



## **Senate Standing Committee on Economics**

### **Inquiry into the Disclosure Regimes for Charities and Not-for-Profit Organisations**

**6 August 2008**

<u>Submission from</u>	Melbourne Community Foundation
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#### **Introduction**

Melbourne Community Foundation (MCF) is a public, independent, not-for-profit charitable foundation. Our mission is to generate and distribute philanthropic resources to address emerging social issues and meet the needs of our communities. The trustee of MCF's endowment funds is Community Foundation Network Ltd, a company limited by guarantee and a Tax Concession Charity (TCC).

There are five charitable Funds under the Trustee, designed to provide maximum flexibility for both donations and distributions:

- MCF and National Community Foundation (NCF) are public ancillary funds endorsed as Deductible Gift Recipient (DGR) and Income Tax Exempt Fund (ITEF). They can only make grants to income tax exempt organisations endorsed as DGR;
- MCF Extension and NCF Extension are open funds and have TCC endorsement. Grants from the open funds can be made to both organisations and individuals for general charitable purposes;

- MCF Scholarship Fund is a public, ancillary fund endorsed with DGR and TCC. Grants from this fund must meet specific ATO Scholarship Fund requirements.

More information about MCF is available at [www.melbournecf.org.au](http://www.melbournecf.org.au)

MCF offers individuals, families, groups, companies and not-for-profit organisations a simple and cost effective way of providing philanthropic resources in a structured, long-term manner. All donations are pooled and invested and the income is used to address disadvantage and build community capacity.

MCF uses its significant community and grantmaking expertise to assist donors plan their philanthropic giving and make effective grants which meet their own charitable objectives and address needs in the community. MCF establishes sub-funds or management accounts for each individual, family or corporate donor, which may be named by the donor.

## **Summary**

Our priority position to put to the Senate Inquiry concerns the inability of an ancillary fund to transfer its corpus into another ancillary fund in the event that the first fund no-longer wants or is able to operate.

We strongly propose that where an ancillary fund (such as a Prescribed Private Fund (PPF)) wants to cease operating, or over a specified period fails to meet the required legal or fiduciary responsibilities, that it should be allowed to transfer its remaining corpus and /or assets to a community foundation where its funds can, subject to the approval of the board, continue to be distributed in similar way.

Full details of our position are included under item 3 below.

The remainder of this submission follows the order of the Inquiry's Terms of Reference.

### **1. Relevance and appropriateness of current disclosure regimes**

We support a single national disclosure regime with uniform, national accounting and reporting standards for charities and not-for-profit organisations.

However, this regime should take account of the scarcity of resources within the not-for-profit and charity sectors and should be built around sensible, efficient practices.

Standard reporting tools should be made available to relevant organisations free of charge via web and on-line access (in much the same way as the ATO has tried to simplify the personal tax return process and tools), supported with on-line training and education. A face-to-face training and education program should also be designed and delivered nationally via contracted agencies (for example TAFEs, COSSs and / or other relevant bodies) where required.

Compliance costs must be kept to a minimum and organisations which fundraise nationally should only have to report once to a single entity.

We also strongly support the need for all Trusts and Foundations to be transparent about their operations through publishing annual reports and accounts. This is directly relevant where the Trust or Foundation receives a tax deduction on donations or income tax exemption on income earned from investments.

However, significant care should be given to avoid any suggestion of 'appropriate' allocations or 'standards' of administrative or fundraising costs as a proportion of expenditure, within an organisation's reporting.

## **2. Regulatory Reform**

### **2.1 National Administrative Body**

We support the establishment of a national administrative body for charities and related entities. It would be counter-productive to duplicate or conflict with existing not-for-profit regulators such as ASIC, so it would make sense to set up a separately resourced division of ASIC specifically charged with regulating, servicing and supporting the sector.

The new division should have an educative and advisory role as well as an enforcement role. It should be funded by government (with no additional cost to the sector) but should not become a cumbersome or overly large bureaucratic body.

As the new division would have an enforcement role, it cannot also have a mediation / dispute resolution role, so this responsibility should be passed to an existing body independent of ASIC.

