

The Public Trustee

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8 September 2011

The Manager
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Dear Sir

PRIVATE ANCILLARY FUND GUIDELINES 2009

The Public Trustee of Queensland welcomes the Government's commitment to maintaining the integrity of Private Ancillary Funds through an increased level of governance and transparency. In response to the *Private Ancillary Fund Guidelines 2009*, and in light of the recent *Public Ancillary Fund Guidelines 2011*; the Public Trustee of Queensland would like to take the opportunity to provide feedback on former, and the practical administrative issues associated with the 2009 Guidelines.

Background

The Public Trustee of Queensland is Trustee for several of Queensland's leading philanthropic charitable trusts. In the main these Trusts maintain their capital in perpetuity for future generations of Queenslanders. Some Trusts continue to grow their capital bases due to the generous support of philanthropic minded people who choose to leave a lasting legacy to Queensland. The continued support and growth of these Trusts very much relies on the perpetuity provided through the preservation of capital.

The philanthropic charitable trusts maintained by the Public Trustee have provided a direct source of funds for over 180 charitable organisations in the last 12 months. The ongoing resources provided by these public ancillary funds assist local and national charities to achieve lasting differences in areas of significant need.

The major funds include The Queensland Community Foundation; Lady Bowen Trust; Forde Foundation; the Queensland Aboriginal and Torres Strait Islander Foundation and the Gladstone Foundation. These five major trusts maintain a combined capital base of approximately \$75.5m.

In addition to the Public Trustee of Queensland's active role in these Public Ancillary Funds, the Public Trustee also maintains an important role in ongoing perpetual charitable funds established by the Wills and Codicils of its clients.

General Comments

Broadly speaking, the Public Trustee of Queensland welcomes the review of the charitable and not for profit sector. Changes to administrative penalties provide appropriate response to

instances of non-compliance that would otherwise erode the integrity of the sector.

Changes to the structure of Trustees require that appropriately accountable individuals can continue to provide expertise and guidance to Funds in line with existing levels of governance under the Corporations Act.

Specific Comments

Private Ancillary Fund Guidelines 2009 items 13 to 16: The Trustee

It would be appropriate that the Private Ancillary Fund Guidelines 2009 be amended congruent to the consideration to the specific legislated requirements of Public Trustees demonstrated in the Public Ancillary Fund Guidelines 2011.

Private Ancillary Fund Guidelines 2009 item 19: Minimum Annual Distribution

The intent of both Private and Public Ancillary Funds operated by the Public Trustee of Queensland is to provide ongoing charitable resources in perpetuity.

In an ideal economic environment, the return on assets of the Fund would well exceed the 5% proposed minimum distribution, and the capital base would be maintained in accordance with the provisions of the Deeds.

That being said it is nature of the investment market that returns fluctuate year on year. This is the case in the not-for-profit sector as it is in any investment based industry such as Superannuation.

To link a minimum distribution amount to the net assets of the Fund rather than the income, means that in times of financial hardship for the Funds, the proposed guidelines would require the distribution of capital to make up for any income shortfall. Such a provision is in direct conflict with the Deeds that are clearly based in ideals of perpetuity.

An inability to preserve the capital of the Funds would place at risk the future bequests made by the people of Queensland, and subsequently the charitable organisations that rely on the funding from these Private and Public Ancillary Funds.

It is the submission of the Public Trustee of Queensland that where it is deemed appropriate to set a minimum level of distribution for each year, that such a level be determined by measurement of Fund distributable income, and not related to net assets of the Fund as is currently proposed.

Private Ancillary Fund Guidelines 2009 item 19: Audit

While the Public Trustee of Queensland acknowledges the need to maintain integrity and transparency for the Private Ancillary Funds, it is the contention that an annual audit for small Private Ancillary funds can be costly and create an unnecessary administrative burden in some instances. This is specifically the case where the Private Ancillary Funds are low value/low transaction funds, and the Funds are under management by a Public Trustee.

