

2022–2023

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL  
2023: NEW CLASS OF DEDUCTIBLE GIFT RECIPIENTS

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EXPOSURE DRAFT EXPLANATORY MATERIALS



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# ***Glossary***

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This Explanatory Memorandum uses the following abbreviations and acronyms.

<b><i>Abbreviation</i></b>	<b><i>Definition</i></b>
ABN	Australian Business Number
Bill	<i>Treasury Laws Amendment (Measures for Consultation) Bill 2023</i>
Commissioner	Commissioner of Taxation
DGR	deductible gift recipient
ITAA	<i>Income Tax Assessment Act 1997</i>
TAA	<i>Taxation Administration Act 1953</i>



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# **Chapter 1: New classes of deductible gift recipients**

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## Outline of chapter

- 1.1 Schedule # to the Bill creates two new categories of community charity funds that may apply for DGR endorsement by the Commissioner.
- 1.2 The amendments will facilitate community charity trust funds and corporate community charity funds achieving DGR status in recognition of their valuable contribution to their communities and Australian society.

## Context of amendments

- 1.3 In the 2023-24 Budget, the Government reaffirmed the decision to provide DGR status for up to 28 entities that are community charity foundations affiliated with the peak body Community Foundations Australia. These community foundations are structured as either trusts or incorporated entities.
- 1.4 The income tax law allows taxpayers who make gifts of \$2 or more to DGRs to claim tax deductions for those gifts, subject to any applicable conditions pertaining to the DGR and/or the gift. An entity may apply, under Division 426

- in Schedule 1 to the TAA, to the Commissioner for endorsement as a DGR. The criteria for endorsement are set out in section 30-125 of the ITAA, including that the entity must fall within one of the DGR categories in Subdivision 30-B of the ITAA, or be established to donate funds to an entity covered by one of those categories.
- 1.5 Separate to the endorsement process, an entity is a DGR if it is listed by name in Subdivision 30-B of the ITAA. The decision to list an entity by name is made in exceptional circumstances by government and subject to the agreement of Parliament to amend the ITAA. Entities may be specifically listed for a period of time or in perpetuity (or until the specific listing is repealed).
  - 1.6 Most entities achieve DGR status through either of the above mechanisms. However, there are a small subset of charitable entities for which the established pathways to DGR status are not appropriate.
  - 1.7 The specific listing regime has a low level of regulatory oversight and lacks compliance infrastructure. The Commissioner's powers in relation to specifically listed DGRs are limited to seeking information and conducting audits.
  - 1.8 While community charity funds sit outside the general categories, they are not suited to a time-limited specific listing due to their provision of longer-term support to communities.
  - 1.9 The classes of community charity trust funds and corporate community charity funds do not fit neatly into any of the existing DGR categories in the ITAA. A particular fund's activities may fall under several of those categories; some activities may fall beyond them. This creates integrity risks were this class of entity to attain DGR status through specific listing.
  - 1.10 By contrast, the endorsement regime empowers the Commissioner to revoke an entity's endorsement on grounds including failure to comply with its conditions of entitlement. Administrative penalties may also be imposed.
  - 1.11 The amendments in Schedule # create a framework for DGR endorsement for community charity trust funds and corporate community charity funds with the above considerations in mind. This is achieved by means of a hybrid model involving both specification by class in Subdivision 30-B of the ITAA and endorsement by the Commissioner, subject to certain conditions.

## Summary of new law

### *Income Tax Assessment Act 1997*

- 1.12 Part 1 of Schedule # to the Bill specifies the classes of community charity trust funds and corporate community charity funds in Subdivision 30-B of the ITAA. This new class listing does not confer DGR status in and of itself.



Rather, it allows the funds that are in the specified class to apply for DGR endorsement under Division 426 in Schedule 1 to the TAA.

- 1.13 The new listing item applies to community charity funds that meet certain conditions, as discussed below. The conditions relate to fund purposes, financial obligations set out in fund governing rules, and fund registration under the *Australian Charities and Not-for-profits Commission Act 2012*.
- 1.14 To accompany the listing item, certain criteria are created which must be fulfilled in order for a community charity fund to be entitled to endorsement as a DGR.

