THE AUSTRALIAN CHARITIES FUND

18 December 2012

Submission to the Not-For-Profit Sector Tax Concession Working Group – Fairer, simpler and more effective tax concessions for the not-for-profit sector

Executive summary

The Australian Charities Fund has previously made a number of submissions in respect of mechanisms that could be adopted to grow workplace giving in Australia.[1] However, for the purposes of this submission, we have limited our recommendations to those we believe can generate significant impact in growing workplace giving in Australia at a relatively low cost to government.

In summary, our recommendations are:

1. launching a co-ordinated, government-funded national campaign to promote workplace giving to employers, employees and DGRs;

2. amending the Fair Work Act to encourage the wide-scale adoption of "opt-out" workplace giving programs;

3. assisting with information gathering and research into workplace giving;

4. encouraging all payroll software providers to incorporate workplace giving functionality into their software; and

5. creating an exception for workplace giving to the threshold for deductible gifts.

The Australian Charities Fund also believes that as guiding principles, any amendments to donor tax incentives should ensure that incentives for employees to donate through workplace giving are not diminished and workplace giving remains simple and straightforward to administer from an employer's perspective.

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1 In other submissions, (see for example, The Australia Charities Fund's 2009 submission to the Productivity Commission as part of its review of the contribution of the Not-For-Profit Sector), we have made recommendations for the provision of grants, resources and other incentives (including preferential tax incentives for employers and employees) to encourage the growth of workplace giving in Australia. Although we believe these recommendations could achieve significant impact in growing workplace giving, it is likely that implementation of these recommendations would have a higher cost to government.

LEVEL 22 126 PHILLIP STREET SYDNEY NSW 2000
WWW.AUSTRALIANCHARITIESFUND.ORG.AU

We believe that the introduction of a tax offset mechanism for charitable gifts is unlikely to satisfy these principles and are concerned that any such proposal could have adverse implications for workplace giving.

Capitalised terms not otherwise defined in this submission have the meanings given to them in the Not-For-Profit Sector Tax Concession Working Group, "Fairer, simpler and more effective tax concessions for the not-for-profit sector" discussion paper dated November 2012 (the "**Discussion Paper**").

Comments on consultation questions

Consultation questions – Chapter 2 – Deductible Gift Recipients

15. Would a fixed tax offset deliver fairer outcomes? Would a fixed tax offset be more complex than the current system? Would a fixed tax offset be as effective as the current system in terms of recognising giving?

Depending how it is structured, a tax offset system may remove the current tax benefits to employees donating through workplace giving and create complexity for an employer administering a workplace giving program. As guiding principles, The Australian Charities Fund believes that any amendments to tax incentives involving a tax offset system should, at a minimum, ensure that:

- incentives for employees to donate through workplace giving are not diminished; and

- workplace giving remains simple and straightforward to administer from an employer's perspective and does not increase the administrative burden on employers.

Currently, under a PAYG withholding class variation (Legislative Instrument Ref: F2006B00300 registered on 10 February 2006), employers may calculate tax on an employee's pay net of workplace giving donations. Effectively, this means that an employee donating through workplace giving receives an immediate tax refund on all workplace giving donations. This is a key benefit to an employee donating through workplace giving. This system is efficient as the facts required to calculate the effective immediate tax refund – namely salary, amount of workplace giving donation and applicable tax deduction – is available to the employer and as such is simple to administer.

The introduction of a two-tiered or multiple tax offset system potentially may deter employers and employees from participating in workplace giving if it results in a system where employers are unable to apply workplace giving tax benefits easily and accurately. This could arise if the application or calculation of the tax offset is contingent on information unknown to an employer, for example, where the applicable tax offset is contingent on the total charitable donations made by an employee in the relevant financial year. As the amount of charitable donations made by an employee outside of workplace giving will not be available to the employer,[2] this could result in:

- workplace giving donors losing the effective immediate tax deduction;
- complicating administration of workplace giving programs for employers; or
- if an employer gives a higher tax benefit than the actual benefit to which the employee is entitled, there is a potential risk that an employee will have to pay further tax at the end of each financial year resulting in donor reluctance to continue with workplace giving.

