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Submission on Exposure Draft – Legislative Framework for Public Ancillary Fund

Thank you for the opportunity to comment on the revised draft Guidelines for Public Ancillary Funds, issued 14 July 2011. This comment reflects the opinion of the Board of Directors of Australian Community Philanthropy and its members.

Australian Community Philanthropy (ACP) is a not-for-profit organisation, that aims to build and support Community Foundations and the communities that support them across Australia.

The areas we have commented on and for which we have suggested changes are from the perspective of Community Foundations.

Community Foundations are independent, non-profit, community-based philanthropic organisations whose goal is to encourage, facilitate and generate contributions from the community in order to address social, cultural and environmental issues.

The structure of most Community Foundations includes a Public Ancillary Fund. The structure also usually includes a corporate trustee that is also an operating charitable institution and sometimes a number of other philanthropic trusts such as a Charitable Fund (not DGR), an Educational Scholarship Fund (DGR) and a Disaster Relief Fund (DGR). This structure is not ideal for community foundations wishing to undertake both grant making and community building projects.

However, without further legislative change, the Public Ancillary Fund is an important part of the Community Foundation structure.

The Public Ancillary Fund Guidelines 2011 include provisions relating to the distribution of corpus, which are inconsistent with the vision and objectives of many Community Foundations.

MINIMUM ANNUAL DISTRIBUTION

19. During each *financial year, a *public ancillary fund must distribute at least 4 per cent of the *market value of the fund's net assets (as at the end of the previous *financial year).

Australian Community Philanthropy does not see any justification for changing the current distribution requirements for Public Ancillary Funds from a percentage of income to a percentage of capital. The current requirement to distribute 80% of income supports the mission and purpose of Community Foundations.

However, as it appears that a distribution of a percentage of capital is the most likely scenario then the requirement to distribute 4% of the market value of the fund's net assets is more appropriate than the initially proposed 5%.

19.1. The fund must distribute at least $11,000 (or the remainder of the fund if that is worth less than $11,000) during that *financial year if:

- ***the 4 per cent is less than $11,000; and***
- ***any of the expenses of the fund in relation to that financial year are paid directly or indirectly from the fund's assets or income.***

Rather than stipulate a minimum dollar distribution or the 4% of net assets and linking the requirment to expenses being paid from the fund's assets or income, it would be preferable to leave the requirement at 4%.

Requiring smaller public ancillary funds, such as many of the rural and regional Community Foundations, to distribute a minimum dollar amount does not reflect the ability of their community to build their Public Ancillary Fund; nor does it recognise the significant other work and benefits provided to the community by Community Foundations. As these Community Foundations are responding to grass roots community needs and building a culture of giving and engagement, whilst also trying to ensure their sustainability, having a single requirement of 4% of net assets and not linking the distribution requirement to how expenses have been funded is more acceptable than setting a minimum dollar distribution amount.

Furthermore, Australian Community Philanthropy is concerned that this requirement could endanger the perpetual nature of many small Public Ancillary Funds, particularly those operating in rural and regional areas. Community Foundations, that serve small populations may take a decade or more to reach $220,000 in their corpus.

An $11,000 minimum distribution amount being required if any of the expenses of the fund were paid from the fund's assests or income is disingenuous. Smaller public ancillary funds, need to pay expenses of the fund from the fund's income.

Until the Community Foundation operating the PuAF is self sustainable in its own right it relies on an administration fee from its PuAF to cover the cost of being open and transparent in its administration of the PuAF. This enables them to report the PuAF's activities to all stakeholders and uphold the highest levels of corporate governance.

This clause does not recognise the cost to the Community Foundation of operating a PuAF and accounting to the public. Newly established Community Foundations with a PuAF will inadvertently be disadvantaged twice, firstly by having the minimum distribution requirement and then if they wish to avoid the minimum distribution requirement not being able to fund their costs from the PuAF.

We therefore ask how Treasury expects small and recently established PuAFs to be able to meet the requirements of the guidelines if expenses of running the fund cannot be paid from the fund's assets or income - it is creating a situation where failure to meet the requirements of the new guidelines will be imminent.

At a minimum, to ensure the sustainability of Community Foundations we recommend that clause 19.1 be removed in full and the requirement is simply to distribute 4% of the fund's net assets.

Alterantively, we would support the implementation of Catherine Brown's recommendation that certain types of Public Ancillary Funds should be able to seek exemption from the Public Ancillary Fund Guideline 19 in relation to the Minimum Annual Distribution.

