



**SUBMISSION TO THE PRODUCTIVITY COMMISSION  
REVIEW OF PHILANTHROPY  
MAY 2023**

*The Case for Sporting Organisations  
To Access Charitable Status*

We thank the Productivity Commission for the opportunity to make this submission.

We believe that this submission provides strong and compelling argument that Australian Sporting organisations should be considered as meeting the four legal requirements for Charitable status under the Charities Act 2013 (Cth) (*the Charities Act*) and the Charities (Consequential Amendments and Transitional Provisions) Act 2013 (Cth).

The essential elements of this submission have been presented and discussed with the Federal Government through the respective Minister for Finance, Assistant Minister for Charities and the Minister for Sport and designated officials on four separate occasions since 2017.

This submission is made by the Confederation of Australian Sport (CAS) in consultation with National Sporting Organisations (NSO) and National Sporting Organisations for Persons with a Disability (NSOD) currently operating in Australia. CAS has been a committed advocate for sport since 1976.

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## EXECUTIVE SUMMARY:

Australia's Sporting Organisations continue to be specifically excluded from accessing the taxation and other financial benefits currently available to those organisations with approved Charitable status.

This submission estimates that Australian sport is being significantly disadvantaged and may be missing out on over \$150 million each year that could be used for community benefit.

This submission demonstrates how and why Australian Sporting Organisations should be considered as meeting the requirements under the Charities Act 2013 (Cth) (the Charities Act) and the Charities (Consequential Amendments and Transitional Provisions) Act 2013 (Cth) for approval as **Health Promotion Charities**.

This submission seeks to convince the Productivity Commission Review of Philanthropy to recommend that the Federal Government put in place steps to allow compliant Australian Sporting Organisations to access Charitable status and the commensurate benefits. The desired outcome is to access both Deductible Gift Recipient (DGR) status and Fringe Benefits Tax (FBT) exemption that may require an amendment to the Fringe Benefits Tax Assessment Act 1986, the Charities Act 2013 (Cth) and ATO Tax Ruling TR2011/4.

Australia's Sporting Organisations provide a direct relief from the health burden of Physical Inactivity by the provision of Moderate and Vigorous Physical Activity and provides mental health and wellness benefits through participation in their chosen sport.

Australia's Sporting Organisations are arguably the most effective tool that Governments have in combatting population physical inactivity. Physical inactivity leads to overweight and obesity, currently affecting 65% of Australians at a cost of \$60b per year. Physical Inactivity has a causal effect in a range of major diseases including cardio-vascular disease, diabetes, stroke and some cancers. The benefits of sporting activity to improving mental health, social inclusion and personal wellness are also well documented.

Australia's Sporting Organisations provide a significant \$23 billion per year contribution to the nation from health, social and economic perspectives. Over 50,000 community sporting clubs provide a vast network of access points with a direct interface with the public that engages over 4.9 million participants, 2.3 million volunteers and provides over 1.2 billion hours of Moderate and Vigorous Physical Activity.

This submission demonstrates how Australia's Sporting Organisations directly deliver a range of significant and quantifiable benefits to participating individuals resulting in a reduction of the health burden caused by physical inactivity.

### Four Tests for Charitable compliance:

Sporting Organisations meet the Four Tests required to comply with the relevant Charities Acts.

#### Test 1: Not-for Profit Test

All Sporting Organisations proposed for inclusion in this submission operate as Not-for-Profit entities. Any surplus made by Sporting Organisations is reinvested back into the organisation to improve the capacity and quality of service for current and future participants.

#### Test 2: Charitable Purpose Test

Sporting Organisations proposed for inclusion meet the test for the Charitable Purpose of **Advancing Health**.

The current reason for specifically excluding sport as a charitable purpose is based upon the findings of a UK legal ruling of 1895 that is no longer applicable as it has not kept pace with the expectations of contemporary Australia. This issue is covered in section 4.2 and 5.2 of this submission.

Sport contributes a range of personal health benefits from both physical and mental health aspects. Appropriate levels of Sport are broadly available to all members of the community irrespective of age, gender, ethnicity, political or religious allegiances, disability and competitive desires.

It is the provision and promotion of Moderate and Vigorous Physical Activity that positions Sport under the definition of a **Health Promotion Charity**.

### **Test 3: Public Benefit Test**

Sport's contribution includes a \$1.5b cost saving for the health system<sup>2</sup> and provides a total of \$23b benefit to the economy through increased productivity and contributions to social, physical and mental wellbeing<sup>11</sup>.

The benefits provided by community sporting entities and by extension by their local, regional, state/territory and national organisations include:

1. A reduction in the health burden of Physical Inactivity through the provision of regular Moderate and Vigorous Physical Activity (MVPA).
2. Providing for inclusion, connectedness and elevating feelings of self-worth
3. Building healthy active lifestyles and promoting feelings of successful endeavour, achievement and emotional wellbeing.
4. Providing a form of relief for people with disabilities
5. Providing a form of relief from and resilience to disease – both physical and mental.
6. Tackling inequality and disadvantage of certain sections of the population.

The health and social benefits of participation are provided to individuals in a similar way to many other organisations and causes currently operating within the Charitable sector.

The community benefit is provided through the combined, collaborative efforts and expertise of the Club members who work together to present and promote their sport to the community.

### **Test 4: Governance and other rules for registration Test**

Many Sporting Organisations will already meet the Governance requirements through their existing incorporation and constitutional documents. Many Sporting Organisations will already have an ABN and may be registered for GST.

For those organisations not currently meeting the requirements in this area support can be provided to facilitate their compliance. CAS will undertake to work with National Sporting Organisations to facilitate the compliance of their affiliated associations and community clubs.

### **Further issues presented for consideration:**

Additional supporting evidence is provided by citing the following:

- Current Overseas practice – citing the United Kingdom Charities Act 2011 which specifically includes “the advancement of amateur sport” as a prescribed purpose for charitable status.
- Australia's current system of partial and restricted access to taxation benefits provided through the Australian Sports Foundation
- Commentary on a previous Australian legal case conducted by the Administrative Appeals Tribunal being *Bicycle Victoria v Commissioner of Taxation* (2011)
- Anomalies of the current charitable system which appear to provide scope for the inclusion of sporting organisations
- Socio-economic disadvantage affecting sports participation

### Advantages missed out on by Sport not being a charity

The ability to offer DGR deductions is a powerful tool to generate financial support particularly from the local businesses and supporters. Community Sporting clubs and associations representing 4.9 million Australians are currently unable to effectively access a number of potential sources of funding that would greatly assist in the delivery of their important work.

Sporting organisations are currently impeded from accessing funds from Philanthropic Foundations, Trusts and Donors. The total of \$4.5 billion per year in philanthropic funds is a substantial pool of resources that Australia's community sporting organisations are unable to access.

If Australia's community sporting organisations could attract just 1.0% of these grants, donations, legacies and bequests it would result in a significant \$45 million being injected into community sporting organisations each year.

The following table suggests that Australia's Sporting Organisations (SO's) may be missing out on over \$150m per year in charitable support.

Financial Benefit to Sport	Estimated potential beneficiaries	Potential Revenue \$m per year
Direct Donations offering DGR benefits	Up to 10,000 SO's generating \$100m in donations	\$100.0m
Cost savings from FBT exemption	Up to 500 SO's and 1,500 employees accessing FBT benefits	\$13.5m
Access to Philanthropic Foundations, Trusts and Donors	Up to 10,000 SO's accessing 1% of Philanthropic funds	\$45.0m
<b>Total</b>		<b>\$158.5m</b>

### Financial Impacts of the Proposal on Taxation Revenue

Although difficult to calculate precisely modelling was undertaken on a range of potential scenarios for access to both Deductible Gift Recipient (DGR) and Fringe Benefits Tax (FBT) benefits.

