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**Submission to Treasury
by
Philanthropy Australia
on
Australian Treasury Green Paper on Financial Services and
Credit Reform -- Trustee Corporations**

August 2008

Philanthropy Australia welcomes the opportunity to comment on the Australian Treasury Green Paper on Financial Services and Credit Reform with particular reference to Section 2 Trustee Corporations. Philanthropy Australia believes that the introduction of a national framework will encourage a more competitive environment with a reduced regulatory burden while enhancing oversight.

Reform in this area is long overdue and has the potential to benefit the philanthropic sector by removing inconsistencies between states, improving efficiency and leading to a more transparent and competitive sector.

Philanthropy Australia and its Members strongly support the Federal Government's plan to bring trustee corporation law under commonwealth jurisdiction. The current system, with a high number of disinterested state bodies, and different rules in different jurisdictions, is not consistent with a modern national financial regulatory framework.

In a one-page submission to Treasury on 1 July 2008, Philanthropy Australia stated:

Philanthropy Australia welcomes Commonwealth regulation of trustee corporations and believes that the introduction of a national framework will encourage a more competitive environment with a reduced regulatory burden while enhancing supervision.

Philanthropy Australia believes that it is in the interests of all stakeholders including trustee corporations to offer a transparent and accountable service to meet the varied interests of the charitable trusts and foundations under their guardianship.

In regard to the "Options for Reform", Philanthropy Australia believes that Option 1: Consumer protection supervision would be the most appropriate entity level framework for Commonwealth regulation of trustee corporations. However given the complex nature of this area, it will raise a number of issues where a consumer-protection solution may not be the best outcome.

While at an entity level Commonwealth regulation looks relatively simple, the issues at an operational level are actually very complex and there are some strongly held views in different parts of both the philanthropic and community sectors. However everyone agrees that there is a need for a streamlining of the current state based approach to a national framework to promote understanding, efficiency, monitoring and compliance.



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Issues Paper for consideration by Treasury
prepared by
Philanthropy Australia
on
Australian Treasury Green Paper on Financial Services and
Credit Reform -- Trustee Corporations

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Philanthropy Australia believes:

- That it is in the interests of existing (and potential) charitable trusts and foundations that Trustee Corporations are able to charge fair and reasonable fees that enable them to provide a sustainable level of service.
- That it is in the interests of Trustee Corporations to offer a transparent and accountable service to meet the varied interests of the charitable trusts and foundations under their guardianship.
- That it is in the interests of the Trustee Corporations, the philanthropic sector and the wider community that Trustee Corporations actively participate in discussions on philanthropy and undertake effective grant-making and social investment for the benefit of the wider community.

Background

Trustee Corporation of Australia (TCA) Members manage over 2,000 charitable trusts with assets of \$3.5 billion. In 2006/07 they distributed \$280 million to charities on behalf of trusts.

Trustee Corporations have three groups of philanthropic charitable trusts and foundations under their guardianship:

1. Those that have recently, currently or will be set up. They mostly have living co-trustees and the donor has chosen or will choose to join the Trustee Corporations in the current environment where they have a range of competitor options to choose from.
2. Those historical trusts that have been set up in the past that currently have living co-trustees. These trusts and foundations were set up at a time when there were few options and are managed by the nominated Trustee Corporations in perpetuity (unless the Trustee defaults, resigns or a Court removes the Trustee).
3. Those historical trusts that have been set up in the past where the Trustee Corporation is the sole trustee. These trusts and foundations were set up a time when there were few options and are with the Trustee Corporations in perpetuity.

Of those 2,000 charitable trusts 80% have a corpus of less than \$5 million and about 60% have a corpus of less than \$500,000.

Issues

In discussions with Members of Philanthropy Australia there are two major implementation issues which remain unresolved.

1. Fees for service

In most states the current state-based legislation provides for a cap on trustee fees in respect of charitable trusts, based either on a percentage of annual income or the corpus. The State

legislation also allows for fees to be negotiated between the benefactor and the trustee. In the absence of a negotiated agreement statutory caps vary from state to state and the new Commonwealth legislation will need to adopt a consistent approach.

Some of our Members see a trade-off between transparent reporting and fee flexibility for trustee companies and would support uncapped or negotiated fees for new clients, with perhaps a publicly available standard set of fees to serve as reference or benchmark.

In respect of historical trusts, it was generally agreed by Members that circumstances change, particularly over long periods of time and that there needs to be a mechanism to change administration fees (in either direction). Any new regulation should not unnecessarily add to costs. However, there was no consensus on how to structure and adjust fees on historical trusts.

Two suggestions for a regulation-light way to adjust fees where appropriate are:

- From the Trustee Companies: to adjust historical fees in line with published fees or new business for similar trusts,
- or
- From the Co-Trustees: have an ombudsman-style regulatory body/group to review fees on existing trusts.

There was a suggestion that a mechanism could be developed for smaller trusts to be pooled to streamline business, and lessen the administrative and regulatory burden, leading to a net community benefit. This pooled fund, which would be similar to an ancillary fund would then be audited and reported in aggregate.

2. Disclosure, transparency, accountability

There was general consensus that disclosure is healthy, but disagreement on what form it should take. In Member discussions it was noted that

- the higher the level of disclosure required, the higher the costs involved, and therefore fees charged
- accountability of trustee companies is already assured by existing corporate governance.

Members suggested that if government is looking to promote transparency, the PPF model is a good one to adopt, with an exemption for very small trusts, unless the pooling suggestion was adopted.

Philanthropy Australia Members noted the potential for overall charity law to be brought into the federal jurisdiction and that this would then provide for a uniform, transparent and regulated sector.