



ADLV LAW
FIERCELY ON YOUR SIDE

PRIVATE ANCILLARY FUNDS

Introduction

Charitable giving can take many forms. Most of us do it on an ad hoc basis but there are many advantages to formalising your approach to strategic long-term giving. This booklet is for people who may be:

- Starting their philanthropic journey;
- Rethinking their approach to charitable giving;
- Hoping to build a relationship with one or more charitable organisations;
- Looking to make a bigger impact; or
- Seeking to give their family a larger role in their giving.

One way to achieve these goals is to establish a Private Ancillary Fund (a PAF) - your own charitable foundation that provides a link between you and the charitable organisations that you wish to support.

This booklet has been developed to assist you to understand

- What a PAF is;
- How it works; and
- Whether it is the best charitable strategy for you.

This booklet contains general information only and is not to be construed as providing legal, accounting or financial advice. The material in this book is not to be used as a substitute for legal advice tailored to your individual situation. Access to the material in this book does not create or constitute a solicitor-client relationship between you and [ADLV Law](#).

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01

GIVING BACK TO THE COMMUNITY

Giving back to the community

To date, your charitable giving has taken the form of volunteering, making a gift to an existing charity from your own pocket or leaving a gift to a specific charity in your Will. However, you have reached a turning point in your life where you wish to use your resources to make a more significant impact on the community without going so far as to establish your own charity.

Perhaps you have received an inheritance, sold a business, undergone a major health event or become more aware of an issue that you care about, either locally or globally. For those of you who have a focus on family, you may be looking for a mechanism for inter-generational giving which allows the whole family to become involved in philanthropy from an early age and contribute towards creating a family legacy.

A PAF is an effective way to use cash, property and investments to support charitable causes without providing services or undertaking charitable work yourself. A PAF requires you to consciously allocate a portion of your assets to philanthropy and, along with the benefits referred to above, you will be able to access the tax advantages offered by PAFs.

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BRIEF HISTORY

Brief history

Philanthropic Trusts or Ancillary Funds have existed in Australia for over a hundred years and were traditionally exempt from income tax. It was not until 1963 with the introduction of Public Ancillary Funds that tax deductible donations were allowed. However, these funds had a public fundraising obligation and were not suitable for private or family philanthropy.

Following a 1999 report by the Business and Community Partnerships Working Group on Taxation Reform about how to foster philanthropy in Australia, a new form of philanthropic structure was introduced by the Howard Government in 2001. The Prescribed Private Fund (**PPF**) was described by the Prime Minister as a philanthropic structure that “*allowed families and individuals to donate to a trust of their own, which then disburses funds to a range of other gift-deductible recipients*”.¹ Importantly, PPFs allowed tax deductions for donations, were exempt from ongoing income tax, permitted family control and had no public fundraising requirements.

PPFs were put under scrutiny over the next 10 years and, following extensive consultations, a new regulatory framework came into force in 2009, for what are now called private ancillary funds (**PAFs**). There are some key differences between PPFs and PAFs. Specifically, PAFs require:

- Corporate trustees (not individuals);
- A 5% minimum distribution per annum;
- A formal investment strategy; and
- Annual auditing and compliance obligations with the *Taxation Administration (Private Ancillary Fund) Guidelines 2022* (the **Guidelines**).

In 2012, the Australian Charities and Not-for-profits Commission Act established a regulatory body for the charitable sector, which includes charitable trusts and PAFs, called the Australian Charities and Not-for-profits Commission (ACNC).

¹ Prime Minister's Press Release, 30 March 2001.

Since 2001, most individual and family foundations established are PAFs. As of October 2024, there were 2,278 PAFs in Australia (although only a fraction of these appear in the ACNC Charity Register)². Tax statistics suggest that there is a correlation between the increase in the number of PAFs and the growth of higher value individual philanthropy in Australia with higher value donors (those giving \$25,000 or more in the year) being responsible for 50% of the \$3.7 billion in individual giving claimed for in 2017-18. Interestingly, these donors represent only 0.17% of the total number of those giving: fewer than 8,000 people in a total of 4.4 million donors.

Interestingly, welfare is the focus of most PAFs, with medical research, arts and the environment also prioritised. Mass market giving tends to focus on religion, international causes and medical research, while Public Ancillary Funds favour welfare and health.³

² Mcgregor-Lowndes, Myles, Balczun, Marie, & Williamson, Alexandra (2025) An Examination of Tax-Deductible Donations Made by Individual Australian Taxpayers in 2022-23: ACPNS Working Paper No. 79. The Australian Centre for Philanthropy and Nonprofit Studies (ACPNS), QUT, Brisbane, Qld

³ JBWere.

03

AN OVERVIEW OF ANCILLARY FUNDS

An overview of Ancillary Funds

An Ancillary Fund is a special type of trust that has the sole purpose of providing benefits to **registered** charities. The Fund itself does not undertake charitable work, but rather can be used as a collection point to pool donations and then distribute them to charities and causes, at the discretion of the trustee.

An Ancillary Fund can be:

- Public; or
- Private.

The main difference between these two types of Ancillary Funds is how they source income. A Public Ancillary Fund (a **PubAF**) must only source its funding from the public.⁴ Whereas a Private Ancillary Fund (a **PAF**) cannot solicit donations from the public; rather, there must be a close relationship between those that establish the fund and those that donate to it. Donors do not need to be related, but they usually share some form of common interest or close relationship.

