

## From the Trustees Viewpoint

David Ward

Friday 25 February

11.00

## **Contents**

- Fundraising & Philanthropy
- Trustees Governance
- Grant Recipient Restrictions
  - for Ancillary Funds
- Beyond Compliance
- Deductible Gifts
- Mission Investing
- Questions

## Timeline Charitable Trusts in Australia

- Charitable Trusts (inter vivos and testamentary) have been around in Australia since 1880s.
- Death Duties with exemptions for charitable trusts from early 1900s to 1976.
- 1963 Public Ancillary Funds able to give tax deductible receipts for donations.
- Prescribed Private Funds (PPFs) from 2001.
- 28 September 2009 Final Guidelines - 1 October 2009 commencement of Private Ancillary Funds (PAFs) with transition period.
- Public Ancillary Funds are currently under review with new Guidelines to apply from 1 July 2011

## Symmetry of Focus

- Keynote speaker at this conference Ken Burnett is quoted in the Conference flier as saying:
  - “Fundraising isn’t about raising money. Its about inspiring people to believe they can make a difference – then helping them make it!”
- Philanthropy Australia’s Statement of Purpose includes:
  - “(Philanthropy Australia) inspires and supports new philanthropists”
- Social Ventures Australia:
  - “has established its Private Ancillary Fund Service to help Australian philanthropists appreciate not only the simplicity of this kind of giving structure, but also understand how rewarding it can be to provide the non-profit sector with the vital funding it needs.”
- Philanthropists and Fundraisers are driven by same altruistic motive, but there are some differences in focus and process.

