



Friday, 28<sup>th</sup> July 2017

Senior Adviser  
Individual and Indirect Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By Email: [DGR@Treasury.gov.au](mailto:DGR@Treasury.gov.au)

Dear Sir/Madam,

**Tax Deductible Gift Recipient Reform Opportunities Discussion Paper**

Please find attached Stand Like Stone Foundation's submission in response to the Australian Government's Tax Deductible Gift Recipient Reform Opportunities Discussion Paper.

Stand Like Stone Foundation is a community foundation based in the Limestone Coast region of South Australia and we welcome the opportunity to contribute to this consultation and would be pleased to discuss the matters raised in our submission.

Please do not hesitate to contact me, if there are any questions or further information required in relation to our submission.

Yours sincerely,

Georgie McKay  
EXECUTIVE OFFICER



## Stand Like Stone Foundation Submission - Tax Deductible Gift Recipient Reform Opportunities

### Introduction – Stand Like Stone Foundation

Stand Like Stone Foundation (SLSF) is a Community Foundation based in the south-east of South Australia, serving the Limestone Coast region. The region is comprised of seven Local Government Areas (LGAs), containing a population of 65 885 (2016 census) and covering a land area of 21 400 square kilometres.

Community Foundations are community-owned, not-for-profit, charitable organisations which exist for public benefit in a specific geographic area. Their shared purpose is to attract resources to support and revitalise local communities and build social capital. They make philanthropic grants and seek to build a perpetual financial asset base for their community.

SLSF was established in 2004 and has a corpus of approximately \$3.5million. Since its inception, SLSF has distributed \$999 300 to the Limestone Coast Community to fund projects which are charitable in nature; SLSF also provides educational scholarships to individuals with a connection to the region. Annually SLSF distributes around \$130,000, as well as actively leveraging further grant funding into the Limestone Coast region. SLSF currently has 11 Directors (voluntary) and employs three paid staff equating to 1.2 FTE. As part of our operations, SLSF operates a charitable 'Public Ancillary Fund' (an 'Item 2' deductible gift recipient) and, as such, provide grants to 'Item 1' deductible gift recipients (as defined in the Income Tax Act.)

The Tax-Deductible Gift Recipient (DGR) framework as it now stands is complex, onerous and mired in red tape, which creates unnecessary barriers to giving, and limits the ability of Community Foundations to effectively distribute funds and make grants so that they have the greatest impact in our local communities. The Discussion Paper fails to address significant issues that exist within the current DGR framework which have a negative impact on community foundations as they support their communities.

### KEY AREA OF CONCERN

#### ***The Discussion Paper does not Address Key Issues for Community Foundations***

There is growing acceptance that the complex problems facing communities around Australia can only be addressed with an integrated, multi-faceted place-based response. Community Foundations empower communities to address local challenges themselves. They seek to build social capital, catalyse development and strengthen community; they engage with their constituents as donors, advisors and volunteers. Community Foundations are responsive to the immediate challenges facing their communities. They have the capacity to leverage their deep local knowledge in their response to need through purposeful grant making.

And yet, community foundations - which harness local resources, strengthen community and build local capacity - are fettered by a regulatory framework that creates significant barriers. The existing tax laws are inhibiting the growth and impact of community foundations.

Community Foundations generally operate a 'public ancillary fund' (an 'Item 2' deductible gift recipient) – which imposes significant restrictions on their operations:

- Community foundations cannot accept donations from one of the most common forms of private foundation, 'private ancillary funds', as private ancillary funds are also an 'Item 2' deductible gift recipient – this prevents Community Foundations accessing a significant source of philanthropic funding, and effectively precludes Private Ancillary Funds from leveraging the unique expertise and community knowledge of Community Foundations.

#### ***Example – Stand Like Stone Foundation***

*SLSF has been approached by several private ancillary funds (PAFs) in recent years, that are seeking to leverage the local knowledge and community expertise to better focus their giving and enable greater impact. As PAFs are also an Item 2 DGR, there is no direct way that a PAF can give to a Community Foundation. They also cannot give directly to their cause area due to the lack of organisations endorsed with DGR Item 1 in rural and regional areas. The current DGR structure is inhibiting targeted and effective giving in rural and regional Australia and inhibiting the ability of PAFs to leverage the expertise and local knowledge of Community Foundations.*



- As an 'Item 2' DGR Community Foundations are limited to funding DGR 1 charities from their Public Ancillary Funds. This creates an obstacle for locally responsive organisations with relevant experience, particularly in rural and regional areas where there are fewer local DGR1s. This undermines community resilience and creates unnecessary dependency on external organisations and government.

**Example – Stand Like Stone Foundation**

*To support a mental health and wellbeing program for young people on the Limestone Coast, the Stand Like Stone Foundation had to undertake a lengthy process through an intermediary to distribute funds, using up valuable time money and resources in the process. The grant maker struggled to understand the complex and unwieldy process required to enable funding due to current DGR legislation (ie for Community Foundations such as SLSF by channelling funds via FRRR). The grant maker also struggled to understand the nature of the relationship between SLSF and the Foundation for Rural and Regional Renewal (FRRR) and where the responsibility lay for implementation and acquittal of the grant. Complex tax deductible recipient arrangements put at risk the provision of grant funding totalling \$45K to address youth mental health issues in our region.*

**A Simple Solution:**

A new deductible gift recipient category within Division 30 of the *Income Tax Assessment Act 1997* (Cth) specifically for Community Foundations is needed to remove these barriers, reduce red tape and enable Community Foundations to focus on generating impact in their communities. We expect that the revenue forgone from the change would be minimal. This would be an affordable reform, which will grow community philanthropy and strengthen community resilience in Australia.

