

UNIVERSITY OF TECHNOLOGY, SYDNEY  
AUSTRALIA

---

**Trustee Companies:  
Their Role in Australian  
Philanthropy**

---

By

Elizabeth Cham

*A thesis submitted in fulfilment of the requirements  
for the degree of Doctor of Philosophy*

*in the*

Business School

January 2016

# Certificate of Authorship/Originality

I, *Elizabeth Cham*, certify that the work in this thesis has not previously been submitted for a degree nor has it been submitted as part of requirements for a degree except as fully acknowledged within the text.

I also certify that the thesis has been written by me. Any help that I have received in my research work and the preparation of the thesis itself has been acknowledged. In addition, I certify that all information sources and literature used are indicated in the thesis.

Signed:

---

Date:

---

*'Compassion may itself be a substitute for justice...compassion always already signifies inequality. The Compassionate intend no justice, for justice might disrupt current power relationships.'*

Arendt, Hannah (1963, pp.74-75)

*DEDICATION*

*FOR MY FATHER*

*JOZEF CHAM*

*Who had no educational opportunity*

*&*

*For Nicholas, Leon and Sean  
who taught me much*

# Acknowledgements

This thesis would not have been written without the support and encouragement of a number of colleagues, friends and family. My foremost thanks are to my supervisor Professor Jenny Onyx. I owe her a great debt of gratitude for being the catalyst for this research. It was her foresight that started me on this scholarly journey and her encouragement was imperative to its completion. She never wavered in understanding the importance of this study.

The University of Technology, Sydney has been a great place to learn. Its culture of supporting doctoral students was reflected in the assistance I received from both academic and administrative staff. The library staff, particularly Patrick Tooth, deserve special thanks and praise for being generous with their knowledge and time. Jenny Green and Bronwen Dalton, colleagues in the Business School, were always encouraging and gave me confidence to keep going. I also want to thank Professor Suzanne Benn for her support. My mentors in philanthropy, Marigold Southey and Louise Gourlay provided the initial capacity for this academic inquiry.

My friends once again were there to help in a myriad of ways. Patricia Niivor and Matthew Ciolek helped me get started. Kate Burns taught me the value of quantitative analysis. David Richardson provided invaluable statistical expertise and Richard Dennis understood why generous dead people need an advocate. Sybil Gibb was a fabulous organiser, transcriber and photographer. Edgar Ng introduced me to the power of the computer. Nicolas Vergnaud a technical professional transformed the manuscript into an elegant document. Special thanks to Sandra Whitty for her razor sharp brain and PhD whispering.

Maud Clark always believed in the importance of this research and that it would be finished. When it all seemed too difficult, Lee Hurlston read another draft and Ruth Gamble provided wisdom and care. Christine Vizzard provided endless delicious meals and sustenance. Amy Wise extended a hand of friendship throughout.

I wish to acknowledge in particular those who were the impetus for this work – the dedicated, under-recognised people in the not-for-profit sector which underpins Australia's civil society.

My family were patient as this thesis came to dominate my life. My sister, Valdie, was always prepared to listen and understood this was also a deeply personal journey. My husband, Sebastian continued his practice of being endlessly kind, helpful and accommodating. Without his loving support there would be no thesis.

# Contents

<b>Certificate of Authorship/Originality</b>	<b>i</b>
<b>Acknowledgements</b>	<b>iv</b>
<b>Contents</b>	<b>vi</b>
<b>List of Figures</b>	<b>xii</b>
<b>List of Tables</b>	<b>xiii</b>
<b>Abstract</b>	<b>xiv</b>
<b>1 Introduction, research questions and literature review</b>	<b>1</b>
1.1 Introduction . . . . .	1
1.2 Thesis Overview . . . . .	3
1.3 Research Questions . . . . .	4
1.4 The Research Purpose . . . . .	5
1.5 The Theoretical Framework . . . . .	6
1.5.1 Hegemony (Gramsci, 1971) . . . . .	6
1.5.2 Soft Power (Nye, 2004) . . . . .	7
1.6 Literature Review . . . . .	8
1.6.1 Background to Current Scholarship and its Inhibitors . . . . .	8
1.6.2 21st Century Scholarship . . . . .	11
1.6.3 Philanthropic Foundation Scholarship in Australia . . . . .	12
1.6.4 United Kingdom Scholarship on Philanthropy . . . . .	16
1.6.5 European Scholarship on Philanthropy . . . . .	16
1.6.6 Philanthropic Foundation Scholarship in the U.S.A. . . . .	17
1.6.7 Hegemony and Philanthropic Foundations . . . . .	20
1.6.8 Social Science Scholarship and Philanthropy . . . . .	23
1.6.9 Economic Scholarly Literature . . . . .	24
1.6.10 Political Science Scholarly Literature . . . . .	25
1.6.11 Historical Scholarly Literature . . . . .	26
1.6.12 Business Scholarly Literature . . . . .	28
1.6.13 Scholarship on Accountability . . . . .	29