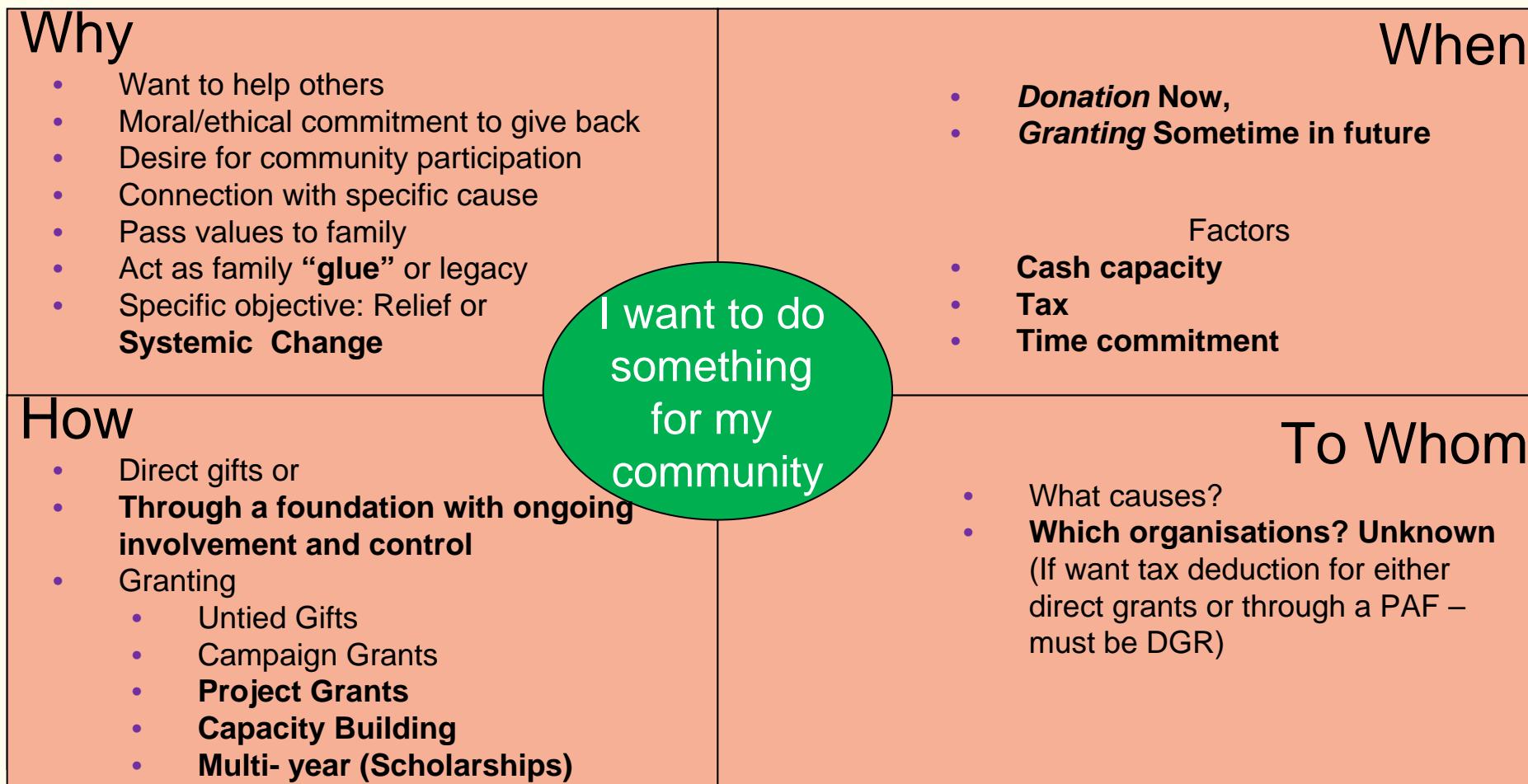
# Call to Giving



# Call to Giving – Charity preferred



# Call to Giving – Foundation preferred



# Types of Foundations

## Types

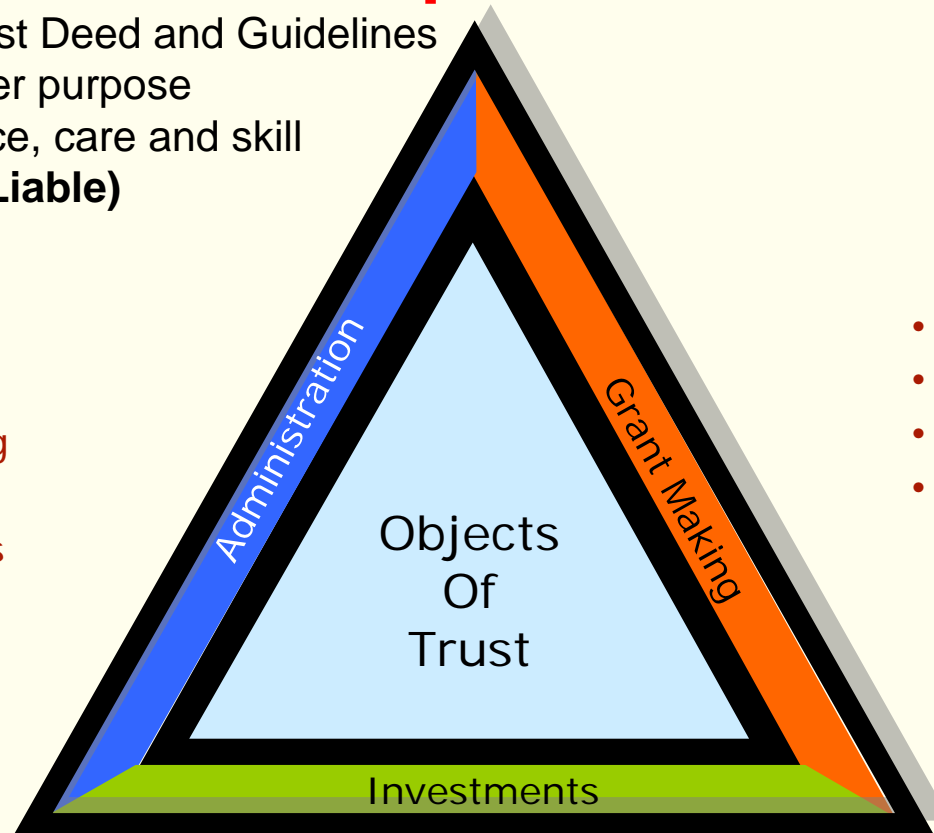
- Private Foundations
  - Individual
  - Family
- Community Foundations
- Corporate Foundations
- Government Initiated Foundations
- Trustee Company Foundations



# Trustees Governance Requirements

Comply with the Law, Trust Deed and Guidelines  
 Act with loyalty and proper purpose  
 Act prudently with diligence, care and skill  
**(Potentially Personally Liable)**

- Composition
- Activity
- Record Keeping
- Reporting
- Trustee Actions



- How much?
- For what?
- To whom?
- Was it spent?

- Maintaining and growing
- Generating distributions
- Prudent person

# Types of Foundations

## Types

- Private Foundations
  - Individual
  - Family
- Community Foundations
- Corporate Foundations
- Government Initiated Foundations
- Trustee Company Foundations

## Structures

- Testamentary Charitable Trusts
- Private Charitable Trusts
- Public Ancillary Funds
- Private Ancillary Funds (used to be Prescribed Private Funds)
- Companies

## Restrictions on Eligible Recipients

<p>Structure</p>	<p>Charitable Purpose DGR 1 &amp; TCC DGR 1 DGR 1 &amp; "charitable but for link to Govt"</p>
<p>Deed Restrictions</p>	<p>Eligible Charity (TCC) Geographic Sector Specific charity(s)</p>
<p>Policy Restrictions</p>	<p>Sector Tax Status Processes</p>

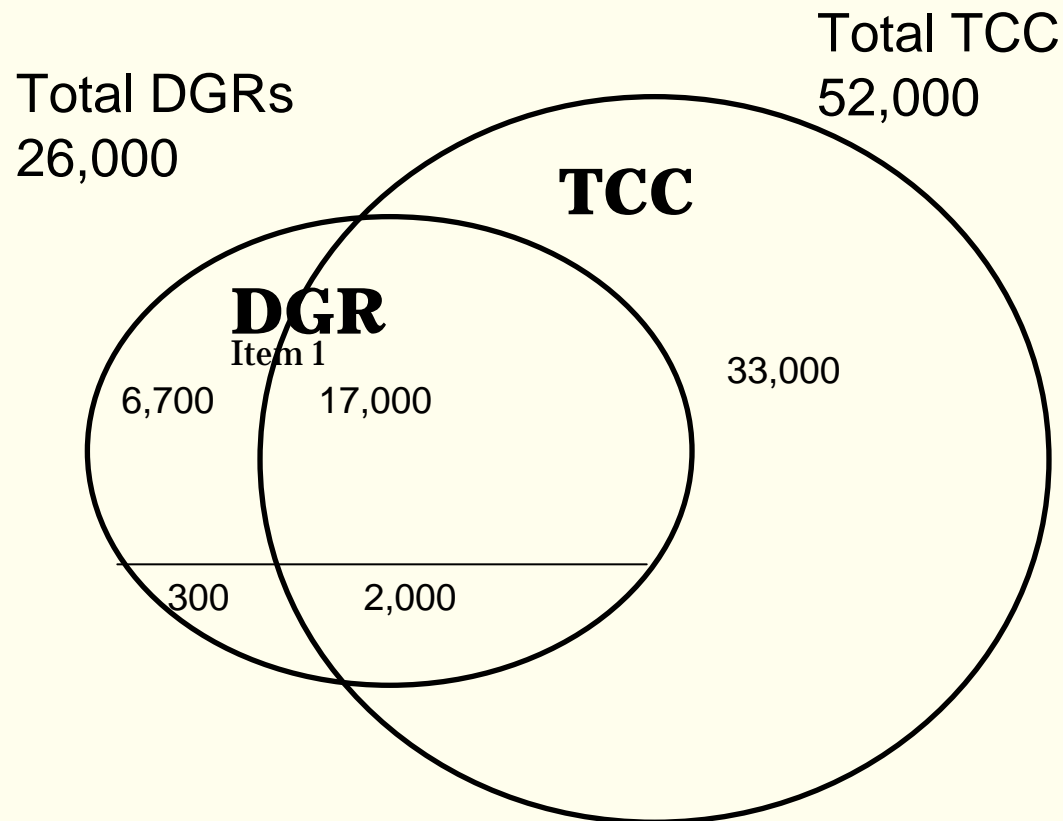
## Granting Restrictions

	Will/Private Charitable Trust
Grant Restrictions	Charitable Purpose specified in will/deed
Can support individuals	Yes unless restricted in will
Can grant to non DGR Charities	Yes
Overseas Granting	Depends on deed/will and date (pre 1997) advice
Annual Granting	>80-85% of Trust Law Income

