

Response to the Treasury Discussion Paper 'Improving the Integrity of Prescribed Private Funds

1 Executive Summary

- 1.1 This submission comes from donkey wheel, a relatively small PPF that has been in operation for a little over four years, with some of its funds donated by generations past and some recently donated by the current generation. donkey wheel operates as a limited liability company with a corporate trustee for the donkey wheel PPF and the donkey wheel Charitable Trust. We have an accumulation plan in place, and invest our corpus in a diverse way, including shares and property. We have experience of both the heavy obligations placed on a PPF and the comparative license when gifting from a Charitable Trust. We are therefore in a position to comment on a number of aspects of the discussion paper.
- 1.2 Our organization is strongly supportive of policies designed to create greater transparency, accountability and effectiveness of PPFs. We recognize and respect the need for PPFs to return at least an equivalent value to the community as that gained through tax benefits from donations. We feel that the PPF model has been a big part of our successful establishment and work, and we are encouraged at indications that there is a desire to make the structure, model, policies and processes simpler to assist non-professional donors.
- 1.3 However, we believe that a critical consideration in relation to PPFs is not addressed in your discussion paper. While the issues of finance have been thoroughly considered, government does not appear to have addressed the social issues at all. Specifically, the Paper has not asked the critical question - "Why do families establish PPFs"? For the ATO, the answer might appear to be simply "to get a tax benefit", because that is their core business and area of concern. However, a tax benefit can be gained through the simple writing of a cheque to an eligible charity, with no requirement for additional responsibility or involvement.
- 1.4 So who in government is examining the social aspect of PPFs in this discussion paper? Who is asking the critical question - Why would a family forgo the simplicity of simply writing a yearly cheque, choosing instead to voluntarily undertake the significant expense, effort and commitment involved in establishing a PPF? Why would a family take on the heavy responsibility of investment management and supervision? Why would a family struggle for common ground across generations to agree gifting decisions, and spend hours researching eligible organisations to try to be sure their choices are wise? Why would ordinary people risk treasured friendships by asking too much, too often for board, event, and skills volunteers? Why would an independent layperson submit him/herself to the deep frustration of trying to comply with a complicated, sometimes illogical and often highly ambiguous set of regulations and legislation?

- 1.5 We believe this question must be addressed BEFORE the establishment of new policies and guidelines, because if the answer is poorly understood, the result may well be the demise of the PPF mode, and the loss to community of a critically important source of support.
- 1.6 Before considering policies and procedures for the management of PPFs, we believe it is imperative that the financial purpose, having been closely examined, is set to one side while the broader SOCIAL PURPOSE of a PPF is examined with equal diligence.
- 1.7 We can't answer for the entire sector, but we can answer for our organization's motivation and purpose. We decided to establish a PPF so that we could engage with philanthropy into the long term – up to and including perpetuity. We chose to commit to a PPF because we want to engage at a deep level with philanthropy, and we saw that long term, sustainable investment would enable a greater difference than that achieved through a single, one off donation.
- 1.8 Establishing a PPF is expensive, time consuming, frustrating, frightening and damn hard work. It is also very rewarding for the Fund in terms of adding value and for the broader community in terms of financial and social benefits. Our directors advise that they would not have contributed anywhere close to the amounts of money or volunteer hours to charitable purposes without the PPF. It forms a structure around which the family strives together, and it drives a level of ambition to achieve results well in excess of individual goals or dreams. The directors are also adamant that a driving force to their commitment is the intention of making their donation keep giving into perpetuity. If a requirement is introduced that severely limits PPFs accumulating funds or forces them to distribute a greater percentage of funds we believe it would have the likely outcome that donors to PPFs would simply choose not to make donations as they may feel that their long term objectives in donating cannot be met. Presumably the vast majority of people who establish and operate PPFs do so because they are not happy with simply donating to PAFs and it is unrealistic to think that they would continue giving at the same level to PAFs as they do to their own PPF. Ultimately, the move would most likely lead to an overall reduction in philanthropic gifting.
- 1.9 In addition to money, PPFs employ staff and volunteers (including directors) who work with community organisations in a variety of ways, passing on skills, experience, knowledge and connections so that the grantee has a greater capacity to succeed. This social benefit should not be ignored or underestimated – it can be of more lasting value than the grant.
- 1.10 Our directors advise that they would NOT establish a PPF if it were to be crippled by 15% distribution of all assets, or if it required distribution of unrealized assets, as this would effectively ensure the PPF was unable to be sustainable into the future, and this removes the whole purpose of

establishing the PPF in the first place. Such a high distribution would force many (most?) PPFs to wind up, cease further donations and spell the loss of jobs, philanthropic skills and long-term community support

