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13 March 2015

Workplace Relations Inquiry
Productivity Commission
GPO Box 1428
CANBERRA CITY 2601

By email: workplace.relations@pc.gov.au

Dear Sir/Madam,

Workplace Relations Framework Inquiry

Philanthropy Australia welcomes the opportunity to make a brief submission to the Workplace Relations Framework Inquiry ('the Inquiry') being undertaken by the Productivity Commission ('the Commission').

In Issues Paper 1, 'The Inquiry in Context', the Commission effectively summarises how broad the impact of Australia's workplace relations framework is.

This impact is so broad as to also have implications for philanthropy, and specifically workplace giving. Workplace giving is a way for employees to regularly donate to eligible charities, and involves employees making small regular donations to eligible charities of choice through their pay.

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.

This restricts the ability of employers to flexibly manage and engage with their employees, and imposes a red tape and compliance burden for employers – both matters which the Commission has been asked to examine as part of the Inquiry.

Although millions of dollars are currently donated using workplace giving to support important causes every year, in 2011-12, across Australia only 4.5 per cent of employees participated in a workplace giving program where it was provided by their employer.

There is strong evidence to suggest that enabling employers to implement an 'opt-out' workplace giving program will engage many more people in giving, resulting in more funds being raised for charitable causes.

An opt-out workplace giving program involves modest amounts being deducted from an employee's regular pay unless they elect for this *not* to occur.

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, the Commonwealth 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 sections 323 and 324 the *Fair Work Act 2009* (Cth).

These provisions currently do not allow for the introduction of opt-out workplace giving arrangements for *existing* employees.

A letter of employment can include a provision outlining the default workplace giving deductions which will apply unless the new employee opts-out or varies those deductions. A new employee gives their written consent when agreeing to their employment terms.

However in the case of existing employees, it is insufficient to provide a written communication outlining proposed default workplace giving deductions, which will take effect if an employee chooses not to opt-out within a specified period of time.

Therefore the kind of initiative outlined in the example above cannot be implemented across an entire organisation, but only for *new* employees.

In the case of existing employees, express consent from each employee is required, with the employee opting-in to workplace giving arrangements, for example by completing and signing a form and sending it to their employer's payroll department.

This not only limits the take up of workplace giving and therefore the funds flowing to charitable causes, but also imposes unnecessary administration and paperwork requirements on both employers and employees.

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, including whether to introduce opt-out arrangements.

This would require minor amendments to the *Fair Work Act 2009* (Cth).

These amendments or associated guidance material could specify the need for:

- Proper consultation of employees when deciding to implement an opt-out arrangement;
- Proposed default workplace giving deductions to be adequately communicated to employees (including in electronic form such as by email);
- A reasonable period of time for employees to inform their employer that they wish to opt-out from any proposed default workplace giving deductions before it takes effect.

It is the experience of our Members that employers identify employee engagement as their primary objective for their workplace giving program¹, and would therefore approach the implementation of any new workplace giving arrangements in good faith and with the aim of positively engaging with as many employees as possible.

This consideration should inform the design of any aspect of the workplace relations framework which relates to workplace giving. However this does not currently appear to be the case.

Further information about this matter, including a legal opinion prepared by King & Wood Mallesons regarding the effect of existing restrictions within the *Fair Work Act 2009* (Cth), is available on the [website](#) of the Australian Charities Fund.

If the Commission wishes to discuss the matters raised in this submission further, please do not hesitate to contact Krystian Seibert, Policy & Research Manager, on (03) 9662 9299.

This submission has the support and endorsement of the Charities Aid Foundation Australia, and the Australian Charities Fund.

¹ See 'Engagement: Recognising the value of workplace giving', Australian Charities Fund and the Centre for Social Impact, 2013, available here: <http://www.australiancharitiesfund.org.au/engagement-recognising-the-value-of-workplace-giving-research-report-2013/>

Yours sincerely

A handwritten signature in black ink, appearing to read 'Louise Walsh', with a small dot at the end.

Louise Walsh
Chief Executive Officer