

*think different, act different, make a DIFFERENT difference*



donkey wheel

July 21st, 2009

Manager  
Philanthropy and Exemptions Unit  
Business Tax Division  
The Treasury  
Langton Crescent  
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ABN 14154880274  
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Dear Sir,

I enclose Donkey Wheel Ltd's submission in response to the draft "Private Ancillary Fund Guidelines 2009".

Donkey Wheel Ltd, as trustee for Donkey Wheel Charitable Trust and Donkey Wheel Prescribed Private Fund made a submission to the initial discussion paper, and we are grateful for the opportunity to respond further. We hope it will assist your deliberations in producing robust guidelines that will ensure the continued healthy growth of the philanthropic sector.

Yours Sincerely

Fran Westmore  
Executive Officer

Michael Witt,  
Responsible Person

# **Response to the draft “Private Ancillary Fund Guidelines 2009”**

## **1 Executive Summary**

- 1.1 In respect of the regulatory changes reflected in the draft guidelines, Donkey Wheel has some needs that are not common across all PPFs. We believe, however, that our approach to philanthropy reflects current thinking, and that it is important that our work be enabled rather than disabled by legislation. We are absolutely supportive of the need to protect public monies, and we have no issue with the role of the ATO as a regulator. However, as in our previous submission, we believe strongly that the social purpose of philanthropy is also hugely important, and we question whether the guidelines sufficiently enable this purpose.
- 1.2 It is our opinion that, unless there are changes to the draft guidelines, Donkey Wheel may be severely and unfairly disadvantaged in achievement of its philanthropic vision.
- 1.3 Donkey Wheel questions the motivations of government in respect of its treatment of PPFs (or PAFs). From the guidelines, one would be forgiven for wondering if government views PPFs/PAFs as some form of suspect tax maximization scheme whereby people of wealth are able to obtain an inappropriate tax advantage. As outlined in our previous submission, the truth is far from this view. To use Donkey Wheel as an example, the directors work many unpaid hours every week in the PPF, and the work is difficult, complex and at times very frustrating. A tax advantage would have been much more easily obtained by writing a cheque. Our board is driven by their vision for a better world, and tax deductibility simply means more can be donated.
- 1.4 Our investment follows the new thinking called “Mission Investing”. In our case, we do not simply use the minimum 5% of our asset for philanthropy. Instead, we put 100% of our assets toward philanthropy by investing in ethical businesses, social ventures – and Donkey Wheel House. The return we get from this philosophy in real dollars may not be as high, but our outcomes aim to be of the highest possible philanthropic quality, and yet this is not in any way considered in the new guidelines
- 1.5 If government is, in fact, supportive of PPFs/PAFs continued existence, there is a need to have a degree of flexibility, to take into account the scope of work being undertaken and the rights of organisations like Donkey Wheel to be supported, rather than hampered. We are creative, and innovative and different – our work should be applauded, not disabled.

## **2 Background to this submission**

- 2.1 In November 2008, Donkey Wheel purchased the building located at 673 Bourke Street Melbourne. The Charitable Trust and the PPF own the building equally. The building was purchased using existing corpus plus supplementary donations from the donor family. Part of these donations was provided as interest free loans to the PPF, with the undertaking that the loans would be forgiven over several years. In this

way the donors received tax benefit spread over several years which enabled them to donate more than would have been the case for one off donation.

- 2.2 Donkey Wheel House (the building), was purchased for three reasons. The first reason is that the Board believes it to be a prudent long-term investment, capable (after renovation) of providing a reliable financial return each year from rental monies. Given the current and projected state of the stock market, the Board believes this was a sound financial decision. The second reason is that the Board's vision is to create a Social Change Hub (see Appendix 1). The third reason is that the building has cultural, historical and architectural value, and the Board selected this building to protect it for the people of Melbourne and to ensure it remains available as a public building.
- 2.3 The actions outlined (above) were taken after receiving substantial legal advice on their acceptability under the PPF regulations, and they were taken in good faith. Our situation under the exiting draft guidelines will be very difficult if not untenable.

### 3 Specific Concerns

***Re clause 19, "During each \*financial year, a \*private ancillary fund must distribute at least 5 per cent of the \*market value of the fund's assets (as at the end of the previous \*financial year)."***

3.1 This clause is practicable while the asset is producing a return. However, if there are a number of years of minimal or even negative return on investments, – as some financial analysts predict will occur over coming years – PPFs/PAFs will be required to sell capital to meet their obligations. It would not take long to make the organization untenable under those conditions. Is that the intention? If so, why? Does government not support long-term viable philanthropy? If not the intention, the guidelines need to be adapted to accommodate periods of low/negative return, a time that is most likely to be difficult for donors to make donations.

