

1 August 2025

Not-for-profits Unit
The Treasury
Langton Cres
Parkes ACT 2600

Submitted Online

Dear Sir/Madam,

Giving Fund Reforms: distribution rate and smoothing

Philanthropy Australia thanks the Treasury for the opportunity to provide a submission in response to the *Giving Fund Reforms: distribution rate and smoothing* consultation paper (**the paper**).

This submission sets out Philanthropy Australia's general and specific comments in relation to the paper, including its consultation questions.

Should the Treasury wish to discuss the matters raised in this submission further, please do not hesitate to contact our Executive Director, Policy and Sector Development, Krystian Seibert. (kseibert@philanthropy.org.au).

Kind Regards



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Chief Executive Officer

Key Points

- Giving (ancillary) funds are essential enablers of generosity and impact, providing a vital flow of support for charities doing diverse work across Australia.
- Philanthropy Australia believes that the existing regulatory arrangements for giving funds are generally working well, ensuring that funds operate for the community benefit whilst providing a stable policy environment for fostering philanthropy.
- We do not believe that any major changes are needed or warranted
- The policy choices made by the Government should focus on maintaining and building on the contributions from giving funds to the community, rather than taking unnecessary risks that could jeopardise the level of support flowing to charities over time.
- There was no finding in the Productivity Commission's *Future Foundations for Giving* report that the regulatory framework for giving funds was not fit-for-purpose, nor did the report identify a clear case for increasing the minimum distribution.
- We support incremental improvements, such as renaming ancillary funds as giving funds and allowing the smoothing of distributions across multiple years.
- We believe that 5 per cent is an appropriate minimum distribution rate, consistent with the range recommended by the Productivity Commission.
- An increase beyond 5 per cent creates a high risk of unintended consequences, such as disincentivising the establishment of new giving funds.
- Reform of the Deductible Gift Recipient (DGR) system was the key recommendation of the *Future Foundations for Giving* report, with a clear finding that an overhaul is needed.
- Philanthropy Australia believes that the Government should be prioritising real and tangible action to reform the DGR system, where the case for change is strong, rather than making changes to the minimum distribution, where the case for change is not strong.

General Comments

Government Policy Choices Are Critical to Supporting Giving

Giving is growing in Australia, but at the same time, the demands on charities are bigger than ever. Increases in the cost of living, rising inequality, and climate change are having a real impact. Our diverse charities are on the frontlines responding to these challenges.

Growing philanthropy and its impact is not an end in and of itself. Growing giving matters, because it benefits the community.

It provides additional resources to channel community voice and action to make a difference to people's lives, and build a more inclusive and resilient Australia. It's not a substitute for government, but rather a complement. It fulfils a different, but vital role.

As the peak body for philanthropy, Philanthropy Australia works with our members and partners to help build a more generous and inclusive Australia.

When it comes to growing giving, the policy choices of governments make a difference. We know that the availability of tax incentives or giving structures is not the primary reason people give, but they can and do support people to give, and to give more – Philanthropy Australia's ['Practical Policy Priorities to Grow Giving in Australia'](#), April 2025



We support the Australian Government’s objective to double giving by 2030, and believe that the policy choices made by the Government will have a direct impact on the trajectory of giving as we move towards 2030 and beyond.

For this reason, we have strongly backed reforms that will support a thriving and vibrant culture of philanthropy in Australia. This includes the Government’s implementation of a new DGR category for community charities, which removes roadblocks standing in the way of community foundations, helping to drive their growth and impact.

The Productivity Commission’s [Future Foundations for Giving](#) report identifies a range of reforms to support giving in Australia, providing the Government with an opportunity to take real and tangible action to enhance the policy settings for encouraging giving.

Philanthropy Australia is encouraged that the Government has taken some initial steps to respond to the proposals in the report. This includes releasing this consultation paper to seek feedback on proposed reforms to the regulatory arrangements for ‘giving funds’ (currently referred to as ‘ancillary funds’).

Although we have concerns regarding the possible impact of an increase in the minimum distribution, we would like to commend the Treasury for the considered approach it has taken to drafting the consultation paper.

Our general comments in relation to the proposals are shared below, followed by our responses to the specific questions posed in the paper.

