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Charitable Superannuation Bequests

Making giving easy

IMPACT ECONOMICS AND POLICY

A report prepared by **Impact Economics and Policy** for **Philanthropy Australia**

Impact Economics and Policy

Impact Economics and Policy brings together a group of expert economists and policy specialists with experience working for government, not-for-profits and big four consulting. We were established at the start of 2022. Our mission is to partner with clients for impact through providing robust evidence, fresh analysis, and strategic communication to tackle Australia's biggest public policy challenges.

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This report was commissioned by **Philanthropy Australia.**

Acknowledgement of Country

We acknowledge Aboriginal and Torres Strait Islander peoples as the Traditional Owners of Australia and their continuing connection to both their lands and seas. We also pay our respects to Elders – past and present – and generations of Aboriginal and Torres Strait Islander peoples now and into the future.

*We accept the invitation of the **Uluru Statement of the Heart** and support the campaign for a **First Nations Voice to Parliament** to be protected by the Australian Constitution.*

We support THE ULURU STATEMENT

IMPACT ECONOMICS AND POLICY

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Overview

Australia is one of the wealthiest countries in the world. Despite our relative wealth, we lag our international counterparts in charitable giving. We can increase Australia's levels of giving through creating the right policy conditions.

One of the most significant areas of potential giving is superannuation balances remaining at the end of life. Australia's superannuation savings are currently valued at $3.5 trillion, and they are designed to provide a better standard of retirement income for Australian employees.

However, many people die with significant superannuation savings intact: in 2018, $17 billion in superannuation death benefits were paid by superannuation funds. This has been forecast by Treasury's Retirement Income Review to grow over seven fold in real terms to $130 billion by 2060.

Current policy settings discourage Australians from giving a portion of these remaining savings to charities. Donations to eligible charities when people are alive are tax deductible. Gifts or bequests through a will are also tax free. By contrast, bequests to charities from superannuation are subject to a 17 per cent tax.

In addition to the tax implications, the process for making a bequest to a charity from remaining superannuation is complicated, differs between superannuation funds, and is often an area of legal dispute. Currently, people are unable to directly bequest funds to a charity from any remaining superannuation when they pass away.

To bequest remaining superannuation to a charity, individuals must have a valid will in place that nominates a charity, and rely on the superannuation fund trustee using its discretion to pay the funds to the executor of the estate, for distribution to the charity. Given the complexity, time and cost involved, relatively few people are taking up this option.

In this report we model the significant potential of a simpler approach: allowing people to instruct the trustee of their superannuation fund to make a direct bequest to a charity from remaining superannuation. We outline the policy reforms necessary to make this avenue of giving fair and simple.

This report makes three recommendations to unlock the potential value of charitable superannuation bequests:

1. **Remove the 17% tax on making a superannuation death benefit to a charity.**
2. **Amend the law on superannuation to permit charities be a direct recipient of a death benefit nomination.**
3. **Consult with representatives of the superannuation industry on design and implementation issues.**

Impact Economics and Policy estimates that by 2060 these reforms could yield between $4.8 and $21.9 billion in income for charities from superannuation bequests. This compares to the $13.4 billion Australians donated in total to charities in 2021.

Impact Economics and Policy modelling finds that over the period to 2060, the reforms will generate, in current dollars, between $64.6 and $260.3 billion in income for charities from superannuation bequests. Under conservative assumptions this is expected to be a cost to government revenue of between $6.4 and $20.7 million over the forward estimates.

