulatory arrangements for ancillary funds prescribe a minimum annual distribution rate of funds so that ancillary funds meet their philanthropic purpose (Explanatory Statement, Private Ancillary Fund Guidelines 2009). 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 – for the first year of operation for private ancillary funds and four additional 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 rate is a key policy lever available to government to influence the timing of amounts that flow from ancillary funds to eligible organisations with DGR status, and ultimately, the community. It determines how much of the remaining ‘stock’ of assets is distributed at any given point in time, making it a tool 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 to provide more support for charities given heightened demand for some of their services in the short-term, allowing ancillary funds to reduce their distribution rate in future years (implemented through the Taxation Administration (Coronavirus Economic Response Package—Ancillary Funds) Amendment Guidelines 2020 (Cth)).

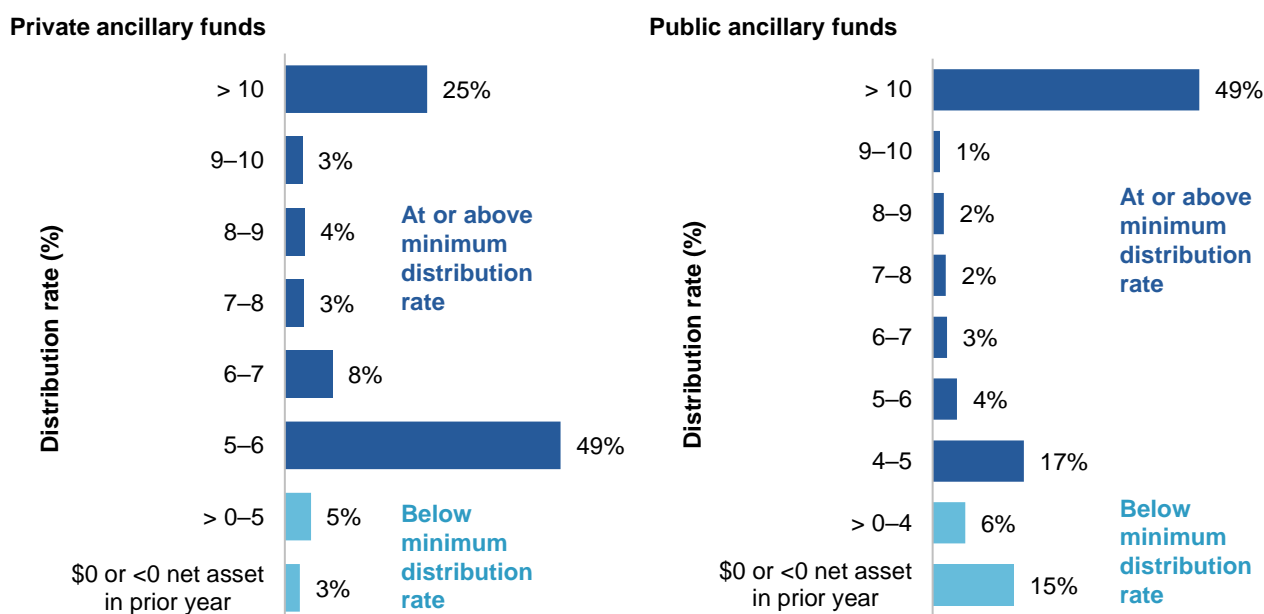
Many ancillary funds converge to the minimum distribution rate

Based on a sample of Australian Taxation Office (ATO) data,¹ about 62% of public ancillary funds distributed above the minimum distribute rate, compared to 44% of private ancillary funds (figure 8.5). 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. While it may not be the same funds that are repeating this behaviour year after year, it is likely that the minimum distribution rate influences the behaviour of at least some trustees of ancillary funds.

There are some 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). There is currently no data collected on sub-funds, and the Commission has recommended that additional data be collected as part of public ancillary fund returns (discussed in chapter 9).

¹ 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.

Figure 8.5 – 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 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. 19–20).

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. These differing preferences were 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 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 exist in perpetuity. If those funds were to be provided to a charitable organisation 50 years in the future, then, depending on realised rates of return and discount rates, those funds could have a lower value when the charity receives them, compared to when the funds were first deposited into the ancillary fund.

Practical 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.

Box 8.2 – Illustrative example for measuring 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

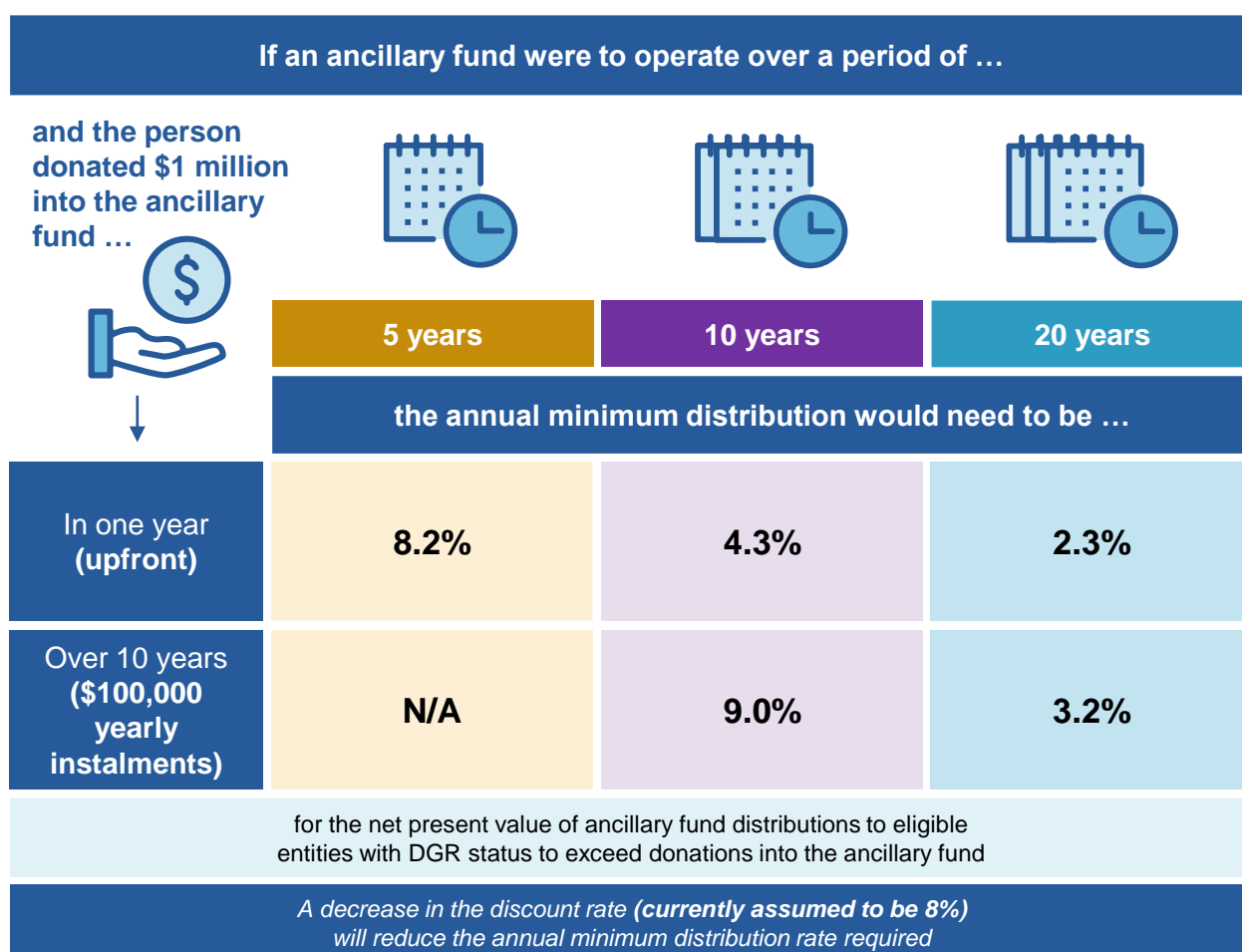
	Scenario 1	Scenario 2	Scenario 3
Donation	One-off \$1 million	\$100,000 over 10 years	\$500,000 then \$50,000 for ten years
Tax rate assumption	47%	32%	32%
Present value of the tax deduction	\$470,000	\$214,700	\$247,600
Present value of the benefit of distributions over			
10 years	\$362,000	\$131,800	\$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 (break-even)	15 years	15 years	11 Years
Distribution rate to have a break even after 10 years	7.0%	9.0%	5.2%
Sensitivity analysis			
Break even using a 15% discount rate and 5% distribution rate	Greater than 40 years	24 years	14 years
Distribution to break even after 10 years using 15% discount rate	10.5%	10.6%	6.7%
Break even using a 5% discount rate and a 5% distribution rate	12 years	13 years	10 years
Distribution to break even 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 divergent views on what discount rate that should be for not-for-profit organisations: the Office of Impact Analysis (2023) suggested a real discount rate of 7%; Jansen and Katz (2002) suggested a social discount rate of 15%; the Office of Best Practice Regulation guidelines (2007, pp. 129–132) suggested a real social discount rate of 7%; and Harrison (2010) suggested a discount rate of 8%. A 7% rate of return has been used.

Source: Commission estimates.

The extent to which the tax deduction donors receive exceeds the present value of distributions is a function of the distribution rate, discount rate and rate of return. The implication of this is that government policy may be able to influence the timing of a net benefit for the community being realised through changing the minimum distribute rate. The higher the distribution rate, the more likely the present value of distributions will exceed the initial tax deduction donors receive at a particular point in time. Figure 8.6 demonstrates these points, and how varying the length of time an ancillary fund operates for, and the size and frequency of donations into the ancillary funds, affects what the distribution rate of ancillary funds needs to be for the present value of distributions to exceed donations (that is, for it to generate a net benefit to the community based on different assumptions). This emphasises that no two ancillary funds are the same. An appropriate distribution rate for one ancillary to achieve a positive present value will differ to another depending on its characteristics – whether it operates in perpetuity, its investment performance and nature of donations into the ancillary fund.

Figure 8.6 – Varying the timing gap – implications for the minimum distribution rate



Note: The analysis assumes an average tax rate of 32% for both scenarios. This is different to Box 8.2 Scenario 1 which uses a tax rate of the value of the donation at 47% (45% plus Medicare levy). That scenario had a 10-year break even distribution rate of 7% compared to 4.3% in the scenario above.

Source: Commission estimates.

Options to bolster the benefits of ancillary funds for the community

The following section presents the Commission's initial analysis of three areas that could improve the effectiveness of ancillary funds.

- Amending the distribution requirements to deliver benefits to the community more rapidly.
- Enhancing flexibility in regulatory requirements to provide incentives for, and remove barriers to, using ancillary fund structures.
- Revisiting the tax deduction specifically for donations to ancillary funds to lower the cost to government.

Should the minimum distribution rate be higher?

A change in the minimum distribution rate is likely to directly influence the behaviour of a subset of ancillary funds – those consistently operating around the minimum distribution. For example, if the Government wanted to increase distributions from ancillary funds to charities, it could increase the minimum distribution rate (figure 8.7). Such a change could also have an indirect influence upon – and change the behaviour of – a much larger proportion of funds than just those distributing around the minimum rate required. Conversely, lowering the distribution rate could encourage more people to use a structured giving vehicle if, for example, it meant a smaller initial donation would be sufficient to operate a fund in perpetuity. Unless such changes were made on a strict prospective basis, they would also have a retrospective effect on donations already locked within the system.

Figure 8.7 – Potential effect of increasing the minimum distribution rate

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: This assumes the number of ancillary funds remains constant – that is, there are no new or existing ancillary funds. It applies 2020-21 distribution rates as a percentage of assets.

Source: Commission estimates.

The effect of changing the minimum distribution rate on donor decisions is unknown

As figure 8.7 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 would be depleted faster than would otherwise be the case. It is also possible that raising the rate 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, directly to a charity or charitable trust) or set up a new charity. 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.

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. 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.

Charitable trusts have different characteristics to ancillary funds which may be more or less attractive to donors. For example, donors may have less control over aspects of a charitable trust or charity compared to an ancillary fund, such as its name or distributions to charities. The extent to which donors may switch giving vehicles in response to any change in the minimum distribution rate is unknown. It is also 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.

Participants to the inquiry had mixed views on changing the minimum distribution rate. Some inquiry participants indicated there was no problem or concern with the minimum distribution amount that warranted a change, or that it should go no further than simplifying the requirement by aligning the private and public ancillary fund minimum distributions at 4% (Australian Philanthropic Services, sub. 112, p. 7). Other submissions argued the minimum distribution for private ancillary funds should be raised (Advancement Network, sub. 178, p. 2; Griffith Business School, sub. 212, p. 11; Seedling Giving, sub. 236, p. 8).

The Commission seeks further views on what minimum distribution rate would maximise the net benefits to the community, and the possible outcomes of a change to the minimum distribution rate (information request 8.1).



Information request 8.1

Effect of changes to the minimum distribution rate for ancillary funds

The Commission is considering whether the current minimum distribution rate for ancillary funds maximises the net benefit to the community. The Commission is seeking views on the likely response to a change in the minimum distribution rate (higher or lower) for public or private ancillary funds, including how it would affect:

- decisions faced by donors about whether to use a structured giving vehicle, which giving vehicle to use including alternatives, such as setting up or donating to an existing charity or giving vehicle, and whether to donate at all
- decisions made by trustees of existing public and private ancillary funds about how much to distribute and when.

The Commission welcomes views on how the distribution rate for public and private ancillary funds should be determined and the advantages and disadvantages of different methods.

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.

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, donations as a lump sum in one year may have more value to a charity undertaking capital works and to the community more broadly, than if the same amount in present value terms that is donated in a series of smaller distributions over several years. 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) pointed out 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).

The Commission recognises there would be benefits to increasing the flexibility of distribution rate (draft 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 that three years should exceed the amount that would have otherwise been payable under existing rules.



Draft recommendation 8.1

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

Restrictions apply to transfers of money, property or benefits between ancillary funds except in limited circumstances detailed in the respective ancillary fund guidelines (*Taxation Administration Act 1953* (Cth), Schedule 1, s. 426-170). Restrictions requiring distributions to be made to eligible entities with DGR status (sometimes referred to as 'Item 1' DGRs) are intended to ensure ancillary funds distribute assets to fund activities for the public benefit in furtherance of charitable purposes.

Some inquiry participants suggested making changes to the ancillary fund guidelines to allow ancillary funds to give to each other, arguing that the current arrangements prevent giving to worthy causes in certain circumstances, including to local organisations that may not have DGR status. For example, the Intrepid Foundation (sub. 86, p. 3), which is established as a public ancillary fund, had to reject a donation from a private ancillary fund in 2022. Philanthropy Australia notes:

This broad intention – ensuring money gets to people in need – is tremendously important, but achieving it through a blanket ban on ancillary funds (AFs) distributing to each other is overly heavy-handed. On occasion, it would improve the quality and impact of giving if a PAF – which are largely private family funds – could distribute to a PuAF – such as a hospital fund or a Community Foundation, that is operating on the ground, with detailed local knowledge of key needs and how to address them. (sub. 162, p. 29)

However, there is a risk that allowing ancillary funds to distribute to each other would churn assets between ancillary funds, limiting the amount that flows to eligible entities with DGR status and beneficiaries. It could, if endorsed without proper consideration, ‘erode trust in philanthropy’ (Perpetual, sub. 254, p. 4), increase complexity and require additional reporting and other measures to manage integrity risks. Several initiatives help to overcome the issues identified by inquiry participants, within the context of the current DGR system, while maintaining integrity of the system to ensure funds are being used for charitable purposes:

- ancillary funds can distribute to specific organisations that have been established through joint government and philanthropic funding, such as the Foundation for Rural and Regional Renewal and the Australian Cultural Fund (through Amplify and in partnership with the Tim Fairfax Family Foundation), that have the required DGR status and can then pass on these donations to organisations without DGR status (Australia Council for the Arts, sub. 243, p. 6; FRRR, sub. 149)
- 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 have DGR status (Leigh 2023d).

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 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.

Implications of implementation of DGR system reforms for ancillary funds

Ancillary funds do not operate in isolation – they are one of many ways people give to charitable causes and changes to the policy framework could change people’s decisions about whether, how and to whom they give. This means it is necessary to consider how the Commission’s proposed reforms to the DGR system set out in chapter 6 would, if implemented, affect the use and effectiveness of ancillary funds. For example, ancillary funds would have more charities to which they could distribute funds given the proposed expansion of the classes of activities which would be within scope of the DGR system. For example, a donor only wishing to focus their philanthropy on addressing health issues may establish a health promotion charity rather than a private ancillary fund. The health promotion charity would be eligible for DGR status, as well as other tax concessions, but would not be subject to the same rules as an ancillary fund in terms of a minimum distribution.

Further, under the Commission’s proposed reforms, a charity would be able to register under multiple ACNC sub-types and use tax-deductible donations to support activities across these sub-types, including providing funds to other entities if this is consistent with the charity’s purposes and registration with the ACNC. This may create an incentive to use a ‘standard’ charity structure as a giving vehicle, rather than an ancillary fund, if the donor’s preference is to support multiple charitable causes. Given the possibility of substitution between different ways of giving – that are subject to different regulatory requirements, including minimum distribution rates – there may need to be a set of criteria introduced in which a charity whose main activity involves making grants to another charity is required to be registered as an ancillary fund, and subject to the relevant ancillary fund guidelines. Alternatively, there could be a case for requiring all charities to have a minimum distribution rate (discussed further below).

The Commission will consult on the interactions between different forms of giving to inform its recommendations in its final report.

Should changes to the regulatory framework for ancillary funds be required, it could provide an opportunity for other reforms to be made concurrently. For example, there may be an opportunity to streamline detail within the ancillary fund guidelines, or to re-name ancillary funds to make them more accessible to a broader audience of potential donors. 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 possibly send a signal that ancillary funds are somehow peripheral entities. Adopting new names, such as ‘private giving funds’ and ‘public giving funds’, may more clearly communicate their purpose and emphasise that their role is central to supporting the work of other charities.

8.3 Assessment of charitable trusts

What are charitable trusts?

Entities that use a trust structure to make charitable grants (other than private ancillary funds and public 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 courts and Attorneys-General to intervene in their administration in certain circumstances) and under state and territory government legislation (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 for DGR status which would enable them to receive tax-deductible donations. In 2016, it was estimated that about 26% of charitable trusts have 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

As noted above, other charities and charitable trusts are not subject to the same regulatory requirements as ancillary funds. Charitable trusts can be a substitute for ancillary funds, with other types of charities also able to be used for this purpose, including more bespoke structures which receive DGR status through specific listing. Unlike ancillary funds, other charities and charitable trusts are not subject to minimum distribution requirements, and there is no clear rule setting out how long a charity can accumulate assets before starting to distribute these to benefit the community. This section considers the distribution requirements for charitable trusts, and charities that are not ancillary funds, but may act as a substitute.

There are reasons charities accumulate assets

By definition, establishing and running a charity with a well-specified purpose involves making difficult, highly selective choices about whom to help (and not to help) and how to achieve that. Decisions regarding whether to accumulate or spend immediately involve a similar set of careful, 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 n.d). Charities cannot access equity markets and may face difficulties accessing debt markets, and so 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 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. Taxation Ruling TR 2015/1 'Income Tax: special conditions for various entities whose ordinary and statutory income is exempt' sets out the Commissioner of Taxation's view of this requirement, stating 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'.

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).

Charitable trusts and charities are not subject to minimum distribution rates

Charitable trusts or other charities are not subject to minimum distribution requirements, and 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, a charitable foundation registered with the ACNC that has DGR status through a specific listing and 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 voluntarism promotion charities, 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 (Murray 2021, p. 31).

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).

As discussed above, the difference in regulatory requirements for structures with similar purposes, such as ancillary funds (that are subject to a minimum distribution rate) and other charities and charitable trusts (that are not), may create an opportunity for donors to opt for structures that are less regulated to, for example, receive an up-front tax deduction for donations while avoiding a requirement to distribute a portion of these donations onto charities.

The Commission has not formed a view about whether there are regulatory issues in this area that require a response from government. However, it would welcome views about whether there is a need to strengthen requirements around timely distribution of funds by charitable trusts and/or other charities, particularly those with DGR status or in circumstances where they may be substitutes for ancillary funds (information request 8.2). These issues will be considered in the context of both the current DGR system, and in the context of the changes to the DGR system the Commission has proposed in chapter 6.



Information request 8.2

Timely distributions of donated funds for charitable purposes

The Commission is seeking views on whether, and in what circumstances, the regulatory framework for entities that have deductible gift recipient status should encourage timely distributions for charitable purposes, and whether there should be regulatory consistency between giving vehicles to encourage distributions.

Charitable trusts are administered by trustee companies

Donors appoint trustees to oversee and manage ancillary funds and charitable trusts. Licensed trustee companies (trustee companies that hold an Australian financial services licence issued by the Australian Securities and Investments Commission) are major providers of fund management services for ancillary funds and charitable trusts. Donors may adopt co-trustee arrangements, where trustees include donor family members and a licensed trustee company.

The long-term nature of these structures means that for funds held in perpetuity, there is limited ability to change trustee service providers once the donor has passed away. 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 duties. This is relatively rare and requires an application to be made to the Court, which can involve significant costs.

Further, 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). In contrast, 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.

In 2012-13, the Corporations and Markets Advisory Committee made a number of recommendations in relation to how licensed trustee companies charge fees in its report *The Administration of Charitable Trusts* (CAMAC report) (box 8.3). 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. Market concentration can lead to situations where fees for services are higher, or the quality of service is lower, that would be the case if there were greater price competition.

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 to report on matters related to licensed trustee companies' administration of charitable trusts, including the effectiveness of fee regulation and grandfathering of existing fee arrangements, the adequacy of mechanisms to remove or replace trustees from a consumer protection perspective, and other relevant issues. The scope was restricted to charitable trusts. The analysis was informed by written submissions and a roundtable from relevant parties. 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 charges 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
- introduction of 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 formal government response to the CAMAC report.

Source: CAMAC (2013).

There are already regulatory roles and legislation, through the ACCC and *Competition and Consumer Act 2010* (Cth) that protect against mergers and acquisitions that have detrimental effects on competition and hence the potential to harm consumers. 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 from trust corporations 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, pp. 5, 15–16). A public merger review was not conducted by the ACCC for Equity Trustees' acquisition of the Australian Executor Trustees but note the ACCC's practice of conducting confidential assessments on transactions that it considers do not warrant a public review.

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, however, 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 to ensure that value for money is provided.

It should also be noted that although CAMAC's focus was on licensed trustee companies, some of the issues raised in relation to administration of charitable trusts, including the way fees are levied and the ability to change trustee arrangements, could arise in other contexts where a specific individual(s) or company has been appointed a trustee, such as under a will. In such cases, there may be less regulation governing fees charged, and similar barriers to changing trustee arrangements.

The Commission is seeking further information about the administration of charitable trusts by licensed companies, particularly in relation to whether there are competition issues that adversely affect donors, for example through fees charged (information request 8.3).



Information request 8.3

Regulatory arrangements for charitable trusts by licensed trustee companies

The Commission is seeking further evidence regarding the administration of charitable trusts by trustee companies, given changes over the past 10 years that have led to further concentration in the market for licenced trustee services. This includes information about arrangements for switching providers or charging fees, particularly for funds held in perpetuity.

