Introduction

My wife and I established a PPF known as the *Christopher Cuffe Foundation* in 2006. We did this as we wanted to establish a vehicle that would allow us and our children to allocate funds to charitable causes for years to come. The PPF also allowed us to undertake our giving in a more structured, systematic, thoughtful and consistent manner.

Our ability to create a PPF has lead us to very significantly increase the amount of our giving when compared to the situation where we were just making sporatic donations each year. I am of the strong belief that establishing a foundation does motivate people to allocate a significantly larger share of their net wealth to philanthropy as opposed to making donations each year which are often random and more emotive in nature. Having a foundation also provides for a regular donation flow which is of benefit to charities as they can better plan their future.

I believe I am well qualified to address the issues raised in this discussion paper. Not only have my wife and I established our own PPF (as noted above), but I have also spent more than 20 years in senior positions within the investment management industry as well as a significant amount of time in the non profit sector where I now work on a full time basis with Social Ventures Australia. My work in the non profit sector puts me in regular contact with many PPFs and their trustees and administrators. I have also had the opportunity to speak in public on many occasions about the structure and importance of PPFs and their likely impact on the future of giving levels in Australia.

In terms of the discussion paper, I fully support the four principles noted in the paper. I also strongly support the need to improve the current arrangements applying to PPFs. In particular, I believe the most important change is the concept of legislating that a set % of the value of a PPF be given away each year – thereby dispensing with the need to distinguish between capital and income and dispensing with the need for a capital accumulation plan and CPI adjustments. This will in turn mean that the administration of PPFs becomes significantly simpler which is likely to lead to a material increase in the number of PPFs created in the future together with the assets allocated to such vehicles and the resulting donations made to the charitable sector in Australia.

Principle 1 — PPFs are philanthropic

The changes proposed under this principle relate to: required distributions; regular valuation of assets at market rates; minimum PPF size; and increased public accountability.

Required distributions - consultation questions

• What is an appropriate minimum distribution rate? Why?

• Should the Commissioner have the ability to modify the minimum amount according to market conditions (for example, based on average fund earnings)?

• Should a lower distribution rate apply for a period (for example, 1-2 years) to allow newly established PPFs to build their corpus?

I believe that 5% of the value of a PPF's assets at the 30 June each year is an appropriate minimum distribution rate. I believe that the figure of 5% provides the right balance between investment income earned (being dividends, interest, rent and realised/unrealised capital gains) and the desire of most PPF founders to create a vehicle that will exist for generations to come.

I have no doubt from my conversations with many philanthropists that the PPF structure encourages them to give more to charities than most would otherwise do because of its very long term nature. If the minimum distribution was set too high (which in my view would be any rate above 5% pa) then this is likely to discourage the creation of PPFs and therefore lead to overall lower giving levels. It is not correct to merely compare the tax "lost" when assets are transferred to a PPF to the donations of a PPF. Some value must be attributed to the desire to create intergenerational giving within families.

I am also of the view that if more PPFs are created (encouraged by the longevity argument flowing from the 5% minimum distribution rate) then more people will actively take an interest in charitable work leading to a more engaged, understanding and caring society.

As an aside, it is obvious that the hefty fall in equity and property values over the past year, together with the increasingly low interest rates being paid on deposits, shows that 5% will actually appear a high figure over many periods.

I believe the Commissioner should not have the ability to modify the minimum amount given that investment markets can fluctuate significantly in value from year to year (and produce negative returns in some years which could not be compensated). Furthermore, a known distribution rate would assist in the establishment of long term asset allocation goals within investment portfolios.

To keep the system simple, a lower distribution rate should not apply for any period, or part period, whether at establishment or subsequently. There is also no mathematical basis for this.

Regular valuation of assets at market rates - consultation question

• Are there any issues that the Government needs to consider in implementing the requirement to ensure PPFs regularly value their assets at market rates?

I support the proposal that PPFs should annually value their assets at market rates. However, illiquid/unlisted assets such as real property should be valued every three years due to the cost of such valuations (and in the interim periods the cost base would be used as the valuation). Note though, as discussed further on, I believe the amount of illiquid/unlisted assets held by PPFs should be restricted.

Minimum PPF size - consultation questions

• Is setting a minimum PPF size appropriate?

• What should the minimum PPF size be in dollar terms?

• Should a fund have to distribute all its capital when its total value falls below this minimum amount?

I do not believe that PPFs should be subject to a minimum size (in the same way that self managed superannuation funds are not subject to a minimum size requirement). However, what I do think is important is that there is some control over the costs of running PPFs such that small PPFs in particular are not eroded by high costs caused by diseconomies of scale. Accordingly, I propose that the costs of managing PPFs (ie the costs paid out of the PPF) be restricted to an annual amount of 1% of the value of the PPF assets.

