Australian Council of Social Service

Review of philanthropy

Submission to the Productivity Commission

June 2023

About ACOSS

The Australian Council of Social Service (ACOSS) is a national voice in support of people affected by poverty, disadvantage and inequality and the peak body for the community services and civil society sector.

ACOSS consists of a network of approximately 4000 organisations and individuals across Australia in metro, regional and remote areas.

Our vision is an end to poverty in all its forms; economies that are fair, sustainable and resilient; and communities that are just, peaceful and inclusive.

Summary

ACOSS thanks the Productivity Commission for the opportunity to engage in this inquiry into philanthropy in Australia and for framing the issues and trade-offs arising in this complex area so clearly in its consultation paper.

We welcome the Commission's proposed approach to 'good policy design', including the tax specific principles of efficiency, equity and simplicity outlined in the Henry Review[1]. We support the Commission taking a 'community-wide perspective' with consideration of "costs, benefits, and distributional effects of reform options".[2]

In approaching this Review, ACOSS has several objectives:

1. To promote an understanding of the different but complementary purposes of philanthropic and government funding;
2. To increase philanthropic giving in Australia;
3. To ensure that tax concessions to encourage philanthropic giving are efficient, cost-effective, simple and equitable; and
4. To simplify the regulatory frameworks governing charities and impacting on philanthropic giving.

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[1] Productivity Commission, *Review of Philanthropy: Call for Submissions,* March 2023, page 12.

[2] Ibid.

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Discussion

The role and limitations of philanthropic giving

Philanthropy offers opportunities beyond government funding but should not replace it

The Commission's consultation paper notes that most charities rely on a combination of government funding and donations and bequests, with government funding a larger source of funding for bigger organisations (e.g. 'extra-large charities' receive more than 50% of their funding from governments). The Commission notes that despite a decreasing proportion of taxpayers claiming deductions, the value of donations has doubled over the last decade (from $2 billion – 3.8 billion). Given this context, it is important to critically consider what role government should play in encouraging or supporting philanthropic giving, and the relationship between government funding and philanthropic giving.

Many community sector organisations currently rely on philanthropic funding:

- where government funding is not available or not enough;
- for greater independence and to diversify activities, including for trials/pilots that may not be eligible for government support;
- to respond quickly to community needs, for example in disasters or crises;
- for greater freedom to advocate in relation to current government policies; and/or
- to support organisational infrastructure and capacity building.

This arguably reflects undue constraints in government funding approaches, including in relation to adequacy, advocacy, innovation and rapid response funding.

Many community organisations deliver services to the community on behalf of, and funded by, government. In many cases these services were previously delivered directly by governments, but have been outsourced to non-government providers, often a mix of non-profit and for-profit organisations. Government funding for services should reflect the actual costs of delivering the service and be sufficient to meet the needs of the community. Governments have a responsibility to generate the revenue needed via the tax system to fund services adequately. This responsibility should not be outsourced to philanthropic donors nor should community organisations have to seek additional funds from private funders to meet the essential costs of delivering services to the community.

Some organisations seek philanthropic funding for advocacy activities due to an absence of government funding for advocacy activity or a real or perceived risk that their independence will be compromised by receipt of government funding. ACOSS' view is that government funding contracts should not constrain advocacy activity, that organisations should be free to advocate without risk of adverse funding consequences and that adequate funding should be available for peak bodies and service delivery organisations to appropriately resource relevant policy, research and advocacy work. The expertise of community service organisations in service delivery and policy and service design should be valued by government and seen as a vital contribution to the public policy process.

Inflexibility in current government grant programs may also preclude resourcing for new, innovative or trial programs. This should be addressed by governments designating funding for such purposes and adequately resourcing robust program evaluations. The new office of the Evaluator General creates an opportunity for more central collection and storing of evaluation reports and data.

Further, charities often seek rapid response philanthropic funding in response to natural disasters or other catastrophic events, in addition to government funding (which may take longer and be more bureaucratically burdensome to access).

