



Mr Peter Robjent
Treasury
Langton Crescent
Parkes ACT 2600

Email: charitiesconsultation@treasury.gov.au

3 December 2024

Dear Mr Robjent,

Re: Draft Taxation Administration (Community Charity) Guidelines 2024

Thank you for the opportunity to respond to the draft "Building Community – ministerial guidelines for community foundations draft Guidelines".

About Foundation Barossa

Foundation Barossa was established in 2002 and currently manages a corpus of approximately \$2.4m. Our governance is overseen by a board that comprises ten volunteers and the daily operations are conducted by two part-time employees (1.2 FTE). After several years of brand-building in our community, we are launching our strategic plan for 2025-2030 that is targeting a ten-fold increase of funds under management in the next ten years.

Our current focus is on providing scholarships to youth who face disadvantage to assist them to enter tertiary education, but we also support the community with annual grants and each year run appeals to immediately support those who are finding life tough in our community.

One of our most impactful programs is the Back-to-School Voucher program - in the last five years we have, with the financial assistance of FRRR, distributed \$170,000 in the form of \$50 gift cards that provide dignity to struggling families.

In the last three years we have co-funded the purchase of four relocatable studios in partnership with the South Australian Government's Homelessness Strategy and Kids Under Cover at a cost of over \$160,000.

The goal is to make giving easy for our Barossa community.

We wish to highlight, query or seek clarification around the following areas of the draft guidelines:

Section 13. Minimum annual distribution

Issue: Assets held for operational purposes are included in the value of net assets upon which the minimum annual distribution rate is calculated. (Section 13(a))

Section 13(1) is similar to the equivalent paragraph in the Public Ancillary Fund (PuAF) guidelines (refer Taxation Administration (Public Ancillary Fund) Guidelines 2022 sec 15(1)). However, unlike PuAFs, community charities can undertake their own DGR1 activities. This will undoubtedly require a community charity to use assets for these purposes (eg a building, motor vehicles, computers etc), which will be recognised as assets in the financial statements. These assets will not be invested and thus will not be generating a financial return, yet this guideline assumes these assets have generated income that is available to be distributed.

- *We propose that this section be revised so that only the market value of assets held for investment purposes are taken into account when determining the minimum 4% distribution.*

Issue: A minimum distribution of \$8,800 unreasonably affects small community charities or those in the early stages of growth. (Section 13(2))

It is very difficult for a community charity to operate without paying any expenses. As a result, this requirement would unreasonably affect community charities that are in the early stages of growth as doing so will deplete their corpus, making it harder for them to get established.

- *We propose that the \$8,800 minimum distribution requirement is removed from the guidelines.*

Issue: Community charities are only exempt from making a distribution in their first year of establishment. (Section 13(3))

We note that no distribution is required in the first year of establishment (section 13 (3)), yet a PuAF does not need to make a distribution in the first four years following establishment (refer Taxation Administration (PuAF) Guidelines 2022 section 15(3)). Again, not giving a reasonable time for Community Charities in their early formative years to get established will make it harder for new Community Charities to flourish.

- *We propose section 15(3) of the PuAF guidelines be replicated in the Community Charity guidelines.*

Issue: It is unclear whether administrative expenses (such as an executive officer's salary, marketing & administrative expenses) would be included in the definition of a distribution.

- *We seek clarification that administrative expenses can contribute towards the minimum distribution.*
- **Section 16. Financial Reports**

Issue: The related party disclosures are onerous, unworkable and duplicate AASB requirements.

Sub-section 16(3) requires that a financial report must disclose all transactions (other than gifts of money) between a community charity and certain listed entities. The list of entities is very broad (eg founders, employees, donors) and would include almost every person that a community charity could potentially have a relationship with.

