University of Technology, Sydney
Australia

Trustee Companies: Their Role in Australian Philanthropy

By

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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.

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'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

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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.

Chapter 1

Introduction, research questions and literature review

1.1 Introduction

Prior to writing this thesis, I had planned to undertake a history of philanthropy in Australia. It quickly became apparent that such a work could not be written because of the lack of publicly available information. Australia has no legal or regulatory requirement for philanthropic trusts and foundations to report publicly. A similar situation existed in the U.S.A. forty-five years ago before the Congress introduced the first regulation of private philanthropic foundations to provide the public with a comprehensive report of all their activities.

In Australia, the lack of empirically verifiable data means it is not possible to answer even the most straightforward question with any certainty (i.e. how many trusts and foundations exist today) much less more complex ones, such as how one assesses the cumulative impact of this important sector. This thesis is the first attempt to examine a critical segment of Australian philanthropy – trusts and foundations administered by trustee companies. These were selected for examination for the reasons that follow.

It appears that trustee companies administer up to 40% of the putative number of organised philanthropic bodies, making them the largest administrators of Australian philanthropic monies. Another reason for their selection is that, because of the scale of their philanthropic operation, they administer a diversity of forms of organised philanthropy.

The focus of this research is on only one structural form of philanthropy – organised, institutional, charitable, perpetual, grant-making trusts and foundations. It does not examine the prominent large philanthropic gifts made by wealthy individuals or families to cultural, medical or educational institutions. Nor does it examine other forms of philanthropy such as corporate philanthropy or the individual acts of giving, including volunteering, of Australian citizens.

Philanthropic foundations are unique entities that provide *private* wealth for *public* purposes. Currently, there is little understanding in the Australian community about such foundations beyond knowing that they 'do good'.

The key question of this thesis is: Should Australian trusts and foundations be publicly accountable? There appears to be an ambiguity at the heart of the issue of public accountability of foundations. This is the need to balance two diametrically opposed ideas: The privacy of foundations versus the public's need to know how this private wealth is being employed to enhance the common good. Despite this work being written during a period of heightened scholarly interest in this form of philanthropy in the U.S.A. and Europe, there is little reflection of this interest within the Australian academy.

The primary sources for this thesis included thirty-two trust deeds and associated probate documents that were examined using a case study method. Historical document analysis was utilised on one hundred and forty-five submissions to a Treasury Inquiry into Prescribed Private Funds, a new form of Australian philanthropy. The same analytical approach was also drawn on to explore seven years of archival material that resulted in the formation of a new independent regulator for Australian charities. The method was used again to examine the only government report into trustee companies and their administration of charitable trusts. Another primary source was seven interviews with people from charitable trusts administered by trustee companies and a representative of a company. Four of those interviewed were chairmen of their respective trusts and foundations.

As philanthropy is not a discipline in the classic sense, some even argue it is not a field of scholarship and at this stage there is no agreed theoretical framework for its study. This thesis therefore has as a methodological basis two theories that are considered apposite for such an analysis. The first is Antonio Gramsci's theory of hegemony and the second is Joseph Nye's soft power theory.

The thesis draws on the author's work in philanthropy for over two decades, initially in an administrative philanthropic grant-making capacity and subsequently as CEO of the national umbrella body for grant-makers. Each of these experiences presented very different perspectives on the practice of philanthropy. Researching and writing this thesis has provided an opportunity to view it through a scholarly lens. This thesis is the first time there has been an attempt to draw together an evidence-based report of the administration of this segment of philanthropy in Australia.

1.2 Thesis Overview

This thesis examines philanthropy in Australia. Philanthropy takes a multiplicity of forms - from individual citizens giving their time, money and/or expertise -to the more organised and structured giving of philanthropic foundations. Today these foundations operate within a variety of legal structures, in Australia these are further complicated by Australia's federal political and legal system. The most common legal structures are: independent foundations, family foundations, community foundations and operating foundations. None of these forms of phi-lanthropy are the focus of this thesis. Instead the focus of this research is only one segment of philanthropy - those grant-making philanthropic trusts and foun-dations that are administered by trustee companies where the company acts as perpetual sole trustee or co-trustee.

- *Chapter 2* analyses what an Australian philanthropic foundation is through a brief outline of its history, evolution, culture, legal framework, political philosophy, and current practice. This will be compared with the evolution and practice of foundations in the United States of America.

- *Chapter 3* describes three relevant methodologies for examining philanthropic bodies.

- *Chapter 4* provides a sketch of the emergence of trustee companies in Australia and examines their role as trustees or co-trustees of 2,000 trusts and foundations. The focus of this chapter is the administration of this philanthropy. During the period of researching this thesis a number of significant structural changes occurred within the trustee company industry. The impact of these changes on the not-for-profit sector is also examined briefly.

- *Chapter 5* analyses thirty-two trust deeds whose benefactors stipulated and appointed a trustee company as trustee of their philanthropic legacy. It examines the governance practices of trustee companies in this role.
- *Chapter 6* examines how contemporary Australian philanthropists view the issue of public accountability for their foundations and some of their views on their operation.
- *Chapter 7* considers the views on their trusteeship of a small group of trustees as given during an interview process.
- *Chapter 8* explores regulatory reforms implemented by successive Australian governments during the last decade. The most important of these was the creation of a new independent regulator, the Australian Charities and Not-for-Profits Commission (ACNC). The other principal reform considered was the review by the Corporations and Markets Advisory Committee (CAMAC).
- *Chapter 9* draws together the findings of the preceding chapters in answering the research question and makes a number of recommendations.

1.3 Research Questions

This thesis seeks to address the question: Should Australian philanthropic foundations be publicly accountable?

Inevitably subsidiary questions arose in the research process. Each question is addressed as one or more themes of a chapter in an attempt to answer the overarching research question.

- What is a philanthropic foundation and what are its unique characteristics?
- What is the role of philanthropy within the not-for-profit sector?
- Why is there no requirement for trusts and foundations to be publicly accountable in Australia?
- Why is philanthropy viewed as being a solely private activity in Australia?
- What is a trustee company and what is its philanthropic role?

- What forms of accountability exist within trustee companies in their role as trustee?
- Is there a clash of purpose between the two roles that trustee companies must fulfil?
- How do contemporary philanthropists view public accountability and do they perceive their foundations as providing private monies for public purposes?
- How do trustees view their role?

1.4 The Research Purpose

This research was undertaken in an effort to provide at least some rigorously researched data for scholars and others on Australian philanthropy.

Because there are no legal or regulatory requirements for Australian charitable trusts and foundations to report publicly, there is very little reliable quantitative data or qualitative information. What does exist is incomplete, difficult to verify and often contradictory. There is a lack of primary sources and almost no philanthropic archives. The Australian Taxation Office (ATO) provides no public statistics on philanthropy and foundation tax returns are treated as private and confidential. Australia's public policy, despite providing one of the most generous tax benefits in the world, treats philanthropic money as solely private (Krever & Kewley, 1991, p.xxi).

Consequently, there is very little scholarship on Australian philanthropy and just as little available public information on the workings of charitable trusts and foundations. Even Philanthropy Australia, the membership organisation for Australian charitable trusts and foundations, can only estimate that there are 5,000 of these (Philanthropy Australia, 2014). Leat & Lethlean (2000, p.21) remind us that this basic data is publicly available in both the U.K. and the U.S.A.

There appear to be no independent studies of the place of trustee companies in Australian philanthropy, including their administration of the charitable trusts of which they are trustees. This lack of reliable information means that it is almost impossible to say anything meaningful about Australian philanthropy (Leat, 2004b, p.98).

The need to address the information gap is emphasized by the recent rapid growth of new Australian philanthropic entities – Private Ancillary Funds (PAFs), introduced in 2001 and since renamed Prescribed Private Funds. As at June 2014, over 1,000 PAFs had been approved. Some of these are administered by trustee companies (ACPNS, 2014, p.2).

1.5 The Theoretical Framework

As philanthropic studies are not a discipline, there is no agreed theoretical framework for the study of philanthropy. This thesis examines two political theories that are pertinent to the investigation of philanthropic foundations. The first is Antonio Gramsci's theory of hegemony and the second is Joseph Nye's theory of 'soft power' because of the influence and impact upon society of trusts and foundations.

Gramsci's theory of hegemony was chosen as one theoretical framework as this is the theory utilised by critical scholars of philanthropy. Although Nye does not refer to philanthropy in his analysis of soft power, it was selected as it appears to describe the influence and power of philanthropy as illustrated throughout this thesis.

1.5.1 Hegemony (Gramsci, 1971)

Gramsci[1] rejected the Marxist view that the ruling class maintained and sustained its dominant position in society through force or threat of force. Gramsci maintained this was an inadequate explanation for how democratic capitalism operated. He developed a more finely nuanced theory of power which claimed that any political system is maintained not only by the coercive power of the State but by a second more subtle force which produces consent without coercion. Gramsci's theory of hegemony proposed that one of the main ways the 'dominant group' acts to maintain its power is by creating and maintaining an elite group of intellectuals drawn from both the dominant class and from other subordinate classes (Gramsci, 1971, p.3-20).

[1] Antonio Gramsci (1891-1937) was an Italian journalist, political theorist, Member of Parliament and one of the founders of the Italian Communist Party. He wrote his classic texts *The Prison Notebooks* (1929-1935) while incarcerated by Mussolini (Gramsci, 1971, p.xix-xcv)

Gramsci's intellectuals were a broad group of professionals beyond the academy and included journalists, teachers, doctors, lawyers, engineers, administrators and artists. The dominant group (ruling class) utilises the knowledge created and disseminated by these intellectuals to articulate a world view where unequal class rule is accepted by the subordinate classes. Without coercion, not only do subordinate classes come to accept their place in society but also the place of the dominant group; they see it as the natural order, what Gramsci calls the 'common sense' of society. Importantly, it is unremarkable and not to be challenged. For Gramsci political systems were more likely to remain stable when educated, artistic and ambitious people had interesting, meaningful and well remunerated work. If disgruntled, this group was capable of igniting political instability that could challenge the hegemony of the dominant class (Gramsci, 1971, p.12-13).

As the ideological hegemony of a particular class is never static, the dominant class constantly pushes to preserve its hegemonic position. This dynamic is referred to by Gramsci as 'passive revolution', the attempt to neutralise the revolutionary potential of the working class through reforms carried out to preserve the existing social order (Francese, 2009, pp.80-96).

1.5.2 Soft Power (Nye, 2004)

Nye developed his theory of 'soft power' in the 1980s. It is also known as 'the second face of power' and is differentiated from 'hard power' which is usually associated with the military and economic might of the State. Hard power relies on coercion, force, threats, inducements or legislation to achieve change. 'Soft power' relies on persuasion, co-operation and the capacity to attract others to do what you want them to do, or convince them of your point of view. Nye maintains that 'soft power' is more than influence, it is the power to influence opinion (Nye, 2004, pp.5-17).

According to Nye the key proponents of 'soft power' are national and international non-government organisations (NGOs), organisations that claim to act as a 'global conscience'. They have no hard power; nevertheless, their increasing capacity to influence government and business policies and practices is due to their 'soft power'. Their capacity to stand on national and international political platforms is facilitated by their ability to persuade and attract millions of followers through

digital technology (Nye, 2004, pp.90-98). Foundations, although an important part of the NGO sector, are not specifically mentioned by Nye.

Nye also presents analysis of the soft power of culture, high and popular culture, as exports that create soft power for America throughout Europe (Nye, 2004, pp.127-128).

1.6 Literature Review

1.6.1 Background to Current Scholarship and its Inhibitors

The literature on a particular form of philanthropy – the organised, institutional, perpetual grant-making philanthropic trust/foundation – is universally scant, especially prior to 2000. The reasons for this are explored below, while acknowledging they are complex and differ according to the historical, social and political context of individual countries. What does exist comes mainly out of studies of the not-for-profit sector. Inevitably this review has gleaned the scholarship on philanthropy from the latter as well as what can be found within the social sciences and business. The situation is compounded in Australia, as mentioned throughout this thesis, by the lack of any requirement for full public accountability of this country's philanthropic foundations.

Twenty years ago, Helmut K. Anheier edited a special issue of *Voluntas* on philanthropic foundations. In the Introduction he stated that 'few types of organisations have received less attention from scholars than trusts and foundations' (Anheier, 1995, p.241). This section of the literature review explores the major barriers that have prevented a greater body of scholarly work on this important aspect of society as articulated by contemporary academics (Anheier *et al.*, 2006; Fleishman, 2009; Hammack & Anheier, 2013).

The most significant scholarship on philanthropy is American. However, scholars in the U.S.A. have argued there are major inhibitors to its study there.

Katz reminds us of the relatively recent emergence of philanthropy as an academic field of study. Thirty-five years ago, there were no academic centres for philanthropy or not-for-profit studies.[2] The term 'philanthropic studies' was not

[2]The first was set up at Yale University in 1978 (Program on Non Profit Organisations).

coined until the 1980s and even today it is a term little understood in mainstream academic life in the U.S.A. or elsewhere (Katz, 1999, p.74).

Related to this is that philanthropy is not a discipline in its own right. Within the universities, the study of philanthropy can struggle to find academic recognition. Mirabella *et al.* (2007, p.124) postulate that in America non-profit scholarship does not suit the single discipline, traditional instutional structure of universities. In addition, attracting long-term funding for centres researching the non-profit sector is difficult and such centres as do exist continue to rely on 'soft', short-term, external funding. Graddy *et al.* (2011, p.26) maintain that even though there are 240 academic programs in non-profit and philanthropic studies in American universities and colleges, the field remains at an 'early stage of development', although Smith claims this 'emerging discipline' is growing exponentially at the beginning of the 21st century (Smith, 2013, p.639).

Another key reason is that philanthropy is a multi-inter-disciplinary field in which economists, sociologists, anthropologists, political scientists, historians, philosophers and even literary scholars have all shown an interest, but they rarely identify themselves as scholars of philanthropy. For example, in the disciplinary field of history, academics are interested in philanthropy only from the point of view of their 'academic perspectives in social history, economic history and history of religions' (Mirabella *et al.*, 2007, p.125). Frumkin (2006b), on the other hand, argues that attention from scholars in a multiplicity of disciplines has been a strength and has assisted understanding of philanthropy that would not have occurred if philanthropy was confined to one discipline (Frumkin, 2006b, p.x).

A reason for the lack of scholarship that is not canvassed in the literature but was suggested to the landmark U.S. Filer Commission (1977, p.1050) is that the response to scholarly criticism was so hostile and vengeful that scholars were discouraged from writing about philanthropy. This is an illustration of how 'soft power' as outlined by Nye can operate. Fleishman considers a similar possible explanation for the lack of scholarly attention – criticism may mean sacrificing future grants. He also contemplates another possibility (which is more concerning), that the academy does not perceive philanthropic foundations as relevant agents in the social change process (Fleishman, 2009, p.226).

Bernholz proposes another explanation. Her view is that academics and practitioners of philanthropy operate in separate worlds and their perceptions of what

foundations do rarely intersect. She claims both sides contribute to this misunderstanding and cites a philanthropy practitioner who maintained that 'scholars who write about foundations don't have a clue about what we do' (Bernholz, 1999, p.359).

Lagemann claims another barrier to the development of critical scholarship has been the lack of appropriate social theories that facilitate the framing of inquiry about these organisations. She maintains most social theorists developed their ideas before the creation of the modern philanthropic foundation. Equally important has been the reluctance of foundations to allow academic scrutiny; she contends they have 'discouraged scholarly writing' (Lagemann, 1999, p.ix). This represents another example of the soft power of foundations.

Schuyt hypothesises different explanations for philanthropy not existing as a topic of academic debate in Europe. The first is that the 'European welfare state paradigm' has no place for philanthropy and considers it an old fashioned, even medieval, concept with little to offer a contemporary civil and social rights debate Schuyt (2010, p.783). There is also no space for philanthropy in the major political question: What services should be provided by the State and which ones should be left to the market? The third reason is power – politicians are reluctant to forego power even to philanthropic foundations or wealthy philanthropists Schuyt (2010, p.784). This analysis suggests the Europeans understand the hegemonic power of philanthropy, as outlined by Gramsci.

In Australia two further reasons compound this paucity of scholarship on philanthropy. The first is legal and structural. As mentioned above, Australia has no legal or regulatory requirements for foundations to report publicly and only a sophisticated few do so (There may be some slow and incomplete change to this with the work of the ACNC described in Chapter 8). There is therefore very little data or information for scholars to interrogate. The second may be cultural – a culture of absolute privacy, even secrecy, permeates Australian philanthropy. This and other questions need to be explored. This ethos of tolerance of non-disclosure is widespread and has a long history here. Trustees generally regard their foundations as private entities. Therefore, historically, philanthropic foundations have been reluctant to fund studies of themselves and their granting. In part this may stem from the desire to maximise charitable beneficence, but it also reflects an assumption that philanthropic monies are private and entitled to confidentiality (see Chapter 6).

1.6.2 21st Century Scholarship

There are claims that the research landscape, at least outside Australia is changing, in part due to new perceptions within foundations and among philanthropists who are displaying a willingness to fund scholarly research and a number who are prepared to open their files for scholars to interrogate. There is also a growing number of foundations which have donated their extensive archives to professional philanthropy archive centres (`http://rockarch.org/`). This openness is not universal. In an informal poll of twelve foundations in the San Francisco Bay area, Bernholz reported the majority indicated they had no interest in opening their archives to scholars (Bernholz, 1999, p.372).