Giving Funds are Essential Enablers of Generosity and Impact

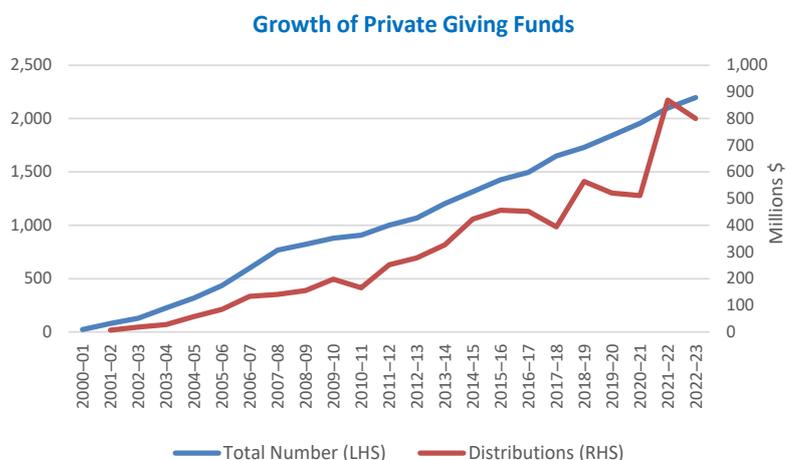
Giving funds are essential enablers of generosity and impact, providing a vital flow of support for charities doing diverse work across Australia.

Giving funds themselves are used in a range of ways to facilitate and channel philanthropic contributions for the benefit of the community. Private giving funds are commonly used by families and businesses seeking to make a sustained and planned commitment to philanthropy.

Public giving funds are often used by corporate, wealth adviser and community foundations, and as fundraising vehicles for individual charities. They may have so called ‘sub-funds’ within them, which are a form of giving account that can be used as an alternative option to establishing a private giving fund.

Donors to giving funds receive a tax deduction for their contributions, and for this reason giving funds are subject to extensive regulation, over and above that which applies to other types of registered charities.

These additional obligations include governance duties and reporting requirements, with the Australian Taxation Office (ATO) having responsibility for oversight of these regulatory arrangements.



Philanthropy Australia believes that the existing regulatory arrangements for giving funds are generally working well, helping to ensure that giving funds operate for the public benefit whilst providing a stable policy environment for fostering structured philanthropy.

We do not believe that any major changes are needed or warranted.

There are now over 2,000 private giving funds and around 1,500 public giving funds in Australia, with distributions from giving funds to charities amounting to just under \$800m and \$490m respectively in 2022–23.

The policy choices the Government makes should focus on maintaining and building on the contributions to the community from giving funds, rather than taking unnecessary risks that could jeopardise the level of support flowing to charities over time.

The policy choices made by the Government following this consultation process should focus on maintaining and building on these contributions to the community, rather than taking unnecessary risks that could jeopardise the level of support flowing to charities over time.

We support incremental improvements, such as renaming ancillary funds as giving funds, to more accurately reflect their purpose, and allowing the smoothing of distributions across multiple years, to enable support to be provided more flexibly.

We do not see the need for an increase to the minimum distribution, given the risk of unintended consequences, such as disincentivising the establishment of new giving funds.

Philanthropy Australia has always taken a measured stance in relation to the proposals to change the minimum distribution, seeking an outcome that maximises the benefits to the community from having a thriving and vibrant culture of philanthropy in Australia.

That is why we [did not support a 2016 proposal](#) from the then Australian Government, which would have had the effect of (considerably) decreasing the minimum rate. This is the same reason for why we believe that 5 per cent is an appropriate minimum rate, consistent with the range recommended by the Productivity Commission.

As a membership organisation, there can be different perspectives on questions such as this. Some of our members have major concerns about the impacts of an increase in the minimum distribution. There are also some members that are less concerned or support an increase.

We note the proposal to align the minimum distribution rates for private and public giving funds. If the rate is set at 5 per cent, this would mean no change for private giving funds, but an increase of 1 per cent for public giving funds.

Some of our members are comfortable with such an increase, whilst others have expressed concerns about such a change. Public giving funds are used to facilitate philanthropy in diverse ways, and such a change would have particular impacts for those seeking to build a perpetual philanthropic asset for the benefit of the community.

We ask the Government to give proper consideration to these concerns.

Prioritising Reform of the Deductible Gift Recipient System

Philanthropy Australia cautions the Government against adopting an approach which ‘cherry picks’ certain recommendations from the *Future Foundations for Giving* report, whilst sidestepping its key recommendation – the need for a comprehensive overhaul of our Deductible Gift Recipient (DGR) system.

