standlikestone

philanthropy | influence | legacy

IMPROVING THE INTEGRITY OF PUBLIC ANCILLARY FUNDS

Background to respondent

The Stand Like Stone Foundation is a Community Foundation, which was launched in 2004 to serve the geographic region of the Limestone Coast. The Limestone Coast is a rural area located in the South East of South Australia, and includes 7 local government areas; Tatiara District Council, Naracoorte Lucindale Council, Wattle Range Council, Kingston District Council, Robe District Council, District Council of Grant and City of Mount Gambier.

Stand Like Stone is part of a network of thirty Community Foundations across Australia and works closely with the Foundation for Rural and Regional Renewal (FRRR), Australian Community Philanthropy and Philanthropy Australia.

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.

They bring together people who care about their communities and aim to strengthen the 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 Community Foundations. They take a long term view, and are able to tackle long-term community challenges, as well as immediate needs. Donations, big and small, to Community Foundations are gifts to meet community need in perpetuity.

Like most Community Foundations in Australia, Stand Like Stone:

- engages in a range of activities for charitable purposes
- is not only engaged in grant making, but is also involved in running projects that support and build our community
- funds non-DGR organisations through its Open Fund
- was established to benefit a particular geographic region and therefore relies on the reservoir of trust which we have built up within the local community

As with many rural communities, in the Limestone Coast, there is only a small reservoir of funds on which the community can draw and so building a perpetual fund to benefit future generations is a key objective.

Stand Like Stone and particularly other rural Community foundations are therefore an important agent for the development of philanthropy and the growth of the available pool of funds for distributing for charitable purposes.

Also, like most Community Foundations, the Stand Like Stone Foundation structure:

- is a Public Company Limited by Guarantee which is the trustee of three Trust Funds
- is endorsed by the Australian Tax Office (ATO) as a Charitable Institution and is exempt from income tax
- includes other trusts for charitable purposes within its legal structure

Stand Like Stone has three Trust Funds for charitable purposes, with each fund established and governed by a separate Trust Deed. The public company, the Stand Like Stone Foundation, is the trustee of the:

- Public Ancillary Fund (to which tax-deductible donations can be given)
- Educational Scholarship Fund (to which tax-deductible donations can be given)
- Open Fund

Each of these Trust Funds have management accounts or 'sub-funds' as part of the trust. These management accounts are an important asset. They enable Stand Like Stone to engage with donors who do not have sufficient means to establish a Private Ancillary Fund, or who do not wish to do so. Others donate because they support the purposes of Stand Like Stone and rely on the expertise of the Stand Like Stone's trustees to make granting decisions.

Stand Like Stone's Constitution provides governance requirements and states that Stand Like Stone is not for profit and that its income will be applied to public charitable purposes.

Stand Like Stone is the perpetual vehicle for community-minded individuals to donate and in this way they create a perpetual legacy to benefit the community through time.

Introduction

Stand Like Stone fully supports any moves to make the system simpler and more effective. It is important to ensure that any regulatory reform ensures maximum long term benefits flow to the community from Public Ancillary Funds.

Stand Like Stone agrees with the underlying principle that there is a need for clear guidance on establishment, maintenance and governance of Public Ancillary Funds. However, the Discussion Paper does not adequately explain why a new regulatory regime should be based upon the principles on which the PAF Guidelines were based.

Paragraph 4 in the Discussion Paper states that the main difference between PAFs and Public Ancillary Funds is "that public ancillary funds solicit funds from the public". However, the difference between the two structures is more complicated, as outlined above in "Background to respondent". There is little logic in attempting to apply the same principles to Public Ancillary Funds as to PAFs.

Stand Like Stone agrees in principle with the sentiment behind paragraph 34 of the Discussion Paper, that an ancillary fund should not be eroded through negative investments and management fees. However, mandating a high distribution rate will ensure this erosion of capital for the majority of Public Ancillary Funds, which already face higher costs than many Private Ancillary Funds due to the need to fundraise.

It is important to note that many donors to Stand Like Stone'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 is a strong motivation for definitely and irrevocably sequestering sums for community benefit. An individual with a large cash surplus in one year has incentives to establish a sub-fund with that cash and the community can be sure that it will always be held in trust for the community and spent on charitable purposes.

Perpetuity is also an important factor because it ensures that Public Ancillary Funds are able to guarantee a permanent funding stream for the community. The ability to generate reliable income, rather than rely solely on donations, is vital to ensure sustainable growth. 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 pursposes.

It must also be noted that Stand lIke Stone's trustees of the Public Ancillary Fund, in accepting their role, are tasked with duties including to protect and preserve the trust property. The trustees agree with the Trustee Principle endorsed by the Council on Foundations, the peak body for foundations in the US, which states, "We hold ourselves responsible to those who created us, those with whom we currently interact, and those who may look to us in the future". Mandating a distribution rate which will force the spending down of capital to the point where the Public Ancillary Fund is no longer sustainable is a breach of this principle, one which undermines the very foundation of the philanthropic impulse. We support distribution that allows Community Foundations to plan for future needs and build their funds in perpetuity.

