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

Dear Sir

Improving the Integrity of Prescribed Private Funds (PPF's) Discussion Paper

The Bruce Bain Foundation

On behalf of the Bruce Bain Foundation (BBF) I enclose submission in response to the Discussion Paper issued in relation to Prescribed Private Funds.

Yours faithfully



LINTON R. LETHLEAN

PRESCRIBED PRIVATE FUNDS (P.P.Fs)

Proposal to improve the integrity of Prescribed Private Funds (P.P.Fs)

This submission is made on behalf of the BRUCE BAIN FOUNDATION ABN 6922523175 and its honorary trustees -

DONALD KIRKWOOD BAIN, B.E.M., B.Com, Chairman of the Foundation, Past President and Life Member of the OAKLEIGH CENTRE FOR INTELLECTUALLY DISABLED CITIZENS, ABN 91480773899. He is the parent of BRUCE BAIN who has been supported by the Centre since 1958 including current full residential care.

MEL WARNER Current C.E.O. of the Centre

LINTON ROY LETHLEAN, O.A.M., LLB, Official Responsible Person as required by the PPF Regulations.

1. Purpose of the Foundation

To provide for the long term, an appropriate facility to receive and manage testamentary gifts by friends and particularly parents, for the benefit of the Centre. To this end a "seeding fund" totaling \$50,000 has been established by friends of the Centre and the Foundation is ready to handle any testamentary gift which may be received. Such bequests will always be sporadic and over a long period of time and some are expected to be quite significant.

When bequests are received, they will be invested in a "Capital Preserved Fund" and the full net income will be distributed to the Centre each year. It is specific policy that the income flow, hopefully increasing with each bequest received, is to be used to supplement direct "hands on" day to day care services not capital expenditure. The foundation does not intend to undertake large scale current fund raising campaigns from its family groups or the general public. Please note the references to the Foundation in the Centre's 2008 Annual Report at pages 9 and pages 14-15 (attached).

The prescribed conditions under which the BRUCE BAIN FOUNDATION was established were considered safe and very appropriate to its inevitable slow growth and we do not accept that the basic conditions should be changed in any vital way. Please note however our comments hereunder concerning realized and unrealized capital gains.

2 Basic Objection to Current Proposals

(a) Mandatory 15% P.A. Distribution

This is totally impractical for the BRUCE BAIN FOUNDATION and indeed for the many similar long term family or special interest P.P.Fs. Such a requirement could wipe out a Trust Fund before it achieves its ultimate objective. Providing a P.P.F. is legally distributing all its net income and no devious or corrupt action is in place to accumulate unnecessary non-earning assets, then the support programs of the Trustees should not be overridden by any such arbitrary directions from the Government. It should be noted that this income from small family and similar Trusts will be favoured by the large amount of volunteer effort.

P.P.Fs which conduct their charitable operations as indicated above are acting with complete integrity and basic business acumen and the 15% proposal will not increase this situation.

The Government should consider what an enforced 15% distributions means at times like the current economic recession when the flow of new funds may diminish or even cease and the sale of assets to meet the obligation could be completely unacceptable. Also any fixed obligation to distribute benefits beyond actual net earnings will deter many philanthropic people from even considering the P.P.F. process.

b Publication of Contact Names

This is totally opposed by our Foundation as being unsuitable to P.P.Fs. It should be noted what the original Government announcement said. "The new Trust will provide donors with greater flexibility so that individuals, families and businesses can donate to a trust of their own".

Donors are involved with a Prescribed Private Fund with no obligation to conduct public fundraising or to support unrestricted charitable organizations, if that is not part of its approved charter. There should be no obligatory public announcement of contact details of our private funds as it could lead to overwhelming demands on the administration of the P.P.F.

3. Realized and Unrealized Capital Gains

When the P.P.F. plan was first announced there was quite indecisive (and seemingly impractical) advice as to the treatment of these gains.

We recorded our objection to any enforced realization and illogical distribution of these gains. The Canberra staff member, Mr. Stewart Turner, advised that there had been other objections to this requirement and that the policy was likely to be amended in the future. On this basis we proceeded with the BRUCE BAIN FOUNDATION in the hope that this would happen.

We now request that this matter be reviewed and clarified and our suggestions are as follows:-

- (a) That total Realized and Unrealized Capital Gains should each be stated separately in the Annual Return to the Australian Taxation Office.
- (b) That no part of these declared gains be required to be distributed during the Approved Fund Accumulation period and that Unrealized Capital Gains be automatically added to the approved Accumulated Fund without further specific approval by the Government. Unrealized Capital Losses should be ignored.
- (c) After the Approved Accumulated Fund is achieved any Realized Capital Gain should automatically be added to the Approved Capital Fund of the P.P.F. and declared Unrealized Capital Gains or Losses should be virtually ignored unless it is clear to the Government that the illusive gain or loss is being used to cover some illegitimate capital asset, use or accumulation. It should be noted that increase in the market value of an investment usually results in an increase in income earning, and if

all net income (after any cost of living hold back deemed by the Trustees to be desirable) is being legally distributed, the operation still reflects maximum integrity.

4. Normal contributions received after the Approved Accumulated Fund is achieved also need clarification. The present requirement that these continued contributions should be distributed within 12 months of receipt defies all logic if the contribution can be and is used by the Trustees for the normal aims of the P.P.F.. The first option of the Trustees should be to apply for inclusion of the amount in the approved Accumulated Fund which should not be unreasonably refused.

Signed on behalf of the Foundation



L. Lethlean