ANZTSR
AUSTRALIAN & NEW ZEALAND THIRD SECTOR RESEARCH

Productivity Commission Review of Philanthropy

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Contents

Background

Australia and New Zealand Third Sector Research Inc (ANZTSR) is a 30-year-old regional network of scholars and practitioners whose research focus is the not-for-profit and philanthropic fields, i.e. the charitable sector. Our research identifies and disseminates evidence-based best practice models that are critical to informing both good public policy and service delivery. We also examine the philosophy and practice of philanthropy and its place in a democracy.

This submission primarily addresses Information Request 9 of the Review paper on **public** data sources (emphasis added) as such data is our research's critical source material. The focus of this submission is on only one structural form of philanthropy – organised, institutional, charitable, perpetual, grant-making trusts and foundations. Because of their major role in trust management, we provide information about data publicly available from Trustee Companies.

We do not address the philanthropic donations made outside these structures by wealthy individuals or families to cultural, medical or educational institutions. Nor do we include other forms of philanthropy such as corporate philanthropy or individual giving, including volunteering.

We also offer comments on other aspects of the review's ambit.

Introduction

Philanthropic entities are unique in that they use a combination of private and public money for public purposes. They sit within the institutional charitable sector along with not-for-profit bodies – grant-makers and grant-seekers respectively. There is a striking disjunction between the research data publicly and freely available about each. Non-profit organisations produce annual reports, audited accounts and generally operate transparently.

By contrast, there is little data on large sections of the philanthropic arena – which makes research incomplete, speculative or impossible, to the consequent detriment of good policy and practice. Publicly available data would also benefit the entire not-for-profit sector as well as donors.

Current data

The nature of data publicly available on the operation of individual philanthropics varies from full disclosure to nothing. There is no regulatory non-tax-related disclosure requirement upon them other than – if they are registered – providing the ACNC with their legal name, location, purpose, size, ABN number and a summary Annual Information Statement. The onus of full disclosure of their operations is left to them. A handful of foundations choose to publish a full annual report, more offer an annual grants distribution account but most give no information about how they operate.

The data that is available on the operations of philanthropic organisations has improved in the last few years, notably with the establishment of the ACNC's Charity Register and the listing by Equity Trustees of the names of all the trusts it manages.

Nevertheless, data is still limited, unrefined and often contested. It is also often very difficult to find.

Australian Charities and Not-for-Profits Commission's (ACNC) Charity Register

A basic research starting point is the ACNC's Charity Register, developed by a former Commissioner, that provides strong data about every registered not-for-profit organisation. (A surprising omission in this is “indigenous” in its list of classifications.) It includes their websites that give more detailed information including annual reports.

Conversely, the Register offers limited information about the other part of the charitable sector, philanthropic bodies. The Register is still new and will doubtless be refined but at present it has limited usefulness for scholarship:

- the database cannot be interrogated to identify trusts and foundations or to find their areas of interest,
- not all trusts are required to be registered (for example, those named in Equity Trustees' Annual Giving Review do not necessarily appear in the Register, especially the smaller ones),
- The Register entry for “Who the charity helps” displays “other charities” for a trust or foundation
- information in the Summary of Activities is often limited to “income

distributed in accordance with the governing documents"

At the most primitive level of investigation, the Register cannot state how many registered trusts and foundations it has.

Other Sources

The peak body of philanthropic trusts and foundations, Philanthropy Australia, no longer has its former Directory of Funders in its publications list. It offers its members Foundation Maps Australia, information on who is funding what and where. This data is provided only by those bodies that wish to share their particulars.

PA's website directs grant-seeking charities to several on-line fee-for-service sources of grant-making bodies. These include: the PAF Guide which has information on over 3,000 Public Ancillary Funds and Private Ancillary Funds (annual subscription $2,988); Grants Hub for 1,800 government, business, private donors and trusts ($348-$1068 p.a.). There are others at varying costs and number of grant-makers cited.

Public Records Offices give access to original trust deeds (in the form of wills) that specify intended recipient fields of philanthropy and trust management. While this is rich data, it is only useful if the name of the trust and the date of its establishment are known.

Robustness of available data

Such information as is available is often contested including the most basic: how many Australian trusts and foundations are there, how much do they grant each year and what is their capital base? If Australia wishes to double its philanthropy on any of these measures, the obvious question is: from what to what?

As a simple example, the PAFGuide claims to be "the only database of every ancillary fund in Australia" and says there are 3,373 of these. The Queensland University of Technology August 2022 report, using statistics from the ATO, stated there are 3,192 such funds with combined net assets of $10.33 billion[1.]

