



Mr Chris Leggett
Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600
31 August 2011

Dear Mr Leggett,

Re. Public Ancillary Fund Guidelines, Revised Draft

Thank you for the opportunity to comment on the revised draft Guidelines for Public Ancillary Funds, released on 14 July 2011. The Sydney Community Foundation (SCF) is very appreciative of Treasury's willingness to consult with Public Ancillary Funds in developing the proposed Guidelines, and to respond to comments and suggestions provided by the sector.

There are three areas of the revised draft where we would like to make comment. We believe that these areas require further refinement to ensure that the Guidelines encourage and support the ongoing development and sustainability of Community Foundations in Australia.

1. Clause 19 - Minimum annual distribution
2. Clause 40 - The fund must not carry on a business
3. Clause 50 - Portability

We have also participated in the Philanthropy Australia submission and encourage Treasury to closely review this submission as it reflects the collective concerns held across Public Ancillary Funds.

1. Clause 19: Minimum annual distribution

We acknowledge that Treasury has made provision for the increased costs incurred by Public (as opposed to Private) Ancillary Funds by lowering the minimum distribution rate from 5% to 4%.

The SCF remains concerned that the requirement for minimum annual distribution may have a detrimental effect on the ability of

Community Foundations to accumulate funds, particularly when they are establishing and in the early phases of growth.

In light of the above comment, we believe the minimum distribution requirement should be 4% of the market value of the fund's net assets i.e. there should be no minimum dollar distribution as is indicated in clause 19.1. This would better reflect the particular challenges experienced by smaller Public Ancillary Funds e.g. rural and regional Community Foundations. As these Community Foundations are responding to grassroots community needs and building a culture of giving and engagement, whilst also trying to ensure their sustainability, having a single requirement of 4% of net assets is appropriate.

The proposed four-year exemption from distribution for newly established Public Ancillary Funds (clause 19.2) is appropriate for Community Foundations setting up. Public Ancillary Funds which are established with a significant corpus, or which grow quickly, may not need this length of time before making a distribution. It is therefore suggested that a corpus level be set, above which the 4% distribution needs to be made, regardless of the time since establishment (e.g. once the fund reaches \$220,000 it needs to make the 4% distribution in the subsequent financial year).

It is also suggested that a Public Ancillary Fund can apply to the Commissioner to approve a non-distribution for a period of up to 2 years where a compelling case is provided (e.g. to fund a major capital project).

2. Clause 40: The fund must not carry on a business

The wording of this clause has been taken from the Private Ancillary Funds guidelines and is not entirely appropriate for Public Ancillary Funds. Public Ancillary Funds are concerned with encouraging the public to become involved in philanthropy and in giving for the community benefit.

As with many Community Foundations in Australia, the SCF is in an important growth phase in which we are moving towards a financially sustainable model. This requires that we generate sufficient income so that we are no longer reliant on government and individual donors to meet our operating costs. Until such time as our endowment fund grows to sustain our business, it is essential that we are able to diversify our income base over and above the fees charged on the endowment fund. To achieve this, the SCF seeks to generate fee for service consulting income in return for providing specialist advice and undertaking research to assist individuals and organisations in developing their giving strategies.

This activity is in direct furtherance of our charitable purpose as a Community Foundation, and in alignment with our role and obligations as a Public Ancillary Fund. The ability to earn income through directly related business activity such as this is

fundamental to the future sustainability, and therefore success, of the SCF and other Community Foundations in Australia.

We suggest that this guideline be amended to allow exemptions for “related businesses”.

3. Clause 50: Portability

The SCF notes that the draft Guidelines make provision for the transfer of assets from one Public Ancillary Fund to another and/or from a sub-fund of a Public Ancillary Fund to a Private Ancillary Fund. We wish to strongly propose that portability needs to be both-ways, therefore also allowing transfer of the capital of a Private Ancillary Fund into an existing Public Ancillary Fund, either to add to its capital or to create a new subfund.

Removing the restriction on transfer of assets from a Private Ancillary Fund to a Community Foundation would provide significant benefits for individual founders and/or trustees who either no longer want to, or are no longer able to, operate their Private Ancillary Fund, but still wish to remain engaged in philanthropy and the community. These individuals would have the option to access the advice, efficiency and grantmaking expertise of a Community Foundation to direct their giving to areas of greatest need and impact in the community.

There would also be significant benefit to the community if the transfer of assets from a Private Ancillary Fund to a Community Foundation could occur, in that this would ensure that the philanthropic endowment would continue to be invested for ongoing community benefit.

We recognise that this provision is outside the scope of the Public Ancillary Fund Guidelines and would require an amendment to the Private Ancillary Fund Guidelines.

Further to our previous submission in response to the discussion paper *Improving the Integrity of Public Ancillary Funds*, the SCF would like to take this opportunity to again raise the issue of donations from Private Ancillary Funds to Community Foundations and like Public Ancillary Funds. A number of our donors have expressed to us their concern at the current restriction on such donations. With the great increase in Private Ancillary Funds in the past 10 years, the restriction effectively removes a significant source of donations to Community Foundations from wealthy individuals in the community. Individuals with a Private Ancillary Fund are unable to partner with citizens of all levels of wealth in the community in addressing disadvantage in a community focused way, through Private Ancillary Fund donations to the work of a Community Foundation and its ability to pool donations.

Community Foundations have a deep and thorough understanding of trends in social disadvantage, and of social change in their particular communities, 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 their grants and investment where need is greatest and for maximum impact.

We believe that the issue of tracking to ensure that donations from Private Ancillary Funds go towards charitable purposes in a timely fashion can be reported on and monitored by the ATO through a regime similar to that which operates for donations from Private Foundations to Community Foundations in the United States.

We recognise that this issue also is outside the scope of the Public Ancillary Fund Guidelines and would require an amendment to the Private Ancillary Fund Guidelines. We wish to signal that we will be making further and separate representation on this matter in the near future.

Thank you again for the opportunity to provide comment on the Guidelines. Please contact me if you have any queries or would like to discuss any aspect of the SCF response.

Yours sincerely,

Jo Hatton
Executive Director