Australian Philanthropic Services

APS Response to Treasury Consultation Paper
Submitted 30 July 2025

What is the problem?

This document is a response to Treasury Consultation Paper ***Giving fund reforms: distribution rate and smoothing***, June 2025.

The paper provides good material for some genuinely interesting questions, however it does not articulate the policy problem that Treasury is trying to address.

- What is Government trying to achieve and what options have been considered?
- Should a change be implemented, how will success be measured?
- What are the risks of adverse outcomes and how will they be managed?

These questions are the usual cornerstones for policy and impact analysis yet have not been addressed in Treasury's paper.

The Productivity Commission correctly identifies the setting of minimum distribution rates as a key policy lever in the ancillary fund framework. Treasury's consultation paper reinforces this view. However, consideration of any change to the minimum distribution rate also needs to include consideration of the wider impact such a change will have:

- as a signal of Government support of people irrevocably donating their funds for the future benefit of the Australian community, and
- as a signal of Government process by which any future change may be considered.

There needs to be a compelling logic to the framework and any changes made to it. Successive Governments have built trust in the regulatory system over 25 years – an asset in its own right that needs to be protected.

Item 1 DGRs need more funds. What is the best way to achieve this is the real question.

APS believes the best way to deliver more funds to "doing" charities is to increase giving and the number of donors, not by squeezing more from structures set up by the generous Australians who are already giving.

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Summary

1. Australian Philanthropic Services (**APS**) believes that aligning all giving fund minimum distribution rates to the 5% private ancillary fund (**PAF**) distribution rate will simplify the regulatory framework and is a sensible improvement. There is currently no relevant explanation for a difference between the two types of ancillary funds in terms of distribution rate and APS supports this proposal. Aligning ***when*** giving funds must start distributions would also be consistent with this approach and have a similar positive outcome.

   APS strongly believes that increasing the PAF distribution rate is ill advised as:

   a. it would run counter to the Government's policy of building the giving culture in Australia,
   b. no compelling evidence has been presented as to why 5% needs increasing,
   c. it would reduce distributions to Item 1 Deductible Gift Recipient (**DGR**) charities in the medium and longer term as shown by Treasury's own modelling, and
   d. it is unlikely to fulfil its intended aim of bringing forward funding to charities in the short-term as the change would negatively impact the establishment of new PAFs and force the spend down of others, ultimately leading to fewer PAFs, and therefore less funds flowing to Item 1 DGR charities.

2. APS believes the current 5% minimum distribution for PAFs is well founded in philanthropic principles, investment market returns, international frameworks, and the principles that the Government applies to its own Future Funds. This is the fourth review of minimum distribution rates for Prescribed Private Funds (**PPFs**)/ancillary funds since 2001. We are not aware of any fundamental change to justify an increase in the minimum distribution above 5%. In keeping with its own principles for policy formulation, Government's decision would no doubt be based on the careful consideration of all the facts and taking account of the risks. Trust in the Government policy framework, is critically important for long term philanthropy, and this would be lost if the Government's rationale is not compelling.

3. Introducing smoothing provisions would be helpful, particularly should Government ignore our and others' advice and proceed with mandating a minimum distribution rate above 5%. We see no issues for smoothing after a large gift – applying an excess part of a large distribution made in year 1 to the next two years in a similar way to the current process for the spreading of a tax deduction over up to 5 years for a donation to any DGR charity. However, we see potential integrity risks that would need to be managed if smoothing to the minimum of $11,000 in Years 1 and 2 is done **in expectation** a of large gift in year 3.

4. Should Government mandate a minimum distribution rate above 5%, the 5-year notice period recommended by the Productivity Commission would be essential to allow adjustment to investment strategies as well as practical planning for additional distribution decisions.

About Australian Philanthropic Services

APS is a charity, is registered with the Australian Charities and Not for Profits Commission (ACNC) and has Item 1 DGR status.

APS's charitable purpose is to benefit the Australian community by increasing the level of giving to charities and other philanthropic causes and entities through structured giving.

APS core activities are:

- providing an administration, accounting and compliance service for private ancillary funds (**PAFs**) and a small number of public ancillary funds (**PuAFs**), charitable trusts and charitable companies,
- operating a public ancillary fund, and
- providing giving support services to all APS clients as they need.

In addition to our core activities, we undertake a number of other activities which are "incidental or conducive to the attainment of" our charitable purposes. This includes promoting structured giving wherever possible, providing free education to professional advisers including accountants, lawyers and financial advisers, and making meaningful contributions to the health and wellbeing of the sector wherever possible.

Since 2012 APS has grown from a team of 3, supporting 14 PAFs, to a team of 50 administering 350+ PAFs, each of which we meet with at least once a year, and 720+ clients with giving funds[1] in the APS Foundation (APS's public ancillary fund). APS is at the forefront of growing structured philanthropy, consistently establishing roughly one third of all PAFs created in Australia each year. Further, APS Foundation is the fastest growing and most generous PuAF in the country.

Since its establishment 13 years ago, APS clients have given away over $1.3B to charities and now have over $2.4B (FY2024) irrevocably donated into ancillary funds for the future use of Item 1 DGR charities. The overwhelming majority of these donations are not from the mega wealthy but are from comfortably wealthy Australians who have some resources and wish to contribute to a better future locally, nationally and internationally.

[1] APS has been using the term "Giving Funds" for donor accounts within APS Foundation since 2018. We introduced this term for the same reasons the Productivity Commission recommended this term, as we did not think "sub-funds" appropriately recognised donor generosity and community commitment. We will continue to use the term in this way.

Background

Australians are generous donors following natural disasters both domestically and in our region, as well as for specific fundraising campaigns. However, the level of regular, longer-term structured giving has long lagged behind the United States and the United Kingdom. The most notable deficit was in philanthropy of the highest wealth cohort. The introduction of Prescribed Private Funds (PPFs – now PAFs) in 2001 was the then Government's response to this problem to create long term pools of philanthropic capital.

Policy Objective of creating Prescribed Private Funds (now PAFs):

"*This measure will open up a new vehicle for private philanthropy, similar to that existing in the United States, so that families and individuals can donate to a trust of their own, which then disburses funds to a range of other gift- deductible recipients*." (Prime Minister John Howard's Press Release, 30 March 2001)

This was reinforced by the 2009 Review and creation of PAFs:

*"The pool of assets collected into private ancillary funds is effectively stored up for the future benefit of just these kinds of organisations; stored up for the wider public good." (*Assistant Treasurer's Nick Sherry Speech, 10 November 2009)

The setting of minimum distribution rates throughout this time has always sought to ensure the highest sustainable level of distributions to community.

Ancillary funds – a success story of bipartisan support

The framework has received broad bipartisan and community support and has only been tweaked with sector support after in depth consultation.

1963 – Public Ancillary Funds introduced.

2001 – Prescribed Private Funds (**PPFs**) created by the Howard Government, initiated by the sector.