Public Trustees nationally are subject to significant governance and audit responsibilities. It is the submission of the Public Trustee of Queensland that some administrative concession should be made to exempt small Private Ancillary Funds (with minimum net asset values) from the annual audit requirement where they are under management by a Public Trustee.

Conclusion

The Private and Public Ancillary Funds maintained by the Public Trustee of Queensland have been founded on ideals of perpetuity to provide ongoing resources to over 150 individual charitable organisations. The Public Trustee recognises the efforts by the Government to improve the integrity of Charitable and Not-For-Profit sector by providing a system of administrative guidelines, and associated penalties for all Ancillary Funds.

The Public Trustee of Queensland urges the Treasurer to reconsider the minimum distribution requirement contained in *Private Ancillary Funds Guidelines 2009*, and recommends that any minimum distribution amount be linked to distributable income, and not to net asset values as is currently proposed.

The Public Trustee of Queensland further submits that recognition be extended for the high level of governance already maintained by all Public Trustees, and requests the Treasurer to reconsider both the Trustee requirements and the annual audit requirements contained in *Private Ancillary Funds Guidelines 2009*.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter Carne', written over the 'Yours faithfully' text.

Peter Carne
Public Trustee of Queensland

The Public Trustee

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15 August 2011

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Dear Sir

IMPROVING THE INTEGRITY OF PUBLIC ANCILLARY FUNDS

The Public Trustee of Queensland welcomes the Government's commitment to improving the integrity of Public Ancillary Funds through an increased level of governance and transparency. In response to the *Public Ancillary Fund Guidelines 2011* released for comment on 14 July 2011, the Public Trustee of Queensland presents the following submission for consideration.

Background

The Public Trustee of Queensland is Trustee for several of Queensland's leading philanthropic charitable trusts. In the main these Trusts maintain their capital in perpetuity for future generations of Queenslanders. Some Trusts continue to grow their capital bases due to the generous support of philanthropic minded people who choose to leave a lasting legacy to Queensland. The continued support and growth of these Trusts very much relies on the perpetuity provided through the preservation of capital.

The philanthropic charitable trusts maintained by the Public Trustee have provided a direct source of funds for many charitable organisations in the last 12 months. The ongoing resources provided by this public ancillary fund assist local and national charities to achieve lasting differences in areas of significant need.

The major fund that the Public Trustee acts as Trustee for is The Queensland Community Foundation which has an asset base of approximately \$40million and some 180 sub-funds under its umbrella. The basic characteristic of this Foundation is briefly described as follows:

1. *The Queensland Community Foundation;*

The Foundation receives donations from Queenslanders wishing to contribute during their lifetime, but more typically from bequests made through their Wills. The Foundation makes distributions to charitable organisations that have Australian Taxation Office - Deductible Gift Recipient (DGR) status.

The Foundation has no administration costs levied against donations received, as these costs are met through the committed corporate sponsorship of The Public Trustee, QIC Limited and Anglo American Metallurgical.

The purpose of this trust, when established was for the capital to be preserved in perpetuity and to provide an ongoing stream of income to be applied for charitable purposes. This purpose has been adopted by many Queenslanders who seized upon this concept to give funds, whether during their lifetime or after their death through their Wills, to ensure that their donation was preserved and maintained to provide for future generations of Queenslanders.

An inability to preserve the capital of the Funds would place at risk the future bequests made by the people of Queensland, and subsequently the charitable organisations that rely on the funding from this particular Public Ancillary Fund. As at July 2011, the estimated level of known future bequests to this charitable trust stands at approximately \$750 million.

The above Trust is subject to annual audit by the Queensland Audit Office (QAO) and relevant statements of account and audit reports are certified and published appropriately. The Trust also has annual investment strategy reviews conducted.

General Comments

Broadly speaking, the Public Trustee of Queensland welcomes the review of the charitable and not for profit sector.

