PHILANTHROPY AUSTRALIA

# Professional Adviser Guide to Giving

January 2023

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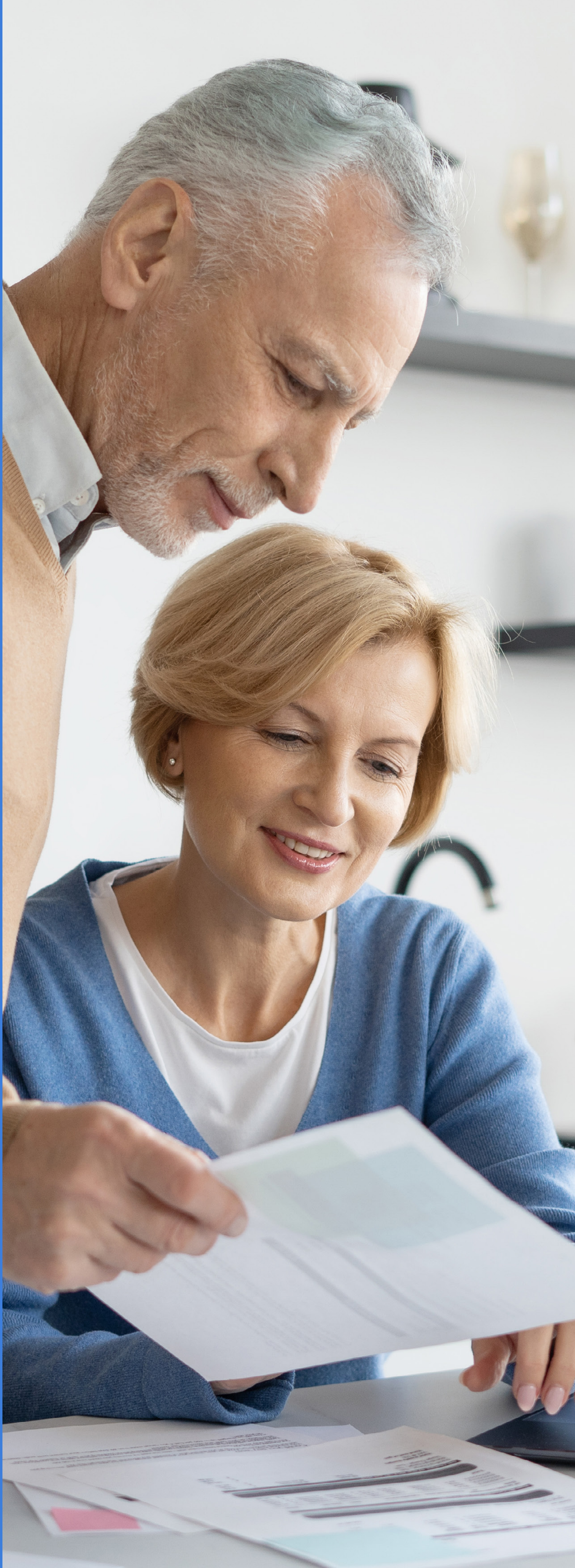
**Acknowledgements**
Philanthropy Australia gratefully acknowledges the contributors to this Guide.



# Introduction

## Philanthropic giving – a growing market

### The value of large-scale giving is rapidly rising in Australia.

In the 2020-2021 financial year, the total value of donations given by the top 50 philanthropists in Australia was $942 million.

In 2021, the donations of Australia's top 50 givers had more than doubled since the list of our top givers was first published in 2016.

Wealthy Australians are increasingly acknowledging their good fortune and are looking to make a bigger contribution to social, environmental, cultural and community causes they connect with.

Australia will shortly experience the largest intergenerational wealth transfer in its history. Over the next two decades, $2.6 trillion is expected to pass to the next generation. If 10–20 percent of that amount went to charity, it would release $260–520 billion to support the most crucial causes in our society, and would be transformational for Australia.