- A "founder" is only relevant to a community charity trust, presumably being the settlor of the trust. If it is intended for the definition to be extended to those who established a community charity corporation, this is potentially a large number of people, who may have contributed 5 minutes or 5 years of their time.
- There is no time limit or boundaries around this disclosure requirement. If a person makes a donation in a particular financial year, and their child is awarded an educational scholarship twenty years later, does this need to be disclosed? Or are donors only considered to be donors for disclosure purposes for that financial year?
- There is no consideration of materiality. Foundation Barossa is a relatively small community foundation, yet we have many small donors (eg \$5 or \$10 per donation) and trying to identify if a donor's child later applies for a scholarship or is involved in a group that applies for a community grant will be extremely difficult.
- Does the reimbursement of reasonable expenses incurred by an employee or corporate director as allowed under paragraph 21 need to be disclosed?
- The implied record keeping requirements of this section are potentially very onerous and would be difficult for the community charity to comply with. Is a community charity expected to be able to identify associates of a founder in fifty years time?
- How are these transactions to be disclosed? Accounting standards typically provide additional guidance as to what disclosure needs to be made. For example, do the individual names of the listed entities need to be disclosed and the financial value of the transaction with that entity, or a list of names and the total amount of the related transactions? Accounting standards already contain requirements around related party disclosures.

- *We request that subsection 16(3) be re-considered in its entirety.*

Issue: Preparation of audited financial reports required before income tax returns are to be lodged.

Sub-section 16(4) requires the financial report to be prepared (and sub-section 17(6) requires the financial reports to be audited) before the community charity is required to lodge an income tax return. However, community charities are exempt from income tax. As they are

required to be registered with the ACNC, they also are exempt from lodging an annual self-assessment return. As the ACNC requires financial statements to be lodged, this paragraph is duplicating the requirements of ACNC registration.

- *We propose that sub-sections 15(4) and 17(6) and are either deleted as they effectively duplicate pre-existing requirements under the ACNC, or they are altered to require a financial report to be prepared and audited prior to lodging their annual information statement and financial reports to the ACNC rather than the Australian Taxation Office.*

Section 20. Uncommercial transactions and benefits to founders and donors

Issue: The prohibition of any benefits to related parties is unworkable and impractical.

In many regional communities, many directors and donors (and their associates) of a community charity will also be affiliated with other charities or not-for-profits in the region who may be seeking grants or other support from the community charity. To prohibit a community charity from working with charities that may also have directors or donors in common will inhibit the ability of a community charity to support their community.

- *We propose that section 20(3) be amended to allow benefits to be provided to related parties, provided the conflicted party is excused from deliberations or decisions as per generally accepted principles of good governance.*

Section 25. Portability

Issue: Portability requirements do not allow for sub-funds to be transferred to another community charity.

Under section 25, a community charity may transfer assets to another community charity, under certain circumstances, and with the agreement of the Commissioner. However, paragraph 25 requires that the community charity transfers **all** of its net assets to the receiving charity. This is inconsistent with PuAF requirements which allow for the existence of sub-funds and enables the transfer of all of the net assets of a particular sub-fund, leaving the remaining assets of the PuAF intact (refer Taxation Administration (PuAF) Guidelines 2022 paragraph 27 (1) (a) (i)).

Many community foundations hold donor-advised sub-funds. Currently donors can “port” their sub-fund if they move to a region that is covered by another place-based community foundation. For example, a retiree from Adelaide relocating to northern Queensland, or Victor Harbor. Being able to move their sub-fund with them can assist the donor joining their new community and establishing new relationships etc.

Issue: Portability requirements do not allow for collaboration between community charities.

Prohibiting the transfer of sub-funds between community foundations or to newly established community foundations will prevent the ability of community foundations to

support each other or collaborate to amplify their impact in a region via a jointly funded program. Two examples come to mind:

- (1) The four existing rural-based community foundations in South Australia are working together to attract funding to enable the continuation of the Back-to-School voucher program that was previously supported by FRRR. The intention is that a state-wide or national funder could contribute to a central fund (possibly administered by Foundation SA), which would then be disbursed to the four regional community foundations.
- (2) Spinifex Foundation is Australia's first indigenous led community foundation and is based in South Australia. Spinifex are actively seeking support of other community foundations to further their work to improve SA's First Nations communities. To prohibit community charities from working with community charities like Spinifex, undermines the community principles that bind community foundations around Australia, and the world.

We also question the need to obtain the Commissioner's consent as this will further restrict the ability of community charities to work together in an agile manner.


- *We recommend replicating section 27 of the PuAF Guidelines in place of the current section 25 of the Community Charity Guidelines.*

We thank Treasury for the opportunity to provide feedback on the draft Guidelines and would be happy to provide further information and assistance. If required, please contact Annabelle Travaglione, EO, on annabelle@foundationbarossa.com.au.

Yours Faithfully,



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Amy Heinicke
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