The likely financial impact of providing both DGR and FBT benefits to Sporting Organisations under Health Promotion Charity provisions is estimated at **\$43.5 million** per year.

Taxation Benefit	Tax Revenue Foregone \$m
Deductible Gift Recipient (DGR)	\$30.0m
Fringe Benefits Tax (FBT) exemption	\$13.5m
	<b>\$43.5m</b>

A brief review of the Australian Government 2015, Tax Expenditures Statement 2014, suggests that the estimated amounts would increase overall DGR tax foregone modestly by 2.4% and FBT tax foregone by 0.4% in 2017-18. These figures have not substantially changed in recent years.

CAS respectfully suggests that there is a strong case for inclusion of Australian sporting organisations under the Charitable status of Health Promotion Charities. The ensuing benefits to the sector and community may be greater than \$150m with taxation foregone of around \$43m.

## THE CASE FOR SPORTING ORGANISATIONS TO ACCESS CHARITABLE STATUS

### 1. OVERVIEW:

The Australian Bureau of Statistics <sup>4,5</sup> reported that 4.9 million Australians participated in organised sport in 2012. Access to community sport is typically provided by a national structure from which an individual community club is affiliated to a regional or state/territory association and then to the National Sporting Organisation through the state/territory affiliation.

Australia's National Sporting Organisations (NSO) are extremely diverse, ranging from highly professionalised, multi-million dollar sports such as the AFL and Cricket through to small community operations existing largely on the contribution provided by club members, volunteers and local supporters. Many Australian sports have existed for over 100 years and are deeply entrenched in the national psyche while many others more recently introduced represent evolving trends in lifestyle, technology and/or Australia's geo-political positioning or cultural links.

Indeed today the vast majority of the 70,000 community sporting clubs and organisations have few assets, they face dwindling financial and human resources and they must cope with ever increasing costs and expectations to provide for their local communities.

The Australian Bureau of Statistics tells us that 2.3 million Australians volunteered for sport in 2013 and that this represents 33% of all volunteers and 26.5% of all volunteer hours<sup>6,7</sup>. The volunteer contribution of sport to Australia has been valued by CAS at over \$8 billion per year<sup>11</sup> and at \$12.8 billion by the Australian Sports Commission<sup>15</sup>.

Recent research also shows that community and school sport provides an estimated 50% of all Moderate and Vigorous Physical Activity (MVPA) undertaken by Australians today<sup>1</sup>. Moderate and vigorous levels of physical activity are required to provide an improvement in an individual's physical health. Sport's contribution includes a \$1.5b cost saving for the health system<sup>2</sup> and provides a total of \$23b benefit to the economy through increased productivity and contributions to social, physical and mental wellbeing<sup>11</sup>. The Australian Sports Commission 'Intergenerational Review of Australian Sport 2017'<sup>20</sup> values the total economic contribution of sport at over \$50b per year.

Of the estimated 2.4 billion hours of Moderate and Vigorous Physical Activity undertaken in Australia each year an estimated 1.2 billion hours (50%) are undertaken through sport.

Sport is arguably the most effective tool that Governments have in combatting population Physical Inactivity. Physical Inactivity leads to overweight and obesity, currently affecting 65%<sup>3</sup> of Australians at a cost of \$60b per year<sup>10</sup>. Physical Inactivity has a causal effect in a range of major diseases including cardio-vascular disease, diabetes, stroke and some cancers.

At a \$60 billion annual cost Physical Inactivity is a greater burden than many other highly publicised causes:

- Smoking \$31b
- Alcohol \$15.3b
- Illicit Drugs \$8.2b
- Arthritis \$23.9b
- Diabetes \$10.3b
- Blindness \$16.6b
- Depression \$12.6b
- Dementia \$6.6b
- Asthma \$1b

At the same time sport at community level is facing increasing challenges to its financial viability and future sustainability. Sport is experiencing financial challenges from increasing costs of facilities and equipment, reducing levels of sponsorship and government funding and from greater pressures on volunteers who are becoming increasingly time poor.

In addition, the cost to parents of sports participation for their children ranges from \$1,000 - \$5,000 per year and the ABS<sup>16</sup> highlights that socio-economic disadvantage is negatively impacting on sport participation.

**Note:** The ABS has not collected statistics on sport participation since 2013<sup>4,5</sup> and so this is the most recent available reference. Since 2015 some statistics have been collected by the AusPlay survey conducted through the Australian Sports Commission. This study uses a relatively small sample size in surveying and the overall results are not considered sufficiently robust for inclusion in this submission.

## 2. BENEFITS PROVIDED BY COMMUNITY SPORT

Sport delivers a range of significant and quantifiable benefits to participating individuals, to communities, to the economy and to the nation as a whole.

The benefits provided by Community Sporting entities and by extension by their local, regional, state/territory and national organisations include:

1. A reduction in the health burden of Physical Inactivity through the provision of regular Moderate and Vigorous Physical Activity (MVPA).
2. Providing for inclusion, connectedness and elevating feelings of self-worth
3. Building healthy active lifestyles and promoting feelings of successful endeavour, achievement and emotional wellbeing.
4. Providing a form of relief for people with disabilities
5. Providing a form of relief from and resilience to disease – both physical and mental.
6. Tackling inequality and disadvantage of certain sections of the population. (eg: The Rumbalara Football Netball Club, Shepparton, Vic – Indigenous Club established in 1997<sup>13</sup>)

## 3. ORGANISATIONAL DELIVERY STRUCTURE

### **How the benefits provided by sport are accessed by individual members of the public.**

Sport delivers benefits directly to individuals through the community interface which is generally the Community Sports Club. Sport is coordinated and delivered by an extensive network that reaches across the nation from major cities to the smallest of country towns.

Community Sports Clubs provide for participation in amateur (non-paid) sporting activity extensively utilising the volunteer contribution of club members, officials and supporters.

A Community Sports Club generally services a local population that may include those living within a set geographic boundary or, depending on the activity, may not have a specific residential requirement or necessity. Sport delivery is constantly evolving to maximise the opportunities for inclusion and participation by all interested members of the community.

A Community Sports Club is generally affiliated to a Local, Regional and/or State/Territory Association that may be responsible for administering competitions, registrations, officiating, facilities and implementing any requirements for the Sport as laid down by the respective National Sporting Organisation (NSO).

State/Territory Sport Organisations (SSO) are affiliated to the National Sporting Organisation which is responsible for the overall management of the sport, including setting requirements for rules of play, participant safety, insurance and competitive requirements. The NSO is generally responsible for the overarching promotion and positioning of the sport including any international affiliations.

