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Private Ancillary Fund Guidelines 2009

The Australasian Compliance Institute (ACI) would like to take the opportunity to thank the Minister Senator the Hon. Nick Sherry for his time on July 10, 2009 to discuss the draft Private Ancillary Fund (PAF) Guidelines as well as the Treasury for allowing ACI to comment upon these guidelines.

First, as discussed during the course of our meeting, ACI supports the inclusion of the PAF Guidelines as part of the Regulations that support the Taxation Administration Act 1953 rather than being incorporated within what already is a sizable piece of legislation. ACI supports the Minister's view that inclusion in the regulations will allow the Guidelines to be more easily administered.

Turning our attention to the draft PAF Guidelines, ACI seeks clarification on a number of issues and would also like to make a few recommendations.

Under guideline 11 it is stated that the PAF "must be established and operated on a not-for-profit basis." ACI believes that this needs to be clarified for two reasons. First, not all not-for-profit bodies run at a loss or break even basis, but rather not-for profit status is more concerned around preventing the distribution of profits and how fund are managed/maintained for the benefit of members. Secondly, under Guideline 29 the PAF is required to have an investment strategy. While ACI acknowledges that this investment strategy needs to be appropriate to meet the needs of a not-for-profit entity (that is low risk and low yielding), there maybe occasions where the investment strategy produces an annual return that exceeds the 5% minimum distribution requirements. On these occasions, if the trustees decide to only distribute the minimum 5% that way preserving the longevity of the PAF, will the PAF have been operating in a manner that is still consistent with aims and objectives of a not-for-profit?

Perhaps one solution is that the PAF must perform or produce a zero return over the life of the PAF.

Under guideline 19, ACI recommends that the sum of \$11,000 be automatically indexed on an annual basis and the guidelines changed to

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reflect this. That way the sum in question remains meaningful into the future and administratively easier to manage.

We also seek clarity around Guideline 20. Guideline 21 is very specific around the market valuation of land on a 3 year basis by a certified independent valuer (or Commissioner), however the same clarity does not exist around the PAF's non-land assets. ACI recommends that these valuations also be undertaken by appropriated skilled professions that are relevant to the assets held by the PAF. As such, the valuation may need to be conducted by a professional who is an expert in equities or antiquities. Therefore ACI recommends the following amendment to Guideline 20:

*"20 The *market value of the fund's assets (other than land) must be estimated at least annually by a suitably qualified professional who is an expert in the asset class(es) held by the fund."*

ACI supports the intent of Guideline 27 however we would draw Treasury's attention to the difference between conducting a financial audit and an assurance or compliance audit. The two are quite different and therefore require a difference skill set. It is on that basis that we would add a new part 27.3 as follows:

"27.3 The compliance audit must be undertaken by an accredited compliance professional."

Finally we would like to briefly return to our discussion around defining the not-for-profit nature of the PAF, ACI would like to seek clarity around guideline 29 and how it relates with Guideline 19 if the PAF generates a return in excess of the total funds distributed for the year. What impact will this have upon the tax status of the PAF?

Once again ACI would like to thank the Minister and the Treasury for providing an opportunity for ACI to comment upon the proposed Private Ancillary Fund Guidelines. Should you require any additional information or seek clarification on the comments that appear in this submission please do not hesitate to contact ACI on +612 9290 1788.

Yours sincerely,

Martin Tolar
Chief Executive Officer