

15 December 2010

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The Treasury  
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Dear Manager

Response to the Discussion paper "Improving the Integrity of Public Ancillary Funds"

Following discussions with Philanthropy Australia (PA), the peak body that represents many of the philanthropic trusts and foundations across the nation, the Lord Mayor's Charitable Foundation (LMCF) decided that most of its comments on the above paper could best be incorporated into the same document. We are therefore pleased to endorse the paper that has been submitted by PA.

The discussion paper acknowledges the legitimacy of philanthropy and in particular Public Ancillary Funds (PuAFs) and it (the paper) is clearly directed toward improving the sector. Many aspects that have been covered in the discussion paper are supported; however in addition to our agreement with the perspectives related by PA, the following matters warrant our separate comment:

1.1.10

"Removal or appointment of trustees". No reason has been given as to the circumstances under which this power would be enacted. If such power was to be given to the Commission it would best be in consultation with or upon receipt of advice from an independent party that possesses a thorough understanding of the sector. We believe that PA is best placed to provide this counsel.

LMCF is a philanthropic fund incorporated under an Act of Parliament in the State of Victoria. With structure and function of LMCF dictated by the Act, "the removal and appointment of trustees" would cause difficulty.

2.1.1.26

"Required distributions". The comment "public ancillary funds should neither be prolonged accumulators of funds...." is inaccurate and does not reflect the operations of the community foundation sector, of which the Lord Mayor's Charitable Foundation is but one component. The "perpetual giving" aspect that is developed as a result of public contributions to community foundations is the reason why and way in which the philanthropy sector's PuAFs will continue to have the capacity to distribute its earnings despite time of economic downturn.

2.1.1.27

The Lord Mayor's Charitable Foundation is more than "a temporary repository for moneys which are to be channelled to particular DGR funds". It invites members of the community to contribute tax-deductible donations that can either be channelled to any number of eligible recipients, or the funds can be retained in designated sub-funds that generate revenue for perpetual distribution to the charitable sector as approved by the trustees. This retention and distribution facility also applies to the broader community foundation sector.

2.1.1.32

A distribution rate of greater than five per cent would be disadvantageous to community foundations. It would impact negatively upon their ability to build a corpus that would enable them to function with greater flexibility and likelihood of permanence. Anything greater than five per cent would diminish their capacity and not provide long-term sustainability for the regions(s) in which they provide their services.

2.1.3.38, 39, 40

Statistical gathering could be gleaned and collected from annual reports that followed a format prescribed by the ATO. This would enable a greater degree of consistency to be evidenced across the sector, obliging PuAFs to provide meaningful data but without requiring them to have to submit any additional returns.

2.2.2.60

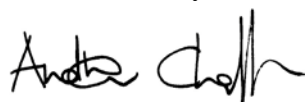
The section dealing with the ineligibility of individuals who have contributed more than \$10,000 is unnecessarily restrictive when it relates to trustees and their contributions. Whilst acknowledging that sound corporate governance principles of independent directors always need to apply, the distinctive features of philanthropic foundations require a more finessed approach in governance structure, particularly as it applies to donors and board directorship. No timeframe has been mentioned and many generous benefactors have given amounts much greater than this to causes they believe in. Such a disincentive to give larger amounts would impact negatively upon the calibre of some trustee boards.

Other aspects of the discussion paper have considerable merit but it is important that full and proper consultation with the sector be sought and encouraged. With this in mind it is respectfully suggested that a public forum be arranged, enabling sectoral representatives to meet with your staff and to discuss any aspects needing clarification.

We would be happy to make our premises available for such discussions. Our new conference room facility at level 5, 140 Queen Street, Melbourne, has a comfortable seating capacity of 25. Alternatively we could secure a suitable room for a greater number at the Melbourne Town Hall. If you would like to avail yourselves of either of these facilities please call me on 9633 0001 at your convenience.

I look forward to receiving your reply in due course.

Yours faithfully



Andrew Chappell  
Chief Executive Officer