Response to the Treasury Discussion Paper
November 2008
Improving the Integrity of PPFS

Introduction

This discussion paper and the process of review which the Government has initiated takes place in a context within the Australian community (business, community groups and individuals) where philanthropy is still a developing characteristic of how we live caringly and co-operatively together, supporting both the development and well-being of individuals and aspects/activities of our community which need our support and assistance.

The introduction of the PPF structure afforded segments of the Australia community an important opportunity to develop a variety of approaches to philanthropy – a diversity that must be protected and supported by Government because it encourages and promotes the joy and value of giving so effectively. The diversity of PPFs contributes a strength and a heart-centred creativity to the role of philanthropy that is vital.

No doubt as with many other successful business people, the introduction of the PPF structure provided us with an appropriately regulated and easily managed vehicle for sharing some of the wealth we had created in a structured, on-going way. This had enormous appeal for us and resulted in us markedly increasing the amount of money we give <u>and</u> the type of project/activity we support.

The value to the Australian community of Government regulations that supports and strengthens this diversity of giving cannot be overestimated.

Principles Underpinning The Rules Governing PPFs

We wish to submit the following for consideration in relation to 13 – Principles 1, 2,3 and 4 on page 3 of the Discussion Paper.

We agree with the general tenor of the Principles and offer these comments which come from our experience of conducting a PPF.

The reality is that there are activities that are legitimately funded by PPFs that may rarely (if ever) be funded by governments or NGOs directly.

This particularly applies to:

- small scale projects that make a qualitative difference to the lives of a few people – to the extent of saving a person from suiciding,
- small local projects that are confined to or are unique to a particular community, town, village that do not have the resources, either human or financial, to attract attention from government, larger funds, PAFs or NGOs,

- projects that are legitimately the precinct of PPFs that are innovative, start-up projects that need immediate funding to establish themselves and yet which lead on to important activities that contribute to the viability and/or well-being of a community,
- projects that do receive some funding which is patently insufficient to ensure the project/activity's on-going sustainability,
- projects that miss out because of the necessity for departments, NGOs to prioritise funding distribution.

In fact we were delighted to hear that the Treasurer, Wayne Swan, commented:

"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 would want you to understand (and act accordingly) that the introduction of PPFs has enabled many of us to bring our business and entrepreneurial skills to our philanthropic activities. We understand the need the Government has for clarity and ensuring the integrity of PPFs <u>and</u> for dealing with those who abuse the privilege of operating a PPF and we suggest that you deal directly with those issues while leaving the majority of us free to contribute as the Treasurer has described.

Required Distributions

In reference to 1a, 16 and 17 (your document) page 4.

In relation to a "minimum standard of philanthropic behaviour" – how this is defined needs to ensure that the current flexibility afforded PPFs, to respond immediately, quickly to a need or request, is protected and maintained while achieving 16.

In particular the size of compulsory distribution needs to be organised in such a way that it doesn't hamper or close small, niche funds or make it so difficult for them to operate that they give up decision-making/control of their fund to others or that people who are considering establishing a PPF (which we think the Government should be actively encouraging) are either prevented or seriously discouraged.

- What is an appropriate minimum distribution rate? Why?

Although the current requirement that we distribute all the interest and 5% of the previous year's donation capital is adequate and appropriate, given our qualified support of regular valuation of assets at market rates, The Angel Fund considers that an appropriate minimum rate would be 5%. To quote Philanthropy Australia, "a minimum rate of 5% will enable a PPF to maintain its real value over the economic cycle as well as to maintain the real value of distributions over time."

The issues relating to anything higher are:

- the impact on longer term planning and distribution,
- the fact that it could close some smaller funds,
- the recipient community's uncertainty about funding over the longer term,
- the on-going viability and growth of the philanthropic sector.

In a good year we would, like many other PPFs, give back more than 5%.

It would be regrettable if a too high mandatory distribution rate acted as a disincentive for the creation of PPFs or mitigated against the on-going development of the fund involving the next generations because the funds became unviable.

- Should the Commissioner have the ability to modify the minimum according to market conditions?

This would be a planning and administrative nightmare of large proportions for most if not all PPFs. We agree with the Government's position on this. No – he/she should not. It would be unnecessarily complex and interventionist for no benefit.

- Should a lower distribution rate apply for a period to allow newly established PPFs to build their corpus?

