

12 May 2023

Our ref: WD: NFP

Philanthropy inquiry
Productivity Commission
GPO Box 1428
Canberra City ACT 2601, Australia

By online form: [REDACTED]

And by email: [REDACTED]

Dear Philanthropy inquiry team

Review of Philanthropy - Call for submissions

Thank you for the opportunity to provide feedback on the discussion paper "Review of Philanthropy - Call for submissions." The Queensland Law Society (QLS) appreciates being consulted on this important step in the review of philanthropy in Australia, with a view to analysing motivations for philanthropic giving in Australia and identifying opportunities to grow it further.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled by the QLS Not for Profit Law Committee, whose members have substantial expertise in this area. Our committee members advise charities and not for profit (NFP) entities across a range of different sectors and bring a broad range of experiences to their roles as legal advisors to NFPs.

Given the expertise of its members, the Committee looks forward to contributing further to the review, when the Commission's draft report is released later this year.

The Committee has reviewed the "Call for submission" discussion paper. At this early stage, we anticipate the Committee will be particularly well-placed to comment on any proposed reforms to:

- the DGR framework (Chapter 3 of the current paper); and
- regulatory barriers to giving (Chapter 4 of the current paper).

In the interim, QLS provides the following information for the Commission's consideration.

1. Previous inquiries and reports

As the Commission undertakes this phase of the review, the Committee commends the work previously undertaken on these and related issues by the following inquiries:

- a. An earlier Productivity Commission inquiry into the **Contribution of the Not-for-Profit Sector** (Feb 2010) – and its final report “[Contribution of the Not-for-Profit Sector](#)”.¹

The terms of reference and scope of the review specifically included an examination of “the extent to which tax deductibility influences both decisions to donate and the overall pool of philanthropic funds”.²

In particular, QLS notes and supports the recommendations in Chapter 7 of the Final report – Taxation, philanthropy and access to capital, and the analysis in Part 7.2 of philanthropic support by individuals and business.

- b. The **Not-for-profit Sector Tax Concession Working Group**, chaired by Linda Lavarch.

The working group was established with the objective of considering whether there are better ways of delivering the current envelope of support provided through tax concessions to the NFP sector by the Australian Government. Ms Lavarch is a member of the QLS Not for Profit Law Committee and we would welcome further engagement with our committee in light of this experience and knowledge.

Its final report was released in May 2013 - [Fairer, simpler and more effective tax concessions for the not-for-profit sector](#).³

We particularly note the analysis and conclusions in relation to the DGR framework, culminating in Recommendations 6 to 11 of the Final Report.

2. Potential areas for further research and inquiry

- a. **Corporate and retail sources of philanthropic giving**

In considering the discussion paper, members of our committee discussed the current lack of information available about other sources of giving in Australia, including:

- the level of philanthropic giving (including DGR donations) by corporations in Australia; and
- where retailers collect donations on behalf of identified charities. A typical example is when a consumer agrees to ‘round up’ their purchase to the nearest dollar.

We are aware that the Australian Taxation Office publishes information about individual giving, but similar data is not published about corporate giving.

¹ Available at: <https://www.pc.gov.au/inquiries/completed/not-for-profit/report>

² Productivity Commission, *Research Report - Final Report: Contribution of the Not for Profit Sector*, (January 2010), page V

³ Available at: <https://treasury.gov.au/sites/default/files/2019-03/NFP-Sector-WG-Final-Report.pdf>

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In order to understand the wider envelope of philanthropic giving in Australia, it may be useful for the Commission to consider opportunities for capturing, identifying and then publishing data about these additional forms of philanthropic giving in Australia.

b. Inactive and dormant charitable funds and trusts

QLS is aware of programs in England, Wales and Scotland considering ways to reactivate dormant funds and trusts where a trust or fund has not distributed any funds for over 5 years.

The programs offer expert assistance to identify the barriers to activity, through a partnership of the charities regulators and a community foundation, with a view to helping the entities to reactivate and releasing inactive funds.

For example, in Scotland, the Revitalising Trusts project has unlocked over £2.3 million from lost or forgotten charitable accounts.⁴ The project is run collaboratively by the Scottish Charities Regulator and Foundation Scotland. The assistance might include help with finding new trustees or identifying appropriate beneficiaries.

It may be useful for the current inquiry to consider the prevalence of inactive charities in Australia and the potential for such a program here to improve charitable activity.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED]

Yours faithfully

[REDACTED]
Chloé Kopilović
President

⁴ <https://www.oscr.org.uk/news/revitalising-trusts-project-tracks-down-millions-for-public-benefit/>