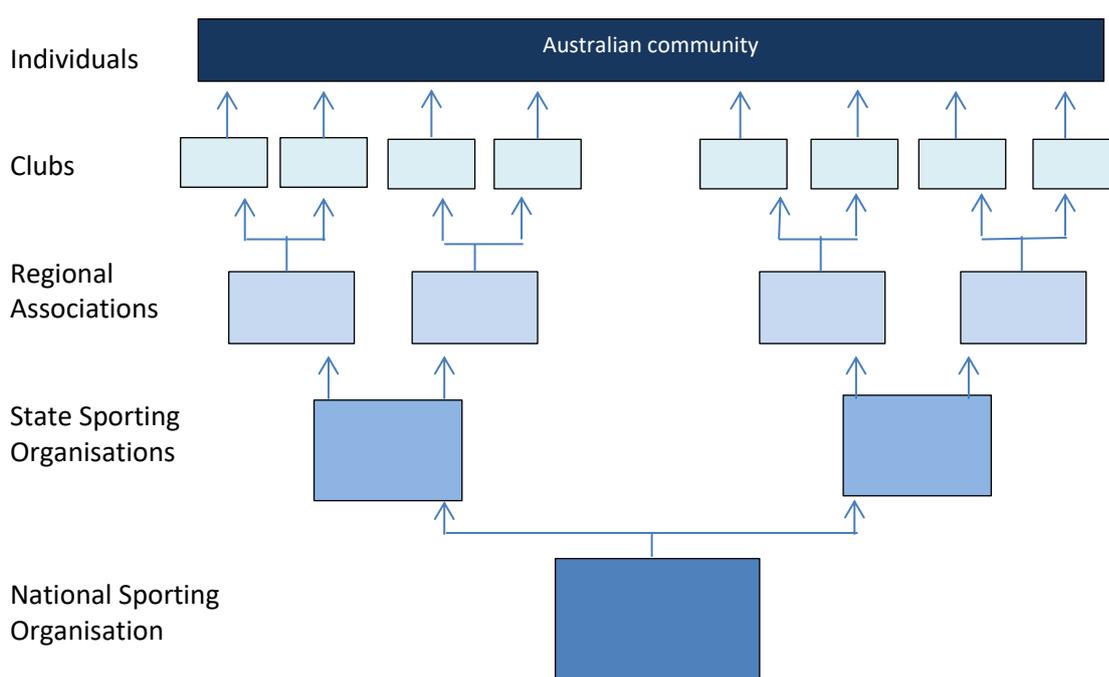
In Australia there are approximately:

- 90 National Sporting Organisations
- 700 State/Territory Sporting Organisations
- 50,000+ Community based Sporting Clubs and organisations

From the Charitable Organisation perspective it is the Community Club that generally provides direct access to the public that addresses the public health burden of Physical Inactivity and the provision of positive health and social benefits. Many Sporting Organisations work closely with local schools to provide access to and encourage broader participation for young Australians in developing healthy, active lifestyles.

### Delivery of MVPA to the community via the National Community Sporting Structure

The typical structure of the delivery of community sport in Australia is shown below.



The National Sporting Organisation and the State/Territory Sporting Organisations provide service and support to the Community Club to facilitate the provision of the benefits to the public. This facilitation and servicing of the Community Club to deliver the sport is a principal purpose of the NSO and SSO.

## 4. REQUIREMENTS OF THE CHARITIES ACT

It is proposed that Sporting Organisations are able to meet the requirements of the four tests prescribed within the Charities Act 2013 (Cth) (the Charities Act) and the Charities (Consequential Amendments and Transitional Provisions) Act 2013 (Cth):

### 4.1. Not-for-Profit test

All Sporting Organisations proposed for inclusion in this submission operate as Not-for-Profit entities.

It will be possible for Sporting Organisations to confirm their Not-for-Profit status through the provision of their organisation's Constitution and documents of incorporation and from their annual accounts. Typically community sporting organisations are registered under the Associations Incorporation Act in their designated State or Territory.

Any surplus made by Sporting Organisations is reinvested back into the organisation to improve the capacity and quality of service for current and future participants.

Sporting Organisations that currently include opportunities for 'professional sport' will be able to demonstrate how the professional sporting arm is separated from community/amateur sporting activity. This separation could be demonstrated through a separate corporate structure or cost centres to meet the requirements of the ACNC and ATO. This point is further discussed in section 5.5 of this submission.

### 4.2 Charitable Purpose test

All Sporting Organisations proposed for inclusion in this submission meet the test for the Charitable Purpose of **Advancing Health**.

Evidence can be provided to demonstrate sport contributes a range of personal health benefits from both physical and mental health perspectives. Appropriate levels of sport are broadly available to all members of the community irrespective of age, gender, ethnicity, political or religious allegiances, disability and competitive desires.

The benefits provided by Community Sporting entities and by extension by their local, regional, state/territory and national organisations include:

1. A reduction in the health burden of Physical Inactivity through the provision of regular Moderate and Vigorous Physical Activity (MVPA).
2. Providing for inclusion, connectedness and elevating feelings of self-worth
3. Building healthy active lifestyles and promoting feelings of successful endeavour, achievement and emotional wellbeing.
4. Providing a form of relief for people with disabilities
5. Providing a form of relief from and resilience to disease – both physical and mental.
6. Tackling inequality and disadvantage of certain sections of the population.

It is the provision and promotion of Moderate and Vigorous Physical Activity that positions sport under the definition of a **Health Promotion Charity**. Moderate and vigorous levels of physical activity are required to provide an improvement in an individual's physical health. Within the Australian Government's *National Physical Activity and Sedentary Behaviour Guidelines*<sup>8</sup> the minimum levels of weekly MVPA are prescribed. Differing requirements are listed for pre-school aged children, school aged children, adults and older Australians.

Recent research also shows that community and school sport provides an estimated 50% of all Moderate and Vigorous Physical Activity undertaken by Australians today. Sport's contribution includes a \$1.5b cost saving for the health system<sup>2</sup> and provides a total of \$23b benefit to the economy through increased productivity and contributions to social, physical and mental wellbeing and taxation revenue on sport related goods and services<sup>11</sup>.

The report calculates the value of one MVPA Hour of Activity to contribute \$8.00 to the economy.<sup>11</sup>

#### **Sample Purpose Clause:**

If required a specific 'Object' could be inserted within the Constitution of the Sporting Organisation to meet the specifications of the ACNC and ATO.

Such a clause could read:

- Non-discriminatory access to the health benefits of Moderate and Vigorous physical activity will be provided through the sport of "insert name of sport".

#### **Current Exclusion of Sport as a Charitable Purpose:**

It is noted that the ATO Ruling 2011/4<sup>18</sup> clause 57 currently excludes sporting purposes 'as being not charitable, regardless of motivation or the benefits to the community that can result'. This exclusion is based upon the findings of the 1895 UK Appeals Court case 'Nottage: Jones and Palmer'<sup>19</sup> that CAS argues is no longer applicable as it has not kept pace with the expectations of contemporary Australia. The broader health benefits provided by sport are now recognised and further explanation of this case is included in section 5.2.

### **4.3 Public Benefit test**

It is proposed that the activities provided by Sporting Organisations meet the requirements of the Public Benefit test.

The provision of benefits by community sport for the Public Benefit as outlined in section 2 of this submission is provided in a similar way to many other organisations and causes currently approved to operate within the Charitable sector.

The major public benefit to the community is provided through the combined, collaborative efforts and expertise of the Club members who work together to present and promote their sport to the community. Community members who subsequently take up the opportunity to participate receive the health and social benefits of their involvement. As mentioned earlier in this document over 4.9 million Australians participate in organised sport annually.

It could be argued that 'members' of Charitable organisations receive personal benefits through the elevation of their self-esteem, sense of personal worth and pride, the feeling of community and connectedness. There are also potential individual benefits through the development of specific skills, expertise and knowledge that may be translatable into greater employability, credibility and networking for those seeking future career opportunities. The involvement with a Charitable Club/Branch/Chapter/Division may provide other personal benefits including enhanced physical and/or mental health and wellbeing.

While it is accepted that there are benefits accrued by individuals who are members of Community Sports Clubs, these personal benefits do not override or downplay the major reason and purpose of the Sports Club. The major purpose of community sport is to provide access to the benefits of the sport for the greater community good for all those individual community members who wish to participate.

Educational benefits are also contributed to participants in community sport as they learn the skills, techniques and strategies of their chosen sport. They develop competence in the physical elements of the sport but also of the importance of team-work, personal discipline, goal-setting, relationships and organisational structure.