2009 – Rudd Government review with wide consultations led to the establishment of PAF Guidelines, including introducing the 5% minimum distribution requirement.

2012 – Similar guidelines extended to Public Ancillary Funds.

2015/16 – Turnbull Government proposal to reduce minimum distribution to RBA Cash Rate was opposed by the sector leaving the minimum distribution unchanged, but ATO Commissioner discretion introduced.

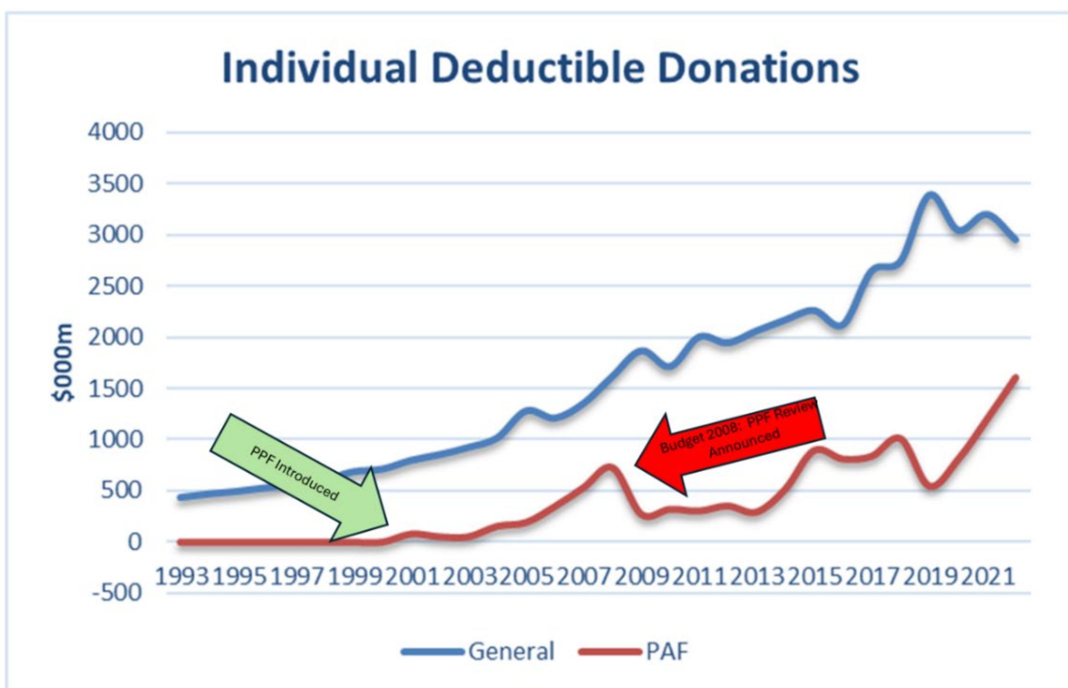
2019 – PAF Guidelines refresh leaving them largely unchanged.

2022 – PuAF Guidelines refresh leaving them largely unchanged.

2025 – Community Charities introduced by Minister Leigh in the Albanese Government with a minimum distribution rate of 4%.

This is a success of Government policy. The rationale for giving funds remains as valid today as it was in 2001. ATO Data and the Productivity Commission (**PC**) Report ***Future foundations for giving*** 2024 (**PC Report**) both confirm that PPFs/PAFs have lifted the total level of giving and have not eroded direct support of "doing" charities. Importantly, the culture of giving has grown – achieving a foundational objective of ancillary fund legislation – with funding flowing to doing charities and entities at increasing rates.

The introduction of private ancillary funds as a legal structure coincided with a noticeable ***increase in the overall level of individual giving*** *in Australia.* (PC Report 2024, page 272).



Source: ATO Tax Stats Charities; Private and Public Ancillary Funds

The PC Report made no findings suggesting misuse or abuse of the PAF structure. Like all frameworks, errors are certainly made but there is no indication of deliberate or repetitive abuse. Further, the ATO and ACNC both have significant powers to deal with any deliberate or repetitive misuse of the structures.

Doubling giving by 2030

There is widespread support for the Government policy of doubling giving by 2030. The PC Report made no recommendations on the double giving goal and Commissioner Alex Robson has been quoted subsequently *"we will probably get there on current settings",* (Intheblack, 1 July 2025).

Changing this successful regulatory framework risks upsetting the current trajectory to 2030 and reducing, rather than increasing, giving.

So while we welcomed the PC Report and this subsequent consultation, it is our experience that most, if not all, of the sector is agreed the policy as it currently stands has been successful in achieving the objective of increasing philanthropy in Australia.

We strongly believe absolute care is needed when modifying a policy framework that is working well and delivering on its objectives. The risk of unintended adverse consequences is higher when there is no problem to solve and no widespread support for change.

Distribution levels

Aligning PuAF to PAF distributions at 5% is not controversial. The following discussion therefore is around the best number for PAF minimum distributions (which then will also apply to PuAFs).

To be clear a change in the minimum distribution rate, while not impacting some funds, would be a significant increase for many.

Potential Increase	Minimum 5%	Minimum 6%	Minimum 7%
PuAF	25%	50%	75%
PAFs	0	20%	40%

The Treasury paper is predicated on the idea that the PC Report called for an increase in distribution levels. That is not accurate.

The PC Report did not make a recommendation to increase the minimum PAF distribution, nor did it make any comment on what an appropriate number might be. The PC Report recommended **sector consultation** around the level of distributions, being somewhere between 5-8%.

Similar consultations have been undertaken in the past, resulting in the 5% minimum distribution being maintained.

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Previous reviews of minimum distribution levels

YEAR		Government Exposure Drafts/Reports	Sector	Outcome
2008	PPF Review	15%[2]	5%	5%
2010	PuAF Guidelines	Higher than PAFs	Same as PAFs @5%	4%
2015	Ancillary Fund Review	RBA Cash Rate If approved would have meant 1.6% average minimum distribution over last 8 years	5%	5% with ATO discretion
2024	Productivity Commission	5-8%	5%	
2025	Community Charities	4%		4%

While over time Government has struggled to settle on its view of a minimum distribution, the sector has been consistent throughout, arguing 5% is the correct number based on best philanthropic practice and investment market realities which also drive international comparisons.

"The *minimum annual distribution requirement balances the aim of supporting community charities to create long term community endowments with that of ensuring deductible gifts are applied for charitable purposes",* Community Charity Deductible Gift Framework, Factsheet, Treasury December 2024.

Why would this statement not also be true for ancillary funds?

[2] Treasury argue 15% was not their recommendation but 15% was the only figure presented.

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Questions posed by Treasury

Q1 Are these considerations appropriate for setting minimum annual distribution levels?

1. *The purpose of giving funds is charitable. Investments are made to maximise the benefits available to Item 1 DGRs, not to maximise investment returns.*
2. *There should be no guarantee that funds can exist in perpetuity in the absence of additional gifts to the fund. However, the distribution rate should not be set so high that it encourages high-risk investment strategies by trustees seeking to maintain the value of a fund.*
3. *Distributions should reflect the funding needs of Item 1 DGRs, which will include short-term as well as longer-term requirements.*

   Source: Treasury Giving Fund reforms: distribution rate and smoothing. Consultation Paper, June 2025.

