

JBWere

8 February 2024

Productivity Commission

Via: Online Submission

Dear Sir/Madam

JBWere Final Submission – Productivity Commission Philanthropy Inquiry Draft Report

Please find attached our final submission in relation to the Productivity Commission's Inquiry into Philanthropy Draft Report.

We thank the Productivity Commission (PC) for the effort and analysis of Philanthropy in Australia and recognising it's important and unique role within the for-purpose sectors operating model.

This final submission follows our initial submission in May 2023 and focusses on specific recommendations made by the PC in their Draft Report.

The JBWere Philanthropic Services team has been conducting research and advising for-purpose and philanthropic clients since 2001. We provide advice to more than 500 clients who have entrusted more than \$13bn in Australia and New Zealand to JBWere – this money exists explicitly to support the delivery of social and environmental outcomes. In preparing our response we have utilised the decades of experience within the team and canvassed the view of our clients, connections, and collaborators across the broader social impact ecosystem.

We would be pleased to continue to offer support through the Inquiry's process and look forward to seeing this opportunity to improve philanthropy in Australia realised.

Yours sincerely



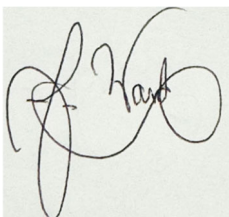
Shamal Dass

Head of Family Advisory and
Philanthropic Services



John McLeod

Senior Consultant – Family Advisory and
Philanthropic Services



Jayde Ward

Director – Philanthropic Services

Overall Scope of the Draft Report

The Draft Report states the purpose of this inquiry is as follows:

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.

This is consistent with Dr. Andrew Leigh's pre-election statement on 7th April 2022:

That's why today Labor is announcing that if we're elected, an Albanese Labor Government will work with the philanthropic sector to double charitable giving by 2030. It's a big task, but we believe as you do that it's an achievable one. If we get there, this will transform Australia's culture of giving. It will mean that Australia is a much more connected nation, and if we believe the research, will be a happier and healthier nation too.

While we delve deeper into individual opportunities below, we encourage the PC to explore, and revisit proposed strategies to increase philanthropic giving. This Inquiry presents a generational opportunity that we must further advance. We encourage the PC to be bolder in their recommendations in removing the barriers, and creating incentives, that will enable the significant growth required to reach the ambitious goal to double charitable giving by 2030.

National Giving Campaign

A key concern for Australian philanthropy and volunteering generally, is the falling participation rate. It is fortunate that those continuing to donate are doing so with increasing generosity, however, if we don't address the participation rate, the weight of the number of those not donating or volunteering will offset the generosity of those who continue to do so. This may result in the for-purpose sector requiring additional funds to maintain critical services or face being forced to reduce the amount of the community they serve.

We recommend a well-co-ordinated, well-designed, and well-funded National Giving Campaign, highlighting the need and value of giving and volunteering to both the donor and the recipient. The co-dependence for Individuals, Corporations and Government on a well-functioning and supported for-purpose sector should be a high priority. Again, to quote from Dr. Andrew Leigh's speech on 7th April 2022:

We like the idea of putting in place a national giving campaign. Australia's skin cancer awareness was improved by the Slip Slop Slap campaign. Our understanding of AIDS is improved by the Grim Reaper campaign. In Canada, the My Giving Moment campaign has helped to change the culture of philanthropy in that country. We believe that there's great potential for strong national focus on changing Australia's culture of giving.

This campaign should substantially educate the entire community on the challenges facing many of our disenfranchised communities and amplify awareness and support.

Given that most individual giving which would be influenced by a National Campaign is not claimed as a tax deduction, this avenue to grow giving has the lowest revenue cost to Government and the broadest reach. Support for a National Giving Campaign remains our top priority sits at the top of our list here by design, just as it did in our wish list presented in the JBWere Support Report in 2018¹.

¹ <https://www.jbwere.com.au/content/dam/jbwere/documents/Insights/JBWere-Support-Report-2018.pdf>

Living Bequest Structures

Just as a National Giving Campaign would attempt to lift giving for the total population, the largest and wealthiest cohort within Australia's population is ageing and considering who their assets will pass to. Increasingly, we are seeing discussions grow about options such as providing family members access to

inheritance earlier, increased spending during one's lifetime or donating to philanthropic causes during one's lifetime, as to see impact.