A general comment on tax offsets

Irrespective of the potential implications to workplace giving arising from the introduction of a tax offset, The Australian Charities Fund does not support any proposal to amend available tax incentives which could reduce overall donations to DGRs. Although the current system may disproportionately favour higher income earners, that demographic represents a large portion of workplace giving donors. A tax offset system is likely to reduce the willingness of higher income earners to give. Any changes to existing tax incentives should not diminish the tax benefits currently available to higher-income earners.

Consultation questions – Chapter 2 – Deductible Gift Recipients

19. Would a clearing house linked to the ACN Register be beneficial for the sector and public?

The Australian Charities Fund believes this question should be considered from a number of perspectives:

a) Donations generally

b) Payroll giving donations

c) Priorities

[2] For example, The Australian Charities Fund's research "*Cutting to the Heart of Workplace Giving*" (2009), found that a majority (if not all) workplace giving donors also donate to DGRs outside of the workplace.

Donations generally

There is some superficial attraction to the concept of having a government owned website through which individuals can donate to DGRs. The prospect that all DGRs could be listed on the one site enabling a person wanting to donate to charity to search comprehensively for a DGR and then donate to it has, at first glance, a certain appeal. This would be the case particularly if a person could donate without paying a fee (either credit card or administrative for doing so).

However, there is a question as to whether this should be the domain of government. (We make this observation in the context that we are not a third party donation processor ie we encourage workplace giving but we do not handle the money. Accordingly, we believe we can make the following comments relatively objectively).

There are a number of websites currently available through which individuals can donate to DGRs. They operate under various models. Some are run as not for profit social enterprises, others as for profit enterprises. Some charge an administrative fee, others do not. The functionality of sites varies. Some provide 'fundraising' capability ie a donor can create a fundraising page for an event. Others provide functionality to enable distribution of workplace giving donations. Others provide simple functionality to allow a donor to donate to a DGR.

Would it be the intention of government to legislate to prohibit these websites or to compete with them?

Any attempt to prohibit non-government websites would appear to be unjustified. They are performing an important role and rapid technological advances are being made through the power of competition. A number of the sites appear to be operating successfully and playing an important role in increasing the level of giving. Probity concerns could be covered by appropriate regulatory supervision.

If current sites are not to be prohibited, then all the usual issues arise when governments seek to compete with the private sector. Would the government entity be able to attract the skills needed to compete effectively with the private operators? How to ensure a level playing field if the government's platform is taxpayer funded? Would the government platform seek to cover all the online giving techniques or concentrate on a narrow range of functionality?

The Australian Charities Fund is doubtful whether this would be the best use of government resources and below we suggest other ways in which a $25 million investment in promoting philanthropy could be used more effectively.

Also, before $25 million was committed to building such a platform, we believe, at the very least, research should be conducted on whether many potential donors would use such a platform. While we don't have empirical research, we would be surprised if the average donor would be inspired to give by searching a website of the type described in the discussion paper. We observe most charities using a wide, often very sophisticated, variety of marketing techniques to attract and inspire potential donors to give. Usually this requires a direct contact with the donor or an introduction to the DGR via a third party (such as an employer in the case of workplace giving donors or a friend or colleague in the case of fundraising challenges).

The Australian Charities Fund believes a "clearing house" that is successful in securing donations would need to use the sophisticated marketing techniques used by private platforms currently. This could create a perception that particular DGRs or causes are favoured by government. This is because on most sites currently, DGRs can gain greater exposure by making variable payments to the platform owner.

Payroll giving donations

A payroll giving donation, by definition, occurs when an employer deducts an amount of salary otherwise payable and pays it to a DGR as directed by the employee. Accordingly, any government sponsored 'clearing house' for payroll giving donations would need to be linked in some way to the donor's employer.

Currently, when an employer uses a third party to distribute payroll giving donations, the employer records the pledges of each of their employees and sends two things to the third party whenever donations are to be distributed. First, they prepare a spreadsheet listing each DGR to which a donation is to be made and the total amount payable to the DGR being the total of amounts pledged by all the employees donating to that DGR. Secondly, they transmit a payment to the third party equal to the total amount to the paid to all the DGRs being the combined gifts made by its employees. Obviously, the employer needs to maintain its own records in respect of each donor employee in order that the correct amount is deducted from their salary each pay day and annual payment summaries prepared.

