

EARLY WINS TO GROW PHILANTHROPY AND ITS IMPACT



Prepared by Philanthropy Australia
to inform the work of the newly re-
established Prime Minister's
Community Business Partnership

November 2014



THE PRIME MINISTER'S COMMUNITY BUSINESS PARTNERSHIP – A BIG OPPORTUNITY

Philanthropy Australia is passionate about growing giving in Australia – it's the reason we exist.

That's why we are excited about the re-establishment of the Prime Minister's Community Business Partnership ('the Partnership'). The Partnership will bring together Government, community and business leaders to advise the Australian Government on practical strategies to foster a culture of philanthropic giving and

Philanthropy Australia believes that the Partnership provides a real opportunity to take giving to the next level, by helping to deliver real and tangible outcomes.

volunteering in Australia.

In addition to the Prime Minister, the Minister for Social Services, and the

Parliamentary Secretary to the Prime Minister, 11 individuals with diverse experience and expertise have been appointed to the Partnership.

The Australian Government has also provided \$6 million over four years to re-establish the Partnership and support its work.

Philanthropy Australia believes that the Partnership provides a real opportunity to take giving to the next level.

The previous Partnership was responsible for some of the most significant reforms in Australia's history designed to support philanthropy. This included the introduction of what are now known as Private Ancillary Funds, and pre-tax workplace giving arrangements.

Philanthropy Australia is keen for the re-established Partnership to build on this success, and deliver real and tangible outcomes to help grow giving.

EARLY WINS FOR THE PARTNERSHIP

To provide the Partnership with a head start, we have set out a number of 'Early Wins' which would address a number of red tape burdens which are a barrier to giving; improve existing giving vehicles to make them more effective and flexible, support impact investment; foster collaboration; and help to drive awareness of giving and its benefits.

For the purposes of this document, we have defined Early Wins as changes which:

- Can be implemented at minimal or no cost to Government;
- Are relatively simple to implement, in that any necessary legislative or regulatory changes are not overly complex or lengthy; and
- Can realistically be implemented within 12-18 months of the Partnership's first meeting (although some wins could easily be implemented much sooner).

Many of the wins can be implemented without any changes to primary legislation (Acts of Parliament).



Many of the Early Wins can be implemented without any changes to primary legislation (Acts of Parliament).

introduced under the previous Community Business Partnership, by addressing issues with the current regulatory framework for Private Ancillary Funds, and by putting forward ways we can grow workplace giving even more.

A number of the Early Wins proposed by Philanthropy Australia focus on building on the reforms

We believe that we need to examine incentives for philanthropy; ways to foster the emerging area of impact investing; options to better harness technology to make it easier to give; and how to get better data on philanthropy and its impact.

Out of this process, Philanthropy Australia hopes that a number of big reforms could be identified and implemented. These may be more complex reforms – but they could also be transformative.

Philanthropy Australia looks forward to working with the Australian Government, Members of the Partnership and other stakeholders to help make the Partnership a success.

ACHIEVING THE BIG WINS

Implementing some or all of these Early Wins would demonstrate the effectiveness of the Partnership as a vehicle for delivering practical policy changes in a relatively quick timeframe, recognising that more substantial proposals will require time to discuss, develop and implement.

Delivering some Early Wins is important, but we also need to think big if we want to take giving to the next level in Australia.

whilst relatively small changes can deliver tangible outcomes that will benefit philanthropy, we really do need to think big if we want to take giving to the next level in Australia.

Philanthropy Australia will also be consulting with our Members and preparing more substantial proposals for the Partnership's consideration in due course.

That's because

COMMON TERMS USED IN THIS DOCUMENT

Deductible Gift Recipient

A Deductible Gift Recipient (DGR) is a fund or organisation that can receive tax deductible donations. The deduction is claimed by the person or organisation that makes the donation. There are a limited number of categories or types of DGRs. There are requirements set out in the tax laws which must be met in order to be endorsed as a DGR.

Item 1 Deductible Gift Recipients are entities which fit into one of the relevant categories of the *Income Tax Assessment Act 1997 (Cth)* and include various types of charities such as welfare, environmental, overseas aid and arts charities.

Item 2 Deductible Gift Recipients exist only to collect, hold and distribute gifts to Item 1 Deductible Gift Recipients and must not carry



on other activities – they include both Private and Public Ancillary Funds.

Private Ancillary Fund

A Private Ancillary Fund is a common form of philanthropic trust, established by an individual, family or business. They are a vehicle for structured private giving, and cannot accept donations from the public. Donations to a Private Ancillary Fund are tax deductible. Donations to a Private Ancillary Fund form a corpus, which is invested, with the trustee then deciding which Item 1 Deductible Gift Recipients to make distributions to each year.