- 1.11 Our deep concern is that the Discussion Paper does not address any of the important aspects listed above, and that it therefore has the potential to make decisions based on only part of the necessary data. In our opinion, a laudable goal of government would be to encourage the public to donate through a variety of means, including PPFs. To accomplish this goal, PPFs should be made as simple and friendly as possible within the requirements of regulation and governance. Clearly more regulation is required for a foundation that attracts a tax benefit, but it must be said that our organization believes our best work has occurred through the Charitable Trust, as this model places the needs of the grantee ahead of the considerations of policy that act as constraints on PPFs.
- 1.12 We agree that there is room for improvement to the PPF model, and we hope that our feedback will give government additional insight, stimulating a closer examination of the scope of the issues, so that policy decisions are made with wisdom and full understanding.

2 Our Recommendations

- 2.1 That within Principle 1 "PPFs should provide a benefit to the charitable sector that is much more than if the Government had taken the revenue forgone (by way of PPF tax concessions) and given it directly to that sector." adequate and fair weight is given to the long term financial returns from PPF investments, rather than just their immediate return
- 2.2 That within Principle 1 "PPFs should provide a benefit to the charitable sector that is much more than if the Government had taken the revenue forgone (by way of PPF tax concessions) and given it directly to that sector." adequate and fair weight is given to the social benefits provided by PPFs over and above the financial gift
- 2.3 That management of PPFs is conducted in collaboration between the ATO (for financial regulation/governance) and a community focused government agency (for organisational capacity /oversight of social impact and liaison with the sector) to ensure a holistic approach to PPF management and regulation and protect their sustainability
- 2.4 That a PPF should be permitted to build to the agreed accumulation, allowing an agreed percentage of income to be contributed to the building of this accumulation, to enable gifting into perpetuity. Further, we recommend that a cap on operating expenses be imposed. These two actions together would ensure that the maximum possible distribution would follow.
- 2.5 That the gifting of capital should not be required to be undertaken unless the PPF is being wound up to protect the PPFs ability to gift into perpetuity
- 2.6 That unrealized capital gains should NOT be included in the distribution requirement for the same reasons as those stated in relation to gifting

- capital.
- 2.7 That government permits the holding on non-liquid assets by PPFs, and creates enforceable guidelines as to acceptable non liquid assets (e.g. based on proposed use)
 - 2.8 That the valuation of assets be done to a schedule based on the volatility of the asset to save costs (e.g. shares annually, vehicles bi-annually, buildings tri-annually)
 - 2.9 That a central database of PPFs be maintained by Government (e.g. Grants search database?) listing a minimum of name of org, postal address and which states can be gifted plus optional email, phone, website and/or details of sectors funded
 - 2.10 That the ATO simplify PPF legislation, guidelines and procedures, expand on available (SIMPLE) information and provide high quality training
 - 2.11 That the search facility on the Business Registry be developed to provide full and reliably current information.
 - 2.12 That increased incentives be provided to make philanthropic legal work a more attractive proposition for the legal community
 - 2.13 That a training course and resources covering the basic obligations for establishment, administration, gifting, windup and investment be made available for prospective "fit and proper persons".
 - 2.14 That the requirements for a "fit and proper person" be based on the same standards as those for the "responsible person" of a corporate trustee
 - 2.15 That decisions on a suitable number of donors begin from an understanding that donors are a positive and desirable resource, and that a cap of 20 donors is too small to accommodate extended family and consideration should rather be given to both the number of donors and the value of the donations, to better reflect the impact of donations on the PPF. (e.g. would the donor of sandwiches to an event be counted as one of the 20?).
 - 2.16 That clear guidelines be developed in respect of the definition of PPFs "undertaking charitable work in their own right", and that the definition recognize and respect the changing role of philanthropy world wide. That philanthropists are providing needed skills and experience to their grantees should not, in our opinion, be perceived in a negative light.
 - 2.17 That assets in active use for philanthropic activities be exempt from inclusion as capital when calculating minimum distributions, and that illiquid assets be subject to scrutiny to ensure they are value adding to the PPFs purpose, and are not automatically disallowed
 - 2.18 That government considers the cost of giving. Just as government incurs overheads in the course of delivering services, PPFs incur overheads and require infrastructure. It would be helpful if government developed guidelines for acceptable levels of overhead/infrastructure costs (e.g. as a percentage of total assets)
 - 2.19 That where changes are introduced then at a minimum there should be grandfathering provisions for existing PPFs.