### *Taxation Administration Act 1953*

- 1.15 Part 2 of Schedule # amends Subdivision 426-D in Schedule 1 in order to:
- empower the Minister to create a legislative instrument setting out community charity trust funds by name;
  - create a ministerial obligation to make guidelines;
  - require the Australian Business Register to show community charity trust fund status;
  - impose liability for misrepresenting endorsement status;
  - empower the Commissioner to suspend, remove and replace trustees of community charity funds; and
  - prohibit certain transfers between community charity trust funds and other funds.

And creates Subdivision 426-E in Schedule 1 in order to:

- empower the Minister to create a legislative instrument setting out corporate community charity funds by name;
- create a ministerial obligation to make guidelines;
- require the Australian Business Register to show corporate community charity fund status;
- impose liability for misrepresenting endorsement status; and
- prohibit certain transfers between corporate community charity funds and other funds.

## Detailed explanation of new law

### Part 1 – Two new classes of deductible gift recipients

- 1.16 The amendments create a new framework to facilitate community charity funds achieving DGR status subject to appropriate oversight and governance rules. Although this framework will currently only apply to a small number of specified community charities, additional organisations could be brought within its scope.

### Income Tax Assessment Act 1997

- 1.17 Section 30-105 is amended by inserting a new table that sets out other general categories of recipients of tax deductible gifts. This table relates to community charity trust funds and corporate community charity funds to which section 30-110 applies.

#### Requirements for funds

- 1.18 The fund must be, or must be operated by, a registered charity. The application of paragraph 23(b) of the *Acts Interpretation Act 1901* means that references throughout to “a fund, authority or institution” in the singular also apply in cases where there is more than one fund, authority or institution.  
***[Schedule #, item 1, subsection 30-105(1) of the ITAA]***
- 1.19 To be a community charity fund specified in the table, either as a trust or an incorporated entity, the entity must have certain characteristics. To be a community charity trust fund, the entity must be established and maintained under a will or instrument of trust for specified allowed purposes and for no purposes beyond those specifically allowed.
- 1.20 To be a corporate community charity fund, the fund must be operated for certain allowed purposes and for no other purposes beyond those specifically allowed.
- 1.21 A community charity fund, either trust or incorporated, must:
- to pursue its own charitable purposes, in that it must engage in one or more of the main activities related to the principle purposes of a fund described in an item of a table in Division 30, (other than item 13.1.1 or 13.1.2 of the table in subsection 30-105(1), as this table describes community charity funds); and
  - to provide money, property or benefits to one or more funds, authorities or institutions.
- [Schedule #, item 2, subsections 30-110(3) and (4) of the ITAA]***
- 1.22 An entity which receives money, property or benefits from either type of community charity fund must itself be a DGR: gifts to the entity must be

deductible under item 1 of the table in section 30-15, and it must be described in an item of a table in Subdivision 30, (other than item 13.1.1 of the table in subsection 30-105(1), as this table describes community charity funds).

1.23 The funds given to the DGR entity by a community charity fund must be for any of the purposes for which the entity may receive funds.  
*[Schedule #, item 2, subsection 30-110(3) of the ITAA]*

1.24 In addition to the two mandatory purposes, both types of community charity funds are permitted to have a purpose of establishing one or more DGR entities.  
*[Schedule #, item 2, section 30-110(5) of the ITAA]*

### **Endorsement as a DGR**

1.25 A community charity fund will be entitled to endorsement as a DGR, upon application to the Commissioner in accordance with Division 426 in Schedule 1 to the TAA, if it:

- has an ABN;
- is described in item 1 of the table in section 30-15 of the ITAA and is not described by name in Subdivision 30-B. This will be the case for all community charity funds;
- meets the relevant conditions identified in the column headed “special conditions” of table item 1 in section 30-15;
- complies with the rules in the relevant community charity fund guidelines, and all of the trustees or directors of the fund comply with those rules as applicable; and
- has governing rules which require the community charity fund, in the event that the fund is wound up or loses its status as a DGR, to transfer any surplus assets of money or property to another entity which is has current DGR status.

