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INDIANA UNIVERSITY
Lilly Family School of Philanthropy

The 2022 Global Philanthropy Environment Index Australia

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QUICK FACTS

Legal forms of philanthropic organizations included in the law¹: Company Limited by Guarantee, Cooperative, Corporation, Limited Liability Company, Trust, Incorporated Association, Unincorporated Association, Letters Patent, Special Act of Parliament

Five main social issues addressed by these organizations: Early Childhood Education through High School, Higher Education, Religion, Social Services, Grantmaking Activities

Average time established by law to register a philanthropic organization: 31-60 days

Average cost for registering a philanthropic organization: USD 0

There is no cost to register a philanthropic organization (PO) with the charities regulator, the Australian Charities and Not-for-profits Commission (ACNC), or to be endorsed for tax concessions with the Australian Taxation Office (ATO). However, depending on the structure chosen for a PO, there may be various costs to register with various bodies. For example, registering a 'company limited by guarantee' with the Australian Securities and Investments Commission (ASIC) incurs a fee of USD 315, registering an 'incorporated association' can vary by state or territory, and some structures like trusts do not require registration with any body other than the ACNC and therefore incur no fee. The legal and tax advice for certain types of registration can be higher where the structure or its activities are more complex, and there can also be costs associated with legal advice associated with more complex applications for a fundraising license from a state or territory.

Government levels primarily regulating the incorporation of philanthropic organizations: Central/Federal Government, State government

¹ Terms used in the report, such as non-profit organizations, non-profit associations, philanthropic organizations are used interchangeably in this report. Please note that charities are a subset of philanthropic organizations in Australia

Australia is a federal system with laws at the federal, state/territorial, and local level applicable to POs. In addition, seven out of eight states and territories have legislation to regulate fundraising, and each attorney-general has inherent responsibility to supervise charitable trusts, although the extent of oversight from attorneys-general is generally rather limited. The Australian Charities and Not-for-profits Commission Act 2012 (ACNC Act) and the Charities Act 2013 govern eligibility of a nonprofit entity to be registered as a charity for federal purposes, with the ACNC Act setting out various requirements which must be met to maintain registration as a charity. This includes compliance with governance standards, external conducts standards for overseas activities, and reporting requirements. Registration is a prerequisite for access to federal tax concessions (which include an income tax exemption and the ability to accept tax-deductible donations) and other purposes. However, there can be different eligibility criteria for state and territory tax concessions, which are administered by the relevant revenue offices of each jurisdiction.

As Australia is a federal system, responsibility for regulating the incorporation of POs is shared between federal and state/territory levels. For example, a PO may choose to register as an ‘incorporated association’ (a state responsibility) but then would register as a charity with the ACNC in order to access federal tax concessions. It instead may choose to register as a ‘company limited by guarantee’ (a federal responsibility) but would then also register with the ACNC.

Philanthropic Environment Scores:

Year	Ease of Operating a PO	Tax Incentives	Cross-Border Philanthropic Flows	Political Environment	Economic Environment	Socio-Cultural Environment	Overall Score
2022 GPEI	4.30	4.00	4.30	4.00	5.00	4.00	4.27
2018 GPEI	4.33	4.00	4.50	4.00	N.A.	4.00	4.17

Source: Indiana University Lilly Family School of Philanthropy, 2022 *Global Philanthropy Environment Index*

Key Findings

I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

The three indicator questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration; (B) operations; and (C) dissolution.

Question One: To what extent can individuals form and incorporate the organizations defined?

Score: 4.0

Australians are generally free to associate together without government interference.

Unincorporated associations and trusts do not require any registration process to form or dissolve. The limits are that the purposes and activities of such associations must be lawful. Of particular note are laws that are common in most liberal democracies covering matters such as anti-money laundering, terrorism, racial hate groups, and organized crime. Some activities require special licenses (such as being a trade union, political party, or seeking investments from the public), but these are also consistent with laws in most liberal democracies. POs that seek federal tax concessions which fall within the definition of ‘charity’ must register with the ACNC and also the ATO; other POs must register with merely the ATO or a supervising government department. POs that seek corporate status are required to register with supervising state or federal agencies and may have some restrictions (such as against commercial trading or distribution of surpluses) but none that are not often found in similar regimes in other liberal democracy jurisdictions. State jurisdictions largely regulate charitable fundraising using mostly outdated and unfit for purpose legislation. Many organizations are in fact exempted. For such issues and proposed reforms please visit: <https://justiceconnect.org.au/campaigns/fix-fundraising/>

Question Two: To what extent are POs free to operate without excessive government interference?

Score: 3.9

There are different levels of internal governance prescribed depending on the legal form of the PO, but generally there are only restrictions which are consistent with good governance practices. POs which are grantmaking foundations eligible to receive tax deductible donations (so-called ‘ancillary funds’) are subject to additional governance and reporting requirements. These requirements do not impact the purposes of the organization; however, they do limit the categories of organizations to which they can make grants. Reporting fundraising to individual state regulators can be onerous and confusing, as some legislation is dated and not fit for purpose. POs can undertake non-partisan advocacy and lobbying, and they can use various communication channels for this and other activities. However, changes to electoral laws were introduced in 2018 that impose new requirements on POs which undertake advocacy efforts aiming to influence voters in a federal election.

