



# The Ballarat Foundation – Comments on the Definition of Charity Consultation Paper

*Now! For the Future*

8th Dec. 2011

## 1 Intro

### **Consultation Paper - A Definition of Charity**

Thank you for the opportunity to comment on "A Definition of Charity", issued October 2011. These comments reflect the opinion of the Board of Directors of The Ballarat Foundation.

The areas we have commented on are specific to the somewhat unique requirements of Community Foundations, which do operate with differences of purpose from the majority of NFP's.

## 2 Background to Respondent

### 2.1 About Community Foundations

Community Foundations are independent charitable organisations working in a specific geographic area which, over time, aims to build up a collection of endowed funds from many donors in the community.

It provides services to the community and its donors, makes grants and undertakes community leadership and partnership activities to address a wide variety of needs in its service area. (Adapted from a statement by Suzanne Feurt)

A community foundation builds capacity within the community to address local needs and opportunities. They build available funds from which grants are made to local charitable organisations<sup>1</sup>.

### 2.2 About The Ballarat Community Foundation

**The Ballarat Foundation** is Ballarat and surrounding regions Community Foundation. It is run for the community by a voluntary Board and its primary role is to raise and invest funds and distribute earnings from those funds to well chosen charitable community purposes.

We operate in Ballarat; however our footprint covers the surrounding shires of Ararat, Pyrenees, Hepburn, Moorabool and the western half of Golden Plains.

We are essentially a funder rather than a provider of services to the community. We can support a broad range of areas of interest - including Health and Wellbeing, Community Development, Arts and Humanities, Education, Sport and Recreation, Conservation and Environment, Disaster Relief; and Research.

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<sup>1</sup> Taken from information on <http://communityfoundations.philanthropy.org.au/about-community-foundations/what-is-a-community-foundation/>

Funds are received through, amongst other avenues, donations from business and individuals and bequests.

Our mission: The Ballarat Foundation is dedicated to enhancing the quality of life for the citizens of Ballarat and surrounding communities by attracting and investing endowment resources, assessing and responding to community needs, using income from investments to make relevant grants, being accountable for our effectiveness and our fiscal responsibility, and supporting local philanthropy.

In addition to the raising, investing and granting of funds we undertake community leadership and advocacy; of particular note is that we produce Vital Signs® a community health check which measures the vibrancy of the community across a number of key measures and reports back to the community through simple easy to read digest and understand table published in the local newspaper.

The foundation has within its structure a range of Sub-funds, most linked to specific donors and some open to community contributions. These Sub-funds facilitate the mechanisms for individuals and business to contribute to their community without incurring the associated governance and management requirements; which are undertaken by the foundation.

In our first tens years we have provided over 150 NFP organisations with grants and support worth in excess of \$1.4M whilst at the same time building a corpus which will operate into perpetuity.

## 3 Issues facing Community Foundations

### 3.1 Overview of issues

There are a number of issues facing community foundations relevant to the Definition of Charity. These are:

- (a) Lack of clarity on the meaning of charity. How to identify charitable purposes or entities.
- (b) Lack of organisations endorsed as charitable by the ATO, particularly in rural areas (they may be eligible for endorsement but have not done so).
- (c) Confusion in relation to the process of 'opting in' under State law to enable the public ancillary fund (but not the charitable company or trust) to make grants to item 1 DGR's without charitable status.

Appendix A contains some examples<sup>2</sup> of activities a community foundation may want to pursue or fund, and would like to ensure the definition and the guidance material from ACNC cover these types of activities.

### 3.2 Clarity as to meaning of charity

In order to maximise the potential and capacity of community foundations it is essential that there is clarity readily available as to the range of activities and the projects that can be funded or pursued directly, while operating within its charitable status.

Community foundations are also in the perfect position within communities to provide advice and demonstrate best practice relevant to all not for profit community organisations. Ideally a community foundation should be able to access and understand the requirements for recognition as a charity in order to be able to assist community organisations seek further funding.

