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The Manager
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I wish to make a submission concerning aspects of the Draft Public Ancillary Fund Guidelines 2011.

Multiple trustees

There are references at various places in the documentation to multiple corporate trustees to replace individual trustees. I would have thought that multiple corporate trustees would make the task of regulation much more complicated. My main difficulty with that wording is, however, that I believe that some laypeople could form the view that it is necessary to have more than one corporate trustee unless that trustee is a state Public Trustee.

14. Individuals with a degree of responsibility to the Australian community as a whole.

I have two principal concerns with these guidelines:

(a) **Retired professionals should be able to perform the role.**

Professional people are constantly being called upon to fill these roles.

With increased responsibility involved, it would be much more appropriate that retired people be able to fill these roles, since they are more likely to have the time to devote to the task. I believe that the additional responsibilities involved with ratios, investment strategies and the requirement to lodge a tax return will deter many practicing professionals from undertaking the role.

In a large organization with prestige that would be less likely to be the case. However, with smaller ones, the responsibility is greater because there is a much less likelihood of a competent employed person preparing the necessary information. I have seen numerous cases where auditors of small not for profit organizations, required to work pro bono, have not been able to devote sufficient time to the task with the result that the audit does not comply with auditing standards. I believe there is a danger that a similar situation will arise if only current licensed professional are require to form the majority of the directors of a corporate trustee.

Does one cease to be a responsible person when retires from a position of school principal or judge? Unfortunately, this clause is written in such a cryptic way that it is impossible to say definitely who is a responsible person and who is not.

Some retired professionals can continue to be members of the relevant professional organization, and in the case of lawyers, as I understand it, enrolment as a lawyer on the roll of the relevant Supreme Court is for life, subject to good behavior. However retired persons' membership or enrolment of a lawyer does not of itself entitle one to practice. The difficulty with the Clause is that Note 2 refers to membership of a professional body, but Clause 14.1 refers to the list of persons before whom a statutory declaration can be made. That list requires that a professional be *currently licensed or registered under a law to practise*.

It is very unfortunate that a document referred to as guidelines, and which has statutory force, has to have notes, rather than contain the whole of the guideline in the text. This is not just an academic matter. The whole of the legislative scheme depends on the persons who are directors. The document will be promulgated to the public and is expected to be complied with. In its present form it is quite unreasonable to expect a layperson to understand at least this portion of the document.

(b) **The list of persons before whom a statutory declaration can be made is not in accordance with modern developments.**

The Health Practitioner Regulation National Law 2009 will, on 1 July 2012, regulate 14 health professions. Not all of them are included in the Statutory Declaration signing list. Was that a deliberate decision?

I note too that the list refers to lawyers as persons enrolled *as a legal practitioner*. That is not the current terminology at least in Victoria, where there is a clear distinction between enrolment as a lawyer and a person with a practising certificate.

16. Disqualifying conviction

How could the ordinary well educated person possibly understand what this clause means? If this is meant to be a guide, surely there could be an explanation.

Summary

I personally believe that this proposal to regulate private and public ancillary funds on the same basis is misconceived. I believe the motives for the establishment of a private fund are completely different from those involving a public fund. For example, I was involved in the formation of a public fund which was formed an interim measure until an overseas aid fund could be approved.

However the fundamental point is that if there are to be guidelines, they must be presented in a form which is easily understood by any reasonably educated person.

Yours faithfully,

R.P.D. Wright