Public Ancillary Fund

A Public Ancillary Fund is a common form of philanthropic trust, into which the public is invited to contribute and which are operated for the benefit of the public. Donations to a Public Ancillary Fund are tax deductible. Donations to a Public Ancillary Fund form a corpus, which is invested, with the trustee then deciding which Item 1 Deductible Gift Recipients to make distributions to each year.

Sub-fund of a Public Ancillary Fund

Some Public Ancillary Funds offer donors the option of setting up a sub-fund, which is a named endowment which sits within the Public Ancillary Fund. A sub-fund operates as a management account for the purpose of tracking donations and grants attributed to the donor.

Community Foundation

A Community Foundation is an independent philanthropic organisation working in a specific geographic area which, over time, builds up a collection of endowed funds from many donors in the community. It provides services to the community and its donors, makes grants and undertakes community

leadership and partnership activities to address a wide variety of needs within the region where it operates. It would typically operate a Public Ancillary Fund, and possibly also an income tax exempt charitable trust.



THE EARLY WINS

Introducing portability for Private Ancillary Funds

Issue

A Private Ancillary Fund that is being wound up cannot transfer its assets to a Community Foundation or another organisation operating a Public Ancillary Fund.

Details

When the *Private Ancillary Fund Guidelines 2009* were finalised, a 'portability' provision was not included in the guideline addressing the winding up of a Private Ancillary Fund.

However, by the time that the very similar *Public Ancillary Fund Guidelines 2011* were finalised in late 2011, the guidelines included a provision which states that subject to certain requirements, a Public Ancillary Fund may transfer assets to another Ancillary Fund on the winding up of the Public Ancillary Fund.

When the relevant enabling legislation for the *Public Ancillary Fund Guidelines 2011* (the *Tax Laws Amendment (2011 Measures No. 7) Act 2011*) was introduced into Parliament, the Explanatory Memorandum stated that "Portability of funds between ancillary fund types will be permitted ... to provide additional flexibility in the management of funds". It is clear that the same principles were intended to be apply to both Public and Private Ancillary Funds.

However, the *Private Ancillary Fund Guidelines 2009* have not yet been updated to

give effect to this. Therefore, when a Private Ancillary Fund is wound up, it cannot distribute its net assets to Community Foundations and other organisations which operate Public Ancillary Funds. It can only distribute its net assets to Item 1 Deductible Gift Recipients.

A trustee may wish to convert a Private Ancillary Fund into a sub-fund of a Public Ancillary Fund. Currently, they cannot do so.

There are Private Ancillary Funds currently in existence, which while set up with the best of intentions, are no longer considered viable by their trustee.

For example, the cost and effort associated with maintaining the fund may have become too high given its size. Currently, if they are wound up their net assets must be distributed to Item 1 Deductible Gift Recipients.

However, the trustee may wish to transfer the net assets to a Community Foundation or another organisation operating a Public Ancillary Fund so the funds can continue to be managed for the benefit of the community on an ongoing basis.

In particular, a trustee may wish to convert a Private Ancillary Fund into a sub-fund of a Public Ancillary Fund, especially if its net assets are small and therefore a sub-fund is a more appropriate and cost-effective giving structure. Currently, they cannot do so.

A more flexible approach is needed to address this red tape – the *Private Ancillary Fund Guidelines 2009* need to be brought up to date, so that when a Private Ancillary Fund is wound up, its assets can be transferred to a Community Foundation or another



organisation operating a Public Ancillary Fund for the ongoing benefit of the community.

No changes to primary legislation would be needed to deliver this win.

Recommendation

Philanthropy Australia recommends inserting a new Guideline into the *Private Ancillary Fund Guidelines 2009*, which replicates the effect of Guidelines 50 of the *Public Ancillary Fund Guidelines 2011* and permits portability.



Allowing Public Ancillary Funds to receive distributions from other Ancillary Funds

Issue

Under the current regulatory framework, a Public Ancillary Fund cannot receive a distribution from another ancillary fund, be it Private or Public. This red tape is an obstacle to giving.

Details

As Item 2 Deductible Gift Recipients, Ancillary Funds can only make a distribution to Item 1 Deductible Gift Recipients.

This restriction is a common source of frustration to Philanthropy Australia's Members, and the red tape it imposes is regarded as a barrier to giving. The following are two examples based on the experiences of our Members.

A Public Ancillary Fund cannot receive a distribution from another ancillary fund, be it Private or Public. This red tape is an obstacle to giving.

initiative bringing donors together and working with partner organisations to achieve social change in a particular area.

