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**Compliance**  
Institute

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By Email – [ppfreview2008@treasury.gov.au](mailto:ppfreview2008@treasury.gov.au)

28 May 2009

### **Submission on Tax Laws Amendment (Prescribed Private Funds) Bill 2009**

The Australian Compliance Institute (**ACI**) would like to take the opportunity to thank the Treasury for providing an opportunity for the Institute to respond to your request for public comment on the proposed Tax Laws Amendment (Prescribed Private Funds) Bill 2009.

ACI is the peak industry body for the practice of compliance in Australasia. Our members are compliance, risk and governance professionals actively engaged in the private, professional services and Government sectors within Australia, New Zealand, Singapore, Thailand and Hong Kong.

We have addressed each of the sections of the Exposure Draft as below.

#### **1. Legislating PPF Guidelines**

ACI supports and encourages the implementation of pragmatic regulation and we believe the suggested legislation will go toward achieving the intention of the guidelines by making them binding and allowing more effective enforcement, whilst also protecting the assets of the private ancillary funds.

#### **2. Full administration by the Commissioner**

ACI understands the need for administration by the Commissioner and would only query whether ASIC will have any role in the administration or regulation of the *corporate trustees* of the private ancillary fund (under the *Corporations Act 2001*) and suggests that organisations may wish to have clarification on this matter. We note the reference to the Commissioner having powers to suspend and remove trustees. Our members have raised concerns about the potential for multiple regulatory agencies supervising the one entity and responsibilities for the entity to report to multiple agencies, especially if requirements and timings varied, thereby increasing the regulatory burden.

Principal Members



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We would also anticipate that for some organisations this would result in an increase in compliance, accounting and reporting costs, however private ancillary funds with an existing high level of governance should be minimally impacted.

ACI also notes the positive outcome of this administration in the provision of an appeals process for applicant funds.

### **3. Private ancillary fund guidelines**

We note that the draft guidelines are still not currently available and look forward to the opportunity to provide comment and input from a compliance perspective once a final draft becomes available. We believe that ACI is in a unique position to provide input into “appropriate governance arrangements”<sup>1</sup>

We also note that the guidelines will include reference to the minimum distribution requirements of the fund and would encourage Treasury to review their earlier suggestions in this regard, in light of responses to your earlier round of consultation.

### **4. Administrative penalties**

ACI welcomes the flexibility of the Commissioner to be able to respond as appropriate to the “nature and size of the breach taking account of the trustee’s level of culpability”<sup>2</sup>

We would also encourage consistency, as suggested in the draft, with the accountabilities applied under the *Corporations Act 2001*.

### **5. Suspension or removal of trustees**

ACI notes the Commissioner’s powers for the suspension and removal of trustees and would seek only clarification in regard to ASIC’s role or jurisdiction under the *Corporations Act 2001* in regard to trustee corporations and their officers. Our members have raised concerns about the potential for multiple regulatory agencies supervising the one entity and responsibilities for the entity to report to multiple agencies, especially if requirements and timings varied, thereby increasing the regulatory burden.

We also welcome the changes that would provide recourse to trustees to appeal or review decisions with the Administrative Appeals Tribunal.

We welcome the added protection to the assets of the private ancillary funds the changes are intended to provide.

### **6. Changes to the Australian Business Register**

ACI welcomes any changes to provide greater transparency and that will assist private ancillary funds to be able to clearly confirm the eligibility of a DGR. This will greatly assist in preventing unintentional breaches of this nature, where previously this information could not be satisfactorily confirmed and may have caused an inadvertent breach.

### **7. Disclosure of information to the states and territories**

ACI welcomes communication between regulatory bodies for the purposes of protecting the assets and stakeholders, as well as where it may greatly reduce the burden on business to report to multiple agencies.



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## 8. Application and transitional provisions

ACI welcomes the suggested transitional arrangements and timetables and believes they should prove adequate.

### Conclusion

Once again the Institute would like to thank the Treasury for providing an opportunity of making submissions on this important topic and would be keen to develop these concepts further with you as required.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Tolar'.

**Martin Tolar**  
**Chief Executive Officer**

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<sup>1</sup> Tax Law Amendment (Prescribed Private Funds) Bill 2009, Exposure Draft, The Parliament of the Commonwealth of Australia, May 2009, p. 11

<sup>2</sup> Tax Law Amendment (Prescribed Private Funds) Bill 2009, Exposure Draft, The Parliament of the Commonwealth of Australia, May 2009, p. 12