If such basic questions cannot be answered from publicly-available data, how do university and other researchers attempt to explore more profound issues such as the effectiveness of philanthropy?

Trustee companies' role in philanthropy

Trustee companies are the largest administrators of grant-making philanthropic foundations in Australia. There are now only 2 such entities in Australia following a series of amalgamations and take-overs – Perpetual Limited and Equity Trustees. While the bulk of their business is wealth management, they are also co- or sole trustees of an estimated 40% of the putative total of 5,000 philanthropic trusts and foundations[2]. They are thus custodians of a trove of philanthropic data, not all of which they release.

Perpetual acts as trustee for around 1,000 charitable trusts and endowments holding $3.6 billion in funds as at 30 June 2021 according to its latest annual report[3].

Equity Trustees' Philanthropy Giving Review 2022[4] lists 652 trusts with a total capital base of $2.4 billion making distributions that year. One of these, Equity Trustees Charitable Foundation is made up of 200 sub-funds.

Trustee companies' available data

The two trustee companies' annual reports on their philanthopic activities provide somewhat different data sets.

Equity's Annual Giving Review 2022 reports a total of $92.2 million distributed by its 652 trusts. It gives analyses of this by focus area and state, including a breakdown of distributions from discretionary trusts (those not tied to a particular named charitable organisation. The distribution information is further categorised into bands of grant sizes with each contributing trust named. Granting rationales are also explained and general conclusions drawn.

Perpetual Limited's 2022 Philanthropy Insights Report mainly addresses the IMPACT program for its 185 discretionary trusts that distributed $34 million that year. It lists the 7 sectors funded, amounts for each, distribution percentage by state and gives explanations of its funding priorities in the context of community sector challenges. With the exception of some highlighted program examples in its news reports, the trusts managed by Perpetual are unnamed. The Australian Taxation Office (ATO) has extensive data, much of it for privacy reasons, not publicly available.

Data gaps

The reports, while offering good aggregated information about the companies' stewardship of their trusts, have major data gaps. The lack of names of the Perpetual Ltd's trusts is the most obvious. Neither company provides information about their trusts' individual asset value, income, fees, date of establishment, the field of funding, the individual amounts made in grants or who is involved in the decision-making process. It would also be useful to know which ones have the company as sole trustee – important data because this is the situation for an estimated 90% of their trusts[5]. During the last five years, Equity Trustees have provided fundamental and important data relating to their management of $2.4 billion of philanthropic capital.

For researchers in this field, the above data is the raw material for analysis of the functioning of philanthropy in Australia and its changes over time. For the not–for–profit sector it is critical knowledge.

For government there are other questions, perhaps including those that concerned Treasury in 2008. Its Discussion Paper of that year noted that the tax benefits received by Prescribed Private Funds (now called Private Ancillary Funds) were more than double the amount returned to the community in grants[6]. Has the situation changed since then? We have no information.

Corporations and Markets Advisory Committee (CAMAC)

Until it was abolished in 2018, government policymaking in the areas of corporate and market law reform was assisted by CAMAC. This body was charged by Treasury in 2012 to review the administration of charitable trusts managed by licensed trustee companies. Its subsequent report noted that its task had been hampered by “a deficit of relevant and indisputable information, particularly in relation to the trusts where the trustee company was sole trustee. What quantitative information did exist was contradictory and often contentious”[7].

CAMAC's review recommended that the ACNC audit those trusts for which trustee companies were the sole trustee[8]. None of the CAMAC recommendations were accepted by the then government.

Privacy-induced data lack

The fundamental reason why philanthropic data is so protected is that, unlike other advanced countries, Australia still has an ingrained belief that philanthropic money is solely private money and not therefore liable to public scrutiny.

This is evident even in this Review's Paper which states (p23): "... information should only be required by government where it is necessary for compliance activity, including **to protect donors** (emphasis added) and the public, or it is of high analytical value". Current philanthropic data is of extremely low analytical value, especially for academics and practitioners whose research and knowledge inform good public policy.

More importantly, it is not readily publicly available to the beneficiaries for whom it is intended – the community sector of Australia.

The arguments for and against philanthropic privacy are well-documented[6] but essentially reduce to two major ones: philanthropic money is private money, and public disclosure would have catastrophic consequences, especially for small trusts. Neither is fully true but continue to be considered sacrosanct concepts and to justify the massive gaps in philanthropic data.

