WORKPLACE GIVING AUSTRALIA

Workplace Giving Australia Comments and Input to Draft Report: Future Foundations for Giving

Australian Government Productivity Commission

9th February 2024

Context

The Productivity Commission issued a draft report on 23rd November 2023 entitled “Future Foundations for Giving” and invited written submissions by 9th February 2024. The draft report was prepared as part of the Productivity Commission inquiry into philanthropy as requested by Dr Jim Chalmers, Treasurer, on 11th February 2023.

Introduction

This submission provides comment and input into the draft report, Future Foundations for Giving dated 23 November 2023. It has been prepared in furtherance to the submission made by Workplace Giving Australia to the Commission in May 2023.

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 many Not-for-Profit and Government employers, the opportunities are significant. In creating community, reinforcing the help given to others and increasing the funding for charities, the combined strength of the workers within their place of employment is meaningful. Uniting people 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.

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 involve the place of work and which is conducted by the employer and/or the workforce. 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. The Workplace Giving Australia 2024 survey again shows that around 80% of workers are engaged in charitable giving. It is important that these workers are allowed and encouraged to bring this part of themselves to their place of work.

We also believe it is incumbent on Corporate Australia to bolster the workers' efforts in positive and proactive ways as they support their chosen charities and causes.

Moreover, a vibrant giving program leads to a strong workforce community joined in common causes. This creates cohesion amongst the workgroups, combats issues such as workplace loneliness, provides a vehicle to engage with the broader community and increases the giving dollars to charities.

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 and 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 though ShareGift Australia.

Key Input and Commentary Areas

1. Observations on draft recommendation 9.3

Draft recommendation 9.3 is to introduce enhanced disclosure and reporting of corporate giving. We support this recommendation in principle.

Ensuring the process and information is fit for purpose

In considering the implementation of the recommendation, defining the information and method must be done balancing the value created with the introduction of additional work and complexity to avoid creating any real or perceived barriers to corporate involvement.

Ideally, the information required will enhance corporate engagement. Engaging with Corporate Australia, including through bodies such as the Australian Institute of Company Directors and Workplace Giving Australia, will assist in creating a response that is aligned to the market demands. Separately, we have advocated for the creation of a body to advise Government on matters relevant to corporations including philanthropy. This would include aspects impacted by Corporations Law, Anti-Money Laundering regulation, Fair Work Act provisions and the common law. This is not a new concept, and 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.

A reinstituted body such as the former CAMAC, working with those with deep knowledge of the philanthropic sector and the intersect with business on aspects such as reporting, would be well placed to ensure that any solution on corporate reporting was appropriate for all parties.

Set the role of Government reporting as a contributor to meeting market demands for consistent information

Government and Government departments should not seek to collect all forms of information and report on all aspects the market may desire for its benefit. The reporting that would stem from an adoption of the recommendation would ideally have a clear role to play in the broader corporate and workplace giving ecosystem.

In determining what data to collect (and how), we would encourage consideration of the wider cross-sector needs for single sourced information and how this might influence what information is gathered and the parameters for it. This would include a view of how the philanthropic sector would best interact with Corporate Australia, with the broader donor base (individuals, PAFs, and workers) and suppliers, including financial institutions. There are clear roles in this for ASIC, the ACNC and the ATO, amongst others alongside and in alignment with the market more broadly. This would enable the sector to develop its solutions for information harvest and dissemination in a complementary manner.

Consideration should also include how the information can be made available including the timing of release and the mode, such as creation of API access.

Include consideration of the broader stakeholders – including the workforce and the consumer

We also encourage a view of corporate involvement in philanthropy that takes into consideration the role of the workforce and how the employer supports their philanthropic endeavours within the place of work. This would include volunteering and broader community engagement, not just monetary or equivalent contributions.

Ideally, consistent reporting will be required and standardised for all public companies. It should extend to any private enterprise or foreign entity with an Australian operation that publish, promote, or otherwise use their engagement and involvement in philanthropy in the public domain, including for marketing, promotional, and public relations purposes.

It may be recognised that different size organisations will have different levels of reporting, reflecting the cost of maintaining records or developing systems to capture information needed. Hence, there may be a revenue or other threshold considered.

What to record and how this might be reported on has been considered both in Australia and in overseas jurisdictions. This would also look to streamline and align current information collected across different areas to smooth the process and provide better interpretation. An example is the categorisation of corporate size by the ATO (based on revenue) and that of the ABS (based on number of employees). While this is a developing area, bodies such as B4SI can provide frameworks that would also benefit from having more international resonance.