The above constraints in current government funding programs should be addressed.

Recommendation 1

Government funding for community services should be adequate to meet the real costs of delivery services and community need, be flexible enough to support innovation and pilot programs, resource policy, research and advocacy work appropriately (and not constrain it) and be available and efficiently administered in rapid response to emergencies.

Balancing the benefits and risks of philanthropic funding

Governments currently subsidise donations to charities via tax concessions, mainly via the deductible gift recipient ('DGR') framework. The consultation paper notes that about half of all charities have DGR status, with total donations in 2019-20 of $3.8 billion, with estimated tax expenditures of $1.9 billion.

While tax concessions encourage donations by individuals or organisations, they come at a budget cost to governments and mean governments cede some control over where resources are directed. This means that governments have little capacity to ensure the philanthropic funds are directed to the communities, programs or people who most need assistance, or the programs and services which are most effective. This must be considered in determining the respective roles of government and philanthropic funding, and government support for and regulation of philanthropic giving. The goal of higher donations must also be balanced with the risks of:

- Government funding being withdrawn in response to increased donations;
- significant loss of revenue through tax deductions and use of private trusts by high wealth individuals;
- wealthy donors establishing foundations that influence public policy processes in a way that is not consistent with government transparency and accountability; and
- complex legal and tax structures and rules, that reduce transparency and increase inequity in tax and other financial benefits between different donors.

Recommendation 2

A government strategy to increase philanthropic giving should clearly outline the respective purposes of philanthropic and government funding and the unique responsibilities of government as funder of services that meet the essential needs of people and communities.

The legal and regulatory charities frameworks should be simplified

A simpler and more equitable framework to encourage donations

DGR status enables an organisation to receive tax-deductible donations from the public and is the primary vehicle by which the Federal government encourages philanthropic giving.[3] The consultation paper helpfully summarises the evolution of the DGR current framework and the successive reviews of the framework.

There is a broad consensus that current DGR categories are archaic, overly complex, inaccessible and not reflective of the work of contemporary charities. ACOSS supports reform to simplify and modernise the current framework and

[3] "Charities" is the overarching category for all not-for-profit organisations in Australia. The subset of charities, Public Benevolent Institutions (PBIs) applies to charities that provide "direct relief of such poverty, sickness, suffering, distress, misfortune, disability, destitution or helplessness as arouses compassion in the community".[3] That is, their main purpose is not broad community support. Recognition as a PBI, gives a charity DGR status, and additional tax benefits to other charities. Charities that are not PBIs can be considered for Deductible Gift Recipient (DGR) status and are specifically named in legislation to receive that status. All charities are exempt from income and capital gains tax. They also receive GST and FBT concessions and franking credit refunds. DGR status affords PBIs exemption from FBT.

to improve access to these concessions, especially by smaller organisations supporting disadvantaged or marginalised, minority communities.

ACOSS supports the recommendation of the 2013 Not-for-Profit Sector Tax Working Group report:

> *"DGR status should be extended to all charities that are registered with the ACNC, but use of tax-deductible donations should be restricted to purposes and activities that are not solely for the advancement of religion, or the advancement of education through child care and primary and secondary education, except where the activity is sufficiently related to advancing another charitable purpose."*

We believe this reform would simplify and modernise the DGR regime, while limiting access to additional concessions for activities solely for advancement of religion and education for sound fiscal, pluralist and integrity reasons.[4]

The consultation paper also identifies alternative models for encouraging donations for consideration, including tax rebate schemes. Tax rebates, as used in New Zealand and Canada, would offer a progressive mechanism to give lower income donors the same proportional benefit as higher income donors and should be considered in Australia and the costs and benefits compared to the current DGR regime. Recent research conducted by the Red Cross indicated that people in low-income areas donated similar proportions of their income as middle- and upper-income areas. In 2021, people living in low-income areas gave a higher percentage of their areas' median incomes, at 0.12 per cent, compared to those living in middle (0.1 per cent), high (0.11 per cent) and very wealthy (0.11 per cent) areas.[5] It is important that the tax regime operates equitably in relation to lower income donors.