3 General Comments

- 3.1 It is our observation that there are two ways to look at Philanthropic Funds.
- 3.2 One way is to see a PPF as a pool of money from which a tax benefit has been gained and that therefore must provide at least equivalent and immediate community benefit in financial terms. With this view, the easiest and simplest approach is to turn philanthropists into a conduit through which funds flow quickly and without the “impediment” of hands on involvement. This approach has the effect of funneling money into the community quickly. It also expects the demise of the Fund for lack of resources at a time in the near to mid future. We believe this view is the one reflected in the Discussion Paper.
- 3.3 A more accurate view of Philanthropic Funds sees a PPF as having an important social and supportive role within the community that goes beyond writing a series of cheques until the money runs out. The role assumes that the donor/s have decided to go beyond simply meeting a tax obligation through writing cheques (which can be done as a private individual). Instead, a PPF is established with the intention of adding value through deeper engagement with the work of philanthropy. This engagement involves a commitment by the donor/s to give much more than just money. Donors also give time and energy and skills to the community groups they support. Engaged philanthropists build relationships with their grantees for the long term. They help with skills development and non-financial resources. They build relationships with other philanthropists, NGOs and government agencies to generate increased support and foster the work being undertaken by their grantees. They are a shoulder to cry on, a think tank for the evolution of ideas and a connector for the furtherance of the work. The value they bring is financial, but not only financial – and it would be difficult to decide which aspect of the work brings most value to the community. As stated by Borms, “the role of foundations to create added value through their work as catalysts of social and political change (innovation) or their role as conveners (coordination)”¹ should not be ignored when considering the value of Funds.
- 3.4 This view is necessarily long term, and sufficient financial resources must be generated to ensure the work continues beyond the initial donation so that the knowledge, skills, experience and relationships that grow over time are not lost because the money runs out.
- 3.5 This approach requires a government’s recognition that while community must see a clear return on tax benefits, the dollars gifted in year one are not the only consideration when studying the role and obligations of a PPF. Community also requires a social return. As Treasurer Wayne Swan so eloquently expressed:

¹ Borms, Luc Tayart de. *Foundations. Creating Impact in a Globalised World*. 1st ed. Chichester, West Sussex: John Wiley and Sons Ltd, 2005. P 8

“Philanthropics bring crucial assets. Philanthropics are usually creative, experimental and adaptable. They have the dexterity to tailor solutions to the needs of their partners and local communities. They are imaginative in dealing with problems that lie in their path, and nimble in responding to new information and ideas as they come to light.”²

3.6 THE FINANCIAL ROLE OF PHILANTHROPY

3.6.1 As has been seen in the US³, philanthropic funds have grown to the point where they play a very significant role in the delivery of charitable and welfare services, and a similar pattern is emerging in Australia due, in part, to the recent period of high wealth creation. It is fitting that government oversees this evolution and makes necessary changes as the sector matures. However, the evolution of the financial role of philanthropy is not, in our opinion, well resolved by some of the proposed changes within the discussion paper. While the bulk of proposals are positive for the sector, we believe that in some instances the proposal takes a short-term view of philanthropy and misses the point that the value of Funds lies in their ability to continue to give long after the initial donation. We see the focus on minimum distribution as an example of this short-term thinking – to see 5% of all assets, as a small amount is only relevant if the issue of perpetuity is ignored. 5% of a donation that continues and increases in real value year after year is a very different proposition to a single, annual figure in the early stages of corpus accumulation.

3.6.2 We ask why the Government would “expect that this revenue foregone will be donated to the charitable sector in a relatively short period of time”? What is the imperative to have the funds quickly distributed? If donors were looking to only have a very short-term impact presumably they would simply donate directly to PAFs in any particular year. Such donations would also achieve the same level of “subsidy” from the Government.

3.6.3 We take issue with the use of the word “subsidy” in this regard. This suggests that the right to receive this taxation revenue is inherent in the Government. The other side of the argument, however, is that it is entirely proper and reasonable for a person who devotes some of their income to a purpose that is of no benefit to them but rather benefits the charitable sector not to have that income taxed, thereby achieving the maximum possible level of donation.

3.6.4 The suggestion that smaller funds will be unduly eroded by fees is of minimal accuracy and relevance given that the level of fees imposed on the management of funds is generally a fixed percentage of the amount

² Australian Philanthropy, issue 71, p. 2

³ Kathleen D McCarthy (et al). *Stanford Conversations in Philanthropy*. Stanford: Stanford university, 2007., p 92

invested and a relatively small one at that.

