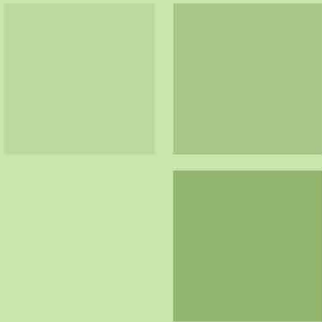




PHILANTHROPY  
*Australia*

# Public Ancillary Funds Trustee Handbook

David Ward



*Promoting Giving*

Download this free publication

[www.philanthropy.org.au](http://www.philanthropy.org.au)

Philanthropy Australia is the national peak body for philanthropy and is a not-for-profit membership organisation. Our Members are trusts and foundations, families and individuals who want to make a difference through their own philanthropy and to encourage others to become philanthropists.

Our vision:	A more giving Australia.
Our mission:	To lead an innovative, growing, influential and high performing philanthropic sector in Australia.
Philanthropy:	The planned and structured giving of time, information, goods and services, voice and influence, as well as money, to improve the wellbeing of humanity and the community.
Philanthropic sector:	Trusts, foundations, organisations, families and individuals who engage in philanthropy.

Email: [info@philanthropy.org.au](mailto:info@philanthropy.org.au)

Websites: [www.philanthropy.org.au](http://www.philanthropy.org.au)  
[www.philanthropywiki.org.au](http://www.philanthropywiki.org.au)

© Philanthropy Australia Inc. May 2012

ISBN: 0 9750639 8 7

Additional copies of the Public Ancillary Funds  
Trustee Handbook are available as a free  
download from our website.

# **Public Ancillary Funds Trustee Handbook**

**David Ward  
Philanthropy Australia  
2012**

From 1 January 2012 philanthropic trusts that are Public Ancillary Funds (PuAFs) are subject to detailed Guidelines; *Public Ancillary Funds Guidelines 2011*. The changes apply to new and existing (with transition arrangements) Public Ancillary Funds.

This Handbook comments on what is now required of trustees of PuAFs, and where the trustee is a company the directors thereof, under the Guidelines and at law. It is not a legal document but a “plain English” introductory guide to the role and duties of the trustee and trustee directors.

It draws on general information on charitable trust governance contained in the *Trustee Handbook: Roles and Duties of Trustees of Charitable Trusts and Foundations, Second Edition* published by Philanthropy Australia in 2012; detail about other charitable trust structures can be found in that publication. The *Private Ancillary Funds Trustee Handbook 2009* provides guidance specifically for those funds.

**Acknowledgments:** Philanthropy Australia and the author gratefully acknowledge the assistance provided by Alice Macdougall of Freehills and thank her for her input.

**Disclaimer:** This booklet has been prepared as a general introductory guide. It is not advice, and must not be relied upon as advice. It contains generalisations and statements that are not necessarily comprehensive, complete or up-to-date. Some statements in the booklet are subject to legal uncertainty.

This document is written on the basis of the governance regime that applies for Public Ancillary Funds from 1 January 2012. With the creation of the Australian Charities and Not-for-Profit Commission (ACNC) from 1 October 2012, some of the reporting requirements may change from 2014 on.

Published by Philanthropy Australia  
©2012 Philanthropy Australia  
ISBN 0 9750639 8 7  
May 2012

# Public Ancillary Funds Trustee Handbook

## Contents

Background .....	4
Laws applying to Public Ancillary Funds .....	5
The Trustee .....	6
The Responsibilities of the Trustee .....	7
The Duties of the Trustee .....	
Administration .....	8
Investment .....	9
Distribution/Grant-making .....	10
Issues for Further Consideration .....	12
Governance Failure and Liability of Trustees .....	14
Implementation and Transition Arrangements .....	16
Compliance Checklist .....	17
Annual Plan and Trustee Dossier .....	18
Administrative Penalties .....	19
Glossary of Terms .....	20
Key References .....	22

# Background

---

Philanthropic trusts have existed in Australia for more than a century. Such trusts were generally exempt from income tax (and donations had exemptions from estate taxes in some states), but it was not until 1963 with the introduction of Public Ancillary Funds that a form of charitable trust allowed for income tax deductible donations. The underlying concept of public funds is that the public are able and invited to contribute and the fund is operated in a public manner for public benefit.

In 2012 there were some 1800 PuAFs taking several forms:

- Public Foundations
- Community Foundations with “sub-funds” for individual donors
- Charitable Endowment Funds also with donor “sub-funds” run by wealth managers, Trustee Companies and other organisations
- Foundations established by charities, public institutions, schools and religious groups as a funding structure for their own charitable activities

The introduction and ready acceptance - after significant consultation and modification - of the Private Ancillary Fund Guidelines in 2009 lead the government to announce in the 2010 Budget that Public Ancillary Funds would undergo a similar tightening of the regulatory framework. After further considerable consultation with the sector these were finalised during 2011 and came into effect from 1 January 2012. These draw heavily on the 2009 Private Ancillary Fund Guidelines while acknowledging key differences between the structures.

*“The purpose of the Guidelines is to set minimum standards for the governance and conduct of a public ancillary fund and its trustee. The Guidelines aim to ensure that public ancillary funds are properly accountable and act in the manner expected of an entity holding philanthropic funds for a broad public benefit”* Explanatory Statement issued by Bill Shorten Assistant Treasurer 2011.

Key features of Public Ancillary Funds remain unchanged:

- established as not-for-profit entities solely for the purpose of providing money, property or benefits to (and for the establishment of) deductible gift entities that are not ancillary funds
- donations are income tax deductible for donor
- funds are exempt from income tax and can reclaim franking credits on Australian dividends
- the fund can and must fundraise from the public
- the decision making body i.e. the trustees or the board, must have a majority of ‘responsible persons’
- the fund can have sub-funds or management accounts for individual donors who can make recommendations on distributions, but it is the trustees who make final decisions

New requirements introduced by the 2011 PuAF Guidelines include:

- a minimum annual distribution level of 4% of fund value (with some exceptions)
- the Commissioner of Taxation has increased powers under the compliance regime including imposing administrative penalties, sharing information about non-compliance with the relevant state Attorneys General and ultimately suspending or removing corporate trustees
- annual financial statements must be produced and these, as well as compliance with the Guidelines, must be reviewed or audited by a qualified auditor
- PuAFs must have and adhere to a formal investment strategy and comply with the investment restrictions
- all new PuAFs must have a corporate trustee(s) (rather than individuals)
- PuAFs must furnish an annual return to the ATO Commissioner
- limited provision is made for capital funds to be transferred to another ancillary fund with the Commissioners approval

# Laws applying to Public Ancillary Funds

---

PuAFs are trusts, so they and their trustees must comply with the requirements of the relevant state trust legislation and common law as it relates to fiduciary responsibility. However, as it is the taxation aspects in particular that define PuAFs, the *Public Ancillary Fund Guidelines 2011* (the Guidelines) are the primary legislative document governing the operation of PuAFs. The Guidelines are created under the powers in the *Tax Laws Amendment (2011 Measures No. 7) Act 2011* and consequential amendments to the Income Tax Assessment Act.