In considering the requirements for reporting, it would be necessary to consider not only content but form. There is a need to ensure that the trust in charities that inspire the general public is not inadvertently eroded. The way corporates communicate to the broader public and how they understand the information, including the terms used, should be tightened to avoid unintentionally misleading statements. While the vast majority of corporates understand the need to tread this ground with integrity, inadvertent misuse or terms and, in rare cases, deliberate cloaking should be guarded against. An example of this might include a review of already common terms such as:

"For Purpose, For Profit"

"Profit for Purpose"

"B Corp Certified"

"Social Enterprise"

"1% pledge"

and the criteria or minimum requirement for the use of such terms (or even whether such claims have a legitimate role within the for profit, corporate sector).

It is important to all parties to ensure that those reading any communication are not misled into believing that the corporate is a Not for Profit or charity, or is doing more for philanthropy, cause areas, and/or community than is the reality. Where claims are made or terms are being invoked, they should have a clearly defined meaning. For example, a claim of "1% pledge" would benefit all parties if it were clear what the 1% is of and how the money is dealt with (for example, how much goes directly to the cause, the timing and amount of distributions to the cause, and the impact being made).

There might also be consideration to ensuring that the use of foundations by corporations and how these operate are made clear. The role of the foundation, its funding and resourcing, the amount (or percent) of distribution from the corpus each year, the lag of the donation to distribution, and the distinction between the corporate and the foundation entity are all areas of uncertainty for many Australians.

Avoiding vague and broad claims through clear guidance on meaning will benefit both those making the claims and those that act on them.

In drawing plans for implementation, consideration will also be needed to enable corporates to include information on their use of structures such as corporate foundations.

2. Additional comments regarding the Australian workforce and the corporate sector

Recognising donors in their capacity as workers

Of the over 13.8 million people engaged in the Australian workforce[1], Workplace Giving Australia calculates that c.85% are employed by the c. 45,000 medium and large corporations, over 2 million small businesses, over 500,000 Not-for-Profit organisations, and Local, State and Federal Governments[2].

Despite the significant input of corporations to the charity and community sector, there is still room for growth. Employee businesses created nearly $687 billion in operating profit before tax in the 2021-2022 financial year[3]. The corporate support of philanthropy noted in the draft report is shown at $17.5 billion[4] during the 2015-2016 period. Of that amount, $6.5 billion of this is through donations.

In this context we encourage viewing the workforce in their working life as a distinct part of the individual's everyday life. 80% of working Australians are engaged in some way with charity or philanthropy[5]. Today, this involvement is primarily outside their working lives. This is a missed opportunity for them, their employer, their chosen cause and the community.

The discrepancy in engaging while in the workplace indicates that the current system is not conducive to this participation. The 2024 survey conducted by Workplace Giving Australia confirms that while poor communication on the availability of workplace giving is the major cause, the lack of simplicity caused by the sign-up process is a significant barrier.

Helping workers engage in their workplace and with the support of their employer in a simple manner would increase the conversion from motivation to action. Regular giving enabled in a tax efficient and simple manner drives donation increases with the average donation from the individual increasing and the additional benefit of matching. This is alongside the benefits of increased volunteering and creation of stronger communities and belonging.

Appropriately considering the role of tax deductibility in workplace giving

In the draft report, there is a focus on tax deductibility as a driver for giving. The evidence from workplace giving suggests that within workplace giving, and while still important, it is only one lever and that it may not be the major motivator. The discrepancy between giving and tax deductions claimed tends to confirm that this is the case, despite the availability of a tax deduction being viewed as positive.

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[1] Australian Bureau of Statistics: Australian Industry by Division Data Cube (Table 5), 6248.0.55.002 Public Sector Employment and Earnings. Series ID A130186106A. Workplace Giving Australia Analysis.
[2] Australian Taxation Office FY'21 and FY'22 Demographics of Large Corporate Groups. ABS Australian Business Data Cube 1 (Table 1), ABS Counts of Australian business, Table 17, ASBFEO calculations. Workplace Giving Australia analysis. It is also noted that per ABS 6150.0.55.003 Labour Account Australia as at June '22 there were over 15.3 million jobs.
[3] ABS Australian Industry Key Statistics 81550DO001
[4] Reference pages 31 of both the draft report and the draft report overview and page 306 of the draft report.
[5] Workplace Giving Australia survey 2024 (to be published March)

The McCrindle Research Report 2023 noted that the reasons for giving were:

1. As an expression of their good fortune – 60%
2. Reinforcing their values – 49%
3. Reflect gratitude for the efforts of others to create change – 30%

Financial considerations were equal 8th in importance with 14%.

