SUBMISSION

INTRODUCTION

The Berg Family Foundation was established in 2002 with a view to being a perpetual foundation supporting a range of community causes. To date approximately $7.0 million has been contributed to the capital account of the Foundation with an original objective of reaching $20 million.

Following an agreement with Treasury on the establishment of the Foundation, 5% of capital contributions were distributed as grants to qualifying DGRs together with income earned on the capital, allowing for the real capital value of the Foundation to be maintained. Last year (2007-2008) approximately $700,000 was distributed.

Organisations supported by such grants have included the Black Dog Institute (to fund awareness of and assistance for depression in regional areas), Musica Viva Australia (to fund the presentation of classical music in Australia and, in particular, the inauguration of a Festival involving master classes and performances for musicians in the Australian Youth Orchestra) and various Indigenous causes seeking to redress disadvantage for Indigenous people in regional Australia and remote areas.

Our family would not have established a PPF under the rules suggested in the Treasury discussion paper and moreover, if implemented, we are likely not to contribute capital to reach our targeted capital amount.

The reasons for this are discussed in the following sections in accordance with the proposed amendments relating to the principles outlined in the discussion paper.

1a. Required Distributions

The intention of most of those setting up a PPF was that charitable distributions would continue in perpetuity just as the famous Foundations (such as the Ford Foundation) do overseas.

The effect of the 15% distribution proposal (as acknowledged in the discussion paper) is to run down a fund which doesn't continue to receive capital contributions. This destroys the very reason many have established such funds.

We propose there be no changes to the current accumulation and distributin rules as outlined in Appendix B of the Discussion Paper.

One advantage of this proposal is that distributions made by PPFs to the philanthropic sector will be sustainable over a longer period of time, giving more predictability about distributions giving more certainty and budgeting

confidence to recipient organisations. Currently, our Foundation does make multi year forward commitments.

1.b Regular Valuation of Assets at market Rates
We agree that assets should be valued at market rates each year.

However, as noted above, unrealised gains (which might arise from illiquid investments) should not be included in income which must be distributed in accordance with current rules..

1c. Minimum PPF Size
We believe that one should not set a minimum PPF size. A small fund can grow over years and a donor may envisage nominating a PPF as a beneficiary of a Will. Trustees of PPFs will have a natural incentive to keep administrative costs to a minimum.

1d. Increased Public Accountability
We agree that it is important for PPFs to have public accountability and to have an ABN number.

However private contact details would lead to a large number of uninvited applications which would be expensive the administer and increase administration with little improvement in the effectiveness of PPFs.

2a. Give the ATO Greater Regulatory Powers
We object to the ATO being responsible for PPFs. The ATO has a natural conflict of interest as it seeks to maximise tax revenue and minimise tax deductions. We fear that giving the ATO greater regulatory powers will lead to excessive delays, bureaucracy and excessive scrutiny.

For example, people often establish a PPF following the receipt of a windfall profit. If the ATO were to delay the establishment of a PPF under these circumstances, the windfall profit recipient may lose the window of opportunity to establish the fund.

We also do not believe it is appropriate for PPFs to necessarily have a Corporate Trustee. This should be left to the discretion of those establishing a PPF who may wish to avoid the extra cost and possible bureaucracy that comes with a Corporate Trustee.

2b. Introduce Fit and Proper Person Test for Trustees
Fit and proper person tests similar to those applying to registrable superannuation entities are appropriate.

However, those tests applying to Tax Agents may require qualifications more specific than those that should apply to Trustees of a PPF.

2c. Move Relevant Provisions from Model Trust Deed into the Guidelines
No issues.

<u>3a. Limit the Number of PPF Donors</u>
No issues.

<u>4a. Restrict PPF Investments to only Liquid Assets</u>
This recommendation is unduly restrictive. This would mean that a PPF could not invest in alternative assets such as private equity or property or other unlisted investments which might have fixed redemption dates. This means that PPFs would not have the investment flexibility of superannuation funds.

It may be appropriate that certain investments be prohibited where likely abuses could occur. This might include art, residential property, motor vehicles and loans to associates.

CONCLUSION

By and large the current rules have worked very well to provide a private philanthropic base to charities in Australia. The great majority of PPFs are well run and do not engage in any form of abuse.

The major proposals in the Discussion Paper seem to act as a sledgehammer to limit the growth in size of PPFs and to deal with the small proportion of abuses that occur. In doing so, this would curtail the growth of PPFs and in our view would legislate for their decline. It certainly would do so in our case. We cannot imagine that many others would establish new PPFs under the accumulation and distribution regime proposed in the Discussion Paper.

Furthermore, other proposals such as "Minimum PPF Size" and "restricting Investment to only liquid assets" would further hamstring most PPFs.