Improving the Integrity of Public Ancillary Funds

Submission by the Geelong Community Foundation Limited as trustee of the Geelong Community Foundation, Geelong Community Open Fund and the Geelong Community Foundation Scholarship Fund.

December 2010

Contents

1. Executive Summary

- The public ancillary fund structure is very flexible and therefore it is used by a wide range of organisations for different charitable purposes. The discussion paper states that it is expected that the guidelines for public ancillary funds will take a similar form to the *Private Ancillary Fund Guidelines 2009*.

  This should not be assumed. The two structures - Private Ancillary Funds (PAFs) and Public Ancillary Funds - certainly share a generic common purpose and as such, many of the specific operational guidelines might well be similar, but they have some very significant differences which means that many of the guidelines are not relevant and in practice can be counter-productive to the purposes of a public ancillary fund.

- There is no evidence or none offered regarding non-compliance or that there is a problem that needs addressing with public ancillary funds. It is very important that in any review of the rules and framework governing public ancillary funds, Treasury understands the purpose and mission of the many and varied public funds in operation today.

- Unlike private ancillary funds (PAFs), public ancillary funds are regulated and required to register under State based laws to be in a position to carry on public fund raising. On an annual basis, registered organisations are required to report to state authorities on funds raised and to supply the names of the organisations that have received grants and the value of these grants. Therefore the correct place for accountability for public ancillary funds is under fundraising law, not tax law.

- In the case of Community Foundations, the Trustee in most cases is a Company Limited by Guarantee. This company is required to file an annual return to ASIC.

- Community Foundations, which use the public ancillary fund structure, have an important and particular community role and purpose. The rules and framework which govern Community Foundations should support their mission and purpose, and should enhance their operation and function. Their mission and purpose are significantly broader and more complex than those of PAFs.

- To be successful, a public fund requires the support and confidence of members of the public who will make donations to it. In most Community Foundations, donors are closely involved with their Foundation. The Community Foundation must be accountable and transparent to the community it serves. This is achieved by frequent reports in the press of Foundation activities and the issue of newsletters to supporters. Community Foundations also publish annual reports and distribute audited accounts.

- Philanthropy is not just for the wealthy and effective giving is not just about money.

  One of Geelong Community Foundation's key activities is to encourage people to begin with small gifts, become involved, and then as their financial capacity allows, grow their charitable giving over time.

Mandating a high level of annual distribution will negate this approach and will effectively leave philanthropy only for the wealthy.
In recent years some countries have had interest rates as low as 0 to 1% and of course capital values can at certain times fall significantly.
Locking into a distribution regime based on a percentage of **capital** for public funds assumes stable rates of return and capital values. This is not always so and in fact in recent years, distribution based on **income** (since dividends have been quite resilient in Australia) has meant that distributing a percentage of **net income** has been of greater benefit to communities than a percentage of **capital value.**

Requiring lower income donors (who, for example, have set up named sub-funds within a Community Foundation's public ancillary fund structure) to distribute more than high net worth individuals (through their PAFs) is counter productive and will greatly diminish the ability of Community Foundations to stimulate, grow and support philanthropy from the broader community.

- Issues of transparency, accountability and public confidence are essential for Community Foundations. The Geelong Community Foundation fully supports public transparency and accountability of ancillary fund structures.

Key responses to the discussion paper:

- Distributions – The Geelong Community Foundation (GCF) believes that the current system of income distribution works well and is not convinced that there is a case for change. The current system results in the distribution of a major share of actual **income** earned as opposed to the suggested percentage of **assets** (asset valuation) where the value can fluctuate substantially through economic cycles. The current system effectively supports the mission and purpose of Community Foundations.

  The concept of endowment is central to Community Foundations. They take a long term view, and are able to tackle long-term community challenges, as well as immediate needs. Donations to Community Foundations are gifts to meet community need in perpetuity. It is essential that Community Foundations have an appropriate balance between minimum distribution requirements and the ability to accumulate capital.

- Increasing Regulatory Powers – GCF supports the use of appropriately scaled penalties for breaches of regulations. The penalties should recognise the voluntary status of directors. Owing to their open and public nature, Community Foundations provide significantly less opportunity for abuse than is the case for PAFs. The penalty regime should reflect this.