The focus of this guide is PAFs.

⁴ Grimshaw, Charlotte, Fundraising Research & Consulting, February 2021.

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WHAT IS A PAF?

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**In the 2022-2023
financial year, PAFs
made distributions
(donations) of just
under \$800 million.**

(Mcgregor-Lowndes, Balczun & Williamson. 2025)



What is a PAF?

A PAF is a sole purpose trust. It can be established while you are alive by an instrument of trust, or it can be set up under your Will. It requires Australian Taxation Office approval for tax concessions. Its operation is governed by its trust deed, the Guidelines, the trust laws of each State and Commonwealth legislation. A more complete list of the relevant legislation is found in the attached Schedule: Legal Framework.

Unlike a family trust or discretionary trust, which may have a range of purposes and distribute income and capital to a wide range of beneficiaries within a family group, a PAF's sole object is charitable, and its class of beneficiaries is limited to charities that are registered with the ACNC as Deductible Gift Recipient (**DGR**) charities.

To qualify as a PAF, the fund must have the following key components:

- It must be not-for-profit and philanthropic in character;
- It must be established and operate only in Australia;
- It must have a corporate trustee (not individuals);
- It must only provide money, property or benefits to charitable organisations that are endorsed as DGR charities;
- It must have at least one director of the corporate trustee who is a 'responsible person';
- It must maintain a current investment strategy; and
- With the exception of the first year, each year it must distribute the 'minimum annual amount'. The minimum annual amount is currently the greater of 5% of the market value of the fund's net assets or \$11,000, unless otherwise agreed by the Commissioner of Taxation. However, this minimum annual amount is expected to increase to 6% in the near future. ⁵

⁵ A PAF may also provide loans, invest in social bonds and/or provide guarantees to reduce the cost of commercial lending to eligible DGR entities.

WHAT IS THE PURPOSE OF A PAF?

A PAF's governing rules must clearly set out that it is established and operated as a not-for-profit entity, ⁶ with any surplus generated directed towards the functioning of the PAF or distributed to DGR registered charitable organisations. This means that the fund cannot operate a business or provide profit or personal gain to its members. This does not mean that the PAF cannot make a profit, but rather that any profit generated must be used solely for the purposes of the fund.

A PAF must be philanthropic. ⁷ This means that a PAF's constitutional documents must reflect the charitable purposes of the PAF which must be maintained and evidenced through the lifespan of the PAF. When establishing the trust, you may decide to specify that the PAF has a particular philanthropic focus (for e.g. medical research) or allow flexibility in how and where funds are directed.

WHO CAN DONATE TO THE PAF?

You can give money to your PAF at any time, including directing a gift through your Will. If you wish, you can also invite family members and friends to donate to your PAF. A PAF cannot seek donations from the public and cannot accept donations totalling more than 20% of the value of the fund at the previous 30 June from persons other than the founder of the PAF, and the relatives, associates or employees of the founder.

ESTABLISHED AND OPERATED IN AUSTRALIA

According to the Guidelines, a PAF must be established and operated only in Australia. ⁸ However, this does not mean that the PAF cannot distribute to an eligible DGR that operates outside of Australia. ⁹

⁶ PAF Guidelines 2019 s 10.

⁷ PAF Guidelines 2019 s 8(b).

⁸ PAF Guidelines 2019 s 11(1).

⁹ PAF Guidelines 2019 s 11(2).

05

WHO CAN BE A TRUSTEE OF THE PAF?

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Who can be a trustee of the PAF?

Like all trusts, a PAF must have a trustee. Unlike other kinds of trusts, a PAF cannot have an individual trustee; it must have a corporate trustee. This can be a company or incorporated association. The trustee must exercise the same degree of care, diligence, and skill that a prudent individual would exercise in managing the affairs of others;¹⁰

WHO CAN BE A DIRECTOR OF A CORPORATE TRUSTEE?

Most of the directors of the corporate trustee of a PAF will be family members of or otherwise closely connected to the founder. Directors cannot be younger than 18 years old, mentally incapacitated, an undischarged bankrupt, have been disqualified from being a company director by ASIC or the ACNC or convicted of a taxation offence.

The ACNC and the Commissioner of Taxation will suspend or remove a corporate trustee and appoint an interim acting trustee in situations where the PAF is non-compliant.

RESPONSIBLE PERSON

At least one director of the corporate trustee must meet the ATO's 'responsible person test'.¹¹ Under the Guidelines, a **responsible person** is independent from the founder and has a degree of responsibility to the Australian community as a whole.¹² This person is often the family lawyer or accountant or belongs to a professional association that has a code of ethics. A more complete list of who may qualify as a responsible person is set out in the Guidelines and includes those people listed in the attached Schedule: Responsible Person.¹³

¹⁰ PAF Guidelines 2019 s 12(1).

¹¹ PAF Guidelines 2019 s 12(2).

¹² PAF Guidelines 2019 s 14.

¹³ For further information see Taxation Ruling TR 95/27.

A responsible person cannot be:

- The founder, or an associate of the founder;
- A donor who has contributed more than \$10,000, or an associate of such a donor; or
- Except with the written consent of the Commissioner, an employee or agent of the founder or a donor who has contributed more than \$10,000.¹⁴

The duties and responsibilities of a responsible person are not different from the other directors, but the Guidelines require them to be active in the administration of the PAF, including the approval of the annual financial statements, the investment strategy, and the distributions.

