

14 August 2025

Director
Not for Profits Unit
Personal and Indirect Tax and Charities Division
The Treasury
Langton Crescent
Parkes ACT 2600

By email: CharitiesConsultation@treasury.gov.au

Dear Director,

Giving fund reforms: distribution rate and smoothing

The Tax Institute welcomes the opportunity to make a submission to the Treasury in respect of its consultation paper *Giving fund reforms: distribution rate and smoothing (Consultation Paper)*.

In the development of this submission, we have closely consulted with our National Not-for-Profit Technical Committee to prepare a considered response that represents the views of the broader membership of The Tax Institute.

Our submission addresses the questions raised in the Consultation Paper concerning the regulation of private giving funds (**PGFs**) and public giving funds (**PuGFs**).

Drawing on the Productivity Commission's [Future Foundations for Giving Inquiry report \(PC report\)](#), the Consultation Paper, and the practical experience of our members in the philanthropic sector, our submission highlights the crucial role giving funds play in supporting Deductible Gift Recipient (**DGR**) charities, and outlines certain concerns regarding proposed changes to distribution rates, fund longevity, and the proposed principle of smoothing.

Giving funds are essential to Australia's philanthropic ecosystem. Their ability to operate effectively in support of long-term, strategic philanthropic initiatives should be safeguarded. The Government's approach should take into account the unique value these funds provide and not focus solely on their fiscal implications. A balanced regulatory framework that respects donor intent, fund diversity, and economic realities will best serve the charities sector and the community.

Our detailed response and recommendations are contained in **Appendix A**.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all.

If you would like to discuss any of the above, please contact our Tax Counsel, John Storey, on (02) 9603 2003.

Yours faithfully,

Julie Abdalla

Head of Tax & Legal

Tim Sandow

President

APPENDIX A

We have set out below our detailed comments and observations for your consideration.

Principles for setting the distribution rate for giving funds

General Comments

The Consultation Paper proposes to implement recommendations 8.1 and 8.2 of the PC Report. The PC Report¹ states that:

‘minimum distribution rates should facilitate ancillary funds to operate in perpetuity (where trustees want this to occur) without guaranteeing that all ancillary funds will actually do so or incentivising that outcome.’

However, the Consultation Paper, in referring to the PC Report, only specifies that:

‘there should be no guarantee that funds can exist in perpetuity in the absence of additional gifts to the fund.’

Although both the PC Report and Consultation Paper stipulate that ‘guaranteeing’ that a fund can exist in perpetuity should not be an objective in determining the minimum distribution rates required to be made by a fund, there is important context contained in the PC Report that is missing from the Consultation Paper. The omission of the additional comments in the PC Report that allowing funds to operate in perpetuity should be ‘facilitated’ if ‘desired’ may suggest that facilitating funds to operate in perpetuity is not a valid policy objective to be considered in regard to any reform proposals to change minimum distribution rates. This is inconsistent with the conclusions of the PC Report. Further, failing to properly take into consideration legitimate reasons for why some funds will seek to operate in perpetuity risks undermining some of the long-term strategic value that giving funds offer. Particularly for initiatives such as scholarships, research grants, and capacity-building programs.

Our members, including practitioners specialising in not-for-profits, question whether the proposed reforms are necessary. As far as our members are aware, there does not appear to be public evidence of widespread misuse of ancillary funds, and we understand from their experiences that each financial year, a large proportion is distributed at rates above the minimum distribution rates. We note that this also appears to be reflected in Chart 1 on page 4 of the Consultation paper. Chart 1 demonstrates the percentage of funds distributed each year, and the high proportion of funds distributing above the minimum each year suggests the system is functioning well. Without data to the contrary, it is difficult to understand the justification for further regulation and we have concerns that it may deter some future philanthropic engagement.

¹ Productivity Commission, *Inquiry into Future Foundations for Giving* (Final Report, no. 104, 10 May 2024), 281.

The proposed goal on page 2 of the Consultation Paper of maximising the benefits available to item 1 DGRs in return for the tax benefit received by the donor would be, in our view, better served by encouraging the creation and longevity of ancillary funds, rather than changes that may shorten the life (and potentially also discourage the creation) of such funds.