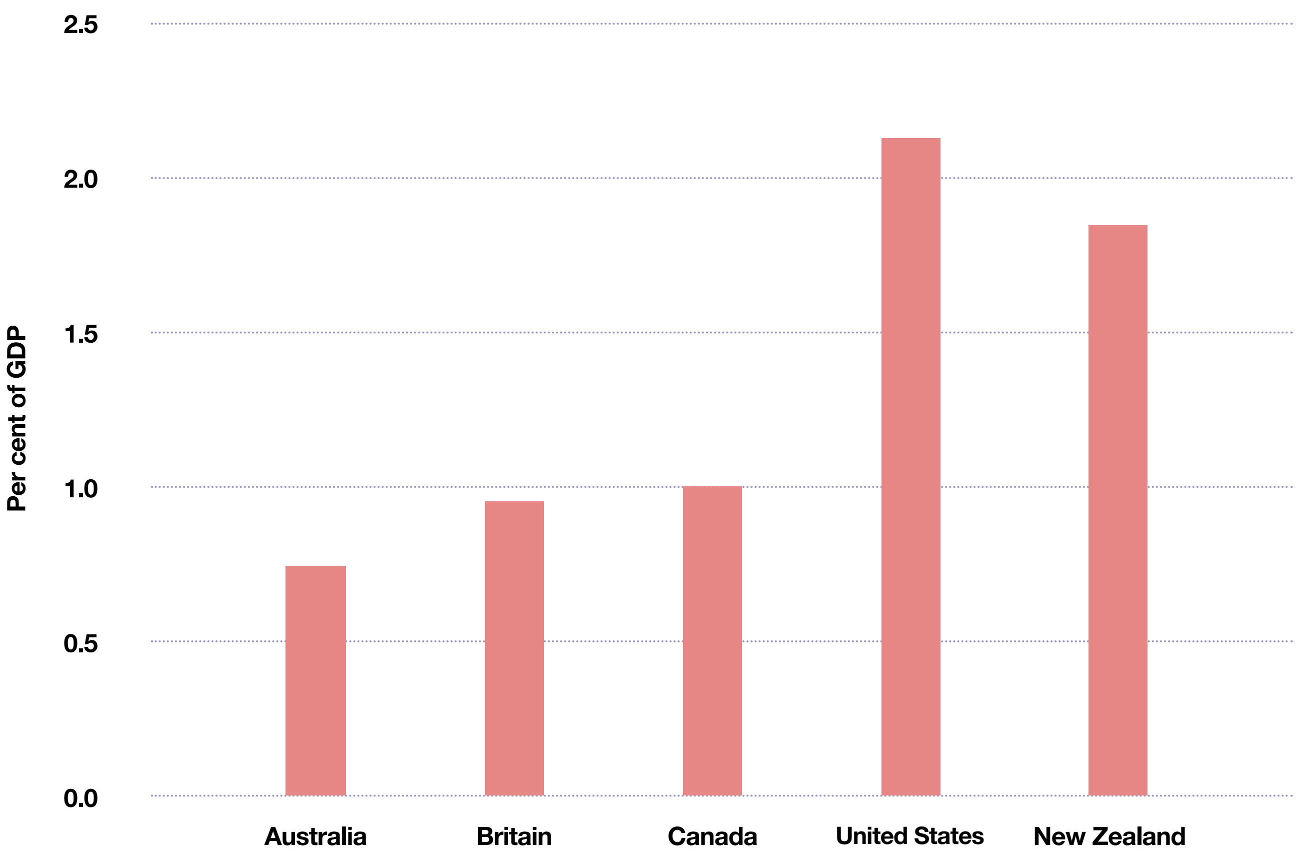
The recommendations in this report do not change the objective of superannuation: it must be preserved for retirement. Instead, the recommendations acknowledge that people are dying with superannuation savings intact, and there is an opportunity to increase the social value of superannuation through removing the current barriers to superannuation bequests to charities. This opportunity should be seized.

Introduction

Australian charities make a significant contribution to Australia's economy and society, providing support and services to millions of Australians every year through their activities. Charities range in size and scope, from the local sports clubs to large international aid organisations, and they operate across a wide number of sectors.

Many charities rely on charitable giving to support their operations, with Australians giving around $13.4 billion in 2021 to charities.[1] While Australians are generous with their giving, the amount of charitable donations as a per cent of national income lags many other comparator countries.

FIGURE 1 INTERNATIONAL BENCHMARKS FOR GIVING AS A PERCENTAGE OF GROSS DOMESTIC PRODUCT



Source: **Philanthropy Australia (2021)**

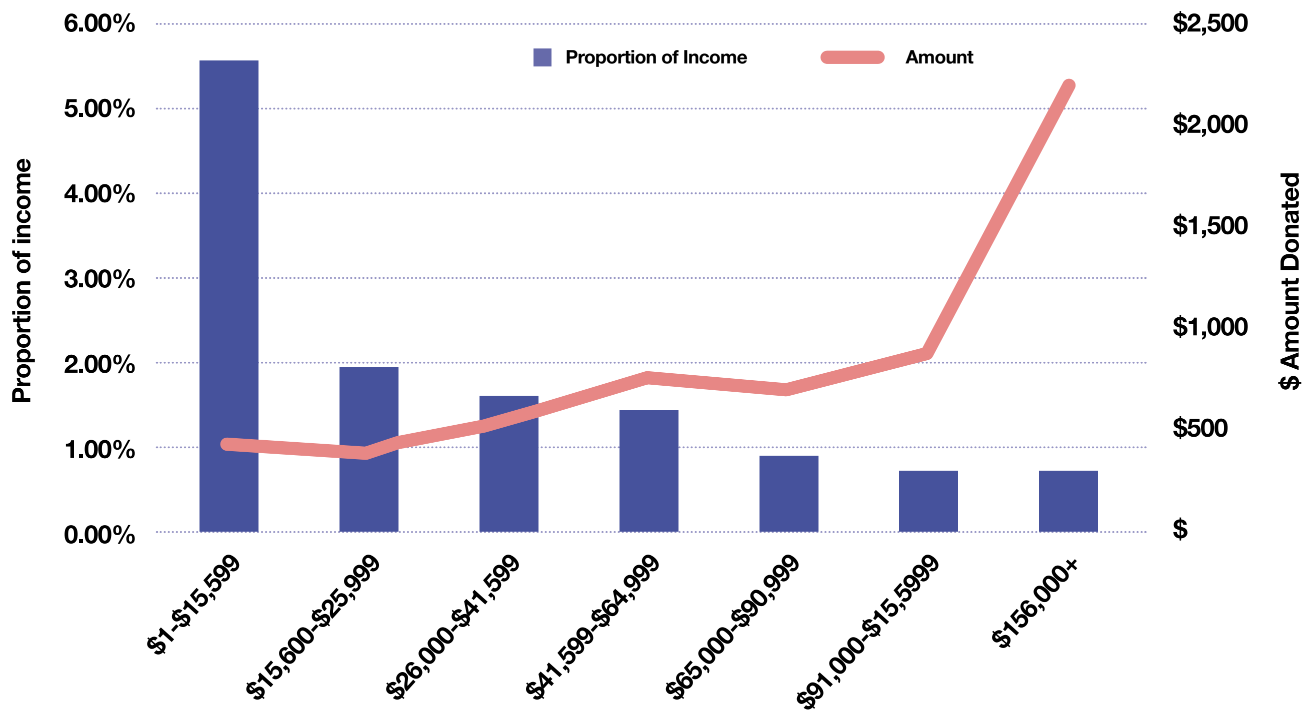
Lifting Australia's performance in charitable giving in the short and medium term could help drive greater activity in the charity sector. This will have flow on effects benefiting the wider Australian community and economy, particularly vulnerable groups that increasingly rely on charities to provide services and advocacy.

