



Perpetual Limited
ABN 86 000 431 827

Level 12 Angel Place
123 Pitt Street
SYDNEY NSW 2000
Australia
Telephone 02 9229 9000
Facsimile 02 8256 1471

12 January 2009

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

Dear Sir / Madam,

Re: Prescribed Private Funds

Please find enclosed Perpetual's submission in response to the Treasury discussion paper 'Improving the integrity of Prescribed Private Funds'.

For over 120 years, Perpetual has helped many individuals and families realise their philanthropic ambitions. For the majority of these 120 years individuals chose to establish Charitable Trusts as the most appropriate legal structure. However since the introduction of PPFs, many individuals have selected PPFs as a more appropriate structure.

Perpetual is the largest manager of private Charitable Trusts and Foundations in Australia, with over \$1 billion in funds under management. Over \$250M of this is within PPFs.

As trustee of over 400 charitable trusts, and 49 PPFs we have assisted in the establishment and distribution of funds for medical, social, environmental, religious, cultural and educational purposes. Through these entities, Perpetual oversees distributions to charities in excess of \$40 million per annum and in the process engages with 1,000s of non-profit organisations.

Our proven success in managing charitable funds means we understand the present and future needs of philanthropists, charitable and non-profit organisations as well as professionals servicing these groups.

Therefore Perpetual is well placed to comment on

- why philanthropists establish structures such as PPFs;
- what timeframes philanthropists like to extend their community support over;
- the appropriate investment and distribution strategy to support the intent of philanthropists; and
- how philanthropists like to be approached for funding.

We would welcome the opportunity to provide additional explanation to any of the comments and information included in the attached response.

Prescribed Private Funds were established to encourage private philanthropy. We hope that the outcome of this discussion will continue to encourage private philanthropy, enabling ongoing assistance to all Australians for many years to come.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'A Thomas', is positioned below the text 'Yours sincerely,'.

Andrew Thomas | General Manager | Philanthropy
Perpetual | Level 12, 123 Pitt St, Sydney | NSW 2000
Phone +61 2 9229 3955 | Fax +61 2 8256 1471
Mobile +61 409 707 389 | www.perpetual.com.au

Perpetual Limited

Improving the integrity of Prescribed Private Funds (PPFs)

Submission to Treasury

January 2009

Concerns for Philanthropy in Australia.

Whilst we have significant concerns for the future of philanthropy with some of the proposed suggestions made in the discussion paper, we would applaud initiatives that simplify the understanding and administration of PPFs. As such, the decision to have a formula which easily stipulates the minimum amount of distributions that must be made to DGRs in a financial year would be welcomed.

Amongst other points, the discussion paper suggests that (1) PPFs would have a very limited life in Australia by distributing 15% of the capital balance each year and (2) that those people that distribute these monies should be publicly identifiable. These two issues will effectively stifle philanthropy in Australia. If we want to encourage philanthropy in Australia, the suggestions made in the discussion paper in respect of these two issues needs very careful consideration.

It is important to look at the principles underpinning the rules governing PPFs as highlighted in paragraph 13:

1 *PPFs are vehicles for acts of philanthropy by donors. PPFs have been established as a vehicle to encourage private philanthropy*

As such donors have the right to remain anonymous to the public whether they contribute via a PPF or whether they contribute directly to an organisation.

Private philanthropy is private philanthropy. It appears that any decision to make public the contact details of individuals who contribute to private philanthropy is retrospective to the intent of the PPF legislation, and will erode trust in any future government process to encourage philanthropy.

For the same reason that Federal, State and Local Governments provide annual, biannual & triennial funding to community organisations, philanthropists like to do the same. Philanthropists provide funding to DGRs to improve the lives of others and most do not want to ever receive any public recognition or accolades for their generosity.