#### Quantifiable Economic contribution of sporting entities:

The following table illustrates how even a modest community sporting club of 100 members may make a \$40,000 contribution to the economy each year while larger associations and national sports make multi-million dollar contributions. The calculation uses the value of one MVPA Hour of Activity as contributing \$8.00 to the economy.<sup>11</sup>

Sporting Entity	Local Sports Club (100 players)	Local Sport Association (100 teams x 20 players)	Medium National Sporting Organisation (25,000 players)	Large National Sporting Organisation (100,000 players)
Participants	100 players	2,000 players	25,000 players	100,000 players
Medium & Vigorous Physical Activity (hours per week)	2.5 hours  (from a total 3 hours practice and match time)	2.5 hours  (from a total 3 hours practice and match time)	2.5 hours  (from a total 3 hours practice and match time)	2.5 hours  (from a total 3 hours practice and match time)
Sporting season	20 weeks	20 weeks	20 weeks	20 weeks
\$ per MVPA hour	\$8.00	\$8.00	\$8.00	\$8.00
Sport \$ contribution (players x MVPA hrs x season x \$8)	\$40,000	\$800,000	\$10 million	\$40 million

While the specific figure of \$8.00 per MVPA hour may be debatable it is clear that there is a significant financial contribution, along with the health and social contribution of community sport that meets the requirement of the Public Benefit Test.

The contribution and benefits of sport are not isolated to the individual participant as there is strong evidence that an individual's children are likely to follow in their parent's footsteps. This multiplying, self-perpetuating effect is also demonstrated by the positive persuasive powers of one sport participant to encourage their friends and work colleagues to join in. This appears particularly strong for ongoing Masters Sport participation (over 30 year olds) where individual interviewees in the *Retaining the Membership of Women in Sport* study highlights the impact that positive encouragement had on them.<sup>12</sup>

#### 4.4 Governance and other rules for registration test

All Sporting Organisations proposed for inclusion will meet the requirements for governance and other rules for registration as specified by the Charities Act.

Many Sporting Organisations will already meet the Governance requirements through their existing incorporation and constitutional documents. Many Sporting Organisations will already have an ABN and may be registered for GST.

For those organisations not currently meeting the requirements in this area support can be provided to facilitate their compliance. CAS will undertake to work with National Sporting Organisations to facilitate the compliance of their affiliated associations and community clubs.

## 5. ISSUES FOR CONSIDERATION:

Consideration of the following issues is requested in support of this submission:

### 5.1 Overseas Practice – United Kingdom, Canada and New Zealand

**United Kingdom:** Recognition of amateur sport is allowable within the United Kingdom Charities Act 2011 from which the Australian Charities Act originated and has drawn much of its current structure and principles. The United Kingdom Charities Act 2011 defines a charitable purpose, explicitly, as one that falls within 13 descriptions of purposes and is for the public benefit. One of the prescribed purposes is ‘the advancement of amateur sport’.

The UK Charity Commission Guide<sup>14</sup> – published September 2013 says:

*The advancement of amateur sport means the advancement of any sports or games which promote health by involving physical or mental skill or exertion and which are undertaken on an amateur basis. This guidance is being revised to reflect the definition of sport in the Charities Act 2006.*

*It recognises as charitable the promotion of community participation in healthy recreation by providing facilities for playing particular sports. (By ‘facilities’ we mean not just land, buildings and equipment, but also the organising of sporting activity.) The guidance is aimed especially at what are sometimes called community amateur sports clubs (CASCs)*

*Examples of the sorts of charities and charitable purposes falling within this description include:*

- *charities advancing sport at a local club, eg local football, rugby, tennis clubs etc*
- *multi-sports centres*
- *other organisations concerned with the promotion of a particular amateur sport or game*

**Canada:** In Canada the Charities Directorate within the Canada Revenue Agency is responsible for charities under the Canada Income Tax Act. Charitable recognition to the extent of providing the Canadian equivalent of DGR status is provided to those sporting organisations that are Registered Canadian Amateur Athletics Associations (RCAAA) as approved by the Charities Directorate.

In Canada the term ‘Athletics’ means all forms of sport with a community benefit – not just ‘track and field’ as the term Athletics is commonly recognised in Australia. A list of the approved RCAAAs can be viewed at <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/qd-lstngs/RCAA-ACESA-lst-eng.html>

**New Zealand:** The New Zealand Charities Act 2005 is the governing legislation which is implemented by Charities Services and assesses applications on a case by case basis. The Charities Act 2005 was amended in 2012 to include: *“the promotion of amateur sport may be a charitable purpose if it is a means by which a charitable purpose listed in subsection (1) is pursued”.*

*Sporting organisations can qualify for registration as charities if the promotion of sport is the means by which a charitable purpose is pursued, for example the ‘advancement of education’ or ‘promotion of health’. They must also advance benefits for a significant section of the public, not primarily for an elite few.*

‘Donee status’ is the principle direct financial benefit of charitable status in New Zealand. Donors may claim tax credit for all donations over NZ\$5.00.

## 5.2 Sport excluded from charitable status by legal precedent no longer applicable to contemporary Australian society

According to the Australian Taxation Office Tax Ruling TR 2011/4<sup>18</sup> sporting organisations are specifically excluded from charitable purpose. TR 2011/4 clause 57 states that “sporting purposes are also not charitable, regardless of motivation or the benefits to the community that can result.” There are ten broader references of ‘Charitable Purpose’ within Part 3 - clause 12(1) of the Charities Act 2013 (Cth) that combine to categorise sporting organisations as ‘Not Recognised’ and thereby excluded from accessing the benefits.

This ruling to specifically exclude sport is based upon the precedent of the 1895 UK Appeals Court case ‘Nottage: Jones and Palmer’<sup>19</sup> that is no longer applicable as it has not kept pace with the expectations of contemporary Australia.

The relevant clauses from TR 2011/4 relating to this issue are listed as follows:

*Clause 54: An institution that simply provides benefits to customers, contributors or subscribers in return for payment lacks the necessary public character.*

### **The purpose is social, recreational or sporting (ref clause 54)**

*Clause 56. A purpose that is social in nature is not charitable, even if motivated by charitable sentiments or results in a benefit to the community.*

*Clause 57. Recreational or sporting purposes are also not charitable, regardless of motivation or the benefits to the community that can result.*

*Clause 58. However, social, recreational or sporting purposes and activities that are merely incidental to a purpose that is charitable do not by themselves prevent that purpose being charitable.*

It is over 120 years since the *Nottage* case and the broader benefits provided by sport, particularly from a preventative health perspective, have been quantified and are now recognised. Community expectations are very different today to those of 1895 England. CAS contends that contrary to TR 2011/4 clause 57 the “motivation or the benefits to the community that can result” are very much valued and demand consideration.

It is also worth noting that as outlined in section 5.1 the United Kingdom Government no longer relies upon the *Nottage* case as the basis for their consideration of sport as the UK Charities Act 2011 now includes Amateur sport as satisfying charitable purpose. The Australian Government is out of step on this point.

## 5.3 Australian Sport’s current access to charitable status and associated taxation benefits

Australian sporting organisations currently have potential access to tax deductibility of donations provided that those donations are made to and through the Australian Sports Foundation (ASF).

Originally established as the Australian Sports Aid Foundation in 1986 the ASF has modernised its operations in recent times.

In order to gain access to the benefits of DGR on donations a sporting organisation must:

- Sign a contract with the Australian Sports Foundation in the form of a Grant Agreement
- Comply with a range of requirements and restrictions outlined within the Grant Agreement document to ensure that donated funds are spent on the purposes for which it was donated.

The Australian Sports Foundation (ASF) system has been recently modernised to facilitate a more streamlined access to donated funds and to provide principally on-line services to assist sporting organisations to implement contemporary fundraising practices.

