

President's Sydney mid-year update , 3 August 2011

Ladies and gentlemen, it is with pleasure that I present the mid year update for 2011.

I have structured this report in two parts. First, I will report against the four areas of Philanthropy Australia's current strategic plan: Representation, Grow and Inspire, Effectiveness and Governance. Second, I will offer some remarks upon the state of philanthropy in Australia now and into the future, some recent and prospective very significant regulatory changes and some opportunities and challenges for Philanthropy Australia in the context of the new Strategic Plan which is being developed currently.

To begin with an overview of the first half of 2011, I am particularly grateful to acknowledge the special support from some of Philanthropy Australia's larger members through their Leading Memberships. This year the baton has been passed by AMP Foundation, The Myer Foundation and The Goldman Sachs JB Were Foundation to three new Leading Members, being the Vincent Fairfax Family Foundation, MLC Community Foundation and the R.E. Ross Trust.

These statements of support for Philanthropy Australia, as well as the financial contribution of Leading Members, are extremely important, to assist the growth and development of philanthropy, and the representation, networking and information services of Philanthropy Australia. Leading Members provide \$25,000 each year for three years, over and above their Full Membership fee already being paid and all Philanthropy Australia Members should be grateful for this significant support. It is a clear demonstration of leadership, collaboration and generosity because apart from public acknowledgement on occasions like today, there are no additional direct benefits. Leading membership is in fact an example of philanthropy itself.

1. Representation

The last few months have been filled once again with intensive representation work. Philanthropy Australia staff and Council have continued to monitor and respond to emerging Government policies, making a number of significant submissions on behalf of Members.

Members will know that Philanthropy Australia made a submission in response to a Treasury discussion paper on Public Ancillary Funds, which was released at the end of 2010. A number of Full and Associate members provided comments and suggestions for this submission, and the expertise of the technical committee drawn from the Membership was invaluable in formulating the Philanthropy Australia response. Treasury then contacted Philanthropy Australia early in 2011 requesting clarification of some of the matters raised in

the submission. In early June Philanthropy Australia met with Treasury officials to canvas a number of key issues including an extension of the date for the introduction of the legislation, a minimum distribution rate which is consistent with maintaining the real value of foundations over the financial and economic cycles, the possible exemption of small foundations from the new regulations for three years, distributions being smoothed through an averaging process over three years, portability of capital between Public and Private Ancillary Funds, and transition arrangements.

It is therefore very pleasing to see that most of the recommendations from Philanthropy Australia have been adopted by the Government in the most recent Consultation Paper issued earlier last month. In particular there is now an acceptance that the minimum distribution rate for philanthropic trusts should be consistent with maintaining the real value of the fund in the medium term, that the costs of running a Public Ancillary Fund are higher than for a Private Ancillary Fund and so the minimum distribution rate should be 4 per cent and that shifting between a Public and Private Ancillary Fund should be permitted subject to certain safeguards designed to preserve the integrity of these funds.

However, there are still some important changes that would further strengthen the proposed Public Ancillary Fund regulations and so a further submission is being prepared for lodgement shortly, following consultations with Members.

A discussion paper on the draft bill Corporations and Other Legislation Amendment (Trustee Companies and Other Measures) Bill 2011 was released in late January this year. Although the draft Bill was available for public comment for less than two weeks, Philanthropy Australia made a short submission following consultation with Members.

Philanthropy Australia also notified Members of the paper and made a brief response in February this year to the Scoping Study for a national not-for-profit regulator. In doing so Philanthropy Australia was keen to see that any new regulator would not be part of the Australian Taxation Office, because of the obvious conflict of interest for any organisation between the responsibilities for maximising revenue and approving tax concession status.

At the same time the Government signalled its intention to introduce a statutory definition of charity, and so Philanthropy Australia also wrote to government on this issue to emphasise the need for any new statutory definition to take into account the High Court decision in the recent Aid Watch case. This is a very important matter, because of its ground-breaking nature, and so I will refer to it in more detail later.

In order to better represent the sector and, more generally, better meet the needs of Members, feedback from Members is being gathered again this year. A Membership Survey was distributed in June and a detailed analysis of the data will be published in the August monthly review, later this month.

However, in the meantime it is striking that Members consistently rate the representation work by Philanthropy Australia very highly. The issue of greatest importance to Members is leveraging resources to maximise impact and the greatest challenge is evaluating the impact of grantmaking. It is also very pleasing that all Members who completed the survey would recommend Philanthropy Australia to others.

2. Grow and Inspire

Over the past twelve months Philanthropy Australia continued to develop and publish very comprehensive information for the wider community, as well as Members.