If the PAF does not comply with the requirement to have a responsible person (e.g. if the responsible person resigns, dies etc.), then the PAF effectively enters caretaker mode. This means that the trustee can only exercise a discretion or power:

- To appoint a new trustee;
 - To protect the property of the fund; or
 - To deal with an urgent matter that cannot be postponed,
- until a new responsible person is appointed.¹⁵

PAYMENT

Directors of PAFs are generally unpaid unless the trust deed of the PAF allows remuneration. If remuneration of directors is allowed by the trust deed, the Guidelines require remuneration for trustee services to be 'reasonable'.¹⁶ If the trust deed is silent about remuneration, then only Licensed Trustee Companies can be paid trustee fees which are governed by the provisions of *Corporations Act 2001* (Cth).

Director's direct expenses relating to the PAF may be reimbursed but must be approved by directors.

¹⁴ PAF Guidelines s. 14.

¹⁵ PAF Guidelines s 15.

¹⁶ The Model Deed suggests a maximum of 1.056% of fund value.

WHO IS RESPONSIBLE FOR THE PAF?

The ultimate responsibility for the governance of the PAF lies with the trustee. The directors of the trustee must ensure that the PAF is run correctly, is compliant with its deed, the law and the Guidelines and supports the purpose for which the PAF was established.

Directors of the trustee have a **fiduciary responsibility** to manage the affairs of the PAF. They must:

- Avoid any actual or perceived conflict of interest;
- Run the PAF solely for the benefit of eligible DGRs; and
- Not provide personal benefit to the founder, trustee or any of their associates.

The directors of the trustee as the 'responsible entities' for a registered charitable organisation must meet and uphold the following **governance standards**:

- Ensure the PAF is not-for-profit and maintains its charitable purpose;
- Comply with the relevant Australian laws and regulations;
- Ensure the directors are suitable; and
- Maintain and enhance public trust and confidence in the Australian not-for-profit sector.

DUTIES OF THE TRUSTEE

As a minimum, the trustee must perform the following duties:

- Maintain and manage the administration of the PAF;
- Manage the assets and investment of assets; and
- Direct distributions in accordance with the PAF's purpose.

Administration

One of the core requirements for the trustee under the Guidelines, trust laws of each State and the ACNC governance standards is to maintain and uphold competent administration of the PAF. This can be done by:

- Ensuring all trust assets are held in the name of the trustee or, if authorised by the deed, statute or the Courts, a custodian of the assets;
- Maintaining an up-to-date and comprehensive record-keeping system of all relevant documents for administering the Trust. This can include:
 - » Copies of the governing documents (including the PAF Deed, corporate trustee constitution, and any materials provided by the ACNC or ATO upon registration);
 - » Contact information of all directors of the trustee (including director's identification numbers);
 - » Declarations of conflicts of interests;
 - » Investment strategy documents;
 - » Director/trustee resolutions (including any agendas, minutes, and resolutions);
 - » Grant agreements or receipts;
 - » Records of financial transactions and ownership;
 - » Expenses; and
 - » Financial reports.
- Preparing Annual Financial Statements in accordance with accounting standards and ensuring they are available to the ATO on request (or provided to the ACNC), including:¹⁷
 - » Estimating the market value of fund assets annually (except for land required once every 3 years); and
 - » Reporting those estimations to ATO annually.

¹⁷ PAF Guidelines s. 26.

- Lodging an annual income tax return, either:
 - » If registered with ACNC: by lodging Annual Information Statement by 31 March each year; or
 - » If not registered with ACNC: by lodging Annual Information Return in paper format to ATO by 28 February each year.
- A PAF must issue a receipt for every gift it receives. The receipt must include the following details:
 - » The name and ABN of the PAF;
 - » The name of the donor; and
 - » A statement that the receipt is for a gift received by the PAF.

Investment

The trustee must ensure that the trust assets are properly managed for the purpose of the PAF (to benefit eligible DGRs). To do this, the trustee will need to develop and maintain a **written investment strategy** which addresses the following:

- Key objectives
- Potential risks; and
- Investment methods.

The investment strategy and portfolio must be reviewed annually.

The trust may employ an external investment manager to advise on and execute the investment strategy.

The trustee must adopt the 'Prudent Person Rule'. In general terms, when exercising investment powers, prudent investment requires trustees to be mindful of several considerations. These include:

- The purposes of the trust, and the needs and circumstances of the beneficiaries;
- The desirability of diversifying trust investments;

- The nature and risk associated with existing trust investments and other trust property;
- The need to maintain the real value of the capital or income of the trust;
- The risk of capital loss or depreciation, and the potential for capital appreciation;
- The likely income return and its timing; and
- The length of a proposed investment, and the overall probable duration of the trust.

The nature and extent of the prudent person regime and trustee investment differs in each State. Generally, the rules allow trustees of new and existing trusts to invest, reinvest or vary investment in any form of investment in any form of investment unless specifically forbidden under the terms of the trust.

There are some limitations to investment.

- The PAF cannot run a business;
- Investment transactions must be arm's length, and on terms favourable to the fund and which do not provide a material benefit to the founder, donors, trustee, directors, employee or associates;
- Conflicts of interest must be declared and managed;
- Collectibles cannot be purchased and any donated must be sold within 12 months;
- A PAF's ability to borrow is very limited;
- A PAF cannot give a security over fund assets other than a guarantee for the benefit of an eligible DGR;
- Any restrictions or directions in the deed, investment strategy or subsequent Court Order must be complied with.

