



Australian  
**Philanthropic  
Services**

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Dear Sir/Madam

**Exposure draft of amendments to the Private Ancillary Fund Guidelines 2009 and the Public Ancillary Fund Guidelines 2011**

Please find attached Australian Philanthropic Services' submission in response to the exposure draft of the amendments to the Private Ancillary Fund Guidelines 2009 and the Public Ancillary Fund Guidelines 2011 (the draft amendments).

Australian Philanthropic Services thanks the Treasury for the opportunity to make a submission in response to the draft amendments.

If the Treasury wishes to discuss this submission further, please contact David Ward, Technical Director, on [REDACTED]

Yours faithfully

Antonia Ruffell  
Chief Executive Officer

## Australian Philanthropic Services Submission

### Exposure draft of amendments to the Private Ancillary Fund Guidelines 2009 and the Public Ancillary Fund Guidelines 2011

#### Introduction

Australian Philanthropic Services is the leading not-for-profit provider of administrative and support services to philanthropists in Australia. We provide governance and accounting services to ensure our clients' foundations are operated in accordance with the Private Ancillary Fund Guidelines 2009 and the Public Ancillary Fund Guidelines 2011, as well as providing grantmaking support and advice.

We currently administer 140 private ancillary funds (PAFs) and nine public ancillary funds (PuAFs) for our clients, as well as running our own PuAF, the Australian Philanthropic Services Foundation, which has 45 sub-funds. In the financial year ending 30 June 2015, we established 32% of all PAFs in Australia.

Australian Philanthropic Services is a member of Philanthropy Australia (PA) and has been actively involved in the preparation of, and fully supports, PA's Submission as representing the sector's views.

In addition to supporting PA's submission, we would like to emphasise two aspects that we see as critical to the continued development of a widespread philanthropic culture in Australia.

#### Portability/Transfer of Assets between Ancillary Funds

##### Summary

- (1) We strongly support the introduction of portability for PAFs (Guideline 51A; Item 32);
- (2) We strongly support the proposed amendment in the PA Submission to allow the transfer of net assets between all types of ancillary funds, not just between **private** ancillary funds (Guideline 51A; Item 32).
- (3) We strongly oppose the proposal to restrict the current PuAF to PAF portability (Guideline 50; Item 23 & Item 24) and strongly support PA's recommendation to permit portability from mid May 2016.

##### Detailed Comment

We consider PAF to PAF portability as proposed to be of limited benefit. It would continue to impose red tape on efficient philanthropy. PAF to PuAF portability within the rules set out will be a significant benefit for philanthropy and we support PA's proposed amendments.

We are aware of a number of PAFs which are either too small to be efficient or the founders are struggling to manage the ongoing administration. However, the founders wish to retain a philanthropic structure for the benefit it affords in creating a future stream of charitable donations. Were a transfer of the philanthropic capital from a PAF to a PuAF be permitted, it would offer these philanthropists the continued benefit of structured giving but in a more cost and administration appropriate vehicle.

Portability between ancillary funds is also an important estate planning mechanism. For example, Founders of PAFs may not be survived by suitable successors, such as children, to continue the ongoing management of the PAF. A transfer of the assets from the PAF to a PuAF presents a viable and sound estate planning solution for such individuals. On their deaths, the transfer of assets will facilitate their testamentary wish of continued structured giving and support of their preferred community organisations.

We strongly oppose the proposal to restrict the current PuAF to PAF portability. PuAFs are a significant seed bed for philanthropists who want to start small, or while they are still fully employed, with a view of establishing their own PAF at a future date. We know of several in this situation currently. We acknowledge concern that a PuAF donor who has publically fundraised into a subfund should not be entitled to move those funds to a family controlled PAF. However we believe this can be adequately managed by the ATO Commissioner when approving the transfer. For example, by requiring such public funds to be distributed before transfer. In any event and to our knowledge, the current system works well and there has been no abuse.

## **Changes to the Minimum Annual Distribution**

Australian Philanthropic Services does not support the proposed changes to the minimum annual distribution requirements for Ancillary Funds contained in Item 7 of Schedules 1 and 2.

All foundations whether PAFs, PuAFs or other charitable trusts, are established to benefit the community. From our extensive experience across our client base, donors are very comfortable with the current minimum distribution guidelines. Whilst some clients distribute the minimum amount, many give away more (and in some cases, significantly more) than the minimum.

The simplicity of explaining the distribution obligation is a major positive in discussing philanthropy with prospective clients. There are enough issues to address without the distraction of a complicated formula or variable amount of minimum distribution. With experience of the antecedent Prescribed Private Fund regime and the confusion arising from that regime's complicated minimum distribution formula, we would consider the unravelling of the 2009 reforms a grave mistake and step backward. We agree with PA that the existing simplicity should be maintained.

Our experience has been that over time the investment returns of well managed foundations are sufficient to preserve the real value of endowed capital while meeting the minimum return and covering expenses

## **General comments**

Finally, we are firmly of the view that a stable regulatory regime is important for building a philanthropic culture in Australia. A review to address any governance shortcoming and technicalities is important. We would consider a review every five years following regulatory amendment, as is the timing of this particular review, to be a sensible and stable approach to regulatory governance.

We are happy to answer any questions or provide further information that may be useful to complete this process in a timely manner.