The Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
Parkes
ACT 2600

Brian R Page
PO Box 157
7 Wyatt Street
Mount Gambier
SA 5290

December 10, 2010

RE Discussion Paper, "Improving the integrity of public ancillary funds", November 2010.
Submission from Brian Page.

Dear Sir or Madam

I have looked carefully at the discussion paper and my comments are provided in this letter. Thank you for the opportunity to make a submission in regard to this important matter.

My first summary comments.

As a first observation, I do have concerns about aspects of the discussion paper and perhaps, the silo mentality of Government, and I note the formation by the Federal Government of a new "Office for the Non-profit Sector" with the Minister for Social Inclusion, the Hon Senator Pilbersek MP to oversee this.

Charities, Community Foundations (often associated with or using Pubic Ancillary Funds) and other core non-Profit bodies (many are not DGR's but have charitable status and income tax free status) are central to social inclusion. These bring massive charitable and philanthropic support towards social inclusion, at the core of which, is the crippling socio-economic situation facing so many Australians and becoming more so in regions.

There are many Australians more than willing by their personal charity and commitment, and support in money, time and volunteer work, to participate towards social inclusion in a co-ordinated way.

But from my observations and long experience in community work, local government, regional bodies such as the area consultative committee, and by attending philanthropic conferences, I have come to a clear view. This is that compared to tax treatment in civilised and enlightened countries like the USA, Canada and UK etc, the Australian Tax situation overall is too complicated, too restrictive and does not encourage to the same extent, the sustained philanthropic giving as in the USA or Canada etc.

There must be a whole of government approach to this matter and this sector. I am worried that the ATO review is in isolation of the whole sector. I also feel that the correct process is for an intense evaluation of the whole sector through consultation. I know organisations like Philanthropy Australia and ACOSS are involved in a central way. There have been calls for a Charities Commission.

There have been calls for the definitions of what is charitable to be amended to today's reality rather than definitions based in the UK of perhaps the 18th century.

There are inconsistencies between State laws and regulations for Charities and Non-Profits and Licensing. It seems inappropriate in SA that Charities Licenses are in the same administration as Hotel and Poker Machine and Raffle licensing when alcohol and gambling create so much pain in communities with my home town being one with a very high level of poker machine victims.

And indeed in SA, there is effort to clean up the Charities sector addressing major problems.

I am also concerned about regions, and isolated communities under assault by the removal of services like hospitals and one or two teacher schools and other services all being relocated often to capital cities. It seems Federal and State Governments are ignoring the plight of our communities and citizens whose social-economic situation declines.

I am concerned that aspects of this review, and the entrenchment of some aspects of the current ATO practices, and that some recommendations of the review, may further institutionalise the plight of these communities. I am fearful of many unintended or unrecognised consequences of this review or acceptance of parts of it.

I am also concerned that for many capital invested Funds, where donors have donated on the basis that their funds will be invested in perpetuity, will cause trustee problems in observing the major tenet of trustee and charities law, that any donation must be used for the purpose for which it was intended. Donors who have given in the past expect trustees to protect their donation in perpetuity.

I am also concerned that the discussion paper and its authors just do not understand how a capital invested fund actually works and that by investment growth, is a far superior concept to the simple 'flow through donation', 'spend it now approach' and the long term view and strategies that such Funds bring to social inclusion, alleviating poverty and particularly an important aspect, one of many, to educational support to the disadvantaged so that many citizens can be assisted in a holistic way, to their rights to a good education.

For instance, participants in university education and the attaining of educational entry level qualifications in regions are significantly below capital cities. The philanthropic sector is already bringing support to this problem in our region for which we are eternally grateful, and very importantly, many tested and proven programs with good outcomes.

The examples of help from some of Australia's greatest Foundations proves to my regional community that regions do need local charitable and philanthropic structures to enable their communities to put their shoulder resolutely to these endemic, long-term problems.

I am not sure that this ATO review addresses this reality and by its silo mentality and not as part of a whole of government approach, and the suggested recommendations and the impetus of the discussion paper, seems to not be at all supportive to a whole of region approach and the problems of regions.

I also think there is puts a totally unwarranted faith in the doing DGR's. Many of are neither represented in regions, or if so, are limited to bigger towns only. Many of their services in regions lack capacity. Many have a singular or limited focus and role and thus do not address the whole gamut of need in regions. Many Churches for instance have closed in small communities taking away pastoral care and access to their specific doing DGR thus continuing the losses of DGR's in regions.

And even worse, many doing DGR's are capital city based that market into regions but provide no services at all to their donors and all they do is clip a donation. This misguided giving removes of millions of dollars from regions to capital city charities. This strikes hard at the financial capacity of regions to help themselves.

At the core of this are massive marketing costs which absorbs much of the donation or the cost of a ticket in many large raffles etc. Many charities have high marketing and administration costs which take from funds reaching the ground and the actual services to the needy. Many duplicate each other and compete for public donations yet provide similar services adding to the inefficiency of the sector.

The Business Review Weekly for instance, has published quite critical Surveys of the sector. Many charities are subject to critical review in various states and State Government Charities Licensing and other reviews, and in many cases severe public condemnation.

Yet the Review proposes to maintain that Public Ancillary Funds must continue to pass their donations or gifts to doing DGR's, so often found wanting, totally opaque in regards to administration and other costs, totally bureaucratic with high benefits to staff and many very inefficient. And as I have said, in many cases just do not deliver.

The Review seems to by its silo approach does not seem to consider the veracity of the doing DGR's and how they may fail to have desired impact and outcomes in regions. As they say, "Charity begins at Home." The good but few Charities active my region, such as the Salvation Army, Lifeline, Church Care bodies, and few local community bodies such as community owned Aged care facilities with doing DGR Status, etc are of course not included in any basic criticisms.

I go the Youth Network Meetings of sometimes about 30 people all working with disadvantaged youth. The Charity that I am involved with is one of a few that attends. Most attendees are agencies, education, police, and many of these bodies might be doing DGR's except that they are government run. These are the bodies with expertise and structure putting in the hard work at the coal face of need and it is obvious that being able to direct PAF Funds to such non-DGR bodies, to support programs, to work on early intervention instead of crisis intervention and to try and get people out of the welfare traps and spiral. Service Clubs in regions also do what is clearly charitable work and why cannot they be supported by PAF donations or grants?

The fact is, regions need more doing regional DGR's and I emphasise the point, that the special case of Community Foundations and associated PAF's should be given doing DGR status to add an efficient charitable force for good. Community Foundations have other functions such as building stronger communities, building regional capacity, linking donors to real need, community surveys and appraisals of need, giving local leadership and perhaps becoming the regional community services and charitable body in the absence of any other body to do this.

Some corporate charitable body is needed in regions to set regional priorities based on intimate knowledge on the ground of their community. This needs to co-operate with the three levels of government as a partner and supporter and one could go on and on in regard to the role of harnessing the charitable and Non-Profit sector and the bringing together DGR's and Non DGR charities and NFP's.

With the unfortunate removal of Area Consultative Committees in regions, administering a highly successful Regional Partnership Grants program and community support in this region, another level of community support from the Federal Government has been removed. In effect, Community Foundations seem to have a destiny o=n regions as taking over what ACC's used to do. The role of Community Foundations is my view, fundamental to regions, and these other roles of these apart from driving philanthropy, but also driving its focus, driving real outcomes, driving community discussion and solutions, and keeping it local.

I also have another worry that many PAF's or similar bodies, that may be affected by the outcomes of this discussion paper are nor at all aware of it. Members of Philanthropy Australia or the network of Community Foundations or other networks may have become aware, mainly from these third party sources. But I have asked a couple of small PAF's if they were aware of the review who knew nothing. There may be many, many PAF's and similar bodies who know nothing of this. I do not know what process was taken to publicise this, or if a letter and full details actually went to such bodies. The consultation may lack from this and also the very short time frame in which to respond.

