Fundraising foundations and charitable trusts

Legal information for community organisations

This fact sheet covers:

- what is a foundation?
- what is a charitable trust?
- what other types of foundations are there?
- how do I set up a foundation or charitable trust? and
- are there alternatives to setting up a foundation?

If you want to start a fundraising entity or grant making foundation to support a particular cause or charity, there are a number of different ways to proceed.

You may be looking to set up a fundraising entity because you have been left funds to distribute by an estate for charitable purposes, or you may yourself have (or wish to raise) funds that you would like to distribute for a particular charitable purpose or cause.

What is a foundation?

Grant making foundations are legal structures set up to hold funds and distribute those funds in line with the rules of the foundation. They may be charitable trusts, public funds or other legal entities. There are complex laws that apply to foundations and charitable trusts in Australia.

What is a charitable trust?

A trust is a legal structure where a trustee (who can be an individual or company) holds money and property for the benefit of someone else (called a beneficiary). A charitable trust is a trust that promotes charitable purposes. It can directly provide services or distribute funds. To be endorsed as a charity for income tax concessions it must:

- be not-for-profit
- have purposes that are charitable, and
- be for the benefit of the public.

NOTE: WHAT IS A DGR?

Most foundations and charitable trusts are set up so that donations made by individuals can be tax deductible. To ensure this occurs the foundation or charitable trust must be endorsed by the Australian Taxation Office as a Deductible Gift Recipient (**DGR**) which is an entity that is entitled to receive income tax deductible gifts.

What other types of foundations are there?

1. Public Ancillary Fund

A Public Ancillary Fund (**PuAF**) is a charitable trust that invests money and property from the public to distribute earnings to charities that are endorsed as DGRs. A PuAF only distributes funds. It does not directly provide services.

There are specific rules that apply to setting up and running a PuAF if it is to be endorsed as a DGR, which rules are set out in the Public Ancillary Fund Guidelines 2011. These include, amonst other requirements, that the PuAF:

- be a Trust
- establish a public fund
- invite the public to contribute to the public fund
- set out the rules of the Trust in a Deed of Trust
- only distribute funds to other DGRs
- have governing rules that require remaining money or property on winding up to go to a DGR
- distribute at least 4% of the market value of the fund's net assets or $8,800 (whichever is greater) in each financial year, and
- ensure the majority of individuals involved in decision making are individuals with a degree of responsibility to the Australian Community.

2. Private Ancillary Fund

A Private Ancillary Fund (**PAF**) is a private charitable trust for individuals or family groups that invest money and property then distribute earnings to charities that are endorsed as DGRs. A PAF does not operate a charity. It only distributes funds. It does not directly provide services.

There are specific rules that apply to setting up and running a PAF if it is to be endorsed as a DGR, which rules are set out in the Private Ancillary Fund Guidelines 2009. These include, amongst other requirements, that the PAF:

- be a trust
- have a corporate trustee
- is a private fund (meaning it does not invite the public to contribute to the fund but it is accountable to the public)
- only distribute funds to other DGRs
- have governing rules that require remaining money or property on winding up to be provided to another DGR
- distribute at least 5% of the market value of the fund's net assets or $11,000 (whichever is the greater) in each financial year, and

- ensure at least one of the Directors is an individual with a degree of responsibility to the Australian community who cannot be the founder or a large donor (i.e. a donor of >$10,000) or an associate of either the founder or such a donor.

3. Necessitous Circumstances Fund

A necessitous circumstances fund is established to provide relief for one or more persons in Australia who are in 'necessitous' circumstances. It is often established after a catastrophic event (i.e. bushfire) or for a single person who requires assistance for a fixed period (i.e. the family of a cancer sufferer who can no longer work).

