

Workplace Giving Australia Pre-Budget Submission Australian Government Treasury

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Introduction

This submission makes recommendations on three key areas which Workplace Giving Australia believes will benefit the community, workforces and businesses in Australia and their support for charitable endeavours. In selecting and preparing these recommendations, Workplace Giving Australia has considered the views of its Network members, charities and clients.

Workplace Giving Australia would welcome further engagement from the Federal Government on the development of the charitable sector, particularly as it seeks to promote and encourage the involvement of workforces and employers across Australia.

With over 13.8 million Australians in the workforce, almost 45,000 large and medium corporations, over 2 million small businesses, and a large number of Not-for-Profit and Government employers, the opportunities are significant. In creating community, reinforcing the help given to others and in increasing the funding for charities, the combined strength of the workers within their place of employment is meaningful. Assembling people together in their natural communities, including through work, is an effective means to drive volunteering, combat loneliness and isolation, re-spark community caring and optimise charitable giving. It is also a tool that promotes productivity and social resilience.

Summary of Recommendations

- 1. Amend Section 324 of the Fair Work Act** – allow for an opt-out workplace giving program with a payroll giving (Give as You Earn) component to encourage higher participation rates of corporate giving.
- 2. Fund the charitable sector to develop industry-wide standards and protocols for data and information collection and the creation of a central information hub** – harmonise the way in which information and data is collected, organised and shared within the charitable sector (for elements outside the Australian Charities and Not-for-profit Commission (ACNC) remit).
- 3. Reinstate a corporations and markets advisory committee to advise on corporate involvement in community and philanthropy** – the committee would provide guidance and clarification on Corporate Australia's governance, responsibilities, and reporting requirements, thereby enabling companies to engage with charitable causes.

These recommendations are outlined in further detail below.

Workplace Giving Australia

Workplace Giving Australia is a not-for-profit organisation that promotes and develops workplace giving in Australia. Workplace giving is all forms of giving that involves the place of work. This can be through volunteering, the use of foundations, corporate grants and grant application processes, payroll giving (also known as Give as You Earn), corporate giving, corporate matching, and share giving.

Our purpose is to make giving part of everyday life in Australia. We believe that as 75-80%¹ of workers are engaged in charitable giving, it is important that they are allowed and encouraged to bring this part of themselves to their place of work. We also believe that it is incumbent on Corporate Australia to bolster the workers' efforts in positive and proactive ways as they support their chosen charities and causes.

This is achieved through:

- Promoting and informing others on the benefits of workplace giving in all its forms
- Developing best-case stories, practices and insights shared via a public library and a network of employees, employers and charities
- Undertaking primary and secondary research to identify and articulate impactful ways for the Australian workforce, employers and charities to work together
- Developing technologies and services that better enable workplace giving, including through sector efficiencies
- Advising workforce groups, corporate leaders and charities on how to work together for greater impact
- Promoting change to enable workplace giving and remove barriers (including policy and sector reform).

Workplace Giving Australia also provides services to workforces, corporate and charity clients, including payroll giving services through the Good2Give platform, information services through the Giving Guide application, grant services through bespoke corporate grant applications, and share or dividend giving through ShareGift Australia.

Three Key Recommendation Areas

1. Changes to Section 324 of the Fair Work Act – Employee Authorised Deductions

Despite recent changes to the Fair Work Act and previous submissions from a number of organisations within the philanthropic community (including Workplace Giving Australia), there has been no change to enable or further enhance giving. The changes have been driven by and structured for other purposes.

Of note is the ongoing call for an amendment (or clarifying addition) to Section 324. While s.324 was clearly not aimed at preventing workplace giving, risk-averse corporates and their advisors

¹ CAF UK Global Giving 2022 (65% all Australians), McCrindle Research Report 2023 (80% all Australians), Workplace Giving Australia analysis.



are nervous about introducing opt-out based programmes for fear of offending against the section. While there is a simple solution available, the changes are yet to be considered despite the benefits to the workers and the causes they support.

Section 324 was amended in 2023 but did not address the issues raised or the recommendations previously provided, specifically concerning the impact of Section 324(1)(a) on workers who want to implement an opt-out workplace giving program with a payroll giving (Give as You Earn) component.

For context, the most successful workplace giving programs have a strong underpinning of expectations that permeates the organisation. For these successful programs, the use of opt-out payroll giving a valuable tool and routinely drives higher participation of the workers, enabling them to fulfil their desire to help the cause. This is true whether the program is designed and implemented directly with the employer company or if it is designed and implemented by the workforce and pushed into the company (such as union designed and led programs).

