17 January 2012

Manager
Philanthropy & Exemptions Unit
Personal and Retirement & Income Division
The Treasury
Langton Crescent
PARKES ACT 2600
Email: NFPReform@treasury.gov.au

Dear Sir/Madam

Review of Not-For-Profit Governance Arrangements, Consultation paper December 2011

SVA established a Private Ancillary Fund Service to inspire, facilitate and educate Australia's high net worth community and the professional advisers that support them about effective philanthropy. The Hon Ursula Stephens formally launched the service in September 2010.

Through our service, we:

- Establish and administer Private Ancillary Funds (PAFs);
- Provide grant making & evaluations services;
- Inspire and educate high net worth individuals and wealth advisers on philanthropy.

As all PAFs execute their community work through charities, we are watching very closely the reforms the Government is undertaking in the community sector. We fully support the "principles" approach to modernising the Governance framework. We strongly recommend the principles such as "reduce red tape" and "report once use often" should remain in the forefront of thinking, including during the transition phase. In particular, new measures or reporting requirements must replace existing ones rather than create duplication, even for short periods of time.

We understand that PAFs, which are DGRs and in most cases also Tax Concession Charities or Income Tax Exempt Funds, are part of the first wave of organisations to be included in the ACNC governance framework.

The PAF framework has been in place only since 1 October 2009 and appears to be working well (in fact it is being essentially replicated with only appropriate modification for Public Ancillary Funds from 1 January 2012). In addition to the external audit required to be undertaken for PAFs (of both the Financial Statements and Compliance with the Guidelines) the ATO Commissioner has significant powers to seek information, charge Administrative penalties and ultimately remove the trustee.

With the above in mind, we have the following specific questions/comments about the Government's December 2011 Consultation paper regarding the Review of Not-For-Profit Governance Arrangements:

1. Is it intended that the ACNC Commissioner will replace the ATO Commissioner for all reporting, compliance and application of administrative penalties under the PAF and PuAF Guidelines? We certainly hope it is not the intention that both the ATO Commissioner and the ACNC Commissioner will have overlapping powers and responsibilities, thereby creating the potential for demarcation disputes with PAFs/PuAFs in the middle? Such an outcome would not be conducive to encouraging philanthropy and would be a total waste of scare resources.

2. Private Ancillary Funds were designed to 'encourage giving by high net worth individuals to increase the flow of philanthropic funds to DGRs*'. Our clients are satisfied with the General Principal outlined in the Private Ancillary Fund Guidelines 2009 that states 'it is a trust that is open, transparent and accountable to the public (through the Commissioner).' Any additional or public reporting requirement is likely to have a significant negative impact on the number of PAFs established, at a time when momentum around establishment needs to be encouraged (following the slowdown as a result of global economics and a legislative review in 2009). All charities (whether foundations or not) that raise funds from the public should have Director details disclosed, however entities that do not publically fundraise (such as PAFs) should not be subject to similar disclosure requirements, in particular names and addresses of Directors. (This issue was considered and dismissed with the October 2009 changes). The contents of the PAF annual return should remain confidential. It should be satisfactory for such entities to continue to appoint a responsible person, file financial statements and be audited.

3. The current date for lodging the PAF Return is 28 February. This date works well. Any suggestion of bringing this date forward to 31 October should be reconsidered as many PAFs invest in managed investment schemes, most of which do not provide their annual statements until well into to September leaving little time to complete the accounts and annual audit. Furthermore, PAFs often received discounted or pro bono audit rates on the proviso services are not required during the July to September busy time when auditors are servicing their commercial mandates.

4. Will PAF/PuAFs with income and assets less than $1m be able to be reviewed rather than audited as required in the Guidelines?

5. If there is any changes there must be an appropriate transition period. It is vital that the new reporting regime replaces whatever is current rather than is in addition to what is current. We note some PAFs and many PuAFs are still in transition to the current arrangements.

Should you wish to discuss this submission further, please do not hesitate to contact me on 0419 259 471.

Yours faithfully,

Chris Cuffe
Chairman, Private Ancillary Fund Services

**source: Office for the Not for Profit Sector*