APS agrees these factors are appropriate for consideration in setting the minimum distribution level but there are several other important principles that we outline in the next section.

Combining the first and third points above conveys an important statement. The objective is to maximise the flow of distributions to Item 1 DGR categories taking into account short and longer-term requirements. Chart 2 in the Treasury Consultation paper, drawing on real historical data, shows that annual distributions from a 5% minimum requirement **exceed** those under 6/7/8% requirements after about 18 years and then every year thereafter for the life of the foundation (reflecting the power of compound interest). This is **before** any likely negative impact of any distribution requirement change on the establishment rate of new foundations. When Treasury's modelling shows that 5% provides the best medium to long-term outcome in dollars to charities and Treasury has no modelling on the negative impacts of a change, nor any suggestions of how to manage any negative impacts, the clear conclusion is that no change is warranted.

We also note that the three principles noted above are positioned as PC Report principles but the changes to PC language and the omissions of PC wording do not accurately reflect the messages of the PC Report. As an example, point two above "*there should be no guarantee that funds exist in perpetuity in the absence of additional gifts to the fund*" is very different to the PC wording "*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".*

This variance in wording indicates a fundamental difference in approach which shifts the goalposts for PAFs without articulating why and without articulating how the negative impacts of such a change would be managed.

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

There are several further considerations including:

A. Best philanthropic practice
B. International context
C. Domestic comparisons for other Future Fund pools of capital
D. Market returns
E. The risk of uncertainty impacting the establishment of new ancillary funds
F. If new funds are not established does that result in increased donations directly to DGRs?
G. The overlooked due diligence work compared to similar costly work done by Government
H. Why change what is clearly working?
I. The contribution ancillary funds make to building a culture of giving in Australia
J. Legacy – a key motivator for many givers

A. Best philanthropic practice

"Funds may operate in perpetuity by earning returns at or above the minimum distribution rate". PC Report, page 281.

Best practice philanthropic principle is to maximise the amount given away each year while maintaining the real value of corpus (and thereby the real value of future grants) for intergenerational neutrality. This principle is consistent with Australian Trust Law that requires Trustees to act in the best interests of all present and future beneficiaries and impartially between beneficiaries.

UK	Wellcome Trust	We seek to triangulate risk, return, and spend to observe a proper balance between the need to meet present demands on our resources and the need to allow for future demands. Target distribution level of 4%.
US	Rockefeller Foundation	In providing oversight of the Rockefeller Foundation's endowment, the board of trustees strives to balance two long-term objectives – maximizing funds for current programs and maintaining generational neutrality – through policies on spending rate and asset allocation of the investment portfolio. Target distribution level of 5.5% including expenses.

Sources: Wellcome Investment Policy, 24 September 2024.
Rockefeller Foundation Annual Report, 2005.

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B. The international context on minimum distribution levels

Global collective wisdom indicates that a minimum distribution level that achieves the dual objectives of encouraging philanthropy whilst delivering to the community is around 5%.

US	5%	Calculated after expenses although tax is applied.
Canada	3.5%/5%	3.5% for first $1M, 5% thereafter.
UK	Income Circa 4%	Considered increasing to mandated 5% - was dismissed.
NZ	Income Range 3.5-5%	NZ is investigating mandating a (higher) minimum distribution for private foundations. International precedent seen as Australia (5%) Canada (3.5 or 5%) and USA (5%).

Sources: **US:** IRS https://www.irs.gov/charities-non-profits/private-foundations/minimum-investment-return
Canada: https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/annual-spending-requirement-disbursement-quota/disbursement-quota-calculation.html
UK: https://www.boodlehatfield.com/articles/encouraging-charitable-trusts-to-increase-charitable-giving/, 04 Dec 2023
NZ https://www.taxpolicy.ird.govt.nz/-/media/project/ir/tp/consultation/2025/taxation-and-the-not-for-profit-sector.pdf?modified=20250303232403&modified=20250303232403

C. The domestic Future Fund context

Future Funds have become part of Australia's fiscal environment as they have overseas. Ancillary funds are in effect the future funds for the DGR community sector. Control is diverse but the funds are irrevocably gifted for the benefit of DGRs and cannot be diverted elsewhere. So, what are the expectations for the Government's Future Funds?

Housing Australia Future Fund	5%	$ defined at 5% CPI indexed
Future Fund	From 1 July 2017 the Fund's Investment Mandate target return was reduced from CPI + 4.5% to 5.5% pa to CPI + 4% to 5% pa over the long term, with an acceptable but not excessive level of risk	7.7% after fees return since inception with Inflation 2.7% over same period
Medical Research Future Fund	RBACR +1.5 to 2%	2024/25 Grant provision 4.2%
Super Pension Mode	4% < 65 5% 65-74 6% 75-79	Finite timeframe based on expectation of duration of pension requirement. At 60 its 24/27 years. At 75, 12 years

Sources: **HAFF:** Housing Australia Future Fund Investment Mandate Direction, 1 November 2023
FF: Future Fund 7.7% Return since inception in May 2006, **FF** 2024 Portfolio update, 30 June, 2024 September. Inflation since June 2006 to June 2024 2.7% RBA Data.
MRFF: https://www.finance.gov.au/government/australian-government-investment-funds/medical-research-future-fund
Super Pension Mode: ATO https://www.ato.gov.au/tax-rates-and-codes/key-superannuation-rates-and-thresholds/payments-from-super

From MRFF: *"In determining the level of risk, the Future Fund Board must take into account; the principle that the nominal value of the credits to the MRFF be preserved over the long- term; and the need to moderate the volatility of the maximum annual distribution."* As noted below this is consistent with best practice for philanthropic trusts.

The Government's guidance provided to the Future Fund is clearly based on a level of sustainable distributions over time to meet long term objectives. This has been consistent from the Future Fund's establishment in 2006 to the HAFF in 2024 with the closest approximate to philanthropy being the MRFF. It should be noted that 100% of funds in these vehicles is taxpayer-funded, compared to 47% in ancillary funds.

D. Market return

The Productivity Commission and Government have acknowledged that one of the risks of increasing the minimum distribution rate is that it may force foundation trustees into more aggressive investment strategies which have the potential to erode community fund value.

Neither the Productivity Commission nor the Treasury analysis indicates a distribution level of above 5% is sustainable with current returns and sustainability is not guaranteed even at 5%.

	Average return	**2016/17 - 2020/21**
PAFs	6.9%	4.4% available for distribution after fees of 0.7% and inflation adjustment of 1.8%

Source: PC Report, page 283.