Typically, a Community Foundation will use a Public Ancillary Fund to coordinate these activities, pool donations and manage them to maximise impact. Therefore an individual, family or business with a Private Ancillary Fund is currently unable to make a donation

The first example involves a situation where a Community Foundation is undertaking a collective impact

to the Community Foundation to support its collective impact initiative.

The second example involves a provider of workplace giving services. They use a Public Ancillary Fund to accept donations from employees across numerous employers, which are then directed to the charities which particular employees have nominated.

An employer approaches this organisation, expressing an interest in matching their employees' workplace giving donations, using funds from their corporate foundation. However, they soon find out that they are unable to do so, as their corporate foundation is a Private Ancillary Fund, and hence their matching donations cannot be channeled through a Public Ancillary Fund.

Philanthropy Australia believes that when it comes to this issue, the regulatory framework for Private and Public Ancillary Funds is in need of targeted reform.

We understand that one concern with allowing Private and Public Ancillary Funds to make distributions to other Public Ancillary Funds is that it may result in money for which a tax deduction has been claimed staying within ancillary funds for too long and not finding its way to supporting charitable causes.

However, Ms Anne Robinson and Mr John King of Prolegis Lawyers, who are two of Australia's leading charity and tax law practitioners, have developed a legislative solution which could address the red tape imposed on Ancillary Funds under the current regulatory framework.

The solution involves allowing 'conduit funds' to be established within Public Ancillary Funds, which can be used to accept distributions from other Ancillary Funds.



These changes fit within the existing architecture of the relevant division of the *Income Tax Assessment Act 1997 (Cth)*, do not compromise the integrity of the regulatory framework for Ancillary Funds, and are revenue neutral.

A document outlining this solution has been prepared and is available upon request.

Philanthropy Australia acknowledges that this proposal would not address the full range of regulatory and taxation challenges faced by Community Foundations and certain other organisations operating Public Ancillary Funds, but it would be a significant improvement on the current situation.

Recommendation

That Public Ancillary Funds be permitted to receive distributions from other Ancillary Funds, with appropriate safeguards put in place to ensure the ongoing integrity of the regulatory framework for Ancillary Funds.



Providing Public Ancillary Funds with the flexibility to allow donors to make directions regarding how their donations are distributed

Issue

A donor currently cannot give a binding direction to the trustee of a Public Ancillary Fund regarding how their donations are distributed. This can be a disincentive to donating to Public Ancillary Funds.

Details

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larger amount of funds which is necessary to make establishing a Private Ancillary Fund a viable option. Typically a Private Ancillary Fund will only be viable where its size is \$1 million or more.

Donors can also make one-off or regular donations to a Public Ancillary Fund without establishing a sub-fund, as with any charity endorsed as a Deductible Gift Recipient.

A sub-fund can be established with an initial contribution of as little as \$20,000. This makes them a particularly attractive giving option where a donor would like to establish a named endowment, but does not have the

One of the challenges with the current regulatory framework for Public Ancillary Funds is that based on the Australian Taxation Office's Taxation Determination 2004/23¹, a donor can only make a recommendation or provide advice to the trustee of the Public Ancillary Fund regarding how their donation should be distributed. This restriction is reinforced by Note 2 to Guideline 45 of the *Public Ancillary Fund Guidelines 2011*.

Donors cannot give a binding direction to the Public Ancillary Fund's trustee, nor can the trustee give an undertaking or assurance that it will comply with the recommendations or advice of a donor.

If such an undertaking or assurance is given, then donations which are subject to the undertaking or assurance will not be tax deductible.

The following example explains why this is a problem. A donor approaches an organisation which operates a Public Ancillary Fund seeking to establish a sub-fund with an initial contribution of \$150,000. The donor would like to have the certainty that the donations they make through the sub-fund will be distributed to Item 1 Deductible Gift Recipients which reflect their preferences.

However, they can only make recommendations to the trustee of the Public Ancillary Fund, with the trustee taking this advice into account when determining how to distribute donations. It is very rare that a trustee will act against the advice of a donor, but they cannot give an undertaking or assurance that it will comply with this advice. They cannot even give a verbal assurance that

¹ See: <http://law.ato.gov.au/atolaw/view.htm?docid=TXD/TD200423/NAT/ATO/00001>



provided any recommendation is consistent with the Public Ancillary Fund's trust deed, it will be complied with.

Many donors will be content to rely on the reputation of the organisation operating a Public Ancillary Fund, and the fact that regularly acting against the advice of a donor will undermine its attractiveness to prospective new donors.

