JBWere

31 July 2025
Director, Not-for-profits Unit
Personal and Indirect Tax and Charities Division
The Treasury
Langton Crescent
Parkes ACT 2600

Submitted by Email to: charitiesconsultation@treasury.gov.au

Dear Sir/Madam,

JBWere submission - Giving Fund Reforms: distribution rate and smoothing

JBWere appreciates the opportunity to make a submission to Treasury's Giving Fund Reforms: distribution rate and smoothing consultation paper.

This submission follows JBWere's initial submission in May 2023 and final submission in February 2024 to the Productivity Commission's Philanthropy Inquiry.

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 $15bn to JBWere – this money exists explicitly to support the delivery of social and environmental outcomes. We have the privilege of working alongside both funders and the Item 1 DGR organisations that rely to some extent on this philanthropic funding. We have had conversations across the breadth of this network in the preparation of this submission.

We have also drawn on 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 further discuss matters raised in this submission as required.

Yours sincerely

Shamal Dass

Head of Family Advisory and Philanthropic Services

John McLeod

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Summary and key points

In an environment where the for-purpose sector is growing strongly to meet community needs (income and expenses increasing by 8% pa), JBWere believes that encouraging more philanthropy is critical. We welcome and support Assistant Minister Andrew Leigh's position that giving funds play an important role in connecting generous Australians with the causes they care about; and furthermore, believe that donations made with tax concessions should be received by charities at the "right pace". This should include both giving from existing funds and encouraging more to be established with Australia's relatively new Private Giving Fund structure.

We believe maintaining the current distribution rate of 5% provides this balance and introducing a three-year smoothing of giving enhances the overall impact that can be achieved. This will bring us into line with our international peers like the USA. The payout ratio from Private Giving Funds over the last five years has ranged between 6.7% and 8.1%, with distributions now reaching around $800million annually. In our experience this has been driven by increasing demands from Item 1 DGRs and supported by historically high investment returns. This indicates that those who have committed their wealth towards social impact through structured giving are not limiting their distributions to the required minimum but rather deploying to meet increasing current and future demand.

Australian net payout rules are already amongst the highest in the world at a time when we need to increase philanthropy, not discourage it. Well intended rule changes in the past, such as those seen in 2009, contributed in part to a dramatic decline in new Private Ancillary Funds (PAFs) being established in subsequent years. Apart from discouraging new Giving Funds being established if payout rates are increased, there is a risk that some existing PAFs (particularly larger ones) may convert to Item 1 DGR "doing" charities (e.g. as The Paul Ramsay Foundation did) while others may pursue higher risk investment strategies.

Giving Funds are established by individuals and families in different financial positions. Some provide a large proportion of their wealth initially, while others start with a relatively smaller part of their wealth and add further over time. Payout ratios should offer flexibility, allowing longevity and sustainability where desired and providing for giving to match growing needs now and in the future. Our case study of a real-life Giving Fund over its 20-year history highlights this balance being achieved (Chart 10 & 11).

We have also modelled the future of the Private Giving Fund sector from the latest 2023 start point at differing payout rates and estimated new fund establishment levels. The results highlight that rates below 5% don't maximise distributions in either the short or long term, however rates above 5% begin to also harm giving levels in the longer term. Chart 9 quantifies these results showing over 25 years, a potential loss of $1.9 Billion in giving is seen with a payout rate of 6.5% (mid-way of 5-8%). This rises to a loss of $9.7 Billion if new average donations into these funds also falls. Conversely, maintaining the rate at 5% but also encouraging more Giving Funds through a National Giving Campaign could result in a further $5.6 Billion being distributed.

Rather than focussing on extracting slightly more from those who have already committed significant funds to philanthropy through blunt legislation, the focus should be on measures that increase the participation rate in philanthropy amongst those who have amassed wealth.

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Detailed comments and analysis

The establishment of Giving Funds in 2001 (then Prescribed Private Funds and later Private Ancillary Funds) has encouraged mainly individuals and families to establish longer time frame giving structures and irrevocably commit funds to DGRs that, in the majority of cases, wouldn't have otherwise been given in that time frame or scale. The ability to gain an immediate tax deduction for donations into a fund has encouraged those donors to effectively more than match the deduction gained with their own "after tax" funds. It's been a success as measured by the number of funds established (chart 1), the cumulative capital in those funds (chart 2) or the distributions made from those funds to DGRs (chart 3).

The wide demographic spread of funds across Australia is also encouraging. Chart 1 also highlights the effects of legislative uncertainty. The introduction of new Private Ancillary Fund guidelines in 2009 contributed to a dramatic fall in the number of new funds established. Although the Global Financial Crisis had a strong influence in 2008/9, markets recovered quickly, but it took until 2014 for PAF establishment to bounce back. Setting up a PAF is a significant decision and often involves a large sum of money – clarity and certainty regarding the policy settings enables trust in the system and growth of this giving vehicle.

Ultimately, payout ratios were set at 5% for PAFs and new establishments and giving recommenced their growth. 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). 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.

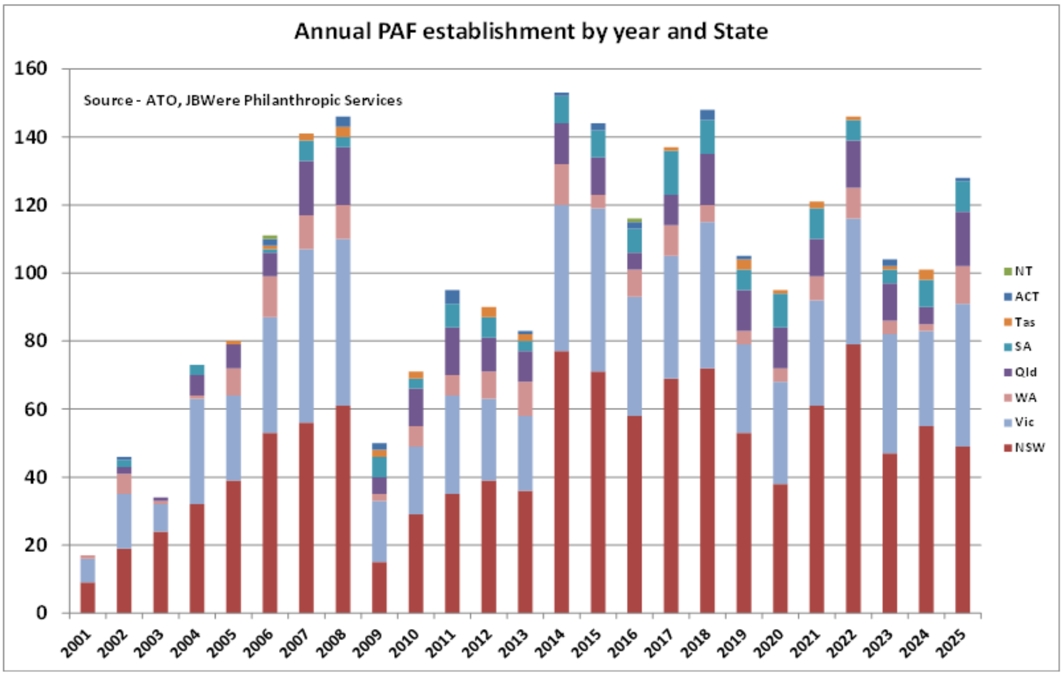

Chart 1 – Annual PAF establishment by year and State. Source – Australian Taxation Office, ABN Lookup

There has been a steady growth in the asset base of Giving Funds through a combination of new funds being established, additions to existing funds and investment returns (Chart 2). The very large Paul Ramsay Foundation converting from a PAF structure in 2018 influenced total asset values, but excluding this, we have seen a steady rise even during volatile financial markets and with growing distributions being made from these funds.