Question Three: To what extent is there government discretion in shutting down POs?

Score: 5.0

POs can voluntarily dissolve with restrictions generally consistent with those normally found in liberal democracies, such as those requiring that a PO distribute any surplus funds to another PO upon winding up. Removal of corporate status or banning of POs is very limited and is rarely used outside cases of serious illegal activity. Charities registered with the ACNC may be deregistered where they do not comply with registration requirements; however, these are set out in legislation or regulation. The ACNC operates independently of political interference, and a charity can apply for decisions to be reviewed by the courts. No significant changes have been introduced regarding the legislation of different forms of POs in Australia since 2018. There are various reform processes underway impacting the taxation and regulatory frameworks for POs, including the implementation of recommendations for a review of the ACNC regulatory framework; however, these will not alter the fundamental characteristics and underpinnings of these frameworks.

II. Domestic Tax and Fiscal Issues

The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.

Question Four: To what extent is the tax system favorable to making charitable donations?

Score: 4.0

Australian personal income tax deductions for gifts are limited in scope but are generous for those POs that qualify for Deductible Gift Recipient (DGR) status and their donors. Not all charities qualify for this status, as a separate eligibility framework applies. There are approximately 60,000 charities registered with the ACNC; about 50 percent of these qualify for donation deductibility status. However, the vast majority of charities by turnover would have this status. Charities focused on religious worship (such as churches) do not qualify, but their affiliated social welfare arms generally would qualify. Non-government schools also do not qualify, although funds can be established for specific purposes, such as financing buildings or scholarships. The application process for POs seeking DGR status can be lengthy for those close to definitional boundaries or within certain categories. There are no caps for donations apart from a donor (individual or corporation) having assessable income to offset the deduction and the donation being over USD 1.52 (AUD 2). In some circumstances, donation deductions can be averaged over five years. Corporate donations can often qualify for a tax deduction as a 'business expense', and there are no caps to this expense.

Question Five: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 4.0

Generally, the system is favorable, for the reasons discussed in the answer to question four.

Eligibility for the income tax exemption has a different set of criteria to deductibility of donations. Most POs obtain an income tax exemption either because they fall within the relevant exemption

category in the tax legislation or by way of the common law doctrine of mutuality of income. Charities must register with the ACNC to access federal tax concessions, but this will only be an onerous task for those that are on the boundaries of the definition of charity. Unrelated commercial income received by charities is usually exempt from income tax. There are also federal concessions for goods and service tax and fringe benefits tax. State and local taxes and charges also have concessions for POs.

III. Cross-Border Philanthropic Flows

The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.

Question Six: To what extent is the legal regulatory environment favorable to sending cross-border donations?

Score: 3.8

Cross-border donations made directly to foreign POs are not eligible for the same tax incentives as domestic donations. In order to receive tax-deductible donations, an organization must obtain DGR status, which requires that the organization be resident in Australia. Donations made to a DGR for its own programs overseas or those of its related entities outside Australia are tax deductible provided that the organization's operational or strategic decisions occur mainly in Australia. It is possible to establish a PO in Australia which can accept tax-deductible donations that are then passed on to POs operating overseas, although there are some additional regulatory requirements, such as those set out in the ACNC's External Conduct Standards introduced in 2019. For detailed information, please see Silver (2016), *Beyond the Water's Edge: Re-thinking the tax treatment of Australian cross-border donations*.

Question Seven: To what extent is the legal regulatory environment favorable to receiving cross-border donations?

Score: 4.8

Cross-border donations can be received with minimal interference and resources. However, under changes to electoral laws introduced in 2018, donations cannot be received from foreign donors where they are used for the main purpose of influencing the way electors vote in a federal election.

IV. Political Environment

The four indicator questions in the next three sections concern the political context, economic conditions, and socio-cultural characteristics that influence the environment for philanthropy.

Question Eight: To what extent is the political environment favorable for philanthropy?

Score: 4.0

Australia has a stable political and economic environment, with a pluralist, liberal democratic culture. POs play a largely unfettered role in public policy and are contracted by government to deliver increasing public services in aged care, health, education, and other social services. Government and POs engage in mostly minor conflict over street protest laws, POs' degree of participation in the electoral process, and often in relation to environmental issues.

Question Nine: To what extent are public policies and practices favorable for philanthropy?

Score: 4.0

The Australian government generally supports the role of POs in the community, and whilst there are some limitations to the taxation and regulatory framework for philanthropy, the policy environment is generally stable and favorable. However, there is at present (compared to previous years) no concrete policy focus on encouraging philanthropy at a federal level. This has been previously achieved through initiatives such as the Prime Minister's Business Community Partnership, which is not active under the current Prime Minister. For detailed information about this initiative, please visit: <https://www.communitybusinesspartnership.gov.au>. Donors are generally free to donate without government pressure, and there are examples, although still relatively rare, of strategic collaboration between government and philanthropy.

