



**Australian  
Community  
Philanthropy**

**Exposure Draft of Amendments to the Private Ancillary Fund Guidelines 2009  
and Public Ancillary Fund Guidelines 2011**

**SUBMISSION FROM AUSTRALIAN COMMUNITY PHILANTHROPY LTD**  
February 2016



**Australian  
Community  
Philanthropy**

11<sup>th</sup> February 2016

General Manager  
Law Design Practice  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Via email: [taxlawdesign@treasury.gov.au](mailto:taxlawdesign@treasury.gov.au)

Dear Sir/Madam,

**RE: Exposure draft of amendments to the Private Ancillary Fund Guidelines  
2009 and the Public Ancillary Fund Guidelines 2011**

Please find attached Australian Community Philanthropy's submission in response to the exposure draft of amendments to the Private Ancillary Fund Guidelines 2009 and the Public Ancillary Fund Guidelines 2011.

For more information or to discuss this submission, please contact me on [REDACTED]

Yours sincerely,

[REDACTED]

Kate Buxton  
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## 1. Introduction

Australian Community Philanthropy (ACP) welcomes the opportunity to provide comment on the exposure draft of amendments to the Private Ancillary Funds 2009 and the Public Ancillary Fund Guidelines 2011.

ACP is the peak membership organisation for community foundations in Australia. Founded by a group of community foundation practitioners to provide support to the voluntary boards and professional staff of new and established community foundations, ACP was incorporated and endorsed as a Charitable Organisation in 2008 and exists to connect, support, represent and guide the community foundation movement and to strengthen its resources and impact.

Australian community foundations are part of a thriving global sector. Since the first Australian community foundation was founded in 1923, they have granted over approximately \$100 million within their communities. Collectively, Australia's 38 active community foundations:

- hold more than \$310 million in funds under management
- granted at least \$21 million within their communities (2013)
- each year, support hundreds of grass roots projects and initiatives through their grant and community strengthening programs.



## 2. Overview

All community foundation boards are voluntary. More than 50% of community foundations operate with one paid member of staff or less (EFT) and at least three foundations have no staff at all. Thus it is vital that any changes to the Guidelines address issues inherent in the current iteration without giving rise to unintended consequences or an increased administrative burden.

- ACP is supportive of the intention to reduce ‘red-tape’ within the reporting framework and supports the integration of the ACNC into the regulatory framework for Public Ancillary Funds and the consequent elimination of duplication.
- ACP is disappointed that the draft amendments do not include adequate provision for portability from Private to Public Ancillary Funds. This omission precludes the community knowledge held by community foundations being leveraged by Private Ancillary Funds.
- ACP is supportive of the intent behind the amendment to change the minimum distribution requirements in order to provide greater flexibility in unexpected economic conditions. Community foundations exist to tackle long term as well as immediate community need. A community foundation’s sustainability is predicated on its ability to:
  - preserve and grow its endowment
  - support the community it serves through its distributions and other community strengthening mechanisms
  - meet donor and broader community expectations with respect to its philanthropic activities

Identifying an appropriate distribution mechanism that meets all these objectives is challenging; ACP notes in the detailed comments below that there are opportunities to introduce further refinement of this aspect of the amendments to reflect the varying capacities of Public Ancillary Funds, particularly with respect to their size and ability to access relevant expertise.

- The tenet of ‘giving where you live’ is fundamental to community foundations. As community based philanthropic vehicles, community foundations harness local talent, time and treasure in all aspects of their operations, from trustees to donors. ACP believes there is a need for a better solution with respect to requirements for consultation or review of donor preferences prior to distribution. The draft amendment does not address the confusion that currently exists in this area. ACP believes that further consultation is required on this aspect of the Guidelines.

ACP acknowledges the valuable role the Prime Minister’s Community Business Partnership has played in broadening discussion around the tax regulations related to philanthropic giving. ACP’s submission to The Partnership in May 2015 – made in collaboration with the Australian Communities Foundation, Lord Mayor’s Charitable Foundation and Sydney Community Foundation - affirmed the significant contribution of community foundations to grass-roots needs across Australia thus enabling everyone to be a philanthropist.

### 3. Detailed Comments and Recommendations

#### ***Omission of provision for portability from Private to Public Ancillary Funds (Guideline 51a Private Ancillary Guidelines)***

Pathways between private and community philanthropy are a pre-requisite to providing Private Ancillary Funds with the opportunity to access local knowledge, achieve greater impact and deliver more effective support.

Community Foundations are uniquely placed to bring together disparate partners and harness their capacities in order to develop innovative solutions and new approaches to social problems.

Community foundations understand that vital, resilient communities are inclusive and engage different experiences and perspectives. Community foundations take a multi-faceted approach to the challenges facing their communities - through grant making, investments, research, community development and engagement. ACP's members have reported many instances of Private Ancillary Funds who have expressed a wish to port their funds to community foundation's Public Ancillary Funds. For example, Ballarat Foundation received two such requests in 2015, both from families who no longer have the capacity to continue managing their funds and have identified that a community foundation is the optimum vehicle for ensuring long term community impact.

ACP's submission to the Prime Minister's Business and Community Partnership stressed the need for portability and transferability between Private and Public Philanthropy and it is disappointing that this has not been addressed.

The draft amendment restricts portability to being from one PAF to another PAF, rather than between ancillary funds. This is inconsistent with the former Assistant Treasurer's and former Minister for Social Services' announcement of 28 May 2015, which specified a change which would *'provide PAFs, which are private funds set up to provide money or property to deductible gift recipients, with the flexibility to transfer their net assets to other ancillary funds'*.

