

# EXPOSURE DRAFT

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## Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Schedule 1, Part 1, Division 1	1 January 2012.	1 January 2012
2. Schedule 1, Part 1, Division 2	1 July 2012.	1 July 2012
2. Schedule 1, Part 1, Division 3	1 January 2012.	1 January 2012
4. Schedule 1, Part 2	The day this Act receives the Royal Assent.	

## Schedule 1—Ancillary funds

### Part 1—Public ancillary funds

#### Division 1—Main amendments

#### *A New Tax System (Australian Business Number) Act 1999*

##### **1 Paragraph 26(3)(ga)**

After “section 426-65”, insert “, 426-104”.

#### *Income Tax Assessment Act 1997*

##### **2 Subsection 30-15(2) (cell at table item 2, column headed “Recipient”)**

Omit “A public fund, or a \*private ancillary fund,”, substitute “An \*ancillary fund”.

##### **3 Subsection 30-15(2) (cell at table item 2, column headed “Special conditions”)**

Before “fund” (wherever occurring), insert “ancillary”.

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## 4 Paragraph 30-125(1)(d)

Omit “a \*private ancillary fund”, substitute “an \*ancillary fund”.

## 5 Subparagraph 30-125(1)(d)(i)

Omit “\*private ancillary fund guidelines”, substitute “\*public ancillary fund guidelines or the \*private ancillary fund guidelines (whichever are applicable)”.

## 6 Paragraph 31-10(1)(b)

Omit “a public fund, or a \*private ancillary fund,”, substitute “an \*ancillary fund”.

## 7 Subsection 995-1(1)

Insert:

*ancillary fund* means:

(a) a \*public ancillary fund; or

(b) a \*private ancillary fund.

## 8 Subsection 995-1(1)

Insert:

*public ancillary fund* has the meaning given by section 426-102 in Schedule 1 to the *Taxation Administration Act 1953*.

## 9 Subsection 995-1(1)

Insert:

*public ancillary fund guidelines* has the meaning given by section 426-103 in Schedule 1 to the *Taxation Administration Act 1953*.

## *Taxation Administration Act 1953*

## 10 Subsection 355-65(8) in Schedule 1 (table item 6, column headed “and the record or disclosure ...”)

Omit “private ancillary fund”, substitute “\*ancillary fund”.

## 11 Section 426-1 in Schedule 1

Omit:

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1 Subdivision 426-D deals with a type of private philanthropic trust  
2 fund known as a *private ancillary fund*.

3 substitute:

4 Subdivision 426-D deals with types of philanthropic trust funds  
5 known as *public ancillary funds* and *private ancillary funds*.

## 6 **12 Subdivision 426-D in Schedule 1 (heading)**

7 Repeal the heading, substitute:

## 8 **Subdivision 426-D—Public and private ancillary funds**

## 9 **13 Section 426-100 in Schedule 1**

10 Omit:

11 This Subdivision deals with a type of private philanthropic trust  
12 fund known as a *private ancillary fund*.

13 substitute:

14 This Subdivision deals with types of philanthropic trust funds  
15 known as *public ancillary funds* and *private ancillary funds*.

## 16 **14 Section 426-100 in Schedule 1**

17 Omit “when private”, substitute “when”.

## 18 **15 Section 426-100 in Schedule 1**

19 Omit “private ancillary fund guidelines”, substitute “public ancillary  
20 fund guidelines or private ancillary fund guidelines (whichever are  
21 applicable)”.

## 22 **16 Before the group heading before section 426-105 in 23 Schedule 1**

24 Insert:

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## Public ancillary funds

### 426-102 Public ancillary funds

- (1) A trust is a *public ancillary fund* if:
- (a) at least one of the following subparagraphs applies:
    - (i) each trustee of the trust is a \*constitutional corporation;
    - (ii) the only trustee of the trust is the Public Trustee of a State or Territory; and
  - (b) each trustee of the trust has agreed, in the \*approved form given to the Commissioner, to comply with the rules in the \*public ancillary fund guidelines, as in force from time to time; and
  - (c) none of the trustees has revoked that agreement in accordance with subsection (2).
- (2) A trustee may revoke an agreement mentioned in paragraph (1)(b) only by giving the revocation to the Commissioner in the \*approved form.
- (3) Sections 426-125 to 426-165 do not apply to a \*public ancillary fund if subparagraph (1)(a)(ii) of this section applies to the fund.