## Granting Restrictions

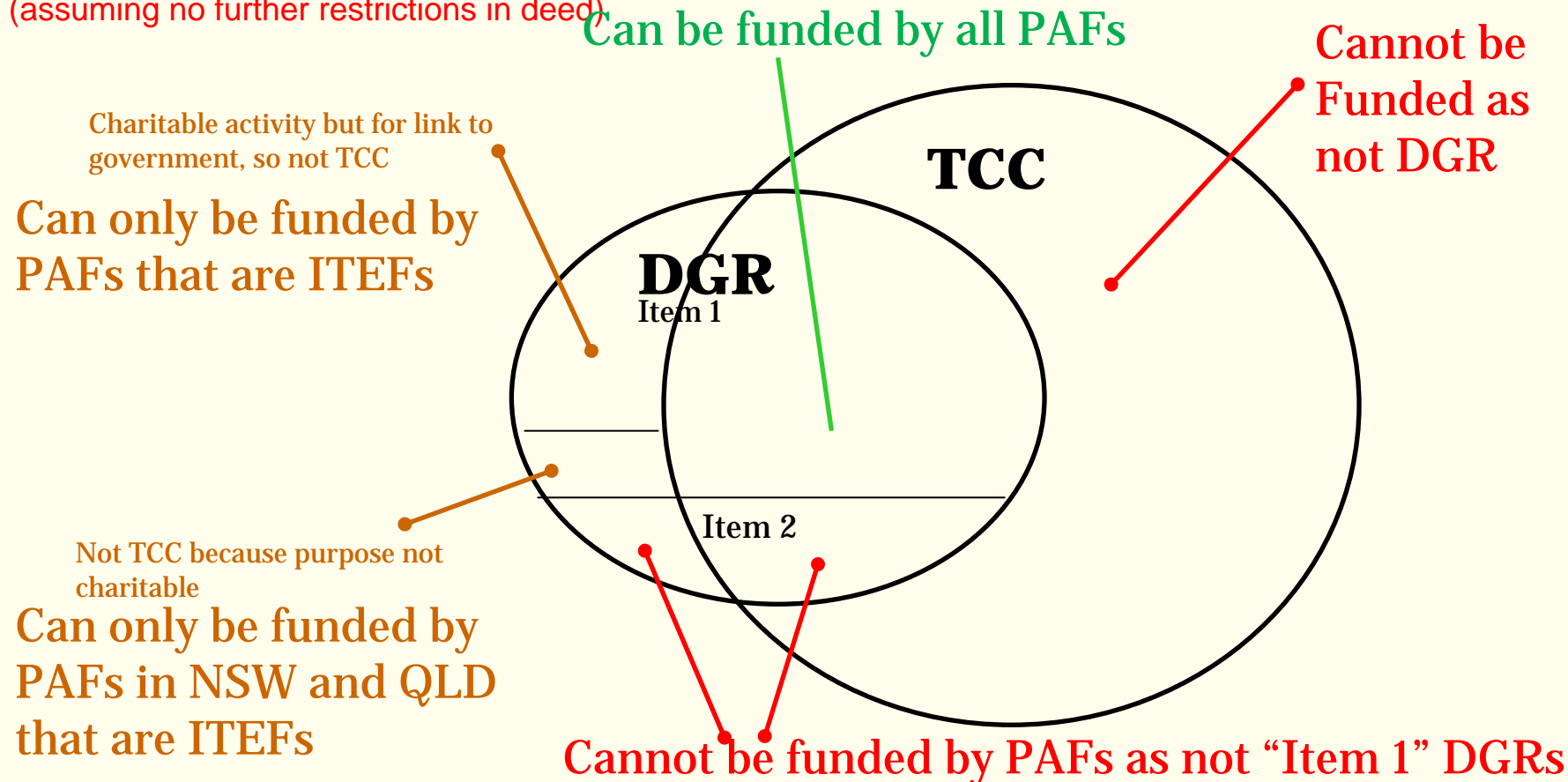
	Will/Private Charitable Trust	Public Ancillary Fund	Prescribed Private Fund	Private Ancillary Fund
Grant Restrictions	Charitable Purpose specified in will/deed	Item 1 DGRs that are charitable with TCC or if ITEF wider Item 1 DGRs	Item 1 DGRs that are charitable with TCC or if ITEF wider Item 1 DGRs	Item 1 DGRs that are charitable with TCC or if ITEF wider Item 1 DGRs
Can support individuals	Yes unless restricted in will	No	No	No
Can grant to non DGR Charities	Yes	No	No	No
Overseas Granting	Depends on deed/will and date (pre 1997) advice	DGRs on AusAid list of overseas relief funds	DGRs on AusAid list of overseas relief funds only	DGRs on AusAid list of overseas relief funds only
Annual Granting	>80-85% of Trust Law Income	>80-85% of Trust Law Income	< Target: Trust Law Income minus CPI >Target: all including capital gains after CPI adjustment plus% of donations	Minimum 5% of previous 30 June valuation – minimum distribution \$11,000

# Eligible Organisations



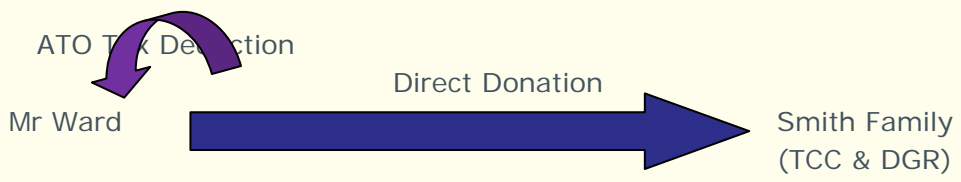
# Eligible Organisations for funding by Ancillary Funds