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<sup>2</sup> Adapted and expanded from Catherine Brown's submission to PMC on Community Foundations, structure and DGR status 23 June 2004.

Clarity of understanding as to what is

For these reasons, The Ballarat Community Foundation supports a full list of charitable purposes in the proposed legislation, including but not necessarily limited to those items identified in Appendix B.

[Consultation question 16: Is the list of charitable purposes in the Charities Bill 2003 and the extension of Charitable Purposes Act 2004 an appropriate list of charitable purposes?](#)

[Consultation question 17: If not, what other charitable purposes have strong public recognition that is charitable which would improve clarity if listed?](#)

The following should be included in the list for particular relevance to community foundations:

- (a) Community capacity building - including developing the ability, skills and confidence of members of a community in ways that enable them to participate in and benefit the community, or and improves the effectiveness and level of participation in community organisations;
- (b) Community development – building a community in response to the needs of the members of the community – this may include:
  - (1) retraining, finding employment, providing work experience, skills development, business incubation in disadvantaged areas or for people who have or are likely to experience difficulty in obtaining and maintaining employment;
  - (2) providing facilities for meeting and holding events;
  - (3) preservation or restoration of the natural and built environment, including community gardens, erecting statues, providing historical information;
  - (4) providing health and community services information;
  - (5) improving community facilities and access, including community transport;
  - (6) supporting non profit community groups with open entry requirements, including clubs and interest groups, which help in reducing social isolation or promote a sense of community, in rural and regional areas.
- (c) Improving the effectiveness or providing support and benefits to charitable organisations;
- (d) Promoting volunteering, giving and involvement in the community.

Community foundations support a full list including the areas which have been accepted as charitable, for ease of understanding, similar to other jurisdictions listed at the end of the Consultation Paper.

### **3.3 Sufficient section of the public**

[Consultation question 3: Are any changes required to the Charities Bill 2003 to clarify the meaning of “public” or “a sufficient section of the general community”?](#)

There should be further clarification of a ‘sufficient section of the public’ to a section which is not numerically negligible compared with the size of that part of the community to whom the purpose would be relevant. To ensure that charities in regional and geographically isolated or other small rural communities continue to meet the public benefit requirement.

### **3.4 Inclusion of sport and government entities**

It will be seen as a significant step to modernising the definition of charity in Australia in line with public opinion if the following 2 areas are included in the list of charitable purposes. These two areas cause much frustration and lack of understanding within the community when community foundations are unable to provide support:

- amateur sports programs and facilities; and
- government controlled entities such state schools, hospitals, community halls/centres, public pools, art galleries, museums, libraries, etc.

In rural and regional Australia, the sporting clubs and government owned facilities are often the centre of the community. The sporting clubs provide much more than sport for sport's sake, in terms of community building, reducing social isolation, providing a meeting point and facilities that often available to other community groups.

State schools are also often the hub of a community and in disadvantaged areas can be very much in need of additional support for building or ground maintenance and development or for equipment and additional programs, counsellors, tutors, etc. The public consider education is charitable so find it hard to distinguish between non charitable State schools and private non profit schools which are charitable.

Local government often seeks to run programs and provide vital infrastructure to the community which community foundations often want to support.

Not being able to support and fund these excluded groups in all areas, but particularly in a rural and regional context, is confusing and frustrating to most communities and seen as being unfair given the often vital role these institutions play in these communities.

The sporting purpose could be restricted to sports which promote health and wellbeing by involving physical or mental skill or exertion and are open to all, regardless of ability; however, we contend that the community support generated by an amateur sporting club whilst linked to the sport itself is not limited by that sport and therefore this should not limit their capacity to be seen as meeting the definition of charitable. Reference can be made with the provision and support of recreational facilities similar to overseas and some State jurisdictions.

These issues are of particular importance in rural and regional Australia but also have relevance in disadvantaged urban Australia, but many Australians would say important to all of Australia!