Our member's feedback indicates that while the preferences of donors and founders of giving funds vary, many value the flexibility and longevity they provide for individuals in taking an active role in choosing and funding causes over a long term. We understand that many founders specifically reference the desire to create an enduring legacy as a motivating factor in establishing giving funds. Removing perpetuity may result in a reduction in the desirability of giving funds as a means of philanthropy.

A recent survey conducted by Australian Philanthropic Services, as quoted in [The Financial Review](#)², indicates that 60% of trustees surveyed intended to maintain their fund in perpetuity. Precluding this may result in a reduction in the number of ancillary funds established and, accordingly, funds directed to philanthropic purposes.

Distribution Rate

Assumptions of the consultation

At page 4, the Consultation Paper suggests that PGFs could be more affected by an increase in the minimum distribution rate, and states that 'the majority of PuGFs distributed well above the minimum required' and that, '[i]n contrast, a majority of PGFs distributed around or below the minimum required'. However, the data in Chart 1 on Page 4 of the Consultation Paper clearly shows that more PGFs than PuGFs distribute at or above the minimum rate (92% compared to 79% respectively). So, if anything, the data suggests that the compliance record of PGFs is better than PuGFs. In any case, we note that the use of a single year's data limits the ability to draw meaningful conclusions. The PC Report³ also notes that some PuGFs act as flowthrough vehicles, which can skew distribution figures even further.

Further, notwithstanding the data that a large proportion of giving funds distribute above their minimum distribution rate, the financial modelling used in the Consultation Paper is based solely on funds being given only and consistently at the relevant proposed minimum distribution rate. This does not appear to take into account that many fund managers have chosen, and would likely continue to choose, to make annual distributions exceeding their required minimum distribution rate.

This detailed discussion in the Consultation Paper on discount rates shifts the focus primarily to the perceived budgetary and economic value over time, and detracts from considerations of flexibility and the varying purposes of giving funds.

² Joshua Peach and Fiona Buffini, Treasury's charity tax plan suits wealthy families, AFR (online), 11 July 2025 <<https://www.afr.com/politics/federal/treasury-s-charity-tax-plan-splits-wealthy-families-20250701-p5mbkm>>

³ Ibid 283.

Responses to Consultation Questions

Q1. Are these considerations appropriate in setting the minimum annual distribution rate?

Our members are of the view that the apparent view that giving funds should not exist in perpetuity is flawed. Ancillary funds in their current form are a flexible vehicle used for different purposes, sometimes as a flowthrough, and sometimes as the capital for a perpetual grant. This flexibility should be retained, and trustees should be able to adopt conservative investment strategies while maintaining the corpus of the fund. A lower distribution rate allows flexibility—funds that wish to give more can do so, while others can preserve capital for long-term commitments. The PC Report⁴ supports this, stating that distribution rates should allow funds to maintain real value in perpetuity should the donors wish, less reasonable administrative costs.

Q2. 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?

Without supporting any increase to the minimum distribution rate other than to standardise the rate at no more than 5% (refer responses to questions 3, 7 and 8 below), we consider that if a change is to occur, a five-year transition period is reasonable for all funds. Otherwise, there will be a period in which different rules apply to different funds, which adds needless complexity and compliance costs.

Q3. What other considerations, if any, should the government consider in setting the minimum annual distribution rate?

The trustees of a giving fund are required to document an investment strategy for the fund. In our members' experience, these strategies are prepared to enable the objects of the fund to be delivered in the most efficient and appropriate way for the particular fund. For this reason, investment strategies vary widely, and there is no standardised approach.

Consideration could be given to setting a minimum liquidity level for a fund that would allow the minimum distribution rate to be achieved each year. If this approach were to be used, we consider a minimum liquidity level of no more than 10% of the fund assets should be required to fund the existing minimum distribution rates and operating costs of a fund.