The *Future Foundations for Giving* report concluded that the DGR system, which determines which charities are eligible to receive tax deductible donations, is ‘not fit for purpose’ and ‘needs reform’. This centrepiece proposal in the report was endorsed by the [Not-for-profit Sector Development Blueprint](#) released at the end of last year.



Finding 5.1

The deductible gift recipient (DGR) system is poorly designed, overly complex and has no coherent policy rationale

The DGR system is not fit for purpose as a mechanism for determining which entities should be eligible to receive indirect government support through tax-deductible donations. There is no coherent policy rationale for why certain entities are eligible for DGR status and others miss out. The complexity of the system continues to increase as new DGR endorsement categories are added in a piecemeal manner.

The DGR system creates inefficient, inconsistent and unfair outcomes for donors, charities and the community. It needs reform.

These two reports build on the other Australian Government commissioned reports which have recommended an overhaul of the system. These include the final report of the *Not-for-profit Sector Tax Concession Working Group* (2013), the Productivity Commission's *Contribution of the Not-for-profit Sector* (2010), and the former Industry Commission's *Charitable Organisations in Australia* (1995). There are now five major reports, including two completed in 2024, that have recommended reforming the DGR system.

Only around half of registered charities are eligible for DGR status, with the system leading to many inequitable outcomes. For example, currently a charity focused on preventing *illnesses* in children is eligible for DGR status, whereas a charity focused on preventing *injuries* to children is ineligible. It is also a complex system, forcing many charities to grapple with unnecessary red tape.

The Productivity Commission's Future Foundations for Giving report did not identify a clear and strong case for increasing the minimum distribution rate for giving funds, other than recommending a range of 5-8 per cent.

Notably, giving funds can only make distributions to so called 'Item 1' DGRs. This means that charities which miss out on DGR status are also cut off from accessing grants from giving funds – irrespective of what the level of the minimum distribution is.

Conversely, there was no finding in the *Future Foundations for Giving* report that the regulatory framework for giving funds was not fit-for-purpose. Nor did the report identify a clear case for increasing the minimum distribution rate, with the report noting on page 288 that the Commission's own analysis '... has ultimately been inconclusive in determining what the precise minimum distribution rate should be'. Based on the available evidence, the Commission was only prepared to recommend a range for the minimum distribution of between 5-8 per cent.

Faced with a choice between progressing reforms to the DGR system, where the case for an overhaul is strong, and making changes to the regulatory framework for giving funds, where the case for major change is not strong, Philanthropy Australia firmly believes that the Government should be prioritising reform of the DGR system.

Responses to Consultation Questions

Principles for setting the distribution rate for giving funds

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

Philanthropy Australia believes that these considerations provide a useful framework for setting the minimum distribution rate, subject to the following additional comments.

It is important to ensure that the principles put forward by the Productivity Commission, recommended for the purposes of setting the minimum distribution, are properly reflected.

In this regard, the paper states that the second principle put forward by the Commission is that 'There should be no guarantee that funds can exist in perpetuity in the absence of additional gifts to the fund'. However, this is an incomplete reflection of the principle, which Philanthropy Australia assumes is an inadvertent omission.

The proper wording of the principle, as set out on page 281 of the *Future Foundations for Giving* report, is extracted below.

Principle 2: enable, but not guarantee, that funds can operate in perpetuity

The 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.

The difference in wording is not merely a matter of detail. The Productivity Commission's use of the active term 'enable' is a signal that where feasible and given the other principles put forward, the minimum distribution should be set at a rate that makes perpetuity possible, albeit it does not guarantee it. This is possible, though not guaranteed, with a minimum distribution set at the lower end of the 5–8 per cent range put forward by the Productivity Commission, whilst maintaining a consistent and growing flow of support to charities over time.

Philanthropy Australia supports the paper's observation that:

... the government also notes giving funds exist to encourage philanthropy. If a donor is discouraged from creating a giving fund, there is no guarantee that the donor would simply donate the same amount directly to item 1 DGRs. In setting the minimum annual distribution rate, the government seeks to strike a balance between maximising benefits to DGRs and encouraging new giving funds.

We believe that this is an important consideration and that it is vital to ensure that the costs and benefits of any proposed change are properly understood.

Sometimes when there is an inclination to make a particular change, this can frame the decision maker's perspectives on the costs and benefits associated with making the change. Referred to as 'confirmation bias', it can lead to the possible negative impacts of a change being (often inadvertently) minimised, and the possible positive impact being maximised (or vice-versa). This can and does lead to all sorts of problematic policy outcomes.