The Philanthropy Australia website continues to attract high usage and a vast amount of information is available via the Philanthropy Australia website, blog and PhilanthropyWiki. Philanthropy Australia's free publications providing guidance to the sector on trustee duties, giving options and submission writing and are being accessed at a rate of over 700 total downloads per month.

Philanthropy Australia is also maintaining a media profile with quotations and positive coverage for both philanthropy and Philanthropy Australia. Staff speak regularly on radio, are often contacted by journalists seeking information about the sector, and represent the organisation effectively, ensuring that the concept of giving continues to grow in the public consciousness.

3. Effectiveness

Philanthropy Australia provides a wide range of services to Members to improve effectiveness. Specifically, in Sydney Louise Burton has established a number of circles of learning, which bring together foundations and Associate Members. Their purpose is to enable both grant-makers and grant-seekers to share experiences and learn from each other.

On 1 September Professor Dorothy Scott who is one of Australia's leaders in child protection, a former Executive Director of The Ian Potter Foundation and now a trustee of The Myer Foundation will present the inaugural Philanthropy Australia Oration.

Philanthropy Australia also continues to conduct regular Grantseeker Workshops. As well as providing a source of income to help support the organisation's core activities, the Grantseeker Workshops help ensure that the not-for-profit community is aware of the needs, drivers and restraints of philanthropic entities, is able to write better submissions and also minimise the time and effort in applying for funding.

In addition this year, staff have developed a 'Philanthropy 101' Workshop for those relatively new to philanthropy. It gives a social and historic overview of philanthropy, discusses how philanthropy has developed in Australia, and how Australia compares to the rest of the world. The seminar also provides statistics and trends, and gives information about various giving structures and the kinds of options and legal entities available. This seminar has already been presented a number of times this year in various states and is available on request and can be tailored to particular audience needs.

4. Governance

Turning to Governance, in recent months the Council and Management of Philanthropy Australia have begun to assemble background information and views of Members as part of the development of the next Strategic Plan. The current Strategic Plan expires at the end of this year and so now is the time to conduct an in-depth review. It is also clear that much has changed since the last Strategic Plan was put in place in 2007.

The four key goals of Representation, Grow and Inspire, Effectiveness and Governance have been strongly relevant and have served the sector and the organisation well.

However the current landscape is much more diverse and complex than even 5 years ago. In addition the reforms announced recently by the Federal Government will have profound implications for the philanthropic sector and Philanthropy Australia.

It has become clear that a fundamental review of Philanthropy Australia's strategy is required at this time, in order for the organisation to respond to both the new challenges and opportunities ahead. Council is grappling with a range of issues, including functions and services to be provided in the future by Philanthropy Australia, the most appropriate financial model, the optimal scale of operations, how Philanthropy Australia can best serve Members, the wider philanthropic sector and the broader community and the balance both within and between these very diverse sets of interests.

Strategic partnerships and how best to increase and deepen Philanthropy Australia's national footprint are also being considered.

Rob McLean, who is well known to many Members and is a former Managing Partner of McKinsey's, has agreed to facilitate on a pro-bono basis the Council's Strategic Planning. Council is extremely grateful for the time and energy Rob is giving, and also to Members who have emailed or met with Management and Council to give input regarding the Strategic Plan.

The resulting Strategic Plan for the next five years should be available for comment and finalisation early next year.

Part Two

Let me now turn to the current state and future of Australian philanthropy and Philanthropy Australia. In doing so, I will focus my remarks in two areas. First, Australian philanthropy and the non profit sector stand on the threshold of very significant change and in this environment it will be vital for the voice of philanthropy to be heard as a distinct and vital part of a very diverse non profit sector. Second, the philanthropic sector has changed rapidly over the past five years and it will continue to evolve quickly, not least because of the changing regulatory environment. It is therefore essential that Philanthropy Australia continues to change in order to optimally meet the needs of Members and the sector and in doing so meet the challenges and maximise the opportunities that lie ahead.

The Government's decision to establish the Australian Charities and Nonprofit Commission and introduce a statutory definition of charity together with the on-going review of specific legislation governing foundations, of which the current review of Public Ancillary Funds is a part, presages the most significant changes in the laws governing this sector. Philanthropy Australia stands ready to comment on and contribute to these changes which are likely to set the regulatory environment for the philanthropic sector for years and in all probability decades.

Representation and policy advice have been strengths of Philanthropy Australia, both in terms of an improved standing with government and in terms of shaping specific issues. This has been particularly evidenced by the current reviews of Public Ancillary Funds and Regulation of the Non Profit Sector and, previously, the review of Private Ancillary Funds.

