



# Charitable foundation and private ancillary fund management

First actions for family appointees

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**Y**ou have just established a charitable foundation or been appointed as a director of a newly registered private ancillary fund (PAF). After months—perhaps years—of planning, finally the foundation:

- is registered with the Australian Charities and Not-for-profits Commission (ACNC)
- has been approved by the Australian Taxation Office (ATO)
- is ready to start making a meaningful impact on the community and to carry on the family legacy.

Now, all that needs to be done is to transfer some assets and start distributing to worthy charities, right? Well, yes, but to do that effectively, you need to take some simple steps right at the beginning to set your foundation up for success. Here is a list of the first actions you should carry out as a new director of a PAF:

1. Establish a record-keeping system.
2. Know your duties.
3. Schedule a directors' meeting.
4. Establish a bank account.

## Establish a record-keeping system

It is important that all directors can access any documents nec-

essary to administer the fund. The best way to ensure that information is accessible is to establish a record-keeping deposit or database. This could be physical hardcopy documents and/or electronic records.

At a minimum, this deposit should contain the items outlined in the following discussion.

### Copies of all governing documents.

This includes a full copy of the PAF's trust deed, the constitution of the trustee company and any materials provided by the ACNC or ATO upon registration. It is also recommended that you keep a current copy of the *Taxation Administration (Private Ancillary Fund) Guidelines 2019* (PAF Guidelines) handy for future reference.

### Contact information of all directors of the trustee company

Keep a spreadsheet with the names, addresses, and contact information for each director and regularly update it.

### Investment strategy document(s)

This includes any documents that evidence an investment strategy is in place. A PAF must maintain a written investment strategy on an ongoing basis to retain its registration.

**Director/trustee resolutions.**

Collect all agendas, meeting minutes and resolutions in one file so that directors can refer to them when making decisions and dealing with external parties (for example, the bank, ACNC).

**Grant agreement/receipt templates.**

This includes editable documents that can be used as the basis for recording the specific details of funds that have been donated into the PAF and the basis on which funds that have been distributed out of the PAF. It is important that these templates comply with any specific requirements set down by the PAF Guidelines and the ATO.

**Records of financial transactions and ownership.**

This includes any bank statements, copies of donation receipts, grant terms (that is, the terms on which the PAF has made grants to particular charities), ownership records of assets held by the PAF and any other materials related to the financial activities of the fund.

**Financial reports**

While the specific reporting and audit requirements of your PAF will depend on the value of the fund's assets from year to year, you want to be confident that you have established a working system for having these documents in order and readily accessible when that time comes.

**Know your duties**

As a director of the PAF's trustee company, you have taken on a number of responsibilities (whether you realise it or not). You must have at least a basic understanding of *where* those duties come from and *what* they are. At a minimum, you should be familiar with the following sources of responsibility.

**Trustee company constitution**

Your relationship with the PAF is as a *director of the trustee company*. The trustee company will have its own constitution which sets out the rules about how the company is to operate. The constitution will contain specific rules that govern your behaviour as a director.

**PAF trust deed.**

The trust deed sets out the rules that the trustee company must abide by when managing a PAF. The trust deed will include rules that are mandatory for all PAFs and must be complied with to maintain your charity registration. The board of the trustee company must have regard to these rules when making any decisions relating to the PAF.

**ACNC Governance Standards**

By registering with the ACNC, you and the other directors must abide by the following six key Governance Standards when managing a PAF:

1. Purposes and not-for-profit nature

2. Accountability to members

3. Compliance with Australian laws

4. Suitability of Responsible People

5. Duties of Responsible People

6. Maintaining and enhancing public trust and confidence in the Australian not-for-profit sector.

You should become familiar with these ACNC standards and discuss with the other directors what you need to put in place to ensure everyone abides by them.

**PAF Guidelines**

These are the mandatory requirements that the PAF must comply with to maintain its registration as a private ancillary fund and therefore access charity tax concessions and receive tax-deductible donations from donors.

While many of these rules will be written into the PAF's trust deed, some may not be, so you need to work with the other directors to put strong systems in place and remain compliant with those rules.