## An opportunity to engage your clients on philanthropy

### Financial advisers, lawyers and accountants play a key role in growing philanthropy in Australia.

The most effective way of doing this is by proactively talking with your clients about giving.

This conversation is not as complex as you might think. Advisers who engage with their clients about philanthropy recognise the many benefits of doing so, including:

- you can build trust and rapport with your clients
- by raising the idea of giving with your client you are demonstrating you can provide more holistic advice
- discussions about meaning, purpose and leaving a legacy helps build long-term, sustainable client relationships
- engaging clients on philanthropy leads to a marked improvement in retention of clients across generations, as successive generations of family members continue the charitable work
- whilst many clients are motivated to make a contribution, they also appreciate the tax concessions that accrue for giving
- donors can become more effective in their philanthropy and support for charitable organisations.

**Australian Financial Review Top 50 Philanthropist List 2022, 27 April 2022*

> *We hear from many advisers who are keen to help their clients create meaningful giving strategies as part of their financial and estate planning. These conversations are becoming more frequent, and are often timed around significant life events such as receiving a large inheritance, retirement or the sale of significant assets.*
>
> *The taxation benefits of making sizable donations, as part of a comprehensive financial planning process, can be quite pronounced when timed with these significant life events. Once a suitable philanthropic structure is in place, we help clients and their advisers to develop a giving strategy which supports charities and causes that have meaning for them, and that can be passed down to the future generations, resulting in a real and lasting philanthropic impact.*
>
> **Dominique Armstrong**
> National Manager Philanthropy and Trustee Services, AET

## About the *Professional Adviser Guide to Giving*

This Guide provides a useful starting point and reference for advisers who are integrating giving into their practice.

It will also help those advisers who wish to have some understanding of the key elements of giving structures before referring their clients to a specialist. In this Guide you will learn:

- some of the key motivations that typically drive donors to give – this will assist you to understand when is the best time to advise your client of the options available, which can further your relationship with them and their family;
- some common triggers behind client decisions to financially support charities – recognising some of those triggers enables you to identify when your clients might have a reason to give – be it a liquidation event or a change in personal circumstances;
- how clients can support a charity to achieve their philanthropic goals through either direct giving and structured giving options – both types of giving will be explained and explored further; and
- the role you can play in managing your client's philanthropic affairs in the future.

# Why and when your clients give?

Giving tends to be a personal journey for donors and the more they feel personally connected to a cause or issue, the better the funding outcome.

Understanding your client's motivations can assist you to provide tailored giving advice as well helping your client to be more effective in their philanthropy.

For clients who give directly to charity, this may be limited to ensuring donations made to deductible gift recipients are taken into account when finalising taxable income.

For clients with capacity and interest in structured giving, advisers can become involved in the ongoing management of the giving structure or foundation.

Typically, a donor's decision to make a high-value gift will be motivated by one or many external factors. When these factors become part of the conversation, raising the topic of giving can prove to be an effective means of engaging with your client as well as building trust and rapport.

| Motivation | Description | Key signs |
|---|---|---|
| **Passion** | Strongest reason why donors give. Will support causes they identify with and are committed to | • May volunteer/social engagement/ personal engagement (eg. have an art collection) |
| **Legacy** | Desire to continue the family name or perpetuate a particular cause or passion | • No direct beneficiaries |
| **Responsibility of Wealth** | Wanting to address impending intergenerational wealth transfer<br>Desire to engage family and future generations | • Estate planning regarding significant wealth transfer to future generations. Succession planning. Transfer of family business |
| **Duty** | Sense of duty based on services and/or support they received, and they want to give back. Eg. hospitals, schools | • Commitment to a cause or organisation – personal or family connection or link to someone close |
| **Community** | Desire to strengthen their local community | • Identify with issues in their community or society in general and want to make a difference |
| **Tax Minimisation and/or Liquidity Event** | Have an income/cash event and have a sizeable tax liability | • Sale of a business, shares, property or other asset<br>• Significant inheritance, gift or lottery win<br>• High taxable income or high capital gains tax |
| **Change in Personal Circumstances** | People rethink life and priorities when personal circumstances change | • Marriage, Divorce, Retirement, Redundancy, Death in the family, Accident, Injury, Serious Illness, Recovery |