Distributions

The trustee should consider developing and maintaining a written distribution strategy for the PAF. This will detail the expected distributions and their recipients. This is not compulsory but is a useful way for the trustee to ensure that the PAF will make its required minimum annual distributions for the financial year and for the trustee to plan ahead.

Unless agreed by the Commissioner, there is a minimum quantum that the PAF must distribute each year – currently the greater of 5% of the net value of the PAF on 30 June or \$11,000 (unless all expenses of the fund are being met from outside the fund in which case the 5% minimum applies). Distributions do not include the expenses of the PAF. The minimum annual amount is expected to increase to 6% in the near future, following [an announcement made in February 2026](#) by the Assistant Minister for Productivity, Competition, Charities and Treasury.

Future payments of multi-year commitments count as distributions in those future years. Distributions to a DGR may take the form of low or no interest loans, guarantees or below market rents. The value of the benefit to the DGR is counted as part of the PAF's distribution.

PAFs can only distribute to eligible DGRs in accordance with the purposes specified in the trust deed. It is a core responsibility of the trustee to ensure that only eligible organisations receive distributions. Trustees must ensure:

- Only 'Item 1' DGRs receive a distribution from the PAF. The vast majority of DGRs are 'Item 1' DGRs; usually these are the funds, authorities and institutions which directly engage in activities (unlike PAFs which support the activities of those funds, authorities and institutions); and
- The PAF does not distribute to 'Item 2' DGRs (such as other PAFs or Public Ancillary Funds).

A trustee can identify an organisations tax status by:

- Using the [ABN Lookup website](#);
- Using the [ACNC Register website](#); or
- Asking the organisation for an ATO DGR Endorsement Notice, which can be obtained from the ATO

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HOW ARE PAFS REGULATED?

How are PAFs regulated?

The ACNC and the ATO regulate PAFs.

All PAFs can register with the ACNC, but do not have to.

If they **do** register with the ACNC:

- Donors to the fund will be able to claim a tax deduction for all gifts / donations made to the fund;
- The fund will be income tax exempt and can claim franking credits; and
- There is no separate obligation to lodge annual information returns to the ATO – these details are included as part of the Annual Information Statement that the fund must submit to the ACNC. The ACNC then passes on relevant information to the ATO.

If they **do not** register with the ACNC:

- Donors to the fund will still be able to claim a tax deduction for all gifts / donations made to the fund, so long as the fund has been endorsed by the ATO as a DGR;
- The PAF will not be income tax exempt and will not be able to claim franking credits (i.e. it will be taxed like any other trust);
- It will need to lodge income tax returns with the ATO;
- The fund must also lodge annual information returns in paper format to the ATO; and
- Details about the fund will not be readily available to the public.

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WHAT ARE THE REPORTING REQUIREMENTS FOR A PAF?

What are the reporting requirements for a PAF?

A PAF must report on its activities each year. The type of reporting required is dependent on the size of the PAF. Required reports will be an Annual Information Statement, which must be lodged with the ACNC annually, plus an annual financial report (if required). A PAF that is a small charity only needs to lodge the Annual Information Statement, whereas medium and large charities must also provide financial reports.¹

Refer to the table below for a summary:

- Small charities are those with annual revenue under \$500,000
- Medium charities are those with annual revenue of \$500,000 or more, but under \$3 million
- Large charities are those with annual revenue of \$3 million or more.

	Small	Medium	Large
Annual Information Statement	Required	Required	Required
Annual financial report	Optional	Required	Required
Basis of accounting	Cash or accrual	Accrual	Accrual
Type of financial statement	Small charities can choose to submit a financial statement. The type of financial statement can be the same as a medium or large charity	Special purpose financial statement (if not a “reporting entity”) or General Purpose Financial Statement - Reduced/Simplified Disclosure Requirements (Tier 2) or General Purpose Financial Statement - Full (Tier 1)	
Review or audit for annual financial report	No ACNC obligation for review or audit	The ACNC requires your financial reports to be either reviewed or audited depending on the charity's governing document or grant funding agreements.	The ACNC requires your financial reports to be audited

* Unless the charity is a Basic Religious Charity or other transitional reporting arrangements apply.

¹ ACNC Charity size and financial reporting obligations

08

GOVERNANCE

Penalties

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Governance

Governance of the PAF requires the trustee to be responsible, accountable and vigilant. The trustee has a fiduciary duty to ensure that the trust is appropriately managed. Failure to do so can result in penalties or other legal consequences.

LIABILITY

The governing rules of a PAF trust must prohibit the fund from indemnifying the trustee, employee, officer, or agent of the trustee for a loss or liability attributable to:

- A deliberate act or omission;
- Dishonesty; and
- Gross negligence or recklessness.

PENALTIES

There are a range of penalties that can apply to the PAF for a breach of the Guidelines. The rate of these penalties will vary depending on the type of breach and can be imposed on the trustee and the directors of the corporate trustee. These penalties cannot be paid by the PAF and the PAF cannot indemnify the trustee for an act of dishonesty, negligence or deliberate breach of the trust.¹⁹

The ATO has released a guidance which sets out how penalties will be applied.²⁰

Other consequences for non-compliance include:

- Suspension / removal of trustee; and
- Loss of entitlement to endorsement – meaning that any donations made to the PAF will **not** be tax deductible and presumably it would lose access to any other tax concessions so would be taxed like any other ordinary trust.

