Andrew Brice
48 Scott Street
Corinda Qld 4075

Ph: 0412 611 967

14 January 2009

By Email – ppfreview2008@treasury.gov.au

Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir or Madam,

Prescribed Private Funds (PPF) Submission

As the founder of the University of Queensland Endowment Fund (UQef), and as an advocate of Philanthropy, I believe it is appropriate that I respond to your request for a submission to the PPFs Discussion Paper.

The background and achievements of UQef, a PPF, are outlined on the website UQef.com.au. Two notable achievements are

1. Business/Higher Education Award for outstanding philanthropy support of higher education presented by the Honorable Julia Gillard; and
2. The establishment of an effective working partnership between UQef and the University of Queensland (UQ) to encourage philanthropy, both money, human capital and effort for UQ's benefit.

PPF's as currently structured have encouraged and resulted in substantial increase in philanthropy. Any effort to make PPF's more effective and efficient is to be applauded.

The current PPF guidelines have in my opinion been the catalyst for this success for the following reasons

1. <u>Encourage Large Gifts</u>

   Genuine donors typically have a "concern" arising from an experience or event in their lifetime. They make a choice to "give" rather than "invest", and between an immediate need, eg disaster relief and a perpetual need eg medical research, scholarships.

   The current PPF guidelines encourage large gifts for the perpetual needs. Genuine large donors want to see their philanthropy working now and in the future.

2. **Capital Base Maintained in Real Terms**

Donors of significant amounts are encouraged by the knowledge that their efforts may endure after their death. Their wife and children are typically involved, consulted and committee to further giving. They seek independent Trustees who have a passion for their "concern", give of their time freely and will manage the PPF after their death.

3. **Management of the Distribution**

Large donors have typically accumulated significant wealth from their business or by inheritance from a family business. Coupled with their donation is involvement, creativity, skill and a deep commitment to give back to the community. They do not want their distribution to DGR to be wasted by excessive administration or ineptitude. They try to leverage their distributions by getting commitments from friends, Governments and Companies to support the same concern.

PPF's are not in place to run Charities, nor should they be, but they do provide a vital control mechanism by choice i.e. non performance results in distributions to other worthy DGR's and on the creation of worthy DGR's

In my own experience, the partnership between UQef (management of Funds, Corporate Governance, Promoting Benefaction to, Alumni, and Friends of the University and making Distributions) and UQ (spending the monies, selecting Scholarship recipients, managing the research in accord with the Donor's concern) have enduring benefits.

4. **Management of Investments**

PPF guidelines stipulate that investment policies be put in place to manage the need to make half yearly distributions. Also, the investment policy needs to consider risk and short and long term returns, and an investment allocation policy to meet the desired goal of the PPF.

In summary, the current PPF guidelines that support a Long Term Trust (80 years) have resulted in significant Philanthropy, both of monies gifted and by human effort, of the Donor, their families, and their Trustees.

The main thrust of the proposals are likely to change PPF Trusts to short term vehicles (say 8-10 years). The result will be a substantial reduction in the amount of gifted capital applied to Philanthropy without a corresponding increase in gifting to other Charitable Institutions and DGR's.

The follow on assumption that there will be a resultant increase in tax revenues in the short term for distribution by Governments which will better benefit Australians does not take into account

1. The comparative administration cost of Government making the distribution versus PPF.
2. The long term benefit which arises from the perpetual income stream from the investment of the After Tax portion of the donation and of the tax foregone.
3. The intangible factor, the disincentive to human effort and capital that usually accompanies the donation, or put another way, there are many charitable and philanthropic activities which by their nature are not effectively and efficiently achieved by Government, or by Government making grants.

The four principles underpinning the rules governing PPF's as outlined in your discussion paper which supports the proposition that the donor puts in 55% of the capital, and the Government puts in 45% to create a pool of investment funds that are typically managed efficiently and effectively for distribution to DGR's is to be encouraged.

The main issues for comment are:-

1. **<u>Rates of Distribution – Mandatory Minimum</u>**

   The proposition to set a minimum distribution rate should reduce the complexity of setting distribution levels. The setting of a rate of 15% will destroy the longevity of a PPF and thereby significantly reduce the incentive to make substantial donations. The proposed annual distribution rate of 15% of total assets at the previous year end does not allow for adverse economic circumstances like the one currently existing. A distribution rate of 15% coupled with a 40% to 50% decline in asset values as in the current climate would be resultant in the sale of assets in a depressed market and thereby eliminate a substantial part of the fund's capital.

