Bibbulmun Track Foundation Rules 2025 proposed amendments: Gift Fund, Winding Up & Objects

The following amendments are proposed to bring our rules into alignment with our activities, strategy, and other organisations doing similar work to BTF, and to prepare the Foundation for endorsement as a Charity and Deductible Gift Recipient ('DGR').

In order to be eligible for registration as a charity and DGR endorsed entity, the BTF rules must include provision for a **Gift Fund** into which tax deductible donations are received. The rules must also require that, should the Foundation be **wound up or lose its charitable status** (once obtained), the Foundation's property and assets be distributed to another charity with a similar purpose. Together, these provisions help ensure that when people donate to charities, they can rest assured that their money will be applied towards the cause as intended.

The suggested rule changes outlined in parts (1) and (2) below implement these requirements, bringing BTF into line with the expectations for registered charities and DGR endorsed entities.

The proposed change to Rule 4, outlined in part (3) simplifies and clarifies the Foundation's purpose (the protection and enhancement of the natural environment of the Bibbulmun Track), and the means through which we achieve that purpose (primarily, but not exclusively, through the maintenance of the Track and its infrastructure). This drafting of our objects clause brings us into alignment with best practice for other similar charities with DGR endorsement.

1. Establishment of a Gift Fund - new rule 40B in Part 7

It is proposed that the following rule 40B be inserted after the current Rule 40, to establish a separate Gift Fund, which is a form of financial instrument and management required for endorsement as a DGR1 entity. Note that the rule will only apply if the Foundation receives DGR endorsement:

40B Gift Fund

(a) The Foundation must, if required under the Tax Act for the purpose of the Foundation's Deductible Gift Recipient endorsement, establish and maintain, for the purposes of the Foundation, a separate Gift Fund:

i. to which gifts of money, property or other contributions for those purposes must be made;
ii. to which any money or other contributions received by the Foundation because of those gifts must be credited; and
iii. that does not receive any other money, property or contributions.

(b) If a Gift Fund is established, it will not be used for the purposes of profit or gain to the Members of the Foundation and the gifts made to the Gift Fund and any money or other contributions received because of those gifts will be applied solely towards the promotion of the purposes of the Foundation and no portion of the Gift Fund shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit to the Members of the Foundation.

(c) The Foundation may maintain a separate bank account for the Gift Fund and will comply with subdivision 30-BA of the Tax Act with respect to the administration of the Gift Fund.

(d) In accordance with the Tax Act, receipts issued for gifts or other contributions must state:

i. the name of the Foundation and Gift Fund;
ii. the ABN of the Foundation and Gift Fund; and
iii. the fact that the receipt is for a gift or contribution.

(e) Rules 6(a) to 6(d) (both inclusive) apply only if the Foundation is required to establish a Gift Fund by the Tax Act or if determined by the Board.

NOTES

- Primarily sourced from Birrarung Valley Walk's governing docs – see Clontarf Hill for alternative
- 'Tax Act' to be defined in (ITAA 1997) in Part 1 rule 2 Interpretation

2. Amendment to the Winding Up clause – rule 5 and new rule 5A in Part 2

It is proposed that the current rules 5(2) and 5(2A) be combined into a single rule 5(2) to simplify the current rule and more explicitly confirm the Foundation's non-profit status and operations:

(2) None of the Foundation's property or income is to be paid or otherwise distributed, directly or indirectly, to members, former members or non-member, except in good faith and in the promotion of the Foundation's objects, and where the payment is; —

(a) reasonable remuneration for services provided to the Foundation, or for goods supplied to the Foundation, in the ordinary course of business; or

(b) the reimbursement of reasonable expenses properly incurred by the member on behalf of the Foundation; or

(c) interest, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia, on money borrowed by the Foundation from the member; or

(d) reasonable rent for premises leased by the Foundation from the member; or

(e) any other such payment reasonably made to a member, former member or non-member in carrying out the Foundation's charitable purpose; or

(f) a payment made under rule 5A.

It is proposed that the following rule 5A be inserted after rule 5, governing what happens if the foundation is Wound Up after charitable status is granted, or if charitable status is revoked. Note that 5A is functionally a replica of the current 5(3) and continues to apply if the Foundation is wound up or its

incorporation is cancelled when it is not a charity. Note that the novel component of the rule – 5A(2) and 5A(3) - will only apply if the Foundation receive obtains charitable status:

5A Winding Up

(1) If the Foundation is wound up or its incorporation is cancelled while it is not a charity within the meaning of the *Income Tax Assessment Act 1997*, its property, after the payment of any debts, must be paid or distributed in accordance with the associations law to one or more persons who will use it in accordance with the objects of the Foundation or for a similar purpose or purposes, or for purposes within the spirit of the Foundation's objects, giving preference, to the extent reasonably practicable, to the protection, enhancement, improvement, maintenance, management or promotion of the Track, its natural environment, or public walking trails in Western Australia.

(2) If the Foundation is a charity within the meaning of the *Income Tax Assessment Act 1997* when it is wound up or its incorporation is cancelled, or if it obtains deductible gift recipient endorsement and its endorsement is subsequently revoked, its property, after the payment of any debts, must be paid or transferred to one or more charities that–

(a) are deductible gift recipients within the meaning of the Income Tax Assessment Act 1997 (Cth); and

(b) have a charitable purpose or purposes similar to the Foundation's objects; and

(c) which also prohibit the distribution of any profits and surplus assets to its members to at least the same extent as the Foundation.

(3) If rule 5A(2) applies, the decision as to the charity or charities to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the Foundation may apply to the Supreme Court to make this decision.

(4) Rules 5(1), 5(2) and 5(3) do not apply to items which are of no financial value, such as historical records of the Foundation and the personal information of members and former members.

3. Clarification and simplification of the Objects of the Foundation – rule 4 in Part 2

It is proposed that Rule 4, which outlines the Object of the Foundation, be amended as follows:

(1) The Foundation's principal object is the protection and enhancement of the natural environment of the Track and the land through which it passes, including its flora, fauna, ecosystems and natural landscapes.

(2) The primary means by which the Foundation pursues this object is through the maintenance, promotion and protection of the Track for the use and benefit of the Public.

(3) Other means by which the Foundation may advance and pursue its object include (without limitation), the following:

a. working with and helping the Department to protect, restore and manage the natural environment of the Track and the land through which it passes, including by maintaining the Track itself so as to prevent erosion, degradation and disturbance of that natural environment and to promote sustainable use by the Public;
b. recruiting, training and coordinating volunteers to undertake environmental protection, restoration and educational work along the Track, and to undertake ancillary and supporting functions;
c. providing, and helping other organisations and groups provide, information, interpretation, education and research about the natural environment of the Track and the land through which it passes,
d. encouraging members of the public to use the Track in a manner that fosters appreciation of, and minimises impact on, its natural environment, and
e. providing services and facilities for people using the Track that are consistent with, and support the protection of, its natural environment.

(4) To help the Foundation pursue its object, it may, for reward, provide services or undertake activities that are in alignment with its object, including but not limited to:
a. providing education and training in matters to do with the building and maintenance of tracks and trails, used by walkers or others, to people who are not members of or volunteers with the Foundation or who are not associated with the Track; and
b. conducting research and assisting other organisations to conduct research into human and cultural use of the Track and surrounding natural environment; and
c. seeking funding from and developing partnerships with government and non-government entities, including private businesses and individuals, and organising fundraising activities.