



PHILANTHROPY  
*Australia*

15 December 2010

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The Treasury  
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**Patrons**

Sir Gustav Nossal AC CBE  
Lady Southey AC

Dear Sir or Madam,

I enclose Philanthropy Australia's submission in response to the Treasury discussion paper, *Improving the Integrity of Public Ancillary Funds*.

Philanthropy Australia is the national peak body for philanthropy and is a not-for-profit membership association. Our mission is to represent, grow and inspire an effective and robust philanthropic sector for the community. Philanthropy Australia has over 400 Member Organisations, of which 59 are Public Ancillary Funds (PuAFs).

The Public Ancillary Fund sector is diverse and complicated. Philanthropy Australia strongly recommends that the Government's wish to encourage the growth of a robust philanthropic sector in Australia is best fostered by the collection of information and data on Public Ancillary Funds prior to making regulatory changes.

This submission has been prepared after extensive consultation with both Philanthropy Australia members and non-members. We believe that the views expressed in this submission are broadly representative of the views of many of Philanthropy Australia's members, but membership is not unanimous in all these views. Philanthropy Australia's members represent a wide variety of approaches to giving, and this diversity is part of the value of philanthropy in building a pluralistic society.

Philanthropy Australia would welcome the opportunity to provide further information on PuAFs and work closely with the Federal Government and Treasury to ensure that any regulatory changes contribute to PuAFs providing even greater long term benefits to the community in the future. I would be delighted to clarify or expand upon any of the points in this document.

Yours sincerely

Dr Deborah Seifert  
Chief Executive Officer

**Philanthropy Australia**  
**Response to Discussion Paper**  
**'Improving the Integrity of Public Ancillary Funds'**  
**15 December, 2010**

## **Introduction**

Philanthropy Australia welcomes the opportunity to comment on the discussion paper, *Improving the Integrity of Public Ancillary Funds* (PuAFs). It is entirely in the best interests of government and the sector that the regulatory framework is clear and simple to comply with, monitor and administer.

Philanthropy Australia fully supports any moves to make the system simpler and more effective. It is important to ensure that any regulatory reform ensures maximum long term benefits flow to the community from Public Ancillary Funds. Bipartisan support for philanthropy is vital as all donors to ancillary funds, regardless of whether that fund is a PAF or a public ancillary fund, are making irrevocable gifts to the community. If there is uncertainty about the new regulations or guidelines it could deal a severe blow to the sustainability of philanthropy in Australia.

In this context it is important to note that the sector has responded positively to the Private Ancillary Fund (PAF) reforms, although more promotion of the benefits of reform is still needed and there is still some trepidation that the PAF guidelines may change. Further consultation may be needed after the proposed ATO Frequently Asked Questions are issued.

Philanthropy Australia sees five issues in the Discussion Paper that warrant general comment, and will also address specific consultation questions. We believe that the views expressed in this submission are broadly representative of the views of many of Philanthropy Australia's members but membership is not unanimous in all these views. Philanthropy Australia's members represent a wide variety of approaches to giving, and this diversity is part of the value of philanthropy in building a pluralistic society.

### **1. Basic Approach**

Philanthropy Australia agrees with the underlying principle that there is a need for clear guidance on establishment, maintenance and governance of Public Ancillary Funds. However the Discussion Paper does not adequately explain why a new regulatory regime should be based upon the principles on which the PAF Guidelines were based.

Paragraph 4 in the Discussion Paper states that the main difference between PAFs and PuAFs is "that public ancillary funds solicit funds from the public". However, the difference between the two structures is more complicated and it should be recognised that there is more diversity in the Public Ancillary Fund sector than the PPF/PAF sector. There is little logic in attempting to apply the same principles to Public Ancillary Funds as to PAFs.

The original PPF structure was introduced as a variation on the public ancillary fund structure in response to a need for a flexible tax deductible structure. At the beginning of the 21st century there was a need for a structure such as the PPF in order to encourage sustained private philanthropy in Australia. This is borne out by the large number of PPFs and PAFs which have been established since 2001 (over 800). This growth has been absolutely indispensable in nurturing a culture of giving in Australia.

