Australian Philanthropic Services
Simple. Strategic. Rewarding.

Australian Philanthropic Services Limited
Level 9, 8 Spring Street Sydney NSW 2000
T 02 9779 6300
E hello@australianphilanthropicservices.com.au
www.australianphilanthropicservices.com.au

27 February 2017

Manager, Housing Unit
Social Policy Division
The Treasury
Langton Crescent
Parkes ACT 2600
By email: socialimpactinvesting@treasury.gov.au

Dear Sir/Madam

Social Impact Investing Discussion Paper

Australian Philanthropic Services (APS) is pleased to have the opportunity to comment on the Government's Social Impact Investing Discussion Paper. APS is a member of Philanthropy Australia and, having participated in their sector consultation, endorses and supports the Philanthropy Australia submission. As our expertise is specifically in the ancillary fund space we would like to highlight two aspects from a Private Ancillary Fund (PAF) and Public Ancillary Fund (PuAF) perspective.

Who We Are

Australian Philanthropic Services[1] is an independent, not-for-profit organisation that inspires and supports effective philanthropy.

- We set up and administer private ancillary funds for individuals and families.
- We offer a public ancillary fund, the APS Foundation, and work with others to do the same.
- We provide grantmaking support and advice.

APS provides specialist advice for high net worth individuals, families and business owners, and education to financial advisers, bankers and the community more broadly, covering charitable trusts (private and public ancillary funds) and grantmaking. Working with over 230 clients, APS is now the leading philanthropic services organisation in Australia, with a high-profile dedicated board and an expert team. For more details visit www.australianphilanthropicservices.com.au.

Potential Role of Ancillary Funds

As our expertise is in the ancillary fund space we are focusing our comments from a PAF/PuAF perspective. While the PAF/PuAF fund pool is much smaller than other investment pools, PAF/PuAFs have the potential to play a significant role in the emergence of the social investment market primarily because the funds have already been committed to the community sector (acknowledging there are restrictions because of the DGR1 only beneficiary requirement for ancillary funds). Furthermore, even 5% of the approximately $6 billion in PAF funds alone amounts to $300 million which is well in excess of current deal flow and PAF/PuAFs can transact at the level appropriate for current and immediate future offerings (which may be too small to be of interest to larger

[1] APS was established by Social Ventures Australia which is an active participant in the Impact Investing market space.

institutional investors). However, clarity is needed to ensure ancillary fund trustee directors are comfortable that the PAF/PuAF is allowed to invest in a product only available to sophisticated and professional investors. As noted in the Discussion Paper the Financial Systems Inquiry identified potential issues for PAFs around the application of the “control” criteria in the relevant section of the Corporations Act.

Ancillary Funds as Sophisticated Investors
Recommendation: That the Corporations Act 2001 be amended to add a new section which provides that an ancillary fund satisfies both the ‘sophisticated investor test’ in s708 and the ‘wholesale client’ test in s761G of the Corporations Act 2001, if either of the following criteria are met:

> **The fund has assets of at least $2.5 million or has had income of at least $250,000 in each of the past two years, as evidenced by its audited financial statements or a certificate from an accountant – this would apply to both PAFs and PuAFs; or**
>
> **At least one director of the Trustee, who personally satisfies both the ‘sophisticated investor test’ in s708 and/or the ‘wholesale client’ test in s761G of the Corporations Act 2001, agrees to the investment as evidenced by the Trustee’s minutes – this would only apply to PAFs.**

Principle Sharing of Risk

Conservatism with a strong focus on prudential responsibility is, quite appropriately, a common element of the thinking of trustee directors, including the directors of ancillary funds. Measures to reduce the downside risk of social investments, other things being equal, are likely to increase the appetite more than an equivalent increase in expected return. To this end, where a structured social investment to provide benefit to an eligible DGR entity either directly or via a special purpose investment trust ultimately fails, we recommend the application of the same treatment as is currently provided where a guarantee is called (Guideline 19.3 Example 6) and the component of the investment written off counts as a distribution of an ancillary fund. This provision of benefit to eligible DGRs is consistent with the purpose of ancillary fund deeds and therefore could be effected by a further example under Guideline 19.3 after Example 6. We believe this provision would still be equitable in terms of the overall sharing of risk and return, as long after the expiry of any successful Social Impact Bond the Government(s) will still be reaping the residual benefit of reduced social welfare outlays.

Recommendation: That a new Example be added to Guideline 19.3 showing that the write-off of an investment made either directly to an eligible DGR or indirectly via a structured investment trust for the benefit of an eligible DGR, may be treated by an Ancillary Fund as a distribution.

APS would welcome the opportunity to participate in any further discussion on Social Impact Investing and the potential role ancillary funds might play. In this regard please do not hesitate to contact either myself or our Technical Director David Ward on 0432 399 954.

Yours sincerely

Antonia Ruffell
Chief Executive Officer