“

*My client was committed to a number of causes during her lifetime. We discussed her charitable giving. When she undertook her estate planning, the prospect of her foundation continuing in perpetuity – and continuing her name and family's legacy – was incredibly appealing. Despite her passing, I continue to be involved in the management of the foundation's assets and advising the trustee on which charities her foundation supports, in effect continuing her commitment to her community and the causes she cared about.*

**Jennifer Wilson**
Estate Planning Lawyer,
Australian Executor Trustees

“

*I see philanthropy as an effective tax planning strategy for my clients. In the third quarter of each financial year, I will review my client's affairs and discuss the merits of structured giving or supporting a charity.*

**Oscar Howard**
Senior Financial Adviser Private Clients,
Perpetual

# How your clients give – supporting your clients' giving

Whilst there is no right or wrong way to give, understanding your client's options will assist in providing informed and correct advice, especially if your client is interested in claiming a deduction for the value of their donation.

Philanthropy Australia has an online tool for advisers to discuss with their clients that assists in determining the type of giving that may be preferable for your client. The following information on Direct Giving and Structured Giving set out the options available for your client depending on their circumstance.

You might not need to set up a philanthropic structure for your client if:

- They are giving a one-off amount
- They are giving for a short period
- They are giving a relatively small amount each year (eg. less than $10,000)
- Tax deductibility isn't required
- It's easier for them to give a tax-deductible donation directly to a charitable organisation

The Direct Giving Table below provides a brief explanation of some of the most common ways people make donations to Australian and overseas aid charities. This is not an exhaustive list, nor does it cover all aspects of each type of giving.

| Types of direct giving | Description | Features | Tax deduction |
|---|---|---|---|
| **Donating to individuals or non DGR 1 organisations** | Responding to requests from individuals (eg. crowd funding) and non-DGR organisations | • Irrevocable gift<br>• Flexible<br>• Generally small amounts | No |
| **Ad hoc donations to registered charities, endorsed as DGR Item 1 entities** | Responding to requests as and when they arise by registered charities, endorsed by the ATO as an Item 1 DGR | • Irrevocable gift<br>• Usually reacting to a request<br>• Generally smaller amounts<br>• Transactional in nature | Yes |
| **Planned giving to registered charities, endorsed as DGR Item 1 entities** | Planned giving typically reflects a regular commitment to a charity via direct debit or annual contribution to the organisation | • Regular donation to charities via direct debit or workplace giving program<br>• Donation value tends to be larger<br>• Emerging trend with Giving Circles – a group that pools funds to make donations based on shared values/interests | Yes |
| **Bequest to charitable organisations or charities, endorsed as DGR Item 1 entities** | A donor will make a gift to charity in their will | • Irrevocable gift from the estate of a deceased person<br>• Donation can be a prescribed amount or % of an estate<br>• Gift must be stipulated in the will of the donor | No |

## Structured giving

If your client is interested in thinking about their giving in a more strategic way, then there are a number of options available. All structured giving options offer attractive tax incentives, designed to encourage and grow this type of giving.

The type of structure they choose will be influenced by a number of factors:

- Level of wealth and how much they are willing to give
- How much they wish to be involved in the giving process – hands-on or more removed
- Whether they wish to solicit donations from the public for their charitable giving
- If they wish to give during their lifetime or leave a bequest on their death
- Whether they wish to involve their family in their giving practice and create a family giving legacy

### ESTABLISH A PAF (PRIVATE ANCILLARY FUND)

A Private Ancillary Fund (PAF) is standalone charitable trust, allowing you to create your own personalised giving program that can operate during your lifetime and after you are gone.