*[Schedule #, item 3, subsection 30-125(1) of the ITAA]*

1.26 An entity which operates or includes a corporate community charity fund will be entitled to endorsement as a DGR, upon application to the Commissioner in accordance with Division 426 in Schedule 1 to the TAA, if it:

- has an ABN;
- legally owns or includes the fund;
- ensures that the fund meets the relevant conditions identified in the column headed “special conditions” of table item 1 in section 30-15;
- has governing rules which require the entity, in the event that the fund is wound up or loses its status as a DGR, to transfer any surplus assets of money or property to another entity which is has current DGR status; and
- complies with all rules associated with maintaining a gift fund.

In addition to these conditions, for an entity to be entitled to DGR status for operating or incorporating a corporate community charity fund, the fund and all directors of the fund must comply with the corporate community charity fund guidelines.

***[Schedule #, item 4, subsection 125(2) of the ITAA]***

## **Definitions**

1.27 Several new definitions added into the ITAA to facilitate the expansion of the DGR regime to community charity funds:

- ‘Ancillary or community charity trust fund’ means a public ancillary fund, a private ancillary fund or a community charity trust fund.
- ‘Applicable trust fund guidelines’ means the relevant Ministerial guidelines created for either a public ancillary fund, a private ancillary fund, or a community charity trust fund.
- ‘Community charity trust fund’ has the meaning given by section 426-117 in Schedule 1 to the TAA. The definition is explained below at paragraph 1.31.
- ‘Community charity trust fund guidelines’ has the meaning given to it by section 426-118 in Schedule 1 to the TAA. This new section in the TAA creates an obligation on the Minister to create guidelines for community charity funds, and is explained in further detail at paragraph 1.39.
- ‘Corporate community charity fund’ has the meaning given by section 426-180 in Schedule 1 to the TAA. This definition is explained below in paragraph 1.35.
- ‘Corporate community charity fund guidelines’ has the meaning given to it by section 426-185 in Schedule 1 to the TAA. The Minister must create guidelines for corporate community charity funds, and is explained in further detail at paragraph 1.39.

***[Schedule #, item 7, subsection 995-1(1) of the ITAA]***

1.28 References to community charity trust funds and corporate community charity funds are added to the index to Division 30, which explains where to find the table related to those funds in the Division.

***[Schedule #, items 5 and 6, section 30-315 of the ITAA]***

## **Taxation Administration Act 1953**

1.29 Schedule # amends Subdivision 426-D in Schedule 1 to the TAA to extend its application to community charity trust funds, as newly defined in the Subdivision. The Subdivision’s application is slightly altered for these newly defined entities, in comparison to its application to ancillary funds, which will continue unchanged. The Subdivision’s operation in respect of community charity trust funds is explained below.

***[Schedule #, items 10 and 11, section 426-1 and Subdivision 426-D in Schedule 1 to the TAA]***

- 1.30 A new Subdivision 426-E is created applying to corporate community charity funds. The Subdivision's operation in respect of corporate community charity funds is explained below.

***[Schedule #, items 10 and 36, section 426-1 and Subdivision 426-E in Schedule 1 to the TAA]***

## **Community charity trust funds**

- 1.31 A 'community charity trust fund' is defined in Schedule 1 to the TAA as a trust:

- which has been specified in a declaration by the Minister for the purposes of being a community charity trust fund;
- each trustee of the trust is a constitutional corporation;
- each trustee has agreed, in the approved form given to the Commissioner, to comply with the rules in the community charity fund guidelines, and
- none of the trustees has revoked that agreement.

***[Schedule #, item 13, paragraphs 426-117(1)(a)(b)(c) and (d) in Schedule 1 to the TAA]***

- 1.32 The Minister is empowered to declare a specified trust by legislative instrument. The legislative instrument will be subject to disallowance by Parliament.