But some of our Members have highlighted that some prospective donors would like more certainty, and that on occasion the inability of our Members to provide such certainty is a disincentive to donating to Public Ancillary Funds. Some donors are hesitant to establish a sub-fund in such circumstances, and given the amount of funds they intend to contribute, establishing a Private Ancillary Fund is not a viable alternative option.

Public Ancillary Funds should have the option of giving donors an undertaking or assurance that they will comply with advice or recommendations regarding how their donation is distributed.

Philanthropy Australia believes that a practical and sensible solution is needed to address this red tape, to provide Public Ancillary Funds with more flexibility around how they structure their operations.

The trustee of a Public Ancillary

Fund should be permitted to give donors an undertaking or assurance that they will comply with advice or recommendations they or their nominated successors make, provided they are consistent with the Public Ancillary Fund's trust deed and other relevant laws.

Where such an undertaking or assurance is provided, this would allow donors to Public Ancillary Funds to make binding directions regarding how their donations are distributed, giving them more certainty that donations they make through the sub-fund will be distributed to Item 1 Deductible Gift Recipients which reflect their preferences.

The ability to make such binding directions should extend to situations where a donor who has a sub-fund wishes to transfer the sub-fund to another Public Ancillary Fund or to a Private Ancillary Fund. It would not extend to any recommendations or advice regarding investment of the corpus of the Public Ancillary Fund.

This win could be implemented through amending the *Public Ancillary Fund Guidelines 2011*, therefore no changes to primary legislation would be needed.

Recommendation

That the *Public Ancillary Fund Guidelines 2011* be amended to permit Public Ancillary Fund trustees to allow donors or their nominated successors to make binding directions regarding how their donations are distributed, provided they are consistent with the Public Ancillary Fund's trust deed and other relevant laws.



Allowing Ancillary Funds to provide third party guarantees

Issue

Restrictions currently imposed on Private and Public Ancillary Funds limit their ability to help charities access debt finance.

Details

Access to capital is recognised as a challenge for Australia's not-for-profit sector. Charities can be risk averse in terms of taking on debt, but the availability of debt finance itself can be limited.

Access to capital is recognised as a challenge for Australia's not-for-profit sector.

Philanthropy Australia believes that one practical step that could improve access to debt finance by certain types of charities, is allowing Ancillary Funds to provide third party guarantees to Item 1 Deductible Gift Recipients.

Ancillary Funds are required to distribute funds to Item 1 Deductible Gift Recipient and a minimum distribution requirement applies for each financial year. They can already provide concessional debt finance to an Item 1 Deductible Gift Recipient, and count the discount to the market interest rate towards their minimum distribution. They could also provide debt finance with a commercial interest rate as part of their investment strategy.

However, they are currently restricted from giving a security over or in relation to an asset of the fund, even if this is as a guarantee for

borrowing by an Item 1 Deductible Gift Recipient.

For example, a charity which is an Item 1 Deductible Gift Recipient may seek commercial finance from a lender only to be informed that it can only be provided if a guarantee is obtained so that if the charity defaults, the guarantor can repay the debt. Under the current framework, if the charity approaches a Private or Public Ancillary Fund to seek assistance, such an Ancillary Fund can only provide a grant rather than a guarantee.

Philanthropy Australia believes that this restriction is somewhat illogical. As with the making of a grant, the provision of a guarantee to an

Item 1 Deductible Gift Recipient involves providing a form of financial benefit to the Item 1 Deductible Gift Recipient,

which is used to further their charitable purposes. They are just different means to achieving the same end.

The total Private Ancillary Fund corpus is currently estimated to be in the range of \$3.5 to \$4 billion, and the total Public Ancillary Fund corpus is approaching \$3 billion.

This is a combined corpus of \$6.5 to \$7 billion which could be used more effectively to unlock considerably more capital for Item 1 Deductible Gift Recipients, if Ancillary Funds were able to provide third party guarantees for them.

The total Ancillary Fund corpus is currently around \$7 billion – this could be better leveraged to support charities by allowing the provision of third party guarantees.



This would allow ancillary funds to be more flexible in how they achieve their impact, complementing other ways they currently seek to do this, for example through providing concessional debt finance. It would be one more option available to assist Item 1 Deductible Gift Recipients to achieve their charitable purposes.

In order to provide an incentive for Ancillary Funds to provide such third party guarantees, a method would need to be devised for calculating their contribution towards an Ancillary Fund's minimum annual distribution.

In putting forward this proposal, Philanthropy Australia acknowledges that some restrictions would still be necessary.

These could include a prohibition on providing guarantees to 'related' Item 1 Deductible Gift Recipients, a limit on the proportion of an Ancillary Fund's assets over which a security can be given, as well as appropriate reporting of transactions in financial statements provided to the Australian Taxation Office.