### 426-103 Public ancillary fund guidelines

The Minister must, by legislative instrument, formulate guidelines (the *public ancillary fund guidelines*) setting out:

- (a) rules that \*public ancillary funds and their trustees must comply with if the funds are to be, or are to remain, endorsed as \*deductible gift recipients; and
- (b) the amount of the administrative penalty, or how to work out the amount of the administrative penalty, under subsection 426-120(1) in relation to public ancillary funds.

### 426-104 Australian Business Register must show public ancillary fund status

- (1) If a \*public ancillary fund has an \*ABN, the \*Australian Business Registrar may enter in the \*Australian Business Register in relation to the fund a statement that it is a public ancillary fund.

Note 1: An entry (or lack of entry) of a statement required by this section does not affect whether a trust is a public ancillary fund.

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1 Note 2: The Australian Business Register will also show if a public ancillary  
2 fund is endorsed as a deductible gift recipient: see section 30-229 of  
3 the *Income Tax Assessment Act 1997*.

4 (2) The \*Australian Business Registrar must take reasonable steps to  
5 ensure that a statement appearing in the \*Australian Business  
6 Register under this section is true. For this purpose, the Registrar  
7 may:

8 (a) change the statement; or

9 (b) remove the statement from the Register if the statement is not  
10 true.

## 11 **17 At the end of paragraph 426-110(b) in Schedule 1**

12 Add “in relation to private ancillary funds”.

## 13 **18 Section 426-120 in Schedule 1 (heading)**

14 Repeal the heading, substitute:

### 15 **426-120 Administrative penalties for trustees of ancillary funds**

## 16 **19 Paragraph 426-120(1)(a) in Schedule 1**

17 Omit “a \*private ancillary fund”, substitute “an \*ancillary fund”.

## 18 **20 Subparagraph 426-120(2)(b)(ii) in Schedule 1**

19 Omit “not a registered trustee company”, substitute “neither a registered  
20 trustee company nor the Public Trustee of a State or Territory”.

## 21 **21 Paragraph 426-120(3)(a) in Schedule 1**

22 Repeal the paragraph, substitute:

23 (a) the amount specified in the \*public ancillary fund guidelines  
24 under paragraph 426-103(b), or the \*private ancillary fund  
25 guidelines under paragraph 426-110(b), whichever are  
26 applicable; or

## 27 **22 Subsection 426-120(3) in Schedule 1**

28 Omit “private ancillary fund guidelines may”, substitute “guidelines  
29 may”.

## 30 **23 Subsection 426-125(1) in Schedule 1**

31 Omit “a \*private ancillary fund”, substitute “an \*ancillary fund”.

## 32 **24 Paragraph 426-125(1)(a) in Schedule 1**

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1 Repeal the paragraph, substitute:

2 (a) the \*public ancillary fund guidelines or the \*private ancillary  
3 fund guidelines (whichever are applicable); or

4 **25 Subsection 426-125(6) in Schedule 1**

5 Omit “a \*private ancillary fund”, substitute “an \*ancillary fund”.

6 **26 Paragraph 426-125(6)(a) in Schedule 1**

7 Repeal the paragraph, substitute:

8 (a) the \*public ancillary fund guidelines or the \*private ancillary  
9 fund guidelines (whichever are applicable); or

10 **27 Subsections 426-130(1) and (2) in Schedule 1**

11 Omit “a \*private ancillary fund”, substitute “an \*ancillary fund”.

12 **28 Subsection 426-130(5) in Schedule 1**

13 Omit “paragraph 426-105(1)(b), agreed to comply with the rules in the  
14 \*private ancillary fund guidelines,”, substitute “paragraph 426-102(1)(b)  
15 or 426-105(1)(b), agreed to comply with the rules in the \*public  
16 ancillary fund guidelines or the \*private ancillary fund guidelines  
17 (whichever are applicable)”.

