

Maximising the efficiency and effectiveness of Community Foundations in Australia

Submission to the Federal Government

To: Prime Minister's Community Business Partnership

This submission requests improvements to community philanthropy through the reduction of unnecessary and onerous regulation for Community Foundations. This submission is supported by large and small Community Foundations operating in urban and rural communities across Australia. It is being led by the Australian Community Philanthropy, Lord Mayor's Charitable Foundation, Australian Communities Foundation, and Sydney Community Foundation, with pro bono legal advice from Herbert Smith Freehills (Melbourne).

1. What are Community Foundations?

Community Foundations are community-owned philanthropic organisations which raise funds from and give back to communities in specific geographic locations. Community Foundations connect communities and give local people a focus for giving their time, skills and money for the benefit of their own community. They are governed by boards comprising local leaders, and as such they know and understand their communities from the inside out, and are in a unique position to grow and encourage engagement and philanthropy.

Importantly, Community Foundations enable communities to help themselves through building financial and social capital to tackle the issues that matter most within particular communities. They enable all Australians to give. From small donations or bequests, to substantial subfunds, Community Foundations are an efficient and easy way for everyone to get involved in philanthropy.

There are in excess of 38 independent Community Foundations in Australia, in every state, and the ACT, and in both urban and rural communities. Australian Communities Foundation, Sydney Community Foundation and the Lord Mayor's Charitable Foundation also hold subfunds on behalf of local communities (ten with LMCF, three with ACF and one with SCF). Australian Community Philanthropy is the peak body for Community Foundations across Australia.

There is a huge untapped potential for engaging people in community philanthropy. Community Foundations represent an opportunity for the Federal Government to support the growth of self-help philanthropy in every community throughout Australia.

2. Background information on Community Foundations internationally

Internationally there are around 1,750 Community Foundations across the world based in all regions from the US and Canada to the UK and all parts of Europe and Russia, from India to Africa, and of course Australia and New Zealand. The first Community Foundation was formed 100 years ago in Cleveland Ohio, making 2014 the centenary of the Community Foundation model.

Community Foundations adapt to their local context but all share some common features. This is summed up well in The Charles Stewart Mott Foundation's (a leading supporter of global community philanthropy) most recent annual report:

“Surely part of what makes a Community Foundation so appealing is its simplicity. Although there are many definitions of a Community Foundation, at its most basic it is an institution of the community and for the community in which a wide range of residents work together to create long-term strategies and solutions for developing vibrant, sustainable communities – and they use local resources gathered from a diverse donor base to do it.

In practical terms, that means Community Foundations should be quite good at: knowing their community's strengths and challenges; leading effective responses to local issues; serving as convenors; building partnerships between disparate parties; pooling resources from inside and outside their communities; engaging a diversity of residents; engendering trust; and acting as the on the ground 'eye and ears' for regional, national and international funders.

*As the concept travels around the world, it is shaped to fit specific cultures and contexts. There is no one size fits all approach....
Still, what links these and all Community Foundations is their sense of purpose, which is to improve lives and communities.”¹*

Governments in many parts of the world have recognised the power of Community Foundations as vehicles for driving community development and growing local philanthropy. A recent example is the Canadian Governor General's call for a smarter and caring community.

As patron of Community Foundations of Canada, the Governor General of Canada has asked Community Foundations to join his call to all Canadians to build a 'smart and caring nation' leading up to 2017. His vision inspired and motivated our movement and Smart & Caring Communities is our response.

Smart & Caring Communities is a landmark effort that brings our movement together around two goals: first, to ensure that every community has access to a Community Foundation by 2017 and second that communities across the country have access to dedicated resources through Smart & Caring Community Funds established specifically to respond to local priorities.²

Community Foundations in Canada make grants of \$142 million every year and hold assets of \$3.35 billion. 82% of Canada's population of 35 million resides within the geographic scope of a Community Foundation. Australia should aim to emulate this legacy of community philanthropy.

¹ Rooted Locally Growing Globally, Annual Report 2013, Charles Stewart Mott Foundation, p14

² Community Foundations of Canada, [www. http://cfc-fcc.ca/programs/smartandcaring.html](http://cfc-fcc.ca/programs/smartandcaring.html)

3. Issues holding back Australian Community Foundations

There are three main issues restricting the growth of community philanthropy through Community Foundations:

1. The overly complex structure and regulatory regime (in particular the taxation requirements) is a deterrent both in the establishment and management of Community Foundations.
2. The pathways between private and community philanthropy require simplification so that private philanthropy has opportunities to access local knowledge and support local communities through Community Foundations.
3. The low level of knowledge and understanding about Community Foundations within the Australian community needs to be addressed.