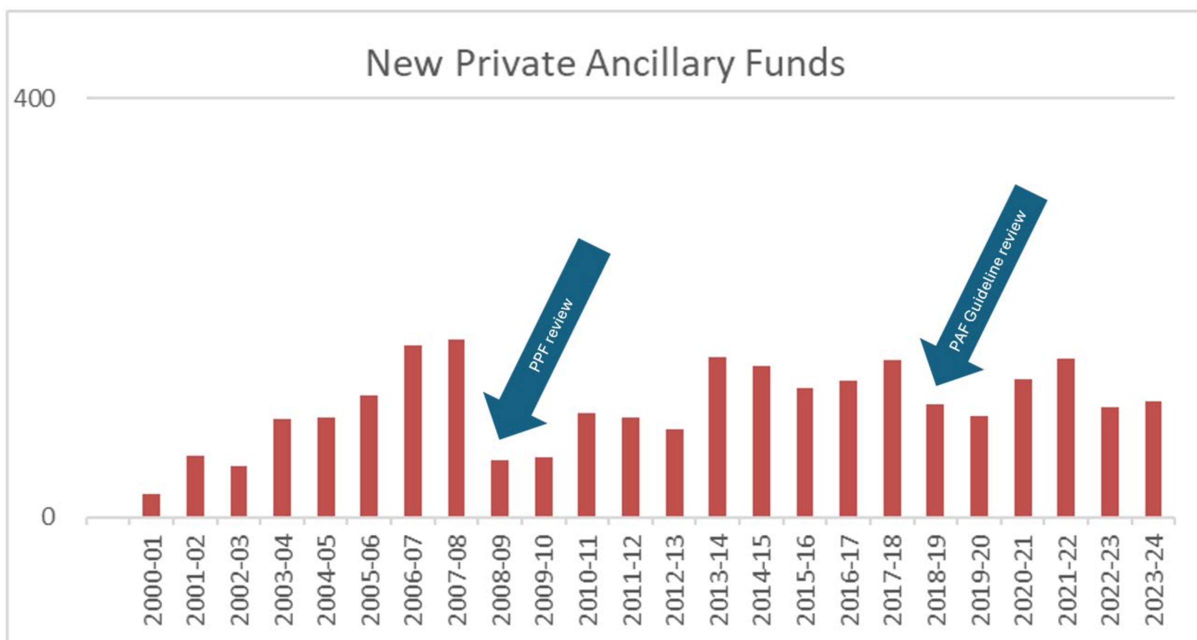
Superannuation Funds in accumulation mode have a Superannuation Guarantee Levy income stream and no distribution call so can afford to take higher risk growth strategies (although the majority of super account holders choose more balanced options), however ancillary funds have a liquidity requirement for minimum distributions to take into account in the Investment strategy.

E. Uncertainty risk

By definition, philanthropy is long-term, with donors making irrevocable donations to the community which makes certainty critical.

The PC Report listed *"the benefits of stability and certainty in the regulatory framework"* (PC Report, page 282) as one of the factors that should inform the minimum distribution rate. Any uncertainty affects the number of new ancillary funds established – both financial uncertainty and regulatory uncertainty. Over the last decade the most commonly asked question of APS by potential founders and donors is "Is this like superannuation? Do the rules change every few years like super?" Unlike superannuation, once funds are donated to an ancillary fund they belong to the community and not the individual. They cannot be retrieved. Policy certainty is paramount.

The uncertainty created by Guideline reviews (2009 & 2019) had an adverse impact on the creation of new PAFs as well as donations into PAFs. While framework change to address a specific problem has been accepted, the idea that guidelines may change acts as a discouragement to the commitment from potential donors.



Source: ATO Tax Stats Private and Public Ancillary Fund. ATO DGR listing for most recent data.

F. A reduction in new PAFs does not equal an increase in giving directly to charities

Treasury comments:

"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."* (APS bolding)

Treasury is absolutely correct. APS notes from our discussions with both giving fund and PAF clients that the level of donations directly to charities would be **substantially less** if ancillary funds did not exist.

One significant reason why ancillary funds have fostered giving is the inherent separation of the decision to give, from the decision of who to give to. This separation is critically important for the establishment of new PAFs and giving funds. Particularly at the time of selling a business or major investment, asset donors are often not ready to nominate ultimate recipient charities or DGR Government entities. Making the decision to share some of their financial success with the community is a significant decision in and of itself. If donors also had to identify the ultimate beneficiaries at the same time, many would simply not donate. Furthermore, many believe that consistent ongoing support of DGR charities is the best way to achieve outcomes rather than large one-off donations.

We know “trigger points” such as the sale of businesses, investment properties or market investments activate the establishment of PAFs and giving funds. If the opportunity to establish a PAF or giving fund at the trigger point is missed, the funds remain in personal names or family trusts or other structures, and while some of the funds might ultimately make their way to charities that is as a result of year on year decision making which can change over time or cease completely, particularly on death. The community benefit is clear when you compare that with a large irrevocable gift into a PAF or giving fund which can only be distributed to Item 1 DGRs.

The negative uncertainty factor will be magnified if the basis for the Government decision were not well grounded in fact and did not fully consider broad sector input. Previous decisions which have resulted in a 4/5% outcome have successfully met these criteria.

G. The overlooked contribution of PAF holders – the unseen (and unpaid) decision makers

With the exception of very large, staffed PAFs, PAF distributions are overwhelmingly determined by families getting together and considering many worthy causes and charities to choose the best implementors to achieve their community improvement objectives. It is varied. It is generally done well. This is overlooked. There is no cost to Government of this application of local knowledge, lived experience and due diligence. To gauge the real value contributed by PAFs to the community sector, this due diligence and administrative cost of zero could be compared to the significant cost to Government of the numerous other community grant programs run by parliament and Government departments.