Further evidence of some change is the inclusion of two significant chapters on philanthropic foundations in an extensive collection (Harrow, 2010; Nickel & Eikenberry, 2010) that examined third sector research, published to celebrate thirty years of *Voluntas* (Taylor, 2010). Acknowledging philanthropy as a contested concept, Harrow provides a comprehensive review of comtemporary international research on philanthropy. Her analysis adopts the broad definition of philanthropy – voluntary giving, voluntary service and voluntary association – although significant consideration is given to its organised form, the perpetual, grant making, philanthropic foundation. This analysis recognises the ambiguity inherent in this form of philanthropy. It is sensitive to both the independance and autonomy of foundations and their responsibility to the public (Harrow, 2010, pp.121-133).

Nickel & Eikenberry raise important questions about the role and responsibilities of philanthropy and philanthropists when old forms of hierarchically organised government within nation states are being replaced by 'privatised' forms of governance. They argue these new porous boundaries allow a few unelected rich people to 'transcend national boundaries and citizenship' and take on responsibilities for social action once only associated with national governments (Nickel & Eikenberry, 2010, p.270).

A year later, reflecting the growing international interest in philanthropy, Harrow & Jung as editors devote an entire edition of *Public Management Review* to philanthropy. The aim of this special issue was to expand the knowledge base on philanthropy which they described as 'fragmented, at times incoherent and often non-existent' although they suggest it is emerging as a 'discipline'. This issue raises challenging questions about philanthropy as it is embraced as a legitimate

part of public policy discourse. Two of the most critical are: To whom is philanthropy accountable, and who holds philanthropy accountable? (Harrow & Jung, 2011, p.1049). While asking these important questions, there is recognition that essential features of philanthropy – its individuality and independence – must be maintained.

Another example of this rekindled interest in research on philanthropy is the emergence of the European Research Network on Philanthropy (ERNOP). This research network has grown rapidly, mirroring government and particularly European Union interest in philanthropy. Pamela Wiepking (2009) edited a volume for ERNOP that provided an overview of philanthropic research in twelve European countries. An expanded version mapping research on Giving in twenty countries is planned for publication in 2015.

1.6.3 Philanthropic Foundation Scholarship in Australia

As there are so few defined fields of philanthropy within the academy, most scholarly attention has been paid to it by not-for-profit scholars. Australia has a strong scholarly community on the not-for-profit sector whose scholarship is recognised globally. Its practitioners have a history of national and international leadership within not-for-profit studies. This is evidenced by the number of positions occupied by these academics on the boards of international associations, as editors of prestigious international journals (Onyx, 2010, pp.14-15) and as contributing authors in landmark publications (Lyons *et al.*, 1998; McGregor-Lowndes *et al.*, 2014). Australian scholarship has been central in developing critical concepts such as 'social capital' (Leonard & Onyx, 2003; Leonard *et al.*, 2004; Onyx & Leonard, 2002, 2010) and the development of 'social enterprise' (Barraket, 2008; Barraket & Collyer, 2010). Other scholars analyse the impact of government policy on the independence of the not-for-profit sector which allows it to advocate on behalf of the most vulnerable in our community (Hamilton & Maddison, 2007; Staples, 2008). Australian academics are monitoring and questioning an international trend of charities embracing 'the market model' and questioning whether their original mission will survive this process (Dalton & Butcher, 2015; Dalton & Casey, 2008; Smyth, 2014). There is also extensive scholarship on the history of volunteering

and the impact government policy has on contemporary volunteering practice (Oppenheimer, 2008; Oppenheimer & Warburton, 2014; Warburton & Oppenheimer, 2000).

Australian historians Shurlee Swain and Anne O'Brien have written extensively about the role Australian women and welfare. Swain (2002, 2005, 2007, 2013) has shown how the development and practice of philanthropy has changed depending on a range of religious and other cultural and social factors. Her scholarship sketches the development and practice of social welfare and the important role of women. She demonstrates how during the nineteenth century philanthropy presented women with one of the few roles they could legitimately occupy outside the home, within the public sphere. O'Brien (2005, 2015) traces the way the terms charity and philanthropy were used interchangeably during much of the nineteenth century. Her scholarship also reveals how our understanding of the term and practice of philanthropy has changed during the last two hundred years (O'Brien, 2008, p.18).

This scholarship is growing as there are now nine not-for-profit research centres in Australian universities, seven established during the last decade. Two new named Chairs have also been funded during the last three years at Swinburne University and the University of Melbourne (Graddy *et al.*, 2011, p.29). Despite this extensive scholarship, Lyons claims organised philanthropy, the philanthropic foundation, has been little studied in Australia (Lyons *et al.*, 2006, p.385) and in the 'absence of any systematic data', it is difficult to know how Australian philanthropy compares with that of other countries (Lyons, 2000, p.12).

Compared with the academic analysis in the U.S.A., there are very few studies of the culture, organisation or influence of philanthropy carried out by critical, dispassionate scholars. Australian research into philanthropic foundations is virtually non-existent. What has been written, often instigated by a series of anniversaries, has been largely limited to a number of recent histories of individual foundations and biographies of philanthropists. These include Liffman (2004); Poynter (2003); Sandilands (2011); Yule (2006) and a number of monographs about some Australian philanthropists (Anderson, 1989; Fabian, 2002; Merrett, 2004; Sandilands, 1999a,b, 2003, 2005, 2006; White, 2009).[3]

[3]With the exception of Anderson (1989) and White (2009), the author was commissioning editor of this monograph series; most were published by Philanthropy Australia.

One of the first attempts at documenting Australian trusts and foundations was that by Leat while a visiting scholar at Philanthropy Australia. The resultant modest monograph sketched the different forms of foundations and identified the problems facing researchers. She found the amount of data available to researchers was miniscule. Her conclusion stated that scholarship was difficult as 'even the minimum data... on which such understanding might be based does not exist...reliable data... [is] clearly urgently needed' (Leat & Lethlean, 2000, p.39).

In contrast to the paucity of academic attention to philanthropic foundations, there is considerable scholarship on Australian charitable law including trustee law (Dal Pont, 2000; Harding, 2014; McGregor-Lowndes, 1999; O'Connell, 2008, 2012; O'Connell *et al.*, 2013). Woodward (2003) examined the legal structures of not-for-profit organisations. However, recent wide-ranging literature reviews on the history of taxation and charities in Australia barely mention the taxation treatment of philanthropic foundations (Chia & O'Connell, 2011). Crimm does address the need for regulatory review of foundations in Australia. Her article outlines the weaknesses of the U.S. federal tax regulatory regime in regard to private foundations and urges Australia to adopt effective regulation 'to protect the tax base and guard against major improprieties and scandals' such as those in the U.S.A. that were the catalyst for the 1969 changes which effectively witnessed the end of self-regulation for private foundations (Crimm, 2002, p.749).

Scholarly research has been conducted on what motivates Australia's wealthy to give and how they structure their philanthropy. Some individuals within these samples have established grant-making foundations; others choose less organised methods (McDonald *et al.*, 2011; Scaife *et al.*, 2011; Smyllie *et al.*, 2011). Other studies have focused on the role financial advisers and other intermediaries play in the form of philanthropy established by wealthy individuals (Scaife *et al.*, 2012; Wymer *et al.*, 2011).

Two unpublished doctoral theses (Hooper, 2004; Smith, 2006) have some bearing on the interest of this research. Hooper's major interest was whether Australian philanthropic foundations were strategic in their giving. Many practitioners he interviewed, particularly those involved in endowed private family foundations, claimed the continuation of philanthropy as a private discretionary practice, outside the public gaze, was necessary in order for them to perform the strategic role being demanded of them (Hooper, 2004, pp.251-252).

The corporate social responsibility of trustee companies is examined by Smith (2006).The thesis is based on two major sources of information. The first was a series of interviews with senior executives of the then four large trustee companies (ANZ Trustees, Perpetual, Equity and the Trust Company of Australia) who all agreed to be interviewed and the second a diverse and vast range of marketing documents issued by the companies. Her thesis makes reference to the philanthropic trusts and foundations administered by the companies and Smith outlines the grant-making where the company is co-trustee, but does not examine the critical issue of trusteeship.

There appear to have been no independent, scholarly studies of trustee companies in their role as sole trustee or co-trustee of charitable trusts and foundations.[4]

Australia keeps its treasures well-buried and views them as private. There are no known or available diaries, no letters reflecting the experience of giving away money, of being a philanthropist. Therefore it is difficult to examine material from which to discover the patterns and groupings described by Stone (1971, p.60). Barbara Lemon maintained that the greatest challenge in writing her doctoral thesis on Australian women philanthropists from 1880-2005 (an unusually long time span for a thesis) was the lack of resources, 'relevant primary sources are sparse' (Lemon, 2008, p.20). She explained that her thesis was pieced together using snippets of information scavenged from memoirs, anthologies, directories, newspapers and probate documents. Critical, relevant primary source material has either not been kept or was often held privately and fiercely guarded. Australia has no public philanthropy archive, much less a great archival collection such as the Rockefeller Archive Center (Rose, 2007).

The fragments of Australian philanthropic scholarship contrast starkly with the comparative richness of North American research.

1.6.4 United Kingdom Scholarship on Philanthropy

There has been the same growing body of scholarly literature on and about philanthropy in the U.K. during the last fifteen years (Jung & Harrow, 2013, 2016). A

[4]I have written two articles on trustee companies for non-peer reviewed journals (Cham, 2010, 2011).

similar pattern of academic centres has been established and peer-reviewed journals operate throughout the U.K. Scholars such as Cathy Pharoah have been mapping and providing the key data on foundations for at least a decade. Supported by the Pears Foundation, Pharoah has produced the last eight consecutive years of Giving Trends by English Family Foundations (Pharoah, 2008, 2012, 2014). This report provides data that is not publicly available in Australia. Breeze & Lyoyd explores the world of the rich and why wealthy people give. Their research findings provide five major reasons why the wealthy give (Breeze & Lloyd, 2013).

This research demonstrates that the English rich appear to have similar motivations as those identified by Tracey (2001) in Australia: Belief in the Cause, Being a Catalyst for Change, Self-Actualisation, Duty and Responsibility, Relationships (Breeze & Lloyd, 2013).

There is also extensive English literature examining the culture of celebrity philanthropy. Jeffrey & Allatson explore how celebrity and branding have become entangled with contemporary philanthropic practice. Like the concept of philanthropy, celebrity philanthropy is a controversial phenomenon. They further claim that scholars generally agree that entertainment and sports celebrities based in the so-called global North, especially North America and Western Europe have become increasingly involved with a particular type of philanthropy. Jeffrey & Allatson also provide data that illustrates that there is a growing publicity given to the subjects 'celebrity and philanthropy' (Jeffrey & Allatson, 2015, pp.4-5).

1.6.5 European Scholarship on Philanthropy

Similarly, until recently, European scholars appear to have paid little attention to philanthropy. Schuyt in a study that interrogated the use of the term 'philanthropy' in English-language European journals on political science (six journals, 480 articles between2000-2008), found only one such citation. During the same period, no articles referring to philanthropy appeared in the Journal of *European Social Policy* or the *Journal of European Public Policy.* He concluded that philanthropy was not a topic of academic debate in Europe (Schuyt, 2010, p.781).

This situation is changing with new scholarship emerging from the recently established European Research Network on Philanthropy (ERNOP). These scholars acknowledge the differing complex cultural, social and political conditions that

exist in each European country and that philanthropic foundations emerge and operate within this context.[5] Schuyt hypothesizes that although not large, European scholarship is different to American as it is often more critical (Schuyt, 2010, p.776; Adam, 2004, p.5; Schuyt, 2013; Tayart de Borms, 2005). Schuyt explores a number of theoretical approaches and argues European scholarship will be richer if scholars accept the importance of a theoretical framework when examining this new emerging social phenomenon (Schuyt, 2013, pp.105-115).

1.6.6 Philanthropic Foundation Scholarship in the U.S.A.

The most significant scholarship on philanthropic foundations is American. This is not surprising as it is widely accepted that the modern philanthropic foundation originated in the U.S.A.[6] The major bibliographies on American philanthropy and the not-for-profit sector illustrate the evolutionary development in the sophistication of scholarly analysis. Although extensive, these bibliographies demonstrate that relatively few scholars were engaged in studying philanthropic foundations (Layton, 1987; Foundation Center 1994; Indiana University 1994).[7]

The bibliographies also reveal how three developments were important in facilitating current research on philanthropic foundations. The first was the establishment by a group of large foundations of an information centre on foundations that remains responsible for data collection and analysis, the Foundation Center which was opened in 1956. Equally important were the passing of the Taxation Reform Act (1969) mandating public reporting by foundations, and the opening of the Rockefeller Archive Center in 1974. Sealander claims it is 'by far the most important archive available to any serious student...of American philanthropy' (Sealander, 1997, p.x). Over 5,000 scholars have visited the Center since its opening and produced a large body of work. An analysis illustrates there is little research on the practice of institutional philanthropy, particularly scholarship examining the philosophy of grant-making or the role of trustees (Rose, 2007).

U.S. scholarship on philanthropy began in the early 20th century. Lindeman (1936), a renowned sociologist, was the first scholar to attempt an analysis of

[5] Foundations were illegal in France until 1983 and banned throughout Eastern Europe during the Cold War.

[6] Thomas Adam reminds us that even though philanthropy is identified as American, 'philanthropy is a European, not an American invention' (Adam, 2004, p.5).

[7] Layton (1987) partially annotated bibliography has 2,200 entries; Foundation Center has 9,380 items in its four volumes and Indiana University approximately 2,500 items.

American foundations. The resultant modest volume, recognised today as landmark work, provided information on one hundred foundations. Two hundred foundations refused to provide any information concerning their operation and this study was unable to answer the question: how many foundations exist in the U.S.A?

Other early works were 'in house' authorised accounts of the foundation or its founders, usually written by insiders who worked for the foundation and produced glowing portraits (Embree, 1936; Embree & Waxman, 1949; Fosdick, 1952, 1956). Examples include the two-volume history of the Russell Sage Foundation published to celebrate its fortieth anniversary (Andrews *et al.*, 1947) and Fosdick's Story of the Rockefeller Foundation (Fosdick, 1952). Neither contained any embarrassing information. Even works authored by outsiders were rarely critical or interpretative, such as the two volume biography of Andrew Carnegie (Hendrick, 1932) and John D. Rockefeller (Nevins, 1940, 1953).[8] Later historians have described these initial volumes as unimportant, offering little insight and even suggesting they may be responsible for the lack of further scholarly research (Lagemann, 1992; Nielsen, 1985; Sealander, 1997). Recent biographers (Ascoli, 2006; Chernow, 2004) maintain that the subject (usually the founder) is often missing in these early accounts.

There is some very fine scholarship on philanthropic foundations, but not a substantial academic literature. There appears to be no agreement or clarity among scholars whether there is 'vast' literature on philanthropy (Jacobs, 1999; Lagemann, 1999, p.101) or a paucity of scholarship. Wheatley (1989), in his introduction to a new edition of Raymond Fosdick's classic on the Rockefeller Foundation, claims that, since its original publication in 1952, there has been an 'explosion' of scholarship concerning the role of foundations in American history. By contrast Fleishman states that the 'culture of diffidence' within foundations and their invisibility have created a 'scholarly void...all the major works can be named and described in just a few paragraphs' (Fleishman, 2009, pp.222-225). The lack of scholarly attention is particularly puzzling given the importance of philanthropy to the not-for-profit sector. It is the venture capital for the not-for-profit sector. Paul Ylvisaker, recognized as one of the doyens of twentieth century American philanthropy, famously said, 'philanthropy is America's passing gear' (quoted in Fleishman, 2009, p.115).

[8]Critical articles were appearing in newly emerging journals such as *The World* and *McClure's* Magazine, e.g. portrait of John D. Rockefeller by Ida Tarbell (1905).

There are two main views of philanthropy that emerge from the U.S.A. literature – a positive view and another that is more critical. Sealander categorises these views as belonging to 'sworn defenders' or 'bitter enemies' of foundations (Sealander, 1997, pp.8-9). From the positive perspective, early scholars such as Bremner (1960, pp.1-18) assume and accept unquestionably that philanthropy is good, that its purpose is to promote the 'welfare, happiness and culture of mankind'. Later scholars (Fleishman, 2009; Frumkin, 2006b; Prewitt, 1999) developed a more nuanced view. Foundations were positive, even virtuous institutions; their existence is a major indicator of pluralism in a modern democracy. Others (Anheier & Daly, 2006; Anheier & Toepler, 1999; Leat, 2004b; Tayart de Borms, 2005) view foundations as providing an independent source of funding for civil society and thus counteracting the market and the state. Foundations, unlike governments that are driven by short-term electoral cycles, and business that is driven by the even shorter term need for profit and shareholder returns, can adopt a long-term perspective on society. Ideally, philanthropic monies can fund innovation, be a vehicle for redistribution and advocate policy change. Anheier *et al.* (2006) make a strong case for foundations to be creative catalysts for change.

Early scholars Karl & Katz (1981, 1987) view foundations as a positive force. They acknowledge their power in providing funding for the training of individuals who assume leadership positions in major public and private organisations and institutions. However, they do not agree with the neo-Marxist or Gramscian ideological position, and argue that hegemonic power does not adequately describe the position of foundations in American society. Despite this they acknowledge that foundations are an integral part of America's ruling class and that the narrow background of foundation trustees reinforces their elite position in the community.

