

IMPORTANT PHILANTHROPIC REFORMS AND FURTHER SECTOR CONSULTATION

The Assistant Treasurer, Senator Nick Sherry, has today introduced into Parliament the *Tax Laws Amendment (Measures No 4) Bill 2009*, which establishes for the first time a comprehensive legal framework for prescribed private funds that will boost the integrity of our tax system and ensure such funds deliver strong philanthropic outcomes.

Prescribed private funds, which are now to be known as Private Ancillary Funds (PAFs), are a type of fund designed to encourage private philanthropy by providing businesses, families or individuals with greater flexibility to start and run their own trust funds for philanthropic purposes.

The Assistant Treasurer has also released for consultation the detailed draft Guidelines on how the new PAF framework will apply and announced a series of bilateral listening meetings with key participants and representatives of the philanthropic sector to discuss the reforms.

"The Rudd Government places a strong policy premium on charitable giving - and all in our community who engage in philanthropy should be rightly acknowledged."

"Private Ancillary Funds are a very important feature of charitable giving in our country and the Rudd Government strongly supports their use. That said, we must ensure that they are not being misused for tax purposes and the Bill introduced today will do this."

"There has been some concern in the sector about the supporting Guidelines, including on the issue of mandatory minimum annual payments from the funds, so I am today also releasing the Guidelines, in draft form, and committing to a comprehensive and direct consultation process with the sector."

"Starting on Monday, I will personally be holding a range of bilateral listening meetings with key participants and representatives of the philanthropic sector to discuss the draft Guidelines," said the Assistant Treasurer.

Following detailed consultation with the sector, the Bill contains three important changes to the earlier Exposure draft Bill, namely:

- allowing multiple corporate trustees of PAFs;
- reducing potential compliance costs by amending the requirement that transitional

PAFs must have a single corporate trustee;
and

- widening the scope of the defence available to PAF trustees and directors from being jointly and severally liable to administrative penalties.

"I thank the philanthropic, tax and legal sectors for their views and I look forward to working with them as we conclude this important reform initiative," said the Assistant Treasurer.

The Bill introduced today also moves the full administration of PAFs under the authority of the Commissioner of Taxation, gives the Treasurer the power to make legislative guidelines about the establishment and maintenance of PAFs, and gives the Commissioner of Taxation the power to impose administrative penalties on trustees that fail to comply with the guidelines, and power to remove or suspend trustees of non-complying funds.

The draft Guidelines released today contain the following key reforms:

- replaces the existing complex rules based on accumulation targets with a simpler minimum annual distribution rate for funds, proposed to be set at 5 per cent, being a rate the Government considers to strike the right balance between ensuring resources flow to the charitable sector now, whilst also allowing PAFs to grow for the benefit of the sector in the future;
- a requirement that funds develop and maintain an investment strategy, which requires consideration of investment objectives and risk;
- the introduction of valuation rules that seek to minimise the compliance costs associated with making regular valuations; and
- a requirement, in lieu of setting a minimum fund size, that trusts distribute at least \$11,000 per year unless the expenses of the fund are met from outside the fund, to ensure

philanthropists have the freedom to establish smaller trusts whilst protecting funds from being eroded by expenses.

For ease of transition into the new regime, applicants seeking to newly establish a prescribed private fund prior to the commencement of the regime on 1 October 2009 should seek to comply with the proposed arrangements, including having only corporate trustees.

The Assistant Treasurer has also indicated that the Government will closely consider prescribed private fund applications received from today until the new regime commences against all of the new requirements to be established by the Bill.

The draft Guidelines are available on the Treasury website at www.treasury.gov.au and formal consultation on the draft Guidelines is open until Friday, 24 July, 2009.

CANBERRA
25 June, 2009