3.1 The overly complex structure and regulatory regime (in particular the taxation requirements) is a deterrent both to the establishment and management of Community Foundations.

A brief outline of simplifications, which would reduce the regulatory requirements and simplify administration to enable Community Foundations to more effectively and efficiently raise moneys and assist their communities, follows. (A submission on some of these issues was made to the previous Liberal Government's Community Business Partnership on these matters. This led to the Tax Determination allowing the Foundation for Rural and Regional Renewal to act as a conduit for rural and regional philanthropy. This was a positive development but only part of the solution.)

As an advisor to the Community Foundation sector, Herbert Smith Freehills prepares papers on relevant legal issues to help support sector development. A paper on the structure and compliance requirements of Community Foundations, which extends to 44 pages, is available.

At a minimum, the simplest form of Community Foundation requires an incorporated trustee and a trust which must meet the requirements of a public ancillary fund to be tax deductible. Many Community Foundations also act as trustee of one or more trusts or internal charitable funds. Community Foundations are also operating charities.

Community Foundations engage with the community and conduct activities which:

- raise funds (during people's lifetimes and from bequests);
- connect and communicate with the community, including convening meetings and forums on key community issues;
- research the needs and service gaps in the community;
- co-ordinate the activities of existing charitable organisations in the community;
- encourage volunteers and involvement in community events and in helping charitable organisations;
- act as a focus and co-ordination point in the event of disasters, as well as supporting the agencies which assist in disasters such as the CFA and SES;
- support local charitable organisations and their activities through grants, connections, promotion and volunteers;
- support organisations and infrastructure which bring the community together (particularly in rural areas) such as sporting clubs and community halls.

Due to the varying regulations, some of the activities of a Community Foundation must be carried out through the trust and some through the company, and some cannot be done at all due to not being 'charitable' e.g. the sporting clubs (which are often the life blood of small and isolated communities) or due to the connection to government (e.g. the CFA).

The Herbert Smith Freehills paper sets out all the different regulatory requirements and rules that make an extremely complex environment, particularly for Community Foundations based in rural and regional areas where appropriately skilled and experienced people may not exist or may not have the time available. Specialist charity law and accounting advisers are very rare. Other than the HSF paper there is no other information available from the ATO or other regulator or source, which collects all the various regulations applicable. This complexity and lack of clear public information presents a significant barrier to both establishment and ongoing operation.

The regulatory and tax regime is unnecessarily complex and results in structures that are difficult to operate and manage, and difficult for donors to understand. Currently the incorporated entity is charitable and is not able to be an item 1 DGR due to the width of its potential activities. The separate trust must be a public ancillary fund which is an item 2 DGR, and as such is restricted to only making grants to item 1 DGRs of which there are very few in rural and regional areas. These restrictions make this structure inappropriate for Community Foundations that wish to raise funds for the benefit of the community to address and respond to their changing needs, but it is currently the only option available to achieve tax deductibility.

This concept is similar to the endorsement as an item 1 DGR for the Foundation for Rural and Regional Renewal (FRRR) which is specifically named in ITAA 97. We anticipate that community philanthropy will significantly grow if this type of entity could exist in each community. Expanding the category of item 1 DGRs to include organisations with purposes similar to FRRR, but specific to their community (communities) or region, would provide an immediate growth in the level of community philanthropy. This would make philanthropy accessible to people of all socio-economic levels and open up involvement and engagement in local communities.

In 2004 the former Howard Government's Prime Minister's Community Business Partnership recognised the difficulties facing Community Foundations and this resulted in an expansion to FRRR's powers to act as a flow-through fund to receive and pass on grants and donations. We can report that in the years since this has been operating, many Community Foundations have taken advantage of these arrangements with FRRR, but many have not (for example, see the attached case study from the Denmark (WA) Community Foundation).

The reality is that the complexities of the regulatory regime remain a real barrier to both the establishment and growth of Community Foundations throughout Australia. Donors to Community Foundations often feel uncomfortable with sending local money to FRRR in order for it to be returned and applied as the Community Foundation intends. This presents a loss of both time and money (due to the commission FRRR receives) and is confusing to both the donors and the community.

RECOMMENDATION

Ideally Community Foundations would be set up as an incorporated body and be able to carry out all the activities noted above in one structure, able to receive tax deductible donations and grants from other private and public ancillary funds and carry out the work in, with and for the community benefit. This would greatly increase community philanthropy throughout urban and rural Australia.

The solution is to simplify the Community Foundation structure to a single entity that is a deductible gift recipient (DGR) under item 1 of the table in section 30-15 of the ITAA 97 (an item 1 DGR). (Currently the only DGR in a Community Foundation structure is the public ancillary fund which is an item 2 DGR).