The most important laws and policies affecting PuAFs are:

1. *Public Ancillary Fund Guidelines 2011*, issued 9 December 2011; *under the Taxation Administration Act 1953 as amended by Tax Laws Amendment (2011 Measures No. 4) Act 2011; Schedule 8 – Public Ancillary Funds*
2. *The Income Tax Assessment Acts of 1997 and 1936*
3. The relevant state Trustee Acts (broadly similar with some variation); *Trustee Act 1925 (NSW)*. *Trustee Act 1936 (SA)*. *Trustee Act 1958 (Vic)*. *Trustees Act 1962 (WA)*. *Trusts Act 1973 (Qld)*. *Trustee Act 1898 (Tas)*. *Trustee Act 1925 (ACT)*. *Trustee Act 1907 (NT)*
4. The common law concept of fiduciary responsibility (see Glossary)
5. Relevant state charity/charitable trust legislation governing Income Tax Exempt Funds; section 7K *Charities Act 1978 (Vic)*, section 22C *Charitable Trusts Act 1993 (NSW)*, section 109 *Trusts Act 1973 (Qld)*, section 22C *Charitable Trusts Act 1962 (WA)*, section 69D *Trustee Act 1936 (SA)*
6. Tax Ruling TR 95/27 (on Public Funds following *Bray v FCT*) and Tax Determination TD 2004/23 on “sub-funds”
7. State fundraising laws which are required to raise money for charitable purposes but will hopefully be replaced by a national framework under the ACNC
8. *Corporations (Review Fees) Regulations 2003* as it relates to special purpose companies.

The impact of this legal framework on the activities of PuAFs is discussed in detail in the following sections. The consequences of any breach of the Guidelines and/or legislation are discussed in the governance failure section on page 14. Other legislation may also impact on PuAFs depending on their structure and operations; this is not discussed in this Handbook as, where applicable, directors’ responsibilities are no different from other organisations. This may include:

1. For company trustees there is compliance with the *Corporations Act 2001*, including the need to approve Annual Statements and solvency declaration and pay ASIC fees
2. The federal *Privacy Act 1988*
3. If the fund employs staff, compliance is required with all relevant state and federal legislation such as WorkCover, superannuation law, etc.

As PuAFs are tax exempt charities there may also be ACNC requirements from 2013 (the ACNC may replace some of the ATO’s role in the Guidelines).

The trust deed is the fund’s governing document and may require or prevent additional specific activity. Changes to the deed can only be made within the powers set out in the deed or by the Courts and must be reported to, and for some clauses will need the approval of, the ATO Commissioner. A Model Deed for new PuAFs and can be found on the ATO website (see page 20).

# The Trustee

---

Trustees have the ultimate responsibility for the governance of PuAFs. The trustee of a new PuAF must be a company (either public or private company), an incorporated association, a Licensed or Public Trustee, or (less likely) a combination of the above. Prior to December 2011 individuals were allowed to be trustees; existing PuAFs with individual trustees can continue with individual trustees (including replacement of individual trustees).

Throughout this Handbook reference to “the trustee” also applies to all trustees should there be more than one and to directors or committee members of the trustee should that be the structure. Trustees cannot be minors or mentally incapacitated; in addition where the trustee is a company, directors must meet ASIC criteria for directors. Also no director/trustee can have been convicted of a tax offence with a penalty of more than 12 months imprisonment.

There must be a majority of individuals as directors/trustees with a degree of responsibility to the community at large, so called ‘responsible persons’. The Guidelines define this as follows:

*Individuals with a degree of responsibility to the Australian community as a whole would generally include: school principals, judges, religious practitioners, solicitors, doctors and other professional persons, mayors, councillors, town clerks and members of parliament. Generally, individuals who are accepted as having a degree of responsibility to the community as a whole are known to a broad section of the community because they perform a public function or they belong to a professional body (such as the Institute of Chartered Accountants, State Law Societies and Medical Registration Boards) which has a professional code of ethics and rules of conduct. Individuals who have received formal recognition from the Government for their services to the community (for example, an Order of Australia award) will also usually have the requisite degree of responsibility.*

The Guidelines expand the definition of ‘responsible person’ to also include those before whom a statutory declaration can be made, this includes:

*individuals who are licensed or registered to practice in a range of occupations such as a dentist, legal or medical practitioner; nurse, pharmacist, bailiff, bank officer or officer of a building society or credit union with 5 or more continuous years of service; clerk of the court; justice of the peace, judge, magistrate; member of various professional associations including a member of Engineers Australia, a member of Chartered Secretaries Australia; a member of the various professional accounting associations in Australia; a marriage celebrant, mayors, town clerks and members of Parliament; a government employee with 5 or more years of continuous service; a teacher employed on a full-time basis at a school or tertiary education institution.*

The responsible persons must be actively involved in the decision making of the PuAF. This includes attending key trustee meetings considering fundamental issues such as approving the financial statements, investment strategy, fundraising strategy and distribution policy.

If there is not a majority of responsible persons serving on the board, the trustee cannot make decisions other than to appoint new trustees/directors, protect fund property or deal with urgent matters.

Generally trustees of PuAFs are voluntary and the constitution of many of companies which act as trustee prevents the payment of director’s fees. However, if the trustees intend to receive remuneration then they need to acquaint themselves with the remuneration and reimbursement provision (if any) set out in the deed as that, or any subsequent Court Order, determines what the trustee can be paid. Where remuneration is permitted by the deed, the Guidelines require any trustee remuneration to be ‘reasonable’ (with the explanatory material referencing state and territory public trustee remuneration benchmarks and the Model Deed suggesting a maximum of 1.056% of fund value – the default maximum allowed under the Corporations Act). Where the deed is silent, only Licensed Trustee Companies can be paid trustee fees.



# The Responsibilities of the Trustee

---

The trustee has the ultimate responsibility for the governance of each PuAF and is accountable for directing the affairs of the fund to ensure it is well run and is compliant with the law, the Guidelines and its trust deed. Trust law and the Guidelines require trustees to *exercise the same degree of care, diligence and skill that a prudent individual would exercise in managing the affairs of others*.

Trustees have a fiduciary responsibility to protect and prudently invest trust assets. They must exercise their powers with integrity and good faith and show care, diligence and skill in managing the affairs of the trust. The duty of care and responsibility is higher where a trustee's business or profession includes being a trustee, for instance a Licensed Trustee Company, or for investment matters where the trustee's profession includes investing or managing investments.

*Charity Law in Australia and New Zealand* (Dal Pont, 2000), sets out the trustees' duties:

- Acquaint themselves with the terms of the trust document
- Execute the trust according to its terms and the general law so as to benefit the community
- Protect and preserve the trust property
- Exercise discretionary powers in good faith, upon real and genuine consideration and according to the purpose for which the power was confirmed
- Not delegate their powers except in accordance with the provisions of the deed
- Not invest trust funds in a manner not authorised by the deed, statute or the court

Where there are **sub-funds** aligned to specific donors, the trustee can seek and take into consideration input from such parties, but the trustees must make final decisions and cannot commit to following any recommendation from such donors. In other words, donors who establish sub-funds are not entitled to direct, but only to recommend, the disbursement of these funds.

Directors of the trustee must act personally and not delegate. This does not preclude directors appointing, and paying for out of trust income, staff and or agents to do administrative tasks, prepare material or provide advice. Directors must not fetter future decision making by, for instance, entering into contracts that cannot be reviewed.

