Grant Thornton

Philanthropy Inquiry
Productivity Commission
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**Grant Thornton Australia Limited**

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# Review of Philanthropy

As a leading firm servicing the not-for-profit (NFP) sector, Grant Thornton Australia is pleased to make this submission to the Productivity Commission's Review of Philanthropy (the inquiry).

The vast and diverse nature of philanthropy is its very strength. The act of philanthropy often is a highly personal endeavour entrenched in individual values, backgrounds, and perspectives. Values and perspectives have also come together and amalgamated to form organisations and institutions with a common purpose.

The vastness of the act itself creates an inherent challenge for trend analysis, data collation and policymaking. We commend the Productivity Commission's objectives and efforts in undertaking this inquiry. The inquiry has asked some pertinent questions which go to the heart of country's values and Australian society.

To form an accurate narrative around giving trends and impact, the data behind the analysis is critical. The data can also reveal how an increasingly diverse Australia gives and how Australians engage with social impact. The role of corporate Australia is evolving significantly. Technology can be a very powerful tool and in the context of philanthropy, can be a key enabler. Finally, the role of government is ever so critical. From regulation and tax reform to education, the leadership required to ensure trust and integrity in the sector is paramount to philanthropic outcomes.

Our comments are based on our significant experience working with our clients in the NFP sector as well as our connection with stakeholders of the NFP sector including Australian Charities and Not-for-profits Commission (ACNC), the Australian Taxation Office (ATO), Australian Securities and Investments Commission (ASIC), other national and state-based regulators, industry bodies, academic institutions as well as our involvement through volunteer, management, and Board roles.

We look forward to engaging with the inquiry further. Should you have any questions about the matters raised in this submission or wish to discuss them further, please contact Bhavesh Narsey at

Yours sincerely

GRANT THORNTON AUSTRALIA LIMITED

Bhavesh Narsey
National Head of Not-for-Profit

## Information Request 1

### Defining philanthropy and the inquiry's scope

The Commission is seeking views and information on the following.

- Philanthropic activities that should fall within the scope of this inquiry.
- Ways of recognising different definitions, perspectives and norms relating to philanthropy among different cultures and communities, including but not limited to:
  - Aboriginal and Torres Strait Islander people
  - culturally and linguistically diverse communities
  - faith-based groups
  - younger and older Australians.

**By reference to the scope of the inquiry, we agree with the Commission's focused approach on giving in the form of donations of money and assets. This is a key aspect of philanthropy in Australia and structural changes or reform in this space can make a significant shift in outcomes. However, financing social impact is much broader than monetary philanthropy. The role of government funding, impact investing and non-monetary giving are other key components of the same challenge. We recommend the inquiry give due consideration to these aspects.**

### Social impact investing

Whilst we concur with social impact investing not being a primary focus of this inquiry, we believe **impact investing has a greater role to play in attaining social impact in Australia and therefore has an increasingly important role in the context of the objectives of philanthropy.** Individuals and decision-makers within institutions and organisations naturally take a holistic approach in their objective for achieving social impact. Financial returns on impact investments (whilst not guaranteed) can be perceived as an alternative to tax deductions received on giving to Deductible Gift Recipients. Hence, naturally it is difficult to push one agenda without considering the other, particularly as impact investing gains further momentum.

Social impact investing is on its own path to maturity in Australia though challenges around social and financial value, data measurement and outcomes reporting remain. The approach, trends and results of social impact investing will have a bearing on the philanthropic endeavours.

Despite its current challenges, we believe impact investing has a greater role to play in Australian social impact landscape. Whether its returns from social programs, government-issued social impact bonds or investments in social enterprises, the potential for individuals and institutions to engage with social impact outcomes as part of their investment activity is significant. The Social Impact Investing Taskforce set up by the Department of Prime Minister and Cabinet in 2019, made recommendations including the development of data on social impact and the need to build capacity through an information portal. The progress of this Taskforce and its recommendations is unclear.

### Giving of non-monetary assets

**The giving of non-monetary assets is naturally understated.** Monetary assets such as cash and shares are recorded and reported with relative ease. Similarly, property (land and building) assets donated are also recorded by the donors and the recipients with relative ease because of the significance of such transactions and the ability of both parties to generally measure the value of these assets using readily available market data. Instead of providing cash, individuals, corporates and other organisations may wish to donate goods to a charity or not-for-profit entity.

Typically, these donations are not systematic and are provided on an ad-hoc basis, however individuals and corporates are increasingly looking at more systemic forms of providing goods as part of their philanthropic giving programs (for example the provision of IT equipment). The increasing awareness and push to reduce waste and create a circular economy for environmental benefits is also driving this form of giving. However, a significant portion of other non-monetary assets is simply not recorded for the following reasons:

- The donor does not typically claim tax deductions for such donations and the recipient does not record the value of these goods for practicality reasons. Hence, in this scenario, neither the donor nor the recipient formally records and reports the value of the goods donated. Whilst such transactions can be typically small, the volume of these transactions right across the country would be significant and we believe is expanding for the reasons stated above. We also note that corporates are increasingly looking to donate goods as part of their more structured corporate social responsibility programs. These donations, to a large extent, can also substitute the giving of monetary assets which is formally reported in tax returns and financial statements.