The impact of an opt-out inclusion is more beneficial to the workers, the charities supported, and the businesses administering them.²

However, in discussions with corporates that would otherwise want to support their workforce, the implications of the current Fair Work Act provisions act as a barrier. Legal and risk considerations to the employer, hinged on a strict interpretation of s.324 of the Fair Work Act, have hindered the use of opt-out programs.

Relevantly, the section provides that a deduction from an employee's wages is lawful only if:

- the deduction is authorised in writing; and
- the deduction is "principally for the employee's benefit".

Both elements of section 324 raise questions.

First, what is written authorisation – are there any formal requirements, or does there only need to be a record that demonstrates the employee's assent? There are many ways an employee might authorise a deduction – sending an email, signing a form, or agreeing to it in an employment contract or letter of employment. It is less clear that an agreement to a deduction up front, but with a right to withdraw their authorisation at any time, can provide an ongoing authority. This arrangement might be described as an authorisation, in the sense of the section, and always subject to a right of veto by the employee.

Second, when does the deduction involve a benefit to the employee when the deduction will be paid to a source other than the employee? A salary sacrifice deduction is clearly for the employee's benefit, given it will typically be structured to minimise tax by taking a non-cash benefit. Similarly, a deduction of a necessary payment, such as mortgage payments, is easily justifiable as being for the employee's benefit. What is less clear, on a literal reading of the section, is that a charitable donation is for the employee's benefit. The benefit to an employee is both philanthropic and economic to the extent of the income tax deduction. Yet it is inconceivable that the section would be taken to prevent an employee expressly authorising a deduction to a charity of their choice.

² Other examples of the effectiveness of Opt-out is known from the organ transplant arena.



We believe the two elements in the section cannot be read in isolation. In other words, the more clearly the employee's authorisation, the more easily the section will accept that the payment is for the employee's benefit. But this lacks certainty.

The lack of certainty is a deterrent to employers embracing deductions for charitable purposes, even if the employee always retains the right to withdraw their authorisation at any time.

While there are sound policy objectives behind the section, there is a countervailing policy consideration which balances the importance of charitable donations and maintains the policy objective of section 324.³

We support a further review of section 324, in light of this concern, to permit workplace giving not only when an employee authorises the deduction in writing but also when the employee has been advised in writing of the proposed deduction and does not provide the employer with a contrary direction after the employer gives the employee a reasonable opportunity to do so.

Of course, whichever way the authorisation is given, the worker always has the right to withdraw it, from which time deductions for charitable purposes would immediately cease.

This may be achieved through clarifying the Fair Work Act 2009 (Cth), as follows:

Section 323

Insert the words "and section 324A" after "324" in Section 323(1)(a)

New section 324A

Insert the following section as a new Section 324A:

"Payroll giving"

- (1) Deductions for the purposes of donations within the class of cases referred to in Legislative Instruments F2016L01641 or F2014L00012, as replaced from time to time are taken to satisfy subsection 324(1) if they are made in accordance with one of the requirements of subsection 324A(2).
- (2) For the purposes of subsection 324A(1), the requirements are:
 - a. the employee authorises the deduction in writing; or
 - b. the employee has been advised in writing by the employer of the proposed deduction and does not provide the employer with a contrary direction after the employer gives the employee a reasonable opportunity to do so.

Practically, this might be supported by a process of written confirmation to employees on a periodic basis, which:

- confirms the standing payroll deduction; and

³ Historically, the effective immediate tax deductibility of regular payroll giving contributions originally became permissible under a 2 July 2002 ruling of the Australian Taxation Office (ATO) set out in the Commonwealth of Australia Gazette S.251 (Regular Payroll Giving Instrument). This has been superseded by various legislative instruments (which remained substantively the same as the original ruling), the most recent of which is F2016L01641. The Regular Payroll Giving Instrument stated that, for the purpose of working out how much a payer (employer) is required to withhold under the PAYG tax withholding schedules, the payer may disregard so much of a withholding payment paid by the payer to a Deductible Gift Recipient (DGR) at the direction of the payee.

The Regular Payroll Giving Instrument related only to 'regular planned giving arrangements'. In 2009, the Government extended the scope of the taxation withholding benefit to 'occasional giving arrangements' (such as one-off donations by employees following a natural disaster). The initial Legislative Instrument permitting this was F2009L01143 (18 March 2009) (Occasional Payroll Giving Instrument). (The most recent version of this is F2014L00012).