Guideline 19.7 could be added which states:

The Trustee of a Public Ancillary Fund may seek an exemption from the distribution requirements in 19.1 and 19.2 where the Public Ancillary Fund is:

1. A trust managed by a community foundation; and
2. The community foundation operates for the benefit of the community in a particular area of rural or regional area of Australia; and
3. The trustee is also an operating charity providing projects which are of benefit to that community.

(Catherine Brown is a Consultant & Solicitor, LLB BA Grad Dip Bus Admin FAICD. Catherine Brown has worked as a lawyer and consultant with community foundations in rural and regional Australia since 2000. She is author and editor of The Community Foundations Kit for Australian Communities, Philanthropy Australia and FRRR, 2004 and author of Great Foundations – a 360° guide to building resilient and effective not for profit organisations, ACER Press, 2010)

19.2. No distribution is required during the *financial year in which the fund is established or during the next 4 financial years.

This clause does not acknowledge the varying capacity of communities to raise funds from the public. We contend that allowing a four year accumulation period is not sufficient time for less established, recently established or new Community Foundations or other new entities with a Public Ancillary Funds.

Clause 19.2 is inconsistent with the vision and objectives of Community Foundations. It is well known internationally that Community Foundations in smaller regions may take many years to build up a significant corpus and rely on a large number of donors.

In addition, many Community Foundations are at the same time running community building and community leadership programs through the incorporated entity with charitable institution status (which is also the trustee of the Public Ancillary Fund). Each Community Foundation responds to the needs of its own community and some will focus on running major projects within their community. Fundraising for a corpus may not be the priority in each year.

Unlike Private Ancillary Funds, Public Ancillary Funds rely on raising funds from multiple donors and a wide range of community members, businesses and organisations. Public ancillary funds are concerned with encouraging the public to become involved in philanthropy and in giving for the community benefit. For example the Stand Like Stone Foundation which serves the South East of South Australia was established in 2004 and as with many other small Community Foundation relies on a large number of donors to give to the PuAF as Table 1 demonstrates 441 donors have given to Stand Like Stone. The minimum donation amount is $10, the maximum donation is $20,000 and the average donation is $472. Table 1 also demonstrates that it takes more than 4 years to build a significant donor base.

This takes time and effort and four years after the year of establishment is not sufficient time to build funds to such a level that 4% of the market value of the fund's net assets is sufficient and efficient to distribute. This is particularly an issue in rural areas where donors' income is subject to the vagaries of weather as has been demonstrated over the previous 10 years of drought and then the recent floods.

Using Stand Like Stone's experience of fund raising and based on Treasury's implied fund balance of $220,000 a new PuAF will need 466 donors giving an average donation of $472 to reach $220,000 within 4 years. This breaks down to 116 donors per annum for 4 years. As Table 1 demonstrates this is a difficult task.

Within the Community Foundation sector in Australia, Stand Like Stone is regarded as a successful Community Foundation and is the leading Community Foundation in South Australia. Despite this as Table 1 shows it has taken Stand Like Stone seven years to reach a corpus of $208,359. This has been achieved as a result of the efforts of a diligent Board working hard in their community to raise funds. This example is replicated across Australia and is generally the experience of Australian Community Philantrhopy's members.

Table 1 - Stand Like Stone's Public Ancillary Fund growth and number of donors since establishment

		Fund balance	4% of corpus	No of donors
2003/2004	0	$2,505	$100	1
2004/2005	1	$27,066	$1,083	17
2005/2006	2	$44,593	$1,784	8
2006/2007	3	$53,426	$2,137	13
2007/2008	4	$71,142	$2,846	7
2008/2009	5	$75,614	$3,025	101
2009/2010	6	$151,684	$6,067	134
2010/2011	7	$208,359	$8,334	160
				Total donors 441

It is worth noting that Stand Like Stone has delivered $300,150 worth of charitable benefit to the community through a combination of activities including an Educational Scholarship Fund (DGR), Public Ancillary Fund (DGR) and Charitable Fund (not DGR) and by undertaking both grant making and community building projects. This example of charitable benefit is replicated across Australia by Community Foundations.

We do support the note that the trustee should consider making an appropriate distribution each year in accordance with the purpose of the fund regardless of the balance of the fund.

We recommend changing clause 19.2 to state that no distribution is required until the *financial year following the fund balance reaching $220,000. This allows Community Foundations to fundraise in line within the capability of its community.