<b>2</b>	<b>Philanthropic Foundations:</b>	
	<b>Private Wealth For Public Purposes</b>	<b>32</b>
2.1	Definition . . . . .	32
2.2	Overview . . . . .	33
2.3	Historical Roots and Development . . . . .	34
2.4	History and Development of Australian Foundations . . . . .	35
2.5	Structural Forms of Philanthropic Trusts/Foundation in Australia .	37
2.6	Variations in Administration and Trusteeship of Australian Foundations . . . . .	39
2.6.1	Family Administrators and Trustees – The Sidney Myer Fund and the Myer Foundation . . . . .	39
2.6.2	Independent Administrators and Trusteeship – Ian Potter Foundation . . . . .	40
2.6.3	Community Foundations – The Australian Community Foundation . . . . .	41
2.6.4	Corporate Foundations – The Macquarie Foundation . . . . .	41
2.6.5	Government-Initiated Foundations – Australian Multicultural Foundation . . . . .	42
2.6.6	Non-Perpetual Foundations: ‘Give While You Live’ – The Stegley Foundation . . . . .	42
2.7	Purposes of Foundations . . . . .	44
2.8	Private Monies for Public Purposes: The Impact of Two Australian foundations . . . . .	46
2.8.1	The Myer Foundation . . . . .	47
2.8.2	The Ian Potter Foundation . . . . .	48
2.9	Unique Features of Privately Endowed Australian Philanthropic Foundations . . . . .	49
2.9.1	A Perpetual Timeline . . . . .	49
2.9.2	A Perpetual Endowment . . . . .	49
2.9.3	Self-Appointed Board of Trustees . . . . .	50
2.9.4	No Public Accountability . . . . .	50
2.10	Public Accountability and Philanthropy: The Debate . . . . .	51
2.10.1	The Public Policy Paradigm Shift in the U.S.A. . . . .	51
2.10.2	Public Accountability and Philanthropy: The Scholarly Debate . . . . .	53
2.10.3	Why foundations should have ‘Glass Pockets’ . . . . .	54
2.11	Governance and Accountability – the scholarship . . . . .	55
2.12	Governance and Philanthropy . . . . .	59
2.12.1	Philanthropy in the Accountability Governance Debate . . .	59
2.12.2	Australian Foundations – Governance and Accountability . .	60
2.13	Discussion . . . . .	61
<b>3</b>	<b>Research Methodology</b>	<b>62</b>
3.1	Epistemological Position . . . . .	62
3.1.1	Social Constructivism . . . . .	62
3.1.2	Positivism . . . . .	64
3.2	Methodological Framework . . . . .	66