Lagemann's classic study of the Carnegie Corporation concluded that the '[Carnegie] Corporation has contributed a great deal to learning and scholarship and in the process has frequently had an important if usually indirect influence upon public policy' (Lagemann, 1992, p.1). Both the Carnegie Corporation of New York and the Rockefeller Foundation were determined to expand the development of knowledge. The former developed a politics of knowledge and chose which group would become the key knowledge-producing elites. Funding went to those individuals and organisations that the foundations judged were the most able to exercise significant influence on public policy (Lagemann, 1992, pp.3-11).

> *This is a politics that has been central to our lives. It involves the creation, organisation, development and dissemination of knowledge...knowledge of various kinds became more and more essential to economic activity and to the formulation, implementation and evaluation of public policy* (Lagemann, 1992, p.3).

Both of these analyses evoke Gramsci's theory that the dominant group (ruling class) utilises the knowledge created and disseminated by 'intellectuals' to articulate a world view where unequal class rule and the place of the dominant group are accepted by the subordinate classes.

1.6.7 Hegemony and Philanthropic Foundations

Few scholars have questioned the basic assumption that philanthropy itself is unquestionably a good thing. Prior to 1980, the scholarly writings on philanthropy generally took a benign view of philanthropy and did not discuss the ongoing political role of foundations. Indeed, Colwell (1993, pp.193-195) claims foundations have always denied they play a political role.

The first indication of questioning this unalloyed beneficence of philanthropic organisations introduced notions of how they may exercise power.

Gramsci did not specifically refer to philanthropic foundations as either social or cultural institutions used by intellectuals to maintain social order as there were few in the Italy of his day (Roelofs, 2003, p.7). Gramscian critics (Arnove, 1980; Arnove & Pinede, 2007; Fisher, 1983, 1984; Roelofs, 2003, 2007) have shown how philanthropic foundations influence the reproduction and production of ideological hegemony through funding the domain of culture and ideas, particularly their focus and development of the social sciences in America and England.

Critics of philanthropy have often been dismissed as neo-Marxist and their scholarship derided as 'marginal and factually shaky' (Fleishman, 2009, p.226). Some claim philanthropic foundations are tax shelters for the rich, are elitist and benefit the wealthy rather than the poor (Odendhal, 1990). Arnove (1980) and Roelofs (2007) maintain there is little evidence for the claims foundations make that they fund programmes to address the root causes of social problems. Roelofs states that instead they fund 'ameliorative practices to maintain social and economic systems

that generate the very inequalities and injustices they wish to correct' (Roelofs, 2007, p.480).

Robert Arnove (1980) argues Antonio Gramsci's concept of hegemony is a valid and useful conceptual framework for understanding philanthropic foundations. Gramsci (1971) posited that any political system, including democracy, is maintained in two ways. The obvious way is the political power of the state which uses force and the law to control society. A more subtle 'system-maintenance' is performed by civil society, or the private realm, which produces consent without the threat of force.

Arnove & Pinede also claim that foundations are sinister, shadowy figures in a democracy, ones which create and utilise hegemonic power to maintain their own power and the existing order. Foundations do this by funding 'hegemonic' leaders, by supporting experts who then promote new fields of study such as psychology. This new branch of knowledge then scientifically proves that people are different and therefore not equal. Arnove & Pinede claim foundations also promote the Protestant work ethic as this helps to legitimate America's industrial capitalism (Arnove & Pinede, 2007, pp.389-425).

Arnove judged foundations to have a corrosive influence on democratic societies. He cites the co-operative funding by the Rockefeller Foundation and Carnegie Corporation of the American Council of Learned Societies (1919), the Social Science Research Council (1924) and the Council of Foreign Relations (1921)[9] as evidence of this 'hegemony'. Such institutions provide meeting places for journalists, intellectuals, financiers, senior business executives of multinational corporations and senior foundation staff and trustees – Gramsci 'intellectuals'. He believed:

> *Foundations like Carnegie, Rockefeller and Ford have a corrosive influence on a democratic society: they represent relatively unregulated and unaccountable concentrations of power and wealth which buy talent, promote causes and in effect, establish an agenda of what merits society's attention. They serve as 'cooling out' agencies, delaying and preventing more radical, structural change.* (Arnove, 1980, p.1)

Roelofs agrees the organisations named above and other similar organisations are vehicles for hegemonic control by elites. She agrees with Gramsci that 'Foundations are prime constructors of hegemony, by promoting consent and discouraging

[9]These are establishment dates.

dissent against capitalist democracy. Their influence is pervasive because they provide funds for intellectuals, who in turn create ideology that is perceived and accepted as 'common wisdom' (Roelofs, 2007, pp.480-484).

Donald Fisher (1983, 1984), a sociologist, asserts that 'foundations have represented the interests of the ruling class' and that 'philanthropy becomes capitalism's way of distributing surplus wealth, which might otherwise go to the state in taxes in its own interest'. He reminds us that during the inter-war period the Rockefeller Foundation was the 'only' source of major funds for the social sciences. He cites this as an example of surplus wealth used to produce knowledge that would 'help preserve the economic structure of Western society' (Fisher, 1983, p.224).

In a now famous debate in Sociology, Bulmer, another sociologist challenged this 'sophisticated Gramscian' view and dismissed Fisher's claim that '...foundations have represented the interests of the ruling class' as a recycled conspiracy theory lacking evidence. He also doubts that private foundations can influence intellectual developments (Bulmer, 1984, pp.572-576).

The debate was analysed by Salma Ahmad and she reminds us that both Bulmer and Fisher examined material in the Rockefeller Archive to reach 'quite different conclusions' regarding the influence of Rockefeller on ideas. Nevertheless, she agrees that Fisher's claim that the Rockefeller Foundation represented ruling class interests has validity because of the self-selecting trustees 'recruited from the American ruling class, the majority being influential lawyers, businessmen and bankers from the New York region' (Ahmad, 1991, p.511).

Sealander points out that this view represents an old debate. Similar accusations were made when America's first billionaire, John Davidson Rockefeller established his 'scientific' philanthropic foundation. She concludes that Gramsci 'exaggerated' the influence of the upper classes and that other theorists exaggerate the influence private philanthropy has had on public policy (Sealander, 1997, pp.8-9). Sealander claims from her own research that the impact of three foundations – Rockefeller, Laura Spelman Rockefeller Memorial and Russell Sage – on social policy in the early decades of the 20th century was not as significant as scholars had initially suggested.

Rich demonstrates foundations have been instrumental in establishing or funding think tanks on the left and the right. His research illustrates that the funding from conservative foundations has had a significant impact on public policy. Rich does

not refer to Gramsci or hegemony, although this analysis appears to be relevant when examining contemporary philanthropic funding (Rich, 2005, pp.18-25).

Dowie also argues that foundations exercise great power and influence far beyond their wealth, suggesting the operation of Nye's soft power. He acknowledges Gramscian theory, but does not view foundations as evil institutions. Nevertheless, he is concerned about the increasing power of foundations as inequality continues to grow in U.S. society. He is also critical of foundation accountability, claiming it is 'minimal and symbolic.' (Dowie, 2001, p.17)

In response to the critics, Hammack & Anheier (2013) remind us that all except the very large foundations lack the resources to undertake anything like the transformational changes claimed by critical scholars. Bernholz also argues that Marxist-influenced critics exaggerate the influence of large philanthropic foundations. She urges scholars to examine the impact small foundations can have on the communities of regional towns and cities (Bernholz, 1999, pp.369-370).

Heydemann & Toepler focus on the legitimacy of foundations and explore questions regarding who or what gives private foundations their legitimacy? They claim 'legitimacy occupies a central place in American debates about foundations' (Heydemann & Toepler, 2006, p.4) and manifests in calls from Congress for increased regulation. In the same volume Prewitt (2006) asks what justifies the unique privileges and power of American foundations. He argues that it is not what foundations do that provides their privilege, but what they represent in American society – they 'emblemize a central quest of liberal society – a way to attach private wealth to public goods without encroaching on political or economic freedoms' (Prewitt, 2006, p.41).

1.6.8 Social Science Scholarship and Philanthropy

Most of the work cited above has come from political scientists and sociologists. As the scholarship literature within the field of philanthropy is not extensive, it is worth exploring which other disciplines consider philanthropy. Anheier & Leat (2002, p.59) claim with few exceptions social science scholars have 'had little to say' about philanthropy, particularly the institutional form, the perpetual, grant-making philanthropic foundation, the focus of this thesis. However, if the

expansive definition of philanthropy is adopted – voluntary giving, voluntary service and voluntary association primarily for the benefit of others – there is an 'overwhelming body of knowledge' (Bekkers & Wiepking, 2011, p.924). The review that follows explores how scholars of economics, history, political science and business view philanthropy.

1.6.9 Economic Scholarly Literature

One suggestion for the lack of economic scholarly literature is that economics 'lacks a satisfactory theory of philanthropy' (Sugden, 1983, p.639). Another explanation is the conflict between the central premise of economics and the basic thesis of philanthropy. Economists hold a view that individuals are self-interested and given a choice will choose what is best for themselves (Fabricant, 1961). The fundamental principle of philanthropy is that citizens can be altruistic (Barber, 2004). Piliavin & Charng (1990, p.27) claim for economists it was intellectually unacceptable to raise the question of 'true' altruism. Fontaine (2006)[10] documents how this long-term view slowly changed with scholars in the 1970s beginning to call for altruism to be included in economic theory and to identify philanthropy as a rational choice (Andreoni, 1990; Becker, 1974; Boulding, 1981; Margolis, 1982; Phelps, 1976).

Piliavin & Charng corroborate Fontaine's (2006) findings and claim their data confirms a 'paradigm shift' where altruism is understood to be 'part of human nature' and increasingly economists acknowledge there is room for altruism in philanthropic giving (Piliavin & Charng, 1990, pp.27-29).[11]

There is now an extensive body of research by economists on altruism, reciprocity, the art of giving and its relationship to social exchange theory (Andreoni, 2006; Cropanzano & Mitchell, 2005; Reich, 2011). The literature on 'crowding out', i.e. the role of public policy, particularly taxation policy on individual giving, is inconclusive (Brooks, 1999; Kingma, 1989; Liu & Zhang, 2008). An example is the study by Brooks (2003) who found the number of individuals who gave increased with government support (tax deduction) but that each contribution was lower.

[10] Fontaine claims the initial studies by economists were instigated by the attacks on private philanthropy during the late 1960s (Fontaine, 2006, p.5).

[11] Piliavin & Charng (1990) literature review examined economic, sociology, political science, psychology and social psychology journals during the 1980s.

Andreoni acknowledges earlier scholars who proposed that there were numerous and complex motives beyond altruism those encouraged individuals to give. These include caring for others, religious beliefs, guilt, sympathy, peer pressure, social acclaim (Becker, 1974; Olson, 1965). He added to these motives his own theory of 'warm-glow giving'—a desire individuals have to feel good about themselves, to be praised. Andreoni claimed the 'warm glow' they received for giving represented a different form of altruism, 'impure altruism' (Andreoni, 1990, pp.464-465).

A theory that resonates with modern philanthropic practice is the impact theory of philanthropy proposed by Duncan. Here, philanthropists want their gift to 'make a difference'. They prescribe where and how the money is used and may demand a board position. This model can present a conflict for the charitable organisation receiving the donation, often modifying or altering its direction (Duncan, 2004, p.2160).

Glazer & Konrad present a further motive for philanthropy, the 'signalling explanation model'. They examined giving to Ivy League universities and prestigious arts organisations. Their data showed anonymous donations were rare, less than one percent and concluded a concern about status and a desire to demonstrate wealth were factors in giving. This model suggests philanthropy is driven by individuals wishing to signal their relative wealth and social status to others, particularly to those of higher social status (Glazer & Konrad, 1996, pp.1020-1021).

1.6.10 Political Science Scholarly Literature

Prior to 1980, there were few critical articles and virtually none that examined the political role of foundations (Colwell, 1993, pp.32-33). A quarter of a century later, Arnove & Pinede maintain 'not much has changed' (Arnove & Pinede, 2007, p.387).

The earliest critical writings about philanthropic foundations were published in non-refereed journals (Schulman *et al.*, 1972; Unknown, 1967). Each of these articles analysed a report commissioned by the Russell Sage Foundation to examine its role and impact on American society. The authors concluded that the interests of this Foundation interconnected with the interests of those who rule the nation by providing marginal amelioration to the poor and simultaneously career opportunities (in welfare and the human services) for thousands of upper-middle

class people. This finding emerges from a classic Gramscian analysis and presents evidence of the hegemony of foundations.

> *...[these professionals] otherwise superfluous to the production system...might become potential disrupters if not supported. The specialised helping jobs make them dependent upon the welfare of a knowledge system's continuation for their privileges, and gives them the illusion that they are working for change within the system...men-of-knowledge form an ideological and bureaucratic defence system against demands for change* (Schulman *et al.*, 1972, p.3).

The Report urged the Foundation to revisit its initial mandate.

Colwell also examined the political role of foundations and disagreed with scholars who denied the political role of foundations. She claimed that foundations control most facets of public policy through their funding of the training and socialisation of leaders in politics, business, education, the arts, medicine and public policy (Colwell, 1993, pp.193-209).

1.6.11 Historical Scholarly Literature

Curti in his seminal article claimed historians had largely ignored investigating and exploring a significant aspect of American's social history, the philanthropic foundation. He then proceeded to outline a vast field of study that demanded scholarly attention. He cited many examples – urbanisation, housing settlements, social mobility, education, health, recreation, and the development of social work – where the literature was extensive, but few of these studies analysed the influence of philanthropy on their development and progress (Curti, 1957, pp.357-360).

The selected bibliography of historical works of American philanthropic foundations compiled by Kastan (1999, pp.377-403) suggests that historians have in part responded to Curti's appeal. Despite this, Sealander claims historians are 'scarce among analysts' of philanthropic foundations (Sealander, 1997, p.7).

Kastan's bibliography is organised in six sections and lists works written between 1980 and 1997.[12] The largest component comprises books or articles that provide an analytical framework for a single foundation or groups of foundations. Most of the biographies and autobiographies cited in Kastan (1999) concentrate on the lives of individual philanthropists and devote only a fraction of the work to the foundation they established (Cannadine, 2008; Chernow, 2004; Collier & Horowitz, 1976; Embree, 1936; Embree & Waxman, 1949; Fosdick, 1956; Lagemann, 1992; O'Clery, 2007). For example Chernow's highly acclaimed eight-hundred page biography of John D. Rockefeller devotes only nine pages to the foundation that bears his name (Chernow, 2004, pp.561-570).

There are several histories of foundations (Fosdick, 1952; Savage, 1953). Most like Fosdick's *Story of the Rockefeller Foundation* often conceal more than they reveal. Wheatley claims it is not surprising that Fosdick was 'coy' about the important role the Foundation played in developing, promoting and funding many of the ideas that led to the establishment of critical government infrastructure, including the idea for a federal budget. He notes that Fosdick also avoids mentioning the foundation's role in funding the Committee on Economic Security which designed what eventually became the national *Social Security Act*. Wheatley's analysis of the influence of the Rockefeller Foundation is another demonstration of the hegemonic power of just one foundation (Wheatley, 1989, pp.xvi-xvii).

Contemporary historians have been more critical when examining the role of foundations, particularly when exploring their impact on influencing or shaping social policy (Magat, 1979; Nielsen, 1972, 1985; Sealander, 1997). Nevertheless, much of the historical analysis appears to be studies of particular aspects of society funded by foundations. These include the history of the rise of modern science (Brown, 1979; Jonas, 1989) and the role of foundations in the development of the social sciences (Hammack & Wheeler, 1995) or higher education (Curti & Nash, 1965).

Historians have paid little attention to the organisation, governance or grant-making practices of philanthropic foundations (Kastan, 1999, pp.401-403). An analysis of the bibliography published by the Rockefeller Archive Centre (Rose, 2007), listing over 5,000 articles, corroborates the findings above, namely that

[12]The six sections are: The six sections are: (i) Archives, bibliographies, historiographies, research guides and reference works (21) (ii) Historical studies of Foundations (81) (iii) Historical studies highlighting Foundations (73) (iv) Biographies and Autobiographies (21) (v) Oral Histories (10) (vi) Historical work on Foundation Management, organisation, personnel and Professionalization (16).

there is hardly any research into the practice of institutional philanthropy, particularly examination of the philosophy of grant-making, the role of trustees or their governance practices.

1.6.12 Business Scholarly Literature

The focus of much of this business scholarship is the corporation, and the moral and financial arguments for and against corporate giving. Those who support corporate giving argue that there has been a momentous change in the role of business in society since Milton Friedman (1962, p.133) declared that 'the business of business is business'.

The two major arguments advanced by this school are that corporations must use their resources to reciprocate the many benefits they have received from society – benefits that have contributed significantly to their own corporate success – and provide assistance to the community. Thus, socially responsible corporate behaviour which encompasses philanthropic giving is a means of creating new opportunities, markets and thereby of improving a company's long-term profits (Porter & Kramer, 2006).

Critics argue that Corporate Social Responsibility and philanthropy are little more than window dressing designed to divert attention from corporate exploitation in the third world, environmental degradation, or away from suspect financial results (Koehn & Ueng, 2010). Williams & Barrett (2000) even present a link with criminal activity arguing that a significant number of corporations defrauded shareholders. Scholars agree that it is difficult to determine the true reasons business executives make philanthropic donations because there have been few empirical studies.