This explanation indicates that a third party 'clearing house' could only do part of the process needing to be carried out by employers who allow employees to donate to DGRs via payroll deductions.

The important issue is whether having a clearing house distribute donations to the various DGRs supported by an employer's employees will remove a barrier, perceived or real, to the growth of workplace giving.

The Australian Charities Fund has done research indicating that some employers perceive payroll giving to be complex and this dissuades them from introducing it. This largely revolves around the donation processing issue. However, we believe the perception is not supported by reality.

Most payroll systems have a payroll giving module. This means it is easy to record an employee's pledge, and deduction calculations are made automatically each pay run. This occurs in a similar way to other salary sacrifice or deduction items. Numerous discussions with payroll officers who are familiar with the process have confirmed it is not viewed as being onerous.

It is appropriate to note that performing the process in house is easier when an employer offers a limited range of charity choice. This is because the employer needs to obtain bank account details and check the DGR status of only a limited number of charity recipients. All the employers supported by The Australian Charities Fund adopt a limited list approach and have not needed to engage a third party processor.

However, we are aware some employers offer total charity choice to their employees (sometimes referred to as 'open box'). In those circumstances, a case can be made to engage a third party processor in order to outsource checking of DGR and bank account details necessary to process the donation. There are existing intermediaries who can provide this service. Importantly, these services are 'transaction' based, not engagement focused ie they are not used to attract and engage potential donors; they are entirely back office focussed to enable the donation processing. We cannot see the need for a government entity to provide such a service.

Priorities

Despite these comments on the role of a clearing house to promote and encourage charitable giving, The Australian Charities Fund believes there is a role for government in encouraging the development of new forms of technology to process and encourage charitable donations. In particular, as mobile giving develops and gains greater impetus, priority should be placed on ensuring that any technological developments are not inhibited and are governed by an appropriate regulatory framework.

In addition, The Australian Charities Fund believes there are alternative initiatives which would achieve greater impact in promoting and encouraging charitable giving than a clearing house. A number of these initiatives are set out in our response to consultation question 20 of the Discussion Paper.

Consultation questions – Chapter 2 – Deductible Gift Recipients

20. Are there any barriers which could prohibit the wider adoption of workplace giving programs in Australia? Is there anything the Working Group could recommend to help increase workplace giving in Australia?

The Giving Business report (2009)[3] and Cutting to the Heart of Workplace Giving (2009) highlighted a number of barriers to the greater introduction of workplace giving in Australia. They can be summarised as:

1. **limited awareness of workplace giving**: many Australian employers and employees remain unaware of workplace giving and the benefits to employers and DGRs from workplace giving;

2. **perceived complexity**: many Australian employers are under the impression that a workplace giving program is difficult to establish and administer;

3. **limited time and resources**: one third of program managers identified limited time and resources as the main barrier to growing participation. It was cited as a problem by half of all program managers surveyed; and

4. **visible support from senior management for workplace giving**: visible and vocal support for workplace giving from senior management is required for a successful workplace giving program.

The Australian Charities Fund sets out a number of recommendations below to address these barriers and increase the rate of participation in workplace giving in Australia.

Recommendation 1: A co-ordinated, government-funded national campaign be launched to promote workplace giving to employers, employees and charities.

The Giving Business report (2010) highlighted that over 60% of businesses had never heard of workplace giving. Our experience and research has shown that fostering awareness of workplace giving, as well as highlighting its benefits to employers, employees and charities, is vital to engaging employers and maximising participation.

The Australian Charities Fund believes that a workplace giving awareness campaign should have two key objectives:

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[3] The Australian Charities Fund, CAF International, The Centre for Social Impact, PricewaterhouseCoopers and United Way, *The Giving Business: Creating successful payroll giving programs*, March 2009 at pages 14 and 18.

