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Our Ref: NEH:ab X:\Internal\H&A\DGR, TCC & Gift Funds\20110830 Submission re PAFs..doc

30 August 2011

The Manager
Philanthropy & Exemptions Unit
Personal & Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

Re: Public Ancillary Funds – Draft Guidelines

This submission is made by Harding & Thornbury, a Chartered Accounting Practice, which specialises in the Not-For-Profit Sector, working primarily in the NFP Sector. The writer, Noel Edward Harding, previously in practice as Harding & Associates, is now senior consultant to the Practice, responsible for the provision of advice to the charitable Sector on taxation compliance, legal structures and related matters. He has substantial experience in the Sector, contributing in many roles including: -

1. Past President Swan Christian Education Association Inc.;
2. Past President Kalamunda Rotary Club & also Past District Secretary Rotary District 946;
3. Past President & Life Member of Citizens Advice Bureau of WA Inc.;
4. Chairman Finance Board of Baptist Union of WA Inc.;
5. Constitutional Advisor to Baptist Union of WA Inc.;
6. Member of Baptist Union of WA Inc. Appeals Board;
7. Member Investigations Committee CPA Australia WA Division;
8. Member of the Task Force investigating the potential of establishing an Eldercare Service set up by the Joint Standing Committee of CPA Australia and Institute of Chartered Accountants in Australia;
9. Vice Chairman, Australian Not-for-Profit Accountants' Network Inc.
10. GST Trainer in 2000 for the Christian denominations in WA in liaison with the Council of Churches WA;
11. Numerous consulting roles in the Sector.

We have examined the proposed Guidelines for Public Ancillary Funds (PAFs) and make the following submissions: -

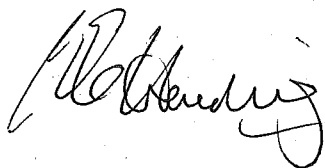
1. At Item 19 there is a proposal for a minimum annual distribution of at least 4% of the market value of the fund's net assets. Such a blanket obligation appears to limit the effectiveness of some funds. There are a number of instances where a PAF is used as the appropriate structure for a capital fund or foundation. In such instances it is considered normal procedure for the consent of the Commissioner to be obtained in respect to a capital target to enable the fund or foundation to achieve its approved purpose. With some such foundations, that purpose is to establish a substantial capital sum to enable the acquisition of a capital asset and for no other purpose. It would be contrary to the purpose of the PAF to be obliged to distribute even a modest amount such as is nominated and would delay the achievement of the nominated target. If, on the other hand, there were a discretion available to the Commissioner to enable a continuance of the capital raising for foundations, subject to his approval, there would be no objection. It is the lack of detail on the matter that produces the comment.
2. Valuation obligation: - may be appropriate where it is a capital fund or foundation, with very substantial assets. However, as by far the majority of PAFs operate merely as fund-raising conduits for other Deductible Gift Recipients (DGRs), a valuation obligation for such PAFs that are conduits seems unnecessary. Their assets would invariably be linked to cash on deposit with a banking institution. They are quite different to a Private Ancillary Fund as they distribute most of their funds on a regular basis.
3. The obligations in respect to the preparation of financial standards, at 26.1, require the financial statements to be prepared in accordance with Accounting Standards. This is defined as meaning Standards as approved by Australian Accounting Standards Board. We express concern if the intention of this provision is to require the preparation of General Purpose Financial Reports (GPFR). The current practice with by far the majority of ancillary funds is to prepare Special Purpose Financial Reports (SPFR), where only relevant Accounting Standards are applied, it does not require the application of **all Standards**. Again, this lack of clarity causes us to request that the precise meaning of the guidelines be made clear before they are implemented. We submit that as by far the majority of ancillary funds are conduits, whose principal assets would be cash at bank in interest bearing accounts, the requirement for a GPFR is an unwarranted additional expense. This seems inconsistent with the intentions of the National Compact and related moves for the reduction of red tape. GPFR may well be relevant for a PAF with substantial assets imposing a reasonable responsibility for valuations, but not otherwise. It seems an unnecessary additional obligation.
4. The obligation at 28 for the financial statements of the fund to be audited by a Registered Company Auditor (RCA) is inconsistent with recent amendments to Corporations Act for tiered reporting, with relief from audit for the smallest tier and relief from the RCA obligations for the middle tier. It also is a concern because of the growing shortage of RCAs. It is becoming increasingly difficult for practitioners serving with smaller accounting practices to become registered because of the increased obligations imposed. These obligations are there to enable an RCA to conduct an audit of very large companies, primarily public companies. Accountants who hold a Practising Certificate with the Chartered Institute of Accountants in Australia or CPA Australia would be

acceptable as auditors for Tier 1 and Tier 2 companies, and this is where a significant number of PAFs would fit if the Tier provisions of Corporations Act were applied.

5. Provided the investment strategy identified at Item 30 can simply be either an interest-bearing account with a recognised financial institution, or an authorised trustee investment, in accordance with the appropriate Trustee legislation of the State of residency of the fund, this presents no difficulty. If however, a PAF which functions solely as a conduit, is required to provide some elaborate investment strategy, the provisions seem pointless.
6. We express appreciation for the broad application of the transitional rules included in the document.

We appreciate the opportunity of making this submission.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'A. Harding', is written in black ink.

HARDING & THORBURY