Improving the Integrity of Public Ancillary Funds

Submission by Community Foundation Network Limited as trustee of the Melbourne Community Foundation and other Funds

December 2010

Contents

1. Executive Summary

- The public ancillary fund structure is inherently flexible and therefore it is used by a wide range of different organisations for different purposes. The discussion paper states that it is expected that the guidelines for public ancillary funds will take similar form to the *Private Ancillary Fund Guidelines 2009*.

  This cannot be assumed. The two structures (Private Ancillary Funds (PAFs) and Public Ancillary Funds) certainly share a generic common purpose and as such, many of the specific operational guidelines might well be similar, but they have such significant differences that many of the guidelines are not only irrelevant, but actually counter-productive to the purposes of a public ancillary fund.

- There is no evidence of non-compliance or that there is an issue that needs addressing with public ancillary funds. It is critical that in any review of the rules and framework governing public ancillary funds, Treasury understands the purpose and mission of these various organisations.

- Unlike private ancillary funds (PAFs), public ancillary funds are also regulated by fundraising guidelines as their purpose is charitable and they are fundraising vehicles. Therefore the correct place for accountability for public ancillary funds is under fundraising law, not tax law.

- Community Foundations, which use the public ancillary fund structure, have an important and particular community role and purpose. The rules and framework which govern Community Foundations should support their mission and purpose, and should enhance their operation and function, which is significantly broader and more complex than PAFs.

- Philanthropy is not just for the wealthy and effective giving is not just about money.

  One of Melbourne Community Foundation's key propositions is to encourage people to start small, get involved, and as their financial capacity allows, to grow their charitable giving over time. Mandating a high level of annual distribution will negate this and will effectively leave philanthropy only for the wealthy.

  Requiring lower income donors (who, for example, have set up named sub-funds within a Community Foundation's public ancillary fund structure) to distribute more than high net worth individuals (through their PAFs) is counter intuitive and will greatly diminish the ability of Community Foundations to stimulate, grow and support philanthropy from the broader community.

- Issues of transparency, accountability and public confidence are essential for Community Foundations. Melbourne Community Foundation fully supports increasing the public transparency and accountability of all ancillary fund structures.

- Key responses to the discussion paper:

  - Distributions – MCF is not convinced that there is a case for change. The current requirements work well and support the mission and purpose of Community Foundations.

    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. It is essential that Community Foundations have a good balance between minimum distribution requirements and the ability to accumulate capital.

  - Increasing Regulatory Powers – MCF supports the use of relevant scaled penalties for breaches. The standards should be suitable to and reflective of the non-profit nature of the directors. Due to their open and public nature, there is significantly less opportunity for abuse that is the case for PAFs and the penalty regime should reflect this.

  - Fit and Proper Persons Requirements - MCF notes that the Responsible Persons requirement for public ancillary funds is already greater than that of a PAF. Therefore, with one exception, the minimum standards of conduct for PAF trustees would be appropriate for Community Foundations.

    The exception to the PAF minimum standards of conflict relate to the donation limitation. 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.

  - Investment Rules - In principle, most of the investment and risk minimisation rules that apply to PAFs are equally applicable to Community Foundations (as public ancillary funds). However, there are two PAF investment rules which would be inappropriate for Community Foundations:

    The fund must not carry on a business - 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.

    The fund must not accept donations in any financial year totaling 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 so there would be no restriction on any donations.

- Issues to address not covered in the discussion paper: (i) Community Foundations should be eligible for the same FBT concessions as per other qualifying non-profit organisations; and (ii) where a PAF is no longer able to or wants to operate independently, it should be able to transfer the assets into a sub-fund of a Community Foundation, where it can continue to operate, but with all the subsequent support and administration provided by the Community Foundation.

