

**IMPROVING THE INTEGRITY OF PRESCRIBED PRIVATE FUNDS
TREASURY DISCUSSION PAPER, NOVEMBER 2008**

SUBMISSION BY THE FOUR WINDS FOUNDATION, JANUARY 2009

The Four Winds Festival at Bermagui, New South Wales, was started about 20 years ago by local residents concerned by the almost complete absence of first class professional music performance and education on the South Coast of the state. As a result there was little incentive or support for schools in the region to develop adequate music programs and few opportunities for outstanding young musicians to pursue professional careers in this field. Since its establishment, the Festival has grown in stature and regional impact with thousands now enjoying the bi-annual Festival and a much larger number of students being reached through an accompanying schools program and performance tour of the region. The cost of the Festival was initially met by local donations. In more recent years it has been met by a combination of box office and support from local residents and businesses, with very limited subvention from government agencies.

Founders of the Festival wanted to ensure its growth in artistic standards and community reach, as well as its continuity for the benefit of the region which it serves. They saw the PPF legislation introduced by the previous Federal Government in 2001 as the appropriate mechanism to achieve this end. The PPF structure allowed for the accumulation of a capital base through tax deductible donations, and protected the Festival itself by ensuring that funding had to flow out to it (or to other organizations with related aims that met the appropriate requirements) .

To date The Four Winds Foundation has fulfilled its charter well, providing some security of funding to the Festival, allowing the Festival to engage professional directors, enhancing the quality and scope of the musical programming, improving the site and facilities for the benefit of audiences and artists, and expanding the scope of related schools and community programming.

Such outcomes are directly in accord with the stated views of the Hon. Wayne Swan MP, Treasurer of the Commonwealth of Australia, who said (see Australian Philanthropy, Summer 2008, Issue 71):

“Government does not hold all the answers. Solving difficult problems usually means working with partners who bring different skills and attributes to the table.

“That’s why I am keen to build a stronger relationship between the Rudd Government and Australia’s philanthropic community, a relationship built on mutual effort and enterprise, which allows us to work together in ways that capture our different strengths, weaknesses, capacities and constraints.

“Philanthropics bring crucial assets. Philanthropics are usually creative, experimental and adaptable. They have the dexterity to tailor solutions to the needs of their partners and local communities. They are imaginative in dealing with problems that lie in their path, and nimble in responding to new information and ideas as they come to light.

“We know that Australian philanthropy is a broad church. Philanthropics come in different shapes and sizes, and have diverse attributes, motivations and needs that we much acknowledge.

“As a partner, one of our roles is to provide a policy environment which makes it simple and rewarding for Australians to get involved in giving, and which helps philanthropic organizations grow and flourish.....Whether you are a big corporate or a small, family-based PPF, in good times and in bad, we are keen to work with you and support your efforts”.

Speaking at the Philanthropy Australia Annual Conference in Sydney in October 2008, Senator Ursula Stephens, Parliamentary Secretary for Social Inclusion and the Voluntary Sector, reinforced the Treasurer’s comments. She talked about the ways in which the Social Inclusion Agenda meshed with philanthropy, encouraging the philanthropic sector to communicate with government about ways to engage new givers,.....to ensure continuing growth and support for new foundations and to ensure that the philanthropic sector is strong and capable. (see Philanthropy Australia Conference Summary).

The rules for PPFs suggested by the Treasury Discussion Paper are in direct contradiction to these comments by leaders of the Federal Government. There is no way that The Four Winds Foundation would have been established if PPFs were compelled to:

- distribute as much as 15% of the closing value of the Fund each year as this would mean the Fund lost value each year so that its grant making capacity was continually reducing. After taking account of management and compliance costs, it would effectively eliminate the Fund within about fifteen years. It certainly would not help the Foundation to “grow and flourish” nor make the sector “strong and capable”. The proposal to distribute 15% per annum is also inconsistent with the original rules under which the Foundation was established and the introduction of such a rule now would represent a breach of faith by the Government;
- make their contact details available publicly as this would result in great numbers of unsolicited applications from organizations across the community and cultural sectors. The resulting administration, which would require the engagement of professional staff, would distract from the mission and from the financial capacity of the Foundation to meet its clear objectives.

In summary, the proposed 15% distribution rule would not only lead to the closing down of this Foundation within a relatively short period, it would also:

- rapidly make the majority of existing PPFs ineffective and eventually lead to their closure;
- result in few, if any, new PPFs being established in future years (why would anyone establish a foundation that has no long term future and no capacity to make a significant contribution in its chosen area of charitable activity?);
- ensure that no further injections of capital were made into the Four Winds Foundation and, in all likelihood, into the majority of existing PPFs.

The development of a culture of philanthropy, as espoused by the Government, is not something that can happen overnight. It will require decades of consistent and attractive policy settings from government as well as articulate advocacy and support from those engaged in the sector. With the initial PPFs only established in 2001, this class of foundation is a very recent phenomenon. It is, of course, encouraging that their uptake has been so swift. This should be seen as a mark of success and an indication that there are people in Australia with the capacity and the desire to make a significant contribution to the community if the policy settings are right. The establishment of PPFs has contributed to the culture of philanthropy not just through increased financial giving, as important as this is, but also through the added motivation to offer time and skills to the community organizations receiving support in order to ensure the donated money is used effectively and for the purposes given.

It is probably not surprising that the very success of PPFs is seen as a matter of concern by Treasury who no doubt prefer to see such success in terms of revenue foregone rather than community strengthened and philanthropic culture enriched. At this early stage in the first flush of PPFs being established, and when the capital base of each PPF is being established with injections of tax deductible donations, the numbers will inevitably appear to be larger than Treasury might have anticipated. This cannot continue indefinitely as the rate of establishment of PPFs will inevitably slow and donations to build the corpus of a PPF will taper off when an adequate capital base is reached. In this way balance will be reached over time.

