



CAF Charities Aid
Foundation

A submission to the discussion...

Improving the integrity of Public Ancillary Funds

December 15.2010

For the attention of:

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The CAF Community Fund ...

is a Public Ancillary Fund (ABN 75706087297)

As part of the international not-for-profit organisation Charities Aid Foundation (CAF) has over 85 years experience, providing the knowledge, infrastructure, back-office administration and ongoing management of donor philanthropy services for charitable activities.

CAF is an independent, non denominational organisation with a Mission to: “Motivate society to give ever more effectively, helping to transform lives and communities around the world.”

CAF Australia was established in 1999 and provides a range of effective giving services for the public to collect and grant to Deductible Gift Recipient charities. CAF Australia utilises the Public Ancillary Funds structure of the CAF Community Fund to provide a comprehensive range of services covering the spectrum of giving including:

- **CAF Community Fund ‘Foundation Sub-Accounts’,**
- **Workplace Payroll Giving Programs,**
- **Employer Matched Giving Programs,**
- **Online Credit Card Giving Programs,**
- **Overseas Project Development and Management, and**
- **Grant Making.**
- **Private Ancillary Funds (PAF’s) – CAF opted out of this service October 1.2010.**

A CAF Foundation (sub) Account (vs. a Private Ancillary Fund - PAF) is the core structure of CAF’s donor service programs and is an effective vehicle for philanthropic giving whether it is a multiple fundraising effort or a single donor endowment.

On average CAF Australia has granted donor funds of (apx) \$11 million per year over the past five (5) years. The majority of those funds are in the control of CAF for less than 30 days.

Last year worldwide CAF helped over half a million donors give more than \$580 million to more than 45,000 charities, in over 90 countries through network offices in UK, Russia, Bulgaria, South Africa, India, Singapore, Australia, America, Brazil and partners across the world.

Overview:

Charities Aid Foundation (CAF Australia) was pleased with the Australian Government's announcement in the 2010-11 Budget that it will support and improve Australia's 1,600 endorsed Public Ancillary Funds.

That the Government seeks to insert new regulatory frameworks to better ensure proper accountability, particularly when it comes to organisations benefitting from taxpayer funded incentives, is a proper and required course of governance development.

CAF has granted \$33 million directly through the CAF Community Fund since startup of that program in Australia in 2002 and as a multi program supplier for philanthropy endorses necessary and effective accountability, open governance and taxation oversight.

In relation to the framework of this discussion, prima facie concerns to CAF Australia are:

- 1. That this legislative direction appears to be ignited by some trustees of Public Ancillary Funds in breach of their Trust Deeds mismanaging the proper and legal administration in the granting of funds.**

CAF Response: If this is of a wide and/or recurring nature then more directed education is required; and subject to ongoing failures of management punitive measure already available should be brought to bear. This is vital to maintain the standards and public esteem of this area of philanthropy in Australia.

- 2. That there appears in the planning of this discussion a misconceived acceptance that Private Ancillary Funds and Public Ancillary funds are similar philanthropic vehicles in the donor sectors they seek to support; and the giving structures that surround them.**

CAF Response: There is a clear definition and need between the two philanthropic vehicles. PPF's have become the domain of individual wealthy philanthropists providing funds from their private and business structures. Public Ancillary Fund contributors, mostly, are smaller donors seeking to be more effective in developing longer term giving.

- 3. That new legislation applied to PAF's – having been adopted in good faith by the philanthropic sector – should now be applied to Public Ancillary Funds simply as a matter of course.**

CAF Response: One size does not fit all and the CAF experience is that Public Ancillary Funds must remain user friendly and cost effective to attract and grow Australian philanthropy from an emerging number of donors through Workplace Giving, volunteer and fundraising efforts, corporate matched giving; and foundation sub-account flow through endowment giving.

CAF contributing discussion...

The Discussion Paper: Improving the integrity of Public Ancillary Funds.

CAF Australia is in a somewhat unique position to bring its experience to these discussions. CAF provides a multi range of donor giving/philanthropy programs not readily or so collectively provided by Australian donor service providers or other Not-for-Profit organisations.