From a practical perspective a detailed consideration of trustee duties can most usefully be achieved using a framework of the four core areas of PuAF activity.

- **Fundraising**  
The process of fund raising from the public for the charitable purpose, which PuAFs are required to do, is currently governed by state law. There are different audit requirements, reporting obligations and timeframes for each state. Material is available from each state authority (see page 23) and the Fundraising Institute of Australia ([fia.org.au](http://fia.org.au)) and is not covered in this Handbook. This is one area where the entire sector hopes the ACNC will merge requirements into a single national licence.
- **Administration**  
The processes of managing the fund to meet its compliance obligations.
- **Investment**  
The investment of fund assets to protect and grow the real value of the fund.
- **Distribution/Grant-making**  
The distribution of funds or grant-making by the fund to eligible entities.

The following section sets out in detail the legal requirements of trustees of PuAFs; what directors **must** do as a minimum under the Guidelines and relevant laws. This is followed by a section covering what trustees are **encouraged to give further consideration to**, as good practice based on current experience of leading foundations in Australia and overseas. This 'good practice' is by no means a static concept, and expectations will continue to evolve due to a quest for improvement within the philanthropic sector and changing public and community standards.

# The Duties of the Trustee: Administration

---

Competent administration is central to the good governance of any foundation.

## Record Keeping

- All trust **assets** must be held in name of the trustee(s) or if authorised by the deed, statute or the Courts, a custodian of assets. The fund can only **borrow in limited circumstances** for short terms (i.e. to fund distributions or to settle investment transactions). The trustee cannot pledge fund assets.
- Proper **minutes** of all trustee meetings must be kept. Decisions are by **majority**; trust law does not provide for a casting vote (but the deed or constitution may). If a director seriously disagrees with a decision, particularly on a fiduciary issue, he/she should insist on getting legal advice, and recording a dissenting vote. If the issue goes beyond a single matter of judgement, a director should reconsider his/her position. **Key documents**; minutes, deed, Court rulings, etc. should be kept safely; financial statements for at least 5 years.
- There must be a majority of responsible persons serving on the Board and actively involved in decision making, if not the trustee cannot make decisions other than to appoint new trustees/directors, protect fund property or deal with urgent matters.
- Directors are required to try to avoid **conflicts of interest** and real possibilities of conflicts. Sometimes conflicts cannot be avoided and must be managed properly including being disclosed and recorded; with the affected director not participating in the specific decision making. Any transaction (except gifts) between the fund and employees, members or directors of the trustee, the founder, any donor or associates must be at arms' length and on a commercial basis or more favourable to the fund. These must be disclosed in the annual financial statements.
- The trustee cannot delegate other than in accordance with the deed and trust law; any **discretion** to staff needs to be properly structured, minuted and controlled.
- PuAFs must invite members of the public to contribute to the fund and proper **receipts** (see glossary) need to be issued when requested by those making donations to the fund, or as stipulated in fundraising licence conditions.
- PuAFs may maintain sub-funds or management accounts on behalf of individual donors which can uniquely named but cannot use the terms 'trust' or 'foundation'.

## Accounts

- **Annual financial accounts** are required to be prepared for each PuAF. These must be **audited** by a qualified auditor unless the fund has revenue and assets of less than \$1million in which case they can be **reviewed** rather than audited (the Commissioner can revoke this option and fundraising licence provisions may require audit). In addition the auditor or reviewer must audit **compliance with the Guidelines** by the fund and trustee (which includes investment, valuation and distribution activities). An objective estimation of the market value of the fund must be done annually (usually 30 June as part of the accounts); although property assets must be valued by a certified valuer at least every 3 years.
- Reclaiming **franking credits** attached to Australian company dividends from the ATO adds substantially to every PuAF's income - this should be done promptly after 30 June.

## Reporting

- PuAFs are required to lodge an annual income tax return by 28 February each year.
- The trustee company will be required to make a solvency statement and confirm the Annual Statement with ASIC (and pay the fee).

## Grant Management

- A **receipt** should be obtained for each grant made as evidence that the funds were received by the intended organisation which was an eligible recipient.
- **Conditions** attached to grants need to be recorded (see page 13 for further discussion).

# The Duties of the Trustee: Investment

---

The purpose of all PuAFs is to manage assets for the ultimate benefit of eligible DGRs. In considering trust investments, the trustee must exercise “the care, diligence and skill that a prudent person would exercise in managing financial affairs of others”. Where the trustee’s profession includes being a trustee or managing investments, the duty of care is higher - “exercise the care, diligence and skill that a prudent person engaged in that profession, business or employment would exercise in managing financial affairs of others” (State Trustee Acts).

## Investment Strategy and Review

Each PuAF must have and adhere to a written **investment strategy**. A PuAF with **sub-funds** has just one investment strategy for the total fund, sub-funds cannot be invested separately. A review of investment assets is required at least annually, examining performance of the entire portfolio and individual assets, including:

- Performance relative to fund Investment strategy and objectives
- A review of any **managers and advisers** used
- Documenting action taken to implement the investment strategy and annual review

Directors can take outside **advice** on investment matters, which can be paid for by the fund.

## Prudent Person

State trust law and the Guidelines require the trustee to consider inter alia:

- The benefits of **diversification** of trust investments
- **Investing not speculating**
- The **purpose/objectives** of the fund
- Balancing the **risk** of capital or income loss
- Maintaining the **real value** of capital and income
- The **tax\*** consequences of investment decisions and choices
- The **liquidity** of the investments having regard to cash flow and liability requirements including the timing of imminent and future distributions
- The **costs** of investment alternatives and transactions

## Investment Limitations

- PuAFs **cannot** run a **business**. The managing of a direct investment portfolio of shares or rental properties for the purpose of deriving income to distribute and running fundraising appeals are not caught by the “carrying on a business” restriction and are therefore permissible.
- Investment transactions must be by way of **arm’s length** transactions on commercial terms, or terms more favourable to the fund unless the other party is an eligible recipient. Investment transactions cannot provide a material benefit directly or indirectly to any of the founder, donor, trustee, directors, employees or associates thereof unless the party is an eligible recipient. Directors with a conflict of interest in any transaction must excuse themselves from that decision.
- **Collectables** cannot be purchased and any donated must be sold within 12 months.
- The PuAF cannot borrow, other than in limited circumstances for short duration.
- Any **directions** or **restrictions** in the deed or any subsequent Court Orders need to be observed (such as a prohibition on holding mining stocks).

\*The tax exempt status of PuAFs enabling the refund of franking credits increases, all other things being equal, the attractiveness of Australian shares paying franked dividends relative to other assets. This means for instance, consideration of the diversification benefits of investing in overseas shares needs to be balanced against the reduction in income from not getting any franking credits attached to foreign dividends.

# The Duties of the Trustee: Distribution/Grant-making:

Making distributions to eligible organisations, often called grant-making, is the core activity for every PuAF. Grant-making can range from funding organisations which provide immediate relief to those afflicted by poverty, sickness, or natural disasters, to advancing education or the arts, through to funding organisations and research projects to identify new ways to solve long term social, medical or environmental problems.

There is no single right way to grant; part of the benefit of philanthropy is the pluralist diversity it brings. However there are strict restrictions as to the entities or organisations that can receive grants or other benefits from PuAFs.