- Fit and Proper Persons Requirements - GCF notes that the Responsible Persons requirement for public ancillary funds is already greater than that of a PAF. It is based on the guidelines for fit and proper directors as set out by the Australian Taxation Office.

- There is one PAF requirement which is totally inappropriate for Community Foundations and that is the donation limitation. A requirement limiting directors' donations to a Community

Foundation would be contrary to and inconsistent with the role and purpose of Community Foundations. The commitment of directors to their Community Foundation is often demonstrated by their generous donations.

- Investment Rules - In principle, most of the investment and risk minimisation rules that apply to PAFs are equally applicable to Community Foundations (as public ancillary funds). However, there is one PAF investment rule which would be inappropriate for Community Foundations:

The fund must not accept donations in any financial year totaling more than 20% of the value of its assets - This would be entirely contrary to the *modus operandi* of Community Foundations. They must seek the greatest possible donations from the public to establish and grow the largest possible capital fund in order to maximize the income available for distribution to meet community needs. To set any limit on donations would negate their necessary fund raising activities.

Issues to address:

Subjects not covered in the discussion paper include-

(i) Community Foundations should be eligible for the same FBT concessions as per other qualifying non-profit organizations.

(ii) When a PAF is no longer able to or wants to operate independently, it should be able to transfer the assets into a sub-fund of a Community Foundation, where it can continue as a named fund and utilize the support and administration provided by the Community Foundation. At present, this is prohibited.

2. Proposed framework in relation to the role of Community Foundations

The public ancillary fund structure is flexible and is therefore used by a wide range of different organisations for different charitable purposes. It is critical that, in reviewing the rules and framework governing public ancillary funds, Treasury understands the purpose and mission of these various organisations. Treasury's purpose for the review is to improve the integrity of public ancillary funds. Unlike private ancillary funds (PAFs), public ancillary funds have to be registered in their state to meet the regulations for public fundraising and also the fundraising guidelines. An annual report is required of funds raised and grants made and this, in the case of Victoria, goes to the Office of Consumer Affairs. Note also that the Community Foundation Trustee Company has to file an annual ASIC return. Because of the diverse range of public funds are in operation, what might seem to suit one type of public ancillary fund may not actually suit another, a flexible approach is necessary.

Community Foundations are a significant part of Australia's philanthropic landscape. Community philanthropy is the fastest growing form of philanthropy globally. After the first use of Community Foundations in USA in the early 1900s, there are now over 1,200 Community Foundations in over 42 countries. In Australia there are 30 Community Foundations, varying from large to small, some focusing on a discrete, geographic region, others operating nationally. All of Australia's population has access in one way or another to a Community Foundation.

Community Foundations are independent, non-profit, community-based philanthropic organisations whose goal is to encourage, facilitate and generate contributions from the community in order to address social, cultural and environmental issues.

They bring together people who care about their communities and aim to strengthen communities by strengthening philanthropy. They can partner with donors to build permanent endowments and establish other funds, generating income to support high priority community projects. They also provide leadership on problems of broad community concern.

The concept of endowment is central to Community Foundations. They take a long term view, and are able to tackle long-term community challenges, as well as immediate needs. Donations to Community Foundations are gifts to meet community need in perpetuity. Their perpetual aspect distinguishes them from many other charitable organizations.

Their role is to make philanthropy accessible by removing the real and perceived barriers. They enable more effective, planned giving to create positive social change. They can match donor interests to community needs and provide an effective, efficient and independent structure to build permanent charitable funds and effectively distribute philanthropic money to the community.

Community Foundations are also an effective alternative to Private Ancillary Funds (PAFs), as they are based on the principle of pooled and shared resources, and sharing of administrative structures and systems. They also harness the expertise and knowledge of professional and experienced community organisations, researchers and grant makers. In many cases, grant applications are requested from community organisations to fund new and innovative projects and programmes which may not be funded in existing agencies.

While there is much diversity in how various Community Foundations operate, they all share a common mission and purpose. Every Community Foundation is a product of its local community, history and leadership. This enriches the philanthropic sector and provides a valuable long term resource for community members and community organisations.