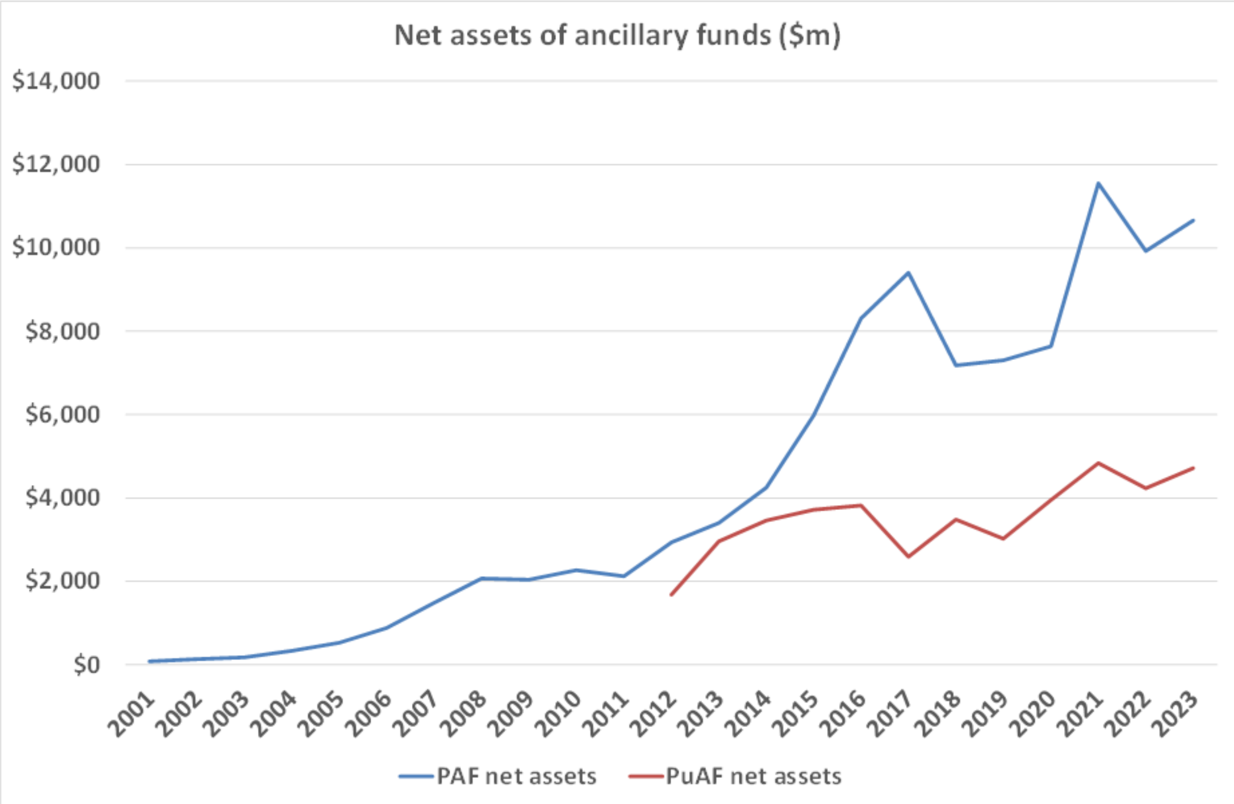

Chart 2 – Net assets of Giving Funds over time, Source – Australian Taxation Office

The most important indicator of the success of Giving Funds has been the growing level of funding distributed to item 1 DGR's over time from this growing asset pool (Chart 3). Later in this document we provide analysis of how giving would evolve under various payout ratios.

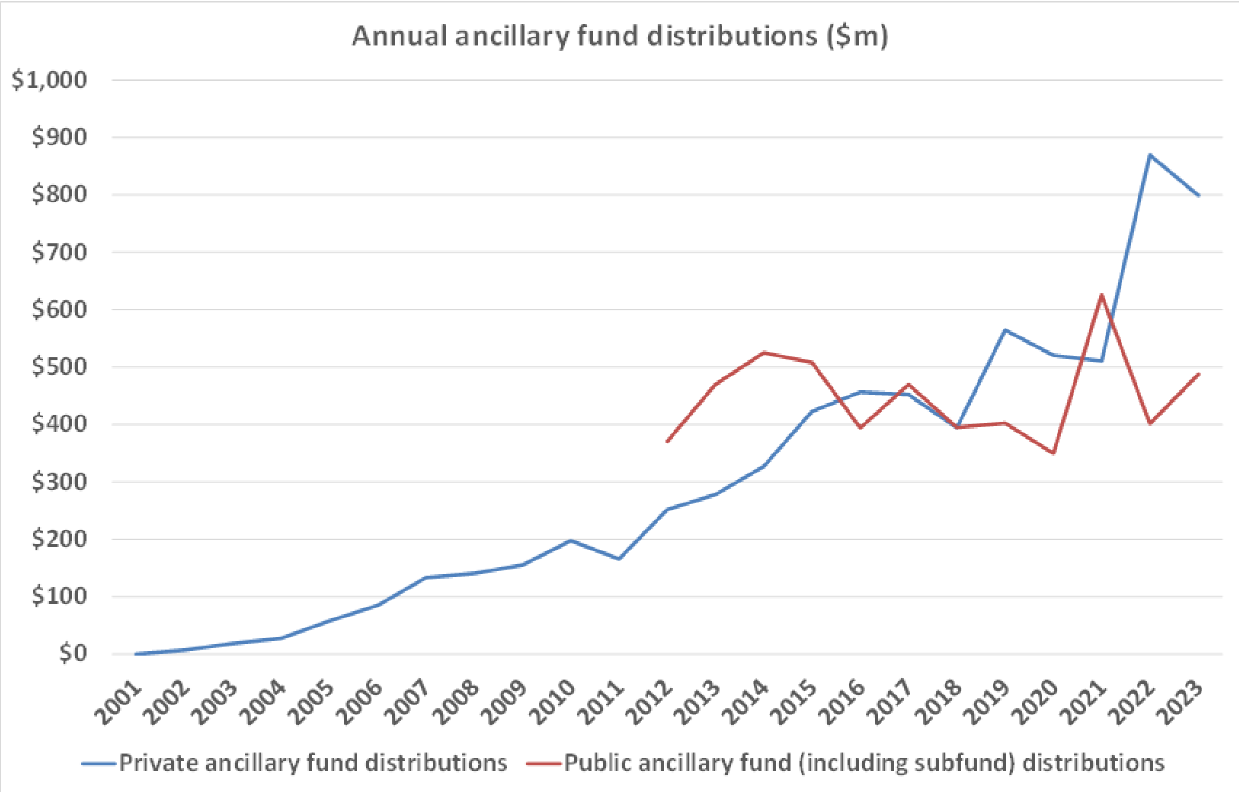

Chart 3 – Annual distributions from Giving Funds, Source – Australian Taxation Office

A good way to see the growing maturity of Private Giving Funds and compare to trends in the much longer established Private Foundations in the USA is to look at the annual ratio of distributions from these funds compared to new donations coming into the funds (Chart 4). 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). The reason for highlighting this is to emphasise that Private Giving Funds are still a relatively new giving vehicle in Australia.