3.2.1	Triangulation . . . . .	66
3.2.2	Framework Artifact . . . . .	66
3.3	Research Methodologies . . . . .	67
3.3.1	Case Study Research (Yin, 2013) . . . . .	68
3.3.2	Prosopography (Stone, 1971) . . . . .	69
3.3.3	Historical Document Analysis . . . . .	71
<b>4</b>	<b>Australian Trustee Companies: Guardians of Perpetual Philanthropic Monies</b>	<b>73</b>
4.1	Background . . . . .	73
4.2	Genesis . . . . .	74
4.2.1	Origins . . . . .	74
4.2.2	Changes . . . . .	76
4.2.3	Legal Framework . . . . .	77
4.3	Trustee Companies 2012 . . . . .	78
4.4	Trustee Companies and Philanthropy . . . . .	80
4.4.1	Philanthropy in Trustee Marketing . . . . .	82
4.4.2	Lack of portability of charitable trusts . . . . .	84
4.5	Exodus . . . . .	85
4.6	The Recipients of Trustee Companies' Grant-making . . . . .	88
4.6.1	Legal Definition of Recipients . . . . .	89
4.6.2	Australia's Charitable and Not-for-Profit Sector . . . . .	90
4.6.3	The Not-for-Profit Philosophy . . . . .	92
4.7	The Impact of Grants from Trustee Companies . . . . .	93
4.8	Discussion . . . . .	93
<b>5</b>	<b>Case Studies: Thirty-two Trust Deeds and Their Accompanying Probate Documents</b>	<b>97</b>
5.1	Introduction . . . . .	97
5.2	Data Collection . . . . .	98
5.2.1	This Research Sample . . . . .	99
5.3	Monetary Value of the Case Study Trusts and Foundations . . . . .	101
5.4	Models of Trusteeship/Trusteeship Structure of the Sample . . . . .	102
5.5	Who Established These Trusts and Foundations? . . . . .	109
5.5.1	Gender & Occupation of Benefactors . . . . .	109
5.5.2	Parental Status . . . . .	110
5.5.3	Location . . . . .	110
5.5.4	Geographic Scope . . . . .	110
5.5.5	Religion . . . . .	111
5.6	Purpose of the Trust/Foundation . . . . .	111
5.7	Trustees' Powers . . . . .	112
5.7.1	Definitions . . . . .	112
5.8	Trustee Company Changes . . . . .	115
5.9	Types of Trusteeship by Trustee Company as at 2012 . . . . .	117
5.9.1	A Unique Trusteeship – The Felton Bequest . . . . .	118
5.10	Public Information 2012 . . . . .	119
5.10.1	Published Annual Reports by Trusteeships . . . . .	119

5.11	Key Findings of the Case Studies . . . . .	123
5.12	Discussion . . . . .	123
<b>6</b>	<b>In Their Own Voice: Contemporary Australian Philanthropists Speak About Public Accountability</b>	<b>128</b>
6.1	Background to this Research . . . . .	128
6.2	What is a Prescribed Private Fund? . . . . .	130
6.3	The Impetus for the Inquiry . . . . .	131
6.3.1	Breaches of Guidelines . . . . .	132
6.3.2	Higher than Forecast Level of Tax Foregone . . . . .	132
6.3.3	Low Levels of Distribution . . . . .	133
6.4	The Inquiry . . . . .	134
6.5	Overview of Submissions . . . . .	136
6.6	The Philanthropic Voice . . . . .	136
6.6.1	The NGO Voice . . . . .	138
6.6.2	The Professional Advisers' Voice . . . . .	139
6.6.3	The Individuals' Voice . . . . .	141
6.6.4	The Union Voice . . . . .	141
6.6.5	The Trustee Company Voice . . . . .	142
6.7	Overall Response about Public Accountability . . . . .	143
6.7.1	Discouragement of Philanthropy . . . . .	144
6.7.2	Application Deluge . . . . .	144
6.7.3	Waste of Resources . . . . .	146
6.7.4	Retrospectivity Concerns . . . . .	146
6.8	The United Voice of Philanthropy and the Not-for-Profit Sector . . . . .	148
6.9	Discussion . . . . .	149
<b>7</b>	<b>Trustees and Their Trusteeship</b>	<b>151</b>
7.1	Background . . . . .	151
7.2	Trusteeship and its Responsibilities . . . . .	152
7.2.1	Trusteeship . . . . .	152
7.2.2	Responsibilities . . . . .	152
7.3	The Research Process . . . . .	153
7.3.1	Trusteeship in Foundations without Independent Trustees . . . . .	155
7.4	Appointment and Succession . . . . .	156
7.5	Relationship with Trustee Company . . . . .	160
7.6	Grant Administration . . . . .	161
7.7	Public Accountability . . . . .	162
7.8	Policy Making . . . . .	165
7.8.1	Grant-making . . . . .	168
7.9	Discussion . . . . .	170
<b>8</b>	<b>Philanthropy and Regulation: Root and Branch Reform or Busi- ness as Usual?</b>	<b>173</b>
8.1	Introduction . . . . .	173
8.2	Background to the Reforms leading to the ACNC . . . . .	174