If there is a suspected breach of the trust or a fiduciary duty, the Commissioner is also permitted to share certain PAF compliance information with the relevant State Attorneys General. This can lead to legal action to seek some form of restitution.

Please see the summary of possible penalties from the ATO for failure to comply with the Guidelines below:

¹⁹ TAA 426-120(4).

²⁰ Practice Statement: Administration of penalties for failure to comply with Ancillary Fund Guidelines (PS LA 2014/1).

Non-compliance	PAF Guidelines	Penalty Units
Failure to notify regarding change to governing rules (variations of the Deed).	Guideline 17	5 penalty units
Failure to distribute the minimum annual distribution.	Guideline 19	30 penalty units if the shortfall is greater than \$1,000
Failure to rectify shortfall in distribution	Guideline 19.5	10% of shortfall reduced by penalty under Guideline 19.4
Failure to keep proper accounts	Guideline 24	10 penalty units
Failure to provide accounts upon request by Commissioner	Guideline 25	10 penalty units
Failure to prepare financial statements	Guideline 26	10 penalty units
Failure to provide financial statements upon request by Commissioner	Guideline 27	10 penalty units
Failure to have the financial statements and compliance of the PAF audited	Guideline 28	10 penalty units
Failure to provide the audit report upon request by the Commissioner	Guideline 29	10 penalty units
Failure to prepare and maintain an investment strategy	Guideline 30	10 penalty units
Failure to implement the investment strategy	Guideline 31	15 penalty units
Failure to document the investment strategy in a written form	Guideline 32	10 penalty units
Breach of investment limitations, including borrowing, related party transactions, and collectables	Guideline 33 - 38	30 penalty units
Carrying on a business	Guideline 40	Penalty amount equal to 25% of the net profits of the business
Uncommercial transactions	Guideline 41	30 penalty units
Providing benefits (excluding exceptions) to the trustee, founder, donor or an associate.	Guideline 42	Penalty amount equal to the amount or value of the benefit provided
Soliciting donations from the public	Guideline 45	30 penalty units
Accepting donations which total >20% of the market values its assets from entities which are not the founder or associates	Guideline 46	10 penalty units

09

WINDING UP A PAF

Winding up a PAF

If you have decided that you no longer wish to maintain your PAF, there are two main options available to you:

- You can distribute the surplus assets to DGRs (and then wind up the PAF); or
- You can apply to the Commissioner of Taxation to either:
 - » Transfer the full assets of the PAF to an existing PAF; or
 - » Transfer the full assets of the PAF to become a sub-fund of a PubAF.

If you decide you want to simply wind up the PAF and wish to distribute the assets, you must do the following:

- Have written evidence of the trustee's decision;
- Pay all liabilities and distribute all the remaining assets;
- Ensure there is an investment strategy and completed accounts, financial statements, an audit report and the annual return for the current year;
- Provide the ATO with:
 - » Advice of the PAF being wound up and the date of that occurrence;
 - » Any outstanding PAF return; and
 - » The revocation of agreement to comply with the Guidelines; and
- Cancel the ABN of the PAF.

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COMMON QUESTIONS ABOUT PAFS

Are PAFs subject to any borrowing restrictions? 35

Are there any stamp duty exemptions that apply for a transfer of property into a PAF? 35

Can a donor claim a tax deduction for the value of real property donated into a PAF? 36

Can a PAF run a business? 36

Can I stay anonymous? 37

Do PAFs have a prescribed 'expiry date'/time limit? 37

Common questions about PAFs

ARE PAFS SUBJECT TO ANY BORROWING RESTRICTIONS? IF SO, ARE THERE ANY EXCEPTIONS?

A PAF cannot borrow money except in very limited circumstances. If a PAF decides to borrow money it must meet all the following criteria:

- The borrowing of money must be to enable the trustee to make a donation that must be made under the Guidelines and the trustee would be unable to make if not for the borrowing;
- The borrowing does not exceed 90 days; and
- The borrowing would not result in borrowings exceeding 10% of market value of the PAF's assets.

If the PAF fails to meet all the borrowing restrictions it may be subject to penalties.

ARE THERE ANY STAMP DUTY EXEMPTIONS THAT APPLY FOR A TRANSFER OF PROPERTY INTO A PAF?

There is a stamp duty exemption available for the transfer of property into a PAF but it is subject to some restrictions. The PAF must demonstrate that:

- The PAF has been established for charitable purposes; and
- The property will not be used for commercial or business purposes.

A PAF is not allowed to run a business. This means that you cannot transfer any properties that are used to run or operate a business into the PAF. However, properties that are used to derive rental income to distribute are considered permissible and do not fall under the business operation restriction.

Any real property held by the PAF must be valued at least once every 3 years through a certified and independent valuer.

CAN A DONOR CLAIM A TAX DEDUCTION FOR THE VALUE OF REAL PROPERTY DONATED INTO A PAF? IF SO, WHAT IS THE METHOD OF DETERMINING THE VALUE OF THE DONATION?

A donor can donate real property to a PAF and claim a tax deduction if:

- The property was purchased within 12 months of the donation; or
- The property is valued over \$5,000.