There are significant differences between PPFs and PuAFs. PPFs had been in existence for less than a decade by the time of the PPF Review. The vast majority of PPFs had significantly similar Deeds which were based on the various versions of Model Deed prepared by the ATO, and 75% of PPFs had Corporations as Trustees, which facilitated the transition to the new PAF regime. By contrast, Public Ancillary Funds have been in existence for almost 50 years. There has never been a model deed and therefore founding documents will vary greatly and the level of Trustee Corporations is unknown. The work required for transition to whatever new regime is proposed is a significant issue with potential State Trustee Law implications.

It is also noted that while there were many issues with PPFs identified in the 2008 Discussion paper:

*27. A number of PPFs have been found to have breached the Guidelines. These breaches include: PPFs carrying on a business; PPFs making loans offshore and/or to associates of the founder or major donor (these loans are of particular concern when they are provided at a reduced or zero rate of interest or are not repaid); and PPF funds being used to purchase property for use by the founder or their associates (examples of property have included both residential and commercial real estate and motor vehicles).*

The compliance breach list for PuAFs is only focused on ineligible distribution recipients:

*48. A number of public ancillary funds have been found to have breached the requirements in the income tax law and ATO administrative requirements. These breaches include: providing benefits to non-DGRs located in Australia; making distributions directly to entities located offshore; and making distributions to other ancillary funds.*

It should also be noted that the distribution requirements for PPFs under the Accumulation Plans were complex, particularly around the target size, whereas the Trust Law requirements for PuAFs and TR 2000/11 which requires the distribution of a substantial part of income but not necessarily capital gains as essential do not pose the same level of complexity.

If the ATO believes that there is an issue with some PuAFs not distributing sufficient of their available income to meet their charitable purpose, this is something that can be dealt with through those organisations' tax-exempt status.

## **2. Differing Uses of Public Ancillary Funds**

Public ancillary funds are public funds established and maintained under a will or instrument of trust solely for the purpose of providing money, property or benefits to DGRs or the establishment of DGRs. Within this definition there is a wide variety of approaches, and different uses for public ancillary funds. While all use the same legal structure and their ultimate purpose is to collect and distribute public donations for the benefit of the community, each is used for different purposes. This distinction is not properly defined in the discussion paper.

Examples of different types of public ancillary fund include:

### *Community Foundations*

Community foundations are independent, not-for-profit, and community-based philanthropic organisations whose goal is to encourage, facilitate and generate contributions from the community for community benefit. They work closely with donors and with the community organisations which receive their funds.

A community foundation will generally consist of an incorporated trustee and a trust which is a Public Ancillary Fund and which will have management accounts or 'sub-funds' as part of the trust. These management accounts are an important asset for community foundations. They enable the foundation to engage with donors who do not have sufficient means to establish a PAF, or who do not wish to do so. Others donate because they support the purposes of the foundation and rely on the expertise of the foundation trustees to make granting decisions.

Many community foundations are established to benefit a particular geographic region and rely on the reservoir of trust which they build up within that local community. Many of their donors would otherwise not become involved with long-term giving.

In many communities there is only a small or no reservoir of funds on which the community can draw and so building a corpus to benefit future generations is a key objective.

Community foundations are therefore an important agent for the development of philanthropy and the growth of the available pool of funds for distribution to DGRs.

#### *Charitable endowment funds*

These are public ancillary funds established by trustee companies and wealth management companies and are offered to clients of those companies as a convenient way to begin or extend philanthropic giving. Donors to charitable endowment funds tend to be individuals of some means who may not have the sufficient funds to establish their own stand-alone foundation, or who do not wish to be tasked with the administration of a foundation, but who can request the establishment of a management account or 'sub-fund' under as part of the charitable endowment fund. In most cases they continue to gradually donate to the charitable endowment fund with requests the donations be allocated to the sub fund over time.

#### *Fundraising foundations for an institution*

Fundraising foundations operate purely to raise funds for a particular DGR such as a hospital, university, museum or art gallery. They may act purely as "pass-through" foundations for general donations, or may be used by the community benefit entity to build funds over a period of time for a particular project such as a building. They are vital to ensure the ongoing sustainability of the institutions they benefit through provision of a steady income stream.

