



31 March 2015

Senior Adviser  
Financial System and Services Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

**Philanthropy Australia Inc.**

Assn. No. A0014980 T  
ABN 79 578 875 531

[philanthropy.org.au](http://philanthropy.org.au)

**Adelaide**

Suite 912, Level 9  
147 Pirie Street  
Adelaide SA 5000  
**T** +61 (0)418 854 361  
adelaide@philanthropy.org.au

**Brisbane**

Suite 7E, Level 7  
344 Queen Street  
Brisbane QLD 4000  
**T** +61 (0)7 3103 2652  
brisbane@philanthropy.org.au

**Melbourne**

Level 2 55 Collins Street  
Melbourne VIC 3000  
**T** +61 (0)3 9662 9299  
info@philanthropy.org.au

**Sydney**

120B Underwood Street  
Paddington NSW 2021  
**T** +61 (0)2 9326 9200  
sydney@philanthropy.org.au

Dear Sir/Madam,

***Response to the Financial System Inquiry Final Report***

Please find attached Philanthropy Australia's submission in response to the Financial System Inquiry's final report.

If the Treasury wishes to discuss the matters raised in this submission further, please do not hesitate to contact Krystian Seibert, Policy & Research Manager, on (03) 9662 9299.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Louise Walsh'.

Louise Walsh  
**Chief Executive Officer**

# **Philanthropy Australia Submission – Response to the Financial System Inquiry Final Report**

## **1. Introduction**

Philanthropy Australia is the national peak body for philanthropy and is a not-for-profit (NFP) membership organisation comprising more than 800 Members and Associates. These include trusts and foundations, businesses, families and individuals who want to make a difference through their own philanthropy and to encourage others with their giving.

Our vision is for ‘A More Giving Australia’ and our mission is to ‘Lead an innovative, growing, influential and high performing philanthropic sector in Australia’.

Philanthropy Australia welcomes the opportunity to make this submission to inform the Australian Government’s response to the Financial System Inquiry (the Inquiry) final report. The submission focuses on the matters raised in the Inquiry’s examination of impact investment, and the proposals contained in Recommendation 32.

Philanthropy Australia has a strong interest in growing impact investment in Australia, given its potential as an emerging approach for financing social change, as well as its potential to compliment and amplify existing grantmaking and philanthropic practices.

We therefore welcome the Inquiry’s examination of impact investment. This is recognition of the fact that Australia’s financial system has a broad role, including facilitating improved social outcomes as well as delivering economic returns and other objectives.

Although the Inquiry did make a number of observations regarding taxation matters, including questioning the merits of dividend imputation, Philanthropy Australia notes that the Government has stated that any taxation matters will be considered as part of the Tax White Paper process.

Philanthropy Australia would strongly oppose any adverse changes to dividend imputation arrangements for philanthropic trusts and other charities. However this matter is not discussed further in this submission, but will be addressed as part of the Tax White Paper process.

## **2. Exploring Ways to Facilitate the Development of the Impact Investment Market**

The first part of Recommendation 32 of the Inquiry states that the Australian Government should

*Explore ways to facilitate development of the impact investment market and encourage innovation in funding social service delivery.*

Philanthropy Australia would welcome a thorough examination of initiatives which could grow impact investment in Australia.

We note that this is a relatively complex task, given the variety of issues and policy options to consider, which relate to matters within the responsibilities of a number of Government departments and agencies.

We also note that another inquiry commissioned by the Government, the Review of Australia's Welfare System, made a number of recommendations regarding impact investment.<sup>1</sup>

Given the overlapping issues, Philanthropy Australia believes that a response to impact investment related recommendations in both inquiries should be developed as part of a single process.

In this regard, the Prime Minister's Community Business Partnership ('the Partnership'), was established in October 2014.

The purpose of the Partnership is to bring together leaders from the business and community sectors to 'promote philanthropic giving and investment in Australia'.

The Partnership's terms of reference specifically ask it to examine 'the potential of innovative investment and finance models',<sup>2</sup> and it has already commenced work to examine policy options for growing impact investment in Australia.

Philanthropy Australia believes that the Partnership would provide the appropriate vehicle to develop options which can inform a 'whole of Government' response to impact investment related recommendations made by both the Financial System Inquiry and the Review of Australia's Welfare System.

### ***Recommendation 1***

*That a 'whole of Government' response to impact investment related recommendations made by both the Financial System Inquiry and the Review of Australia's Welfare System be developed based on the advice of the Prime Minister's Community Business Partnership.*

There are a variety of proposals to facilitate the development of the impact investment market which could be considered as part of such a process.

These include:

---

<sup>1</sup> See 'A New System for Better Employment and Social Outcomes – Final Report', pp.170-175. Available at: <https://www.dss.gov.au/our-responsibilities/review-of-australias-welfare-system/a-new-system-for-better-employment-and-social-outcomes-full-version-of-the-final-report>

<sup>2</sup> The terms of reference are available at:  
<http://www.communitybusinesspartnership.gov.au/about/terms-of-reference/>

