

21 September 2018

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By email: DGR@treasury.gov.au | ExternalConductStandards@treasury.gov.au

- **Deductible Gift Recipient (DGR) Reforms, and**
- **External Conduct Standards (ECS) for Charities registered with the ACNC**

Dear Sir/Madam,

Australian Community Philanthropy (ACP), the peak body for Australia's community foundations, appreciates the opportunity to make this submission in response to two of Treasury's consultation processes; on the implementation of Deductible Gift Recipient (DGR) reforms, and External Conduct Standards (ECS) for Charities registered with the ACNC, respectively.

Deductible Gift Recipient (DGR) Reforms

ACP welcomes the package of reforms to administrative and oversight arrangements for DGRs that the Government announced late in 2017, and we support in general terms the proposed implementation approach as set out in the consultation paper. In addition to our general support, we offer the following specific comments:

1. Community Foundations and ACP as their peak body favour any changes to the regulatory environment that provide for greater consistency and clarity, reduction of red tape, and increased flexibility.
2. We believe that mandatory charity registration as a prerequisite for all DGRs will increase consistency and clarity of regulatory requirements, while allowing some limited discretion for the Commissioner of Taxation to offer exemptions will be helpful for dealing with exceptional circumstances.
3. The proposed transition arrangements appear reasonable. However, parallel to comments submitted by our colleagues from Philanthropy Australia, we believe that a slightly longer transition period than 12 months would be useful, especially in cases where an organisation has to amend its governing document. To give effect to such changes will usually require consultation with members and a general meeting, processes which take some time. Requiring such changes to be implemented within a relatively short time frame would in all likelihood disproportionately disadvantage smaller charities with limited administrative resources. We

therefore echo Philanthropy Australia's suggestion that Treasury consider providing a two year transition period.

4. We note that the requirement for 'the majority of persons on management committees of public funds to have a degree of responsibility to the community as a whole because of their tenure of some public office or their position in the community' will be abolished (p.14 of consultation paper), specifically because it can be difficult for entities in regional and rural areas to nominate persons that meet this criterion.

The majority (around 70%) of ACP member foundations serve communities in regional and rural areas [refer also to appendix 1] and are familiar with this issue.

We welcome the added flexibility that will be afforded to public funds as a result of this change, and respectfully propose that Treasury consider applying this reform also to private ancillary funds and public ancillary funds that are specifically excluded from it under the arrangements as currently drafted. This would make the updated requirement consistent, increasing clarity and fairness.

External Conduct Standards (ECS) for Charities registered with the ACNC

A number of ACP members make grants to charities registered in Australia, which then use the funds for charitable purposes overseas.

As our colleagues from Philanthropy Australia have pointed out, under the current wording of the ECS, *both* the grant-making organisation *and* the registered charity receiving the funds will have to comply with the ECS. We believe that this arrangement would significantly increase the compliance burden for (e.g.) community foundations, without providing any benefits in terms of improved regulatory outcomes.

We concur with Philanthropy Australia's view that the ECS should only apply where a registered charity actually operates outside Australia (e.g distributes funds directly overseas or delivers programs overseas), or works with a third party that is operating outside Australia but only where that third party is not already itself a registered charity.

ACP supports Philanthropy Australia's recommendation that the following proposed amendment be made to the 'Application' clause in the ECS:

Application

(2) This standard applies to a registered entity that is:

(a) operating outside Australia; or

(b) working with third parties that are operating outside Australia (other than registered entities).

We further support in principle Philanthropy Australia's comments regarding the wording in the draft legislation around "minimising" certain risks, and regarding provision of a transition period and guidance and support from ACN during the transition for charities that will be affected by these changes.

Australian Community Philanthropy appreciates the opportunity to contribute on behalf of our members to these consultations and would be pleased to discuss the matters raised above. In this regard, please do not hesitate to contact us.

Yours faithfully,



Ben Rodgers
Chair
Australian Community Philanthropy Ltd



Gerlinde Scholz
Executive Officer

Appendix 1: About ACP and its members

Appendix 2: Copy of Philanthropy Australia Submission (in draft format), referenced above

About ACP and its members

Australian Community Philanthropy (ACP) is the peak body for community foundations in Australia. It was founded in 2008 by a group of community foundation practitioners to provide support to the voluntary boards and professional staff of new and established community foundations. ACP exists to connect, support, represent and raise awareness of the community foundation movement to strengthen its resources, capacity and impact.

A community foundation is a charitable organisation created by and for a community of people. It is supported by local donors and governed by a board of volunteers who work toward the greater good of local people. Funds come from a variety of sources, including bequests and sub-funds, and are invested in perpetuity. The investment earnings are then distributed to organisations and causes.

Community foundations empower communities to address local challenges themselves. They build social capital, catalyse development and strengthen community; they engage with their constituents as donors, advisors and volunteers. Community foundations are responsive to the challenges facing their communities and leverage their deep local knowledge and networks to respond to need through their purposeful grant making.

Collectively, ACP's current 38 community foundation members:

- have presence in over 80% of Australian LGAs
- hold more than \$310 million* in funds under management
- grant at least \$21 million* annually within their communities
- support hundreds of charitable grass roots projects and initiatives through their granting and community strengthening programs

Note: *indicates 2013/14 data

The majority of ACP members - 26 foundations, ie. almost 70% of the membership - are based in rural and regional areas. They serve a combined population of more than 2 million, or 30% of all people who live in rural or regional Australia, where infrastructure and programs taken for granted in the city are unavailable due to population size, distances and cost. In that context, community foundations have a unique role and responsibility to bring together people with the capacity and interest to help address challenges on the ground specific to a given community with the community groups best placed to implement locally and culturally appropriate solutions.

