

## **IMPROVING THE INTEGRITY OF PRESCRIBED PRIVATE FUNDS**

TREASURY DISCUSSION PAPER - NOVEMBER 2008

### **SUBMISSION BY SHERRY-HOGAN FOUNDATION – JANUARY 2009**

1. The Principal Donors of the Sherry-Hogan Foundation were attracted to the idea of establishing a PPF by the fact that a “perpetual” Fund could be created (and enlarged), in times of affluence, that would enable ongoing support to organisations that the donors wished to support. While realising that nothing lasts forever it was expected, within the existing Guidelines, that the Foundation would exist for at least fifty years through present and future generations.

Prudent investment of the corpus – and any additions thereto – to achieve the stated aims of the donors requires an investment strategy that balances risk (low to medium) against income and medium to long term growth. Such a strategy is not – in general terms – achieved by large holdings of cash.

#### *1a. Required Distributions*

- We accept the “rule against perpetuity” but believe that the suggested changes in the Discussion paper requiring distribution of 15% of the “closing value” of a Fund each year will result in a decimation of the corpus available to sustain ongoing viability and a donation policy that might have been established to support ongoing programs – for example the Up Up and Away Program of Down Syndrome NSW.
- To comply with the suggested distribution “rules” would necessitate realisation of investments – irrespective of market conditions with possible detrimental effect on the balance of the corpus.
- A policy requiring a 15% distribution of the fund balance would effectively decimate the fund in a period of 10 to 12 years.
- Such a policy would also reduce the availability of recurrent funding to the recipient organisations.

- Giving the Commissioner the “ability to modify the minimum amount” would create a bureaucratic nightmare for both the PPF and the ATO. Each fund would, presumably, have its own investment strategy and would operate on the lowest cost base possible. To enable detailed submissions to be made to the ATO for exercise of the Commissioner’s discretion would entail a great deal of expense in framing the submissions, and a great deal of time in the ATO in considering, evaluating and responding.
  - The current guidelines/establishment conditions provide clear, simple rules regarding the building and maintenance of corpus.
2. Under the current rules PPFs are required to produce audited Financial Statements each year.

*1b. Regular valuation of assets to market rates*

- Generally accepted accounting principles (GAAP) require that investments be re-valued to market value at balance date although, in the case of PPFs this is most probably not a mandatory requirement.
  - There could be no objection to the imposition of this condition in regard to reporting.
3. The amount contributed to a PPF must, perforce, vary from individual to individual and will depend upon circumstances at the time.

*1c. Minimum PPF size*

- Prescribing a minimum PPF size may be counter productive as this may act as a deterrent to those who would seek to establish a PPF with a view to enlarging it in the future.

4. The question of increased “public accountability” is one that needs careful consideration. Under the present rules PPFs are required to report the names and tax file numbers of their significant donors and also the names and ABNs of all donation recipients. Trustees make their donation decisions on the basis of their own preferences.

*1d. Increased public accountability*

- Providing contact details of PPFs on the public register would significantly increase the cost of administering the PPF and would not, except in exceptional circumstances, have any impact on the donation policy of the PPF.
5. In regard to the matters raised in Principle 2, the Foundation has the view that the present regulations are adequate.
  6. The idea of a corporate trustee is soundly based if only for the reason that this makes dealing with investments much easier than if individuals are involved. We would be surprised if any PPF, properly advised, did not have a corporate trustee.
  7. The Foundation is of the view that any PPF that knowingly breaches the existing guidelines should be dealt with to the fullest extent possible. It is not clear what additional ability that the ATO would have in taking action against corporate trustees (Clause 30).
  8. There are adequate “controls” in regard to the status/qualifications of trustees under the existing rules. You obviously cannot prevent the founders – assuming they are of good character and qualify as Directors under the Corporations Act – from being trustees, and the current rules provide for “responsible person” as a requirement.