

Philanthropic Freedom Pilot Study: Australia Country Report

Overall Philanthropic Freedom Score: 4.28

General Background Information on Australia

- GDP per capita: \$ 60,979¹
- Population: 22.6 million²
- Percent of population reporting “giving money”: 76%³
- Percent of population reporting “volunteering time”: 37%⁴
- There are three main types of civil society organizations: incorporated associations, charitable trusts, and companies limited by guarantee. Incorporated associations are membership-based organizations. Companies limited by guarantee have members instead of shareholders and have more stringent reporting requirements than incorporated associations. The vast majority of what would be described as philanthropic foundations is in the form of a charitable trust. It is also the term applied to operative nonprofit organizations.

Philanthropic Freedom Score Summary

Category	Score	Key Points
Civil Society Regulation	4.83	<ul style="list-style-type: none"> • Requirements for registering a CSO are clear and reasonable, usually with nominal registration fees. • Structure for CSO can be flexible, and the reporting requirements are mostly clear and predictable. However, CSOs which operate in more than one jurisdiction (particularly in relation to fundraising or charitable gaming) are burdened by inconsistent and often incoherent reporting requirements. • CSO termination is voluntary, while involuntary termination is subject to judicial jurisdiction.
Domestic Tax Regulation	4.25	<ul style="list-style-type: none"> • Individuals and corporations are eligible for deductions on cash donations and limited in-kind donations. There is no ceiling for corporations or individuals. • A serious limitation is that the tax deductions are limited to a class of charities (Deductible Gift Recipients), which is restricted to only a sub-class of organizations that would be considered charitable in other common law jurisdictions. Only about half of all registered charities are DGRs. • For a CSO organization to receive a tax-exempt status the organization “must have a physical presence in Australia” and most of its activities must be done in Australia.
Cross-Border Flows Regulation	3.75	<ul style="list-style-type: none"> • There are few restrictions or taxes on incoming donations to nonprofit organizations. • Donations to organizations operating outside of Australia are not tax deductible. • Most Australian nonprofit organizations, apart from limited exceptions, cannot be income tax exempt unless they are operated principally in Australia.
Overall	4.28	<ul style="list-style-type: none"> • The policy environment in Australia is relatively conducive to philanthropic activity.

¹ World Bank. (2012). Data retrieved December 26, 2012, from World Bank Databank.

² Central Intelligence Agency. (2012). Data retrieved December 26, 2012, from The World Factbook 2012.

³ World Giving Index. (2012). Kent, UK: Charities Aid Foundation, 2012.

⁴ Ibid.

Socio-Cultural Background on Australia's Giving Environment
Provided by Dr. Myles McGregor-Lowndes
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A government report reviewing the contribution of the nonprofit sector noted that:

“In terms of donations as a share of Gross Domestic Product (GDP), philanthropic giving in Australia (0.69 per cent of GDP in 2004) was relatively high compared to giving in New Zealand, Germany and France (0.29, 0.22 and 0.14 per cent of GDP respectively), but slightly below that in the UK and Canada.”

It has been estimated that there are over 600,000 non-profit organisations in Australia with nearly 59,000 economically significant organisations and about 177,000 CSOs registered with the taxation agency. There are about 57,000 organisations are classed as charities with about 5,000 foundations. Registration time and complexity varies with the legal form ranging from a charitable trust and company of a couple of days to incorporated associations that may take up to a month. Fundraising licences and taxation approvals can take months in some jurisdictions.

A recent reform agenda has been driven by the desire to cut red tape and provide greater transparency (rather than as a reaction to a scandal) and promises to improve the amount of accessible information for charities (57,000 of the 600,000 CSOs). This will include an organisation's governing documents, annual financial statement and annual information return.

The complete absence of an estate tax since 1976 with philanthropic exemptions, a limited range of tax deductible gifts and recipient organisations (particularly the absence of religious causes from deductibility) and modest tax expenditures in relation to encouraging gifts are contributing fiscal issues. The recent tax incentives since 2000 have contributed to a more generous attitude towards philanthropic contributions, but are not the only influence.

Socio-cultural influences also have a part to play in explaining the level of giving and current philanthropic trends. Australia is a relatively young nation with its origins as a distant penal colony for Britain. The British culture of the time of private, unplanned, dispersed giving is clearly evident in early Australia, together with the ever-present government control and provision in a penal colony which tended to encourage greater reliance on the state, rather than a culture of independence and self-reliance. Further, apart from a period of gold discoveries in Australia, there was not an early accumulation of wealth by a few families or corporations.