As the pool of existing funds grows and giving from it grows, we would expect this ratio to rise over time. We can see that both Australia and the USA trend up, with annual fluctuations as some larger funds are established. Over time, if legislation changes don't discourage the establishment of new funds, we would expect to see Australia steadily reach the maturity levels seen in the USA and this virtuous cycle of giving to continue. This is another sign of the healthy progress of this important giving vehicle. If higher payout ratios were introduced, while it would initially raise this ratio, it would also cause giving to fall in the medium term as shown by our later modelling and in the Treasury's own analysis as the rate of increase in cumulative giving slows from year 29 onwards.

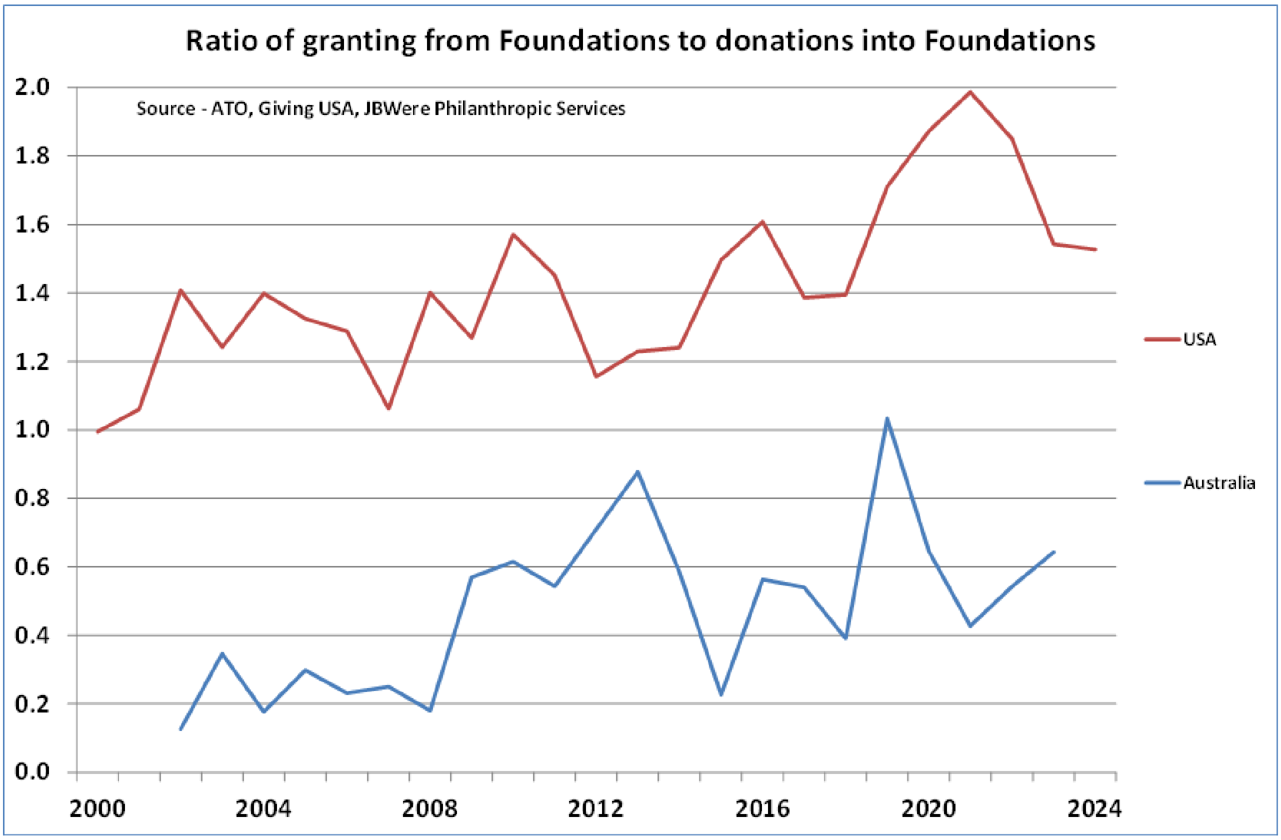

Chart 4 – Ratio of distributions from Foundation to donations into Foundations, Source – Australian Taxation Office, Giving USA

This positive trend is to be compared to the worrying, almost 20-year decline in the proportion of Australian taxpayers claiming a tax deduction for giving (Chart 5). While the average amount given has risen strongly (partly due to donations into Giving Funds) the fall in number of individual donors, mirrored by the fall in those volunteering, is the largest problem for philanthropy in Australia. Our submissions to the Productivity Commission's Future Foundations for Giving Inquiry Report urged efforts to be directed to this issue through a National Giving Campaign. We continue to believe this is the best return and lowest cost and risk way of improving philanthropy and helping double it by 2030.