***[Schedule #, item 13, subsection 426-117(3) in Schedule 1 to the TAA]***

- 1.33 It is appropriate to delegate this power to make a legislative instrument specifying community charity fund because:
- the legislative instrument imparts a benefit in that it is only the first step in a process towards being endorsed as a DGR, and does not impose a liability on the entity;
  - being specified in the legislative instrument does not impart DGR status, it is merely one of the necessary factors for a community charity fund to achieve DGR status;
  - the legislative instrument will be subject to Parliamentary oversight;
  - there are significant safeguards built into the definitions of 'community charity trust fund' and 'corporate community charity fund' in the TAA and the items in the ITAA;
  - the entities will remain limited to their allowed purposes under the ITAA; and
  - an entity named in a Declaration will not have the benefit of DGR status unless the meet the definitions within the TAA and ITAA, the

Commissioner endorses the entity, and the entity continues to act according to its allowed purposes.

- 1.34 A trustee may revoke an agreement to comply with the rules in the community charity fund guidelines only by giving the revocation to the Commissioner in the approved form.

*[Schedule #, item 13, subsection 426-117(2) in Schedule 1 to the TAA]*

### **Corporate community charity funds**

- 1.35 A ‘corporate community charity fund’ is defined in Schedule 1 to the TAA as a company:

- which has been specified in a declaration by the Minister for the purposes of being a corporate community charity fund;
- which is either a constitutional corporation or a body corporate that is not a constitutional corporation;
- where each director of the company has agreed, in the approved form given by the Commissioner, to comply with the rules in the corporate community charity fund guidelines; and
- none of the directors of the company has revoked that agreement.

*[Schedule #, item 36, paragraphs 426-180(1)(a), (c) and (d) in Schedule 1 to the TAA]*

- 1.36 As with community charity trust funds, the Minister is empowered to specify a company by legislative instrument. To make such a declaration, the Minister must have regard to the definition of community charity funds contained in section 30-110 of the ITAA. The legislative instrument will be subject to disallowance by Parliament.

*[Schedule #, item 36, subsection 426-180(3) in Schedule 1 to the TAA]*

- 1.37 A director may revoke an agreement to comply with the rules in the corporate community charity fund guidelines only by giving the revocation to the Commissioner in the approved form.

*[Schedule #, item 36, subsection 426-180(2) in Schedule 1 to the TAA]*

### **Ministerial obligation to make guidelines for community charity trust funds and corporate community charity funds**

- 1.38 The particular circumstances of the entities covered by the newly created classes of DGR mean it is appropriate to provide for mandated guidelines with which community charity trust funds and corporate community charity funds must comply.

- 1.39 The Minister must create guidelines by legislative instrument for both types of community charity funds. These guidelines will set out the rules that community charity funds, the relevant operating entity, and their trustees or directors must comply with if the funds are to be, or are to remain, endorsed as

- DGRs. The guidelines will also include the amount of the administrative penalty, or a method for how to work out the amount of the trustee or director.
- 1.40 These penalties may be enforced against trustees or directors of a community charity fund if the trustee or director acts in a manner that is prohibited under sections 426-120 or 426-195, as applicable.  
*[Schedule #, items 13 and 36, sections 426-118 and 426-185 in Schedule 1 to the TAA]*
- 1.41 The guidelines may specify different penalties or methods for different circumstances.  
*[Schedule #, items 13 and 36, paragraphs 426-118(b) and 426-185(b) in Schedule 1 to the TAA]*
- 1.42 The amount of the penalty has been left to be determined by the guidelines so that any administrative penalty can be appropriately tailored to the nature and size of the breach, taking account of the trustee's level of culpability and the particular requirement that the fund has not complied with.
- 1.43 The guidelines may specify requirements about the purpose, structure and governing rules of a community charity fund. The guidelines may also specify matters about the ongoing governance and permitted and prohibited activities of the fund. The guidelines will ensure community charity funds have appropriate governance arrangements, are properly accountable and act in a manner consistent with an entity holding philanthropic funds for a broad public benefit.