The Commission invites views on whether there is a need for policy reforms in relation to the administration of charitable trusts by licensed trustee companies, and if so:

- the nature and rationale for any proposed changes
- accompanying evidence, such as data or case studies
- any potential role or implications for Australian regulators.

8.4 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 intergenerational wealth

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 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, Dr 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% taxation plus 2% Medicare levy (Philanthropy Australia, sub. 162, p. 13).

There should be a high threshold for changes to superannuation arrangements

In September 2023, Treasury concluded consultation on Exposure Draft Legislation to legislate the objective of superannuation, which is proposed to be, ‘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 those 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, super 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 its 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. 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 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.

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 6,957 complaints in relation to superannuation, of which 599 (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 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).

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:

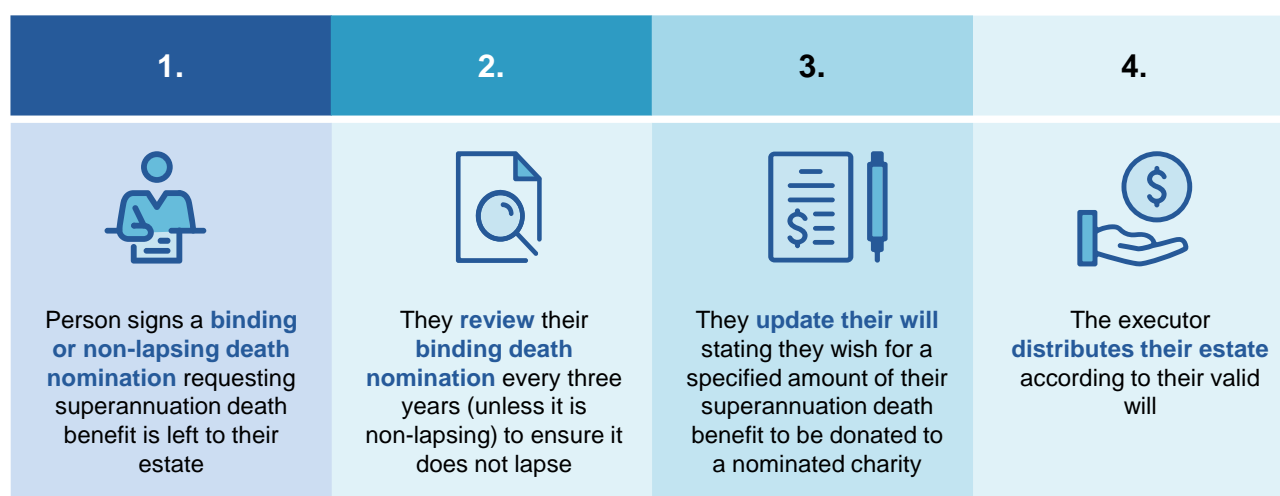
- **binding death benefit nomination:** this is a written direction from a member to their superannuation fund trustee detailing how they wish some or all their superannuation death benefits to be distributed. A nomination is valid for a maximum of three years and lapses if it is not renewed
- **non-lapsing death benefit nomination:** this is similar to a binding death benefit nomination but remains in place forever 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).

Assessing the case to change regulatory arrangements

Death nominations are an important mechanism for protecting the member 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 to ensure 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 8.8). 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 (Dr Natalie Silver, sub. 260, pp. 3–4).

Figure 8.8 – Process for giving superannuation death benefit to a charity

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.

Changes to reduce regulatory barriers to giving may support people seeking to give to charity via their superannuation, 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, to provide sufficient safeguards.

State-based succession laws provide a safety net in the event a beneficiary of an estate dies. Succession laws protect the wishes of the donor and their estate and provide safeguards that:

- people's wishes are not being unduly influenced
- people's preferences regarding their financial assets are supported
- proper provision is made for family and other dependants.

The same succession laws do not apply to charities, therefore it is important to understand the effect of any change to enable binding death nominations to charity on the role of superannuation trustees. This could include potential costs in receiving and assessing legal challenges from claimants or in managing scenarios where the charity has wound up or had its charitable status revoked. Whereas similar issues for estates are currently dealt with by the executor, under this scenario superannuation trustees may be required to play a role, which could also have flow-on effects to AFCA, given their dispute resolution role in relation to death benefits. Any potential costs would need to be balanced against potential benefits from a change, to assess the net benefits to the community.

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.

A final policy consideration is whether any potential change has broader implications for the death benefit nomination process. For example, the issue of restrictions regarding who is eligible to be a recipient of a nomination has been raised previously – 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 is not aware of any changes that have been made to resolve this issue.

Further information is required before the Commission forms a view on whether regulatory change is warranted. The Commission is seeking information from inquiry participants regarding the potential benefits and costs of change, including views regarding the potential design of a mechanism to direct a superannuation death benefit to a charity upon death. It would particularly welcome perspectives from superannuation fund members in terms of how any change would affect their decisions about how death benefits are distributed, as well as superannuation fund trustees, regarding how any change may affect their role (information request 8.4).



Information request 8.4 **Making bequests through superannuation easier**

The Commission is seeking information, including from donors, charities and superannuation funds, on options to allow people to nominate their superannuation death benefit to a charity. The Commission welcomes further information on the:

- potential design of a mechanism to enable people to direct a portion of their superannuation death benefit to nominated charities, including the roles and responsibilities of parties such as trustees and estate executors
- benefits, costs, risks, necessary safeguards, and potential unintended consequences of policy options enabling a person to direct their superannuation death benefit to nominated charities
- factors, such as family or financial circumstances, that would contribute to a person deciding whether to take up the option to direct their superannuation death benefit to nominated charities.

There is no case to change tax arrangements for superannuation bequests to charities

The current tax settings incentivise giving whilst living. People who place money into superannuation receive a range of tax concessions as a way for 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 taxation 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 8.9 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 dependant under superannuation legislation compared to taxation 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 is 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)

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):

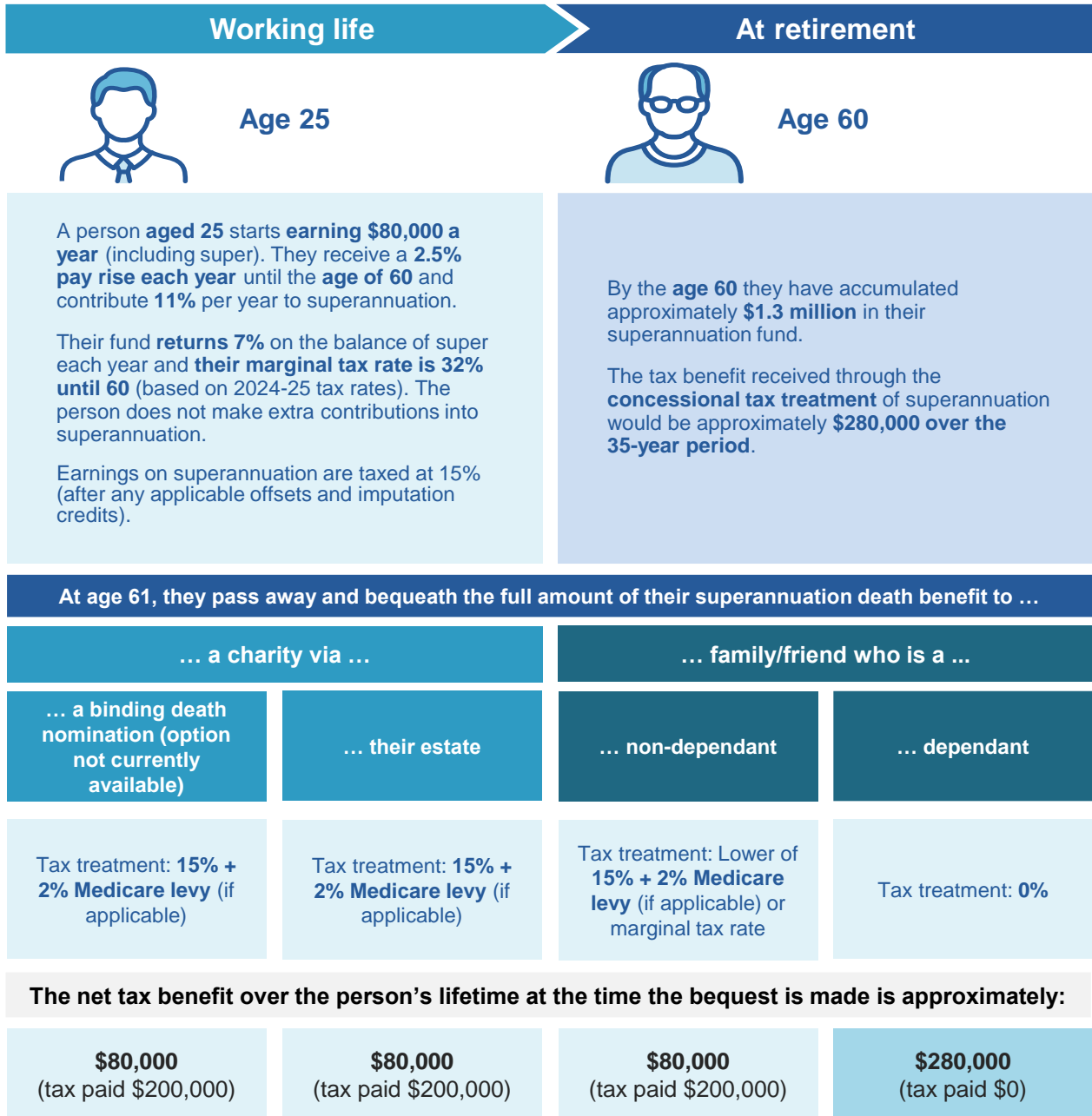
Tax concessions have a role in incentivising Australians to save for retirement but come at a significant and growing cost to the revenue required to fund services, so they need to be targeted at where they are needed most. Policy-makers will need to weigh up these types of factors when assessing future superannuation policies against the objective of superannuation. (Treasury 2023c, p. 9)

Figure 8.9 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 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 taxation 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 take into account 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.

Figure 8.9 – 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 8.8). 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.

It is clear that donations made during life are not subject to the same taxation as those made after death (box 8.5). The current tax settings incentivise giving whilst 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 taken into account 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 occurring through the taxation 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 (draft 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 concessionally taxed
 - 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 all of the above.

The table below provides a case study 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 and they have \$100,000 to give through the various mechanisms and options. 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 taxation 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).

Box 8.5 – Net tax consequences of donating in life and in death

Tax consequences for donations to a charity at different points in time and through different mechanisms

Phase	Mechanism	Donation tax consequences	Tax benefit (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
	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. A different approach by Impact Economics and Policy (2023, p. 5) focuses 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). Furthermore, 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% taxation 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.

The analysis (Impact Economics and Policy 2023, p. 5) 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 analysis focuses 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 position on several methodological areas.

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 system creates incentives for people to donate while alive.
- Some superannuation bequests to charities would occur even if there were no changes to current taxation 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

Box 8.6 – Impact Economics and Policy’s modelling on changing tax arrangements for superannuation bequests

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. That is, 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 taxation arrangements.

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% taxation plus 2% Medicare Levy – that it would have been distributed to a non-dependant. 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 which comprise the forward estimates.^a

a. This estimate represents 15% taxation 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 and Policy (2023).



Draft finding 8.1

There is no case for reducing superannuation taxes for bequests

The current taxation 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

Some participants consider this suite of giving vehicles outlined in this chapter too limited, and not reflective of giving preferences for donors:

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)

Some inquiry participants argued there was low uptake of ancillary funds 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). Inquiry participants identified non-regulatory barriers for people adopting giving vehicles.

- 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 (Perpetual and Equity require a minimum donation of \$20,000 for donation into their endowment Foundations, and more for 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).

Submissions proposed the creation of alternative giving vehicles, or ways of innovating existing giving vehicles (box 8.7). This is not an exhaustive list, and any potential model would need to be designed to clearly overcome an identified barrier to existing structures. Any new giving vehicle structure would need to be philanthropic, by ensuring funds reach charities, and maintain the integrity of the tax system.

For the Commission to form a view as to whether new giving vehicles are warranted, further evidence is required to understand the shortcomings of the existing vehicles and the specific problems alternative giving vehicles would seek to solve (information request 8.5). The Commission would also need to understand whether implementing new giving vehicles is the most appropriate solution, as opposed to other policy options for example in relation to advisors (chapter 10) or regulatory changes to address the identified problems.

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. Some of these included:

- **Living Legacy Trust** – allows a donor to place an asset on trust for the benefit of a charity when the testator passes. The asset is irrevocably locked into being given to the beneficiary, but the testator (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 testator may continue to live in the property or rent it on commercial terms. These 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 (Philanthropy Australia, sub. 162, p. 35)
- **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 set time period, such as 10 years, with the option of having the capital returned when the time period lapses. Annual minimum distributions would apply. The concept overcomes a reason some people may choose not to use an ancillary fund currently, if they are concerned they may need the funds in the future.



Information request 8.5

Barriers and opportunities for innovative giving vehicles

The Commission invites evidence such as data or case studies on the use of innovative giving vehicles. The Commission is seeking further evidence on the extent to which the existing regulatory framework and tax arrangements impose barriers or facilitate the development of innovative giving vehicles.

9. Public information about charities and giving

Key points

- ✳ **Publicly available information on charities, including on their performance, and on how and to whom people give, has many uses.**
 - Charities have strong incentives to publish information that could attract donations, including volunteers, but are less likely to publish information that does not benefit them directly.
 - Government agencies publish information collected from charities to achieve policy and regulatory goals, including promoting informed donor decisions, effective use of donations by charities (including donations that are tax deductible), and 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.**
 - Concerns raised by participants include lack of relevant indicators of charity performance, inadequate disclosure of information about charities' activities, particularly by ancillary funds, lack of consistency in reported data, and data being difficult to access.
- ✳ **The Australian Charities and Not-for-profits Commission (ACNC) and the Australian Taxation Office (ATO) should enhance the utility of existing government-held information to donors and the public.**
 - Where practicable, the ACNC and the ATO 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 that a government agency can publicly report on standardised measures of effectiveness would impose costs on charities with little benefit to the community.
- ✳ **The Australian Government should issue a statement of expectations for the ACNC, with a view to embedding donor and public views in the ACNC's regulatory approach.**
- ✳ **There is sufficient public information about tax-deductible donations of money and other assets by individuals but little on other forms of giving, particularly volunteering and giving by listed companies.**
 - Better information on giving would enhance governments' ability to assess whether policy measures 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.

9.1 The role of information in philanthropy

Information about charities is critical to decisions about giving

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 clearing house for decisions with the final consumer being the centre of decision making (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 (who act as intermediaries between donors and beneficiaries by receiving donations, combining these together with inputs to supply goods and services). Although charities cannot make ongoing losses, making a profit is not one of their objectives.

The absence of such price signals means that other sources of information, such as public reporting by charities, play a particularly important role in informing decisions about where people choose to donate or volunteer and in promoting public trust and confidence in the charitable sector. However, ‘principle-agent’ problems may also lead to less sharing of information than what is needed to meet these objectives (Edward Flack, sub. 19, p. 5; Prakash and Gugerty 2010, p. 24).

Where the availability or quality of information is deficient, it can prevent donors from making giving decisions that align with their preferences and values. In some situations, a lack of transparency may increase certain risks, such as those associated with misuse of donated funds. It can also prevent the wider public from having a proper understanding of the work of charities within the community.

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 a charity’s fundraising campaign on television. Sources of information about work that charities undertake include annual reports, program impact evaluations and charity comparison websites. People who are making a large donation or charitable bequest may seek specialist advice or directly approach the charity for more information (figure 9.1).

Charities have incentives to publish certain types of information ...

The quality and transparency of public information on charities can be understood as the provision of relevant information about social impact in an unbiased context, and making that information easy to find and understand (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 and 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 will 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.

Figure 9.1 – People obtain information about charities from a variety of sources

... but less incentive to publish information that does not help them directly

Charities will have less incentive to invest in or publicise 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 will (understandably) seek to present information about their organisation in the most positive light possible. For structured giving vehicles, such as private ancillary funds, there may not be a strong incentive to publish any information at all.

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 7.2), 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 (chapter 2).

Misconduct by one charity (or an organisation purporting to be a charity) can negatively affect other charities, or the charitable sector more broadly, if it contributes to a decline in public trust and confidence (chapter 7).

Charities can and do also 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 (ACNC 2023b, p. 21).

Governments also play a regulatory role by setting minimum standards, with Cordery et al. (2013, p. 836) noting that such regulation:

... [r]equires 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.

There is a role for government in supporting people to access information ...

In Australia, government agencies, such as the Australian Charities and Not-for-profits Commission (ACNC) and the Australian Taxation Office (ATO), collect and publish trustworthy and user-friendly information on charities and giving, in part to support people to make their decisions about whether and to whom to give. 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, and 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 good quality and reliable information about their activities and giving, government provision of this information can help achieve various policy and regulatory goals (chapter 2). Government provision of public information about charities and giving can serve the following 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 efficient use of donations by charities** – including donations to charities that are subsidised by taxpayers through the deductible gift recipient (DGR) system (chapter 5). Such information can enhance the ability of donors and the public to hold charities to account for how they use donations to achieve their stated purpose or outcomes.
- **Promote confidence in the charitable sector** – helping maintain the 'social licence' which charities, including giving vehicles such as ancillary funds, hold within the wider community (McCrimble 2023). This can include information shared by regulators which helps:
 - assist the public to avoid certain risks when donating
 - signal that regulators are committed to addressing instances of non-compliance or misconduct and discourage other organisations from engaging in similar behaviour
 - mitigate the risks of negative spillovers on other charities if a charity engages in misconduct (chapter 7).

Government sources of public information on charities complement regulations that prescribe how charities and structured giving vehicles operate, such as rules in relation 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 (chapter 6, chapter 7 and chapter 8).

... but the response must be proportionate to the problem

Like all government interventions, government provision of public information on charities comes at a cost. A request from government for more information about charities results in added reporting obligations and burdens for the charities which has implications for the resources charities have available for core activities.

Governments need to ensure that the information on charities they collect and publish provides benefits to the public that 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 giving decisions, 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 to provide goods and services to beneficiaries. At worst, publishing poorly designed performance measures for charities could result in perverse outcomes, including for beneficiaries.

How can governments improve public information about charities and giving?

The terms of reference for this inquiry asked the Productivity Commission to consider several issues related to information on charities, namely:

- the ability of donors to assess and compare charities based on evidence of effectiveness, including through impact evaluations and making comparisons across charities
- the potential to increase philanthropy by enhancing the effectiveness and efficiency of the use of donations
- the appropriateness of current sources of data on philanthropic giving and ways to enhance databases in a cost-effective manner.

The Commission examined these issues from a government and community perspective. It examined whether enhancing the information that government agencies currently publish about charities' activities and giving would encourage more people to give to charities, improve public accountability, or mitigate any broader risks associated with philanthropic giving. It also considered whether the benefits from providing information for these purposes would likely outweigh the costs to the community.

For some donors, understanding charity effectiveness is an important determinant of whether and how they give (chapter 3). 'Charity effectiveness' is the extent to which a charity achieves its main stated purpose or outcome. A charity's stated purpose can vary widely across the sector which, coupled with the lack of price as guide to quality, means donors often have limited ability to directly compare the performance of charities. Metrics, including those designed to be a measure of effectiveness, are often limited to charities that work in similar areas or produce similar outputs. This is not unique to the charitable sector – similar considerations apply to government provision of services, such as health and education. Similarly, 'effectiveness and efficiency in the use of donations' (or outcomes achieved per dollar of donation) is usually context specific (box 9.1).

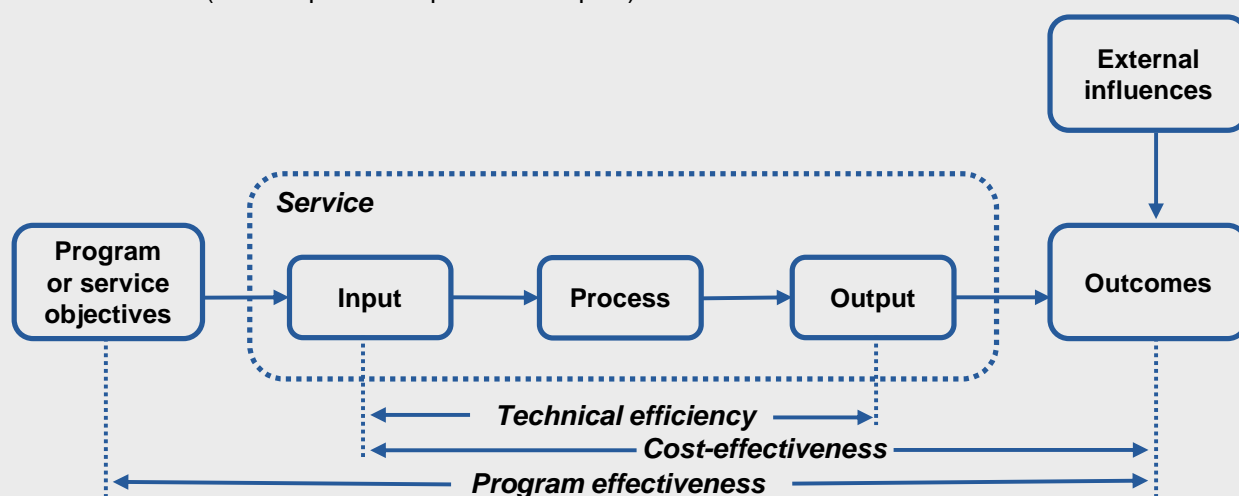
Box 9.1 – Charity effectiveness and cost-effectiveness

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 measures 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 is that service options can be ranked by their degree of effectiveness or cost-effectiveness. One of the assumptions of cost-effectiveness analysis is that the effectiveness (or benefit) measure is the same across all options. However, this assumption often does not hold in a sector as diverse as the charitable sector (box 9.2 provides specific examples).



Source: PC (2013a).

9.2 Government information on charities and giving







The ACNC is the main government provider of charity information

The ACNC maintains a public register of approximately 60,000 charities in Australia. For each charity the ACNC charity register includes:

- a profile (charity details, summary of activities, charity programs, and financial overview)
- financial documents (annual financial statements and financial reports and governing documents for funds)
- 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 9.2).

Figure 9.2 – The ACNC charity register shares public information on most registered charities^a

Coverage	General exemptions	Intended uses
 <p>ACNC registered charities (approximately 60,000)</p>	 <p>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 • Financials and documents • People • History (including any actions) <p>Some types of charities do not report financial information to the ACNC (basic religious charities, Indigenous Corporations, non-government schools).</p>	 <p>Publishing information on private ancillary funds would:</p> <ul style="list-style-type: none"> • identify individual donors • create an unreasonable administrative burden 	 <ul style="list-style-type: none"> • ACNC charities register database • Annual information statements • Annual charities report

a. Reporting requirements vary by charity size. For the purpose of 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 registered charities send in their annual information statements in the annual Australian Charities Report. 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 assessments 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 their own website, and digital and print media if it is compliant with all ACNC reporting requirements (ACNC 2022d).