(assuming no further restrictions in deed)

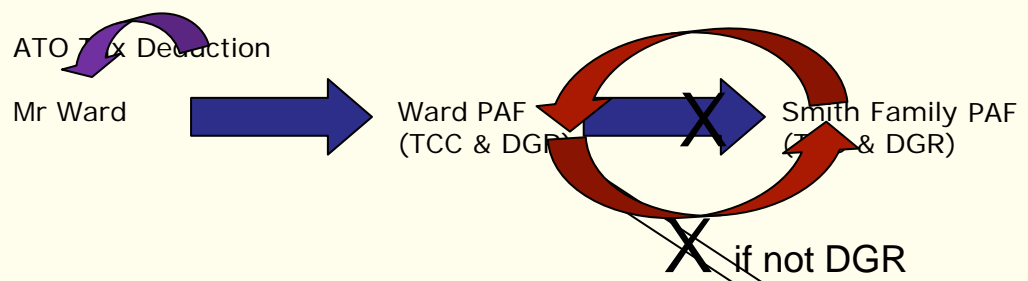


# Tax Deductibility of Donations restricts recipients for Ancillary Funds

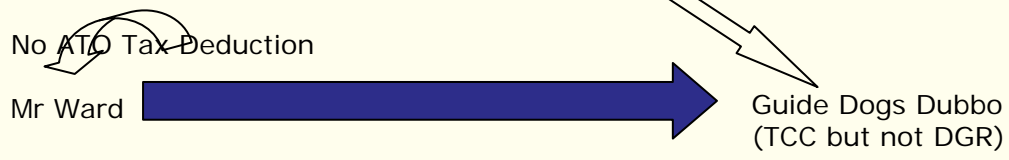
Direct Gift



Ancillary Fund



Direct Gift







## Welcome to ABN Lookup

**ABN Lookup** provides access to the publicly available information provided by businesses when they register for an Australian Business Number (ABN).

### ABN Lookup services

**Quick search** for an ABN, ACN or name:

**Note:** **Quick search** available at the top right of each page.

[Advanced search](#)  
Add extra criteria to increase the relevance of your results.

[Statistical search](#)  
Query the number of ABNs by state, active ABNs, etc.

### Super Fund Lookup services

[Super Fund Lookup](#)  
Search the publicly available information about superannuation funds.

### News and features

If you are using IE7 or Firefox 2+, install our new [browser Quick Search](#) to lookup ABN information from any web page

- #### Online services
- [business.gov.au](#)
  - [Business Consultation](#)
  - [Content Syndication](#)
  - [GovForms](#)
  - [Business Licence Information Service](#)
  - [Apply for an ABN](#)
  - [Change your ABN details](#)
  - [Apply for a Tax File Number](#)

- ABN Lookup**
- [Advanced search](#)
- [Statistical search](#)
- [Downloadable tools](#)
- [Web services](#)
- [Reductible Gift recipients](#)
- [Frequently asked questions \(FAQ\)](#)
- [Help](#)
- [Search tips](#)
- [Contact us](#)

# What we used to see pre 2010

- Recipients
- Frequently asked questions (FAQ)
- Help
- Search tips
- Contact us
- Super Fund Lookup

ABN: **28 000 030 179**  
[View ABN history](#)  
 Replaces: **12 191 833 275**  
 Last modified: **09 Mar 2007**  
 ABN status: **Active from 01 Nov 1999**  
 Entity name: **THE SMITH FAMILY**  
 Entity type: [Australian Public Company](#)

Main business location  
 State: **NSW**  
 Postcode: **2000**

Trading name(s)  
 THE SMITH FAMILY

Other registrations  
 GST status: **Effective from 01 Jul 2000**

Tax Concession status: **THE SMITH FAMILY**, a [Public Benevolent Institution](#), is endorsed to access the following [tax concessions](#):

Tax concession	From
GST Concession	01 Jul 2005
FBT Exemption	01 Jul 2005
Income Tax Exemption	01 Jul 2000

Deductible Gift Recipient: **THE SMITH FAMILY** operates the following Funds, Authorities or Institutions. Gifts to these Funds, Authorities or Institutions may be deductible:

Name	From
THE SMITH FAMILY	01 Jul 2000

**Important.** Please read [Deductible Gift Recipient \(DGR\)](#) information before making a gift.

ACN or ARBN: **000030179**  
[Search ASIC](#)

## What we see now

ABN: **28 000 030 179**  
[View ABN history](#)  
 Replaces: **12 191 833 275**  
 Last modified: **02 Nov 2009**  
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Tax concession	From
GST Concession	01 Jul 2005
FBT Exemption	01 Jul 2005
Income Tax Exemption	01 Jul 2000

Deductible Gift Recipient: **THE SMITH FAMILY** operates the following funds, authorities or institutions. Gifts to these funds, authorities deductible.

Name	<a href="#">DGR Item</a>	From
THE SMITH FAMILY	Item 1	01 Jul 2000

## What we see now

ABN: **42 196 844 275**

[View ABN history](#)

Last modified: **03 Nov 2009**

ABN status: **Active from 09 May 2008**

Entity name: **The trustee for Joy Smith Family Foundation**

Entity type: [Discretionary Investment Trust](#)

GST status: **Not currently registered for GST**

### Main business location

State: **VIC**

Postcode: **3150**

### Trading name(s)

Joy Smith Family Foundation

### Other registrations

Tax Concession status: **The trustee for Joy Smith Family Foundation**, a [Income Tax Exempt Fund](#), is endorsed to access the following [tax concessions](#):

Tax concession	From
Income Tax Exemption	26 Jun 2008

Deductible Gift Recipient: **The trustee for Joy Smith Family Foundation** is endorsed as a Deductible Gift Recipient from **01 Oct 2009**. This entity is a [private ancillary fund](#) covered by [item 2](#) of the table in section 30-15 of the *Income Tax Assessment Act 1997*.