It is for these reasons that the Federal Government has set the goal of doubling charitable giving by 2030[2] and has tasked the Productivity Commission with recommending policies that could help Australia reach that goal.

Who gives and when?

Australians give to charities through a variety of avenues including workplace giving, private donations, participation in charity events, volunteering their time, and bequests. While higher income Australians give more to charities in aggregate, lower income individuals give more as a proportion of their income.

FIGURE 2 AMOUNT DONATED TO CHARITIES BY INCOME



Source: **Australian Centre for Philanthropy and Non-profit Studies, Giving by gender and age group**

Australians also tend to give more as they age, with average donation amounts increasing across the life course. This includes in death, where 7.5 per cent of Australians leave charitable bequests in their wills.[3]

Barriers to greater giving through superannuation

An estimated $3.2 billion was left to charities through bequests[4] in 2022, with Australians choosing to leave some of their estate to causes that have meant much to them during their lifetime. While this is a substantial amount and accounts for 25 per cent of all charitable donations, it only represents around 2 per cent of the assets that are inherited each year.[5]

One issue is that barriers exist for people who may wish to bequest any portion of an increasingly important asset for many Australians, their superannuation savings. Superannuation represents the second largest share of net household wealth for Australians aged 55 to 74.[6]

While recent estimates are that Australians left $17 billion in superannuation death benefits during 2018[7], very little of this was bequeathed to charities. This is because the tax system penalises such giving, and the superannuation system makes it very difficult.

1. Australian Charities and Non-Profit Commission (2023), Australian Charities Report – Ninth Edition.
2. The Hon Andrew Leigh (2022), Media Release – Harnessing Generosity, Boosting Philanthropy.
3. Baker, C and Gilding M (2011), Inheritance in Australia: family and charitable distributions from personal estates, Australian Journal of Social Issues Vol. 46 No.3.
4. See Appendix 1 for methodology.
5. Productivity Commission (2021), Research Paper – Wealth Transfers and their Economic Effects.
6. The Treasury, 2020. *Retirement Income Review Final Report*. Canberra: Department of the Treasury, Commonwealth of Australia, p.118.
7. Ibid, p.369.

Current taxation & administration of superannuation death benefits

The existing settings for taxation and administration of superannuation after death are not conducive to individuals bequeathing remaining superannuation balances at the end of life to charities.

What currently happens to your superannuation balance when you pass away

When a person dies with remaining superannuation, their savings are paid:

- to whomever the member nominates in a 'binding death benefit nomination' if they have one in place;[8]
- to the member's dependents; or
- to the deceased's legal personal representative (the executor of their estate) for distribution according to the instructions of the deceased's will.

However, payments cannot be paid to a charity directly from the superannuation fund in a death benefit nomination. In addition, death nominations are not offered by all funds. Where they are available, they can either be lapsing, generally every three years, or non-lapsing. A 'non-lapsing, binding death benefit nomination' provides the greatest certainty about where a member's death benefits will be paid.[9]

While superannuation fund trustees must comply with a valid binding death nomination, where one is in place, in the absence of one the trustee has a discretion whether to pay remaining monies to family members or the executor of a will.

If the recipient of the superannuation balance is a 'dependent' under tax law, no tax is payable. If the beneficiary is not a dependent (for example, a an adult child, or a charity), then a 17 per cent tax on the value of funds payable.

Disputes over estates and death benefits are a feature of the current system. The Australian Financial Complaints Authority (**AFCA**) reports that in 2021-22 financial year, there were 335 complaints over the distribution of death benefits, representing 12.5 per cent of all complaints. There are different dispute resolution options, depending on the type of fund holding the superannuation death benefit. For a dispute over the distribution of a deceased self-managed superannuation fund (**SMSF**) member's death benefit, AFCA does not have jurisdiction and instead the dispute must go through the courts, which is time consuming and costly.