- The Australian Accounting Standards require the fair value of donated goods to be reliably measurable for the recipient to recognise these values as income in the financial statements. As noted above, the recipient typically cannot practically carry out this exercise to the extent required for financial reporting purposes. Hence, a significant amount of non-monetary assets is not recorded in the recipient's financial statements.

### Giving of in-kind services

**The giving of in-kind services, including pro-bono services and other volunteer services is naturally understated.** Individuals, corporates, and other organisations may wish to donate time and services to a charity or not-for-profit entity. This could be for several reasons including, the service needs of the recipient, the personal health, social and psychological impact of the donor giving time and the broader impact on a team and organisational culture. A significant portion of the value of time donated is not recorded for the following reasons:

- The donor cannot claim tax deductions for donations of time and the recipient does not record the value of the time for practicality reasons. Hence, in most cases, neither the donor nor the recipient formally records and reports the value of the time donated. For several reasons, including the financial circumstances of individuals and organisations and personal preferences, the donation of time can often substitute the giving of monetary assets which is formally reported in tax returns and financial statements.

- The Australian Accounting Standards require the fair value of volunteer services to be reliably measurable for the recipient to recognise these values as income in the financial statements. As noted above, the recipient typically cannot practically carry out this exercise to the extent required for financial reporting purposes. Hence, a significant portion of the value of volunteer services is not recorded in the recipient's financial statements.

### Changing demographics

With an increasingly culturally and linguistically diverse society, a large portion of Australians naturally has some affiliation with their countries of origin or background. This affiliation can translate to migrant remittances, including philanthropic giving. A country's official migrant remittance received data can reveal some trends around overseas transfers. Here are some key statistics in this context:

- According to the Global Knowledge Partnership on Migration and Development (KNOMAD), the country with the highest amount of migrant remittance in 2022 was India with US$100 billion. Included in the top 5 remittance recipient countries for 2022 was China and Philippines. According to the Australia Bureau of Statistics (ABS), India, China, and Philippines were in the top 5 countries of birth for migrant arrivals into Australia in 2021-22.

- According to KNOMAD, the top 3 remittance recipient countries in 2021 (as a percentage of their respective GDPs) were Tonga, Samoa and Lebanon.

The prominence of the above-noted diasporas in Australia and the associated cultural factors need to be considered in the context of Australians giving. Migrant remittances, including philanthropic giving can particularly increase during times of specific need in a country or region for example due to health crises, natural disasters, and political instability. Such giving can often be directed straight to the recipient or an organisation or charity overseas and can often substitute giving to an Australian NFP.

With such transactions being ineligible for a tax deduction in Australia for the donor, they are not reported as philanthropy in Australia.

### Social media and crowdfunding

The increasing use of social media has facilitated philanthropy to cross borders. Australians can easily be informed of and engage with a social cause in another country. Social causes in other countries are also widely shared directly on Facebook, Instagram, Twitter, LinkedIn, and other platforms. This naturally has increased competition for the local philanthropic dollar. With these transactions being ineligible for tax deductions, this form of direct contributions to overseas causes is not reported as philanthropy in Australia. These transactions, to a large extent, can substitute donations to Australian NFPs which are formally reported in tax returns and or financial statements.

Technology has also enabled direct connection between the recipient and the donor. Platforms such as GoFundMe, Chuffed.org and Change.org can facilitate the sharing of information, call for action and requests for donations directly for a specific cause (with or without an Australian NFP).

Through sharing of information from individuals and communities, crowdfunding platforms used in conjunction with social media can facilitate the giving of funds directly to an Australian cause or recipient rather than an Australian NFP. Similar to the point above, with these transactions potentially being ineligible for tax deductions, this form of direct giving to a recipient may not be formally reported as philanthropy in Australia. These transactions, to a large extent, can substitute donations to Australian NFPs which are formally reported in tax returns and or financial statements.

Philanthropy is increasingly becoming an international market. Whilst there are obvious disadvantages for the donor in not being able to claim a tax deduction and in potentially having limited information in verifying the overseas regulatory framework and charitable work, the fact is that Australians do give directly to social causes overseas. Similarly, the direct giving to an Australian social cause or recipient (which is not for an Australian NFP) via a crowdfunding page can often replace giving to an Australian NFP. In both these scenarios, we believe there are three key value propositions from the donor's perspective:

- Firstly, the donor has direct connection with the recipient cause and narrative (either overseas or in Australia). The donor can engage with the cause without an intermediary.

- The second value proposition for the donor is often the ability to have greater control over their giving. The donor potentially has greater visibility over where their funds will go and how the funds will be used. The direct connection with recipient or cause (either overseas or in Australia) may also allow the donor to assess first-hand whether the intended outcome of the cause has been achieved.