Please forgive me for belabouring the issue but I just want to try and put a realistic picture of the reality in regions, and that this discussion paper and consultation do look at the bigger picture. I try to make sure that the ATO is not restricted to its silo. Any decisions must be based on the better good and improving the system, not clogging it up with unwanted legal or other limitations nor measures that just add to additional trustee and legal costs which costs do not assist the m=needy in our community not one iota.

Section 1, Improving the integrity of Public Ancillary Funds.

These are generally motherhood statements and principles.

We all accept that tax concessions are a fact, as they are with all charitable bodies. The Principle 1 page 4 hits the nut on the head, with the statement of rationale about the more efficient allocation of charitable funds than if the government had alternatively, not allowed the tax concessions and given the money directly to charities.

I also add that in my opinion, that any process of direct funding to the major doing charities might further institutionalise charities, might limit the number of charities and thus the scope of these, and in particular, in regions, limit charities perhaps to large national charities driving bureaucratic institutions beset by the problems alluded to in my comments above and later. There are of course national charities and other bodies that do receive by way of grants or other support, do receive significant federal funding and I would surmise that members of ACOSS are these.

I have heard addresses by ACOSS and my view is that often their approach is to urge more and more funds to be allocated to large, national charities, that this funding drives a huge bureaucracy that is itself dependant on welfare, and most of these charities are acting in crisis intervention which is too late and the damage is done and the costs of alleviation so high. They seem unable to address early intervention, and, charitable sectors addressing this issue are needed. Australia's great Foundations, the growing army of Community Foundations and increased philanthropic effort and funding have a serious and needed and fundamental role in early intervention to address welfare dependency and reduce it.

Section 2, Proposed Amendments to the Principles.

I find one principle, proposed in various sections eg **clauses 26** 'should not be prolonged accumulators of funds', **27** 'unless there is a specific reason for accumulation', **28** 'are likened to a conduit or temporary repository for moneys' and 'a public ancillary fund cannot accumulate gifts without jeopardising their entitlement to DGR endorsement', **29** 'excessive accumulation of investment income is not applying of a fund for its purposes' 'in practice, the ATO has allowed …. funds… to accumulate a CPI based amount of income to maintain the real value of their capital base' and talks of exceptional circumstances and' it is expected that the guidelines will provide the sector with additional clarity on this issue', at this time, in my view does not indicate clarity but rather more confusion

More disturbing is **section 32** which sets higher rates of distribution on Public AF's than Private AF's. Why? There is no logic. The setting of higher levels of corporate governance such as disclosure and community reporting could be the only differences between the Private and Public AF's. In fact, Public AF's being public do this naturally as required by their public, or it is the case certainly with community foundations. To be able to distribute more income seems to infer that Public AF's have some magic wand that enables them to do better from an investment point of view which is ludicrous. On average both should have the same investment performance and same capacity to generate charitable funds.

Sections 26-29 as mentioned above seem to strike at the heart and notion of a capital invested fund which distributes income only, which accumulates capital and invests it, and which might receive gifts from estates, or which from day 1 have been marketed as capital accumulation without the taking of one cent from these gifts in fees or other charges. Donors know from day 1 that their funds will be accumulated and invested to provide a perpetual benefit to the community.

The basic tenets of trustee and charities law that any donation or gift has to be used for the purposes that the gift or donation was intended, cannot be achieved. Trustees will or may be put in an impossible situation with donations based on the invested capital model in the past or in the future.

Text elsewhere in the document stresses this basic tenet about 'being used for the purposes intended and requirement is fundamental yet the treatment of invested capital PAF's seems to be at odds to these donor intents.

It was the Nobel Laureate James Tobin's famous words that ring true, **'the trustees of today are the guardians of the future against the claims of the present**' and from another source**, 'most endowments and non profit organisations have a perpetual mission and the trustees or directors of these groups face an intergenerational issue which put simply is – do we favour money today versus money tomorrow?'.**

I feel that in simple terms that it is essential to spell out why a capital invested fund which does not ever distribute any of its capital is so much more effective over time. There may donors that ask for a short term charitable gift where over a short stipulated time, all income and capital is expended which might be in a time of a disaster or emergency purpose for instance but this is a separate issue.

Assume a donor gives $1,000 and income of 5% is distributed per annum. Over 20 years, the income of 20 x $50 pa or $1,000 is distributed and the whole value of the original donor. But the original $1,000 is still there. Over 100 years, $5,000 is distributed from the original $1,000 yet that original $1,000 is still there for a perpetual benefit. The reality is that such funds will invest prudently in growth investments and trustee guidelines require that the growth matches the rate of inflation.

Since the year 1900, typical returns on shares and other growth investments should enable a prudent trustee to achieve a safe growth of 6% and income of 4% on this proportion of the corpus capital. If inflation was the typical 3% then about 50% of the corpus should be invested in secure growth investments to match inflation. Thus in about 22 years the corpus capital doubles matching inflation. And the income doubles also thus income in about 22 year's time is distributed matching the inflated value of today's money. This is of course a very conservative and capital secure portfolio approach.

This is not financial rocket science. Thus **section 34** is **a terribly misinformed requirement or desire. This is an ivory tower statement** which infers that it is federal intention as inferred or stated to close down invested capital funds not receiving donations! A well managed investment portfolio in an invested capital PAF grows at least at the rate of inflation and in reality is a continuing entity in perpetuity without receiving donations.

There may be some small moribund PAF's both Public and Private that fail the test of duty in other regards such as invested funds in hand not growing at the rate of inflation and other reasons including lack of donations including corporate governance such as not holding AGM's etc and they would be better either wound down or even better, their funds be transferred to a better run PAF in the same area of purpose before funds rot away. But this would be for reasons other than stated in **Section 34.**

Firstly, trustee guidance stresses prudent investment, regular review, diversification of investments, risk analysis, taking professional advice, avoiding excessive management fees of costs of advice and investments help from prudent professionals, would prevent over the long term, that erosion of the capital of the fund would happen bearing in mind that at least 40% would be in secure cash and term deposits with banks etc of the highest rating eg AAA or AA.

The reality is that the vast majority of capital invested not for profit and charitable purposes would do better than the simple statements above, and the reality is that

i) Erosion of fund assets by negative investments and excessive fees would happen rarely and in most cases would be a temporary lowering of capital often with the income remaining quite stable.
ii) Capital would increase over time even if no further donations were ever received.
iii) The reality is that donations would be received as donors perceived the better benefit over time to the community of their original gifts. The annual income would be stable over time and rise with inflation. To not trust this process or vision is to deny the basic growth vision of superannuation and section 34 also in effect accuses superannuation funds as well of risks and poor outcomes which are unjustified, or else super funds would not be invested in.

iv) Capital invested funds also by basic principle do not have to expend a large proportion of funds on marketing whereas typical charities based on the 'flow through donation' process are tied to the treadmill of marketing and the high costs inherent at most charities, eg paid collectors taking 30% of donations, large raffles where at best 20% of raffle income goes to the charitable concern after expenses. Internal marketing expenses are difficult to obtain as most charities are totally opaque and non transparent. Many similar charities market against one another effecting diminution of the benefit to the community (but maximising the benefit to employees which is not be reasonable outcome of any not for profit).

v) Capital invested philanthropic bodies also have one other significant characteristic. Whereas charities always under the marketing and fund raising treadmill and need to put so much effort and costs into these activities, they can be distracted from their real mission. Capital Invested Funds by their very nature, are freed from these treadmills, with secure and reliable income thus can devote their activities to giving and quality outcomes. I feel that many charities, as they say are 'too busy fighting alligators when their mission was to drain the swamp'. It seems that most of the famous and nationally regarded large Foundations are bring great value and outcomes because over time and with great experience gained over many, many years, they have developed programs with a high focus on real outcomes. **They can strategically look at long term problems such as reducing welfare rather than perpetuating welfare**. They really concentrate on early intervention for instance, and to reducing the worst outcomes of long term poverty and lack of opportunity and its effects. By doing this, have a higher chance of reducing welfare dependence, in my view, and the view of many that I have talked to or associate with. Better outcomes and reduction of welfare must be everyone's collective aims.