- reiterates the employee’s right to withdraw their authorisation at any time.

An amendment to section 324, clarifying these matters so as not to discourage charitable donations seems to us both possible and viable, without prejudicing the underlying purpose of the section.

The recent changes to section 324 enable multiple or ongoing deductions to be authorised by an employee, including to allow for the amounts to vary, rather than the employee having to provide a new written authority on each occasion. An example of an issue which is clearly addressed by these changes is deductions for union membership fees. Until the recent amendments it is likely an employer required a fresh written authorisation each time the amount of the deduction needed to change in line with an increase in the union fees. These amendments now permit ‘blanket’ deductions where the dollar amount of the deduction may vary over time.

The amendments do not otherwise change the position under s324(1)(a) in that (amongst other things), the deduction must still be principally for the employee’s benefit. It is a further requirement that the deduction must not be directly or indirectly for the benefit of the employer, or a party related to the employer (unless reasonable in the circumstances). This is expressed clearly in the guidance material published by the Department.

Finally, we would suggest that if there was still disquiet that these amendments might unduly favour the employer, or disadvantage employees, in minimum wage positions, this might be worded such that it only take affect for workers with over a base income level (for example). This would be in line with the differentiation principles applied, for example, in the draft sustainability reporting legislation released on 12 January 2024 by Treasury.⁴

2. Fund the development of standards and protocols for data and information across the charitable sector (and enable the creation of a central information hub)

There is an ongoing need to create and harmonise the way in which information and data is collected, organised and shared within the charitable sector. While this is in part achieved through the ACNC, the sector should be responsible for elements outside the proper ACNC remit.

An industry aligned hub providing information gathered from Government sources (ACNC, ATO, ASIC) and from the sector (charities, community groups) in a single, consistent format to drive simplicity would increase the impact of the not-for-profit sector and reduce wastage making more available to the causes supported.

The nature of information sought on charities by donors and by others, including Private Ancillary Funds, corporations, and corporate foundations, is varied. While the ACNC records information in line with its remit, other forms of information are either held elsewhere (such as with ASIC, individual charity websites or with third party agencies including financial institutions).

⁴ Treasury Laws Amendment Bill 2023: Climate-related financial disclosure – exposure draft



It would be inappropriate to expect the ACNC or other Government agencies to collect the broader information needed.

In addition, there is a lack of protocols and standards aimed at reducing the complexities in obtaining and using information on the charity and not-for-profit sector. While in profit-based industries, this is often addressed by market forces, within the charity sector these dynamics are less sharp, and progress is slow.

The impact of the dissipated information and the lack of standards is additional cost and complexity. Charities, for example, must deal with individual donors, corporates and with third party aggregators on a 1 to 1 basis. For larger charities, this can lead to hundreds of enquiries all requiring individual attention.

The information is required for each charity and by each corporation and each donor (and extend this to the PAFs and PuAFs). The waste and work is considerable. None of this adds value to the charitable cause.

Case Study 1: An example of the Corporate Experience

For a corporate financial institution to support its workforce and combine forces to donate time and/or money to charities there is information and verification to meet its obligations.

First, the worker or worker group will look to agree an appropriate charity. While this is best done through a workforce led polling, the company will most usually seek to align at least some of the charitable causes to its strategic goals. This selection process requires insight into the charities to enable a rating and selection which can then be actioned with the workforce.⁵ This insight will require research into the different charities to enable some judgement to be applied on whether to include them or not. This is likely to include information on:

- *cause area and purpose*
- *philosophy and approach*
- *geography*
- *impact on the cause area*
- *partnering opportunities (including for volunteering)*
- *ability to provide corporate wide information (for example, reporting to the corporate and its workforce on their contribution of the impact of the charity)*

Once a shortlist is created (usually between 50-80 charities) the financial institution must examine each charity to ensure that it legitimate, has an acceptable risk profile and does not contravene any of its risk aspects. This will include looking additional information including:

- *identification of current Directors and responsible people (and perhaps founders)*
- *interest or involvement of each Director and each responsible person beyond that charity to ensure within risk parameters*

⁵ In most circumstances a closed or hybrid program is implemented to avoid risk which would be included in an open program.



- *use of funds (including where they are redirected to overseas locations)*
- *identify if any involvement in prohibited areas, (for example dealings with children or in political campaigning).*

Having been 'cleared' through this process, the inclusion or not of the charity is then voted on by the workforce. This would ideally lead to the selection of a finite number of partner charities (usually between 5-20 but on occasion up to 200).