Whilst this may have been the early socio-cultural environment, since 2000 the trend is for greater philanthropic habits. Giving is starting to be more planned with the creation of family and local community foundations, payroll giving and bequests, accompanied by professionalization of those who can advise on such matters. Significant individuals are becoming less hesitant about making public their major giving and this behaviour is gradually becoming normalised. The greater accumulation of wealth by families and corporations in Australia is also gradually allowing a sustainable philanthropic tradition to emerge.

To date there have been few scandals to tarnish the image of philanthropy and dent the trust displayed in foundations, trusts, charities and the sector generally. The level of transparency is about to dramatically increase in Australia with the creation of a central charity regulator which may induce greater public scrutiny of foundations and the sector.

**Scoring of Australia’s Civil Society Regulation
Provided by Dr. Myles McGregor-Lowndes**

<p>Indicator Question 1: To what extent can individuals form and incorporate the organizations defined?</p> <p>Score: 5.0</p>	<p>The federal, state and territory laws of Australian jurisdictions permit individuals to act together through unregistered associations and organizations for lawful purposes. Each jurisdiction offers one or more forms of incorporation for nonprofit associations with reasonable administrative requirements, although for those associations operating in multiple jurisdictions there are moderately costly reporting burdens.</p> <p>In some jurisdictions, there are restrictions on the capacity to set up or be an officer in organizations; e.g. those with serious recent criminal records, subject to bankruptcy, with mental incapacity or children are excluded. There are generally no minimum capital or asset requirements which would deter association formation. While documentation for association varies between jurisdictions, requirements are clear and reasonable, usually with nominal registration fees.</p> <p>The registration process for basic incorporation is reasonably efficient, conducted with due process in a timely fashion with appropriate rights of review and appeal. However, there is room for improvement when compared to recent progress in streamlining business incorporations.</p>
<p>Indicator Question 2: To what extent are CSOs free to operate without excessive government interference?</p> <p>Score: 4.5</p>	<p>The structure and governance of CSOs are relatively flexible and do not overly constrain the internal affairs of organizations. Some organizations which are designed for small simple associations have preset governance rules, such as all governance committee members having to be elected by the members or certain officers having to reside in the jurisdiction.</p> <p>The activities of CSOs are not restricted for lawful activities, but political parties, workers’ unions and financial/banking enterprises are subject to special rules and regulation, often in relation to governance. There is virtually no restriction on cross-sector collaboration, participation in networks or use of the internet or social media.</p> <p>While reporting requirements are clear and predictable in most instances, there are different reporting requirements for different forms of incorporation and jurisdictions. CSOs which operate in more than one jurisdiction (particularly in relation to fundraising or charitable giving) are burdened by inconsistent and often incoherent reporting requirements. Many jurisdictions have recently moved to develop graduated reporting requirements and more meaningful and consistent reporting across legal forms and jurisdictions.</p>
<p>Indicator Question 3: To what extent is there government discretion in shutting down</p> <p>Score: 5.0</p>	<p>The governing bodies of corporate CSOs are able to voluntarily terminate their CSOs; this is regulated by law and generally supervised by the courts. Charitable trusts have perpetual existence and any change to their objects or existence is also supervised by the courts and the relevant Attorney General. Involuntary termination is available, subject to constraints, due process and judicial supervision.</p>
<p>Average Score on Civil Society Regulation: 4.83</p>	

**Scoring of Australia’s Domestic Tax Regulation
Provided by Dr. Myles McGregor-Lowndes**

<p>Indicator Question 4: Are there income tax incentives (at national, state, or provincial levels) in the form of credits or deductions for individuals and/or corporations to donate money or charitable gifts?</p>	<p>Score: 4.0</p>	<p>There is a system of tax deductions for taxpayers (individual and corporate) in respect of donations to Deductible Gift Recipients (DGRs). The minimum amount is A\$2.00 and there is no ceiling for individuals or corporate taxpayers, apart from having sufficient taxable income to claim the tax deduction i.e. there is no provision for a donation to create a tax loss.</p> <p><i>(This question did not require a score by the expert; CGP applied a score of 4.0. On the positive side Australia implements liberal tax deductions and high incentive fiscal policies. On the negative side, there are a limited number of organizations that can receive a Deductible Gift Recipient tax status, which reduces the pool of recipients for potential donors. Furthermore, the claiming of tax deductions can be cumbersome.)</i></p>
<p>Indicator Question 5: To what extent is the tax system favorable to making charitable donations?</p>	<p>Score: 4.5</p>	<p>While the recipients of tax deductible donations are restricted, donors have some flexibility in making donations. There are provisions to allow donations to be spread over several tax years, donations to be in the form of property, trading stock or shares and some donor benefit in donations (called contributions) which are apportioned. The claiming of such tax deductible donations is on a self-assessment basis, but the rules can be complex. For example, the Australian Taxation Office’s ruling on “what is a gift” is over 45 pages long.</p>
<p>Indicator Question 6: Do CSOs receive tax exemptions in the form of property tax exemptions, income tax exemptions, or others? If so, what are these exemptions?</p>	<p>Score: 4.0</p>	<p>Broadly, the major exemptions and special taxation provisions for non-profit entities are as follows:</p> <ul style="list-style-type: none"> • Exemption from Income Tax for religious, scientific, cultural, charitable, sporting and public educational institutions and a number of other bodies; • Transactions of some nonprofit organisations will be regarded as GST-free for the purpose of the Goods and Services Tax (GST) • Exemption from Payroll Tax available to religious institutions, Public Benevolent Institutions (PBIs), hospitals and certain schools and colleges; • Exemption from Stamp Duty available to PBIs, religious bodies, educational institutions and various other charitable bodies; • Exemption from Land Tax for land owned by friendly societies, trade unions, charitable or educational institutions, religious institutions and some clubs and associations; • Exemption from Fringe Benefits Tax, to certain limits, for benefits provided to some employees of religious institutions and benefits provided to employees of PBIs; and • Exemption from some Local Government charges. <p><i>(This question did not require score by the expert; CGP applied a score of 4.0. On the positive side, there are some exemptions available for nonprofits. On the negative side, limited number organizations are eligible for a DGR status.)</i></p>