V. Economic Environment

Question Ten: To what extent is the economic context favorable for philanthropy?

Score: 5.0

Australia is a wealthy country with a stable economic context. Prior to the COVID-19 pandemic, Australia had not experienced an economic recession (defined as two quarters of negative economic growth) since 1990–1991. As with many similar countries, there are challenges associated with wealth and income inequality.

VI. Socio-Cultural Environment

Question Eleven: To what extent are socio-cultural values and practices favorable for philanthropy?

Score: 4.0

Trust in charities is generally high, and Australians have demonstrated significant giving in response to natural disasters. POs play an important role in society and the economy. There are no significant cultural barriers to giving per se, and there is sufficient wealth to support giving in the future, with USD 2 trillion in intergenerational wealth transfer to occur between 2021 and 2040 (Philanthropy Australia, 2021). Historically, there has not been a tradition of foundation creation as strong as in the United States or the United Kingdom. This is due to various policy and cultural factors as well as

lower numbers of high net worth individuals and families. However, this is changing, and the past 10 years in particular have seen the creation of several larger foundations in Australia.

VII. Future of Philanthropy

These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.

Current state of the philanthropic sector

Philanthropy continues to gradually develop new products such as social bonds, impact investing, and social enterprise. Digital technologies are experiencing a rapid uptake, but with little regulation. The sector has well developed peak/umbrella bodies to facilitate advocacy on behalf of the sector. Giving circles and donor-advised funds are developing from a low base.

Three major recent events affecting the philanthropic landscape between January 2018 and December 2020

- 1) The Celeste Barber Facebook Bushfire Appeal raised a record USD 39 million, with estimates that over USD 375 million was raised in total from individual, foundation, and corporate funders in Australia and overseas
- 2) The introduction of External Conduct Standards for charities operating outside Australia, which include various new requirements for how charities manage and account for the use of funds (including donated funds) outside Australia
- 3) An agreement amongst territory and state governments to reform the regulation of charitable fundraising through the introduction of a cross-border recognition model whereby charities will only need to register once in order to fundraise across Australia

Future development trends in the philanthropic landscape

The sector is growing incrementally, and while donors are increasingly moving to digital technologies, regulators have yet to grapple with the issues that this raises. Alternative philanthropic forms of social enterprise, social bonds, and impact investing are in their early stages.

Three key recommendations to improve the environment for philanthropy

- Reinvigorate the federal government's engagement with philanthropy, including through the introduction of specific reforms to enhance the taxation and regulatory framework²
- Reform fundraising regulation to be fit for purpose and with low compliance costs, ideally by way of a single national regulatory framework
- Review the regulation of online fundraising platforms and consider reforms to enhance the regulation of these platforms in order to provide better protection to both donors and charities

² Philanthropy Australia's 'A Blueprint to Grow Structured Giving' (2021) sets out a range of recommended reforms, including improving the taxation and regulatory framework for community foundations, enabling the donation of excess superannuation (private pension) assets upon the death of an account holder, and introducing a 'Living Legacy Trust' structure based on the Charitable Remainder Trust structure available in the US.

VIII. Philanthropic Response to COVID-19

These questions are used to provide a general picture of the philanthropic response to the COVID-19 pandemic in this country and recommendations for improving cross-sectoral collaboration.

Areas where the nonprofit sector and philanthropy are playing a role in responding to COVID-19

Nonprofit hospitals agreed to enter into arrangements with government hospitals in response to increased pressure on services due to more COVID-19 patients, whilst community service providers and food banks have provided extra services. Philanthropic trusts and foundations focused on a range of areas, including mental health and domestic violence services amongst others. Philanthropic trusts and foundations changed practices in various ways, including through providing extra support for existing grantees, waiving grant conditions to allow funds to be used for general operations, removing or adjusting reporting requirements, and creating special COVID-19 grant rounds.

Innovation and new trends in the nonprofit sector and philanthropy related to COVID-19 responses

POs have increased the use of digital tools to further their mission and developed cross-sector collaborations.

Impact of COVID-19 on the philanthropic environment

The philanthropic sector has experienced a greater use of online fundraising. However, widespread unemployment and business disruption for a period resulted in muted giving. Institutional giving to nonprofit research bodies and universities to research COVID-19 and develop vaccine has increased. For more information, please see *Voluntary sector Peak Bodies during the COVID-19 Crisis: A case study of Philanthropy Australia*, by Seibert et al (2021).

Anticipated impact of COVID-19 on the philanthropic environment in 2021

One of the main anticipated impacts of the pandemic is overall muted giving with the inability of organizations to hold in-person special event fundraising and to generate revenue through trading activities such as charity shops. Early data indicates that there was a significant drop in giving in 2020 (JBWere, 2021). Data on granting levels from philanthropic trusts and foundations is not yet available; however, the considerable collapse of markets in March 2020 is likely to have had some impact on granting given that many such trusts and foundations operate on a financial year basis (from 1 July to 30 June), and markets had yet to recover by June 2020.

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