Philanthropists give to make a difference. Yet they also know that some of the sources that receive the funding will require more than one year, or even three, five or ten years worth of funding to achieve their mission (eg to prevent youth suicide, to fund a cure for a medical disease, to reduce child abuse, etc)

It is vitally important that the long term nature of PPFs is preserved.

2 *PPFs should provide a benefit to the charitable sectors that is more than if the government had taken the revenue foregone (by way of PPF tax concessions) and given it directly to that sector*

This question simply needs a time frame to be fully answered. In its simplest form if you apply a 12 month time frame and a black and white accountant's view it would appear clear that the government has in fact lost revenue from allowing a PPF contribution. However it would be unrealistic to expect that the time frame in which this evaluation should be made is a 12 month time frame. It would also be unrealistic to expect that the government didn't consider a longer time frame when introducing PPFs in Australia.

An illustration of the value of compound returns in perpetuity can be seen in any established charitable trust. For instance the Ramaciotti Foundations were established in

1970 with initial funding of \$6.7M. Since 1970 the Ramaciotti Foundations have distributed over \$45M (more than 6 times their original corpus, and current annual distributions of approximately \$2M). Over this period the original corpus of the funds has grown to provide the income stream to make annual distributions to support biomedical research in the community each year.

To further support the community benefit of long term philanthropy, the Ramaciotti Foundations have provided funding to researchers such as Professor Ian Frazer well before the breakthrough cervical cancer vaccine. With insufficient medical research funding in Australia, and pressure on many other key public services, the evidence of international philanthropy would support a long term framework of evaluating 'public benefit' as compared to 'revenue foregone'.

This example also highlights the importance of giving in perpetuity and the value added to the community through a prudent investment strategy to help achieve community outcomes.

Consultation questions

1 What is the appropriate minimum distribution rate? Why?

To answer this question it is important to consider the time frame in which the wealth was accumulated to establish a PPF, why a PPF was established, and what the not-for-profit sector requires from PPFs.

The establishment of a PPF requires substantial wealth and whilst this is a relative term a PPF is a structure that somebody has the possibility to establish once in their life time. The funds seeded and added to the PPF have been accumulated by the individual or family over a long period of time and it would seem the most appropriate solution to allow this wealth to also have a benefit to the community over a long period of time and not something that is fully expired within a short number of years.

Not for profit organisations (and specifically for PPFs, DGRs) require a sustainable finding solution. In the main, these organisations do not have a level of reserves to allow them to continue to deliver their services to the community should there be a downturn in their revenue streams. Well governed not for profit organisations prefer a consistent income stream to allow them to consistently deliver their services and hopefully grow their services as required annually. Therefore a distribution policy for PPFs should allow for a consistent income stream to be distributed each year and for the capital base within the PPF to grow at least in line with CPI to ensure it can continue to deliver comparable annual distributions to DGRs.

When people have established their PPF, they have taken counsel from documentation from the ATO such as the guidelines for PPFs. No such documentation supports the concept of a PPF having a limited life (such that would be the case if the minimum 15% distribution rate as suggested in the discussion paper).

Whilst the existing requirement for distribution is functional, we believe all parties would benefit from a simplified formula to calculate the amount to be distributed each year, and we would recommend a formula as suggested being a fixed percentage of assets held as at 30 June of the previous year.

A perfect illustration of the value of long term philanthropy is the Ramaciotti Foundations as outlined earlier in this paper.

We therefore strongly recommend a distribution rate of a minimum of 5% of the capital base as calculated at 30 June of the previous year. This minimum rate allows philanthropists to distribute more than 5% if inclined in any one year.

2 Should the commissioner have the ability to modify the minimum amount according to market conditions (for example, based on average fund earnings)?

The most important issue in this regard is what is required by the DGRs? DGRs would prefer a consistent income stream to their organisation rather than the volatility as is often seen in investment markets. In a context of keeping distributions consistent for the DGRs, and simple for those administering PPFs, a fixed rate should be established.

3 Should a lower distribution rate apply for a period (for example, 1-2 years) to allow newly established PPFs to build their corpus?