There appear to be multitudinous articles in business and finance scholarly journals that initially give the impression of focusing on philanthropy, but which actually examine the regulatory and legal environment of philanthropic investing. There is also research on how professional advisers, particularly estate planners and investment advisers are in positions to facilitate the growth of philanthropy. There is little scholarship about the theory or practice of philanthropy, or about the governance and accountability of institutional philanthropy.

Two important articles in the Harvard Business Review (Letts *et al.*, 1997; Porter & Kramer, 1999) scrutinised philanthropy from the viewpoint of its investment practices. Christine Letts and her colleagues argued that foundations would be more efficient and effective if they adopted the practices of venture capitalists. She argued they needed to be more strategic, manage risk better and develop investment performance measures.

Porter & Kramer documented how the model of organised philanthropy, the perpetual foundation did not take advantage of the best investment practices that understood how the business (organisation) created value. Porter's research demonstrated that philanthropic funds were poorly invested and trustees could not achieve their main purpose of maximising the income they could provide to not-for-profit organisations. The writers challenged foundations to create value (Porter & Kramer, 1999).

A plethora of reputational indexes has been developed to measure corporate social responsibility. Moore & Robson (2002) suggest that companies, particularly top corporate givers, can and do use these rankings as a form of moral window dressing.

There is considerable research exploring whether there is a link between corporate philanthropy and financial performance, and whether there a competitive advantage for the corporation if it engages in philanthropy (Orlitzky *et al.*, 2003; Pava & Krausz, 1996; Porter & Kramer, 2002).

1.6.13 Scholarship on Accountability

There is an extensive multi-disciplinary scholarship on accountability. In education (Biesta, 2010; Jacobsen & Young, 2013; Lewis & Young, 2013; Stensaker & Harvey, 2011) health care (Porter, 2010; Rowe, 2006) criminal justice (Mears, 2010; Walklate, 2013) politics (Bovens, 2007; Rhodes, 1998) and especially business (Banfi, 2013; Collins, 2000; Payton & Moody, 2008; Porter & Kramer, 2006, 2011; Swift, 2001) scholars debate important questions such as who should organisations be accountable and for what. Dhanani & Connolly (2015) maintain there is also an ever increasing scholarly discourse on NGO accountability. Onyx & Dalton (2006) suggest that despite an acceptance of the importance of accountability important questions such as to who should NGOs be accountable and for what

often remains unexamined. This analysis only explores the theoretical literature on accountability as it relates to charities and not-for-profit organisations.

Brown & Moore (2000) define accountability as the recognition by an individual or organisation that a promise has been made and now they have a moral and legal obligation to fulfil that pledge. Often this will require an organisation to provide an explanation of its operations, particularly its finances, to one or more of its stakeholders.

Traditionally, NGO accountability was viewed from a principal-agent perspective (Stewart, 1984). This theory assumes an asymmetrical relationship where the agent (NGO) is accountable to the principal (funder and/or government) for the implementation of a programme of work, or the appropriate management of funds. Often this commitment is a legal one and is determined by government laws and regulation. Here accountability is an externally motivated construct, where the principal has power over the agent. The key assumption in this analysis assumes that the principal's objectives are more important and should be achieved ahead of that of the agent and other stakeholders; a relationship where one party has power over the other (Cutt & Murray, 2002; Fry, 1995; Pratt & Zeckhauser, 1985).

Dhanani & Connolly (2015) maintain the principal-agent theoretical model does not adequately reflect the multifaceted accountability relationships of not-for-profit organisations. They claim recent scholars have perceived this analysis as too limited and are increasingly examining this concept from a variety of different perspectives, including stakeholder theory (Dhanani & Connolly 2015, p.615). This theory emphasises the importance of reporting to all the organisation's constituents not just those in powerful positions. In this context, NGO accountability is often described as upward and downward accountability (Najam, 1996).

Brown & Moore (2001) present a more complex concept of accountability for NGOs – moral accountability. They agree that NGOs, like corporations, may have unambiguous accountability responsibilities to funders including government, to their members and to clients. However, more difficult questions arise when NGOs view their primary accountability to their mission which is often expressed as an abstract moral ideal or purpose, such as the advancement of human rights or the elimination of poverty. Najam (2002) and Ebrahim (2003) claim this form of accountability arises from a sense of internal obligation and responsibility rather than being imposed externally.

Ebrahim (2003), Lloyd (2005) and Bendell (2006) examine various mechanisms of accountability. These include annual reports, codes of conduct and performance assessment and evaluation. They conclude that in practice these different forms of accountability if used collectively function well. Nevertheless, Ebrahim (2003) and Walden (2006) caution that these accountability demands can become overly burdensome for many NGOs. They also suggest performance assessment may stifle creativity and innovation.

Jordan & van Tuijl (2000) maintain that the concept of accountability is not fixed and the accountability structure may change throughout any relationship. However, they suggest the most beneficial accountability relationship is based on trust and a general sense of shared purpose.

This literature review illustrates that as philanthropy becomes an increasing part of public discourse and is seen, at least by politicians, as a solution to complex social policy dilemmas, scholars in all disciplines will need to address increasingly complex questions. The deeper social implications of private foundations as public organisations in modern democracies will need to be re-explored and re-assessed.

In chapter 2 the questions what is a foundation, what are the unique features of a philanthropic foundation and the literature of governance and philanthropy will be examined, and philanthropy and governance will be explored.

Chapter 2

Philanthropic Foundations: Private Wealth For Public Purposes

> *There is no more strange or improbable creature than the private foundation. Aggregations of private wealth...conveyed to public purposes. Like the giraffe, they could not possibly exist, but they do* (Nielsen, 1972, p.3).

2.1 Definition

This chapter asks and examines two questions: what is a private philanthropic foundation and what are its unique characteristics, and why is philanthropy viewed as being a solely private activity in Australia? Scholars have provided various definitions. In the first scholarly study of American foundations conducted by Lindeman (1936), the foundation was defined as 'a symbol of wealth'. F. Emerson Andrews (1950, p.21) defined an American philanthropic foundation as non-governmental, non-profit, with its own fund, managed by its own trustees and established to serve the common good. A more bureaucratic interpretation is given by Frumkin (2006b, p.219) who describes it as 'an endowed institution that makes grants to non-profit organisations using the interest and appreciation from its investments. Constituted by a board and sometimes with a staff, a foundation reviews grant applications and disburses funds to those applicants deemed most deserving'. Hammack (2006, p.49) claims they have been characterised as 'large stocks of wealth controlled by independent, self-perpetuating boards of trustees devoted to the support, through grants, to charitable purposes or to no specific

purpose except "the general good"'. Leat, in her monograph on trusts and foundations[1] in Australia, defines a philanthropic foundation as 'an endowed fund established in perpetuity...for distribution to organisations with charitable status' (Leat & Lethlean, 2000, p.6).

While these definitions appear simple, the reality is more complex and is affected by each foundation's cultural genesis and the social and political context in which it operates. As the former President of the Rockefeller Foundation, Peter Goldmark, is fond of saying 'if you know one foundation, you know one foundation' (pers. comm.).

In summary, charitable foundations are established by individuals, families or companies as a means of providing long-term growth of, and support to, the common good. Unlike government and business, foundations have no voters, no customers and no shareholders. Although legally defined as charitable, they are unlike other charities and not-for-profit organisations which have multiple constituencies and need to fundraise. In most western countries where they operate they also have mandatory public reporting requirements (Anheier & Daly, 2004; Fleishman, 2009; Frumkin, 2006a; Prewitt *et al.*, 2006). This is probably the single most important difference between Australian foundations and their counterparts in the U.S.A. and the U.K. and it is the underlying theme of this thesis.

2.2 Overview

This chapter will sketch the origins of philanthropy generally and in Australia, and will briefly contrast the latter with its origins in the acknowledged home of philanthropy, the United States of America. It will look at the impact on foundations' formation of the social philosophies that were extant in both countries at the time. The various structural forms of Australian foundations are examined, along with their unique features and exceptions to these.

The chapter examines the scholarship on the purposes of organised philanthropy and the inherent ambiguity of using private monies for public purposes. It further explores how these two potentially conflicting qualities are at the centre of the scholarly debate about public accountability of foundations. Particular attention is given to the landmark philosophical and political debate around this issue in

[1] In this country the term 'foundation' is used interchangeably with philanthropic 'trust'.

the U.S.A. during the 1960s that culminated in a new legal definition of a 'private' foundation in the *Taxation Reform Act (1969)*. The impact of philanthropy in Australia is explored and arising from this, a discussion follows on the legitimacy and accountability of foundations.

2.3 Historical Roots and Development

In the popular understanding, philanthropy is believed to have developed in the U.S.A. during the first decades of the twentieth century. However, archaeological records have demonstrated that philanthropy existed in ancient and disparate civilisations such as those of China, Egypt, Greece and Rome (Weaver, 1967, p.13; Nielsen, 1972, p.3). It was endorsed through religious texts and became an integral component of all major religions including Islam. Nevertheless, philanthropy has not been encouraged in all societies. It was banned in France after the French revolution (1789) on the basis that the welfare of citizens was the responsibility of the State and was not legally reinstated there until 1987. Totalitarian societies such as Russia under the Bolsheviks and Nazi Germany also outlawed and nationalised private philanthropy as both, according to Nielsen, interpreted privately organised philanthropy as a threat to the State's domination (Nielsen, 1972, p.5; Fleishman, 2009, p.105; Gautier *et al.*, 2013).

It appears that the first continuous, organised philanthropy (still operating today) was established by Jakob Fugger in Germany in 1521. The Fuggers, often described as the German Medici, founded a social housing estate known as the Fuggerei for Catholic citizens of Augsburg who worked but needed to supplement their income. The tenants, in return for life-long accommodation, paid a peppercorn rent and were obliged to say three prayers daily for the souls of the Fugger family (Häberlein, 2012, pp.156-159). Schuyt (2013, p.7) quotes Thomas Adam (2004) who demonstrated that 'philanthropy is a European, not an American invention'.

Community foundations – one of the forms of philanthropy – are also commonly assumed to have been created recently. These entities are generally established to serve the needs of a discrete geographic area and operate as an umbrella administrative point for a number of small funds provided by individuals and families. The first modern community foundation, the Cleveland Foundation, celebrated its centenary in 2014. There are currently approximately 700 in the U.S.A. The

antecedents of this form of philanthropy lie in the ancient Persian practice of establishing small trust funds, vaqfs, (pronounced waffs), for charitable purposes thousands of years ago (Dowie, 2001, p.1).

Modern, organised philanthropic foundations did emerge in the U.S.A. at the beginning of the twentieth century as a response to the enormous technological and industrial changes that had created momentous social change that entrenched inequality. Sealander argues that these conditions placed enormous concentrations of power and money in the hands of a small number of individuals and families. These new conditions also transformed traditional assumptions about the poor, about charity and about the responsibilities of the wealthy. Most of these newly wealthy plutocrats ignored such notions of social responsibility but a small number, including some of the so-called 'robber barons', started to re-imagine 'the vehicles through which they would distribute charity' (Sealander, 1997, p.2). Fleishman (2009, p.101) claims some of these new philanthropists, particularly steel magnate Andrew Carnegie and oil entrepreneur John D. Rockefeller, changed the rationale of philanthropy. There would no longer be old-fashioned almsgiving. Instead, scientific giving was introduced with the aim of solving intractable social problems (Fosdick, 1989, p.7).

2.4 History and Development of Australian Foundations

Philanthropy has existed in Australia since European settlement, although it has been largely invisible. Indeed, most Australians have seen it as an American tradition. The reasons for this are complex and numerous, but include the very different origins of both nations. The British colonies in America were settled by religious dissidents and this encouraged the tradition of individual giving and association, rather than provision by the State which was viewed with deep suspicion and distrust. Simultaneously, this philosophical political belief developed into a view that that big government was to be resisted and small government tolerated (Karl & Katz, 1981).

White Australia was established very differently, as a penal colony, by the British government which provided most of the social services and built the infrastructure. Unlike the American experience where great fortunes were amassed at the

end of the 19th Century through infrastructure building, fewer private Australian fortunes were made from rail or road as these were developed and paid for by government.

Another difference relates to the nature of the labour movement in both countries. As the United States emerged as one of the new world economic powers, huge private wealth accumulated rapidly, in part because of the weakness of the labour movement and possibly because of the lack of legislative attention in regulating labour. In contrast, Australia had a strong labour movement and, through government intervention, hours of work and a basic wage were regulated. At the end of the nineteenth century, one of Australia's two major political parties, the Labor Party, grew out of the union movement. In 1904, the newly established federal government created the Australian Conciliation and Arbitration Court. Three years later (1907), this Court declared that all men were entitled to a 'fair and reasonable' wage that would allow them to support a wife and three children. The impact of this legislation, known as the Harvester Judgement, was that companies and businesses did not create fortunes for their owners (Macintyre & Isaac, 2004).

The above and other pioneering social legislation, including the aged and invalid pensions (1909), a maternity allowance paid to the mother on the birth of her child (1912) and universal suffrage for men and women, invoked the metaphor that Australia was 'a social laboratory' for the working man (Oppenheimer & Warburton, 2014, p.19; Hancock & Richardson, 2004; Garton, 1990). The philosophical and political culture underpinning this legislation was an 'Australia for the [white] working man'. 'A fair go' and 'mateship' meant there was little need for private philanthropy. The government, elected by the people, was seen as responsible over time for mitigating economic and social disadvantage, for funding all levels of education, and more recently for providing universal health (Clark, 1981, p.286, p.296; Dickey, 1987).

The first discretionary, perpetual trust in Australia was established in Adelaide in 1886 by Dr William Wyatt who instructed that it be used for South Australians experiencing poverty '...in favour of persons above the labouring class and in poor or reduced circumstances' (Fort, 2008, p.107). Subsequent trusts continued to be established under the laws of each State.

Today, Philanthropy Australia estimates that there are approximately 5,000 philanthropic trusts and foundations in Australia, but the real number is unknown as

at the time of this thesis there is no regulatory requirement regarding information collection or public reporting for all philanthropic entities or activity.[2] Therefore, the actual number is unknown outside the Australian Taxation Office to which they must submit annual returns. Philanthropy Australia's *The Australian Directory of Philanthropy*, (The Directory) provides information on only 350 or 7% of the putative 5,000. Table 2.1 below classifies the forms of foundations described in the 2010 edition of the Directory – the last edition in hard copy form.

2.5 Structural Forms of Philanthropic Trusts/-Foundation in Australia

The focus of this thesis is the privately-endowed philanthropic foundations administered by trustee companies because collectively their wealth exceeds that of other foundations. The best-understood form of Australian foundation is the privately endowed philanthropic foundation established by one or more individual benefactors who: (a) bequeath their money in perpetuity to benefit the community and (b) nominate a trustee company to administer the foundation as sole or co-trustee.[3] The trust deed that establishes these provisions and other instructions in law is almost always the benefactor's will.

There are, however, many other forms of philanthropic foundations. These include independently managed foundations (e.g. the Ian Potter Foundation), family foundations (e.g. the Myer Foundation), Community Foundations (e.g. the Wingecarribie Community Foundation), corporate foundations (e.g. the Macquarie Foundation), government- initiated foundations (e.g. the Victorian Women's Trust) and limited-term foundations (the only known one being the Stegley Foundation which, as intended, ceased operation when it exhausted its capital in 2001). In some cases these categories may overlap. Brief descriptions of the different forms of Australian philanthropic foundations are given below in Table 2.1, p.38.

[2]The ACNC legislation is an attempt at this. Its outline and limitations are discussed in Chapter 8.

[3]In the latter case, a provision is made to appoint one or more independent trustees from outside the trustee company.

Table 2.1: Structural Forms of Philanthropic Trusts/Foundations and their administrators in Australia in 2010

Type	Description	No.
Independent and family trusts and foundations	Established through a will or other form of trust document, administered by trustee board, initial trustees stipulated and then board self-selected. Also administered by family trustees, solicitors, lawyers or accountants or a formally constituted governance structure.	96
Government initiated trusts and foundations	Generally established to progress government policy or reform. For example, VicHealth which promotes public health; Australian Multicultural Foundation; Australian Sports Foundation.	10
Specific trusts and foundations	Most are not perpetual philanthropic grant-making. They include Foundation in their name, but they do not have a perpetual capital base. Instead they fundraise for their specific purpose, e.g. Heart Foundation. The board raises money for their specified purpose, approaching philanthropic foundations, for monies.	15
Corporate trusts and foundations	Corporations use various structures (internal funds, ancillary or private foundations) for their corporate philanthropy. Decisions are commonly made by executives in the corporation and a priority in granting and expenditure is to maintain goodwill among customers and staff morale and loyalty.	44
International trusts and foundations	Several international trusts and foundations fund in Australia, although their strategies are generally directed at global issues.	24
Community trusts and foundations	The structures of Community Foundations allow the establishment of smaller funds under the legal umbrella of the larger foundation. Frequently these work in a specific geographic area and are themselves reliant on grants and local fundraising.	16
Trustee companies	Trustee companies are the largest administrators of charitable monies in Australia with $3.3 billion of capital in 2,000 private trusts and foundations. In 2014, six publicly listed (ASX) companies managed these foundations and were the legal sole-trustee or co-trustee. Largest number of trusts and foundations 2,000 therefore 40%) of putative 5,000. Non-Perpetual trusts and foundations – NIL in this edition.	145
Private Ancillary Funds *	Private Ancillary Funds (PAFs), established in 2001 modeled on the U.S private family foundation allow wealthy individuals and families, while living to donate their wealth to philanthropic purposes and grow the capital of the PAF during their lifetime. As at June 2014 there were 1,002 PAFs. Trustee companies administer and unknown number. PAFs are not listed in the Directory.	1002

Source: The Australian Directory Of Philanthropy (2010)
* Source: Private Ancillary Funds (PAFs) ACPNS 2014/3. Called Prescribed Private Funds until 2009.