3.6.5 Our belief is that PPF funds invested for the long term deliver MORE benefit to the community than a one off, short-term donation

3.7 EXAMPLE (Using fictional figures from an imaginary PPF):

SCENARIO 1- An individual pays \$45,000 in income tax (no donations or tax deductions apply). The government has full use of this money immediately, and expends it on, for example, social services in that same year as follows:

Year 1 \$45,000 Tax payment acquitted

Total community benefit = \$45000

SCENARIO 2 - An individual donates \$100,000 to a PPF, receiving a tax benefit of \$45,000. The \$100,000 is invested by the PPF and 5% of the invested funds are gifted each year as follows (this fictional example creates uneven capital gains and some poor investment returns to demonstrate a worst case scenario):

Year 1	\$10,000	
Year 2	\$12,000	
Year 3	\$13,000	
Year 4	\$10,000	Tax benefit acquitted
Year 5	\$12,000	
Year 6	\$13,000	
Year 7	\$ 9,000	
Year 8	\$10,000	
Year 9	\$14,000	Additional benefit to Community
Year 10	\$16,000	\$64,000
Year 10 – 20	\$100,000	\$164,000 (cumulative)
Year 20 – 30	\$135,000	\$299,000 (cumulative)

And so on into perpetuity.....

In scenario 1, government realizes a community benefit of \$45000 immediately, but then the funds are gone.

In scenario 2, it takes 4 years for the initial \$45000 to flow to the community. HOWEVER, the community continues to receive benefits well after the \$45000 benefit is achieved. In fact, in this scenario, the \$45,000 benefit has grown to \$299,000 after 30 years and shows no sign of ending.

It is very important that both immediate and long term community financial benefits are considered when making policy decisions.

3.8 THE SOCIAL ROLE OF PHILANTHROPY

As well as financial governance, it is equally important that government recognizes and supports the evolving social role of philanthropy, and does not just focus on the money management aspect.

- 3.9 PPFs are playing an ever-growing role in support for eligible charities, providing funds for capacity building, research, public awareness, delivery of services and more. PPFs (along with other philanthropic organisations) play a key role in supporting organisations work that cannot/should not be funded through government. Loss of this source of funding to communities would deny many important initiatives and place greater demands on government over the long term.
- 3.10 donkey wheel believes there is a need to encourage the professionalisation of philanthropy, and sees numerous areas of potential improvement, particularly in the areas of transparency, accountability, impact management and strategic planning. We believe there should be a new focus on specific objectives and outcome assessment. We must not only create value, but also clearly justify our taxation exemption by demonstrating the value of the service we provide. We need government to support us in this by recognizing the emerging role and ensuring it is not hindered by obsolete approaches to tax management
- 3.11 We would urge government to give at least equal consideration to the SOCIAL impact of the growing rate of philanthropy in conjunction with the FINANCIAL impact of both tax benefits and community benefit from gifting, to gain a more holistic picture of what is needed in restructuring the sector.
- 3.12 To the extent that it is suggested that the ATO's role should move beyond regulation and compliance checking to the setting of distribution levels it is submitted that this is a policy decision that is not one which the ATO is appropriately equipped to decide. Rather, it is a decision that should be made by Government in consultation with relevant representatives of the philanthropic and charitable sector. We therefore respectfully request that government consider the management of PPFs be conducted in collaboration between the ATO (for financial regulation/governance) and a community focused government agency (for organisational capacity /oversight of social impact and liaison with the sector) to ensure a holistic approach to Fund management and regulation

4 Consultation questions

4.1 What is an appropriate minimum distribution rate? Why?

- 4.1.1 Imposing a minimum distribution rate at a level that requires regular gifting from capital would mean that PPFs that do not receive continuous donations will eventually need to be wound down. This will, as indicated in the discussion paper, prevent the erosion of the fund through negative investments, fees and the like, and would no doubt be simpler from a tax

perspective. However, it would also negate the very purpose of the PPF. The flip side to erosion of bad investments is the loss of income from good investments; if funds are required to be distributed from capital the Fund dies and the community loses both a source of funding and the capacity of those knowledgeable people who may have spent years learning the intricacies of governance, research and distribution of funds. This would place a heavy burden of loss on all the organisations that rely on philanthropic funds.

4.1.2 In our opinion, a PPF should be permitted to build to their agreed level of capital using an agreed percentage of income to build corpus, with all income beyond the agreed amount required to be gifted in the following year, including all REALISED capital gains.