This is almost a case of how long is a piece of string. With a large minimum distribution then time would definitely be needed. But how long? Up to 2 years in the current climate would be woefully inadequate. It could take more than 5 years before significant stasis is achieved by the PPF.

A 5% minimum distribution rate would obviate the need for new PPFs to be operating differently from older ones.

Regulation Valuations Of Assets At Market Rates

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

AND

Restrict PPF Investment To Only Liquid Assets

- Would there by any disadvantages from introducing this limitation to the PPF investment rules?

While supporting the proposal of annual valuation of assets, The Angel Fund has some concerns which we think need to be thought through.

There is an underlying issue here that relates to the relative liquidity of assets. If the Government insists that PPFs only invest the approved capital base in a very narrow range of easily liquidated investments, funds such as our that are intended to be in perpetuity (which affords us the space/time for the returns to fluctuate while ultimately protecting the overall integrity of our capital base) might be forced to liquidate in an unfavourable market thereby losing money. If we were forced to invest only in say cash, the current situation would mean (as you are aware) a drastic reduction in funds available for distribution.

This is not to say we shouldn't be required to regularly value our assets and report that valuation and its nature to the ATO but if the Government markedly increased mandatory distribution rates and tied it to this valuation then some (and ours could ultimately be one of them) PPFs may be wiped out.

Such a scenario is not a good thing and the overall impact on building a significant, private culture of giving in this country, would be damaged.

There are also issues relating to how "charitable use assets" would be valued and consideration needs to be given to the costs of annual valuation and the impact of increased costs on funds available for distribution.

Minimum PPF Size

If setting a minimum PPF size is related to the Government's concern that some PPFs are "being eroded through operating expenses" then we consider it more appropriate that a direct measure be introduced to prevent this and to prevent any "misusing" of operating expenses.

For example:

- exclude PPFs from acquiring property unless it can be demonstrated as a direct philanthropic activity,
- set maximum operating expenses allowable relevant to the size of the PPF.

Setting a minimum PPF size carries with it the disadvantage of reducing the number of PPFs even started, especially if the amount set is around $500,000. For example The Angel Fund has a goal of developing/donating to achieve $1m capital base and it may take some years to get there and we do NOW contribute good quality, ethically managed philanthropy with the base we are at – a base which every year we add to both directly from our business and through unsolicited gifts.

Surely there is a place for funds like ours as well as for funds like the Pratt's and the Reichstein's.

The problem with minimum PPF size is contained in your discussion question – should we then be forced to distribute all our capital if we fall below this arbitrary level? Such a requirement would no doubt remove many PPFs (including ours) from the philanthropic arena and the current diversity of sizes and activities is real plus for the development and implementation of philanthropic work in this country. Such a situation will discourage individuals from establishing PPFs, remove vital funding from DGRs damaging their work and there is no guarantee that would be philanthropists would be more encouraged to donate directly to charities. While support for organizations like the Salvos is important it is entirely different from directly helping to establish an art therapy program in a small town for local recovering drug addicts.

It is often smallish businesses who, after succeeding, look to develop a PPF and if you make it too hard or impossible for ordinary Australians to do this, the health of both large and smaller scale philanthropy will suffer.

Increased Public Accountability

The Angel Fund has had an ABN since its inception and we support the proposal that all PPFs be required to have an ABN and be recorded on the Australian Business Register that they are a PPF.

In general though responding to these two consultation questions we wish to use our PPF as an example rather than talking generally when we have limited information about other PPFs' modus operandi.

The Angel Fund now distributes in the region of \$50,000 annually. If our contact details were distributed, DGRs/charities could (almost certainly would) waste a lot of time and resources contacting us only to find that:

- their project/activity is one we specifically exclude,
- we are unlikely to fund 6 environmental projects in one round because we prefer to spread (in as focussed a way as possible) the types of activities we fund each year,
- our preference leans more to local (150km radius) projects so calls from W.A. may not be appropriate.

Secondly we are not set up to answer heaps of requests and we see that as one of our strengths. <u>Every</u> cent the fund earns is distributed. We take no administration fees and we pay for services to The Angel Fund privately if they are not donated. In addition we have a personal (sometimes on-going) relationship with many of our recipients which is precious to us and enables The Angle Fund to process distributions quickly, effectively and in a timely way.

We are often hands-on philanthropists contributing business skills and experience, community development expertise working as part of a "local" committee, mentoring, connecting DGRs with other sources of philanthropy/grants and generally promoting philanthropy as a way other businesses/wealthy individuals can make meaningful contributions back to society.

