



Arts and cultural philanthropy

Productivity Commission submission

Introduction

The Productivity Commission welcomes the opportunity to make this submission to the inquiry into arts and cultural philanthropy. Each year, millions of Australians donate their money, time, skills, assets and voice to charities and causes they care about, and to generate benefits to society more broadly. These donations contribute to the provision of services, such as health care and housing, that are fundamental to a person's social and economic participation. Donations to arts and cultural institutions also enable participation and can help connect people to their community and promote social inclusion and wellbeing.

Governments support philanthropy in a variety of ways, including providing financial incentives to donors, providing grants to charities and maintaining a regulatory framework that supports public trust and confidence in charities.

Income tax deductions are the main way that the Australian Government encourages giving to charities, but many of the reasons people give or do not give cannot be influenced by tax policy or even by government. For example, income and wealth are major determinants of giving – the PC found that the likelihood and size of tax-deductible donations increased with income with almost half of all tax-deductible donations in 2020-21 made by people who were in the top 1% of income earners. There is evidence that a person will respond differently to changes in the price of giving for health, education and arts and culture causes – giving to culture and arts declined significantly compared to health during the COVID-19 pandemic. It also found work and family commitments are the main reason people do not volunteer.

Because there are many factors that shape giving patterns, including the actions of philanthropic organisations themselves, government initiatives to increase giving lie beyond relying solely on tax concessions and include regulatory reform and the provision of more information to help donors make decisions that are aligned with their preferences.

The PC's 2024 report *Future Foundations for Giving*¹ focused on three main areas of reform to grow giving relevant to the terms of reference 3 and 4 for this inquiry: improving the system that determines which charities have access to tax-deductible donations; enhancing the regulatory framework for charities and ancillary funds; and improving public information on charities and donations. A fourth area, improving access to philanthropy for Aboriginal and Torres Strait Islander people, is relevant to terms of reference 5.

¹ PC 2024, *Future Foundations For Giving*, Inquiry report no.104, Canberra.

The Deductible Gift Recipient framework should be reformed

The deductible gift recipient (DGR) system underpins the Australian Government's financial support of giving in Australia and steers donations towards certain charities and purposes. The Australian Government has reformed the DGR framework in recent years, including in response to the PC's 2024 recommendations², but more needs to be done to make it fit-for-purpose.

The DGR system should be simpler and create fairer and more consistent outcomes for donors, charities and the Australian community. The PC proposed a comprehensive overhaul of the DGR system applying a principles-based framework 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. If adopted, these principles would 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 government to underpin its future development.

The PC outlined three criteria to determine if a class of charitable activity should receive DGR status.

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

It should be noted that under the third criteria, an activity that is funded partly by user fees (such as tickets) could still be within the scope of the DGR system – some degree of judgement is required. Using the Australian Charities and Not-for-profits Commission's charity subtype classifications, the PC proposed all activities within the 'culture' charity subtype would be included within the DGR system.

The PC proposed amendments to the *Income Tax Assessment Act 1997* (Cth) to give effect to these criteria (recommendation 6.1). If adopted, the PC's recommendation would simplify the DGR system and significantly increase the number and diversity of charities able to access tax-deductible donations.

The regulatory framework underpinning the charitable sector

Trust and confidence in the charitable sector influence the likelihood a donor will give and how much they will give. Regulation can contribute to enhanced public trust and confidence in the sector, including by helping to ensure that donations are used for intended charitable purposes, so a sound regulatory framework is critical to increasing giving.

The PC found the regulatory framework for charities is complex – there are many regulators with different roles and responsibilities, and this creates inconsistencies, confusion and unnecessary regulatory burden, particularly for those affected by different arrangements across jurisdictions.

The PC proposed a suite of recommendations that build on the existing collaborative approach to charities regulation to strengthen the Australian Government's Australian Charities and Not-for-profits Commission

² Leigh, A (Australian Government Assistant Minister for Competition, Charities and Treasury) 2023, *Streamlining the Deductible Gift Recipient Registers*, Media release, 29 June.

(ACNC), rather than widespread reform. The PC's preferred approach is based on two key findings. One, although complex, the regulatory framework has sound foundations, and the PC did not find evidence of widespread non-compliance in the charitable sector. Two, regulatory oversight is not consolidated at the national level because the Australian Parliament does not have constitutional power to legislate over all the structures a charity can adopt. A referral of powers from the states would involve significant implementation challenges and costs, and variation across jurisdictions may still occur if states decline to refer a matter to the Australian Parliament.