Since 1 July 2015 ASF is no longer in receipt of Government funding, and so retains 5%-6% of the donations to assist in meeting its operating costs and contributing to service provision. This means that 94-95% of donated monies are now granted out to projects, as opposed to 100% prior to July 2015. According to the ASF 2020-21 Annual Report over \$50.9m was sourced by sport as donations of which \$2.56m was retained by the ASF.

The ASF promotes the fact that donation support through the ASF has increased in recent years and that this is certainly a positive outcome. Currently the ASF is the sole mechanism for processing, approving and receipting DGR donations made to sport. The ASF reports that in 2020-21 around 2,400 'partner organisations' accessed its services representing some 3.7% of the 70,000 community sporting clubs and organisations.

CAS argues that sporting organisations are missing the opportunity for capacity building of their own staff through greater engagement with those who are supporting their sport. Experience in generating meaningful financial support from a donor requires a sport to identify specific positive outcomes that will be achieved from that donation that elicits a strong emotional connection with the donor.

While the ASF currently plays a role in processing donations and providing tax deductibility we believe that this administrative task could be readily undertaken by the recipient sporting organisation and it is indeed useful in fostering their relationships with the donor and communicating the ongoing benefits that the donor's support provides.

CAS respectfully suggests that the Federal Government's original establishment of the Australian Sports Foundation in 1986 demonstrates that it acknowledges that sport provides a charitable benefit to the community. The Federal Government has been providing DGR benefits to sporting causes through the ASF for over 35 years – since 1986.

If the precedent of charitable benefit and value of sporting activity is agreed CAS suggests that each individual sport is best positioned to seek philanthropic support:

- Sports are able to speak with authority about specific benefits and positive outcomes their projects and activities provide.
- Generic promotions about the health, social and community benefits of all sports are unlikely to trigger a meaningful emotional connection with potential donors.
- Sports already have established networks of participants who are their most likely future donors – 68% of ASF donors in the 2019 financial year were participants, former participants or fans.
- The existing on-line tools and resources developed by the ASF should be retained and access provided to sporting organisations wishing to use them.

The ASF now has limited scope to provide access for sporting organisations to access donations from Philanthropic Foundations, Trusts and Donors which operate as Private Ancillary Funds (PAF) and Public Ancillary Funds (PuAF) which are described in section 6.2.

The ASF has achieved interest from only 3.7% of the available client base of sporting organisations after 35 years of operation must be considered a failure. A new approach needs to be taken.

### **Sports Foundations of Individual Sports**

In addition to the Australian Sports Foundation there has been the establishment of Foundations by individual sports to enable their access to some elements of charitable status using an underlying non-sporting charitable purpose.

The Australian Schools Rugby Union Foundation was established over 25 years ago under the ASF structure but more recently major sports have started creating their own Foundations. One example Foundation is the Netball Foundation, an initiative of Netball Australia that commenced operations in 2015. Donations to the Netball Foundation are paid through the Australian Sports Foundation in order to obtain tax deductibility.

The logical extension of this trend is for the larger, better resourced sports to establish Foundations for their own purposes.

It is important to note that the provision of charitable benefits to individual sporting entities and the continued operation of the Australian Sports Foundation are not mutually exclusive. Both provisions would easily co-exist and build greater access, penetration and benefit to the community.

### **5.4 Previous Legal Case assessing charitable status for sporting organisations**

**Bicycle Victoria v Commissioner of Taxation** – 24 June 2011  
(2011 AATA 444, 2011 ATC 10-188, 81 ATR 924)<sup>9</sup>

The Administrative Appeals Tribunal decision handed down by AAT Deputy President S. Forgie in June 2011 makes a number of points that we would like to highlight in support of this submission.

#### ***Issues decided by the Tribunal***

*The Tribunal held that the applicant (Bicycle Victoria) was a charitable institution, as its primary purpose was to benefit the general community by promoting cycling in all its forms for the overall purpose of promoting fitness which is a charitable purpose.*

*The Tribunal also held that the applicant's principal activity was not to promote the prevention or control of diseases in human beings, as its purpose is to promote physical fitness. Accordingly, it was not entitled to be endorsed as a deductible gift recipient or as a health promotion charity under s123D of the FBTA.*

#### ***Tax Office view of Decision***

*The decision that the applicant's primary activity was not to promote the prevention or the control of diseases in human beings confirms the Commissioner's view.*

*The finding of the Tribunal that the applicant had a purpose of promoting cycling in all its forms and an overall purpose of promoting fitness, which is a charitable purpose, was open to the Tribunal on the facts.*

*The ATO will apply the decision to institutions that promote an activity that is sporting or recreational in nature, if the facts indicate that the activity is a means by which a broader charitable purpose is achieved.*

#### ***Administrative Treatment***

*Implications for ATO precedential documents (Public Rulings & Determinations etc)*

*Draft Taxation Ruling TR 2011/D2 was published as a final ruling, Taxation Ruling TR 2011/4.*

*Paragraph 266 of TR 2011/4 provides an explanation of the ATO's view of the decision in Bicycle Victoria . Although a recreational or sporting purpose is not a charitable purpose, an institution that promotes an activity that is sporting or recreational in nature can still be charitable if the activity is simply a means by which a broader charitable purpose is achieved.*

**CAS response:** CAS argues that the Tribunal did not fully recognise the important role that the provision and promotion of physical activity (aspiring to physical fitness) has in delivering important health outcomes to individuals and the community.

The Tribunal held that the applicant's "principal activity was not to promote the prevention or control of diseases in human beings, **as its purpose is to promote physical fitness.**"

Further CAS disagrees with the Tribunal finding that the provision physical activity was not for public benefit as it is 'one step removed'. CAS contends strongly that the benefits are provided directly to individuals through the activities of their sporting organisation and that they consequently provide 'direct relief' and make a direct and immediate contribution to the public benefit.

As stated earlier in this submission it is the **promotion and provision** of Moderate and Vigorous Physical Activity (MVPA) by sporting organisations, coupled with the other 'benefits of community sport' described earlier that directly targets the health burden of Physical Inactivity. As mentioned earlier it is Physical Inactivity that leads to the massive health burden created by obesity, overweight with the consequent physical and mental illnesses and conditions.

It is the work of Sporting organisations, particularly community clubs that provides the direct relief from the current and future health burden of physical inactivity.

## 5.5 Anomalies of the current charitable system

Whilst the criteria for registration under the ACNC Register of Charities is well explained and the four key criteria are certainly highlighted there appears to be a lack of clarity and consistency in the application of charitable status.

CAS is in no way being critical or questioning of the charitable status of the following organisations and does not question the value of the services they provide. We merely include these organisations as examples to highlight the point that there appears to be broad discretion in approving charitable status and that there are a wide range of methods to achieving valuable charitable outcomes.

CAS suggests that the following examples lend weight to our assertion that the current system provides for organisations like Sporting Clubs to convey their public benefit in the way that they do.

### **Example 1: Warehouse Circus - achieving health outcomes via circus performance**

(Reference: [www.warehousecircus.org.au](http://www.warehousecircus.org.au))

*Warehouse Circus is a not-for-profit organisation dedicated to improving the mental and physical health of young people through the medium of social circus.*

*Warehouse Circus has been providing social circus classes in Canberra since 1990. We have a host of programs including core circus programs for beginner, intermediate and advanced performers, adult classes, school holiday programs, and workshops and performances for community festivals and other events.*

*We foster a co-operative environment rather than a competitive one, and aim to give everyone an opportunity to learn fun skills they can show off with. You will be amazed at what you can learn!*

Warehouse Circus advertises being able to accept tax deductible donations on its website.