Community Foundations are uniquely equipped to convene and connect welfare agencies to pool resources and work together. As apolitical, objective conveners, Community Foundations can bring together government, the private and non-profit sectors and individual philanthropists in a way few others can. Solutions and new approaches to social problems are thus developed which harness the capacities and strengths of each participant and ultimately deliver the maximum benefits to the community.

Community Foundations are a mechanism to connect disparate parts of the community, building understanding, knowledge and engagement. As well as connecting philanthropists to non-profit and community organisations, Community Foundations connect philanthropists to each other, enabling them to collaborate, leverage their giving with others. By combining their efforts, they achieve optimum outcomes.

Endowment is a key feature of Community Foundations – endowing the community with a permanent source of charitable funds. But the real test is how these funds are then used. It can be hard to give money away well, and it can be even harder to do it on your own.

The in-depth knowledge of community needs and opportunities is vital to ensure effective and rewarding philanthropy. By their nature, Community Foundations have a deep and thorough understanding of trends in disadvantage and of social change. They know what is happening at the grass roots level in their communities and can identify needs in government policy contexts. This provides philanthropists working through Community Foundations with the expertise, advice and research to ensure the grants and investment is where need is greatest and for maximum impact.

Finally, Community Foundations, as public funds, are committed to operating in an open and transparent manner in all that they do. The public need to trust them as a vehicle for their giving.

3. The Geelong Community Foundation (GCF)

The Geelong Community Foundation Limited is the trustee of three Charitable Funds. It is an independent, not-for-profit company limited by guarantee. GCF is the third oldest and second largest Community Foundation in Australia. The Geelong Community Foundation encourages individuals, families, corporations and other organisations to make donations to meet community needs that are not met from other funding sources. The Foundation Fund is being built up to fund needs both now and in the future. Donations are retained as capital by the Foundation to build a substantial fund for philanthropic purposes with only the income earned from the capital being used to make local community grants.

The Geelong Community Foundation Limited is the Trustee of the following three charitable funds:

- The Geelong Community **Foundation**, which is a public ancillary fund endorsed as Item 2 Deductible Gift Recipient (**DGR**) and Income Tax Exempt Fund (**ITEF**). This fund can only make grants to income tax exempt organisations endorsed as DGR;
- The Geelong Community **Open Fund** has Tax Concession Charity **(TCC)** endorsement. Grants from the Open Fund can be made for charitable purposes to organisations that do not have DGR endorsement. Donations to this Fund are not tax deductible;
  In many cases gifts to this fund come from wills and estates where tax deductibility is not required
- The Geelong Community Foundation **Scholarship Fund** is a public fund endorsed with Item 1 DGR and TCC. Grants from this fund must meet specific ATO Scholarship Fund requirements.

The Geelong Community Foundation is the largest of the three funds. For simplicity, in this submission, we will collectively refer to the three funds as GCF.

GCF offers donors 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 make grants which meet community need, address disadvantage and build community capacity.

GCF advertises annually for appropriately endorsed organisations to make submissions in the form of a grant application to apply for funding from the Foundation for projects and programmes in our region.

In this way the Foundation uses its significant community knowledge and grantmaking expertise to assist our donors with their philanthropic grant making and community support by addressing needs in the community.

GCF establishes sub-funds or management accounts for each individual, family or corporate donor, which may be named by the donor.

As at 30 June 2010, GCF had 38 named sub-funds and accounts, and total, pooled funds under management of approx. $11 million. Using a public ancillary fund structure in this way makes planned and structured giving accessible to many more donors than other available structures.

The GCF covers four municipal areas which are the City of Greater Geelong, the Borough of Queenscliffe, the Surfcoast Shire and the Southern half of the Golden Plains Shire. This region encompasses approx 300,000 people.

The northern portion of the Golden Plains Shire is covered by the Ballarat Community Foundation while the region to the west of Geelong up to the Vic/SA border is covered by the South West Community Foundation. Over the border in South Australia the Stand Like Stone Foundation represents the people of South East South Australia.

