

**Private Ancillary Fund (PAF) and Public Ancillary Fund (PuAF) Amendment Guidelines 2015**

***February 2016***

**Introduction**

This submission outlines the views of the Community Council for Australia (CCA) in relation to the Private Ancillary Fund and Public Ancillary Fund Amendment Guidelines 2015. This response to proposed amendments has been informed by consultation with CCA members (listed in *Attachment A*) and key organisations in the NFP sector. It is important to note that this submission does not override the policy positions outlined in any individual submissions from CCA members on this proposed legislation change. It is also interesting to note that many CCA members have made their views felt on the proposed amendments and in particular the three issues we highlight in this submission. There was an unusually high degree of agreement about the position CCA should adopt. This submission does not address each of the proposed amendments in detail, but provides: a brief background to CCA; an outline of the current context; an outline of three primary concerns in relation to proposed changes, and a conclusion. CCA is unsure why some of these proposed amendments have been put forward, but welcomes this opportunity to provide input into the legislative process and is willing to engage in detailed discussion about any of the issues this submission raises.

**The Community Council for Australia**

The Community Council for Australia is an independent non-political member based organisation dedicated to building flourishing communities by enhancing the extraordinary work undertaken by the charities and not-for-profit sector in Australia. CCA seeks to change the way governments, communities and not-for-profits relate to one another. It does so by providing a national voice and facilitation for sector leaders to act on common and shared issues affecting the contribution, performance and viability of NFPs in Australia. This includes:

* promoting the values of the sector and the need for reform
* influencing and shaping relevant policy agendas
* improving the way people invest in the sector
* measuring and reporting success in a way that clearly articulates value
* building collaboration and sector efficiency
* informing, educating, and assisting organisations in the sector to deal with change and build sustainable futures
* providing a catalyst and mechanism for the sector to work in partnership with government, business and the broader Australian community to achieve positive change.

Our success will drive a more sustainable and effective charities and not-for-profit sector in Australia making an increased contribution to the well-being and resilience of all our communities.

**Context: not-for-profit reform**

The NFP sector contributes over $55 billion to GDP per annum, encompasses over 600,000 organisations - from large to very small, and is estimated to employ over one million staff (or 8% of all employees in Australia). Each year it turns over more than $105 billion. It holds over $175 billion in assets. In the last decade, sector growth has continued at more than 7% a year, greater than any other industry group. These figures tell only a small part of the story. The real value of the NFP sector is often in the unmeasured contribution to Australian quality of life. NFPs are at the heart of our communities; building connection, nurturing spiritual and cultural expression, and enhancing the productivity of all Australians. Collectively, they make us a more resilient society. The importance of the NFP sector is now being internationally recognised with many governments putting in place measures to increase NFP investment and productivity. Smaller government and bigger community is a common theme, driven in part by savings, but also by a commitment to greater civic engagement, social entrepreneurship and increased productivity within the NFP sector. In Australia there are currently various initiatives seeking to: promote social enterprise; reduce compliance costs for NFPs; encourage a diversification of financing options to build a more sustainable funding base; streamline and refine the regulation of NFPs and charities; establish less bureaucratic reporting requirements while building community transparency; increase philanthropy; improve relationships between government and the NFP sector; promote impact investing; and increase sector performance measurement. CCA supports all these activities. The establishment of the ACNC is the first time the NFP sector has had an independent regulator dedicated to serving their needs and enhancing their capacity. It has already proved to be a positive step towards red tape reductions, increased transparency, and trust in the community by prospective volunteers and donors. The national charities register has also provided invaluable information. While the recent history of the NFP sector is framed by growth and reform, new issues are emerging. The level of individual philanthropic giving has still not recovered to the highs of 2009. At the same time, revenue available to governments is effectively falling in real terms against a backdrop of increasing demands and higher community expectations. Competition for fundraising and services has increased. In the context of recent changes, the NFP sector is slowly but surely finding its voice - building its collective power and seeking real reform that will provide substantial savings to government as well as tangible benefits to the community. Given the size of the sector and its critical role in our community, the Federal Government can achieve real economic and social benefits if it chooses to strategically invest in strengthening our communities and our NFPs. There have been numerous reports and recommendations relating to the NFP sector over the last decade, but it is only in recent years that governments have enacted some of these recommendations and embarked on a long overdue process of reform and enhancement. Like most of the NFP sector and the broader philanthropic sector, CCA has been a supporter of both the 2009 PAF and 2011 PuAF legislation, and the way these foundations currently operate. The growth of PuAFs and PAFs in the last five years and the amount now being regularly given to charities makes PuAFs and PAFs an important source of support for the invaluable work being undertaken by charities. Australian regular giving still lags behind comparable countries such as the US, but PuAFs and PAFs have made an important contribution to increasing levels of giving in Australia. CCA does not want this contribution undermined.

