# CAMBOOYA

13 January, 2009

Manager
Philanthropy & Exemptions Unit
Personal and Retirement Income Divisions
The Treasury
Langton Crescent
Parkes ACT 2600

Via Email: ppfreview2008@treasury.gov.au

Dear Sir,

**Re: Improving the Integrity of Prescribed Private Funds (PPFs)**

We would like to raise several concerns over some of the proposed amendments relating the Principles underpinning the rules governing PPFs, expressed in the Consultation Paper released by the Assistant Treasurer on 26th November, 2008.

In particular, our concerns stem from the financial implications of mandating a minimum distribution amount based on the value of the PPF's net assets at the close of the previous financial year. This proposal is outlined in Principle 1 of the Assistant Treasurer's paper.

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In the current economic climate, a requirement to distribute 15 percent, as suggested in paragraph 20 of the Consultation Paper, would have an adverse impact on philanthropy in Australia.

By definition, a PPF is a trust; this is highlighted in paragraphs 5,6 and 8 of the Consultation Paper. One of the basic tenets of trust accounting is the doctrine of prudence – the concept that a trust corpus be protected and augmented so that the future needs of beneficiaries are protected. Conservative investment policies aimed at maintaining the real value of a fund, should remain the focus of PPF trustees.

A requirement to distribute at least 15 percent of the closing value of the fund is contrary to the doctrine of prudence. It would diminish the assets of a PPF in a manner which serves beneficiaries **now** at the expense of those who might benefit in future. It is a short term "fix" which contravenes the conservative and prudent principles upon which any trust is established.

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The requirement to distribute 15 percent of the closing value of the fund would mean that a PPF with a concentrated interest in yield investments, not subject to market movements, would deplete its assets to zero within seven years of establishment, assuming investment income is distributed in full (as is currently required). Such short-term thinking will have a deleterious effect upon the establishment of PPFs and consequently will have an adverse impact upon philanthropy in Australia. Indeed, it would seem to be a particularly bad time to take such a step given the current volatility and uncertainty of all investment asset classes.

The very success of the PPF initiative is a testimony to a latent wish of community-minded people to contribute for public philanthropic purposes. Many philanthropists, who have expressed their desire to contribute to Australia's philanthropic landscape by the establishment of a PPF, have done so with long-term goals in mind. A requirement to distribute a minimum 15 percent of net asset value is at complete odds with many of those philanthropists who also wish to engage their families in long-term charitable pursuits.

We believe that a more reasonable approach is to require that PPFs distribute their investment income in full. This is a current requirement which we feel is consistent with conservative and prudent principles of corpus preservation, which balances the needs of future DGRs with the current demands of these charities. The current volatile and unpredictable investment markets reinforce the need of trustees to adopt a cautious approach in both investment and distribution policies. Distribution of capital gains both realised and unrealised, would deplete assets so significantly that the philanthropic culture fostered through the introduction of PPFs would be severely impaired.

One advantage of PPFs is that they encourage thinking about philanthropy in a macro way, encouraging development of appropriate policies and procedures for investment and distribution as well as good governance in general. The mandating of a minimum distribution rate of 15 percent of net asset value would be a deterrent to the establishment of new PPFs. The proposal would also constitute an abrupt rebuff to those individual philanthropists who wish to go further beyond personal donations to DGRs, by establishing philanthropic bodies to provide some coherent framework for their giving.

In summary, we have several concerns over the proposal outlined in paragraph 20 of the Assistant Treasurer's Consultation Paper *Impairing the Integrity of Prescribed Private Funds.* These concerns are:

- 15 percent will severely deplete the assets of PPFs thereby denying the needs of future beneficiaries to the benefit of current recipients.
- The distribution of capital gains contradicts the doctrine of prudence upon which any trust is established.
- Volatile investment markets require a cautious and conservative approach towards distribution policies. A blanket, "one size fits all" approach is inappropriate and ignores the impacts of market volatility.
- The establishment of a PPF provides structure, discipline and a long-term framework for family Philanthropy. A 15 percent minimum distribution rate is a short-term reaction which will be a major discouragement to the establishment of new PPFs.

We believe that a more reasonable approach is to require that PPFs distribute in full their investment income each year. This is consistent with general trust principles and provides some longevity and investment rigour in the establishment and governance of PPFs.

That PPFs have flourished over the past few years is confirmation of Australia's appetite for philanthropy. We believe that the requirement to distribute 15 percent of the closing value of the fund would be a discouragement to the establishment of new PPFs, thus having an adverse impact upon philanthropy in Australia.

Yours faithfully,

Peter A. Roach
Chief Executive Officer