This whole section2.1.1 is a badly conceived statement of intent or perception and so out of touch with reality that, in my view, the whole discussion paper is weakened by such statements and the consultation weakened by this section. All of the above statements of intent seemingly do want to allow properly run capital invested funds. I have seen a survey of a number of capital invested philanthropic, charitable bodies which had about 4 Billion Dollars invested and distributed about $250 million dollars annually to the community, surely this demonstrates the power of capital invested funds and the characterisation as required as being philanthropic, this is serious philanthropy.

In regard to Section 33, this also seems to be totally confused over charitable benefit to the community and tax deductions available and suspicious implications of benefit based on marginal tax rate and the government subsidy to every donated dollar. The same could be said of Private Ancillary Funds or indeed ay donations to any charity.

i) Donations to Public Ancillary Funds and charities are typically 80% of small donations and 20% of large donations. A large percentage of donations are not claimed as tax deductions.

ii) A so called high income donor is perceived here of getting a large benefit as a tax deduction, the fact is that the real beneficiary is the community through the charitable cause to which the donation is made and this also applies to any charitable DGR not only a PAF. A high wealth person might actually make a larger donation because of the deduction but the charitable cause is the real beneficiary, not the person. Another beneficiary in the long term is the government because more private funds are donated reducing reliance on federal funding.

iii) Many high worth individuals do give some enormous part of their wealth to charitable and community benefit sometimes in their lifetime or from estates. Effectively, they voluntarily transfer their wealth from the rich, to the poor. Is this not an aim of a giving society rather than the jackboot of authoritarian government and forced re-distribution of wealth?

iv) A large donor to say the Wilderness Society would benefit the Society as both the Donor and Tax Deduction benefits the Society. But in this case, The Wilderness Society receives annual additional funding from the federal public purse and recently publicly reported as $18 million a year. Lifeline which also receives tax deductible donations also receives assistance from a Federal Grant of $40 million pa. Thus it seems incongruous that the tax deductibility is any issue at all for other bodies but is raised as an issue with Public AF's? It seems that the fact that many doing DGR's do receive significant Federal Government subsidies should be noted strongly in regard to how one views Section 33 using the whole facts of Government tax deductions and their cost to the public purse. Wealthy individuals giving away their money reduce the need for such federal assistance.

v) And the analysis above for capital invested funds also makes the statement quite incongruous 'that public funds should direct funds to the charitable sector in a reasonably short time period' and that the said time of accumulation of a capital invested fund should be able to say that its time frame is perpetual and this should be accepted as a sufficient time frame based on the overwhelming financial argument and long term benefits of such funds to the community. A well invested capital PAF is indeed a very strong and desirable entity and should not be discouraged.

Again the other proposed requirements of **section 32,** that the Government intends to consider the distribution rate of a Public AF, to provide certainty to trustees of the rate of distribution of funds suggested as 5% of market capital value at 30/06. I put it that any such rate of distribution should be financially or economically realistic rather than this suggestion of 5% which is economically unrealistic.

I also comment here on what I perceive to be other poorly conceived statements which seem to imply pre conceived outcomes despite what may be the overwhelming comments received by the consultations,

i) As above it must be clear that capital invested Funds are well and truly philanthropic in every way and over the long term bring over whelming benefits that 'flow through donations' spent immediately ever will.

ii) That accumulation of capital is indeed a preferable or desirable practice

iii) That requiring a Public AF to distribute a higher amount of its funds based on because of a higher accountability standard being requires is incongruous Public AF's by nature should be publicly transparent, but imposing a higher distribution as suggested has nothing to do with the duty of a public entity, it is just an unwarranted imposition. This is economic unreality. In the case of Community Foundations, we are talking about transparency and real accounting practices, and annual income and expenses statements and balance sheets made publicly available to all donors, the media and in the community and the Directors or Trustees are thus put to community scrutiny and in every sense. All charities and charitable entities be they DGR's, PAF's, private of public, should have to provide public disclosure. Obviously the identity of donors would not be disclosed. Requiring Public AF's to be more transparent in regard to their Annual Financial Statements being public is a more realistic expectation, not a higher rate of distribution and all charitable bodies should be similarly transparent.

iv) The current practice, as I understand, is that a minimum of 80% of income must be distributed as grants or donations and some administration fees to run the Foundation or to meet real trustee costs. This is a more reasonable requirement rather than 5% of the capital as valued on 30/06, to be distributed in the next year. This is realism.

v) Unconceivable events do occur eg the Global Financial Crisis. This probably was the cause of many negative investments eg most superannuation funds! Interest rates fell dramatically and in early to mid 2008 it was difficult to find any term or bank account with an interest rate over 3.5% well below the 5% distribution suggestion and an impossible requirement to be met from income. Many capital invested funds had significant growth assets and the valuation at 30/06/2007 may have been a record maximum but by March 2008 in the next F/Y, many funds might have been down to under 80% of nominal value as at 30/06/2007 and the 5% requirement is an imposition not reflecting unforseen events such as the GFC. Any such PAF by this regulation would require distributions maybe up to half coming from capital because of a crucial event totally out of its control. There must be recognition of unforseen circumstances. The health of the Australian economy is what makes everything possible, and financial times of extreme concern do occur. The stock market crash in 1987 and the property crash of the following years was another event (but at that time inflation was high and interest rates about 14%).

vi) **Thus the distribution of a maximum of 80% of income is what is realistic because it is in tune with economic reality and events such as the GFC where everyone suffers.**

vii) One must also bear in mind that almost capital invested funds would over time, distribute close to 100% of income.

In regard to Consultation Question on Page 6.
The distribution rate from a Public Ancillary Fund should be based on economic realities and remain as a basic minimum of 80% of income particularly for invested capital funds.

In regard to section 34, there could be desire to remove moribund funds and small legacy funds not functioning at all. It would be better to try and have these funds amalgamated into other AF's for a similar purpose and there would be real logic in trying to have these directed to Community Foundations and into Public AF's associated with Community Foundations. The same could be said of Private AF's in a similar situation that they be encouraged to transfer their assets to a Public AF associated with a Community Foundation.

And, the matter of invested capital PAF's should be encouraged, not discouraged, and the power of well invested PAF's over time must be recognised. Capital Invested funds are a good thing. They are immeasurably better than entities based on 'flow through donations. The investment income over time returns the value of any donation to the community over time, may times over and over and over. It drives bodies not fixated on the day to day treadmill to survive and such bodies tend to concentrate all efforts on the quality of their giving and real outcomes over time.

The general tenor of this section is of unforseen problems for Community Foundations being based on invested capital principles eg trustee problems, a real threat to their actual being, un-necessary impositions on their operations, and a lot of small matters akin to the death of a thousand cuts. The ATO should carefully consider the special status of Community Foundations and their important regional role and importance to socio economic well being in regions.

Section 2.1.2. Regular valuations at market rates.

Assets should be re-valued every year as at 30/06. This is simply good corporate governance, and the usual trustee and director's obligations require this. Valuation rules for private and public funds should be the same. Valuation on shares and listed investments is easy. Investments in managed Funds are also valued each 30/06. Direct property can always use the Government valuation.

However the main thrust of is my previous comments is that valuation should not be the basis of the rate of charitable distributions, income is the only appropriate basis eg a minimum of 80% of income

Section 2.1.3 Increased accountability.

This is all in my view straight forward. This is central to proper accounting and auditing, good corporate governance etc.

Sections 36, 37, are straight forward. Yes (36) funds should be open and transparent to the community and annual reports and financial figures should be provided, (37) all should have an ABN, or TFN. Most of course already have an ABN or should have one for GST purposes.