The ACNC charity register aims to promote accountability and informed choice

The ACNC charity register has been in place since 2012. The Revised Explanatory Memorandum to Australian Charities and Not-for-profits Commission Bill 2012 (Cth) (ACNC Bill) details a clear intent for the ACNC charity register 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, ACNC Bill, para. 4.8)

The explanatory memoranda to the ACNC Bill noted a motivation for 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, 4.7).

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.

- **Charities that are Indigenous Corporations:** about 1.9% of registered charities are registered with the Office of the Registrar of Indigenous Corporations (ORIC), which publicly reports on these charities and other organisations incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (ACNC 2023g, p. 51). Charities registered with ORIC do not submit annual information statements to the ACNC and data from annual reports submitted to ORIC cannot be viewed on, or accessed via, the ACNC register and is not included in ACNC datasets.
- **Basic religious charities:** about 17% of charities (8,280) reported that they were a basic religious charity and were not required to provide financial information to the ACNC (2023g, p. 12) (chapter 7, draft recommendation 7.1).
- **Charities that are non-government schools:** about 2.6% of charities that are registered with the ACNC are non-government schools. These charities must submit a financial questionnaire to the Department of Education and do not have to provide financial information in the ACNC annual information statement. The Department of Education provides the information it collects in the financial questionnaire to the ACNC so the ACNC can fill information gaps arising from incomplete answers to financial questions in a charity's ACNC annual information statement. This process often results in delays the publication of financial information on the ACNC charity register for a charity that is non-government school (ACNC 2023g, p. 51, 2023o).

Exemptions may apply to publishing information on the ACNC charity register

Charities can apply to the ACNC to have information withheld or removed from the ACNC charity register in certain circumstances, such as where the information could endanger public safety or is commercially sensitive. Private ancillary funds can additionally 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. The consequence for the public is that information about many private ancillary funds is either not available or not easily accessible (section 9.4).

Other government agencies publish data on giving including volunteering

The Australian Taxation Office publishes data on tax-deductible donations

The ATO publishes information on giving through its annual Australian Taxation Statistics. The ATO reports aggregated information on donations by individual taxpayers to charities with DGR status that it collects through tax returns. Public and private ancillary funds must submit annual returns, and the ATO uses this information to publish aggregated data on:

- the total number of ancillary funds
- total distributions
- the number of new ancillary funds
- net assets
- distributions to charities with DGR status by ancillary funds, categorised by broad type of charity (ATO 2023f).

The Australian Bureau of Statistics collects and publishes data on volunteering

Over the past decade, the Australian Bureau of Statistics (ABS) has collected data on volunteering by including questions in its broader social surveys. The frequency, coverage and detail on volunteering varies across sources.

- **General Social Survey (GSS):** the GSS has occurred every four years since 2002 (with exceptions of 2019 and 2020 when the ABS conducted the survey in consecutive years as a response to the COVID-19 pandemic). Past GSS have included questions about whether people had volunteered, how much time they spent volunteering, and the nature of the volunteering (type of activity). Since 2019, the GSS has included a specific question on informal volunteering. Before 2019, researchers estimated informal volunteering using questions in the GSS relating to community participation, community involvement, social involvement and support provided for children living outside the household.
- **Census of Population and Housing (Census):** the Census, which captures the whole population of Australia and occurs every five years, has previously included a question on whether the person did any voluntary work for an organisation or group in the last 12 months.
- **Survey of Disability, Ageing and Carers (SDAC):** since 1998, the SDAC has collected information on whether people have undertaken voluntary or community service activities in the last three months. The ABS conducts SDAC every three to six years. The SDAC covers people living in households who are aged 5 years or older with a disability or aged 65 years and over, and primary carers aged 15 years and over.
- **How Australians Use Their Time (time use survey):** the ABS conducted time use surveys in 1992, 1997, 2006 and 2021, which capture how people in Australia use their time including whether respondents had helped or done a favour for a friend or neighbour and time spent for travel for volunteering in the last 12 months. The survey reports the proportion of time people spend on activities on average, rather than rates of volunteering.

As discussed in section 9.5, uncertainty about whether and when the ABS will conduct another GSS has implications for future availability of public information on volunteering.

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* (AIHW 2021b) has a section on philanthropy and charitable donations, including volunteering.

The Australian Government has also contributed to funding once-off or periodic reports on giving, such as *Giving Australia* (2017), which was undertaken in 2016.

Standards for financial reporting aim to promote transparency

The Office of the Australian Accounting Standards Board (AASB), established and empowered under Part 12 of the *Australian Securities and Investments Commission Act 2001* (Cth), is the Australian Government agency responsible for making accounting standards under section 334 of the *Corporations Act 2001* (Cth).

Medium- and large-sized registered 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.

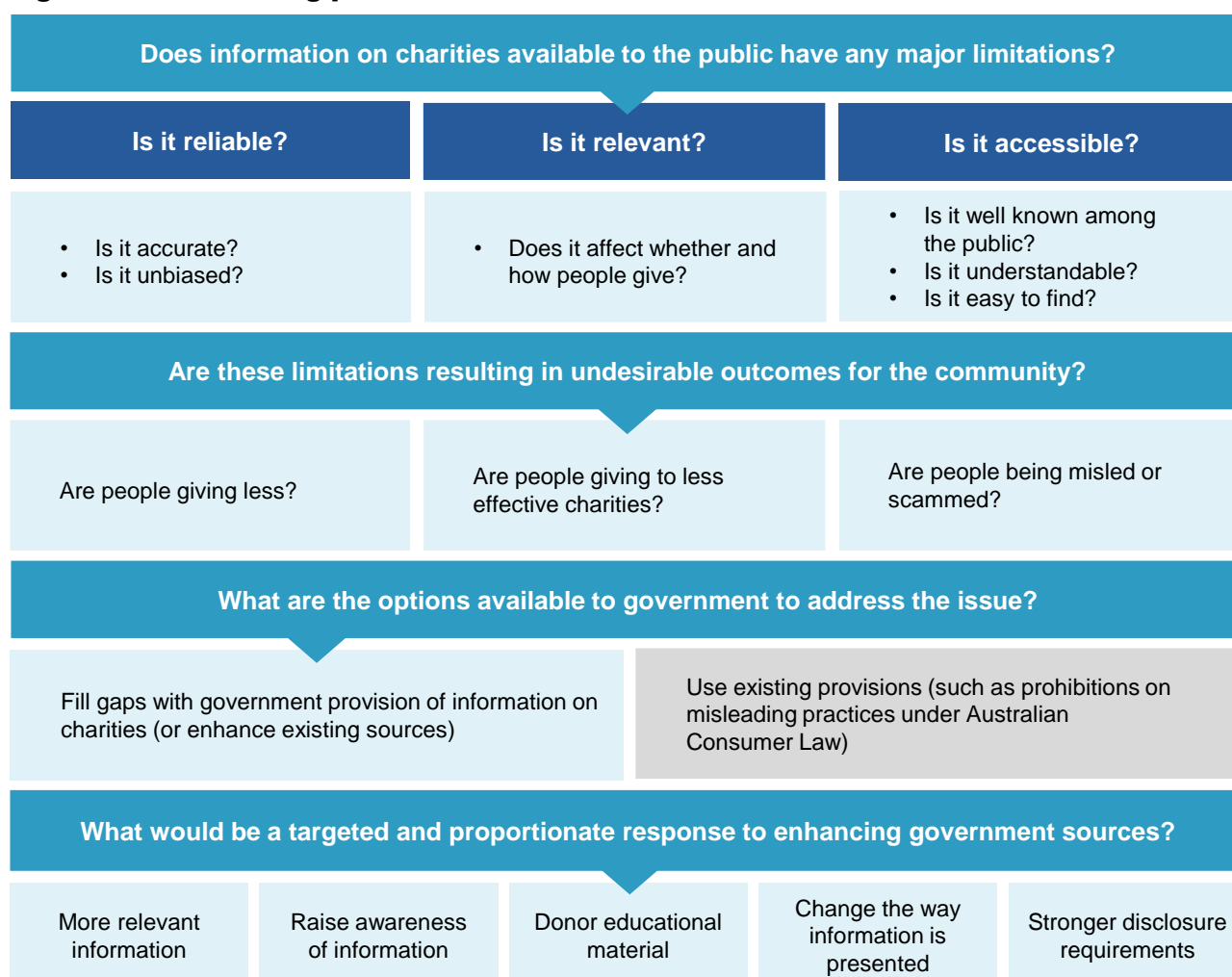
9.3 Assessing public information on charities and giving

The Commission applied the general policy assessment approach set out in chapter 2 to identify opportunities to enhance government sources of information on charities and giving. It sought to clarify:

- whether publicly available sources of information on charities and giving, including from government agencies, have major limitations, such as lack of reliability, accessibility or relevance from the public's perspective
- the extent any limitations in publicly available sources of information on charities and giving result in undesirable outcomes for the community, such as inhibiting giving to charities that provide services that benefit the community
- what type of government response would directly address the source of the problem or limitation (figure 9.3).

In the case of government sources of information on charities and giving, limitations may result from 'regulatory or government failure' and undesirable outcomes can include wasteful public expenditure, or unnecessary compliance costs that are associated with collecting information which few people use.

Measures to enhance publicly available information on charities for donors and the public are considered in section 9.4. Publicly available information on giving, such as corporate giving, volunteering, and bequests is discussed in section 9.5.

Figure 9.3 – Assessing public sources of information on charities^a

a. The questions are illustrative and not meant to be exhaustive.

9.4 Enhancing public information on charities

The ACNC charity register is the main source of information

As the main government source of public information on charities, the ACNC charity register is a natural starting point in considering opportunities for government to enhance publicly available information about charities. It is also a natural starting point for considering opportunities for government to enhance the ability of donors to assess and compare charities based on evidence of effectiveness.





For some people, government sources of public information about charities, including the ACNC charity register and the ATO's information on distributions by ancillary funds, do not promote informed donor decisions and public accountability as well as they could. Concerns raised by participants included:

- **lack of performance indicators that are relevant to giving decisions**, with several participants suggesting government sources overemphasise charities' financial information over measures or indicators of charities' effectiveness in achieving their purpose (for example, EEA and Effective Altruism Australia: Environment, sub. 32, p. 14)

- **inadequate public disclosure of information about the activities of some registered charities**, such as ancillary funds and other giving vehicles (ANZTSR Inc, sub. 174, pp. 4–5)
- **lack of reporting consistency** (Rationalist Society of Australia, sub. 219, p. 5)
- **lack of data accessibility** (Saward Dawson, sub. 81, p. 4), with several participants noting data and information from government sources are not in a user-friendly or machine-readable format, which makes it difficult for donors and others to compare the performance of charities (figure 9.4).

These concerns can be categorised into two groups: those that directly relate to a donor’s ability to assess and compare charities based on effectiveness and those that relate to the public accountability of charities more broadly.

Figure 9.4 – Participant views on limitations of public information on charities from government sources^a

<p>Lack relevance to giving decisions </p> <ul style="list-style-type: none"> • Overemphasis on financial information • Insufficient information on charity effectiveness 	<p>Inadequate public disclosure </p> <ul style="list-style-type: none"> • Data on distributions by ancillary funds lack sufficient detail of benefits to community • Secrecy provisions that prevent the public being informed about actions against charities • Unjustified reporting exemptions (basic religious charities)
<p>Lack reporting consistency </p> <ul style="list-style-type: none"> • Inconsistencies in how charities report information and what they report (such as financial information) 	<p>Lack of data accessibility </p> <ul style="list-style-type: none"> • Databases that are difficult to navigate • Low awareness of information • Difficulties extracting data

a. Some limitations identified in table were raised in roundtables and other consultations.

Sources: Australia and New Zealand Third Sector Research, sub. 174; Centre for Social Impact, sub. 191.

Reporting on ‘effectiveness’ across all charities is impractical

One way to address concerns that publicly available sources of information about charities do not inform donor choice could be for a government agency to collect and publish data on charity effectiveness in a single location.






The government should create an impact-orientated Australian charity evaluator based on international best practices, and widely promote its findings. (EAA and Effective Altruism Australia: Environment, sub. 32, p. 14)

This information would be in addition to information available from non-government sources, including charity comparison websites and charities themselves, which publish information on charity impact for specific causes, such as education programs in developing countries (figure 9.5). In theory, this is a role that the Government could give to the ACNC.

One possible justification for a government agency collecting and publishing data on charity effectiveness is that it could promote efficient and effective giving by helping donors when they are deciding whether to give to a charity, or which charity to give to, by enabling them to consult a single, impartial, comparable source of

information on charity effectiveness. However, while this argument may be attractive at first glance, it ignores some key evidence.

Figure 9.5 – 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).

Evidence that more effectiveness information would influence giving is mixed

The first question when considering whether a government agency should publish information on charity effectiveness is whether information from government sources would improve outcomes for the community. There is evidence that people do not give because they lack information necessary to verify whether a charity is effective. For example, the Giving Australia 2016 (McGregor-Lowndes et al. 2017) report found one in three people (34%) do not give because they were 'unsure where the money would be used', with a similar proportion (32%) of respondents not giving because they were 'unsure money would reach those in need' (chapter 3, figure 9.6).

There is also academic research that suggests providing people with information about charity effectiveness can increase the likelihood of giving (Karlan and Wood 2017) and encourage to give to charities that have the largest impact (Metzger and Günther 2019). For example, a US study examining donor responses to aid effectiveness in a direct mail fundraising found large donors were more likely to donate if the flyer included a paragraph that indicated scientific studies supported the program's effectiveness (Karlan and Wood 2017).

Figure 9.6 – 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: Giving Australia (2017, p. xxii); Global Trends in Giving Report (2020).

However, motivations for giving and not giving vary greatly among the population (chapter 3), and it is unclear that a significant proportion of people would give (or give more) than they otherwise would if presented with information on charity effectiveness. 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 (2020, p. 30) study 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 Giving Australia research (‘unsure money would reach those in need’) (figure 9.6).
- **Some survey results are dated:** The Giving Australia research is now seven years old and may not reflect recent efforts to improve public information on charities, including by government agencies.
- **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 the views such as that money donated to charities would not reach those in need, and whether additional information would convince them to give.
- **Some people may have answered questions in a way that they considered more socially acceptable:** Behavioural research survey results (in general) can be subject to errors arising from participants choosing response options to appear prosocial to the interviewer, or to conform to their self-view (for example, they would rather present themselves as a sceptic than as not caring or selfish) (Brenner and DeLamater 2016, p. 336).

Results from behavioural experiments examining how information on charity effectiveness influences giving are mixed. While behavioural experiments suggest information on charity effectiveness can affect giving in some context, they also suggest it can often have no effect on giving and can even decrease giving (Berman et al. 2018, p. 836).

- In an experiment examining impediments to effective altruism, Berman et al. (2018, p. 836) found 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 personal preference.
- In an experiment examining the relevance of aid effectiveness on charitable giving, Metzger and Günther (2019) found only a minority of individuals make informed donation decisions and donors are often unwilling to pay for information on aid effectiveness.
- In the study examining donor responses to aid effectiveness in a direct mail fundraising experiment, Karlan and Wood (2017) also found people motivated by warm glow (donors who are driven by their sense of self) may respond negatively to appeals based on evidence as it turns off the emotional trigger for giving.

These findings are consistent with broader literature about motivations for giving, which suggest many people give out of emotion 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 so valuable to donors – individual charities do not provide that information. Nor do these studies examine the individual and social benefits and costs of compelling additional information, the extent to which it would increase overall giving (versus changing the mix of giving among existing donors), and the question of how additional information would be conveyed most effectively by regulators.

Donors can access effectiveness information from non-government sources

Many donors already have access to information on charity effectiveness. As noted above, charities have an incentive to publish impact reports to attract donors and 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 (Karlan and List 2020).

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. The purpose of government agencies publishing information about charities is to improve accountability and help inform decisions, and the collection and publication of additional data should only be undertaken where there is clear evidence of a market failure and that it would generate net benefits to the community.

The presence or absence of public information about charities will, in part, also 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 education).

Charity comparison websites with a presence in Australia can be eligible for DGR status, which enables them to receive tax-deductible donations. As with the existing operators of charity comparison websites in Australia, such as The Life You Can Save, new operators seeking to establish in Australia would be able to access and use the data on charities made available by the ACNC and may be able to access government support through eligibility for DGR status.

Costs and technical issues limit the practicality of effectiveness measures

The NFP sector is highly diverse, and how each NFP organisation defines its purpose and measures its success can vary widely. As one director of an NFP organisation observed:

For a not-for-profit, success is having an impact. Every not-for-profit has a mission and success is achieving that mission. It might be finding a cure if you're a medical charity, protecting vulnerable habitat if you're an environmental NGO, or connecting people with jobs through proven employment pathways for social enterprises. (Australian Institute of Company Directors 2018)

Measuring the effectiveness of an NFP organisation can have a range of benefits to the organisation itself and to the public, such as improving services by better understanding what works and what does not work, motivating staff, encouraging more giving and promoting accountability (Australian Institute of Company Directors 2018).

The AASB previously sought to promote more widespread and consistent reporting on effectiveness across charities. In 2015, the AASB released an exposure draft accounting standard which would have required

not-for-profit organisations to report service performance information, including by defining and reporting on measures for effectiveness in delivering outputs (AASB 2015).

However, this and other efforts to require charities to publicly report on their effectiveness in a more standardised way have been subject to criticism from a range of stakeholders, with the ACNC recommending that any additional measures proposed by the AASB should be voluntary (ACNC 2016a, p. 12). The main critiques, echoed by many participants to this inquiry, included:

- the regulatory burden that a new accounting standard would place on charities, particularly smaller charities
- the lack of resources and relevant skills among charities to measure their impacts, particularly smaller charities
- perverse incentives that could result from attempting to develop and report on comparable metrics of charity effectiveness, such as favouring charities with more tangible outputs or short-term outcomes, which can stifle innovation (box 9.2)
- the upfront and ongoing costs to the regulator and the diversion of regulator resources from other activities.

The ACNC Legislation Review suggested that the ACNC and the AASB undertake further work to consider further to the financial reporting framework for registered charities, including potential reporting on service and social performance (Treasury 2018b, pp. 59–60). While the AASB has undertaken further research and consultation to develop service performance reporting for not-for-profit entities including charities and is in the process of developing a project plan, the Australian Government has not made any official announcements about service and social performance reporting standards since the ACNC legislation review (AASB staff, pers. comm., 14 November 2023).

The Commission recognises that there can be benefits to enhancing the quality and comparability of how charities report on their performance, but also notes any additional reporting requirements would place a burden on charities. As noted above, charities already have incentives to provide information about effectiveness to donors, and this information is shared in various ways.

It is noteworthy that governments themselves have had limited success in developing, collecting, and publishing standardised information on the effectiveness of various government services, although there are notable exceptions. For example, the Annual Report on Government Services, which provides information on the equity, efficiency and effectiveness of a limited set of government services (such as school and vocational education, police services and housing) is the result of many years of development and it combines reporting of performance indicators with extensive contextual and explanatory material (PC 2023a).

In practice, there may be other enhancements to the ACNC charity register that may help donors make giving decisions which are much more modest than adopting charity effectiveness measures or publishing full impact evaluations. For example, some donors may value having access to ‘proxies’ of effectiveness or other information to help them make giving decisions such as whether charities:

- have an impact measurement and evaluation framework
- adopt other good governance practices, including compliance with voluntary codes which promote transparency and accountability of outcomes
- that work with Aboriginal and Torres Strait Islander people have Aboriginal and Torres Strait Islander people on their board or staff.

There may be scope to enable the sharing of information, such as the above examples, through the ACNC charity register, in addition to providing other information that donors may find useful, such as whether a charity has DGR status (ACNC, sub. 238, p. 9). The Commission notes in some cases that regulatory impediments may constrain what the ACNC can include on the ACNC charity register (ACNC, sub. 238, p. 9; box 9.3).

To the extent certain good governance arrangements are positively correlated with charity effectiveness or impact, publishing information about whether a charity has specific governance arrangements in place could provide a signal to donors that mitigates the need for effectiveness metrics. However, the extent to which specific types of governance information are good indicators for charity effectiveness in practice is not well understood.

As some of the above information may be available from non-government sources such as ChangePath (figure 9.5), the main benefit from adding this information to the website of a government body such as the ACNC might be that it increases the likelihood a donor will come across the information or it increases the likelihood the donor will use the information because they consider information on a government site as more trustworthy.

Box 9.2 – Why using cost-effectiveness analysis to compare charities is difficult

Cost-effectiveness analysis is an approach to assessing and comparing the merits of different options in which the assessor measures the benefits of different options in terms of outputs rather than dollars. Compared to formal cost-benefit analysis, cost-effectiveness analysis can be a fast and low-cost assessment approach provided it is possible to express the benefits of different options using a common output. However, this assumption does not hold when examining a diverse array of charities. For example, charities can vary widely in terms of:

- **the nature of outputs they produce:** for example, one participant noted that a program that involves taking Aboriginal and Torres Strait Islander children on country can be extremely enriching but may not be as tangible an output as some donors are familiar with (such as number of immunisations)
- **the number of outputs they produce:** some charities provide a range of services and outputs, such that focusing on any one output would provide an incomplete or potentially inaccurate picture of their overall performance
- **the time and scale over which they produce outputs:** for example, some participants noted that biodiversity and conservation outputs 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.

Box 9.3 – Legislative constraints on the ACNC’s publication of information

The ACNC Act requires the ACNC to maintain a public online register of current and former charities. The Act specifies the information to be generally included about all charities, such as name and governing rules, and additional information required about current charities, such as their annual information statements and basic details of their responsible person. The Australian Charities and Not-for-profits Commission Regulations 2022 (Cth) prescribe additional matters that must be included on the ACNC charity register, subject to various conditions, including the size of a charity, its operating locations, beneficiary classes and activities.

ACNC legislation does not expressly provide the ACNC with a general discretion to include other information on the ACNC charity register whether it has been voluntarily provided by charities for that purpose, or the ACNC reasonably believes would further the objects of the ACNC Act. The ACNC has

Box 9.3 – Legislative constraints on the ACNC’s publication of information

stated that it believes that the Act ‘exhaustively’ specifies the information that may be included on the ACNC charity register (this includes the information required by the ACNC Regulations).

Sources: *Australian Charities and Not-for-profits Commission Act 2012* (Cth), ss. 40-1, 40-5; Australian Charities and Not-for-profits Commission Regulations 2022 (Cth), subdivision 40-A; ACNC (2018, pp. 25–27).

Administrative expenses are not an accurate measure of performance

Some participants and recent studies have raised concerns that some donors and other stakeholders can focus on the amount of revenue charities spend on administrative expenses or ‘overheads’, particularly where those are indirect costs that are not attributable to a specific program, when engaging with charities. 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, 11–12; Paul Ramsay Foundation, sub. 234, p. 6; Save the Children Australia, sub. 246, pp. 2–3; Social Ventures Australia, sub. 262).

While they can be a useful input to a more holistic analysis of a charity’s effectiveness, an overemphasis on administrative costs can result in incorrect conclusions about charity effectiveness because they do not account for the nature of the activity that gave rise to the administrative costs (Flack et al. 2014) (draft finding 9.1). For example, two charities might spend 10% of their donations on administrative costs. However, one charity could have spent the money on marketing (such as telemarketing, printing, postage, IT and advertising) while the other spent the money on research and evaluation of programs (so called ‘administration and accountability’). Arguably, the latter case has a more direct link to enhancing service delivery. There are also difficulties with classifying and reporting such expenses consistently, which means that accurate comparisons between charities or across time can be difficult to make.