CAF is purely a 'conduit' of donor funds to approved DGR community and charitable Not-for-Profits. CAF neither instigates fundraising per se' nor is it the end recipient of donor funds.

Because of the range of CAF's donor services – especially Workplace Payroll Giving and Foundation sub-accounts – CAF readily distributes in excess of 50% of total annual funds on a monthly basis.

The following points are of a more general nature as we understand that substantial detail is being provided to the Discussion by other philanthropic organisations including Philanthropy Australia and other Public Ancillary Fund holders.

Principal 1 – Public Ancillary Funds are Philanthropic

Public Ancillary Funds are Philanthropic and every endeavor must be made to ensure they remain interesting, attractive, uncomplicated and beneficial to donors and the recipient charities.

In the experience of CAF Australia, of the funds received by this organisation most come through:

- Workplace Payroll Giving;
- Employer matching of Workplace payroll giving, or
- Volunteer and fundraising matched donations; and
- Group and individual donations to Foundation Sub-Accounts for granting to approved NFP's...

unlike a Private Ancillary Fund these 'sub accounts' of the CAF Community Fund are mostly made up of a smaller \$ value and mostly of a 'flow through' nature. E.G: Workplace Payroll Giving is granted to charities on a monthly basis.

Required Distributions-

For Foundation Sub-Accounts structured as 'endowment' funds there is often a need to build the corpus to reach an amount to make the donation effective.

The Discussion Paper notes that “...*The majority of donors to public ancillary funds are mostly private individuals so the value of the tax deduction will be based on the individual’s marginal rate...in the absence of a trustee providing a good reason for a period of accumulationdonations made through public ancillary funds will be directed to the charitable sector in a relatively short period of time.*”

Pairing Public Ancillary Funds and Private Ancillary Funds to a compulsory discharge of funds will be counterproductive to the encouragement of public philanthropy.

The user group difference between Public and Private Ancillary Funds is developing a clear economic distinction; with PAF’s the domain of wealthy individuals with excess/ available funds and a desire for philanthropic involvement – perhaps with substantial tax benefit...

and Public Ancillary Fund users more often of a lower income without the resources for sole contribution, or financial entrée to commission ongoing management, investment, validation and granting expertise.

This is further being reflected in the management services of Private Ancillary Funds with fees reflecting the higher amounts required to make this structure financially worthwhile. CAF Australia has withdrawn from PAF services because the use of CAF Community Fund sub-accounts is seen as more cost and user effective for a wider group of donors – especially those collecting/contributing funds either privately or collectively.

These groups of people, and individuals, are committed to giving but require the time and support to accumulate funds prior to disbursement. The benefits to charitable and community organisations and the people they serve are reliant on these repeat donations.

Both socially and practically, legislative requirements instructing Public Ancillary Funds donors to discharge monies they have donated (even with the tax deductible support of the ATO) will cruel donor interest, directly impact on the building of endowment funds for future distribution and quickly render many donor holding programs ineffective.

Regular valuation of assets at market rates –

Most organisations involved in this discussion would have regular valuations of their holdings and investments and such a requirement would not be onerous extensions of their reporting. It would be reasonable to expect that the majority of holdings with Public Ancillary Funds are cash, bonds and share investments.

Increased Accountability -

The structure of Public Ancillary Funds is not based on a common Deed and provides different organisations with different regulatory frameworks and duties.

CAF Australia is already required to provide an annual return of accounts to ASIC and each of the 8 State and Territory Government it operates under. Through the year CAF is required to respond to and satisfy 34 separate legal, accounting and government 'forms'.

A centralised and simplified accounting and accounts reporting regime would be of benefit and in some cases cost savings to the sector – perhaps through a Charities Commission.

Principle 2 -Public Ancillary Funds are trusts that abide by all relevant laws and obligations, and are open, transparent and accountable.

The CAF Community Fund is managed by the CAF Community Fund Ltd and its Directors. These Directors are also appointed Trustees of the public ancillary fund entity and as such are required to act as required by ASIC.