Sections 38 and 39. Many probably already lodge tax returns and having to lodge a tax return and some may have to also lodge accounts with the ASIC. For larger Public AF's, this seems acceptable. Whether this is an unnecessary burden is a good question. I can see the value in some Government entity having basic details of PAF's and all charitable bodies and NFP's in total to measure the funds employed and the distributions of donations, gifts or grants to the community in total or on a sectional basis. For instance as an alternative, a Charities Commission might have powers to also receive some pro forma data for government and public information and recognition of the huge impact of the sector in Australia. I probably leave this question to the accountants.

Section 40 that higher disclosures be required is agreed. **But this should extend to all bodies with charitable status or similar.** The big Charities like Red Cross, Lifeline, Salvation Army should be required to do the same including Religious charitable bodies such as Anglican Community Care, St Vinnies, etc. The Religious bodies running huge businesses such as Sanitarium Foods, cults like Scientology (I cannot understand why a body banned in most of the world gets charitable status in Australia), evangelical bodies such as the one in Adelaide which defrauded parishioners with the Pastor appearing on stage with oxygen tubes which were faking a health problem, Medical research charities especially those receiving much bad press such as in Adelaide (McGuinness McDermott Foundation forced to change its name , Queen Elizabeth Hospital Research Foundation and others where the percentage of donations after marketing and admin costs left little for service, Charities associated with celebrities part of their personal Marketing eg Shayne Warne, the Movember Charity which has been criticised in the press for the benefits in job related expenses to the beneficial owners, all Charities basically criticised in the BRW examination of charities need to report publicly.

The main charitable sector is of considerable concern and the call for a national Charities Commission and reform are well over due. Public AF's are not the problem, it is the large national charities who must provide clear and concise financial detail in a public way. Again, I point out Community Foundations which provide high quality Annual Reports with full financial disclosure to their donors and community as a good example.

41 and 42 are basically consistent with appropriate disclosure and like Australian Accounting rules, a consistent approach is reasonable. And with confidence that Public Ancillary Funds are performing well would give confidence to donors.

In regard to the Consultation questions on page 8.

I leave the issue of lodging income tax returns to the accounting profession and those who need to attend to these tasks. If so, there is an immediate requirement to have an ABN.

These requirements should be extended to all the major charities, religious bodies etc as should publicly disclosed accounts and details of real operational outcomes, and how much is spent on marketing ad advertising.

I also add that in SA and other States, licensing conditions and other legislations in regard to Charities have been enacted. There needs to be a national approach. In Victoria, model Accounting Standards for Not For Profits has been introduced and a national account to Accounting Standards would also be good guidance for the sector.

I also note that some charities are Incorporated Bodies under State corporate surveillance and in my view, all would be better to be corporate structures under the ASIC, and all Directors or trustees thus would subject to appropriate scrutiny by the ASIC and penalties with real teeth under corporate law and also required to submit accounts and balance sheets to the ASIC.

2.2.1 Current Regulatory powers. Page 8.

Section 44. This section raises the joint regulation by States and Commonwealth level. Note 20 advises some variations between States requirements and I would be of the opinion that the Commonwealth should consult with the States (as is probably happening), to bring a common approach to philanthropy and charities. Much philanthropic and charitable work does cross borders and is national and a national approach seems preferred.

2.2.2 Increasing regulatory powers. Page 9.

Sections 45-47 address matters associated with appropriate accounting and whether tax returns be lodged and were covered in previous comments.

Breaches 48 to 53 are commented on. There is a huge question! Why should Public Ancillary Funds have to distribute to doing DGR's? Why cannot they be able to distribute funds to non DGRs and other NFP's etc doing work that is clearly under the definitions of charitable and to the public and community benefit? And why penalise where a breach was unintentional? Look the community clearly receives a charitable benefit! It is not only doing DGR's that provide charitable benefits, and in regions particularly isolated places, there may not be an existing doing DGR able to receive the gift yet a clear and desperate community need is there which is clearly charitable.

Section 45 in regard to breaches might be a consequence of legal confusion and breaches might be non intentional. It may be just an outcome from obstructionist tax rulings in this country, so different and obstructionist compared to overseas according to my experience.

I particularly want to comment on the situation faced by **Community Foundations** and those in regions where this restriction can provide significant disadvantages to rural regions. In many regions, and particularly isolated places, small communities which are losing services and which feel betrayed by a seeming loss of federal and state support, they see medical services reduced; they see small schools closing and longer travels on school busses to bigger Area Schools, and other services being lost.

a) Doing DGR's have either no presence or little presence and many are city based and while willing to collect donations, have little or no capacity at all to support these communities. Churches have closed and these DGR's are lost along with the pastoral care that used to be received. Many DGR's have a single activity focus and do not have a wider 'doing' focus and cannot even approach having the most basic knowledge of community problems, and all totally lack the ability to bring any strategic long term consideration to the matter (other than to clip a donation and go away to consider and in doing so, simply mislead rural donors).

b) Rural donors are subjected to a marketing barrage, unsolicited phone calls by the dozen, mail-outs probably because they have given a donation in lieu of flowers at a funeral and as well the letter box is filled with stuffing's, and the national television is filled with marketing by charitable bodies(much labelled as receiving Federal support), and thus, a great amount of donations are continually collected and leave regions for good adding to the lack of financial capacity to address real local problems. And many of these charities or DGR's have been subject to media scrutiny and concern about the cots of marketing and administration and a low level of funds escaping the entity as actual service on the ground. This unrelenting media barrage is clearly damaging to regions and addressing their problems. It is time that the Federal Government and the ATO realise that many charities and doing DGR's just do not do a decent job at all particularly in rural regions.

c) The only community bodies are often the local football or tennis club or Memorial Hall which often acts as the only place to host health or community support, and is the only place from which to source volunteers upon which isolated regions rely upon. But these bodies do not have the charitable status to act yet may be are the only bodies available. The only entities with any corporate substance are rural councils, perhaps local hospital boards (if they still have a hospital), and local School Committees or Boards. The only way for the community to access the charitable support they deserve and have donated to over many years, is inevitably through non doing DGR's and this is becoming even more so.

d) One needs to visit small communities. Mount Benson for consists of rural farms and there is the Community Hall next door the CFS Station and opposite is the school now closed! The Hall received a Regional Partnership Grant a few years ago assisted by the local ACC. The hall offers every community need within its powers, a clean place for visiting health and other community services. It would provide backup to the CFS during a major fire. It provides a total service to its community including services defined as charitable. Why cannot PAF's pass on donations and support to the Hall for its clearly charitable role but is not a DGR or even a tax exempt Charity?

e) In regard to PAF's providing benefits to non-DGRs in Australia or making distributions to other ancillary funds, I wish to comment on this. Why should Private and Public AF's be prevented from distributing to some classifications of Public AF and particularly those associated with Community Foundations?

f) The local UniSA Director Sarah Mott made a public statement recently, 'that South Australia has the lowest rate of university qualifications in the Australia and the Limestone Coast region has the lowest in the State'. This also imputes that students in this region are unable to attain minimum educational entry levels to university which might imply, that regional education is under resourced, and that there is in my view, no other alternative for the local community to address this problem. This is a charitable cause, the support of the needy and disadvantaged compounded by low educational attainment. There is massive need for assistance to support programs such as remedial English and numeracy, support to student mothers, drug and alcohol awareness, personal hygiene issues, anger management, counselling of victims of all types of abuse, mental problems, higher rates of rural depression and suicide, school bullying, etc. Who will support these issues? How can the regional donors be involved collectively to fund such charitable causes in a strategic and long term way?

g) Community Foundations which while in a formative stage at this time, being locally based do have local knowledge and in their short time of experience, have already developed some capacity on a local basis in regard to this issue d) above. In my view, the use of Community Foundations with a doing capacity, and able to distribute directly into school and other programs is the efficient and effective long term way. The other entities that are also involved in regions are local government and working with them on programs such as Opal etc can address issues like healthy lifestyles. Working with local government and other bodies who may not have doing DGR status is also needed with the refugee citizens in our region. Community Foundations if allowed to flourish, like they do overseas under more encouraging tax and charitable laws, are proving what they can do (Canada, USA, UK are three countries).