Summary of CCA primary issues and concerns

1. **Recognition of the role of the Australian Charities and Not-for-profits Commission (ACNC)**

CCA has long been a supporter of an independent regulator for the charities and not-for-profit sector, and has repeatedly expressed concern about the stated government intention to dismantle the Australian and Charites and Not-for-profit Commission (ACNC). Like the vast majority of the not-for-profit sector, CCA believes the ACNC can make a positive difference in reducing red tape and duplication, increasing public trust and confidence, and strengthening the sustainability of the sector. Given this position, CCA is pleased to see a recognition of the role of the ACNC in the proposed amendments, particularly as a co-regulator with the ATO, and also in relation to the measures to reduce duplication (items 5 and 23). CCA believes there may be further capacity within the proposed amendments to reduce duplication in reporting and regulatory burdens. The more government can reduce duplication and promote philanthropy, the stronger our communities will be. Supporting the role of the ACNC will reduce compliance costs and provide real benefits to the not-for-profit sector and the broader community.

1. **Changes to the minimum annual distribution**

CCA does not support proposed changes to the minimum annual distribution requirements for PAFs and PuAFs as outlined in Item 7 of Schedules 1 and 2. The purpose of PAFs and PuAFs is to provide a benefit to the community and on this basis they enjoy certain exemptions and taxation benefits. To weaken the need to focus on this primary charitable purpose and allow PAFs and PuAFs to be driven by their capacity to gain a return on their investments seems to be giving almost equal importance to the purpose of making a profit on investments. Whether PAFs and PuAFs generate a substantial or minimal profit in any particular period should not be the driver of their purpose. Whether PAFs and PuAFs can wear the fluctuations of particular investment markets and maintain their investment funds at a set level over time is not the key factor in whether or not the fund delivers a benefit to the community. CCA understands that if a fund had maintained a balanced portfolio of investments over the last five or ten years, the average returns would be well above the minimum distribution requirements. Some CCA members would go further and suggest that rather than dribble out small amounts of money over a long period of time, PAFs and PuAFs would achieve much greater community benefit if they invested significantly more of their assets in sustainable beneficial change. Philanthropists from around the world have argued greater community benefit flows from large investments in the short term rather than distributing much lower annual grants over a longer period. In recognition of this principle CCA has some support for the position of allowing PAFs and PuAFs to maintain distribution of the current minimum amounts, but with some flexibility across a given two-year period. That is, a PuAF would have to distribute 10% over two years or 5% over one, and a PAF would have to distribute 8% over two years or 4% over one.

1. **The lack of consultation or rationale**

CCA is uncertain who has put forward the proposed amendments and on what basis they were developed. In consultation with our members, it seems most people in the charities sector are unclear about where the proposed amendments come from. Leading philanthropic bodies have been very supportive of the 2009 PAF Guidelines and the 2011 PuAF Guidelines. Charities have been supportive of the way PAFS and PuAFs operate. While there are always grounds for minor improvements and recognition of the role of the ACNC, changing the very basis of the function of PAFs and PuAFs including the rate of distribution seems completely at odds with what is needed to promote philanthropy. Like business, PAFs and PuAFs need certainty for longer term strategic planning and investment. CCA would hope the proposed amendments to a system that already seems to be working well will not undermine the stability of philanthropy. Just as importantly, CCA would like to think that any proposed changes to this legislation or other legislation impacting across the charities sector will be raised in appropriate forums and communicated to peak bodies like CCA so due consideration can be given before legislative amendments are drafted. Had this been a proposed legislative change impacting on small business, CCA doubts it would be drafted without input from the relevant peak bodies representing that sector. CCA hopes this approach by government to changing legislation impacting on the sector does not reflect a dismissive attitude to the charities and not-for-profit sector.