There is a need to define an annual distribution rate which is equitable and meets the criteria of the four principles as set out in your discussion papers, and in particular,

2. Continue to encourage substantial philanthropy, and
3. Compensate Government for foregone tax revenue (in the short and long term) less the cost to Government to takeover the funding currently provided by PPF's.

To use the concept of simplicity to justify a specific rate is most likely not valid as the existing annual distribution calculations and proposal both require the determination of market values of assets at year end.

I do not have the available statistics or facts to determine the current and likely future distributions to DGR's by PPF's., the comparative administration costs by Government and PPF and other factors which would be necessary to make a decision or an equitable annual distribution rate.

However, a rate of 5% in effect gives the Government an annual 11% rate of return on its investment of the tax foregone. This is an excellent return especially if there is also a resultant increased giving and longevity.

My comments on other consultative questions are set out in the attachment.

Please communicate if you require further information or explanation, or assistance.

Yours faithfully,

Andrew Brice

Annexure

Consultation Questions	Submission
Principle 1 – Philanthropy Consultation Questions	
1. What is an appropriate minimum distribution rate? Why?	5% would be an appropriate minimum rate. The fundamental policy objective should be to encourage philanthropy and to allow PPF's to maintain the capital gifted in real terms.
2. Should the Commissioner have the ability to modify the minimum amount according to market conditions (for example, based on average fund earnings)?	Yes. The fund though should not in any year distribute less than 5% unless there were exceptional circumstances, such as out of control inflation.
3. Should a lower distribution rate apply for a period (for example, 1-2 years) to allow newly established PPFs to build their corpus?	No. Funds should be established quickly. There should be facility to increase capital base based on submission and for valid reasons.
4. Are there any issues that the Government needs to consider in implementing the requirement to ensure PPFs regularly value their assets at market rates?	No. PPFs should value their assets to market annually. The current superannuation guidelines work effectively and are understood by auditors and accountants and could be used in your legislation.
5. Is setting a minimum PPF size appropriate?	Yes.
6. What should the minimum PPF size be in dollar terms?	$1,000,000 with the ability to seek to increase the capital base.
7. Should a fund have to distribute all its capital when its total falls below this minimum amount?	Yes, subject to ATO's ability to modify the minimum size in unusual circumstances, such as the present economic circumstances.
8. Are there any relevant issues that need to be considered in improving and standardising the public accountability of PPFs?	I am not aware of abuse in this area. There should be powers available to the ATO to deal with abuse.
9. Are there any concerns with the proposal to require that the contact details of PPFs should be provided publicly?	No. PPFs should be transparent. See UQef website.
Principle 2 – Lawful and Transparent Operations Consultation Questions	
1. Will two years be a long enough transitional period for existing PPFs to comply fully with the new Guidelines?	The proposed 15% annual minimum distribution will result in many PPFs being wound up.
2. Are there any cost or other concerns that the Government needs to consider?	No.
3. Are there any privacy concerns that the Government needs to consider?	No.

Consultation Questions	Submission
4. Are there any concerns over particular penalty types?	No.
5. I a fit and proper person test were introduced, what criteria should be imposed on trustees?	This test should not preclude the ability of a family members involved. Maybe two Trustees or Directors should meet the test.
6. Are there any other provisions presently in the Model Trust Deed that should be covered in the updated Guidelines?	I am not a Solicitor.
7. Are there any provisions not in the Deed that should be in the updated Guidelines?	I am not a Solicitor.
Principle 3 – Ancillary Funds Consultation Questions	
1. Would there be any disadvantages if a cap were introduced on the number of donors to a PPF (for example, a maximum of 20 donors over the life of the fund)?	Yes. This would preclude business based PPFs and be a disincentive to donors to encourage others to support their concerns.
2. Is conversion from PPF to PAF an acceptable mechanism to deal with changing PPF circumstances?	Yes. In circumstances where it emerges that the PPF is suitable and is successful in getting substantial donations from the public.
3. What rules could be used to deal with the conversion from a PPF to a PAF?	Compliance with existing PPF and PAF guidelines and the ability of a PAF to be a DGR.
Principle 4 – Ancillary Funds Consultation Questions	
1. Would there be any disadvantages from introducing this limitation (to holding only liquid assets) to the existing PPF investment rules?	No. We would expect that the majority of PPF funds are already held in liquid assets. Land and buildings should be the only exception.