- The third perceived value proposition from the donor is their ability to by-pass the administration and operating costs of an NFP. Whilst there has been an increasing understanding and appreciation of the value of administration and operating costs of an NFP, we believe, there remains a negative connotation around such costs amongst the general population of donors in Australia.

Despite the above-noted potential disadvantages of these forms of giving, the above three points highlight why many Australian donors may substitute giving to NFPs with these avenues.

**In considering the points above, we have considered the increasing interconnectedness between impact investing and philanthropy and questioned how an increasingly diverse philanthropic landscape is being assessed and in this respect, whether the giving activities of Australians are understated and under-reported?**

**In assessing Australian philanthropy trends and looking at drivers to increase this giving, we believe it is important to contextualise how Australians give by reference to the above points and relevant specific data.**

### We recommend the inquiry consider the following:

- Review the findings and progress made from the Social Impact Investing Taskforce set up by the Department of Prime Minister and Cabinet in 2019. The Taskforce reviewed matters this inquiry is considering, including the collation of impact data. Results from other state-based reviews on impact investments should also be considered. Impact investing and philanthropy will increasingly be interlinked and therefore it is in the interest of the government and the impact sector that. findings, recommendations, and outcomes on these two aspects are assessed concurrently.

- Without significantly increasing the administrative burden on NFPs, we recommend the Commission reviews options for assessing the level of non-monetary giving not already captured within tax returns and financial statements. This includes the giving of non-monetary assets as well as the giving of pro-bono and volunteer services.

- We note that NFPs will, at times, aim to recognise in narration form, the value of such giving within their publications and annual reports. The Commission should look at whether this information (where applicable) could optionally be captured at least by registered charities as part of the Annual Information Statement submission to the ACNC. The information may not be verifiable but may provide some insight into non-monetary giving trends. This information would also allow a single NFP and the sector to assess the impact of an absence or decline in such giving.

- Assess trends of migrant remittances from Australians to other countries. Whilst migrant remittances are made for several reasons, including family, community and philanthropic reasons, the data may reveal how an increasingly culturally and linguistically diverse Australian society disburses income and provide some insight into the impact this may have on philanthropic giving in Australia.

- Analyse data from large crowdfunding platforms over a given period on amounts given by Australians which would not be captured within tax returns or financial statements, such as amounts given to overseas non-tax-deductible causes.

## Information Request 2

### Vehicles, trends and motivations for giving

The Commission is seeking views and information on the following.

- Any data, in addition to what is publicly available, on giving by donors who have different characteristics, such as age, gender or income.
  - Australian-specific data, case studies or other insights regarding motivations of donors who have different characteristics, including elasticities of giving if available.
- Data on the costs to not-for-profit (NFPs) organisations of sourcing revenue through different approaches, including:
  - data on the rate of return of these different methods
  - data comparing fundraising costs with costs of other funding sources, such as securing grants from governments or corporate partnerships
  - how these costs are changing over time.
- Information on the advantages and disadvantages of philanthropy as a source of revenue for NFPs compared with other funding streams, such as government grants, and whether these advantages and disadvantages differ:
  - between different types of organisations, such as Aboriginal Community Controlled Organisations
  - according to deductible gift recipient status or the organisational structure of charities
  - according to size or whether they are newly-formed.
- Giving vehicles that are not currently available in Australia and their purpose, suitability in an Australian context, benefits, costs and implementation risks.

We have outlined some of the trends in giving as part of our response to Information Request 1. In the comments below, we have noted our observations around costs incurred by NFPs in generating philanthropic income and the challenges in assessing data and effectiveness in this space.

### Data on philanthropic income

We have highlighted the limitations of assessing non-monetary giving in our response to Information Request 1. In terms of monetary giving, there are existing limitations because of the way information is recorded. For example, the Annual Information Statement on the ACNC portal requests 'revenue from goods and services' and 'other revenue'. However, these components can potentially have philanthropic elements which may not be captured as such. There may be other data sets from other regulators with similar limitations.

### Data on costs incurred to generate philanthropic income

The costs incurred to generate philanthropic income and or grant income are not highly comparable between NFPs. This is because there is no Australian Accounting Standard or other requirement which mandates the classification of such costs in the financial statements or any other reporting mechanism.

Even where two NFPs have classified similar costs such as 'fundraising costs' in their financial statements, it is highly likely that the two sets of numbers (despite being accurate in their respective financial statements) may not be comparable due to the varied interpretation and level of discretion applied by NFPs in classifying such costs.

This makes it very challenging to compare the effectiveness of costs incurred in generating philanthropic or grant income between two NFPs. For this reason, it is also difficult to compare philanthropic returns on investments or costs incurred.

It is also highly incomparable because typically this data is assessed on an annual basis. However, costs incurred in a particular year can generate philanthropic returns in future years and so ideally such data should be assessed over a multi-year period.