## **Administrative penalties**

- 1.44 Certain administrative penalties may apply to trustees of community charity trust funds or directors of corporate community charity funds. This is achieved through amending the existing administrative penalties regime for ancillary funds and their trustees contained in Division 426 in Schedule 1 to the TAA to incorporate community charity trust funds and their trustees. Similar provisions are created for corporate community charity funds and their directors.
- 1.45 The trustee of a community charity trust fund must not hold the fund out as being endorsed, entitled to be endorsed or entitled to remain endorsed as a DGR when there is no factual basis to do so. Directors of a corporate community charity fund must not hold the fund out as being endorsed or entitled to remain endorsed as a DGR where there is no factual basis to do so. Trustees or directors of community charity funds, and each director of each constitutional corporation that is a trustee of a community charity trust fund, will be jointly and severally liable to an administrative penalty if the fund is held out in this manner. The Commissioner is required to give written notice of the penalty.  
*[Schedule #, items 14, 15, 16, 17 and 37, subsections 426-120(1), 426-120(2), 426-195(1) and (2) in Schedule 1 to the TAA]*
- 1.46 As corporate trustees of community charity trust funds usually have little capital, it is necessary to also impose the penalty on the directors of that

corporate trustee (where any of the penalty cannot reasonably be recovered from a trustee) to effectively ensure that a community charity fund complies with the guidelines. Exposure to this liability promotes a minimum level of accountability amongst directors of corporate trustees of community charity funds for decisions that affect the community charity fund. The penalty can only be imposed on directors of corporate trustees where any of the penalty cannot reasonably be recovered from a trustee.

- 1.47 The amount of the administrative penalty for holding the fund out as described will be specified in the community charity fund guidelines created under sections 426-118 and 426-195.

*[Schedule #, items 17 and 36, subsections 426-120(3) and 426-195(3) in Schedule 1 to the TAA]*

- 1.48 A director that did not take part in the management of the corporate community charity fund or the corporate trustee of a community charity trust fund at the time the fund breached its obligations may in certain circumstances avoid an administrative penalty. These circumstances are that:

- the director can demonstrate that the director was not aware of the breach, and it would not have been reasonable to expect them to have been aware of the breach; or
- the director took all reasonable steps to ensure that the breach did not occur; or there were no such steps that the director could have taken.

*[Schedule #, items 14, 15, 17 and 36, Subsections 426-120(5) and 426-195(5) in Schedule 1 to the TAA]*

- 1.49 An administrative penalty must not be reimbursed from the fund and the *Corporations Act 2001* cannot apply to provide relief to a director of a corporate trustee from the administrative penalties.

*[Schedule #, items 14, 15, 17 and 36, Subsections 426-120(4), 426-120(8), 426-195-(4) and 426-195(8) in Schedule 1 to the TAA]*

## **Suspension or removal of trustees**

- 1.50 The amendments relating to the Commissioner's powers to suspend and remove trustees, explained below, will apply to the trustees of community charity trust funds. This regime is an extension of the Commissioner's current powers as they relate to the trustees of public and private ancillary funds.

### *The Commissioner's powers*

- 1.51 As is this case for public and private ancillary funds, the Commissioner will also have the power to remove or suspend a trustee of a community charity trust fund that breaches the guidelines or any other Australian law. The references in section 425-125 in Schedule 1 to the TAA 1953 are amended so that the rules for suspending or removing a trustee apply to community charity trust funds as well as public and private ancillary funds.

*[Schedule #, items 18, 19, 20 and 21, section 426-125 in Schedule 1 of the TAA]*



- 1.52 It is expected that the Commissioner would only take action to suspend or remove trustees from community charity trust funds in situations that involve serious non-compliance by a community charity trust fund.
- 1.53 If the Commissioner chooses to suspend a trustee, it will be for a period that the Commissioner determines by reference to the circumstances. The Commissioner may also modify the suspension period as the Commissioner considers necessary.
- 1.54 If the Commissioner suspends or removes a trustee, the Commissioner must give the trustee a written notice advising them of the decision, explaining the reasons why the decision was taken and in the cases of suspension, setting out the period of suspension. The trustee may seek a review of the decision by the Administrative Appeals Tribunal or a court following the process outlined in Part IVC of the TAA 1953 (taxation objections, reviews and appeals).  
***[Schedule #, items 18, 19, 20 and 21, subsection 426-125 in Schedule 1 to the TAA]***

