



# PITCHER PARTNERS

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Ref: PTR:mm

23 July 2009

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

Dear Sir/Ms,

## PRIVATE ANCILLARY FUNDS GUIDELINES 2009

In light of the Government's announced plan to improve the integrity of prescribed private funds ("PPFs") henceforth to be known as private ancillary funds ("PAFs"), we offer the following submission for your consideration.

For the purposes of this submission Pitcher Partners comprises 5 independent firms operating in Melbourne, Adelaide, Sydney, Brisbane and Perth. Collectively we would be regarded as one of the largest accounting associations outside the Big Four. Our specialisation is servicing and advising smaller public companies, large family businesses, small to medium enterprises ("SMEs") and high wealth individuals. Consequently, we have a number of clients who have established PPFs.

Whilst we welcome the increased certainty intended to be provided by the proposed legislation and the PAF Guidelines released on 25 June 2009, we believe that there will need to be extensive consultation to achieve clarity in respect of the issues addressed therein.

We have attached our comments on what we perceive to be some of the more salient issues contained in the current draft PAF Guidelines.

Yours sincerely

A handwritten signature in black ink, appearing to be 'P T Riley', written in a cursive style.

P T RILEY  
Executive Director

Encl

No.	Comments
1	<p>Example 2 in item 14 states that an individual would be considered to be involved in the decision-making of a fund, if he or she is a director of the trustee <b>and</b> is active in the ongoing management of the fund (authors emphasis).</p> <p>Most such funds do not have a substantial infrastructure. More particularly, they would tend to be managed only by the directors.</p> <p>What is meant by the expression, “active in the ongoing management of the fund”?</p>
2	<p>The market value of the fund's assets must be estimated at least annually except in respect of land. This may add considerable compliance costs to funds that invest in land assets.</p> <p>Market value is defined by reference to the Income Tax Assessment Act 1997 (“the 1997 Act”).</p> <p>Among other things that provides in section 960-410 that the market value of a non-cash benefit is to be determined, disregarding anything that would prevent or restrict conversion of the benefit to money.</p> <p>Non-cash benefit is in turn defined to be property or services in any form except money.</p> <p>Forcing trustees in the valuation process to disregard anything that would prevent or restrict conversion of property into money is inconsistent with bone fide valuation processes and that where applicable will force funds to disgorge amounts that in reality, they do not have.</p>
4	<p>Paragraph 33, which comes under the heading distribution strategy requires a record of the “associated decision-making processes” to be available in a written form. Elaboration is required of the expression “associated decision-making processes”.</p> <p>It is noted that the requirement to prepare and maintain a current distribution strategy may hamper a fund’s ability to make distributions on a needs basis.</p>
5	<p>Paragraph 37, prevents a fund from acquiring an asset, other than by way of gift from a variety of parties.</p> <p>Why, could this not occur, so long as it was on arms length terms?</p>
6	<p>The effect of the new legislation and the guidelines appears to be that there is no longer a target capital amount cap. This needs to be confirmed.</p>
7	<p>Paragraphs 56 and 56.1 operate to require a trustee to distribute its trust income within one year after receiving it (reduced by an amount up to the amount necessary to maintain the capital of the fund calculated at the start of the financial year to reflect movements in the All Groups Consumer Price Index, published by the Australian Statistician the previous</p>

	<p>financial year).</p> <p>On a literal reading income received part way through a year, must be distributed part way through the next year. This is impractical from a compliance perspective, and also in terms of the concession allowed in relation to retention of the CPI amounts.</p> <p>In order for paragraph 56 to operate logically, it would appear that it was intended to apply to trust income for a financial year, with that trust income to be distributed within the following 12 months, subject to any CPI adjustment.</p>
<p><b>8</b></p>	<p>Paragraph 47 precludes donations totalling more than 10% of the market value of the fund assets from entities other than the founder, associates of the founder or employees of the founder.</p> <p>Why shouldn't this proviso extend to employees of the associate of the founder, thus enabling corporations with multiple entities to facilitate the establishment of a private ancillary fund?</p>
<p><b>9</b></p>	<p>Confirmation is sought that Paragraph 56 mandates minimum distributions only. On a literal reading it sets a fixed amount.</p>