If the property was not purchased, or in other words it was not acquired through the sale for money or some other form of payment, then the donor may not be able to claim under the first gift type. For example, property that the donor received as a gift, won or inherited is not considered 'purchased property' and is not tax deductible under the first gift type.

If the property is valued by the ATO at more than \$5,000 then the donor may be able to claim a tax deduction. This valuation must be done by the ATO for the purpose of determining the applicable tax deduction. More information about obtaining an ATO valuation for donations can be found on the ATO website.

We recommend that the donor obtain specific advice from a tax accountant to ensure that the donation is correctly recorded, and the deduction is appropriately claimed.

CAN A PAF RUN A BUSINESS?

A PAF is **prohibited** from 'carrying on a business. Under the PAF Guidelines, the trustee of a PAF must ensure that the PAF does not carry on a business but if the PAF has passive income activities this does not necessarily mean that the fund is carrying on a business.²¹ For example, if the PAF holds or deals with investments like shares or rental properties for the purpose of deriving income to be distributed to eligible DGRs, then it will not contravene the restriction.

If a PAF was operating as a trading entity or was found by the ATO to be carrying on a business in the circumstances, it may be subject to penalties.

²¹ PAF Guidelines, s 21(11).

CAN I STAY ANONYMOUS?

This is an issue that seems to weigh heavily on some philanthropists who want to do good, but don't want to go public or be the subject of unsolicited requests for donations.

There are specific exemptions regarding details that are required to be entered on the (otherwise public) ACNC Register. It is possible to request that the ACNC withhold certain details for PAFs, including: ²¹

- Name and ABN of the PAF;
- Contact details of the PAF (including address for service);
- Governing rules;
- Name of responsible person / entity;
- Information in Annual Information Statement; and
- Information in financial report, audit, or review report.

In our experience, the ACNC is sympathetic to founders and directors of PAF trustee companies wanting to withhold their personal information from the ACNC Register. However, it is difficult to obtain approval to have many of these details withheld. This means that most information about a PAF registered with the ACNC will be publicly available.

DO PAFS HAVE A PRESCRIBED 'EXPIRY DATE' / TIME LIMIT (ALSO KNOWN AS A 'PERPETUITY DATE' AND 'VESTING DATE')?

Most trusts don't last forever and have an 'expiry date', where the trust must 'die' and be wound up. A PAF will be subject to this expiry date if it has been established in all states in Australia, excluding South Australia.

If the PAF is established in South Australia, it is not subject to a mandatory expiry date - unless this is specifically included in the trust deed. However, if the PAF holds assets that are located in other states (like property), then it may still be subject to that expiry date.

The trust deed of the PAF will outline when the trust vests and under what conditions. You may wish to nominate certain objectives or events which would cause the trust to be wound up.

11

IS A PAF A GOOD
OPTION FOR YOU, YOUR
FAMILY, CHOSEN CAUSE
OR CLIENTS?

Is a PAF a good option for you, your family, chosen cause or clients?

A PAF may be a good idea if:

- You wish to set up a system of giving that extends past your death and allows for controlled, flexible giving.
- You want a structure that involves your family or children in your giving.
- You wish to capitalise on the tax deduction opportunities available through a PAF.
- You would like to devote considerable amounts of time and or money to a charity into the future.
- You don't want to start a charity or participate in services or activities personally. You primarily just want to provide financial support.

12

OVERVIEW OF A PAF

Overview of a PAF

Feature/Terms	Private Ancillary Fund
Overall purpose	To hold and distribute property for the sole purpose of advancing charitable purposes.
Regulations	See attached Schedule: Legal Framework
Trustee	Corporate with at least 1 responsible person director who cannot be: <ul style="list-style-type: none"> • The founder; • A donor that has contributed more than \$10,000; or • An associate of the above. ²²
Location	Established and operated only in Australia ²³
Source of Contributions	<ul style="list-style-type: none"> • Must not solicit donations from the public. ²⁴ • Must be a close relationship between those who establish the fund and those who donate to it. ²⁵ • In any one financial year, fund must not accept donations totalling more than 20% of market value of assets from entities other than: <ul style="list-style-type: none"> » The founder; » Associates of the founder; » Employees of the founder; or • The deceased estate of any of the above. ²⁶
Beneficiaries	Can only make distributions to 'Item 1' Deductible Gift Recipients. ²⁷
Minimum Annual Distribution	<p>Currently 5% of market value of the fund's net assets (as at end of previous financial year)*</p> <p>OR</p> <p>\$11,000 (or the remainder of the fund). ²⁸</p> <p>No distribution is required in the year of establishment of the Fund. ²⁹</p> <p>* This rate will likely increase to 6%, pending formalisation of proposed changes.</p>
Distributions and Investments	<p>Trustee's power is limited as follows:</p> <ul style="list-style-type: none"> • Cannot borrow money or maintain an existing borrowing of money (subject to limited exceptions). ³⁰ • Investments must be made and maintained on arm's length basis. ³¹ • Must not give security over, or in relation to, an asset of the Fund. ³²

²² PAF Guidelines 2019 12; for further explanation of the meaning of 'responsible person' see paragraphs 19 to 25 below.

²³ PAF Guidelines 2019, 11.

²⁴ PAF Guidelines 2019 24.

²⁵ PAF Guidelines 2019 24.

²⁶ PAF Guidelines 2019 24(2).

²⁷ Income Tax Assessment Act 1997 (Cth) s 30-15.