h) Central to the potential of Community Foundations, is the invested capital trust model and its long terms sustainability, and strong long term economic performance advantages. These have long term ability to ingrain themselves deep into its community, to provide leadership, develop effective programs with outcomes. The other central issue is its DGR status without unnecessary limits. This should be doing DGR status of the Public Ancillary Funds that they tend to use or even the Foundation itself as well.

i) Public AF's associated with Community Foundations being a special case I my view deserve doing DGR status and should also be able to receive donations or grants from other Public AF's.

j) A good example is a major disaster. A Community Foundation would have excellent abilities to collect donations and pass these to the community with community involvement and efficiency. Often after the emergency response and emergency responses are attended to and monies expended, the long term effects may be forgotten. In recent fires eg Eyre Peninsula and Victoria, the philanthropic movement went to these communities bringing significant support to longer term issues. The community would be best served if Community Foundations and Public AF's associated with them had doing DGR status and were able to accept gifts from other Public and Private AF's. The Red Cross can do this, but, remember the furore of the Indonesian Tsunami. The $350 million or so for the Victorian bushfires also attracted significant undisclosed interest perhaps $20 million which simply disappears into Red Cross coffers whereas, a Community Foundation would also hand on the interest after minimum expenses thus the direct support on the ground is maximised and not absorbed into a heavily bureaucratic organisation.

The strong argument that I present is the need to isolate the Community Foundation sector from the issues raised in Section 45 and to acknowledge what I believe is a substantive case for doing DGR status of Public Ancillary Funds and the ability in these cases of receiving gifts or grants from other Public and Private Ancillary Funds

Section 45 about the need to lodge an Income Tax Return has been previously commented on.

Section 47 about the ability for national statistics and reporting of the benefit of this sector is supported strongly so. As mentioned before, when the public realises the public benefits the community receives, would highlight what and important collective group that Public Ancillary Funds indeed are in Australia. Whether this is the ATO or a Charities Commission is a moot point.

Breaches By Trustees.
I am unable to comment on the issues of penalties as I do not know the situation of the Private PF penalties. Section 52/53 in regard to breaches by an individual director as applied to Private AF's would seem reasonable but this opinion is not supported buy any real knowledge of the detail.

Consultation Question page 10. Administrative penalties regime.
I am unable to comment. I do not know the penalties applicable for Private Ancillary Funds. In general I support the commonality between Private and Public AF's and the charitable sector in toto.

But I also submit that the reasons for breach such as providing support to a non DGR, but to an end which is clearly charitable are really process matters. There is no criminality. The community has received a benefit. And the lack of an appropriate doing DGR may have been one reason.

I have argued previously that another approach particularly in the case of Public AF's associated with a Community Foundation should receive special consideration because of their particular benefits such as doing DGR status and ability to receive gifts form other Public and Private AF's and thus would eliminate any likely hood of breaches in Section 48.

Corporate trustees Page 10.

Section 54, Corporate trustee.
Most Community Foundations area Company Limited By Guarantee under the control or supervision of the ASIC and having a responsibility to meet Federal Corporations Law. **Community Foundations being a Company Limited by Guarantee subject to the ASIC, and required to submit annual financial statements to the ASIC, should be accepted as a suitable Trustee Body in the case of Public AF's.**

All legal advice that I have seen suggests that this is a very strong, stable corporate structure and appropriate to act a trustee.

I note that most Community Foundations might act as trustee for three trusts, the Public Trust which is a DGR, the Open Trust which is not a DGR but has charitable status, and the Educational Scholarship Trust Fund which is a DGR with particular powers to grant scholarships direct into the hands of worthy recipients subject to clear guidelines.

In regard to the Educational Scholarship Fund, this was according a Trust Deed developed by one of Australia's leading Trustee and Charities lawyers and benefits via legal scholarships go in to the hands of recipients after a scholarship awarding process and public calls for applications. Whether this is classified as a Public AF, I do not know, but it would be the greatest of concern if matters like the requirement to direct benefit through a doing DGR are now intended to be implemented. The discussion paper does not mention this. This is unclear. Are these affected by the proposed ATO changes?

Most such scholarship funds would be highly distressed to be laden down with additional obligations as per this consultation in regard to the discussion paper. It just adds another uncertainty which needs to be clarified. The terms of the Trust Deed may need to be changed, or if tax treatment is changed etc a possible problem for the trustee and directors and is one of the possible un-intended problems.

Similarly, the Open Fund which is not a DGR but a tax exempt charitable body, is raised as another concern which may be bought into the fray of this discussion paper and consultation and possible trustee problems. This is another example of the confused legal situation the philanthropic sector in Australia is subjected to, compared to countries overseas.

Section 55. Sections 56 and 57 as well.
I assume that this confirms that the Company Limited by Guarantee used by Community Foundations is accepted as an approved trustee. Thus breaches etc are under the ASIC and Corporations Law and Trustee laws and thus the protection of the PAF and its donors is more than adequately covered in law, it would seem.

Consultation Questions Page 11.
I can see no problems with Public AF's having a corporate trustee on the basis that in the case of Community Foundations, that the preferred trustee is a Company Limited by Guarantee or similar entity of appropriate trustee standard.

The rules of removal of Trustees are therefore those according to trust deeds and trustee laws rather than the same suspension rules for both Private and Public AF's, it is a matter for the various trust deeds.

I also would not probably have the detailed knowledge to answer the second question but at first glance it seems reasonable and brings in consistency.

Introduce a fit and proper person for trustees. Page11.

Section 58. These are interesting comments. Yes, any Trustee will certainly show a desire to get it right.

Superannuation is mentioned and the complexity of superannuation is not relevant if we are talking about Public AF's for charitable purposes. This is a totally separate issue in my view. I also note Appendix A and RSE tests applicable to superannuation. I do not see any reason to use the Appendix A as any guide to fit and proper persons as this is clearly well covered.

In the situation of Community Foundations, from my experience, they have access to two of Australia's charities and trustee lawyers on a pro bono or part pro bono basis. Most have a Lawyer on their board acting as director and trustee and a qualified accountant. Most have received training from experienced practitioners. There is expert guidance eg the Philanthropy Australia Trustees Handbook etc. And attendance at Community Foundation Forums held annually have considerable content about trustee and charities laws and regularly update Director-Trustees and Executive Officers. There is a Community Foundations Gateway or website facility for the dissertation of topics and questions.

I would put it to the consultation that the doubts expressed in **section 58** about Community Foundations about lack of knowledge have no basis in fact and underestimate the expertise available and exercised.

As an example, I include trustee guidance at one Community Foundation in regard to investment policy and the issue of trustee responsibility, one part of this policy. This is evidence of trustee expertise within Community Foundations and hopefully provides strong evidence to the consultation.

Trustee Responsibility.

Trustee responsibilities and guide lines are at the forefront of investment policy and strategy. SLSF directors acting as trustees have a general duty to invest any and all funds. This duty to invest must be exercised with care, diligence and the skill of an ordinary 'prudent' person or where a professional manager is appointed, a professional 'prudent person'. In general, trustees should not take on the same degrees of risk with trust investments as they might with their own, and should avoid speculative investments.

Trustee responsibilities include

> Investing according to the purposes of the three trusts and needs and circumstances of beneficiaries, the benefits of **diversification** of trust assets, **investing not speculating, balancing** the potential of capital appreciation with income, the **likely income** return **and timing** of income return, **balancing** the risk of capital and income loss, maintaining the **real value** of capital assets and income after **inflation**, the **tax** consequences or liabilities of investments and of the trusts, the **liquidity and marketability and term** of the investments, the **costs of investments and transactions** including commissions, fees, charges and duties payable of making the proposed investment and, **the aggregate value of the trust's** estates.

SLSF and its Trusts are committed to investments that are socially responsible and ethical. Trustees will review all investments according to these principles.

