

Submission on Exposure Draft – Legislative Framework for Public Ancillary Funds

Background

I have worked as a lawyer and consultant with community foundations in rural and regional Australia since 2000. The structure of most community foundation 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. Earlier submission to government recommended a Register of Community Foundations.

The Public Ancillary Fund Guidelines 2011 include provisions relating to the distribution of corpus, which are 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. This can be at least ten years. 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.

Recommendation

It is recommended 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 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.*

The Exposure Draft would need to refer to this exemption in clause 1.34.

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