The GCF provides the opportunity for individuals, families, groups and organisations to become involved in philanthropy at modest (or large) levels in a simple and supported environment while obtaining the benefits of scale. Many people do not wish to set up a Private Ancillary Fund but do want to be engaged in community philanthropy. Also many people do not feel they have the expertise in grant making and look for assistance from a community foundation to achieve this. By pooling their funds they are able to participate in significant community projects and programmes.

A named sub-fund with the GCF can be opened with an amount of $10,000 which can be donated over three years if need be. It is a very straightforward, simple and cost effective way to have a named fund. Funds management, legal and administrative expenses are pooled and therefore very cost effective. The GCF charges a fee of 1.00% of funds under management as a management fee for all these services.

More information about GCF is available at: geelongfoundation.org

4 Response to Proposed Amendments as per discussion paper (November 2010)

4.1 Introduction to Discussion Paper (ref. 1.1)

The discussion paper states that it is expected that the guidelines for public ancillary funds will take similar form to the *Private Ancillary Fund Guidelines 2009*.

The two structures (PAFs and Public Ancillary Funds) share a generic common purpose – to enable philanthropy and allow tax deductions for donations where relevant. Many of the specific operational guidelines might therefore be similar, but the two kinds of funds also have some very significant differences. Therefore a number of the PAF guidelines are not applicable and can be counter-productive to the purposes of a public ancillary fund.

The major difference is that the PAF regulations are driven by tax regulation, as most of the rules relating to their operation are tax-related.

Public ancillary funds also have tax considerations, but they are actually driven by charitable and fundraising regulations as their purpose is charitable and they are fundraising vehicles. Therefore the correct place for accountability for public ancillary funds is under fundraising law, not tax law. There have been reports of significant work in progress at State and Federal levels to improve and standardise the fundraising regulations.

The review of the original Prescribed Private Fund (PPF) guidelines, which led to the PAF guidelines, was initiated because of some specific operational concerns. It is not at all clear (and there have been no reports made) that public ancillary funds have the same issues as PPF's had. We believe they do not. There is no evidence of non-compliance or that there are major problems that need addressing with public ancillary funds. Trying to solve a problem that does not exist may only create a new set of problems.

Members of the public should be the judges for determining accountability for public ancillary funds. Unlike PAFs, public ancillary funds are fundraising vehicles. They are public, transparent, and of necessity open to scrutiny. Members of the public will not give if they are not satisfied with the information, transparency and level of accountability provided.

To impose PAF regulations where some are not relevant and where there is no evidence of the need for such regulations would be unacceptable and imprudent. In any event, any contemplated action should await the ongoing review of fund raising guidelines.

Before any change is imposed, it is essential to collect and collate all relevant information and then consider their relevance to proper governance. Otherwise, unintended consequences could have significant detrimental effects.

4.2 Required Distributions (ref. 2.1.1)

Philanthropy is not just for the wealthy and effective giving is not just about money.

One of GCF's aims is to enable people to start donating and establish a named Fund. Once people become involved, many wish to add to the Named Fund and, if their financial capacity allows, grow their sub-funds over time. Mandating a high level of annual distribution will negate this and will effectively leave philanthropy only for the wealthy.

Requiring lower income donors (who, for example, have set up named sub-funds within GCF's public ancillary fund structure) to distribute more than high net worth individuals (through their PAFs) would seem contrary to the Government's desire to encourage giving by people both wealthy and of lesser means. Inappropriate distribution requirements will greatly diminish the work of Community Foundations in stimulating, growing and supporting philanthropy from the broader community.
Of interest is the fact that the Foundation for Rural and Regional Renewal, which was formed and endowed with Federal Government funding, has had as a major part of its programme over the past 10 years, the development and support of community foundations across rural and regional Australia.

The aim has been that through community endowment, the people of rural and regional Australia can have a continuing source of funding to assist them to work on projects that they deem to be of major need in their communities.

The GCF is currently required under the ATO guidelines to distribute at least 80% of the Trust Fund income annually. The minimum philanthropic obligations are very clearly defined and the Trustee has certainty on the distribution requirements.

The GCF board believes there is no case for change. The current requirements work well and support the mission and purpose of Community Foundations.