In terms of governance and management oversight of the operations of the public ancillary fund this provides Australian best practice - as currently available.

If there is a absence of necessary regulation covering managers of Public Ancillary Funds, or a significant provable lapse in adequate governance and responsibility , then further examination of current and perhaps needed legislation should be implemented. It is vital to maintain trust, efficacy and the good perception of the public in this platform of philanthropy.

Reporting -

CAF is required to submit annual accounts to ASIC and there is no seen objection to providing those reports to the ATO.

What might be of greater benefit for all would be a centralised and simplified accounting and accounts reporting regime, in some cases cost savings to the sector – perhaps through a Charities Commission.

Breaches by Trustees -

Discussions raised about penalties for breaches of care and responsibility by public ancillary funds Directors – to match those of applied to Prescribed Private Funds – would appear to have merit.

However, in modern business practice CAF questions the need to have an additional layer of governance through the position of a Trustee given the already in-place Board of Directors and the rigid legal and accounting disciplines they are required to act within.

These standards are supported through the qualifications needed of a director to be able to take his/her place on a board of management.

This multi layering of responsibility is not seen as necessary. It also highlights the situation that many public ancillary funds (and other entities within the philanthropic sector) are required to

operate under the varying complexities of regulation and administration of numerous state and federal governments and their administrative departmental arms.

CAF would also question the limitation of a Director or his/her associate donating more than \$10,000 to the fund. This is a seemingly small amount and given the legal responsibilities of all directors of the fund this contribution would not be seen as significant in the day to day affairs of the organisation.

Additionally, it is in the interest of the Fund and philanthropy more generally that directors be involved in practical ways along with their time and skills commitment. If they are to promote philanthropy the best marketing is to have their money where their mouths are.

Fit and Proper persons –

In relation to a ‘fit and proper person’ CAF believes that in modern business it would be expected that a majority of Directors would both comply and act as this person. Requiring an additional ‘authority’ will be a further unnecessary complexity to the growing list of compliance requirements for ASIC, the ATO, state and territory legislation etc.

Principle 3 – Public Ancillary Funds are Public.

CAF Australia has not had the opportunity to have advice provided on this aspect of the Discussion paper.

The CAF Community Fund - a public ancillary fund – is contributed to by the public; the public does contribute to it through a range of donor giving programs; and the public is invited to contribute.

The public does contribute to the administration of the fund in that their recommendations are sought in relation to all grant making decisions.

Principle 4 – Public Ancillary Funds are Ancillary Funds.

CAF Australia accepts the need for its funds to be held in low risk investing strategies; with quick access as required to satisfy donors grant instructions. To that end CAF has an overseeing Investment Committee and annually reviewed parameters for its investment strategies.

Investment –

Within the sector, it is believed there would be concern, cost and possible lack of universal compliance - not to mention possible legal debate – if guidelines or legislation compelled restrictive or mono investment planning.

The variance of cash flow needs, endowment vs. flow-through structures, and philanthropic support programs; along with cash versus property holdings or capital investment will require disparate investment strategies.

There may be a better outcome achieved if the sector works with the government on provision of recommended guidelines within 'categories' to help investment strategies and highlight areas of investment that are seen to be risky.

Summation:

CAF urges caution that the underlying needs and structures between PAF's and Public Ancillary funds are understood as there are substantial differences in their needs and the public vs. private users of them. This separation of needs and users is becoming more evident with time.

CAF believes that in the wake of the changed legislation relating to Prescribed Private Funds – subsequently Private Ancillary Funds – there there may be undue rush to mirror a 'me too' legislative structure for Public Ancillary Funds.

There is a growing awareness and involvement in philanthropy in Australia and the perception of a heavy hand - as opposed to a guiding light through government legislation - could bring about unintentional harm.

On many of the issues raised for discussion it is believed that an overriding governance organisation such as a UK style Charities Commission could provide education, monitoring and where necessary punitive / corrective administration.

Ends...

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Foundation