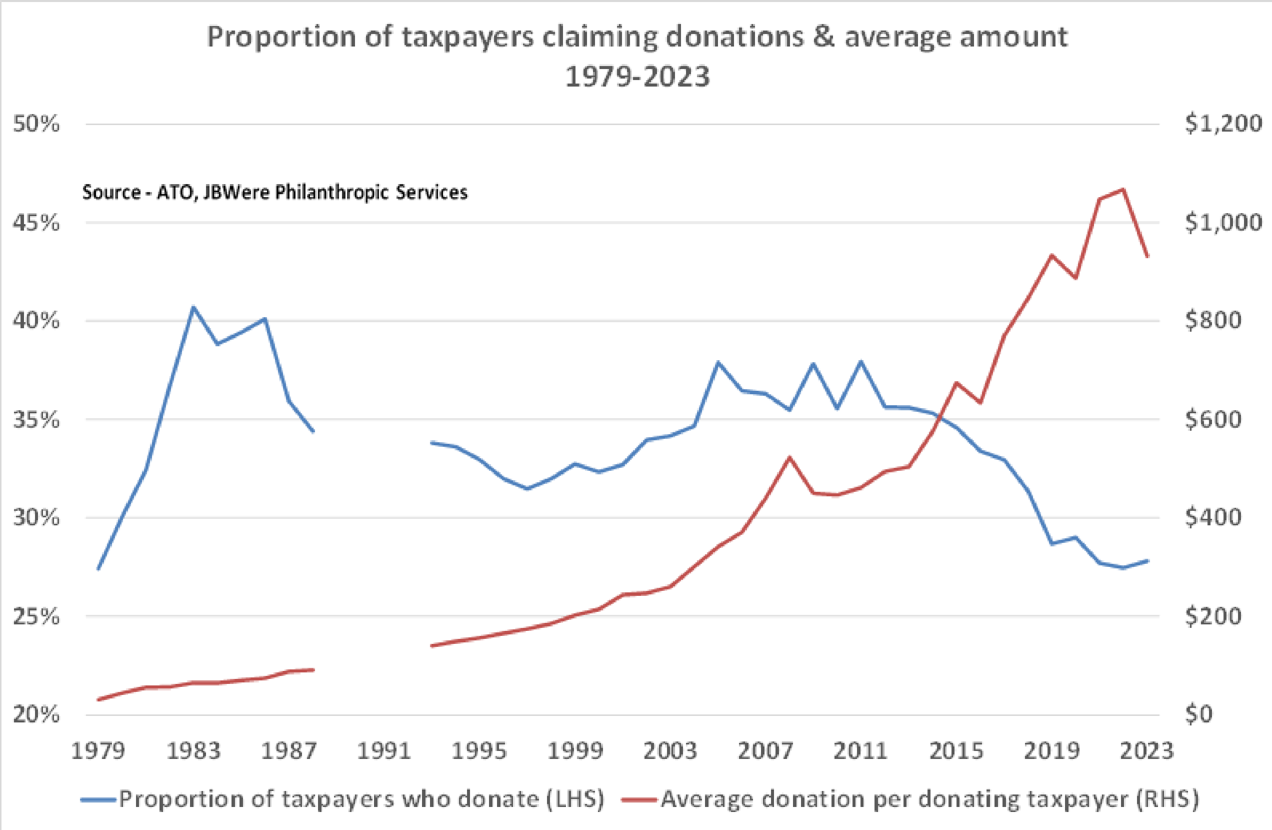

Chart 5 – Proportion of taxpayers claiming a deduction for giving and average amounts given (excluding into Minderoo in 2023), Source – Australian Taxation Office

Modelling from The Treasury shows the performance of a hypothetical Giving Fund from 1980 with real world financial returns at different distribution rates (Chart 6 reproduced from Chart 2 of the Treasury paper). Even this analysis shows that from year 18, a 5% distribution rate begins to give more annually than higher distribution rates do as they have reduced the initial capital annually. From year 32 onwards, the 5% distribution has also distributed more cumulatively than higher distribution rates. In addition, the capital value of the fund is only maintained at the 5% level.

In addition, the Australian Taxation Office data shows PAFs have recorded an average payout of 10.0% since establishment and 8.2% since the 2009. 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 of the Productivity Commission Report 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 * 49% giving between 5-6% * 1% increase). It also doesn't account for the likely lower new funds established under a higher payout ratio regime. Raising the distribution rate by 1%, may only increase short term giving by around 0.5% overall due to the number of funds already distributing above the minimum (25% already distribute over 10%) and so the effect of changes may be less than indicated.

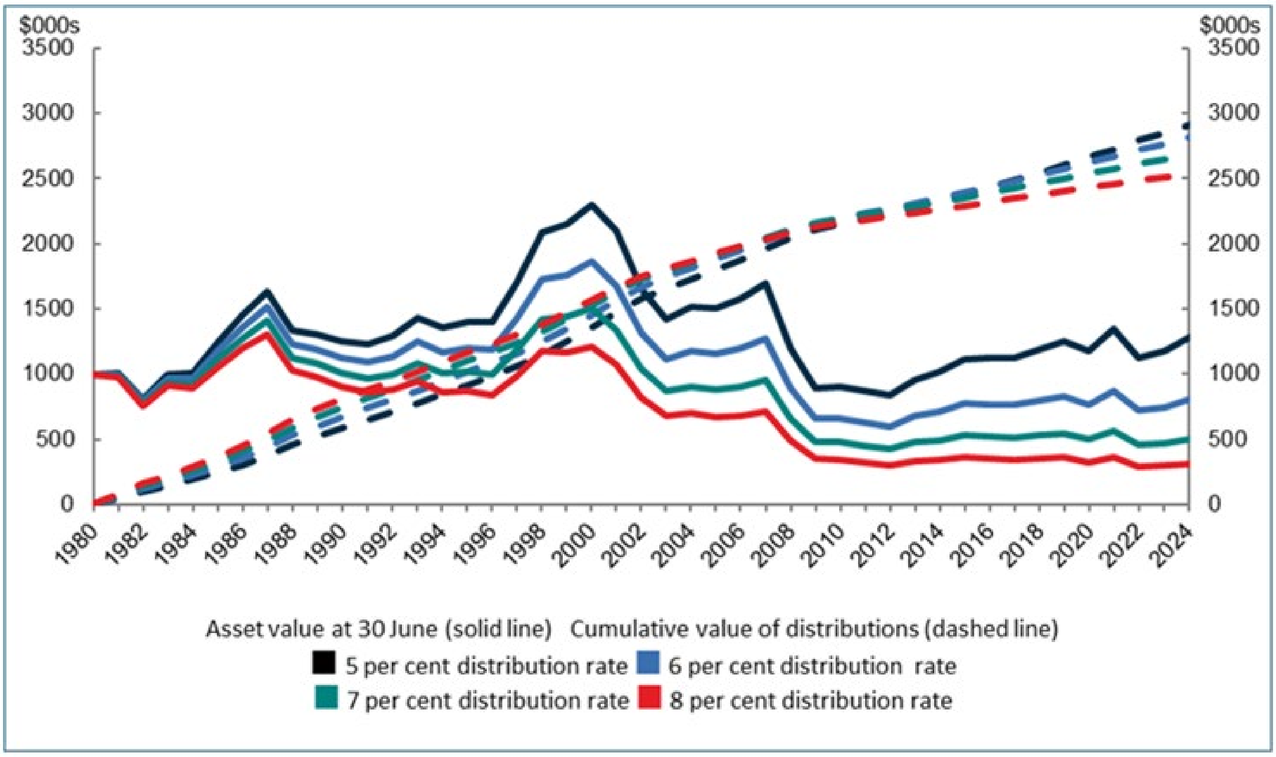

Chart 6 – Chart 2 from Giving Fund Reforms consultation paper, Source – Australian Government, The Treasury

While The Treasury paper has modelled past giving from a hypothetical Giving Fund, we thought it useful to project what the current state of the PAF sector would look like going forward. We started with the most recently released data for 2023 showing cumulative distributions to date of $6.8 Billion and a net asset value of $ 10.7 Billion. We have used a number of scenarios including different payout ratios and some assumptions for both new fund establishment and donations into those and existing funds at different payout rates (Chart 7 and 8).

Recent years have seen around 120 new PAFs established annually which we have continued as our base case, along with an assumed donation of $3.5m into each new fund plus an average of $250,000 into each existing fund, which combine to equate to recent total PAF annual donations received. To this base case we have added a positive case of 180 new funds per year which could be achieved via better promotion of Giving Funds through a National Giving Campaign (see response to Q3 below). We have also used a negative case of new funds falling to 60 per year with the same average donations into them. Finally, we have also presented a further negative case of 60 new funds but with a reduced donation inflow of $2.5m for new funds and $100,000 for existing funds. For each of these 4 scenarios, we have looked at the cumulative distributions achieved at various payout rates with net investment returns of 7% after costs for both 20-year and 40-year time periods, equivalent to that used by the Treasury.