2. Proposed framework in the context of Community Foundations

The public ancillary fund structure is inherently flexible and therefore it is used by a wide range of different organisations for different purposes. It is critical that in reviewing the rules and framework governing public ancillary funds, Treasury understands the purpose and mission of these various organisations. Treasury's purpose for the review is to improve the integrity of public ancillary funds and is therefore proposing a more uniform framework for their operation. Unlike private ancillary funds (PAFs), however, public ancillary funds are also regulated by fundraising guidelines and in terms of tax regulations, what might suit one type of public ancillary fund may not actually suit another.

Community Foundations are a significant part of Australia's philanthropic landscape. Community philanthropy is the fastest growing form of philanthropy globally, and after its start in the early 1900s in the US, there are now over 1,200 Community Foundations in over 42 countries. In Australia we have 30 Community Foundations, from large to small, some focusing on a discrete, geographic region, others operating nationally.

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 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 to Community Foundations are gifts to meet community need in perpetuity.

Their role is to make philanthropy accessible, removing the real and perceived barriers, and enabling more effective, planned giving to create positive social change. They match donor interests to community needs and provide an effective, efficient and independent structure to build charitable funds and to get philanthropic money to the community.

Community Foundations are also an effective alternative to Private Ancillary Funds (PAFs), as they are based on the principle of pooled and shared resources, sharing of administrative structures and systems, and harnessing the expertise and knowledge of professional and experienced community grant researchers and makers to advise and direct grants for maximum impact and effectiveness.

While there is much diversity in how various Community Foundations work they all share this common mission and purpose. Every Community Foundation is a product of its local community, history and leadership, which enriches the sector and provides a valuable long term resource for community members and community organisations.

The unique capacity of Community Foundations to convene, connect and endow is where they go beyond just operating as a philanthropic fund. As apolitical, objective conveners, Community Foundations can bring together government, the private and non-profit sectors and other philanthropists in a way no-one else can. Solutions and new approaches to social problems are developed which harness the capacities and strengths of each participant and ultimately deliver good to the community.

Community Foundations are a mechanism to connect disparate parts of the community, building understanding, knowledge and engagement. As well as connecting philanthropists to non-profit and community organisations, Community Foundations connect philanthropists to each other, enabling them to collaborate, leverage their giving with others, to meet those with similar interests and to create effective and rewarding networks.

Endowment is a key feature of Community Foundations – endowing the community with a permanent source of charitable funds, as well as with engagement and leadership. But the real test is how these funds are then used. It can be hard to give money away well, and it can be even harder to do it on your own.

It is the in-depth knowledge of community needs and opportunities that supports effective and rewarding philanthropy. By their nature, Community Foundations have deep and thorough understanding of trends in disadvantage and of social change, knowing what is happening at a grass roots level through to government policy contexts. This provides philanthropists working through Community Foundations with the expertise, advice and research to direct the grants and investment where need is greatest and for maximum impact.

Finally, Community Foundations, as public funds, are committed to operating in an open and transparent manner in all that they do, as people need to trust them as a vehicle for their giving.

3. Introduction to Melbourne Community Foundation

Community Foundation Network Limited is the trustee of 5 Charitable Funds. It is an independent, not-for-profit trustee. It is the oldest and the largest Community Foundation in Australia. Its mission is to generate and distribute philanthropic resources to address emerging social issues and meet the needs of our communities.

Community Foundation Network Limited is the trustee of five charitable Funds:

- Melbourne Community Foundation (**MCF**) and National Community Foundation (**NCF**) Main Funds are public ancillary funds endorsed as Item 2 Deductible Gift Recipient (**DGR**) and Income Tax Exempt Fund (**ITEF**). They can only make grants to income tax exempt organisations endorsed as DGR;

- MCF Extension and NCF Extension Funds are open funds and have Tax Concession Charity **(TCC)** endorsement. Grants from the open funds can be made to both organisations and individuals for general charitable purposes. Donations to these Funds are not tax deductable;
- MCF Scholarship Fund is a public fund endorsed with Item 1 DGR and TCC. Grants from this fund must meet specific ATO Scholarship Fund requirements.

