

RESPONSE TO CONSULTATION QUESTIONS

Consultation question 1

What is an appropriate minimum distribution rate for a public ancillary fund and why?

We do not favour the setting on a mandatory minimum distribution rate or amount.

Reason: Fundraising registration in all Australian states do not require any minimum rate for distribution of donations, but do impose penalties for abuse. Ancillary funds fulfil a special function within the philanthropy sector and should *ipso facto* within a reasonable timeframe have the obligation to pass on their donated revenue to ultimate DGR beneficiaries, less their fundraising and administration costs. We consider a reasonable timeframe to be eighteen months.

Consultation question 2

Are there any issues that the Government needs to consider in implementing the requirement to ensure public ancillary funds regularly value their assets at market rates?

The cost/benefit of this proposal is not justified, since unrealised gains cannot be distributed.

Are the valuation rules that apply to private ancillary funds also appropriate for public ancillary funds? If not, why not?

No objection is raised to mirroring PAF valuation rules.

Consultation question 3

Are there any issues with requiring public ancillary funds to lodge a return?

This proposal is supported, provide such returns are on the public record.

Are there any issues with imposing greater public disclosure requirements on public ancillary funds? What information should remain confidential and what information should be disclosed and why?

The disclosure requirements for public ancillary funds should be consistent with the disclosure requirements for entities receiving tax deductible donations. A good template for relevant contents is available from the Charity Commission (UK).

Information which should be disclosed should include –

- A financial report which discloses costs of administration and fundraising
- A report from the governing body of the ancillary fund

A financial report which is made available to the public should be accompanied by –

- (a) For entities with gross assets exceeding \$1m or gross income exceeding \$500k – a report from an auditor based on Australian Auditing Standards
- (b) For all other entities - an independent examination report from a person approved for this purpose by the Commissioner of Taxation.

It should be an offence for a public ancillary fund to reveal the names and/or contact details of their donors without their written permission.

Consultation question 4

Is the administrative penalty regime (including magnitude of penalties) that applies to private ancillary funds suitable for public ancillary funds?

Denial of DGR status would be a more effective penalty for non-compliance.

However, we also support the governance penalty regime proposed.

Consultation question 5

Are there any difficulties in requiring public ancillary funds to have a corporate trustee?

Given the public accountability of PuAFs, the trustee should be a corporate trustee or equivalent (eg. corporation sole).

The primary difficulties facing corporate trustees of PuAF's are the onerous regulatory requirements which impact on small entities, especially companies limited by guarantee.

We hope that the Not for Profit Reform Council will initiate an inexpensive form of incorporation which would be more suitable to a Trustee role than a CLG.

Are the rules for suspension or removal of trustees of private ancillary funds suitable for public ancillary funds?

Yes.

Consultation question 6

What fit and proper person requirements should be imposed on trustees of public ancillary funds?

Status quo – that is, the same 'responsible persons' requirement as in TR 97/27.

Consultation question 7

What transitional arrangements are required for existing public ancillary funds to conform to the new arrangements?

The transitional proposal in 2.2.3 is supported by us.

Consultation question 8

Should the term ‘public fund’ be codified in the guidelines in accordance with the principles set out in ATO Taxation Ruling TR 95/27?

Yes – this would be of great assistance to users of public ancillary funds. A model trust deed, similar to the model guidance provided to PAF’s would also be well received. [You are probably aware that different officers in the Taxation Office require different clauses and wording for PuAF trust deeds prior to their endorsement as a DGR – most frustrating.]

Consultation question 9

Can the investment and risk minimisation rules that apply to private ancillary funds be suitably applied to public ancillary funds?

Yes