Addressing the cases for privacy

Case 1: Philanthropic money is private.

Philanthropic money is actually a highly unusual amalgam of private and public monies (in the form of taxes forgone) for the enhancement of the common good. In its Discussion Paper of November 2008, Treasury noted that the public purse effectively provides a subsidy of 45 cents for each dollar donated to a philanthropic foundation[9]. If it is not solely private money, those other contributors to its pool – the taxpayers of Australia whose common good is being enhanced – deserve greater accountability.

Case 2: Dangers of open information

The most commonly perceived dangers are organisations being overwhelmed by funding applications or by data requests with a consequent discouragement of philanthropic activity. Experience overseas has demonstrated these fears to be without much basis.

For example, in the United States, similar arguments were advanced as objections to the proposed *1969 Taxation Act* that mandated public accountability for private foundations. The number of these in 1969 was 25,000[10]. As of November 2016 it was 165,000[11]. Greater transparency has evidently not inhibited philanthropy there.

Who is philanthropy for?

<u>The legal beneficiary of institutional philanthropy is the not-for-profit sector.</u>

This is the sector whose work it is to enhance the common good. There is a moral dimension to the restrictions the latter confronts in accessing information about potential support for its programs. ANZTSR submits, in response to information request 3 about the role of government in philanthropy (Review Paper p 14), that the government's policy of not mandating full public accountability of philanthropic trusts and foundations inhibits the ability to obtain support of the very sector for which philanthropic money is intended and for which it receives a generous taxation benefit. In response to bullet point 4 of request 3, the nature of existing government support for philanthropy therefore does not align with community expectations.

This particularly affects the very large number of smaller not-for-profit charities who typically operate highly-effective niche services on lean budgets.

Philanthropy and democracy

Philanthropy has a valuable role to play in a civil society. It can give seed-funding to experimental programs that are not appropriate for tax-based public funding and many of these develop into key components of our society. For example, Landcare grew out of the Ian Potter Foundation's Potter Farmland program. It now operates throughout Australia and has been taken up in other countries. Another example is diversionary justice, an alternative to sentencing for young or first-time offenders found guilty of less serious charges, which these days is well-established in a number of judicial settings. It was developed here initially through a program of the Brosnan Centre (now Jesuit Social Services) funded by The William Buckland Foundation.

Philanthropy gives private individuals power to influence public policy through the organisations and causes it supports. The concomitant of power in a democracy is accountability, especially if, as the Review Paper notes on page 11, "the government relinquishes some control over where public funds are directed when it provides tax support for philanthropic giving".

Because philanthropic money is partly public money, its operations should be publicly accountable.

Expanding Philanthropy

There is certainly plenty of money among our richest people to expand philanthropy. *The Australian* newspaper's annual "The List" for 2023[12] gives, in descending order, the wealth of this country's richest 250 individuals – a total of $531.96 billion. "The List" also names the top 25 philanthropists from these people. Their total philanthropic donation in the last year was $382.5 million. Only ten of these philanthropists are also among the 25 richest (who are all multi-billionaires).

The recent report by the Centre for Social Impact[13] gives detailed statistical analysis to back its contention that, as a proportion of their wealth, Australia's richest give much less than their international peers and that, while their wealth is increasing, their collective contribution to philanthropy is actually declining. This in the face of the well-documented increasing demands on charities and despite generous tax incentives for philanthropy.

Conclusion

At this stage, Australia still lacks sufficient publicly-available robust and detailed information that can be primary source material for scholars and practitioners in the field to be able to have meaningful input into policy and practice.

The Government's desire to double philanthropy in this country is understood but, to reiterate, there is no clear answer to the three simplest questions about philanthropy:

how many trusts and foundations are there, what is their capital base and how much do they distribute to the community each year.

Recommendations

1. As the information about the operation of philanthropy in this country is incomplete and inaccessible, the government should mandate public accountability of individual trusts and foundations that receive a tax benefit.
2. That the former CAMAC recommendation be enacted for the ACNC to audit those trusts managed by a trustee company for which it is sole trustee and that the ACNC be resourced to to undertake this.
3. That, as the wealth of very rich Australians continues to grow in disproportion to their support of the not-for-profit sector, the government should examine non-voluntary means of wealth-transference for the very wealthy, for example an inheritance tax. Another mechanism might be to legislate a suggestion of the Australian philanthropist, Daniel Petre. He suggested that individuals with net worth of at least $50M could set up a trust or foundation such that 1% of their net worth would be made available annually to the charitable sector[14].

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