Given this, the PC proposed a suite of recommendations that would strengthen the ACNC's information gathering powers and are proportionate to current and foreseeable risks. The PC's recommendations include enabling the ACNC to:

- require a charity to provide information necessary to form an opinion on whether it is a 'federally regulated entity'
- require a charity undergoing revocation of its ACNC registration to evidence the distribution of its net assets to an eligible entity, unless the ACNC Commissioner waives that requirement
- have standing so it can seek orders in the Supreme Courts of all jurisdictions, where necessary, to protect charitable assets (recommendation 7.2).

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

Government regulators in the charitable sector regularly collaborate but a more formal and comprehensive approach is needed to sharing information and assessing and mitigating risk. The PC recommended the establishment of a National Charity Regulators Forum to help the Australian and state and territory governments identify areas of regulatory intersection, prevent and manage regulatory issues, and co-ordinate their response in the event of large-scale misconduct, such as which jurisdiction would lead a response (recommendation 7.5). This would represent a shift toward a 'joint stewardship' approach to charities regulation, which recognises that charities regulation in Australia is implemented through a network of regulators at different levels of government. The PC welcomes the Australian Government's efforts to strengthen representation from states and territory governments on the ACNC Advisory Board to help foster a consistent national approach to regulatory and policy matters in the charity sector³.

The PC also found that duplicative and overly burdensome reporting requirements result in administrative costs that are not covered by the funding charities receive. Differences in fundraising licencing requirements, application and approval processes increase complexity and create confusion and uncertainty for charities. These costs disproportionately affect smaller charities – the majority of the sector – that have fewer resources to focus on the causes they were created to support. Further effort by governments is needed to deliver reforms already agreed to streamline fundraising regulation across jurisdictions, including transitioning to a single point of reporting and registration through the ACNC⁴ (recommendation 7.6).

³ Leigh, A (Australian Government Assistant Minister for Competition, Charities and Treasury) 2025, *Helping charities and strengthening communities*, Media release, 20 February.

⁴ Leigh, A (Australian Government Assistant Minister for Competition, Charities and Treasury) and Pearson, D (Victorian Minister for Consumer Affairs) 2023, *Agreement reached on reform of charitable fundraising laws*, Joint media release, 16 February.

The need to enhance structured giving vehicles

A variety of giving vehicles can be used by donors to structure their giving over time. Although giving vehicles, such as private ancillary funds and public ancillary funds, do encourage giving, there are trade-offs with the timing gap between the initial act of a person or family donating into the fund (and the tax deduction is received), and the point or points in time when money is distributed from the fund to eligible entities and the benefits flow to the community.

Ancillary funds must make a minimum distribution to eligible charities each year and this is the main policy lever the Australian Government has to ensure a reasonable and steady flow of funds to charities from ancillary funds for the benefit of the wider community. The PC could find no policy rationale for the current minimum distribution rates for ancillary funds and identified three principles to determine what the minimum should be, including that the funds should operate to support their charitable purpose and benefit the community. The PC recommended setting the minimum distribution rates at between 5% and 8% to generate greater benefits to the community (recommendation 8.1). The Australian Government announced it will set the minimum annual distribution rate for ancillary funds at 6% of net assets to ensure more benefits will flow to charities now, while still allowing funds to provide benefits in the future⁵.

The Australian Government is also progressing recommendation 8.2 to allow ancillary funds to smooth their annual distributions over three years to provide greater flexibility to fund capital works or large projects for charities⁶.

Terms of reference 2 relates to emerging structures and mechanisms for philanthropy including digital fundraising platforms. In its inquiry, the PC heard that 5% of GoFundMe's Australian online fundraising appeals are for the benefit of registered charities. While some inquiry participants proposed the creation of alternative giving vehicles, the PC considered the current range of giving options sufficient to facilitate and incentivise philanthropy in Australia, and that our proposed reforms to the DGR system and public information on ancillary funds would provide strong foundations for increasing philanthropy in Australia.

Improving public information about charities and giving

Publishing information on charities and giving can assist donors, charities and public accountability. High quality information on charities and their performance can enable donors to make decisions that are aligned with their preferences and shape more practical and realistic expectations of how charities spend donated funds to provide public benefit.