As philanthropy is about making a long term difference to the community it appears sensible to be able to have a variation from a minimum distribution rate, particularly in the first full tax year after a PPF is created.

For instance if a PPF was incorporated in June of 2008 we would support an exemption from a minimum distribution rate for the first 12 months following this incorporation. Therefore applying the suggested distribution of a minimum of 5% of a capital base at 30 June of each year, the newly incorporated PPF would not need to (however could opt to) make distributions during the 2008 / 2009 financial year however would need to fall in line with the minimum distribution rate in the 2009 / 2010 financial year.

4 Are there any issues that government needs to consider in implementing the requirement to ensure PPFs regularly value their assets at market rates?

It follows that if there is a minimum distribution rate based on the asset value at 30 June of each year, PPFs need to have their assets valued to market at 30 June each year. As PPFs are required to be audited, auditors will be looking at market valuations on assets in their process and therefore it seems that this issue will have limited impact on PPFs.

5 Is setting a minimum PPF size appropriate?

A PPF should be established irrespective of size in dollar terms. This is simply as people will establish and add to the capital base of their PPF when appropriate over their life and through their estate. The compliance costs of PPFs (administration, accounting, audit, tax, and legal) will be natural barriers to the establishment of PPFs and thus should provide barriers to smaller sized PPFs.

6 What should the minimum PPF size be in dollar terms?

Not applicable.

7 Should a fund have to distribute all its capital when its total value falls below this minimum amount?

It would appear logical that if a PPF size reduces, or if the trustees of a PPF would prefer a simpler structure for making annual contributions to the community, the ATO should allow a PPF to retire subject to the funds being placed in a Public Ancillary Fund. As both PPFs and PAFs can only distribute to DGRs this would enable the funds originally invested in a PPF to continue to provide benefits to the community without either (a) the risk of non compliance or (b) the PPF reducing its capital further by the substantial compliance costs of a PPF where simpler structures are available.

This amendment would therefore allow a more efficient and compliant structure for the Australian Government, the individual and most importantly, the wider community.

The decision to retire from a PPF to a PAF should be allowed for a PPF of any fund size.

8 Are there any relevant issues that need to be considered in improving and standardising the public accountability of PPFs?

It should be a role of the Australian Government to ensure that the PPF is compliant with the law; is making distributions in accordance with its legal obligations, is not undertaking charitable work in its own right, is not taking donations from the wider community, is abiding by all the relevant laws, is not receiving any benefit from its activities in the community, etc.

The role of improving and standardising the accountabilities of PPFs is important to encouraging further philanthropy in Australia.

9 Are there any concerns with the proposal to require that the contact details of PPFs be provided to the public? What information should be provided publicly?

The establishment of a PPF should be encouraged and in doing so there is no public need to disclose the contact details of PPFs to the general public. To establish a PPF, an individual family is undertaking a long term commitment to help the lives of others through their philanthropic intent.

This decision to establish a PPF should not be an invitation to have thousands of registered DGRs contacting these individuals. To provide some comparison, if somebody simply makes a donation to a DGR (for example: to provide a scholarship in perpetuity) their donation is not public knowledge, yet they also require a tax deduction just as a donor receives when providing a capital base to the PPF. Therefore it would seem discriminatory to only provide the contact details of those people with PPFs and not other people who receive tax deductions each year for contributing to DGRs.

This links to the very name the Australian Government provided for these structures, being Prescribed Private Funds – it is important not to forget the word ‘Private’ which is contained in the very name of its structure.

In the interests of growing philanthropy in Australia we strongly recommend that the contact details of PPFs not be provided to the public.

10 Will two years be a long enough transitional period for existing PPFs to comply fully with the new guidelines?

We believe two years is a very reasonable time frame for full compliance with new guidelines.