In this regard, the policy choices made by governments are often made in an environment of uncertainty. This includes the choices that will be made regarding the level of the minimum distribution. Decision makers therefore need to draw on the best available evidence, but they also should be prepared to acknowledge that they may not know what the impacts of a particular change will be, at least not with an acceptable degree of certainty about the resultant trade-offs.

Philanthropy Australia believes that this has two implications for the policy choices made by the Government following this consultation process:

- **There should be a relatively high threshold for making a change where the status quo arrangements are generally operating in a satisfactory way.** As discussed previously in this submission, there is evidence that this is the case. This includes the lack of any finding in the *Future Foundations for Giving* report that the regulatory framework for giving funds was not fit-for-purpose, and the Productivity Commission's openness that its own analysis '... has ultimately been inconclusive in determining what the precise minimum distribution rate should be'.
- **The Government should have a willingness to accept responsibility for the negative impacts of any policy changes, as well as any possible positive impacts.** For example, if the minimum distribution is increased, this may lead to increased granting from giving

funds in the short-term but also to less giving funds being established, and reduced support flowing to charities over time. This will not be of benefit to the community, and the Government will need to be prepared to 'own' this outcome if it eventuates, especially given that the Productivity Commission did not specifically recommend an increase to the minimum distribution.

2. 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?

As stated above, Philanthropy Australia believes that 5 per cent is an appropriate minimum distribution. On this basis, there would be no need for a transition period in the case of private giving funds, as the rate which applies to them would not change.

However, if the minimum distribution rates for private and public giving funds were aligned, this would mean an increase of 1 per cent in the case of public giving funds. If this change were implemented, it would be essential to provide an extended transition period.

5 years should be the minimum time frame for such a transition period, noting that under guideline 15(3) of the *Taxation Administration (Public Ancillary Fund) Guidelines 2022*, new public giving funds are already allowed up to 5 years before they are required to meet the existing minimum distribution requirement.

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

The Expectations the Government Has for Its Own Funds

Philanthropy Australia believes that the Government should also take into account the expectations it has for its own funds under management.

This can include expectations regarding investment returns, such as those of the various 'Future Funds' established by the Australian Government, some of which are set out below.

Fund	Investment Mandate
Future Fund	Average annual return of at least the Consumer Price Index plus 4% to 5% per annum over the long term, with an acceptable but not excessive level of risk.
Medical Research Future Fund	At least the Reserve Bank of Australia Cash Rate target plus 1.5 to 2.0% per annum, net of investment fees, over a rolling 10 year term.
Housing Australia Future Fund, and Future Drought Fund	Average return, net of costs, of at least the Consumer Price Index plus 2.0% to 3.0% pa over the long term while taking an acceptable but not excessive level of risk.

These investment mandates provide a useful indicator of the investment returns that could be expected of assets held within giving funds, whilst noting that giving funds do not generally benefit from the scale of the Government's own funds.

These returns are relevant to considerations of what the appropriate minimum distribution rate should be, given the Productivity Commission's recommendation that the rate should be set at a level which should enable, but not guarantee, that funds can operate in perpetuity (as discussed in the response to question 1 above).

It is also relevant to consider the expectations regarding distributions from the Government's own funds with similar purposes to giving funds.

One example is the [Medical Research Future Fund](#) (MRFF), whose aim is to ‘provide an ongoing funding stream for medical research and medical innovation into the future with the credits to the MRFF preserved in perpetuity’.

The total balance of the MRFF at the end of June 2024 was \$23 billion with its ‘maximum annual distribution’ for 2024–25 set at \$973 million. This works out to be a distribution rate of 4.2 per cent for 2024–25. For the 2023–24, the distribution rate was 3.96 per cent.

The MRFF is fully taxpayer-funded, rather than comprising a hybrid of direct private contributions and indirect public contributions (provided through tax concessions), as is the case with giving funds.

It is notable that despite this:

- The MRFF is specifically intended to operate in perpetuity, rather than to be drawn down over time, whereas the paper seems to question whether perpetuity is a valid consideration for giving funds.
- The MRFF distributes at a rate considerably lower than that currently required of private giving funds, and closer to that required of public giving funds.

It is not for Philanthropy Australia to express a view on the appropriate distribution rate for the MRFF.