²⁸ PAF Guidelines 2019 15; to understand how this works in practice, see Annexure A.

²⁹ PAF Guidelines 2019 15(3).

³⁰ PAF Guidelines 2019, 21(1)-(3).

³¹ PAF Guidelines 2019, 21(4).

³² PAF Guidelines 2019, 21(5)-(6).

Feature/Terms	Private Ancillary Fund
	<ul style="list-style-type: none"> • Must not acquire asset (except by way of gift) from: <ul style="list-style-type: none"> » Founder; » Donor; » Trustee; or » Director, officer, agent, member or employee of above entities, unless by way of arm's length commercial basis, and on terms more favourable to fund than that expected at arm's length. ³³ • Must not make a loan or provide any other kind of financial assistance to: <ul style="list-style-type: none"> » Founder; » Donor; » Trustee; or » Director, officer, agent, member or employee of above entities, unless by way of arm's length commercial basis, and on terms more favourable to fund than that expected at arm's length. ³⁴ • Must not acquire asset if it is capable of being a 'collectable' (e.g. artwork, jewellery, ancient manuscripts etc). ³⁵ • Must not carry on a business (subject to limited exceptions). ³⁶
Records, Financial Statements & Reporting	<ul style="list-style-type: none"> • Must prepare and maintain current investment strategy that complies with requirements of the Guidelines. ³⁷ • Must issue a receipt for all gifts received, including name & ABN of fund, name of donor and confirmation that contribution is a gift. ³⁸ • Must: <ul style="list-style-type: none"> » Estimate market value of assets annually (except for land – once every 3 years); and » Report that estimation to ATO annually. ³⁹ • Must prepare financial statements each financial year in accordance with accounting standards. ⁴⁰ • Must make financial statements available to ATO on request (unless already provided to ACNC). ⁴¹ • Must report annually either: <ul style="list-style-type: none"> » If registered with ACNC: by lodging Annual Information Statement by 31 March each year; or » If not registered with ACNC: by lodging Annual Information Return in paper format to ATO by 28 February each year. • Must notify ATO or ACNC of any changes to Governing Rules within set timeframes. ⁴²
Audit	<p>Annual accounts must be:</p> <ul style="list-style-type: none"> • Audited if either revenue or assets over \$1 million for financial year; or • Reviewed or audited if both revenue and assets under \$1 million. ⁴³

³³ PAF Guidelines 2019 21(7).

³⁴ PAF Guidelines 2019 21(7).

³⁵ PAF Guidelines 2019 21(10); Income Tax Assessment Act 1997 (Cth) s 108-10.

³⁶ PAF Guidelines 2019 21(11).

³⁷ PubAF / PAF Guidelines 30.

³⁸ PubAF / PAF Guidelines 46.

³⁹ PubAF / PAF Guidelines 20-23.

⁴⁰ PubAF / PAF Guidelines 26.

⁴¹ PubAF / PAF Guidelines 27.

⁴² PubAF / PAF Guidelines 17; ACNC Act 2012 (Cth) Division 65.

⁴³ PAF Guidelines 28 PubAF Guidelines 28.

Feature/Terms	Private Ancillary Fund
Winding up / Vesting	Surplus assets must be distributed to Item 1 Deductible Gift Recipient (unless Commissioner approves otherwise). ⁴⁴
Tax Position	<ul style="list-style-type: none"> • Donations to the Fund can be claimed as a tax deduction by the donor. • If registered with the ACNC: <ul style="list-style-type: none"> » Income Tax Exempt (incl. CGT); and » Able to claim franking credits.

⁴⁴ PubAF Guidelines 49; PAF Guidelines 50.

13

THE TEAM THAT CAN HELP

The team that can help.