11 Are there any costs or any other concerns relating to the corporate trustee proposal?

One of the principal advantages of a corporate trustee is that it provides continuity of trusteeship. Individuals can come and go for various reasons and on each occasion there are costs associated with the appointment of new trustees. Over time these costs can outweigh the administrative cost of a corporate trustee. Changes of shareholders and directors are managed in a much more straightforward manner.

Any additional costs associated with the need for a corporate trustee are minimal. They include the initial cost to set up the corporate trustee which should currently be no more

than \$1000 and the cost of the annual requirement to lodge returns with ASIC, if required, which again should currently be less than \$1000.

The principal concern with a corporate trustee is the single shareholder and single director situation. A corporation can now be established with a single shareholder who can appoint a single director – shareholder and director typically being one and the same person. Effectively, in this situation, the corporate trustee is controlled by the same person which, for all practical purposes, is no different to that person being the trustee personally.

If a trustee corporation was to take the position of the corporate trustee, these issues would be eliminated. That trustee corporation would charge an ongoing fee for its involvement but there would not be the set up or ongoing administration costs associated with an individual corporate trustee. Trustee corporations provide the same, if not more, degree of continuity with a high level of independence, responsibility and objectivity. They are regulated by ASIC in the same manner as any other corporation. It is anticipated that, in the near future, their trustee responsibilities will also be regulated nationally, mostly likely again by ASIC.

12 Are there any privacy concerns that the Government needs to consider?

Where the ATO is concerned that a trustee of a PPF has misused PPF funds or may otherwise be in breach of the relevant State or Territory legislation, the ATO should be provided with powers to make enquiries to satisfy itself of its investigations. PPFs are and should be required to abide by all State, Territory and Commonwealth laws.

13 Are there any concerns over particular penalty types?

A scale of penalties relevant to the breach would seem appropriate. This means that the penalty for a breach made by genuine mistake would be less than a breach by fraud.

14 If a fit and proper person test were introduced, what criteria should be imposed on trustees?

We would consider a fit and proper person test for PPF trustees to be an appropriate measure to assist in ensuring PPFs comply with all legislation.

15 Are there any other provisions presently in the model trustee that should be covered in the updated guidelines?

No.

16 Are there any provisions not in the deed that should be updated in the guidelines?

No, other than the changes to ultimately reflect the changes confirmed by this review.

17 Would there be any disadvantages if a cap were introduced on the number of donors to a PPF (for example, a maximum of 20 donors over the life of a fund)?

Yes. Any limitation to the amount of donors has the potential to reduce philanthropy in Australia which would be contradictory to why PPFs were established. Encouraging more people to contribute would increase planned giving in Australia. Having said this, these additional contributions must be from people known to each other and be personal contributions and not be soliciting or seeking public funds.

18 Is the conversion from PPF to PAF an acceptable mechanism to deal with changing PPF circumstances?

As both PPFs and PAFs can only distribute to DGRs this would enable the funds originally invested in a PPF to continue to provide a long term benefit to the community without either (a) the risk of non compliance or (b) the PPF reducing its capital further by the substantial compliance costs of a PPF where simpler structures are available.

This amendment would therefore allow a more efficient and compliant structure for the Australian Government, the individual and most importantly, the wider community.

19 What rules will be used to deal with a conversion from a PPF to a PAF?

It would appear appropriate that a PPF should comply with its distribution requirements in the year it converts to a PAF. Therefore assuming a PPF has assets at 30 June of \$500,000 and the minimum distribution amount is 5%, the PPF would need to distribute a minimum of \$25,000 prior to converting to a PAF.

20 Would there be any disadvantages from introducing this limitation to the existing PPF investment rules?(Liquid Assets)

PPFs should not be restricted in their investment selection to only liquid assets as this could limit a fund's ability to generate capital growth and thereby provide greater income over the long term and therefore the amount of money available for DGRs. Having said this, if the minimum distribution percentage of assets is approved, a PPF will need to maintain liquid assets within its investments in order to make such distributions.