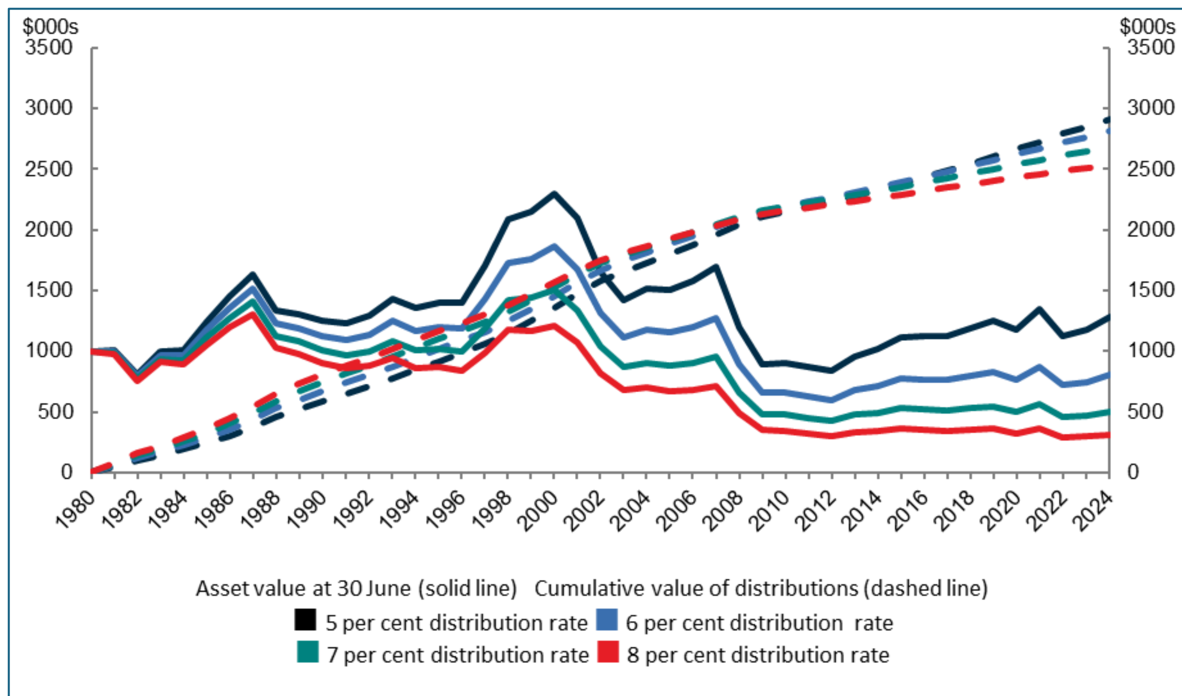
Through only having to fund 47% of the corpus and having others complete the due diligence and execution of the grants (for no cost), PAFs provide great value to Government.

H. Why change what is clearly working?

Treasury analysis and inclusion of Chart 2 and related discussion in its consultation paper is important. This shows, using real data between 1980 and 2024 that only the 5% distribution rate maintained the real value of the initial donation. Furthermore, and equally importantly, **the 5% distribution rate scenario became the highest cumulative distribution amount** after about 2010 and increased every year thereafter.

This further supports the best practice philanthropic principle of maximising the contribution to the community while maintaining the real value of the fund.

Chart 2: Giving fund asset value as at June 30 and cumulative value of distributions made in constant 1979-80 dollars



"The higher distribution rates see aggregate distributions to DGRs maximised over the short term. In the longer term, distributions are maximised when the distribution rate is set at its current rate of 5 per cent. 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.

Using the current highest marginal personal income tax rate of 47 percent (inclusive of the Medicare levy), the benefit of the $470,000 tax deduction to the donor is distributed to DGRs within seven to nine years. This time will be shorter where the donor faces a lower marginal tax rate.", Treasury Giving Fund reforms: distribution rate and smoothing. Consultation Paper, June 2025.

This chart is compelling – the (lower) 5% distribution level is the only level that maintains the real value of the fund over time, and also delivers higher distribution levels over the medium to longer term.

The only rationale for increasing the mandated distribution from ancillary funds is to accelerate the short-term distribution of tax deductions to the charity sector. However, that requires accepting a reduction in long term distributions by slowing the growth of the funds under management and potentially discouraging new philanthropy. This seems counter intuitive to growing giving.

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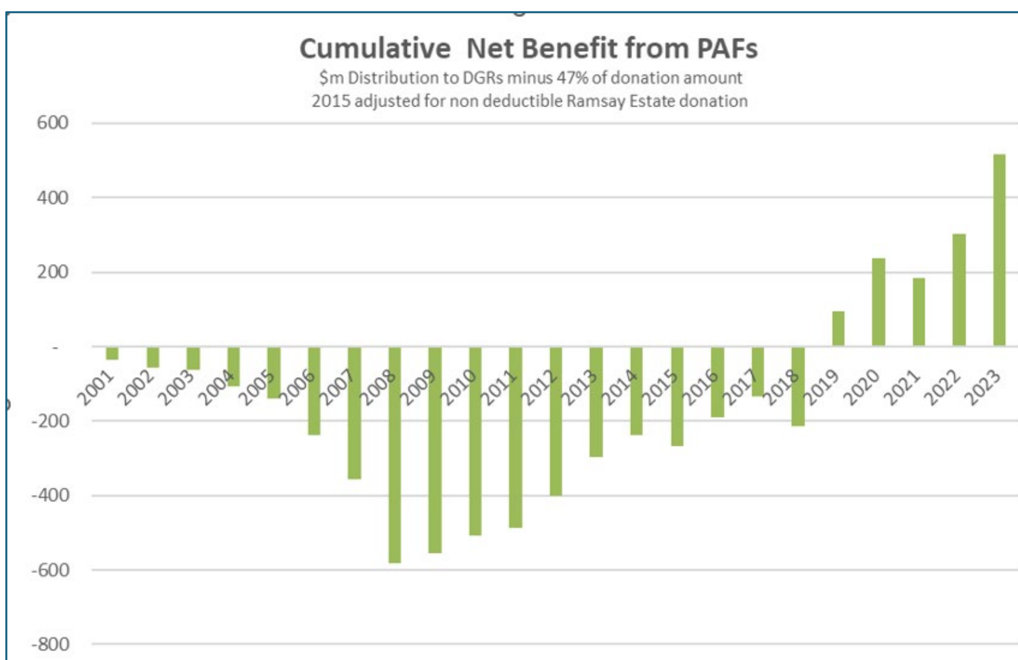
Treasury (*Improving the Integrity of PPFs*, 2008, page 3) stated that ancillary funds should provide a benefit to the charitable sector that is much more than if the Government had taken the forgone revenue and given directly to that sector.

In the last five years the total distributed to Item 1 DGR charities by PAFs since their inception in 2001 has exceeded the estimated forgone tax revenue from donation deductions. Talk of "PAFs costing taxpayers $7B" in recent media articles is simply wrong. The PAFs contribution to Item 1 DGR charities is already net positive, and increasingly so, on the Treasury measure of the alternative of direct support of such charities by Government.



Source: ATO Tax Stats Private and Public Ancillary Fund.

That is purely on the flow of funds measure. Assessment of the benefit would also include consideration of the creation of a charity sector "Future Fund" of $10B (2023 number).

I. Building a culture of giving in Australia

Since their creation, PPF/PAFs have contributed to increasing philanthropy, particularly by higher income Australians.

"I think what we have been able to do is awaken a large segment of the population to the value of philanthropy, to draw on the natural decency of the Australian people but also remind people that the government can't do everything" John Howard Philanthropy Australia Conference May 2021.

There are still many more to "awaken". As outlined previously, only half of those earning $1M or more claim any tax deductible donation to charities. This needs to change. Popular ancillary funds are doing just that and a stable regulatory environment will allow that work to continue.

PAFs and particularly giving funds within Public Ancillary Funds are vehicles for the community minded wealthy and often modestly wealthy individuals and families to support the causes they care about. They are not the preserve of the super wealthy. If Government is serious about building a culture of generosity in Australia, it should be seeking ways to encourage the establishment of these much more accessible funds, rather than potentially curtailing their growth.