4.1.3 Unrealized capital gains should NOT be included in the gifting requirement. To include the value of unrealized capital gains creates significant potential problems for PPFs. In particular, as has happened recently, where there is a significant fall in the overall investment market it will create the situation that high values at the end of one financial year will be eroded not only by the requirement to gift up to 15% of that value, but also by the fall in the market. For example, stock markets have fallen by up to 50% over the past year. If the proposed model were adopted, this could result in a 65% diminution in the value of the fund. If this were combined with the proposal that PPFs maintain a minimum size it could lead to some PPFs being effectively "wiped out". From our own experience, we know that much of these falls have simply reversed previous unrealized gains. However, the requirement to gift on the basis of an arbitrary value on one particular date will mean that where falls occur, PPFs will be unduly penalised.

4.1.4 We understand that government may be concerned to ensure PPFs do not acquire inappropriate assets. However, denying the holding of all assets is an overreaction to this issue. Instead of halting appropriate asset holding, government should create enforceable guidelines as to what assets are acceptable (e.g. based on proposed use)

4.1.5 We note that the discussion paper draws a parallel between PPFs and PAFs. We feel it is important to note that PPFs differ from PAFs in one crucial respect. PPFs may receive just one, large donation and then no more. They must therefore either go out of existence quickly or invest some funds to enable gifting into the future. PAFs rely on fundraising and their goal is to receive ongoing donations. That they are therefore required to expend those ongoing donations each year is not relevant to the PPF circumstances. Also, a PAF is involved in direct service delivery and the vast majority of PPFs would be unlikely to have this responsibility

4.1.6 We also note that the Discussion paper uses a total gifting to arrive at its average distribution, and feel it is important to point out that private PPFs should be considered separately to corporate Funds particularly in

the fact that many family PPFs cannot provide ongoing donations. We feel this anomaly skews the average.

4.1.7 Instead of setting a minimum distribution, we recommend that a cap on operating expenses be imposed. This, along with the capped accumulation, would ensure that the maximum amount possible is distributed.

4.2 Should the Commissioner have the ability to modify the minimum amount according to market conditions (for example, based on average fund earnings)?

4.2.1 absolutely not – average fund earnings can cover a huge range and could decimate a small PPF just starting out. Besides, not all PPFs invest in funds – income from investments could be derived from a range of sources that may not behave as per the stock market. This is an unnecessary step anyway as if a distribution rate is based on a percentage of income it will rise and fall with conditions.

4.3 Should a lower distribution rate apply for a period (for example, 12 years) to allow newly established PPFs to build their corpus?

4.3.1 Yes – until the agreed accumulation amount is reached (perhaps a percentage of the growth should be gifted and a percentage added to capital).

4.3.2 EXAMPLE 1 – the need for sustainable PPFs

donkey wheel has been in existence now for a little over 4 years. In that time, we have expended considerable amounts in legal fees establishing the PPF, and considerable time in developing our skills and knowledge. The projects we fund today are, in our opinion, of higher quality than those we funded in our first year. Time and experience has provided networks to identify good projects and the skills to identify them. If we are now forced to gift ourselves out of existence, all that money will be effectively wasted and all that time lost to the community and philanthropic sector.

4.3.3 EXAMPLE 2 – the need for longevity of PPFs

donkey wheel initially funded a project relating to support for Indigenous Traditional Knowledge recording. Through the funding period, a relationship developed with the grantee and other interested parties. The result was that, after the funding period, donkey wheel continued its relationship in a new capacity. We worked with the grantee to form a group of like-minded organisations that are now sharing resources and ideas, seeking income jointly and reducing replicated work. Our role in this project will diminish with time, but it has been very valuable to have an independent and objective voice as a catalyst for this collaboration – and we now have a long term relationship with this group that will be able to provide various kinds of support for their future goals and visions for many years to come. This is only possible because we assume our

Fund will exist into perpetuity.

5 Consultation question

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

5.1.1 Again the issue of cost and longevity of PPFs arises. There are considerable costs associated with valuation, particularly of fixed assets. Yearly seems to be extreme for fixed assets given the costs. Perhaps valuation could be done to a defined schedule based on the volatility of the asset.

6 Consultation questions

6.1 Are there any relevant issues that need to be considered in improving and standardising the public accountability of PPFs?

6.1.1 No issues

6.2 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?

6.2.1 We are unclear about the purpose of this proposal; in general terms, the imposition of minimum gifting requirements will be sufficient to ensure that the funds of PPFs are distributed and the regulations ensure that recipients are eligible. Further, if, as the discussion paper states, most PPFs are companies, their contact details are readily obtained from an ASIC search

6.2.2 If there is a further purpose that requires contact details, we believe there should be a central database of PPFs (maintained by Government (maybe Grants search database?)) listing a minimum of name of org, postal address and which states can be gifted plus optional email, phone, website and/or details of sectors funded.