### 3.5 Simplification of issues relating to government entities

[Consultation question 15: In the light of the \*Central Bayside\* decision is the existing definition of "government body" in the Charities Bill 2003 adequate?](#)

[Consultation question 18: What changes are required to the Charities Bill 2003 and other Commonwealth, State and Territory laws to achieve a harmonised definition of charity?](#)

The issue of whether an entity is a government body or controlled by government is of material importance in determining eligibility to charitable status. But is this distinction still relevant and should it be continued in the legislative definition?

This exclusion causes confusion in the community and frustration that organisations that the community considers charitable, are in fact not charitable due to their connection with government (examples of this include State schools, hospitals, community halls/centres, public pools, art galleries, museums, libraries, etc – see discussion in the point above). This affects the organisation's ability to receive funding from charitable foundations.

Currently under some State Acts, trusts are given the power to "opt in" to make grants to non-charitable entities which are DGR's. [In Victoria there is an additional requirement that the entity would be charitable but for its connection with government.]

These provisions cause considerable confusion and complexity for the boards of the trustees of charitable trusts both in understanding the divergence between Commonwealth and State laws and in the complexity of the application. As a result very few community foundations have exercised this power in respect of their public ancillary funds, although The Ballarat Foundation has done so.

There may be a further concern once the Australian Charities and Not for profit Commission (ACNC) commences its register of charities as those trusts which have

opted in will not appear on the register unless they are specifically included in the proposed list of charitable purposes. Not appearing on the register could be seen as a marketing disadvantage to those trusts raising money from the public.

In addition to the confusion, the charitable trusts of community foundations which are not public ancillary funds would also wish to take advantage of the State law enabling them to “opt in” but are unable to do so. Why is our public ancillary fund able give to item 1 DGR’s but the charitable trust cannot?

In summary:

- Charitable trusts which are not private or public ancillary funds cannot make grants to government entities (including government controlled entities) for their general operations or for infrastructure;
- Charitable trusts which are not private or public ancillary funds can make grants to government entities (including government controlled entities) for charitable purposes over and above their usual operations (*Re Cain* and discussion in 279 and 280 in TR 2011/4);
- Charitable private or public ancillary funds cannot make grants to non-charitable item 1 DGR’s;
- Private or public ancillary funds in States where there is State legislation which enables them to opt in by making a declaration and changing tax status from a charitable fund to an Income Tax Exempt Fund, can make grants to non-charitable item 1 DGR’s, provided the trust makes the declaration and ceases to be charitable under *ITAA 97* and presumably under the proposed legislation on the definition of charity.

The complex issues created by the divergence in State and Commonwealth laws and the confusion surrounding entities ‘controlled by government’ could be simplified by (in decreasing order of preference):

- (a) allowing a government body to be a charity;
- (b) inserting in the proposed list of charitable purposes:
  - (1) providing money, property or benefits to government bodies which would be charitable but for their connection with government;
  - (2) providing money, property or benefits to Item 1 DGR’s which are exempt bodies even if they are not charitable.

### 3.6 Restrictions in the event of a disaster

Consultation question 19: What are the current problems and limitations with ADRF’s?

Reacting to natural disasters is a real and on-going concern of all rural and regional community foundations. A large amount of money can be raised immediately after a disaster, without the need for a tax deduction, and this is best to be received in the charitable not tax deductible entity of the community foundation to maximise possible recipients and application.

There are two issues for community foundations which arise in the event of a disaster:

- (a) Understanding how the money can be applied for charitable purposes; and
- (b) Where the funds are from tax deductible donations to the public ancillary fund, how to distribute this money and whether in order to respond to the needs of the community and the expectations of the donors it is necessary to set up a separate Australian Disaster Relief Fund (ADRF).

In the context of the proposed legislation regarding the definition of charity, it would be of assistance to communities in rural and regional areas recovering from a disaster for:

- (a) the suggestion above that government bodies are included as charities; and

- (b) the issues listed in the December 2009 legislation as a consequences of the Victorian bushfires are specifically deemed as charitable.