### **Example 2: Surf Life Saving Australia - separating Professional from Amateur Sport**

(Reference: [www.sls.com.au](http://www.sls.com.au) )

*As a movement we save life, protect life, promote life and believe in the great Australian way of life. Surf Life Saving creates a safe environment on and off our beaches, through lifesaving patrols, training programs and education.*

*What we do best is saving lives. Our volunteer surf lifesavers, paid lifeguards and rescue services perform more than 15,000 rescues each year around Australia's coastline.*

*We promote leadership and personal development for our members. We offer mateship, training, education and experience. We are an active part of local Australian communities.*

*But Surf Life Saving does much more than save lives on our beaches. We reach out to all Australians through our community programs, education and training.*

Surf Life Saving Australia is arguably one of Australia's leading public benevolent institutions and is a highly recognisable and highly respected community organisation.

CAS notes that SLSA has been successful in separating what appears to be professional sporting aspects of the 'Nutri-Grain Iron Man Series' from the community service elements of surf rescue, beach patrolling; surf life saving and first aid training.

CAS understands that the professional Iron Man/Surf Lifesaving competition is not treated as a charitable element within the SLSA financial structure but the community service elements are quite rightly treated as charitable purposes.

We make this point to illustrate that some Sporting organisations that we seek to have included by this submission may also have aspects of their operations (like SLSA) that would not be covered by the charitable status and would be treated separately within the Sport's accounting structure.

## **5.6 Socio-economic disadvantage affecting sports participation**

Sport at community level is facing increasing challenges to its financial viability and future sustainability. Sport is experiencing financial challenges from increasing costs of facilities and equipment, reducing levels of sponsorship and government funding and in greater pressures on volunteers who are becoming increasingly time poor.

CAS is also concerned that affordability to play sport is negatively impacting on participation rates, particularly that of children. Many individuals and families struggle to pay for sport participation. Estimates for sport participation for children range from \$1,000-\$5,000 per year taking into account club fees, coaching and officiating fees, travel, equipment and competition fees.

The ABS *Information Paper: An Introduction to Socio-Economic Indexes for Areas (SEIFA)*<sup>16</sup> identifies a relationship between the rate of participation in sport and physical recreation and the level of socio-economic disadvantage, with the participation rate increasing with each successive quintile in the index. Of those in the lowest quintile of the index, 63% of people participated in sport or physical recreation activity, while 84% of those in the highest quintile participated.

In addition, the proportion of participants in the highest quintile of the index of relative socio-economic disadvantage (26%) is nearly twice that of those in the lowest quintile (15%).

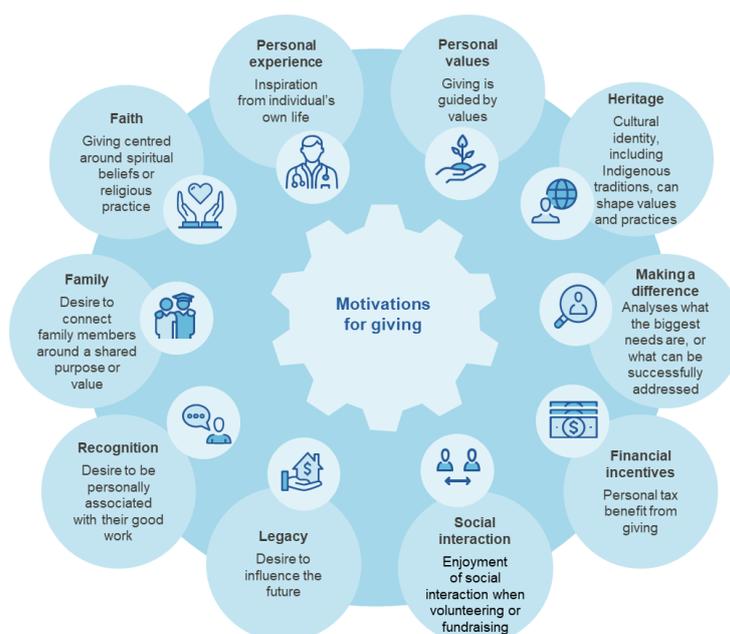
By generating additional revenue and cost savings through charitable status it will assist community sporting organisations to deliver their important services in an increasingly difficult economic environment.

***No child should miss out on playing sport because their parents cannot afford the cost of participation.***

## 5.7 Trends and motivations for giving

CAS acknowledges the following information presented by the Productivity Commission webinar of 18 April 2023 which presented the graphic below as Figure 1: Motivations for Giving.

As shown in the Productivity Commission's graphic there are indeed many reasons why individuals donate to a cause they feel moved to support. The potential for a financial incentive through DGR is only one reason of many. When considering the highly social and passionate interaction that is central to involvement in sport we argue that this presents a great opportunity to encourage philanthropic giving and should be supported.



## 5.8 Feedback from leaders within Australia's sporting industry

Canvassing the opinion of leaders from Australia's National Sporting Organisations clearly demonstrates strong support for this proposal. Of the 30 CEOs and executive managers interviewed in early 2019 all 30 (100%) were in favour of the community sport being able to directly access DGR status.

Providing DGR status to community level and club sport will raise the status of sport in the minds of the public equivalent to those of other charitable and social service organisations that already receive DGR status.

“This would arguably be the most important, visible and significant demonstration of Government support for community sport in over 30 years,” commented one CEO.

The measures would also remove the anomalies within some Disability Sports where some sub-groups within the organisation are currently able to access charitable benefits while others within the same organisation are not.

Many of the respondents commented that while the measures would be beneficial to their sport specifically it would greatly benefit all those involved in community sport more broadly.

The following comments are indicative of the sentiment of the broader group:

“The public will be glad that the contribution they make to sporting organisations will finally be recognised as being valuable.”

“Regional and rural communities would consider this as a big vote of support – sport is the lifeblood of many country towns and any support and incentive would be warmly welcomed.”

“The proposed measures would sit comfortably alongside the Australian Sports Foundation to provide greater reach and scope to generate support from local communities.”

“Government funding for sport is viewed by some of the public as a ‘hand-out’ towards winning gold medals at the Olympics – this measure will demonstrate that Government recognises and values the contribution of Australian sport – for the health, social and economic benefits it provides to our broader community.’

## 6. WHAT ADVANTAGES IS SPORT MISSING OUT ON BY NOT BEING A CHARITY?

Community Sporting clubs and associations are currently unable to effectively access a number of potential sources of funding that would greatly assist in the delivery of their important work.

In a highly competitive ‘fundraising’ environment potential donors are weighing their options of which organisations and causes they will support. In a situation where a donation to one cause will derive a DGR return versus a donation to another cause without DGR in many cases the DGR benefit will be the deciding factor.

The Australian Charities Report 2020 estimated that 14.9 million Australian adults (81% of the population) gave \$12.7 billion to charities and not-for-profits organisations in 2019-20.

If eligible sporting organisations had Deductible Gift Recipient status it would facilitate greater potential access to donations from the following sources.

### 6.1 Maximising support from local supporters and businesses

A major source of potential donation support for sporting clubs is from their own local communities and existing fan-base. Sporting clubs are able to communicate and connect with their local communities and supporters through a range of communication channels, existing networks and established relationships.

Sports are able to speak with authority about specific benefits the proposed projects provide and their local communities will have a greater understanding, awareness and appreciation for the proposed use of their financial support. The substantial use of social media is assisting sporting organisations with promotion of their activities.

These elements should combine to maximise the potential for successful donor acquisition and will maximise the cost effectiveness of the fundraising efforts.

Sports currently have established networks of participants who are their most likely donors – the Australian Sports Foundation reports that 68% of ASF donors in the 2019 financial year were participants, former participants or fans.