Once selected, there is then the ongoing need to ensure that the charity information remains current and that transactions can be completed (this is an ongoing demand).

This information includes:

- *bank details (these can be for the overall charity or for specific ongoing or one-off appeals)*
- *changes to directors and responsible people*
- *updates on impact*
- *changes to use of funds*
- *reporting (periodic) from the charity to the corporate on:*
 - *the funds raised (donations and matching)*
 - *the impact contribution for that corporation (to enable it to communicate and report to its people and to external stakeholders).*

On the other side of the coin, the charities are required to engage with the company and its people as they undertake this work.

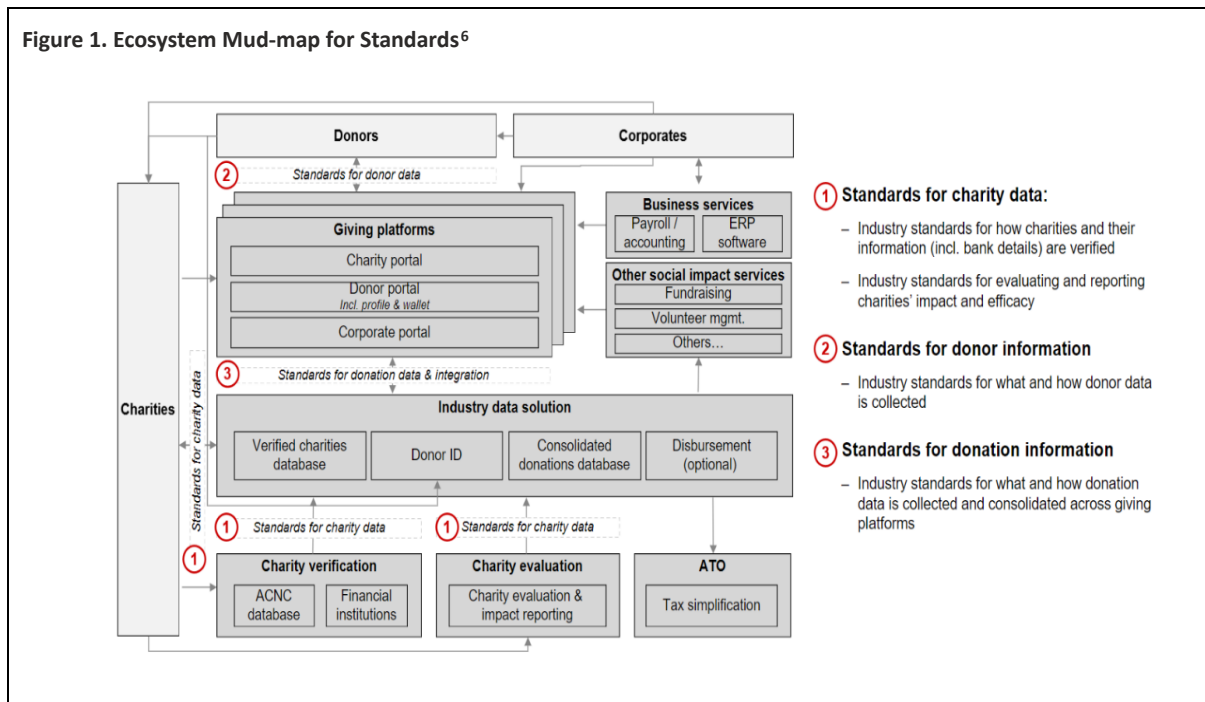
It would not be appropriate for all information required to be harvested and be made available by the ACNC or ASIC as Government bodies. Rather, it should be industry that creates a centralised set of standards and an information hub that enables a simple solution available to all, enabled by access to appropriate ACNC, ASIC and other information. The Giving Guide (<https://gg.org.au>) is an example of the way data can be converted to information to alleviate the costs and complexity involved. The Giving Guide is a digital tool that Workplace Giving Australia has invested in and will continue to develop for the benefit of the sector.

Going forward, the base information currently collected will be added to in an attempt to simplify the processes and to reduce costs to charities and the ecosystem that supports them. This will, for example, capture impact data (self-reported by the charities) and ultimately will address the more complex areas such as bank details. The intent is a central repository that is open to all. A lack of clear standards not only for the technology involved, but also for the manner in which data is reported and used needs to be resolved.

There is also the need for further investment in building out the hub such that it can deliver to the sector and those that need information from it. This will also benefit from an open relationship with the ACNC and other government bodies at both the State and Federal levels.