Further, it should be borne in mind that an average rate of return on investment is just that, an average, and across the broader economy there will be funds invested more aggressively and more conservatively than the average. It may not be a positive policy outcome if trustees are forced to invest funds more aggressively simply to preserve the corpus of the fund, noting that, generally, more aggressive investment strategies run the risk of higher losses.

The Tax Institute does not support any increase to the minimum distribution rates that currently apply to giving funds. However, if changes are to be made, we support in principle standardising the distribution rate for all giving funds, irrespective of whether they are PGFs or PuGFs. This would provide greater consistency, fairness, and simplicity in the system

⁴ Ibid 282.

Q4. In setting the minimum annual distribution rate, is it appropriate to consider the time preferences of DGRs and the community?

In principle, it is appropriate to consider the time preferences of DGRs and the community. However, any inclination toward an increased minimum distribution rate as suggested in the Consultation Paper needs to be balanced with the preferences of donors, and the potential impact on their willingness to continue to provide funding to giving funds. Please also refer to our comments under the heading ‘General Comments’ above.

Any decision should also be informed by the profile of other funding sources for DGRs, including government funding, such that the long-term sustainability of DGRs is prioritised.

Q5. Is your preference for DGRs to receive distributions sooner (implying use of a higher discount rate), later (a lower discount rate) or no preference?

It is difficult to provide a straightforward response to this question since each giving fund will have its own strategy and objectives, reflecting the founder’s intentions for the fund. The Tax Institute’s view is that maintaining flexibility in this regard is preferable.

Due to significant variances in the purpose and intention of different PGFs and PuGFs, we do not consider that it is possible to apply a single discount rate to all types of giving funds to achieve an accurate estimate of the economic value of distributions from the funds over the medium term. In our view, focus solely on a discount rate and the economic value of the distributions also fails to take into account that there are significant variances in the distribution patterns of giving funds. This results in an inappropriate lessening of their economic value in the analysis.

Q6. To what extent should the wishes of donors to operate a fund in perpetuity be balanced against preferences of DGRs?

In our view, given the nature and purpose of giving funds, donor intent and preferences should carry significant weight. Donors are the primary contributors, and the trustees of giving funds. With PGFs, the appeal often lies in the ability to control the fund and support long-term projects. Increasing the distribution rate is likely to reduce the attractiveness of these vehicles for philanthropic purposes, and may lead to a reduction in the number of new funds being established.

While some DGRs may prefer immediate distributions, this alone should not be the determining factor. In other circumstances, long-term giving fund commitments may be preferable to demonstrate and encourage sustainability.

In our view, the PC Report’s suggestion of a Principal-Agent relationship between the government and trustees⁵ undervalues donors’ substantial financial contribution and intent.

Market pressures may also impact the life of any fund. If a fund does not have a sufficient corpus, or trustees with a passion for the activity of the fund, it follows that the market may influence that some funds may be wound up early, and the distribution of surplus assets made to DGRs.

⁵ Ibid 271-272.

Q7. Do you have a view on how increasing the distribution rate would affect the willingness of donors to set up giving funds?

Other than standardising the distribution rate to 5% per annum, feedback from our members suggests that a higher distribution rate could likely lead to a reduction in the number of giving funds. This would be detrimental to the objective of encouraging philanthropy in Australia, which dropped from 4th in 2023 to 14th ⁶ in 2024 out of 142 countries, and is lower in comparison to other developed economies such as the USA, the UK, Canada and New Zealand.⁷

Q8. Given all considerations, do you have a view on what the appropriate minimum annual distribution rate should be?

We support the introduction of a standard distribution rate for both PGFs and PuGFs. We consider the rate of 5% of the fund's net assets to be fair and sustainable.

This view is supported by the rate of return on the ASX200 over the last ten years, in which the dividend yield has averaged 4.5% per year and the capital growth rate has averaged 4% per year.⁸ With a minimum 5% distribution rate, giving funds with a passive investment strategy would therefore likely result in declining corpus over the years, whereas more aggressive investment strategies would be expected to prolong the fund's life.

It would also be desirable to have the same set of regulatory guidelines for both PGFs and PuGFs. This would simplify the regulatory environment for trustees and advisers of funds, which can help to enhance productivity.