Required distributions

What is an appropriate minimum distribution rate for a public ancillary fund and why?

Stand Like Stone 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 works well and supports the mission and purpose of Community Foundations. The proposed distribution rate is counter intuitive and will greatly diminish the ability of Community Foundations, particulary in rural areas, to stimulate, grow and support philanthropy from the broader community.

The argument that a higher level of distribution will ensure a higher level of accountability could be viewed as incorrect as there appears to be no logical connection between the two. In particular, Stand Like Stone sees no justification in changing to a distribution rate based on the value of capital. If this change is introduced, there will be many unintended consequences. Stand Like Stone strongly urges the Government to consider the following points:

- The Trustees of Stand Like Stone's Public Ancillary Funds implement a conservative investment strategy, stemming from the public nature of the funds. Given the conservative investment strategy (which is appropriate for public money) and therefore low returns it is unlikely the Public Ancillary Fund will be sustainable in the long term while paying out at a rate of 5%.

- A distribution rate based on capital rather than income will threaten the perpetual nature of Community Foundations, and make it less likely that donors will make donations. It is likely that many donors to Community Foundations particulary in rural areas, where there are few item 1

DGRs based, rather than diverting their funds directly to item 1 DGRs, will simply choose not to give at all if the attractions of perpetuity are withdrawn.

- In the recent economic climate interest rates were well below the 5% of capital distribution suggested. The 5% distribution of capital is an imposition not related to the economic climate and the Public Ancillary Fund's ability to earn income now or in the future. Market rates of income return vary and capital values fluctuate. Consideration should also be given to appropriate flexibility for distributions, particularly as charitable projects can have a longer preparation term than 12 months.

  Distribution of net income is simple to apply and audit. Capital based formulas are unnecessary and will add to compliance complexity with no recognizable benefit. Thus the distribution of a percentage of income is realistic because it is simple and in tune with the economic climate. The investment income from a perpetual investment, over time returns the value of any donation to the community over time, many times over and over and over.

- Many donors to Public Ancillary Funds within Community Foundations have donated to these funds because they believed their gift would ensure community benefit in perpetuity. Donors like to have the ability to give a donation that is invested in perpetuity and therefore provides a community benefit in perpetuity as it means they only need to give once rather than having to continually give each year. The introduction of a mandated distribution rate based on a percentage of capital will lessen, not strengthen, the trust of donors and also make giving more complicated as donors cannot give once and know that there will be an ongoing benefit to the community.

Stand Like Stone notes that the Discussion Paper states that "public ancillary funds should benefit the charitable sector more than if the Government has taken the revenue foregone (by way of public ancillary fund tax concessions) and given it directly to the sector". In light of this statement it is worth acknowledging that in rural areas there are few locally based organisations to which the Government could directly give to the sector. Most item 1 DGR organisation's are capital city based and have either no presence or little presence in rural communities and have little or no capacity to support rural communities. Also most item 1 DGR's have a single activity focus, unlike Community Foundations which are able to be reactive to wide ranging and changing charitable needs. Even Community Foundations which have local knowledge find it difficult to identify suitable organisations to give to from their Public Ancillary Funds.

It is also worth noting that Stand Like Stone's Open Fund (where donations not requiring a tax deduction are held) which distributes to charitable projects has a higher balance than the Public Ancillary Fund. The Open Fund's balance is $199,824 and the Public Ancillary Fund has donations of $153,884. Therefore as an organisation Stand Like Stone is providing a significant benefit to the charitable sector without requiring the Government to forego revenue.

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 community need in perpetuity. Community Foundations build resources over time from multiple donors, over generations, to create a community asset for on-going community benefit.

A core tenet of Community Foundations is to make philanthropy accessible and to encourage more people to be philanthropic. Community Foundations engage all members of the community in philanthropy not just high new worth individuals. If the regulations governing public ancillary funds take away the flexibility for small donors to get engaged and involved, it will simply make philanthropy inaccessible for these donors. It is essential that Community Foundations have a good balance between minimum distribution requirements and the ability to accumulate capital.

The rationale for accumulating capital is twofold:

- their purpose is to endow the community for the long term
- they need to generate sustainable income over the long term which is used for distribution.

The community benefits directly from each of these activities, core to the Community Foundation proposition. The endowment and subusequest income provides sustainability and secuity to rural communities which have limited capacity to fund raise to undertake charitable projects for their communities, therefore accumulating capital is particulary important to rural communities.