Trustees should be instilled with a disciplined approach to managing the assets of the trusts. Investment advice will not necessarily be acted upon at all times. The management of assets by any appointed investment manager (acting as a 'professional prudent person') shall be according to management mandates agreed to by trustees and any investment manager/s.

This also adds to the invested capital model arguments and the basic trustee directions in regard to investment.

I did ask a lawyer pro bono about a relevant issue and he offered an opinion as lawyers do, but suggested also that this opinion may have to be clarified by a Supreme Court action to beggar the question. The minimum cost in 2004 was an Initial $45,000. I humbly submit that where compliance issues arise, they are not in the main a mistake or lack of knowledge, but rather, the totally confusing laws without clarity and needing interpretations or interpretations from the ATO or similar.

I also note the frequency that the ATO loses Supreme Court actions on its own interpretations eg a recent one into the issue of advocacy being a community service. How can trustees of Public Ancillary Funds be doubted if the ATO at times cannot get it right. Based on the current press about High Court and other actions, the ATO is doing as badly as the Australian Cricket Team.

The core issue might actually be the incredible complexity of Australian Law in regard to charities. This supports the argument that we should not add further complexity nor add to the potential added legal costs and trustee costs. Such cost impositions would not be necessary with laws that are simple and less complicated and with clarity of purpose and intent.

This emphasises the need for a whole of government approach to charities, PAF's and NFP's and all entities working in the charities and philanthropic sector. One needs to get back to basic principles, to establish a national model, to clearly define what are charitable and to legislate this carefully and which has been the call of the sector for some time. There is also the proposal for a Charities Commission to give oversight. The next logical step based on the clarity of definitions and government intent reinforced by wide community assent, is that the ATO and tax treatments are then adopted and provided in a totally consistent way introducing a most efficient model and practices of immeasurable benefit to the Australian community, which it deserves and is the government duty. Such would drive a unified approach on social inclusion, to addressing socio-economic disadvantage, and to a fair society with better outcomes than in the past.

The current hotch-potch in my view has had the main effect of enshrining and institutionalising of a charities sector bloated by bureaucracy and efficiency more committed to the corporate body, which does not seem to achieve outcomes other than enshrine welfare and a welfare mentality. It seems to the entry of alternative bodies like community foundations difficult. It does not understand the power of the invested capital model preferred by the philanthropy sector and the perpetual nature of this. Nor does it recognise the potential in the long term, of reducing tax support and outlays, and by its serious efforts to try and reduce welfare dependence through stronger and better educated Australians, who can drive an enterprise economy which cares.

Section 59 is OK. As far as I know, most people involved particularly in Community Foundations are of the highest merit and committed to philanthropy and all they ask is for a fair go to get on with this work unfettered by unnecessary obstruction and acting to achieve best outcomes for the community.

Section 60. I have answered the issue of diligence as above, and I am aware of the issue of at least one individual with a degree of responsibility to the community and the need to be active.

But the issue of a limit of $10,000 as a donor making an individual not eligible to act as a trustee is a restrictive and unnecessary condition.

In the first instance, $10,000 is not a huge amount of money in today's value of money, and will be worth even less as inflation continues.

Often individuals that are associated with Community Foundations are there because of their skills, they may be retired or partly retired thus have the time to act with diligence and actively as required, and being involved may naturally and sincerely wish to then assist the Foundation and its Trust Funds.

The involvement of say a Foundation and its trusts in issues like the educational disaster in the Limestone Coast region, raises the question, why would you prevent such persons from assisting to the end of their financial capacity based on the knowledge of need in the community?

We do not need to inhibit people. We need to encourage them to be philanthropic. If a wealthy donor, gave to charitable needs through the Community Foundation, and that there was clearly no link at all of a benefit to that person, or associates or family, that was all totally hands off, then there would be no issue of personal benefit should that person be a trustee, and the only benefit would be to the community through better educated giving to the best outcomes and priorities in their community.

And in regions, the availability of persons with skills as director or trustee implies that in the main, most would have had a successful life and a deep desire to assist their community in perpetuity and know the legal concept of fairness and such persons should not be prevented from being a trustee over their donations. It is common in many Community Foundations, particularly, overseas that indeed Foundations and particularly early in the life of the Foundation, that that people do get involved as a Trustee and Director as a means to effectively assist their own giving to best outcomes to the community thus community benefit is enhanced.

Sections 61, 62, 63, 64.

Consultation Question Page 12.

In my view, the considerations of a suitable trustee, particularly for Community Foundations, but for Public AF's should be those people that have the expertise, have not any offences, are people standing in their community and that the trustees overall meet the common tests for Directors and Trustees.

But the issue of a $10,000 donation limit on any trustee is totally un-needed. The issue should be solely the basis of the expertise of the person, their demonstrated fairness and that the other trustees acting as group know the skills fit needed at all times. Skills, ability, demonstrated diligence and prudence, knowing the issue of benefit and conflict of interest etc. are all that is important, skills. This is a crazy suggestion. The ability as a trustee or willingness to donate to the trusts should not be fettered with such impractical and unnecessary limits which run contrary to the principles of philanthropy as practiced world wide. This proposition could only happen in Australia with its myopic tall poppy syndrome!

2.2.3 Transitional rules.

I have no comment to make on these or the consultation question page 13. But June 30, 2011 is very close. Maybe too close.

2.3 Principle 3, Public Ancillary Funds are Public.

I have no legal expertise in regard to the detail of the questions but the sections 68-69 are quite obvious and well recognised and understood. In regard to the Consultation Question page 13, I have no detail to be able to answer the question.

2.4.1 Investment Rules to be low risk.

Investment rules and the principles of investment rules for any trust whether Public or Private Ancillary Funds, for a charity or any other body are basically the same and in the text, I have provided an example of trustee rules or direction towards investment strategy.

Success in investing has to recognise that the strength and growth of the real economy is the real driver. It is as expressed previously. Any trustee whether a private prudent person or a professional prudent person, is bound with the same trustee responsibilities. One must in all cases act prudently and professionally. There is considerable trustee guidance available. It does not seem that any special requirements are needed.

I pose an obvious question. What if one Private Ancillary Fund and a separate Public Ancillary Fund approached the same Trustee such as Perpetual or Equity Trustees or similar to run these. The Trustee would apply the same duty of care, investment principles and diligence to both. Costs and fees for similar sized entities would be the same and disclosed in the processes of agreement. But, constant suggestions in this discussion paper about additional diligence, disclosure etc for Public Ancillary only means an additional layer of duty and effort which will add more complexity and with that comes the inevitable, **more trustee costs.**

It is also expected that professional advice would be sought and these costs and fees would also be scrutinised and negotiated from the strength of being the owner of assets coveted by the investment advising sector. I am sure that fees will be examined in minute detail and questioned and the immense fee stripping in superannuation, which the government seems helpless to control, would not be accepted by any trustee of a Public AF.

Typical management fees are 2%, 5 % entry fees are accepted and in effect, these take from the potential long term performance of superannuation, more than 25% of the performance in the long term. The ATO and the government need to consider the appalling situation of superannuation legislation. And of course, the privileged situation of public servants and their defined benefit superannuation is at odds of the rest of Australian citizens and need to be an accumulation benefit super, rather than defined benefit super which aligns their interests with the reality of most Australian citizens, and their cosy attitudes to the real economy because their cosy benefits and that of politicians are privileged above that of most Australians. Citizens in need would be envious and the principles of disclosure espoused in the discussion paper need to be extended to such tax payer benefit.

Some of the most obvious suggestions are outlined in sections 72-74 egg sufficient liquid assets, risk aversion, etc. As added here, fees and costs must be factored in. And the ATO should ensure that one of the unintended consequences of changes is to turn these entities into prey vehicles for increased legal and trustee costs which take away form the intended benefits to the community by its charity.

The issue of a buildings or property of substantive value receiving a low rent while a non liquid asset, such assets must be included in any asset review.

I am totally surprised that this basic tent of any investment strategy and its implementation, asset reviews, is not mentioned in 2.4.1.