In the context of workplace giving, the 2022 Workplace Giving Australia survey[6] provided reasons for giving as:

1. The company was matching donations – 62%
2. Enables to give to a cause they are passionate about – 44%
3. Easy to do – 29%.

Again, making sense from a tax perspective scored down the list of motivators with 14%[7].

The draft report notes that the proportion of taxpayers who claimed a donation declined and now sits below 30%. It is also noted there that the average donation is higher with higher income and that this group is also more likely to claim the tax deduction[8] at 49%.

Simplifying the worker experience by enabling changes to Section 324 of the Fair Work Act

Recent amendments to Section 324 of the Fair Work Act did not address the issues raised or the recommendations previously provided, specifically concerning the impact of Section 324(1)(a) on workers who are wanting to implement an opt-out workplace giving program with a payroll giving (Give as You Earn) component.

The most successful workplace giving programs have a strong DNA of giving whereby the workforce is galvanised to engage with its community. The employer is encouraging and supportive, usually using matching as a primary tool. Where implemented, the participation is 2 or more times that where no opt out is enabled.

The average donation through workplace giving via pre-tax payroll giving is $245[9]. Workplace Giving Australia analysis indicates that this will include matching by the employer in 50-60% of cases for larger corporates, with c.95% of this at a rate of 1 to 1. Moving from individual giving to payroll giving not only increases the average donation amount, but it also attracts doubling of that donation in the majority of cases.

Further, the Workplace Giving Australia research conducted in 2024 indicates that one of the 3 barriers to adopting payroll giving is that the sign-up process is too complex (noting the most common reason is the lack of knowledge as to the existence of workplace giving programs).

[6] Workplace Giving Donor Insights 2022 Research and Analysis: https://content.workplacegivingaustralia.org.au/app/uploads/2023/05/workplace-giving-donor-insights-2022-research-analysis-workplace-giving-australia-.pdf

[7] See also Charity Aid Foundation survey of 700 donors in which 96% reported feeling a sense of duty to give back to society;

[8] Reference pages 3 and 4 of the Slider – Draft Report – Future Donations

[9] ATO data for FY'22

The evidence and studies on this tend to support the view that matching is a positive and does not impact significantly the amount donated by the worker (put simply, the worker does not reduce their gift in the knowledge that it will be matched). Further, within workplace giving it appears that matching is more effective than subsidised rebates or deductions, (e.g. Eckel & Grossman 2003 and 2008 in the US, Scharf & Smith 2011 in the UK and that it has a positive impact on triggering of giving).

Hence, making it simple for workers to give from within their workplace benefits the worker and funnels more money to the charities they support. This is doubled when 1:1 matching is enabled.

However, in most cases the process is complicated by the need for documented election from the worker that is outside their usual workstream or their onboarding process.

The use of opt-out payroll giving is a valuable tool and routinely drives higher participation of the workers, enabling them to fulfil their desire to help the cause in a simple manner. This benefits the employee as it is an easy and effective manner of giving which allows them to bring their philanthropic self to the workplace. This must be optional at the request of the employee. The method of optionality is the issue.

In discussions with corporate employers that express a desire to support their workforce through a consistent program applied to all workers, the potential interpretation and 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 uptake of opt-out programs, despite this being clearly outside the intent of the legislature.

The current position creates complexity for the worker and the employer, requiring unwarranted effort from both and hindering the smooth process of donating. In a world in which decisions can be made and enacted rapidly with the use of technology, this bureaucracy is an anomaly that leads to a break in the motivation-to-action cycle.

Workers miss the opportunity for matching, the socialisation with their colleagues and the ability to feel part of a giving community in the workplace. Employers face increased complexity and cost, hindering their efforts to support their workforce.

An opt-out approach, which includes the worker in the workforce program unless the worker elects otherwise, would remove the barriers. Any potential downside can be readily ameliorated as the worker retains full control over their involvement and can be regularly reminded of their right to opt out through a simple notification.

Today, 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.

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.

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[10].

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

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

[10] 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).

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.