> "When someone dies, [all your assets] are all thrown into a pot and divvied up, but that takes time. Whereas if you can organise for a nice letter to go to the superannuation manager [saying], 'I've already approved it,' they can send the money within 24 or 48 hours. It's a much more efficient way of doing it, as far as the charitable organisation getting their hands on the money."[10]

A summary of the administration and tax consequences of paying superannuation benefits to different categories of recipient is set out in Table 1.

TABLE 1
CURRENT ADMINISTRATION AND TAX CONSEQUENCES OF SUPERANNUATION BEQUESTS TO DIFFERENT CATEGORIES OF RECIPIENT

Source of bequest	Category	Trustee discretion to pay differently?	Recipient	Trustee can pay direct to recipient?	Tax rate	Form of payment that may be made
Estate of deceased	Will	Y	Dependent (e.g., spouse or children under 18 years)	Y	0%	Lump sum or income stream
			Charity	N	0%	Lump sum only
Superannuation death benefit[11]	Non-binding death benefit nomination	Y	Dependent (e.g., spouse or children under 18 years)	Y	0%	Lump sum or income stream
			Charity	N	17%	Lump sum only[12]
	Lapsing, binding death benefit nomination	If elapsed, then Y	Dependent (e.g., spouse or children under 18 years)	Y	0%	Lump sum or income stream
			Charity	N	17%	Lump sum only
	Non-lapsing, binding death benefit nomination	N	Dependent (e.g., spouse or children under 18 years)	Y	0%	Lump sum or income stream
			Charity	N	17%	Lump sum only

8. And subject to the fund's rules permitting that a binding death benefit can be made.
9. For a summary of different categories of binding death benefit nomination – See **Appendix 3** for summary.

10. Lucy Dean and Joanna Mather, 'The suburbs where kids' inheritance is more than $3m'. Financial Review. 3 August 2023.
11. Table excludes reversionary nomination as a category of death benefit, which is a pension/income stream payment that may only be made to a member's dependents.
12. SIS Regulations: reg 6.21(2A).

A simple and fair process for charitable bequests from superannuation

The current taxation and administration arrangements covering superannuation benefits make the bequest of superannuation remaining at the end of life costly and complicated.

Charitable bequests from superannuation should be **simple**, **certain**, and **taxed the same** as when a person makes a charitable bequest from their estate, or donations to charity during life.

To create the circumstances for this, we recommend implementing the following proposal:

1. **Removing the 17% tax** on making a superannuation death benefit to a charity.
2. **Amending the law** on superannuation to permit charities be a direct recipient of a death benefit nomination.
3. **Consulting** with representatives of the superannuation industry on design and implementation issues.

A non-lapsing, binding death benefit nomination creates most certainty, but we acknowledge that not all funds offer this option. Superannuation trustees may prefer other forms of binding death benefits to give greater flexibility to members to respond to changing circumstances.

Interactions with the superannuation policy landscape

There are several potential issues with implementing the recommendations, including: coherence with the purpose of superannuation; the possibility of disputes over nominations; the ability of people to donate to charities tax free during their lives already; the government's policy agenda to support greater draw down of funds during retirement; and the administrative burden on superannuation funds.

Are the recommendations consistent with the purpose of superannuation?

The Government's proposed objective of superannuation is to 'preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way.'

The recommendations do not undermine the purpose of superannuation for retirement income. The reality is that people die with superannuation savings intact, and while they do, making charitable donations from that pool of savings should be fair and easy to do.

Will donations to charities from superannuation be contested?

As occurs currently under existing bequests, there will likely be claims brought by dependents and other non-dependents of a deceased that challenge the right of a charity to the money.

Access to a non-lapsing binding death benefit nomination payable from trustees directly to charity offers the greatest certainty. Government could also provide guidance to trustees about the exercise of their discretion in cases where a death benefit nomination to a charity is in place, including if the deceased has creditors.

Can't people withdraw their superannuation after age 60 tax free and donate to charity now, tax free?

There is nothing stopping more people making donations in this way. But we know there is only minimal take-up of this option, including because people are generally very conservative with spending their superannuation when alive and often spend the minimum amount of superannuation in retirement. Estimates from the Retirement Income Review indicate that on average people are dying with 90 per cent of their superannuation assets at retirement intact.

Isn't government policy for people to use their savings in retirement, in line with the proposed objective of superannuation?

Yes, the Retirement Income Covenant places a positive obligation on superannuation fund trustees to assist members in or approaching retirement to improve their retirement outcomes. Over time, this could result in fewer savings available to bequest. This should not preclude the ability of fund members having a simple process available to them, should they wish, to donate any remaining superannuation savings to a charity.

Won't this create additional administration costs for superannuation funds?

Superannuation funds have been under scrutiny for taking excessively long periods of time to pay death benefits and for cumbersome documentary requirements imposed on dependents.

Consultation on reforms that would allow an easier binding death benefit nomination process that include charities are required.

What other implementation issues might exist?

Consultation with the legal industry would assist in understanding the best way of addressing the mechanics of the recommendations in various scenarios, for example nomination to a charity that then ceases to exist; the application to different types of superannuation fund, including defined benefit funds and state-based schemes.

