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Sent: Thursday, 16 December 2010 5:50 PM
To: PAF Reforms
Subject: improving the integrity of public ancillary funds

The Manager
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I refer to your discussion paper regarding improving the integrity of public ancillary funds.

First of all let me say that the time given to consider this paper was less than adequate, particularly given the time of the year and the matters raised being so important for community foundations in country areas.

I am not at all convinced that the measures outlined in the proposed framework fit community based philanthropic foundations, particularly for foundations that have not been up and running for long and are still working on obtaining donations to establish a reasonable asset base going forward.

What you must remember which is particularly important in rural areas is that community based foundations are very much in the public eye and are subject (in my experience) to significant enquiries as to who the board members are, the integrity of the fund, how the funds will be invested before donations are made, the bulk of which (in my experience) have not sought tax deductibility.

If for example funds are invested with banks regular valuations of assets is a non-event. Until funds have sufficient assets to diversify their investments, investing in banks on Term Deposit type basis is the only sensible approach. On that basis you should consider a minimum amount of investment held by a fund, say $5 million, before considering some of the suggestions in your paper.

Community accountability is very much a major concern of the directors or trustees of community based funds in rural areas. The “everyone knows everyone” is very evident and the last thing any trustee wants when involved in one of these funds is for something to go wrong hence the very conservative approach.

The level of community accountability in rural areas is already very high and I do not believe it needs to be legislated for.

In relation to minimum distribution requirements, investment strategies and audit requirements, these I believe already exist.

In my experience, the public does participate in the administration of the fund through election of trustees and/or directors. There is a public consultation process when grants are made available for specific purposes and when donations are made for purposes such as “stay at school” & “back to school” the time spent on selection process for recipients is considerable.

In relation to No19 improving standard of governance and integrity. What do you mean by compulsory distributions? It is my understanding there are already adequate requirements to distribute funds under the ATO guidelines.

Imposing new requirements such as regular valuation of assets at market rates, preparation of accounts and audit requirements & improving disclosure requirements giving the ATO greater regulatory power. It is my belief that the ATO already has sufficient powers, there are already significant requirements for preparation of accounts and audit requirements and as mentioned before, what is the use of regular valuation of assets if the funds are invested in banks (the safe haven)?

Who may you suggest will pay for all of these regulatory requirements? Or will the government be providing funding to meet these additional regulations so that community based rural funds are not put at risk by having to utilise their hard earned earnings funding government requirements, rather than for the very purpose that they were established.

In section 31 & 32 you mention that at least 5% of the market value of the funds net assets must be distributed. Where and how did you arrive at 5%? If the net assets of the fund for example are $500,000 and say invested at 5% which you had trouble getting 12 months ago, where does say 2% for administration costs come from if you have to distribute the total 5%? You would have to use capital which is not the purpose of community based funds. They would eventually go backwards and create significant distrust in the community.

In our area we have some very civic minded people who have donated money to community based funds and have a strong desire to provide benefits to the community on a philanthropic basis. Those people are important to the trustees and/or on boards to benefit the community and should not be subject to restrictions because a trustee or board member donated more than $10,000 (Item 60).

The suggestions in this consultation paper do not address the community style funds which are based on the corpus model and distributions based on income not value of the fund.

If guidelines are such that a qualified valuer is required every 3 years, who pays? And where do the funds come from?

I was under the impression that all public funds were on the Australian Business Register, certainly the ones I know of have an ABN & lodge regular BAS statements. I can not see the point in lodging a return, and again, who pays?

The funds I know of prepare audited financial statements, which are available to the public, what more do you need?

Increasing regulatory powers just imposes unnecessary burdens on the community based funds that have been set up principally to support public and community needs in many rural areas.

One gains the impression from your comments that because there have been several private funds that have not toed the line, every other fund (public or private) must have bad apples in the bin.

For community based rural funds the fit & proper person speaks for themselves. If the trustees or board members are not regarded as fit & proper by the community then the fund will not survive. It is my experience that persons who make donations to community based funds are extremely caring and enthusiastic members of the community with an intense desire to keep and support community projects the best way possible. They are an essential part of any successful community based public fund.

There are probably more comments that need to be made in terms of your discussion paper, however time does not permit. Having made the forgoing observations one thinks there should be a separation between what you perceive as public ancillary funds and what I consider to be “public” community based funds.

To me community based funds should be allowed to grow capital as the whole purpose is to be in existence for many years to provide community support.

Sincerely

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