Within the proposed regulatory review and reform, it will be critical to allow charities and not-for-profit organisations the flexibility of structure and operation to best meet the needs of the community/communities they serve and the objects of the organisation. We really need to simplify and reduce the wide array of compliance and accountability requirements, to ensure organisations focus their resources on helping communities – instead of managing red tape.

### **2.2 Definition of Charity**

We support the review of the definition of 'charitable purpose' to include advocacy activities to support a charitable purpose.

Due to the current ATO guidelines, grantmakers cannot fund organisations or projects whose primary purpose is to advocate for a cause, or to change the law or government policy, or to promote a particular point of view (all of which are defined as non-charitable purposes by the ATO).

Funding advocacy is vital to the development and refinement of public policy, to providing underrepresented constituencies a voice in the political process and making government more accountable to community. There is a significant difference between political advocacy and advocacy which supports a charitable purpose. Undertaking non-partisan advocacy activity can often be a major means by which charitable organisations most effectively meet their charitable purposes.

The Industry Commission Inquiry into Charities in 1995 recommended significant modernisation, including updating the definition. As the need escalates for voluntary and community action to respond to the challenges which no government alone can solve, this is the time to update charitable legislation and the regulatory environment to make accountability simpler. The purposes (rather than activities) of public and community benefit should determine charitable status.

### **3. Other measures to improve governance, standards, accountability and transparency**

A Prescribed Private Fund (PPF) is an ancillary fund as described in item 2 section 30-15 of the *Income Tax Assessment Act 1997* (ITAA). This means that it may donate only to an organisation described in the table to section 30-15 of the ITAA other than one described in item 2; that is, another ancillary fund.

Community foundations, including the Melbourne Community Foundation, are also ancillary funds, meaning that PPFs cannot make donations to them or to their sub-funds.

The policy reason for this is, presumably, to ensure that income from ancillary funds, including PPFs, is contributed to charitable activities.

While the policy reason is clear, there is a serious anomaly which is of concern to MCF. When a PPF either no longer wants to or is no longer able to operate, any property remaining after satisfaction of all debts and liabilities must be donated to a charitable organisation described in the table to section 30-15 of the ITAA (other than item 2) or used to establish such a charity.

There are two main reasons why a PPF may no longer be able to function independently:

1. the founder of the PPF and/or the trustees no longer wish to be responsible for or operate the PPF (for a range of reasons such as time, interest, degree of work involved, etc) but still wish to have an endowment vehicle for their philanthropic giving, and therefore want to transfer the assets to a community foundation as a named sub-fund;
2. the PPF might fail to make required minimum distributions or meet its legal and fiduciary responsibilities.

MCF knows of cases where individuals or corporations have established PPFs and subsequently become aware that a community foundation can provide the required services at lower cost, with greater efficiency, and can also give them access to significant grantmaking expertise, with less onerous involvement of the donor.

We are also aware of examples where the PPF founder is no longer able to expend the time and attention (due to relocation or changed personal circumstances) to the running of the fund, but still wants to stay engaged with philanthropy and the community, and would prefer to transfer the PPF's assets to a sub-fund with a community foundation.

There would be significantly more benefit to the community if, in these circumstances, a PPF could be transferred to a community foundation. As both community foundations and PPFs are established ostensibly for the same purpose, this would ensure that the endowment continues to be invested for on-going community benefit.

As community foundations are public, independent not-for-profit organisations they represent an appropriate vehicle to deliver on-going encouragement and support of private philanthropy, whilst being fully open, transparent and accountable.

It would be consistent with the purpose of the limitation on ancillary funds for the requirements for PPFs to permit these funds, on being wound up, to be contributed to a community foundation to be used in a similar way to those of the PPF.

A PPF, on being wound up, should be able to be “rolled” into a public ancillary fund, given that the conditions governing both kinds of funds are similar.

This could be effected simply by amending the PPF model deed through the ATO and through an amendment to item 2 of section 30-15 of the ITAA and the various ATO rulings and guidelines which cover provisions for winding up of PPFs.

In addition to the above, there is a case for the reverse to be enabled: that is, individuals new to philanthropy and who wish to build an endowment for community benefit should be able to start working through a community foundation sub-fund structure, and have the option of establishing their own PPF if they prefer, once they have sufficient assets and more relevant experience and knowledge.

We would be very happy to discuss this further with you or provide more information if required.



Sarah Davies  
CEO