Many (if not all in the majority of rural areas) of the community assets and infrastructure (such as community halls, community centres, sports and recreational centres, theatre halls, playgrounds) will normally be owned by the local government or owned and operated by sporting or other recreational clubs. In most respects these will not come within the definition of charitable. Additionally the community foundation may want to fund the local state schools or health centres for additional counsellors or for other goods and services.

The affected community and the donors do not understand why charities and charitable foundations who have received money for these communities cannot then fund what the community needs and wants. These issues severely hamper the community's access to funding and also severely limits the ability of community and other foundations wishing to support disaster recovery. And frustrate and annoy donors and supporters – the general public.

## **Acknowledgement**

We acknowledge the guidance of Alice Macdougall, Special Counsel, Freehills; Catherine Brown, Catherine Brown & Associates; Philanthropy Australia and Australian Community Philanthropy in the preparation of this document.

## **APPENDIX**

### **Appendix A: Examples of community building/development activities:**

Some sample projects are described below which show the type of charitable project that a community foundation such as The Ballarat Foundation might want to fund or facilitate in their local area.

- 1 *Community Philanthropy Premises and Support:* The community wishes to establish a facility that can be an incubator and provide shared and supported office or operational accommodation to a number of NFP groups. The benefits would be realised in lower occupation costs, the support and reduced operational costs through sharing facilities, services and skills, the synergies and the support networks that would emerge particularly in support of new and emerging NFP's.
- 2 *Statue:* The community wishes to recognise a member or past member of the community who has made a significant impact on the community and who the community wishes to immortalise. The community wish to make donations (including tax deductible donations) but cannot identify a local organisation which is chartered to facilitate the collection of donations and then to facilitate the project and expend the funds with the charitable and tax deductible requirements.
- 3 *Schools supporting their Community:* Schools have a unique capacity to learn of the plights of their school families, particularly in areas of poverty, social exclusion, trauma, breakdowns, medical and health issues etc. etc. They are therefore in an equally unique position to facilitate programs to address these issues. One local school runs a program with year 5 & 6 boys who connects them with their fathers and engages the fathers to participate in the learning process and builds stronger bonds with their children. Often the father gains more than the child, particularly if the father has a low education standard

himself. This program now extends to the local secondary school who continues the program through years 7 & 8. Getting financial support from outside the school to run like programs is not easily achieved as the schools are not considered to be charitable.

- 4 *Skate Park:* The youth of EC region lack constructive activities. Many are partly or wholly unemployed, often having left school early. The community foundation wants to raise funds for a skate park, which will provide young people with a venue and an interest. It will provide them with opportunities to create new social contacts and to create some community events and competitions. Recognition for their achievements in event managing and skateboarding will develop their self-esteem and possibly lead to other opportunities within the community.
- 5 *Internet Café:* The community leaders want to set up not-for-profit Internet café. The café will be operated to provide employment and training opportunities for the young people with policies to encourage turn over to maximise the opportunities for training and experience for all in need. The café will also act as a drop in centre for the area. Eventually the community hopes to run computer courses for all members of the community from the café.
- 6 *Opportunities Program:* The community of XXX want to set up a program that encourages disadvantaged children to stay in school or be able to follow their dream or talent. The project will offer 'scholarships' which will fund basic provisions required to stay at school and participate fully eg for books, uniforms, equipment, stationery, excursions, breakfast, lunch and travel; or to follow their dream eg music tuition, instruments, music, transport to competitions or sporting clothes and equipment, transport to competitions, coaching.
- 7 *Festival:* The community of YYY want to run a community festival highlighting the arts and culture of both white and indigenous people from the area. The festival will attract tourists to the area and provide many local artists opportunities to show their art and young people with opportunities to gain skills in organising an arts event and other associated activities. The festival will be educational and also bring the region together as a community. It will encourage racial acceptance and diversity.
- 8 *Women's Enterprise Program:* Some of the women who have been out of the workforce (or underemployed) are keen to establish small businesses based on skills they have developed such as soap making, gourmet food production, website design for community groups, organic gardening and so on. The Community Foundation is aware there are a large number of long term unemployed women and youth and believes the public benefit in supporting a time limited business incubator outweighs any private benefit to the women or youth involved. There will also be a social welfare and economic benefit in the community potentially generating a flow on effect in employment. It wants to fund a program of small grants, revolving loans, and expert mentors to support this work and a Centre where this program could be promoted and where the small business could be located (a business incubator).
- 9 *Community Leadership:* A Community Foundation has contact with many different community groups who are keen to improve their organisational and volunteer management and fundraising skills. The Board of the community foundation would like to develop and run a series of workshops around the region.
- 10 *Indigenous Arts:* The SSS Community Foundation wants to help raise funds to support the local aboriginal community develop a Arts Precinct in a central township where indigenous artists, mainly women, can work, display and sell their products. Many of the women need start up grants for materials. A coordinator position is also required, at least until the project is self-sustaining.

