

EXPLANATORY STATEMENT

Issued by authority of the Assistant Minister for Finance, Charities and Electoral Matters

Taxation Administration Act 1953

Taxation Administration (Coronavirus Economic Response Package—Ancillary Funds) Amendment Guidelines 2020

Sections 426-103 and 426-110 in Schedule 1 to the *Taxation Administration Act 1953* (the Act) provide that the Minister must make guidelines setting out rules for private ancillary funds, public ancillary funds and their trustees that must be complied with in order for the funds to become or remain endorsed as deductible gift recipients.

The purpose of the *Taxation Administration (Coronavirus Economic Response Package—Ancillary Funds) Amendment Guidelines 2020* (the Amending Instrument) is to amend the *Public Ancillary Fund Guidelines 2011* (PUAF Guidelines) and the *Taxation Administration (Private Ancillary Fund) Guidelines 2019* (PAF Guidelines) (collectively, the Guidelines) to support giving by these funds in the 2019-20 and 2020-21 financial years in response to the effects of the coronavirus known as COVID-19 (the Coronavirus).

Public ancillary funds and private ancillary funds are types of ancillary trust fund that are eligible to be endorsed as deductible gift recipients. The funds do not directly engage in charitable activities but instead provide financial support for other deductible gift recipients to engage in those activities.

The purpose of the Guidelines is to set minimum standards for the governance and conduct of public and private ancillary funds and their trustees. The Guidelines aim to ensure that private ancillary funds and public ancillary funds respectively are properly accountable and act in the manner expected of an entity holding philanthropic funds for a broad public benefit.

Among other things the Guidelines require public and private ancillary funds to distribute an amount that is at least equal to 4 or 5 per cent, respectively, of the market value of the net assets of the fund – the minimum annual distribution rate.

The amendments would encourage additional giving by these funds in 2019-20 and 2020-21 financial years. It would do so by provide that funds that make donations that sufficiently exceed the minimum required distributions under the Guidelines for the 2019-20 and 2020-21 financial years to benefit from a reduced minimum annual distribution rate in the 2021-22 financial year and potentially later financial years.

Further explanation of details of the Amending Instrument are set out in Attachment A.

The Act does not specify any conditions that need to be met before the power to make the Amending Instrument may be exercised.

The Amending Instrument commenced on the day after the instrument was registered on the Federal Register of Legislation.

Consultation was undertaken on the draft amendments with the Australian Taxation Office. Further public consultation was not undertaken as the change was minor, wholly optional and beneficial for funds and urgent, in order that funds be able to provide additional support for charitable activities as soon as possible in light of the ongoing economic effects of the coronavirus.

The Amending Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

A Statement of Compatibility with Human Rights is at [Attachment B](#).

Details of the *Taxation Administration (Coronavirus Economic Response Package—Ancillary Funds) Amendment Guidelines 2020*

Section 1 – Name of the Instrument

This section provides that the name of the Instrument is the *Taxation Administration (Coronavirus Economic Response Package—Ancillary Funds) Amendment Guidelines 2020* (the Amending Instrument).

Section 2 – Commencement

The Amending Instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

The Amending Instrument is made under the *Taxation Administration Act 1953* (the Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument will be amended or repealed as set out in the applicable items in the Schedule, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments to the *Public Ancillary Fund Guidelines 2011*

Schedule 1 to the Amending Instrument inserts a new guideline, guideline 57, in the *Public Ancillary Fund Guidelines 2011* (PUAF Guidelines).

This guideline provides the minimum annual distribution rate for a public ancillary fund in the 2021-22 financial year and certain later financial years is reduced from 4 per cent to 3 per cent if the distributions by the fund in the 2019-20 and 2020-21 financial years exceed the minimum annual distribution rate for those years by at least 4 percentage points, as determined using the method statement set out in guideline 57.

The method statement in guideline 57 provides that the amount by which a fund exceeds its annual minimum distribution for the 2019-20 and 2020-21 financial years (the excess) is determined by, broadly, first determining the proportion of the capital of the fund actually distributed in each of 2019-20 and 2020-21, adding these amounts together and then subtracting 8 (representing the combined minimum distribution rate for each year) from the total. The excess is the resulting amount. However, if the amount would be less than zero it is instead zero.

The reduction to the minimum distribution rate only applies in eligible years.

The 2021-22 and 2022-23 financial years are eligible years for the reduction for all funds to which the reduction applies.

