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Not-for-profits Unit  
Treasury  
Langton Cres  
Parkes ACT 2600

**SUBMISSION ON THE MINISTERIAL GUIDELINES FOR COMMUNITY FOUNDATIONS**

**PREPARED BY AUSTRALIAN COMMUNITIES FOUNDATION**

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# INTRODUCTION

**Australian Communities Foundation (ACF) is pleased to have the opportunity to respond to the proposed ministerial guidelines for community foundations.**

We are pleased to see the Community Charity entity come to realisation as it will simplify what can be an extremely complex operation and enhance the power of community foundations to achieve good in communities across Australia.

Detailed in our submission are the key issues we have identified from the guidelines, together with our recommendations to enable the effective implementation of the guidelines by community foundations to ultimately grow giving in Australia.

Our recommendations are as follows:

1. That portability guidelines be amended to enable the transfer of sub-funds
2. That clarity be provided for the calculation of a community charity's minimum annual distribution
3. That granting from a Community Charity to another Community Charity be allowed for specific purposes
4. That a 4 year grace period to meet minimum distribution requirements be provided for newly established community charities
5. That the guidelines favour simplicity to support community foundations in implementation

We thank Treasury for the opportunity to make this submission. We are available to answer any questions on our submission.

## ABOUT US

**Australian Communities Foundation (ACF) is a non-profit organisation that inspires smarter giving for greater impact.**

We do this by setting up giving infrastructure (donor advised funds and private ancillary funds); providing philanthropic support services to new and existing funds and foundations; and by inspiring giving amongst a nation-wide community of philanthropists that includes individuals, families, corporate and not-for profit organisations and advisory firms.

As one of Australia's fastest growing philanthropic foundations, and the country's only nationally focused community foundation, we are home to more than 700 funds and foundations. Each year we find and support hundreds of new people into structured giving.

In ACF's last financial year, our giving community distributed \$30.2 million (19% of corpus) via 1,451 grants to 1000 organisations.



# RESPONSE TO MINISTERIAL GUIDELINES

## 1. PORTABILITY

25 (a) “...a community charity may transfer assets to another community charity if the first-mentioned charity transfers all of its net assets to the second-mentioned charity;...”

ACF Comment:

- The guidelines only allow for the transfer of assets to another community charity where the charity transfers all its net assets to the other community charity. This requirement disregards sub-funds that may exist within the community charity that may wish to port from one community charity to another.
- The existing guidelines for Public Ancillary Funds (PuAF) allow, subject to the satisfaction of certain conditions, the “transfer of assets to another ancillary fund”. This allows Community Foundation’s to transfer the balance of sub-funds from one entity to another.
- Portability is a key feature of the existing PuAF structure and should be retained for community charities. It allows community foundations to be flexible and respond to changing community needs without being constrained by rigid infrastructure.
- ACF has experience with transferring sub funds between community foundations. This often occurs when a new community foundation is established that better meets the needs of donors in a particular location. For example, ACF has ported sub funds from its structure to the Inner North Community Foundation (INCF), also one of the 28 listed for community charity status. This has been because the sub fund holders were keen to be more involved in their local community and to grant solely in that area, however when they first established their sub fund at ACF, INCF did not exist. They had been active grant makers at ACF and continue to be active grant makers once their sub fund moved to INCF. Portability allowed INCF to do more good because the donors were better serviced by the new community foundation.
- A second example of the benefits of porting out to another community charity is where ACF has operated as the incubator for a new community foundation/charity. We are currently incubating smaller community foundations such as Foundation South Australia and Southside Community Foundation (SWCF). These both started as sub funds of ACF with the aim to grow to a size where they could stand alone. They both intend to port out and this would be to a community charity structure. SWCF began as a stand-alone community foundation but found the governance and cost requirements unsustainable for their community. Believing it was better to continue a community foundation offering in their region, rather than to wind down immediately, they chose to port their Foundation into ACF to benefit from our scale and offering. The inability to port out at some point in the future when they are once again at a sustainable level could inhibit the growth of the Foundation.
- The requirement to transfer all assets of a community charity to another is inflexible and not practical when considering the sub-fund structures of many community foundations. Being able to transfer the balance of a sub-fund ultimately builds trust with donors and grows giving to community foundations and charities.
- Consistent with the current PuAF guidelines, risks associated with porting between community charities could be mitigated by ensuring community charities meet the following requirements to port a sub fund to another community charity:



- Ensure the ported amount is not included in the total granting amount each year, ensuring the minimum distribution is met on the funds being ported.
- Have the Commissioner provide approval of the porting (as is currently done for PuAFs by the Taxation Commissioner).

Recommendation:

- That guidelines be amended to be consistent with current PuAF guidelines to allow for the portability of sub-funds between Community Charities.

## 2. MINIMUM DISTRIBUTION

*13 (1) "During each financial year, a community charity must make distributions of amounts that are in total equal to at least 4 per cent (the minimum annual distribution rate) of the market value of the charity's net assets..."*

ACF Comment:

- Greater clarity should be provided on the calculation of the annual minimum distribution for community charities. The guidelines should be supported with examples that are relevant to community charity's circumstances.
- The current guidelines determine the minimum distribution be calculated as a percentage of the "net assets" of the charity. This could include both income and non-income producing assets.
- Community foundations will often hold long-term assets that are non-income producing but serve an important community benefit, including property and facilities. The assets can also be highly illiquid. The current guidelines would capture such assets in the calculation of net assets, potentially inflating the minimum distribution requirement on community charities without the resources to pay the distribution.
- The exclusion of the non-income producing assets from the calculation:
  - Is financially pragmatic for community charities to satisfy the calculation.
  - Preserves long-term assets of the community charity without the need to liquidate community assets.
  - Helps align the philanthropic purpose of the community charity by protecting essential resources needed for community impact.
- Additionally, operational costs for the running of the community charity should be included as part of the "distributions" calculation. This would be particularly critical for smaller foundations to attract donors to support the running costs of a community charity.
- The inclusion of operating costs in the calculation:
  - Provides a transparent and holistic view of the community charity's financial commitment to community support, acknowledging that achieving social impact involves not just grant-making.
  - Ensures a more realistic representation of the community charity's total investment in community programs.



## Recommendation

- That “net assets” for the purpose of calculating the minimum annual distribution excludes any non-income producing assets.
- Operational expenses of the charity be included in the distribution calculation for the purpose of satisfying the minimum 4% requirement.

### **3. MOVEMENT OF FUNDS FROM ONE COMMUNITY CHARITY TO ANOTHER**

*30.110 (3) “...the purpose of providing money, property or benefits to a fund, authority or institution if...is described in an item of a table in this Subdivision (other than...subsection 30 (105) (1)...”*

## ACF Comment

- The current legislation prohibits Community Charities from providing money to another Community Charity.
- This limitation disregards the important work of community charities in supporting community-based activities. Particularly in circumstances where granting to a community foundation meets an intentional community need e.g. disaster relief.
- The rules that prohibit providing money between Community Charities creates unnecessary complexity and may tempt Community Charities to consider additional auspice arrangements, or require them to continue with multiple Trust or Fund structures alongside a Community Charity. This is structural complexity that Community Foundations have sought to avoid.
- Granting to Community Foundations is often a more efficient use of philanthropic resources. By enabling granting to Community Charities, it can:
  - Leverage the Community Charities comprehensive understanding of local community needs
  - Create administrative efficiency and effectiveness
  - Reduce risk associated with direct charitable giving and increase community impact by giving to the most effective community organisations.
- In the height of the Queensland flood disaster, ACF communicated an appeal to our fund holders to contribute to our National Crisis Response Fund (NCRF) and we collected co-funding which was pooled in the Fund. Our team then researched local organisations via desktop and via phone/email. This included talking a lot with Northern Rivers CF as the local Foundation with knowledge and connections best positioned to respond to the disaster. If ACF had been able to donate directly from the NCRF to Northern Rivers CF they could have got on with getting the money as quickly as possible to the people and organisations in need (as the organisation closest to those directly affected by the natural disaster), rather than responding to enquiries from ACF. Grant recipients would also have had to deal with only one Community Foundation making the grants, rather than responding and engaging with multiple Community Foundations seeking to support the response. The inability to grant between Community Charities increases the complexity involved in supporting people and organisations on the ground.