#### *Other*

Other types of public ancillary fund include

- corporate foundations, which may use the foundation to fundraise from staff and customers as well as make donations to it from company funds;
- some large grantmaking foundations which were established prior to the introduction of the Prescribed Private Fund (PPF) legislation;
- public funds established to fundraise for a particular cause such as research into cancer, or to protect a certain environmental area;
- workplace giving public ancillary funds, which pool and distribute the funds collected via workplace giving programs.

Some of these types of Public Ancillary Fund have a very short lag between donation and capital distribution, such as those established to fundraise for a specific cause. Others, particularly Community Foundations or Charitable Endowment Funds, are the perpetual vehicles for community-minded individuals who may not have the financial resources or the wish to establish a PAF. Some individuals do not have the ability to administer a PAF. These donors have irrevocably relinquished legal control of the funds to the trustee of the PuAF, but are still drawn to the ability to have be able to make requests to a named perpetual sub-fund to enable ongoing benefit to the community. A significant number of donors choose to make a bequest in their will to a public ancillary fund (often through a charitable endowment fund or community foundation), and in this way they create a perpetual legacy to benefit the community through time.

### **3. Education/ Professional Development Material**

The discussion paper correctly identifies that a lack of knowledge, rather than purposeful abuse, is behind most compliance breaches.

*58. The ATO has found that not-for-profit organisations generally show a strong desire to 'get it right,' but often have a low level of knowledge about how the tax and superannuation systems work. Where compliance issues arise, they are mainly due to mistakes or a lack of knowledge.*

Trustee and Administrator education would seem to be needed most to achieve compliance. We would note while the ATO produces significant material to assist Trustees of Self Managed Super Funds understand and comply with their responsibilities, nothing is produced for Trustees of Charitable Foundations. This is a gap Philanthropy Australia has attempt to fill over the last two years with handbooks and Governance seminars, but is constrained by funding availability which could be addressed through specific Government support.

Philanthropy Australia notes that the recent upgrade of the Australian Business Register to include DGR item numbers has been very helpful to both public and private ancillary funds, enabling them to quickly identify the eligibility of a potential grantee. More educational material is needed, particularly given the understanding that there are different levels of professional advice and expertise amongst Public Ancillary Funds and some are better resourced than others.

Philanthropy Australia suggests that:

1. the ATO provide directly, or fund through Philanthropy Australia, and promote through its direct contact with PuAFs, Governance seminars for Trustees and Administrators;
2. at the appropriate time the ATO produces, or funds production of, a Trustee Handbook covering the new Public Ancillary Fund guidelines when these are finalised, to be made available as soon as possible after new rules take effect. **We note that the PAF Trustee Handbook produced by Philanthropy Australia has been downloaded more than 3200 times since it was launched in November 2009**, indicating the strong desire for Trustees to inform themselves and ensure they are doing the right thing when the resources are made freely available to them.

#### 4. Portability

Philanthropy Australia believes it is important to make provision to explicitly permit the portability of capital between Public Ancillary Funds, and between Public Ancillary Funds and Private Ancillary Funds, (and vice versa) in a way that does not diminish the distribution requirement even for the year of transfer. Under current practice an Advisory Committee may recommend to the Trustees of a PuAF that capital should be distributed to an item 1 DGR. Our understanding is that this is usually decided by the Trustees in a manner that does not disadvantage the overall Trust Fund. We cannot see why the transfer of capital to another Ancillary Fund (item 2 DGR) cannot be handled in a similar manner. There should be no taxation or distribution leakage under this approach. Guideline 51 in the PAF Guidelines goes part of the way in that it allows a PAF to convert to a PuAF, but not to transfer capital into an existing PuAF

#### 5. Perpetuity

Philanthropy Australia agrees in principle with the sentiment behind paragraph 34 of the Discussion Paper, that an ancillary fund should not be eroded through negative investments and management fees. However, mandating a high distribution rate will ensure this erosion of capital for the majority of PuAFs, which already face higher costs than many PAFs due to the need to fundraise.

It is important to note that many donors to Public Ancillary Funds make their donations, or request the establishment of sub-funds, because they are attracted to the perpetual nature of the fund. Perpetuity is a strong motivation for definitely and irrevocably sequestering sums for community benefit. An individual with a large cash surplus in one year has incentives to establish a sub-fund with that cash and the community can be sure that it will always be held in trust for the community and spent on charitable purposes.