The results demonstrate that while a higher distribution rate provides increasing distributions as payout rates increase over 20 years, this effect plateaus at around 5% over 40 years. More importantly, the correlation between each scenario will be strongly linked to which payout rate is mandated. We would argue that a retention of a 5% payout rate would be consistent for both the 180 and 120 new funds options, while a payout rate of 6.5% may lead to the lower 60 new funds with the same donation inflows and an 8% payout rate for 60 new funds with lower donation inflows. The analysis shows (in red dots in Chart 7) that over 20 years cumulative donations from the two 60 new fund options never reaches that seen with the 120 or 180 fund options. Even more significantly, over 40 years (Chart 8) neither of the 60 new fund scenarios comes close to cumulative distributions made from the base 120 or 180 new fund scenarios at any payout ratio used.

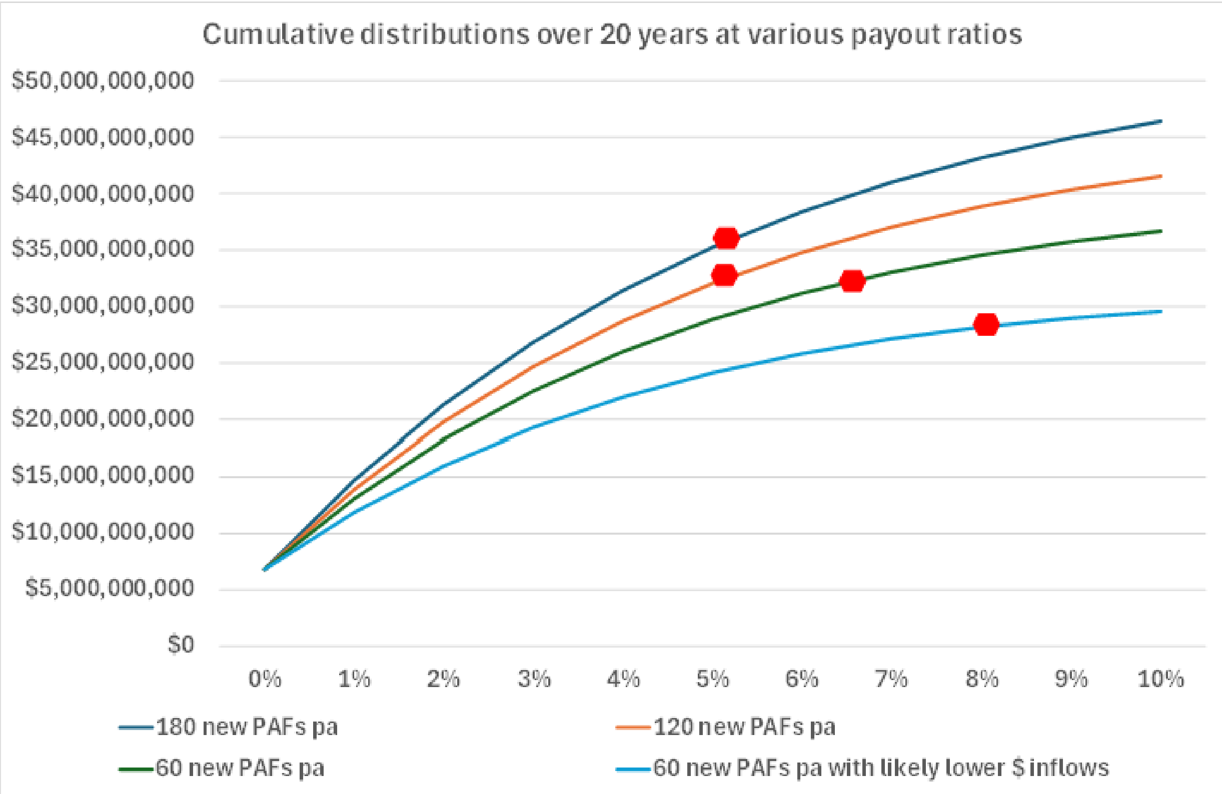

Chart 7 – Cumulative distributions onwards for 20 years from current 2023 PAF sector, Source – JBWere Philanthropic Services

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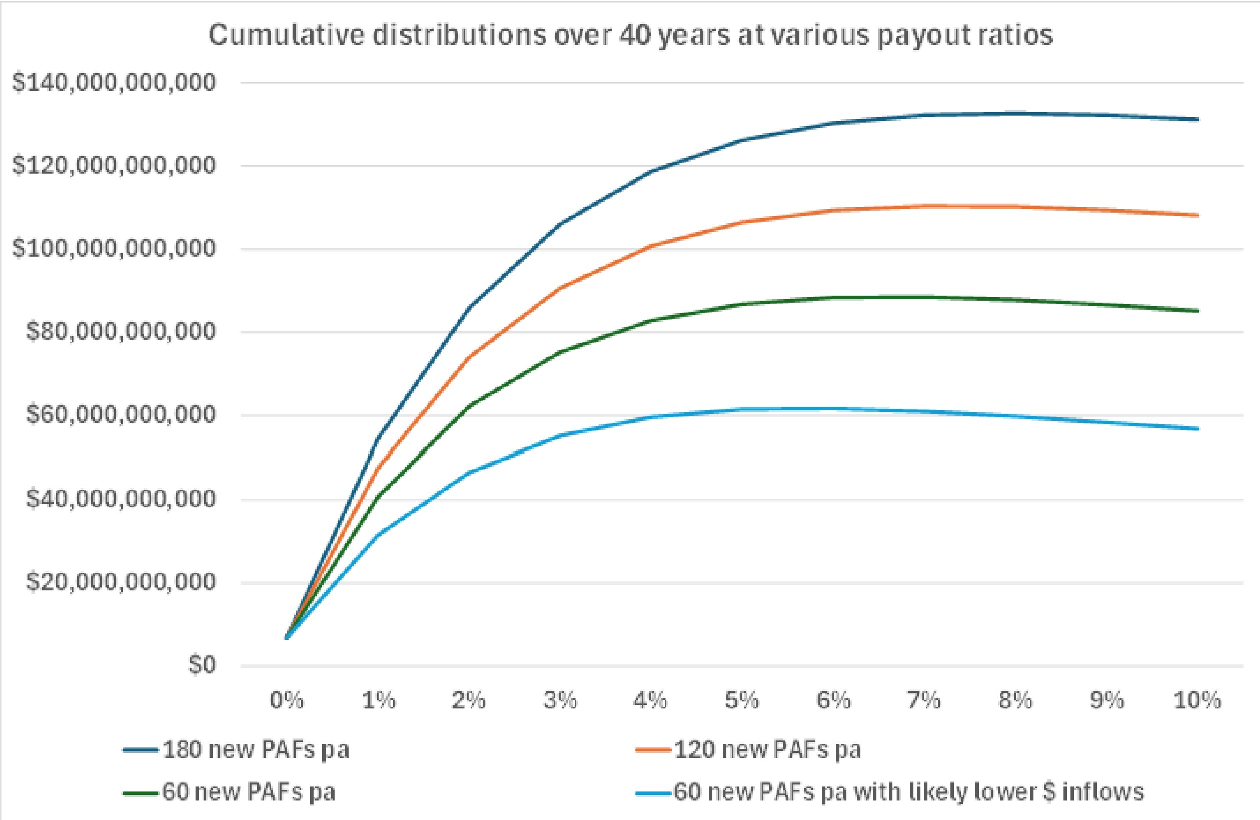

Chart 8 – Cumulative distributions onwards for 40 years from current 2023 PAF sector, Source – JBWere Philanthropic Services

To highlight the quantum of these differences we have modelled the cumulative distributions over the next 25 years (the same time period as PAFs have currently existed) at each of the 180 and 60 new funds pa scenarios plus the 60 with lower donations scenario, all compared with the base case of 120 new funds pa.