7 Consultation questions

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

7.1.1 No. We would have a concern that our building would potentially sell at a loss if put on the market to meet ATO requirements rather than market conditions.

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

7.2.1 Donkey wheel has a corporate trustee setup, and it was costly and time consuming – and confusing. This underlines the importance of ensuring that the heavy costs and administration of compliance are not wasted because the PPF is then forced to distribute to a point where it winds down quickly. It doesn't make sense to complicate the process even further than it is today and simultaneously demand skills that then die out.

8 Consultation question

8.1 Are there any privacy concerns that the Government needs to consider?

8.1.1 It is important that families that wish to remain anonymous in relation to their public philanthropic activities can do so (provided there has been no wrong doing of course). In our case, the donors prefer to have the donkey wheel name publicly available but not the names of the donors themselves.

9 Consultation question

9.1 Are there any concerns over particular penalty types?

9.1.1 Were the penalties to hold trustees or directors of trustees personally liable for penalties for inadvertent breaches then it would reduce the willingness of persons to undertake philanthropic activities. However, personal liability for blatant and intentional breaches of PPF regulations would be appropriate.

9.1.2 The penalties should be fair, just and be an appropriate response to the wrongdoing. Just as importantly, it should be easy for PPFs to follow the regulations and not inadvertently commit wrongdoing. We would suggest that the ATO simplify the rules, expand on available (SIMPLE) information and provide high quality training before looking at penalties. For example, it is almost impossible to be REALLY confident that an applicant is an eligible organization (e.g. Ancillary 1 and 2) that DGR is still in place and charitable status still applies. With the best of intentions it is easy to make mistakes. One thing that would help is if the search facility on the Business Registry provided full and reliably current information.

9.1.3 It is very hard to find good quality legal assistance in this area. An increased incentive to the legal community to do philanthropic legal work would be very helpful. At present it is not seen as an attractive area to work in.

10 Consultation question

10.1 If a fit and proper person test were introduced, what criteria should be imposed on trustees?

10.1.1 Again, this underlines the importance of a sustainable organisation rather than a short term money conduit – while we agree that more capacity would assist PPFs, such requirements would mean training and while some people would do it as a “professional” service, many family members would be unwilling to undertake training and so on if the trust was unlikely to survive in the mid to long term.

10.1.2 We would recommend a training course and resources that cover the basics obligations for establishment, administration, gifting, windup and investment. The person should be reputable, conforming to similar standards as those required of the “responsible person” of a corporate trustee

11 Consultation questions

11.1 Would there be any disadvantages if a cap were introduced on the number of donors to a PPF (for example, a maximum of 20 donors over the life of the fund)?

11.1.1 As a starting point, it would be helpful if government recognized that donors are a positive presence in philanthropy. Within that context, and understanding the goal of a PPF to be “private”, 20 donors would be a very small number - it would be very easy for an extended family to exceed 100, or for a family and close friends to exceed that number. Also, the donor may have very little impact – for example if providing only a small amount of benefit.

11.1.2 Perhaps consideration needs to be given to both the number of donors and the value of the donations, to better reflect the impact of donations on the PPF. (e.g. would the donor of sandwiches to an event be counted as one of the 20?).

11.2 Is conversion from PPF to PAF an acceptable mechanism to deal with changing PPF circumstances?

11.2.1 This depends on the simplicity or otherwise of the process and the requirements thereafter. We would, of course, like to see a simple and logical process

11.3 What rules could be used to deal with the conversion from a PPF to a PAF?

11.3.1 Unsure of the process, but recommend it be quick, simple and require minimal legal cost

12 Principle 4

12.1 The purpose of a PPF is to assist in the management of money as it is transferred from the donor to non-ancillary DGRs. PPFs are unsuitable for undertaking charitable work in their own right as this would make them 'institutions' which are subject to a different regulatory environment.

12.2 There is no consultation question in relation to this issue, but we believe it is an area of concern and confusion. It would be most helpful if the statement "undertaking charitable work in their own right" were better defined so as to enable PPFs to conduct their work effectively and with confidence. It is our opinion that the role of a PPF is NOT always as simple as handing over a cheque, but that there is also a role of support for the grantee that ranges in scope from simple advice to ongoing mentoring to active hand holding if the project gets into difficulties. This is a value adding activity for philanthropists as they can bring needed skills and knowledge to grantees and ensure that the grant moneys are effectively spent

12.3 It would be most helpful if the guidelines were much clearer in regard to this definition, and if the definition gave accord to the changing role of philanthropy world wide. That philanthropists are providing needed skills and experience to their grantees should not, in our opinion, be perceived in a negative light.