**RESPONSE TO CONSULTATION QUESTIONS**

- Q1. What are stakeholders' views on a requirement for a DGR (other than government entity DGR) to be a registered charity in order for it to be eligible for DGR status. What issues could arise?**

*Specific information and feedback should be sought from those organisations which currently hold DGR status and are not registered charities, to enable a well-informed decision. There may be specific situations/cases, particularly in rural and regional Australia, where charity endorsement is not congruent with an organisation that holds a current DGR status. If it is a requirement that an entity be registered as a charity in order to be eligible for DGR status, appropriate resources would need to be made available to assist DGRs who are not currently registered.*

- Q3. Are there particular privacy concerns associated with this proposal for private ancillary funds and DGRs more broadly?**

*SLSF is committed to the principle of transparency. The ACNC regulatory framework includes adequate provisions and processes to enable the appropriate withholding of information.*

- Q4/5/6 Should the ACNC require additional information from all registered charities about their advocacy activities?**

**Is the Annual Information Statement the appropriate vehicle for collecting this information?**

**What is the best way to collect the information without imposing significant additional reporting burden?**

*SLSF does not support the ACNC obtaining additional information from charities on their advocacy activities. The Discussion Paper does not clearly differentiate "charitable purpose" from "activities of charities." Charitable purposes are clearly defined in the Charities Act 2013 (Cth) (section 12(1)) and whilst connected to, are not interchangeable with a charity's activities. Charities with different purposes may employ similar activities OR charities with the same purpose may employ very different activities. It is our view that DGR reform should*



focus on purposes. Australian charities may legitimately undertake advocacy to address the root causes of social and environmental problems that relate to their charitable purpose. Any charity engaging in advocacy does so within a prescribed legal framework and has access to guidance from the ACNC to ensure it does so appropriately.

**Q8. What are stakeholders' views on the proposal to remove the public fund requirements for charities and allow organisations to be endorsed in multiple DGR categories? Are regulatory compliance savings likely to arise for charities who are also DGRs?**

SLSF is supportive of the removal of the public fund requirements for charities and allowing organisations to be endorsed in multiple DGR categories. These proposals will result in a reduction of red tape for charities and will decrease the complexity of the DGR framework.

Where the Discussion Paper raises points with respect to Public Funds, these apply equally to Community Foundations operating a Public Ancillary Fund. SLSF advocates that:

- The community and donors would be better served by allowing the Community Foundation to be a charity with DGR 1 tax status. This could be achieved by a simple amendment to create a new deductible gift recipient category within the Income Tax Assessment Act 1997 (Cth) specifically for Community Foundations.
- The majority of Community Foundations are located in rural and regional Australia and face similar challenges in identifying committee members for public funds because of the tighter definition of 'responsible person' in the tax area.
- The majority of Community Foundations are located in rural and regional Australia and face challenges in distributing funds donated to their Public Ancillary Fund (DGR Item 2) due to the lack of DGR Item 1s in rural and regional Australia. (See Argument above, and our "A Simple Solution proposal.")

**Example – Stand Like Stone Foundation**

The Limestone Coast region is comprised of seven Local Government areas, containing a population of 65 885 (2016 census) and covering a land area of 21 400 square kilometres. Within this region there are currently 41 entities that are endorsed as Item 1 DGR, many of whose charitable purposes are narrowly defined and not congruent with the distribution of funds from a Community Foundation. Due to this, for the majority of distributions that occur from the Public Ancillary Fund, SLSF is required to channel these funds via FRRR to "loan" their DGR Item 1 status and enable distribution of these funds within our local community for charitable purposes. This process adds expense (2.5% per grant) and significant time (up to 15 working days) to the granting process. Community Foundations have already undertaken a grant round, received applications, assessed applications, done due diligence on applicants and made recommendations to Board on distributions prior to channelling funds via the FRRR donation accounts (to "lend" FRRR's DGR1 status). The grant making process for SLSF can take 4 weeks and this requirement adds up to 3 additional weeks. It is unpalatable to most applicants that it could take over 8 weeks before the outcome of a small grant application (\$2-5K) is known. A new deductible gift recipient category within Division 30 of the Income Tax Assessment Act 1997 (Cth) specifically for community foundations is needed to remove these barriers, reduce red tape and enable Community Foundations to focus on generating impact in their communities.

**Q9. What are stakeholders' views on the introduction of a formal rolling review program and the proposals to require DGRs to make annual certifications? Are there other approaches that could be considered?**

Transparency and accountability of DGRs is important, however, rolling reviews and audits are not warranted and would create an unnecessary burden for DGRs, the vast majority of which are already registered with the ACNC and thus governed by a regulatory framework which requires annual reporting. Both the ACNC and the ATO have sufficient powers to ensure compliance and can respond if systemic issues are identified.

**Q11. What are stakeholders' views on the idea of having a general sunset rule of five years for specifically listed DGRs? What about existing listings, should they be reviewed at least once every five years to ensure they continue to meet the 'exceptional circumstances' policy requirement for listing?**

*It is SLSF's view that this is unwarranted and would create an unnecessary burden for these organisations. The Australian Government already has the option to direct the Treasury to review specifically listed DGRs.*

**Q12: Stakeholders' views are sought on requiring environmental organisations to commit no less than 25 per cent of their annual expenditure from their public fund to environmental remediation, and whether a higher limit, such as 50 per cent, should be considered? In particular, what are the potential benefits and the potential regulatory burden? How could the proposal be implemented to minimise the regulatory burden?**

*Charities themselves are best placed to determine what approaches and activities are most appropriate in order for them to achieve their charitable purpose. The proposed restrictions and limitations unfairly single out environmental organisations and will result in unnecessary red-tape.*