18 **29 Paragraph 426-135(1)(b) in Schedule 1**

19 Omit “\*private ancillary fund’s”, substitute “\*ancillary fund’s”.

20 **30 Subsections 426-135(2) and 426-150(1) in Schedule 1**

21 Omit “\*private ancillary fund”, substitute “\*ancillary fund”.

22 **31 Subsection 426-150(3) in Schedule 1**

23 Omit “a \*private ancillary fund”, substitute “an \*ancillary fund”.

24 **32 Paragraph 426-155(b) in Schedule 1**

25 Omit “\*private ancillary fund’s”, substitute “\*ancillary fund’s”.

26 **33 Subsection 426-160(1) in Schedule 1**

27 Omit “\*private ancillary fund”, substitute “\*ancillary fund”.

28 **34 Paragraphs 426-165(1)(a) and (2)(a) in Schedule 1**

29 Omit “a \*private ancillary fund”, substitute “an \*ancillary fund”.

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## 1 Division 2—Amendment commencing on 1 July 2012

### 2 *Taxation Administration Act 1953*

#### 3 **35 Subsection 426-104(1) in Schedule 1**

4 Omit “may”, substitute “must”.

## 5 Division 3—Transitional provisions

### 6 **36 Definitions**

7 In this Division:

8 *commencement time* means the time at which this item commences.

9 *constitutional corporation* has the meaning given by the *Income Tax*  
10 *Assessment Act 1997*.

11 *private ancillary fund* has the meaning given by section 426-105 in  
12 Schedule 1 to the *Taxation Administration Act 1953*.

13 *public ancillary fund* has the meaning given by section 426-102 in  
14 Schedule 1 to the *Taxation Administration Act 1953*.

15 *public ancillary fund guidelines* has the meaning given by  
16 section 426-103 in Schedule 1 to the *Taxation Administration Act 1953*.

### 17 **37 Application of Division**

18 This Division applies to a trust if, just before the commencement time,  
19 the trust was:

- 20 (a) a public fund covered by item 2 of the table in subsection  
21 30-15(2) of the *Income Tax Assessment Act 1997*; and  
22 (b) endorsed as a deductible gift recipient under section 30-120  
23 of that Act; and  
24 (c) not a private ancillary fund.

### 25 **38 Transitional—trustees need not be constitutional** 26 **corporations**

27 Paragraph 426-102(1)(a) (trustees of public ancillary funds must be  
28 constitutional corporations or Public Trustees) and sections 426-125 to  
29 426-165 (Suspension and removal of trustees) in Schedule 1 to the  
30 *Taxation Administration Act 1953* do not apply to the trust during the  
31 period:

- 32 (a) starting at the commencement time; and  
33 (b) ending at the earlier of the following:

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- 1 (i) the time (at or after the commencement time) the trust  
2 first satisfies the requirements of that  
3 paragraph (disregarding this item);  
4 (ii) the first time any of the trustees of the trust revoke the  
5 agreement mentioned in item 39 in accordance with  
6 subsection 426-102(2) in that Schedule.

7 **39 Transitional—agreement to comply with public ancillary**  
8 **fund guidelines**

- 9 (1) For the purposes of Subdivision 426-D in Schedule 1 to the *Taxation*  
10 *Administration Act 1953*, each of the trustees of the trust is taken to  
11 have agreed, at the commencement time and in accordance with  
12 paragraph 426-102(1)(b) in that Schedule, to comply with the rules in  
13 the public ancillary fund guidelines, as in force from time to time.
- 14 (2) To avoid doubt, subitem (1) does not prevent a trustee from revoking  
15 that agreement at a later time as mentioned in paragraph 426-102(1)(c)  
16 in that Schedule.

17 **40 Transitional—transfer of property**

18 For the purposes of item 2 of the column headed “Recipient” of the  
19 table in subsection 30-15(2) of the *Income Tax Assessment Act 1997*,  
20 disregard a transfer of all of the property of the trust to another public  
21 ancillary fund if:

- 22 (a) the other fund is a deductible gift recipient; and  
23 (b) at least one of the following subparagraphs applies:  
24 (i) every trustee of the other fund is a \*constitutional  
25 corporation;  
26 (ii) the only trustee of the other fund is the Public Trustee of  
27 a State or Territory; and  
28 (c) the transfer happens during the period mentioned in item 38.  
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2 **Part 2—Minor amendments**

3 ***Income Tax Assessment Act 1936***

4 **41 Subsection 6(1) (definition of *private ancillary fund*)**

5 Repeal the definition.

6 Note: This item repeals a redundant definition.

7 ***Taxation Administration Act 1953***

8 **42 Subsection 2(1) (definition of *private ancillary fund*)**

9 Repeal the definition.

10 Note: This item repeals a redundant definition.