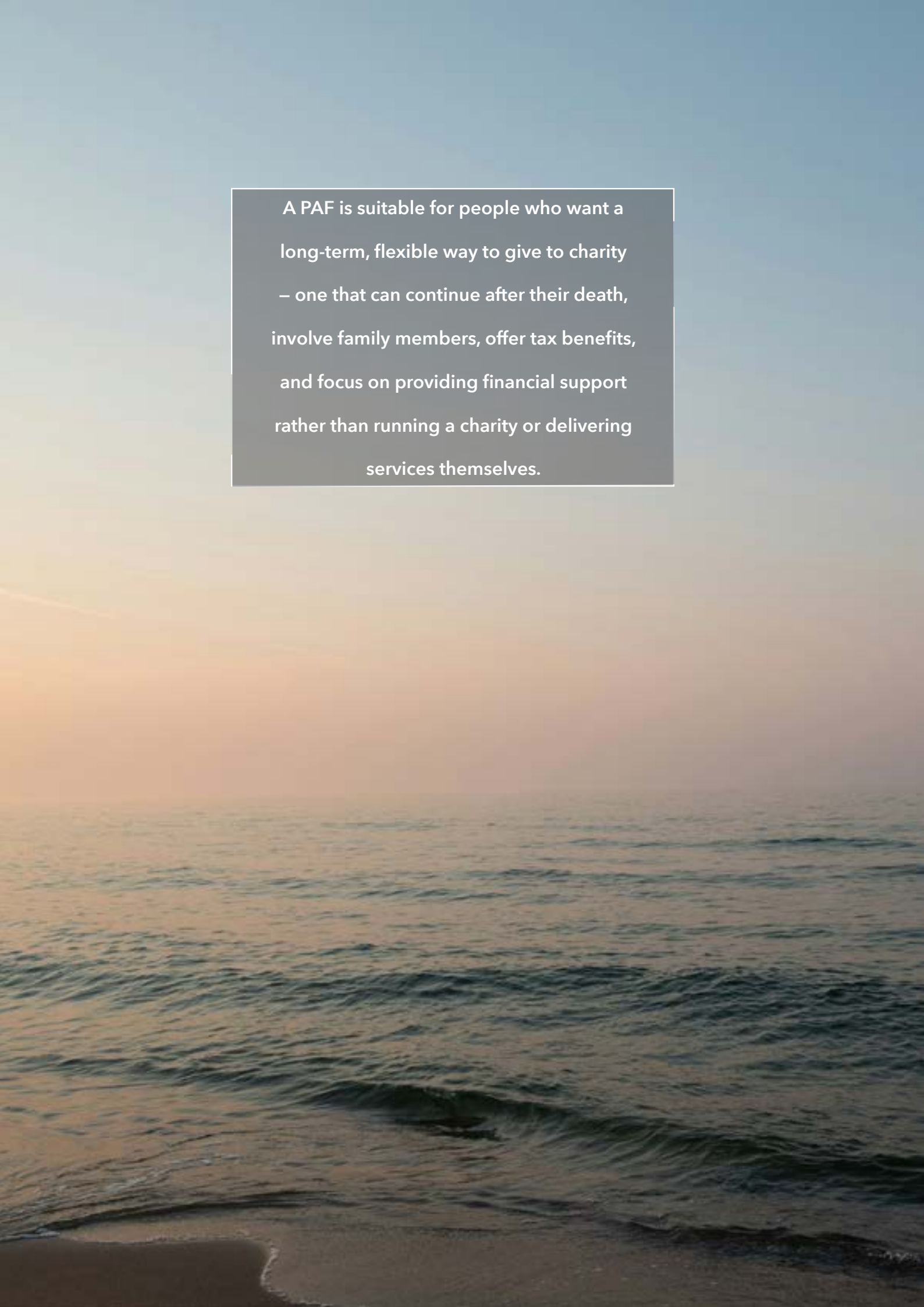
We can offer several services in this space, including:

- Advising on the options available when structuring your affairs to support charitable causes, including PAFs;
- Establishing structures that include PAFs - we not only provide a comprehensive trust deed but also a trust register / minute book with all the resolutions that you need to get started;
- Initial and ongoing advice to trustees of PAFs about their obligations (this includes trustees that have been appointed as the nominated 'responsible person');
- Assisting with compliance issues, such as responding to audit or penalties issued by ATO;
- Acting as 'responsible persons' for particular PAFs;
- Documenting transactions between PAFs and third parties that are compliant with the Guidelines (e.g. loan arrangements, employment agreements, deeds of gift); and
- Assisting in structuring donations and appropriate claiming of deductions (for e.g. a family trust may not have Unpaid Present Entitlements or UPEs on its books in the name of the Fund. An actual donation must pass from the family trust to the Fund.)

SCHEDULES

Legal Framework	48
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Responsible person	50
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A serene sunset over the ocean with a dark grey text box in the upper center. The sky transitions from a pale blue at the top to a warm orange and yellow near the horizon. The ocean is dark with gentle waves, and a small portion of a sandy beach is visible at the bottom left.

A PAF is suitable for people who want a long-term, flexible way to give to charity – one that can continue after their death, involve family members, offer tax benefits, and focus on providing financial support rather than running a charity or delivering services themselves.

Schedule: Legal Framework

The key legislation affecting PAFs include:

- Private Ancillary Fund Guidelines 2022;
- Australian Charities and Not for Profit Commission Act 2012;
- Australian Charities and Not-for-profits Commission Amendment Regulation 2013:
 - » (No.1) Governance and Reporting Requirements;
 - » (No. 2) PAF privacy (this may be updated to improve administration);
- The Income Tax Assessment Acts of 1997 & 1936 and Taxation Administration Act 1953;
- The relevant State Trustee Act:
 - » 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); and
 - » Trustee Act 1907 (NT);
- Charities Act 2013 (Commonwealth definition of charity including for income tax purposes); and
- Charities (Definition of Government Entity) Instrument 2013.

The common law concepts of charity (for state trust law purposes) and fiduciary duty of a trustee also apply.

Other legislation may also impact on a PAF's operation depending on the management and range of activities including:

- Trustee company directors' compliance with the Corporations Act 2001;
- Privacy Act 1988; and
- If the PAF employs staff, compliance is required with all relevant state and federal legislation such as Fairwork, WorkCover, Superannuation law, PAYG, FBT etc.

Schedule: Responsible Person

Examples of what constitutes a responsible person are set out in the Guidelines and includes:

- School principals;
- Judges;
- Religious practitioners;
- Solicitors;
- Doctors and other professional persons;
- Mayors;
- Councillors;
- Town clerks;
- Members of Parliament;
- Members of a professional body which has a professional code of ethics and rules of conduct (e.g. Institute of Chartered Accountants, State Law Societies, Medical Registration Boards);
- Individuals that have received formal recognition from the government for their services to the community (e.g. an Order of Australia); and
- Individuals before whom a statutory declaration may be made.⁴⁵

⁴⁵ PubAF / PAF Guidelines 14.2.



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