Smoothing Distributions

Our members are of the view that the term 'smoothing' may not be the most appropriate and instead it should be referred to as 'averaging'. The term smoothing can have connotations of regularity and low volatility, whereas the concept being discussed here would invite a degree of annual variation and volatility. The Tax Institute is supportive of the concept but suggests the word 'averaging' is more accurate. We consider that allowing funds to calculate minimum distributions over a three-year period is a reasonable and practical approach. It enables responsiveness to the specific needs of DGRs without compromising the corpus of the fund. This flexibility is especially important for strategic or time-sensitive philanthropic initiatives.

However, the consultation lacks clarity on several key points:

⁶ Workplace Giving Australia (2024) *CAF world giving index ranks Indonesia as most generous country, Australia drops to 14th*, *CAF World Giving Index Ranks Indonesia As Most Generous Country, Australia Drops To 14th*. Available at: <https://workplacegiving.org.au/news/caf-world-giving-index-ranks-indonesia-as-most-generous-country-australia-drops-to-14th> (Accessed: 01 August 2025).

⁷ Ibid 96-97.

⁸ SPDR S&P/ASX 200 fund (ASX:STW) - Share Price and Research, Investsmart. Available at: <https://www.investsmart.com.au/shares/asx-stw/spdr-sandp-asx-200-fund> (Accessed: 01 August 2025).

- grounds for refusal: it is unclear what criteria the Commissioner of Taxation would use to deny a fund the ability to average distributions over a three-year period;
- purpose of restriction: the rationale for preventing averaging in a fund's early years should be better articulated; and
- zero distribution years: neither the PC Report nor the Consultation Paper clearly address whether a fund could make a \$0 distribution in one year if offset by higher distributions in other years within the three-year period.

These ambiguities should be resolved to ensure that averaging provisions are both effective and administratively feasible. The overarching goal should be to support funding certainty for charities while preserving the flexibility and strategic intent of giving funds.

Responses to Consultation Questions

Q9. Are the principles reasonable?

We support the ability to make annual distributions below the minimum rate if this is made up in other years.

We consider that the use of a three-year term is valid, but in certain situations could be too rigid for funds that have agreed to support a significant initiative of a recipient DGR that can take up to five years to implement. For this reason, we recommend that a discretion for the Commissioner of Taxation or the Australian Taxation Office (**ATO**) to grant an extension from three to five years should be built into the regulations.

Q10. 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.)

No. At a policy level, we do not see the need for this proposal. As long as a fund is complying with whatever distribution rules are ultimately adopted to implement a smoothing arrangement, there should be no reason why the Commissioner of Taxation should direct a giving fund otherwise. We also note that while the ability to object to a such a decision would be appropriate, it would introduce unnecessary burden and delay, not only for funds, but also the ATO in processing objections of this kind.

Q11. 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.

While we do not consider that there is a need for the Commissioner to have such a power, if it did exist, the principal factors to be considered should be the fund's compliance history, its investment strategy, and liquidity. Consideration should be given to granting funds that have met or exceeded the minimum distributions for a certain number of years automatic qualification for smoothing. This would provide funds increased certainty when considering smoothing and should help reduce the time spent by the Australian Taxation Office (**ATO**) in straightforward cases.

Q12. 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.

Yes. We do not support requiring a minimum annual distribution threshold in the first year of a fund and recommend allowing a fund to smooth/average distributions from Year 1. The principle of smoothing/averaging is that over a three-year period, the same overall distributions would have been made in total, as would be the case if requiring an annual minimum distribution for each of those three years. The purpose is to allow flexibility and require minimum distributions over a longer time frame, rather than annually. There is no policy reason to treat the first year any differently. We acknowledge that, given PuGFs are not required to make distributions in their first four years, this may mean a first distribution is delayed even further, but the total distributions, on average, would remain substantially the same.

Q13. Are there other principles for smoothing that should be reflected in the guidelines?

It is our view that flexibility and administrative simplicity should guide the proposed provisions to introduce a process to average (or smooth) annual distributions by a giving fund.