12.4 EXAMPLE1 – The traditional role of a PPF

Donkey wheel funded a peak body to establish a reference group into children of offenders (currently, it is no one's specific responsibility to ensure that people entering the justice system have left their children in a safe and healthy environment - e.g. children have come home from school to an empty house when a parent has been arrested). Donkey wheel provided funds for this project and has received regular reports that indicate the work is well on tack. This is the conventional role of charity – we simply wrote the cheque, because the organization didn't need any additional help.

12.5 EXAMPLE2 – the emerging role of PPFs as catalysts, conveners and coordinators

Donkey wheel had two applications for Asylum Seeker employment activities that were very similar although from different organisations. Both organisations concluded that their project was not sustainable (one after gifting and one during the application process). Donkey wheel suggested the organisations meet to pool their ideas, and we provided a meeting space. In addition, we provided some specialist knowledge of Job Network employment services as a member of staff had a background in this area. The result has been a very creative collaborative project that involves a number of organisations working together, and the re-assignment of our grant to a steering committee for the new project. The group requested that donkey wheel be part of the steering committee, not to undertake the project, but to provide information on potential funders,

specialist employment advice, meeting space and an independent perspective. Is this appropriate?

13 Consultation question

Illiquid assets donated to or held by a PPF should be converted to liquid form as soon as practicable if they are likely to affect a PPFs ability to meet its philanthropic obligations. This change would have the advantage of ensuring that donations can be quickly distributed. Furthermore, the value of liquid assets is generally easier (and therefore cheaper) to determine and verify

13.1 Would there be any disadvantages from introducing this limitation to the existing PPF investment rules?

13.1.1 Donkey wheel is wholly in agreement that philanthropists should not purchase “luxuries” such as homes, up market offices, cars etc and call them part of the Fund when they are not necessary for the work.

13.1.2 However, in our case, illiquid assets are a fundamental part of our strategy in several ways:

- Investment in a building returning commercial rental is, in our opinion, a safe, responsible diversification of our investments and likely to protect the value of the corpus beyond shares or cash in times of financial uncertainty
- The building will be the venue for our gifted activities – if we sell the building we can’t gift the work. We certainly couldn’t gift 15% of our total asset value (including the building) without seeing our work effectively come to an end. I would expect many other Funds have their own version of this issue

13.1.3 EXAMPLE of philanthropic use of illiquid assets

Since purchasing the building, we have been inundated with eligible organisations that want to be part of our planned community Hub - some for full commercial rental and others as a granted subsidy. Our goal is to gift a range of activities in the building including:

- Leadership conversations/workshops with social change leaders to nurture, challenge and develop ideas
- A Marketplace and brokering resource where community groups and philanthropists can build funding relationships
- Project support, where leaders are supported throughout the journey
- Media support, with expertise offered to get great stories supported
- An elders circle where social change leaders can pass on their wisdom to the next generation
- A small gallery of social justice art for sale
- Think tanks and Hypotheticals open to the public where current issues are explored and new ideas emerge
- Documentaries showings covering important issues, followed by conversations about the issues raised and future possibilities
- An incubator for newly emerging grass roots community groups,

- providing hot desks and advice on sustainable operations.
- Subsidised rental (based on capacity to pay) for a diverse range of organisations who will add to the collective wisdom and benefit from being co-located

13.1.4 We therefore urge you to consider this and potentially other innovative and creative philanthropic activities when setting guidelines in relation to assets. At the least, we request that assets in active use for philanthropic activities be exempt from inclusion as capital when calculating minimum distributions.

14 Conclusion

14.1 We feel that there is a lack of correlation between the perceived role of philanthropy from the ATO/Treasury perspective and the role expected by the broader community. We believe the broader community sees the role of Philanthropy as supporting those projects that government should not (or cannot) fund. We believe there exists a need to encourage philanthropists to become well trained, knowledgeable and committed for the long haul so that the money they gift is spent wisely and well. We urge government to see the sector not just as a tax benefit issue but also as a critical and innovative community service

14.2 We are very supportive of the need to address deficiencies, but urge you not to stifle the capacity of philanthropic Funds to survive the process of regulation. Rather, we would urge you to make PPF regulation and legislation so simple and straightforward that you encourage potential donors into the sector, train them so that they are able to meet their obligations with integrity, and then support them so that philanthropic Funds can meet the needs of community into perpetuity.

