2023-24 Pre-Budget Submission to Treasury and The Hon. Dr Andrew Leigh MP (Assistant Minister for Competition, Charities and Treasury)

January 2023

The Good2Give Group

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The Good2Give Group ("Good2Give") comprises of 3 charitable organisations with the uniting purpose to make giving part of everyday life in Australia (and New Zealand).

- **Good2Give** which provides consulting, technology and support services to corporations and charities to enable payroll giving, grants and foundations;
- **Workplace Giving Australia** which represents the advocacy and advisory work engaging with workers, Government, Charities and Corporate Australia to promote and enable workplace giving;
- **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.

Since 2001, Good2Give has been the leading advocate for workplace giving in Australia and represents a significant number of ASX listed and other companies, as well as a large number of charities in this space. Good2Give launched the 'One Million Donors' workplace giving campaign in conjunction with the Australian Government in 2014.

Our Submission

Our submission is focused on three recommended initiatives which would make a material difference in removing some of the barriers and promote an environment in which we can together achieve workplace giving success, namely:

1. An Australian-wide campaign that promotes the awareness of all Australians on the benefits of workplace giving to workers as they engage with their community and with their colleagues. This will also create the expectation of support from employers to enable and enhance their impact.
2. Champion opt-out workplace giving provisions through an addition to the Fair Work Act to remove an unintended but perceived barrier created by s.324
3. Expand the existing ACNC data to develop a consistent and useful Charities Information Database with API's to provide consistent, one-stop data on Australian Charities including impact reducing cost to charities and enabling simplification of philanthropic giving.

Overview

Increasing the uptake of workplace giving will increase money to charities, reduce complexity and confusion, and build stronger communities while providing business and economic benefits more broadly. By engaging Australian workers in giving through their place of work, this not only increases philanthropic giving, it makes giving part of everyday life and supports communities within the workplace.

Close to 14m Australians are members of the Australian workforce. Of these over 65% are involved in some form of philanthropic activity. And yet, less than 2% (c.220k) chose to take this action within their capacity as a worker. In era of declining community engagement and participation, this misses a crucial opportunity for all to not only increase their philanthropic impact, but to create communities within the place of work with the worker at the forefront.

Where programmes are in place that encourage the employees to engage with the corporate to shape and drive their giving, we see and average workforce participation of over 20% and exemplars ranging between 70-90% becoming common.

Despite the obvious benefits, Australia's uptake of workplace giving lags other countries. For example, in payroll giving (sometimes called pay as you earn giving) our less than 2% worker participation compares unfavourably with the likes of the US (24%) and the UK (10%).

Given workers currently contribute matched donations in the order of $110m, increasing our national rates to equal those in the UK would add over $0.5 billion in additional philanthropic giving.

The Benefits

Workers

Workers benefit from workplace giving in creating a better place to work. It is telling that over 75% of employees report that they want to work for an organisation that supports charities that they support.

Further upside includes the benefits of being pre-tax, the simple interactions and that it often comes with matching provided by their employers. They also benefit from the opportunity to create events and socialise around common causes. It also allows them to engage, or not, with the charity on their terms.

Additionally, there is evidence that the majority of workers neglect to claim their deductions at tax time. Where they do, it involves collating a combination of paper and electronic receipts creating needless complexity and work.

Charities

For Charities, workplace giving is one of the most effective forms of charitable funding and is supported by most as a preferred option. Benefits include the low cost of acquisition and the ability to plan and budget created by regular donation streams.

Employers

From an employer organisations' perspective, actively engaging the workers in philanthropy creates engagement, reduces costs (including churn cost reduction by c18-20%), decrease absenteeism (by up to 80%) and increases productivity (between 10-20% increases). Corporate led giving, while beneficial to charities and which supports marketing and social licence messaging, does not provide these benefits.

Regulators

Workplace giving creates records electronically and is easily reportable. This assists in the process of ensuring philanthropic giving is administered correctly by the charities, corporates, and individuals.

The Barriers

Workers

Less than 30% of Australian companies offer workplace giving at all, and the majority have no active or supported programme. This compares to over 94% of US companies.

Awareness levels are low and where programmes do exist, they are often created by the corporate with corporate objectives rather than being driven by the workers for combined benefit.

Charities

The charities are often approached by individual corporations or by providers (many for profit) seeking information to enable them to be included in their corporate giving or workplace giving programmes. This creates a large and complex workload for an unknown return.

The current ACNC held data is incomplete for meeting this demand.

Corporates

Corporations suffer not only from a lack of awareness, but also an aversion to risk (in many cases heightened) leading them to make safe decisions on adopting and enabling key elements of programmes.

In some cases, corporations require information on charities which is not readily available to them and is not held in any single or formalised location. This may expose them to reputational or other risks. In other cases, they are needing to ensure that any action they take does not alienate their workers but engages them positively.

A specific barrier often cited is the potential impact of the Fair Work Act on creating opt out provisions in workplace giving programmes.