Finally, ACOSS cautions against allowing tax benefits on donations of superannuation from deceased estates. Excess superannuation funds are taxed at 17 per cent following death. This tax should not be avoided through donations as it directly conflicts with the purpose of superannuation to fund retirement.

Recommendation 3

DGR status should be extended to all charities that are registered with the ACNC, but use of tax-deductible donations should be restricted to purposes and

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[4] The Working Group paper explains its decision not to recommend extension of DGR status to all charities "for fiscal and principled reasons", noting that additional access to tax concessions should not be provided to subsidise activities solely for the advancement of religion given the pluralist nature of our society, and that the private benefits delivered by education providers and associated fees would raise integrity issues. https://treasury.gov.au/sites/default/files/2019-03/NFP-Sector-WG-Final-Report.pdf. While we do not advocate the extension of DGR status for childcare providers, we note the importance of other tax concessions, including income and payroll tax exemptions, to support the important role that non-profit early childhood education and care services play in providing affordability, access, quality and inclusion.

[5] https://www.redcross.org.au/media/releases/2022/red-cross-reveals-australias-most-generous-donors/#:~:text=In%202021%2C%20a%20total%20of,first%20four%20months%20of%202022

activities that are not solely for the advancement of religion, or the advancement of education through child care and primary and secondary education, except where the activity is sufficiently related to advancing another charitable purpose.

Recommendation 4

Consideration should be given to other, more progressive mechanisms to encourage donations informed by analysis of the relative costs and benefits compared to the current DGR regime.

Streamlining assessment and administration of DGR status

The reforms proposed above to DGR would dramatically simplify the application process, doing away with the current categories and complexities.

ACOSS supports the Australian Charities and Not-for-profits Commission (ACNC) holding responsibility for DGR applications, registration and reporting. That is, it should be the "one stop shop" for reporting and registration, including secure data sharing with state, territory and Commonwealth regulators.

Should broader DGR reform not be pursued, it is important that, at a minimum, reforms are implemented to improve the administration of the existing scheme.

A nationally consistent approach to fundraising

Related to this review is the need to ensure that fundraising regulation is harmonised across respective jurisdictions, so that no charity is disadvantaged from seeking donations due to discrepancies across domestic borders. Harmonisation would greatly improve the current outdated and ineffective fundraising regime for charities. The Council on Federal Financial Relations made this a top reform priority for 2022. In February 2023, the Commonwealth, state and territory Treasurers agreed to a set of nationally consistent fundraising principles.[1] With this agreement, and to give full effect to these principles, it is now important that each jurisdiction implement the principles consistently and continue to engage with the charity sector in doing so.[2]

The key risk at this point is that jurisdictions claim to have harmonised their rules, but in effect, up to seven different fundraising regimes remain in place,

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[1] https://www.andrewleigh.com/joint_media_release_agreement_reached_on_reform_of_charitable_fundraising_laws_thursday_16_february_2023

[2] See also https://justiceconnect.org.au/media/we-fixed-fundraising/

each requiring ongoing licencing and reporting. The ultimate test of reform should be that charities only need to register once, comply with a single set of rules no matter where they are in Australia, and report once.

In line with the #FixFundraising campaign, we recommend that the PC monitor existing promising reforms and if needed, recommend further reforms to create a simple, single national framework for fundraising for charities.

Recommendation 5

The National Fundraising Principles should be harmonised, and a mandatory Code of Conduct developed, in consultation with state and territory governments, to better regulate fundraising activities.

Acknowledgements

ACOSS prepared this submission in consultation with members, including charities and state and territory COSSs. ACOSS acknowledges the contributions of members and the Stronger Charities Alliance.

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