### Data on impact

Typically, donors will be attached to the mission of an NFP which may even be tied to a specific cause or program. In an increasingly data-driven society, donors are seeking information and data on the impact of their giving. This presents two key challenges for the NFP:

- The NFP may not have the ability and or capacity to produce this data to the donor's satisfaction. Social impact measurement and reporting has its benefits and challenges.

- The NFP may be driven to spend the funds on service delivery even where they may be a greater need to build capacity or invest within the NFP itself. This can inhibit innovation, efficiency, and long-term planning.

One of the key challenges for the donor is that the data is not highly comparable even between similar NFPs. Hence, the effectiveness and or efficiency of an NFP's operations can be very difficult to assess. We have made further observations on this point in our response to Information Request 7.

**We believe education in this space for the NFP, and for the donor is vital and should be elevated. In this context, we have noted some of the advantages and disadvantages of philanthropy as a source of revenue compared with other funding streams and made further recommendations below.**

### Advantages of philanthropy as a source of revenue

- Typically, philanthropic income is not restricted or tied to fixed outputs or outcomes. This is unlike most government and private grants which are given for a specific purpose(s). The NFP typically receives grant funding on the basis that it will execute a specific activity or set of activities (outputs), with the objective of achieving certain outcomes. In seeking the grant funding, the NFP generally needs to demonstrate how that specific funding will be used via a program budget or plan, and upon review, the NFP would typically need to demonstrate how the funding was used, for example, through a periodic acquittal or other reporting mechanism.

- The absence or lack of such conditions within untied philanthropic income provides greater flexibility for NFPs around its use. This use can allow the NFP to direct funding as it sees appropriate in delivering its services. It can also represent investing in the NFP itself, including in its people, processes and systems and investing for the future, for example in new services, locations, and other growth opportunities. The relative risk-free element of this form of income can also foster innovative thinking and provide greater room for investment in new projects in making the entity more effective and or efficient and in achieving social outcomes.

- Grant income often comes with administration and reporting obligations. Grant writing, monitoring, and reporting activities, which often occur at regular intervals, incur resources and time to execute. The absence of such binding obligations with respect to attaining philanthropic income can relieve the NFP of such resource needs.

### Disadvantages of philanthropy as a source of revenue

- Philanthropic giving by its nature contains an element of goodwill. In this respect, untied giving with no conditions or reporting mechanisms can foster an absence of accountability. This inherently can lead to misuse of funds as well as the inefficient and or ineffective application of funds to an NFP's objects.

- Philanthropic income by its nature can be highly volatile. For an NFP, philanthropic income in any given period is dependent on several factors including, its fundraising activities, its actual service delivery levels and outcomes, its reputation and brand, macroeconomic conditions, and the emergence of other causes (such as natural disasters). The volatility of this income creates a challenge. NFPs can often find it difficult to strategically plan long term service delivery activities. This can naturally lead to a focus on shorter-term outcomes which may or may not achieve sustained social impact.

- Generating philanthropic income incurs costs. An often-underrated element of philanthropy is the resources, time and effort needed to generate this form of income. This is largely because it is a more ambiguous investment which spans over multiple periods with the return on investment often very difficult to accurately measure.

  In comparison, there is a significant focus on the cost of attaining grant income. This includes advocacy efforts, time and effort spent on various meetings with government departments and other parties and the monitoring and reporting mechanisms which take place if and when the grant income is received. These activities and resources, whilst still difficult to measure, attract greater attention because they are more distinct and measurable. Philanthropic income, on the other hand, is typically part of a broader organisational effort. The income will be generated from often a combination of various investments made by an NFP over multiple periods, including dedicated fundraising personnel, efforts from Board Members and management, events, marketing material, social media activities and direct engagement with individuals, corporates, and intermediaries.

### We recommend the inquiry consider the following:

- Assess current data points on philanthropic giving from all regulators and other relevant sources. The objective of 'doubling philanthropy' needs to commence with a data set which is well understood.

- Assess current data points in the NFP sector around social impact and look at options for supporting NFPs around social impact measurement and reporting. As noted in Information Request 1, we recommend the inquiry consider the findings of government and other reviews already conducted around social impact investing. We have made further observations on this point in our comments under Information Request 7.

- Assess how to support and elevate education to donors around the operations of NFPs and the challenge of achieving social impact. This education should highlight the differences between tied and untied funding, the importance of long-term funding, the importance of internal investment (administration and operating costs) in an NFP, the challenges of sustainable long-term social impact and the challenges of measurement and reporting of outcomes.

- Assess options for encouraging long-term giving. The level of certainty over funding has a significant impact on how an NFP makes decisions. These decisions not only influence how they deliver services but also influence how the NFP operates internally. The longer-term form of giving currently typically arises from strategic partnerships between NFPs and trusts, foundations, and corporates and to a lesser extent by regular giving from individuals. This push could potentially be incentivised via the tax system but certainly be amplified through greater awareness and education about the benefits of longer-term sustained giving.

## Information Request 3

### Role of government in philanthropy

The Commission is seeking views and information on the following.