Endowment

The concept of endowment is central to Community Foundations. They take a long term view, and are able to tackle long-term community challenges, as well as immediate needs. Donations to Community Foundations are gifts to meet community need in perpetuity. Community Foundations build resources over time from multiple donors, over generations, to create a community asset for on-going community benefit.

This is quite different to the purposes for which PAFs were established. PAFs do not have the same obligation, to build community capacity through endowment, and as such their guidelines are not designed for endowment models. Applying the same guidelines to Community Foundations is inappropriate.

If Community Foundations are not supported to carry out their function as community endowment builders, then the opportunities for the community presented by the intergenerational transfer of wealth, for example, are lost. Wealth will remain in private hands, not preserved for on-going community benefit.

It is also worth noting that although the public ancillary funds of Community Foundations enable a tax deduction for donations received, not all donations require or are eligible for a tax deduction. For example, at GCF, some donors choose to make a gift or leave a bequest without tax deductibility being sought. This can give rise to a Named Fund in the Geelong Community **Open Fund**. Income on these funds can be used for charitable grants to organisations that do not have endorsement as Deductible Gift Recipients.

It is essential that Community Foundations have a good balance between minimum distribution requirements and the ability to accumulate capital.

The rationale for accumulating capital is twofold:

- to endow the community for the long term
- to generate sustainable income over the long term which is used for distribution.

The community benefits permanently from these activities and this is a major focus of the Community Foundation's operation.

On the other side of this balance is the need for a relevant minimum distribution requirement.
A core aspect of the Community Foundation's work is to make philanthropy accessible and to encourage more people to be philanthropic.

Unlike PAFs which have been set up for high net worth individuals, Community Foundations are designed for a range of donors, and are particularly attractive to lower income or less wealthy donors.

Whatever the minimum distribution requirement, it needs to be averaged over time. When donors only have the capacity to start a small sub-fund, and rely on building their funds over time, flexibility for distributions over a rolling three year period or longer is important.

This is where sub-funds under a Community Foundation are quite different to PAFs. A PAF is established once a donor has already amassed personal wealth. Sub-funds are often established while donors are still building personal assets, and the motivation is driven by their values and interest in supporting the community, often before they have the financial means to establish a large fund.

The GCF recommends leaving the distribution requirements are they are today.

4.3 Regular valuation of assets at market rates (ref 2.1.2)

The GCF values its assets monthly, and publishes its annual audited valuation in both its published Annual Report and its web site.

The valuation rules that apply to PAFs are appropriate for public ancillary funds.

4.4 Increased accountability (ref 2.1.3)

GCF agrees that all charitable bodies which receive benefit through offering tax deductions and which operate in a tax free environment should have public reporting obligations.
GCF supports registration of public ancillary funds on the Australian Business Register. Consistency of classification and recording is desirable.

GCF keeps full and proper accounts using the services of professional accountants. It also produces and publishes annual audited financial statements. Summary financial accounts are included in the GCF Annual Report and the full financial statements are available on the web site.

GCF also publishes:

- the number and name of all the sub-funds
- the amount of total annual donations
- the value of sub funds each year
- the amount and details of annual grants made
- the names of all grant recipients.

GCF supports the proposal that public ancillary funds be required to lodge an annual return. GCF currently reports to ASIC and to Victorian Consumer Affairs annually. It would be preferable to have to report only once and for ASIC, Consumer Affairs and the ATO to share the data from one return. In addition, as per the recent Corporations Act amendments, the reporting requirements should be designed to suit funds of varying size and complexity.

In relation to the PAF guidelines specifically, it would be inappropriate and impractical for public ancillary funds to have to report a full list of all individual donors. Privacy and confidentiality aspects need to be considered. Some donors wish to remain anonymous. Unlike PAFs which are private (and where there is no requirement for disclosing information to the public), public ancillary funds are raising funds from the public. Hundreds and even thousands of donors may make a contribution in any given year, and a tax deduction given for any donation over $2.00.

This is where the fundraising legislation is applicable to public ancillary funds, not PAF guidelines. The current review to ensure national consistency of fundraising regulation is critical and will accommodate any issues confronting public ancillary funds.

4.5 Increasing regulatory powers (ref 2.2.2)

(i) Administrative penalty regime

GCF supports the use in principle of scaled penalties for breaches of legal and administrative requirements, where the penalties suit the nature of the breaches.