The results (Chart 9), show both the strong benefit of further promoting Private Giving Funds through a National Giving Campaign potentially leading to 180 new funds pa, but also the real risks of raising payout ratios to say 6.5% and seeing new funds fall to 60 pa (loss of $1.9 Billion) or worse still raising it to 8% pa and seeing both that lower number of new funds plus lower donations made to them (loss of $9.7 Billion). The for-purpose sector cannot afford that scale of loss in potential philanthropic income.

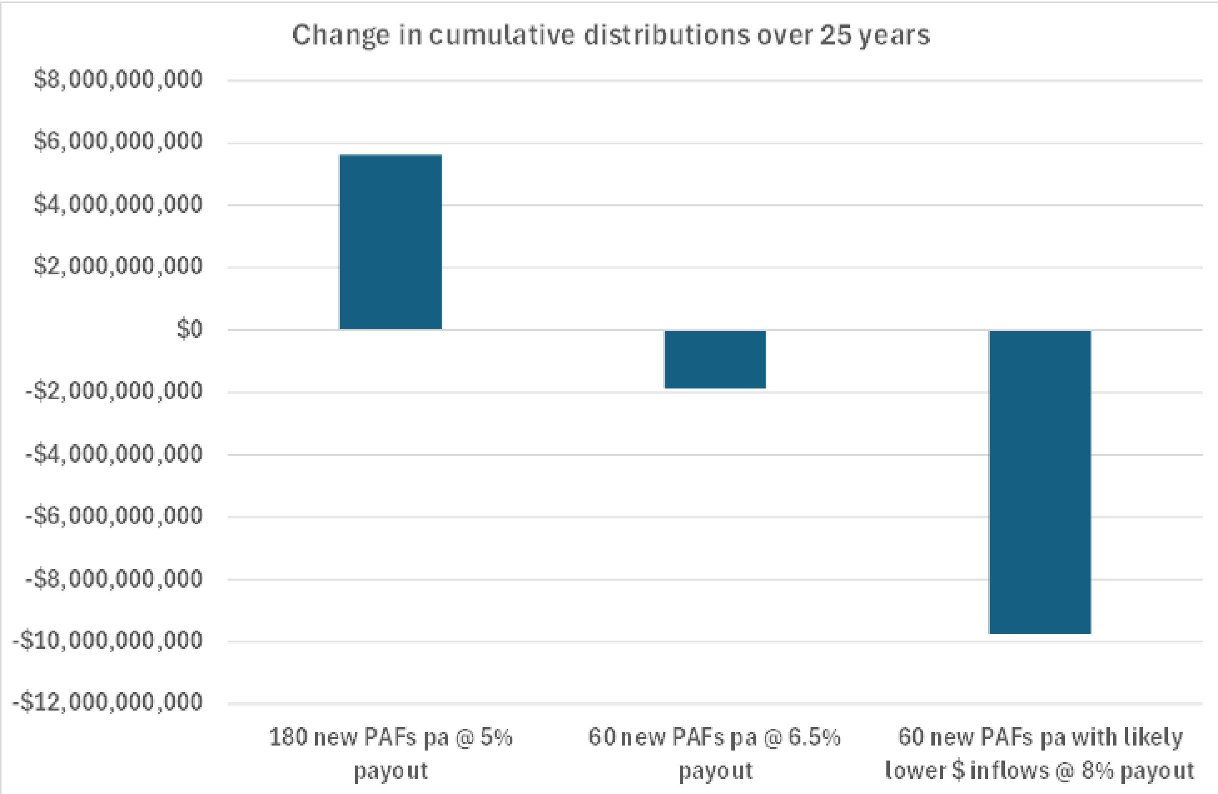

Chart 9 – Difference in Private Giving Fund distributions over 25 years at various scenarios, Source – JBWere Philanthropic Services

One of the first 200 PAFs to be established in Australia is also a JBWere client and has allowed us to reproduce their asset and funding statistics for this submission (Chart 10). As they were established in 2004 and have been of a size close to the PAF average over time, it is useful to examine their giving history and compare it to the value of the initial tax deduction in the subsequent 21 years since establishment. Their initial donation was $2.2m in 2004 from a one off financial gain through an asset liquidation. This provided a tax offset of $1.034m at a 47% marginal rate. Only much smaller donations into the PAF were made in subsequent years. Over those 21 years, distributions have totalled $3.1m, three times the original cost to taxpayers. In fact, that initial cost to taxpayers had been distributed by year 11. In addition, the current capital base of $4.5m at June 2025 will allow the fund to continue to give at higher rates through future generations, should they choose to continue.