Stand Like Stone recommends that the minimum distribution rate for Public Ancillary Funds remain at the current level based on a minimum percentage of earned income (eg, interest and dividends) and that the guidelines specify that level.

Regular valuation of assets at market rates

Are there any issues that the Government needs to consider in implementing the requirement to ensure public ancillary funds regularly value their assets at market rates?

Stand Like Stone which is a public company limited by guarantee, is already required to report annually to ASIC and in the interests of good corporate governance and transparency to the community is audited annually. Imposing further regular valuation and administrative requirements on the trustee is a cost burden that will erode the benefit that can be returned to the community.

Increased accountability

Community Foundations understand their public accountability obligation to their community, donors and the general public. Provided that there is no duplication in reporting requirements not only between Federal Gvoernment bodies but between State and Federal bodies, Stand Like Stone agrees that all bodies which receive benefit through offering tax deductions and which operate in a tax free environment should have public reporting obligations.

Stand Like Stone currently reports to ASIC and the Government of South Australia's Office of Liquor and Gambling Commissioner annually with a full set of financial accounts. It would be preferable to have to report only once, and for ASIC, the ATO and the applicable State Government body to share the data. As per the recent Corporations Act amendments, the reporting requirements should be staggered according to size and complexity.

As Stand Like Stone engages in fundraising from the public it must also comply with the fundraising legislation of South Australia which requires annual reporting to retain its fundraising licenses and is listed on the Office of Liquor and Gambling Commissioner website as a licensed charity (http://www.charities.sa.gov.au/default.asp?action=charities_list).

Stand Like Stone supports the recording of all ancillary funds on the Australian Business Register. Consistency of classification and recording is desirable.

Stand Like Stone keeps full and proper accounts using the pro bono services of professional accountants. It also produces and publishes annual audited financial statements. Summary financial accounts are included in Stand Like Stone's Annual Report and are available on our web site.

Stand Like Stone also publishes:

- the amount of total annual donations
- the amount of total annual grants distribution
- the names of all grant recipients

It would be inappropriate and extremely difficult for public ancillary funds to have to report a full list of all individual donors, notwithstanding the confidentiality issues this raises. In terms of confidentiality, some donors do not wish to be named. Public ancillary funds are raising funds from the public. Hundreds and potentially thousands of donors may make a contribution in any given year.

The current review to ensure national consistency of fundraising regulation is critical and will accommodate any issues confronting public ancillary funds.

Increasing regulatory powers

Is the administrative penalty regime (including magnitude of penalties) that applies to private ancillary funds suitable for public ancillary funds?

Community Foundations draw their directors from the community within which they operate, all on a voluntary basis and although an earnest attempt is made to follow good corporate governance and compliance regulations, there may be some errors which will occur largely as a result of oversight or misunderstanding. Due to their open and public nature, there is significantly less opportunity for abuse than is the case for Private Ancillary Funds.

There is a requirement that those holding directorships of companies must be responsible people of good standing. More government assistance with providing training opportunities to company directors and people of authority within the foundation movement, rather than any punitive measures is preferred.

Are there any difficulties in requiring public ancillary funds to have a corporate trustee?

Stand Like Stone does not see any difficulty in requiring Community Foundations to have a corporate trustee as long as the corporation can act as trustee of a number of trust funds. Stand Like Stone Foundation Limited, a public company limited by guarantee is the trustee of three trust funds; Public Ancillary Fund (to which tax-deductible donations can be given), Educational Scholarship Fund (to which tax-deductible donations can be given) and Open Fund.

This is a very effective model and brings with it public accountability through having to comply with the Corporations Act 2001.

It should be noted that all Community Foundation Directors are independent, and the majority are also Responsible Persons.

What fit and proper person requirements should be imposed on trustees of public ancillary funds?

The discussion paper asks if the minimum standards of conduct for Private Ancillary Fund's trustees would be appropriate for public ancillary funds. However the Responsible Persons requirement for public ancillary funds is already greater than that of a Private Ancillary Fund. Stand Like Stone believes that a fit and proper person test will add no additional accountability than is already offered by the Responsible Person test. Therefore there is no need to change.

It should also be noted that for many Public Ancillary Funds, particularly those which operate in rural areas, there is already some difficulty in sourcing appropriately qualified and willing Responsible Persons to act as trustees and additional requirements will increase this difficulty.

The Discussion Paper suggests that requirements for Superannuation Trusts might be comparable. However, Superannuation Trusts are not an appropriate comparison for Community Foundations; they are solely focused on producing financial benefit for members. A core tenet of Community Foundations is community engagement and grant making, which requires an additional, different and specialist skill set as well as significant community knowledge and networks.

Stand Like Stone has an extremely strong governance structure and process. Board composition is deliberately diverse with a requirement for an extensive range of experience and expertise. Stand Like Stone encourages donors with the relevant skills to take up Board positions as they can reflect the views and interests of the donor community.