However, despite this, most will die with a larger asset value than seen during their lifetime due to property values and accumulated superannuation. From the limited data available, Australia lags well behind similar countries for bequests to charity, whether this is the proportion of estates leaving a charitable bequest (7% in Australia is half what is seen in the UK and USA)² or the proportion of overall donations to charity that come from bequests (7% estimated for Australia versus 13% in the UK and 9% in the USA)².

While history and culture encourage higher international bequest giving values, the incentives offered by living bequest structures in the USA have also greatly encouraged giving from estates. We strongly encourage the adoption of a similar model of the living bequest system to be considered for implementation in Australia.

Charitable Bequests from Superannuation

While JBWere remains supportive of the removal of the 'death tax' from superannuation given to charities, we were encouraged to see the potential for allowing charities to be beneficiaries from superannuation bequests remains.

We appreciate the stated purpose of superannuation being to fund retirement, but argue that after the death of the superannuant, the purpose of those funds change. If the goal is to improve Australia's rate of bequests to charity, these impediments to gifting part of most individuals second most significant asset after property, should be removed.

Payout Ratios for Ancillary Funds

The introduction of PAFs in 2001 commenced around 100 years later than in the US where Foundation numbers grew from 27 to over 4,100 between 1915 and 1955 (they now number around 125,000)³. The reason for highlighting this is to emphasise that they are still relatively new giving vehicles in Australia.

Uncertainty around the rules of operation caused a dramatic decline in the number of new PAFs established in 2009 when among other things, payout rates were debated. The number established in 2007 and 2008 was 164 and 169 and fell to 54, 57 and 28 in the subsequent three years.³ Ultimately, payout ratios were set at 5% for PAFs and new establishments and giving recommenced their growth.³ This has parallels to the US where in 1969 payouts were first set at 6% and over the subsequent 5 years, 5,000 closed (15% of the total in 1969).³ Congress then reduced the rate to 5% in 1976 where it has remained for almost 50 years during many economic cycles. It should be added that the US 5% also includes eligible expenses plus donations while Australia currently doesn't count expenses as part of the required minimum payout. This should also be considered in any change to payout ratios³.

² <https://givingusa.org/> , <https://www.cafonline.org/> <https://fundraising.co.uk/>

³ <https://www.philanthropyroundtable.org/resource/private-foundations-and-the-5-percent-payout-rule/>

In addition, the ATO's data shows PAFs have recorded an average payout of 10.0% since establishment and 8.2% since the 2009³. There would need to be deeper analysis conducted (see data section below) to understand the effect of changing minimum rates as it can't be assumed that raising it by 1% would

automatically lift PAF giving by the \$60m shown in figure 8.7 as that analysis assumes an average size for all PAFs and all in the 5-6% band were at the minimum of 5% (\$11.6 Billion X 49% giving between 5-6% X 1% increase).⁴ It also doesn't account for the potentially lower number of new funds established under a higher payout ratio regime.

We are concerned that changing the rules around Ancillary Fund minimum payout ratios again risks lowering their growth potential at a time when many, including JBWere, argue that for a country such as ours, with a significant amount of wealth, there should be a far greater use of both private and public

ancillary funds. We do support the recommendation to continue the ability to average payouts over three years as happened during the COVID pandemic.

DGR Categories

We agree with the PC's comment that "*the DGR system is poorly designed, overly complex and has no coherent policy rationale*" (pg.175). The concept that other countries such as the USA, UK and New Zealand do not discriminate between charity causes and offer tax deductible donations for all charities, supports this thinking.

In the 2010 'Contribution of the Not-for-Profit Sector' report, the PC stated (recommendation 7.3) "*The Australian Government should progressively widen the scope for gift deductibility to include all endorsed charitable institutions and charitable funds. Consistent with the Australian Taxation Office rulings on what constitutes a gift, payments for services should not qualify as a gift.*"

While we applaud the projected increase in the number of DGRs by 5,000-15,000, the recommended reduction in other areas such as school building funds, estimated to number 5,000, due to perceived private benefit is questionable. While a child of a donor may benefit for a few years, this is quite small compared to the total number benefitting for the life of the building. Could that same argument be applied to donors to cultural organisations or even medical research, particularly rare diseases, or environment where they also likely gain a personal benefit for them and future family from the impact of their gift?