3.2 In the case of non-liquid assets, this clause effectively makes it impossible to hold illiquid assets that do not make a financial return. Is this the intention? We believe the guidelines do not give sufficient consideration to the variety of assets that may be impacted. This clause will effectively disable our ability to conduct the philanthropic activities we had planned. For us, the issue is that our major asset (Donkey Wheel House) is both our investment and the site of our philanthropic activities. This is a step away from the simple cheque book philanthropy that the guidelines cover. It is new thinking about Mission Investment, where all assets are dedicated to philanthropy, not just the small percentage that is gifted. We could tenant the building to high end commercial businesses with no social agenda, and hopefully gain the returns necessary to meet the proposed guidelines. However, this is not philanthropy. Our vision is to people the building with community groups, social ventures and grass roots organisations – none of whom can pay high end rentals. Our vision requires us to make a reasonable return, and we cannot guarantee that this will be 5%

after overheads. We may be forced to sell the building to meet our obligations, and we assume that this would not be in the spirit of the purpose of the guidelines which should support philanthropy, not disable it. We believe the guidelines should recognize activities such as ours ongoing, but at the very least, we request that the guidelines grandfather existing assets. We would be very happy if this grandfathering were made conditional on proof of genuine philanthropic intent and would love to take you through our plans to justify our request.

3.3 The requirement to gift 5% of all assets does not stipulate that this should be the Nett value of assets (ie the value of the asset after overhead costs). PPFs have always been required to keep overheads to a minimum, but even so the costs of investment advice, office administration, services and utilities added to the arbitrary 5% means that the returns required to meet the guidelines become very difficult to achieve. Even worse, it promises to penalise the smaller PPFs more than the large ones as the proportion of overhead drops as economy of scale is reached.

***Re Clause 34. “The trustee must not \*borrow money or maintain an existing borrowing of money.”***

and

***Clause 37. “The fund must not acquire an asset (except by way of gift) from, and must not make a loan or provide any other kind of financial assistance to, a founder of the fund, a donor to the fund, the trustee, a director, officer, agent, \*member or employee of the trustee, or an \*associate of any of these entities.”***

3.4 Our donors made their loans to Donkey wheel in the good faith expectation that they would be spread over a number of years through the facility of a no interest loan. If it is dis-allowed mid loan, it will cause great financial hardship to the donors – or will force Donkey Wheel to sell Donkey Wheel House to repay the loan, which will cause a great loss of money already expended on our vision, plus the loss of staff jobs – and the loss of our vision for the future. We believe existing loan agreements must be honoured through grandfathering.

***3.3 Re Clause 44. “The trustee may apply income or capital of a \*private ancillary fund:***

***• to reimburse the trustee for reasonable expenses incurred on behalf of the fund;***

***and***

***• to pay fair and reasonable remuneration for the trustee’s services in administering the fund.”***

As in our previous submission, Donkey Wheel request greater clarity on the definition of “reasonable”. For example, can government tell us what the benchmark is for reasonable expenses incurred by government departments who process grants? Our belief is that this benchmark amount should be deducted from the distribution requirement

## 4 Recommendations/requests

4.1 That the minimum distribution of assets amount be nett of reasonable overheads

4.2 That “reasonable overheads” be defined with greater clarity in line with Government benchmarks for granting

4.3 That the minimum distribution of assets amount be graduated according to the investment return achieved and that a zero distribution be allowed in times of negative return

4.4 That distribution of illiquid assets be based on realized capital gains, provided that asset is actively used for charitable purpose OR that existing assets have their current status maintained through grandfathering

4.5 That existing loans be grandfathered

## APPENDIX 1

### donkey wheel background

*NOTE: This background document includes activities conducted under both the PPF and Charitable Trust*

Donkey Wheel Ltd as Trustee for Donkey Wheel Prescribed Private Fund and Donkey Wheel Charitable Trust was established in 2004 for the purpose of philanthropic gifting. Our corpus is approximately \$6.2 million plus a building asset of approx \$8.0 million. We average grants in the region of \$500,000 per annum.

The initial funds for both the Trust and Fund were provided by a private family, and the current generations are still actively involved in the organization. Donkey Wheel focuses on philanthropic gifting to charitable organisations, with specific focus on positive social change through different thinking.