This is not simple valuation but asset review and a core and central part of investment strategy. A regular asset review could have determined that such a poor asset should be sold as expeditiously as possible and indeed, owning direct property is usually a non preferred strategy and any diligent trustee, should take action. This asset is illiquid, it may be much of a proportion of assets under management in any properly diverse portfolio and units in property trusts are preferred as being liquid. The management time and effort in direct property and the needs of tenants plus repairs and maintenance and depreciation make direct property a less likely asset. And for some reason people fall in love with property even if it is a completed dog of an investment in such trust funds.

Capital gains are not income and any gain should not be used as income but put back into capital under management. Similarly capital loss is not income loss. And unrealised capital gains or losses are exactly that, unrealised, and I have previously addressed the probable effects of out of the ordinary unrealised capital gains or even losses on distributions if based on the 5% rule which is clearly opposed vigorously.

It should not be an unnecessary outcome of this discussion paper and consultation that unnecessary investment tax rules or complexity are added or legal uncertainty increased. To simply increase compliance and prescription and thus a raft of hidden trustee and legal costs, is no guarantee at all of performance and will by the cots incurred actually reduce investment performance upon which the benefits of the trusts in financial terms, is derived.

An added benefit of Community Foundations is of course that it actually introduces a regional but charitable trustee service for donors at low cost and expenses. And this expertise developed and any jobs, remains placed within regions.

And it in the long term may induce small Private Ancillary Funds and small regional Public Ancillary Funds to transfer their assets into those of the Community Foundation's Trusts. This by agglomerating small trusts is another pubic charitable service reducing costs for small Funds yet maintaining the community charitable benefit. Community Foundations and their Trusts should be able to absorb the funds of any moribund PAF should that be agreed by all parties.

For any 'volunteer' to accept the risk as director or trustee of a Public Ancillary Fund, without any financial recompense, willingly acting on behalf of the community and accepting personal risks in a society obsessed with litigation, one may ask why? It is out of a sense of community duty and competent people in regions are prepared to accept these responsibilities.

Hopefully some one in Canberra might understand this or will have the courage to journey to regions to see on the ground where regional Australia is going and how regions can be helped. It will not be assisted if the results of this discussion paper and consultation and the decisions made by the ATO or government, actually have the unintended consequence of stifling regional philanthropy and charity.

Sometimes a sledge hammer is not needed to crack a very small nut.

In regard to Consultation question page 14.
Investment and risk management rules are universal. I do not know what rules are applied to Private Ancillary Funds or whether the rules applied are appropriate to Public AF's.

Investment rules in principle should not be different other than perhaps general guidance to additional prudence and trustee responsibility in the Public arena but not to the extent that Pave's are saddled with unnecessary costs and compliance rules which are not needed or may have little real meaning or consequence..

Investment is a serious matter but trustees of any entity know the rules or guidance requirements.

Recognition of the service that regional people and their commitment to their community, needs to overlay this whole discussion paper and responses received. And also the special differences of Community Foundations and their potential role to address regional disadvantage in a holistic way.

With respect, the ATO is just a tax gatherer, it itself has no expertise in investment, and should itself take professional advice on this question.

Respectfully

Brian Page
PO Box 157
Mount Gambier
SA 5290.

Phone 08 8725 5290.
Mobile 0417 886 953.

The Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
Parkes
ACT 2600

Brian R Page
PO Box 157
7 Wyatt Street
Mount Gambier
SA 5290

December 13, 2010

RE Discussion Paper, "Improving the integrity of public ancillary funds", November 2010.
Submission from Brian Page and Summary of PAF previously submitted 10/12/2010.

INTRODUCTION.

My main submission is detailed in many areas. It is perhaps, the background detail. In this second submission, I come to concise conclusions from the first, to highlight what I believe to be the main issues. I now link these to the Minister's principles outlined in the Foreword of the discussion paper.

Minister's statements; particularly

'The government is committed to continuing growth of the philanthropic sector.

'The measures recognise that alongside a strong philanthropic sector must come proper accountability, particularly when it comes to organisations benefiting from taxpayer funded incentives'.

The new framework…….provide donors and the charitable sector with greater confidence that donations are being used effectively'.

'The reforms will improve transparency and integrity in this important area'

SUMMARY.

I see the tenor of the discussion paper as further institutionalising the current charitable organisational setup in Australia and may actually inhibit, rather than being a commitment, to the growth of the philanthropic sector, particularly invested capital foundations and charitable funds.

I think the discussion paper reinforces the 'silo' attitudes of government. The philanthropic sector has vigorously supported changes over the years, such as updating the definitions of what is a charitable or community benefit definitions of which are still from the 1800's. There have been calls for a Charities Commission. Senator Pilbersek is to head a new Office for the Non-profit Sector'. There are differences between States licensing and support for the sector varies adding legal and other complexities. It seems that common sense dictates that the Government should settle all these matters, come to a national consensus with the States and the sector by consultation, and once that is settled, then ATO and legislations and regulations should match the outcomes agreed and needed by the community, particularly updated principles of social inclusion and social justice.

I believe the tenor of the discussion paper indicates that the ATO and by association, the government, might not fully understand the power of the invested capital funds or how these function (usually associated with the philanthropic sector and community foundations).

The outcomes, money available over time, and of program outcomes, from invested capital funds, are immensely more effective than the 'flow through donation method associated with charities. Some of the suggested outcomes seem totally averse to invested capital funds and therefore averse to a strong and growing philanthropic sector, which is a possible unintended consequence of what may be instituted.

I have concerns that the inferred direction of changes will neither improve clarity to the legal and regulatory environment that the charitable sector is in, and may add further problems. An unforseen consequence of this may be added costs of legal compliance and trustee obligations due to continuing, lack of clarity, for Public Ancillary Funds.

I have reservations that the tenor of the discussion documents, by the prescriptive, conformance and compliance practices to be continued or reinforced, will or may not lead to improved performance and thus improved outcomes. I feel that all that will happen will be a reinforcement of status quo, the stifling of initiatives and barriers to the entry of new charitable bodies particularly community foundations, and the stifling the innovation which comes from new entries. Conformance and compliance are neither guarantees of, nor related directly to performance.

The whole charitable sector seems stuck in the welfare trap and has institutionalised a welfare mentality but little seems to be effectively done to address the issues and early intervention strategies that get people out of risk before they become with age entrenched in poverty and welfare. The philanthropic sector, secure because of its investments in trusts, is well into early intervention from my experience.

Community Foundations globally have grown in numbers from 905 in year 2000 to 1680 of them in 2010 and in particular, the growth in philanthropy in Europe was quite spectacular. I see the tenor of the discussion paper seems to be driving decisions that will severely affect community foundations in Australia which now number around 30 and are widely distributed in Australia with a strong collective operation nationally.

I am particularly concerned about community foundations which have a unique situation from their very composition. The proven success of this model overseas and few years of Australian experience may not be properly recognised for their aims and their cohesiveness. The tenor of the direction of the discussion paper or measures implied to be enacted seems to inhibit this sector by many possible unforseen consequences.

I am concerned in particular, that many rural regions with growing socio economic disadvantage compared to cities, are being severely disadvantaged by the system of charities in this country which overall, seem unable to provide wide support to regions nor to supplement the diversity of need, and have very restricted presence on the ground in regions and no presence in isolated places.

If the government is fair dinkum over the stated commitment of the Minister, 'that 'the government is committed to continuing growth of the philanthropic sector' then the Growth of Community Foundations in Australia needs a fair tax situation similar to the charities described as doing DGR's. A less restrictive tax regime is in place overseas. An unfair tax situation seems to be further locked in by the discussion paper outcomes and this is seemingly indicated as a fait accompli.

Section 2 which seems to have an overwhelming bias against accumulation of funds.