8.3	The Australian Charities and Not-for-Profits Commission (ACNC)	177
8.3.1	The Aims of the ACNC	177
8.4	Philanthropy Regulation and the ACNC	178
8.5	Background to the CAMAC Report	180
8.5.1	The Review Process	181
8.6	Submissions to the CAMAC Inquiry	181
8.6.1	The Charitable Alliance Submission	182
8.6.2	Fees	182
8.6.3	Financial Services Council (FSC) Submission	184
8.6.3.1	Introduction	184
8.6.3.2	Existing Compliance Requirements	184
8.6.3.3	Services Provided in Context of Fees	185
8.6.3.4	Removal of Trustee – Portability	187
8.6.3.5	Response to Charitable Alliance Concerns	187
8.6.4	Philanthropy Australia Submission	189
8.6.4.1	Fees	190
8.6.4.2	Portability	190
8.7	The CAMAC Report	191
8.7.1	Report Summary	192
8.7.1.1	Lack of Information	192
8.7.1.2	Recommendation – Stewardship Audits	192
8.7.2	Trustee Fees	193
8.7.2.1	Recommendations	194
8.7.3	Portability & Governance	195
8.8	Discussion	196
<b>9</b>	<b>Findings, Discussion and Recommendations</b>	<b>199</b>
9.1	Context	199
9.2	Research Findings	200
9.2.1	Chapter 1: Introduction, research questions and literature review	200
9.2.2	Chapter 2: Philanthropic Foundations	201
9.2.3	Chapter 3: Research Methodology	201
9.2.4	Chapter 4: Australian Trustee Companies	202
9.2.5	Chapter 5: Case Studies	202
9.2.6	Chapter 6: In Their Own Voice	203
9.2.7	Chapter 7: Trustees and Their Trusteeship	203
9.2.8	Chapter 8: Philanthropy and Regulation	203
9.2.9	Overall Finding	204
9.3	Discussion	204
9.4	Policy Recommendations	207
9.5	Conclusion	207
<b>A</b>	<b>Ethics Approval</b>	<b>209</b>
A.1	Letter of Approval from Ethics Committee	209
A.2	Proforma Interview Consent Form	211

<b>B</b>	<b>Extract of Wills</b>	<b>212</b>
B.1	BASAN, Ernest - 27 September 1957 . . . . .	214
B.2	BAXTER, Hilda Gertrude - 21 March 1969 . . . . .	215
B.3	BAXTER, John Percy H. - 25 August 1949 . . . . .	216
B.4	BELL, Mary Kathleen - 28 July 1975 . . . . .	217
B.5	BROWN, Isobel Hill - 2 May 1962 . . . . .	218
B.6	BUCKLAND, William - 17 February 1961 . . . . .	219
B.7	CURRIE, Ian Rollo - 15 April 1971 . . . . .	220
B.8	DANKS, Aaron Turner - 27 August 1928 . . . . .	221
B.9	DAVIES, Edward - 5 May 1905 . . . . .	222
B.10	DODD, Ian William - 23 June 1989 . . . . .	223
B.11	EWART, Nancy - 21 April 1995 . . . . .	224
B.12	FELTON, Alfred - 20 August 1900 . . . . .	225
B.13	FLEMING, John William - 18 October 1973 . . . . .	226
B.14	HECHT, Hans Henri - 17 March 1959 . . . . .	227
B.15	HERMAN, Ethel - 10 November 1976 . . . . .	228
B.16	HOWE, Edward John - 31 October 1975 . . . . .	229
B.17	HUTCHINGS, Blanch - 24 July 1958 . . . . .	230
B.18	IRWIN, Enid Campbell - 10 August 1994 . . . . .	231
B.19	KNELL, Hope - 10 March 1978 . . . . .	232
B.20	LASCELLES, Walter George - 2 March 1990 . . . . .	233
B.21	LAWRENCE, Margaret - 17 September 2002 . . . . .	234
B.22	McGAUREN, Rose Lucy - 4 April 1974 . . . . .	235
B.23	MYER, Elkon Baevski - 28 October 1937 . . . . .	236
B.24	OGG, Charles - 30 June 1940 . . . . .	237
B.25	PIPKORN, Percival - 12 March 1958 . . . . .	238
B.26	QUAIL, Cecil Gordon - 18 September 1990 . . . . .	239
B.27	REID, Irene Emma - 8 September 1972 . . . . .	240
B.28	SCOTT, Daniel - 10 November 1954 . . . . .	241
B.29	TENNANT, Edith - 2 September 2000 . . . . .	242
B.30	WARDELL, Teresa - 28 September 1983 . . . . .	243
B.31	WHITE, Anna Maria - 28 May 1938 . . . . .	244
B.32	WILLIAMSON, Hugh - 4 November 1985 . . . . .	245
<b>C</b>	<b>Submissions to Treasury Inquiry into Improving the Integrity of Prescribed Private Funds (PPFs)</b>	<b>246</b>
C.1	List of submissions . . . . .	246
<b>D</b>	<b>Members of The Charitable Alliance</b>	<b>250</b>
D.1	The Charitable Alliance . . . . .	250
D.2	The Community Council of Australia (CCA) Board . . . . .	251
D.3	CCA Membership as at August 2012 . . . . .	252
	<b>Bibliography</b>	<b>254</b>