MCF is the largest of the five Funds. For simplicity, in this submission, we will collectively refer to Community Foundation Network Limited and those Funds as MCF.

MCF offers individuals, families, groups, companies and not-for-profit organisations a simple and cost effective way of providing philanthropic resources in a structured, long-term manner. All donations are pooled and invested and the income is used to make grants which meet community need, address disadvantage and build community capacity.

MCF uses its significant community and grantmaking expertise to assist donors plan their philanthropic giving and make effective grants which meet their own charitable objectives and address needs in the community. MCF establishes sub-funds or management accounts for each individual, family or corporate donor, which may be named by the donor.

As at 31 October 2010, MCF has 179 named sub-funds and accounts, and total, pooled funds under management of over $33 million. Using a public ancillary fund structure in this way makes planned and structured giving accessible to many more donors than other available structures.

MCF provides the opportunity for individuals, families, groups and organisations to become involved in philanthropy at modest (or large) levels in a simple and supported environment while obtaining the benefits of scale. Setting up sub-funds (which can be opened with as little as $20,000) is very straightforward and funds management, legal and administrative expenses are pooled and therefore very cost effective. MCF charges a fee of 1.75% (1.35% management fee plus 0.4% funds management fee) of funds under management for all these services.

More information about MCF is available at www.melbournecf.org.au

4. Detailed Response to Proposed Amendments as per discussion paper (November 2010)

4.1 Introduction to Discussion Paper (ref. 1.1)

The discussion paper states that it is expected that the guidelines for public ancillary funds will take similar form to the *Private Ancillary Fund Guidelines 2009*.

This cannot be assumed. The two structures (PAFs and Public Ancillary Funds) certainly share a generic common purpose – to enable philanthropy and allow tax deductions for donations where relevant. And as such – many of the specific operational guidelines might well be similar, but they have such significant differences that many of the guidelines are not only irrelevant, but actually counter-productive to the purposes of a public ancillary fund.

The overarching difference is that the PAF regulations are driven by tax regulation, as most of the factors relating to their operation are tax issues.

Public ancillary funds also have tax considerations, but they are actually driven by charitable and fundraising regulations as their purpose is charitable and they are fundraising vehicles. Therefore the correct place for accountability for public ancillary funds is under fundraising law, not tax law. We know there is significant work in progress at State and Federal levels to improve and standardise fundraising regulations.

The review of the original Prescribed Private Fund (PPF) guidelines, which led to the PAF guidelines, was driven by specific operating issues. It is a nonsequitor to then assume that public ancillary funds have the same issues – they do not. There is no evidence of non-compliance or that there is an issue that needs addressing with public ancillary funds. The danger in trying to solve a problem that does not exist is that you inadvertently create new problems.

The judge for determining accountability for public ancillary funds is the public. Unlike PAFs, public ancillary funds are fundraising vehicles, they are public and open to scrutiny. The public will not give if they are not satisfied with the information, transparency and levels of accountability provided.

Therefore it is problematic to impose PAF regulations that in a large part are not relevant, where there is no evidence of need, and where the review of the fundraising guidelines is still on-going.

Before any change is imposed, it is essential to capture relevant information and consider all the factors. Otherwise, unintended consequences could have significant detrimental effects.

4.2 Required Distributions (ref. 2.1.1)

Philanthropy is not just for the wealthy and effective giving is not just about money.

One of MCF's key propositions is to encourage people to start small, get involved, and as their financial capacity allows, to grow their sub-funds over time. Mandating a high level of annual distribution will negate this and will effectively leave philanthropy only for the wealthy.

Requiring lower income donors (who, for example, have set up named sub-funds within MCF's public ancillary fund structure) to distribute more than high net worth individuals (through their PAFs) is counter intuitive and will greatly diminish the ability of Community Foundations to stimulate, grow and support philanthropy from the broader community.

MCF's current requirement is to distribute at least 80% of the Trust Fund income. Annual distribution is required. The minimum philanthropic obligations are very clearly defined and the Trustee has certainty on its distribution requirements.