- The role of philanthropy, including where it can be a substitute for, or complement to, government funding or provision of services.
- The reasons why government should (or should not) support philanthropy and whether or how this may vary between causes and various types of philanthropic giving.
- The extent to which government policies can increase, impede or distort philanthropic giving, including data to support those views where possible.
- The extent that existing government support for philanthropy aligns with good policy design and community priorities, and examples where it may no longer align with community expectations.

The word philanthropy is derived from the two Greek Words – philein, meaning to love, and anthropos, meaning humankind. Therefore, significant alignment exists between the purposes of government - as the provider of public goods and services and representative of the people - and the goal of philanthropists who seek to promote the welfare of others.

The challenges facing society are inherently complex and intertwined, and therefore unlikely to be solved by any one stakeholder in isolation. **We believe the role of philanthropy should be to complement government funding and provision of services, not act as a substitute.** As a steward of public funds, government has a fiduciary duty to ensure smart allocation of its finite resources, directing funds to programs that make the greatest inroads to addressing inequity and delivering social impact. In supporting philanthropy, government provides a pathway for not-for-profit organisations to build capacity and trial innovative programs that may ultimately result in better outcomes with each government dollar spent.

The operation of current legislation would indicate that when income tax is foregone (that is, a tax deduction is provided) there are already parameters in respect of the entity meeting the definition of a charity and the criteria for deductible gift recipient status. These pre-existing guardrails in our view are sufficient to appropriately direct philanthropy in such a way that government support need not be varied between causes or types of philanthropy.

Notwithstanding this observation, we note anecdotally a strong not-for-profit presence in some traditional areas of need (such as health, medical research and education) where there is a arguably saturation in the range of charities pursuing these charitable objects. Government may, therefore, consider providing additional incentives to encourage philanthropic activity in areas of emerging need that are consistent with community expectations, such as climate change and the environment where the institution charities may have less current presence.

In considering the motivation for giving, **government policy can increase or impede philanthropic giving**. A range of existing policies are considered below.

### Deductible gift recipient status

In our experience this is overly complex and the broader community's understanding of the difference between a registered charity and a DGR is limited. Further consideration to this specific area of public policy is given in information request 4.

### Private and public ancillary funds

The introduction of these funds some 20 years ago have provided additional pathways for philanthropic giving, particularly targeting high net worth individuals and corporations who may have significant philanthropic dollars to divest. Further consideration to this specific area of public policy is given in information request 4.

### Australian Charities and Not-for-Profits Commission

In our experience, the introduction of the Australian Charities and Not-for-Profits Commission ("ACNC") in 2012 was generally well received by the not-for-profit sector and the broader community. The charity register provides a rich source of data and the maintenance of the dataset on data.gov.au provides the opportunity for detailed analysis of the charitable subset of the not-for-profit sector. The recent introduction of program level reporting and the ability to search using this feature provides an opportunity to connect donors with causes they wish to support.

Charities are trusted by the Australian public, but trust levels have been shown to be declining. It is critical therefore that the ACNC have the remit and resources to ensure public confidence is maintained and built upon if the goal of doubling philanthropy is to be met by 2030. The ACNC registered charity tick should be a meaningful indicator to the general public that the organisation meets expected compliance requirements, and that action will be taken by the ACNC against the – rare – rogue operators.

The widening of the scope of the regulator to include non-charitable not-for-profit organisations would also enhance overall trust and oversight in the broader sector.

### Fundraising reform

We support recent developments to harmonise fundraising regulation throughout Australia. The differing requirements in each State are an unnecessary burden on organisations that often work throughout Australia and the world and in manners that were previously not considered by the respective legislation (for example, online fundraising).

### Environmental, Social and Governance (ESG)

An emerging area of public policy is the regulation of ESG reporting frameworks. As additional expectations are placed on the corporate sector, it is likely that this will drive partnership opportunities and philanthropic activity to deliver on societal expectations. In turn, ESG reporting can be anticipated to trickle down to Not-for-Profit organisations and they will need the means and ability to report on their environmental, social and governance outcomes.

We recommend ESG frameworks for the not-for-profit sector are principles based and remain cognisant of the tension between direct mission-related works and the costs associated with these types of compliance obligations.

## Information Request 4

### The Deductible Gift Recipient (DRG) framework

The Commission is seeking views and information on the following.

- The costs and benefits of the DGR framework as a way to incentivise donors to give to particular organisations or whether other policy levers would be more efficient, effective, or equitable.
- The policy rationale and objectives of the DGR framework, including whether it is:
  - sufficiently clear
  - consistent with promoting the welfare and priorities of the Australian community.
- The efficiency, effectiveness, and equity of the DGR framework, including whether its design and administration:
  - is clear, transparent and fit-for-purpose for its intended objectives, and result in any unnecessary costs (including forgone tax revenue) or risks to the Australian community
  - results in any inequities, inefficiencies, or perverse outcomes.
- The extent to which the DGR framework encourages giving to charities and other eligible entities, and the donors or causes for whom it is particularly effective (or not effective).
- Alternative models to the DGR framework that could be adapted to the Australian context. The Commission would also welcome information on whether models used elsewhere, such as tax rebate or contribution schemes, may or may not be suited to the Australian context.