Australian community foundations generally operate a 'public ancillary fund' (an 'Item 2' deductible gift recipient) and, as such, provide grants to 'Item 1' deductible gift recipients.

Australian community foundations are part of a thriving global sector of more than 1,800 place-based foundations, which collectively have US\$6.3billion in financial reserves and granted more than US\$5billion (last fiscal year reported).



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Appendix 2 to submission from Australian Community Philanthropy

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Dear Sir/Madam,

Deductible Gift Recipient Reforms and External Conduct Standards for Charities Registered with the Australian Charities and Not-for-profits Commission

Philanthropy Australia thanks the Treasury for the opportunity to make a submission in relation to the Treasury's consultation on the implementation of Deductible Gift Recipient (DGR) reforms and the introduction of External Conduct Standards for charities registered with the Australian Charities and Not-for-profits Commission (ACNC).

Deductible Gift Recipient Reforms

Philanthropy Australia has examined the proposals in the 'Deductible Gift Recipient Reform' consultation paper and is broadly supportive of the proposals.

We note that a number of ancillary funds are not currently registered as charities. Under the proposals, these ancillary funds will be required to register as charities and will be provided with a one-year transitional period in order to comply with this obligation. This period will commence on 1 July 2019 and conclude on 30 June 2020. Given that it can take some time to make changes to the governing documents of ancillary funds as well as other DGRs, we would suggest that the Treasury consider providing a two year transition period.

The Commissioner of Taxation will have a discretion to exempt ancillary funds and other DGRs from the requirement to register as charity. This is a sensible proposal which will

provide flexibility to consider the special circumstances of certain ancillary funds and other DGRs.

A small proportion of ancillary funds that are not currently registered as charities may have as their purpose the distribution of funds to other organisations which are ineligible to register as charities. We note that this is one of the circumstances specifically identified in the consultation paper where the Commissioner may provide an exemption from the requirement to register as a charity.

External Conduct Standards for Charities Registered with the Australian Charities and Not-for-profits Commission

Philanthropy Australia supports the introduction of External Conduct Standards (ECS) for charities registered with the ACNC.

We believe that it is important to have appropriate oversight arrangements in place to ensure that where a registered charity operates overseas or sends funds overseas, that these funds are used for charitable purposes and are not for other illegitimate purposes. Ultimately, we believe that the ECS will help support public trust and confidence in Australian charities, both within the philanthropic sector and within the broader community.

However, Philanthropy Australia does have one major concern with the ECS as they are currently drafted, and we therefore cannot support the ECS in their current form.

Many philanthropic organisations, such as public and private ancillary funds or income tax exempt charitable trusts, distribute funds for use overseas. In many if not most cases these funds are distributed to an Australian registered charity, which then uses them for charitable purposes overseas.

As per the *Private Ancillary Fund Guidelines (2009)* and the *Public Ancillary Fund Guidelines (2011)*, public and private ancillary funds can only operate in Australia, and must grant funds to an Australian DGR (such as a registered charity which is approved under the Overseas Aid Gift Deduction Scheme). They cannot distribute funds directly to an organisation operating overseas.

Under the current wording of the ECS, if a philanthropic organisation is making a distribution to a registered charity in Australia and the funds are to be used overseas, then *both* the philanthropic organisation *and* the registered charity receiving the funds will have to comply with the ECS.

This arrangement will unnecessarily duplicate regulatory obligations, without providing any benefits in terms of improved regulatory outcomes.

Philanthropic organisations will be required to undertake extensive due diligence on registered charities which they provide funds to in Australia for use overseas, even though those registered charities will themselves be required to comply with the ECS.

Philanthropy Australia believes that the ECS should only apply where a registered charity actually operates outside Australia (e.g distributes funds directly overseas or delivers programs overseas) or works with a third party that is operating outside Australia but only where that third party is not already itself a registered charity.

Therefore, Philanthropy Australia recommends that the following amendments be made to the 'Application' clause in each of the ECS:

Application

- (2) This standard applies to a registered entity that is:
- (a) operating outside Australia; or
 - (b) working with third parties that are operating outside Australia (other than registered entities).

Provided these amendments can be made, Philanthropy Australia will be in a position to support the ECS.

Philanthropy Australia also makes the following additional comments:

- The word 'minimise' is used in certain part of the ECS, e.g clause 50.30 (3) (a) in Standard 3. 'Minimise' could be interpreted as 'reduce to zero', and in many if not most cases the only way to minimise certain risks (such as corruption, fraud or financial impropriety) associated with a charity's activities overseas will be to not undertake any activity at all. This would in turn harm the beneficiaries of the charity. We therefore believe that instead of using the term 'minimise', it is more appropriate to use a term such as 'mitigate' or 'manage'. Such terms would reflect the fact that a charity's activities overseas will come with certain risks, but that these risks need to be reduced to the furthest extent possible whilst recognising that there are benefits from the charity pursuing its charitable purposes.
- The ECS will impose some new regulatory obligations for certain charities. Philanthropy Australia recognises the need for these obligations, however we also believe that a transitional period will be needed to provide charities with time to ensure appropriate procedures are put in place. In addition, we understand that the ACNC has been resourced to develop guidance and support for charities so that they understand their obligations and are equipped to meet them. The provision of such guidance and support will be essential.

Philanthropy Australia would welcome the opportunity to discuss the matters raised in this submission further. In this regard, please do not hesitate to contact Sarah Wickham, Policy & Research Manager, on (03) 9662 9299.

Yours Sincerely

Sarah Davies
Chief Executive Officer