MCF is not convinced that there is a case for change. The current requirements work well and support the mission and purpose of Community Foundations.

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.

This is quite different to the purposes for which PAFs were established. PAFs do not have the same obligation, to build community capacity through endowment, and as such their guidelines are not designed to support endowment models. Applying the same guidelines to Community Foundations is inappropriate.

If Community Foundations are not supported to carry out their function as community endowment builders, then the opportunities for the community presented by the intergenerational transfer of wealth, for example, are lost. Wealth will remain in private hands, not quarantined for on-going community benefit.

It is also worth noting that although the public ancillary funds of Community Foundations enable a tax deduction for donations received, not all donations require or are eligible for a tax deduction. For example, at MCF: (i) a number of corporates have charitable sub-funds with corporate contributions; (ii) some donors choose to leave a bequest to an existing sub-fund under the public ancillary fund, rather than establishing a sub-fund under the open or extension fund; and (iii) many donations are generated from fundraising activities (events, charity auctions, etc).

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.

On the other side of this balance is the need for a relevant minimum distribution requirement. A core tenet of Community Foundations is to make philanthropy accessible and to encourage more people to be philanthropic. Unlike PAFs which have been set up for high net worth individuals, Community Foundations are designed for a range of donors, and are particularly attractive to lower income or less wealthy donors.

Whatever the minimum distribution requirement, it needs to be averaged over time (such as MCF's current rolling three year average). When donors only have the capacity to start a small sub-fund, and rely on building their funds over time, flexibility for distributions over a rolling three year period is important.

This is where sub-funds under a Community Foundation are quite different to PAFs. A PAF is established once a donor has already amassed personal wealth. Sub-funds are often established while donors are still building personal assets, and the motivation is driven by their values and interest in supporting the community, often before they have the financial means to have a large fund.

If the regulations governing public ancillary funds take away the flexibility for small donors to get engaged, get involved, and build their knowledge while at the same time build their funds, it will simply make philanthropy inaccessible for these donors.

If the balance for Community Foundations between distribution and accumulation is wrong, it then raises a real challenge of how do you ‘value’ or ‘count’ in the distribution requirements all the other community contributions?

This is another significant difference between PAFs and Community Foundations.
For example, part of MCF’s activity in stimulating giving is to inform the community generally about trends and patterns regarding inequality and disadvantage, to highlight what can be done to effect positive social change and to increase public debate and understanding of community need.

One of the programs MCF runs is called MacroMelbourne. The program is designed to encourage donations and improve grantmaking, but it is also about fostering collaboration and leverage between sectors and organisations in order that Melbourne might develop as a liveable city for all of its citizens.

Through bespoke research and analysis, and then development and identification of community projects and activities, MacroMelbourne aims to provide the basis for more strategic giving and investment. It invites philanthropic trusts, large corporations, small businesses, government, research institutes and community organisations to consider the evidence in relation to disadvantage and then support the identified projects to address these issues.

The 2010 MacroMelbourne initiative has generated to date almost $1 million in donations to the identified projects. Of this, $550,000 came from MCF and the remainder came from other philanthropic, corporate and community members and organisations. These additional contributions were generated because of MCF’s work and activities.

The purpose of the MCF public ancillary fund is to provide “money, property or benefits” (Deed of Trust, MCF Main Fund) to the community. Many of the benefits MCF provides to the community are intangible (for example leveraged giving, increased awareness of community issues and need, publicity and promotion of philanthropy, etc). How does MCF calculate this contribution as part of its “distribution requirements”? How do you account for these other, very real, highly valuable contributions that are part of a Community Foundation’s role? Simply assuming that the distribution requirements for PAFs are directly applicable to Community Foundations is erroneous and ignores and will militate against one of the basic functions of Community Foundations.

Finally, Community Foundations face higher costs than many PAFs, particularly in relation to the provision of benefits (as per above) and because of their fundraising costs. It unlikely that a Community Foundation will generate enough income to sustain a payout rate of 5%.