## VISION



thi nk di fferent  
act di fferent  
*make a di fferent di fference*

## MISSION STATEMENT

We are active catalysts for positive social change and we seek out innovators, leaders and passionate volunteers. We provide a space where different thinking about how to create a better world is made possible. We strive to give all of our actions a philanthropic outcome, including our investments, gifting, building operations and office management

## STRATEGIES

The purchase of Donkey Wheel House enables us to create a Social Change Hub, housing a mixture of tenants and activities, events and meeting spaces, with a whole of community engagement in the space. While we will continue to fund a number of small projects and organisations, our major focus of activity and expenditure will be to catalyse and support different thinking in grass roots, small and medium community groups, with a particular focus on Innovative Leaders of Change. We will maximize our impact by assisting eligible community groups and innovators to expand and develop their ideas, find project funding and develop their capacity to be self sufficient in the long term. To achieve this, we will support the delivery of workshops, events, formal and informal dialogue and networking, project support and funding brokerage, and provide space for emerging innovators as tenants. We will employ volunteers, consultants and staff to support these activities, and build a very public profile to ensure we engage as many people as possible.

## PHILOSOPHY

Our goal is to make every Donkey Wheel action have a philanthropic outcome. To support that philosophy, we have purchased premises outright, to ensure our money is not lost to rent or mortgage costs but instead is available to circulate through the community sector, preferably a number of times. For example, the building is part of our investment strategy and must legally be a sound investment with reasonable financial returns. We will therefore lease part of the building at commercial rates, but will seek out tenants who share our values and desire to contribute to the Donkey Wheel House Community in some way. Their rental will then be used to gift to tenants with less funds– which will then come back into our funds as rent – again to be gifted to a community group or event.

## VALUES

Donkey Wheel seeks to achieve a culture for itself and Donkey Wheel House that is:

Adventurous    Challenging                      Creative                      Empowering  
Fun              Intuitive                      Transformative              Ethical

## INVESTMENTS

We will seek to maximize the return on our investments within an ethical framework. We will seek commercial return for the building space, but will only accept tenants who match the criteria of our values and goals. For our

invested funds, we will maintain an ethical investment profile whereby positive, negative and proactive ethical considerations dictate our decisions. This approach may include modest investment in innovative startups where the risk is high but so too is the potential social benefit.

#### GIFTING:

We are open to funding all eligible charitable organisations, but believe we will usually find most value in funding grassroots and small groups where the vision of the individual has a large impact on the organization as a whole, and where the projects can quickly adapt to changing issues or opportunities as they arise. In many cases we may help these groups to be partnered by more experienced larger organisations.

#### DONKEY WHEEL HOUSE

We will create a Social Change Hub that has the capacity to become a centre of creative thinking. We see the Hub as consuming approximately 80% of available gifting funds

The reason for our move to a Hub instead of traditional project gifting is related to past experience and future possibility. We have found in the past that many exceptional organisations come to us (and other philanthropists) with projects that lack vision, courage and ambition. We have found many community groups are trapped in solving the current problem with the current model, instead of visualizing the future they want, and seeking a path to it. We believe that our Hub will enable community groups and their creative innovators to develop and implement much higher quality projects, and we see the opportunity of helping them to succeed

1.

The products and services we will provide commencing financial year 1 2009/2010 will include the following:

2. Space for commercial tenancies, including existing office and café leaseholds.
3. A creative Social Change Hub at Donkey Wheel House – a physical meeting place for new thinking, including hot desks, meeting rooms, function spaces, café, a training/commercial kitchen and office space for the whole of community to participate, with a focus on support for innovative leaders of change.
4. Support for workshops that will:
  - a. Develop capacity to move from problem solving to creative, imaginative future thinking
  - b. Develop life skills and work skills specific to the social change environment
  - c. Increase capacity for planning, analysis and evaluation skills and help prepare projects for funding requests and effective implementation
  - d. Enhance networks and capacity to find support, partners and funding
  - e. Create survival and sustainability strategies including self sufficiency and entrepreneurial thinking
5. Support for Change-making organisations in the development of

- projects, tools and resources
6. Support for elders circles and apprentice circles where ideas, experience and wisdom are shared
  7. Support for think tanks, forums, Hypotheticals and dialogues that identify creative solutions to current and future social issues
  8. A website for the distribution of information and resources and management of events, functions and tenancies
  9. Brokerage support for good projects to help them connect with philanthropists and Corporations
  10. Direct funding to a small number of projects