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Submission on Exposure Draft – Legislative Framework for Public Ancillary Funds

The Ballarat Foundation thanks 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 Ballarat Foundation Ltd. which is the trustee of a Public Ancillary Fund.

The areas we have commented on and suggest changes to are particularly from the perspective of small and less established Community Foundations with Public Ancillary Funds. As we are based in a regional community we also express comments and concerns over how the draft Guidelines will impact on entities in rural areas with a Public Ancillary Fund.

BACKGROUND TO RESPONDENT

The Ballarat Foundation is a Community Foundation, which was launched in 2001 to serve Ballarat. In 2008 the geographic boundaries were extended to include a number of small rural and regional towns and cities that fall within the Ararat Rural City, the Pyrenees Shire, The Hepburn Shire, The Moorabool Shire, The City of Ballarat and the western half of the Golden plains Shire.

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.

As with most Community Foundations The Ballarat Foundation's structure includes a Public Ancillary Fund which is an important part of the Community Foundation structure.

Within the Community Foundation sector in Australia, The Ballarat Foundation is regarded as a successful Community Foundation and has built a corpus in its PuAF which exceeds the minimums indicated in the draft legislative framework. Our submission is based on our experience of growth and in support of the many smaller Community Foundations who would be adversely affected by these measures, especially in their important early years, and for the benefit of the Community Foundation movement in general.

It is my view that smaller rural and regional Community Foundations may not have the knowledge and capacity to make their own submissions and may not have been appropriately represented in this review process to date.



At the recent 2011 National Community Foundation Forum held in Kingscliff, NSW August 16th-18th, the draft legislation was discussed and the points made in this response reflect the views that were supported at that forum which included representation from Philanthropy Australia, FRRR and Australian Community Philanthropy which are, I understand making separate submissions. A significant number of the Australian Community Foundations, particularly those from regional areas, were present and may make separate submissions also.

General points relating to community foundations:

- Community Foundations bring together people who care about their communities and aim to strengthen community by strengthening philanthropy. They partner with donors to build permanent endowments and other funds, from which to support community projects, and by providing leadership on issues of broad community concern.
- The concept of endowment is central to all 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 community need in perpetuity.
- Every Community Foundation is a very important component within the philanthropic sector at a local level. 90% of Community Foundations are in regional areas, often with few alternate community support networks and with limited bodies to fund through, which to an extent limits their capacity to distribute funds effectively. Any changes which limit the community foundation's capacity to fund its operation and to grow its endowment will be extremely detrimental to the ongoing success of these community run organisations and may dishonour the millions of dollars already received from supportive donors and bequests who offered their financial support on the very basis that it would have a long term, perpetual impact within their community.
- Philanthropy is not just for the wealthy and effective giving is not just about money. At the heart of the community foundation model is the opportunity for donors who would not or could not consider establishing their own PAF to participate in philanthropy through our community foundation. Community Foundations handle all the governance and encourage person's to start with small regular amounts within their financial capacity and to grow their charitable giving over time. Mandating a high level or fixed minimum level of annual distribution will negate this capacity and will effectively limit philanthropy to the wealthy.
- Requiring (particularly lower income donors who have set up named sub-funds) to distribute a minimum % of valuation is counter intuitive and will greatly diminish the ability of Community Foundations to stimulate, grow and support philanthropy from the broader community.



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).

The Ballarat Foundation 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%.

Our preference is to implement Catherine Brown's¹ 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 rural or regional area of Australia; and
3. The trustee is also an operating charity providing projects which are of benefit to that community.

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 requirement to expenses being paid from the fund's assets or income, it would be better to leave the requirement at 4%.

¹ **Catherine Brown BA/LLB/GD Bus Admin/FAICD is a management consultant, lawyer and author. Ms Brown was CEO of the Brain Foundation for three years. She is also a board member/chair of several government and not for profit Boards. Principal consultant and director of Catherine Brown & Associates, a consultancy which supports and promotes innovation and best practice in philanthropic and not for profit organisations; Catherine is a Member of the Law Institute of Victoria and a Fellow of the Australian Institute of Company Directors. Catherine Brown has made her own separate submission to the Exposure Draft.**



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.

A \$11,000 minimum distribution amount being required if any of the expenses of the fund were paid from the fund's assets or income is disingenuous. Smaller public ancillary funds, such as many of the rural and regional Community Foundations, need to pay expenses of the fund from the fund's income. Until the entity operating the PuAF, the Community Foundation, is self sustainable in its own right Community Foundations rely on an administration fee from their PuAF to cover the cost of being open and transparent in their administration and operating of the PuAF and enabling 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 operating entity involved in operating a PuAF and accounting to the public. Newly established entities 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 they are not able to fund their costs from the PuAF. This raises the question of how does Treasury expect small any small or 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.

Our preference is to implement 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 rural or regional area of Australia; and
3. The trustee is also an operating charity providing projects which are of benefit to that community.



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. Allowing a four year accumulation period is not sufficient time for less established, recently established or new Community Foundations setting up or other new entities with a Public Ancillary Funds.

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

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.

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 populations are sparse and donors' income is subject to the vagaries of weather as has been demonstrated over the last 10 years of drought and then the recent floods.

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.

At a minimum 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.

Our preference is to implement 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 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 smaller and 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 all ways (so equally, from a Private Ancillary Fund to a Public Ancillary Funds; or even from Public to 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).

It is logical and practical that a Private Ancillary Fund that is no longer supported by the entity who established it be wound up and transferred to a fund with a similar purpose. Their local Community Foundation is a practical and very logical option to continue the purpose of the fund and benefits from the community ownership which all but guarantees the funds perpetuity and its capacity to continue to support the community.

Further, a Public Ancillary Fund operating in a very small community may see benefit in rolling into a larger Public Fund operating in a region in which the small fund resides.



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 with 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.

As with most Community Foundations it is important to note that many donors to The Ballarat Foundation's 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 endowment is a strong motivation for definitely and irrevocably sequestering sums for community benefit. The Ballarat Foundation includes 35 named sub-funds, of which 23 are within our Public Ancillary Fund.

Perpetuity and endowment 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 subsequent income provides sustainability and security to rural communities which have limited capacity to fund raise to undertake charitable projects for their communities, therefore accumulating capital is particularly important to rural 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.

Noel Trengove
Chief Executive Officer
The Ballarat Foundation