An overemphasis on administrative costs can also 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. Some suggest these strategies used by some charities can have a compounding effect in that donors can develop increasingly unrealistic expectations about what constitutes efficient expenditure of administrative costs (Goggins Gregory and Howard 2009, p. 50), leading to what is sometimes referred to as a ‘starvation cycle’. According to the ‘Paying What It Takes’ research undertaken by Social Ventures Australia and the Centre for Social Impact, there is evidence that these dynamics are present in Australia (Social Ventures Australia, sub. 262, p. 6; Centre for Social Impact, sub. 191, p. 8).

Studies suggest the charitable sector itself can play a role in addressing these issues, by not seeking to compete for donor dollars on the basis of lower spending on administration costs thereby undermining the capabilities of charities more broadly (Goggins Gregory and Howard 2009, p. 51). For example, charities can articulate the importance of investing in activities that are not directly attributable to programs such as information systems to donors and funders. However, the ‘Paying What It Takes’ research referred to above also points to a need for philanthropic funders in Australia to ensure their funding practices reflect the full

costs of running charities, with the Centre for Social Impact commenting that as ‘a funding source, philanthropy in Australia has not yet evolved to adequately support the true cost of impact’ (sub. 191, p. 8).

It is also important for governments to be mindful of not exacerbating these issues when providing public information on charities, by having a proper understanding of how information may be used or perceived by donors. The ACNC has developed 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’ (2023a).



Draft 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, including standardised quantitative measures, would be impractical and may lead to significant unintended consequences.

There is scope to enhance public information on charities

The Commission is not proposing major changes to the public information available to improve donors’ ability to assess and compare charities based on effectiveness, but there is scope to enhance public information about charities more broadly to improve public accountability.

Participants to this inquiry and earlier reviews have raised concerns that a lack of public information about charities and ancillary funds (which is partly the result of reporting exemptions and exceptions) undermines public accountability. Specific concerns included:

- secrecy provisions that prevent the public being informed about regulatory actions against charities
- exemptions from financial reporting obligations for basic religious charities
- insufficient detail on private ancillary funds
- insufficient detail on distributions by ancillary funds.

The Government is making ACNC investigations into charities more transparent

Secrecy provisions in the ACNC Act generally prohibit the disclosure of information provided by charities to the ACNC except in specific situations, such as the publication of ACNC annual information statements on the ACNC charity register (ACNC Act, subdivisions 150-B, 150-C). One of the effects of these secrecy provisions is that the ACNC is unable to disclose to the public whether it is investigating alleged misconduct by a charity, the outcomes of any investigations, referrals made to another Australian government agency (including a state or territory regulator), or the reasons for revoking the registration of a charity.

Some participants to this inquiry and previous reviews expressed concerns that the constraints that the secrecy provisions place on the ACNC have the potential to diminish public trust in charities. 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.

The Australian Government has recently committed to amending the secrecy provisions in the ACNC legislation to allow greater disclosure of certain regulatory activities. To support delivery of this reform, the ACNC will receive additional funding of \$2.9 million from 2023-24 to 2026-27 and \$600,000 on an ongoing basis (Leigh 2023c). Complementing this, the Commission is also proposing that the Australian Government implement reforms to increase transparency of recommendations given to a charity to address actual or potential non-compliance with their obligations and referrals made by the ACNC to other Australian government agencies, including state and territory regulators (draft recommendation 7.2).

Eliminating the concept of basic religious charities would also help ...

Several participants to this inquiry argued reporting exemptions for basic religious charities are inequitable as they result in charities of a similar size (and risk profile) being subject to different levels of public accountability (Rationalist Society of Australia, sub. 219; Say Sorry, sub. 266). Some considered such exemptions as particularly unnecessary following recent reforms to reporting thresholds for charities, which have the effect of decreasing administrative and cost burdens on many charities in meeting financial reporting obligations to the ACNC.

As outlined in chapter 7, the Commission is recommending that the concept of 'basic religious charity' and associated exemptions should be removed so all charities registered with the ACNC have the same governance obligations and reporting requirements proportionate to their size (draft recommendation 7.1), including publication of information on the ACNC charity register.

... but concerns about public information on ancillary funds remain

As discussed in chapter 8, there are two types of ancillary funds.

- Private ancillary funds are a giving vehicle designed for individuals, family groups or close associates and are not required to invite donations from the public.
- Public ancillary funds are a giving vehicle that invites donations from the public and are typically used by community groups, corporate and community foundations, wealth advisor foundations and as fundraising vehicles, including for individual charities (Williamson et al. 2021, p. 235).

As noted by earlier reviews, deciding whether to disclose information about charities involves balancing a registered charity's or donor's right to privacy and the need to protect public trust and confidence in the sector and ensuring public has access to information about registered charities (Treasury 2021, p. 5). It also requires consideration of how donors may respond to different public disclosure requirements. For example, some donors may give less through an ancillary fund if their donation or identity became public.

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).

An argument against publicly disclosing information is that it can impose added compliance costs on private and public ancillary funds if the information is additional to what the government already collects from the charities they distribute funds to.

Additional counterarguments to increasing public information on ancillary funds, applying mainly to private ancillary funds, are that it 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).

There are opportunities to publish information on ancillary funds at little cost

There are sound reasons why ancillary funds should be subject to greater public disclosure than people making direct donations to charities.

- Ancillary funds (private and public) manage donations that taxpayers have subsidised for the purposes of funding charities that provide benefits to the community.
- Private ancillary funds tend to be closely held entities and there are higher risks that assets could be used for private benefit, including through related party transactions.
- For public ancillary funds, public disclosure also helps protect donors (for example, public information about where public ancillary funds are distributing donations) and can help members of the public determine whether they want to give through a public ancillary fund and also holds trustees of public ancillary funds to account.

There are at least two ways government agencies could publish more information about ancillary funds that would promote public accountability with limited risks or costs to donors and ancillary funds.

The ATO and ACNC should report more information on ancillary fund distributions

Several participants noted public information on distributions by ancillary funds from the ATO does not enable members of the public, such as researchers, to scrutinise whether such funds provide value, in terms of increased giving that benefits the community. For example:

- **the ATO only reports sufficient information to calculate average distributions by ancillary funds.** The ATO reports the aggregate number of ancillary funds, total distributions by funds and net assets held by 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 (chapter 8)
- **neither the ATO nor the ACNC collect or report information on sub-funds within public ancillary funds.** Public ancillary funds are not required to provide any information on sub-funds as part of their annual returns. This means that there is very little data available on sub-funds overall, and it is difficult to understand their role as a giving vehicle. Although public ancillary funds must distribute a minimum amount each year, this only applies at the fund level (chapter 8). 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%.

The Commission is proposing two measures to address these information gaps (draft recommendation 9.1).

- **Present ATO data on ancillary fund distributions in additional ways.** 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 ACNC's Australian Charities Report or the ATO's Taxation Statistics.** 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.

More information on donor and public perspectives is needed

It is important to acknowledge that many participants noted public information on charities and giving has improved because of the establishment of the ACNC (chapter 3). As discussed above, however, there are several ways that the government should enhance the utility of government sources of information, such as the ACNC charity register, to donors and the public.

It is important to understand the information needs of donors and the wider public when determining whether to provide more public information on charities, and how this information is provided.

Although government agencies (such as the ACNC) typically track the number of visits to their websites, they could collect further information about donor and public perspectives on government sources of public information on charities (such as the ACNC charity register) to inform the design of these information sources so they offer more value to the community. Specific areas where there appears to be limited evidence on donor and public perspectives include:

- which cohorts of donors do and do not access the ACNC charity register
- the information needs of those that already access the ACNC charity register
- 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. For example, the ACNC should consider more prominently presenting charities' DGR status on the ACNC charity register (draft recommendation 9.1). This may require the Australian Government to address regulatory impediments to the ACNC presenting more meaningful information on the ACNC charity register.

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 2023, p. 2) found that one in five people were aware of the ACNC charity register (figure 9.7) (draft recommendation 9.1).

Engagement processes that capture the views of donors and the public are a key enabler to improve the ACNC charity register and other government sources of information.

The Commission expects that implementing draft recommendation 9.1 would be relatively low cost for charities and agencies, and would not impose material risks to donor privacy, but welcomes views from participants to inform its final report.

Figure 9.7 – Awareness of the ACNC 2017

Source: ACNC (2017).



Draft recommendation 9.1

Creating more value from the data held by Australian Government agencies

The Australian Charities and Not-for-profits Commission (ACNC) and the Australian Taxation Office (ATO) should work together to enhance the utility of Australian Government sources of information 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 (such as more prominently presenting charities' deductible gift recipient status), where it is enabled to do so by the Australian Government.

The ACNC and the ATO should work together to:

- publish additional information on distributions by ancillary funds, including collecting and publishing additional information by sub-funds within public ancillary funds
- raise public awareness of government sources of information on charities, including the ACNC charity register.

The Australian Government should:

- implement reforms to enable the ACNC to publish circumstances and reasons for referrals made to other government agencies (draft recommendation 7.2)
- address regulatory impediments to the ACNC presenting more meaningful information on the ACNC charity register, where necessary.

Embedding donor and public views in the ACNC's regulatory approach

One impediment to the ACNC being responsive to the perspectives of donors and the public could be real or perceived limits on its legislative responsibilities and mandate. While the purpose of the regulatory system is to help the public understand the work of charities, perspectives of donors appear much less evident in the ACNC objectives, consultation processes and regulatory performance measures, compared to the perspectives of registered 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 Australian Government should provide guidance to the ACNC

The environment in which the ACNC 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. The Commission's draft recommendations 7.1 and 7.2 would give the ACNC more powers to take proportionate action to improve its oversight of charities and be more transparent with the public about the compliance activities it has taken. 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 through a statement of expectations.

Ministers in the Australian Government routinely issue statements of expectations to statutory agencies, including regulators.

Through issuing a Statement of Expectations, Ministers are able to provide greater clarity about government policies and objectives relevant to a statutory authority, including the policies and priorities it is expected to observe in conducting its operation (Treasury 2023).

A statement of expectations issued by the Government on how the ACNC balances the views of charities, donors, volunteers, beneficiaries and the wider public in its regulatory approach would provide important guidance to the ACNC in undertaking its activities. These expectations could relate to:

- how the ACNC resources activities that aim to promote transparency (such as timely review of applications to withhold or remove information from the ACNC charity register)
- how the ACNC weighs up competing interests in its decisions about whether and what to publish about charities (such as whether to grant a request to withhold or remove information from the ACNC charity register)
- the way the ACNC engages with the charitable sector, governments and the public on the structure and the design of the ACNC register. It could also cover the forming of consultative or expert committees (draft recommendation 9.2).

The statement of expectations should clarify that the design of the ACNC charity register should be shaped by research on the information needs of donors of all sizes and the wider public, and how the evaluation of future changes to the charity register should inform its content and presentation.

A statement of expectations could help to refocus the ACNC on the information needs of donors and the broader public, but its capacity to support other functions and activities could suffer if not sufficiently resourced to undertake new areas of work. Moreover, while statements of expectations may provide an imprimatur for the ACNC to take a more assertive regulatory posture to advance the interests of donors and public, its ability to effectively meet these expectations may ultimately be constrained by legislation. For example, there are legislative constraints on what information about charities the ACNC may publish on the ACNC charity register (box 9.3).

The Government would be better placed to consider the need for legislative changes to enable the ACNC to report more data on the ACNC charity register after the ACNC has undertaken further research to clarify the information that donors and public value most when researching a charity on the ACNC charity register.



Draft recommendation 9.2

Embedding donor and public views in the Australian Charities and Not-for-profits Commission's (ACNC) regulatory approach

To provide clarity on how the ACNC balances the views of charities, donors, volunteers and the wider public in its regulatory approach, the responsible Australian Government minister should issue a statement of expectations that sets out 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.

The design of the ACNC charity register should be shaped by research on the information needs of donors of all sizes, and evaluation of the charity register should inform its content and presentation.

9.5 Enhancing public information on giving

Total giving in Australia is worth billions of dollars each year. Despite this, there is little detailed public information on giving aside from tax-deductible donations by individuals. For example, it is uncertain how much charities receive in donations each year from corporate donations, non-tax-deductible donations from individuals, and bequests, respectively. 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 (chapter 3).

Information on giving will play an important role in achieving the Australian Government policy aims of increasing the amount and effectiveness of giving in Australia (chapter 2). Relevant and reliable information enables government agencies to figure out 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.

However, there are costs, trade-offs, and practical limits to collecting more information on giving. Collecting information and publishing data on giving comes at a cost to charities and to taxpayers and can raise privacy issues. Adding questions about giving to existing general purpose government surveys either means there are fewer questions on other topics governments and researchers want to know more about or the surveys become burdensome for respondents and the government agencies administering them.

The following section considers opportunities for government to enhance the quality of public information on giving with respect to two specific areas highlighted in this inquiry: corporate giving and volunteering.

Corporate giving

Corporate giving in Australia is significant but there is little detailed public information about who gives, and to which charities (JBWere, sub. 249, p. 8; Queensland Law Society, sub. 223, p. 2) aside from tax-deductible donations by individuals through workplace giving. A 2016 Australian study estimated that corporate giving – in the form of cash, non-commercial sponsorships, and partnerships – was worth

\$6.2 billion in 2015-16, with cash donations alone making up 35% (the study estimated total corporate giving including non-commercial sponsorships and partnerships to be worth \$17.5). More recent analysis estimated corporate cash donations made up about 40% or \$5 billion donated to charities in 2020. However, the precise value and make up of corporate giving is highly uncertain because many businesses report giving as an expense and do not separately report it to the ATO (chapter 3).

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. 27). This 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 researchers analysing trends on corporate giving, including policy makers who want to better understand the effect of policies to increase giving.

At the entity level, businesses often have strong incentives to publicise their 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. 17). 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)

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 and proactively discloses this information.

The Commission is proposing the government implement two complementary measures to enhance public information on corporate giving.

- Introducing public reporting requirement for corporate giving at the entity or business level (for example, in companies' annual report to shareholders).
- Collecting and publishing aggregated data on corporate giving (for example, the ATO could collect information on giving from companies and then publish this information in Australian Taxation Statistics).

Introduce entity level reporting for giving to increase company accountability to shareholders, employees and customers

The Australian Government should 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 (draft recommendation 9.3). The reporting requirement would enhance the accountability of boards and management of listed companies to company shareholders, employees and others. This reporting requirement would also increase public visibility of the charities that companies support through donations, including volunteering, and by allowing people to compare giving across companies. Increased public visibility of donations by publicly listed companies would also provide scope for non-government bodies (such as advocacy shareholder groups) to aggregate the data across businesses, providing an independent and consistent source of corporate giving data.

There are several ways the Australian Government could implement this disclosure requirement. These include adding a provision into the Corporations Act or prescribing regulations under the Corporations Act

(s. 295 (3)) that financial statements of listed disclosing entities include information on corporate giving. The Commission will examine the merits of different implementation options for the final report.

Collect and publish aggregated data on corporate giving

The ATO should 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 donations by company size, taxable status, and broad industry (draft recommendation 9.3).

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.

The change 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. For example, businesses already have to determine their aggregated donation expenses to entities with DGR status if they want to claim the donations as a tax deduction.

The Commission would welcome feedback on how this draft recommendation could be implemented in a way that minimises costs to those providing the information on donations of money, goods and time to inform its final report.



Draft recommendation 9.3

Introducing 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 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.

Bequests

There is limited public information on how much Australians donate to charities each year through bequests despite considerable interest in the scope to increase this form of giving (JBWere, sub. 249, p. 8). The most widely cited estimates of charitable bequests in Australia 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).

The ACNC collects information on donations and bequests from charities, and a relatively simple way to obtain regular information on bequests would be to separate out the reporting of this information in charities' annual information statement (JBWere, sub. 249, p. 8; Fundraising Institute Australia, sub. 134, p. 13) (draft recommendation 9.4). 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 and nature of bequests to charities in Australia. If implemented with draft recommendation 9.3, this information would also improve understanding

of the overall composition of financial gifts to charities. This approach would also be low cost compared to detailed studies of bequests that involve examining probate records.

The Commission expects the impost on charities of collecting and reporting information on bequests to the ACNC would be relatively modest, but welcomes views from participants. The additional administrative burden on charities would be offset by the benefit they would derive from a national aggregated data set on bequests, which can assist with understanding trends over time, particularly given the expected intergenerational wealth transfer in coming years (chapter 8).



Draft recommendation 9.4 Improving 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 reflected as follows:

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 for the consultation was a major driver for the consultation). The ABS incorporated feedback from the national consultation (and earlier government consultation) into a review of the current methods and scope of volunteering and giving data collection. 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 (box 9.5).

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 2020a). In particular, the 2019 and 2020 GSS include additional questions about informal volunteering, including detail on:

- whether the respondents undertook informal voluntary work in the last 12 months
- 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 and rich public information on volunteering collected through the GSS has improved public understanding of the contribution of volunteering in the community, particularly informal volunteering.

Box 9.4 – Opportunities to enhance volunteering data

Participants to this inquiry and in earlier consultation undertaken by the ABS (2018) have identified several opportunities to further enhance how governments collect and measure volunteering in Australia but have not been implemented yet. These include:

- **motivations for volunteering:** submissions to the ABS review suggested including questions to better understand how motivations differ across different types of volunteering. For example, it was suggested some people who would not normally offer their time and services may engage in 'spontaneous' volunteering in an emergency
- **underreporting and cultural sensitivity:** the ABS review and previous reports (chapter 3) highlighted concerns about the under-representation of groups of people, including those from culturally and linguistically diverse backgrounds and Aboriginal and Torres Strait Islander communities, noting the concept of volunteering and giving mean different things across cultures, so there is a risk of under-reporting of rates for these activities. The ABS (2018) noted 'this topic requires further development and research' and that 'it would require additional funded sample, as the current sample size of the GSS is not large enough to represent characteristics of smaller populations' (ABS 2018)
- **informal volunteering:** the ABS noted a strong theme of its national consultation was that statistics on informal volunteering are a critical data gap and remarked 'In the absence of being able to quantify both formal and informal volunteering, it is not possible to understand the true amount of voluntary activity that people engage in' (ABS 2018). The ABS subsequently viewed its volunteering data and set question for the 2019 GSS to capture both formal and informal volunteering
- **corporate volunteering:** some submissions to the ABS review and this inquiry suggested greater public visibility of corporate volunteering could help normalise a culture of corporate giving but noted that neither the GSS nor the Census ask respondents questions about corporate volunteering
- **past volunteering:** some submissions to the ABS review observed that many people volunteer infrequently (and not every year) and therefore may be excluded from official statistics if they did not volunteer in the previous 12 months from when the survey was conducted (which is every four years for the GSS and every four years for the Census). They suggested the GSS could include additional questions about whether respondents had volunteered more than 12 months ago
- **understanding when people are more likely to volunteer:** some people suggested that asking for additional details on when people volunteered (such as the days of the week or periods of the year

Box 9.4 – Opportunities to enhance volunteering data

people usually volunteer) in the GSS survey could help policy makers and organisation to develop strategies to engage new volunteers

- **out-of-pocket expenses and time:** some people suggested amending the question in the GSS to ask people about how much time they spent travelling to and from their volunteering activities and any out-of-pocket costs incurred, so that government and organisations can better understand the full cost to volunteering and potentially develop policies to address them
- **geography:** some people wanted the ABS to capture more detailed location (i.e. by postcode or statistical area) data to better understand where there is more or less volunteering. The GSS does not capture more granular data by state and territory. The census captures more geographical data as it surveys the entire population but only asks respondents if they had volunteered in the last year.

Sources: ABS (2018); Volunteering Australia (sub. 222).

... but the future of some data collections is uncertain

During consultation for this inquiry, the ABS advised that due to budget and resource constraints, the GSS is not currently on the survey forward work program (pers. comm., 13 November 2023).

Unless there are changes to other ABS surveys, the discontinuation of the GSS would mean there will be no ongoing source of data on:

- informal volunteering rates and activity in Australia
- time spent volunteering (other than the share of time people spend volunteering from the time used survey).

The Government should secure and improve key public volunteering data

Good information plays an important role in developing and evaluating government policies to incentivise giving and volunteering. The Australian Government has a policy goal of doubling giving by 2030 and lent its support to the sector-led National Volunteering strategy, which among other things, aims to improve collection of information on volunteering (Volunteering Australia, sub. 222, p. 15) 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.

The ABS should continue to collect key data on volunteering in Australia, so there is an ongoing and reliable source of information to inform and advance the government's policy goals relating to giving. It should continue to collect data on:

- **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, particularly among Aboriginal and Torres Strait Islander communities and culturally and linguistically diverse communities in which informal volunteering rates appear higher than the population average based on a survey with a smaller sample (Binder 2002; Hendriks et al. 2023, p. 8; Kerr and Tedmanson 2003, p. 67). It may also undermine efforts under the National Strategy for Volunteering 2023–2030 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 severely reduce the usefulness of data in understanding how people respond to policies designed to promote giving.

One way to collect this information would be amending the questions on volunteering in the Census (draft recommendation 9.5).

The ABS should also continue efforts to improve how it collects volunteering data. One longstanding issue to address is developing methodologies to reduce underreporting of volunteering by Aboriginal and Torres Strait Islander communities and culturally and linguistically diverse communities. 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.

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 incentives giving. However, the Commission has not examined the costs and benefits of this option in detail.

While there may be a case for the Australian Government to aid these efforts through additional funding support or facilitating partnerships with other government agencies, more detail on specific proposals would help inform such decisions.

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.



Draft recommendation 9.5 **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 by amending 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).

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. Increasing participation in giving

Key points

- ✳ **Personal income tax deductions have helped increase financial donations to charities, particularly from people who earn a high income, but have not encouraged wide participation in all forms of giving.**
 - While higher income earners (taxable income above \$180,000) accounted for over two thirds of the increase in donations from 2010-11 to 2019-20, people with lower incomes (taxable income below \$100,000) accounted for about 17%. Annually, less than a third of taxpayers make tax-deductible donation to a charity.
 - To the extent the social benefits of giving increase when more people participate in giving of various kinds across the community, government could consider policy to encourage more people to give in different ways.
- ✳ **A public campaign, supported by government, could help broaden participation in giving but there is insufficient evidence to conclude that such an intervention would be effective or produce net benefits.**
 - More evidence is needed, including through rigorous evaluation from Australia or overseas, to assess whether a government-funded campaign would be effective at increasing giving and create net benefits.
 - Governments could maximise the chances of success (and learning opportunities) by ensuring any public campaigns that directly involve taxpayer resources (whether it be a government agency run or a publicly funded sector-led campaign) adhere to basic principles of program design, evaluation and transparency.
 - In considering proposals for campaigns on giving and the government's role and contributions, governments need to consider the extent to which philanthropic groups and charities already have the capacity and incentive to undertake a coordinated campaign on giving independent of government. Taxpayers are already co-investors in the sector's activities by virtue of the deductible gift recipient system.
- ✳ **Strengthening the capacity of Aboriginal and Torres Strait Islander organisations to access philanthropy could advance community empowerment and self-determination.**
 - The Australian Government should support the establishment of an independent philanthropic foundation controlled by Aboriginal and Torres Strait Islander people to enhance the arrangements linking philanthropic and volunteer networks and funding to Aboriginal and Torres Strait Islander organisations.
- ✳ **It is unclear what steps, if any, the government should take to address concerns about the quality of professional advice on philanthropy. The Productivity Commission is seeking further information.**
 - Professional associations could help enhance the quality and availability of professional advice on philanthropy by helping their members access relevant information and training.
- ✳ **Given charities, fundraisers and private businesses have a strong incentive to develop technologies that reduce the time and effort of giving, any role for government is limited.**

Philanthropy can help fill gaps in market and government provision of goods and services to help ensure people are able to access goods and services that promote wellbeing, such as health and education services, and cultural institutions. Philanthropy can contribute more than dollars, assets or time. For example, donors often have specialised skills or networks that enable them to work with charities to help develop innovative ways to deliver services that better meet the needs of the community (chapter 2).

