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The Treasury
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Submission on Exposure Draft – Legislative Framework for Public Ancillary Fund

We seek to submit our comments re Exposure Draft on Legislative Framework for Public Ancillary Funds.

The Community Foundation for Bendigo and Central Victoria is one of the Community Foundations serving communities in rural and regional Australia. Like other Community Foundations we are an independent, non-profit, community-based philanthropic organisation whose goal is to encourage, facilitate and generate contributions from the community in order to address social, cultural and environmental issues.

Like most Community Foundations our structure includes a Public Ancillary Fund managed by us as corporate trustee as well as being a charitable institution operating a non DGR Charitable Fund. This structure is not ideal for community foundations wishing to undertake both grant making and community building projects.

The Public Ancillary Fund Guidelines 2011 include provisions relating to the distribution of corpus, which are inconsistent with our vision and objectives, and in particular we provide comments of the following Sections:

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).

We do not understand the merits or justification for changing the current distribution requirements for Public Ancillary Funds from a percentage of income (80%) to a percentage of capital (4% or 5%). The current requirement to distribute 80% of income supports our mission and purpose.

If the percentage of capital option wins traction then we reluctantly support 4% of the market value of the fund's net assets as being 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.**

We do not agree to this Clause at all and find its unintended consequences as quite onerous and a recipe for disaster for rural and regional Community Foundations.

If the rules must be changed leave the minimum dollar distribution to 4% in recognition of the difficulty small Community Foundations in their formative years (which can take from 8 to 12 years or more at least) to build a corpus and the necessary support funds for administrative sustainability.

If there was a requirement for a minimum distribution of \$11,000 to be paid smaller public ancillary funds, particularly the many rural and regional Community Foundations would be disastrously disadvantaged as we need to pay expenses of the fund from the fund's income. We rely on retaining a small administration fee to cover our costs of being open and transparent and to report to all of our stakeholders.

We therefore ask how Treasury us as trustee for our Public Ancillary Fund 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.

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.

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 advise that allowing a four year accumulation period is not sufficient time. We are 9 years old, and it took all of that time PLUS a large injection of funds from the Victorian State Govt through a substantial grant to our Open Fund PLUS some drought breaking rain to generate some vital leverage from the 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 Fund).

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.

Yours sincerely

Cheryl Hardie
Executive Director
Community Foundation for Bendigo and Central Victoria