Perpetuity is also an important factor because it ensures that Public Ancillary Funds are able to guarantee a permanent funding stream for the community. The ability to generate reliable income, rather than rely solely on donations, is vital to ensure sustainable growth.

It must also be noted that trustees of charitable trusts, in accepting their role, are tasked with duties including to protect and preserve the trust property. The majority of trustees would also agree with the Trustee Principle endorsed by the Council on Foundations, the peak body for foundations in the US, which states, "We hold ourselves responsible to those who created us, those with whom we currently interact, and those who may look to us in the future". Mandating a distribution rate which will force the spending down of capital to the point where the PuAF is no longer sustainable is a breach of this principle, one which undermines the very foundation of the philanthropic impulse.

## **Response to specific Discussion Paper questions**

### **1. What is an appropriate minimum distribution rate for a public ancillary fund and why?**

Philanthropy Australia does not see any justification for changing the current distribution requirements for Public Ancillary Funds from a percentage of income to a percentage of capital. The argument that a higher level of distribution will ensure a higher level of accountability could be viewed as incorrect as there appears to be no logical connection between the two. Increased accountability stems from increased governance and reporting, not from amount distributed. A higher distribution rate may provide the appearance of enhanced accountability but ultimately will not ensure proper compliance.

In particular, Philanthropy Australia sees no justification in using even the 5% distribution rate for Private Ancillary Funds as a starting point on which to base the distribution rate for Public Ancillary Funds. If this change is introduced, there will be many unintended consequences. Philanthropy Australia strongly urges the Government to consider the following points:

- Trustees of Public Ancillary Funds will generally be implementing a more conservative investment strategy than the trustees of PAFs, stemming from the public nature of the funds. Public Ancillary Funds also face higher costs than many PAFs, particularly fundraising costs. Given these restrictions it is unlikely that a PuAF will be sustainable in the long term while paying out at a rate of 5%.
- Philanthropy Australia encourages Treasury to ensure a simple process for Public Ancillary Funds to apply for exemption to any minimum distribution requirement so that funds may be accumulated for a fixed period of time in certain circumstances – for example, such as when a Public Ancillary Fund established to benefit a single institution is raising funds for major capital works.
- A distribution rate of 5% or higher will threaten the perpetual nature of sub funds administered by Community Foundations and Charitable Endowment Funds, and make it less likely that donors will make donations. It is likely that many of these donors, rather than diverting their funds directly to item 1 DGRs, will simply choose not to give at all if the attractions of perpetuity are withdrawn.
- Some sub funds have not received any tax benefits (eg, where funded by a bequest) and it would be excessively onerous to introduce a regime that threatens the perpetuity of such funds based on consideration of forgone tax revenue.
- According to the ATO Taxation Statistics 2007/08, in the 07/08 year only 4,169 individuals who made donations of over \$25,000. However, there were over 30,000 individuals who made donations of over \$5000. Many of those donors will be making contributions to sub-funds of community foundations or charitable endowment funds. Philanthropists in a lower wealth bracket should not be penalised by a higher distribution rate than faced by their wealthier counterparts.
- Many donors to Public Ancillary Funds, particularly those who have established sub-funds, have donated to these funds because they believed their gift would ensure community benefit in perpetuity. The introduction of a 5% or higher distribution rate will lessen, not strengthen, the trust of those donors.
- Complying with a 5% distribution obligation may not be possible legally for many trusts due to either the terms of the initial gift to the PuAF that may restrict the distribution of its capital, or the terms of the trust deed. For example, the deed may only permit the distribution of income. If income in a year was less than the 5%, the trustee would not be able to comply with the requirement. The deed may not be able to be amended.
- Sufficient flexibility to cover “social investment” circumstances such as where a public ancillary fund holds illiquid assets such as a building which may be provided to a DGR for a lower than market value, or “soft loan”, should also be included.

If a new distribution rate is introduced, grandfathering of existing funds will be required. The sentiments contained in Para 33 & 34 of the Discussion Paper may be inconsistent with some Trust Deeds and without grandfathering there is potential for a breach of Trust.