Most of the great foundations are based on the invested capital model proving this model conclusively. **We accept invested capi**tal and personal accumulation of capital as a central platform **for superannuation**, as the best way to ensure future benefits of adequate pension income in the future. **An invested capital fund** or PAF effectively **acts as a community pension fund from day one** and grows a community pension or charitable benefit over time as capital increases. There should not be any inhibitions to invested capital funds.
I have simplistically shown by investment examples that **an invested capital PAF can be perpetual providing annual income in perpetuity** which can surely grow at the rate of inflation as a minimum and as the capital grows, the income grows in relation to the accumulated capital.
A capital invested fund, never distributing capital, is clearly proven as the **most effective system** being able to act in perpetuity providing vastly increased charitable benefit to its community over time, than the simple 'flow through donation system can ever provide.
The great foundations all around the world prove that the invested capital model **free**s charitable funds, over time, **from the treadmill of fund raising with its great costs in marketing and administrative effort** significantly reducing the benefit passed to the community.
Bodies focussed on fund raising and survival, cannot fully focus their charitable benefit and the **providing of strategic approaches to ingrained socio economic problems**, to effective programs backed by sustained experience and thus expertise and therefore positive and effective outcomes.

Consultation question Page 6. Distribution rate.

This should be realistic and aware of the difficulties of predicting financial returns from investments and the inevitable unforseen events like a Global Financial Crisis. See previous letter for more detailed reasons.

The distribution rate should be a minimum of 80% of income as at present.

Section 2.1.2. Asset valuations.

Yes, easy to do and good corporate governance.

Section 2.1.3. Increased Accountability.

A reasonable proposition, but practical and not so onerous, that significant costs to trustees are added in. Normal trustee requirements covers this and it may also unreasonable from a trustee point on view to have different trustee requirements for Public and Private Ancillary funds when the trustee responsibility is the same.

The same accountability requirements including disclosures are required by doing DGR's, large and small. It would not be reasonable to not do so. After all, there was a large and prominent DGR that was required to return over $100 million in job network payments a few years ago, they need to really improve corporate governance.

2.2 Principle 2. Obligations and laws.

The Issue of having to pass any gifts or donations or grants onto a doing DGR should be totally reviewed for many reasons or arguments as provided in the first submission. Many DGR's, either individually, or the whole sector in toto, in the main is city based without any presence in regions and as an overall group are arguably failing regions terribly.

This requirement seems totally **outdated,** does not match the many changes in the charitable and philanthropic sector over time particularly the last few years.

This requirement **inhibits flexibility and innovation** of charitable support in regions
This requirement does not take heed of the general **lack of doing DGR's in isolated or small communities in desperate need.**
This requirement does not take heed of the act that many doing DGR's are of **restricted purpose** and as a collective group by their **lack of presence in regional and rural communities** from receiving the wide range of charitable support taken for granted in cities.
This requirement does not heed the **steady erosion of government services** and presence in regions or the lack of these taken for granted eg lack of public transport for the needy, reduced or declining medical and hospital support.
This requirement does not take heed of the **lack of higher education facilities** driving regional people out of higher education because of the expenses of living expenses in capital cities where these facilities in the main are, and for those in low socio-economic situations the expectations of a university degree are forlorn eg the parlous uptake of higher education in my region.
This requirement does not take heed of the massive **donations removed from regions to capital cities, under a program of remorseless costly marketing campaigns,** (using media, intense telemarketing, and paid collectors visiting the region) from countless city based charities without presence in regions, nor of having any intent to have a presence.
This requirement does not take heed that the **loss of rural charitable dollars to capital cities,** over a $million dollars a year from my small city, **actually reduces the regional community capacity to address its own declining socio-economic standing. This requirement to give to DGR's institutionalises rural decline.**
This requirement does not take heed of the massive marketing and administrative costs of the many large doing DGR's and that **much of the donations received are absorbed in bureaucracies and enormous marketing and administration costs.** These funds should, in the main, should fund programs on the ground or put real support into the hands of the disadvantaged, but they do not.

This requirement does not heed the rapidly **growing loss of faith in regions in charities generally** that they just clip donations to the city and never provide any direct support to needy regions.

My rural city in the 2006 ABS Index of socio-economic ranking had 54.1% of the population in the bottom 30% of Australia and 84.1% in the bottom 50%. There were two sub-districts in the bottom 1% of socio-economic ranking. Who will help these people? Few City based Charities ever will and many or most have no capacity to do so in regions!

The issue of Community AF's not being able to receive donations from other Public AF's or from Private AF's is in my view outdated and outmoded for all the reasons above and this also perpetuates the continuing difficulties of regions and should also be reviewed as argued in my main submission.

Breaches by Trustees. Sections 52/53.

A difficult question but mat be function of a legal and regulatory regime which is so complicated with poor clarity. This makes seeking legal opinions expensive. Even the ATO is unable to guarantee that they can say that the High Court will not concur with everything that the ATO does eg a recent High Court decision on what is charitable.

Corporate Trustees. Consultation question page 11.

In regard to Community Foundations, the current and preferred model of a Community Foundation as a Company Limited by Guarantee under the aegis of the ASIC and acting as Trustee for associated PAF's and other funds, should be accepted and acknowledged as being an ATO accepted trustee. Removal etc rules should be those according to trustee law and need no further added responsibilities at the ATO.

Consultation question page 12.

The issue of a donation of $10,000 to any Ancillary fund or charity is an unreasonable requirement particularly in PAF's associated with Community Foundations or in any philanthropic body. Would giving say $10,000 preclude one form being on the board of the Salvation Army or in any important position? Giving donations unfettered by unreasonable regulations strikes at the heart of what philanthropy is all about and is inconsistent with what philanthropy is all about.

Transitional rules should also waive trustees whose donations in the past are over $10,000 if such a requirement is retained and the monetary limit should be raised substantially, but preferably removed.

2.4.1. Investment Rules and consultation question page 14.

Trustee requirements in the real world are the same for public and private ancillary funds and so are investment rules as outlined in the previous submission. Requirements for superannuation as outlined in the discussion paper and rules for this sector in the main, are irrelevant.

As a final comment, I believe that the Community Foundations sector needs special assessment and tax treatment commensurate with its potential to bring real change to the charitable sector, as does the philanthropic sector.

Community Foundations can match the growth overseas become a real force in philanthropy, and in particular it is the only sector seemingly able to fill the huge philanthropic void in regions, it is seemingly the only sector able to overcome the shortcomings overall of the charitable sector, and it is the only sector able to achieve strong partnerships with the community. In this way, Community Foundations and their community act in partnership to set priorities in place charitable support to address social justice and socio-economic shortcomings and decline in an organised and effective way.

Community Foundations are charitable but also a trustee. The trustee responsibility is very important and community foundations can offer a low cost trustee to regions, they in doing so may become trustees for people who may think about establishing a Private or Public Ancillary Fund and in doing so, reduce the proliferation of said bodies and bringing great effectiveness to these funds so put in trust. This should be regarded as a good outcome by the ATO.

Community Foundations also have other functions such as creating stronger communities, growing regional community capacity, linking donors to proven need, stimulating regional philanthropy, co-operating with the three tiers of government, bringing focussed and strategic attention to socio-economic and social justice problems and introducing programs with real outcomes.

Some ideas are

a) Community Foundations and/or their associated Public Ancillary Funds, should be provided with a 'doing' DGR status appropriate to their being.
b) Community Foundations should be recognised as important corporate and charitable bodies able to provide philanthropic and charitable leadership in regions.
c) Community Foundations should have a tax regime as is available in most overseas countries, that encourages rather than stifles without unnecessary limitations, by their lack of clarity and complicated laws and regulations.
d) Community Foundations should be recognised as agents for real change, and particularly, early intervention and strategies that do not institute welfare but seek to reduce reliance on welfare by growing its own people in its region.
e) Community Foundations should be able to engage with partners such as Government Agencies (who would be doing DGR's if not being Government entities) thus able to contribute either to programs or directly to those needy people directly involved in programs.
f) Community Foundations should be recognised as being a core component assisting a 'whole of government' approach to charity and philanthropy.

Sincerely

Brian Page