I believe a 1% cost restriction would also minimize the possibility of PPF funds being utilised to fund inappropriate salaries, expenses or benefits for employees (or related parties) of the PPF.

Increased public accountability - consultation questions

• Are there any relevant issues that need to be considered in improving and standardising the public accountability of PPFs?

• Are there any concerns with the proposal to require that the contact details of PPFs be provided to the public? What information should be provided publicly?

I support the proposal that all PPFs should be required to have an ABN and to be recorded on the Australian Business Register with the indication that they are a PPF.

I do not support the proposal to require that the contact details of PPFs be provided to the public given the practical issues and costs in terms of capacity to manage volumes of unsolicited enquiries and applications.

Principle 2 — PPFs are trusts that: (1) abide by all relevant laws and obligations, and (2) are open, transparent and accountable

The changes proposed under this principle relate to: giving the ATO greater regulatory powers; introducing a 'fit and proper person test' for trustees; and moving relevant provisions from the Model Trust Deed into the Guidelines.

Give the ATO greater regulatory powers - consultation questions

• Will two years be a long enough transitional period for existing PPFs to comply fully with the new Guidelines?

• Are there any cost or other concerns relating to the corporate trustee proposal?

• Are there any privacy concerns that the Government needs to consider?

• Are there any concerns over particular penalty types?

I have no comments in relation to these questions.

Introduce fit and proper person test for trustees - consultation question

• If a fit and proper person test were introduced, what criteria should be imposed on trustees?

I do not support the proposition of a fit and proper person test as I believe this to be an unnecessary compliance burden on trustees and may discourage the establishment of PPFs and involvement of families, including younger members, in charitable foundations. PPFs are not trying to satisfy similar public policy requirements as superannuation schemes and should not have similar trustee requirements.

However, I fully support the Treasury position that trustees need education and guidance. Indications are that the majority of PPFs offend due to ignorance or oversight. To minimize the incidence of problems occurring, I support the development of relevant and accessible information to be issued to all existing and new PPFs including information on all regulations and legislation (including state-based) which governs them. I would also support the Responsible Person of PPFs to undertake some form of training or education seminar or program developed specifically for them.

Move relevant provisions from Model Trust Deed into the Guidelines - consultation questions

• Are there any other provisions presently in the Model Trust Deed that should be covered in the updated Guidelines?

• Are there any provisions not in the Deed that should be in the updated Guidelines?

It would be very useful if the ATO provided a model deed for existing PPFs to adopt in place of their existing trust deed and for coordination with State Governments to ensure there are no unintended stamp duty implications from a “wholesale” amendment/replacement of existing trust deeds.

Principle 3 — PPFs are private

The change proposed under this principle relates to limiting the number of PPF donors.

Limit the number of PPF donors - consultation questions

- 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)?
- Is conversion from PPF to PAF an acceptable mechanism to deal with changing PPF circumstances?
- What rules could be used to deal with the conversion from a PPF to a PAF?

I am supportive of the principle that a PPF is a vehicle for private philanthropy and that public donations should not be the primary source of funds for a PPF. However, <u>I do not support a prescribed arbitrary limit on the number of donors</u> primarily because extended families over a number of generations can easily involve many many family members and friends making donations into the PPF. It is also possible that over time existing PPFs may be approached by likeminded individuals who are willing to join them and increase their community commitment through donating to an existing PPF rather than establishing a new one. This is highly beneficial to the community as it increases both the dollars and the culture of giving without the duplication of additional administration.

Principle 4 — PPFs are ancillary funds

The change proposed under this principle relates to restricting PPF investment to only liquid assets.

Restrict PPF investment to only liquid assets - consultation question • Would there be any disadvantages from introducing this limitation to the existing PPF investment rules?

I believe it is inappropriate to disallow PPFs from holding illiquid assets. Such assets often provide more favourable investment returns over the long term and suit the time frame of a PPF. However, I am of the view that that the amount and type of such assets held should be restricted as follows:

- Illiquid assets should not comprise more than say 50% of the total assets of a PPF (the definition of illiquid assets would need to be carefully considered) so as to ensure that annual donations are not interrupted; and
- Certain illiquid assets should not be allowed to be held to safeguard against the possible abuse of PPFs (eg so as to avoid personal or family benefit to the PPF trustees/founders). This would include art, collectables and directly held residential real estate.

Other issues not raised in the discussion paper

I believe that PPFs and PAFs should be able to transfer their assets to other PPFs and PAFs. This would not disrupt the annual legislated distribution and would in turn provide flexibility for combining PPFs or allowing founders/trustees to transfer from a public vehicle to a private vehicle when the assets available are greater in size and provide better economies of scale to be in a PPF.