2.6 Variations in Administration and Trusteeship of Australian Foundations

The following section explores the Australian variations in administration and trusteeship with an example of each. Philanthropy Australia (PA), the umbrella body with four hundred members, separates them into four categories:

2.6.1 Family Administrators and Trustees – The Sidney Myer Fund and the Myer Foundation

The one Australian similarity to the U.S. profile is that many of the individuals who established philanthropic foundations in Australia were also entrepreneurs. Sidney Myer (born Simcha Baevski, 1878-1934), migrant and entrepreneur, initially established a department store in Bendigo and then in Melbourne where he introduced practices that revolutionised Australian retailing (Hyslop, 1986). In his will he bequeathed 10% of his fortune to a perpetual foundation and appointed four trustees. As well as family members, the Sidney Myer Fund's trustees included loyal employees and advisers who had expertise in finance and management (Liffman, 2004, pp.44-45, pp.102-103). Today, generations of family members continue to act as trustees and the Myer Family Office invests, manages and administers philanthropic monies.

A second Myer philanthropic entity, the Myer Foundation, was endowed by Sidney's children in 1959. Initially, all of its governors were members of the Myer extended family. Today, three of the surviving founders remain in emeritus positions, four governors are family members and four highly experienced external professionals also act as governors. The Myer Family Office manages the Foundation's funds. In its first annual report (1959-1960), the governors began a tradition that continues today in that there is no disclosure of the source of the foundation's funds, nor the amount (Liffman, 2004, p.62). The Myer Foundation has continued to produce and disseminate an annual distribution report, a listing of grant recipients, for the last forty-five years.

Two decades ago, the trustees of both The Sidney Myer Fund and the Myer Foundation established a number of grant-making committees and instigated a practice of appointing external experts who provide advice. Reflecting the American trend,

the Myer Foundation and Sidney Myer Fund Annual Report (2014) lists trustees and up to thirty-three external individual experts who were appointed to fifteen committees.

Through these two philanthropic entities, the Myer family is acknowledged as Australia's pre-eminent and most influential philanthropic family because of its impact on Australia's social and cultural life.

2.6.2 Independent Administrators and Trusteeship – Ian Potter Foundation

Another form of trustee administration is that in which the governing Board is made up of independent trustees. The Ian Potter Foundation celebrated its fiftieth anniversary in 2014. Its founder, Sir Ian Potter, was also an entrepreneur and self-made man who extended the range of international finance to Australia and in the process became a dominant figure for over thirty years in Australian business, politics and cultural life.

Initially, Sir Ian chaired his Foundation and appointed four other founding governors who were all friends, business associates and professional colleagues. As the corpus of the Foundation grew, the number of governors was increased to twelve. Potter's philosophy in appointing his trustees was to seek 'outstanding people with a broad range of expertise.' Although most of the current Board was appointed by Sir Ian, his tradition is upheld by the continuing appointment of people with 'integrity and experience' (Yule, 2006, p.365). The only family member on the Foundation board is Sir Ian's widow, Lady Potter, whom he appointed as a life governor prior to his death.

The governors are responsible for all investment and grant-making decisions. The Foundation's staff provide all administrative and management services. Since 1964, the Foundation has provided $200 million in grants to over 2,000 organisations and its corpus today exceeds $500 million (Ian Potter Foundation, 2014, p.4).

2.6.3 Community Foundations – The Australian Community Foundation

Since their inception a century ago in America (Cleveland Community Foundation 1914), community foundations have been publicly accountable and have reached out to their communities and appointed a diverse group of trustees. Today, there are seven hundred operating throughout the U.S.A. Unlike private or family foundations, community foundations are not dependent on the generosity of any one individual or family. Instead they reach into their specific geographic communities to raise their endowment from individuals, families and companies. A relatively new form of giving in Australia, the first community foundation was initially established in the late 1980s within a bank. A decade later it was're-created' outside the bank as the Melbourne Community Foundation. Today, renamed the Australian Community Foundation to reflect its national reach, it is the oldest and largest of the thirty-five Australian community foundations in various stages of development and operation (Leat, 2004a, p.22).

Trustee boards of community foundations are not self-selecting. Instead they are deliberately chosen from diverse groups within the foundation's community. These foundations provide a legal umbrella that allows for unified management of large number of funds. Trustees are legally responsible for all investment and grant-making decisions, although donors are consulted extensively and their funding recommendations are usually accepted. Paid staff provide services to the donors, trustees and the broader community (Leat, 2004a, p.12).

2.6.4 Corporate Foundations – The Macquarie Foundation

Usually corporate foundations are established as entities separate from the parent company. There are an unknown number of instances in which the foundation operates but is not legally, formally constituted. Contributions are regularly made to the foundation from company profits and in some companies the staff is also encouraged to contribute. These foundations are not perpetual, do not have a permanent endowment and trustees are often appointed from the senior executive and have limited tenure. All such foundations report publicly to their shareholders. Some choose to do this within the company's annual report, others publish a standalone separate report and utilise it as an important aspect of marketing the

company to the broader community (AMP Foundation, 2014). A different form of trusteeship is found at Macquarie Foundation where the committee members for its foundation are appointed from its many global offices (Macquarie Foundation, 2014).

2.6.5 Government-Initiated Foundations – Australian Multicultural Foundation

These foundations gain their income, often an endowment, from government. They are established as a result of governments seeking to promote public policy. Recently governments of all political persuasions have used gambling taxation revenue to establish foundations to discourage gambling, promote cultural activity and fund programmes for fragile and disadvantaged groups. Although initiated by government, often these foundations are not directly controlled by it; instead trustees are appointed for limited terms by the responsible minister. These organisations are usually obliged to report annually to the community often through the relevant Parliament. An example is the Australian Multicultural Foundation established with monies that were unspent after Australia's Bicentennial Celebrations in 1988. The foundation was created to enhance Australia's multi-cultural community.

2.6.6 Non-Perpetual Foundations: 'Give While You Live' – The Stegley Foundation

The Stegley Foundation is the only known Australian foundation that was a non-perpetual foundation and it spent the last of its funds in June 2001. After a twenty-eight year life, from an initial $2 million in 1973, it had by then distributed close to $6.4 million in 671 grants to the community. Founded by entrepreneur Brian Stegley and his wife Sheleagh, the foundation was always intended to have a limited life and the trustees understood they would liquidate all monies within thirty years (Fabian, 2002, p.38).

Because the issue of 'perpetual' granting versus 'give while you live' is part of the current philanthropic debate, a brief examination of the justification of the latter is useful.

Andrew Carnegie, in his now classic 'The Gospel of Wealth', was the first to pronounce that it was the duty of a rich man after providing 'moderately for the legitimate wants of those dependent upon him' to give all of his wealth away in his lifetime. He further proclaimed that:

> *The day is not far distant when the man who dies leaving behind his millions of available wealth...will pass away unwept, unhonored and unsung...Of such as these the public verdict will then be: The man who dies thus rich dies disgraced* (Carnegie & Nasaw, 2006, p.12).

Carnegie did not live long enough to take his own advice and give away all of his enormous wealth. Instead, a number of large Carnegie perpetual philanthropic entities were created and still operate today. Julius Rosenwald, entrepreneur and founder of Sears, Roebuck & Co., heeded Carnegie's call and was the first to clearly articulate why he would make his foundation self-liquidating. He wanted to be engaged and was determined to ensure his funds would have a critical impact on what he regarded as the fundamental social justice issue of his time – the lack of education for black children in the South.

Rosenwald had major concerns about the idea of perpetuity. First, future trustees would dilute, distort or forget the founder's intention. A second reason was that perpetual foundations over time develop into bureaucratic structures and become preoccupied with themselves rather than the community they were founded to serve. He also believed that younger generations would have their own interests and passions and should not be constrained by the wishes of their forbears (Ascoli, 2006, pp.405-408).

A contemporary American proponent of this philosophy of philanthropy is Chuck Feeney (another entrepreneur) who founded Atlantic Philanthropies as a 'give while you live' foundation. Feeney articulated four principles similar to Rosenwald's, which underpinned his model of 'give while you live.'

(i) There will always be 'wicked' problems for every generation to solve;

(ii) Trustees in time become removed from the founder and his/her wishes;

(iii) Large amounts of money are often needed to defeat intractable problems;

(iv) It is difficult to predict the future or understand the future needs of society (Proscio, 2010).

2.7 Purposes of Foundations

Prewitt asks the question: what specifically does a philanthropic foundation do that is not done by government (our taxes), corporations, or the numerous not-for-profit organisations (Prewitt, 2006, p.30). He and other scholars suggest four potential purposes. The first, initially proposed by Weisbrod *et al.* (1986) and DiMaggio & Anheier (1990), is that foundations, like non-profits, provide services to populations that the market ignores because they are too poor to purchase their services and that governments overlook because they are politically ineffectual. Prewitt contends there is no evidence to suggest this major purpose for the existence of foundations.

Redistribution, redistributing resources from rich to poor, is another claim made by scholars (Fleishman, 2009; Frumkin, 2006a; Leat & Lethlean, 2000; Prewitt, 1999). Historically, foundations have funded programmes to address disadvantage in the hope of creating a fairer society. There is no evidence internationally to suggest foundation giving is actually redistributive. Wolpert (2006, p.125) claims there is no conclusive evidence to suggest that foundations redistribute to the poor, although he states that grants provided to social services 'are more distributive' than those made available to the arts, health or higher education. Teresa Odendhal (1990), in her extensive study of American philanthropists, found the majority of philanthropic monies went to institutions and organisations controlled and used by the wealthy. One of her major conclusions was that philanthropy, instead of relieving social and economic inequality actually exacerbated it.

Cost-effectiveness is also proposed as an argument (Prewitt, 2006, p.31). Foundations have the advantage of operating with great flexibility and, unlike governments which are disinclined to take risks, foundations are able to be more adventurous in their granting. Prewitt argues that once again there is no evidence base to make this assertion (Prewitt, 2006, pp.31-35).

Another role ascribed to foundations is that of promoting and supporting innovation. Leat & Lethlean posit that this is an appealing function as it allows foundations to engage in short-term funding by providing 'seed' funding. Once the risk associated with innovation is allayed by proven results, foundations may leave funding to governments. It also clearly provides a demarcation between the differing role of the state and foundations. Longer-term funding is the role of the

State which must be cautious with its public moneys but is well placed to adopt effective proven innovations (Leat & Lethlean, 2000, p.14).

Prewitt states that the promotion of social change is the 'most common rationale' advanced on behalf of foundations (Prewitt, 2006, p.35). He argues that social change rhetoric is 'popular' and a way for foundations to justify their existence. He then lists significant achievements of a number of large American foundations, e.g. Rockefeller's public health campaigns or the more recent Aaron Diamond early research on AIDS. He reminds us that, despite these impressive results, there is no measurement of foundation impact, or even 'a theory of social change that might point to a measurement strategy'. He further argues that the enormous social changes that have occurred during the last fifty years on both the progressive and conservative side of politics were not initiated or driven by foundations. On the left, civil rights, feminism, environmental and gay and lesbian movements received philanthropic funding, but this was small compared to the resources of government. On the other side of politics a number of conservative foundations, such as the John Olin Foundation, claim responsibility for changing public policy and opinion that has justified privatisation of public assets and responsibilities. Prewitt argues, however, that foundations were not as influential as governments (specifically those of Thatcher and Reagan) in this seismic political shift (Prewitt *et al.*, 2006, pp.132-137).

The function that is often seen as the most powerful of philanthropy's roles is that of promoting pluralism, of curbing the dominance of government in modern society. Prewitt argued that foundations contribute to pluralism by funding and strengthening the diversity of the not-for-profit sector and thus contributing to pluralism in democratic societies (Prewitt, 1999).

In a later analysis he proposed that the most important role is that foundations are a powerful symbol of America's liberal society. 'They mirror a central quest of [such a] society – how to attach private wealth to public goods without encroaching on individual freedom' (Prewitt, 2004, p.12).

Other roles are assigned by other scholars and practitioners. Goldmark claims foundations should be supporting the not-for-profit sector to reshape global institutions such as the U.N., World Bank, IMF and NATO. Their impressive resources should be used to influence public opinion to ensure the global elite commences on the long road to modernising these critical institutions so they are equipped to

solve the contemporary world's problems (Goldmark, 2004, p.39). Freund claims the most important role of foundations is to search and identify 'exceptionally talented individuals' of all ages and help develop their creativity (Freund, 1996, p.143).

Are these purposes realised?

As foundations do not welcome scrutiny and most do not fund scholarly research that examines their practice, there is little evidence that they fulfil any of these ascribed roles. As mentioned above, Odendhal (1990) in her study suggests redistribution is little more than an aspiration. Frumkin claims the role of philanthropy is to promote innovation and potentially controversial ideas and theories. Instead, he maintains, in practice foundations forego their strength and uniqueness to be independent and individual and instead have a strong tendency towards 'isomorphism', towards homogeneity and convergence resulting in philanthropic caution (Frumkin, 2006b, pp.275-276).

Arnove & Pinede (2007) and Roelofs (2007) view foundations as being powerful, semi-aristocratic institutions that are fundamentally undemocratic and influence public opinion and public policy with their private funds. They argue that foundations do not fund ideas that question the political, legal and economic context that has allowed great inequalities in wealth acquisition to occur. They believe that until these root causes are challenged and changed, the social problems foundations claim their grants are ameliorating will continue.

2.8 Private Monies for Public Purposes: The Impact of Two Australian foundations

Despite being small in comparison with its U.S. counterpart, Australia's philanthropy has been seminal to the creation of some of our social, cultural, medical, educational and environmental infrastructures. Much of this owes its existence and continuation to generous benefactors, particularly the Myer philanthropies and the Ian Potter Foundation. Both are used here as case studies documenting their impact on public policy. They are examples of thoughtful, intelligent, long-term funding.

2.8.1 The Myer Foundation

Australia's strong diplomatic, cultural and trade links with Asia, particularly with China and Japan, can be sourced back to relationships fostered by the first Asian and Pacific Fellowships Programme that was initiated by the Myer Foundation in 1964 (Liffman, 2004, pp.201-202). These fellowships allowed graduates in the social sciences and humanities to undertake further study in Asia. For the last sixty years, the Foundation has continuously funded significant projects fostering these important relationships. AsiaLink is the most recent manifestation of a Myer-funded Asian Centre at Universities throughout the country. This program was established twenty-five years ago by the Foundation and is till funded it, to encourage cultural exchanges with our Asian neighbours and to promote Asian languages in Australia's primary schools (Liffman, 2004, pp.75-76).

The Foundation was also responsible for significant grants in the arts benefiting all cultural forms. A Melbourne landmark, the Sidney Myer Music Bowl, was opened to the public in 1959. As well as funding the construction of the free music venue, Sidney left money for an annual free classical concert at the Bowl during summer. The Foundation supported the establishment of the Australian Ballet Foundation, made landmark gifts to the National Library of Australia and endowed the Yushoko and Ken Myer Asia Centre at the Art Gallery of New South Wales. Foundation monies built the Malthouse Theatre, the purpose of which was to produce only Australian plays (Liffman, 2004, pp.95-96). The Sidney Myer Cultural Awards, iconic Australian cultural grants, are another example of effective, long-term ripple effect funding.

The Myer Foundation had a significant impact on understanding Australia's indigenous people, who are part of the world's longest continuous civilisation, by funding Charles Rowley's seminal work *The Destruction of Aboriginal Society* (1972). This scholarship was the first independently-financed survey of Aborigines throughout Australia (Rowley, 1972, p.vii). Prior to this, aboriginal affairs had been largely neglected by social scientists with the exception of anthropologists. Rowley was enthusiastic in his praise of the Foundation as this was the only source of funding he was able to obtain for this pioneering scholarly work. The Myer trustees and Rowley both had a vision that these three volumes would introduce the beginnings of equality and justice for the peoples who had lived harmoniously with this land for at least 60,000 years. They may have been aware of

the significant impact on public debate of the Carnegie-funded two-volume study *An American Dilemma: The Negro Problem and Modern Democracy* (1944), by the Swedish social scientist and economist, Gunnar Myrdal (Nielsen, 1972, p.39).

2.8.2 The Ian Potter Foundation

The Ian Potter Foundation has also funded significant cultural infrastructure, including providing significant private funding for two of Melbourne's public art galleries. The foundation has a twenty-five year old programme of providing cultural travel scholarships for young artists to develop their work internationally. It has been instrumental in the establishment and development of the Australian Ballet. The Ian Potter Music Commissions, established in 1999 offer support for the composition and performance of new Australian music. Performance of the finished work is a major element of this programme.

The foundation has an international reputation as being concerned with reversing the degradation of Australia's farm land. The Potter Farmland Plan had an enduring impact on the farming sector and the environment movement, giving rise to the national and international LandCare movement. The themes of conservation and restoration have been a continuous part of the foundation's programme for the last forty years (Diamond, 2005, pp.412-413; Ian Potter Foundation, 2014, p.71). The Foundation, with Myer, was instrumental in establishing the national umbrella body for philanthropy in Australia in 1975.[4] Twenty years later the Ian Potter Foundation provided support, including accommodation, for the association that allowed it to operate on a full-time basis. These and other similar grants illustrate a thoughtful understanding of how to leverage the foundation's money and simultaneously have an impact on public policy (Yule, 2006, pp.374-375; Sandilands, 1989, pp.9-12).