The small and tenuous nature of the connection between donation and personal benefit could indeed be made to nearly all charity cause areas. International aid potentially reduces conflict and makes travel and trade safer while welfare may reduce crime and future Medicare levies. The current ATO rules around what constitutes a gift already exist to cover 'forced' donations and personal benefit and are sufficient to cover the PC's concerns.

Establishment of a First Nations philanthropic foundation

We strongly support First-Nations led philanthropy in Australia. Certain communities have long faced significant resource gaps, hindering their ability to address unique challenges and pursue self-determined development.

Whilst in principle we support draft recommendation 10.1, our experience aligns with international examples, that tells us that addressing systemic issues will require a multitude of funds, foundations, and

⁴<https://www.ato.gov.au/about-ato/research-and-statistics/in-detail/taxation-statistics/taxation-statistics-2020-21>

organisations to provide the flexibility required to address the significantly varying needs and desires across different peoples, cultures, and geographies.

We recommend further consultation with First Nations peoples to determine the right approach to ensure the potential benefits can be realised, and the following risks and challenges to be considered:

- Ensuring genuine community control: While establishing a single First Nations Foundation would centralise resources, it also raises concerns about equitable distribution across diverse communities. Balancing diverse community voices and ensuring representation across various First Nations groups would be crucial.
- Transparency and accountability: Clear governance structures and robust reporting mechanisms are vital to maintain trust and public confidence.
- Balancing individual community interests with broader national priorities within the foundation's decision-making processes.
- Aligning the foundation's goals with community aspirations and developing culturally appropriate impact evaluation methods.

Giving and Volunteering Data

We welcome the focus on sector data. JBWere has used existing data sources and developed some new and timely ones (e.g., the JBWere-NAB Charitable Giving Index, Top 50 individual and corporate givers lists published annually in the AFR) to create a clearer picture and deeper understanding of giving trends in Australia. We understand what is available and what is missing.

The collection of bequest data through the annual information statements provided by charities to the ACNC is an important addition, particularly as we progress through the intergenerational wealth transfer period of the next two decades. Utilising existing ancillary fund data, already collected by the ACNC for the ATO, to better understand patterns of giving through these vehicles of growing importance is also critical and can inform and guide both donors and recipients towards better practices.

Similarly, a better understanding and visibility of charitable trusts is needed. Corporate giving is complex and definitions not consistent. While we are strongly supportive of data collection through ATO returns, this should be beyond just donations to DGRs. It should include community investment done with non DGRs and to non-charities and individual communities, where corporates are able to deduct the expenditure.

The need is even more acute when it comes to truly understanding of the needs and priorities of Aboriginal and Torres Strait Islander communities. This in turn, can lead to more targeted and impactful support, ensuring that resources are allocated effectively and address the specific challenges faced by these communities.

Finally, a consistent methodology plus regular and timely reporting of detailed volunteering data is sorely needed.



About JBWere

JBWere provides a wide range of investment advisory, research, and wealth management services to a substantial and diversified client base. We have more than 500 staff and offices in Melbourne, Sydney, Brisbane, Canberra, Adelaide, Perth, Auckland, Christchurch, and Wellington. Our clients include for-purpose groups and organisations, government bodies, financial institutions, high-net-worth individuals and families across Australia and New Zealand. We are proud to be the leading provider of philanthropic, governance, strategy, and investment advice to the for-purpose sector, who have entrusted us with more than \$13 billion of their financial assets. Since 1840, JBWere has provided world-class investment advice and superior service to our discerning clients. Our reputation as a market leader is founded on our commitment to excellence, our diverse service offering and the expertise of our people. JBWere has evolved over the decades from a privately owned Australian partnership and is now 100% owned by National Australia Bank. We have research alliances with UBS, MSCI and Moelis Australia. To discuss how we might be able to work with you please contact us on 1300 263 166 or Philanthropic.Services@jbwere.com