



The Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 3600
Via email: pafreforms@treasury.gov.au

Attention: Ms Robyn Vincent

Dear Ms Vincent,

Exposure Draft – Legislative Framework for Public Ancillary Funds

I have pleasure in enclosing some brief comments in response to the Exposure Draft – Legislative Framework for Public Ancillary Funds released by the Assistant Treasurer on 14 July 2011.

The comments have been prepared by the Taxation Committee of the Business Law Section of the Law Council of Australia.

Thank you for agreeing to an extension of time in which to lodge these comments.

If you have any questions in relation to the comments, in the first instance please contact the Committee Chair, Teresa Dyson, on 07-3259 7369 or via email: teresa.dyson@blakedawson.com

Yours sincerely,



Bill Grant
Secretary-General

4 August 2011

Amendments to the Income Tax Assessment Act 1997

Definition of public ancillary fund – in section 995 (1) (1)

Section 8 of the Exposure draft provides the intended amendment to the definition of public ancillary fund. It provides that “public ancillary fund has the meaning given by section 426-102 in Schedule 1 to the Taxation Administration Act 1953”

There are two points:

1. The route that needs to be taken to find a meaning of the term “Public Ancillary Fund” is very circuitous. Subdivision 426- D Taxation Administration Act deals with Public Ancillary Trusts. However to find the definition of public ancillary trust referred to in that subdivision, one must go to section 995 (1) of the ITAA, which then refers you back to section 426 -102 of the Taxation Administration Act.
2. It is arguable that section 426-102 does not provide a meaning of the term public ancillary fund but rather sets out the requirements for a fund to be considered to be a public ancillary fund. Consideration might be given to including a description of the term so that the meaning is clear. A better description of the meaning exists in subsection 30-15 (2) under the column “Recipient”

Taxation Administration Act

Constitutional corporation

Section 16 of the Exposure draft provides the intended amendment to introduce new section 426-102.

Proposed Section 426-102(1)(a)(i) requires that the trustee of the trust must be a ‘constitutional corporation’.

A constitutional corporation is defined in section 51(xx) of the Constitution as ‘foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth’.

The explanatory memorandum with the Exposure Draft provides that ‘a corporation established and operated solely as a trustee of a public ancillary fund would be considered a constitutional corporation’. Query whether this is a correct assumption. Should not this be provided for in the legislation. For example: Is a public company limited by a guarantee going to fall within the definition of section 51(xx) of the Constitution, if its sole activity is to act as a trustee for the public ancillary fund?

Definition of public ancillary fund – section 426-102

The same point is made here as made above in relation to the ITTA. Could not the term be better defined in this Act?