[4]Initially called the Australian Association of Philanthropy, today known as Philanthropy Australia.

2.9 Unique Features of Privately Endowed Australian Philanthropic Foundations

Like their international counterparts, the Australian foundations used as case studies and examined in this thesis share a unique set of characteristics:

- they are all perpetual entities,
- they have a permanent endowment,
- their trustees initially appointed in the trust deed are self-appointed thereafter,
- in Australia at the time of this thesis they have no legal or regulatory requirement for full public accountability.

2.9.1 A Perpetual Timeline

In Australia, until the establishment of the Prescribed Private Funds (see Chapter 6) in June 2001, virtually all foundations were established by their trust deed to be perpetual entities, i.e. their endowments were to be invested to benefit society for all time. As discussed above, only one Australian benefactor is known to have has chosen to 'to give while they live', although this is currently a strongly promoted option in U.S. philanthropic literature (Proscio, 2014). The perpetual nature of most foundations potentially allows trustees to develop more far-sighted granting policies and a long-term framework for financial support to the community that far exceeds the time constraints of government electoral cycles and the even briefer commercial cycle of the business world. Foundation trustees are also able to develop more far-sighted policies. Despite this, on the evidence available, Australian foundations still tend to make mostly one-off, short-term grants.

2.9.2 A Perpetual Endowment

The fundamental fiduciary responsibility of trustees of privately endowed foundations is to ensure that they invest the benefactor's monies in perpetuity. Therefore, they must ensure that each generation benefits equally from the endowment. This

investment philosophy and strategy differs from most other approaches that require strong short-term financial results.

While trustees have fiduciary responsibilities, they are uniquely relieved of the need to find funding for their organisation. Unlike other charities and not-for-profit organisations they do not need to fundraise; unlike governments, they do not need to raise taxes; unlike commercial organisations, they do not need to make profits for their shareholders.

2.9.3 Self-Appointed Board of Trustees

The benefactor may nominate one or more independent individuals to be trustees. As these retire, their replacements are determined by the remaining trustees. There is no public recruitment; there are no terms of reference made public, no apparent investigation or declaration of interests. Unsurprisingly, trustees are probably known to each other.

In Australia, a trustee company can also be appointed as a trustee. In all the case studies in this thesis, the benefactors nominated a trustee company to be their sole trustee or a co-trustee, (i.e., together with additional independent individuals). The trust deed establishing the foundation allows the company to hold this position in perpetuity. The only way this may be changed is through a successful *cy pres* court case.[5] *Cy pres* cases are rare and those that do occur are almost always unsuccessful.

2.9.4 No Public Accountability

In the U.S.A., legislation was introduced in 1969 to make foundations publicly disclose their philanthropic operations. No such legal or regulatory requirements exist in Australia. Government policy and law require provision of annual audited accounts to the Australian Taxation Office (ATO) which treats this information as private.[6]

[5] When the original intention of the benefactor becomes impossible to achieve, e.g. funds were left for polio research and subsequently polio was eradicated, the *cy-pres* application allows the court to amend the original terms of the charitable trust to a purpose related as closely as possible to the original objective of the testator to allow the trust to continue.

[6] The impact of the Australian Charities and Not-for-profit Commission is uncertain at the time of writing.

Nevertheless, three forms of philanthropic disclosure can be identified in practice. The first is nil disclosure, evidenced by the fact that we do not know how many foundations there are in Australia, and that twenty-five of the thirty-two case study foundations in this research provide no public information. The most widespread form of accountability for foundations that have a public presence is what they describe as an 'annual report', but which is more accurately characterised as a grant distribution report. This report contains the name of the recipients, the size of the grants and the project/program that is funded. The rarest form of accountability is a fully audited set of accounts that provides grant distribution information and also information on investment policies and names of financial advisers.

This is in stark contrast to the very different philosophies and legal requirements in the U.S.A. where the third style of reporting is the norm and gives the public full information of the operations of its philanthropic sector.

2.10 Public Accountability and Philanthropy: The Debate

2.10.1 The Public Policy Paradigm Shift in the U.S.A.

McIlnay (1995), in an extensive article examining twenty-five years of the debate about the public accountability of foundations, reminds us that this debate is not new and did not start with the passing of amendments to the *1969 Taxation Act*. In the U.S.A. it started with the birth of the modern foundation in the early 20th century when foundations were attacked for their excessive power and influence (Senate U.S., 1916). Conscious of these views, two of the greatest proponents of philanthropic public accountability were the influential Rockefeller and Carnegie foundations. As early as the 1920s, both raised concerns at the dearth of public information available about America's foundations. Their own practice was based on the philosophy that there was a moral if not a legal responsibility for private philanthropic foundations to report publicly. They were concerned that unless the public had confidence in foundations, (which could only be achieved with full knowledge of their operations), not only might their privileged tax-exempt status

be threatened, but the community could even agitate to legislate them out of existence (Fosdick, 1989, pp.18-21).

The founders of modern philanthropy were strong advocates for public accountability. For example, the Rockefeller Foundation issued a 300-page annual report on the first year of its operation (Rockefeller Foundation 1914). As trustee and president, Fosdick described how his fellow trustees viewed philanthropy and their duty to account publicly:

> *A foundation is not only a private philanthropy: it is affected with a public interest and is in a real sense, a public trust. Exempt from taxation, it enjoys a favoured legislative status. The grants which it makes are matters of public concern and public confidence in the foundation as a social instrument must be based on an adequate understanding of its purpose and work. A foundation therefore cannot escape responsibility, moral if not legal, for giving the public complete information of its activities and finances* (Fosdick, 1989, p.289).

At the height of the Cold War, attacks on foundations were renewed during two Congressional Committees that investigated them for alleged 'un-American' activities (Cox Committee, 1952; Reece Commission 1956) (Prewitt, 2006, pp.42-43). Once again the Carnegie Foundation reiterated its position on public accountability when its Chairman, Russell Leffingwell, stated during his testimony before the Cox Commission, which is quoted in the Foundation Centre's new program 'glass pockets':

> *So far as there is a justification...and I am sure there is...for the existence of these institutions, it is that they serve the public good. If they are not willing to tell what they do to serve the public good, then as far as I am concerned, they ought to be closed down* (Smith, 2010).

Congress took no action against foundations on the basis of these commissions. It was not until Wright Patman, a Texas Democrat, initiated a series of Congressional Committee inquiries into 'tax exempt foundations' that Congress was motivated to act. Patman's reports (1962-1968) uncovered extensive impropriety and generated widespread media attention. Out of this ferment Congress finally amended the *1969 Taxation Reform Act* which created a new category of foundation, the 'private' foundation and mandated public accountability for such foundations (Brilliant, 2001, p.24; Hammack, 2006, pp.80-81).

This paradigm shift in public policy occurred because there was legislative and public consensus that philanthropic foundations are not solely private and therefore must be accountable to citizens in a democracy. It heralded the end of an era of what had effectively been self-regulation by U.S. foundations.

2.10.2 Public Accountability and Philanthropy: The Scholarly Debate

McIlnay also acknowledges that there is a contradiction at the heart of the issue of public accountability of foundations. This is the 'difficulty of balancing two diametrically opposed ideas...the privacy of foundations and the public interest'. While accepting that both are important, he favours the public accountability of foundations over their privacy which he identifies as a 'privilege' (McIlnay, 1995, p.118). He summarises the five arguments advanced by the pro-privacy advocates as follows:

(i) Supporters for the privacy of foundations argue that private foundations are the creation of private individuals using private money and therefore are private and have no responsibility to report publicly. Their only 'public' responsibility is to fulfil the legal obligations demanded by the Internal Revenue Service and lodge annual audited statements (McIlnay, 1995, p.119). This point of view has a long history. Lindeman (1936) reported that philanthropists viewed their foundations as private and to be used as they wished.

(ii) The second argument advanced by the privacy advocates is that foundations will be inundated with applications that they do not want, particularly as most foundations are small, do not employ staff and are often administered by attorneys, bankers or members of the donor's family (McIlnay, 1995, p.120).

(iii) The third justification for not reporting publicly is anonymity. Critics however, argue that this reticence is often related to a need to retain absolute, unsupervised control (McIlnay, 1995, p.120).

(iv) A fourth argument is that public accountability would further increase government regulation over foundations and therefore diminish their independence and individuality and ultimately jeopardise their freedom (McIlnay, 1995, p.120).

(v) The last argument is that publicity can 'subject a foundation to potentially embarrassing questions about itself', that in turn could lead to political attacks (McIlnay, 1995, p.120).

2.10.3 Why foundations should have 'Glass Pockets'[7]

McIlnay presents five counter arguments that are frequently cited in favour of public accountability. The first is that foundations are not completely private because 'the public is their ultimate beneficiary'. Fundamentally this position accepts the ambiguity at the centre of philanthropy –that foundations are both private and public. They are private because they receive their funds from private individuals, and public because they devote their resources to public purposes' (McIlnay, 1995, p.121).

The second argument is that foundations have considerable economic power that they use for public purposes and therefore should tell the community how they are using these funds. He argues this would reduce suspicion of foundations as 'concentrations of private wealth' engaged in improper activities (McIlnay, 1995, p.121).

The third argument is that foundations are not solely private as they receive generous subsidies from the public purse in the form of taxation benefits. Increasingly the community is demanding public accountability from all forms of organisations and institutions, including charities and this should include foundations (McIlnay, 1995, p.122).

McIlnay's fourth counter is that public accountability could improve the representativeness of foundation boards, which continue to be insulated from the community they serve. Diversity on boards could assist trustees in understanding community problems the foundation is trying to solve (McIlnay, 1995, p.122).

Quoting Boris & Odendahl, he argues finally it is the right thing to do. 'Philanthropy should advance moral values, trust should characterise philanthropic behaviour and ethics should be the guiding force in charitable organisations, including foundations' (Boris & Odendahl, 1990, p.189).

[7]The term was first used in 1952 in testimony before the Cox Commission by Russell Leffingwell, Chairman, Carnegie Corporation of New York who stated that it was incumbent upon foundations to have 'glass pockets'. Today, it is the name of a major programme at the Foundation Centre(`www.glasspockets.org`).

There has been an increased scholarly interest in this question since McIlnay outlined the case for and against public accountability twenty years ago. This is partly due to the heightened interest in ever-increasing philanthropic resources and the shift in the policy debate regarding the role of government (Frumkin, 2006a, p.102).

Recently, scholars continue to reiterate similar arguments and add new ones in this increasingly prominent debate. Prewitt advocates for greater public accountability on the grounds that foundations possess unique resources, occupy a unique position in modern democratic societies and are not, in effect accountable to anyone:

> *The American foundation is endowed with untaxed private wealth, designs grant strategies not governed by election cycles, annual reports to stockholders or short-term bottom line considerations. More generally, the foundation stands outside the controls of the State or the market and yet it is given the right to intervene in both* (Prewitt, 2006, p.30).

Frumkin repeats the arguments regarding the substantial public subsidy tax benefit and the potential impact foundations have on public policy, but claims the inbuilt power imbalance between grant-maker and recipient is another reason for public accountability (Frumkin, 2006a, p.101).

He advanced the notion of philanthropic accountability even further. He characterises the provisions of information and data as necessary for 'transparency', but defines accountability as the engagement of trusts and foundations with the not-for-profit sector. Such engagement would ensure foundations were not only accountable, but, he argues, they would also be more effective and have greater impact (Frumkin, 2006b, pp.55-90).

There has been no such scholarly debate in this arena in Australia. This thesis will explore further the Australian position.

2.11 Governance and Accountability – the scholarship

Like philanthropy itself, governance and accountability are contested concepts (Gallie, 1956, pp.167-198; Daly, 2012, p.537). Bovens states that accountability is

an essential component of governance. He contends that accountability is another 'golden concept' it is hard to argue against as it conveys openness, trustworthiness, fairness and justice (Bovens, 2007, pp.447-449). He holds that accountability can be used interchangeably with concepts such as transparency, equity, efficiency, responsiveness, responsibility and integrity. Increasingly, it has come to represent any 'mechanism that makes powerful institutions responsive to their particular publics' (Bovens, 2007, p.449). It is also a prerequisite for preventing corruption as accountability mechanisms encourage openness and reflection particularly in organisations that might otherwise be inward looking (Bovens, 2007, pp.462-464). He identifies five main forms of accountability – political, legal, administrative, professional and the one of most relevance for this thesis, social accountability. Malena *et al.* (2004) suggest that with a growing lack of trust in government by citizens in Western democracies, there is an increasing requirement for interest groups, charities and civil society more broadly to be publicly accountable.

Recent theories of governance emerged from the World Bank in the 1990s as the Bank redefined the philosophical foundations of its programmes due to globalisation and democratisation. Corporate governance has been the focus of most recent scholarship on governance, although there is an increasing literature within disciplines such as politics, international politics, economics and development studies (Pierre, 2000; Rhodes, 2007). Steen-Johnsen *et al.* (2011), editors of an entire edition of *Voluntas* devoted to governance of civil society organisations, claim there is an emerging research interest in the way civil society bodies are governed. Philanthropy, however, is barely mentioned by any of the contributions.

Internationally, the governance landscape has changed from traditional hierarchical structures of government (centralised and bureaucratic), to more fragmented, horizontally organised systems of governance. Porous boundaries have replaced rigid, hierarchical government structures, leading to a 'polycentric' state, where government, business and the (non-philanthropic segment of the) voluntary sector work together to solve society's problems (Ball, 2008, p.748). Bovens claims this more fragmented, horizontally organised system of governance allows:

> *Processes of accountability in which administrators are given the opportunity to explain and justify their intentions, and in which citizens and interest groups can pose questions and offer their opinion, [it] can promote acceptance of an organisation's authority and the people's confidence in the body's administration* (Bovens, 2007, p.464).

As an example, Ball outlines the complex network of governance structures that currently operates in English education, emphasising the new and 'influential beast', the multimillionaire education philanthropist. What is different about this form of philanthropy is not just the direct involvement of givers in policy communities – committees, trusts boards, authorities, agencies and council bodies, which are connected to and do the work of the state – but also the hands-on approach to the use of donations.' ...they want to be involved in the way the project is managed... and influence the way [schools] operate' (Ball, 2008, p.759).

Ball claims these philanthropists or 'transactors', at different times, or sometimes simultaneously, are representatives of business, advisers to the state, philanthropists, moral entrepreneurs or citizens doing public service (Ball, 2008, pp.757-760).

Marinetto asserts these new forms of networks and governance suggest a new paradigm where the State, although not impotent, is now dependent upon a vast array of state and non-state actors to govern (Marinetto, 2003, p.599).

Corporate governance has been the focus of most recent scholarship on governance although there is an increasing literature within the social sciences (Pierre, 2000; Rhodes, 2007) and also a growing academic interest in the governance of not-for-profit organisations (often referred to in the international literature as 'civil society organisations'). Middleton (1987) in the first extensive exploration of the governance literature on not-for-profit organisations, found few empirical studies and little scholarly analysis. Two decades later, Ostrower & Stone (2006) claimed that although there were still gaps in the literature, there had been significant growth in academic research, though most of this focused on the composition and role of boards and was therefore limited. They argued for a broadening of the scope of this research and urged scholars to explain boards and their governance in relation to their 'external environment, the societies in which they operated' (Ostrower & Stone, 2006, p.612).

This increased scholarly interest in the governance of civil society organisations was confirmed as mentioned above, when *Voluntas* devoted an entire issue to this in 2011. In describing this special edition, the editors (Steen-Johnsen *et al.*, 2011) confirmed that the contributions coalesced around two major research questions. The first focused on 'external governance', i.e. the processes through which societies are governed and the second dealt with 'internal' organisational governance.

The editors emphasise that these two dimensions of governance are 'intertwined' within not-for-profits and need to be examined together. Such analysis differs markedly from the study of governance and politics for example, where scholars focus mainly on the 'external' aspect of the concept, or business scholars who concentrate only on the 'internal' dimensions of organisations (Steen-Johnsen *et al.*, 2011, p.556).

Jepson claims civil society organisations should not simply adopt the private sector governance regime as their mission is to work as independent change agents within society. He maintains they need to develop and debate a distinct and credible accountability system that strengthens and defines their role. He argues strongly for a legitimacy-based approach to governance and accountability, as legitimacy maintains and builds public trust (Jepson, 2005, pp.518-520). Kaldor (2003) argues for moral as well procedural accountability. For her, moral accountability also arises from the mission of these organisations and is related to their legitimacy, their right to speak for and on behalf of the poor and dispossessed. Anheier & Hawkes also argue for debate and innovation around accountability and suggest NGOs move towards a notion of social accountability. They provide a number of examples of what social accountability could mean. NGOs could start to encourage citizens to hold public officials to account through mechanisms such as 'participatory budgeting, public expenditure tracking, public commissions and citizen advisory boards (Anheier & Hawkes, 2009, p.134). They argue that social accountability both complements and enhances conventional mechanisms of accountability.

These arguments are possibly an indicator that narrow legal or financial definitions of governance and accountability may not be the appropriate framework for exploring what form of accountability and transparency is appropriate for foundations.

