

---

**From:** Brian and Sue <brsjpage@bigpond.com>  
**Sent:** Wednesday, 24 August 2011 1:10 PM  
**To:** PAF Reforms  
**Subject:** Submission to PuAF Reforms currently under review.

**Submission to Public Ancillary Fund Guidelines 2011.**  
**Brian Page, PO Box 157, Mount Gambier, SA 5290.**

I have made previous responses. I have recently been to a conference or forum on philanthropy which clarified the final issues as we get closer to closure on this important matter. I appreciate the opportunity to be involved, as if we have been having a discussion but electronically and not face to face over time.

I also agree with the overall thrust of the draft regulations eg accountability, doing Tax Returns, audits, reporting, attention to the trust deed and operating to this, minimum granting of 4%, trustee or director responsibility, prudence in financial affairs and investments, etc which is perhaps well overdue and which will improve the whole PuAF sector with certainty and better accountability.

I am fortunate to be involved with a PuAF which hopefully may have little problem in implementing most of the requirements of the Guidelines as drafted at this time and the Tax Return is a one issue to implemented.

#### **Paragraph 14.2**

The term active '**directors**' might need some clarification referring to clause 14.

Directors might imply Directors of a Company of some sort but many PuAF's might be controlled by persons or entities which are not technically Directors, if a corporate director definition is used. The controlling entity may be a company and the persons are therefore actually directors. The controlling entity might be an incorporated body under state Incorporation's Acts and are thus they are not directors but Members of the Board which might be a Management Board or a Board elected by the Members. The responsible persons might be Trustees. Or a Responsible entity might be involved which is partly covered by clause 14.3.

**Perhaps an added rider to Clause 14, or within section 3 Interpretation**, might be a definition or statement that a range of responsible persons is listed and then a clear statement that the word 'directors' when used further during this document covers all such persons mentioned above or in the list wherever placed. This is for clarity purposes.

#### **Paragraph 19.1 and Paragraph 53.**

I have previously commented on the minimum \$11,000 distribution and the \$220,000 minimum corpus and the difficulties placed on new PuAF's associated say with Community Foundations when initial donations might be small and it might take some time for the corpus to reach \$220,000.

At the said conference above the possible or probable reasons for these were given eg that many PuAF's existed which might not be operating as intended or might be inoperative or moribund.

When reflecting on the overall draft rules, and being briefed by a professional, I would now consider that these two rules are unnecessary when one considers the document in total and the duties implied in the draft regulations.

Therefore **I submit that both the \$220,000 minimum corpus requirement and the minimum distribution of \$11,000 under various circumstances should be removed.**

Some strong reasons are listed here.

a) **14.2 Directors must be active.** To not be active as a whole implies that this is a breach of the rules and DGR status might be removed and the PuAF and directors might be penalised.

b) **19 Minimum distribution of 4%.**

Most entities would or should have been distributing to other guidelines eg a minimum of 80% of income. To not distribute any grants or donations as is intended by these draft regulations or as according to PuAF trust deeds is another strong issue. Not making an distributions is against the requirements of these regulations and risks losing DGR Status and the infliction of serious penalties (19.4), at least \$1,000 in the main and perhaps in substantive numbers of cases.

This has considerable clout and effect. This is not a small consideration.

c) **Accounts, Financial Statements, Audit and Investment Strategy.**

The responsibilities under these sections alone are enormous and there may be some or many unrealised consequences and liabilities on the PuAF and on the directors or trustees.

For instance, a PuAF according to its investment strategy must invest accordingly, but while this is not stated, it is inferred and would be required under normal auditing standards, that **the Auditor must also sign off that all investments are in accord with the strategy.**

In regard to **grants to legal Item 1 DGR's, the Auditor** while not directly stated in these regulations, will according to normal accounting standards have **to sign of that this is the case which is an additional assurance of grants veracity to the ATO.**

This infers **Auditors will have increased surveillance responsibilities, duties and costs.**

This also infers that this will lead to the end of pro bono auditing, and also increase auditing costs to trustees and in time to increased auditors and trustees or **directors liability insurance** costs. Auditors must sight the Investment Strategy and all investments. Auditors must sight all grants or donations and the charitable status of each recipient which may be many.

**Within the PuAf, higher accounting costs** will be incurred to account for these matters before accounts are ready to be presented to the Auditor. This includes complete documentation of the DGR status of the grantee attached to every grant or donation and setting out investments for the auditor with copies of the investment strategy. All of this must be done clearly based on the need to not simply act accordingly, but to be seen to act so.

And Directors or Trustee responsibilities as to signing off on accounts, signing off on investments and grants and operating to the Trust Deed are also increased. Apparently there are various rulings eg the Bamford Ruling and others for directors to be aware of and to consider. **Director obligations seem to be or are certainly considerably increased but are clearly spelt out.**

d) The many **penalties** provided in the regulations including restitutions, possible personal penalties on directors associated with all of the above, **are an issue of real substance.**

e) The need to do a **Tax Assessment** according to ATO guidelines is also another layer of legal compliance, accountability and implementation and assurance to the ATO that the PuAF sector is indeed performing and meeting its social justice and charitable obligations.

**I hope that one can easily see that from what I argue here, the minimum corpus of \$220,000 and a minimum distribution of \$11,000 (paragraphs 19.1 and 53) are unnecessary.** They also **complicate the document.** And as argued in previous submissions, **these add an unnecessary layer of difficulty for new PuAF's particularly those associated with Invested Capital PuAF's and Community Foundations intending to provide a perpetual legacy.**

The substance of the proposed PuAF regulations under consultation are more than enough without these two obligations.