- 11 *Sport for health:* The community foundation wants to support the building of a new clubhouse for the local football club. The football club is a big focus of the community and provides the basis of many community events. The clubhouse plans include a gym for public use which will offer reduced rates for disadvantaged people and actively encourage community groups, particularly the elderly, to join. It will provide health and fitness education and information. The new clubhouse will also include a meeting room which will be available for a wide range of community groups and events for a modest or no rent. The community needs both a fitness centre and a place for meetings and events.
- 12 *Kids for Conservation:* Local school students want to carry out an erosion control planting program. The land is at risk of major environmental degradation if works are not undertaken. The local Conservation Association is seeking funding to work with local schools on this project.
- 13 *Seniors Community Gardens Project:* A Senior Citizens group has approached the community foundation. The Group wants to expand its activities creating and maintaining gardens around the towns in areas which are accessed by the community some of which may be owned by local government. Sites such as Senior Citizens Clubs and Neighbourhood Houses have been identified. The group needs funds to purchase plants, seeds and mulching materials. Labour is voluntary.

## **Appendix B: Suggested list of Charitable Purposes**

- the advancement of education;
- the advancement of religion;
- the advancement of health and the saving of lives, which includes;
- the prevention and relief of sickness, disease, disability or human suffering
- the advancement of social or community welfare, which includes:
  - the prevention and relief of poverty, distress or disadvantage of individuals or families;
  - the care, protection and support of those in need by reason of youth, age, ill health, disability, financial hardship or other disadvantage;
  - the care and support of members or former members of the armed forces, emergency services and the civil defence forces and their families;



- the advancement of community development, which includes:
  - retraining, finding employment, providing work experience, skills development, business incubation in disadvantaged areas or for people who have or are likely to experience difficulty in obtaining and maintaining employment;
  - providing facilities for meeting and holding events;
  - preservation or restoration of the natural and built environment, including community gardens, erecting statues, providing historical information;
  - providing health and community services information;
  - improving community facilities and access, including community transport;
  - supporting not-for-profit community groups with open entry requirements, including clubs and interest groups, which help in reducing social isolation or promote a sense of community, in rural and regional areas;
- the advancement of the arts, culture, heritage or science;
- the advancement of amateur sport, which includes:
  - the provision of sporting or recreational activities or facilities with the object of improving the conditions of life for persons who are in need by reason of youth, age, infirmity, disability, poverty, geographic isolation, or social and economic circumstances;
- the advancement of human rights, which includes:
  - the promotion and advancement of conflict resolution or reconciliation, and the promotion of equality, diversity and religious or racial harmony;
- the advancement of animal welfare;
- the advancement of the natural environment, which includes:
  - the advancement of environmental protection or improvement;
- the advancement of volunteering and the advancement of philanthropy;
- improving the efficiencies of, and supporting, charities;
- the provision of finance exclusively to organisations recognised as charities;
- activities or organisations that “but for its connection to Government” would be charitable;
- the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services; and
- any other purpose that is beneficial to the community.