



14 July 2023

Personal and Indirect Tax and Charities Division  
Treasury  
Langton Cres  
Parkes ACT 2600

By email: [charitiesconsultation@treasury.gov.au](mailto:charitiesconsultation@treasury.gov.au)

Dear Sir/Madam

### **Building Community—deductible gift recipient status for community foundations**

1. This submission has been prepared by the Charities and Not-for-profits Committee of the Law Council of Australia's Legal Practice Section (the **Committee**). The Committee welcomes the opportunity to make a submission to the Treasury about the exposure drafts of the *Treasury Laws Amendment (Measures for Consultation) Bill 2023: New class of deductible gift recipients* (the **draft Bill**) and the explanatory memorandum for the draft Bill.
2. The Committee welcomes the draft Bill to implement the budget measures for 2022–23 (announced in March 2022) and refined in the budget measures for 2023–24 (announced in March 2023). As outlined in this submission, in the Committee's view there are some fundamental issues with the Bill as drafted, which will mean that it is unable to achieve its policy objectives. The Committee's comments, as set out in this letter, are provided as matters for consideration to improve what is proposed in the draft Bill.
3. The Committee's comments on the draft Bill are as follows:

#### Community charity trust funds (ComCTF)

- a) Proposed subsection 30-110(1) as set out in the draft Bill requires that a ComCTF is established and maintained under a will or instrument of trust for the purposes covered in subsections 30-110(3) and (4), or subsections 30-110 (3), (4) and (5), and for no other purpose. Current community foundations that are trusts are, almost exclusively, established for broad charitable purposes that are not so restricted. Further, the definition of ComCTF, as set out in the new proposed section 426-117 of the *Taxation Administration Act 1953* (Cth) (**TAA**), requires that the ComCTF be a trust.

The practical effect of this is that:

- (i) new trusts will need to be established to meet the definition of a ComCTF;
- (ii) the policy intention that a ComCTF could be a fund (akin to a school building fund or a school library fund, ie. a bank account with rules that

comply with the yet-to-be drafted guidelines) operated by a trust cannot, on the present wording of subsection 30-110(1) and section 426-117, be achieved.

The Committee recommends the draft Bill be amended to allow the ComCTF to be operated by a trust with broad charitable purposes, and to be either a fund or a trust.

This will reduce red tape, and, in our view, meet the policy objectives of the legislation.

#### Corporate community charity funds (CorpCCF)

- b) Proposed section 30-105, in item 13.1.2, of the draft Bill suggests that a CorpCCF can be operated by a registered charity. However, the proposed definition of CorpCCF requires the CorpCCF to be a company (proposed new section 426-180 of the TAA). Clearly this definition is inconsistent with item 13.1.2 as a company cannot be operated by a company. In addition, existing bodies corporate that are community foundations have, almost exclusively, broad charitable purposes that are not restricted to the purposes covered in subsections 30-110(3) and (4) or subsections 30-110(3), (4) and (5) and no other purpose.

The practical effect of this is that:

- (i) new bodies corporate will need to be established to meet the definition of a CorpCCF;
- (ii) the policy intention that a CorpCCF could be a fund operated by a company cannot, on the present wording of section 426–180 be achieved.

As with its recommendations for the ComCTF the Committee recommends that the draft Bill be amended to allow the CorpCCF to be operated by a company with broad charitable purposes and to be either a fund or a company.

Again, this will reduce red tape, and, in the Committee's view, meet the policy objectives of the legislation.

#### Combine to one CCF?

- c) The Committee's comments above respond to the drafting in the current draft Bill. However, in the Committee's view, there is actually no need to separate out the ComCTF and the CorpCCF. The Committee would welcome greater simplification so that a CCF could be a fund, a trust or a company operated by a trust or a company. The Committee is happy to discuss this further.

#### Mandatory and permitted purposes

- d) The draft Bill should allow distributions by the community charity funds (**CCFs**) (whether ComCTFs or CorpCCFs) to non-DGR entities for DGR purposes or activities. This is essential to achieve the policy objective of facilitating the role of community philanthropy, relevant everywhere but particularly in rural and regional areas. The wording from the original budget measure does not tie the distribution only to DGR entities (as is provided in the proposed section 30-110(3) in the draft Bill) but to purposes and activities permitted for such entities: "Community

foundation-related entities will not be listed unless their governing rules do not permit a use of funds beyond that permitted for entities endorsed under the DGR categories in the tax law.<sup>1</sup> We recommend that the draft Bill (and the draft Explanatory Memorandum) be amended accordingly.

- e) In relation to the proposed subsection 30-110(4) in the draft Bill:
- (i) The Committee assumes that the intention is that the reference to principal activity in subsection 30-110(4)(a) relates to the categories of DGR with a principal activity test, and the reference to pursuing the principal purpose in subsection 30-110(4)(b) relates to those DGR categories with a principal or sole purpose test. The Committee recommends that this be made clear in the drafting.
  - (ii) It is not clear from the current drafting how broadly the principal activities/purposes of current DGR categories will be interpreted, and what will be the application of the restrictions or requirements in some of the DGR categories. For example, where a CCF wants to undertake activities that pursue the principal purpose of an approved research institute, is that principal purpose *research* meaning a CCF could fund or undertake any research, or is the principal purpose *peer-reviewed or selected, scientific research, of value to Australia*, which further limits the CCF? The current draft Bill certainly leaves open the former interpretation, but it is unclear. Similarly, a scholarship fund has the purpose of advancement of education. So, could a CCF fund scholarships for anything that advances education for the public benefit, or is the purpose more limited to providing scholarships in courses within the GST requirements and offered to a region of more than 200,000 people, to only an Australian citizen and decided on merit or equity?

This lack of clarity will create uncertainty and therefore concern, for community foundations. The Committee recommends the drafting be amended to achieve greater clarity and avoid unnecessary confusion.

4. The Committee would welcome the opportunity to discuss this submission with the Treasury. In the first instance, please contact the Chair of the Committee, Bridgid Cowling on [BCowling@abl.com.au](mailto:BCowling@abl.com.au)

Yours sincerely



**Dr Leonie Kelleher**  
**Acting Chair, Legal Practice Section**

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<sup>1</sup> Budget Measures, Budget Paper No. 2 2022-23, page 25