

Submission on behalf of David Henning Memorial Foundation – January 2009.

Improving the integrity of Prescribed Private Funds (PPF's) Discussion Paper

Background.

My wife and I set up the David Henning Memorial Foundation in June 2006 as a memorial to our son, David, who died in December 2005. David, who was 39 years of age, left a substantial estate, part of which was bequeathed to us. Having entered the retirement period of our life we decided that the establishment of a PPF would be an appropriate use of these funds and a means of engaging our family in providing regular meaningful contributions to eligible deductible gift recipient charities in perpetuity.

Comments on Discussion Paper

As stated in the discussion paper “PPFs are a form of ancillary trust fund designed to encourage private philanthropy by providing private groups, such as businesses, families and individuals, with greater flexibility to start their own trust funds for philanthropic purposes”.

We do not believe that certain of the recommended changes in the discussion paper follow the spirit of this statement for the reasons listed below. Furthermore we would not have established a PPF if the suggested rules had applied back in June 2006.

The main reservations we have are –

1. The method of calculation of minimum distribution . Using the suggested rate of 15% to determine minimum distributions would most likely result in distribution of capital on an annual basis. This would necessarily decrease distributions in the longer term as capital is dissipated on a regular basis. We maintain that the minimum distribution should be directly related to actual earnings of the PPF and it should NEVER be a requirement for distributions to exceed earnings.

We would suggest that, if a minimum long term distribution rate is to be determined, then it would be more appropriate to relate it to the deeming rates used for Social Security pension purposes.

2. We have objections to making contact details of PPFs publicly available. The reason for this is twofold. Firstly it would result in additional cost for charities seeking funds by way of additional unsolicited submissions by them to PPFs. Secondly it would result in increased

administration and cost for many PPFs as they handled these additional submissions. In our own case we even request gift recipients not to add our PPF to their mailing list so as to keep their costs to a minimum.

3. We do not agree with the setting of a minimum size for PPFs. If there are concerns about the cost of administering smaller PPFs then this should be addressed in another way. The only costs which are borne by our own PPF are those of corporate trustee fees paid to ASIC. All other duties and compliance completed (including audit) is completed in a voluntary capacity at no cost to the PPF.

4. We do not see the need to limit the number of donors to a PPF over its lifetime. The current accumulation and distribution rules are satisfactory.

We do not have any problems with improving the integrity of PPFs in general, as long as these are truly within the spirit of the existing guidelines and model trust deed. We agree that, if guidelines are breached, there should be some method by which appropriate action can be taken against those who attempt to use PPFs as a means by which to rot the system.

We hope that this review of PPFs will further advance the cause of philanthropy in Australia and not have the opposite effect. We believe that this opposite effect will be the ultimate result if all the suggestions in the discussion paper are adopted.