## **Minimum Amounts**

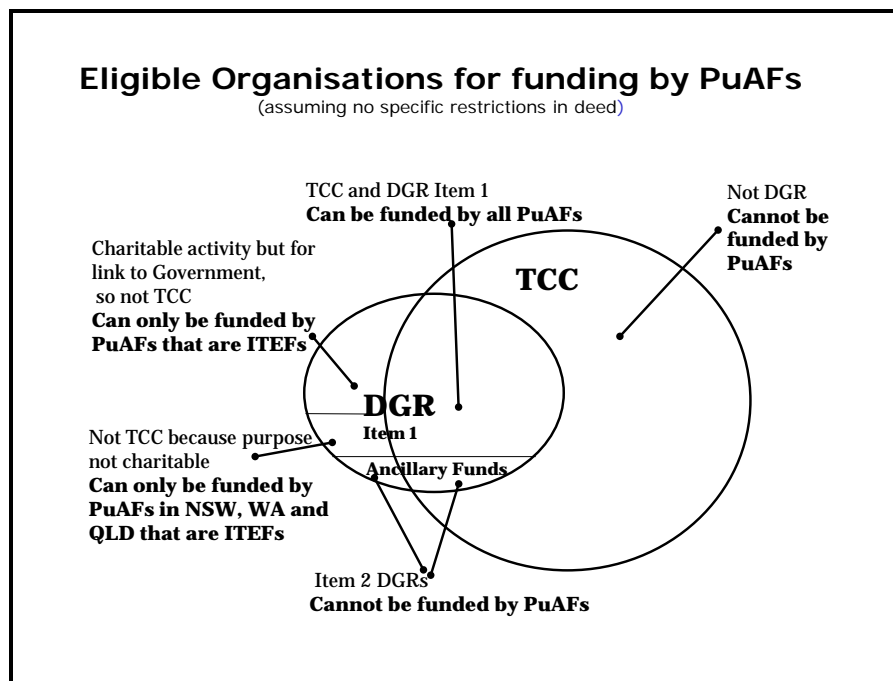
- Each financial year PuAFs must distribute an amount equal to at least 4% of the net value of the fund at 30 June the previous financial year (with a minimum annual distribution of \$8,800 unless expenses of the fund are being met from outside the fund when 4% applies).
- For new PuAFs no distribution is required in the year of establishment or for the following four financial years. This is to allow particularly Community Foundations to build sufficient corpus to be effective, but PuAFs that receive substantial funding during the first four years are encouraged to commence distribution earlier to fulfil their charitable purpose.
- Distributions do not include expenses to operate the fund.
- Distributions are what is **paid out** each year, future payments of multi-year grants count in those future years and should be subject to satisfactory progress and reporting each year.
- The PuAF Guidelines came into effect from 1 January 2012, however for the financial year ending 30 June 2012, PuAF Trustees can elect to adhere to the 4% minimum distribution rule or continue to distribute under previous practice at least 80-85% of net fund income. Those funds with a corpus of less than \$220,000 on 31 December 2011 will not be required to make a minimum distribution until the 2014-15 financial year or the year following the corpus reaches \$220,000.
- For a PuAF with sub-funds the minimum distribution requirement applies to the whole fund which may mean some variation between sub-funds as the trustee decides.
- Benefits PuAFs can provide eligible recipients are not limited to distributions of money but may include the provision of support such as office space or other property at below market rents, low or no interest loans, and other social 'investments' made for the benefit of the DGR recipient.

## **Eligible Recipients**

- Determining which organisations are eligible to be funded is one of the trustee's key governance duties. Each deed defines the "**eligible entities**" which the PuAF can fund.
- As a tax deduction has been given on donations to PuAFs they can only grant to organisations that are also Deductible Gift Recipients (**DGR**). In effect, from the ATO's perspective PuAFs are seen as a holding vehicle in the process of donations passing from individuals to operating DGR entities. (Many other charitable trusts other than PuAFs/PAFs are not so restricted in their distributions as donations to them are **not** tax deductible).
- In **no** circumstances can PuAFs distribute to other PuAFs or PAFs (even though they are DGRs), because if they did the money could be just circulating from one fund to another and therefore not having the intended direct beneficial impact on the community. All PuAFs and PAFs can be recognised as they are **DGR Item 2**.
- **For charitable PuAFs (those that are not ITEFs)** all grants must be to charitable organisations with both **TCC** and **DGR Item 1** i.e. operating charities shown on the ABR as Public Benevolent Institutions, Health Promotion Charities and Charitable Institutions and DGR Item 1 Charitable Funds such as school building funds, scholarship funds and necessitous circumstance funds. Where the charity is not DGR itself but has an Item 1 DGR fund, the grant must go to that fund.
- **For PuAFs that are ITEFs:** in addition to granting to DGR Item 1 with TCC, grants can also be made to other DGR Item 1s depending on state law. For those domiciled (usually last clause in the deed) in NSW, Qld and WA all exempt Item 1 DGRs are eligible; for Vic and SA PuAFs granting to Item 1 DGRs that other than for their connection with government would be charitable is allowed (i.e. public hospitals, state libraries, museums and galleries). Note it is the domicile of the fund that determines which state rules apply **not** the domicile of the recipient organisation.
- All distributions from PuAFs must go to the actual entity that has DGR, which may be a fund managed by the charity.

# The Duties of the Trustee: Distribution/Grant-making (ctd):

The discussion on the previous page on eligible recipients can be summarised in this diagram.



For further information see “Community Foundations Structure and Compliance Overview” Alice Macdougall (2012) Freehills.

There are three tools to assist establishing an organisation’s eligibility status.

## **1. The Australian Business Register (ABR)**

Organisations can be searched for by name or ABN using the ABN Lookup website:

<http://www.abr.business.gov.au/Index.aspx> . This will indicate whether the organisation itself is a Tax Concession Charity (TCC) and whether it is a DGR Item 1 or it manages a fund or institution that is DGR Item 1. This page should be printed and filed with a copy of the grant letter attaching the cheque. ABN Lookup also can provide information on the PuAF itself including whether it is a TCC or an ITEF.

## **2. ATO DGR Endorsement Notice**

For larger or multi-year grants it is still recommended that the PuAF requests a copy of the organisation’s DGR Endorsement Notice from the ATO. If the DGR endorsement reads “**Item 1** of the Table in Section 30-15 of the ITAA 1997” or there is a letter stating “specifically listed in Act of Parliament as being DGR in subdivision 30B of the ITAA 1997” then the organisation meets the DGR criteria to receive a grant. If it reads “**Item 2** of the Table in Section 30-15 of the ITAA 97” it is another Ancillary Fund to which grants **cannot be paid**.

## **3. Overseas granting**

Distributions can only fund activity overseas where made to overseas aid funds endorsed by the Treasurer for work overseas; these appear on the **AusAid** listing at

[www.ausaid.gov.au/ngos/approved\\_funds.cfm](http://www.ausaid.gov.au/ngos/approved_funds.cfm). After confirming that fund is DGR Item 1 the payment must be to the “overseas relief fund” or “overseas aid fund” on the AusAid list.

# Issues for Further Consideration

---

In addition to the legal responsibilities, there are many issues PuAFs trustees should also consider in order to enhance the fund's effectiveness and transparency. As all charitable foundations operate in a tax exempt environment, the expectation is that there will be significant community benefit, more so for PuAFs because of their public nature.