Philanthropic giving can also promote social capital – the value derived from social connections and networks. The act of giving often brings people together to share ideas (such as through giving circles), to pitch in to support a common cause or to connect emotionally. Philanthropy can also contribute to social capital where relationships form between donors and not-for-profit organisations, or between donors and beneficiaries. The way giving contributes to social capital depends on the level of participation in giving within the community and the form of giving (money, goods, services, or time) – that is, the way giving is practised matters, in addition to the amount that is given.

In recognition of these wider social benefits from philanthropy, governments in Australia and overseas use incentives and other measures to encourage philanthropic giving (chapter 2). The main way governments in Australia encourage philanthropic giving is by allowing individuals to claim income tax deductions for donations of money and assets to endorsed entities (chapter 4). Another argument for government support for giving is that it facilitates citizen choice in a democratic, pluralistic society. That is, individuals can reveal their preferences about the causes and services that matter most to them, rather than relying solely on government making centralised decisions about how to allocate public resources. Government support for giving also means taxpayers are indirectly involved in – and provide financial support for – almost all decisions and activities in the charitable sector.

In Australia, the deductible gift recipient (DGR) system sets out the rules governing which entities may receive tax-deductible donations of money or assets. In earlier chapters the Productivity Commission presents draft recommendations to make the DGR system more effective and fairer (chapter 6). It also proposes changes to the regulatory framework governing philanthropy to help maintain donor and public confidence that donations are being used for charitable purposes (chapter 7). If adopted, this suite of recommend changes alone would have a meaningful effect on giving in Australia and should be the main reform priorities for the Australian and state and territory governments (where states need to make legislative changes to their regulatory frameworks to implement the draft recommendations).

Personal income tax deductions for donations to charities have helped increase financial donations, particularly from people who earn a high income. The real value of tax-deductible donations has tripled in Australia over the past two decades. From 2010-11 to 2019-20 (the period for which data on tax-deductible donations by income is available), higher income earners (those with taxable income above \$180,000) accounted for about two thirds of the increase in tax-deductible donations (chapter 3).

Personal income tax deductions have not encouraged wide participation in all forms of giving. Reasons for this include:

- personal income tax deductions only apply to financial donations, so have no direct effect on volunteering (although they can support volunteering indirectly, for example by providing financial support for charities that are primarily run by volunteers)
- some people with low disposable income or on a low marginal tax rate may have less financial capacity or incentive to donate money (people with a taxable income below \$100,000 accounted for about 17% of the increase in tax-deductible donations from 2010-11 to 2019-20; annually, less than a third of taxpayers make tax-deductible donation to a charity (chapter 3)

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- some people give primarily out of emotion or because of social norms or personal values, without considering whether they can or will claim an income tax deduction for the donation, meaning they would have given the same amount to charity in the absence of the income tax deduction
 - some people do not give because they hold negative perceptions about charities or are sceptical their donation will benefit people or the community more generally (chapter 9).

It is important to recognise that a person's giving behaviour often changes over time when considering what these trends in giving mean for policy (chapter 3). For example, after retirement, a person may have more time available to volunteer. Similarly, a person may have a higher disposable income at certain stages in their life, such as when they get a promotion at work, pay off their mortgage, or receive a financial windfall.

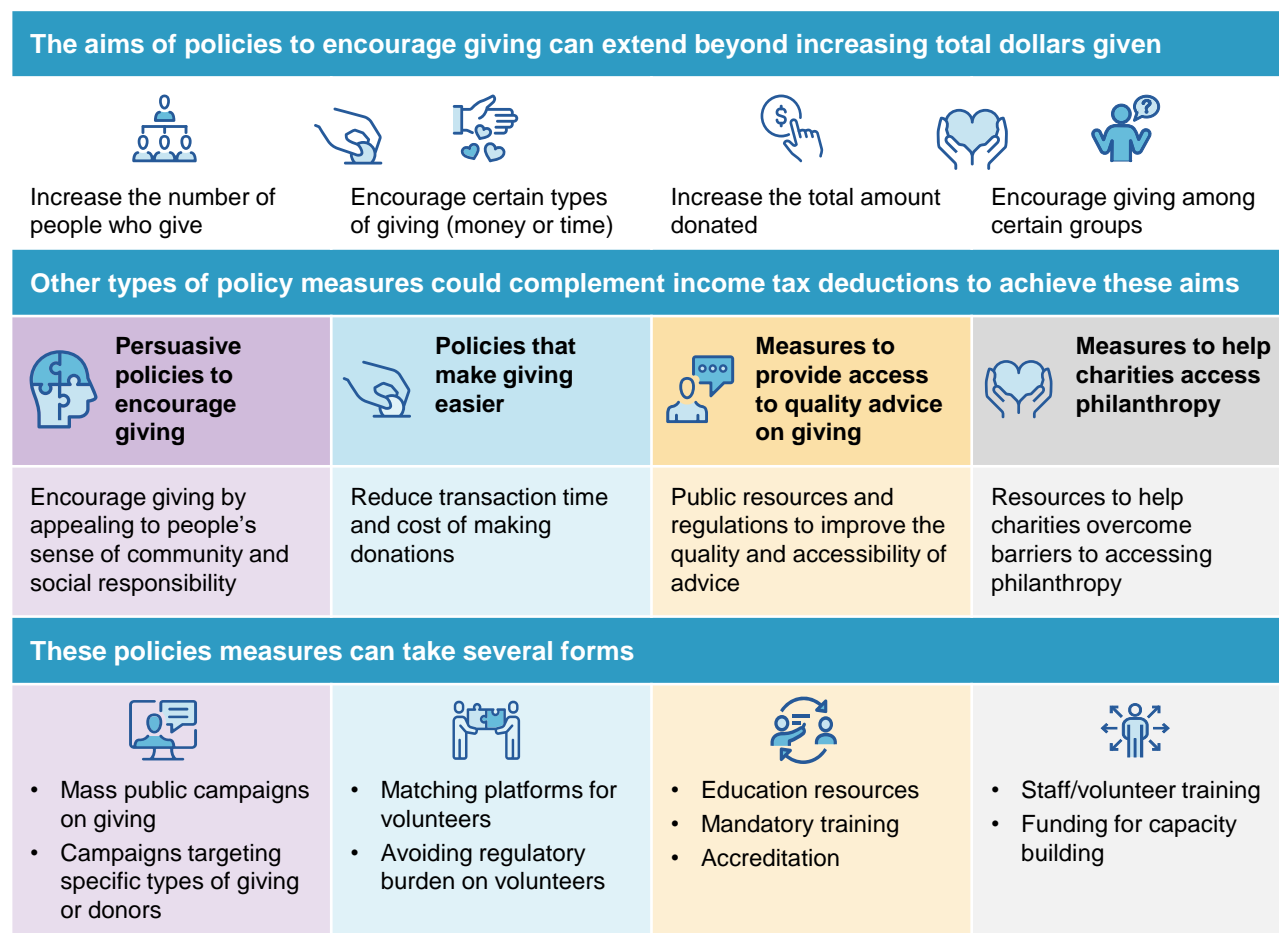
To the extent the social capital benefits of giving would increase if more people participated in different types of giving, not just the *amount* given, government (or the charitable sector itself) could adopt measures that aim to:

- increase participation in giving or the total number of people giving, either across the population or among specific cohorts
- promote specific types of giving that may contribute to social capital in specific ways or improve the quality of giving (for example, fostering personal connections and social cohesion through volunteering or long-term philanthropic relationships between donors and charities can build connections to community; the Maranguka initiative provides one such example (chapter 2)).

The Commission assessed a range of complementary measures to increase participation in giving (figure 10.1) having regard to the principles of good policy design.

Addressing existing barriers to giving will often entail government working with the charitable sector and professional organisations to develop solutions, and in some cases, given existing taxpayer support, the sector and professional organisations playing a leading role rather than government. 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.

Figure 10.1 – Other policies could complement tax incentives to encourage giving



10.1 Suasive policies to encourage giving

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' (chapter 3). Although measures of private giving (as a share of GDP) do not provide the full picture of how much different societies care about social causes, social and cultural norms can play an important role in shaping attitudes toward giving (chapter 3). Two policy initiatives were proposed by participants: a public campaign and behavioural nudges to increase giving.

Public campaigns aim to change behaviour through persuasion

Several participants to this inquiry argued for the government to invest in public information campaigns to encourage giving (Australian Philanthropic Services, sub. 112, p. 4; Perpetual, sub. 254, p. 8; Philanthropy Australia sub. 162, pp. 41–44). Philanthropy Australia (sub. 162, pp. 41–44; supplementary sub. 274, pp. 8–9) noted the effectiveness of similar campaigns in public health, such as the 'slip slop slap' campaign of the 1980s and the Traffic Accident Commission's various road safety campaigns. It also cited public polling that found 65% of the 2,500 people surveyed supported such a proposal.

In addition to mass market campaigns, participants suggested government campaigns specifically targeting:

- high-net-worth individuals and their advisers

- 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. 162, p. 42; Workplace Giving Australia, sub. 175, p. 17)
- charitable bequests (The Smith Family, sub. 216, p. 12).

Public information campaigns are a type of suasive policy. Suasive 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 suasive 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). Suasive policies can use a variety of media, such as print, radio, social media, or television.

Charities also use persuasive strategies (such as public campaigns) to attract donors, including volunteers for their organisation (chapter 9).

Public campaigns can work in tandem with financial incentives and regulations

Encouraging prosocial behaviour that benefits society through suasive policies is akin to what economists sometimes refer to as internalising the uncompensated external costs or benefits of an activity (box 2.1). In this regard, suasive policies can complement or substitute other policy instruments, such as financial incentives and direct 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), suasion (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. Suasive 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).

As with any policy intervention, government needs to weigh the benefits of suasive policies against the 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).

Government agencies in Australia and overseas have funded public campaigns in a variety of policy areas, including in 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) (figure 10.2).

Figure 10.2 – Public campaigns in other policy areas^a

Campaign	Country	Aims	Audience	Role of government	Publicly-available evaluation?
Life. Be in it.	Australia	To increase physical activity and general wellbeing	Victorians and later expanded by the Australian Government	Victorian and later Australian Government funding	No. Survey found 20% responded by taking action
National Tobacco Campaign	Australia	To reduce harm from tobacco use	Changed overtime through effectiveness feedback	Advertising expenditure. Cost of on the ground policy	Yes. Between 1997 and 2003 adult smoking reduced by 3.7% and continued to decline
Cancer Council	Australia	Skin cancer prevention	Targets specific demographics over time (trades people, sun tanning)	Some partnerships and projects with government agencies	No. Melanoma rate in Australian under 40 has been dropping
Don't be a Tosser	Australia	To reduce littering in New South Wales (NSW)	NSW residents and tourists	Multilingual publicly funded campaign and reporting applet	Yes. Helped reduce littering by 43% 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. For 'Life. Be in it.' survey information was only available from a secondary source.

Sources: Australian Geographic (2022); Cancer Council (2020); Cancer Council (2023); Care (2023); NSW Environmental Protection Agency (2023).

Government sponsored public campaigns for giving are uncommon

Government sponsored campaigns to increase philanthropic giving are less common, particularly in Australia (figure 10.3) but overseas examples include:

- Canada's 'My Giving Moment' campaign, which encouraged Canadians to share giving experiences and ideas (using social media strategies favoured by younger Canadians)
- the United Kingdom's 'Big Help Out' campaign, which promoted volunteering across the community
- the United States' 'Combined Federal' workplace giving campaign, which promoted workplace giving to charities (including localised charities) by federal government employees.

The Australian Government is contributing funding for the implementation of the sector-led the *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).

In 2014, former Prime Minister Malcom Turnbull (who was then Minister for Communications) helped launch Workplace Giving Australia's 'one million donors' campaign for workplace giving which aimed to increase workplace giving from a little over 150,000 people to 1 million people by 2020 (Turnbull 2014). In 2002, the Australian Government, through the Australian Taxation Office, 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).

Figure 10.3 – Public campaigns for 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	National multimedia	Government funded	No. Public data show giving reduced in Canada across all demographics despite campaign
Big Help Out	United Kingdom (UK)	To get more people to volunteer	UK public to initially volunteer on national volunteer day	Campaign funded by donations and partnerships	No. Organisers estimated 6 million volunteers on national volunteer day
Combined Federal Campaign	United States (US)	Encourage and make it easy for public servants to donate	US federal government employees	Coordinated by government. Costs deducted from donations	No. Campaign reports indicate program has raised \$8.6b over 60 years. Giving has slumped recently
Toward one million donors	Australia	Increase workplace giving – 1m donors by 2020	Large corporate employers	Endorsement, tax support for workplace giving	No. Public data indicate workplace giving increased by 55,000 to 211,000 by 2020
Perception of Volunteering	Australia	Increase public understanding of volunteering	General public	TBA	Not applicable

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 (2019); Big Help Out (2020); Canda Helps, Environics Analytics and Imagine Canada (2022); Combined Federal Campaign (2023); Governor-General of Canada (2013).

Assessing the case for taxpayer funded giving campaigns

There are arguments for government support for a giving campaign

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 public campaign is likely to be an effective way to address the problem compared with other options

- whether it is possible to design a public campaign that would both increase giving and have net benefits to the community (chapter 2, box 10.1).

In principle, a public campaign on giving arguably satisfies the first two criteria in that it would help address a market failure that means contributions to charitable organisations or to social capital are likely to be ‘underprovided’ (chapter 2). It is also likely to be more effective in encouraging giving than income tax deductions for donations for some cohorts and some types of giving. However, it is less clear whether it is possible to design a campaign to encourage giving that is likely to increase giving and result in net benefits to the community.

Evidence on the effectiveness of campaigns in changing behaviour is mixed

There are examples from Australia and overseas, and in other policy contexts, where public information campaigns have been successful in changing people’s behaviour (figure 10.2). For example, the Australian Government ran a national ‘Life. Be in it’ campaign promoting healthy habits in 1978, following a similar successful campaign in Victoria. A follow up evaluation reported the national campaign found 20% of people surveyed had taken steps to improve their wellbeing in response to the campaign (Australian Geographic 2022).

Many other public campaigns, including those targeting giving specifically, have fallen short of expectations and/or have not undergone formal evaluation (figure 10.3). For example, there is little public information the results of Canada’s My Giving Moment campaign, including whether there has been an evaluation of the campaign. Donations fell across all age cohorts in Canada in the years following the launch of the campaign in 2013 (CanadaHelps et al. 2022, p. 7). While a range of economic and social factors likely explain the decline in giving, and it is possible giving in Canada could have declined even further in the absence of the campaign, the example illustrates the limits of government campaigns in influencing aggregate giving patterns (chapter 3). Similarly, 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 156,000 employees to 211,000 – despite over four million employees being eligible to take part in workplace giving in 2020 (ATO 2019) (figure 10.3).

Box 10.1 – Factors to consider when assessing campaign on giving

In markets for consumer goods, such as cars or mobile phones, business strategies to attract customers include pricing, product or service differentiation, and promotional activities to persuade people that they need the product and that their product is superior to their competitors. Promotional activities can increase a business’s sales by causing customers to switch from its competitors (‘churn’) and/or by attracting new customers.

In the case of philanthropy, charities also use advertising and promotion to communicate the benefits of their activities to the public. These activities can increase their donations by causing donors to switch from other charities or by attracting new donors. Advertising and other forms of promotion, such as partnering with social media influencers, are particularly important for charities because, unlike a commercial business, charities cannot offer a lower price or other financial incentives attract more patrons. For example, the Ice Bucket Challenge involved more than 17 million people who uploaded videos that were watched more than 10 billion times by about 440 million people around the world. High-profile participants included philanthropists and television celebrities (Sohn 2017).

In-principle arguments for supporting giving through a campaign

There are potential spillovers associated with giving, such as contribution to social capital, that provide an in-principle case for government intervention to improve outcomes for the community (chapter 2). The

Box 10.1 – Factors to consider when assessing campaign on giving

Australian Government has also committed to an objective of doubling philanthropic giving by 2030. However, the expected benefits to the community of a government-funded campaign should exceed the costs. Predicting these benefits and costs can be difficult.

Factors influencing the benefits of giving arising from campaigns

As a first step, a campaign is more likely to generate benefits to the community where it encourages 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 even 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).

A campaign is less likely to generate benefits where it results in 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.

Practical challenges designing effective campaigns

Designing a public campaign that would both increase giving and have net benefits to the community would encounter several challenges. These include:

- **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 (DGR and non-DGR), the campaign might focus on them
- **identifying the target audience.** The extent to which different audiences would be responsive to suasive appeals to engage in more giving, particularly by government, may vary and some may even respond negatively
- **choosing the right communication channel.** 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 network, given research indicating large donors view their peers as their most trusted information source (Rosqueta et al. 2011, p. 96).

Costs of campaigns

A government sponsored public campaign on giving would 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 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 in print and broadcast media can entail significant costs. The costs of campaigns

Box 10.1 – Factors to consider when assessing campaign on giving

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.

It is also worth noting that considerations regarding the funding of a public giving campaign are different from those related to reform of tax incentives and regulation, where only the government can act. In the case of a public giving campaign, the philanthropic sector itself could design and fund a public giving campaign using its own resources, indirectly supported by taxpayers via existing tax deductions (subject to receiving any relevant regulatory approvals). Given these alternative possible sources of private and public funding, the evidence base would need to be strong to conclude that government should contribute directly to a public giving campaign, especially if there are other higher priority areas for government intervention. Notably, the Australian Government has established the Australian Centre for Evaluation within the Treasury (Leigh 2023a), whose objectives include working with other agencies to improve the quality of impact evaluation across Australia.

Sources: Leigh (2023a); Sohn (2017); Rosqueta, Noonan and Shark (2011).

More successful public campaigns have common features

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 (such as the Traffic Accident Commission's various road safety campaigns targeting young drivers over recent decades)
- 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 (box 10.2).

Conversely, suasion 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) (figure 10.4).

Box 10.2 – Appealing to sense of self dominated altruism 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. ‘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 sending people a postcard that appealed to their sense of self 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 decision 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).

2014 campaign encouraged Alaskans to donate a portion of the dividend they received from the state’s oil production revenues

Researchers randomly assigned 541,000 people into **three groups**

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 sense of self 	<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 control group Average donations 20% larger control group 	<ul style="list-style-type: none"> Negligible increase in giving compared with control group







Sources: Li et al. (2019, p. 841); List et al. (2021).

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 consequence when designing a behaviour change policy or campaign (UK GCS 2021).

Figure 10.4 – When public campaigns are more successful and when they are not

Campaigns that influence behaviour have several common features					
 Clear audience	 Clear message	 Credible source	 Tailored message	 Integrated	 Sustained effort
<ul style="list-style-type: none"> Clearly defined 	<ul style="list-style-type: none"> Required clear action 	<ul style="list-style-type: none"> Trusted Relevant 	<ul style="list-style-type: none"> Appeals to values and tastes 	<ul style="list-style-type: none"> Supported by ground measures 	<ul style="list-style-type: none"> Message repeated over time
Examples					
<ul style="list-style-type: none"> Teen p-plate drivers 	<ul style="list-style-type: none"> Slip, slop, slap campaign 	<ul style="list-style-type: none"> People with direct experience of trauma 	<ul style="list-style-type: none"> Highlight personal satisfaction 	<ul style="list-style-type: none"> Policies to reduce family violence 	<ul style="list-style-type: none"> Successive traffic safety campaigns
Campaigns that do not have these design features are more susceptible to risks					
<ul style="list-style-type: none"> Message does not resonate with audience 	<ul style="list-style-type: none"> Superficial or tokenistic compliance 	<ul style="list-style-type: none"> Appeals seen moralistic or manipulative Entrenches behaviour 	<ul style="list-style-type: none"> Target audience ignores message 	<ul style="list-style-type: none"> Deflects attention from structural issues 	<ul style="list-style-type: none"> Behaviour change is transient

Effective public campaign design is challenging and requires managing risks

Even when governments follow good practice, designing public campaigns that change behaviour is inherently challenging even for government agencies working in policy areas where campaigns are common and had the most success, such as public safety and health. Positive campaigns (which aim to change behaviour by appealing to desirable consequences) can differ greatly from negative campaigns (which aim to change behaviour by pointing to undesirable outcomes). 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 among certain cohorts that 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 because people become desensitised. A study of 'compassion fatigue' by Kinnick, Krugman and Cameron (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). Yet another example of this comes from a study that found a breast cancer prevention message emphasising the need for women with a family history of breast cancer to have regular mammography created a false sense of security among women who did not have a family history of breast cancer (Lerman et al. 1990).

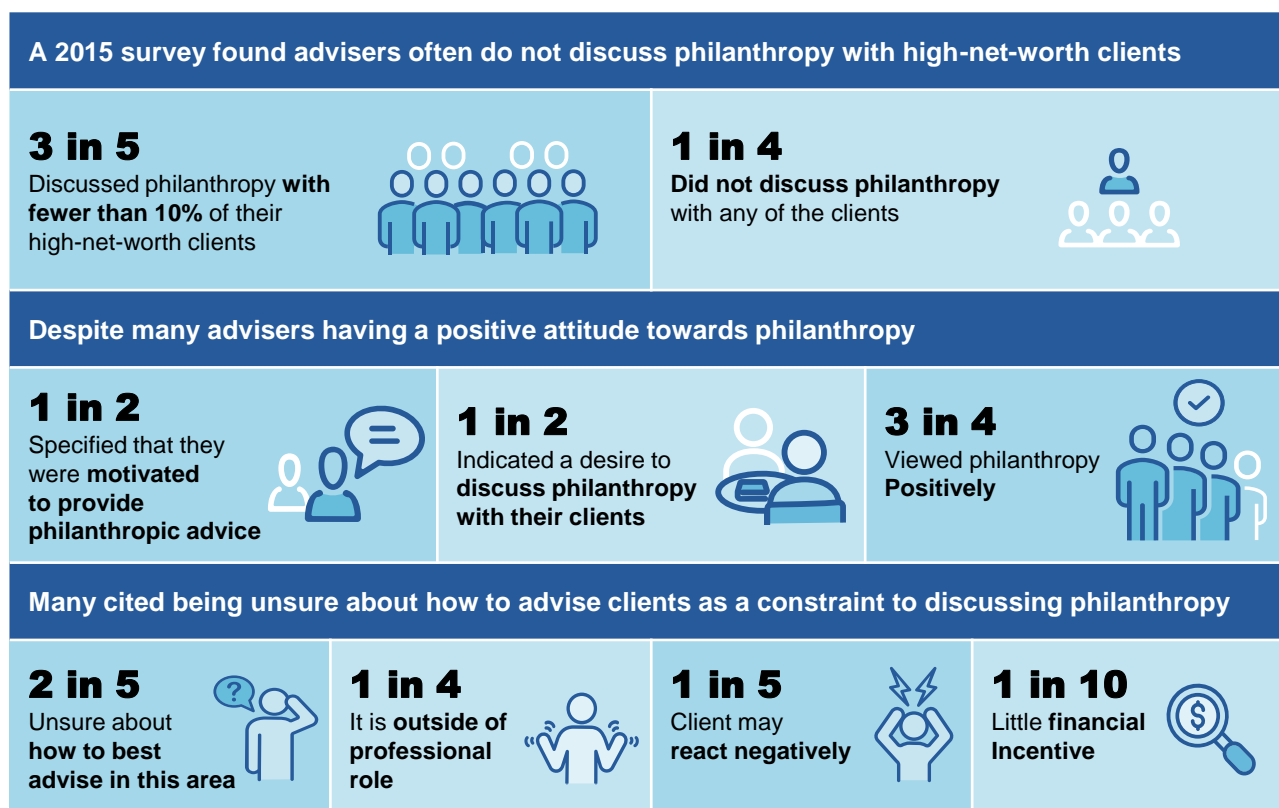
These challenges and risks are likely to be even greater when designing a public campaign to promote giving, particularly given such campaigns would be something novel for the Australian Government in this context. For example, little is known about how the likelihood of someone giving would change if the messenger was the government (as opposed to their favourite or well-known charities). A French study found 61% of people thought businesses who 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 itself.