There really is no shortcut to this action item of knowing your duties, and you are personally responsible for seeing it through. It is recommended that *each director*:

- obtains a copy of each of the aforementioned documents
- reads through them
- takes notes of anything they do not understand or are unsure about
- discusses these items at the first directors' meeting
- agrees on a strategy to resolve these items. This could include seeking professional advice, appointing one director to undertake further research, and deciding on future agenda items to discuss further.

**Schedule a directors' meeting**

It is recommended that *within the first month of establishing the PAF, or being appointed as a director charged with managing a PAF*, you should convene a meeting with all of the other directors. This meeting is a good opportunity to agree on the practicalities of operating the PAF and ensuring you have strong compliance systems in place.

Here are some suggested agenda items and key questions for that first meeting.

**Record-keeping system**

- Where and how are records being kept?
- Who will manage the records on an ongoing basis?
- How will directors go about accessing records on an ongoing basis?
- Are all the directors comfortable with the system?

**Board composition**

- Have any directors been appointed/resigned since the last meeting?
- Does at least one of the board members qualify as the "responsible person" as required by the PAF Guidelines?
- If not, how will the directors go about addressing this requirement?



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Andrew is the principal of Andreyev Lawyers. He helps business owners, investors and wealthy families build successful businesses and enduring wealth. Well known for his expertise in business and investment structures, he is a trusted adviser to several family offices and acts as responsible person on half a dozen private ancillary fund boards.



### The quote

*It is important that all directors can access any documents necessary to administer the fund.*

#### Director responsibilities

- Have all of the directors read through each of the documents that set out their responsibilities in managing the PAF?
- Is anyone unclear on their duties?
- What strategy will the board adopt to resolve these issues?
- Is there a need to seek specific professional advice?

#### Meeting schedule

- How often will the directors meet throughout the year?
- Who will be primarily responsible for convening and coordinating those meetings?
- What items will form part of the meeting agenda?

#### Bank account

- Have the directors passed a resolution to establish a bank account?
- Which bank?
- What operating authorities are in place?

#### Investment strategy

- Has the PAF adopted a written investment strategy?
- Does it need updating/review? How will the directors go about implementing the strategy?
- Is there a need to seek professional advice?

#### Valuations and auditing

- Has the board selected appropriate professionals to assist with complying with the valuation and auditing requirements applicable to the PAF?
- What information will those professionals need to do their job and when will they need it?
- Who will be primarily responsible for engaging with those professionals and providing them with that information?

#### Annual distributions

- How will distributions from the PAF be managed? For example, will the PAF make a series of small grants throughout the year or form a long-term partnership with just one charity?
- Will any conditions attach to grants that are made to charities? For example, will the PAF require the charity to report back on key outcomes achieved?

#### ACNC and ATO reporting

- Who will be primarily responsible for maintaining the PAF's details through the ACNC Charity Portal?
- When does the PAF need to submit its Annual Information Statement?
- Who will be responsible for collating and submitting that information?

#### Establish a bank account

To operate effectively, your PAF will need to establish a bank account. This should be done by reference to the

PAF's trust deed, investment strategy and any specific resolutions passed by the trustee company concerning the establishment and operation of bank account. You may also wish to consult any financial adviser the PAF has engaged.

When establishing the bank account, it is important to remember that your PAF is a *trust*, and the bank account must be established as such. This means that you will need to provide the bank with:

- the PAF's Australian Business Number (ABN)
- a copy of the PAF's trust deed
- details of the trustee company (including name, Australian Company Number (ACN), personal details and identification documents of the directors and a copy of its constitution).

The trustee company is only empowered to operate the bank account in accordance with the terms of the PAF's trust deed. It is *not* entitled to hold the PAF's assets outright in a company bank account.

#### Final thoughts

Being a part of managing a private charitable foundation can be a rewarding experience. It does not need to be weighed down by an administrative burden. Legal guidance can help you to stay on top of the practicalities of running a PAF, leaving you to focus on your key objective—making a strong and lasting positive impact on the community. **FS**