MCF recommends leaving the distribution requirements are they are now.

4.3 Regular valuation of assets at market rates (ref 2.1.2)

MCF values its assets monthly, and publishes its annual audited valuation in both its publically available Annual Report and on its web site.

The valuation rules that apply to PAFs are appropriate for public ancillary funds.

4.4 Increased accountability (ref 2.1.3)

MCF agrees that all charitable bodies which receive benefit through offering tax deductions and which operate in a tax free environment should have public reporting obligations.
MCF supports the recording of public ancillary funds on the Australian Business Register. Consistency of classification and recording is desirable.

MCF keeps full and proper accounts using the services of professional accountants. It also produces and publishes annual audited financial statements. Summary financial accounts are included in the MCF Annual Report and the full financial statements are available on our web site.

MCF also publishes:

- the number and name of all the sub-funds
- the amount of total annual donations
- the amount of total annual grants distribution
- the names of all grant recipients.

MCF supports the proposal that public ancillary funds lodge an annual income tax return. MCF currently reports to ASIC annually with a full set of financial accounts. It would be preferable to have to report only once, and for ASIC and the ATO to share the data. In addition, as per the recent Corporations Act amendments, the reporting requirements should be staggered according to size and complexity.

In relation to the PAF guidelines specifically, 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. Unlike PAFs which are private (and where there is no requirement for disclosing information to the public), public ancillary funds are raising funds from the public. Hundreds and potentially thousands of donors may make a contribution in any given year, and a tax deduction given for any donation over $2.00.

This is where the fundraising legislation is applicable to public ancillary funds, not PAF guidelines. The current review to ensure national consistency of fundraising regulation is critical and will accommodate any issues confronting public ancillary funds.

4.5 Increasing regulatory powers (ref 2.2.2)

(i) Administrative penalty regime

MCF supports the use in principle, of scaled penalties for breaches of legal and administrative requirements, where the penalties suit the nature of the breaches.

MCF's Trust Deed states that the Trustee or an officer of the Trustee shall not be indemnified from loss or liability where that loss or liability is attributable to the dishonesty or the willful commission or omission of any act known by the Trustee to be a fraudulent breach of trust in bad faith.

But the PAF standards may not be directly applicable to public ancillary funds. The standards should be suitable to and reflective of the non-profit nature of the directors.

Community Foundations draw their directors from the community within which they operate, all on a voluntary, pro-bono basis. Due to their open and public nature, there is significantly less opportunity for abuse that is the case for PAFs and the penalty regime should reflect this.

If there is any evidence of breaches with Community Foundations, then appropriate education of directors should always be the first step.

(ii) Corporate Trustee

MCF does not see any difficulty in requiring Community Foundations to have a corporate trustee.

MCF already has a corporate Trustee: Community Foundation Network Ltd. As such, Directors are already required to meet the standards of conduct required by chapters 2D and 2E of the Corporations Act 2001.

MCF agrees that, subject to appropriate safeguards, it would be quite appropriate for a corporate trustee to be removed where:

- it acts fraudulently or dishonestly;
- is in material breach of its fiduciary duty as trustee; or
- materially non-complies with accountability requirements.

Equally, directors of the trustee should be open to removal or suspension if they are in breach of the mandatory standards specified in the Corporations Act.

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

(iii) Fit and proper person requirements

The discussion paper asks if the minimum standards of conduct for PAF trustees would be appropriate for public ancillary funds.

However the Responsible Persons requirement for public ancillary funds is already greater than that of a PAF. Indeed sections 13 and 14 of the PAF Guidelines note that the PAF requirement "is similar to (but less strict than) the requirement applying to public ancillary funds".

Therefore there is no need to change.

The Discussion Paper suggests that requirements for to 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 grantmaking, which requires additional, different and specialist skills sets as well as significant community knowledge and networks.