The next two years and beyond will be a particularly vital and active time for Philanthropy Australia in its roles of policy development, advocacy and provision of information.

Philanthropy Australia is deeply committed to contribute to the reforms to the not-for-profit

sector foreshadowed in this year's Federal Budget. These developments have the potential to affect the landscape of the entire charitable sector, and it is vital that the new legislation enhances practice and effectiveness and minimises unnecessary red tape.

Initially the establishment of the Australian Charities and Non-Profits Commission is unlikely to have a direct effect on charitable trusts, as the focus will be on the non-profit sector more broadly. However, given the vital partnering role that many non-profits play with foundations, the philanthropic sector will have a keen interest in this aspect of the reform agenda as an enabler of the work of foundations. In time it is likely that the Charities Commission will assume responsibility for regulation of the philanthropic sector and so at the appropriate time it will be very important to ensure that the distinctive nature and strengths of the philanthropic sector are fully understood when framing any new regulatory arrangements and that existing resources such as the Philanthropy Australia website are used optimally as part of the role of the Charities Commission as a portal of information. Philanthropy Australia will, of course, continue to pursue these issues and keep Members up to date.

The proposed introduction of a statutory definition of charity has enormous potential implications. So far, the Government has indicated that the definition will be based on the recommendations of the 2001 Report of the Inquiry into the Definition of Charities and Related Organisations. It will also take into account the results of recent judicial decisions such as the Aid/Watch case in the High Court in December last year, which in my view is very significant with immense implications for the potential for philanthropy to generate additional leverage, a point which I mentioned earlier is the 'Number One' issue for foundations in the recent Member survey.

It is therefore very worthwhile going through this decision in some detail.

Aid/Watch Incorporated researches, monitors and campaigns in support of overseas aid. Its objective is 'to promote aid programs that are environmentally sound and effectively delivered'. It does not provide aid directly itself.

Aid/Watch was endorsed as a charitable institution for a number of years before the ATO determined in October 2006 that it should not be considered charitable because of its purported political purpose.

The matter was initially heard by the Administrative Appeals Tribunal which found that Aid/Watch was primarily established to promote the relief of poverty. The means it used to achieve that end, such as conducting research and publishing the results with a view to

influencing public opinion and ultimately government itself, were deemed charitable, notwithstanding that Aid/Watch did not distribute aid itself and that its activities involved criticism of government activities and advocacy for change in government activities and policies.

The AAT decision was challenged by the ATO in the Full Federal Court which found that the Tribunal was wrong in concluding that Aid/Watch's main purpose was not political and in holding that Aid/Watch was a charitable institution. The Court noted that the 'natural and probable consequence' of Aid/Watch's activities was an effect on public opinion and in turn, government opinion. The Court further ruled that relief from poverty was neither a natural or probable consequence of Aid/Watch's activities because governments have to take into account additional factors, such as public policy and foreign relations, factors which institutions such as Aid/Watch do not need to consider when determining their views on the delivery of aid.

In December, the High Court found that the Full Federal Court was wrong in concluding that Aid/Watch's main purpose was political and found that Aid/Watch was a charitable institution.

The High Court majority accepted Aid/Watch's submission that the generation of public debate, in relation to the relief of poverty, advancement of religion, advancement of education or the advancement of other purposes beneficial to the community, is a charitable purpose. Accordingly, the Court decided that Aid/Watch's generation by lawful means of public debate concerning the efficiency of foreign aid directed to the relief of poverty is itself a purpose beneficial to the community and is charitable.

The consequence of this decision for trusts and foundations is potentially enormous.

The comparative advantage of philanthropy lies in its capacity to innovate, while governments are in the best position to take new ideas to scale. In the past, it has been unclear whether the promotion of the results from innovative programs funded by philanthropy should be classified as public education, and hence charitable, or advocacy and so not charitable. This decision by the High Court removes any doubt; it is charitable for foundations to fund the dissemination, publication and advocacy for new ideas, so long as this promotion is itself lawful and the innovation will contribute in time to activities that are themselves charitable.

This decision by the High Court should also be seen in the context of the Federal Government's decision earlier in 2010 to establish the National Compact, which explicitly

recognises the rights and duty of non-profit organisations to advocate on behalf of their constituencies and the removal of the so-called ‘gag clauses’ from Federal Government contracts.

The potential significance of the High Court’s decision has been highlighted by Changemakers which has been promoting the significance of this change amongst Members and the non profit sector more generally because “it has overturned a century of restrictions on advocacy and campaigning activities of charities”. If you have not seen it, their publication *Freedom to Speak: Capacity to Act* can be downloaded through a link from the Philanthropy Australia website and is well-worth reading.