By providing DGR status to sporting clubs there is a much greater potential for successful fundraising for local projects and for building even greater connections to local communities.

### 6.2 Accessing funding from Philanthropic Foundations, Trusts and Donors

Not-for-profit status is not sufficient for organisations to successfully apply for funds from Philanthropic Foundations, Trusts and Donors. To be considered for funding from many philanthropic institutions grant seeking organisations must have DGR status and a recognised charitable purpose.

(Extract from St George Foundation website) *“To be eligible for funding your organisation will be endorsed as a deductible gift recipient (but not another ancillary fund). Deductible Gift Recipients must be listed with the Australian Taxation Office under Item 1 of the Table in Section 30 - 15 of the Income Tax Assessment Act, 1936.”*

The Giving Australia Report 2016 reported that there are around 5,000 philanthropic organisations in Australia, giving more than \$850 million per year. This includes almost 3,000 Private Ancillary Funds (PAF) and Public Ancillary Funds (PuAF), and nearly 2,000 charitable trusts and foundations

administered by trustee companies.

In 2018-19, donations, bequests and legacies from households in Australia amounted to approximately \$4 billion, based on Australian Bureau of Statistics data.

The total of nearly \$5 billion per year in philanthropic funds is a substantial pool of resources that Australia's community sporting organisations are currently excluded from accessing.

If Australia's community sporting clubs could attract just 1.0% of these grants, donations, legacies and bequests it would result in a very helpful \$45-50 million being injected into community sporting organisations each year.

## 7. FINANCIAL IMPACTS OF THIS PROPOSAL ON TAXATION REVENUE

While it is difficult to precisely calculate the financial impact of Charitable Status for sporting organisations on Australian Government Taxation Revenue a range of scenarios and potential outcomes can be proposed for consideration.

As outlined in section 4.2 this submission proposes that eligible sporting organisations be approved for status as **Health Promotion Charities**. As an approved Health Promotion Charity an organisation has access to the following two taxation benefits:

- Deductible Gift Recipient (DGR) Status
- Fringe Benefits Taxation (FBT) Exemption.

As explained earlier according to the Australian Sports Commission data it is estimated that there are over 70,000 sporting organisations and clubs in Australia. It is unlikely that this total number would be eligible to access Charitable status under this proposal.

Australian sport comprises approximately:

- 90 National Sporting Organisations
- 700 State/Territory Sporting Organisations
- 50,000+ Community based Sporting Clubs and organisations

For the sake of the following calculations let us use 50,000 as the total number of potentially eligible entities that may access Charitable status.

The number of Sporting Organisations (SO's) that would ultimately access Charitable status would be much, much lower than 50,000 for a variety of reasons. Some are not eligible based on the definition of professional versus 'community' activity and many are just too small from a financial and personnel perspective to undertake the requirements for access and compliance.

### 7.1 Estimated Impact from Deductible Gift Recipient (DGR) Status

The Scenarios used to illustrate potential access show an uptake of 30% of total SO's (6,000 SO's); 50% (10,000 SO's) and 70% (14,000 SO's) of the total.

The full table of calculations for Deductible Gift Recipient deductions on donations is shown in Appendix A - Table A.

The level of donations as an average per Sporting Organisation is also difficult to estimate. The financial and human resource capacity of SO's varies widely from multi-million dollar turnover to turnover in the low thousands. Once again a range of annual donation levels is shown between \$2,000 in donations per SO per year; 5,000 per SO and 10,000 per SO.

Calculating the Marginal Taxation rate paid by donors is also open to debate. 30 cents in the dollar has been selected as a mid-range estimate for the calculations.

#### Calculation Range – DGR impact on Taxation Revenue:

Summary of calculations for Taxation Revenue Foregone from DGR donations:

Estimate	Scenario Parameters (Sporting organisations x average donation)	Total Donations estimate \$m	Taxation Revenue Foregone \$m
Low range	6,000 SO's with average \$5,000 in donations	\$30.0 m	\$9.0m
High range	14,000 SO's with average \$10,000 in donations received	\$140.0 m	\$42.0m
<b>Best estimate</b>	<b>10,000 SO's with average \$10,000 in donations</b>	<b>\$100.0 m</b>	<b>\$30.0m</b>

#### Best Estimate: \$30 million Taxation Revenue Foregone

(Scenario – 10,000 SO's with average \$10,000 donations for total \$100m donations)

If \$100,000 in donations was achieved by Sporting Organisations it would have a significant impact on their organisational sustainability and the ability to deliver their services to their local community.

## 7.2 Estimated Impact from Fringe Benefits Tax (FBT) Exemption Status

While FBT Exemption is an important benefit for the sector it is suggested that relatively few Sporting Organisations will be able to take advantage of it in any meaningful way. Relatively few community sporting clubs employ staff as the majority are administered and managed by volunteers or are part of Registered Licensed Clubs being outside the scope of this proposal.

Salary levels in Sporting Organisations are typically lower than paid in other industries and the ability for Sporting Organisations to either pay closer to market rates or reduce their salary costs will have a major benefit. By providing FBT benefits Sporting Organisations will potentially have the ability to attract higher quality employees or to reduce their salary budget.

The full table of calculations for Fringe Benefits Tax exemption on employee salaries is shown in Appendix A - Table B.

Fringe Benefits Tax exemption provides a maximum benefit of approximately \$15,000 cash-in-hand to the employee being \$30,000 grossed up benefits as per the FBT legislation. This means that an employee earning \$72,000 or more as an annual salary can receive the maximum \$15,000 benefit with a sliding scale of benefit down to zero at \$18,200 salary under the 2019-20 PAYG Tax scale.

For the purpose of the calculations it is proposed that 20% of employees in an eligible Sporting Organisation would be paid \$72,000 or more (with consequent \$15,000 tax benefit) while 80% would receive an average of half the maximum benefit being \$7,500 – achievable at \$49,100 taxable salary.

The Scenarios shown in the appendix uses calculations for 100, 300, 500, 700 and 1,000 Sporting Organisations and contrasts with an average of 3 employees and 5 employees per organisation who may potentially access FBT exemption benefits.

#### Calculation Range – FBT impact on Taxation Revenue:

Summary of calculations for Taxation Revenue Foregone from FBT Exemptions:

Estimate	Scenario Parameters (Sporting organisations x average no of employees)	Total Employees benefitting	Taxation Revenue Foregone \$m
Low range	300 SO's with average 3 employees	900	\$8.1m
High range	700 SO's with average 5 employees	3,500	\$31.5m
<b>Best estimate</b>	<b>500 SO's with average 3 employees</b>	<b>1,500</b>	<b>\$13.5m</b>

**Best Estimate: \$13.5 million Taxation Revenue Foregone from FBT exemption**  
(Scenario – 500 Sporting Organisations with average 3 employees)

### 7.3 Combined Impact of DGR and FBT Benefits on Taxation Revenue Foregone

The estimated likely financial impact of providing both DGR and FBT benefits to Sporting Organisations under Health Promotion Charity provisions is **\$43.5 million** per year.

Taxation Benefit	Tax Revenue Foregone \$m
Deductible Gift Recipient (DGR)	\$30.0m
Fringe Benefits Tax (FBT) exemption	\$13.5m
	<b>\$43.5m</b>

Australian Government 2015, Tax Expenditures Statement 2014, suggested that in 2017-18 the Australian Government would forego \$545m in FBT related exemptions<sup>17</sup>. The proposed \$13.5m for Sporting Organisations as FBT exemptions in this submission would increase the taxation revenue foregone from FBT by the Australian Government by 2.48%.

The projected revenue foregone from DGR donations across all Australian Public Benevolent Institutions was \$1.2b in 2017-18<sup>17</sup>. The estimated \$30m for DGR from Sporting Organisations would represent 0.4% of the total foregone gift deductible revenue.