A culture of giving is not just about raw numbers. The PC Report, the sector and the Minister all support the concept of "**more and better giving**". Better giving comes from learning, experience, connection with charities and other donors, engagement with the peak body and other backbone groups working in particular areas such as Australians Investing in Women, Australian Environmental Grantmakers Network (AEGN), Foundation for Rural and Regional Renewal (FRRR), She Gives, Australian International Development Network (AIDN), 10 x 10, Impact 100 and The Funding Network (TFN) for small, grassroots charities. Due diligence and sector wide work is often generously shared by those larger professionally staffed PAFs (and other entitles such as Paul Ramsay Foundation, Minderoo Foundation, Ian Potter Foundation, Snow Family Foundation, CAGEs and others). Support from service providers such as Australian Philanthropic Services and others provides donors with education, best practice, connection and the opportunity to collectively give with others.

Philanthropy is known to be agile and can support programs that Government's approach to risk could not support. It can also work long term with Government as it does with the Investment Dialogue for Australia's Children, a ten-year collaboration.

The growth in structured giving underpins not just more dollars making their way to Item 1 DGRs but encourages and provides the support framework for thoughtful giving, strategic giving, collective giving, better giving.

J. Legacy – a key motivator for many givers

For many, one of the key reasons for establishing a PAF is the concept of leaving a legacy. In a recent survey of APS PAF clients, 70% of those who responded said they intended their PAF to continue in perpetuity, while 6% had in mind a spend down within a certain timeframe and the remainder were not yet certain. 49% already had their successors involved in the PAF, showing the power of structured giving to hand down values within families and foster community engagement.

There is a small but growing cohort of PAFs that intend to spend down for a variety of reasons but often to deal with urgent issues such as the climate crisis where there is a definitive timeframe for positive impact. Charitable causes and families are diverse, and APS supports the decision to spend down noting it should remain a choice by the directors of the PAF not a de-facto mandate by Government as a result of imposing an unrealistic minimum distribution.

It might be assumed that a desire for legacy and ongoing giving would result in PAFs limiting their giving to 5% that is not the case with APS's 350+ PAFs.

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As a pool, APS PAF clients give well above the 5%, showing the generosity and responsiveness to urgent need, such as natural disasters and COVID.

Mandating an increase to the minimum distribution rate is unnecessary and would adversely affect the viability of smaller PAFs.

Looking into the pool in more detail, the median sized APS PAF is about $2M. Of newly established PAFs less than four years since establishment, about a third are this size. Not surprisingly the majority of this group give at the 5% level while they build the corpus and gather experience in giving. It is this cohort that would be severely impacted by an increase in minimum distributions and would immediately be forced into spend down if they were unable to generate extraordinary investment returns. Treasury and the PC have pointed to the risk associated with encouraging PAF directors towards riskier investments to attempt such returns as a way of coping with an unforeseen change in the rules.

Giving begets giving and 80% of APS PAF clients go on to make additional donations in subsequent years. A trigger event may prompt the first and largest donation, but others follow as circumstances allow. That may not turn a $2M PAF into a $10M PAF but it means that the PAF can maintain its real value over time while still giving away $100K per annum and covering costs; ultimately resulting in more funds flowing to Item 1 DGR charities over time.

Of the 20% of APS PAFs that only ever receive one donation there are some outstanding stories of generous Founders who were in the process of building wealth, established a PAF with an initial donation and then have sadly passed away. Their legacy continues as the next generation of family has taken over the management of the PAF and the giving, despite the fact that the wealth builder has ceased generating revenue and making donations.

If the APS pool is representative of PAF establishments generally and were government to increase the minimum distribution then this cohort of Founders, who start relatively modestly and build over years, will likely conclude legacy is not available to them, that structured giving is the preserve of the mega wealthy and will not irrevocably donate their $2M. A lot of $2Ms adds significantly to the pool of future philanthropic capital. Treasury has noted there is no guarantee that the $2Ms will end up with Item 1 DGR charities without the ancillary fund structure. Treasury has not provided any modelling on the impact of an increase in minimum distributions on new establishments, but it is impossible to see any community benefit in having 15%, 20% or 25% fewer PAFs established year-on-year.

Central to much family philanthropy is the “gathering of the clan” to make decisions on how to support the community and select recipients. It is a joyful process that fosters a giving culture. This is what donors want to achieve when setting up PAFs. Mandating distribution levels beyond the inherent investment capacity risks damaging that fabric.

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Context for Treasury questions 4, 5 and 6

We find questions 4,5, and 6 do not consider all parts of the philanthropic community. They set up a false dichotomy between Item 1 DGRs and donors – and then sometimes use the term "community" as in "community preferences". The community consists of Government, donors, Item 1 DGRs ***as well as*** the beneficiaries of charities and the directors of the trustees. The last two are not mentioned in Treasury's paper.

If you are a beneficiary of a charity, you might have a view that charities building a corpus of reserves is not in your best interests as a beneficiary and you would prefer that the charity expend more of its reserves on immediate service provision. In the same way it is reasonable to think that some Item 1 DGRs might hold a view that giving funds should hold less in reserves (corpus) and expend more immediately via gifts to Item 1 DGRs.

In both cases while that is an expected view it is not necessarily in the "community's" best interests; prioritising the immediate needs of today over the longer-term needs of tomorrow; perpetuating an intergenerational inequity. **The balance is to provide for both the now and the future** and in doing so allow the fund to continue to give for many years, beyond the benefit of the tax deduction amount.

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

Time preferences have their uses in policy formulation but should not be the arbiter. Philanthropy, like Future Funds, is about long-term solutions to often entrenched problems that cannot be solved in the short term. The best practice philanthropic principle is to maximise giving while maintaining the real value of the corpus, so that the real value of giving can at least be maintained. Some philanthropic supported activities like medical research and education scholarships require ongoing funding (and increasing to maintain the real value of contributions) over many years.

We note this philanthropic principle, rather than the concept of time preference, is embedded in the Government's own Future Funds. Based on publicly available information, time preferences are not an issue in determining Government Future Fund minimum distribution rates. We therefore believe the same approach should apply to the Community Future Fund of ancillary funds, which as we have pointed out previously, are less than 47% funded by the Government.

The key question is whether the roughly seven year "payback" period for the original tax deductions is sufficient for Government creating the ongoing and increasing distribution flow from perpetual "Sector Future Funds" for the Charity and Government Entity DGR sector. This was the original idea behind creating PPF/PAFs.

The DGR community is not a single body but rather a diverse and varied sector with different cause specific goals and challenges. Even subsets such as DGR charities and DGR Government entities have different priorities. By way of example, time preferences of a food or homeless charity are very different from a medical research or education institute. Further, time preferences may vary within one philanthropic program having both an immediate relief of symptoms component as

well as a long-term solution component. Attempting an overall sector time preference is an enormously complex task.

If the concept of time preferences is to be applied, it should be done so consistently. For instance, if donors want to spread their resources over a longer term to address deep seated community issues and provide a legacy for their time on this planet, that should be taken into account – remembering that 53% of the funds committed is private money. Furthermore if "doing" DGRs simply build their own reserves with the additional donations received from ancillary funds, what policy outcome has been achieved? We note in 2022 the total assets of the ten largest charities exceeded the entire 2,200 PAF Total Assets by a factor of four times (ACNC AIS Database, FY2022).

