53 Monteith Street
Warrawee NSW 2074

15th January 2008

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

Dear Sir,

This submission is in response to the discussion paper "Improving the Integrity of Prescribed Private Funds (PPFs)".

I am making this submission as an individual although I have had the benefit of reading the submission made by Philanthropy Australia with which I am in broad agreement. However in some aspects I would go further than that paper did in supporting retention of the status quo.

May I also state that I am not by any means a wealthy person, being a salaried worker, albeit in a high-ish salary bracket? I work in the not-for-profit sector for an arts company that depends to a large degree on sponsorships and private donations for its funding.

The changes proposed in the discussion paper would make the PPF structure totally unsuitable for a number of reasons. The following responses to relevant consultation questions relate to my personal situation but can also be generalised to the wider philanthropic community.

As a general observation I might say I am alarmed and angered by the proposal which appears to fundamentally change the PPF regime by requiring all funds to be disbursed over a period of time. Under the proposals, it would no longer be possible for someone to set up a fund to be held in perpetuity with the income used for charitable purposes.

Principle 1a Required Distributions

1. What is an appropriate minimum distribution rate? Why?

a) There is no need for a minimum distribution rate.
The basic premise should be that people are only going to establish PPFs for philanthropic purposes. There is no point in anyone establishing a PPF if it is not intended to make distributions for the purposes intended. Hence all the objectives should be achieved if the PPFs are allowed to self-regulate in this respect.

b) If a minimum rate is applied it should be allowable to average distributions over a number of years. This is because quite obviously, neither the financial markets nor the demand for charitable contributions will ever be an average in any year. In my particular case, the costs to be funded are basically on a two year cycle with a need to provide for periodic costs that might recur every 7 – 10 years. It ought to be allowable to accumulate earnings in the fund to cover such circumstances.

2. Should the Commissioner have the ability to modify the minimum amount according to market conditions?

No. Ideally there would be no minimum amount. If there is giving the Commissioner the power to modify it would further exacerbate an already imperfect situation. It would however be appropriate for the Commissioner to have the discretion to waive minimum distributions on a case by case basis.

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

Ideally there would be no minimum distribution rate. In any event, there should be no minimum until the corpus has been reached.

Principal 1b Regular valuations of assets at market rates

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

The whole issue of setting distributions based on a valuation at one particular point in time ignores the issue of volatility of markets. As an example, distributions in the current climate based on a June 2008 valuation could create problems for many funds.

What about real property and other assets for which there is no readily available market price? Requiring regular valuations would be time consuming and expensive.

Principle 1c Minimum PPF size

1. Is setting a minimum PPF size appropriate? What should the minimum PPF size be in dollar terms? Should a fund have to distribute all its capital when its total value falls below this minimum amount?

No. Administration expenses would be proportionate to the size of the fund. Very small funds would have practically no administration costs so there’s no reason not to allow them. Again, anyone establishing such a fund would be acutely aware of this issue and would not proceed if the end result – supporting charities – was not achievable.

Principle 1d Increased public accountability

1. Are there any relevant issues that need to be considered in improving and standardizing the public accountability of PPFs?

Issues which ought to be taken into account in establishing any form of accountability regime should include the costs of compliance, administrative burden and PPFs’ fundamentally private nature.

PPFs should be required to have an ABN and be recorded on the Australian Business Register with the indication that they are a PPF.

2. 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?

This is entirely unnecessary and inappropriate. PPFs will seek out appropriate recipients for their funding and would publicise themselves if they want or need unsolicited funding requests.

Principal 2a Give the ATO greater regulatory powers

1. Will two years be a long enough transitional period for existing PPFs to comply fully with the new Guidelines?

Unable to comment without knowing the full extent of the new Guidelines.

2. Are there any cost or other concerns relating to the corporate trustee proposal?

I note the discussion paper states "corporate trustees are relatively popular in the self-managed superannuation fund sector…". This implies an element of choice in the adoption of a trustee. The same choice might be appropriate for PPFs.

3. Are there any privacy concerns that the government needs to consider?

No comment. Refer to the provisions of the Privacy Act.

4. Are there any concerns over particular penalty types?

I would support the use of restitution in the event of an abuse of the PPF system. I would think the public would want to be able to recoup any inappropriate loss of public money from people abusing a charitable structure to enrich themselves.

Principle 2b

No comment.

Principal 3a Limit the number of PPF donors

1. Would there be any disadvantages if a cap were introduced on the number of donors to a PPF?

I can envisage situations where this might create issues for some PPFs. It is another area where I suspect self-regulation might work as well or better than prescribing limits. I would support the concept of "close relationship" as mentioned in the discussion paper with disclosure being required in the annual return. Setting quantitative limits is unnecessary and may be inappropriate.

2. Is conversion from PPF to PAF an acceptable mechanism to deal with changing PPF circumstances? What rules could be used to deal with the conversion from a PPF to a PAF?

I support Philanthropy Australia's response to these questions.

Principal 4a Restrict PPF Investment to only liquid assets

I believe this to be an unnecessarily restrictive proposal that would prevent PPFs from acquiring real assets for the use of charities.

Steve Davidson BA CPA