GCF's Trust Deed states that the Trustee or an officer of the Trustee shall not be indemnified from loss or liability where that loss or liability is attributable to the dishonesty or the willful commission or omission of any act known by the Trustee to be a fraudulent breach of trust or in bad faith.

But the PAF standards may not be directly applicable to public ancillary funds. The standards should be suitable to and should reflect the voluntary status of the directors.

Community Foundations draw their directors from the community within which they operate, all on a voluntary, pro-bono basis. Due to their open and public nature, it is believed that there is significantly less likelihood of abuse than may be the case for PAFs. The penalty regime should reflect this.

If there is any evidence of breaches with Community Foundations, then appropriate education of directors should always be the first step.

(ii) Corporate Trustee

The GCF already has a corporate Trustee: Geelong Community Foundation Limited. Directors are therefore required to meet the standards of conduct required by chapters 2D and 2E of the Corporations Act 2001. Most Community Foundations have a Corporate Trustee.
GCF agrees that, subject to appropriate safeguards, it would be quite appropriate for a corporate trustee to be removed where:

- it acts fraudulently or dishonestly;
- is in material breach of its fiduciary duty as trustee; or
- materially non-complies with accountability requirements.

Directors of the trustee should be open to removal or suspension if they are in breach of the mandatory standards specified in the Corporations Act.

It should be noted, however, that unlike PAFs, all Community Foundation Directors are independent, and the majority come within the definition of Responsible Persons.

(iii) Fit and proper person requirements

The discussion paper asks if the minimum standards of conduct for PAF trustees would be appropriate for public ancillary funds.
However the Responsible Persons requirement for public ancillary funds is already greater than that of a PAF. Sections 13 and 14 of the PAF Guidelines note that the PAF requirement is similar to (but less strict than) the requirement applying to public ancillary funds.

Therefore there is no need to change.

The Discussion Paper suggests that the requirements for Superannuation Trusts might be comparable. However, Superannuation Trusts do not provide an appropriate comparison for Community Foundations. They are focused solely on producing financial benefit for members.
A core component of Community Foundations' activities is community engagement and grant making, which requires additional, different and specialist skills, as well as significant community knowledge and networks.

The GCF has an extremely strong governance structure and process. Board composition is deliberately diverse with a requirement for an extensive range of experience and expertise. The Board has eight sub-committees with membership drawn from the Board and external, independent experts as required:

- Investment Committee
- Allocations Committee
- Finance Committee
- Audit Committee
- Donors Committee
- Nominating Committee
- Marketing Committee
- Planning Committee.

GCF offers the opportunity for donors to "donor advise" in relation to grant allocations if they so wish. In reality at present, all donors leave the discretion relating to grant making to the Board They do record at the time of starting a Named Fund, the main areas of charitable activity in which they have the greatest interest.

GCF encourages donors with the relevant skills to take up Board positions as they can reflect the views and interests of the donor community.

There is one PAF requirement that is totally inappropriate for Community Foundations. The PAF minimum standards of conflict relate to the donation limitation, namely that directors of a trustee should not be a "donor to the fund who has contributed more than $10,000 or an associate of such a donor". It is not clear why this requirement has been suggested but is presumably intended to prevent 'self interested' use of philanthropic funds.

GCF believes there is no justification for this requirement. If the Board of a trustee of a public ancillary fund is composed of fit and proper persons, the opportunity for a particular director who has donated significant amounts to that fund to act in a self interested way is negligible. The Board itself will determine a proper course of behavior.

In the Community Foundation context, directors of the trustee company are all encouraged to become donors to the Foundation and the larger these funds the better. It is felt that with trustees being donors, they are better able to ask others in the general public to become donors also.

Therefore a requirement limiting directors' donations to a Community Foundation would be totally counter-productive and inappropriate in terms of the role and purpose of Community Foundations, where the directors' generosity is to be encouraged.

(iv)Transitional rules

It will be essential to allow Community Foundations enough time to make any transition, and to provide them with the resources to do so.

GCF cannot comment further as it is unclear and uncertain what transitioning may be required.