What we stand to gain: unlocking the potential of superannuation bequests

Making it easier for people to choose to allocate a proportion of their superannuation death benefits could deliver substantial additional funds for the charity sector:

- Making giving easier has been shown to increase both the number of people that give to charity and the amount given.[13]
- Reducing the taxation of charitable giving has been shown to increase the amount given to charities.[14]

Impact Economics and Policy estimates that the recommended policy reforms to make charitable super giving easier could result in between $64.6 and $260.2 billion in additional income for charities over the period to 2060. The full methodology is outlined in **Appendix 1** but summarised below.

Estimating the charitable giving benefits

Estimating the amount of charitable giving that may flow from the recommendations is sensitive to several assumptions, including:

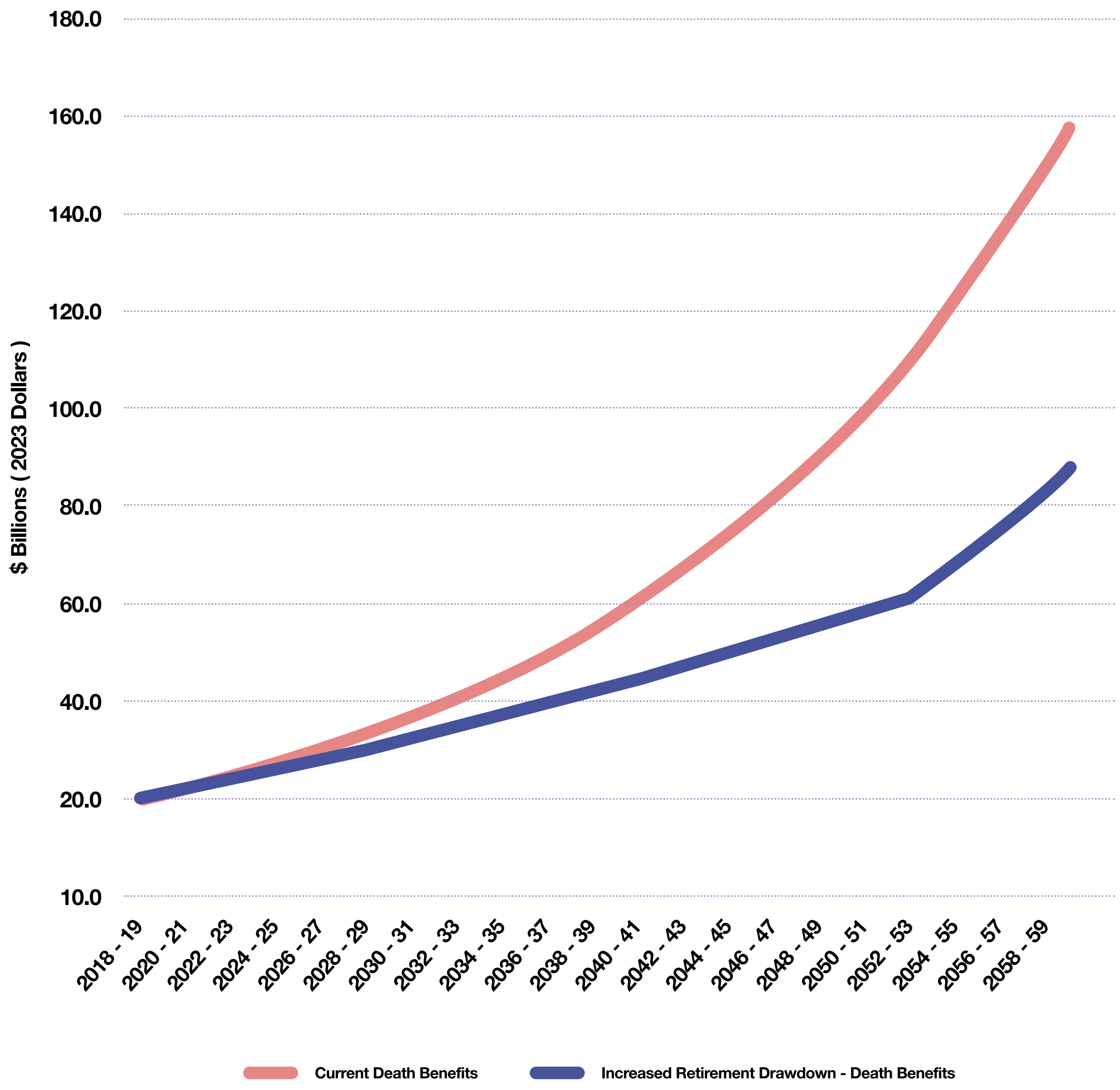
- the projected future superannuation death benefits;
- the underlying rate of giving;
- the impact of lowering the tax on charitable super giving; and
- the impact of behavioural nudges to increase the number of people electing to give some of their superannuation death benefits to charities.

Projected future superannuation death benefits

While Treasury's Retirement Income Review provides current and projected estimates of superannuation death benefits, these are based on several assumptions. Given the timeframe Treasury uses goes to 2060, these may or may not hold. Most importantly, the Federal Government has announced the intention to focus on supporting the drawdown of superannuation benefits through the retirement phase that should act to significantly reduce the level of death benefits into the future.

