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Not-for-profits Unit  
Treasury  
Langton Cres  
Parkes ACT 2600  
Submitted by Email to: [charitiesconsultation@treasury.gov.au](mailto:charitiesconsultation@treasury.gov.au)

Dear Sir/Madam,

RE: Taxation Administration (Community Charity) Guidelines 2024 Exposure Draft

The Ballarat Foundation thanks the Treasury for the opportunity to provide feedback on the Taxation Administration (Community Charity) Guidelines 2024 (Guidelines) exposure draft.

Should the Treasury wish to discuss the matters raised in this submission further, please do not hesitate to contact myself ([andrew.eales@ballaratfoundation.org.au](mailto:andrew.eales@ballaratfoundation.org.au)).

Kind Regards

*Andrew Eales*

Chief Executive Officer

## **General Comments**

The Guidelines are the final component necessary before a new deductible gift recipient (DGR) category for community foundations can commence.

This significant reform will make it easier for community foundations to receive funds, including from private ancillary funds, and also facilitate granting to organisations and groups without DGR status.

In doing so, it will provide an enhanced regulatory environment to support the growth of community philanthropy in Australia.

In addition, although less widely understood, the new DGR category will also provide an alternative way of accessing DGR status for other types of organisations, particularly those operating across multiple DGR categories and/or for whom the public ancillary fund structure is unsuitable. Such organisations must currently either operate multiple DGR endorsed entities, or seek to be specifically listed in the tax laws, which is a complicated and time-consuming process.

Overall, the Ballarat Foundation supports the Guidelines and believes that they provide a workable framework that underpins the new DGR category. We do, however, believe that a number of changes to the exposure draft are necessary to simplify the Guidelines and address some practical issues.

These changes are specific and targeted, and they are feasible to action as part of promptly finalising the Guidelines following this consultation, to enable the commencement of the category as soon as possible.

Following the category's commencement, the Ballarat Foundation also believes it is important to clarify the arrangements for how it will be administered, especially the decision-making process for making the necessary ministerial declarations for endorsement under the category.

The making of these declarations will, in effect, be subject to ministerial discretion, and it would be appropriate for a policy statement to be developed which sets out how the discretion will be exercised in a practical sense. This would provide transparency regarding the use of the discretion, helping to promote more certainty and consistency of outcomes.

The policy statement could include information about:

- The types of entities that are eligible to apply for a ministerial declaration, given that the scope of the DGR category extends beyond community foundations;
- The process of applying for a ministerial declaration and the timeframes involved; and
- The factors that will be considered by a minister when deciding whether to declare an entity, including specific examples

The policy statement should be accompanied by guidance about other aspects of the administration of the DGR category, developed by the Australian Taxation Office (ATO).

Ideally, the ATO's Not-for-profit Stewardship Group should be involved in the development of this guidance, with input from other relevant stakeholders.

Additional specific comments about the Guidelines are set out in the next section.

### **Simplification of the Guidelines**

The Ballarat Foundation supports the need for proportionate and risk-based regulation for philanthropic entities.

Given that such entities, and their donors, can benefit from various tax concessions, regulation helps to ensure that such entities fulfil their philanthropic purposes to benefit the community. In doing so, it contributes to supporting public trust and confidence in these entities, contributing to fostering a culture of giving in Australia.

However, as the Productivity Commission notes in the final report of its philanthropy inquiry, Future Foundations for Giving, there are trade-offs involved when making regulations and the benefits of regulation must be balanced with the costs of regulation, in the form of compliance burdens imposed.

In this regard, it is noted that many of the entities that will be endorsed under this DGR category will be relatively small, and in many cases primarily supported by part-time staff and/or volunteers. Regulatory complexity can have a disproportionate impact in such a context, and therefore it is of added importance to ensure that any regulatory obligations imposed by the Guidelines are proportionate and risk-based.

Given that entities will have to be registered with the Australian Charities and Not-for-profits Commission (ACNC), and subject to the various requirements of the ACNC regulatory framework, Philanthropy Australia believes that the following changes should be considered to minimise unnecessary duplication and overlap between that framework and what is proposed in the Guidelines.

- Guideline 11 (Trustees and corporate directors) – This appears to impose duties that duplicate those in ACNC Governance Standard 5 (Duties of Responsible People). One rationale for this duplication may be that the ACNC Governance Standards only apply to registered charities, rather than individual trustees and directors of those charities, as a result of constitutional limitations on the powers of the Federal Parliament.

However, if this is the case, these same limitations would likely constrain the ability of the Guidelines to apply duties to individual trustees and directors. Consideration should be given to removing this guideline, or alternatively, replacing it with a reference to the requirements of the ACNC Governance Standards.

- Guidelines 15, 16 and 17 (Accounts, Financial Reports and Audits) – These appear to duplicate ACNC reporting requirements, at least to an extent, although it may be argued that these actually impose additional requirements, given that the ACNC reporting requirements

do not require financial reports to be prepared consistent with the accounting standards for registered charities with revenue of under \$500,000 per year.

However, if this is the case, then it is questioned why such additional requirements are necessary, and why the requirements under the ACNC regulatory framework do not provide sufficient transparency and accountability. Consideration should be given to removing this guideline, or alternatively, replacing it with a reference to the ACNC reporting requirements.

### **Commencement of Minimum Annual Distribution Requirement**

Sub-section 3 of Guideline 14 (Minimum Annual Distribution) provides that the minimum annual distribution requirement only commences in the financial year after an entity is established.

This is considerably shorter than the requirement for public ancillary funds, which provide that no distribution is required during the financial year in which the public ancillary fund is established or during the four financial years following the financial year in which the fund is established.

The Ballarat Foundation believes there would be benefit in retaining the extended period that applies to public ancillary funds, given this provides a window of time for an entity to fundraise and build up its assets to a level that can support longer-term sustainability.

### **Allowing Portability of Sub-funds**

As currently drafted, Guideline 25 (Portability) would mean that an entity endorsed under the DGR category would be unable to transfer a sub-fund to another entity. Also, it would appear that a sub-fund would be unable to be transferred to a public ancillary fund, nor to a private ancillary fund.

This is due to the requirement to transfer all the first entity's net assets to the second entity, which is a significant restriction compared with the arrangements for public ancillary funds.

The effect of the restriction would be to limit donor choice and flexibility, inhibiting the efficient management and allocation of philanthropic assets.

For example, a donor may believe that another entity is better suited to hold and manage a sub-fund, but as currently drafted, it would not be possible to transfer the sub-fund to the other entity. Alternatively, a donor may initially establish a sub-fund, and then as their philanthropic activities evolve, they may wish to establish a private ancillary fund. However, they would not be able to transfer the assets in the sub-fund to the private ancillary fund.

The Ballarat Foundation submits that the portability arrangements should be re-drafted, based on those applying to public ancillary funds. This would allow transfers of sub-funds to other entities, including other ancillary funds.

Ends.