Trade-offs need to be considered. On initial consideration, the prospect of receiving higher funds up front may appear attractive to a busy DGR. However, if they were to appreciate the modelling in Chart 2 (page 14), that over the medium to long term, they would ultimately receive less funding, how might their answer change?

In short, we believe the application of time preferences is appropriate though inherent in the philanthropic principle of intergenerational neutrality and a reasonable (5%) minimum distribution.

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

We don't believe this question is useful in the context of a thoughtful consideration of the issues. Furthermore, as per question 4, this assumes distributions each year will remain at the same level overall which is a flawed assumption. As Treasury analysis shows, higher short-term distribution rates lead to lower longer-term distribution rates.

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

Again, we do not believe time preferences should be the key factor in this discussion. However, if it is, it is essential that donor time preferences are given full consideration, after all, they are funding 53% of the funds in these vehicles.

Treasury focuses on the 47 cents in the dollar of forgone tax but does not consider the 53 cents in the dollar of donor's own funds that are being irrevocable committed to the community. This is not a by-product but rather a generous donation from individuals for the betterment of the Australian community. The raison d'etre of ancillary funds is to encourage this behaviour. Donors' objectives are critical.

Government mandates its own Future Funds including the Medical Research Future Fund to take a long-term view – why should private funds be subject to a higher distribution requirement than taxpayer funded funds?

Some donors have explicit long-term time preferences. For instance, funding medical research necessitates a multi-year commitment. Education scholarships and support for DGRs such as the Smith Family require commitments for up to 20 years to see a disadvantaged child through the education system. DGRs frequently insist on that before they will engage. Funding of a University Chair requires either up front funding of the entire term or a multiyear commitment. Other causes such as Climate Change have an immediate need for funds – PAF holders recognise this and some APS clients have actively decided to grant out their funds in a short period of time to commit more resources to addressing an immediate need.

Ultimately, donor preferences will determine the level of funds committed, not Item 1 DGRs.

As noted previously, a foundational and best practice philanthropic objective is to maximise giving levels while maintaining the real value of the fund in order to preserve intergenerational neutrality.

Australia has already embarked on the $5.4T of intergenerational wealth transfer. One of the key questions for the next 20 years will be what proportion of this wealth transfer will arrive in structures that can only distribute to Item 1 DGRs? If the opportunity is missed due to growing uncertainty about the future of ancillary funds and because donors feel the framework does not consider their needs and preferences, the sector and the community will be very much worse off.

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

Yes. It will undoubtedly reduce the level of funds available – the real question is by how much? There are two reasons:

1) Moving above 5% impinges on legacy which is important to many, but not all, donors. Fostering an intergenerational giving culture is often cited as a reason for establishing a family PAF.

2) One of the key elements in the success of ancillary funds in fostering a more generous Australia over the last two decades with a stable and relatively consistent compliance regime. This is particularly important given the long-term nature of philanthropy. Tinkering with regime parameters or implying a lack of certainty itself is a risk factor. If minimum annual distributions are increased even modestly, potential donors will think it may go up again.

As we, and the sector have submitted, since before PAFs were introduced, we believe that 5% strikes the right balance. Furthermore, the higher the minimum distribution level, the higher the potential for adverse behaviour. There are likely to be more applications for a reduced minimum distribution. There will be more interest in complex loan arrangements that, though providing a benefit to an Item 1 DGR, also enhance the PAF’s distribution calculation, thereby reducing the direct giving component. These are added complications.

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Our experience, and ultimately the reason for the change to the PAF Guidelines resulting from a review of the original PPF framework, is that it was too complicated to be fully accessible and gave rise to compliance issues. Adding complexity has its cost which must be factored into decision making.

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

The minimum annual distribution rate should be maintained at 5%.

The creation of PPFs/PAFs has been beneficial for developing a culture of philanthropy in Australia. Stability of policy framework has reinforced the success of the well thought through framework. Momentum has suffered each time there has been a review of the framework, with the minimum distribution rate a particularly sensitive factor.

We consider 5% to be an appropriate number for the following reasons:

- 5% is the figure market analysis calculates as sustainable.
- PAFs are already distributing more to DGR charities than the opportunity cost of direct funding and there has been a substantial and growing Charity Future Fund of $10B created at the same time.
- 5% is the figure Government uses for expected returns from its own Future Funds.
- 5% is sustainable – just – with a good investment policy which is a fair setting.
- Australia already sits at the higher end of global philanthropic minimum distribution mandates.

Nevertheless, each PAF should be encouraged to give away as much as it can while maintaining the real value of its corpus.

Furthermore, Government and peak bodies in addition to encouraging more giving should be encouraging the building of deeper relationships between philanthropy and the "doing DGRs" so the existence of the community "future fund" can provide comfort to operating entities.

In summary on distributions

- Australia's giving culture is building but still emerging – PAFs/PuAFs are contributing significantly to the progress.

- PAFs/PuAFs are a "good deal" for Government, building a charity and Government entity Future Fund for only 47% of outlay.

- PAFs/PuAFs have grown and operated well since their founding because:

  a) they're a great idea, and
  b) generous, Australians are being motivated, and

c) there's been a consistent bi-partisan policy setting that has provided certainty and encouraged growth.

- A basic principle of the system is to enable maintenance of the corpus – providing intergenerational equity for future generations.
- The minimum distribution rate is a floor, not a ceiling, and allows choice for PAF directors to give more and/or spend down to deal with urgent issues with immediate timelines.
- The current minimum distribution level is consistent with a) other charitable structures around the world, and b) the Government's own Future Fund framework.
- Based on deep research, modelling and international comparisons, the sector has been unified and consistent in its view that 5% minimum annual distribution is appropriate and supports the goals and intentions of these structures.
- Treasury's analysis shows an increase in the minimum distribution rate will lead to a fall in funds flowing to Item 1 DGRs in the mid and long term and in fact there is no guarantee that increasing the minimum distribution rate will lead to increased flows to the community in the near term as a consequence of a negative impact on the establishment of new funds.
- "Tinkering" with the system creates uncertainly and undermines it, thereby potentially stunting growth. Further, it may also have unintended consequences on a system that is working well.
- The PC Report was very clear that the ancillary fund framework is not broken and that there are more pressing matters more deserving of Governments attention, such as DGR reform.

The Government is really asking if the community is willing to accept lower distributions from ancillary funds in the medium to longer term for merely the potential of marginally increased distributions in the near term, and only if the establishment of new funds stays at the same level (which Treasury notes as a key risk).

On balance, any reasonable policy formulation should conclude that no change be made to the current 5% minimum distribution amount.

Q2. Should the five-year transition period apply only to giving funds that exist at the time the distribution rate changes, or to all giving funds?