## Administration

- Have a written **Code of Conduct** on handling conflicts of interest (actual and perceived), trustee disclosure obligations, and ability to seek advice. This should include how trustees will handle and disclose gifts remembering they cannot personally benefit from the trust (although immaterial items such as tickets to attend performance of supported groups are reasonable).
- Develop a **succession planning framework** for directors.
- Develop a **Trustee Dossier** (see page 18) and an induction program for new directors.
- Additional **transparency can** be achieved through reports, printed or online, including:
  - **A mission statement** setting out the history, vision and objectives of the foundation
  - **A clear statement of processes**, particularly in grant application and assessment
  - **An annual report**, which does not need to be lengthy, expensive or even printed but should include concise financial statements, a summary of the investment policy and performance and the areas of granting activity (ideally with some case studies).

## Investment

All investors face risks; PuAFs are no different. The potential to lose the favourable tax status because of inappropriate investment activity demands great prudence. So part of the thought process in formulating the **investment strategy** should be to think through the investment risk profile.

Because of their long-term time horizons and tax exempt status, most PuAFs investment profiles are different from superannuation or personal monies. Therefore, for PuAF trustees, rather than being dominated by asset price risk concerns (as is the case for many private investors), inflation risk (the possibility of losing real value of income over time) is of increased concern. This and the benefits of being able to reclaim franking credits increase the attractiveness of Australian equities. Because liquidity is required to make distribution to charities yield and consistency of yield is also of increased significance.

While investing in overseas shares or bonds may bring diversification benefits, this needs to be balanced against the reduction in income (dividends and franking credits) that would flow from a lower holding of Australian equities. Investing offshore also brings the need to manage the effect of currency fluctuations on the value of the PuAF's assets.

However, if the corpus is small and in the process of being built, or the PuAF regularly distributes significant amounts of its asset base to beneficiaries, consideration of a more defensive investment strategy may be warranted.

Some directors may want to consider further refinements including adopting an ethical, socially responsible or sustainable investment approach. Any such change needs to be considered carefully and advice should be taken. Under trust law the purpose of holding investments is to generate funding to support the objects of the trust. Certainly, investments contrary to the trust purpose should not be held. The long term horizons of perpetual foundations may warrant including an assessment of the sustainability of business practice as part of the investment criteria. Also investment restrictions without which there would be a risk of alienating critical financial supporters and donors may be considered. However, the trustee must be careful not to introduce additional risk of "financial detriment" by applying a restrictive investment policy.

## Issues for Further Consideration (ctd)

---

### Distribution

Directors are encouraged to apply a similar degree of diligence, skill and care to grant-making as they do to investment matters. To paraphrase Aristotle, “giving money away is easy, but giving it away effectively and having impact is a very different matter”.

A critical component of effective grant-making is **research** into the issue being supported, and knowing what interventions have been tried previously in that field, with what levels of success. This understanding is invaluable in assessing which projects are most likely to achieve a positive impact and make a real difference to the problem at hand.

Then particularly for larger and multi-year grants, conducting **due diligence** on potential grant recipients is essential in order to assess an organisation's:

- structure and tax status - to confirm they are eligible
- mission and purpose - to ensure a ‘good fit’ with the PuAF's objectives
- the experience and capacity of key staff and directors - to ensure they are capable of delivering what they say they will deliver, given the grant
- their financial strength including diversity of income— to minimize risk

For many grants for general use a simple covering letter and receipt from the organisation is acceptable paperwork (along with a copy of the ABN printout). However, larger grants intended for specific projects can be subject to a grant agreement. The ATO accepts that if the grant agreement provides no material benefit to the grant-maker and specifies **only** the conditions set out below, then the agreement is not “supply” and the recipient will not be subject to GST in respect of the grant. The grant agreement can:

1. identify the project to which the funds are intended to be applied
2. establish a date for completion of the project
3. require the grantee to maintain separately in its books of account records on how the grant has been used
4. require that the grantee acknowledge the assistance of the grantor in any published or display material
5. require a report on the use of the grant
6. require repayment of any part of the grant not applied for the project.

Further details can be found in GSTR 2011/D4 <http://law.ato.gov.au/pdf/pbr/gstr2011-d004.pdf>

Acquittal reports detailing how the money (**inputs**) provided was spent (**outputs**) and what was achieved (**outcomes**) are a key part of philanthropy. Beyond whether money was properly spent, trustees should accept a responsibility to evaluate whether grants for significant projects have been effective (**impact**) in addressing the identified problems; sometimes this evaluation requires the use of external independent parties.

Much of this work may be delegated to employees of the fund or out-sourced to consultants who can provide advice to the fund on their grant-making

# Governance Failure and the Liability of the Trustee

The trustees have ultimate responsibility for governance of each PuAF; in short, “the buck stops” with them. Good internal processes reduce the risk of governance failure. Currently, state Attorneys General have legal jurisdiction of charitable trusts and can instigate legal action if there is a suspected breach of trust. The ACNC may have investigatory and enforcement powers from 1 October 2012. The ATO can take a range of actions where there is a suspected failure to comply with the requirements of tax legislation and the PuAF Guidelines which could entail an investigation, and if failure to comply is found, administrative penalties for specific breaches of the Guidelines which are payable by the trustee/directors (and not the fund) through to the removal of the trustee company as trustee for a significant breach of law.

However, it is encouraging that the list of foundation governance failure in Australia is not long. Even overseas foundation governance failure is limited, but it must be said that disclosure practices vary greatly and we may not be aware of all the issues. There were certainly some issues of concern with the earlier PPF (2001-2009) structure particularly around use of assets by a few PPF funders and granting to ineligible entities which led to the PAF changes in 2009. Insufficient distribution and funding of ineligible organisations by PuAFs were the specific concerns leading to the PuAF Guidelines being introduced.

Based on identified issues here and overseas, the following are examples of potential specific problems that may arise and should be guarded against. Trustees should take legal advice should they find themselves in circumstances where a possible breach of law may have occurred.

## Fundraising

- Failure to have the necessary **licence**, registration, or permit to fundraise in the relevant state or territory
- **Not** raising funds from the public
- Inadequate **record keeping** for fundraising events/appeals
- False or misleading **statements** or conduct
- Carrying on **business activities** to raise funds

## Administration

- **Misappropriation** of trust income or assets for personal benefit
- Directors voting on an issue on which they have a **conflict of interest**
- Failure to **disclose** related party transaction in financial statements
- Operating without a majority of independent **responsible persons**
- Excessive **expenses**
- Failure to prepare **audited/reviewed financial statements**

## Investment

- Not having or adhering to a written **investment strategy**
- **Non arms length related party** transactions including loans
- **Use** of investments by donor or associates
- **Breaching** investment limitations, i.e. borrowing, holding collectables

## Distribution

- **Insufficient** distribution – less than 4% of preceding 30 June value
- Granting to **ineligible** organisations
  - Distribution to **non DGR** charitable organisations
  - Distribution to other **PuAFs or PAFs**
  - For TCC PuAFs distribution to **non charitable DGRs**
- Permitting **redirection** of grants through legitimate recipients to others
- Imposing additional grant conditions but failing to pay **GST**.



