

Friday 5 May 2023

Philanthropy Inquiry
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

[Via submission online portal](#)

Dear Productivity Commission

Productivity Commission: Philanthropy Inquiry

Thank you for the opportunity to make a submission to the Productivity Commission's Philanthropy Inquiry (**the Inquiry**).

The Australian Institute of Company Directors (AICD)'s mission is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society. The AICD's membership of more than 50,000 includes directors and governance leaders of not-for-profits, large and small businesses and the public sector.

With a significant majority of our members involved in the governance or work of Not-for-Profits (NFPs) and philanthropic organisations, the AICD supports the Government's commitment to double philanthropic giving by 2030 and welcomes the Productivity Commission's Inquiry on ways to give effect to this commitment.

Our submission is informed by our engagement with members of the AICD's Not-for-Profit Chairs' Forum, as well as other members and advisers to the sector.

Summary

The AICD has long advocated for promoting sound NFP governance practices, reducing the regulatory burden on NFPs and charities, and incentivising sector innovation and efficiency. In line with these policy priorities, we make the following high-level comments:

1. **the harmonisation of fundraising regulations and registration requirements for NFPs and charities needs to be prioritised** to reduce compliance costs and support philanthropic giving;
2. **the AICD considers that the definition of "philanthropy"** (as set out in the Call for Submissions paper, including in Information Request 1) **should be expanded to include volunteering and other non-monetary forms of support** to reflect the significant time and expertise that directors and other volunteers contribute to NFPs and charities;
3. **digital and crowdfunding fundraising laws need to be reformed** to address specific issues arising from these types of donations, such as what happens when a public appeal leads to a surplus of funds; and
4. there is a **need for a central data depository for NFPs and charities** that provides a complete picture of the role and contribution of the sector which can be used to inform policy decisions.

Harmonising fundraising regulations and registration requirements for NFPs and charities

5. The AICD has long advocated for harmonising fundraising and registration requirements for NFPs and charities across Australia.¹ In particular, we have supported a model that provides a simple single national point of registration, notification, regulation, audit and reporting for charitable fundraisers.
6. We welcomed the February 2023 announcement by the Commonwealth Assistant Treasurer and the Treasurers of all States and Territories of an agreed set of national fundraising principles (**Fundraising Principles**). This is an important step forward in removing unnecessary and inefficient regulation which imposes costly and unnecessary barriers to raising funds.
7. We recommend that the Productivity Commission strongly support these reform steps and encourage the States and Territories to implement the Fundraising Principles as quickly as possible. We look forward to seeing each states' implementation plan detailing how they will give effect to the Fundraising Principles (due by July 2023).
8. Whilst the forthcoming adoption of Fundraising Principles by the states is a positive development, members and stakeholders are still finding the process of creating and registering charities and philanthropic organisations burdensome and complex. Whilst many organizations are set up as trusts, there is a lack of awareness among directors about their obligations and what good governance within a trust structure looks like. The AICD is willing to collaborate with the government to provide guidance on directors' governance obligations.

Definition of “philanthropy” should include volunteering

9. Directors of NFPs of all sizes volunteer their time and expertise out of a strong commitment to the purpose of the organisation. The [2022-23 AICD NFP Performance and Governance Study \(NFP Study\)](#) found that just over half of NFP directors spend between one and five days on director duties per month, with the vast majority of directors being unpaid.²
10. The time commitment for NFP directors continues to grow as regulatory changes and shifting community expectations increase the number and complexity of issues directors are expected to be across. This is reflected in the NFP Study, which found that 44% of directors believed that they were contributing more time to their NFP director duties than the previous year.
11. The current definition of philanthropy (as set out in the Call for Submissions paper) which does not include volunteering, therefore risks devaluing the significant contribution that directors make in volunteering their time and expertise.
12. We therefore strongly support an expanded definition of philanthropy which includes volunteering. We otherwise look forward to the development of the National Volunteering Strategy 2023–2033 by the Department of Social Services.

¹ See the AICD [submission](#) to the Deregulation Taskforce for streamlining overlapping regulations in relation to the harmonisation of state and territory fundraising laws.

² 78% of directors are not paid for their director role- see page 7 of the NFP Study.

Digital and Crowdfunding fundraising reform

13. The use of online platforms for fundraising has rapidly grown in recent years. Such platforms can utilise the power of digital and social media networks to obtain potentially greater reach, visibility and impact than traditional forms of fundraising. However, the regulation of such non-traditional fundraising platforms remains complex and nebulous.
14. One such challenge is how narrowly funds can be spent or applied, and what to do with a surplus of funds. With the popularity of digital and crowdfunding continuing to rise, we consider that there is a need for further analysis, and if needed, law reform in this specific area. We note that the Law Council of Australia made some recommendations for law reform as part of its [submission](#) to the Royal Commission into National Natural Disaster Arrangements. In its submission, the Law Council suggested the adoption of laws similar to Canada's *Uniform Benevolent and Community Crowdfunding Act 2020* (ULCC Act) which provides for the application of trust law to all public appeals, gives powers to the fundraisers to administer funds, and provides special guidance on how to deal with fundraising surpluses. We consider this suggestion is worthy of careful consideration.

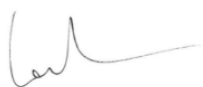
Need for aggregated whole-of-sector data

15. Since the Australian Bureau of Statistics (ABS) ceased publication of regular NFP statistics in 2013, there has been a lack of comprehensive data in respect of the NFP sector. Whilst the ACNC's annual Australian Charities Report provides a useful high-level snapshot of key statistics and trends sourced from the Annual Information Statements of ACNC entities, it is limited in reach as it does not include data from non-ACNC registered NFPs. Further, it has limited information on volunteering or new or emerging donation mechanisms such as donation-based crowdfunding or donations via social media and apps.
16. Our view is that the lack of comprehensive whole-of-sector data has inhibited evidence-based policy reform and an undervaluing of the sector's role and contribution. It can also serve to hold back innovation in the sector. The 2010 Productivity Commission report, *Contribution of the Not-for-Profit Sector*, recommended the creation of an Information Development Plan to provide a "coherent strategy for future statistical data development and research relevant to the sector" and identify ways of improving scope and coverage of data sources. Given the lack of published ABS data, we consider that this recommendation remains relevant and even more necessary to implement.

Next steps

We hope our submission will be of assistance to you. If you would like to discuss these matters further, please contact Christian Gergis, Head of Policy at cgergis@aicd.com.au or Anna Gudkov, Senior Policy Adviser at agudkov@aicd.com.au.

Yours sincerely,



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