IMPROVING THE INTEGRITY OF PRESCRIBED PRIVATE FUNDS
THE TREASURY - DISCUSSION PAPER, NOVEMBER 2008

SUBMISSION BY THE KEIR FOUNDATION - January, 2009

I would like to make a specific observation based on the discussion paper. The government proposes to bring the full administration under the Commissioner of Taxation rather than Treasury. In other words the government now sees this part of the philanthropy endeavour more in terms of collecting taxes rather than public policy. The not-for-profit sector provides a vitally important component of our civil society. To discourage its development or to limit its vitality or diversity would only serve to limit civil society.

The discussion paper makes mention of the government 'subsidy' of 45% for each dollar donated to a PPF, it does not make mention of the 'subsidy' of 55% of each after tax dollar donated by the PPF founders or the public benefit derived by those receiving the grants from PPFs. A narrow focus on revenue protection will only result in an abrupt winding down of the PPF sector.

A general principal of our legal system has been to avoid wherever possible changes that have retrospective effect. Many of the proposals contained in the paper have retrospective effect and as such would be considered a breach of faith on the part of government. Many PPF founders would not have proceeded to establish foundations under the rules suggested in the paper.

I would make several comments about the nature of The Keir Foundation's operation to this point in time. The Keir Foundation ('the Foundation') has taken advantage of what I would consider to be the two vital advantages of the PPF structure. The present guidelines have allowed the Foundation to run a very low expense ratio. In fact the only substantial expenses has been those required to address the accounting and auditing obligations.

Many PAFs [public ancillary funds] have very high expense ratios sometimes as high as 50% of donation base. It would appear counterproductive to try to make PPFs more like PAFs. From a public policy point of view, this would only result in a lower amount of donations in the hand of grant seekers. The public already has a concern that too high a proportion of charitable donations go into administration costs.

The second vital advantage of the present PPF structure is that it allows the Foundation to maintain a very specific grant making policy. The Foundation has over the last few years worked in specialized areas of arts funding and social justice specifically in the media area. The media and the arts are areas in which the founders of the Foundation have previous specialist knowledge. This knowledge is brought to bear within the grant making process achieving maximum value for each grant dollar spent.

I would add that much of the activity within the not-for-profit or the volunteer sectors is provided without cost. Some of the proposals in the paper would tend to push these from voluntary towards professional costs and so reduce the amount available to grant seekers.

In addition I would like to specifically address a number of points in the discussion paper:

1a Required distributions

The appropriate distribution rate should be 4%. This is a realistic rate to retain stability over a longer term. The Norwegian Government Sovereign fund (Norges Bank Investment Management) has achieved a return of 4.15% per annum [as at 30th September, 2008] over the last 10 years (a real return after tax of 1.95%). This is of course on a much bigger capital base. The Australian Future Fund by comparison has achieved around 1% per annum since its formation, though it is still in start up phase.

The ATO estimate of 15% of distributions of capital may reflect a number of one-off elements. The last few years have seen an asset boom and a very high level of investment earnings that have given a high-income flow, combined with high inflation. Both investment income and earnings are certain to drop very substantially. Many PPFs in start-up phase may have donated above minimum levels. It should also be remembered that a number of PPF continue to donate above minimum levels as a matter of policy.

A minimum of 15% or any percentage higher than a long-term sustainable level is likely to lead to an initial increase and then diminishing donations until extinction 8 to 10 years later. Certainly to a grant recipient it would be truly depressing it be receiving a 10% smaller grant each year [and this is before any impact of inflation].

1b Regular valuation of assets at market rates

The main issue here is the cost involved in frequent valuations. Most PPFs are modest in size. I would expect a three-year revaluation cycle would achieve a much better outcome. Annual revaluations over the next three years for instance are likely to result in net losses not gains, and this is before the cost of the valuations taken into account.

1c Minimum PPF size

Many conventional foundations and bequests have a lower quantum than $500,000. If a minimum level of PPF size is necessary it should be $100,000. As a matter of policy I think it is important that the philanthropy sector is not purely restricted to the Ultra-High Worth sector.

1d Increased public accountability

I would question whether the requirement for an ABN and the requirement to appear on the Australian Business Register would add any more acceptance or transparency to the operation of a PPF on the part of the public as suggested. Accountability issues are dealt with by the audit process and the ATO. It would simply add more administrative costs.

The proposal to publish contact details of PPFs would create the heaviest cost impost as 20,000 deductible gift recipients ('DGRs') could seek information or make applications that need to be considered and responded to. To encourage this futile activity would incease the cost ratio of the DGRs as well as the PPFs.

Many foundations including the Keir Foundation try to get best value out of the donations by specializing in specific fields. For the Government to give hope to medical charities, for instance, that they should send funding applications to the Keir Foundation for medical research would be a waste of everyone's time. The Keir Foundation has absolutely not expertise in medical research, so it would be futile for grant seeker and grant giver.

2a Give the ATO greater regulatory powers
Although it may be prudent to review the regulatory powers available to the ATO, I feel it is crucial to avoid a situation where compliance costs are greatly increased and the formation of new PPFs are discouraged.

2b Introduce fit and proper person
I would argue from a policy point of view that it is important to encourage the appointment of trustees that have experience relevant to the grant making process as well as fiduciary side. I would argue that given a requirement for audit accounts and the proposal for greater ATO oversight that a greater level of professional financial experience does not need to be introduced into the fit and proper person test.