MCF has an extremely strong governance structure and process. Board composition is deliberately diverse with a requirement for an extensive range of experience and expertise. The Board has seven sub-committees with membership drawn from the Board and external, independent experts:

- Finance and Investment Committee
- Grants Committee
- Audit and Risk Committee
- Governance Committee
- Nominations Committee
- Development Committee
- Professional Advisers Committee.

MCF is "donor advised" rather than donor directed. Once a donor has made a request, this request is assessed by professional staff and then grants are recommended and approved through the Grants Committee and Board. There is no opportunity for self interested use of funds and, importantly, the fact that there are a number of donor directors and non-donor directors means that no one donor director can take control of the Board.

MCF encourages donors with the relevant skills to take up Board positions as they can reflect the views and interests of the donor community.

A full list of MCF Board Directors and their professional and community roles is included as an appendix to this submission.

However, there is one PAF requirement that is totally inappropriate for Community Foundations. The PAF 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.

MCF does not believe that there is any justification for this requirement. If the Board of a trustee of a public ancillary fund is comprised of fit and proper persons, the opportunity for a particular director who has donated significant amounts to that fund to act in a self interested way will be negligible. The Board itself will determine a proper course of behavior.

In the Community Foundation context, where the trustee may own and control a number of sub-funds, it is not unusual for directors of the trustee, being themselves interested in philanthropy, to use the mechanism provided by the Community Foundation to establish their own sub-funds. This is the case with MCF.

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.

(iv) Transitional rules

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

MCF cannot comment further as it is unclear and uncertain what we might be transitioning to.

4.6 Public fund (ref 2.3.1)

The discussion paper asks should the term 'public fund' 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.

4.7 Investment rules to ensure liquidity and low risk

The Finance and Investment Committee of the MCF Board comprises both Directors and independent external members, all of whom are significantly experienced in finance and investment. This Committee is responsible for developing the MCF investment strategy, which is approved by the Board.

MCF engages an independent funds manager, appointed after tender and for a limited term, to manage MCF's funds. The investment manager is required to operate within the terms of the services agreement and mandate, set by the Finance and Investment Committee.

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

MCF publishes, in detail, its investment strategy including strategic asset allocation, details of risk management and liquidity of investments.

The discussion paper suggests that the PAF investment rules would be appropriate for Community Foundations. MCF agrees that most of them may be appropriate. However, there are two PAF 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 PAFs 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 totaling 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 so there would be no restriction on any donations.

5. Other issues which also need to be addressed, not included in the discussion paper

5.1 <u>FBT benefits</u>

A range of qualifying non-profit organisations are eligible for FBT concessions where employers are entitled to have their liability reduced by a rebate equal to 48% of the gross FBT payable (subject to a $30,000 capping).

Because Community Foundations are public ancillary funds, they are defined as charitable funds and are therefore ineligible for the same FBT concessions.

If the role and purpose of Community Foundations was solely to operate charitable funds, this would make sense. However, as indicated throughout this submission, the role, purpose and contribution of Community Foundations is considerably broader and their contribution to community capacity building beyond grantmaking is significant.

As non-profit community organisations themselves, Community Foundations should have access to the same FBT benefits as other charitable organisations. Charging small administrative fees, Community Foundations are not in a position to offer the same salary levels as the gift funds offered by Trustee companies and financial institutions, or even PAFs. Therefore they operate at a disadvantage in attracting and retaining appropriately qualified and experienced staff.

5.2 Transferring a PAF to a public ancillary fund

Portability and aggregation are important elements to encouraging and supporting effective philanthropy. Having the opportunity to change the vehicle or structure where relevant is preferable to eliminating a philanthropic 'engine'.

Whilst a PAF can convert to a new public ancillary fund (reference section 51 of the PAF Guidelines) it cannot transfer to an existing public ancillary fund structure. By allowing the latter, the aggregation reduces cost, simplifies administration and allows more effort and resource to focus on effective grantmaking.

A PAF may donate only to an organisation described in the table to section 30-15 of the ITAA other than one described in item 2; that is, another ancillary fund.