In a nutshell, the potential for philanthropy to create leverage and maximise impact from the ideas and projects it funds through partnerships with non profit organisations has never been greater and so understanding the Aid Watch case and acting on the new possibilities it presents is vital.

It will therefore be equally important that as the Government moves to establish a new and modern statutory definition of charity it builds on, rather than seeks to reverse the recent decision in the High Court in favour of Aid Watch.

Going forward it will also be important that the government takes into account experiences in England, Wales, Scotland and Ireland where the introduction of statutory definitions have had some unintended consequences and complications. Specifically, the definition of ‘public benefit’ which has become the central tenet of the new definitions of charity in these jurisdictions has some clear advantages as it facilitates including acts which address the causes of disadvantage and poverty as well as the consequences. However, the public benefit test also raises some difficult questions as to when public benefit is central to the objects of an organisation and so makes it charitable or incidental and so not charitable.

Looking ahead it also seems likely that the current review of the legislation governing Public Ancillary Funds and the previous review of Private Ancillary Funds will be followed by further reviews of the legal structures underpinning other types of foundations. These reviews have been important both in their own rights and because of their potential flow on consequences. It is for this reason that Philanthropy Australia has put so much effort into the reviews to date and will continue to work assiduously to both improve the legislative underpinnings to the operations of the philanthropic sector and represent the views of Members

Given the importance of these reforms and their potential effects, Philanthropy Australia will continue to pursue an active involvement in the consultation process, on the legal framework

governing the philanthropic sector, the statutory definition of charity and on the formation and implementation of the Australian Charities and Non-Profit Commission.

A related and very important issue is the taxation status of Philanthropy Australia, because the organisation clearly provides considerable public benefit but does not have DGR status, which prevents a growing proportion of Members from making grants to the organisation.

Last year, Effective Philanthropy, in a study commissioned by the Department of Families, Housing, Community Services and Indigenous Affairs, identified a series of ten recommendations through which Government could promote giving, especially amongst HNW and UHNW individuals and families. Amongst these was a recommendation to strengthen the philanthropic sector's capacity to promote and cultivate giving by supporting the development of Philanthropy Australia as a strong, sustainable national peak body and that Philanthropy Australia should be given DGR status.

Philanthropy Australia has and will continue to contribute to public discourse on the importance of philanthropy and its growth. The many resources that Philanthropy Australia makes available to new philanthropists in the community also add to the growth of the sector, as well as increasing public understanding. Philanthropy Australia will also continue to recommend that the Government takes up some of the other suggestions in the report from Effective Philanthropy including appointing Philanthropy and Giving Ambassadors, the promotion of philanthropy amongst financial advisers and, more generally, changing the culture of Australia to better recognise those that give as well as those who have amassed great wealth.

Philanthropy Australia's activities in terms of effectiveness have continued in a very traditional way over the past five years, via Affinity Groups, the provision of information on the website, other electronic communications and publications. In recent years the philanthropywiki and Projects Pool have been added, in response to Member requests, but the hoped for direct contributions of Members to the information on these sites has been less than was expected at the time these initiatives were launched. In some respects, this is not surprising given that Members tell us that time is a critical issue and this kind of collaboration does utilise scarce resources.

The decision five years ago to open up access to almost all parts of the Philanthropy Australia website to make it a public resource was necessary and right. As a result, Philanthropy Australia is the leading source of information on Australian philanthropy. The website is well known and respected because of its comprehensive, objective information and data. However, considerable resources go into keeping information up to date and

maintaining and increasing the underlying computing infrastructure to cope with new demands and information storage. There are also ever changing and increasing new demands such as for video downloads as well as for new written material. Staffing and infrastructure requirements to manage this are increasing exponentially and the expertise required and expected of staff is both considerable and growing. The Australia is therefore very grateful to the Macquarie Group for offering recently to provide pro bono strategic technology advice in order to identify the future technology requirements of the organisation.

Close to half of all phone-calls to Philanthropy Australia are from non-Members. On the website it is not possible to distinguish between Members and non-Members accessing free-to-public information, but it is clear that there is a very significant cross-subsidy from Members to non-Members, within the structure of Philanthropy Australia's membership fees.

Similarly, there is a cross-subsidy when Philanthropy Australia makes representations on behalf of the whole sector not just on behalf of Members. When these contacts are successful, as was the case in the review of PPFs and seems very likely in the case of Public Ancillary Funds, Members and Non-Members benefit alike. In addition, when these contacts result in a non-Member being guided, through impartial information on giving structures and options, to establish a foundation, Members are cross-subsidising the overall growth of the sector.