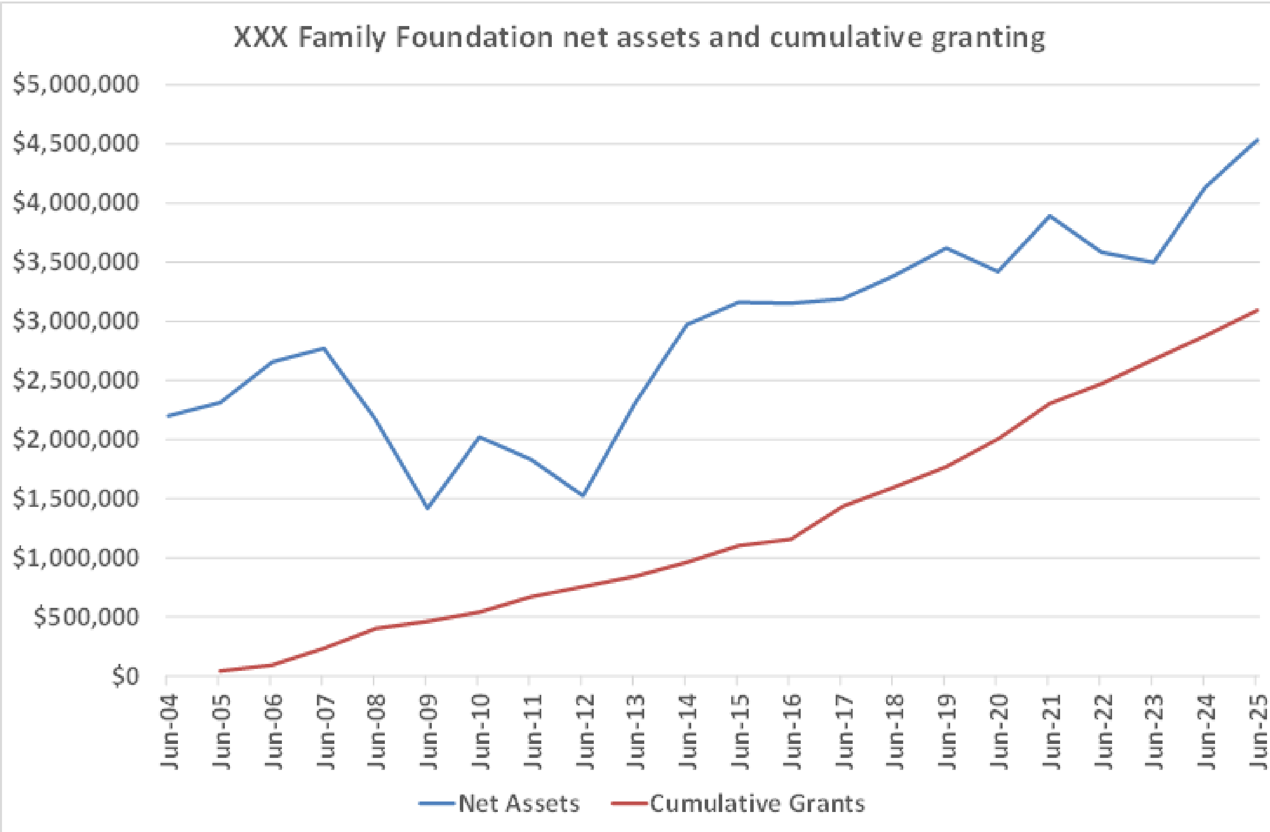

Chart 10 – Actual Private Giving Fund assets and cumulative distributions, Source – JBWere Philanthropic Services

The ability to gradually and consistently grow distributions is one of the strengths of Giving Funds and one of the attractions of those who establish them. Both giving now for current needs, and in the future as new needs arise is an important part of how philanthropy contributes to the successful funding of the for-purpose sector as its income and expenses has grown at around 8% pa. Chart 11 shows how this individual Foundation has grown its giving, including responding to the urgent needs during the COVID years of 2020 and 2021.

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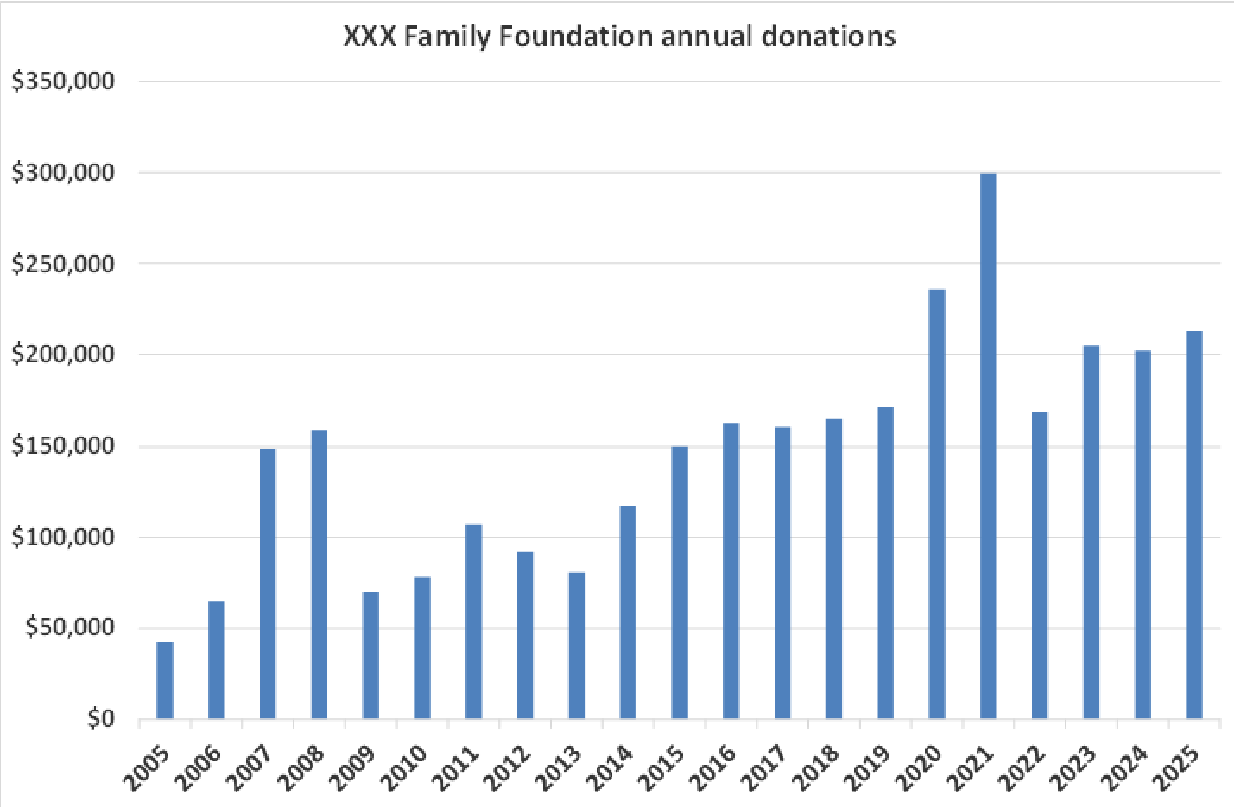

Chart 11 – Actual Private Giving Fund annual distributions, Source – JBWere Philanthropic Services

Response to Consultation questions

Principles for setting the distribution rate for giving funds

1. Are these considerations appropriate in setting the minimum annual distribution rate?

They are appropriate but not complete. The sole purpose of Giving Funds is to provide funding for item 1 DGRs. The end outcome of any suite of changes should be that more funds are deployed for social and environmental impact – through both granting and investment. If changes are made to distribution levels which would reduce the future potential scale of giving from these funds, then those changes have failed to deliver an appropriate outcome.
There is a balance between the current and future support provided which is what the payout ratio determines. However, a critical part of this equation is also the encouragement of new funds to be established. While this is mentioned in the consultation commentary, the analysis only deals with one hypothetical fund and even this work did not conclude that a higher rate benefitted distributions over time. Chart 2 of the Treasury paper shows that from around year 18 onwards, the 5% minimum provides greater levels of giving than higher payout rates and cumulative giving is higher from year 32 onwards and increasingly outgives beyond. Real asset values are also maintained.

There is a subtle but important difference in wording between the Productivity Commission Report and the Treasury paper that has significant repercussions in our view. The original Productivity Commission Report states "the minimum distribution rates should facilitate ancillary funds to operate in perpetuity, where the trustees want this to occur, without guaranteeing that all ancillary funds will actually do so". The Treasury paper states, "there should be no guarantee that funds exist in perpetuity in the absence of additional gifts to the fund".

This difference in approach has the potential to encourage less giving now as donors won't initially add their full philanthropic allocation to a Giving Fund initially but will potentially hold back to top up in the future, if at all. More importantly, it will discourage some from establishing a Giving Fund at all if they cannot provide an ongoing giving legacy to future generations.

2. Should the five-year transition period apply only to giving funds that exist at the time the distribution rate changes, or to all giving funds?