2.12 Governance and Philanthropy

2.12.1 Philanthropy in the Accountability Governance Debate

Leat (2007) and Eikenberry (2006) assert that, despite increasing scholarly interest in the governance practices of the private sector and of government, until recently scholars have virtually ignored the governance practices of institutionalised philanthropy. Eikenberry (2006) and Ball (2008) claim this new interest in governance and philanthropy originates from a major structural shift in the way citizens are governed in modern democracies – the porous boundaries referred to above. Australian philanthropy appears to operate without any recognition of this new governance framework.

Fleishman, a strong supporter of foundations, claims they have long been the least accountable major institutions in America (Fleishman, 2009, p.49). He argues strongly that public and private organisations and institutions benefit from 'continuing challenges, criticism and oversight provided by others to whom they are accountable' (Fleishman, 2009, p.219). By contrast foundations have no external oversight. Foundation staffs are accountable to their trustees, but trustees are self-perpetuating and not accountable to anyone. He believes the consequence of this lack of public accountability insulates foundations making them less effective agents for social change. Peter Goldmark adds 'philanthropy enjoys relative immunity from the three chastising disciplines of American life: the bottom line, the ballot box and having the press walk up and down your spine every day' (Goldmark, 2004, p.38).

The case for greater accountability could be summarised by Russell Leffingwell, the Carnegie Corporation Chairmen, in his now legendary 'glass pockets' speech referred to above, in which he stressed that public accountability was necessary to earn the public's trust as they are able to deploy wealth that is unavailable to any other organisations or groups in society (Smith, 2010).

Another reason for public accountability is the impact that foundation grants can have on public policy. Foundations argue that their value in a democracy is their capacity to provide seeding grants on the assumption that government will continue to provide longer term funding. In Australia, this power to influence

public policy may be constructive and beneficial, yet as it is virtually invisible, there is no opportunity for the community to understand its impact. Prewitt claims that in the U.S.A., despite the ubiquity of foundations, it is the twenty-five large foundations that have impact on public policy (Prewitt, 2006, p.28). Although Australia's large foundations are miniscule compared to their American counterparts, it would appear from the only study that examines the grants made by twelve large foundations that the Australian distribution pattern is similar (Anderson, 2013). There is no scholarly evidence to suggest that they have the same impact on policy and debate.

2.12.2 Australian Foundations – Governance and Accountability

Diana Leat argues that, whatever the reason in Australia, 'debate around foundation governance and accountability appears to be virtually non-existent' (Leat, 2004b, p.9). She suggests that Australian foundations might argue that endowed grant-making foundations are different from all other organisations because their funds are private, donated by an individual or family. Therefore it could be argued that their governance and accountability are private and of no concern to the public (Leat, 2002, pp.4-7).This argument would be valid if endowed foundations and/or their benefactors received no tax benefits. However, most foundations receive significant tax benefits, so in a real sense foundations spend public money and their 'governance and accountability are issues of public interest' (Leat, 2002, p.7).

Australian legal scholars Krever & Kewley remind us that Australia's tax rules for charities and philanthropies 'are amongst the most generous in the world'. In addition, unlike the situation in other countries, there are no restrictions in Australia on the size of the capital base of perpetual foundations and consequently no constraints upon the total amount of tax relief (Krever & Kewley, 1991, p.xxi). Australian legislation provides an effective tax benefit of at least 45 cents in every dollar put into a philanthropic foundation (Treasury, 2008).

However, the key reason for foundations to be accountable is to ensure public trust and confidence. This will be the most effective way to guarantee that foundations retain their independence and individuality, or what Leat describes as their 'freedom and flexibility' (Leat, 2002, p.9).

The continuing debate and analysis in the U.S. is likely to lead to the further development of socially progressive philanthropy. It relies on the availability of solid information about philanthropic operations. How very different from Australia where we are still trying to source the names of foundations and their contact details.

2.13 Discussion

Private philanthropic foundations are distinctive organisations as they provide private wealth for public purposes. They have four characteristics – a perpetual timeline, a perpetual endowment, self-selecting boards of trustees and, in Australia, no law or regulation that requires them to report their activities and practices to the public. These features make them unique organisations in a modern democracy.

Foundations receive favoured legislative status and in most western democracies, including Australia, government policy exempts them from most forms of taxation and also provides tax benefits to their founders. Australia's taxation rules for philanthropy are some of the most generous in the world, as there are no restrictions on the size of the capital base and consequently no constraints upon the total amount of taxation relief. The rationale behind this policy is that foundations have been created to benefit and enhance the common good. The first reason they should be publicly accountable is that foundations' taxation benefits come from the public purse.

The second reason for accountability is their impact within Australia's civil society, i.e. what Nye calls their 'soft power'. The examples discussed earlier are just a small illustration of this influence in many areas of this nation. This aspect of philanthropy is one that is generally not recognised, much less understood in this country. It is appropriate, or perhaps even imperative, for organisations that exercise this degree of influence to be accountable in a democracy.

Ultimately, however, the most compelling reason is a moral one. Their influence can only be validated if they have the trust and confidence of the public.

The next chapter describes the methodological approach used in this thesis.

Chapter 3

Research Methodology

3.1 Epistemological Position

This chapter outlines and describes the research methods employed in this thesis to examine the governance practices of trustee companies in their administration of perpetual philanthropic trusts and foundations.

The chief epistemological position adopted for this research is social constructivism, also referred to as social constructionism. It suggests that:

> *...social phenomena and their meanings are continually being accomplished by social actors and...social phenomena and categories are not only produced through social interaction but that they are in a constant state of revision* (Bryman, 2012, p.33).

3.1.1 Social Constructivism

At the heart of the theory of social constructivism is the assumption that there is no objective reality and that all knowledge is predicated on values, ideas, beliefs and judgments of the individual. Reality is not fixed, but dependent on a person's political, social and cultural background. A further assumption is that researchers are not objective; they impose their own values, understandings and beliefs on the social context being researched. Therefore, all understandings of the external world are not objective and value-free, but are solely subjective interpretations. Unlike positivists who assume that all people experience the world in the same

way, social constructivism presumes that individuals may not experience social or physical reality in the same way (Prowse, 2010).

For researchers employing this theory, the purpose of research is to understand how people construct social meaning; to discover what is meaningful for individuals and how they understand and experience their daily lives. This approach assumes that social reality is dependent on human consciousness, it does not exist independent of individual human awareness. It is not the purpose of research to discover causal laws that determine patterns of external behavior (Steinmetz, 2005).

Social constructivists understand it is illogical to try and understand people's lives from abstract, logical theories that do not consider feelings and experiences. 'Individual motives are crucial...even if they are irrational, emotion-laden and contain false facts and prejudices' (Neuman, 2005, p.64). This school understands that often the most important things cannot be measured; therefore, its adherents do not believe that social theory should replicate natural science theory with deductive axioms and theorems. For social constructivists, a theory is true if it makes sense to those being studied and if it allows others to understand the reality of those being studied (Bryman, 2012, pp.387-388).

Social constructivism is a theory of research that facilitates the processes that allow change. Some of its proponents would hold that social science research should be used to aid any disadvantaged or underprivileged group in society. Such research sees many social groups as lacking power in society (women, consumers, racial minorities, gays, the poor, the disabled) and argues that these are oppressed by the powerful in our society. The social researcher should defend those who lack a voice in society and who are manipulated by those in power. Researchers have a unique role in society and have an obligation to help the weak and share knowledge with them (Neuman, 2005, p.451).

Qualitative data is associated with social constructivism as it emphasizes understanding through close examination of people's words, actions and records. It concentrates on collecting 'rich' information from relatively few people (Bryman, 2012, pp.379-415).

Unlike quantitative research, which relies on tables, charts, numbers and statistics, qualitative research examines texts, documents, wills, letters, transcripts of conversations or interviews and pictures. Charts, diagrams and tables are used,

but only to supplement text. The purpose of qualitative research is to ascertain patterns that emerge after in-depth examination, close observation, careful documentation and thoughtful analysis of all information and data. As the core philosophy underpinning qualitative research is that reality is socially constructed rather than objectively determined, emphasis is placed on understanding people's motives and action. In this process, researchers can spend many hours in direct personal contact with those being studied. Qualitative research is open to criticism for being subjective and biased (Bryman, 2012, pp.159-183).

This thesis uses the social constructivist approach to interrogate rich primary source material. This includes: thirty-two trust deeds (wills), the critical documents that present the benefactor's wishes; their associated probate documents; submissions to two parliamentary inquiries and interviews with seven relevant individuals.

3.1.2 Positivism

To a lesser extent – especially given the lack of Australian philanthropic data – the thesis also uses the positivist research methodology in at least part of its data analysis. Many scholars use positivism rather than social constructivism. One of the oldest research methods, positivism was originally the fundamental approach of the natural, and later, medical sciences. Today, it is widely used in the social sciences and favoured by those who use quantitative research methods.

The theory of Positivism asserts that there is an objective reality that can be studied. It seeks to understand the social world by uncovering universal laws through the measurement of the constant conjunction of tangible, objective events. Universal laws are seen to be mainly independent of time and space neutral and value-free (Neuman, 2005, pp.55-60). Positivism further contends that nothing exists in the external world outside observable phenomena and it rejects the 'invocation of theoretical abstract and unobservable entities' (Prowse, 2010, pp.212-213). The acquisition of knowledge is solely about being objective, value-free and unbiased. That is, the ontological question for the positivist is framed by the core belief that the research process is objective and there is an objective reality to be studied.

At the core of positivism is the belief in objectivity. Positivists contend that the social world, like the natural world, has patterns, laws and order. Human

behavior must be studied by examining and observing behavior, an external reality, rather than an internal, subjective reality. This 'mechanical model of man', or behaviourist approach, echoes Durkheim's statement that 'social phenomena are things and ought to be studied as things'. Ultimately, the fundamental premise of positivism is that the researcher at all times remains detached, neutral and objective as he or she gathers data or examines evidence (Tiryakian, 1978, p.227).

Karl Mannheim was one of the first to question the notion of value-free research for social science researchers. He stated that context was critical in determining knowledge. In his view researchers occupy a unique social role and the determinants of their knowledge are influenced by their social class, geographic location, gender and age. Or more simply, a person's social position in a society shapes his or her views and ideas (Mannheim, 1936).

Despite this early questioning, the major re-evaluation of positivism did not occur until the late 1960s and early 1970s. Gouldner attacked the notion of value-free, objective social science, arguing that the notion of value-free was used in the past to disguise specific value positions (Neuman, 2005, p.555). Gouldner contended that complete value freedom was impossible and that scientists and other professionals hide their values and beliefs behind this position (Gouldner, 1976). A researcher can be motivated to do research by a strong moral desire to effect change, which need not invalidate good research practice.

More recently, Small & Uttal demonstrated that there is a growing dialogue among researchers who are increasingly experimenting with new methods of conducting research to ensure 'greater applicability and responsiveness to contemporary social issues' and ultimately to influence social policy. One such method is for those researchers to work collaboratively with practitioners and community partners. Positivist researchers appear to have no part or interest in this debate (Small & Uttal, 2005, p.937).

Quantitative research design and practice is the lynchpin of the positivist approach. Data, surveys, statistics, questionnaires, market research, cluster analysis, structured equation modeling, these are the tools best suited to a positivist approach. Figures provide 'facts' and only 'facts' can be interpreted, analysed and criticised. Data in the form of numbers provides precise measurement. Positivist researchers

are dismissive of the interpretative and critical approaches central to other methodologies including social constructivism and indifferent to its information sources – words, texts, documents, observations and transcripts.

The thesis takes the positivist approach to obtain quantitative data from the following sources: the probate documents, submissions made by Private Prescribed Funds to a Treasury Inquiry and trust companies merger data obtained from the wills.

3.2 Methodological Framework

3.2.1 Triangulation

Triangulation is the use of more than one research method to verify data and information in the study of social phenomena (Bryman, 2012, p.717). Triangulation has been used as a verification model, a multi-factorial checking research method for the social sciences. It was initially designed as a method of confirming the findings of a research study (Webb *et al.*, 1966). This mixed method research combines methods associated with both qualitative and quantitative research (Bryman, 2012, pp.635-636). The research techniques used in this thesis are case study, Prosopography and historical data analysis.

3.2.2 Framework Artifact

The use of any research method presupposes the availability of data to interrogate. As will be noted throughout this thesis, hard information on Australian philanthropy is extremely difficult to obtain.

The most reliable source of information about perpetual grant-making trusts and foundations is *The Australian Directory of Philanthropy [The Directory]* (Philanthropy Australia, 2010).[1] This directory is published by the peak membership body, Philanthropy Australia (PA), and there are an unknown number of foundations and trusts that do not allow publication of their details in it, even though they are members of PA.

[1]Initially published as Directory of Philanthropic Trusts in Australia 1968 by the Australian Council for Educational Research (ACER) and funded by the Myer Foundation (p.xiii).

This sample of trusts and foundations used for research in this thesis was identified from the last hard copy edition (14th) of *The Directory*. This listed three hundred and fifty (350) grant-making foundations; this represents 7% of the putative 5,000 philanthropic bodies in this country. Almost forty per cent (145) of listed foundations are administered by trustee companies. *The Directory* provides limited information about these philanthropic entities and is designed primarily as a tool for grant-seeking not-for-profit organisations.

Leat & Lethlean urge caution when using *The Directory*, claiming the problems encountered by those compiling the first edition 'vividly highlight' the difficulty of obtaining information about trusts and foundations in Australia (Leat & Lethlean, 2000, p.21). In the Preface to this edition the editor stated:

> *As there is no central record available for public examination in any state, or in any Commonwealth department or agency (there is a duty to secrecy imposed, for example, on the Federal Commissioner of Taxation), every other possible source of information was tapped. Information about the trusts come from public registers and records, from trustees of known trusts, from solicitors and accountants, from banks and churches, from life assurance companies, from newspaper files, from industrial, commercial and charitable organisations, from the annual reports of appeals and hospitals, and from any other organisations. Individuals, too, helped us with this private information*[2] (Australian Council for Educational Research, 1968, pp.ix-x).

3.3 Research Methodologies

Three research methodologies were employed for this thesis. They are:

- *Case Study* (Yin, 2013) – the analysis of unique primary sources. In this case the thirty-two trust deed and probate documents are case studies of the governance practices of trustee companies in their role as trustees of

[2] 1st edition 1968 listed 226 trusts and foundations. 3rd edition 1980 listed 292 trusts and foundations. 5th edition 1987 listed 275 trusts and foundations. 14th edition 2010 listed 350 trusts and foundations – the sample chosen from this last hard copy edition provides a snap shot and exploratory study, a moment at the beginning of what some have named the second golden age of philanthropy.

philanthropists' specific wishes. These primary sources constitute a unique resource for analysing this aspect of trusteeship of the benefactor's legacy.

- *Prosopography* (Stone, 1971) is an historical methodology that seeks to explore social patterns within groups of individuals. This method is employed in a qualitative study of the trust instruments (usually wills) of Australian philanthropists who designated a trustee company as their sole or co-trustee. The method is also applied to the analysis of the interviews of five representatives of the trusts/foundations and a senior advisor to one.

- *Historical Document Analysis* is used to interrogate government documents that trace the policy development of the establishment of Australia's first independent regulator for the not-for-profit sector, the Australian Charities and Not-for-Profits Commission (ACNC). It is also used in considering the submissions to a government inquiry into the administration of charitable trusts administered by trustee companies (CAMAC, 2013).

3.3.1 Case Study Research (Yin, 2013)

Such research involves an in-depth examination of people, organisations or groups. Yin contends it is an all encompassing method that includes design of the case study, data collection and a specific approach to data analysis. He cautions that often researchers incorrectly assume that Case Study methodology is easy to use. In fact, it is the reverse, because of the absence of routine procedures in data collection (Yin, 2013, pp.67-79).

Case study research investigates a contemporary phenomenon in depth and within its real life context, especially when the boundaries between phenomenon and context are not clearly evident. The essential core quality of case study research is the continuous interaction between the theoretical framework and the data. Yin advises that only highly trained and experienced researchers should attempt case study research. This research method is successful if the researcher has the understanding to ask good questions and the capacity to interpret the answers. They must be able to listen and be adaptive and flexible and be exceptionally knowledgeable of the issues being studied (Yin, 2013, pp.70-72).

This research focused on philanthropists' wills to verify the benefactor's original wishes, identify the initial capital base and confirm the benefactor's trusteeship

instructions. It also explored and analysed the integrity of the original and ongoing governance arrangements for, and the purpose of, each perpetual, discretionary and charitable trust under the trustee company's administration.

Access is the principal issue in using wills as primary source material. The task would have been relatively straightforward had the trustee companies been willing to grant access to the wills of the trusts and foundations they administer. Unfortunately, such access was not granted. The only option therefore was to find the benefactors' wills through a much more laborious process.[3]

Wills are public documents, available in the Public Records Office of each State. Access is simple if the researcher has the benefactor's full name and date of death. The Australian Directory of Philanthropy provides the surname, but often only the initials, rather than the first name, of the benefactor and does not provide the date of death. The Victorian and New South Wales Public Records Office have indexes recording deaths for the last 150 years. As these indexes are on microfiche (not digitised), without the full name and date of death searching the microfiche was a painstaking and lengthy process.

Thirty-two legal instruments (mostly wills) and accompanying probate documents that established perpetual, philanthropic grant-making trusts and foundations were found and form the basis of this analysis. Charitable trusts and foundations were identified, examined and analysed and governance practices were identified.

3.3.2 Prosopography (Stone, 1971)

The second part of the triangulation is Prosopography (Stone, 1971), a method that seeks patterns from primary documents for groups of individuals for whom there is little publicly available information.