There is one Private Ancillary Fund requirement that is totally inappropriate for Community Foundations. The Private Ancillary Fund minimum standards of conflict relate to the donation limitation: that directors of a trustee should not be a "donor to the fund who has contributed more than $10,000, or an associate of … such a donor". It is not clear why this requirement has been postulated. Presumably, it is intended to prevent 'self interested' use of philanthropic funds.

Stand Like Stone does not believe that there is any justification for this requirement. Since the board of a Public Ancillary Fund already comprises a majority of Responsible Persons, the opportunity for a director who has made donations to act in a self-interested way is negligible and will be subject to conflict of interest exclusions applicable under trustee laws as well as the Corporations Act.

In the Community Foundation context it is not unusual for directors of the trustee who are volunteers, being themselves interested in philanthropy, to use the mechanism provided by the Community Foundation to make donations and / or to establish their own sub-funds. This is the case with Stand Like Stone.

Therefore a requirement limiting directors' donations to a Community Foundation would be an illogical contradiction in terms of the role and purpose of Community Foundations, where the complete opposite is the objective.

Transitional rules

What transitional arrangements are required for existing public ancillary funds to conform to the new arrangements?

A long lead time is required for transition arrangements, particularly on the distribution level. As all Stand Like Stone's marketing material states that we operate on a model where donations are invested in perpetuity requiring the distribution of 5% of capital will require the reprinting of all marketing material, a complete rewrite of our website and extensive communication with our donors who gave based on their donations being invested in perpetuity and the income being distributed.

It will be essential to allow Community Foundations enough time to make any transition, and to provide them with the resources to do so.

The following would need to occur to move to the new arrangements:

1. The purpose, strategy and activities of each public ancillary fund must first be understood. Not all public ancillary funds are the same.

2. The Productivity Commission should be consulted so that any changes only add to the sector's effectiveness and do not unnecessarily increase the regulatory burden on these not-for-profit organisations.

Public Fund

Should the term 'public fund' be codified in the guidelines in accordance with the principles set out in ATO Taxation Ruling TR 95/27?

The term 'public fund' should definitely not be codified in the guidelines in accordance with the principles set out in ATO Taxation Ruling TR 95/27?

There are many different types of public fund (the public ancillary fund is one) and any proposed changes which affect public funds need to be properly and openly discussed, and the organisations affected by the proposed changes must be properly consulted.

Public Ancillary Fund investment rules should ensure liquidity and low risk

Can the investment and risk minimisation rules that apply to private ancillary funds be suitably applied to public ancillary funds?

Stand Like Stone, like all Community Foundations, has an investment strategy in place which is available to donors.

In principle, many of the investment and risk minimisation rules that apply to Private Ancillary Funds are equally applicable to Community Foundations (as public ancillary funds).

However, there are two Private Ancillary Fund investment rules which would be inappropriate for Community Foundations:

(40) The fund must not carry on a business

The meaning of this guideline is unclear. Does it mean that a public ancillary fund would not be allowed to undertake other relevant fundraising activities from which it derives an income, besides the operation of the endowment fund?

If so, then this is definitely not appropriate for Community Foundations. As non-profit community organisations themselves, Community Foundations need to carry out fundraising businesses in order to generate enough resources to cover administration expenses.

This is another example of where Community Foundations and Private Ancillary Funds are significantly different in their mission and purpose, and where a direct transfer of guidelines would be counter-productive and damaging to Community Foundations.

(46) The fund must not accept donations in any financial year totalling more than 20% of the value of its assets

This is clearly irrelevant for Community Foundations / public ancillary funds which are required to seek donations from the public and where any limit on donations would be nonsensical.

Summary

It is critical that the regulations and guidelines concerning the operation of public ancillary funds, recognise, are relevant to and facilitate the operation of the different types of organisations that use the public ancillary fund structure.

Community Foundations have an important and particular community role and purpose. Issues of transparency, accountability and public confidence are essential for Community Foundations.

Due to the lack of Item 1 DGRs in rural areas Community Foundations play an important role in facilitating philanthropy in rural Australia and addressing the social welfare issues in rural areas that in major capital cities are tackled by Item 1 DGRs.

Assuming that the guidelines which regulate private ancillary funds are directly transferrable to or relevant to Community Foundations is inappropriate and problematic. In many instances they may actively work against the Community Foundation mission and purpose, particularly in rural areas.

Stand Like Stone would be happy to discuss in detail any aspect of the review of public ancillary funds and particularly the affect on rural communities, and assist in designing guidelines and regulation that support the sector for future growth and meet the need for public accountability and confidence.

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For and on behalf of the Board of Directors of the Stand Like Stone Foundation as trustee of the Stand Like Stone Foundation Public Fund

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