3.2 The pathways between private and community philanthropy require simplification so that private philanthropy has opportunities to access local knowledge and support local communities through Community Foundations.

Currently private ancillary funds are prevented from winding up in favour of public ancillary funds (which is the structure for the trust adopted by Community Foundations). Amendments to the *Taxation Administration Act* in 2011 clearly anticipate that this should be made possible, as it is for public ancillary funds to wind up in favour of other public ancillary funds or private ancillary funds.

Private philanthropists often establish a private foundation (private ancillary fund) with a great deal of enthusiasm. After some years, especially if the following generations of family members are not as interested as the founder, the philanthropist may wish to focus on the giving side of philanthropy and might find the 'back office' compliance and administration aspects too difficult or onerous. An easy solution would be for the fund to be transferred into a Community Foundation public ancillary fund, usually retaining the foundation name as the subfund name i.e. Smith Foundation becomes the Smith Charitable Fund Account (subfund) within an existing Public Ancillary Fund of a Community Foundation. This is not currently possible.

In addition, there are many private ancillary funds that wish to utilise the skills and experience of Community Foundations to more effectively and efficiently grant into certain communities. Community Foundations have a direct connection with their community including knowledge of local needs, and have often researched particular programs that they are actively supporting. For private ancillary funds this represents a valuable resource for achieving maximum grant making impact, without having to duplicate the work done by experts in the community. However, due to the provisions in the Income Tax Assessment Act, a private ancillary fund is not able to make a grant to a Community Foundation as a Community Foundation does not currently have the required tax status (i.e. an Item 1 DGR).

For example, one donor to a regional Community Foundation was very keen to support a respite care program through the Community Foundation. He wanted to add his funds to other Community Foundation donor funds and to allow the Community Foundation to manage the project in partnership with the respite care organisations. The donor could not give to the Community Foundation for this purpose as his funds were held in a Private Ancillary Fund. He was required to give directly to the DGR organisation or not at all. He did this but was disappointed as it did not enable the engaged philanthropy he was looking for.

In another situation, a donor with a Private Ancillary Fund wanted to wind up and grant out to a subfund held by a Community Foundation because the amount of funds available for granting from the PAF, once the compliance costs were deducted, was minimal and was proving unsustainable. In addition, the donor wanted to find projects to support in a particular focus area and the donor did not have skills or knowledge to do this on their own. If they were to engage a consultant, this would further diminish the funds available to grant. A subfund at a Community Foundation would have allowed them to become more engaged and to draw on the Foundation's experience and expertise. This Private Ancillary Fund is still languishing.

RECOMMENDATION

The missing step is an amendment to the Private Ancillary Fund Guidelines 2009 to include the portability from private ancillary funds to public ancillary funds.

3.3 The low level of knowledge and understanding about Community Foundations within the Australian community needs to be addressed.

The low level of knowledge and understanding about Community Foundations within the Australian community could be targeted with advertising and promotion capitalising on the 2014 centenary, such as being undertaken in Canada.

Australian Community Philanthropy and its member Community Foundations would be happy to develop this further in consultation with the Federal Government.

4. Case Studies

In order to ground this submission in examples of real experience, some case study examples are attached. While these show the great work being done by Community Foundations through community self-help philanthropy, they also highlight current barriers.

We encourage you to envisage this work being magnified across each and every community in Australia.

We look forward to discussing this submission with you, and welcome any questions you may have.

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APPENDIX 1: CASE STUDIES

Case Study 1 The Feed Melbourne Appeal Lord Mayor's Charitable Foundation

The Feed Melbourne Appeal began as an initiative of Leader Community Newspapers and Fare Share to raise funds to support FareShare and other food charities working to support the most disadvantaged people in the Melbourne community. In 2011, the Lord Mayor's Charitable Foundation joined the campaign to provide matching funding up to \$250,000 for all donations generated from the community and to provide additional expertise to the Food Security Granting Panel.

For the past three years Leader, FareShare and the Foundation have worked together with the shared goal of raising community awareness and understanding of food waste and the opportunities to rescue food; raising much needed funds so that community food programs have sufficient means to receive, collect, store and distribute food, while also educating the community on the emerging issue of food insecurity in Australia.

In 2013 alone, more than \$500,000 dollars was raised through the campaign and grants were provided to 40 food charities across Melbourne including grassroots charities based at local churches, school breakfast clubs and many community services agencies.

The Foundation has renewed its commitment to match \$250,000 of donations in 2014. Currently Private Ancillary Funds cannot give to this matched appeal. This is a barrier which should be overcome.