4.6 Public fund (ref 2.3.1)

The discussion paper asks should the term 'public fund' be codified in the guidelines in accordance with the principles set out in ATO Taxation Ruling TR 95/27?

This is not appropriate as there are many different types of public fund (the public ancillary fund is one) and any proposed changes which affect public funds need to be properly and openly discussed, and the organisations affected by the proposed changes must be properly consulted.

4.7 Investment rules to ensure liquidity and low risk

The Investment Committee of the GCF Board comprises both Directors and independent external members, all of whom are significantly experienced in finance and investment. This Committee is responsible for developing the GCF investment strategy, which is approved by the Board.

GCF has an independent funds manager and that manager is required to operate within the terms, guidelines and policies laid down by the Board of the GCF.

In principle, many of the investment and risk minimisation rules that apply to PAFs are equally applicable to Community Foundations (as public ancillary funds).

The GCF invests to generate income for annual grant making as well as maintain the real purchasing power of the capital sum from capital growth.

The discussion paper suggests that the PAF investment rules would be appropriate for Community Foundations. GCF agrees that most of them may be appropriate. However, there is one PAF investment rule which would be inappropriate for Community Foundations:

(46) The fund must not accept donations in any financial year totaling more than 20% of the value of its assets

This is totally inappropriate for Community Foundations / public ancillary funds which are required to seek donations from the public. Any limit on donations would seriously impede the work that the Foundation sets out to do.

5. Issues which also need to be addressed, not included in the discussion paper

5.1 FBT benefits

A range of qualifying non-profit organisations are eligible for FBT concessions where employers are entitled to have their liability reduced by a rebate equal to 48% of the gross FBT payable (subject to a $30,000 capping).

Because Community Foundations are public ancillary funds, they are defined as charitable funds and are therefore ineligible for the same FBT concessions.

If the role and purpose of Community Foundations was solely to operate charitable funds, this would make sense. However, as indicated throughout this submission, the role, purpose and contribution of Community Foundations is considerably broader and their contribution to community capacity building beyond grant making is significant.

As non-profit community organisations themselves, Community Foundations should have access to the same FBT benefits as other charitable organisations. Charging small administrative fees, Community Foundations are not in a position to offer the same salary levels as the gift funds offered by Trustee companies and financial institutions, or even PAFs. Therefore they operate at a disadvantage in attracting and retaining appropriately qualified and experienced staff.

5.2 Transferring a PAF to a public ancillary fund

Portability and aggregation are important elements in encouraging and supporting effective philanthropy. Having the opportunity to change the vehicle or structure where relevant is preferable to eliminating a philanthropic 'engine'.

Whilst a PAF can convert to a new public ancillary fund (reference section 51 of the PAF Guidelines) it cannot transfer to an existing public ancillary fund structure. By allowing such transfers, aggregation reduces cost, simplifies administration and allows more effort and resource to focus on effective grant making.

A PAF 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.

As Community Foundations are also ancillary funds, PAFs cannot make donations to them or to their sub-funds. The reason for this is to ensure that income from ancillary funds, including PAFs, is contributed to charitable activities.

While the reason is clear, the limitation can create a serious anomaly which is of concern to GCF. When a PAF 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 PAF may no longer be able to function independently:

1. The founder of the PAF and/or the trustees no longer wish to be responsible for or operate the PAF (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 PAF might fail to make required minimum distributions or meet its legal and fiduciary responsibilities.

GCF knows of cases where individuals or corporations have established PAFs and subsequently become aware that a Community Foundation can provide the required services, especially of grant making.

There would be significant benefit to the community if, in the circumstances where the PAF wishes to do so, a PAF could be transferred to a Community Foundation which 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 PAFs 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 PAF.

6. Summary

It is very important that the regulations and guidelines concerning the operation of public ancillary funds recognise, are relevant to, and facilitate the operation of the different types of organisations that use the public ancillary fund structure.

Community Foundations have an important and particular community role and purpose. Transparency, accountability and public confidence are essential features of Community Foundations. GCF fully supports increasing public transparency and accountability of all ancillary fund structures.

However, assuming that the guidelines which regulate private ancillary funds are equally relevant to Community Foundations is inappropriate and false. In a number of instances as outlined above, those guidelines may actually work against the Community Foundation's missions and purposes.

