

**PHILANTHROPY
AUSTRALIA**

**Philanthropy Australia Submission to the Treasury
Consultation Process: Building Community – DGR
Status for Community Foundations**

14/07/2023

philanthropy.org.au

A Note of Appreciation

PA would like to express our appreciation to the Treasury – notably the Not-for-Profits and Tax Administration Branch – for the open, thoughtful, rigorous, constructive and engaging way you work with us on reforms to create a more generous and giving Australia. Most recently, thank you for engaging with PA, CFA and Herbert Smith Freehills the day after the consultation papers were released to talk through the policy work and answer our questions.

PA Recommendations

1. Enable Community Foundations to utilise an existing charitable trust for the Community Charity Fund to limit the red tape burden.

We understand Herbert Smith Freehills (HSF) have been engaging you about making the necessary amendments in the most simplified way possible.

As HSF advise, we think it is important that Treasury adopt a structure that enables Community Foundations to utilise an existing charitable trust for the Community Charity Fund rather than having to establish a new trust or company. This would significantly reduce the compliance burden and red tape for Community Foundations which already operate multiple entities.

2. Be explicit and clear that Community Charity Funds can make grants to non-DGR organisations for DGR charitable purposes.

A core purpose of the reforms is to allow Community Foundations to fund local community organisations who don't have DGR status to undertake charitable activities. This is particularly crucial in regional areas, where few local organisations may have DGR status, but local organisations exist to support charitable activity.

We understand from our engagement with you that you intend to make this policy shift, however it is not always clear in the drafting. Indeed, in certain areas, the legislation appears to not allow distributions to non-DGRs for DGR purposes or activities. Could the Bill and Explanatory memorandum be amended to make your policy intention clear?

3. Be clear and explicit on your intention for the legislation and subsequent guidelines.

Philanthropy Australia is very supportive of the approach in the form explained in person by the Treasury, which would not only deliver DGR 1 status to 28 Community Foundations, but also provide a streamlined framework for future Community Foundations to seek access to DGR 1 status.

However, while we recognise the need for complex drafting and explanatory materials given the nature of this work, it is very difficult for the reader to understand the intended reforms from the explanatory material, particularly as the guidelines are yet to be provided.

To avoid scope for misinterpretation and unintended consequences, could a prelude in the explanatory material explain in a clear and simple way the policy approach intended by Treasury. PA's support is for the version explained in person, which includes:

1. The Minister for Charities will have the power to prescribe entities using a delegated instrument.
 2. The ATO would assess an application by the entity. Where the entity met a range of requirements – eg is a registered charity, has appropriate governing documents, meets the definition of a Community Foundation and is consistent with the Ministerial guidelines, the entity would be entitled to DGR 1 status.
- In essence, the reforms create a DGR 1 category for Community Foundations (noting that unlike other categories, they will also need to get tick off by the Minister).
 - The 5-year limit on DGR status for Community Foundations has been removed.
 - Community Foundations would be able to receive funds from PAFs.
 - Community Foundations would be able to distribute to community organisations who do not have DGR 1 status, but are undertaking charitable activities.
 - Community Foundations will be able to: 1) fund other organisation to do charitable work; and 2) do their own charitable activities.

Thank you again for your engagement and the opportunity to comment.

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