## Governance Failure (ctd)

---

### **Potential Liability**

Restitution, i.e. putting the trust back to the position it would have been in had the breach not occurred, is the potential penalty for a breach of trust facing trustees as a result of legal action (although the Courts may take into account mitigating factors).

Also specifically for PuAFs (and PAFs) the ATO Commissioner also has the power to remove the corporate trustee where a breach of trust is believed to have occurred. For less serious compliance breaches the Commissioner can apply monetary penalties (set out in the Guidelines, see page 19), any such penalties must be paid by the trustee/directors and cannot be a charge on the fund.

Trustees should take legal advice should they find themselves in the circumstances where a possible breach of trust may have occurred.

### **Insurance**

For larger funds, particularly those with staff, trustees may wish to consider taking out Directors and Officers Insurance to cover issues where the PuAF suffers a loss through the actions of others. PuAFs trustee/directors cannot be indemnified by the fund for dishonesty, gross negligence or deliberate acts of breach of trust.

### **Unsatisfactory outcomes may not be Governance Failures**

It is equally important to note that not achieving the desired outcomes from a PuAF investment portfolio does not necessarily mean a governance failure. Unfortunately, from time to time there may well be assets in a investment portfolios that substantially under-perform. The test is not whether, in hindsight, investment choices were not ideal, but whether prudent investment processes were in place and were followed. This includes adhering to the Guidelines, particularly having and adhering to an investment strategy, proper diversification of the investment portfolio, and well documented annual reviews.

Similarly, a well thought through and executed grant project that failed to deliver the expected outcome is not prima facie a governance failure; it may have been simply an overly ambitious new approach to tackle a deep-seated problem. It is what happens next that determines the governance outcome. Like many foundation academics Professor Peter Frumkin of the RGK Centre for Philanthropy at the University of Texas distinguishes between 'constructive failures' where knowledge of what was tried and what went wrong has been created through effective communication, and 'unconstructive failures' where no new knowledge is created - because no-one hears about the experience.

Repeated 'unconstructive failures' are a governance issue, as foundation resources are not benefiting the community. Expressed more colloquially, while 'reinventing the wheel' is widely recognised as wasteful, 'reinventing potholes' is clearly worse (Brest and Canales, 2007).

# Implementation and Transition Arrangements

The PuAF Guidelines came into effect from 1 January 2012. The Guidelines apply to existing and all new PuAFs, but there are transitional rules which apply in some circumstances for existing funds.

## **Administration**

Where the deed of a PuAF as at 14 July 2011 prevents compliance with the Guidelines the fund is exempt and has until 1 July 2015 to change the deed to comply. However the trustee must comply with the Guidelines as far as possible without breaching its deed.

Any changes to deeds, not just those made specifically to meet the Guidelines must be notified to the Commissioner, and some need the Commissioner's consent.

A PuAF with individual trustees can continue as a PuAF without changing trustees. Individual trustees can be replaced as long as the majority always remains responsible persons. While the Commissioner does **not** have powers to suspend or dismiss such individual trustees, they must still comply with the Guidelines and the Commissioner does have powers to revoke the DGR endorsement and share information with the relevant state Attorney General potentially leading to legal action should breaches occur.

## **Investments**

Where a PuAF held collectables as investments at 31 December then the trustee has until 1 July 2015 to rectify the situation.

Where a PAF has current borrowings as at 31 December 2011, these may be maintained but any change in terms requires the Commissioner's approval.

## **Distribution**

For the 2011/12 financial year PuAFs can choose whether to apply the 4% minimum distribution rule or continue distributing at least 80-85% of net trust law income under their previous policy.

For smaller PuAFs with funds less than \$220,000 on 31 December 2011, there is no minimum distribution requirement until the end of 2014-15 financial year or from the end of the financial year in which the fund reaches \$220,000.

## **Portability**

The Guidelines provide for, with the Commissioner's approval, a PuAF trustee authorising the transfer of assets to another PuAF or PAF as long as:

- the transfer is of all the assets or all assets of a specific sub-fund
- the distribution minimum requirements for that financial year have already been met
- the assets have not been so transferred during the previous two financial years

The Commissioner's approval will only be granted in certain circumstances and the transfer will only be able to be made if the trust deed permits it and the transfer is consistent with the trustee's duties.

## **Winding up of a Fund**

Each deed will have a clause dealing with winding up of the fund to ensure that on wind up assets, after meeting liabilities are transferred to eligible organisations (Item 1 DGRs).

# Annual Checklist

The following checklist is prepared to assist the trustee check off the compliance obligations to ensure trustees “do not hold the fund out ... as entitled to remain endorsed as a PuAF ... when the fund is not so endorsed or entitled” (TAA 1953 426-120);

	ANNUAL
<b>Fundraising</b> Has the public been invited to donate to the PuAF? ✓ Are relevant state fundraising licences in place? ✓ Are fundraising licence obligations being adhered to? ✓ Have proper receipts been issued when requested? ✓	
<b>Administration</b> Has there been any change to the deed and was the Commissioner notified? ✓ Are the majority of directors Responsible Persons? Are they actively involved? ✓ Does the audit/review cover both the financial statements and compliance with the PuAF Guidelines? ✓ Confirm no benefit has been provided to the founder, donors, the trustees, directors, employees or associates. ✓ Are all related party transactions disclosed in financial statements? ✓ Have all expenses been reasonable? ✓ Has the PuAF return been lodged with ATO? ✓ (For the trustee company) has the ASIC annual fee been paid? ✓	
<b>Investment</b> Is there a written Investment Policy? Is it current? ✓ Have all investment decisions been consistent with the investment policy? ✓ Has the annual investment review been completed? ✓ Confirm there has been no borrowing or pledging of fund assets and no purchase of restricted assets (collectables). ✓	
<b>Distribution</b> Has at least 4% of the 30 June fund value been distributed or transition/small/new PuAF rules followed? ✓ Are all grants being paid to “eligible organisations”? (no non DGRs no DGR 2s) ✓ Is all distribution activity consistent with the deed? ✓ Are there any additional grant conditions that may require GST to be paid? ✓	

# Annual Plan and Trustee Dossier

To facilitate effective administration PuAFs should have an annual work plan, this provides a base document for trustees/directors to plan annual activities (using a 30 June year end);

<b>First Quarter</b> July - September	Prepare annual financial statements. Lodge claim for refund of franking credits with ATO. Review investment strategy and investment performance during previous year. Approve accounts and complete audit/review. Confirm appointment of auditor for current year.
<b>Second Quarter</b> October –December	Based on audited accounts set 4% minimum distribution level. Review existing commitments and set level of new granting. Refine the fundraising plan. Confirm state fundraising requirements met
<b>Third Quarter</b> January – March	Confirm sufficient liquidity for grant payments. Lodge Tax Return. Pay ASIC fee (date for this will vary, it may not be third quarter)
<b>Fourth Quarter</b> April - June	Actively review annual Compliance Checklist. Ensure 4% (of previous 30 June fund value) minimum distribution to eligible organisations have been made before 30 June. Seek donations

It is also recommended that each PuAF has a **dossier** for directors as a basic reference document. This should contain at least the following:

1. A copy of the deed and any subsequent amendments and Court Orders and copies of correspondence to/from the ATO approving the PuAF
2. A copy of the Public Ancillary Fund Guidelines 2011
3. A copy of the contents pages of the appropriate Trustee Act (for example for Victorian foundations the Victoria Trustee Act 1958) and the Investment section (Part 1 SS4-8 in Victoria's case)  
[www.austlii.edu.au/au/legis/vic/consol\\_act/ta1958122/](http://www.austlii.edu.au/au/legis/vic/consol_act/ta1958122/)
4. Tax Rulings Tax ruling TR 95/27 (on Public Funds following Bray v FCT) and Tax Determination TD 2004/23 on "sub-funds"
5. A copy of all policy documents endorsed by the trustee – particularly the investment strategy, and where relevant, Mission Statement, Fundraising Policy, Trustee and Staff Code of Conduct (including a conflict of interest policy), and Financial/Delegation Authorities
6. Employment agreement for the CEO (if applicable)
7. Operating budget and any strategic plan
8. Where investment managers have been appointed with investment mandates - details of the investment managers, the funds allocated to each, and the terms of the mandates
9. A list of directors with contact details, and disclosure of other relevant organisations each director is involved with
10. A copy of the Directors and Officers Insurance Certificate (if applicable)
11. A copy of this Handbook.