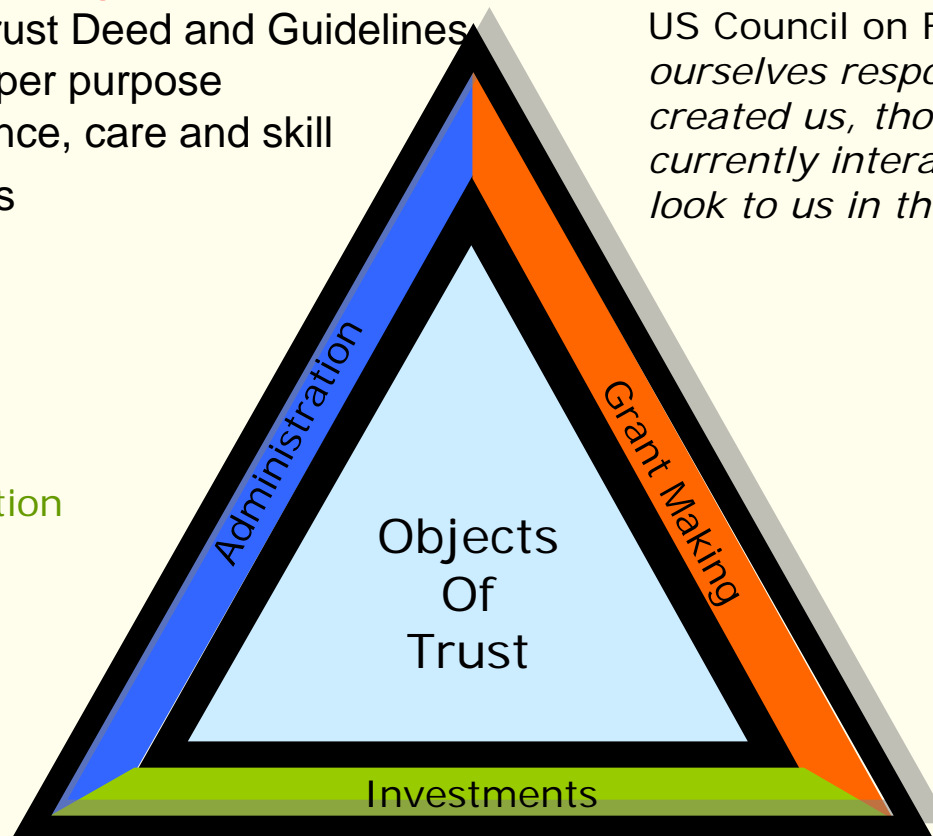
**Important:** Please read [Deductible Gift Recipient \(DGR\)](#) information before making a gift.

# Governance: Beyond Compliance

Comply with the Law, Trust Deed and Guidelines  
 Act with loyalty and proper purpose  
 Act prudently with diligence, care and skill  
 Respect all Stakeholders  
 Review

US Council on Foundations: *"We hold ourselves responsible to those who created us, those with whom we currently interact and those who may look to us in the future".*

- Transparency
- Policy Documentation
- Periodic review



- Process
- Strategy
- Evaluation
- Co-ordination
- Value adding

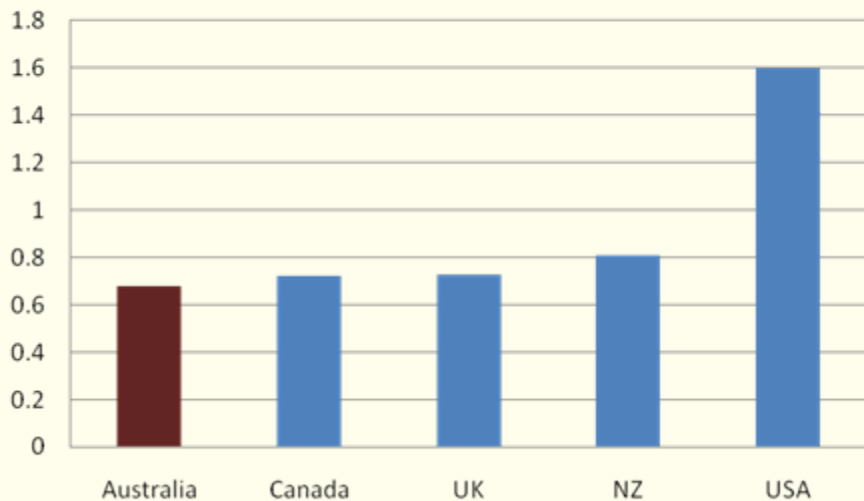
- Refine Investment Strategy
- Analysis of Risk
- Benchmarking Performance

# Stakeholder Management is Important for Trustees: Reporting is central to effectiveness.

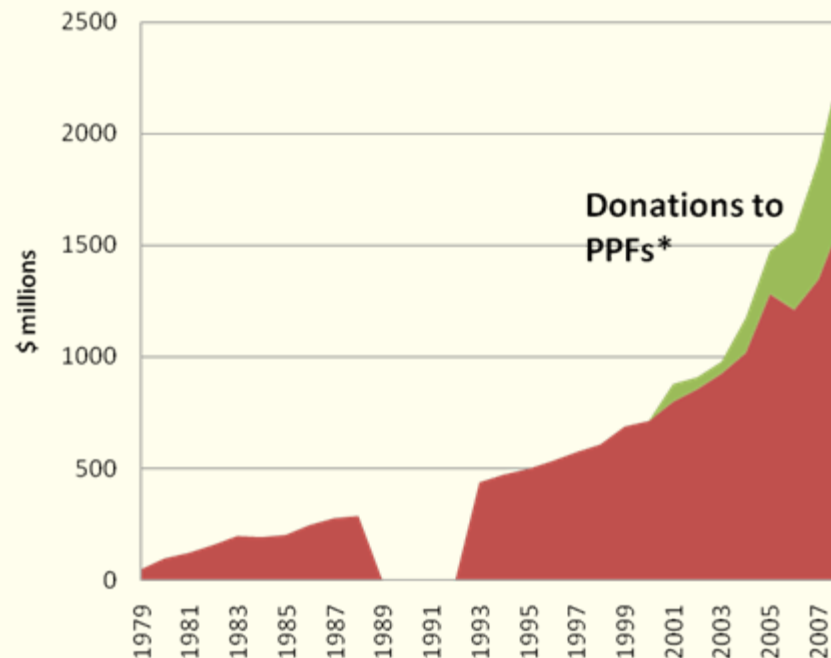
Set Up	Application
Inputs	Receipt of grant Acquittal on project
Outputs	What was result of the project
Outcomes	Was it specifically effective in addressing the problem
Impact	Did others learn from it (Ripple effect)