Figure 1. Ecosystem Mud-map for Standards⁶



Hence, as the philanthropic and charitable sector moves forward there is an ongoing and heightened need for consolidation of information around clear standards and infrastructure. As the sector bodies struggle with the increasing need for technology and meeting the costs that this brings, there would be great economic benefit in harmonising to reduce duplication and cost.

In addition, bolstering the position of the ACNC as the regulator in this space while ensuring freedom for private sector involvement in developing and innovating solutions is possible by creating a common, central hub focused on enabling the sector more broadly.

An additional aspect to this is that by creating a central hub for data which is aligned to known standards, the information will become useful for academic and economic studies beyond that which is currently available through the ACNC or the ATO.

3. Create/reinstate a corporations and markets advisory committee with a remit that includes advising on corporate involvement in community and philanthropy

There is a lack of clarity on the extent to which Corporate Australia can or should be involved in supporting the not-for-profit sector. Guidance aimed at clarifying governance, responsibilities and reporting would remove barriers and encourage companies to engage with their workforce for the benefit of charities and community causes.

To enable corporations, their Boards and executive to take action in partnership with their staff and the community, there are outstanding areas that require consideration, interpretation, clarification, and amendment. These include aspects covered by the Corporations Law, Anti-

⁶ Source: Workplace Giving Australia



Money Laundering regulation, Fair Work Act provisions and the common law. Without guidance, the propensity to conservatism is likely to hinder the growth of this important involvement.

The community and charity sector are reliant in large part on the engagement of Corporate Australia. The recent draft report into the Future Foundations for Giving released by the Productivity Commission estimated corporate giving contributes over \$17.5 billion per annum.⁷ This is, and should be, an increasing trend particularly as younger generations seek employment with companies that are actively and genuinely engaged in causes that they support.

We are also seeing the rise in corporate-driven initiatives and the raising of their profiles based on philanthropic involvement. Examples of this include claims made regarding the 1% pledge movement and the increasing number of businesses paying for registration as “B-Corps” or claiming to be “For Profit, For Purpose”.

At the same time, there is heightened awareness of the risk of companies making claims that are misleading in the market. Recent challenges in the environmental space have been well publicised globally and have led to a need for a legislative response, including in Australia, creating expense and delivery overheads.

Similarly, there has been an increase in the challenge from some commentators on the role or involvement of corporations in philanthropic activities. While few would advocate a return to the extremes propounded by the Friedman inspired Chicago School of Economics during the 1970’s and 1980’s, the boundaries are uncertain.

The result of this is that those responsible for the governance of Australian companies, executive and non-executive, are challenged by the extent to which their companies should or should not engage in philanthropy in line with their duties.

We recognise that there is broader need for interpretation, guidance and advice on Corporate legal and governance matters, and that the considerations impacting philanthropy are only a fraction of the area of interest. We also recognise that companies are looking for assistance which enables smoother and more effective operations overall, and not an emphasis on what they can do for the community sector. Given this, we would encourage consideration of a broad-based advisory body created by the private sector to intersect with Government and that has as a part of its remit the intersect of philanthropy and corporate.

It is noted that the Corporations and Markets Advisory Committee (CAMAC), which was established in 1989 under the Australian Securities and Investments Commission Act 2001, had a generally positive role in providing advice and recommendations to the Minister about matters relating to corporations and financial services law, administration and practice.

As part of the 2014-15 Budget, the Government announced its decision to cease the operation of CAMAC and its legal committee. CAMAC was abolished by Schedule 7 of the *Statute Update (Smaller Government) Act 2018*, which commenced on 21 February 2018.

⁷ Per Future Foundations for Giving Draft Report Productivity Commission November 2023. It is noted that this figure was estimated as at 2015-2016, with donations accounting for \$6.2bn of this, while recognising the inherent difficulty in determining the full extent of corporate involvement.



Reinstituting CAMAC or a similar body would not only benefit this sector but have broader, positive implications for business and business governance more broadly.

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The Workplace Giving Australia Group:

The Workplace Giving Australia Group comprises three charitable organisations that make giving part of everyday life in Australia (and New Zealand).

- [Workplace Giving Australia](#), which represents the advocacy and advisory work engaging with workers, Government, Charities and Corporate Australia to promote and enable workplace giving;
- [Good2Give](#), which provides consulting, technology and support services to corporations and charities to enable payroll giving, grants and foundations;
- [ShareGift Australia](#), which works with individuals as shareholders and corporates on the financial and transactional aspects of corporate work to enable share and related philanthropy.

