

Wednesday, 21 September 2011

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Dear Sir / Madam

Re: Public Ancillary Funds

Please find below Perpetual's submission in response to the Treasury discussion paper, "Improving the integrity of Public Ancillary Funds".

For over 120 years, Perpetual has helped many individuals and families realise their philanthropic ambitions.

We are one of the largest managers of private Charitable Trusts and Foundations in Australia, with over \$1.1 billion in funds under management. We are trustee of one Public Ancillary Fund, The Perpetual Foundation.

Our proven success in managing charitable funds means we understand the present and future needs of philanthropists, charitable and non-profit organisations as well as professionals servicing these groups.

Therefore Perpetual is well placed to comment on:

- Why philanthropists utilise structures such as Public Ancillary Funds;
- What timeframes philanthropists like to extend their community support over;
- The appropriate investment and distribution strategy to support the intent of philanthropists;
and
- What level of public disclosure is expected by the community

Response to Discussion Paper “Improving the Integrity of Public Ancillary Funds”

Response to specific Discussion Paper questions

1. What is an appropriate minimum distribution rate for a public ancillary fund and why?

Perpetual does not agree with amending the current distribution requirements for Public Ancillary Funds (PuAFs). We maintain that the minimum distribution rate should remain at current levels.

Our reasons include –

- People have chosen to utilise a Public Ancillary Fund as a sustainable solution to their giving. Being required to distribute income, allows for the income to be utilised by the chosen Type 1 DGRs in the community, and the capital to remain untouched – unless otherwise specified by the Deed.
- As noted by Philanthropy Australia (PA) there is no evidence to suggest that changing the distribution requirements from a percentage of income to a percentage of capital will improve accountability in the sector.
- Many people who wish to establish a sustainable giving program will chose to utilise a PuAF rather than a PAF. One of the major factors effecting this decision is the amount of money donated to the PuAF or PAF. Therefore to mandate that a PuAF needs to distribute at a higher level of income than PAFs is discriminating against those people with less financial capacity, yet they still want to achieve a sustainable giving strategy to the community.
- Many PuAFs have property assets which may achieve an income return less than a prescribed percentage of capital, forcing the PuAF to distribute at an unsustainable level.

Philanthropy Australia recommends that the minimum distribution rate for Public Ancillary Funds remain at the current level.

2. Are there any issues that the Government needs to consider in implementing the requirement to ensure public ancillary funds regularly value their assets at market rates?

The only issues are those covered under the submission from Philanthropy Australia.

3. Are the valuation rules that apply to private ancillary funds also appropriate for public ancillary funds? If not, why not?

Yes, the valuation rules that apply to PAFs are appropriate for public ancillary funds.

4. Are there any issues with requiring public ancillary funds to lodge a return?

Whilst there is no issue we agree with the comments raised by Philanthropy Australia in regard to the potential duplication of reporting. These comments include –

All Public Ancillary Funds are required to register to fundraise, and that under various State fundraising laws they are already subject to reporting requirements. For example, under Victorian law any entity registered to fundraise must lodge an annual return with Consumer Affairs Victoria which includes details of gross proceeds and a list of beneficiaries and amounts they received. Given that the ability to fundraise from the public is the driver behind the proposal that PuAFs lodge a return, we agree with Philanthropy Australia’s suggestion that this is a fundraising matter rather than a taxation matter and that the proper place for such requirements is in fundraising regulations.

We also note that the Government has accepted the recommendations of the Productivity Commission that there is urgent need for a national regulator for the not-for-profit sector, to reduce the costly and wasteful regulatory burden on the sector by providing a single reporting point for not-for-profit

corporate and financial information. Given this need for reporting reform, we too suggest that any reporting requirement be developed as part of the reform process currently being undertaken by the National Office for the Non-Profit Sector. It would be preferable for Public Ancillary Funds to only report once, rather than to have to file separate returns with ASIC, the ATO and the proposed national regulator.

5. Are there any issues with imposing greater public disclosure requirements on public ancillary funds? What information should remain confidential and what information should be disclosed and why?

All information relating to donors to PuAFs should remain confidential and should not form part of any public disclosure of PuAFs.

The majority of giving in Australia is provided direct to Type 1 DGRs. These entities are not required to list their donors in a public forum (nor should they), and therefore nor should the donors of a PuAF be listed publicly.

6. Is the administrative penalty regime (including magnitude of penalties) that applies to private ancillary funds suitable for public ancillary funds?

We agree with the comments of Philanthropy Australia and note that it is absolutely appropriate to introduce proportionate penalties for non-compliance, particularly for any wilful misuse, fraud or dishonesty.

7. Are there any difficulties in requiring public ancillary funds to have a corporate trustee?

We believe that corporate trusts may be appropriate for PuAFs established in the future, however grandfathering, as was allowed for previously established PPFs transitioning to PAFs, should be allowed.

8. Are the rules for suspension or removal of trustees of private ancillary funds suitable for public ancillary funds?

Yes, if a serious breach of the law occurs.

9. What fit and proper person requirements should be imposed on trustees of public ancillary funds?

We note and agree with the comments raised by Philanthropy Australia that PuAFs are already required to be governed by a board with a majority being Responsible Persons, and there are additional requirements in state fundraising regulations. We therefore believe that a fit and proper person test will add no additional accountability than is already offered by the Responsible Person test.

10. What transitional arrangements are required for existing public ancillary funds to conform to the new arrangements?

We would expect that a five (5) year transition arrangements would be available, as is the case for PAFs, particularly in regard to any proposed changes to the distribution level.

11. Should the term 'public fund' be codified in the guidelines in accordance with the principles set out in ATO Taxation Ruling TR 95/27?

In regards to PuAFs this is appropriate, however we can not speak on behalf of Public Funds who are not ancillary funds (such as school building funds, overseas aid funds, necessitous circumstance funds and others).

12. Can the investment and risk minimisation rules that apply to private ancillary funds be suitable applied to public ancillary funds?

Yes. We do note the concern raised by Philanthropy Australia in regard to carrying on a business and that the issue of whether a PuAF can carry on a fundraising business to generate operational funds – as item 1 DGRs are permitted do – is not addressed in the Discussion Paper. This question must be raised and the answer clarified.

We also concur with Philanthropy Australia that that the requirement for a majority of directors to be Responsible Persons is already an additional governance requirement, and in almost all cases the investment function is performed by a professional investment committee.

Conclusion

We would welcome the opportunity to provide additional explanation to any of the comments and information included in the above response.

Public Ancillary Funds such as The Perpetual Foundation encourage additional philanthropy. We hope that the outcome of this discussion will continue to encourage additional philanthropy, enabling ongoing assistance to all Australians for many years to come.

Yours sincerely,

Andrew Thomas
General Manager - Philanthropy