No changes to primary legislation would be needed to deliver this win.

Recommendation

That the *Private Ancillary Fund Guidelines 2009* and *Public Ancillary Fund Guidelines 2011* be amended to enable Ancillary Funds to provide third party guarantees to unrelated Item 1 Deductible Gift Recipients.



Providing clarity for Private Ancillary Funds undertaking impact investment

Issue A – The Counting of Discounts to Market Interest Rates as Part of Minimum Distribution Requirements

There is currently a lack of clarity regarding whether Private Ancillary Funds may, in certain circumstances, count discounts to market interest rates toward minimum distribution requirements.

Details

Example 3 in Rule 19.3 of the *Public Ancillary Fund Guidelines 2011* states that:

If a public ancillary fund invests in a social impact bond issued by a deductible gift recipient with a return that is less than the market rate of return on a similar corporate bond issue, the fund is providing a benefit whose market value is equal to the interest saved by the deductible gift recipient from issuing the bond at a discounted rate of return.

However, no such example is included in the *Private Ancillary Fund Guidelines 2009*.

There is uncertainty about whether Private Ancillary Funds can count discounted returns as a distribution.

more clarity would be beneficial and enable Private Ancillary Fund trustees to make more informed decisions about how they utilise

Although some trustees correctly assume that the same arrangements apply for Private Ancillary Funds as for Public Ancillary Funds,

their funds to deliver social impact. This could be achieved through an amendment to the *Private Ancillary Fund Guidelines 2009*.

No changes to primary legislation would be needed to deliver this win.

Recommendation

That Example 3 in Rule 19.3 of the *Public Ancillary Fund Guidelines 2011* should be replicated in Rule 19.3 of the *Private Ancillary Fund Guidelines 2009*.

Issue B – The Classification of Private Ancillary Funds as Wholesale Investors

Some Private Ancillary Funds do not meet wholesale investor tests under the *Corporations Act 2001 (Cth)*, despite high net worth individuals or organisations having established them. This is known to be a barrier for Private Ancillary Funds who wish to invest in social impact bonds and other impact investments which are put to market only as a wholesale offering.

Details

Wholesale investors are able to access a wider range of investments than retail investors, however, reduced protections and disclosure requirements apply than in the case of retail investors.

This is the case with social impact bonds in Australia, which at this stage have only been put to market as a wholesale offering.

Many Private Ancillary Funds are established by high net worth individuals who in their own right would meet the wholesale investor tests under the *Corporations Act 2001 (Cth)*. However, under the current law, there is uncertainty about whether such Private Ancillary Funds themselves meet the wholesale investor tests, and this can



preclude Private Ancillary Funds from investing in social impact bonds and certain other impact investments.²

Some Private Ancillary Funds do not meet wholesale investor tests under the *Corporations Act 2001 (Cth)*, despite high-net-worth individuals or organisations having established them.

This uncertainty relates to whether the individual who has set up the Private Ancillary Fund *controls* it, as this element of control is required in order to meet the wholesale investor tests.

Philanthropy Australia has raised this uncertainty with the Australian Securities and Investments Commission, who have advised us that they are not planning to provide guidance on when a Private Ancillary Fund is controlled by a person who meets the wholesale investor tests.

Therefore it appears that some minor legislative change may be necessary to provide clarity on this issue. An option could be to classify a Private Ancillary Fund as a wholesale investor where its designated investment officer, or its sponsor, meets the wholesale investor tests in the *Corporations Act 2001 (Cth)*.

This would unlock more capital within Private Ancillary Funds to be used towards investing in social impact bonds and other impact investments.

Recommendation

That a minor legislative change to the *Corporations Act 2001 (Cth)* be made to

provide clarity regarding when a Private Ancillary Fund is classified as a wholesale investor. This amendment should adopt a practical approach which enables more Private Ancillary Funds to have the option to invest in social impact bonds and other impact investments where these are only put to the market as a wholesale offering.

² See: <http://cuffelinks.com.au/private-ancillary-funds-suffer-retail-treatment-smsfs/>



Encouraging foreign investor support for impact investment and philanthropy

Issue

Reforms to the 'Significant Investor Visa' (SIV) programme provide an opportunity to increase the flow of capital into impact investments, and to support philanthropy in Australia.

Details

The SIV requires migrant investors to invest \$5 million into complying investments within Australia for a minimum of four years before being eligible to apply for a permanent visa.