Over the past five years the membership of Philanthropy Australia has grown by more than 60 per cent and as it has grown the interests and the needs of Members have become more diverse, reflecting different interests, different staffing structures, different stages on the philanthropic journey, and different geographies as Philanthropy Australia's national footprint has grown. As a result growth itself has added to the challenges of providing relevant and timely services to Members because it has created very few economies of scale.

It is also clear that the distinction between grant-makers, who are eligible to become Full Members, and Associates, who have traditionally been grant-seekers and service providers is becoming very blurred as foundations and other participants in the sector expand their range of activities. Foundation trustees also often have multiple roles within the community sector which mean that they can be simultaneously involved in grant-making, seeking support from philanthropy as directors of non-profit organisations and providing services.

It is also clear that some of the services provided by Philanthropy Australia to members are scalable. Representation and bringing the perspective of the philanthropic sector to government reform clearly fall into this category, as does the work that Philanthropy Australia has initiated in the areas of governance, through the publication of trustee

handbooks. However many of the other activities are much more bespoke and not scalable, as the intimacy of the interaction is central to their effectiveness.

Philanthropy Australia is also providing considerable public benefits through the website which is freely available, while receiving no government support, unlike many other peak bodies. There is also a tension between providing these very considerable public benefits and providing direct benefits to Members, especially given that the organisation is very largely reliant on membership fees for revenues.

New revenues sources as well as the taxation status of Philanthropy Australia will therefore be a priority in the Strategic Plan. One area that is being explored is more professional development opportunities for staff, which could be on a fee paying basis like the other specialised programmes and courses currently offered by Philanthropy Australia.

Philanthropy Australia is also alone among its peers in the Western world, in not receiving regular operational grants from Members. These counterparts, which include those in the UK, US, New Zealand and Canada, have also expressed astonishment at the amount and quality of services and information that Philanthropy Australia provides from its limited budget, attesting to the efficiency of current operations.

So one of the key issues in Council's strategic review is a close examination of the business model of the organisation, which has operated largely unchanged for most of the past two decades. Careful judgements regarding future revenue sources and service priorities in the next five years will be essential.

As always I am optimistic about Philanthropy Australia and philanthropy: to be creative; to collaborate; to act for the common good; to spread the word; to share and showcase the sector's excellent work; to disseminate knowledge and experience widely; and to learn and acknowledge the need for improvements and change where it is necessary.

The importance of philanthropy to a flourishing democratic society is being increasingly recognised in Australia at a community, business and government level.

The Treasurer, the Hon Wayne Swan in *Australian Philanthropy* Issue 71 stated, "As a partner, one of our roles is to provide a policy environment which makes it simple and rewarding for Australians to get involved in giving, and which helps philanthropic organisations grow and flourish." Assistant Treasurer the Hon. Bill Shorten emphasised that "The Government is committed to the continuing growth of the philanthropic sector"¹, and that commitment has been underscored by the Government's active reform agenda,

including support for the establishment of the independent Australian Charities and Non-Profit Commission and the clarification of guidelines for both private and public Ancillary Funds.

Ensuring that the philanthropic sector continues to grow and to benefit society is vital for the development of a thriving, inclusive community.

Australia needs a strong, sustainable body to promote philanthropy and provide independent, non-partisan and non-commercial advice to philanthropists and givers and potential philanthropists and givers. Philanthropy Australia fulfils that role and the current strategic review that is underway is occurring at an ideal time and provides a great opportunity to evolve the organisation to the next level so it can operate even more effectively in the future

Thanks and Conclusion

First, I wish to thank my fellow Council Members for their generous contributions and Deborah Seifert and her dedicated staff team. Deborah has taken over the leadership of Philanthropy Australia at an important time and the Council and I are looking forward to continuing to work with her and her team.

I would also like to thank the members of our Sydney team, Louise Burton and Annie Scoufis, for their warmth, generosity, hard work and for always making me feel so welcome when I am in Sydney.

Can I also thank all Members in Sydney who are here today, and those who could not be here, for your support for Philanthropy Australia, for your hosting of and attending events, for your involvement and richness of interaction and collaboration.

I would also like to acknowledge all Leading Members. In addition to the Vincent Fairfax Family Foundation, the MLC Community Foundation and the RE Ross Trust, whom I mentioned earlier as they have become Leading Members this year, the William Buckland Foundation, the Colonial Foundation and ANZ are all very long term and very strong supporters of Philanthropy Australia and I thank them all for their generosity and leadership.

In closing, Philanthropy Australia through its staff and Council looks forward to continuing to work with all Members and the wider philanthropic sector to contribute to a more civic society.

Thank you.

Bruce Bonyhady AM

3 August, 2011