1. **growing awareness**: raising awareness and highlighting the benefits of workplace giving to grow the adoption of workplace giving. In particular, The Australian Charities Fund believes that any awareness campaign will achieve greater impact if it is underpinned by the business case for workplace giving and has the strong support of leading CEOs of employers with successful workplace giving programs; and

2. **growing participation**: based on ATO taxation statistics for the financial year ending 30 June 2011, only 4.9% of the employees at the 3,412 employers through which workplace giving donations were made donated via payroll deductions and less than 1.5% of all Australian employees donated via payroll deductions.[4] Best practice programs have participation rates well over 30% and our research indicates around 70% of employees would be interested in workplace giving but need to be asked well. Accordingly, The Australian Charities Fund believes there is significant scope to grow workplace giving by building participation in these organisations by providing them with the appropriate resources to grow high impact workplace giving programs. Also there are many thousands more organisations who do not currently allow workplace giving to which an awareness campaign should be targeted

In designing a targeted workplace giving awareness campaign, there should be an emphasis on promoting workplace giving to senior business leaders. In our experience, visible and vocal support from senior management for workplace giving is vital to developing a successful workplace giving program and our most successful programs are in organisations where CEOs and senior management have communicated the vision and business objectives for the organisation's workplace giving program (see more generally at recommendation 5 below).

Recommendation 2: Legislative amendments to encourage the wide-scale adoption of "opt-out" workplace giving programs

The Australian Charities Fund believes that the wide-scale adoption of "opt-out" workplace giving programs could significantly drive the growth of workplace giving in Australia. An "opt out" process involves modest regular workplace giving contributions being deducted from an employee's pay unless the employee elects to "opt out" of the workplace giving program. Although "opt out" can be implemented currently in respect of new employees (because the employee gives their written consent when agreeing to their employment terms), section 324 of the Fair Work Act 2009 (Cwlth) (the "**Fair Work Act**") restricts "opt-out" from being introduced in respect of an employer's existing employees. This is

4 This figure has been calculated based on the number of employed persons in Australia as set out in Australian Bureau of Statistics 2011, *Labour Force June 2011*, cat. no. 6202.0, ABS, Canberra.

because under section 324 of the Fair Work Act, an employer must obtain the written consent of an employee before deducting amounts from their salary.

To date, The Australian Charities Fund is aware that a number of organisations have introduced "opt-out" workplace giving to its *new* employees. Where it has been introduced, it has proven to be very successful in building employee participation and engagement with participating employers seeing approximately 72% of new employees on average choosing to participate in workplace giving.

The Australian Charities Fund recommends that legislation amending section 324 of the Fair Work Act be passed to create an exception to the written authorisation requirement for workplace giving to permit employers to extend opt-out to *existing* employees.

Of course, the success of an opt-out scheme is dependent on strong messaging from senior leadership around the purpose of the scheme and having good processes for ensuring all employees are aware of its existence and their clear right to opt out.

Recommendation 3: Government support is provided to assist with information gathering and research into workplace giving

The growth of workplace giving would be assisted by having better information and insights.

In recent years, the ATO has been very helpful in producing data on the levels of workplace giving in Australia. However, in some respects this is limited because of the information base available eg they do not currently obtain details from employers of the amounts donated to particular charities. It would be very helpful to obtain this type of data.

Also, The Australian Charities Fund has conducted numerous research projects over the past few years but much more work is needed to obtain a better picture of the state of workplace giving and proving the business case.

The Australian Charities Fund believes that the government could provide significant support to assist in information gathering and research.

Recommendation 4: Encourage all payroll software providers to incorporate workplace giving functionality into their software

Currently, The Australian Charities Fund is aware that a majority of payroll software providers have incorporated workplace giving functionality into their payroll software. However, not all payroll software providers have done so.

As previously noted, there is a perception that workplace giving is difficult to establish and administer. Strongly encouraging all remaining payroll software providers who have not already done so to build in workplace giving functionality into their payroll software could assist in addressing this misconception. Moreover, at a practical level, it would also streamline the adoption of workplace giving by employers who use payroll software without workplace giving functionality.

Consultation questions – Chapter 2 – Deductible Gift Recipients

23. Are there additional barriers relevant to increasing charitable giving by corporations and corporate foundations? Is there anything the Working Group could recommend to help increase charitable giving by corporations and corporate foundations?