*If a trustee is suspended or removed*

- 1.55 When a trustee is suspended or removed, the Commissioner must appoint an acting trustee to undertake the duties of trustee until the suspension period has ended or a replacement trustee is appointed (as the case may be).
- 1.56 An acting trustee may be an individual, a body corporate or a Government authority. The Commissioner may also appoint themselves as acting trustee. The acting trustee must have agreed to comply with the community charity trust fund guidelines, and the governing rules of the community charity fund will apply to the acting trustee. The Commissioner cannot appoint an acting trustee who is not a constitutional corporation for a period exceeding 6 months.  
***[Schedule #, items 22, 23, 24, 25 and 30, sections 426-130 and 426-155 in Schedule 1 to the TAA]***
- 1.57 The Commissioner may determine the terms and conditions upon which an acting trustee is appointed, including by determining that the acting trustee's fees are to be paid out of the corpus of the community charity trust fund. The terms and conditions determined by the Commissioner are valid despite any limitation in an Australian law or the governing rules of the community charity fund.  
***[Schedule #, items 26 and 27, section 426-135 in Schedule 1 to the TAA]***
- 1.58 The Commissioner may also give directions to an acting trustee to do or not to do certain things. The acting trustee commits an offence if they contravene a direction.  
***[Schedule #, item 31, section 426-160 in Schedule 1 to the TAA]***
- 1.59 The Commissioner may terminate the appointment of an acting trustee at any time. If the Commissioner were to do so, the Commissioner would be required to appoint a new acting trustee.  
***[Section 426-140 in Schedule 1 to the TAA]***

- 1.60 An acting trustee may resign as acting trustee. However, the acting trustee must do so in writing given to the Commissioner. The resignation is not effective until seven days after the Commissioner receives the written resignation.  
***[Section 426-145 in Schedule 1 to the TAA]***
- 1.61 If the Commissioner appoints an acting trustee, the Commissioner must make an order transferring the property of the community charity trust fund from the former or suspended trustee to the acting trustee. The order has the legal effect of immediately transferring that property subject to certain limitations. The property covered by the order is both legal and equitable property.  
***[Schedule xx, items 28 and 29, section 426-150 in Schedule 1 to the TAA]***
- 1.62 The Commissioner must also make a subsequent order transferring the property when the appointment of an acting trustee ends. The subsequent property transfer order may be to a new acting trustee, to the previously suspended trustee or to a newly appointed trustee as appropriate.  
***[Subsection 246-150(2) in Schedule 1 to the TAA]***
- 1.63 If the Commissioner makes an order to transfer property of a community charity trust fund as described, then the property immediately vests in the entity to which the property is transferred. However, the Commissioner's order to transfer property of a community charity trust fund does not immediately transfer property if the property is of a kind whose transfer is registrable under an Australian law. Instead, the property is transferred only after the registration process has been completed.  
***[Schedule #, item 29, subsections 426-150(3) and (4) in Schedule 1 to the TAA]***
- 1.64 A former trustee has a number of obligations to comply with following their suspension, removal or the ending of their appointment.
- 1.65 A former trustee must provide the acting or new trustee with all books relating to the fund's affairs that is in their custody, possession or control within 14 days. The former trustee commits an offence if it fails to fulfil this obligation. The penalty for this offence is 50 penalty units.  
***[Schedule #, item 32, subsection 165(1) in Schedule 1 to the TAA]***
- 1.66** If the property of a community charity trust fund is vested in a former trustee, an acting trustee may, by notice in writing to the former trustee, require the former trustee to identify all the property of the community charity trust fund (as much as they possibly can), and provide notice to the acting or new trustee explaining how that property was accounted for.  
***[Schedule #, item 33, subsection 426-165(2) and (3) in Schedule 1 to the TAA]***
- 1.67 The acting or new trustee may also require the former trustee to assist with the transfer of the property of the community charity trust fund. The acting or new trustee must do so by mandating that the former trustee take certain actions necessary for the transfer of a specific item of property to the acting or new trustee.