The changes proposed in *Exposure Draft – Public Ancillary Funds* bring a transparent system of accountability to Public Ancillary Funds. Changes to administrative penalties provide appropriate response to instances of non-compliance that would otherwise erode the integrity of the sector. Changes to the structure of Trustees require appropriately accountable individuals that can continue to provide expertise and guidance to Funds in line with existing levels of governance under the Corporations Act.

Specific Comments

Guideline 19: Minimum Annual Distribution

The intent of all Public Ancillary Funds operated by the Public Trustee of Queensland is to provide ongoing charitable resources in perpetuity.

In an ideal economic environment, the return on assets of the Fund would well exceed the 4% proposed minimum distribution, and the capital base would be maintained in accordance with the provisions of the Deed.

That being said it is nature of the investment market that returns fluctuate year on year. This is the case in the not-for-profit sector as it is in any investment based industry such as Superannuation.

To link a minimum distribution amount to the net assets of the Fund rather than the income, means that in times of financial hardship for the Funds, the proposed guidelines would require the distribution of capital to make up for any income shortfall. Such a provision is in direct conflict with the Deed that is clearly based in ideals of perpetuity.

It is the submission of the Public Trustee of Queensland that where it is deemed appropriate to set a minimum level of distribution for each year, that such a level be determined by

measurement of Fund's distributable income, and not related to net assets of the Fund as is currently proposed.

Specific Comments

Guideline 42: Uncommercial transactions and benefits to Founder/Donor

Many charitable organisations identify the benefits of being able to budget for an ongoing stream of income rather than depend on irregular donations being received. This notion is achievable through a named fund where the organisation is the beneficiary of that fund. Often charitable organisations have provided "seed money" to create a named sub-fund, enabling them to avoid high initial start up costs and ongoing management costs.

In many instances the structure and governance arrangements of Community Foundations, being already in place, attract charitable organisations wishing to establish a fund that will harvest future contributions from donors and provide the organisation with that perpetual source of future income.

Being part of a Community Foundation provides them with the ability to attract ongoing support and growth of their named sub-fund through donors attracted to the notion of providing ongoing income through the perpetual investment of the capital. The Public Trustee submits that disallowing organisations to "seed funds" into a named sub-fund will constrain their ability to attract donors wishing to leave a lasting gift.

Specific Comments

Guideline 53: Distributions

One of the attractive features of Community Foundations is the ability for the donor to create a sub-fund in their own name to serve specific purposes that they identify with. Often these sub-funds can be relatively small in value, but offer the donor the advantage of being less expensive to conduct through a Foundation's structure.

In some circumstances the beneficiary Charities may request that the distribution be held to further grow the fund to meet future needs or to coincide with an ongoing project. If these sub-funds are treated separately, then there is the risk of future viability of some sub-funds.

Collectively these sub-funds are gathered under the umbrella of the Community Foundation for efficiency in management and investment however clarification is sought as to whether the guidelines will apply to each sub-fund individually or on an aggregate basis to the parent Public Ancillary Fund. The Public Trustee's submission is that these funds should not be looked upon separately, but that the collective total of the Community Foundation be viewed as the one entity.

Conclusion

The Public Ancillary Funds maintained by the Public Trustee of Queensland have been founded on ideals of perpetuity to provide ongoing resources to over 180 individual charitable organisations. The Public Trustee recognises the efforts by the Government to improve the integrity of Public Ancillary Funds by providing a system of administrative guidelines, and associated penalties for all Public Ancillary Funds.

The Public Trustee of Queensland urges the Treasurer to reconsider the minimum distribution requirement contained in *Public Ancillary Funds Guidelines 2011* and recommends that any minimum distribution amount be linked to distributable income, and not to net asset values as is currently proposed.

It is the concern of the Public Trustee of Queensland that the current proposed guidelines could place at risk a portion of the reported \$750million currently committed as future bequests, and in turn, restrict the resources that would otherwise directly flow to local and national charitable organisations.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter Carne', with a large, stylized initial 'P' on the left and a long horizontal stroke extending to the right.

Peter Carne
Public Trustee