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. For example:

- **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 (chapter 3). A potentially more effective way for government to increase workplace giving would be to focus on ensuring that individual 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
- **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 have viewed philanthropy positively (three in four) and indicated a desire to discuss giving with the 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 will respond negatively (one in five) (Figure 10.5). 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 the 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 negative personal attitude toward philanthropy. The role of advisers is discussed further below.

Figure 10.5 – Results from 2015 survey on advisers of high-net-worth individuals^a



a. Sample was 250 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, Scaife, and Boldeman (2016).

Some proposals (such as the initiative under the National Volunteering Strategy to ‘Reshape the Public Perception of Volunteering’) currently lack sufficient detail to form a preliminary judgment about their likely effectiveness.

These are the Commission’s preliminary views on some specific proposals raised in consultations. It welcomes further information and evidence on these and other options for a government funded public campaign to increase giving.

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 (draft 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.

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 activity that would have occurred without support with no additional benefit to the community. Taxpayers are already co-investors in the sector's activities by virtue of the DGR system.



Draft 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 also 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 10.3). One proposal was for the Australian Government to prompt taxpayers to donate when lodging their income tax returns (Philanthropy Australia, sub. 162, p. 23).

While nudges to encourage people to give are commonplace among businesses and charities, the use of nudges among governments agencies, such as the Australian Taxation Office (ATO) for this purpose would be novel and relatively untested. The nudges that are effective in increasing giving in the context of a purchasing decision, or a charity's fundraising website, might not necessarily 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.

A common reason why people make one-off tax-deductible donations to a charity (including at the financial end of 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 that cannot reliably predict their tax position a year in advance.

Use of nudges by the ATO to increase giving may also raise ethical issues (box 10.3). 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). It is possible that taxpayers may resent being asked to donate by a government body, particularly in the context of a compulsory interaction related to taxation, and 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 may not be a priority relative to other system changes.

Box 10.3 – 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, including in a roundtable on the policy implications of behavioural economics (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)
- using social-proof heuristics, 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)
- 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 at retail outlets).

Who uses nudges?

Governments in many countries use behavioural insights and nudges to induce changes in behaviour. The NSW Government set up a ‘Nudge Unit’ in 2012 to provide behavioural insights to public policy. In 2016, the Australian Government formed the Behavioural Economics Team of Australia (BETA). BETA’s (2022, p. 5) nudging experiments have included a workplace giving trial in 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).

Are nudges effective and efficient?

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 statistical 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 is no evidence that nudging would have any effect. Dhami (2016) and John (2018) provide thorough overviews of the field.

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 suggest

Box 10.3 – What are behavioural nudges?

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).

Ethicists have contemplated nudge theory and its ethical implications. For example, some critics of nudges are concerned that they are manipulative and some are concerned that they can be used for illicit ends without concern for the interest of the person being nudged or concern for imposing ethics on an individual who may have a different idea of what is good (Schmidt and Engelen 2020, pp. 7–8).

Difficulties that people can encounter opting out of subscriptions (that might use nudges) have also raised concerns about consumer protection.

A counterview is nudges preserve people's rights to freely choose whatever option they like, but that the nudge is 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'.

Sources: BETA (2022); Dhimi (2016); John (2018); Li et al. (2019); List et al. (2023); Maier et al. (2022); Mertens et al. (2022); PC (2008), Weimer (2017); Schmidt and Engelen (2020); Viscusi (2022).

10.2 Measures to improve access to philanthropy

Accessing philanthropy is harder for some charities

Access to donor networks and donor awareness affect fundraising capacity ...

A charity can adopt a range of approaches to fundraising (chapter 3) and, depending on its fundraising strategy, an organisation's ability to access donor networks, such as groups of high net worth donors with personal connections to each other or philanthropic foundations, 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.

The ability of a charity to attract donations can also depend on its ability to establish awareness, and develop relationships with the public. For example, many Australians provide ongoing support to their favourite charity or causes for many years through donation subscriptions or annual events. In return, a charity may provide donors with regular updates on their various projects, including tangible examples of how donations are used and their effects on outcomes.

Where a charity develops a relationship and 'brand awareness' among donors (large or small), it can provide funding certainty for the organisation and avoid the costs associated with attracting new donors. To the extent that these networks lead to the same set of donors regularly giving to the same organisations over

time, they can create a culture of giving (chapter 3). Several participants highlighted the important role of ‘word of mouth’ recommendations among donors, and relationships with donors to attract funding.

... and some charities face challenges in this regard

Some charities likely have a significant advantage when it comes to accessing large donor networks and conveying information to donors. 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), access to donor networks, and connections with donors. 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).

The Commission heard from participants that the time, costs, and capabilities associated with attracting philanthropy, such as applying for DGR status, accessing pro bono services and meeting donor reporting requirements, are often very challenging for small charities (Centre for Social Impact, sub. 191, p.10; FRRR, sub. 149, p. 13).

Some participants noted smaller charities encounter difficulties accessing large donor networks or foundations.

It makes us as a small organisation really hard to get our foot in the door, particularly when they’ve 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 2022, p. 17)

... 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)

Others highlighted 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 PTY LTD, 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)
- provide services or support causes that donors or the public are less familiar with or are aware of (such as community-led responses in Aboriginal and Torres Strait Islander communities). This lack of familiarity can manifest in fewer donations or in donors seeking to apply conditions to the funding (such as onerous reporting obligations) that risk undermining the outcomes they are seeking to achieve. Charities, beneficiaries and communities may be unwilling to engage with philanthropy for this reason (chapter 2).

Participants suggested governments could assist not-for-profit (NFP) organisations, including charities, access philanthropy by:

- providing funding or resources to increase an NFP organisation’s capacity to fundraise from private sources
- coordinating training or events to help NFP organisations identify and access philanthropic networks
- establishing procurement rules that require Australian Government entities to consider providers’ current and future pro bono activities. One participant noted this type of arrangement is already in place when

Australian Government agencies determine which legal service provider to engage for particular purposes (AGD 2022, p. 14)

- requiring ancillary funds to distribute a certain proportion of funds to specific types of NFP organisations, such as Aboriginal and Torres Strait Islander organisations
- funding capacity building activities (such as training or events) to help NFP organisations identify and access philanthropic networks.

Assessing measures to help NFP organisations access philanthropy

Governments support NFP organisations through direct and indirect assistance in recognition of the wider benefits that NFP organisations can provide to the community. This support includes allowing individuals to make tax-deductible donations to registered charities, regardless of the charity size or location in Australia.

In some cases, governments have provided additional targeted support to assist specific organisations to access philanthropy. For example, Creative Partnerships Australia (formerly known as ArtSupport, and recently subsumed within the newly established government arts funding body Creative Australia), 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 (2012, p. 29).

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 has also supported the establishment of bodies that assist with connecting certain organisations and communities to philanthropy. For example:

- the **Foundation for Rural and Regional Renewal (FRRR)** is the only 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, FRRR connects common purposes and funding from government, business and philanthropy with the genuine local needs of rural people and places. FRRR provides funding and capacity building support to 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** assists schools to engage with philanthropy, and was established following a recommendation from the Review of Funding for Schooling (Gonski et al. 2011, p. xxviii; Australian Schools Plus, sub. 108).

The case for providing additional assistance to specific types of charities depends on whether such measures could result in more efficient or equitable outcomes by correcting for a market failure. In this context, more efficient or equitable outcomes could involve increasing the total amount of giving or by improving the 'quality' of outcomes, by redirecting existing giving from some entities to others.

Even where assistance to specific types of NFP organisations is justified in principle, there is a question of whether assisting them to access philanthropy is the best solution (as opposed to addressing the policy goal by changing other policies affecting NFP organisations, such as government funding arrangements).

One possible rationale for additional measures to assist specific types of NFP organisations access philanthropy would be where it would advance other policy goals by facilitating better outcomes for the particular parts of the community that these organisations serve. One example is where strengthening the

capacity of Aboriginal and Torres Strait Islander organisations to access philanthropy could advance community empowerment and self-determination.

Barriers accessing philanthropy for Aboriginal and Torres Strait Islander organisations

The Commission heard that some Aboriginal and Torres Strait Islander organisations are interested in attracting more philanthropy but can face barriers accessing the networks and resources that can facilitate access (box 10.4). Barriers 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 (Centre for Social Impact and Jumbunna Institute for Indigenous Education and Research 2022, p. 11; Cortis 2017, pp. 816–817; Cultural and Indigenous Research Centre Australia 2016, p. 59).

Research by the Centre for Social Impact and Jumbunna Institute for Indigenous Education and Research (2023) includes the following perspective from a survey participant:

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. (p. 16)

Several Aboriginal and Torres Strait Islander organisations highlighted that a drawback of accessing conventional forms of philanthropy include the time and costs of finding donors who understand and respect what the organisation is trying to achieve as well as the aspirations, priorities and needs of Aboriginal and Torres Strait Islander communities (Cultural and Indigenous Research Centre Australia 2016, pp. 56–59). Some Aboriginal and Torres Strait Islander organisations noted that they have chosen not to receive funding due to some donors imposing their own agenda or unwieldy reporting requirements (chapter 2). Another participant from the survey notes:

Connections with new funders also take up a lot of time- we’re constantly trying to upskill funders and having to change conversations based on their cultural awareness. (Centre for Social Impact and Jumbunna Institute for Indigenous Education and Research 2023, p. 13)

A history of dispossession and negative experiences with western philanthropic institutions means some Aboriginal and Torres Strait Islander people can be wary of some donors. As part of its engagement for this inquiry, the Commission heard that some Aboriginal and Torres Strait Islander organisations may be less willing to interact and engage with philanthropy due to cultural competency issues or perceptions of power imbalances, trust deficits, or perceptions regarding historic injustices (chapter 2). A survey by the Centre for Social Impact and Jumbunna Institute for Indigenous Education and Research found that almost 67% of grant recipients felt that their values are incompatible with that of the funding body and therefore do not apply for funding (Centre for Social Impact and Jumbunna Institute for Indigenous Education and Research 2023, p. 14).

A 2018 report commissioned by the ACNC showed that only 4.7% of giving vehicles (such as ancillary funds and charitable trusts) included Aboriginal and Torres Strait Islander people as a specific beneficiary group (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, pp. 816–817). The Paul Ramsay Foundation commented on the low levels of philanthropic funding contributed 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. 4)

Giving overall will increase in coming years, including through giving vehicles such as ancillary funds, and some of this may flow through to Aboriginal and Torres Strait Islander communities. However, challenges engaging with philanthropy may continue if the approach of donors – even when they seek to support

Aboriginal and Torres Strait Islander people – is not aligned with what Aboriginal and Torres Strait Islander organisations and communities want or need.

When philanthropic funders work with Aboriginal and Torres Strait Islander communities in a manner that respects their autonomy, this can create long-term trusting relationships that lead to better outcomes. Shifting the approaches of philanthropic funders requires changing the informal norms and conventions that shape relationships in this context, moving toward what the Fellowship for Indigenous Leadership has referred to as ‘respectful and culturally aware relationships’ in the context of philanthropy (Fellowship for Indigenous Leadership 2018, p. 2).

Box 10.4 – What the Commission heard about obstacles to Aboriginal and Torres Strait Islander organisations accessing philanthropy

During engagement for this inquiry the Commission heard a range of obstacles to Aboriginal and Torres Strait Islander organisations accessing philanthropy. These include:

- the complexity of setting up a charity and obtaining DGR status
- barriers to building and sustaining relationships with funders due to limited access to the social networks connecting them with the philanthropic community, resources and lack of awareness of funding opportunities available compared to other charities
- often invisible additional workloads associated with donor expectations that they undertake advocacy for Aboriginal and Torres Strait Islander people regarding cultural safety or how services should be delivered in communities (Centre for Social Impact and Jumbunna Institute for Indigenous Education and Research 2023, pp. 12–15)
- 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 (Centre for Social Impact and Jumbunna Institute for Indigenous Education and Research 2023, p. 17)
- 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.

Sources: Centre for Social Impact and Jumbunna Institute for Indigenous Education and Research (2022, 2023); Centre for Social Impact (sub. 191, pp. 9–11); Cortis (sub. 127).

Addressing barriers to philanthropy could advance other policy commitments

Working with large donors or philanthropic organisations will sometimes not align with the values and interests of organisations that support Aboriginal and Torres Strait Islander communities or Aboriginal and Torres Strait Islander people themselves. Where it does, however, strengthening the capacity of Aboriginal and Torres Strait Islander organisations to access donor networks could contribute to key government policy commitments to Aboriginal and Torres Strait Islander people under the National Agreement on Closing the Gap. For example, strengthening capacity to access donor networks could support a stronger community-controlled sector.

The benefits of strengthening the capacity of Aboriginal and Torres Strait Islander organisations reflects their comparative advantage in providing culturally safe and effective services. The Commission's draft report on the Review of the National Agreement on Closing the Gap notes:

Aboriginal community-controlled organisations (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 knowledge, and have stronger ties to the community. This would suggest that government service outcomes for Aboriginal and Torres Strait Islander people and communities can benefit substantially from the involvement of ACCOs. (2023b, p. 39)

Philanthropic partnerships have proven successful in meeting community aspirations

There are examples where philanthropy has helped deliver better outcomes for communities, compared with 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 in doing so meet community needs (Cultural and Indigenous Research Centre Australia 2016, p. 56).

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. For example, the Indigenous Peoples Resilience Fund is 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. Joint philanthropic ventures allowed the pooling of funding to bring both tangible and intangible 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).

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, NSW. The initiative is a First Nations community-led place-based model of justice reinvestment – that redirects resources that would be spent on incarceration back into the community (KPMG 2016, p. 42) (chapter 2). Philanthropic funding enabled the community to try innovative approaches that have provided positive outcomes in their community (in particular, to family strength, adult empowerment and youth development), leading to changes in government approaches (KPMG 2018, p. 25).

The Maranguka initiative represents a fundamental shift away from how service and justice systems have previously operated in the region to an adaptive, flexible funding model that enabled community control and influence through a partnership. An independent impact assessment of the Maranguka initiative showed it reduced pressure on the justice system, resulted in an increase in retention rates for students in year 12, generated economic benefits for the community and provided savings to government (KPMG 2018, p. 6).

Developed in response to the service system consistently delivering poor outcomes, community-led decision making approaches recognise that members of the community are best placed to identify their needs and determine the interventions that might be most impactful. (KPMG 2018, p. 30)

The Maranguka initiative demonstrates the benefits of building empowering networks and creating trusting relationships with philanthropy. This is a form of social capital (Adler and Kwon 2002; Woolcock 2001), with philanthropic funding supporting self-determination of Aboriginal and Torres Strait Islander communities.

There is an opportunity for more communities to be empowered to further their goals and ambitions through engagement with different sources of philanthropy.

An Aboriginal and Torres Strait Islander philanthropic foundation

In principle, philanthropy can (and should) support the goals and ambitions of Aboriginal and Torres Strait Islander communities. However, the Commission heard that the approaches of some philanthropic funders may not suit the aspirations, priorities and needs of Aboriginal and Torres Strait Islander communities.

To address the barriers that Aboriginal and Torres Strait organisations face in accessing philanthropy, 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. The 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 from government (draft recommendation 10.1).

The purpose of the foundation would be to enhance the arrangements linking philanthropic networks and funding to Aboriginal and Torres Strait Islander organisations. The objective of its establishment would be to strengthen the ability of Aboriginal and Torres Strait Islander communities to direct how and where resources are allocated – it would enable Aboriginal and Torres Strait Islander communities to self-determine outcomes in line with their priorities and aspirations.

While the design of the foundation should be led by Aboriginal and Torres Strait Islander people, the foundation's mandate and functions would be specifically focused on addressing barriers to Aboriginal and Torres Strait Islander people accessing and benefiting from more philanthropic giving. This would be achieved by:

- strengthening the capacity of Aboriginal and Torres Strait Islander communities to build partnerships with philanthropic networks, including to access volunteering networks
- supporting new and existing giving vehicles that are led by or support Aboriginal and Torres Strait Islander people
- administering grants programs to fulfill these functions.

The Commission has developed a set of principles that could help guide the operation of the foundation.

- **The foundation should complement rather than duplicate or substitute for existing programs and commitments for the benefit of Aboriginal and Torres Strait Islander people.** Funding the establishment of the foundation would not absolve governments of their responsibilities and commitments to enhance outcomes for Aboriginal and Torres Strait Islander people through other programs that strengthen outcomes important to the rights, wellbeing and quality of life of Aboriginal and Torres Strait Islander people. A concern with government programs is the potential to 'crowd out' (or substitute for) initiatives already undertaken by non-government organisations. The foundation's mandate would help mitigate this risk. In addition, governance arrangements would be necessary to ensure that the foundation does not duplicate the roles and responsibilities of other bodies, including government agencies.
- **The foundation should support a diversity of Aboriginal and Torres Strait Islander organisations and communities across Australia.** Ideally, the foundation should support the diversity of Aboriginal and Torres Strait Islander organisations (new and existing) and Aboriginal and Torres Strait Islander communities in Australia. Implementing this principle would require further engagement and guidance on how available resources are prioritised. For example, experience from Canada suggests prioritising different local community needs have posed significant challenges for Indigenous philanthropic foundations (Sidorovska 2020, p. 5). Further, it may require understanding whether some types of Aboriginal and Torres Strait Islander organisations face larger barriers than others. Aboriginal and Torres Strait Islander communities engage in philanthropy in many different ways, such as the Koondée Woongagat Toor-rong First Nations philanthropic fund based in Victoria (Koondée Woongagat Toor-rong 2021).

The foundation would be able to support and amplify existing initiatives, and in doing so, it would build on the work of organisations which have sought to change philanthropic funding practices to ensure they support self-determination of Aboriginal and Torres Strait Islander people, such as Woor Dungin.

- **The foundation should collect and publish information on its activities to facilitate learning about what works, with an evaluation of the foundation after five years of operation.** Transparency and public reporting about the foundation's activities would have broader benefits to the community and the charitable sector. 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 funding practices, as well as government approaches. Undertaking a five-year evaluation would similarly ensure that insights can inform the ongoing role and approach of the foundation, supporting it to fulfil its functions and mandate into the future (draft recommendation 10.1, box 10.4).
- **The foundation could fund any Aboriginal and Torres Strait Islander organisations that provides services that benefit Aboriginal and Torres Strait Islander people.** One of the key roles of the new foundation would be to support Aboriginal and Torres Strait Islander organisations and communities to build networks with philanthropy, to facilitate access to new forms of philanthropic funding that can be used for different purposes compared to government funding. It would be able to support any Aboriginal and Torres Strait Islander organisations organisation in furtherance of this objective.

The draft recommendation for an Aboriginal and Torres Strait Islander philanthropic foundation is intended to empower more communities to further their goals and ambitions through engagement with different sources of philanthropy. The Commission is seeking participant input and feedback to further shape this proposal and on other options for supporting Aboriginal and Torres Strait Islander organisations to engage with different sources of philanthropy (information request 10.1).



Draft recommendation 10.1

Establishing an Aboriginal and Torres Strait Islander philanthropic foundation

The Australian Government should support the establishment of an independent philanthropic foundation controlled by Aboriginal and Torres Strait Islander people.

The foundation would focus on strengthening the capacity of Aboriginal and Torres Strait Islander communities to build partnerships with philanthropic and volunteering networks, and supporting new and existing Aboriginal and Torres Strait Islander giving vehicles. It would be able to administer grants programs to fulfill these functions.

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.



Information request 10.1

Supporting charities to engage with different sources of philanthropy

Some charities may face greater challenges accessing philanthropy because of their size, location or the nature of their services. The Commission is seeking information on possible measures to assist charities to access philanthropy.

- Examples of government-funded programs in Australia or overseas that help charities access philanthropy or volunteer networks, and any related evaluations.
- The role of intermediaries, such as community foundations, and opportunities to enhance this role.
- What additional support governments could provide to help charities access philanthropy or volunteer networks, and the reasons why this support is needed.
- Further ideas and perspectives on options to support Aboriginal and Torres Strait Islander organisations that are seeking to access philanthropy, where they wish to do so, including feedback on draft recommendation 10.1.

10.3 Measures to improve access to quality professional advice on philanthropy

Professional advisers, such as accountants, lawyers and financial advisers, are a key source of legal and financial knowledge for millions of Australians.

- 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 can result in for example super bequests to charities.
- Financial advisers issue advice on financial products and household financial planning which could include donations.

Advisers can play a key role in helping potential donors acquire information on:

- different options for giving, including more novel approaches, such as living bequests, and the pros and cons of each
- 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.

Some participants raised concerns about the availability of quality advice on giving (Australian Philanthropic Services, sub. 112; Advancement Network, sub. 178). These concerns ranged from instances of advisers giving incorrect advice, ranging from 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 not raising philanthropy with their client because they were 'unsure of how to offer advice in this area' (Crittall et al. 2016, p. 32).

One participant said options for addressing these concerns include 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 (Perpetual Trustees, sub. 254).

Based on existing evidence, it is unclear what steps, if any, the government should take to address concerns about the quality of professional advice on philanthropy. Regulations mandating standards or training relating to professional advice on philanthropy would appear to be a disproportionate response that is unlikely to result in net benefits.

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 investing in these skills as a low priority because they think these skills are unlikely to be relevant to existing clients, increase the amount of business they can attract or fees they can charge. That only a small proportion of advisers have the confidence to advise on philanthropy (or other specialist areas) is not necessarily a problem that should be resolved by government. If the government were to mandate training in philanthropic giving for advisers, it could mean many advisers would not use these skills and have less time to obtain generalist or specialist skills that they are more likely to use in their jobs. Also, advisers that do want to specialise can already access an internationally recognised accreditation scheme relating to philanthropy, such as the Certified Fund-Raising Executive certification.