A PAF is a trust fund for businesses, families and individuals. Family members can make tax deductible donations but PAFs cannot solicit funds from the public.

Taxation benefits as deductions can be spread out over a five year period.

**Features**

- PAFs require a corporate trustee. The trust fund is controlled by a company usually with family members as directors and at least one independent "Responsible Person" director (someone with a degree of responsibility in the community)
- Contributions are irrevocable (once funds are donated, they can't be returned to the donor) and must be invested in line with the investment strategy
- PAFs are required to distribute a minimum of 5% of the net assets of the fund per year (unless they have been granted an exemption from the ATO)
- Requires a stand-alone investment strategy, reflecting 'prudent person' investment principles

**Tax effectiveness**

- Contributions are fully tax deductible, and deductions can be spread over five years
- Assets are exempt from income tax

**Costs for establishment and ongoing trustee and administration**

Fees vary – seek advice from service providers

**Time frame to establish**

Around 2 months – it's important to keep this in mind if 30 June is approaching and a major donation needs to be made before the end of the financial year

**Minimum contribution**

$500,000, with a plan to donate more to the PAF in order to grow it beyond $1M

## ESTABLISH A SUB-FUND WITH A NON-PROFIT COMMUNITY FOUNDATION ACCOUNT OR SUB-FUND WITH A PRIVATE PROVIDER (PUBLIC ANCILLARY FUND)

Sub-funds provide a more affordable and accessible entry point for many individuals and families to structure their giving. They are suitable for those who are seeking more guidance with their giving and do not want to be involved with any of the administration, compliance and due diligence.

A sub-fund can be with a community foundation or a charitable trust fund run by a not-for-profit, Trustee Company, private foundation or wealth adviser.

A community foundation typically focuses on supporting a geographical area, primarily by facilitating and pooling donations used to address community needs and support local non-profits. Community foundations make it easy for individuals, families, corporates and more to develop grantmaking strategies that align with their specific interests.

In most cases the legal structure is a public ancillary fund (PuAF).

### Features

- Sub-funds can only distribute funds to organisations with DGR 1 and charitable status (unless the sub-fund is established in a charitable trust that is not a PuAF, in which case no tax deduction is available)
- Funds are pooled within the corpus of the PuAF under a common investment strategy – they cannot be individually managed
- Sub-fund holders make recommendations for grants – however the trustee of a PuAF is not under a legal obligation to comply (however it is rare for a trustee to disagree with a recommendation)
- Donations are irrevocable, but 'portability' may be an option – this means that a sub-fund holder can request that the trustee transfers the assets in a sub-fund to either a PAF or to another sub-fund in another PuAF – it can be a good idea to ask about portability options before establishing a new sub-fund
- The Foundation corpus must distribute a minimum of 4% of the value of the fund overall as grants in each financial year, however one of the benefits of a sub-fund is that this does not apply to the individual sub-fund but the PuAFs as a whole
- Sub-funds can raise funds from the public, whereas a PAF cannot
- Tend to be more economical to manage than a PAF as the annual fees are much lower

**Tax effectiveness**

- Contributions are fully tax deductible, and deductions can be spread over five years
- Assets are exempt from income tax

**Costs for establishment**

Minimal costs

**Time frame to establish**

1–2 days

**Ongoing Costs**

Usually between 1% – 2.5% of value of account

**Minimum Contribution**

Recommended establishment amount of at least $20,000 but some community foundations and other providers allow lower entry levels for funds – from as low as $2,000 – and others have no minimum amount as long as there is a commitment from the donor to build up the fund over time.

## ESTABLISH A PRIVATE FOUNDATION OR TESTAMENTARY CHARITABLE TRUST

Most Private Foundations are established upon the death of their founder.