Whether a subsequent year is an eligible year is determined based on the amount of the excess worked out using the method statement set out in guideline 57 of the PUAF Guidelines. A fund is entitled to a further subsequent year for each amount of 2 by which the excess exceeds four. Expressed differently, a subsequent year is an eligible year if the total of the number of prior eligible years plus the current year does not exceed half the amount of the excess.

For example, a fund that made distributions in the 2019-20 and 2020-21 financial years that exceeded the required amount by a total of 7 percentage points would be entitled to a reduction in the minimum annual distribution rate to 3 per cent for 2021-22 and 2022-23 automatically. It would also be entitled to a reduction in the maximum annual distribution rate for 2023-24 but would not be entitled to reductions in any subsequent financial year as the amount of the excess – 7 – exceeds 4 by an amount of 2 only once.

In effect the new guidelines entitle eligible funds to a total reduction in the proportion of the capital of the fund they must distribute in later years equal to around half the amount of their additional donations in 2019-20 and 2020-21 as a proportion of the capital of the fund in those years, rounded down. This will assist public ancillary funds that may wish to make additional contributions in the context of the Coronavirus but may be concerned about the impact on their longer-term philanthropic strategy.

Schedule 1 – Amendments to the *Taxation Administration (Private Ancillary Fund) Guidelines 2019*

Schedule 1 to the Amending Instrument also inserts a new section, section 31, in the *Taxation Administration (Private Ancillary Fund) Guidelines 2019* (PAF Guidelines).

This section provides that the minimum annual distribution rate for a private ancillary fund in the 2021-22 financial year and later financial years is reduced from 5 per cent to 4 per cent if the distributions by the fund in the 2019-20 and 2020-21 financial years exceed the minimum annual distribution rate for those years by at least 4 percentage points, as determined using the method statement set out in section 31.

The method statement in section 31 provides that the amount by which a fund exceeds its annual minimum distribution for the 2019-20 and 2020-21 financial years (the excess) is determined by, broadly, first determining the proportion of the capital of the fund actually distributed in each of 2019-20 and 2020-21, adding these amounts together and then subtracting 10 (representing the combined minimum distribution rate for each year) from the total. The excess is the resulting amount. However, if the amount would be less than zero it is instead zero.

The reduction to the minimum distribution rate only applies in eligible years.

The 2021-22 and 2022-23 financial years are eligible years for the reduction for all funds to which the reduction applies.

Whether a subsequent year is an eligible year is determined based on the amount of the excess worked using the method statement set out in section 31 of the PAF Guidelines. A fund is entitled to a further subsequent year for each amount of 2 by which the excess exceeds four. Expressed differently, a subsequent year is an eligible

year if the total of the number of prior eligible years plus the current year does not exceed half the amount of the excess.

For example, a fund that made distributions in the 2019-20 and 2020-21 financial years that exceeded the required amount by a total of 7 percentage points would be entitled to a reduction in the minimum annual distribution rate to 4 per cent for 2021-22 and 2022-23 automatically. It would also be entitled to a reduction in the maximum annual distribution rate for 2023-24 but would not be entitled to reductions in any subsequent financial year as the amount of the excess – 7 – exceeds four by an amount of 2 only once.

In effect the new section entitles eligible funds to a total reduction in the proportion of the capital of the fund they must distribute in later years equal to around half the proportionate amount of their additional donations in 2019-20 and 2020-21, rounded down. This will assist private ancillary funds that may wish to make additional contributions in the context of the Coronavirus but may be concerned about the impact on their longer-term philanthropic strategy.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Taxation Administration (Coronavirus Economic Response Package—Ancillary Funds) Amendment Guidelines 2020

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of *Taxation Administration (Coronavirus Economic Response Package—Ancillary Funds) Amendment Guidelines 2020* is to amend the *Taxation Administration (Private Ancillary Fund) Guidelines 2019* (PAF Guidelines) and the *Public Ancillary Fund Guidelines 2011* (PUAF Guidelines) (collectively, the Guidelines) to support giving by these funds in the 2019-20 and 2020-21 financial years in response to the effects of the coronavirus known as COVID-19 (the coronavirus). The amendments achieve this by allowing donations made in this period that are in excess of the minimum required distributions under the Guidelines to reduce the minimum required contribution in the 2021-22 financial year and potentially later financial years.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms because it varies rules for specific types of philanthropic funds rather than affecting the rights or freedoms of individuals.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.