- **The development of improved guidance for public and private ancillary funds regarding impact investment** – to provide clear guidance to the trustees of such funds regarding the treatment of ‘sub-market interest rate’ loans to eligible charities.
- **Allowing public and private ancillary funds to provide loan guarantees to eligible charities using their corpus** – loan guarantees are a common form of so called ‘program related investment’ by philanthropic foundations in the United States, these are investments made to further a foundation’s charitable purposes.
- **Considering the adequacy of legal structures for social enterprise in Australia** – Other jurisdictions have legal structures specifically tailored for social enterprises, with the ‘Community Interest Company’ in the United Kingdom being one such example and the ‘Community Contribution Company’ in British Columbia, Canada, being another example.<sup>3</sup> The introduction of such a legal structure could provide an additional means by which public and private ancillary funds could make ‘program related investments’.
- **Participating in Intergovernmental Initiatives to Develop the Impact Investment Market** – The New South Wales Government is seeking to establish an ‘Intergovernmental Taskforce on Social Impact Investment’, with representation across state and territory governments and the Commonwealth. The Taskforce would identify investment opportunities with shared benefits, and address practical barriers to successful transactions.<sup>4</sup>
- **Examining options for better supporting capacity building of social enterprises** – The objective would be to grow the number of ‘contract ready’ social enterprises which can attract impact investment.
- **Examining tax incentives which could support different forms of impact investment** – Recent initiatives in the United Kingdom provide an example of the types of tax arrangements which could be considered in order to support impact investment. Under the United Kingdom’s *Finance Act 2014*, tax relief is provided for investments in charities, community interest companies and community benefit societies, and in certain types of social impact bonds.<sup>5</sup>
- **Examining options for establishing a Social Investment Bank in Australia, including consideration of possible structures and funding models** – Such an initiative has the potential to increase the scale of the impact investment market in Australia and unlock funds from other sources.

Philanthropy Australia would also encourage leveraging the work already undertaken by Social Impact Investment Taskforce established under the United Kingdom’s Presidency of the G8, and in particular the contribution of Impact Investing Australia and the Australian Advisory Board on Impact Investment as part of that process.

---

<sup>3</sup> See: <https://www.gov.uk/government/publications/community-interest-companies-introduction> and <http://www.fin.gov.bc.ca/prs/ccc/>

<sup>4</sup> More information about this proposal is contained in the New South Wales Government’s ‘Social Impact Investment Policy’ which is available at:

[http://www.dpc.nsw.gov.au/programs\\_and\\_services/social\\_impact\\_investment/nsw\\_policy](http://www.dpc.nsw.gov.au/programs_and_services/social_impact_investment/nsw_policy)

<sup>5</sup> See: <http://www.legislation.gov.uk/ukpga/2014/26/schedule/11/enacted>

In this regard we refer Treasury to the submission prepared by Impact Investing Australia, which examines various policy options for growing impact investment in detail.

### ***Recommendation 2***

*That a broad range of proposals to facilitate the development of the impact investment market be considered as part of a 'whole of Government' response to impact investment related recommendations made by both the Financial System Inquiry and the Review of Australia's Welfare System.*

#### **3. Law Reform to Classify Private Ancillary Funds as a 'Sophisticated' or 'Professional' Investor in Certain Circumstances**

The third part of Recommendation 32 of the Inquiry states that the Australian Government should

*Support law reform to classify a private ancillary fund as a 'sophisticated' or 'professional' investor, where the founder of the fund meets those definitions.*

Philanthropy Australia strongly supports the recommendation and urges that it be implemented as a priority.

The recommendation addresses a problematic regulatory barrier for private ancillary funds which wish to invest in social impact bonds and other impact investments which are put to market only as a wholesale offering.

Many private ancillary funds are established by high net worth individuals who in their own right would meet the wholesale investor tests under the *Corporations Act 2001* (Cth).

However, under the current law, there is uncertainty about whether such private ancillary funds themselves meet the wholesale investor tests. This uncertainty relates to whether the individual who has set up the private ancillary fund controls it, as this element of control is required in order to meet the wholesale investor tests.

Philanthropy Australia has raised this uncertainty with the Australian Securities and Investments Commission, who have advised us that they are not planning to provide guidance on when a private ancillary fund is controlled by a person who meets the wholesale investor tests.

Therefore it appears that a legislative change may be necessary to provide clarity on this issue. An option could be to classify a private ancillary fund as a wholesale investor where one director of its trustee meets the wholesale investor tests in the *Corporations Act 2001* (Cth).

Addressing this barrier would unlock more capital within private ancillary funds to be used towards investing in social impact bonds and other impact investments.

The recommendation is particularly relevant given that the New South Wales Government's intention, as part of its Social Impact Investment Policy, to bring at least two impact investment transactions to market each year.

In order to boost the range of investors which can participate in these transactions, it is important that the current uncertainty be addressed.

This issue has also been raised in a submission we made to the Prime Minister's Community Business Partnership in late 2014<sup>6</sup>, and we note that by addressing a problematic regulatory barrier, the proposal is consistent with the Government's broader deregulation agenda.

### ***Recommendation 3***

*That the Corporations Act 2001 (Cth) be amended to provide clarity regarding when a private ancillary fund is classified as a wholesale investor. This could be achieved by classifying a private ancillary fund as a wholesale investor where one director of its trustee meets the wholesale investor tests in the Corporations Act 2001 (Cth).*

---

<sup>6</sup> See:

[http://www.philanthropy.org.au/images/site/blog/Early\\_Wins\\_to\\_Grow\\_Philanthropy\\_and\\_its\\_Impact.pdf](http://www.philanthropy.org.au/images/site/blog/Early_Wins_to_Grow_Philanthropy_and_its_Impact.pdf)