The Three Recommended Initiatives

1. Workplace Giving Awareness Campaign

While most employers are involved in corporate giving, and the majority of Australians are involved in individual giving, there is little overlap of the two. There are four major contributors to this disconnect (amongst others):

a) Lack of awareness of the employee on the existence and the benefits of workplace giving as opposed to other forms of giving;
b) Lack of motivation from the employer on giving power to their workforce to determine the mode of corporate engagement;
c) Misunderstanding of the corporate governance and community expectations on corporates for their engaging as members of our Australian society;
d) Corporations using philanthropic giving for marketing and to promote their social licence but failing to capture the benefit of creating real connections with their people.

By highlighting the benefits of the workplace giving and creating the workers' expectation that this will be offered and supported by their employer, there will be higher demand for, uptake of and involvement in workplace giving. This will both increase the amounts raised for charities and enhance involvement and community development.

Ideally, in many organisations, the workers will drive, and even create their own programmes which the corporations will follow and enable as a matter of necessity, thus reversing the traditional power dynamic where the programme is conceived and run by the corporation.

A significant step forward in achieving this outcome should be a broad-based awareness campaign aimed at inspiring action from individuals with their places of employment (such as was the case with the “slip, slop, slap” campaign).

2. Fair Work Act Amendment For Opt-Out Workplace Giving

Workplace giving through regular payroll deductions is a highly effective way to enable workers to gain the support of their employer organisations their charitable giving. The data shows that where an Opt-In approach is implemented, requiring the worker to notify the employer of their desire to be involved, the average take up is less than 5%. Where an Opt-Out approach is adopted, the rate of uptake is over 20%.

Opt-Out enables the default position for an organisation to provide for regular giving with notice and as part of the overall remuneration of the worker. In the majority of cases, it would also be accompanied by matching contributions by the employer.

However, there are barriers to overcome in order to promote workplace giving. This includes removing risk and complexity for employers as they seek to create programmes aimed at engaging and enabling their workers in giving. One perceived barrier is the unintended consequence of the Fair Work Act, specifically section 324 on the use of opt-out approaches to workplace giving via payroll deductions.

While s.324 was clearly not aimed at preventing workplace giving, risk-averse corporates and their advisors are nervous about introducing opt-out based programmes for fear of offending against the section.

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).

Despite these Instruments, an ongoing concern in relation to giving to charities through payroll deduction is mooted given section 324 of the Fair Work Act 2009 (Cth). This section has, as noted, led to some hesitancy among employers about introducing an opt-out program, given that there is some ambiguity as to what the section requires before a payroll deduction is properly authorised by the employee.

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 which 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.

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 said to act as 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. We support a 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 employee 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
- 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.

3. ACNC Database - Expand for One Stop Shop Usability

The Australian Charities and Not-for-profits Commission (ACNC) is the national regulator of charities and is the body where charities are required to report and submit data regularly. Good2Give proposes expanding the existing database to create a ‘one-stop shop’ to reduce charity time, resources and cost and enable the simplification of philanthropic giving.

When charities sign up to use a channel or method of fundraising, such as a tech platform, or they create a new partnership with a corporate, due diligence needs to be conducted by that organisation to ensure that funds are distributed compliantly, and laws such as anti-money laundering are adhered to. Each charity in Australia, of which there are over 60,000, needs to deal with donors, corporates and aggregators. Every one of these wants access to complete information about the charity, which is reliable and enables decisions and engagement.

This duplication of sending the same information (such as registration, status, bank details, logos, descriptions, appeals and Director details) multiple times place yet another burden on charities that are already stretched and that would be better focussing on delivering programs to help the community, not completing administrative tasks. In addition, most individual donors and corporations look for charity information and reporting that shows evidence of impact in their cause area.

To further complicate matters, this information is not a simple set and forget, but requires regular updates and confirmations, sometimes in different formats. The cost to the charities of dealing with collective donors is high. In extreme cases, charities are unable to engage as they cannot meet corporations' requirements. ACNC currently houses basic information from the Annual Information Statement, which goes some way to helping reduce the cost and simplify the process. However, this information is incomplete for the purposes needed.

Good2Give proposes a solution that utilises the current database, expanding it and implementing an API (software allowing systems to talk to each other) to streamline data duplication and save charities valuable time and resources. This can be used as a single source of charity information. Using the ACNC as the vehicle to develop, maintain and enhance its relevance and provide a credible, agnostic provider to the sector.

A charity register might be built on the foundation of the Current ACNC charity register to provide current and complete charity information in one location via a single CMS which can be curated by the charity concerned once and shared to many. Similarly, a comprehensive search capability would enable anyone to locate a charity based on defined criteria.

The benefits of this would be to reduce overheads for charities, individuals and all involved while ensuring the charities remain the owners of their information and presence.

The development of this register would be finite and should be, conservatively, less than $5m if managed for complexity but would require ongoing funding to maintain and operate. The benefits would be significant and would swamp the cost involved. By way of reference, a saving in overhead for charities of less than 0.01% of their revenues over the course of a single year would result in an additional $10m+ being available to the end cause.

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