Trustees are responsible and control all governance, compliance, investments and giving strategies (as outlined in the will/trust deed). The will or trust deed can nominate family members and colleagues to be initial trustees and can specify appointment process and other requirements of trustees in perpetuity.

Most suited to older clients who wish to establish a legacy.

### Features

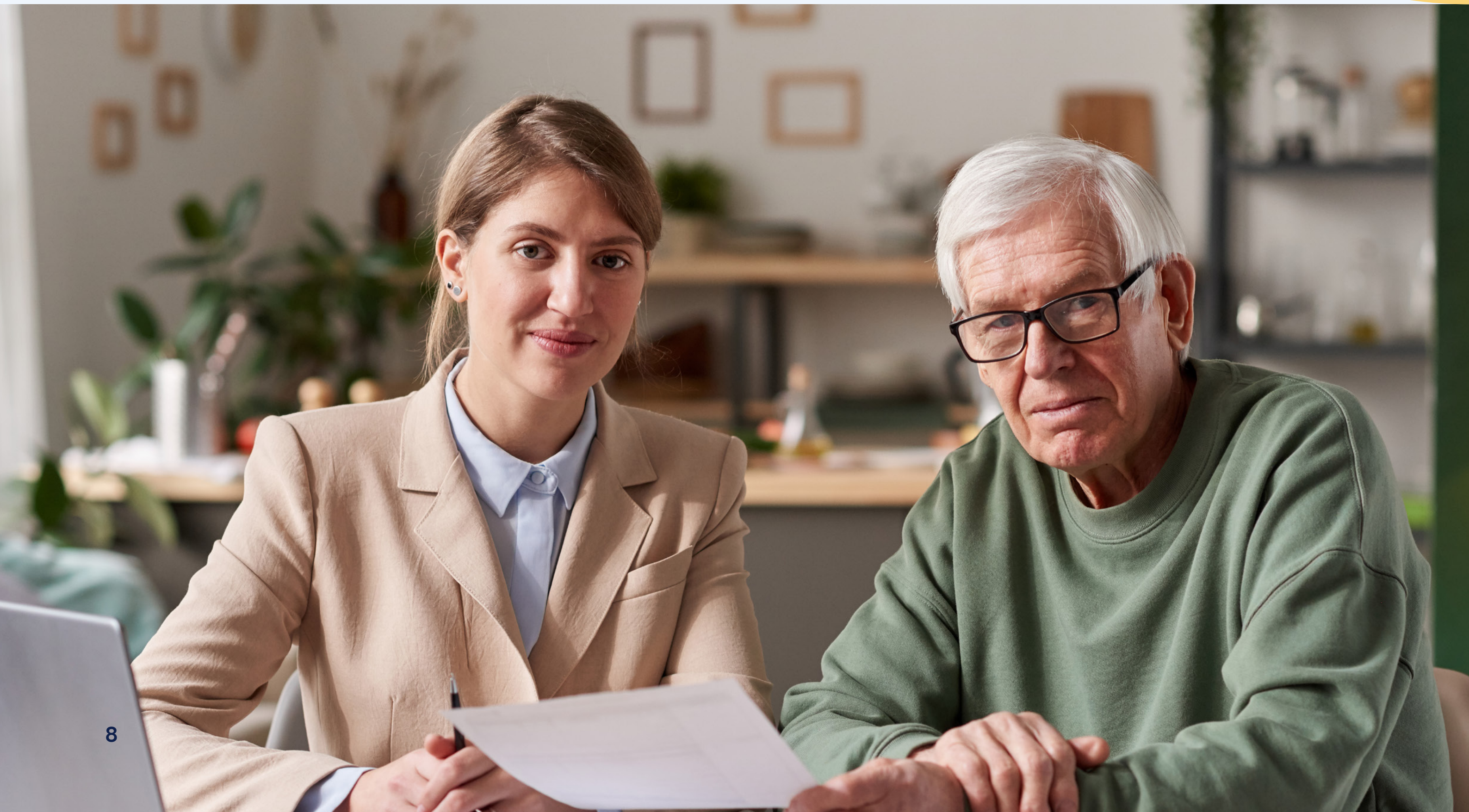
- Governing document is a trust deed or in most cases, the Will of the founder (testator)
- Recommended minimum of $500,000 to establish
- Individuals can be appointed as trustees. Alternatively, licensed trustee companies can take on this responsibility and manage the risk and compliance associated with the ongoing management of the trust
- Assets must be invested in accordance with prudent person rule, defined under Trust Law