APPENDIX 1

An introduction to donkey wheel

NOTE: This background document includes activities conducted under both the PPF and Charitable Trust

Donkey Wheel Ltd as Trustee for Donkey Wheel Prescribed Private Fund and Donkey Wheel Charitable Trust was established in 2004 for the purpose of philanthropic gifting. Our corpus is approximately \$6.2 million plus a building asset of \$8.0 million. We average grants in the region of \$500,000 per annum.

Our goal is to make every action philanthropic in nature wherever possible, and while this obviously drives our gifting decisions, it also influences our investment decisions and our expenditure policies.

OUR INVESTMENTS

donkey wheel has engaged the services of an Ethical Investment Funds manager, who ensures that our invested funds support only ethical enterprise. Our policy includes the following:

- Negative screening of companies that derive revenues from business involvement in activities that give rise to environmental destruction, human rights violations or social harm
- Positive screening for companies whose products and/or services make a positive impact on the wellbeing of people, animals and the environment.
- Investment of a small percentage of funds in startup businesses that are seeking innovative solutions to serious issues such as climate change, water shortage, pollution and renewable energy generation

We have also introduced a diversified strand to our investments through the purchase of a building in November 2008. This building will be commercially leased to social responsible businesses and/or fully funded NGOs for investment income. It will also be the site of donkey wheel philanthropic activities (see below)

The purpose of our investment approach is to ensure that philanthropic moneys give "twice" where possible – once through investment support for socially responsible business and then again when income from these investments is gifted to eligible charities.

Investment decisions are made responsibly to ensure ongoing income into the future beyond this generation of donors, on the assumption that the Fund will exist into perpetuity.

OUR EXPENDITURE

Since 2004, we have grown from a tiny office employing a part time consultant and part time contractor to today when we employ two full time staff. Staff and Directors are very conscious of the desirability of keeping our expenses to a minimum, so our office is modest, we use public transport rather than

company vehicles, our events are simple and low key, and we own only the basic non-productive assets. Where possible we utilize the services and products of community enterprise.

OUR FUNDING ACTIVITIES

Based in Melbourne, donkey wheel has funded projects ranging from very small, local impact activities to locally based projects with significant international impact. Our grants generally range between \$3000 - \$50,000 over one to three years, with a history of further funding to successful grantees where a trust relationship has developed. Our criteria are to seek out projects seen by the "Wheel" (Gifting committee) as having a high potential for significant change from relatively modest budgets. We have a passion for social change, constantly seeking ideas that move away from today's problems and instead, create new possibilities for the future. We believe extraordinary change happens when people think differently – and that leaders of change (especially those working at grass roots level) need to be supported and nurtured so that their ideas can take root and flourish. We have therefore always funded ideas that demonstrate a DIFFERENT way of thinking.

In addition to funding with money, donkey wheel has regularly been approached by applicants for help "in kind". This support does not include execution of the project, but relates rather to the resources and capacity of the grantee. Such work can include:

- Helping to find additional/alternate funders and broker relationships with other philanthropists
- Helping to develop the project idea/goal/plan to make it clearer and more focused
- Helping to broker relationships with other related community groups to reduce replication of effort and increase leverage
- Helping leaders of change within the project (and outside it) on their journey through new territory with both formal and informal support – for example training courses and/or mentoring

OUR FUTURE STRATEGY

While we have until now provided funds directly to organisations through grants, our experience told us that there was a gap in services to community groups, particularly that of support during the very early developmental stages of a project. We came to believe that our relatively small corpus could give more value if we responded to this need. Accordingly, we purchased the building located at 673 Bourke Street Melbourne in November 2008 as a base for these activities.

The intention behind the purchase of this building is fourfold:

- It provides a safe, diversified source of investment for our corpus (desirable in times of financial upheaval) to ensure a sustainable source of gifting income into perpetuity
- It enables us to provide office, workshop and event space to eligible charities at low/no cost as part of our gifting strategy
- It enables us to create a social change hub where eligible charities and

- their leaders can undertake development and capacity building activities as part of our gifting strategy
- It ensures an important heritage building will not be acquired for any form of development that would remove its inherent historical value

donkey wheel sees accountability, transparency and ethical behaviour as critical to the healthy future of PPFs, and we support the changes proposed as they relate to these areas. It is in the areas of the PURPOSE and planned LONGEVITY of a Philanthropic Fund that we find difference and reason for concern. Based on our current and planned future activities, we believe that some of the proposed changes to PPFs may unintentionally result in considerable barriers placed in the way of the work we seek to do in the future. We respectfully request that you give consideration to our circumstances as being representative of the great diversity of useful work being done within philanthropy, and ensure that genuine, innovative philanthropic activity is not jeopardized by the equally important need for structure and good governance.