Case Study 2 The Macro Melbourne Project (Australian Communities Foundation)

A liveable city for all its citizens was an initiative of Australian Communities Foundation established in 2005. The Foundation led this initiative for its donors and the broader philanthropic community based on the ideas of partnership and collaboration, creating and investing in evidence-based research and the idea that more can be achieved together than individually.

Through solid research and evidence base about disadvantage and inequality in Greater Melbourne the *MacroMelbourne* initiative over six years supported the implementation of 27 projects across Melbourne raising more than \$2 million dollars in funding as well as in kind support.

Following on from *MacroMelbourne*, Community Foundations across Australia are engaged in research at small and large scale to understand their communities. This knowledge could be leveraged by private donors if Private Ancillary Funds could give to Community Foundations.

Case Study 3 Place-based Philanthropy in South Western Sydney Sydney Community Foundation

In 2013, Sydney Community Foundation (SCF), through its Sydney Women's Fund, significantly scaled up its place-based philanthropy program in Warwick Farm.

Evidence from research conducted in April 2013 by SCF clearly showed the lack of philanthropic investment in South Western Sydney. One response to this has been the

\$500,000 Challenge Grant from NSW Family and Community Services to extend the place-based model of philanthropy into three other locations; Liverpool, Fairfield and Campbelltown LGA's. This grant was the first-of-its-kind in NSW and has accelerated the program significantly by challenging us to find matching philanthropic funding for place-based programs.

The program in Warwick Farm aims to build the capacity of the community through a collective impact approach. In partnership with Liverpool Neighbourhood Connections, FutureHub was held where members of the Warwick Farm community, with Liverpool Council, NSW Police, NSW Health, community organisations, NSW Government and philanthropists came together to map a collective vision for the community's future.

SCF has worked with Liverpool Neighbourhood Connections and the Warwick Farm community to develop and fund eleven programs initially focused on employment and education. The project is anchored by the participation of more than 150 women through the Doorways to the Future TAFE outreach program, giving women opportunities to access education and employment that would otherwise be unavailable to them.

Building on the programs already underway, and with the help of more than 20 donors and supporters, in 2013 SCF has invested more than \$330,000 in new project funding. Other private donors with Private Ancillary Funds have not been able to work directly with SCF because of the complex legal structure. The long-term commitment of SCF to support community initiatives, and change future lives has inspired multiple donors to invest in this grass roots work – with a more straightforward tax and legal structure, it could inspire many more.

Case Study 4 **Education Benalla Program** **Tomorrow:Today Foundation**

The Education Benalla Program, an initiative of the Tomorrow: Today Foundation (Benalla and District's Community Foundation), is a minimum ten year program that takes a whole of community approach to improving outcomes for Benalla's young people aged 0 to 25 years.

After three years of research and development the program began in 2010. During 2013, the Education Benalla Program was responsible for either directly delivering or facilitating in partnership: eleven early years programs (playgroups and parent education) attended by over 150 families; early literacy support to 24 primary school children; mentoring for 19 Year 9 students; part time work preparation and support to 25 students; Hands on Learning school-based artisanal education for 28 disengaged students; individual and club assistance (e.g. tutoring, Year 12 study camp, club membership fees, etc.) to over 90 senior students and delivering a mental health first aid course for 20 parents, mentors and teachers. The program also supported every Year 10 student in Benalla to develop a meaningful career action plan, partnered in the facilitation of a Careers Day, and funded buses for 681 Year 11 and 12 students to visit universities in Melbourne. Numerous local collaborations resulted in children and parents having many contacts with supportive environments leading to increased aspirations.

Since the Education Benalla Program began, Tomorrow:Today has been considered a model for community-led investment in rural communities to address inequity and inequality.

A significant amount of program funding is provided by philanthropic organisations. Currently only two of these organisations can support the Community Foundation directly. Most can only give to Item 1 DGR's so have to give their support via Foundation for Rural and Regional Renewal (FRRR). Each new relationship requires a lengthy process to confirm that the ATO supports our connection with FRRR, that it is not a case of inappropriate auspicing.

Board and staff time and skill are required, with backup from Herbert Smith Freehills. This is an onerous process for a small rural and regional Community Foundation.

Discussion with a local Private Ancillary Fund did not result in support after they discovered the donation would have to be made to FRRR not directly to the Community Foundation and that FRRR charged a fee for the transaction. The structure of the Community Foundation was a barrier to engaging with this private donor.

**Case Study 5:
'Lost Opportunity'
The Stand Like Stone Foundation**

The Stand Like Stone Foundation is a Community Foundation servicing the Limestone Coast Region of South Australia. Our geographic reach is vast covering 7 Local Government areas, totaling over 21,300 square kilometres, housing a population of around 65,000 people. Only 56 DGRs operate in this region.