**Tax effectiveness**
Assets are income tax exempt

**Costs for establishment and ongoing trustee and administration**
Fees vary – seek advice from service providers

**Time frame to establish**
4–12 months pending complexity

**Minimum contribution**
$500,000 – $2M



## Roles and responsibilities of trustees

When a client decides to structure their giving, advisers should be aware of the roles and responsibilities involved in the ongoing management of a foundation or sub-fund of a public ancillary fund.

| | |
|---|---|
| **Role of the trustee** | The trustees, or directors of a corporate trust, are responsible for the ongoing management, administration and compliance of running a charitable trust.<br>This includes ensuring the deed is executed appropriately and necessary tax concessions are obtained from the relevant government agency.<br>The trustees must also ensure the charitable trust meets its trust and tax law regulatory obligations, including meeting annual reporting requirements and ensuring grants are distributed to eligible charitable beneficiaries.<br>There are a number of entities that can assist with these services. Please contact Philanthropy Australia for information on our members who offer this service. |
| **Managing a foundation's investments** | Charitable trusts are often established with the intention of existing in perpetuity. Accordingly, donations made to a charitable trust need to be prudently managed to ensure the fund meets its stated investment objectives and mindful of its distribution requirements.<br>An investment adviser needs to be cognizant of the risks posed to charitable investors as well as any tax concessions that are available. Increasingly, trustees are also considering ethical investment and impact investment options, in addition to the traditional asset classes. These considerations should be documented in the charitable trust's investment strategy.<br>Amendments to your client's Statement of Advice (SoA) may also be required. |
| **Making grants to eligible charities** | The main 'reward' your client receives by structuring their giving is the provision of ongoing and sustainable support for the charitable purposes they care about. Each year, charitable trusts are required to distribute a minimum amount to beneficiaries.<br>Increasingly, donors are becoming more strategic in their approach to giving to charities and depending on the quantum of funds, may wish to seek guidance and support on how they should give, as well as to whom they support. |

# What's next?

The legal, financial and operational requirements, establishment fees and ongoing costs are influenced by the type of structure that is established, so it is important to choose one that will work best for your client.

If your client is interested in exploring sub-funds, there are over 40 community foundations and many private foundations in Australia that have this option. Please go the Professional Adviser page on the Philanthropy Australia website for further information.

If you are unsure about setting up a structure, your client will appreciate you referring them to an organisation that can assist, many of whom are members of Philanthropy Australia and listed on the Professional Adviser page on our website. Some of these organisations may seek to manage the corpus investment of the fund, whilst others are able to set up the structure and allow you, the client's adviser, to continue to manage the corpus (investment portfolio).

Philanthropy Australia would be pleased to work with you and your clients to grow giving in Australia. Please contact us if you would like further guidance about establishing a structured, strategic approach to your clients' giving. As the peak body for philanthropy, we can provide your clients with resources and learning to inform their giving strategies and help them feel confident that they are achieving impact through their giving.

Through membership of Philanthropy Australia, we have a range of peer-to-peer learning opportunities which give members access to experts, insight into how others are funding and opportunities to connect and share with people who are on the same journey.

We also offer a wide range of educational programs designed to guide your clients' philanthropic practice.

We look forward to working with you to create a more generous and inclusive Australia.

We trust this guide has been useful in helping you better understand the philanthropic sector.

For more information please go to our website: **www.philanthropy.org.au**

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