A necessitous circumstances fund can be endorsed as a DGR as long as it has:

- a 'public fund' where members of the public are invited to contribute to the fund that is set up by a registered charity, an Australian Government Agency or what is called a non Australian Charities and Not-for-profits Commission (**ACNC**) entity.
- governing rules that set out that the necessitous circumstances fund is for persons in Australia who are in 'necessitous circumstances'. This refers to financial necessity and includes persons in financial hardship who do not have enough financial resources (including insurance payouts) to have a modest standard of living in Australia. The circumstances in which the financial need arises need not be permanent, and
- governing rules that set out that the necessitous circumstances fund is exclusively or chiefly for the 'relief' of persons in necessitous circumstances. This is normally by direct distribution of money and goods. It can also distribute to other funds and organisations that provide relief to persons in necessitous circumstances.

Examples

- A fund set up by community members, to which members of the public are invited to donate to raise money for victims of a bushfire in Australia. The money will be distributed to victims to buy food, clothing and make accommodation arrangements at a local motel.
- A fund to raise money for a resident who is permanently incapacitated while playing soccer. The resident does not have any income protection insurance, or any other financial support, so the money raised will help to pay for medical bills.

If a necessitous circumstances fund goes beyond giving money or goods, then it is more likely to be an institution than a fund and will not be endorsed by the Australian Taxation Office as a necessitous circumstances fund for DGR purposes.

How do I set up a foundation or charitable trust?

While setting up your own foundation may be appealing, the process is very complex. It also requires a substantial sum of money. If you want a general overview of what is involved, go to Philanthropy Australia (who publish information about various types of foundations including charitable trusts, and also run workshops and seminars).

Are there alternatives to setting up a foundation?

A simpler alternative to setting up your own structure is to find an existing foundation that you could contribute to in support of your cause. Some existing foundations will allow you to establish named sub-funds or special accounts, and will manage the administration for you. Through an existing foundation you can set up a fund in memory of a loved one, or in support of a particular charity or cause, without the cost and administrative difficulty of setting up or managing your own foundation.

Where can I find an existing foundation?

Most trustee companies have Public Ancillary Funds. The Financial Services Council provides contact details for all of the Public Trustees and most of the private trustee companies. Many of them will allow you to set up a named or unnamed sub-fund or management account to distribute your funds. A number of trustee companies will also assist to set up and manage a PAF.

The Australian Communities Foundation and Lord Mayor's Charitable Foundation also have a variety of giving options, including setting up named sub-funds. There can be minimum requirements for setting up a named sub-fund (for example the Australian Communities Foundation requires a minimum contribution of $20,000). There may also be other local community foundations near where you live that offer you the same possibilities.

Not-for-profit Law generally can't assist individuals or organisations looking to establish a foundation or other form of charitable trust. If you think this might be a good option for you, then you should seek independent legal advice.

NOTE: TESTAMENTARY TRUSTS

A testamentary trust is different to a charitable trust. It is a trust that arises upon the death of a person (called a testator) and is provided for in the testator's will. The will may also provide that funds are to be distributed to a charity or a public fund. This does not however make it a charitable trust.

Resources

Philanthropy Australia

- A guide to giving for Australians

This freely downloadable guide provides useful information on how to locate or establish a charitable trust or foundation.

- Public Ancillary Funds Trustee Handbook

A plain English introductory guide to the role and duties of the trustee and trustee directors of public ancillary funds.

- Private Ancillary Funds Trustee Handbook

A plain English introductory guide to the role and duties of the trustee and trustee directors of private ancillary funds.

Australian Taxation Office

- Private ancillary funds

Information from the ATO on the tax treatment of private ancillary funds.

- Private ancillary funds - frequently asked questions

Frequently asked questions in relation to the establishment and maintenance of private ancillary funds.

- Private ancillary fund model trust deed

This model trust deed can be used to establish an acceptable form of trust for private ancillary funds.

- Public ancillary funds

Information from the ATO on the tax treatment of public ancillary funds.

- Public ancillary fund model trust deed

This model trust deed can be used to establish an acceptable form of trust for public ancillary fund.

- Necessitous circumstances fund

Information from the ATO on the requirements for a necessitous circumstances fund.

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au