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Level 11, 1 Margaret St  
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The Productivity Commission  
[www.pc.gov.au](http://www.pc.gov.au)

Dear Sir/Madam,

**PRODUCTIVITY COMMISSION REVIEW OF PHILANTHROPY - BDO SUBMISSION**

BDO refers to the invitation by the Productivity Commission to provide comments on the Productivity Commission's Philanthropy Inquiry. BDO is pleased to provide feedback and comments in relation to the call for submissions. Our detailed comments are outlined in the appendix below and in the attached spreadsheet.

Please note that the BDO Foundation Trust was established as a Public Ancillary Fund in 2018 and has started its growth plans in 2021 connecting the firm and its employees with key community issues. The initial focus is on mental healthcare.

Should you have any questions, or wish to discuss any of the comments made in our submission, please do not hesitate to contact me on 02 9240 9736 or [lance.cunningham@bdo.com.au](mailto:lance.cunningham@bdo.com.au).

Yours sincerely

Lance Cunningham

BDO National Tax Technical Leader

**PRODUCTIVITY COMMISSION Call for Submissions**

Below are the BDO comments to the Productivity Commission's request for comments on the Productivity Commission's Philanthropy Inquiry. The questions from the Productivity Commission's call for comments are reproduced in green below and the BDO comments in this submission are in black type.

**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.

**BDO submission**

Philanthropy includes:

- donations by individuals during their lifetime
- bequest by individuals
- establishment of Private Ancillary Funds and Public Ancillary Funds ("PAFs") by those individuals or entities that create the initial fund
- donations by those PAFs exclusively to DGR 1 entities on an annual basis
- corporate philanthropic support

Philanthropy has the power to design solutions to problems.

**Information request 2****Vehicles, trends and motivations for giving**

The Commission would welcome 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.

**BDO submission**

The BDO observation of donors includes:

- Individuals who contribute to charities that support causes of particular focus to the donor.

- Staff and clients who donate to and support fundraising activities of business aligned Public Ancillary Funds
  - Individuals / families who have a significant business transaction such as a sale of a business and they make a substantial donation to a PAF.
  - High net wealth individuals who donate large sums to charities of their choice.
- Australian-specific data, case studies or other insights regarding motivations of donors who have different characteristics, including elasticities of giving if available.

#### **BDO submission**

BDO observations include

- Clients are motivated by a donation that is income tax deductible.
- Staff in workplace giving are motivated by using pre tax dollars that is fully income tax deductible.
- Clients remain focused on whether a contribution is deductible.
- PAFs can only distribute to entities that have a DGR 1 status and have a minimum percentage of the PAF's funds to distribute each year.

A large proportion of the BDO workforce is of a younger demographic with a good gender balance. At present the BDO Foundation is focused on the Sydney office with plans to extend this through the broader practice. The workforce in Sydney is supporting the fundraising work of the BDO Foundation and the connection through to the supported cause of mental healthcare.

In some BDO offices the local office also support local charities through a work place program. This connects the younger generation with the concept of community support and giving to focused causes. BDO has observed that the younger demographic will more likely support a cause rather than an organisation - they will support healthcare services and the BDO Foundation as the mechanism to achieve this.

- 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.

#### **BDO submission**

Data regarding costs is hard to compare on a broad cross section basis.

BDO's observation is that each charity develops their own strategy on how to raise funds and seeks to create their own unique fundraiser. Examples such as Mater Prize home, Shave for a Cure.

One of the challenges facing every charity these days is the competition for the donor dollar and how each charity must seek to find a niche that allows them to generate funds in an effective manner by a means other than just asking for donations. Even asking for donations is harder with the restrictions on telephone contact, the challenges of a door knock etc.

Attached is a spreadsheet that compares examples of five charities with different fundraising methods. All five charities raise \$40,000 over the two year period, each using their own methods.

The spreadsheet highlights that it is not appropriate to simply take a set of financials and generate a comparison and expect to produce some evaluation of the efficiency of the fundraising process. Some have costs of goods sold, art union prizes, and others may have costs buried in admin.

- 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.

#### **BDO submission**

Philanthropy can provide the seed capital to allow a charity to establish a trial to test a new innovative approach to a problem in society where the charity and the philanthropist are prepared to carry the risk with the initiative.

The support of philanthropy allows the new initiative to be proven up and the risk removed allowing government or alternate funding sources to provide ongoing financial support with a degree of certainty regarding outcomes.

Work placed giving initiatives introduce a broad cross section of the workforce to supporting charitable activities.

- Giving vehicles that are not currently available in Australia and their purpose, suitability in an Australian context, benefits, costs and implementation risks.