The trustee dossier should be reviewed from time to time to ensure all documents are current. There should also be an induction program for new trustees/directors, particularly those totally new to the trustee role, to ensure they are fully aware of their legal responsibilities and the operational procedures of the PuAF.

# Administrative Penalties

Under the Guidelines there are administrative penalties for various specific breaches of the Guidelines that must be paid by the trustee or the directors of the trustee company and specifically **cannot be paid by the fund** (TAA 426-120(4)). Currently penalties are \$110 per penalty unit as defined under Schedule 1 of the Taxation Administration Act 1953 and Crimes Act 1914.

Issue	Guidelines	Penalty
Failure to notify any change of deed	Clause 17	5 Units
Failure to distribute 4% of net assets	Clause 19	30 Units*
Failure to rectify shortfall in distribution	Clause 19.5	10% of shortfall
Failure to keep proper accounts	Clause 24	10 Units
Failure to provide accounts to the Commissioner on request	Clause 25	10 Units
Failure to prepare financial statements	Clause 26	10 Units
Failure to provide financial statements to the Commissioner	Clause 27	10 Units
Failure to have accounts and compliance with Guidelines audited/reviewed	Clause 28	10 Units
Failure to provide audit to the Commissioner	Clause 29	10 Units
Failure to have an investment strategy	Clause 30	10 Units
Failure to implement the investment strategy	Clause 31	10 Units
Failure to keep proper investment records	Clause 32	10 Units
Breach of Investment limitations including related party transactions, pledging and borrowing, and collectables	Clauses 33 -38	30 Units each
Running a business in the fund	Clause 40	25% of profit
Uncommercial transactions	Clause 41	30 Units
Provision of benefit to founder, trustee, donor, director or associates thereof	Clause 42	Value of benefit
Acting trustee not following instruction from Commissioner	TAA** 426-160	100 Units
Former trustee failing to provide books to Commissioner within 14 days	TAA 426-165(1)	50 Units
Former trustee failing to act as instructed by the Commissioner	TAA 426-165(5)	50 Units

\* If shortfall in distribution is greater than \$1000. The shortfall must also be rectified which is additional to the minimum distribution in the year of rectification.

In addition to the administrative penalties, the ATO Commissioner has the power to suspend or remove a corporate trustee and to appoint an acting trustee where the Commissioner is satisfied the fund, or any trustee of the fund, has breached the Guidelines or Australian law. The Commissioner may also share any information gathered concerning a potential breach of trust law with the relevant state Attorney General who may then commence legal proceeding against the trustee.

# Glossary of Terms

---

## ACNC

Australian Charities and Not-for-Profits Commission; the new regulator of the charity sector (which includes charitable funds) to commence operation from 1 October 2012.

## DGR

Deductible Gift Recipient. An ATO classification of an organisation or fund that enables donors to that organisation or fund to claim a tax deduction (subject to eligibility criteria).

**DGR Item 1** – Public Benevolent Institutions, Health Promotion Charities, some Charitable Institutions and others are DGR Item 1s. Public Ancillary Funds can only distribute to DGR Item 1s (but not all DGR Item 1s are eligible for all PuAFs (see page 11).

**DGR Item 2** – Public Ancillary Funds and Private Ancillary Funds are DGR Item 2s. Public Ancillary Funds cannot distribute to another DGR Item 2.

## Fiduciary Duty

Common law duty of trustees to exercise rights and powers in good faith for the benefit of beneficiaries of any trust and not in their own interest.

## Franking Credits/ Imputation Credits

Under Australian tax law, charitable foundations with TCC or ITEF are entitled to receive cash refunds of franking credits attached to dividends received from Australian companies.

## Indictable Taxation Offence

A taxation offence that is punishable by imprisonment for a period exceeding 12 months is, when committed by a natural person, is an indictable offence. *Taxation Administration Act 1953 - Sect 8ZA*

## ITAA97 and ITAA36

Income Tax Assessment Act 1997 and Income Tax Assessment Act 1936.

## ITEF

Income Tax Exempt Fund: A type of Ancillary Fund able to be created from 1 July 2005 to also support certain non-charitable DGRs. In NSW Queensland and WA an ITEF can grant to any exempt DGR, while in Victoria and SA an ITEF can support those DGRs that would be charitable other than for their government connection. Legislation is yet to be enacted in other jurisdictions.

## Model Public Ancillary Fund trust deed

Available from the ATO website

<http://www.ato.gov.au/nonprofit/content.aspx?doc=/content/00303736.htm&pc=001/004/044&mnu=44475&mfp=&st=&cy=1>

## Overseas Aid Funds

The AusAid website contains a list of overseas aid funds approved by the Treasurer under ITAA97. [www.ausaid.gov.au/ngos/approved\\_funds.cfm](http://www.ausaid.gov.au/ngos/approved_funds.cfm)

## Penalty Unit

Currently \$110 as defined under the Crimes Act 1914

## Private Ancillary Fund (PAF)

Philanthropic structure available from 2009, replacing Prescribed Private Funds (PPFs)

# Glossary of Terms (ctd)

---

## **Receipt**

Must include:

- name of the donor
- the name and ABN of the PuAF
- the date and the amount donated
- that it was a gift.

## **Responsible Person**

An individual with broad community responsibilities who are required to be in the majority as trustee/directors for each PuAFs (see page 6).

## **Standard Grant Conditions**

The ATO accepts that if the grant agreement provides no material benefit to the grant-maker and specifies only the conditions set out below, then the recipient will not be subject to GST in respect of the grant. GSTR 2011/D4 <http://law.ato.gov.au/pdf/pbr/gstr2011-d004.pdf>

1. identify the project to which the funds are intended to be applied
2. establish a date for completion of the project
3. require the grantee to maintain separately in its books of account records on how the grant has been used
4. require that the grantee acknowledge the assistance of the grantor in any published or display material
5. require a report on the use of the grant
6. require repayment of any part of the grant not applied for the project.

## **ITAA 1953**

Taxation Administration Act 1953

## **TCC/ITEC**

Tax Concession Charity, previously known as Income Tax Exempt Charity (ITEC), is an ATO endorsed charitable organisation (Public Benevolent Institution, Charitable Institution, Charitable Fund, or Health Promotion Charity) which is exempt from paying income tax.