Between 24 November 2012 and 31 October 2014, 490 SIVs were granted, with \$2.45 billion invested in complying investments.³

The Australia Government is proposing to reform the Significant Investor Visa programme, to leverage and better direct additional foreign investment into areas lacking capital, such as startups and venture capital.⁴

As stated in the Prime Minister's and Minister for Social Services' media release announcing the membership of the Prime Minister's Community Business Partnership – one of the objectives of the Partnership is to consider how innovative investment and financing can

better support a culture of giving and volunteering in Australia.⁵

The SIV reform process provides an opportunity to deliver on this objective in two ways.

Firstly, by encouraging additional foreign investment into impact investments – these are investments which involve both a measurable societal as well as financial return.

According to the recently released report 'Delivering on Impact – The Australian Advisory Board Breakthrough Strategy to Catalyse Impact Investment', to expand impact investment in Australia one of the key priorities is the need to grow capital from diverse sources and make it available to social purpose organisations and to support innovative and effective approaches to addressing societal challenges.⁶

Reform of the Significant Investor Visa programme provides an opportunity to channel foreign investment towards impact investment and philanthropy.

In order to assist with this, impact investments could be classified as 'Complying Investment' under the SIV framework, with incentives to encourage foreign investors to direct a portion of their funds towards such investments.

For example, reflecting the fact that impact investment is a relatively new and emerging form of finance but also that it provides

³ See: <http://www.immi.gov.au/public/Pages/statistics/significant-investor-visa-statistics.aspx>

⁴ See: <http://www.theaustralian.com.au/business/economics/robb-flags-revamp-of-investor-visa-schemes/story-e6frg926-1227099074154>

⁵ See: <http://www.pm.gov.au/media/2014-10-18/partnership-promote-generous-australia>

⁶ See: <http://impactinvestingaustralia.com/>



societal benefits as well as competitive financial returns, impact investments could receive a higher weighting compared to other forms of Complying Investment.

Secondly, incentives could be introduced to encourage foreign investors to support philanthropy in Australia.

For example, where a foreign investor establishes a Private Ancillary Fund in Australia as part of applying for a SIV, the amount that they donate towards this PAF could reduce the amount of Complying Investment they must make.

Such initiatives could have the potential to unlock millions of dollars of additional funding for impact investment and philanthropy in Australia at little cost to Government, which would have considerable flow on benefits for our community.

Recommendation

That reform of the 'Significant Investor Visa' (SIV) programme includes incentives to encourage foreign investors to direct a portion of their funds towards impact investments and/or philanthropy.



Simplifying property donation rules

Issue

Existing property donation rules in the tax laws are complex, confusing and costly. They are a source of red tape and make donating property more difficult.

Details

Property donation rules within the tax law specify the types of donated property eligible for tax deductions and valuation requirements to determine appropriate tax deductible amounts. Property can include physical things such as land, or rights and interests such as shares.

Existing property donation rules in the tax laws are complex, confusing and costly – they make giving more difficult.

The existing property donation rules are a source of red tape – they are complex, confusing and costly, and need to be simplified to make the donation of property easier.

This was recognised by the Not-for-profit Sector Tax Concession Working Group in 2013.⁷

The rules for gifts of shares valued under \$5,000 are relatively simple.⁸ However, for shares and other property worth more than \$5,000 the process is more complicated and costly.

⁷ See:

<http://www.treasury.gov.au/~media/Treasury/Access%20to%20Information/Disclosure%20Log/2014/1447/Downloads/PDF/NFP%20Sector%20WG%20Final%20Report.ashx>

⁸ See: [https://www.ato.gov.au/Non-profit/Guides/In-detail/Fact-sheets/Gifts---fundraising/Gifts-of-shares-valued-\\$5,000-or-less/](https://www.ato.gov.au/Non-profit/Guides/In-detail/Fact-sheets/Gifts---fundraising/Gifts-of-shares-valued-$5,000-or-less/)

A valuation by the ATO is required – with two forms needing to be submitted, a request for valuation and a certificate of donation. In addition to this paperwork, a non-refundable application fee of \$241 is payable the ATO, in addition to the costs for the ATO to have the valuation undertaken.⁹

A simpler way needs to be found to make property donation easier.

Recommendations

That the property donations rules in the *Income Tax Assessment Act 1997 (Cth)* be simplified.

In particular, gifts of listed shares or units in managed funds with regularly published net asset valuations should no longer require a valuation. This reflects the fact that the value of listed shares and units in managed funds with regularly published net asset valuations is straight forward to ascertain and verify.

For other property and gifts of non-listed shares, a simplified process should apply. Rather than having the ATO undertake a valuation, the onus should be placed on individuals donating property and claiming a tax deduction to ensure that their deduction appropriately reflects the value of the donated property.

A principles-based rather than prescriptive approach should be used.