As Community Foundations are also ancillary funds, PAFs cannot make donations to them or to their sub-funds.

The policy reason for this is to ensure that income from ancillary funds, including PAFs, is contributed to charitable activities.

While the policy reason is clear, there is a serious anomaly which is of concern to MCF. When a PAF either no longer wants to or is no longer able to operate, any property remaining after satisfaction of all debts and liabilities must be donated to a charitable organisation described in the table to section 30-15 of the ITAA (other than item 2) or used to establish such a charity.

There are two main reasons why a PAF may no longer be able to function independently:

1. the founder of the PAF and/or the trustees no longer wish to be responsible for or operate the PAF (for a range of reasons such as time, interest, degree of work involved, etc) but still wish to have an endowment vehicle for their philanthropic giving, and therefore want to transfer the assets to a Community Foundation as a named sub-fund;

2. the PAF might fail to make required minimum distributions or meet its legal and fiduciary responsibilities.

MCF knows of cases where individuals or corporations have established PAFs and subsequently become aware that a Community Foundation can provide the required services at lower cost, with greater efficiency, and can also give them access to significant grantmaking expertise, with less onerous involvement of the donor.

We are also aware of examples where the PAF founder is no longer able to expend the time and attention (due to relocation or changed personal circumstances) to the running of the fund, but still wants to stay engaged with philanthropy and the community, and would prefer to transfer the PAF's assets to a sub-fund with a Community Foundation.

There would be significantly more benefit to the community if, in these circumstances, a PAF could be transferred to a Community Foundation which would ensure that the endowment continues to be invested for on-going community benefit.

As Community Foundations are public, independent not-for-profit organisations they represent an appropriate vehicle to deliver on-going encouragement and support of private philanthropy, whilst being fully open, transparent and accountable.

It would be consistent with the purpose of the limitation on ancillary funds for the requirements for PAFs to permit these funds, on being wound up, to be contributed to a Community Foundation to be used in a similar way to those of the PAF.

6. 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. MCF fully supports increasing the public transparency and accountability of all ancillary fund structures.

However, 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.

MCF would be happy to discuss in detail any aspect of the review of public ancillary funds, and assist in designing guidelines and regulation that support the sector for future growth and meet the need for public accountability and confidence.

Mr. Chris Lovell
Chair, Melbourne Community Foundation

For discussion and further information please contact:

Sarah Davies
CEO
Melbourne Community Foundation
Suite 6, 19-35 Gertrude Street
Fitzroy, Vic, 3065

Telephone - (03) 9412 0412
Email - sarah@communityfoundation.org.au

APPENDIX
Melbourne Community Foundation, Board Membership

December 2010

MCF is governed on a voluntary basis by a distinguished group of men and women from all walks of life and reflects a broad range of skills and community experience. Members include lawyers, accountants, philanthropists, finance experts, community workers, CEOs and company directors.

All Board members contribute financially to the operations of MCF and more than half the Board members and their families or companies are donors with either sub-funds or gumnut accounts.

Chris Lovell (Chair) LLB. BA. LLM – Joined MCF Board 2005.
National Managing Partner, Holding Redlich, *Director* - Clemenger Group Ltd, Victorian Railtrack Authority *Trustee* - Melbourne Cricket Ground Trust

Sue Dahn BCom, MBA, Grad Dip Applied Fin & Investment, FFin, FAICD, FASFA, FSCPA - Joined MCF Board Dec 2010
Partner/Executive Director - Pitcher Partners, *Director & Chair* - Investment Committee AGEST, *Chair* - Finance Committee Australian Council of Super Investors, *Chair* - Investment Committee - Essendon Football Club.

Sandra de Wolf AM BA (Hons) Monash, DipSocStud, MSW, AASW, FAICD, FAIM- Joined MCF Board 2008.
CEO Berry Street Victoria, *Chair* - Families Australia, *Director* - Child and Family Welfare Association of Australia, *Member* - Victorian Children's Council, Victorian Child Death Review Committee

Annie Duncan, PhD - Joined MCF Board March 2006.
Director - Shipley Consultants, *Director* - Scope

Jo Grigg, BA – Joined MCF Board 2007.
President - Friends of The Elms Inc.