# Key References

---

**For a fuller reference list please refer to:** *Trustee Handbook: Role and Duties of Trustees of Charitable Trusts and Foundations in Australia*, David Ward, Philanthropy Australia, (2012) which can be downloaded from [http://philanthropywiki.org.au/index.php/Trustee\\_Handbook](http://philanthropywiki.org.au/index.php/Trustee_Handbook)

*The Australian Nonprofit Sector Legal and Accounting Almanac 2011*  
QUT: The Australian Centre for Philanthropy and Nonprofit Studies

*Charity Law in Australia and New Zealand*,  
Gino Dal Pont, (2000).

*Charities and Investment Matters*  
UK Charity Commission for England and Wales, (2011)  
<http://www.charity-commission.gov.uk/Library/guidance/cc14text.pdf>

*Community Foundations Structure and Compliance Overview*  
Alice Macdougall, Freehills (2012)  
<http://freedownload.is/pdf/freehills-foundation>

*The Essential Trustee*,  
Charity Commission for England and Wales, (2012)  
[www.charity-commission.gov.uk/publications/cc3.asp](http://www.charity-commission.gov.uk/publications/cc3.asp)

*Foundations for Giving 2012*  
QUT: The Australian Centre for Philanthropy and Nonprofit Studies

*Giftpack for Deductible Gift Recipients and Donors*  
ATO (definition of Charitable Purposes)  
[www.ato.gov.au/nonprofit/content.asp?doc=/content/34482.htm](http://www.ato.gov.au/nonprofit/content.asp?doc=/content/34482.htm)

*Improving the Integrity of Public Ancillary Funds*. The Treasury, (2010)  
[http://www.treasury.gov.au/documents/1907/PDF/discussion\\_paper\\_ancillary\\_funds.pdf](http://www.treasury.gov.au/documents/1907/PDF/discussion_paper_ancillary_funds.pdf)

*Non-Profit Organisation Guide, Chapter 3*. ATO  
[www.ato.gov.au/content/downloads/Nat7967.pdf](http://www.ato.gov.au/content/downloads/Nat7967.pdf)

*Public Ancillary Fund Guidelines 2011*  
<http://www.comlaw.gov.au/Details/F2011L02758>

*The Role of Directors and Governance Issues for Charities*,  
Alice Macdougall, Freehills (2003)  
[www.philanthropy.org.au/community/publications/roleofdirectors\\_Freehills.doc](http://www.philanthropy.org.au/community/publications/roleofdirectors_Freehills.doc)

Bray v Federal Commissioner of Taxation (1978) and following Tax ruling TR 95/27  
<http://law.ato.gov.au/atolaw/view.htm?docid=TXR/TR9527/NAT/ATO/00001>

GSTR 2011/D4, Grants and GST  
<http://law.ato.gov.au/pdf/pbr/gstr2011-d004.pdf>

Tax Determination TD 2004/23 on “sub-funds”;  
<http://law.ato.gov.au/atolaw/view.htm?docid=TXD/TD200423/NAT/ATO/00001>

*Tax Ruling TR 2005/21 Income Tax and Fringe Benefit Tax – Charities* ATO, (2005)  
<http://law.ato.gov.au/atolaw/view.htm?docid=TXR/TR200521/NAT/ATO/00001>



# Legislation

---

*Taxation Administration Act 1953 Public Ancillary Fund Guidelines 2011*

<http://www.comlaw.gov.au/Details/F2011L02758>

*Tax Laws Amendment (2011 Measures No. 7) Act 2011* <http://www.comlaw.gov.au/Details/F2011L02758>

*Income Tax Assessment Act 1936*

[www.austlii.edu.au/au/legis/cth/consol\\_act/itaa1936240/](http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1936240/)

*Income Tax Assessment Act 1997 Section 30*

[www.austlii.edu.au/au/legis/cth/consol\\_act/itaa1997240/](http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1997240/)

*Trustee Act 1958 Victoria*

[www.austlii.edu.au/au/legis/vic/consol\\_act/ta1958122/](http://www.austlii.edu.au/au/legis/vic/consol_act/ta1958122/)

*Trustee Act 1925 NSW*

[www.austlii.edu.au/au/legis/nsw/consol\\_act/ta1925122/](http://www.austlii.edu.au/au/legis/nsw/consol_act/ta1925122/)

*Trusts Act 1973 Queensland*

[www.austlii.edu.au/au/legis/qld/consol\\_act/ta1973132/](http://www.austlii.edu.au/au/legis/qld/consol_act/ta1973132/)

*Trustee Act 1936 SA*

[www.austlii.edu.au/au/legis/sa/consol\\_act/ta1936122/](http://www.austlii.edu.au/au/legis/sa/consol_act/ta1936122/)

*Trustee Act 1962 WA*

[www.austlii.edu.au/au/legis/wa/consol\\_act/ta1962140/](http://www.austlii.edu.au/au/legis/wa/consol_act/ta1962140/)

*Trustee Act 1898 Tas*

[www.austlii.edu.au/au/legis/tas/consol\\_act/ta1898122/](http://www.austlii.edu.au/au/legis/tas/consol_act/ta1898122/)

*Trustee Act 1925 ACT*

[http://www.austlii.edu.au/au/legis/nsw/consol\\_act/ta1925122/](http://www.austlii.edu.au/au/legis/nsw/consol_act/ta1925122/)

*Trustee Act 1907 NT*

[http://www.austlii.edu.au/au/legis/nt/consol\\_act/ta122/](http://www.austlii.edu.au/au/legis/nt/consol_act/ta122/)

# Fundraising Acts

---

- |             |   |
|-------------|---|
| <b>NSW:</b> | Charitable Fundraising Act 1991<br>Charitable Fundraising Regulation 2008   |
| <b>ACT:</b> | Charitable Collections Act 2003<br>Charitable Collections Regulation 2003   |
| <b>VIC:</b> | Fundraising Act 1998<br>Fundraising Regulation 2009<br>Veterans Act 2005  |
| <b>WA:</b>  | Charitable Collections Act 1946<br>Street Collections (Regulation) Act 1940<br>Charitable Collections Regulations 1947<br>Street Collections Regulations 1999 |
| <b>TAS:</b> | Collections for Charities Regulations 2001  |
| <b>QLD:</b> | Collections Act 1966<br>Collections Regulation 2008   |
| <b>SA:</b>  | Collections for Charitable Purposes Act 1939  |

**Philanthropy Australia Inc**

Assn. No. A0014980 T  
ABN 79 578 875 531

**Head Office**

Level 2, 55 Collins Street  
Melbourne VIC 3000  
Australia

Tel (61 3) 9662 9299  
Fax (61 3) 9662 2655  
[info@philanthropy.org.au](mailto:info@philanthropy.org.au)

**Sydney Office**

Suite 402, Level 4  
105 Pitt Street  
Sydney NSW 2000  
Australia

Tel (61 2) 9223 0155  
Fax (61 2) 9223 0877  
[l.burton@philanthropy.org.au](mailto:l.burton@philanthropy.org.au)

[www.philanthropy.org.au](http://www.philanthropy.org.au)  
[www.philanthropywiki.org.au](http://www.philanthropywiki.org.au)

**Patrons**

Sir Gustav Nossal AC CBE  
Lady Southey AC