If the PAF distribution level remains at 5% no transition phase is needed. Should Government decide to change the minimum distribution level, then the 5-year transition to 2030 should be applied consistently to all funds. To do otherwise would add unnecessary complexity for directors, regulators and the sector generally.

Reviewing the 5-year "holiday" from distributions for new PuAFs concurrently would meet the objective to accelerate distributions and eliminate an avenue for potential abuse. (The prime reason the 5-year exemption was included in the 2012 PuAF Guidelines was to allow small community foundations to get established. The new Community Charity Structure is likely to become the structure of choice for community foundations so this exemption is no longer needed for PuAFs.)

Smoothing

Introducing smoothing provisions would be helpful, particularly should Government ignore our and others' advice and mandate a minimum distribution rate above 5%. We see no issues for forward smoothing – applying the excess part of a large distribution in year 1 to one or two years forward in a similar way to the current process for the spreading of a donation tax deduction. However, we see potential integrity risks that will need to be managed if smoothing to say the minimum $11,000 in years 1 and 2 is done **in expectation** of a large gift yet to be made in year 3.

As we have expressed, we believe the current regime is working and appropriate. However, should the Government make what we believe is a poor decision and increase the level of minimum distribution, the ability to smooth will become more important and the resulting compliance risks outlined below will need to be accepted by Government as a consequence.

Smoothing principles presented by Treasury

"Smoothing may occur only over discrete three-year periods. The guidelines will not allow rolling periods.

Over the three-year period, a fund may distribute more than the minimum required. Any distribution over and above the minimum may not be used to offset a below minimum distribution outside the period.

The minimum distribution calculated for each year in the smoothing period will use the minimum annual distribution rate specified in the giving fund guidelines. There will be no ability to seek a reduction in the minimum distribution rate for any year of the smoothing period.

In deciding whether a fund has met its distribution requirement, nominal values of minimum annual distributions and distributions made will be used.

This approach is administratively simpler than if real and/or discounted values are used.

A giving fund will not need approval from the Commissioner of Taxation to smooth distributions. However, it will need to inform the Commissioner before or in the first year of the period of its intention and the reasons for smoothing distributions.

This approach reduces administration costs while ensuring the Commissioner may accurately assess a fund's compliance with the guidelines.

At the end of the smoothing period, the Commissioner will have the power to direct a fund to rectify any shortfall in distributions. The Commissioner will be able to impose administrative penalties on the trustee of a fund if the trustee does not rectify the shortfall. This is consistent with the Commissioner's existing ability to direct a giving fund to rectify a shortfall in its annual distribution."

Q9. Are these principles reasonable? If you don't agree with one or more of them, please provide reasons.

We see no issues with a giving fund paying out a large gift in year 1, and having its distribution smoothed to say the minimum of $11,000 for next two years (subject to any adjustments around FUM growth which would have required a higher distribution in year 2 or 3). The application to carry over additional distributions can be part of the Annual Information Statement / Ancillary fund return for the year of excess distribution. (This is the same principle as taxpayers being able to spread deductions for donations over up to four subsequent tax years). Such an approach is also consistent with existing discretionary powers of the ATO Commissioner under Guidelines 15 (7) to reduce the minimum distribution level.

Ancillary funds being able to smooth in advance (lower distributions first) is a more complex question with substantially greater compliance risks. Smoothing should not be an option for a Fund that has simply failed to make the minimum distribution level. Rather, it should be reserved for funding particular projects. If so, should there be a minimum distribution required say the $11,000? Is "smoothing" a new right or a special circumstance? If there is a very large specific upcoming project the Commissioners current discretion to apply a lower minimum distribution level could be expanded to cover this situation.

Q10. Should the Commissioner of Taxation have the ability, following notification by a giving fund of its intention to smooth distributions, to direct the fund to instead make the required minimum distribution in each year? (A fund would be able to object to a direction.)

If there was evidence of non-compliance with Guidelines, then yes. Note that timing will be an issue if the fund notifies its intention on 29 June.

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Q11. If the Commissioner is given the power to direct a fund to instead make the minimum annual distribution, what factors should the Commissioner be required to take into account before giving the direction?

Examples are the fund's reasons for smoothing, past compliance with minimum distribution requirements and the ability of the fund to make a distribution larger than the minimum in a year.

Q12. Should a giving fund be able to access distribution smoothing if it has never previously made a distribution? For example, a PuGF that is not required to and, in fact, has not made a distribution in the four years following its establishment might want to smooth distributions over the first three years in which it is required to make distributions.

Yes for future smoothing (carrying over excess from a large distribution), but no to delayed smoothing. If Government's concern is about delays in funds getting to Item 1 DGRs the additional four year exemption for new PuAFs should be removed. With the new Community Charity structure the original argument for the additional four year exemption from distributing no longer exists.

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

We do not believe so at this time.

Conclusion

As the leading provider of giving support and compliance services to ancillary funds, APS strongly believes any move to increase the minimum distribution rate above 5% would be ill advised and potentially counterproductive.

Item 1 DGRs need more funds. What is the best way to achieve this is the real question.

APS believes the best way to deliver more funds to "doing" charities is to increase giving and the number of donors, not by squeezing more from structures set up by the generous Australians who are already giving.

Half of Australians earning over $1M p.a., 10,000 of them, currently give nothing. Motivating them to start giving will have a significant impact on increasing the overall flow of funds to community organisations.

If the Government's objective is to increase the flow of funds to operating charities via a mandated increased minimum distribution it needs to explain why the Government's own Future Funds and other structures have lesser distribution requirements – in both the level and the distribution free

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holidays. The only modelling provided in the Treasury paper concludes that the current level of minimum distributions for PAFs at 5% is the only level at which giving to Item 1 DGRs continues to grow. Increasing the minimum distributions by 20% to (6%), 40% (to 7%) or 60% (to 8%) would be an enormous change with negative impacts in the medium to long term as the modelling shows. No modelling has been done on the negative impact of new establishments but historical reductions in new establishments at times of uncertainty, plus anecdotal evidence from more than a decade of experience, indicate that there would also be a short-term negative impact.

In our view, an increase to minimum distributions would destabilise the system, stunt growth of new ancillary funds (which are the Future Funds of philanthropic capital), and run-down existing funds, ultimately leading to less funds overall flowing to charities and supporting the broader community.

Listening to the sector combined with consistent policy has created the supportive environment for long term philanthropy, leading to a lift in Australians giving. It makes little sense to undermine structured giving – the segment of philanthropy demonstrating the strongest growth. We agree with the Minister that Government's role in policy development through to outcomes is to be "stewards of public trust " and that "good government is not just about today's outcomes but about building capability for tomorrow" (Assistant Minister Leigh's Address to the AFR Government Services Summit 29 July 2025) Maintaining the 5% minimum distribution level would be the perfect example of achieving this balance between today's needs and tomorrow's capability, while reinforcing Government's role as a trustworthy steward which listens to lived experience and applies the learning to good policy development.

---APS Submission ends here---