As a result, it is important to model a number of scenarios, including that Federal Government reforms are successful and increase the drawdown of superannuation through the retirement phase. Currently, people die with approximately 90 per cent of their superannuation assets at retirement unspent. We assume that over a 30-year period, government policies are successful at reducing this to 50 per cent (**Figure 3**).

FIGURE 3 PROJECTED SUPERANNUATION DEATH BENEFITS (2023 DOLLARS)



Source: Impact Economics and Policy Modelling (see Appendix 1 for details)

13. Saeri, A.K., Slattery, P., Lee, J. *et al.* What Works to Increase Charitable Donations? A Meta-Review with Meta-Meta-Analysis. *Voluntas* 34, 626–642 (2023).
14. Peloza, John, and Piers Steel. "The Price Elasticities of Charitable Contributions: A Meta-Analysis." Journal of Public Policy & Marketing 24, no. 2 (2005): 260–72.

The future rate of giving from superannuation death benefits

The recommendations will reduce the cost of giving and make giving at end of life easier. This will have several potential impacts on the rate of amount and rate of charitable giving:

- Through making superannuation giving available to anyone with a superannuation account we assume the same rate of giving that currently occurs through people with wills in Australia, which based on the total amount bequeathed and the amount given to charity is estimated at 3.3 per cent.[15]
- Removing the taxation on superannuation giving after death is estimated to increase the rate of giving by between 14.1 and 31.9 per cent, based on previous research on the price elasticity of charitable giving.[16] This is based on non-charitable bequests continuing to be taxed at 17 per cent.
- Evidence from a UK study indicates that when individuals are prompted to make charitable donations, the rate of giving increased by 2.2 to 3.14 times.[17]

The upper and lower ranges of potential impacts are modelled to produce a range of the potential size of superannuation charitable giving into the future.

TABLE 2 ASSUMPTIONS UNDERPINNING THE SCENARIOS

	Lower Range	Upper Range
Level of Superannuation death benefits	50 per cent drawdown in assets at retirement	10 per cent drawdown in assets at retirement
Overall amount of giving	Giving increases to 2.6 per cent of superannuation death benefits over 30 years.	Giving increases to 3.3 per cent of superannuation death benefits over 30 years.
Impact of reduced taxation	Removing the 17 per cent tax on superannuation charitable giving through death benefits increases giving by 14.1 per cent	Removing the 17 per cent tax on superannuation charitable giving through death benefits increases giving by 31.9 per cent
Behavioural response	Giving increases by 1.08 times over a 30-year period.	Giving increases by 2.67 times over a 30-year period.

Source: **Impact Economics and Policy Analysis (see Appendix 1)**

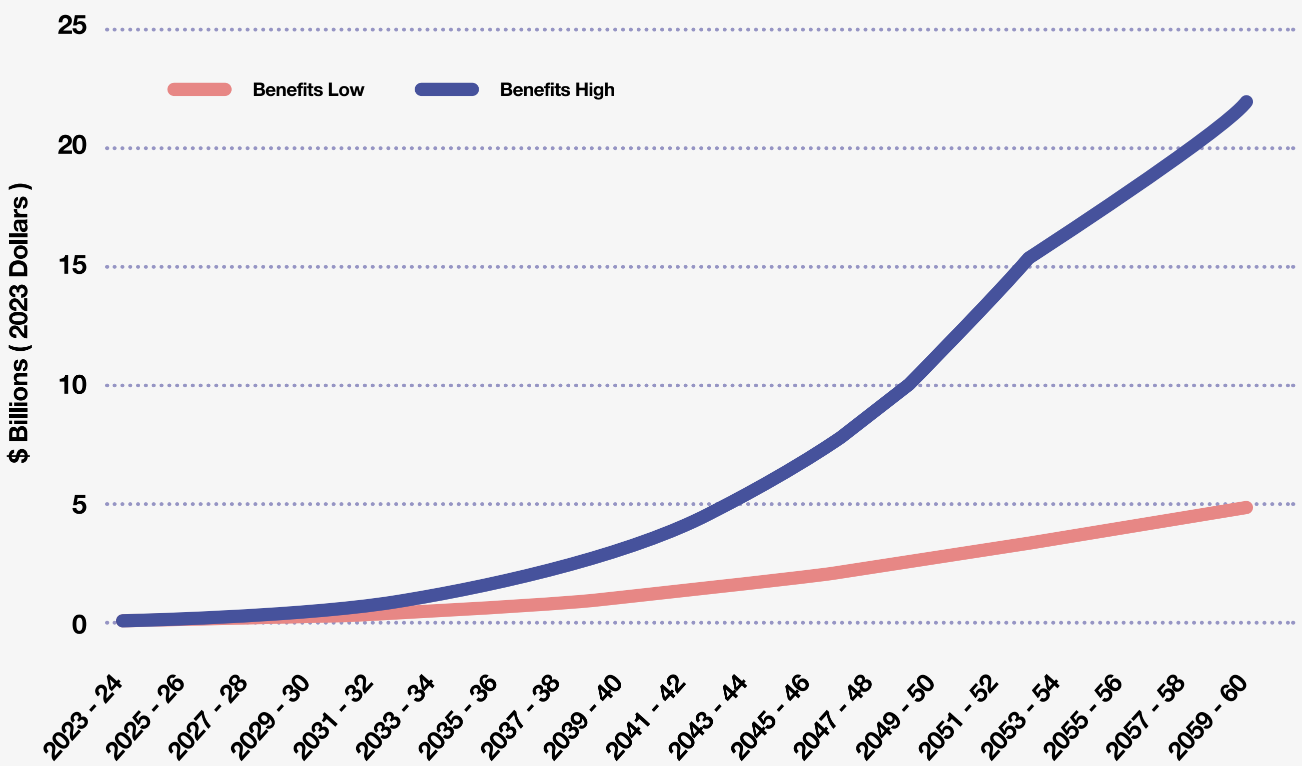
15. **See Appendix 1** for full methodology.
16. Peloza et al, 'The price elasticities of charitable contributions: A meta-analysis', *Journal of Public Policy and Marketing*, Volume 24(2),(2005): pp.260-272.
17. Behavioural Insights Team. "Applying behavioural insights to charitable giving." 2019.

