Executive Council of Australian Jewry Inc.

הועד הפועל של יהודי אוסטרליה

The Representative Organisation of Australian Jewry

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Hon Dr Andrew Leigh MP
Assistant Minister for Competition, Charities and Treasury
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Email: andrew.leigh@treasury.gov.au

Dear Dr Leigh

Re: Prohibition against Private Ancillary Funds making distributions to Public Ancillary Funds

We are writing to you at the suggestion of the Attorney-General, the Hon Mark Dreyfus QC MP, with whom we met recently, concerning the current prohibition against Private Ancillary Funds making distributions to Public Ancillary Funds.

By way of introduction, our organisation is the elected peak body representing the Australian Jewish community. The roof bodies of the Jewish communities in each State and the ACT are our constituent organisations, and other national Jewish organisations which operate in at least three States are our affiliates. Some 200 Jewish organisations across Australia – including schools, synagogues, and cultural, women's and sporting organisations – come under the umbrella of our organisation, directly or indirectly. Many of them are charities or operate charitable funds.

Our concern is that under the current law, private ancillary funds are not permitted to distribute to public ancillary funds, as neither of them are deductible gift recipients (DGRs) in item 1 of the table in section 30-15 of the *Income Tax Assessment Act 1997* ('doing charities'), but rather are in item 2 ('pass-through charities').

We presume that this restriction exists because private ancillary funds must generally distribute a minimum of 5% of the value of the fund each year to a 'doing charity'. As public ancillary funds are also not 'doing charities', a distribution to them would not necessarily be used by a 'doing charity' (eg if the public ancillary fund accumulated the distribution and only distributed the minimum it is required to distribute).

We support the policy that distributions of donated funds should be made to 'doing charities' in a timely manner, and that any accumulation by a public ancillary fund would not be appropriate. However, the effect of the current implementation of that policy is that private ancillary funds are not able to utilise the skills and resources that a public ancillary fund can mobilise, and this acts as a disincentive to philanthropy towards private ancillary funds. (This is particularly relevant as minimum distributions must generally be made by private ancillary funds by 30 June in each year).

For example, a private ancillary fund may be required to distribute, say, $1,000,000 in a particular year. It may wish to distribute this to charities to support certain medical research. However, the operators of the fund may not know which medical research charities are doing the best work or showing the most promise, whereas a public ancillary fund may have the knowledge, skills and resources to determine which charities may be the most appropriate recipients of the distribution. If the private ancillary fund could distribute to the public ancillary fund, and then the public ancillary fund could distribute to the appropriate charities, the goals of the private ancillary fund would be best achieved and the distribution would go to the most appropriate charities.

In the Jewish community, as in the wider community, many philanthropic families have in recent years established private ancillary funds in order to bring proper structure and governance to their charitable giving activities. In the past, individual members of these families made charitable donations to the Jewish Communal Appeal in NSW (JCA), a public ancillary fund (ie an Item 2 DGR) which was established in 1967, and which is the umbrella organisation responsible for allocating donated funds across Jewish community sectors in NSW – education, aged care, welfare and communal security. Over the decades the JCA has evolved a highly successful allocation methodology which is widely respected by both donors and recipients alike. These families have expressed a wish to continue giving to the JCA so that their donations will continue to have the benefit of being utilised optimally for the overall good of the community through the JCA allocations process, but they are presently precluded by law from doing so through their private ancillary funds. The current rules thus act as an impediment, rather than an encouragement, to these families continuing their past support for the JCA.

We would therefore urge the government to take the following steps:

1 Amend the *Income Tax Assessment Act 1997* and guidelines for private ancillary funds and public ancillary funds so as to allow private ancillary funds to distribute to public ancillary funds; and

2 Introduce a requirement that any such distributions would not be permitted to be accumulated by the public ancillary fund and would need to be fully distributed to a 'doing charity' with deductible gift recipient endorsement under item 1 of the table in section 30-15 of the *Income Tax Assessment Act 1997* within an appropriate period, say by 30 June following the year in which the private ancillary fund distributes to the public ancillary fund.

We agree that it would not be appropriate for a public ancillary fund to accumulate any of the distribution it would receive from a private ancillary fund. Accordingly, we suggest that the public ancillary fund must be required to distribute 100% of the distribution to it from the private ancillary fund by, say, 30 June in the year following the distribution to it, failing which there would be a breach of the guidelines by the public ancillary fund with appropriate penalties. There would also be mandatory reporting requirements in the annual information statements of both funds for every distribution by a private ancillary fund to a public ancillary fund.

As noted, these changes would require amendments to the guidelines for private ancillary funds and public ancillary funds, and to item 2 of the table in section 30-15 of the *Income Tax Assessment Act 1997*. For the reasons already stated we believe that this would facilitate greater philanthropy within the spirit of the DGR legislative regime.

We would be pleased to elaborate on the above or provide any further information you may seek. Also, we would be pleased to meet with you to discuss the matter further.

Yours sincerely

Jillian Segal AO
President

Peter Wertheim AM
Co-CEO

cc Hon Mark Dreyfus QC MP, Attorney-General of Australia