Conclusion

With the growth in the charities and not-for-profit sector over the last decade, and the increasing competition for philanthropy and fundraising, supporting positive reform that strengthens philanthropy will clearly benefit the whole community. Aside from the issues raised in this submission, there may be additional benefits if we can remove barriers to PuAFs supporting workplace giving programs and other forms of philanthropy. CCA believes that over the past two decades, the NFP sector as a whole has not benefited from any detailed economic analysis by governments across Australia. This is despite the very considerable contribution the broader NFP sector makes in terms of employment, productivity and community resilience. The impact of philanthropy on the sector is not well understood or analysed. The NFP sector is too large and too important to be left on the margins of economic debates and major policy reforms within Australia. It is of even greater concern when issues that directly impact on the sector are not canvassed with the sector itself prior to legislative changes being drafted. There is very limited evidence supporting the need for the changes to the minimum annual distribution outlined in the proposed amendments. CCA hopes that the issues highlighted in this submission will be given due consideration, and that any future proposed changes might go through a more rigorous process of engagement with the charities and not-for-profit sector before being presented as draft amendments.

Current Membership – Community Council for Australia *Attachment A*

Organisation | Director / CEO

2Realise | Rowena Stulajter

Access Australia's National Infertility Network | Sandra Dill

Alcohol Tobacco and Other Drugs | Carrie Fowlie

Australian Charities Fund | Jenny Geddes

Australian Council for International Development | Marc Purcell

Australian Healthcare and Hospitals Association | Alison Verhoeven

Australian Indigenous Leadership Centre | Rachelle Towart

Australian Institute of Superannuation Trustees | Fiona Reynolds

Australian Major Performing Arts Group | Bethwyn Serow

Australian Women Donors Network | Julie Reilly

Arab Council Australia | Randa Kattan

Beyondblue | Georgie Harman

Canberra Men’s Centre | Greg Aldridge

Carers Australia | Ara Cresswell

Centre for Social Impact | Andrew Young

Charities Aid Foundation (Good2Give) | Lisa Grinham

Church Communities Australia | Chris Voll

Community Broadcasting Association of Australia | Jon Bissett

Community Colleges Australia | Don Perlgut

Compass Housing Co Ltd | Greg Budworth

Connecting Up Australia | Anne Gawen

Drug Arm | Dr Dennis Young (Director)

e.motion21 | Claire Vissenga

Family Life Services Centre | Jo Cavanagh

Foresters Community Finance | Rhyll Gardner

Foundation for Alcohol Research and Education | Michael Thorn

Fragile X | Wendy Bruce

Fundraising Institute of Australia | James Austin

Good Samaritan Foundation | Catherine Cresswell

HammondCare | Stephen Judd

Hillsong Church | George Aghajanian (Director)

Justice Connect | Fiona McLeay

Life Without Barriers | Claire Robbs (Director)

Lifeline Australia | Pete Shmigel

Maroba Lodge | Viv Allanson

Mater Foundation | Nigel Harris

Missions Interlink | Pam Thyer

Mission Australia | Catherine Yeomans

Musica Viva Australia | Mary Jo Capps (Director)

Opportunity International Australia | Rob Dunn

Our Community | Denis Moriarty

Palliative Care Australia | Liz Callaghan

Philanthropy Australia | Sarah Davies

Port Phillip Housing Association | Karen Barnett

Power Housing Australia | Julie Quass

Pro Bono Australia | Karen Mahlab

Reach Foundation | Trisha Squires

Relationship Australia | Alison Brooke

RSPCA Australia | Heather Neil (Director)

SANE | Jack Heath

SARRAH | Rod Wellington

Save the Children | Paul Ronalds (Director)

Scope (Vic) | Jennifer Fitzgerald

Settlement Services International | Violet Roumeliotis

SHOUT | Darryl Smeaton

St John Ambulance Australia | John Hunter

Social Ventures Australia | Rob Koczkar

The Australian Charities Fund | Jenny Geddes

The Benevolent Society | Jo Toohey

The Big Issue | Steven Persson

The Non Profit Alliance | Kelly Beaumont

The Smith Family | Lisa O’Brien (Director)

The Ted Noffs Foundation | Matthew Noffs

Variety Australia | Neil Wykes

Volunteering Australia | Brett Williamson (Director)

Wesley Mission | Keith Garner (Director)

World Vision Australia | Tim Costello (Chair)

YMCA Australia | Ron Mell

Youth Off The Streets | Fr Chris Riley