***[Schedule #, items 32 and 33, Subsection 426-165(4) in Schedule 1 to the TAA]***

- 1.68 A former trustee will commit an offence if they do not comply with these obligations. The penalty for this offence is 50 penalty units  
***[Schedule #, items 32 and 33 Subsection 426-165(5) in Schedule 1 to the TAA]***
- 1.69 Former trustees are strictly liable for their actions relating to books, identification of property and transfer of property (that is, liable regardless of fault). This liability has been established to compel former trustees which have already been removed on the grounds of misconduct to deal fairly with the trust's property during the handover period.  
***[Schedule #, items 32 and 33, Subsection 426-165(6) in Schedule 1 to the TAA]***

### **Transfers between funds**

- 1.70 Community charity funds, whether trust or incorporated entity, are not permitted to transfer funds to other community charity funds or to ancillary funds. Ancillary funds are permitted to provide money, property or benefits to community charity funds, as this is consistent with ancillary funds' purpose of providing support to DGRs covered by item 1 of the table in section 30-15 of the ITAA. Ancillary funds, either public or private, are still not permitted to transfer funds to other ancillary funds.
- 1.71 Despite this prohibition, the relevant guidelines for either community charity funds or ancillary funds may provide that any of the types of transfers outlined above are allowed. In this case, these transfers will be permitted.  
***[Schedule #, items 34, 35 and 36, sections 426-170 and 426-200 in Schedule 1 to the TAA]***

### **Community charity fund status to be entered on Australian Business Register**

- 1.72 If a community charity trust fund or corporate community charity fund has an ABN, the Australian Business Registrar must enter a statement on the Australian Business Register that the fund is a community charity trust fund or a corporate community charity fund, as applicable.
- 1.73 The Australian Business Registrar must take reasonable steps to ensure that the statement appearing for this purpose is true, and the Registrar may change or remove the statement if necessary.  
***[Schedule #, items 13 and 36, sections 426-119 and 426-190 in Schedule 1 to the TAA]***

## Other amendments to the TAA

- 1.74 To reflect the inclusion of community charity funds in the law, the guide to Subdivision 426-D is amended to include that the Subdivision deals with types of philanthropic trust funds known as community charity trust funds, in addition to both private and public ancillary funds.  
***[Schedule #, items 10 and 11, section 426-1 in Schedule 1 to the TAA]***
- 1.75 The Minister may make guidelines which determine when ancillary or community charity trust funds are entitled to be endorsed as DGRs. The guide further specifies that penalties for trustees who fail to comply with guidelines and power for the Commissioner to suspend or remove trustees are also provided for in Subdivision D.  
***[Schedule #, item 12, Guide to Subdivision 426-D (heading) and section 426-100 in Schedule 1 to the TAA]***
- 1.76 Subdivision 426-E is created to deal with certain philanthropic companies known as corporate community charity funds.
- 1.77 The guide to Subdivision 426-E specifies that the Minister may make guidelines which determine when corporate community charity funds are entitled to be endorsed as DGRs. The guide further specifies that penalties for directors who fail to comply with the guidelines are provided for in this Subdivision.  
***[Schedule #, item 36, Guide to Subdivision 426-E and section 426-175 in Schedule 1 to the TAA]***
- 1.78 The scope of Subdivision 298-A in Schedule 1 to the TAA, which deals with administrative penalties, is broadened to include those imposed on directors of corporate community charity funds under section 426-195.  
***[Schedule #, item 8, paragraph 298-5(c) in Schedule 1 to the TAA].***
- 1.79 Disclosures to the Commissioner of the Australian Charities and Not-for-profits Commission or the Attorney-General of a State or Territory are permitted, and will not be an offence, if the information relates to non-compliance of a community charity trust fund or corporate community charity fund with an Australian law, and the disclosure is for the purpose of the administration of an Australian law governing trusts and charities.  
***[Schedule #, item 9, subsection 355-65(8) in Schedule 1 to the TAA]***

## Consequential amendments

- 1.80 *A New Tax System (Australian Business Numbers) Act 1999* is amended to facilitate the Australian Business Registrar entering statements about community charity funds onto the Australian Business Register.  
***[Schedule #, item 37, paragraph 26(3)(ga) of the A New Tax System (Australian Business Number) Act 1999]***

## Commencement, application, and transitional provisions

1.81 The amendments commence on the day after Royal Assent.