Normal ATO tax return audit processes could be used to ensure that appropriate tax deductions are claimed.

⁹ See: [https://www.ato.gov.au/Non-profit/Guides/In-detail/Fact-sheets/Gifts---fundraising/Gifts-of-property-valued-by-the-ATO-at-more-than-\\$5,000/](https://www.ato.gov.au/Non-profit/Guides/In-detail/Fact-sheets/Gifts---fundraising/Gifts-of-property-valued-by-the-ATO-at-more-than-$5,000/)



Supporting better collaboration

Issue

Supporting better collaboration could facilitate more effective partnerships between the Australian Government, philanthropy and not-for-profits.

Details

There are considerable benefits which can be gained from Government, philanthropy and not-for-profits partnering together to develop and implement initiatives which address their shared priorities, and leverage the strengths of each party – be that funding, risk appetite, expertise and experience.

However developing and implementing effective partnerships is not a simple undertaking, and necessitates a mutual understanding of the different partners, as well as examples of the different ways partnerships can be structured.

In 2011 and 2012, Philanthropy Australia was involved in a project undertaken together with the Victorian Government to develop *Guiding Principles for Collaboration Between Government and Philanthropy*.¹⁰

This tool has been used at a range of levels to support effective collaborative approaches and a series of case studies have also been developed focusing on three way relationships between Government, philanthropy and not-for-profits.

Philanthropy Australia believes there would be merit in developing a new collaboration

framework which could facilitate more effective partnerships between the Australian Government, philanthropy and not-for-profits.

A starting point would be to develop a tool similar to Victoria's *Guiding Principles for Collaboration Between Government and Philanthropy*. This would set out a strategic approach to developing and implementing effective partnerships between Government, philanthropy and not-for-profits. It could also identify areas where partnerships can be developed, implemented and subsequently evaluated.

Combined with this process, it is important to raise awareness amongst Australian Government officials about how they can more effectively engage with philanthropy and not-for-profits, and visa-versa.

This should not only involve developing and implementing a tool similar to Victoria's *Guiding Principles for Collaboration Between Government and Philanthropy*, but also facilitating the sharing of expertise and experience more directly.

This could be done through the establishment of a 'buddy program' where senior Australian

Government officials are partnered with senior leaders from philanthropy to form a two-directional relationship, helping to build mutual understanding and foster collaboration.

It's important to put in place a framework which fosters closer collaboration between Government, philanthropy and not-for-profits.

¹⁰ See: <http://www.premier.vic.gov.au/media-centre/media-releases/4370-government-collaboration-with-philanthropy-takes-a-step-forward.html>, and <http://www.dhs.vic.gov.au/for-business-and-community/not-for-profit-organisations/philanthropy>



Recommendations

That a new framework for collaboration between the Australian Government, philanthropy and not-for-profits be established.

Tools should be developed and implemented in order to translate this new framework into practice, with areas identified where partnerships can be developed, implemented and subsequently evaluated.

In order to share expertise and experience, build mutual understanding and foster collaboration, a 'buddy program' where senior Australian Government officials are partnered with senior leaders from philanthropy should be established.



Establishing the Prime Minister's Giving Awards

Issue

Establishing the Prime Minister's Giving Awards would provide a way of raising the profile of philanthropy, driving cultural change and promoting best practice.

Details

Growing giving is not just about getting the right taxation and regulatory settings. It's equally important to recognise and promote philanthropy and its impact more widely. This

Growing giving is not just about getting the right taxation and regulatory settings, we also need to drive cultural change.

can inspire more giving and drive cultural change.

A prestigious awards program, with awards bestowed by the Prime Minister, would provide a way to do this.

Awards could be made in a variety of categories covering the breadth of the philanthropic sector including, but not limited to:

- Philanthropist of the Year
- Emerging Philanthropist of the Year
- Community Foundation of the Year
- Giving Circle of the Year
- Corporate Giver of the Year
- Workplace Giving Employer of the Year
- Philanthropic Adviser of the Year

The Partnership could appoint a selection panel for the awards, and the administration

of the awards process could be outsourced to keep costs to a minimum.

Philanthropy Australia does not believe that such an awards program should be event-based. An event-based program would have a higher cost, without necessarily providing the broader recognition and promotion that would be the objective of the awards program.

Instead, media partners could assist in widely publicising the awards, their recipients and the impact of their giving to a broad audience.

Recommendation

That the Prime Minister's Giving Awards be established to raise the profile of philanthropy, drive cultural change and promote best practice.



