

28 May 2009

**Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
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PARKES ACT 2600**

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Dear Sir / Madam

SUBJECT: EXPOSURE DRAFT – TAX LAWS AMENDMENT (PRESCRIBED PRIVATE FUNDS) BILL 2009

Thank you for the opportunity to provide feedback on the Draft Legislation.

As mentioned in our earlier submission to Treasury, we applaud initiatives which

- 1) encourage philanthropy;
- 2) simplify the understanding and administration of Prescribed Private Funds / Private Ancillary Funds; and
- 3) strengthen the compliance infrastructure.

However without the opportunity to review the guidelines in association with the exposure draft we are unable to provide a complete response to the exposure draft. We would suggest that a similar opportunity to comment on the guidelines be provided, particularly to trustees of existing PPFs.

The fundamental area of concern is the presumption that existing PPFs will comply with the new legislation by 1 October 2009. This is too short a transition period, especially when existing PPFs are yet to see the guidelines. This is inconsistent with Treasury's discussion paper which asked the question '*will two years be long enough transition period for existing PPFs to comply fully with the guidelines?*' A more realistic and lengthy transition period was discussed in this paper. It should not be forgotten that PPF trustees have existing State based trustee legislation with which they must comply. We believe existing PPFs which comply with the statutory trustee legislation should either be grandfathered into the new regime without any changes, or be given the benefit of a lengthier transition period.

Another issue of concern is the single corporate trustee. Many people have established PPFs and remain co-trustees as individual(s) with a professional trustee company like Perpetual. For the individual(s) establishing the PPF, this structure brings skills, knowledge and expertise to the table as trustees. Under the proposed model these founders would now need to choose whether they relinquish the role of trustee, or perform the role without the benefit of a professional co-trustee such as Perpetual. The alternative suggestion of utilising a corporate entity, which is often a non trading shell entity offers a less effective governance and decision making structure than individuals working as co-trustees with a statutory trustee company.

We therefore recommend that the trustee of a Private Ancillary Fund can either be (a) a single corporate entity; (b) individual(s) with a licensed trustee company, or (c) a corporate entity and a licensed trustee company.

There is currently a tremendous opportunity to grow philanthropy in Australia to assist all our communities. The macro impact of the draft legislation, without the guidelines, on the philanthropic community cannot be understood. While we welcome the efforts to date, we would welcome the opportunity to provide further more detailed input into the reform process once the guidelines are made public.

Perpetual is aware of the response from Philanthropy Australia and as a member fully endorses its submission. We would welcome the opportunity to discuss further any of the points raised.

Yours sincerely,



Andrew Thomas
General Manager - Philanthropy