The GCF would be happy to discuss in detail any aspect of the review of public ancillary funds, and assist in designing guidelines and regulation that support the sector for future growth and meet the need for public accountability and confidence.

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APPENDIX
Geelong Community Foundation, Board Membership
December 2010

GCF is governed on a voluntary basis by a distinguished group of men and women from all walks of life and reflects a broad range of skills and community experience. Members include lawyers, accountants, philanthropists, finance experts, community workers, CEOs and company directors.

In total eight of the Board members have Named sub funds.

Val Lawrence OAM DSJ Chairman Joined board in 2009. Chairman since 2009
Civil Celebrant, Past Chairman of Geelong/Barwon Red Cross, Councillor Borough of Queenscliffe 1999-2008 and Mayor 2001-2004.

Peter Hudson KSJ AFAIM Deputy Chairman. Joined board in 2007. Deputy since 2009.
Member Deakin University Ethics Committee and Rotary Club of Highton.
Past CEO for 10 years of United Way Geelong and CEO of the Lord Mayor's Mayors Charitable Foundation Melbourne.

John Bannister LL B (Melb) Joined board in 2004. Deputy Chairman 2005-2008.
Lawyer in Geelong since 1974. Works with Harwood Andrews as specialist in Business Law. Past director of GMHBA for 12 years. Life Governor of United Way Geelong and board president 1982-1984.

Ed Coppe B.Com FAICD FCPA. Joined board in 2008
Managing Director Strategic Investments. Chairman of G21 Strategic Alliance, Member of Geelong Chamber of Commerce and Committee for Geelong.
Has worked in Australia and overseas with Mars Corporation in various finance and marketing roles and has been a councillor of the City of Greater Geelong and Mayor.

Barry Capp B.E (Civil), B.Com, B.A. Joined board in 2008.
Has been Chairman of National Foods Limited (1991-2004), Chairman of Australia Infrastructure Fund Ltd (1996-2003) and a director Westpac bank(1993-2003) Chairman Buckland Foundation (2000-2006).

Barry Fagg B.Com (Melb) CPA MAICD. Joined board 1999. Chairman (2005-2009)
Director and Co owner Faggs Mitre 10 Geelong. Director and Chairman 2002-2004 of Mitre 10 Australia. Past Chairman of United Way Geelong and Life Governor.

Wendy Maloney B Com(Deakin) M Tax (Melb) MBA CA. Joined board in 2004

She is a Principal of WHK Accountants and a Taxation specialist.
She is a C Race Director of Corporate Triathlon In Geelong and a member of the Geelong Chamber of Commerce Public Finance Committee.

Geoff Neilson AM KCSJ D.Univ FCA FCPA ACIS FTIA. Joined board 1999. Chairman (999-2005).
Consultant with WHK Chartered Accountants, Past National President of the Institute of Chartered Accountants. Past Member Executive Committee Confederation of Asian and Pacific Accountants. Member Order of Australia for services to accountancy.
Past President Geelong Rotary Club, YMCA Geelong and past Deputy Chancellor Deakin University, Geelong College Council and current member of the Geelong Chamber of Commerce.

Brian Quarrell Certified Financial Planner and SMSF Specialist Advisor. Joined board in 2009.
Director and part owner of Wheeler Investment Advisors. Former career with Westpac bank in finance and investment roles. Chairman of Geelong chapter of the Financial Planning Association 10years.

Tim Santalucia. Joined board 2007.
Councillor City of Greater Geelong 1998-2001. Board Member Encompass Community Services since 2001. Manages family Property company and developments.

Kate Betts. Joined board 2010.
Manager Alcoa Australia (Geelong) Community Relations Department.
Previously has worked in marketing with Westfield Geelong and was marketing manager of United Way Geelong.

Diane Ritchie. TPTC. Joined board in 2010.
Was Regional manager Young Achievement Australia for 8 years, Resident and Public Relations Manager Rice Village Retirement Centre for 8 years, a councilor of Bannockburn Shire Council. Currently she is the Special Projects manager of Kalkee, a Uniting Church Aged Care facility.