Furthermore, the draft is in conflict with the explanatory memorandum for the relevant enabling legislation for the Public Ancillary Fund Guidelines 2011 (The Tax Laws Amendment Act (2011 Measures No.7) which states *'Portability of funds between ancillary fund types will be permitted to provide additional flexibility in the management of funds'*

In addition to our recommendations with respect to the draft guidelines, ACP urges that urgent consideration be given to legislative change which would allow for distributions from Private to Public Ancillary Funds. This would enable the community knowledge held by community foundations to be leveraged by private ancillary funds, overcome obstacles to collaborations and granting programs which could achieve more impact, and attract new donors into philanthropy.

## **Recommendations**

**ACP recommends that the draft amendment Guideline 51a of the Private Ancillary Guidelines 2009 be amended to remove the word ‘private’ in order to allow a Private Ancillary Fund to transfer assets to a Public Ancillary Fund.**

**ACP recommends that the portability provision commences prior to July 1<sup>st</sup> to facilitate those PAFs wishing to wind-up in this financial year and transfer their net assets to another Ancillary Fund**

**Further to amendments to the Private Ancillary Fund and Public Ancillary Guidelines, ACP recommends legislative change to allow for distributions from Private to Public Ancillary Funds which will remove the barriers preventing private philanthropy leveraging the unique value of community foundations.**

### ***Minimum Distribution Requirements (@7 Guideline 19 Public Ancillary Guidelines)***

Community foundations are champions of local philanthropy, they engage donors of all ages and from all walks of life to grow permanent endowments as a community resource, now and for the future. Economic conditions which result in endowment growth being outpaced by minimum distribution requirements is challenging for community foundations and may:

- Result in erosion of the endowment leading to donor disillusion and community concerns pertaining to lack of growth
- Impact on a foundation’s ability to strategically plan for and respond to community need or prudently structure their giving over the short and long term.

As a result of their corpus size, many smaller community foundations rely on very low-risk investment strategies including a reliance on, for example, term deposits. In periods of declining or very low interest, Public Ancillary Funds which are forced to distribute out of capital, reduce the value of their funds and, ultimately, the funds available for community benefit. Whilst there is the prospect of regaining this lost ground, extended cycles of loss place an unnecessary burden on volunteer Boards and trustees, particularly those of emerging foundations, rural and remote foundations and foundations with smaller endowments. It is precisely these categories of community foundations (emerging, relatively smaller corpus, rural and remote) which are likely to have limited access to financial and investment expertise and are thus much less resilient to fluctuations in the economy.

Notwithstanding the above, community foundations are extremely mindful of meeting community and broader public expectations with respect to their philanthropic giving and of ensuring a consistent flow of funds to deserving projects and causes. Community foundations strive to achieve the very best for their communities and are committed to maximizing their distributions. As active participants in the lives of their community, community foundations engage in constant consultation and dialogue. Above all community foundations are reputable stewards of community resources and committed to being accountable and transparent.

Whilst ACP is supportive of the intent to provide greater flexibility in unexpected economic conditions we acknowledge that community foundations are part of a much larger sector. It is critical that any changes to the guidelines do not add to administrative obligations and preserve the



integrity of philanthropic giving and receiving, as also outlined in Philanthropy Australia's submission. For this reason, we suggest that consideration be given to making this amendment more nuanced and responsive to the different capacities of Public Ancillary Funds:

**Recommendation**

**ACP recommends the introduction of a threshold such that Public Ancillary Funds with endowments of less than \$2 million dollars would be required to distribute 2% of net assets. For Public Ancillary Funds with assets greater than \$2 million the current minimum annual distribution of 4% would apply.**

***Trustee Review of Donor Non-Binding Preferences (@22 Note to Guideline 44 Public Ancillary Funds)***

Community foundations democratize giving by allowing everyone to be a philanthropist. As locally embedded organisations, community foundations leverage local resources to address local issues, empowering communities and creating resilience. Community foundations build long term relationships with their donors – aligning their donor's desire to serve their communities with their charitable goals.

Communicating the current requirements with respect to the relationship between donor preferences and trustee obligations leaves many donors confounded – particularly those that are unfamiliar with giving in the Public Ancillary Fund context.

**Recommendation**

**ACP recommends that further consultation be undertaken on this aspect of the legislation with a view to achieving a better balance between trustee obligations and the honoring of donor preferences.**

**4. General Comments on the Regulatory Framework for Community Foundations**

The current regulatory framework is too complex, especially for voluntary governing Boards and trustees. Community foundations are limited to funding local DGR 1 charities from their Public Ancillary Fund. In many cases, especially in rural Australia, there are few local DGR 1s working on relevant issues. Local organisations with relevant experience and capacity are precluded from obtaining grants, undermining community resilience and creating unnecessary dependency on external agencies and government.

This situation could be resolved by adopting a legal structure that allows a community foundation to be a charity with DGR 1 tax status dependent on the community foundation meeting a number of criteria, including not for profit community governance, and undertaking activities from amongst the range of current DGR 1 approved classifications. Each community foundation's focus areas would change over time, reflecting the changing needs of each community. This solution would, furthermore, effectively address the issue of Private Ancillary Funds being unable to leverage the expertise and community knowledge of Public Ancillary Funds by allowing them to make distributions to the latter.

ACP urges consideration of the aforementioned issue and would welcome the opportunity provide further information.