Philanthropy Australia also notes that the Discussion Paper states that “public ancillary funds should benefit the charitable sector more than if the Government has taken the revenue foregone (by way of public ancillary fund tax concessions) and given it directly to the sector”. In the light of this statement it is worth acknowledging that many Public Ancillary Funds have received significant additions to their corpus

for which no tax deduction has been sought or granted. In some cases the non tax deductible portion of the corpus exceeds the percentage for which a tax deduction has been sought. If the main justification for a higher distribution rate is the fact that donors receive a tax deduction for their donations, then the higher rate should not apply to the non-deductible component of the fund.

Philanthropy Australia recommends that the minimum distribution rate for Public Ancillary Funds remain at the current level based on a minimum percentage of earned income (eg, interest and dividends) and that the guidelines specify that level.

## **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?**

Philanthropy Australia has raised many of these issues in the response to question 1. It should particularly be noted that some PuAFs hold a high level of illiquid assets, which are often used to further the charitable purposes of the trust. For example:

- trusts which may own buildings which are provided to DGRs at low rates;
- trusts to benefit an art gallery which may have been gifted with collectible art works to display at the gallery.

Philanthropy Australia also recommends that any distribution rate allows trustees to average valuation over a rolling 3 year period, to enable trustees to offset a low year with a higher year.

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

Yes, the valuation rules that apply to PAFs are appropriate for public ancillary funds.

## **4. Are there any issues with requiring public ancillary funds to lodge a return?**

There is no issue with the principle of requiring public ancillary funds to lodge a return. Discussions have been underway for some time to harmonise fundraising licences and reporting there under. Philanthropy Australia suggests that any new reporting rules for the ATO should harmonise in with these.

Philanthropy Australia notes that the Government has accepted the recommendations of the Productivity Commission that there is urgent need for a national regulator for the not-for-profit sector, to reduce the costly and wasteful regulatory burden on the sector by provide a single reporting point for not-for-profit corporate and financial information. Given this need for reporting reform, Philanthropy Australia suggests that any reporting requirement be developed as part of the reform process currently being undertaken by the National Office for the Non-Profit Sector. It would be preferable for Public Ancillary Funds to only report once, rather than to have to file separate returns with ASIC, the ATO, the various state fundraising authorities, and the proposed national regulator.

Philanthropy Australia also questions whether the Government intends to require Public Ancillary Funds to be audited every year. An annual audit is required by the PAF Guidelines but is not currently required of PuAFs, nor is there any mention of such a requirement in the PuAF Discussion Paper. If an audit is required, it will be an additional cost to PuAFS and the requirements should be staggered according to size and complexity in accordance with similar principles now applicable to companies limited by guarantee.

## **5. 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?**

If the PAF return is used as a basis for the PuAF return, it should be noted that it would be extremely time-consuming and difficult for PuAFs to provide a full list of individual donors. Many PuAFs will have thousands of individual donors. In fact for some PuAFs which rely on the 'rattling of tins' on street corners to raise funds this requirement will either be impossible to meet or an important source of funds will be lost. The requirement to provide a list of all donors should therefore be omitted.

Philanthropy Australia also notes that the granting list from some types of PuAF, such as community foundations and other PuAFs with sub-funds, will be very long and there should be provision to attach this as a spreadsheet or in other electronic form.

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

Yes, it is absolutely appropriate to introduce proportionate penalties for non compliance, particularly for any wilful misuse, fraud or dishonesty. However, it must be recognised that unlike PAFs, where any penalty is highly likely to be paid by the founder of the PAF, the trustees of PuAFs are generally drawn from the community and participate on a voluntary, pro bono basis. The public nature of the fund means that there is significantly less opportunity for abuse of the PuAF structure than for the PAF structure.

It is vital that if a penalty regime is introduced, the Government makes appropriate educational materials freely available and easily accessible for trustees of PuAFs, given that the majority of breaches are likely to be caused by ignorance rather than by deliberate misuse. Philanthropy Australia proposes that the penalty regime for PuAFs reflect this and that the first response to inadvertent breaches should be compulsory education of the trustees rather than financial penalty.

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

There will be no issue for new PuAFs. However, there will be some difficulties for existing PuAFs as some State trustee laws have existing requirements around minimum trustee numbers. For example, under Victorian Trustee law it is not legally possible for a single trustee to be appointed as a trustee of a trust unless there was only a single trustee at the time the trust was first established. Grandfathering, as for previously established PPFs transitioning to PAFs, will be required.