However, we do believe that in setting expectations for giving funds, and especially if considering an increase to the minimum distribution, the Government should act in a manner that is consistent with the expectations it sets for its own funds that perform a similar role, such as the MRFF.

Effects on the Appetite for Impact Investment

A number of Philanthropy Australia members have also observed that an increase in the minimum distribution may also affect the appetite of giving funds to engage in impact investment.

Many giving funds are seeking to allocate some of their assets towards impact investments, enabling them to generate investment returns whilst also achieving positive social and environmental impacts. This can help align the investment and granting activities of giving funds, providing more funds for addressing social and environmental challenges, and enhancing the overall benefits they provide to the community.

If the minimum distribution rate is increased, many giving funds will likely shift their investment strategies to seek higher investment returns, especially those seeking to operate in perpetuity. There is a perception that impact investments tend to deliver lower financial returns, and/or often provide a source of longer-term ‘patient capital’. Given this perception, there may be a decrease in the appetite of giving funds to engage in impact investment.

This would be a further unintended consequence of an increase in the minimum distribution, with the possible outcomes discussed in more detail in [this post on the ‘Inside Adviser’ website](#). This may run counter to the [Government’s efforts](#) to encourage different forms of investment capital to be directed towards addressing social and environmental challenges.

Practical considerations for setting the minimum annual distribution rate

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

Yes it is. However, as acknowledged in the paper, it is important to recognise that these time preferences will vary. They are likely to vary not only across organisations, but also across time.

It is essential that any judgements about the preferences of charities and the community are supported by proper and rigorous evidence, particularly if used by the Government as a basis for increasing the minimum distribution. This is especially relevant given, as observed above, that the Productivity Commission's own analysis was inconclusive on these matters.

By their very nature, consultation processes such as this may not present a complete picture. The *Future Foundations for Giving* report did suggest that the Government could commission a survey of charities in order to gather such information, and there is merit to considering this further.

There should also not be an expectation that the minimum distribution must do all the 'heavy lifting' in terms of seeking to ensure closer alignment between the time preferences of the trustees of giving funds, DGRs and the community. As observed in the *Future Foundations for Giving* report, the minimum distribution is one tool to help achieve this. However, regulation is not only about the use of formal government mechanisms to influence behaviours. Norms are also relevant, and these are shaped by a host of factors.

For example, many donors are now establishing philanthropic foundations (including giving funds) with the intention of 'spending down', distributing much more than the minimum distribution. This can help to explain why chart 1 in the paper shows that 1 in 4 private giving funds (in that sample) have a minimum distribution rate of over 10 per cent.

The recently released [Australian Tech Giving Report](#) highlights that tech donors in particular are less motivated by leaving a legacy, and therefore are often seeking to give more quickly. The report predicts that their involvement in giving is likely to increase considerably over coming years. It is highly likely that we may see more giving funds distributing at higher rates over time as a result of these changes.

Although this could be used as a justification for an increase to the minimum distribution, Philanthropy Australia believes that it may actually be the opposite. If norms are changing, and we can expect distributions from giving funds to increase over time because of these shifts, it further weakens the case for an increase in the minimum distribution, given the other possible unintended consequences, such as those discussed in the response to question 7.

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

Philanthropy Australia has no preference.

We do, however, caution against placing too much reliance on a discount rate-based analysis. Such analysis is a valuable input to inform decision-making, but it is just one input and should not be regarded as conclusive. Notably, it is a tool that is generally limited to considerations made at a fixed point in time.

For example, if the minimum distribution is increased, so that the funds flowing to charities over time are reduced and are therefore lower in 20 years compared with what they otherwise would be (as chart 1 of the paper would indicate they may well be), the fact that future funding flows were 'discounted' for analytical purposes will likely have little meaning for charities that have access to less support from giving funds.

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

Philanthropy Australia does not accept the premise of this question, given that its framing creates a false dichotomy, implying there is an inherent conflict between the wishes of donors to operate

a giving fund in perpetuity and the preferences of DGRs, and that this necessarily needs to be 'balanced'.

It is important to recognise that perpetuity is an established concept within philanthropy that has shaped giving decisions and practices for a long time.

For example, many well-known and established philanthropic foundations in Victoria were set up to operate in perpetuity. They have helped create a thriving and vibrant culture of philanthropy in the state, benefiting many causes and charities over many years.

A desire to operate a giving fund in perpetuity is still an important motivator for many donors. As noted in the submission from Australian Philanthropic Services, a recent survey of their clients found that 70% of respondents wished for their giving fund to continue in perpetuity.