<p>Indicator Question 7: To what extent is the tax system favorable to CSOs in receiving charitable donations?</p>	<p>Score: 4.5</p> <p>Unlike donation deductibility status, a wide range of nonprofit organizations enjoy tax exemptions. There is currently no form of unrelated business income tax operating in Australia. The Productivity Commission estimated ‘the value of tax concessions given by all Australian governments to NFPs to be at least A\$4 billion in 2008–09 and that it could realistically be twice this amount when non-estimated expenditures are included.’ The process of receiving tax exemption is largely on a self-assessment basis, but charitable institutions and funds are required to be endorsed by Commonwealth authorities. There are eligibility issues at the boundaries of the definition of charitable purpose, such as public vs. private benefit; advocacy or political purpose; and government or family control, but no more than in other common law jurisdictions. A serious limitation is that the class of DGRs is restricted, being only a sub-class of organizations that would be considered charitable in other common law jurisdictions. Only about half of all registered charities are DGRs.</p>
<p>Average Score on Domestic Tax Regulation: 4.25</p>	

**Scoring of Australia’s Cross-Border Flows Regulation
Provided by Dr. Myles McGregor-Lowndes**

<p>Indicator Question 8: Are there costs/taxes on cross-border philanthropic cash and/or in-kind donations (e.g. customs, duties, VAT, etc) ? If so, what are these costs?</p>	<p>Score: 4.0</p> <p>There are few restrictions or taxes on incoming donations to nonprofit organizations. Imported goods are subject to customs duty and/or GST, but wide ranging exemptions are generally available. Customs duty rates vary and depend on a number of factors such as the type of goods and country of origin, but are generally not regarded as a barrier. Large foreign currency transfers are subject to reporting requirements consistent with many other jurisdictions. There are few restrictions on cross-border philanthropic flows, apart from being unable to claim income tax exemption or donation deductibility status. Traditionally, Australian nonprofit organizations cannot be income tax exempt unless they are operated principally in Australia, are prescribed as exempt in the <i>Income Tax Assessment Regulations 1997</i> or are Deductible Gift Recipients (DGRs).</p> <p><i>(This question did not require a score by the expert; CGP applied a score of 4.0. On the positive side there are few restrictions and costs to cross-border donations. On the negative side, there are no tax incentives in receiving or sending donations abroad.)</i></p>
<p>Indicator Question 9: To what extent is the legal regulatory environment favorable to cross-border flows impeded?</p>	<p>Score: 3.5</p> <p>While both income tax exempt entities and DGRs are subject to ‘in Australia’ special conditions, different thresholds apply. Recent court decisions have raised doubts about the proper application of the ‘in Australia’ special conditions. Charities can now be found to be pursuing their objectives principally ‘in Australia’ if they merely pass funds in Australia to another charitable entity that conducts its activities overseas. The publicly funded taxpayer concession was primarily meant to be used principally in Australia for the broad benefit of Australians, and not be passed on through entities and then spent overseas. These provisions are the subject of a proposed legislative amendment.</p> <p>A special category of DGRs is allowed to operate overseas and is covered by appropriate integrity requirements, to ensure that this taxpayer funded concession is directed to the causes that it was donated for, and is not at risk of being misdirected to inappropriate and unauthorized operations. The approval process for such organizations often takes several years and involves multiple departmental approvals.</p>
<p align="center">Average Score on Cross-Border Flows Regulation: 3.75</p>	

Overall Philanthropic Freedom Score*: 4.28

***This score reflects equal weighting of the three categories described above.**