#### **Information request 3**

##### **Role of government in philanthropy**

The Commission is seeking views and information on the following matters.

- 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.

#### **BDO discussion**

Philanthropy allows charities in particular to identify needs within the communities and to establish solutions. These charities identify and solve the risk in the design process allowing government to have a higher certainty of effectiveness of taxpayer funds in the long term.

Government should support philanthropic giving.

The Australian Financial Review Magazine for May 2023 profiled a list of the largest philanthropists, measured in terms of donations made during the year ended 30 June 2022. Of the top ten all but one were trusts and foundations with specific focus areas identified for the target of their philanthropy.

#### **Information request 4**

##### **The Deductible Gift Recipient (DGR) 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.

#### **BDO submission**

Donations that are income tax deductible under the gift rules. All DGR holders are required to ensure that consistent with the requirements of the income tax legislation for DGR under Division 30 of the ITAA 1997 they issue receipts that comply with the law.

Consequently the ATO should be able to request substantiation of the gifts claimed in income tax returns.

- 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.

#### **BDO submission**

Recent announcements and legislation related to the DGR reforms enhance the accountability and supervision of those entities that hold a DGR registration in that all non government DGRs are required to be registered charities.

BDO supports these positions.

There is commentary from time to time suggesting that all charities should receive access to be a DGR. BDO considers it is appropriate to separately qualify those entitled to the DGR registration.

- 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).

#### **BDO submission**

Recent changes to the law require all non government entity DGRs to be registered charities. As a consequence all non government entity DGRs will be subject to the governance rules required of a charity and be subject to oversight by the ACNC.

This assists in ensuring the public (and the government) can have confidence in the regulation of those entities that have DGR registration.

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.

#### **BDO submission**

BDO does not support the concept of a rebate in place of the existing tax deduction regime for donations.

In the experience of the BDO, an important issue for the majority of donors is whether the recipient is a DGR. The ability to claim a deduction and the extent of that deduction are both relevant.

BDO is confident that a tax rebate rather than an income tax deduction would act as a disincentive for donors whose marginal rate of tax was higher than the rebate level.

Where a business sponsors a charity the expense is claimed for income tax purposes under the standard Section 8-1 of the ITAA 1997 rather than the gift rules.

A rebate approach would create an inconsistency where an entity claims an amount as a deductible outgoing, such as a sponsorship instead of a donation. In such circumstances, the entity would enjoy a deduction for the sponsorship at its marginal tax rate however the same amount, if treated as a donation would only result in the rebate.

BDO experience is that individuals and families will often establish a Private Ancillary Fund or Public Ancillary Fund (“PAFs”) in a year in which a substantial income transaction occurs. The sale of a major asset is an example. The individual / family elects to donate income into a PAF rather than paying income tax. Once in a PAF, the assets are subject to the strict rules applicable to PAFs.

The BDO Foundation as a Public Ancillary Fund relies on donations and fundraising income to establish an asset base to support its nominated causes. Young persons no longer carry loose change so all donations are by card or similar electronic payment means. This makes the decision to donate far more conscious with the focus on receiving the tax deduction for the donation connected to the decision to give.

Staff will also volunteer their time. By example staff in Brisbane attend a community kitchen on a regular structured basis to assist in the delivery of meals to the homeless. However if they are asked to donate money the question re tax deductibility will arise.

If the deduction for the donation is removed or substantially reduced, the incentive to donate income to a PAF may be so impaired as to remove the incentive. This could result in fewer PAFs being established.

### 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.

#### BDO submission

At the Commonwealth level the tax concessions for a charity in addition to the DGR concessions include:

- Income tax exemption;
- FBT exemption concession; and
- GST concessions.

Income tax exemption is provided to NFPs under two broad headings -

- Those organisations whose activities are within the specific exemption categories contained in Division 50 of the ITAA 1997 including,
- Those organisations who are required to apply for income tax exemption (ITEC).

Division 50 prescribes requirements that must be met to retain income tax exemption by a charity.

The broad requirements for Australian based charities are:

1. The entity must have a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia (paragraph 50-50(1)(a))
2. The entity must be endorsed as exempt from income tax by the ATO

There are separate requirements for charities

- That meet the requirements of Item 1 of 30-15 (the DGR rules);
- Is a prescribed institution located outside Australia and is income tax exempt in its country of residence; or
- Is a prescribed institution based in Australia but incurs its expenditure and pursues its objectives principally outside Australia.