### DGR requirements

Current construction of Division 30 of the Income Tax Assessment Act 1997 (Division 30) is not easy to understand with multiple categories divided up into the General recipients and the Specific recipients. Each of these recipients may then be subject to Specific Conditions.

We note the large number of Specific recipients in Division 30 tends to suggest that the requirements to become a General recipient are currently too restrictive.

We note that for many community organisations the main class of General recipient under which they may obtain DGR status is as a registered Public Benevolent Institution (PBI) with the ACNC. This is included under the welfare and rights category in Section 30-45 of Division 30. The definition of a PBI is a restrictive and historical one based upon judicial precedent that has been revised by the courts in recent years to reflect community expectations.

We suggest that Division 30 be revised so that the categories of eligible DGRs are defined by specific reference to the community or other philanthropic need that the organisation is addressing through its fund raising or activities.

### Public and Private Ancillary Funds

We note that in our experience Public Ancillary Funds (PuAFs) and Private Ancillary Funds (PAFs) are not as widely used as they could be and they are often little understood. The structure is simple and practical but PuAFs and PAFs often lack scale and suffer from a lack of a specific philanthropic vision. We see that there is generally a lack of compliance with ancillary fund Constitutions and ancillary Guidelines which reflects the small scale of the funds typically involved.

We suggest that amendments to the ancillary fund regime be made to encourage increased giving and better philanthropic outcomes including:

- Requirements that each fund pursue a philanthropic vision; and
- Mechanisms to facilitate an increase the scale of funds held.

### Gifts and Fund Raising

Division 30 generally allows deductions for gifts. “Gift” is not a defined term and Taxation Ruling 2005/13 provides lengthy guidance on what is a “gift”. One of the requirements to be a “gift” is that a giver may not receive a material benefit or advantage in return for their contribution.

Division 30 also allows deductions for contributions, that are not gifts, that take place in relation to fund raising events which allow a deduction for the contribution reduced by the market value of the event or property received.

The rules in relation to gifts and contributions as part of fund raising and at fund raising events are difficult to administer. They tend to favour larger gifts and contributions where it can be easily assessed that any benefit or advantage is immaterial and where the cost of administration is small in proportion to the amount received.

We suggest that at a simplified regime for determining the maximum level of advantage or benefit that a deductible donor may receive would assist in increasing the level of philanthropy. This would encourage DGRs to innovate and undertake more fund-raising activities. This could include:

- Increasing the threshold of advantage or benefit that a deductible donor to a DGR can receive; and
- Bright line tests for determining the amount of advantage or benefit that may be received by a deductible donor to a DGR.

## Information Request 5

### Other tax concessions for not-for-profit organisations

The Commission is seeking views and information on the following.

- The role and effectiveness of tax concessions (other than those available under the DGR framework — see above) in supporting the operation of not-for-profit organisations and philanthropy.
- Anomalies and inequities in the operation and application of particular concessions.
- Unintended and adverse consequences arising from compliance with concession eligibility criteria, including those applicable in Australian States and Territories.
- The efficiency, effectiveness and equity of tax concessions in supporting not-for-profit organisations, and how they compare with alternative approaches to providing government support for not-for-profit organisations.

Whilst other tax concessions support the operation of NFPs, we have not identified a direct correlation of such concessions to enhancing philanthropy itself and therefore have no further comments on this matter.

## Information Request 6

### Unnecessary regulatory barriers to philanthropic giving

The Commission is seeking views and information on the following.

- The costs and benefits of options for reducing any unnecessary regulatory restrictions and burdens, their effect on philanthropic giving and on policy objectives, such as consumer protection, but would not detract from the policy objective the regulation is meant to serve, such as, consumer protection or public safety.
- The effectiveness of existing regulations, including those that apply to public and private ancillary funds and other types of foundations and philanthropic entities, including any issues that may arise under state or territory laws.
- Unnecessary or inconsistent restrictions or regulations relating to requirements like police or working with children checks when volunteering or engaging volunteers.
- Emerging risks or regulatory gaps, including in areas such as cybersecurity, privacy and donor protection associated with certain of modes giving, such as peer-to-peer donations or crowdfunding, fundraising or marketing.
- Regulatory barriers that may limit donor choice and flexibility, such as rules and taxation arrangements for bequests and the distribution of superannuation death benefits to charities.

Overall, it is not our experience that the regulatory framework has a major impact on deterring philanthropic giving. We consider a regulatory framework such as the existing State fundraising legislation a reasonable level of regulation to seek to ensure reasonable and appropriate fundraising, management, and use of donated funds. Particularly with smaller charities, there is a significant level of lack of knowledge and lack of documented governance oversight by those charged with governance, of existing regulation. There is low level general awareness of governance responsibilities within smaller charities, other than basic lodgement requirements, which improves with medium and larger charities. However, even with larger charities it is our experience that the regulatory oversight is observed by the charities from a lodgement perspective rather than governance. Hence, we would be concerned if there was a loosening of regulation that left governance weaker.

