

SUBMISSION BY SARA HALVEDENE FOUNDATION - December 2008

to The Treasury's November 2008 discussion paper:

IMPROVING THE INTEGRITY OF PRESCRIBED PRIVATE FUNDS (PPFs)

Introduction: The Founders of *Sara Halvedene Foundation* saw the setting up of our PPF with our daughters as a way for our family to engage with the Australian community strategically in order to address issues associated with environment and indigenous health. Our Foundation was established in June 2005 and by the end of this financial year (2008/2009) the Foundation will have donated \$406,000 to Deductible Gift Recipients in Australia to tackle issues associated with health of Aboriginal communities and conservation of Australia's biodiversity. The following are examples of the Foundation's support.

A total of \$195,000 is being donated to The Fred Hollows Foundation (TFHF) over 3 years to enable them to employ an Indigenous coordinator to develop a program in Western NSW to address eye health, mental health, nutrition, land care and bush tucker horticulture and literacy in Aboriginal communities in the Wilcannia/Broken Hill areas.

A total of \$60,000 is being made to Bush Heritage Australia over 2 years to support their program of encouraging Noongar People's Participation in the Gondwana Link project. This program aims to: assist Indigenous people to acquire and protect high quality conservation lands; support Indigenous people to undertake environmental assessments and to develop and implement environmental management plans for their lands; and encourage and support Traditional Owners in the management of conservation reserves.

We have found the Foundation an effective way of structuring our philanthropy for several reasons. The first is that we were able to endow the Foundation with an income generating corpus that will enable donations to be made in perpetuity. The second is that the Directors must give careful consideration to the support offered to DGRs to ensure that the Foundation is providing its support directly to address its objectives as agreed in its trust deed. It is worth noting that our decisions are subject to scrutiny through external annual audit and return to the Australian Tax Office. The third is that we have been able to link with other like-minded PPFs to explore ways to work together to allow us to work in programs that are larger than we are able to support alone.

There is no way we would have established a PPF under some of the rules suggested in this discussion paper. These relate specifically to the principles that PPFs must distribute as much as 15% of the closing value of the fund each year and make their contact details available publicly. The first would effectively destroy our PPF quickly and the second would potentially bury us under an avalanche of requests for donations.

Our comments on the principles that concern us are given below.

Accumulation plans and minimum annual distribution: Some of the current guidelines for PPFs are ambiguous. Those relating to accumulation plans make administration of PPFs unnecessarily complex. Abolishing accumulation plans and establishing a minimum amount for distribution annually would greatly simplify administration and oversight of PPFs. Basing the minimum amount on the market value of a PPF's net assets at the close of the previous financial year is obviously a fair method. Market value of net assets should be calculated at the end of each financial year; this is certainly the case with the annual audit conducted by the external auditor of our Foundation and reported to the ATO. Establishing a minimum distribution will provide greater certainty to PPF trustees and should provide more consistency to giving by PPFs. It is possible that such clarity, but at a distribution rate which allows perpetuity of the foundation, should also lead to an increase in the establishment of PPFs.

The figure of 15% of the market value of the corpus to be distributed annually as proposed in the discussion document is completely inconsistent with the original rules under which our Foundation was established. Should the Government agree to this figure it would constitute a gross breach of faith with those who set up PPFs under the rules that dictated establishment and administration of PPFs. Regulating on the basis of 15% will close down the majority of existing PPFs rapidly and ensure that few new PPFs will be established.

Based on our experiences since establishment in June 2005, we believe that 5% of the market value of the PPF's assets constitutes a reasonable annual distribution rate. This would ensure that a minimum of 5% of the corpus is distributed to the community each year. It should also allow PPFs to accumulate funds over a reasonable period of time so that the annual distribution will increase. This should maximise the long term benefit to the community.

Regular valuation of assets at market rates: While PPFs are not bound by current guidelines to value their assets, this should be required at the annual audit necessary to be prepared to accompany the annual return to the ATO. Annual valuation is essential for good governance and should be mandatory. This is also essential to calculate the amount for distribution (no more than 5% of the market value of the assets). This should be performed by an external auditor and constitute part of the PPF's return to the ATO.

Increased public accountability: We agree that PPFs should operate in an acceptable and transparent manner and should be subject to scrutiny. PPFs should have an Australian Company or Business Number and should be recorded on the Australian Business Register as a PPF.

We disagree strongly with the proposal that PPFs be required to provide their contact details publically. If that were to happen we would be swamped with an avalanche of requests for funds. We understand that there are over 20,000 deductible gift recipients in Australia. Although only a proportion of these may be eligible to receive gifts from a PPF, once a list of PPF addresses is made publicly available we would expect a vast number of these DGRs would likely write to each PPF seeking funding. We keep our operating costs to a minimum by not employing any staff, however, if the Foundation was to be swamped with funding requests it is likely that staff would need to be

employed to manage this process. This would have a material adverse impact on grants made by the Foundation each year. We foresee this resulting in a significant waste of resources for charities.

Give the ATO greater regulatory powers: Given the lack of the ATO power to ensure PPFs follow the guidelines, greater regulatory power with an appropriate range of penalties is warranted. Requiring PPFs to have corporate trustees is appropriate.