# Deductible Giving

Giving as % of GDP

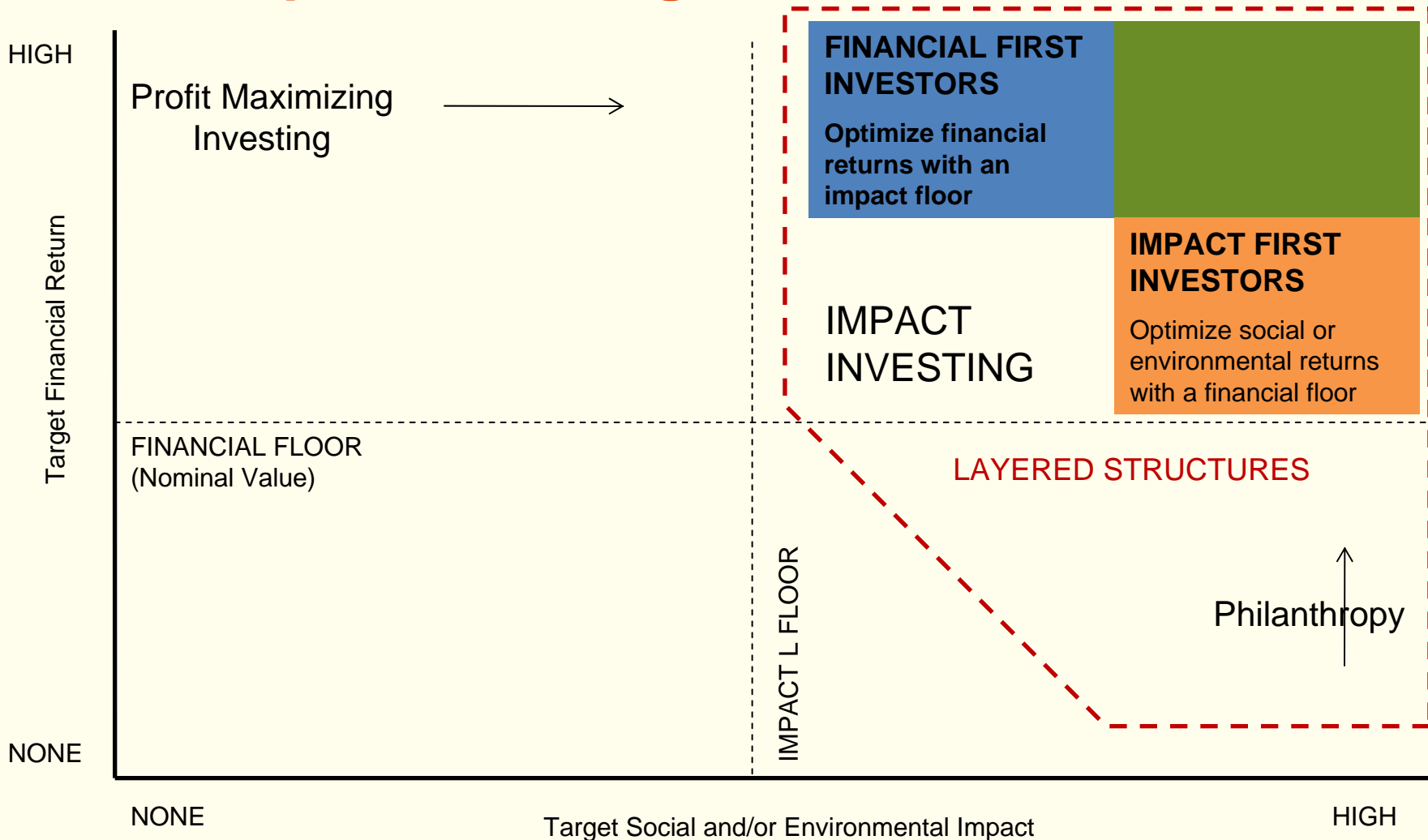


Total Australian Tax Deductible Donations



\*Overlay includes Company donations so overstates personal donations to PPFs

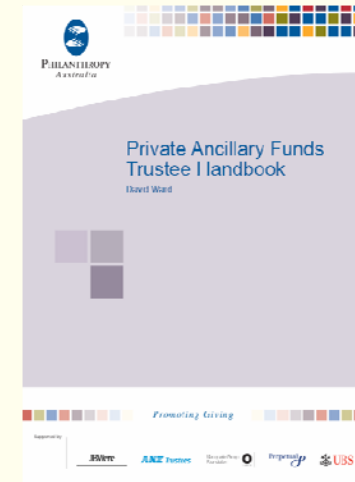
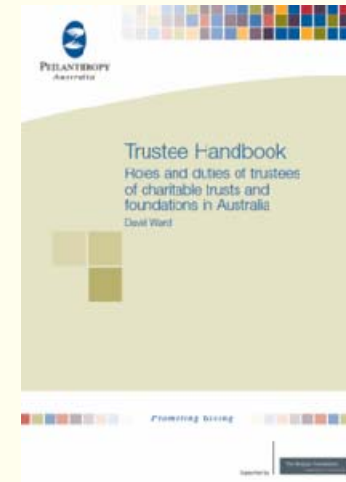
# Social Impact Investing Framework





# Reference Material

- Philanthropy Australia.
- ATO Prescribed Private Funds
- SVA
- *Watch Public Ancillary Fund & NFP Regulation Reviews closely*



## Key Messages

- Philanthropists have rules they must comply with. Fundraisers need to understand these constraints.
- We are all working for a better community and to help individuals make a difference.
- Funding of PPF/PAFs has added to pool of community funds not displaced other gifts.
- Donations to foundations are irrevocable gifts to the community sector - Foundations Future Funds of NFP Sector.
- Controlled by a range of individuals; pluralism. You would not want all funding controlled by government.
- Any Questions?