**ATO Notification of the PuAF Review to the PuAF Sector.**

As an example, at the conference mentioned above, one hospital in Melbourne was reported to have over 60 individual PuAF's associated with their many individual auxiliaries. What will they do? How do they prepare for audit and tax return? Do they consider combining all these into one entity with named subfunds under one investment pool? Have these been run accord to the draft regulations? Are trustees and directors aware of the new regulations?

I also include a comment on appropriate advice to the PuAF Sector. It is my understanding that the PuAF that I am a trustee of, was not advised directly by the ATO of the review and was advised by third parties on its importance. I suggest that **the substantive number of PuAF's are not aware of the proposed changes nor of the opportunity to make submission.**

I also suggest that the **ATO must consider the notification process to the PuAF Sector when the new regulations come into play and that every PuAF needs to be advised formally** by letter or e-mail or in some way when the new regulations come into force. It may be that they are adopted by say January 1, 2012 but it may be **necessary to allow** a clear financial year or a longer and **reasonable time for all PuAF's to consider and implement all the new changes**, and to be able to consider all the other requirements to come into force and to be ready for Tax Returns.

Many PuAF's will need to find an Auditor. Many will have to adopt a higher level of Accounting and an Investment Strategy. Trustees or Directors will need to become aware of the new requirements and to implement them. Trustees and Directors will have to consider the penalties. There are so many substantive matters. It all takes time. The Hospital issue mentioned above with over 60 PuAF's is a good example of the issues of orderly implementation

**It sets a scene for chaos unless managed properly.**

**Granting to public institutions that would be an Item 1 DGR (and a TEC) except that they are government owned eg Hospitals.**

This also raises a new problem as to whether these PuAFs can actually grant to the hospital (example of the Melbourne Hospital Auxiliaries above) it not being a doing Item 1 DGR, but a government owned entity which would be an Item 1 DGR with charitable status except that is owned by the state?

Now I do get into an area that I am hazy on but the gist of what I have been told is that PuAF's can only gift to an Item 1 DGR with charitable status and hospitals per se are not these. Nor are school library and building appeals, and museums and libraries etc. But if a PuAF converts to or is also given ITEF status eg able to give to an Income Tax Exempt Fund, then it can grant or donate to say Public Hospitals and certain activities of Public Schools and public entities etc in most States.

It therefore seems an important matter that in some place in the Guidelines that better clarifying guidance is provided eg in Interpretation.

Perhaps a real simplification of the process is that all **PuAFs might automatically be converted to become ITEF's as well.**

Associated with this are complications is some State Charitable Laws some being well out of date, might preclude technically eg in South Australia from assisting a Government Hospital in charitable acts and that some enabling regulation at the ATO might overcome this possible obstacle to remove variations within Australia.

The issue of Local Government as partners and recipients of grants eg Art Galleries, Museums, Libraries and other activities that are clearly charitable is an issue to clarify under the ITEF or PuAF structure.

For most regional Community Foundations, being able to assist local hospitals and schools etc is a vital matter. Being able to provide donors the ability to donate to an invested capital funds which provide certain income in perpetuity to these important local institutions, is important (additional to the normal community donations always provided).

In many regions (regional, rural and isolated) these public institutions are the core of small communities and are constantly under threat and because of this, small communities and their intrinsic viability are under threat.

This is why small communities are looking for the growth of local philanthropy and Community Foundations are becoming core to this where these have been established. Small communities look for certainty and an assurance that they are not forgotten, and one would hope that the ATO does recognise this and takes a fair view of these issues when the Draft Guidelines are finally adopted.

## Clause 50, Portability of Funds.

In the United Kingdom, Community Foundations which are more widely distributed, are reported to have preferred status as a charitable vehicle into which to place the funds of moribund charitable trusts and the like. The issue of the Hospital above is also relevant eg it may wish or need to amalgamate all PuAF's into one with each auxiliaries funds represented by an internal named sub fund, or whatever they decide. Clause 50 in a general sense covers this.

But would the Hospital in the case above actually be able to receive distributions or donations from its related PuAF's? Will changes to Trust deeds be needed?

Similarly there are Private Ancillary Funds which might want to (perhaps due to age of family trustees), to a PuAF, probably associated in regions, to a Community Foundation PuAF.

The **Clause 50 might need to have a section about receiving funds** (additional to transferring funds) from another PuAF or a PAF, and might need to clarify the Hospital/ITEF/public institution that would be an Item 1 DGR if it were not public.

This would be for reasons of clarity, of certainty, and the general growth of philanthropy and perpetual legacy.

One must also comment that the ATO has dwelt on the income tax forgiven by tax exempt status. ALL such entities are certainly grateful for this.

But what also must be acknowledged and recognised is that these charitable donations, both before tax deduction, and after tax deduction do assist the Australian Community in a way that provides funding that other wide Governments might or would have to provide.

By the simple fact that Tax Returns will be done, will in time demonstrate the financial extant of this enormous contribution to the Australian Nation in partnership with its Governments, Federal, State and Local.

Respectfully

Brian Page  
PO Box 157  
7 Wyatt Street Mount gambier  
SA 5290

Phone 08 8725 6590  
Mobile 0417 886 953