Results

Impact Economics and Policy estimates that by 2060, the reforms will generate between $4.8 and $21.9 billion in additional income for charities. This represents a large range but illustrates that the potential benefits of the reforms are significant, even when more conservative assumptions are employed, underpinning the value of the reforms to the charity sector.

In particular, the lower end estimates assume a minimal behavioural response from making it easier for people to donate through their superannuation compared to through a will, the impact of prompting people about charitable giving through easy election mechanisms or the cultural shift that the reforms are likely to support where donating to charities becomes normalised.

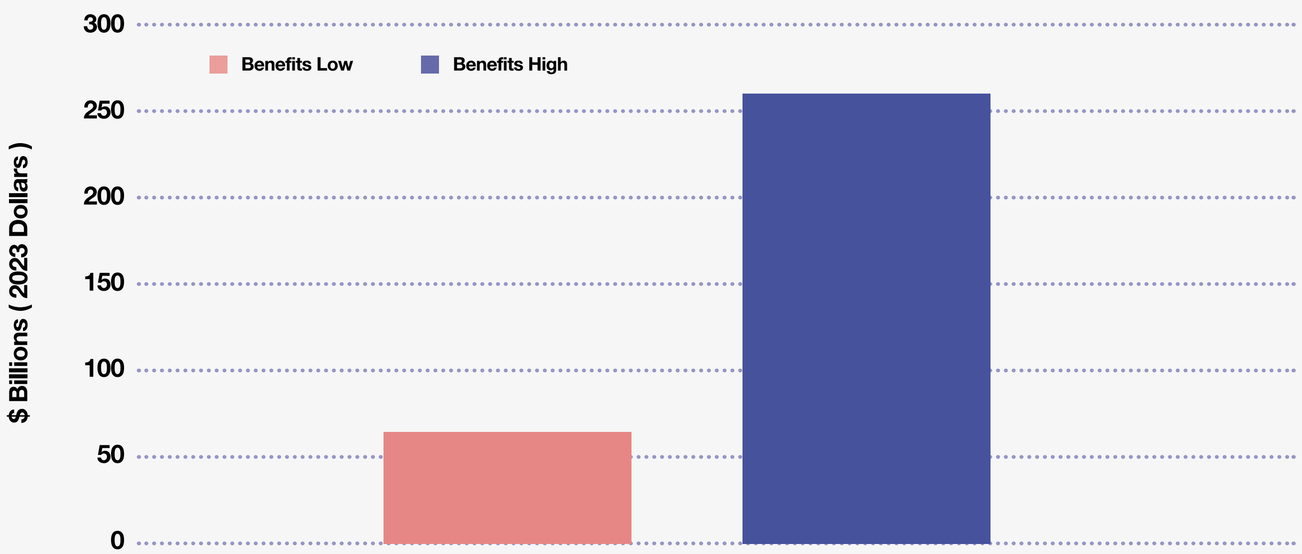
FIGURE 4 ANNUAL CHARITABLE GIVING BENEFITS



Source: Impact Economics and Policy Modelling (see Appendix 1 for details)

The combined potential impact of the recommendations is estimated to grow over the period to 2060, and result in additional charitable superannuation giving of between $64.6 and $260.2 billion over the period to 2060.

FIGURE 5 TOTAL CHARITABLE GIVING BENEFITS TO 2060



Source: Impact Economics and Policy Modelling (see Appendix 1 for details)

Cost to government of the recommendations

The recommendations will not result in an increase in government tax expenditures because under the benchmark lump sum payments from superannuation are tax free. It will, however, have an impact on revenue.

Impact Economics and Policy modelling estimates that the reforms will reduce Commonwealth Revenue by between $6.4 million and $20.7 million over the forward estimates.