## Disclaimer

Material can used with full attribution for the purpose of philanthropic education but not for commercial benefit.

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All statements in the document are based on the author's interpretation of the laws applicable to charitable foundations as at the date of this document. The laws regulating charitable foundations are complex. While some of the legal requirements are mentioned in this presentation, only a very brief summary has been included and accordingly such information may not be comprehensive, complete or up-to-date and should therefore not be relied upon. Some statements in the presentation are subject to legal uncertainty. It is intended only as a guide to some of the main requirements. February 2011.

*David Ward*

*Director*

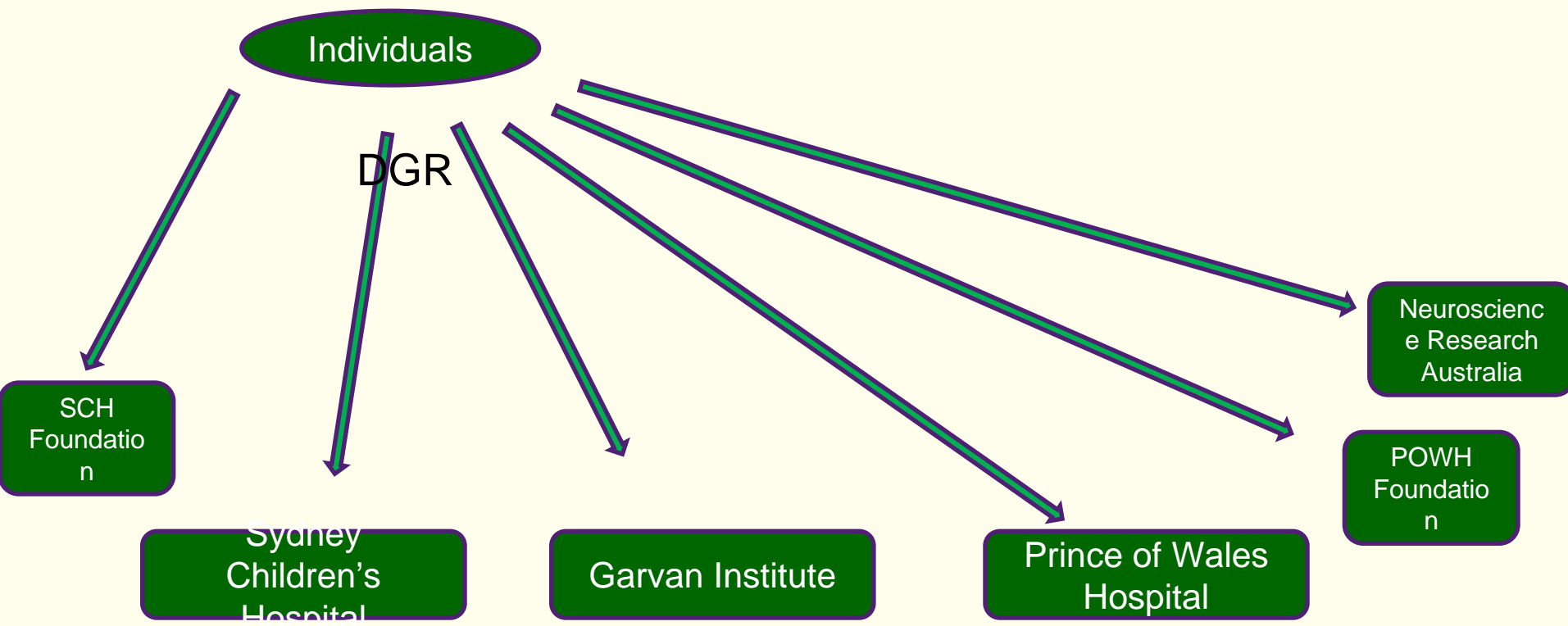
*Te Anau Consulting*

*David.ward1@optusnet.com.au*

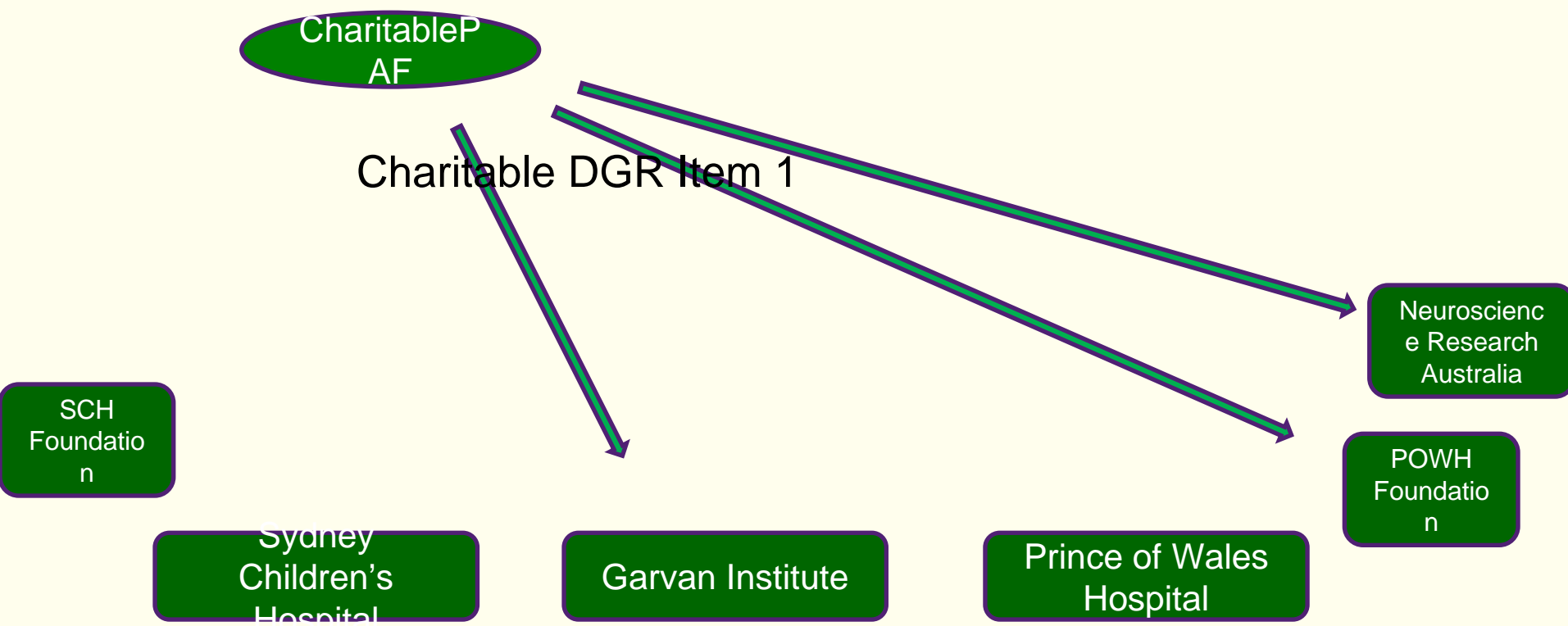
Speaker gifts are proudly supported by



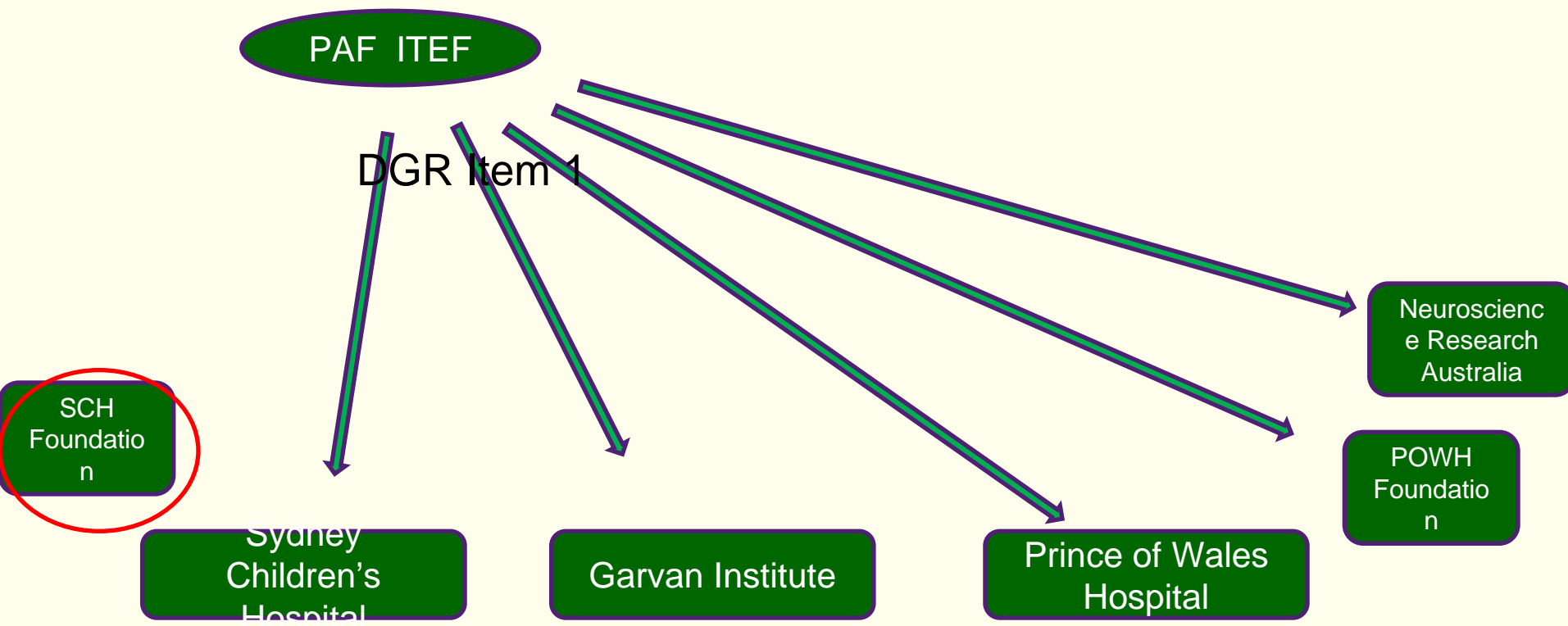
# The giving process: Individuals



# The giving process: Charitable PAFs



# The giving process: ITEF PAFs



# Structure determines Governance Responsibilities

	Will/Private Charitable Trust	Public Ancillary Fund	Prescribed Private Fund	Private Ancillary Fund