It must also be stressed that the revenue 'foregone' has not been 'lost' or misappropriated or applied for personal enrichment. Its application for the benefit of the wider Australian community has been most carefully monitored by the Australian Taxation Office. Our experience is that the ATO has been rigorous in its supervision of PPFs with recipient organizations being asked to verify their charitable status and to verify receipt of grants. In addition, of course, the grants provided have increased the capacity of the recipient organizations (in this case the Four Winds Festival) to employ artists, production and administrative staff, to contract for accommodation, to provide food and beverage services, and generally expand their capacity to contribute to the economy, and thus to taxation and other government revenues, through employment and the purchase of goods and services.

On the other hand, if the proposals of the Treasury Discussion Paper were to be legislated, the PPF sector would be seriously undermined. This would not only be contrary to the Government's own stated intentions, it would also be damaging to the wide charitable community, including the cultural and not-for-profit sectors. It will also ensure that rather than being a constructive partner with government and advocate for further broadening of the philanthropic base, the philanthropic sector would be made distrustful of government and unwilling to promote philanthropic partnerships with them.

One important aspect of PPFs is the capacity to engage families in strategic support of community causes over a long period of time. The Four Winds Foundation has representatives from three generations of the founding family as Trustees. This is how families are encouraged to build a tradition of giving and how a long term culture of philanthropy is fostered. As outlined above, a compulsory distribution rate of 15% would, within a short space of time, result in an immaterial corpus and hence an immaterial capacity to partner with and support the chosen cause(s). Philanthropy needs a long term and strategic approach to be effective in addressing needs in the community. Building a diversity of philanthropic sources of support for community needs should be a priority for government, not preventing such an outcome.

There are certainly ways that the Government can improve the current PPF legislation and guidelines. We would welcome the abolishment of 'accumulation plans' which are an arbitrary and artificial barrier to the growth of philanthropic capacity. We would also agree that it is appropriate for a minimum amount to be distributed each year. The current requirement for The Four Winds Foundation is to distribute a minimum of 5% of the previous year's capital contributions plus 100% of the income earned less expenses. A simpler and more reasonable distribution requirement would be 5% of the corpus per annum. This is approximately what a well managed foundation might expect on average and after costs to earn on its capital base over time. Such a rate would:

- ensure that 5% of the capital base of PPFs was distributed for the benefit of community each year;
- provide certainty to PPF trustees in their management of the Fund;
- encourage donations to the corpus of PPFs for the benefit of the Australian community;
- provide consistency to the giving patterns of PPFs for the benefit of the community sector and the confidence of the government;
- enable the founders of PPFs to plan long term by ensuring the potential perpetuity of their Fund;
- be in line with the rate used in the USA;
- lead to confidence in, advocacy of, and long term growth for the PPF sector, all of which is in line with the Government's stated policy.

The current legislation defines the type of organization that can receive funding from a PPF in very narrow terms: they must have the status of Deductible Gift Recipients (DGR) and Tax Concession Charities (TTC). While such narrow definition may have been appropriate in the initial phase of PPF operations in order to ensure that grants were properly applied and that confidence in the system was built in government, for some PPFs (but not The Four Winds Foundation) it has led to anomalies in the grant making process. Some organizations that can receive tax deductible donations from individuals and from foundations established under earlier legislation cannot receive donations from a PPF because they are not considered to be TCCs.

This consideration does not relate to their purpose or activities which can be entirely charitable in nature, but rather to their structure and/or constitution. The Royal Children's Hospital in Melbourne and National Gallery of Victoria, for instance, are two such entities which cannot receive direct donations from a PPF because they are not considered in law to be charitable (TCC) because of their statutory links to the Victorian State Government. This anomaly should be corrected by making the grant from a PPF acceptable if the purpose of the grant (rather than the constitution of the recipient entity) is fully charitable under the terms originating in the Statute of Elizabeth.

We disagree strongly with the proposal that PPFs should have to make public their contact details directly in a government published listing or through any intermediary body such as Philanthropy Australia. This would result in them being inundated with requests for funding. Already some NGOs and deductible gift recipients (DGRs) are sleuthing out details of The Four Winds Foundation and other PPFs and applying for support for causes entirely unrelated to the purpose for which the Foundation was established. This requires administrative time and money that would be better applied to fulfilling the Fund's objectives. In this age of computer generated fund raising materials and techniques, public listing will certainly mean a flood of applications seeking support for a vast range of causes. This will require the employment of professional staff to manage and will have an adverse impact on the capacity of the Foundation to make grants in its chosen area. It will also result in a significant waste of resources by the community and NGO sector. We can understand the attraction of transparency but effective giving is of greater value and importance. The word "private" in "Private Prescribed Fund" should have real meaning and it should be quite sufficient that a PPF is meeting its proper legal and administrative obligations as monitored by the ATO without being overwhelmed by irrelevant administration.

The introduction of legislation supporting the establishment of PPFs has seen a blossoming of charitable giving and offers significant encouragement to the generation of a wider philanthropic culture. This is exactly what the Government says it wants so why would Treasury recommend against it? With a convenient and effective institutional framework and strict guidelines for their operations, PPFs have led to increased charitable giving, an improved focus on the outcomes of this giving, a longer term commitment to the cause, and a wider engagement of families in philanthropy. Any refinement to the existing legislation should only be considered if it can be shown that such refinement will further enhance and enlarge the role of philanthropy for the long term and wider benefit of the Australian community, a concept not to be confused with the more narrow focus on revenue foregone and the resulting short term discomfort of the Australian Treasury.