Information on giving is also necessary to help governments make evidence-based public policy decisions. Government requires the collection and publication of information about charities and giving to achieve policy and regulatory goals, to help promote public trust and confidence in the charitable sector.

Public information about charities and giving is lacking in certain areas and, where it does exist, it can be difficult to access. Government sources of public information, from the ACNC, the Australian Taxation Office and the Australian Bureau of Statistics, about charities do not promote informed donor decisions and public accountability as well as they could.

⁵ Leigh, A (Australian Government Assistant Minister for Productivity, Competition, Charities and Treasury) 2026, *Boosting support for Australian charities*, Media release, 26 February.

⁶ Leigh, A (Australian Government Assistant Minister for Competition, Charities and Treasury) 2024, *Supporting philanthropic giving*, Media release, 5 December.

Charities and donors have mixed incentives regarding transparency that can lead to less sharing of information that what is necessary for informed decision-making or public accountability. Similarly, the transparency of corporate giving could be improved.

Although public information on charities and giving has improved because of the establishment of the ACNC, there is little information on which to base the performance of charities that are relevant to giving decisions, and data is inconsistent and often inaccessible. The PC found that more value could be created from existing ACNC information by presenting data in a way that is more accessible and meaningful to donors and the public, among other things (recommendation 9.1). The PC also recommended the introduction of enhanced disclosure and reporting of corporate giving to improve transparency (recommendation 9.2). A recommendation to improve data collection on volunteering (recommendation 9.4) is being progressed by the Australian Government.

Access to philanthropy to support outcomes for Aboriginal and Torres Strait Islander people

Increasing the level of philanthropic giving and other support to Aboriginal and Torres Strait Islander people and organisations is essential to promoting Australia's Indigenous arts and cultural activity.

In its 2024 inquiry on philanthropy, the PC heard many reasons why philanthropic funding flowing to Aboriginal and Torres Strait Islander organisations is low.

- Some Aboriginal and Torres Strait Islander organisations are interested in attracting more philanthropy, but that the approaches of some philanthropic donors may create barriers for Aboriginal and Torres Strait Islander communities to access that funding.
- Additional challenges to accessing philanthropy can arise when Aboriginal and Torres Strait Islander organisations are small, operate in remote or regional areas, or provide services or support causes that donors or the public are less familiar with.
- There can sometimes be power imbalances between funders, not-for-profit organisations and the communities they serve, and this is particularly true of the balance of power between certain donors and certain Aboriginal and Torres Strait Islander people and organisations receiving funding.
- Some Aboriginal and Torres Strait Islander organisations said that they have chosen not to receive funding because the potential donors imposed their own agenda or unwieldy reporting requirements.
- Aboriginal and Torres Strait Islander participants also expressed concern that even when funding flows to causes affecting Aboriginal and Torres Strait Islander people and communities, it is often not directed to Aboriginal and Torres Strait Islander led or controlled organisations.

There are many successful philanthropic partnerships between Aboriginal and Torres Strait Islander and philanthropic organisations and lessons can be drawn from those examples, including the need for Aboriginal and Torres Strait Islander people to be at the centre of decisions that affect them.

Some barriers to Aboriginal and Torres Strait Islander people and organisations accessing philanthropy require government support to overcome. To this end, the PC recommended Australian Government establish and fund an independent organisation, provisionally called Indigenous Philanthropy Connections, controlled by – and for the benefit of – Aboriginal and Torres Strait Islander people and communities (recommendation 10.1). The goals of the organisation should be to strengthen the capacity of:

- non-Indigenous philanthropic organisations to be more culturally safe and effective in their work with Aboriginal and Torres Strait Islander organisations

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- Aboriginal and Torres Strait Islander organisations to build relationships and partnerships with philanthropic and volunteering networks
 - Aboriginal and Torres Strait Islander communities by supporting the establishment and growth of new and existing Aboriginal and Torres Strait Islander philanthropic organisations.

Conclusion

Increasing philanthropic giving to the arts and cultural sector requires range of actions by governments – and by the sector itself – to support public trust, removes unnecessary complexity, and target government support where it delivers the greatest community benefit. Reforming the DGR framework, strengthening proportionate regulation, improving public information, and enhancing access to philanthropy for Aboriginal and Torres Strait Islander people would together create a more effective and inclusive system of giving. And while there is a role for government to support philanthropy, growing philanthropy should not be done at the expense of government funding for core services that society expects governments to provide.