State Trustee Act Applies	Yes	Yes	Yes	Yes (part in Guidelines)
Gifts to Tax Deductible	No	Yes	Yes	Yes
Income Tax Exempt	Yes	Yes	Yes	Yes
Responsible Persons	No requirement	Majority RPs	One Independent RP Trustee/Director	One Independent active RP Director.
Audited Accounts	Depends on Will/ Deed	Yes (in practice)	Yes	Yes and of Guidelines
ATO Reporting	No	No	Yes	Yes
Target Size	No	No	Yes	No
Fundraising	No	Yes	Not primary source of funds	No soliciting from public
Penalties	Restitution	Restitution	De-prescribing	Financial penalties & potential Trustee removal ; restitution
Prudent Person	Yes	Yes	Yes	Yes; some investment restrictions
Investment Reviews	Annual	Annual	Annual	Annual and Investment Strategy
Grant Restrictions	Charitable Purpose specified in will/deed	Item 1 DGRs that are charitable* with TCC	Item 1 DGRs that are charitable* with TCC	Item 1 DGRs that are charitable* with TCC
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\*Post 2005 Private & Public Ancillary Funds can become ITEFs and grant to some organisations which are DGR Item 1but not TCC; rules vary between states.



# INSPIRED

FIA's 34<sup>th</sup> International Fundraising Conference  
 MELBOURNE CONVENTION & EXHIBITION CENTRE  
 24 - 27 February 2011



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