Alterantively, we would support the implementation of Catherine Brown's recommendation that certain types of Public Ancillary Funds should be able to seek exemption from the Public Ancillary Fund Guideline 19 in relation to the Minimum Annual Distribution.

Guideline 19.7 could be added which states:

The Trustee of a Public Ancillary Fund may seek an exemption from the distribution requirements in 19.1 and 19.2 where the Public Ancillary Fund is:

1. A trust managed by a community foundation; and
2. The community foundation operates for the benefit of the community in a particular area of rural or regional area of Australia; and
3. The trustee is also an operating charity providing projects which are of benefit to that community.

40. The fund must not *carry on a *business.

We suggest the wording be revised slightly to “The fund must not carry on an unrelated business”.

Clause 40.2 should also be amended to include any activities in relation to fundraising (not just public appeals).

Clauses 36 & 42: Benefits to Founder / Donor

Whilst this clause makes sense for Private Ancillary Funds, due to the wide range of donors giving to a Public Ancillary Fund it will cause negative unintended consequences for Public Ancillary Funds.

For example a donor may give a donation for the purpose of benefitting their community as a whole but as they live in that community they may directly or indirectly benefit - this is problematic particularly in rural communities.

To avoid such confusion we suggest the clause is modified to exclude “distributions to eligible recipients”.

PORTABILITY

Portability within the sector is very welcome.

Portability needs to be both ways (so equally, from a Private Ancillary Fund to a Public Ancillary Fund). Whilst we understand that these Guidelines only refer to public ancillary funds, the Private Ancillary Fund Guidelines also need to be amended to include the provision for the transfer of capital and assets to a Public Ancillary Funds (and / or an existing or new sub-fund of a Public Ancillary Funds).

TRANSITIONAL DISTRIBUTION RULES

Clause 53.

A fund with a corpus of less than $220,000 on 31 December 2011 will not be required to make a minimum distribution until the earliest of these times:

• the end of the 2014-15 financial year; or

• from the end of the financial year in which the market value of the net assets of the fund at the end of the financial year reaches $220,000.

Please refer to our comments with respect to Clauses 19, 19.1 and 19.2.

We strongly recommend that Community Foundations with Public Ancillary Funds should be able to fundraise in line within the capability of its community and therefore the transitional distribution rules should reflect this.

At a minimum we recommend deleting clause 53 in its entirety and simply stating that no distribution is required until the *financial year following the fund balance reaching $220,000. This allows Community Foundations and other PuAFs to transition within the capability of its community to fundraise.

WHY IS ENDOWMENT IMPORTANT TO COMMUNITY FOUNDATIONS?

The concept of endowment is central to Community Foundations. They take a long term view, and are able to tackle long-term community challenges, as well as immediate needs. Donations to Community Foundations are gifts to meet the needs of Item 1 DGRs in perpetuity. Community Foundations build resources over time from multiple donors (refer to Table 1), over generations, to create a community asset for on-going benefit to Item 1 DGRs.

It is important to note that many donors to Community Foundations' Public Ancillary Funds make their donations, or request the establishment of sub-funds, because they are attracted to the perpetual nature of the fund. Perpetuity and endownment is a strong motivation for definitely and irrevocably sequestering sums for community benefit.

Perpetuity and endownment is also an important factor because it ensures that Public Ancillary Funds are able to guarantee a permanent and ongoing funding stream for the community through Item 1 DGRs. The ability to generate reliable income, rather than rely solely on donations, is vital to ensure sustainable growth and ongoing funding of Item 1 DGRs. This is particularly important for rural communities who have a limited base from which to fund community projects and have a desire to create a sustainable pool of funds for community projects. The ability to build a perpetual fund is attractive as eventually there is no longer a need to fundraise, while still being able to distribute for charitable purposes to Item 1 DGRs.

Mandating a distribution rate which will force Community Foundations to spend capital to the point where the Public Ancillary Fund is no longer sustainable undermines the very foundation of the philanthropic impulse.

The endowment proposition and subusequest income provides sustainability and security to communities which have limited capacity to fund raise to undertake charitable projects for their communities.

We support distribution that allows Community Foundations to plan for future needs while addressing current needs and to build their funds in perpetuity.

Please contact me if you have any queries or would like to discuss our submission.

For and on behalf of the Board of Directors of Australian Community Philanthropy and its members.

Sue Charlton
Chairman

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