TABLE 3 UNDERLYING CASH IMPACT ($, 2023 DOLLARS)

	2023-24 ($millions)	2024-25 ($millions)	2025-26 ($millions)	2026-27 ($millions)	Total ($millions)
Cost to Revenue Low	0.6	1.2	1.9	2.8	6.4
Cost to Revenue High	0.9	2.8	6.1	11.0	20.7

Source: Impact Economics and Policy Modelling (see Appendix 1 for details)

Conclusion

This report has outlined the significant potential benefits of making superannuation death benefit bequests to charity simpler and fairer. It is an idea that can be achieved with simple law reform, but will require cooperation across the superannuation sector.

In the context of a renewed examination of the objective of superannuation, it is timely to consider how Australians wish their wealth to be passed on when they die. The recommendations in this report seek to facilitate rather than penalise people looking to apportion some of their wealth, in ways that support charities.

Importantly, the reforms proposed would not impact on the ability of people to live with dignity in retirement or undermine the objective of superannuation. Super bequests only flow after a person has passed away.

The fiscal impacts of the recommendations are modest when compared to the potential benefits from the increase in charitable giving that could be unlocked, including contributing the Albanese Government's commitment to double giving by 2030.

For the recommendations to be successfully implemented the superannuation industry will need to have an open mind and engage with the government on implementation. Through leveraging the expertise of superannuation funds on design and implementation issues, the government can ensure reforms are implemented effectively and fulfill their potential.

The superannuation landscape is changing, and the system needs to adapt to stay attuned to an ageing membership base. The recommendations in this report represent a simple change that would allow trustees to support members to allocate remaining savings more flexibly, confirming their social licence to operate.

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Appendix 1 Methodology

Superannuation Death Benefits

The estimates of Superannuation Death Benefits from the Retirement Income Review for 2018-19 and 2059-60 ($17 billion and $130 billion respectively) were updated into June 2023 dollars using ABS Consumer Price Index figures.

The average growth from 2018 until 2060 implied by the RIR was calculated using the Excel Rate Function and assumed to be constant across the period.

Average Growth assumed to be 5.177.

Rate of Giving

The rate of potential superannuation bequests to charities was estimated based on the total amount of bequests to charities from individuals with valid wills in place, excluding superannuation.

In 2019 $11.8 billion[18] was donated to charities, with 25 per cent generated through bequests from deceased estates.[19] Based on these figures there was an estimated $2.95 billion given in 2019 through bequests.

An alternative method is to use estimates from the Productivity Commission that estimated 2 per cent of total inheritances was given to charities, or $2.4 billion in 2018.[20]

Excluding the value of superannuation death benefits from these figures on the basis that these are not currently generating significant bequests to charities, in 2018-19 $103 billion was passed on from deceased individuals to either dependents, charities or other entities, which based on the amount bequested to charities and the percent that die with wills equates to between 2.6 and 3.3 per cent rate of potential superannuation bequests.[21]

Number with wills

The number of individuals dying with wills is calculated based on the percent of people with a will by age[22], and the current number of deaths by age[23]. This may be a conservative assumption if people are less likely to die at any given age if they have a will as it indicates higher income and better health.

Age	Number of Deaths	Per cent with wills
20-24	701	10%
25-29	854	10%
30-34	1,092	38%
35-39	1,411	38%
40-44	1,836	63%
45-49	2,824	63%
50-54	4,151	78%
55-59	6,078	78%
60-64	8,296	75%
65-69	11,235	82%
70-74	16,287	89%
75-79	19,743	91%
80-84	25,288	93%
85-89	28,410	97%
90-94	26,568	97%
95-99	12,415	97%
100+	2,373	97%
Total	169,562	88%

Impact of Reducing Price on Giving

Removing the 17 per cent tax on making superannuation donations to charities through death benefit nominations is assumed to reduce the price of such giving, eliciting a price effect.[24]

Various estimates exist in the literature[25] however few studies have looked at the Australian context. We utilise one study using Australian tax data to model a range of elasticities from -0.831 to -1.118.[26]

Behavioural Response

A number of studies have sought to evaluate strategies to increase charitable giving, with a wide range of results.

One study looked at the impact of asking people about donating to charities during the process of formulating a will and found a 220 per cent to 314 per cent increase.[27] We use the average of these findings as our upper bound estimate, noting that we allow this impact to slowly impact giving over a 30 year period as the behavioural response takes hold.

18. Australian Charities and Non-Profit Commission (2023), Australian Charities Report – Ninth Edition.
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Appendix 2 Categories of death benefit nomination

1. **Non-binding nomination,** where the trustee of the fund has regard to the nomination you make but still retains the final say over which of a member's beneficiaries receives their super and in what proportions.

2. **Lapsing BDBN,** which overrides the trustee discretion on payment of a superannuation death benefit but which expires after three years unless renewed. If it is not renewed, the trustee will deem the nomination to be a non-binding one, and will have the final say over which of a person's beneficiaries receives their superannuation, and in what proportions.

3. **Non lapsing BDBN** overrides the trustee discretion on payment of superannuation death benefit and does not expire. It remains in force until a member cancels it or replaces it with a new BDBN. **These are rarely offered by funds other than SMSFs, so members would need to check their fund has this option.**

4. Reversionary nomination, **allowed by some superannuation funds,** in which a pension/income stream automatically reverts to a particular beneficiary (usually a person's spouse) when a person dies. These can usually only be made when a super pension is started.

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