Empowering employers and employees to make their own decisions about structuring workplace giving programs

Issue

Currently the *Fair Work Act 2009 (Cth)* precludes employers and employees from making their own decisions at an enterprise level regarding how they structure their workplace giving programs, including whether to adopt an 'opt-out' arrangement for both new and existing employees. This red tape is limiting the potential growth of workplace giving.

Details

Workplace giving is a simple and effective way for employees to regularly donate to eligible charities, and involves employees making small regular donations to eligible charities of choice through their pay.

Workplace giving is a simple and effective way for employees to regularly donate to eligible charities. We need the right policies in place to help it grow.

12, across Australia only 4.5 per cent of employees participated in a workplace giving program where it was provided by their employer.

This presents a real opportunity to grow this form of giving.

Although millions of dollars are currently donated using workplace giving to support important causes every year, in 2011-

There is strong evidence to suggest that enabling employers to implement an opt-out workplace giving program (whereby employees must opt-out from making a modest donation from each pay, rather than opt-in) will engage many more people in giving resulting in millions more dollars being raised for the benefit of the Australian community.

Feedback from our Members is that where such arrangements have been implemented for *new* employees, this has resulted in a vast number of employees choosing not to opt-out, thus demonstrating widespread support for such an initiative.

For example, a major Australian bank trialed such a system within one of its business areas whereby new employees had a default deduction of \$2 per fortnight included in their employment contract, from which they could choose to opt-out. Over 60 per cent of all new employees chose not to opt-out and joined the employer's workplace giving program in this manner. This increased the total number of workplace giving participants by 37 per cent compared with the previous year.

Employer deductions from employee salaries are regulated by the *Fair Work Act 2009 (Cth)*, which currently does not allow for the introduction of opt-out workplace giving arrangements for *existing* employees.

Therefore the kind of system outlined in the example above cannot be rolled out across an entire organisation, but only for new employees.

This restriction not only limits the growth of workplace giving in Australia, it also adopts a top down approach whereby Commonwealth legislation precludes employers and employees from making their own decisions



at an enterprise level regarding how they structure their workplace giving programs.

Philanthropy Australia believes that a more flexible approach is needed, which lets employers and employees make their own decisions about the structure of workplace giving programs in their workplace

Recommendation

That a small amendment be made to the *Fair Work Act 2009 (Cth)* to reduce red tape and let employers and employees make their own decisions at an enterprise level about the structure of workplace giving programs in their workplace, without the *Fair Work Act 2009 (Cth)* imposing the current paperwork requirements which preclude the introduction of opt-out workplace giving arrangements.



Energising workplace giving within the Commonwealth Public Service

Issue

Currently workplace giving is an option for Australian Government employees, but it needs to be promoted more widely and effectively.

Details

Workplace giving is an option for Australian Government employees, and in a positive development, in 2013 the Australian Public Service Commission issued a circular to inform Australian Government employers and employees of the benefits of workplace giving programs and to give advice on how to implement these programs.¹¹

However more effort is needed to promote workplace giving amongst the more than

A renewed effort is needed to promote workplace giving amongst the more than 150,000 Australian Government employees.

150,000 Australian Government employees, to communicate the benefits of giving using this method and increasing take up.

An energised workplace giving

strategy within the Commonwealth Public Service could involve bringing senior Australian Government officials together with workplace giving support organisations.

These organisations could advise on strategies for increasing take-up of workplace giving within the Commonwealth Public

Service, building on their experience working with other employers and with charities.

They could also provide the technology solutions that are necessary to provide the engagement that is needed if employees are to take advantage of workplace giving, including through building long-term direct relationships between donors and charities.

Agencies with particularly effective approaches could share this information with other agencies.

Once such a strategy is in place, it would be important to measure take up across agencies, so this can be compared with other agencies and Commonwealth Public Service-wide benchmarks, and reported.

In seeking to grow workplace giving within the Commonwealth Public Service, the Australian Government would be adopting a leadership role, setting an example for other employers.

Recommendation

That an energised workplace giving strategy within the Commonwealth Public Service be introduced, bringing senior Australian Government officials together with workplace giving support organisations to develop and implement new approaches to grow workplace giving within the Commonwealth Public Service.

¹¹ <http://www.apsc.gov.au/publications-and-media/circulars-and-advice/2013/circular-20134>



ABOUT PHILANTHROPY AUSTRALIA

Philanthropy Australia is the national peak body for philanthropy and is a not-for-profit membership organisation with a more than 800-strong membership. Our mission is to represent, grow and inspire an effective and robust philanthropic sector in the community.

Our Members are trusts and foundations, businesses, families and individuals who want to make a difference through their own philanthropy and to encourage others with their giving. To find out more about Philanthropy Australia, visit www.philanthropy.org.au.