- As a national organisation, ACF values the opportunity to grant from our sub funds to other Community Foundations as this can leverage local expertise and knowledge which enhances outcomes. Where there is a local Community Foundation in an area of disaster, for example, our experience indicates that they are usually better placed to coordinate philanthropic resources.

#### Recommendation

- That the guidelines provide confirmation that a Community Charity:
  - Can make a grant to another Community Charity for the specific purposes or activity consistent with one or more of the principal purposes or activities of a DGR category. This will enable other Community Charities to contribute to disaster relief in the affected Community Charity’s community through the Community Charity
  - Cannot make a grant to another Community Charity for the Community Charity’s general purposes.
- That where a specific purpose under the DGR category is satisfied, that grants between Community Charities be counted towards the Community Charity’s minimum distribution requirements.

#### 4. GRACE PERIOD FOR NEWLY ESTABLISHED COMMUNITY CHARITIES

*13 (3) “...no distribution is required during the financial year in which a community charity is established.”*

#### ACF Comment:

- Given the operational costs for establishing a Community Charity and acknowledging that it can take some time to build a substantial endowment to be sustainable long-term, the requirement to meet the minimum distribution requirement (4% or \$8,800) is an onerous financial burden on Community Charities.
- For this reason, existing PuAFs are not required by the ATO to make distributions in the year in which the Fund was established, or within the next 4 financial years. This grace period allows trustees to accumulate funds in the trust to the point where the Foundation is self-perpetuating.
- The early operational phase of a community foundation is critical for:
  - Building financial capacity and reserves to maintain long term sustainability
  - Building comprehensive strategic plans and effective grant-making processes
  - Enabling strategic planning and building community engagement.
- Evidence supports that this grace period is critical for supporting new Community Foundations in the early phase, and that Foundation’s will typically exceed minimum distribution requirements over the long term.

#### Recommendation

- Consistent with the existing PuAF guidelines, that clause 13(3) of the guidelines be expanded to allow for an additional 4 year grace period for meeting the minimum distribution requirements.



## 5. SIMPLICITY

### ACF Comment:

- Fundamental to the move to community charities is the intent to simplify operations for community foundations. These are often lean organisations, focused on delivering much needed support and services to communities across Australia. Their efficacy can only be enhanced by reducing complexity and unnecessary hurdles. We have identified the following components which err towards complexity, and we encourage Treasury to consider measures to simplify as possible:
  - Challenges distinguishing between charitable DGR category activities and charitable non-DGR category activities
  - Why does it need to be charitable *and* philanthropic? What is the difference?
  - Purpose of a community charity (section 9 of Guidelines)
  - Community Foundations often manage many entities and it is essential they are not prevented from transferring between these entities
  - The number of DGR purposes required to qualify as a community charity
  - Clarity and detail on what a community charity can do is needed and will simplify next steps
  - The Guidelines should be clear on what is required when giving to a non-DGR for DGR purposes and activities, and what is required when undertaking activities which are DGR purposes.
  - Clarification around terms such as ‘direct course’ (Guideline 13) which do not exist in current PuAF guidelines
  - Confirm whether a community charity is required to operate separate scholarship and/or necessitous circumstances funds within the community charity structure, or whether these can be combined within the Community Charity or required to be held in a separate structure (e.g. Trust or Public Ancillary Fund).

### Recommendation

- That Treasury keep simplicity as a guiding principle in finalising the guidelines and ensure simplicity in each of the factors detailed above.