Chart 2 of the paper shows that we don't need to create a false dichotomy between perpetuity and the needs of charities – it is possible to align both the wishes of donors seeking to operate a giving fund in perpetuity, whilst maximising the flow of funds to charities. As stated in the paper's commentary on the chart:

The 5 per cent distribution rate is also the only scenario in which the real value of the initial \$1 million gift is retained, if perpetual operation of a fund is considered important. This suggests benefits to DGRs in the future are also maximised with the lowest distribution rate.

And for those donors wishing to give more quickly, including those discussed in the response to question 4, the existing regulatory arrangements enable them to do so by providing flexibility for different donor motivations and preferences, with the aim of encouraging as many people as possible to engage in giving for the benefit of the community.

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

Based on the feedback provided to us by members who work with people exploring the option of setting up a giving fund, we believe that an increase in the distribution rate would certainly affect the willingness of some donors to set up giving funds. Philanthropy Australia agrees with the observation in the paper that there is no guarantee that such donors will simply donate the same amount of funds directly to charities.

The impacts of a change will likely vary depending on the intentions of donors.

For example, if a donor intends to establish a giving fund and to spend it down within a certain period of time, then an increase in the minimum distribution will likely have less of an impact. However, if a donor wishes to create a longer lasting legacy through establishing a giving fund, then an increase in the minimum distribution will have more of an impact.

It is also possible that an increase in the minimum distribution may result in some donors having a lack of confidence in the regulatory framework for giving funds. If they are concerned about the 'rules of the game' changing again in the future, this may also affect their willingness to set up a giving fund.

Philanthropy Australia is not seeking to exaggerate these risks. But nonetheless, they are real and tangible risks that cannot be brushed aside.

In this regard, we draw the Government's attention to the submission from JBWere, which sets out the results of modelling showing how changes in the willingness of donors to set up giving funds could impact the flow of support to charities over time. The various scenarios highlight the possible risks involved with changing the minimum distribution.

If such a change leads to less giving funds being established, then we can expect to see evidence of this in the near term, even if the actual increase in the minimum distribution may only take effect after a transition period. For example, we may well see fewer giving funds established in 2026 and 2027. As mentioned in the response to question 1, were this to occur, the Government should have a willingness to accept responsibility for the near-term negative impacts of its policy choices, as well as the possible longer-term negative impacts.

It is also worth noting that there may also be substitution effects arising from an increase in the minimum distribution, with more donors seeking to establish so called 'sub-funds' within public giving funds, as opposed to private giving funds.

Whilst a public giving fund as a whole is subject to a minimum distribution, individual sub-funds are not. Therefore, if some sub-funds within a public giving fund are granting at a higher rate, this may mean that other sub-funds can grant at a lower rate. For this reason, some donors may find sub-funds more attractive, in a relative sense compared with private giving funds, if there is an increase in the minimum distribution. However, it is difficult to predict this with any certainty.

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

As stated above, Philanthropy Australia believes that 5 per cent is an appropriate minimum distribution.

Principles for smoothing distributions

9. *Are these principles reasonable? If you don't agree with one or more of them, please provide reasons.*

Philanthropy Australia supports the principles and believes that they form a sound basis for implementing the proposal to allow giving funds to smooth distributions over three-year periods.

10. *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.)*

Philanthropy Australia believes that the proposal should be implemented in as simple a manner as possible. Although we have no objections to the Commissioner of Taxation having such a power, we also do not think it is essential.

11. *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.*

Philanthropy Australia believes that if such a power is provided to the Commissioner of Taxation, it should not be a general power that provides a broad discretion. This could create uncertainty for the trustees of giving funds and their advisers, and also impose an administrative burden on the Commissioner.

For example, it would be appropriate for the Commissioner to have the ability to use this power where a giving fund:

- 1) Has not met its minimum distribution in any of the preceding 3 years; or
- 2) Has been subject to an administrative penalty under the guidelines in any of the preceding 3 years (including where such a penalty has been remitted); or

- 3) Has outstanding reporting obligations to the Commissioner of Taxation or Commissioner of the Australian Charities and Not-for-profits Commission; or
- 4) The Commissioner has reasonable grounds to believe that the giving fund's investment strategy will mean that it is unlikely to meet its minimum distribution during the smoothing period.

12. *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.*

Philanthropy Australia has no objections to this.

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

Philanthropy Australia does not have any further suggestions in this regard.