Even if further evidence were to reveal a problem with the quality of professional advice, the Government should consider non-regulatory options in the first instance. For example, the Australian Government could engage with professional associations to see whether there are opportunities for them to enhance the quality and availability of professional advice on philanthropy by helping their members access relevant information and training. A 2015 survey of professionals who advise high-net-worth individuals suggests the types of information on philanthropy advisers would value include information packs and guides (about 70% of advisers who were surveyed), case studies (about 70%) and formal training sessions (about 50%) (Crittall et al. 2016, p. 38).

The Commission would welcome evidence of regulatory or other barriers that prevent professional advisers entering the market to provide advice on different options for giving or prevent people accessing that advice.



Information request 10.2 **Accessing professional advice on philanthropy**

The inability to access high-quality professional advice on philanthropy could prevent some people from identifying giving opportunities or making decisions that align with their preferences. The Commission is seeking information on professional advice on philanthropy.

- Evidence that people who use professional financial services would value and are willing to pay for professional advice on philanthropy, but are unable to source that advice.
- Information on specific regulatory or other impediments (if any) to people accessing advice on philanthropy and ways to address them.
- Evidence that an inability to access professional advice is materially affecting giving or resulting in harm to donors.

10.4 Policies to make the act of giving easier

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 also little evidence that donors and volunteers face high transactions 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 or searching for more information about a particular charity, before they give. The Commission has made draft recommendation that will help alleviate these other administrative and transactions costs associated with giving.

- Draft recommendation 7.5 recommends Australian, state, territory and local governments 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 (chapter 7). Avoiding unnecessary regulatory burdens on volunteers could reduce the time and effort they incur when offering their time to work with charities.
- Draft recommendations 9.1 recommends the Australian Charities and Not-for-profits Commission and ATO improve government sources of information on charities and giving for donors and the public. User friendly public information about different charities' activities reduces the search 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 options in detail.

Appendices

A. Public consultation

The Commission has actively encouraged public participation in this inquiry. This appendix outlines the consultation process and lists the individuals and organisations who have participated to date.

- Following the receipt of the terms of reference on 11 February 2023, advertisements were placed in The Australian and The Koori Mail, and a call for submissions was released on 23 March 2023.
- The Commission received 275 submissions prior to the release of the draft report (table A.1) and 74 brief comments. These submissions and brief comments are available online at <https://www.pc.gov.au/inquiries/current/philanthropy>
- 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 and table A.3). The Commission engaged with Aboriginal and Torres Strait Islander organisations and people and sought to reflect their perspectives on philanthropy.
- The Commission welcomes further submissions on the content of the draft report, including responses to the information requests, and draft findings and recommendations.
- Public hearings will be held in February 2024. Further details on registering for hearings and making submissions can be found on the inquiry website.

The Commission would like to thank everyone who has participated in the inquiry to date.

Table A.1 – Submissions

Participants	Submission no.
3arc Social	272
A New Approach (ANA)	102
Academy of Root Development (Australia) Incorporated	043
Adams, Grace	039
Advancement network (UQ; Uni Adelaide; ANU; UoM; Monash; UNSW; Uni Sydney; Uni WA)	178
AgForce Queensland	237
Alannah & Madeline Foundation	047
ALLFED Australia	095
Anderson, Benjamin	005
Anglicare Australia	125
Animal Defenders Office	184
Animal Liberation NSW	163
Animals Australia	183
Anura, Aravindh	120
APT Travel Group	227
Aruma Disability Services	187
Associated Christian Schools (ACS)	092
Association of Australian Medical Research Institutes (AAMRI)	091
Association of Heads of Independent Schools of Australia (AHISA)	070
Atlassian Foundation Australia; Atlassian Foundation International Limited; Pledge 1%	048
Australian Academy of Science	230
Australian Associated Press (AAP)	244
Australian Charities and Not-for-profits Commission (ACNC)	238
Australian Communities Foundation	100
Australian Competition and Consumer Commission (ACCC)	153
Australian Council for International Development (ACFID)	242
Australian Council of Social Service (ACOSS)	263
Australian Environmental Grantmakers Network (AEGN)	258
Australian Federation of Disability Organisations	193
Australian Institute of Company Directors (AICD)	139
Australian International Development Network (AIDN)	143
Australian Land Conservation Alliance (ALCA)	226
Australian New Zealand Third Sector Research Association (ANZTSR)	174
Australian Philanthropic Services Limited	112
Australian Red Cross	235
Australian Schools Plus	108
Australian Technology Network of Universities (ATN)	132
Australians Investing in Women (AIIW)	271
Bailey, Kirsten	059
Baptist Care Australia	152
Barber, Isabella	013
Barnes, Heather	180

Participants	Submission no.
BDO	205
Blackburn, Kyler	135
Blyth, Matthew	168
Boundless Earth	253
Boyd, James	056
Brazilek, Jasmine	062
Broeren, Zac	025
Bukowski, Jessica	275
Business Council of Australia (BCA)	252
Carrasco Reyes, Martin	151
Catholic Social Services Australia Ltd (CSSA)	089
CatholicCare Sydney	142
Centre for Corporate Public Affairs	210
Centre for Social Impact	191
Chamberlain, Sophie	240
Charities for Impact	028
Chen, Po-chia	035
Chiu Chong, Mark	204
Christodoulides, Natalie	150
Christodoulides, Peggy	195
Clarke, Kathryn	207
Coalition of Animal Welfare Charities	109
Colman Education Foundation	190
Community Council for Australia (CCA)	218
Community Foundations Australia (CFA) and Philanthropy Australia (PA)	273
Community Gardens Australia	209
Community Industry Group	093
Community Information and Support Victoria (CISVic)	214
Confederation of Australian Sport (CAS)	049
Conley Wright, Prof Amy	265
Conrade, Josephine	073
Consumer Policy Research Centre (CPRC)	105
Corker, Helen	066
Cortis, Natasha	127
Council for Advancement and Support of Education	124
CPA Australia and Chartered Accountants Australia and New Zealand	123
Creative Partnerships Australia	140
Croakey Health Media	129
D Mello, Gloria	079
D'Agostino, Remy	198
Dao, James	024
Darcas, Christine	154
Dawn Wade Foundation	087

Participants	Submission no.
Debono, Fabian	069
Delaney, Oscar	014
Deng, Steven	042
Dezarnaulds, Kate	011
Dias, Astrella	159
Dimos, Alexandra	200
East Gippsland Community Foundation	103
EdConnect Australia	054
Educate Plus Ltd	133
Effective Altruism Australia (EAA) and Effective Altruism Australia: Environment	032
Equity Trustees	259
Eyre Peninsula Community Foundation Inc	097
Fairer Future	141
Farm Animal Rescue	046
Felice, Sophie	002
Flack, Edmund	019
Floreat Uniting Church Creative Living Centre	076
Foundation for Rural & Regional Renewal (FRRR)	149
Foundation SA	164
Fowler, Mark	268
Freeman, Luke Kevin	009
Fukazawa, Rickey	166
Fundraise For Australia	185
Fundraising Institute Australia	134
Future Generation Companies	118
GoodCompany	084
Grant Thornton Australia	157
GrantFamily Philanthropy	137
Grew, Samuel	021
Griffith Business School	212
Group of Eight Universities	213
Ha, Krystal	023
Haddad, Sandra	107
Hall, Matthew; Guo, Yuki; Kober, Ralph; Pucci, Richard; Thambar, Paul; and Wiegmann, Leona	116
Happy Valley Community Association Inc	189
Harriott, John	033
Harris, Clare	156
HeartKids Limited	094
Henry, Courtney	030
Herodes, Ellie	196
Hesp, Benjamin	148
Honig, Daniel	177
Humane Research Australia Inc (HRA)	034

Participants	Submission no.
Humanists Victoria	220
Independent Schools Australia (ISA)	250
Indigenous Business Australia	130
Inner North Community Foundation	231
International Campaign to Abolish Nuclear Weapons (ICAN Australia)	044
International Women's Development Agency (IWDA)	077
Intrepid Foundation	086
Jain, Arshia	147
Jamali Pour, Soroush	040
JBWere	249
Jesuit Social Services	165
Justice Connect	269
Kassler, Michael	080
Kerwick, Carmel	050
Khan, Dr Aila	027
King, Kasey	160
Kirkpatrick, Liam	020
Latham, Isaac Gough	003
Law Council of Australia	255
Lawrence, Sean	026
Lawson, Dr John	229
Leighton, Laura	104
Lewis, Charles	016
Lewit-Mendes, Lucas	052
Liang, Chelsea	138
Limbada, Yusuf	038
Lipman, Johann	015
Lishman, Manisha	167
Local & Independent News Association	136
Local Community Services Association (LCSA)	188
Long, Dr Brendan	228
Lord Mayor's Charitable Foundation	106
Luketic, Annabel	017
Marshall, Michael	029
Marty, Tom	010
McBeth, Kai	203
McGregor, Bruce and McGregor, Ann	247
McNamara, Kel	022
Medical Association for Prevention of War	051
Mercy Works Ltd	060
Merrilees, Sue	144
Minderoo Foundation	270
Mission Australia	061

Participants	Submission no.
More Growth Pty Ltd	202
Mulik, Dr Roopa	169
Murray, Assoc Prof Ian	206
Name withheld	006
Name withheld	041
National Automotive Leasing and Salary Packaging Association	257
National Catholic Education Commission (NCEC)	224
National Museum of Australia	145
Neal, Chay	194
New South Wales Young Lawyers Animal Law Sub-Committee	241
Noble Ambition	131
O'Brien, Jack	012
Office for the Arts	251
Olive, Justin	071
Ong, Jenna	179
O'Riordan, Joshua	053
Our Community Pty Ltd	186
Ovarian Cancer Research Foundation (OCRF)	114
Paewai, Tesni	208
Parris, Daniel	182
Paul Ramsay Foundation	234
Perpetual	254
Philanthropic Consulting Services	248
Philanthropy Australia (PA)	162, 274
Public Interest Journalism Initiative (PIJI)	192
Publica	055
Queensland Law Society (QLS)	223
Raise Foundation	245
Rassool, Kevin	211
Rationalist Society of Australia Inc.	219
Research Australia	122
Riemenschneider, Johannes	007
Rowland, Jennifer	088
Royal Flying Doctor Service (RFDS)	126
Rudloff, Jake	115
Rudstead, Simon	057
Saeri, Alexander	067
Salazar, Killki	045
Save the Children Australia	246
Saward Dawson	081
Say Sorry	266
Seedling Giving	236
Selle, Gaetan	008

Participants	Submission no.
Sherburn, Nathan	098
Silver, Dr Natalie	260
Slattery, Peter	037
Smith, Scott	031
Social Ventures Australia (SVA)	262
Sonti, Tharun	176
South Australian Council of Social Service (SACOSS)	083
South West Community Foundation (SWCF)	215
Southern Youth and Family Services	072
St Vincent de Paul Society National Council	082
StartGiving	090
Steady Advisory	264
Strive Philanthropy and GivingLarge	119
Stronger Charities Alliance	121
Surf Life Saving Australia	099
Sutton, Dr Michael J	101
SynergyWorks Consulting	065
Tandy, Max	170
The #FixFundraising Coalition	261
The Achieve Foundation	232
The Animal Law Institute (ALI)	267
The Australia Council for the Arts	243
The Australian Sports Foundation	197
The Clem Jones Foundation	171
The Foundation for Young Australians	128
The Funding Network Australia (TFN)	075
The Ian Potter Foundation	173
The Long Game Project	001
The Myer Foundation	221
The Nature Conservancy (TNC)	225
The Salvation Army	117
The Smith Family	216
The William Buckland Foundation	063
thepeopleproject institute	085
Thompson, Kramer	181
Tones, Matthew	068
Tones, Megan	096
Townsend, Michael	036
Trust for Nature	233
Umbrazunas, Paul	058
UNICEF Australia	172
Uniting Church in Australia - Synod of Victoria and Tasmania	161
UnitingCare Australia	074

Participants	Submission no.
University of Technology Sydney (UTS)	256
Vegan Australia	239
Volunteering Australia	222
Volunteering Victoria	110
Volunteering WA	064
Wade, Dr Matt; Filo, Assoc Prof Kevin; Hookway, Dr Nicholas and Palmer, Prof Catherine	199
Watkins, Ethan	146
Watkins, Kieren	078
Weinert, Dr Kim and Topp, Damian	113
Wettenhall Environment Trust	217
Wilcher, Sophie	155
Willshire, Simon	201
Wise, Caitlin	158
Workplace Giving Australia	175
World Animal Protection Australia	111
Wu, Maxine	004
Zeleznikow-Johnston, Ariel	018

Table A.2 – Consultations

Participants
Aboriginal Executive Council (AEC)
Alannah & Madeline Foundation
Asylum Seeker Resource Centre
Aurora Education Foundation
Australia and New Zealand Third Sector Research (ANZTSR)
Australian Accounting Standards Board (AASB)
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 Institute of Company Directors (AICD)
Australian Philanthropic Services
Australian Red Cross
Australian Securities & Investments Commission (ASIC)
Australian Taxation Office (ATO)
Australians Investing in Women (AIIW)
Barraket AM, Prof Jo
Benevolent Society
Boyd, James

Participants

Bryan Foundation

Business Council of Australia (BCA)

CAGES Foundation

Centre for Social Impact

Chapman, Assoc Prof Cassandra

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)

Department of Social Services

Department of the Prime Minister and Cabinet

Dusseldorp Forum

Equity Trustees

Ferguson, Alister

Financial Services Council

First Australians Capital

First Nations Futures

Fitzgerald AM, Robert

Fowler, Mark

Franklin, Jason

Fundraising Institute Australia

GiveOUT

GoFundMe

Griffith Business School

JBWere

Jumbunna Institute for Indigenous Education and Research

Justice Connect

Justice Reform Initiative

Koondee Woonga-gat Toor-rong

Koorie Heritage Trust

Langford, Prof Rosemary

Law Council of Australia - Charities and Not-for-profits Committee

Leigh MP, Hon Dr Andrew

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

O'Connell, Prof Ann

Participants

Office of the Registrar of Indigenous Corporations (ORIC)
OzHarvest
Paul Ramsay Foundation
PayPal Giving Fund Australia
Perpetual
Philanthropy Australia (PA)
Pride Foundation
Public Interest Journalism Initiative (PIJI)
Queensland Department of Justice and Attorney-General
Ramsay AO, Prof Ian
Research Australia
Robinson AM, Anne
Save the Children Australia
Schools Plus
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 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, Assoc 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

Telethon Kids Institute

University of Western Australia (UWA)

11 September 2023 Western Australian not-for-profit academics

Belyea, Dalveen

Feenan, Clare

Flatau, Prof Paul

Participants

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

Fogarty Foundation

Fremantle Foundation

Gratia Australia

Philanthropy Australia

Rowley Foundation

Spinifex Trust / Impact100 WA

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 the deductible gift recipient (DGR) system – which lowers the price of giving – changes a person’s giving behaviour. Taxpayers can claim a 100% tax deduction when they give \$2 or more to entities with DGR status, which means the price of giving incurred 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 given in Australia.

There are at least two ways the Productivity Commission could examine the effect of the DGR system 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 the charity’s tax-deductible status, controlling for changes in marketing and fundraising strategies, and the quality and characteristics of the services they provide.

The Commission used the first strategy and Australian Taxation Office (ATO) longitudinal data to examine how Australian taxpayers respond to tax deductions for giving by calculating values for price and income elasticity. The draft report provides preliminary estimates of how people are likely to respond to incremental policy changes associated with tax-deductible giving (chapter 4 and chapter 5), although these estimates have some limitations. In particular, the Commission acknowledges there are likely to be model specifications that better address the number of non-givers and better distinguish the effect of price and income on giving. Further work is underway to improve the reliability of the Commission’s elasticity estimates, and various models will be presented in the final report.

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 a reliable measure of the quality and characteristics of the services they provide.

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 ATO has released a longitudinal taxpayer dataset called ALife, 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's preliminary estimates show that if a taxpayer gives \$100 and had \$50,000 of disposable income (holding all other factors constant):

- a 1% decrease in the price of giving is associated with an increase of giving between 87 and 92 cents
- a 1% increase in disposable income is associated with an increase of giving between 55.5 and 56.4 cents.

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. The **price elasticity of giving** and the **income elasticity of giving** can be estimated through modelling, examining changes in how much taxpayers claim in gift deductions. However, the effects of a significant expansion of DGR status or changes to DGR eligibility by charitable purpose cannot be estimated because of data limitations.

Generally, studies have found that price elasticity of giving is negative and that the income elasticity of giving is positive: that an increase in the price of giving – including a reduction in the deduction rate for giving – tends to reduce the amount of giving and that people who have a higher income tend to give more (Peloza and Steel 2005). 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 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 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.

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 (Peloza and Steel 2005, p. 262).

If elasticities for specific groups do vary significantly, such as by level of income, this would be a valuable input into further discussions about the design of the tax deduction for giving.

The price elasticity of giving and the concept of treasury efficiency

The price elasticity of giving also determines **treasury efficiency** – the relationship between forgone tax revenue and additional giving induced by the tax deduction, assuming no other behaviour (by government or taxpayers) change. If the price elasticity of giving is greater than one, then the increase in giving more than offsets the financial cost of the tax deduction and the tax deduction is said to be treasury efficient (box B.1).

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

Why and how is the price elasticity of giving relevant for analysing changes to the DGR system?

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.

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 the response of individuals who give nothing to a change in the tax price.

Deriving the treasury efficiency from the tax price elasticity

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 this 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*.

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.

Box B.1 – Tax-price elasticity and treasury efficiency

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:

$$\left. \frac{\partial g}{\partial \theta} \right|_{\theta=1} \times (1 - \theta t) - gt = \frac{\partial g}{\partial(1-t)} \times (-t) \times (1-t) - gt$$

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:

$$\epsilon_{INT} < -1$$

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.

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.

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.

Box B.2 – Income and substitution effects for giving

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
- the income effect induces *less* giving (assuming giving is a normal or luxury good where giving increases with income, all else being held constant).

Income effects are likely to be important. Empirically, the Commission found that those 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.

Key assumptions and limitations of the Commission's estimates

While the availability of longitudinal taxpayer data means that the Commission can estimate elasticities with greater confidence compared to the existing literature (further discussed in section B.2), there are limitations in using these estimates to model changes in taxpayer behaviour if DGR eligibility were to be expanded significantly or if the tax deduction were to be changed by introducing matched giving or a tax credit.

The Commission's estimates also do not distinguish between mass giving and giving that involves structured giving vehicles, such as ancillary funds. Ancillary funds can introduce a time lag between tax deductions – which can be claimed upfront – and distributions, which can occur in the future (chapter 8). As such, future distributions may be affected regulatory changes, such as changes to the minimum required distribution rate to charities each year, which these elasticity estimates cannot anticipate. Some gifts, such as artwork, may be subject to capital gains tax concessions, the value and effect of which cannot be modelled using available data.

Many of the limitations discussed below flow from the tax return form for individual taxpayers only including one field for tax deductions associated with gifts. The ATO does not require individuals to itemise separate transactions or to list who they gave to or what the method of giving was.¹

Elasticity estimates are not applicable to all giving

ALife data does not include giving to charities that do not have DGR status which includes many crowdfunding platforms, a growing source of fundraising.

Some giving to charities that do not have DGR status can be tax-deductible if the gift is made through an intermediary charity with DGR status. This is known as auspicing. Examples of these arrangements include the Australian Government's Australian Sports Foundation and the Cultural Fund (chapter 5).

¹ Field D9 on the Tax return for individuals 2023 form (ATO 2023).

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.

Similarly, ALife also does not distinguish between the method of giving – whether a taxpayer donated through a private ancillary fund, public ancillary fund, charitable trust or otherwise – because it is not a field on the tax return for individuals. People who use giving vehicles, like ancillary funds, are likely to consider how those giving vehicles are regulated, because such regulations affect decisions about how much to give and which organisations to give to. For instance, there is a minimum distribution rate each year, which may alter how much initial capital is injected into an ancillary fund (chapter 8).

ALife data does not distinguish between donations of money and donations of other assets, which may be subject to some form of capital gains tax. For example, some gifts, such as cultural artefacts, are exempt from capital gains tax under the Australian Government's Cultural Gifts Program (ATO 2023c).

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 before government transfer payments, which may be necessary to accurately estimate the effective marginal tax rates associated with taper rates for transfer payments.²

B.2 Estimating the price and income elasticity of giving

What is the ALife dataset?

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. The current release, ALife 2020, released in mid-2023, provides unit-record personal income tax data from 1990-91 to 2019-20 and individually linked superannuation records from 1996-97 to 2019-20.

Construction of ALife dataset: sampling and retention

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 from superannuation member contribution statements and self-managed superannuation fund annual returns. 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

² ALife cannot distinguish between private or public income sources for a taxpayer.

(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 relevant financial year, gender, residential geographic 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 model

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 (OLS) 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 US data (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 (chapter 4). Comparing international estimates of price and income elasticity estimates with Australian estimates can be vexed, given differences in tax frameworks – for example, whether giving is subsidised through a simple 100% tax deduction, matching or rebate schemes – and social norms relating to giving.

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: -0.30 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.	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

	Model	Price elasticity of giving estimates	Income elasticity of giving estimates
	Includes individual and time fixed-effects		
Hickey et al. (2023)	Quantile regression	-1.9 with the price elasticity of giving varying significantly across the income distribution	No estimates calculated

For the draft report, the Commission has used a log-log model with Australian panel data. The Commission intends to use an intensive margin approach similar to that in Almunia et al. (2020) in the final report (more detail below).

Challenges of estimating the price and income elasticity of giving

Where possible, the Commission has addressed estimation challenges – some improvements will also be made in the final report. Estimation challenges include some omitted variable bias, distinguishing between price and income effects of giving, the high number of zeroes in the dataset and inaccurate reporting. The Commission has addressed some omitted variable bias and endogeneity issues in the draft report modelling. Modelling for the final report will seek to better address omitted variable bias, endogeneity of the price and giving, but inaccurate reporting of donations cannot be addressed.

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 cause areas of DGR-eligible entities 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) and time factors that do not vary across individuals (using time fixed effects). For example, a variable that varies across individuals but not across time could be a taxpayer’s innate views towards giving (assuming the individual does not change their mind on charity over time). A variable that varies across time but not across individuals could be the presence of natural disasters in Australia.

However, other omitted 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 value of giving.

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 regression model. The Commission’s preliminary method adopts this approach, though this measures the marginal price of giving with more error. 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 effects³

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 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, because tax rates are itself an input into the price of giving. The Commission plans to adapt the approach used by Almunia for the final report.

High number of zeroes in dataset

Some taxpayers may have made tax-deductible donations but chose not claim a deduction for giving on their tax return. 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 model specification in the draft report does not account for the high number of zeroes in the dataset, but the Commission will investigate more appropriate models in the final report to address this.

Inaccurate reporting by taxpayers may affect estimates

Some people may have made donations that would be eligible for a tax deduction but chose not claim the deduction for it in their tax return. Similarly, some taxpayers may not have made a donation but falsely claim that they have or claim more or less than the donation they have actually made. However, there are no other available Australian datasets that the model can be run across to compare elasticity values.⁴

Methodology

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. 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 by using the R package *grattan* 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 tax payable.⁵ 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 amount payable.