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

Yes, if a serious breach of the law occurs, but could only apply to Trustees that are corporations and there is no data on what proportion of the existing 1600 PuAFs are individual Trustees and unable to transition to a Corporate Trustee owing to State Trust Law limitations .

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

Paragraph 64 of the Discussion Paper points out that certain trustees are already required to meet stricter requirements, such as those covered by the Superannuation Industry (Supervision) Act 1993. However, Superannuation Trusts are not an appropriate comparison; they are solely focused on producing financial benefit for members. PuAFs include a grantmaking element, which requires a different skill set as well as community links.

PuAFs are already required to be governed by a board with a majority being Responsible Persons, and there are additional requirements in state fundraising regulations. Philanthropy Australia believes that a fit and proper person test will add no additional accountability than is already offered by the Responsible Person test.

If there is no evidence of the current regime failing other than in areas of noncompliance owing to a lack of knowledge, then making educational materials available is the key rather than increasing regulation or requiring further qualifications of trustees. It should also be noted that for many PuAFs, particularly those which are very small, locally based or operate in rural areas, there is already some difficulty in sourcing appropriately qualified and willing Responsible Persons to act as trustees and additional requirements will increase this difficulty.

Finally, the requirements in the PAF Guidelines are not universally applicable to PuAFs and any requirements under a new regime must reflect that. In particular, the PAF limitation that directors of a trustee should not be a “donor to the fund who has contributed more than \$10,000, or an associate of ... such a donor” is not applicable to a PuAF. Many trustees of PuAFs believe in the aims of the fund and make donations to it (or in the case of community foundations, establish sub-funds). Since the board of a PuAF already comprises a majority of Responsible Persons, the opportunity for a director who has made donations to act in a self-interested way is negligible and will be subject to conflict of interest exclusions applicable under trustee laws as well as the Corporations Act.



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

Transition arrangements are definitely required, particularly on the distribution level as PuAFs do not have individual accumulation plans as PPFs did. For example, the deed may only permit the distribution of income. If income in a year was less than the 5%, the trustee would not be able to comply with the requirement. The deed may not be able to be amended..

Currently 80% of Net Trust Law income (after expenses) is the accepted minimum distribution, although many PuAFs do in fact distribute more than this. Philanthropy Australia proposes that at the very least the current rules apply until the end of the 2013/14 financial year, which is also the final date for PAFs to implement compliance with the new regime.

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

Philanthropy Australia is unclear as to the meaning of this question. One interpretation which has been suggested is the codification of the principles in Taxation Ruling 95/27 in the Guidelines so that they apply to all Public Funds, including those which are not ancillary funds (such as school building funds, overseas aid funds, necessitous circumstance funds and others). According to Taxation Statistics 2007-08, there are currently over 5,000 such public funds.

Philanthropy Australia is strongly opposed to such a move without proper consultation with the affected entities. It is highly unlikely that the majority of these other public funds are aware of the existence of this Discussion Paper and its potential implications and there must be proper consideration and consultation.

The ATO view in relation to gifts as expressed in paragraph 30 of ATO Taxation Ruling 95/27 is that ancillary funds may be likened to a conduit or temporary repository for moneys which are to be channelled to particular DGR funds. As this does not seem to account for the perpetuity of ancillary funds Philanthropy Australia would strongly oppose its codification in the Guidelines.

**12. Can the investment and risk minimisation rules that apply to private ancillary funds be suitable applied to public ancillary funds?**

Yes; they are totally consistent with, and give prominence to, the Trust Law requirements which already apply to PuAFs. However, any investment strategy should be in line with the objectives of the fund, no matter how wide they are, and should allow for a flexible use of assets for charitable purposes such as social enterprises.

Philanthropy Australia also notes that the PAF Guidelines prohibit the fund from carrying on a business and that the issue of whether a PuAF can carry on a fundraising business to generate operational funds – as item 1 DGRs are permitted to do – is not addressed in the Discussion Paper. This question must be raised and the answer clarified.

It should also be noted that the requirement for a majority of directors to be Responsible Persons is already an additional governance requirement.

**Philanthropy Australia would welcome the opportunity to provide further information on PuAFs and work closely with the Federal Government and Treasury to ensure that any regulatory changes contribute to PuAFs provide even greater long term benefits to the community in the future.**