As stated in this submission, we do not support the change to Private Giving Fund distribution rate. If there was to be a change, then a five-year transition period is needed to allow changes to investment strategies that have been set based on the current distribution requirements. Based on our experience, it is likely that trustees will have to hold a higher level of cash (lower returns) to ensure they have funds for distributions, and could also adopt a high-risk strategy to generate higher returns to meet the higher distribution rate and generate necessary returns. Higher risk assets tend to have longer investment time horizons and often higher volatility and risk of loss. This suggests if a change was made, a minimum five-year transition should apply to all funds.

3. What other considerations, if any, should the government consider in setting the minimum annual distribution rate?

The most important consideration is how much new funding to both existing Giving Funds and the establishment of new funds would be lost to DGR1's. Our modelling (see Chart 9 and related analysis) suggests that $1.9 Billion could be lost over the next 25 years (Private Giving Funds are now in their 25th year) with an increase from 5% to 6.5% leading to a fall in new fund establishment from recent levels of around 120 p.a. to an estimated 60 p.a. If this also leads to a reduction in the size of new funds and a reduction in the average amount added to existing funds, this loss is more likely around $9.7 Billion. This assumes the number of new funds established annually falls from 120 to 60 and in the latter case the average new fund size and additional contributions to existing funds also declines.

Perhaps more importantly, there is potential for new fund establishment to grow to 180 annually if a stability of Giving Fund rules was maintained and a National Campaign for Giving was introduced which promoted the value of all giving, including structured giving and volunteering. Modelling suggests this could grow giving over 25 years by $5.6 Billion.

Another issue is that larger funds focussed on long term change will convert into item 1 DGR's for flexibility in executing their strategies. In this case, rather than supporting existing item1 DGR's, they could potentially compete with them for exposure and funding.

It is important to note the relative immaturity of the Australian private structured giving system compared to longer established regions such as the UK and USA. Australia had only 2,388 PAFs at June 2025, whilst at the same time there are 85,000 people earning over $500,000 annually (2023) and an estimated 97,000 households with net assets of over $10 million. This highlights our claim that with policy stability and proactive focus, there should be 50,000 Private Giving Funds in Australia and an even more substantial number of sub funds within Public Ancillary Funds. Any changes that would reduce the enthusiasm for more people to commit to giving over extended periods should be discouraged.

Another unintended consequence of an increase in the distribution rate will likely be reducing the potential capital available for impact investment. A significant portion of the capital allocated to impact investing comes from PAFs, which makes sense as this capital is set aside for social impact. Impact Investments tend to be longer term in nature and often has lower levels of liquidity when compared to non-impact funds of a similar nature. Moreover, impact investment in certain areas (e.g. certain types of housing, first nations advancement) will target a lower level of return in order to generate the type of impact required (which will not be funded by traditional markets).

A higher distribution rate has the potential to limit allocation to impact investments as some of these are unlikely to generate the type of returns to match the portfolio's need to meet distribution requirements. A higher distribution rate will likely mean a lower allocation to illiquid investments like impact investments as these also present challenges for managing risk through asset class diversification (these can't be as easily sold to rebalance portfolios).

Furthermore, in total, this is regressive as impact investment increases capital that is deployed in the sector beyond distributions and thus reducing this impact capital being recycled (as the capital comes back) for additional cumulative impact over the long term.

Practical considerations for setting the minimum annual distribution rate

4. In setting the minimum annual distribution rate, is it appropriate to consider the time preferences of DGRs and the community?

The Australian for-purpose (charity) sector has seen both income and expenses grow by around 8% pa over an extended period with margins remaining dangerously tight. So, while immediate needs are important, future needs are also critical and growing fast. Giving from PAFs currently reflects this dual need for funding with an average payout of 7.5% over the past 5 years and 25% giving over 10% pa and a number spending down in a shorter period. This is well balanced by another 49% giving between 5-6% pa and mostly looking to continue and grow funding into the longer term. This latter example is illustrated in our modelling section by the distributions over time from the XXX Family Foundation – Chart 10 & 11). This balance seems to serve both the shorter- and longer-term needs of the item1 DGR sector they are serving.

5. Is your preference for DGRs to receive distributions sooner (implying use of a higher discount rate), later (a lower discount rate) or no preference?

As stated in Question 4, we believe a combination of shorter- and longer-term distributions best serves the sector's needs. Removing that option from funders risks reducing funding at both ends of the time spectrum if it discourages new Giving Funds being established. Our modelling shows that the internal rate of return (IRR) from a Giving Fund with a 5% payout ratio and 7% investment return net of costs is 12.6% over its life. This uses the initial 47% of donation cost to taxpayers and the subsequent distributions to Item 1 DGR's. This is a strong IRR for community benefit. The risk of depriving community of this return rises as payout ratios rise and the number of new funds established declines as a result.

6. To what extent should the wishes of donors to operate a fund in perpetuity be balanced against preferences of DGRs?

As stated in Questions 4 and 5, we do not believe these two issues are in conflict as suggested by the question. Many donors are not managing their funds in perpetuity, nor do all Item 1DGR's want all the capital right now. The flexibility should be available to funders and Item 1 DGR's to develop funding partnerships that suit their impact strategies. Based on historical evidence, most of those Item 1 DGR's will be in existence for generations (potentially perpetuity) as well. In addition, there will be many more new ones established as the number of charities in Australia continues to grow and their future funding needs also grow.

7. Do you have a view on how increasing the distribution rate would affect the willingness of donors to set up giving funds?

As seen in our modelling section above and in past examples in both Australia and the USA, there is little doubt that an increase in the minimum distribution rate will reduce the establishment of new Giving Funds. The number of new PAFs established in Australia fell from 164 and 169 in the 2 years prior to the 2009 PAF guidelines changes and were 54, 57 and 28 in the subsequent three years despite some recovery in financial markets post the Global Financial Crisis.

8. Given all considerations, do you have a view on what the appropriate minimum annual distribution rate should be?

We recommend that the current 5% rate for Private Giving Funds be maintained and aligning the Public Giving Funds to the same rate. This would provide greater cumulative giving over the medium term as shown in Treasury modelling and confirmed in our own work. When we consider the likely decline in the number of new funds established and the lower amounts committed to these and existing funds, increasing the minimum distribution rate would only reduce medium term giving.

Principles for smoothing distributions

9. Are these principles reasonable? If you don't agree with one or more of them, please provide reasons.

Smoothing of distributions as suggested is encouraged.

10. Should the Commissioner of Taxation have the ability, following notification by a giving fund of its intention to smooth distributions, to direct the fund to instead make the required minimum distribution in each year? (A fund would be able to object to a direction.)

Only if evidence of non-compliance was found.

11. If the Commissioner is given the power to direct a fund to instead make the minimum annual distribution, what factors should the Commissioner be required to take into account before giving the direction?

Examples are the fund's reasons for smoothing, past compliance with minimum distribution requirements and the ability of the fund to make a distribution larger than the minimum in a year. The examples given are reasonable.

12. Should a giving fund be able to access distribution smoothing if it has never previously made a distribution? For example, a PuGF that is not required to and, in fact, has not made a distribution in the four years following its establishment might want to smooth distributions over the first three years in which it is required to make distributions.

The four year exemption for Public Giving Funds should not be included in any smoothing calculations or the first year exemption to Private Giving Funds. However, beyond this period, the smoothing process should work as outlined.

13. Are there other principles for smoothing that should be reflected in the guidelines?

No.