We note particularly the general lack of understanding of the State based fundraising legislation and welcome the harmonisation process. We, however, consider having such regulation seeking to provide an appropriate level of fundraising management and process, reasonable and necessary.

As we have outlined elsewhere in this submission, the ACNC have been a significant positive for the charities' sector and have been more active and effective in increasing awareness governance responsibilities within charities and those persons charged with governance within charities. But we consider there remains a lower than appropriate understanding of these responsibilities and issues at a charity and responsible person level.

We do consider as a general proposition, it is not regulation that is significantly negatively impacting philanthropy. Conversely, we see that regulation can and has assisted philanthropy. A stronger and transparent charities' sector, from a governance and meeting objectives perspective, is likely to give confidence to donors.

As we have outlined elsewhere in this submission, we see opportunity for greater use public and private ancillary funds and other types of foundations. We do not consider there is any significant deterrent from the use of PAFs by their regulatory detail. We consider the PAF's include reasonable and appropriate restriction and responsibility on the use and distribution of funds. Whilst we acknowledge a limited use of PAFs, we consider greater awareness of PAF's amongst the corporate sector and with advisors may increase their use.

We agree that there is an emergence of other forms of fundraising that may (likely do) operate, unknowingly, outside the regulatory framework, particularly with online fundraising by individuals or entities, including crowd funding. We consider it may be appropriate for online platforms to be required to include charity identification registration details on entities that use their platforms to fundraise. Additionally, caps or limits maybe required for crowd funding by unregulated entities, that could be incorporated into the harmonised fundraising legislation and regulations. Regulation should be considered for online platforms for how their platforms are used for fundraising including restrictions, caps, public notification on the platform of appropriate warnings, and reporting to regulators of fundraising activity.

We noted the specific requirements for certain classes of charities that held Public Funds, and the requirement for inclusion within committees of management to include persons of responsibility in accordance with Taxation Ruling TR 95/27. This would seem a reasonable approach to consider for certain charities.

## Information Request 7

### Consumer information on the effectiveness of not-for-profit organisations

The Commission is seeking views and information on the following.

- The role of government and the non-government sector in providing additional information to donors.
- The policy rationale, costs and benefits of government provision of specific data sources to inform donors' choices about where to give.
- Information donors would value on the effectiveness of not-for-profit (NFP) organisations, but cannot access and why.
- Data sources that are most beneficial to donors and examples of data that is provided by government to donors (directly or indirectly) overseas that could have net benefits to the community if applied in Australia.

The Commission would particularly welcome views on measures used by NFPs to assess and communicate how they perform against their objectives, including views on the following.

- Weakness or gaps in existing data sources relating to the effectiveness of NFPs that limit their reliability and usefulness or create perverse incentives by focusing on metrics that may be easier to collate but do not provide an accurate measure of effectiveness.
- The extent to which providing information on the effectiveness of NFPs influences decisions made by donors, including decisions not to give.
- Any overseas policy responses to measuring effectiveness which may be relevant, including the use of accounting standards and other reporting tools.

There is increasing competition for the philanthropic dollar, and to attract such investment it is **increasingly the role of the non-government sector to specify, measure and report on the social outcomes they achieve**.

There is considerable subjectivity in identifying outcomes and their manner of measurement and therefore individual donors may well hold differing viewpoints on what represents a valuable advancement towards solving complex societal problems. On this basis, it is unlikely that a push down of prescriptive outcomes measurement frameworks will be a viable approach from government.

**We identify the key role of government in this process is to connect potential donors to outcomes measurement information where the recipient organisation produces this information.** For charities, the Charity Register freely available on the ACNC website is a key source of information. An additional – and optional – question on a charity's annual information statement could be gathered to direct interested readers to a charity's outcomes measurement reporting where this has been completed.

We expect not-for-profit organisations will be at different stages in their journey towards outcomes measurement and reporting.  Whilst some, often larger, organisations may be in a position to publish their theory of change and evaluation methodology and plans, for smaller organisations it may be a case of providing an opportunity to present a case study or beneficiary's story to illustrate their impact.

The identification, measurement and reporting of outcomes encourages organisations to focus resources on the activities that make a real difference.  Outcomes measurement is inherently difficult and was considered in a 3-year research project undertaken by Grant Thornton and the UWA Business School over 2016 – 2018. The findings from this review are here.

The value inherent in identifying, measuring and reporting outcomes is almost universally recognised in Australia today. However, there are challenges associated with each of these ideas which serve to create difficulties for service providers, funders and service users.  A key challenge is balancing the cost of outcomes development, measurement and reporting (which can be substantial) with the benefits expected from the process. Indeed, a cost/benefit analysis is critical in ensuring an organisation is deploying its scarce resources to best effect. Additionally, the timeframe over which an outcome is measured can prove problematic as the social issues an organisation is seeking to impact may only be influenced over many years, creating potential conflict amongst donors and the organisation if expected timelines for change is not agreed on.