The three specific tests are

1. Comply with all the substantive requirements in its governing rules (paragraph 50-50(2)(a))
2. Apply its income and assets solely for the purpose for which the entity is established (paragraph 50-50(2)(b)); and
3. Continue to be recognised as a registered charity by the ACNC (Section 50-47)

For those NFPs that do not qualify for full income tax exemption, and are required to lodge income tax returns most can access the mutuality principle with the result that income derived from members of the NFP is not assessable.

The introduction of the annual return for non charity income tax exempt NFPs will over time provide the regulatory structure for the Federal Government as the controller of the income tax legislation, to be satisfied that those who have access to the income tax exemption remain qualified to receive access to that tax concession.

State and Territory tax concessions for charities include land tax and duty discounts or exemptions, with rules varying between jurisdictions. In a similar manner to the income tax exemption the object of these concessions is to allow the charity to better deliver its purpose.



Any benefits to the charity from these State and Territory concessions are subject to the ACNC governance rules and the income tax rules - that is any benefit must be applied solely to the purpose of the organisation.

The BDO Foundation is endorsed for income tax exemption. It does not have the FBT exemption.

The ACNC has provided that oversight of charities since 2012.

## **Competitive neutrality**

Page 19 of the Productivity Commission document includes the statement:

*These types of concessions can increase the ability of charities to compete with other organisations and businesses that are unable to access them and can raise competitive neutrality concerns.*

BDO submits that the question of competitive neutrality is broader than whether a NFP has an income tax exemption.

The income tax exemption must be considered alongside other factors that equally impact on the competitive neutrality with many of those other factors placing the NFP at a disadvantage.

These other factors include:

- Access to capital. A NFP can only source capital from borrowings and accumulated reserves. A NFP does not have a shareholder base that it can go to for capital. Whilst it can ask donors for support for a particular project, the lead time for these is usually substantial and the outcome uncertain.
- For profit enterprises can apply more flexibility in the reward and remuneration of their key personnel, including employee share schemes, performance rights and options. These are not available to a NFP.
- For a NFP to maintain its income tax exemption it must comply with the strict requirements of Division 50 of the ITAA 1997 - if the pursuit of a commercial activity becomes the dominant focus of the organisation there is a strong risk that the organisation is no longer applying all income and all assets to the purpose.
- For larger charities they are required to lodge their financial statements with the ACNC and these financial statements are freely available to public access. The financial statements of a private enterprise are not required to be lodged with any organisation unless it falls within the category of a large company and has to lodge with ASIC. The financial position of the charity may be visible to the private enterprise entity with no reciprocal visibility of the financial statements of the private enterprise, giving the private enterprise a business knowledge advantage.

The Productivity Commission considered this question in 2012 and BDO submitted material to that review.

### **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.

#### **BDO submission**

Fundraising regulation is a state based system. It remains a significant barrier and cost for NFPs especially those NFPs that operate in multiple state jurisdictions.

The Statement by the Assistant Minister in February 2023 is a positive step. However reform is required in all aspects such as registration in one state or territory to allow recognition in all states and territories, a consistent single set of art union rules, universal reporting requirements, etc.

- 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.

#### **BDO submission**

Crowdfunding options including GoFundMe pages with request for financial support for a myriad of requests are a frequent. Amounts raised are not subject to any regulatory oversight such as ensuring that the funds raised are used for the purpose advertised.

There is also the question of whether those who contribute are under a mistaken belief that the amounts contributed are a tax deductible gift in Australia.

- 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.

#### **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.

### **BDO submission**

There is an increasing focus by NFPs and charities on reporting outcomes rather than merely reporting outputs. In New Zealand there is now increased mandatory reporting by NFPs for the first year and this is being monitored by the accounting bodies for the Australian context.

BDO Advisory services have been engaged by charities to assist with development of economic and project reports that highlight the broader value add delivered by the charity. This can include the economic value add or the overall economic contribution by the charity.

### **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.

## **BDO submission**

BDO submits that it is important that philanthropy can continue to fund charities who then support the needs of our society, to establish innovative services and de risk options that the levels of government can consider.

### **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.

### **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

### **BDO submission**

BDO submits that government and society in general should encourage positive recognition of philanthropists.

In Queensland the Queensland Community Foundation (“QCF”) hosts annual Philanthropy awards recognising various categories of philanthropist from emerging to corporate. BDO in Queensland supports the QCF awards.

BDO also submits that there should be no change to the \$2 threshold as the minimum for the income tax deduction for donations. To change would create a barrier to small donations and potentially interfere with the regular giving and workplace giving programs that are in use in BDO now are commonplace in other businesses.

### **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 deliveryother benefits, including intangible benefits such as enhancing social capital.