In the total picture of ATO revenue the figure of \$43.5m potential revenue foregone is a very modest one and that would allow for community benefits many times the expense.

#### 7.4 Case Studies: Estimated access of Charitable Tax benefit within selected National Sporting Organisations

The following table shows the estimated access to charitable taxation benefits within selected Large, Medium and Small National Sporting Organisations. The examples are taken from actual NSOs with strong community club structures within the following Participation categories: Large (greater than 300,000 participants); Medium (75,000-300,000 participants) and Small (fewer than 75,000 participants). The categories are based on participation figures across the selected organisations nationally and do not reflect financial or other status in any way.

##### Estimate of access to Charitable Tax benefit within categories of National Sporting Organisations

Sport Category	Potentially compliant entities within the National Sporting Organisation		Participants within the NSO	Employees potentially accessing FBT benefits
	Associations (Nat/State/Reg)	Clubs		
<b>Sport A</b> Large – Professional + community (>300,000 participants)	10	1,300	700,000	300
<b>Sport B</b> Medium – mostly community level (75,000-300,000 participants)	9	931	92,965	92
<b>Sport C</b> Smaller – mostly community level (<75,000 participants)	9	228	12,000	10

## 8. CONCLUSION

The information provided in this submission demonstrates how and why Australian Sporting Organisations should be considered as meeting the current requirements for charitable status as Health Promotion Charities under the required Charities Acts.

The submission has explained how Sporting Organisations meet the four Tests for compliance with the Charities Acts and how these organisations representing 4.9 million Australians are currently being disadvantaged by being unable to benefit from access to DGR or FBT benefits. The current Not-for-Profit status is not sufficient for sport to access DGR or FBT benefits and it also excludes sport from potentially accessing significant categories of Philanthropic funds.

This submission seeks to convince the Australian Government to put in place steps to allow Australian Sporting Organisations that meet the requirements as specified in the relevant Acts to access Charitable status and the commensurate benefits. The desired outcome is to access both Deductible Gift Recipient (DGR) status and Fringe Benefits Tax (FBT) exemption that may require amendments to the Fringe Benefits Tax Assessment Act 1986, the Charities Act 2013 (Cth) and Australian Taxation Office Tax Ruling TR 2011/4.

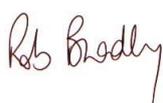
The following table suggests that Australia's Sporting Organisations may be missing out on over \$150m per year in charitable support.

Financial Benefit to Sport	Estimated potential beneficiaries	Potential Revenue \$m per year
Direct Donations offering DGR benefits	Up to 10,000 SO's generating \$100m in donations	\$100.0m
Cost savings from FBT exemption	Up to 500 SO's and 1,500 employee access to FBT benefits	\$13.5m
Access to Philanthropic Foundations, Trust and donors	Up to 10,000 SO' access 1% of Philanthropic funds	\$45.0m
<b>Total</b>		<b>\$158.5m</b>

We hope that the Productivity Commission will be convinced of the important and substantial contribution that sport makes to the public good and agrees that by bestowing access the benefits of charitable status the community will be further enhanced. We request that a recommendation be made to include eligible Sporting Organisations under the provisions of Health Promotion charities.

### Contact:

We have pleasure in submitting this proposal for consideration and we are available to answer any questions and provide additional information on request.



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## Appendix A: Financial impact of Sport Charitable Status on Taxation Revenue

### Scenarios of possible impact for consideration

#### Assumptions:

- 1 Number of eligible community sporting organisations and clubs (estimate) = 20,000
- 2 As Health Promotion Charities eligible Sporting Organisations will have the opportunity of:
  - A. Deductible Gift Recipient (DGR) status
  - B. Fringe Benefits Tax (FBT) Exemption status
- 3 Not all community sporting clubs will be eligible for Charitable Status or will necessarily take up the opportunity

#### A. Scenarios for Deductible Gift Recipient Status - Donations made that are claimed as Tax Deductions

##### Tax Revenue Foregone by Australian Taxation Office per year

	Scenario Name	Sporting Organisations/Clubs eligible and take up offer		Donation Average	Total Donations	Tax Deduction	Tax Revenue Foregone	Submission Estimate
		(SO's/Donation)	% take up	No. of SO's	Ave total \$ donations per SO	\$	Marginal Tax est 30.0c	\$
1	30% / \$2,000	30%	6,000	\$2,000	\$12,000,000	0.3	\$3,600,000	
2	30% / \$5,000	30%	6,000	\$5,000	\$30,000,000	0.3	\$9,000,000	Low est
3	30% / \$10,000	30%	6,000	\$10,000	\$60,000,000	0.3	\$18,000,000	
4	50% / \$2,000	50%	10,000	\$2,000	\$20,000,000	0.3	\$6,000,000	
5	50% / \$5,000	50%	10,000	\$5,000	\$50,000,000	0.3	\$15,000,000	
6	50% / \$10,000	50%	10,000	\$10,000	\$100,000,000	0.3	\$30,000,000	Best est
7	70% / \$2,000	70%	14,000	\$2,000	\$28,000,000	0.3	\$8,400,000	
8	70% / \$5,000	70%	14,000	\$5,000	\$70,000,000	0.3	\$21,000,000	
9	70% / \$10,000	70%	14,000	\$10,000	\$140,000,000	0.3	\$42,000,000	High est

**B. Scenarios for Fringe Benefits Tax Exemption Status -  
Tax Revenue Foregone by Australian Taxation Office per year**

**Assumptions:**

- 1 Only a relatively small number of eligible organisations will employ staff at sufficient salary levels to benefit from FBT exemption
- 2 FBT deductions shown below as 100% and 50% of maximum benefit available (\$30,000 grossed up) which equals approx \$15,000 or \$7,500 cash-in-hand to employee.

	Scenario Name (SO's / Employees)	Sporting Orgs/Club eligible and using FBT exemption	Ave No of employees for FBT exemption	Total Employees	Ratio of employees with maximum:partial FBT deduction	Cost of max FBT Deduction @ \$15,000 per employee	Cost of partial FBT Deduction @ \$7,500 per employee	Tax Revenue Foregone	Submission Estimate
1	100 SO's/ 3 Employee	100	3	300	20:80	\$ 900,000	\$ 1,800,000	\$ 2,700,000	
2	100 SO's/ 5 Employ	100	5	500	20:80	\$ 1,500,000	\$ 3,000,000	\$ 4,500,000	
3	300 SO's/ 3 Employ	300	3	900	20:80	\$ 2,700,000	\$ 5,400,000	\$ 8,100,000	Low est
4	300 SO's/ 5 Employ	300	5	1,500	20:80	\$ 4,500,000	\$ 9,000,000	\$ 13,500,000	
5	500 SO's/ 3 Employ	500	3	1,500	20:80	\$ 4,500,000	\$ 9,000,000	\$ 13,500,000	Best est
6	500 SO's/ 5 Employ	500	5	2,500	20:80	\$ 7,500,000	\$ 15,000,000	\$ 22,500,000	
7	700 SO's / 3 Employ	700	3	2,100	20:80	\$ 6,300,000	\$ 12,600,000	\$ 18,900,000	
8	700 SO's / 5 Employ	700	5	3,500	20:80	\$ 10,500,000	\$ 21,000,000	\$ 31,500,000	High est
9	1,000 SO's/ 3 Employ	1,000	3	3,000	20:80	\$ 9,000,000	\$ 18,000,000	\$ 27,000,000	
10	1,000 SO's/ 5 Employ	1,000	5	5,000	20:80	\$ 15,000,000	\$ 30,000,000	\$ 45,000,000	

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