A recent approach by a local vineyard management group represented an opportunity to access grant money from outside our region to undertake an environmental restoration and education project on a popular fishing lake east of Robe, South Australia.

The project included the upgrade and extension of a landing to be utilized for fishing, re-vegetation & renewal of native scrub & bush land destroyed and eroded due to inadequate fishing access. It also included the installation of signage to educate visitors on the fish stocks, native wildlife and vegetation in the area. It was proposed that the project would encompass several community groups working together, along with students at the local primary school and kindergarten. The project would bring together young and old and provide the opportunity to educate local youth, as well as the large tourist market that frequents the lake.

It was proposed that the Robe & Districts Lions Club would coordinate the community groups involved and implement the project. As the local Lions Club did not have Item 1 DGR status and no other organisations in the area held this status, Stand Like Stone was required to channel funds through the Foundation for Rural and Regional Renewal (FRRR) to enable local non-Item 1 DGR organisations to undertake the work and at the same time ensure that the corporate donor received the desired tax deduction.

The project represented a beautiful opportunity for community collaboration and partnerships across several community groups, with a clear charitable benefit. The local vineyard were not successful in their application for funding, which can be partially attributed to the confusing, complicated and convoluted project management due to the lack of organisations with Item 1 DGR status in our rural and regional area and the complex philanthropic pathway. The current structure/tax regime for Community Foundations acts as a barrier for external parties seeking to fund projects in rural and regional areas.

A lost opportunity and lost potential for future collaboration, community strengthening and sustainability.

CASE STUDY 6

From Denmark Community's Future Fund (DCFF) to Denmark Community Foundation (WA) Inc. A Matter of Trust!

The Denmark Community Foundation (WA) Inc has risen from the ashes of the demise of the Western Australian Community Foundation (WACF in 2009 -2010), under which it had been held as a future fund for the people of Denmark. The Denmark Community's Future Fund (DCFF) was launched in 2008 and aimed at stimulating, sustaining and inspiring a caring culture amongst the Denmark community and business members, towards a bright and prosperous future.

The mission was to build, grow and distribute gifted/ended funds, providing a unique opportunity for Denmark to achieve long-term social and economic sustainability. The DCFF was put in an unenviable position when WACF went into receivership, as all funds were frozen and the possibility of us losing our community's funds became evident. Our DCFF committee, concerned about this scenario, was determined to fight to get what was rightfully ours back and over a demanding two year period (2010 -2012) all community fund building operations ceased in order to work on the task of reclaiming our funds. This inordinate amount of work detracted from our main agenda and causes, with the Chairperson having to deal almost daily with entities such as Price Waterhouse Cooper (PWC) and then, The Trust Company (TTC). We managed to get our funds back, minus some administration fees charged by the organisations mentioned, in late 2012.

The complexities in structure and compliance for setting up such an organisation initially led us to WACF, who promised administrative oversight, governance and legal assistance for a fee of 3% per annum on the total amount on our fund account. Needless to say we received very little help and worse still we were paying for it! When WACF ceased operations there were added difficulties in getting the community re-engaged, once it appeared we had failed. We could not expect our local people to accept sending their money to another out of town foundation such as FRRR as there was no other foundation, or similar body, in WA to contemplate collaborating with at the time. Hence we decided to 'go it alone.'

None of this was remunerated (*costing us an estimated \$155,000 in pro-bono time and expertise, which in hindsight would have been better directly used for community projects*), and once we tenaciously pursued reimbursement of our funds, the remaining DCFF committee members rallied and created the Denmark Community Foundation (WA) Inc. as an separate entity in 2012.

Hence, we had to start up again, face new challenges and put the past events behind us.

Assistance is now needed in revivifying the governance, business and marketing/promotions aspects of the Foundation, which were stymied by the WACF collapse. We hope to achieve this by applying for grant assistance to enable the start-up and continuation of this not-for-profit organisation. As our promotions and intent attract members and when donations and bequests start coming in, the where-with-all to gradually set up a robust operational basis for the Foundation will eventuate. We have a new, energetic and committed Board and a number of exciting ideas to progress as soon as possible.

One heartening and incredibly positive development has fortunately occurred, which augers well for the Foundation in securing the pro-bono assistance of lawyers at Squire and Sanders, a prominent legal firm in Perth WA. A simpler structure would make a huge difference to local self-help philanthropy – and would perhaps have prevented the failure of WACF, which failing to achieve Item 1 DGR status, established a very complex structure of trusts and subfunds.