Peter Hero BA, MA, MBA (USA) - Joined MCF Board 2007.
Vice President- Development and Institute Relations, Caltech, Pasadena. *Director* - Sesame Workshop, NYC, Skoll Foundation, Palo Alto, Thrive Research, Los Altos

Tim James B. Bus, DipFinPla, CFP - Joined MCF Board 2009.
Executive Director – UBS. *Director* – Hanover Welfare Services

Karen Mahlab B. Econ – Joined MCF Board 2001.
Director and CEO - Pro Bono Australia, *Director* - Mahlab Group, Jewish Aid Australia
Trustee - National Council of Jewish Women Foundation

Ian McHutchison OAM LLB – Joined MCF Board March 2006.
Director and CEO - Adult Multicultural Education Services, *Director* - Urban Communities Ltd

David Murray BA, DipCrim, MA - Joined MCF Board 2009**.**
Executive Director - Youth Substance Abuse Service, *Member* – Minister's Advisory Committee on Mental Health, Victorian Drug and Alcohol Prevention Council, Victorian Children's Council, Juvenile Justice Roundtable and Youth Parole Board, Victorian Alcohol and Drug Association

His Honour Judge David Parsons SC LLB (Hons) - Joined MCF Board 1997.
Judge of the County Court of Victoria
Director - Koorie Heritage Trust, Australian Community Support Organisation
Member - Law Council of Australia Indigenous Affairs Committee, Judicial Officers' Cultural Awareness Committee, Aboriginal Leadership Committee

Casey Tan BCom Mmgt, FCA, FAIM, FIPAAV, FAICD, PHF - Joined MCF Board 2007.
Director - CiTiConsulting Pty Ltd, Entitlements Consultancy Sdn Bhd

Elana Rubin BA(Hons), MA, FFin, FAICD, FAIM, FAIST - Joined MCF Board 2009**.**
Non-Executive Director - Australian Super. *Chair* – Victorian WorkCover Authority, *Director* – Tower Australia, Transport Accident Commission, SecondBite, Mirvac Group

Marion Webster OAM BA Monash, DipSocStud , Senior Fellow City University of New York – Joined MCF Board 1997. Chair 2005-2009
Chair - Fitted for Work, *Director* - Almalia Pty Ltd, Arts Access Ltd., Manukau Community Foundation (NZ), Vice Chair, Changemakers Australia, *Patron* - Education Foundation Australia, *Trustee* - Philip and Vivien Brass Foundation.

MCF has seven sub-committees which comprise Board as well as community or professional members with special expertise

Audit Committee
Hugh Parkes (Chair)
Chris Arnold
Hayden Raysmith
Casey Tan

Development Committee
Annie Duncan (Chair)
Chris Boag – Mutual Trust
Will Fowles- Piper Capital
Linda King – King PR
Chris Lovell
Marion Webster

Finance Committee
Ian McHutchison (Chair)
Sue Dahn
Michael Gilmore – Ipac Securities
Tim James
George Krithis - DFS Advisory Services
Elana Rubin
Casey Tan

Grants Committee
Karen Mahlab (Chair)
Sandie de Wolf
Jo Grigg
David Imber
David Murray
Jill Reichstein
Trudy Wyse

Governance Committee
David Parsons (Chair)
Annie Duncan
Chris Lovell
Marion Webster

Nominations Committee
Chris Lovell (Chair)
Chairs of Sub-Committees

Professional Advisers Committee
Simon Briggs – Pitcher Partners
David Gibbs – Mutual Trust
Ian Granter – Westpac Private
Heather Gray – DLA Phillips Fox
Larissa Moran - KPMG
Sarah Robinson – Macquarie Group
Emma Woolley – Hall & Wilcox
Carl Walsh – WHK