Codifying our giving in the form of pamphlets, publicity material or application forms would not only be cumbersome but would reduce our funds available for distribution, limit our creativity, relative spontaneity, reduce our flexibility and impact negatively on our opportunity to recognise a need and act. To us all of this is at the heart of our commitment to the PPF process.

We love it and it works.

PPFs Are Trusts That Abide By All Relevant Laws and Obligations And Are Open, Transparent And Accountable

We need much more time to adequately understand the implications of changes which as yet you haven't detailed.

Our current position in relation to proposed changes (whatever they may be) is that if the ATO needs greater regulatory power to address issues such as misuse of funds, inadequate philanthropic distribution then very specific regulations to directly address these should be developed. This would leave the rest of us to get on with our work which is already open, transparent and accountable. Doing it in the way the paper may be suggesting is a blunt instrument that would have undesirable and unwanted consequences that negatively impact on those of us who manage our PPFs ethically and effectively as well as deterring others from private, active, sustained philanthropy.

We do not support the proposal for a sole corporate trustees as:

- we consider the Treasury/ATO already has at is disposal (and uses) appropriate mechanisms to ensure that PPFs abide by all relevant laws and obligations,
- we consider that the increased costs involved would further reduce our amounts for distribution or involve us in unnecessary additional expense,
- we are unclear about the legal implications for The Angel Fund of such a proposal vis á vis our existing trust structure.

We do not understand what you mean by privacy concerns the government needs to consider and we think it vital that you make the issue clear to all of us before proceeding so we can comment intelligently.

As stated The Angel Fund supports the ATO being given more specific, appropriate sanctions to deal with PPFs that mismanage their funds.

We do not support the introduction of a fit and proper person test, as in our view there is nothing about holding a formal qualification that means a person is ethical, has high moral principles and acts on them routinely or whose values are necessarily consistent with the operation of an open, transparent and accountable philanthropic undertaking.

We concur with Philanthropy Australia that this would be a real issue for PPFs which operate from a multi-generational base and to which donors are introducing children and younger family members as trustees. Instead we support the development of accessible information to be issued to all existing and new PPFs, as well as mandatory professional development on philanthropy for professional advisors. Like Philanthropy Australia, The Angel considers that this issue could be largely overcome by:

- education for professional advisors who are or may be involved with PPFs – including wealth managers, accountants and lawyers,
- requiring trustees of new PPFs to be provided with appropriate materials which include information on all regulations and legislation (including state-based) which governs them,
- mandatory supplementary education for auditors of PPFs particularly on "eligible organizations" for distributions,
- requiring a least one trustee (ideally the Responsible Person) of PPFs to undertake some form of training or education seminar or program developed specifically for them.

The issue is one of education and clarity of guidelines. As trustees we have at times spent considerable energy exploring where to turn for accurate information with which to educate ourselves.

PPFs Are Private

We established The Angel Fund <u>because</u> as a PPF it was private. We appreciated that we were the major source of funds. However we do not support a prescribed arbitrary limit on the number of donors to PPF because:

- existing PPFs are approached by likeminded individuals who are willing to join them and increase their community commitment through donating to an existing PPF rather than establishing a new one. This is highly beneficial to the community as it increases both the dollars and the culture of giving without the duplication of additional administration,
- PPFs are a useful vehicle for workplace giving programs in firms and partnerships,
- extended families involving more than three generations can easily involve more than 100 family members and friends making donations into the PPF,
- PPF events may from time to time invoke high numbers of people including some donors who may wish to make contributions into the PPF.

Move Relevant Provisions From Model Trust Deed Into The Guidelines

In principle we support giving the rules the force of law particularly as mentioned in 41. on page 10 of the Discussion Paper.

However until we see some detail we are not in a position to comment further.

Conclusion

The Angel Fund is supportive of the need for the current review of PPF regulations. In such an important arena as private philanthropy we need to ensure that the bases for PPF operation are clear and simple to administer for PPF operators, recipients and the Government/ATO.

The Angel Fund supports measures that increase private investment for long term community benefit and acknowledges that these measures should ensure transparency, efficiency and flexibility, to ensure that maximum long term benefits flow to our communities.

We consider it imperative that any new regulatory framework supports the operation of a viable and vibrant philanthropic culture. Given that we set up the existing PPFs honourably and with a sense of certainty about their future operation, we consider it vital that not only the letter but the spirit of the regulations honours our efforts to give as generously as we collectively have.