# List of Figures

4.1	Distribution by size of charitable trusts 2011. . . . .	82
5.1	Source: Will of A.M. White: The first page of the Will of A.M. White, 26 May 1938. . . . .	104
5.2	Trusteeship Structures for the Sample Wills . . . . .	105
5.3	Purpose of Grant-Making Charitable Trusts . . . . .	112
5.4	Discretionary Powers of Trustees (n= 32) . . . . .	113
5.5	History of Trust Administrators in this Sample . . . . .	117
5.6	Public Information about Grants Distributed . . . . .	120
5.7	Publicly Available Annual Reports . . . . .	120

# List of Tables

2.1	Structural Forms of Philanthropic Trusts / Foundations and their administrators in Australia in 2010 . . . . .	38
4.1	Foundations administered by four trustee companies - September 2012 . . . . .	82
5.1	The Case Studies – Trust and Foundations Examined . . . . .	100
5.2	Value of Estate at Probate and Estimated 2014 Value of Capital of Foundation / Trust . . . . .	103
5.3	History of Trusteeship of This Sample of Wills . . . . .	115
6.1	PPF donations, distributions, closing value and approvals 2001-2008	131
6.2	Forecast Tax Expenditure . . . . .	133
6.3	Tax Expenditure Foregone . . . . .	134

# Abstract

Trustee companies play an important role in Australia's philanthropic sector as they administer approximately 40% of all charitable trusts and foundations. Today, these companies also manage the largest amount of philanthropic monies about \$3.2 billion and annually distribute \$180-\$200 million to the community in grants. Despite this pivotal position, this thesis is the first research study of this segment of Australian philanthropy and therefore it can only be exploratory.

The focus is on only one structural form of philanthropy – organised, institutional, charitable, perpetual, grant-making trusts and foundations. This research asks the question: Should Australian philanthropic foundations be publicly accountable? This is addressed by examining the governance practices of trustee companies in their role as trustees of trusts and foundations.

The only legal obligation upon philanthropic entities in Australia is to provide an audited annual report to the Taxation Office. This information is treated as private and confidential. As a consequence, there is almost a complete lack of publicly available information on Australian philanthropy. This situation exists despite foundations receiving favoured legislative status with government policy exempting them from most forms of taxation and also providing significant taxation benefits to their founders.

This lack of empirically verifiable information means it is almost impossible to say anything meaningful about Australian philanthropy, from the most straightforward question (how many philanthropic foundations are there in Australia) to more complex ones, such as how one assesses the impact of this important sector.

Three research methodologies were employed for the thesis. Thirty-two trust deeds and probate documents were analysed using a case study method. Prosopography was used to interrogate interviews with seven relevant individuals including chairmen of foundations. Historical document analysis was used to examine government documents relating to the establishment of the Australian Charities and Not-for-Profits Commission, and for submissions to a government inquiry into the administration of charitable trusts administered by trustee companies.

The research confirmed the culture of privacy in Australian philanthropy and examined the implication of this for the not-for-profit sector for whom these philanthropic monies are intended. The notion of the need for public accountability

was not generally accepted in any of the research material examined.

The thesis concludes that the question needs to be asked: Is there a clash of purposes for an ASX- listed company between its legal role of making profits for its shareholders and its role as sole trustee or co-trustee of a perpetual charitable foundation established to benefit the community? The thesis recommends that this question and others, particularly the need for public accountability of philanthropic trusts and foundations, be examined by policy makers.