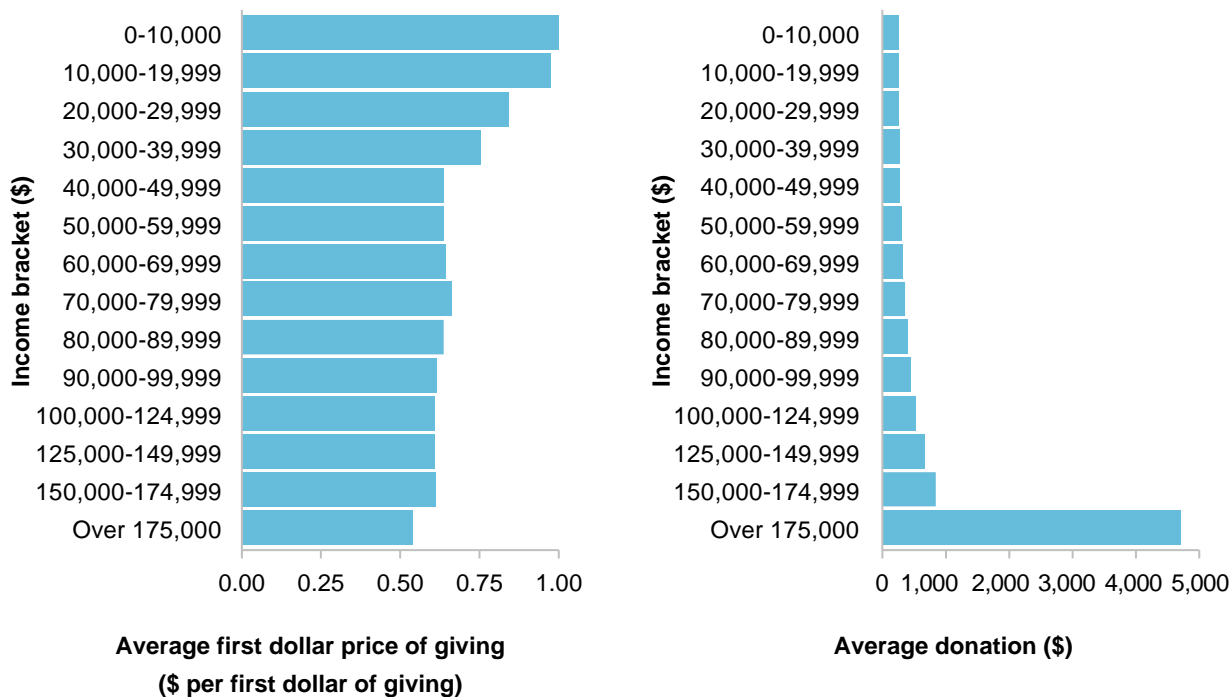
Broadly, people with a higher income tend to have a lower first-dollar price of giving – reflecting their higher marginal tax rates – while also having a higher average donation (figure B.1).

³ Such changes include the introduction of the Low and Medium Income Tax Offset and the temporary budget repair levy.

⁴ Some banks may have transaction data for giving through electronic transactions. However, such datasets are unavailable for analysis given privacy concerns.

⁵ The package is maintained by a former Grattan Institute employee.

Figure B.1 – The average first-dollar price of giving 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.

Basic log-log model

The basic **log-log model** regresses the first-dollar price of giving on quantity donated taking income as exogenous using the following equation:

$$\ln(g_{it}) = \epsilon_{INT} \ln p_{it} + \eta_{INT} \ln(y_{it}) + \delta_i X_{it} + \alpha_i + \alpha_t + u_{it},$$

Where g_{it} is a person i 's donations at time t , ϵ_{INT} is the intensive tax-price elasticity of giving, p_{it} is the 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 taxpayer characteristics contained in the vector X_{it} are the person's age, occupation, place of residence (coded to SA4 level) and spouse's taxable income (table B.2). These variables were used across all the models discussed in this paper.

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.

Table B.2 – Variables and parameters

Variable or parameter	Description
g_{it}	Value of gift deduction for taxpayer i , at year t , inflated to 2019 prices
ϵ_{INT}	Price elasticity of giving
p_{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 an SA4 level (with Capital Region as the reference SA4)
a_i	Individual fixed-effects corresponding to taxpayer i
a_t	Time fixed-effects corresponding to year t

The analysis uses 2010 to 2019 financial year data, excluding the effects of COVID. The Commission chose to examine data from this time period because of technical constraints in the modelling environment and because data was recent enough to provide an indication of current taxpayer responses to changes in prices and incomes.

Two model specifications were estimated:

- specification 1 (preferred specification): the basic log-log model, excluding taxpayers who had an average taxable income below \$10,000 over the sample period
 - this specification is preferred over the specification that includes all taxpayers, because including taxpayers under \$10,000 resulted in high and unrealistic elasticity values (in absolute terms), despite these taxpayers only comprising 6.4% of the sample and 0.46% of total donations, adjusted for price, over the period. These high elasticity values stemmed from a minute change in the first-dollar price of giving being correlated with significant *relative* increases in donations, but small *absolute* increases in donation value (section B.3)
- specification 2: the basic log-log model including all taxpayers.

B.3 Modelling results

Regression results

The base year in the specification is 2018-19. Using the Commission's preferred specification (table B.3):

- a negative and statistically significant coefficient for the price elasticity of giving was estimated – that on average, a 1% decrease in the price of giving was associated with a 0.890% increase in giving, holding all else constant
- a positive and statistically significant coefficient for the income elasticity of giving was estimated – that on average, a 1% increase in income was associated with a 0.560% increase in giving, holding all else constant.

The coefficient for the price elasticity of giving was larger in magnitude (-3.316) when including all taxpayers, compared to the elasticity for people who had a taxable income of above \$10,000 (-0.890). This is likely because people who have a low income tend to give fewer dollars and so are starting from a low base. The Commission will further investigate potential factors that are causing the high elasticity values associated with taxpayers who have low income. For example, this cohort may not be required to file a tax return – in some or all years – if their total income is less than the tax-free threshold. As such, the taxpayers with low total income that *do* file tax returns, may have individual characteristics that affect giving over their lifecycle, like deriving a large share of their income from capital. As such, individual and time fixed-effects will not adequately account for this.

In general, younger people tended to have fewer tax-deductible donations, with the exception of those over 65, who were less likely to donate relative to those in the 60–64 age group.

Table B.3 – Price and income elasticities of giving under preferred specification

	Point estimate	95% confidence interval
Specification 1: Excluding taxpayers with average income below \$10,000		
Price elasticity of giving	-0.890***	(-0.916***, -0.863***)
Income elasticity of giving	0.560***	(0.555***, 0.564***)
Specification 2: All taxpayers		
Price elasticity of giving	-3.316***	(-3.333***, -3.298***)
Income elasticity of giving	0.070***	(0.069***, 0.071***)

a. *p<0.1; **p<0.05; ***p<0.01.

Source: Commission estimates using ALife data from 2010–2019.

The full results of the Commission’s regression analysis are presented in table B.4. The R-squared and adjusted R-squared are low (0.026 and -0.136), but this is typical of studies investigating the price elasticity of giving. In the final report, the Commission will also investigate an alternative model specifications, including ones that distinguish between employment status, rather than occupation.

Table B.4 – Full results of the Commission’s regression analysis

	Specification 1	Specification 2
Has spouse	0.001	-0.0005
Confidence intervals in brackets	(-0.004, 0.006)	(-0.005, 0.004)
Has sufficient private health insurance for the year	0.116***	0.161***
	(0.112, 0.120)	(0.158, 0.165)
Log(spouse’s taxable income, inflated)	-0.002***	-0.001***
	(-0.003, -0.002)	(-0.002, -0.001)
Log(first dollar price)	-0.890***	-3.316***
	(-0.916, -0.863)	(-3.333, -3.298)
Log(disposable income, inflated)	0.560***	0.070***

	Specification 1	Specification 2
	(0.555, 0.564)	(0.069, 0.071)
Age brackets (reference bracket = 60-64), confidence intervals in brackets		
Under 20	-0.421***	-0.537***
	(-0.449, -0.392)	(-0.562, -0.511)
20-24	-0.235***	-0.313***
	(-0.260, -0.209)	(-0.336, -0.290)
25-29	-0.052***	-0.087***
	(-0.074, -0.029)	(-0.107, -0.066)
30-34	-0.003	-0.015
	(-0.023, 0.017)	(-0.033, 0.003)
35-39	0.035***	0.039***
	(0.017, 0.052)	(0.024, 0.055)
40-44	0.066***	0.089***
	(0.051, 0.080)	(0.076, 0.103)
45-49	0.065***	0.105***
	(0.053, 0.077)	(0.094, 0.116)
50-54	0.037***	0.085***
	(0.028, 0.046)	(0.077, 0.094)
55-59	-0.006*	0.043***
	(-0.013, 0.0003)	(0.037, 0.049)
65 and over	-0.077***	-0.124***
	(-0.085, -0.068)	(-0.131, -0.116)
Occupation (reference = Occupation is unlisted), confidence intervals in brackets		
Clerical and Administrative Workers	0.310***	0.314***
	(0.304, 0.317)	(0.308, 0.320)
Community and Personal Service Workers	0.326***	0.301***
	(0.318, 0.334)	(0.295, 0.308)
Labourers	0.243***	0.214***
	(0.236, 0.251)	(0.208, 0.221)
Machinery Operators and Drivers	0.319***	0.313***
	(0.309, 0.328)	(0.305, 0.322)
Managers	0.344***	0.372***
	(0.337, 0.350)	(0.366, 0.378)

	Specification 1	Specification 2
Professionals	0.389*** (0.382, 0.396)	0.434*** (0.429, 0.440)
Sales Workers	0.259*** (0.251, 0.267)	0.229*** (0.223, 0.236)
Technicians and Trade Workers	0.302*** (0.294, 0.309)	0.299*** (0.293, 0.306)
SA4 level (reference = Capital Region), confidence intervals in brackets		
Adelaide - Central and Hills	0.030* (-0.003, 0.063)	0.013 (-0.017, 0.043)
Adelaide - North	0.081*** (0.048, 0.115)	0.058*** (0.027, 0.088)
Adelaide - South	0.035** (0.001, 0.069)	0.014 (-0.016, 0.045)
Adelaide - West	0.049*** (0.014, 0.084)	0.029* (-0.003, 0.060)
Australian Capital Territory	0.119*** (0.092, 0.146)	0.127*** (0.102, 0.152)
Ballarat	0.070*** (0.029, 0.111)	0.041** (0.004, 0.078)
Barossa - Yorke - Mid North	0.018 (-0.029, 0.065)	-0.005 (-0.047, 0.038)
Bendigo	0.116*** (0.074, 0.157)	0.087*** (0.050, 0.125)
Brisbane - East	0.066*** (0.033, 0.100)	0.055*** (0.025, 0.086)
Brisbane - North	0.108*** (0.076, 0.140)	0.099*** (0.070, 0.128)
Brisbane - South	0.071*** (0.041, 0.101)	0.063*** (0.036, 0.090)
Brisbane - West	0.088*** (0.056, 0.121)	0.074*** (0.044, 0.104)
Brisbane Inner City	0.067*** (0.038, 0.097)	0.060*** (0.034, 0.086)
Bunbury	0.012	-0.001

	Specification 1	Specification 2
	(-0.026, 0.050)	(-0.035, 0.034)
Cairns	0.047***	0.032**
	(0.013, 0.081)	(0.002, 0.063)
Central Coast	0.077***	0.065***
	(0.044, 0.111)	(0.035, 0.095)
Central Queensland	0.085***	0.082***
	(0.050, 0.120)	(0.051, 0.114)
Central West	0.078***	0.068***
	(0.041, 0.115)	(0.034, 0.102)
Coffs Harbour - Grafton	0.027	-0.001
	(-0.015, 0.069)	(-0.038, 0.037)
Darling Downs - Maranoa	0.016	0.007
	(-0.024, 0.057)	(-0.030, 0.043)
Darwin	0.116***	0.122***
	(0.082, 0.149)	(0.091, 0.152)
Far West and Orana	0.022	0.015
	(-0.022, 0.066)	(-0.025, 0.054)
Geelong	0.118***	0.100***
	(0.082, 0.154)	(0.067, 0.132)
Gold Coast	0.044***	0.027**
	(0.015, 0.073)	(0.001, 0.053)
Hobart	0.024	0.01
	(-0.016, 0.063)	(-0.026, 0.046)
Hume	0.070***	0.042**
	(0.033, 0.108)	(0.008, 0.076)
Hunter Valley exc Newcastle	0.084***	0.070***
	(0.049, 0.119)	(0.038, 0.102)
Illawarra	0.078***	0.062***
	(0.043, 0.113)	(0.031, 0.094)
Ipswich	0.076***	0.055***
	(0.044, 0.108)	(0.026, 0.085)
Latrobe - Gippsland	0.082***	0.051***
	(0.046, 0.119)	(0.019, 0.084)
Launceston and North East	-0.059**	-0.085***

	Specification 1	Specification 2
	(-0.106, -0.013)	(-0.127, -0.043)
Logan - Beaudesert	0.060***	0.052***
	(0.028, 0.091)	(0.023, 0.081)
Mackay - Isaac - Whitsunday	0.091***	0.093***
	(0.056, 0.127)	(0.060, 0.125)
Mandurah	0.029	0.021
	(-0.014, 0.072)	(-0.018, 0.060)
Melbourne - Inner	0.115***	0.111***
	(0.087, 0.142)	(0.086, 0.135)
Melbourne - Inner East	0.099***	0.086***
	(0.069, 0.129)	(0.059, 0.114)
Melbourne - Inner South	0.096***	0.086***
	(0.066, 0.126)	(0.059, 0.114)
Melbourne - North East	0.116***	0.109***
	(0.086, 0.146)	(0.081, 0.136)
Melbourne - North West	0.142***	0.137***
	(0.110, 0.174)	(0.108, 0.166)
Melbourne - Outer East	0.097***	0.084***
	(0.066, 0.127)	(0.056, 0.112)
Melbourne - South East	0.103***	0.093***
	(0.074, 0.133)	(0.067, 0.120)
Melbourne - West	0.137***	0.130***
	(0.108, 0.166)	(0.103, 0.156)
Mid North Coast	-0.015	-0.030*
	(-0.052, 0.022)	(-0.064, 0.004)
Moreton Bay - North	0.026	0.015
	(-0.008, 0.060)	(-0.016, 0.046)
Moreton Bay - South	0.096***	0.081***
	(0.062, 0.129)	(0.051, 0.112)
Mornington Peninsula	0.075***	0.059***
	(0.042, 0.108)	(0.029, 0.090)
Murray	-0.011	-0.031
	(-0.052, 0.030)	(-0.069, 0.006)
New England and North West	-0.022	-0.035*

	Specification 1	Specification 2
	(-0.061, 0.017)	(-0.070, 0.001)
Newcastle and Lake Macquarie	0.080***	0.068***
	(0.047, 0.112)	(0.038, 0.098)
North West	0.023	0.008
	(-0.017, 0.064)	(-0.029, 0.045)
Northern Territory - Outback	0.028	0.027
	(-0.013, 0.069)	(-0.011, 0.064)
Perth - Inner	0.058***	0.062***
	(0.025, 0.090)	(0.032, 0.091)
Perth - North East	0.079***	0.077***
	(0.046, 0.112)	(0.047, 0.106)
Perth - North West	0.096***	0.088***
	(0.065, 0.126)	(0.060, 0.115)
Perth - South East	0.102***	0.092***
	(0.072, 0.132)	(0.064, 0.119)
Perth - South West	0.081***	0.075***
	(0.050, 0.112)	(0.047, 0.104)
Queensland - Outback	-0.005	0.006
	(-0.048, 0.037)	(-0.033, 0.044)
Richmond - Tweed	0.006	-0.011
	(-0.029, 0.040)	(-0.042, 0.020)
Riverina	0.045**	0.038**
	(0.006, 0.084)	(0.002, 0.073)
Shepparton	0.044**	0.031
	(0.001, 0.087)	(-0.008, 0.069)
South Australia - Outback	0.082***	0.063***
	(0.031, 0.132)	(0.017, 0.110)
South Australia - South East	-0.009	-0.025
	(-0.049, 0.031)	(-0.061, 0.011)
South East	-0.027	-0.065**
	(-0.089, 0.034)	(-0.119, -0.010)
Southern Highlands and Shoalhaven	0.051***	0.031*
	(0.013, 0.089)	(-0.004, 0.065)
Sunshine Coast	0.014	-0.008

	Specification 1	Specification 2
	(-0.017, 0.046)	(-0.036, 0.021)
Sydney - Baulkham Hills and Hawkesbury	0.127***	0.122***
	(0.094, 0.160)	(0.092, 0.152)
Sydney - Blacktown	0.125***	0.125***
	(0.094, 0.156)	(0.097, 0.154)
Sydney - City and Inner South	0.109***	0.118***
	(0.081, 0.137)	(0.093, 0.143)
Sydney - Eastern Suburbs	0.133***	0.142***
	(0.103, 0.163)	(0.115, 0.169)
Sydney - Inner South West	0.135***	0.130***
	(0.106, 0.165)	(0.103, 0.156)
Sydney - Inner West	0.115***	0.117***
	(0.086, 0.145)	(0.090, 0.143)
Sydney - North Sydney and Hornsby	0.129***	0.137***
	(0.100, 0.158)	(0.110, 0.163)
Sydney - Northern Beaches	0.093***	0.098***
	(0.060, 0.126)	(0.068, 0.128)
Sydney - Outer South West	0.113***	0.105***
	(0.080, 0.147)	(0.074, 0.136)
Sydney - Outer West and Blue Mountains	0.104***	0.104***
	(0.072, 0.136)	(0.075, 0.133)
Sydney - Parramatta	0.124***	0.120***
	(0.095, 0.154)	(0.093, 0.146)
Sydney - Ryde	0.110***	0.113***
	(0.078, 0.143)	(0.083, 0.143)
Sydney - South West	0.129***	0.125***
	(0.097, 0.161)	(0.095, 0.154)
Sydney - Sutherland	0.129***	0.127***
	(0.094, 0.163)	(0.095, 0.159)
Toowoomba	0.091***	0.070***
	(0.052, 0.129)	(0.035, 0.105)
Townsville	0.086***	0.074***

	Specification 1	Specification 2
	(0.053, 0.120)	(0.043, 0.104)
Unknown	0.013	0.002
	(-0.015, 0.040)	(-0.023, 0.026)
Warrnambool and South West	0.105***	0.081***
	(0.055, 0.155)	(0.036, 0.126)
West and North West	-0.055**	-0.080***
	(-0.107, -0.003)	(-0.127, -0.034)
Western Australia - Outback (North)	0.141***	0.164***
	(0.103, 0.180)	(0.128, 0.199)
Western Australia - Outback (South)	0.049**	0.055***
	(0.010, 0.088)	(0.019, 0.090)
Western Australia - Wheat Belt	0.03	0.023
	(-0.010, 0.070)	(-0.013, 0.059)
Wide Bay	-0.018	-0.035**
	(-0.052, 0.016)	(-0.066, -0.004)
Observations	12,674,998	14,331,591
R²	0.026	0.037
Adjusted R²	-0.136	-0.116

a. 95% confidence interval listed in brackets. *p<0.1; **p<0.05; ***p<0.01

Source: Commission estimates using ALife data from 2010–2019.

Robustness checks

The Commission conducted robustness checks to investigate why a full sample of taxpayers resulted in unrealistic and large elasticity values. The large magnitude of these elasticity values were caused by taxpayers with low income, despite representing only 6.9% of donations and 0.45% of individuals in the sample. In the ALife data, a small *decrease* in the price of giving was associated with large percentage increases in giving, although the value of these individuals' donations still remained small (table B.5). The Commission will investigate potential reasons for this observation.

Table B.5 – 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	6.015	0.994
\$1 to \$2,000	3.598	0.999
\$2,001 to \$4,000	11.045	0.998

	Average donation (\$)	Average first-dollar price of giving (\$)
\$4,001 to \$6,000	16.733	0.995
\$6,001 to \$8,000	22.071	0.992
\$8,001 to \$10,000	25.295	0.984
\$10,001 to \$12,000	27.470	0.974
\$12,001 to \$14,000	32.265	0.963
\$14,001 to \$16,000	35.773	0.949
\$16,001 to \$18,000	39.763	0.933
\$18,001 to \$20,000	47.517	0.915

a. Average income is defined as average total income before deductions over 2010–2019. Donation values are adjusted for price.

Source: Commission estimates using ALife data from 2010–2019.

The Commission investigated whether the exact value of the threshold – \$10,000 in the Commission’s preferred specification – for excluding taxpayers from the model affected estimates for the price elasticity of giving and the income elasticity of giving. The magnitude of the price elasticity of giving increased as the income threshold decreased is presented in table B.6, from -0.834 when excluding taxpayers with an average total income below \$15,000 to -1.579 when only excluding taxpayers with an average total income below \$2,000 (table B.6). As such, the Commission chose a threshold of \$10,000 which considered a need to minimise the share of the sample that was excluded and where the average first-dollar price of giving for the taxpayers with the lowest income was noticeably less than 1.

Table B.6 – Including lower-income earners increases the magnitude of the price elasticity of giving

	Excluding average total income under \$15,000	Excluding average total income under \$10,000	Excluding average total income under \$5,000	Excluding average total income under \$2,000
Price elasticity of giving	-0.834***	-0.890***	-1.170***	-1.579***
Confidence intervals	(-0.861, -0.807)	(-0.916, -0.863)	(-1.195, -1.145)	(-1.603, -1.556)
Income elasticity of giving	0.580***	0.560***	0.471***	0.374***
Confidence intervals	(0.575, 0.585)	(0.555, 0.564)	(0.468, 0.475)	(0.371, 0.377)

a. 95% confidence interval is listed in brackets. Average income is defined as average total income before deductions over 2010-2019. *p<0.1; **p<0.05; ***p<0.01.

Source: Commission estimates using ALife data from 2010–2019.

Limitations of the analysis and directions for further work

While the Commission has addressed the log-log model’s limitations, where possible, there are still limitations in this analysis. The Commission intends to address the following limitations in the final report – as such, the Commission cautions that these preliminary results should not be relied upon.

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- The large numbers of people who do not give – for example, in 2019 about 71% of taxpayers did not give. The Commission will further consider using a negative binomial model like Deloitte Access Economics paper.
 - 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 Commission will adapt the approach used in the Almunia paper to remove other sources of endogeneity.
 - 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. The Commission aims to include the Medicare Levy Surcharge in its final model specification.

However, some limitations cannot be addressed, namely 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.

Abbreviations

AASB	Australian Accounting Standards Board
AAT	Administrative Appeals Tribunal
ABN	Australian Business Number
ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
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
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
FBT	fringe benefits tax
FIA	Fundraising Institute of Australia
GDP	gross domestic product
GSS	General Social Survey
GST	goods and services tax
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
PIJI	Public Interest Journalism Initiative
PPF	prescribed private funds
PPGF	PayPal Giving Fund
PuAF	public ancillary fund
RCIRCSA	Royal Commission into Institutional Responses to Child Sexual Abuse
RFS	Royal Fire Service
SDAC	Survey of Disability, Ageing and Carers
WWCC	Working with Children Check

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