Recommendation 5: Research be undertaken in respect of the business case for workplace giving (and possibly corporate community engagement more generally)

As noted above, The Australian Charities Fund believes, and our experience has demonstrated, that visible and vocal support from senior management for workplace giving is vital to a successful workplace giving program. Practically, support is required, amongst other things, to ensure program managers have sufficient time and resources to develop strategies (such as regular promotion) so that workplace giving remains appealing to employees. Visible and vocal support for workplace giving and appropriate communication by senior business leaders also assist employees in understanding the vision and business objectives for an employer's workplace giving program.

Whilst many senior managers have embraced workplace giving (and corporate social responsibility and corporate community engagement more generally) as a mechanism for contributing to the community, The Australian Charities Fund believes that a greater understanding by senior business leaders of the benefits to business from having a strong civil society could foster greater workplace giving and corporate community engagement. In particular, comprehensive research into the business case for workplace giving should encourage senior business leaders who do not otherwise perceive a role for business in the not-for-profit sector to provide greater support to the sector and to increase the priority and focus placed on having a strong workplace giving program.

The business case for workplace giving could be promoted to senior business leaders as part of any targeted campaign to promote workplace giving in Australia (see recommendation 1 above).

Consultation questions – Chapter 2 – Deductible Gift Recipients

26. Should the threshold for deductible gifts be increased from $2 to $25 (or to some other amount)?

Recommendation 6: Remove or reduce the threshold for deductible gifts made through workplace giving

Whether or not the threshold for deductible gifts is increased, The Australian Charities Fund strongly recommends that an exception to any threshold be created for workplace giving.

Based on our experience and research, The Australian Charities Fund believes there is significant scope to grow workplace giving by encouraging large numbers of employees (particularly low-income earners) to make regular small donations and this could be inhibited by increasing the deductible gift threshold. However, unlike other donations where DGRs are required to issue receipts to each donor, an increase in the number of workplace giving donors donating to a DGR will not increase the administrative burden on DGRs. As such, The Australian Charities Fund believes that it is appropriate to create an exception to the deductible gift threshold for workplace giving donations.

One of the basic goals of workplace giving is to generate a steady stream of donations through large numbers of employees making regular donations to DGRs. Although each individual employee's workplace giving donation may be small, significant impact can be generated through the collective donations generated through the employer's workplace giving donations. This message has been very successful at many employers. Our data indicates that the inclusion of a small donation amount on a workplace giving pledge form and impact that can be achieved through the collective donations of employees significantly grow participation in, and consequently donations flowing through, a workplace giving program.

The traditional concern about the increased administrative burdens imposed on DGRs by reducing or removing the tax deductibility threshold would not result if it was applied solely to workplace giving. This is because significant differences exist between traditional individual monetary donations and workplace giving. In particular, we note that no additional administrative burden would be imposed on DGRs as DGRs are not required to issue a receipt to each employee making a donation through workplace giving.[5] As such, the burden of issuing receipts in respect of small gifts to many donors will not arise as DGRs are only required to

[5] See paragraph 7 of ATO Practice Statement Law Administration PS LA 2002/15.

issue one receipt to an employer in respect of all workplace giving donations made by its employees.

Edward Kerr
Chief Executive Officer
The Australian Charities Fund
Level 22, 126 Phillip Street
Sydney NSW 2000
+ 61 2 9024 8664
edward.kerr@australiancharitiesfund.org.au

About The Australian Charities Fund

The Australian Charities Fund (www.australiancharitiesfund.org.au) is a not for profit social enterprise whose vision is to see significant social impact through employers and charities working together.

Our mission is to facilitate engaged employee giving by connecting employers and charities by providing advice, capacity building, facilitation and leadership.

Since its establishment in 2002, The Australian Charities Fund has assisted over 100 mainly large and medium sized employers launch and grow workplace giving programs. This has resulted in over $85 million being donated to the community sector. About 120 charities (including most of Australia's largest charities) partner with The Australian Charities Fund with a view to growing awareness of and participation in workplace giving.