Where the government could provide possible value is in guidance through a principles-based approach to outcomes measurement and reporting, to give some baseline expectations for not-for-profit organisations and funders. This could be similar to the way in which The Australian Evaluation Society provides several principles to guide the conduct of evaluations to ensure ethical principles are observed in the conduct of evaluations. As outcomes measurement generally takes the form of an evaluation, these principles themselves would be relevant.

It will be beholden on funders – both government and philanthropists – to provide the funding necessary to enable not-for-profit organisations to undertake these outcome measurement projects.

In some jurisdictions, such as the United States of America, rating agencies that provide comparisons between charities are prevalent.  A common focal point is the percentage of costs related to administration expenses compared to direct service delivery.  As current Accounting Standards and other mandatory requirements do not prescribe – for example – how overhead costs should be attributed, such attempts may not produce directly comparable results and distort perceptions of value when considered in isolation.  **We favour an organisation-led approach to communicating the effectiveness of their activities with appropriate disclosure in respect of the associated rationale and measurement approaches.**

## Information Request 8

### Other measures to support potential donors

The Commission is seeking views and information on the following.

- Steps governments can take do to better equip professional advisers to advise their clients on philanthropic giving.
- Aside from those mentioned so far, any other opportunities for government to improve philanthropic giving in Australia.

Connection with professional services and industry bodies is an effective way of disseminating information and implementing policy change. We recommend the inquiry looks at how the government currently engages with such institutions and how this can be leveraged to support education and awareness around philanthropy.

## Information Request 9

### Cost-effectiveness of public data sources

The Commission is seeking views and information on the following.

- Critical data and information gaps about philanthropic giving and how these impede policy development and decision making.
- Effective ways to collect information that balance the costs and benefits, including where:
  - current information collection is unnecessary or unduly onerous
  - there is duplication of data provision to different government bodies, or it is in different formats for different purposes
  - more streamlined collection would make the data more useful, and if relevant, more comparable with other data, such as international sources.
- Risks and other factors to consider in expanding or changing information reporting requirements and processes.
- Who should pay for any new information collection and be the stewards of current and any new information.
- Any additional data-related considerations for:
  - organisations run by Aboriginal and Torres Strait Islander people or that provide services to Aboriginal and Torres Strait Islander people
  - small or newly-formed not-for-profit organisations
  - organisations that operate across States and Territories, and internationally.

The cost benefit analysis of monitoring and reporting information is critical. NFPs often spend significant time and resources disseminating information for various purposes, including internal and external publications, reporting to funders and grant acquittals. We recommend the inquiry considers any opportunities to streamline reporting for NFPs.

As part of this process, we recommend the inquiry review current and potential practices around digital reporting. Investments made to digitise reporting, as exemplified with the ACNC portal, can have significant benefits. We have made other observations around data as part of our other responses.

## Information Request 10

### Public strategies to increase the status of giving

The Commission is seeking views and information on the following.

- Public strategies or initiatives that have proven cost-effective in increasing philanthropy in other countries and evaluations conducted on those initiatives.
- Developments in behavioural economics and other social experiments in 'nudging' and engaging new donors and volunteers.
- Other approaches that could be used to attract new donors and different demographics into philanthropy.

There is increasing awareness of the risks, strategies and reporting principles associated with Environmental, Social and Governance (ESG) within corporates and capital markets. This has elevated the focus on these factors with corporates looking to amplify their credentials with consumers, investors, suppliers and employees. The International Sustainability Standards Board (ISSB) has been established with the objective of providing a global baseline of sustainability disclosures and this will impact Australian corporates.

This movement has elevated the concept of a corporate's impact in society beyond the more traditional Corporate Social Responsibility (CSR) programs. The potential benefits to society and opportunities for for-purpose organisations (NFPs and for-profits) are clear.

However, there are limitations to this movement, as well as likely limitations to the forthcoming reporting standards. There are also underlying risks, such the potential risk of manipulating or misleading social impact information (whether related to climate or otherwise). A well-coined example of this is greenwashing. This potentially can undermine the broader social impact sector.

Whilst ESG considerations are not in scope for this inquiry, the matter is relevant for the social impact sector and hence the benefits, limitations and risks associated with this movement should be considered.

## Information Request 11

### Identifying and assessing reform options

The Commission is seeking views and information on the following.

- The costs and benefits of reforms most likely to increase giving in Australia, including:
  - empirical evidence from other countries that have adopted similar reforms
  - previous research modelling the effects of the proposed (or similar) reforms.
- Evidence on the costs and benefits associated with reform options to increase levels of giving, including:
  - impacts on government expenditure
  - impacts on the quality of service delivery
  - other benefits, including intangible benefits such as enhancing social capital.

We have no further comments on this matter.