The prosopographical method is relevant to this research because it seeks to examine the exercise of philanthropy given its power and influence. Gilding in his research on Australia's super rich, cautions the researcher to be wary and vigilant about why the rich and powerful allow access to their views. Nevertheless, he encourages the technique of face-to-face interviews, because it is the most successful

[3]The Victorian Public Records Office digitised these records in January 2014 after this segment of research for this thesis had been completed. Digitisation only helps the research process if the researcher has the date of death.

way of understanding the otherwise largely invisible world of elites (Gilding, 2010, pp.756-757).

Originally a tool of political history, today it is applied extensively in historical research. It provides a means of examining the lives of a collective group of people with common backgrounds, who demonstrate cohesive relationships, bound by 'common blood, background, education, economic interests, ideals, ideology and possibly prejudices' and whose individual biographies are difficult or impossible to trace (Stone, 1971, p.40).

The method employed is to 'establish a universe to be' (Stone, 1971, p.46). A group of people is selected and their common background characteristics examined using a uniform set of questions about family, social origins, inherited economic position, amount and source of personal wealth, occupation, and religion (Stone, 1971, p.48). This information is compiled, contrasted and tested for obvious patterns. This method is based upon the idea that the actions of any institution or organisation can be understood by examining the experiences of the individual people within it. It is designed to analyse 'the role in society, and especially the changes in that role over time, of specific, usually elite status groups...' (Stone, 1971, p.49).

Stone asserts that individual members of this group are moved by a convergence of constantly shifting forces, 'a cluster of influences' such as kinship, friendship, social, political and economic interests, and often religious principle. He argues that this web of social and economic connections is the basis of group unity. It is these relationships, interactions and self interest that ultimately give this small group (the ruling elite) its political power.

Possibly the most critical question about the use of this approach is whether the portion for which reliable information is available is in anyway representative of the whole. This is important for this thesis, given the large knowledge gaps referred to earlier.

Interviews with sole trustees and co-trustees are the other major primary source for this research and Prosopography was the basis for their analysis. Trustee companies are the sole trustees for the majority of trusts and foundations in this research sample. The initial aim was to request an interview with senior representatives of the then four major trustee companies (who together manage 91% of all philanthropic monies managed by trustee companies) as well as a number of external co-trustees.

Ethics approval was sought and received through the University of Technology Sydney's Ethics Committee (20 March 2013, HREC Reference No: 2013000134. A copy is included as Appendix A.1, p.209). Letters and emails were written to the four trustee companies to seek an interview. As mentioned above, only one company agreed to be interviewed. Requests were also made to the chairmen of foundations who were independent external trustees. Ultimately seven interviews were conducted, employing a semi-structured interview format. These hour-long interviews were recorded and transcribed with the permission of those being interviewed.

All those interviewed were sent a typed transcript of the interview for corrections or comments. Most of the transcripts were extensive as the interviewees gave their time generously. The interviews were conducted either at the home of the interviewee or in their office in the central business district of Melbourne. All interviewees were known to the researcher through her work in philanthropy.

The overriding ethical consideration was confidentiality. It was critical to secure trust with interviewees so that participants felt free to disclose freely. Prior to the interview commencing a consent form was signed by participants (see form, Appendix A.2, p.211). It was discussed and signed at the interview or some chose to sign it after they had read the resultant transcript. The methods used to ensure confidentiality were outlined and participants were asked if they had any concerns or suggestions for additional or alternative methods.

3.3.3 Historical Document Analaysis

This self-explanatory term might be seen to include the analysis of the wills outlined above under the case study approach. However, while these documents were certainly created in the past, they still have a contemporary existence and indeed will continue to operate in the future. They therefore would not be regarded by Yin as what he describes as 'dead' documents (Yin, 2013, p.11).

Historical document analysis mines material, using both qualitative and quantitative methods, that relates to events that can be seen as completed. In this thesis, the historical, discrete, past 'events' considered were: the 2009 Treasury Inquiry into Prescribed Private Funds (PPFs, a form of philanthropy outlined in Chapter 2); the establishment of the Australian Charities and Not-for-Profits Commission

(ACNC) in 2012; and the 2013 Government Inquiry into charities administered by trustee companies. The documents that these generated respectively were one hundred and forty-five submissions from PPFs and others, seven years of ACNC documentation, and the submissions to CAMAC and its final report.

The research used qualitative analysis of submissions to garner information about governance and specifically to try and determine whether philanthropists had objections to the notion of public accountability. The same resource was quantitatively tested to find evidence for why they held their views and the correlation of this with the form of their foundations.

The other important suite of historical papers examined was the probate documents relating to the particular wills under scrutiny. This quantitative exercise sought to establish the initial value of the benefactors' estates and the foundations' estimated current capital value. It was also used to examine what public information was made available by trustees.

Triangulation validated the findings which were consistent across all methods. It therefore proved to be rich data and this is the first time such data has been used to critique Australian philanthropy.

Chapter 4

Australian Trustee Companies: Guardians of Perpetual Philanthropic Monies

> *In Australia as against the United Kingdom there is an additional problem of mapping a number of trusts and foundations, i.e. the large number of trusts and foundations administered by trustee companies upon whom there is no obligation to disclose tax deductible and tax exempt charitable funds held in trust for public benefit in perpetuity* (Leat & Lethlean, 2000, p.35).

4.1 Background

This chapter asks what is a trustee company, what is its philanthropic role and is there a clash of purposes between this and its other roles? As stated in the Introduction, trustee companies have a significant place within the Australian philanthropic landscape as they are trustees of the largest number of charitable trusts and foundations and, in perpetuity, control the largest amount of philanthropic capital. This chapter explores their origins, their legal framework, and their important role today within Australian philanthropy and as members of the financial services industry. It also examines the concentration of these entities through mergers and takeovers that has occurred during the last thirty years. Because of the lack of primary source material, the major data has been derived from trustee companies' own websites and is therefore limited. The only primary source material incorporated is that obtained from one of the interviews, with a

senior executive of a trustee company, that is the focus of Chapter Seven. Historical document analysis is utilised to interrogate both of these sources.The present chapter addresses only the private trustee companies; it does not explore public trustee companies.[1]

4.2 Genesis

4.2.1 Origins

Trustee companies are commercial entities that appear to have developed in the nineteenth century in Britain's English-speaking colonies. The first was established in Cape Town on 22 April 1834 (Ehlers, 2003; Poynter, 2003, pp.227-244). New Zealand Trustee Executors was founded in 1881 and the first Canadian Trust Company in 1882. A detailed analysis of the motives for the non-Australian ones is beyond the scope of this thesis and there appears to be no scholarly research exploring their role in philanthropy. Among the different international trustee company models, the Australian one is distinguished by the sheer scale of its philanthropic operations.

The prospectus for Australia's first trustee company, the Trustees Executors and Agency Company Limited (TEA), was issued in the Colony of Victoria in 1878 (Nash, 1899, p.180). The company's founder, William Templeton, migrated to Australia from Glasgow as a young boy and became a respected magistrate. Through his court experience he noticed that wealthy people had difficulty finding someone to act as their executor after their death. Templeton recognised a business opportunity and proceeded to create a trustee company (Sykes, 1996, p.33; Templeton, 1976). A different explanation for the motive to establish trustee companies is now provided by their umbrella body, the Trustee Corporations Association (TCA, 2012), which claims there was the need to manage the assets of wealthy individuals when they travelled abroad, often for very lengthy periods and that this was later extended to managing deceased estates, some of which established perpetual charitable trusts and foundations. The situation was made

[1]Public trustee companies are an authority of the eight State and Territory governments. The public companies are: Public Trustee for ACT, NSW Trustee & Guardian, Public Trustee NT, The Public Trustee Queensland, Public Trustee SA, The Public Trustee Tas., Public Trustee WA, State Trustees Victoria. These companies provide services for individuals who are legally judged unable to look after their own affairs.

more complex by the then law prohibiting companies from acting as executors, a power which had previously been the prerogative of individuals only.

It appears that the Victorian Parliament became aware of the potential powers of such companies and sought to define these in a special Act of Parliament passed on 8 December 1879. Its main object was to:

> *...afford persons the opportunity of obtaining the services of a permanent corporation for the performance of the duties of such offices and thus to remove much of the uncertainty and insecurity which attend the appointment of private individuals* (The Executors Company's Act 1879 Victoria Regina, No. DCXLIV).

Within the next decade, a further four trustee companies were established in Victoria, each requiring a special Act of Parliament. Perpetual Executors' and Trustees' Association of Australia Limited and the Union Trustees, Executors and Administrators' Company Limited were both established on 8 December 1885, and the National Trustees Executors and Agency Co of Australasia Ltd and the short-lived Colonial Permanent Trustees, Executors & Agency Company Limited were formed in late 1887. These four companies, whose offices were located in the heart of Melbourne's financial district, rapidly came to dominate the investment market, even after the emergence of competitors from the other Australian colonies (Merrett, 2008, p.1).

The first Sydney trustee company, Perpetual Executor and Agency Company Limited, was also incorporated by a special Act of the New South Wales Parliament on 29 June 1888. The Permanent Trustee Company of New South Wales was founded in the same year (Nash, 1899, pp.163-181). Because Victoria and New South Wales produced the overwhelming majority of trustee companies, the origins of those in the other States have not been explored in this thesis.

Trustee companies in their original form can be viewed today as somewhat old-fashioned entities, established by gentlemen for gentlemen, with a reputation for being prudent, respected and trusted. An illustration of how far they have evolved from their beginnings to their current financial services role is the story of the election of Perpetual Trustees' first Chairman. The first meeting's Minutes record that the claims of all the Directors to the Chairman's position was 'great' and 'equal', so they determined the man 'having the weightiest body mass' would be

appointed Chairman. Mr. James Reading Fairfax achieved this honor (Original Minutes, Angel Place Foyer 1886)[2].

Trustee business was personal, private and confidential. The importance of this was emphasised in 1935 when, celebrating its fiftieth birthday, Perpetual required all staff to sign an Obligation of Secrecy book, a practice that continued until 1988 (Perpetual Limited, 2010).

Sykes claims that if the founders had returned a century later they would have discovered little had changed for trustee companies. Most were still at their original headquarters, they were still engaged almost entirely in their traditional trustee business – acting as an executor, administrator and trustee, writing wills and managing individual estates (Sykes, 1996, pp.33-34).[3] Trustee companies' image was of being reliable, dependable and respectable.

4.2.2 Changes

The first, cataclysmic, change came when the oldest, largest, most respected trustee company, Trustees Executors & Agency Company Limited (TEA), collapsed and was declared bankrupt in May 1983. This created a financial scandal as no trustee company had previously failed. Its board then (which was drawn exclusively from Melbourne's leading business establishments) included Chairman Alex Ogilvy, who also sat on the board of one of Australia's pre-eminent companies, Broken Hill Proprietary Company Limited (BHP), and Sir Robert Norman, former CEO of the Bank of New South Wales. The company's 1982 accounts had shown net assets of $7.79 a share. A year later it was declared bankrupt having over-invested in speculative property development. It was revealed that the new young CEO, brought in to modernise the company, had manufactured the previous year's financial statements and the company was trading while insolvent. He was the only person gaoled, despite the board being seen as self-perpetuating and negligent (Sykes, 1996, p.34).

The closure of this highly respected trustee company was performed with great secrecy. Shareholders and the public only learnt of the causes of the collapse when the Victorian Attorney-General tabled a five volume report in the Victorian

[2]Cited by author, 20.3.2011. This display has since been replaced.
[3]Sykes makes no mention of their philanthropic role (Sykes, 1996).

Parliament. The failed company was purchased by ANZ Bank in 1983 and renamed ANZ Trustees (Kennan, 1990; Sykes, 1996, pp.52-54).

The second change was the deregulation of the financial services industry by the federal Hawke Government in 1983, driven by its reforming Treasurer, Paul Keating. This created a transformation in the culture and practice of trustee companies (Sykes, 1996, p.34-38). To their traditional role they now added the ability to offer a much broader range of financial services. Their philanthropic responsibilities correspondingly came to represent a much smaller fraction of their overall financial business activities. Grabosky & Sutton claim that until deregulation, trustee companies enjoyed statutory protection from takeovers to ensure that control of the company could not pass into the hands of those whose motives might not be in the best interests of beneficiaries (Grabosky & Sutton, 1989).

4.2.3 Legal Framework

Originally, the legal architecture, the policy, regulations and law for trustee companies was based on each individual State's law.[4] They remained the responsibility of State Attorneys-General until the Commonwealth assumed full responsibility for their services on 6 May 2009. This followed an extensive Commonwealth of Australian Governments (COAG) process, which was part of the Rudd Government's reform agenda. Under this, the Commonwealth took over responsibility for the regulation of the traditional activities, including philanthropic duties, of the private trustee companies.[5]

During the Parliamentary debate, the Minister stated several reasons why the Commonwealth was taking on regulation of trustee companies from the States. Efficiency was the most important of these. The current State-based system imposed unnecessary compliance costs and burdens on trustee companies, as those wishing to operate in more than one jurisdiction 'must comply with differing and often inconsistent authorisation and reporting requirements' Other reasons given were that the State system 'lacks transparency' and that consumers are entitled to 'efficient, honest and fair' services. Despite the Act's intent, it made no provision for greater transparency (Bowen, 2009, p.7155).

[4]E.g. the *Trustee Act Vic* 1886, *Administrative and Probate Act (Vic) 1890*; *Administration and Probate Act 1890 NSW*.

[5]The relevant Act is the *Corporations Legislation Amendment (Financial Services Modernisation) Act 2009*.

In the entire debate there was only one specific mention of charitable trusts:

> *The government is aware of the need to protect charitable trusts by regulating the fees they may be charged by trustee corporations. It is proposed to 'grandfather' the fees charged to existing charitable trusts and foundations. Thus, if the fees of the charitable trust would be increased due to the introduction of a new fee regime, the grandfathering rules...* (Bowen, 2009, p.7155).

Nevertheless, the new Commonwealth Act had the unforeseen consequence of enabling a large increase in the fees that a trustee company could charge an individual trust or foundation for the administrative and financial service provided if no numerical fee calculation basis was included in the trust deed (will) of the trust or foundation. Traditionally, the trustee company's fee was based on 5-6% of income. The new legislation allowed it to be based on up to 1.056% of capital.

In spite of the apparent clarity of the Minister's speech, the Act itself is confusing regarding the critical 'grandfathering' provision. For example if a foundation's assets are included in a common fund operated by the Trustee Company, the old fee will not be adhered to. Instead a fee 'not exceeding 1.1%' of the trust's assets may be charged.

As an example of the negative impact of this, one of the charitable trusts in this thesis' sample of thirty-two case studies had a capital base of about $10 million at the time of the legislation change. It faced a potential fee increase from $26,840 to $105,600 per annum – a loss of $78,760 grant-money for the non-profit sector, or given the latter's generally low remuneration levels, effectively at least one full-time salary (pers. comm. 20 February 2009).

The process of trustee fee deregulation is currently stalled within a number of inquires and investigations. The potential impact on philanthropy is unclear.

4.3 Trustee Companies 2012

At the time the research for this thesis was conducted, a time-limit of 2012 was selected. There were then eight private trustee companies in Australia. What follows describes the position and operations of trustee companies at that time. As section 4.5 outlines, there has been a substantial drop in the number of trustee companies

since then. The following private trustee companies – ANZ Trustees, Australian Executor Trustees, Equity Trustees, National Australia Trustees, Perpetual, Sandhurst Trustees, Tasmanian Perpetual Trustees, and The Trust Company – were all listed on the Australian Stock Exchange or were wholly owned subsidiaries of banks. All were scrupulously transparent and accountable to their shareholders. They published comprehensive annual reports and complied with all laws and regulations set out by a number of regulators including the Australian Securities and Investments Commission (ASIC). They have a proud record of increasing shareholder value and indeed have a fiduciary duty to maximise and grow profits and returns to their shareholders. They employed 3,000 staff in more than 80 offices throughout the nation (FSC, 2014).

Those aspects of their operations that are traditionally most relevant to philanthropy include estate planning, writing wills and acting as executor of deceased estates. During the 1980s all trustee companies expanded beyond their traditional trustee business. Perpetual, for example, became a leader in the rapidly-developing funds management industry. The company proudly proclaims:

> *Our passion is to protect and grow our clients' wealth with our vision to be Australia's largest wealth manager of choice...Today Perpetual is a modern full-service wealth manager – but we have never lost sight of our trustee heritage or mission to help people to protect, manage and grow their wealth* (Perpetual Limited, 2010).

All trustee companies provide financial services and advice for their clients and all offer tailored specialised services for the complex needs of their most discerning private clients. They all state their aim to 'manage, grow and protect' their clients' personal wealth and to provide a complete suite of services to achieve this goal. These include investing, superannuation, taxation advice, estate planning, and customised charitable and philanthropic giving (Perpetual Limited, 2014b).

In addition to the above services, trustee companies retain almost two million wills on behalf of their clients and write a further 60,000 wills each year as well as administering 9,000 deceased estates. There is no information on how many, if any, of these instruments are converted into philanthropic trusts and foundations that the companies then administer in perpetuity (TCA, 2012).

From 1947, the trustee companies had their own umbrella association, the Trustee Corporations Association (TCA). In March 2012 this was disbanded and its members joined the Financial Services Council (FSC) – an indicator of their growing assumption of a broader role. In September 2014, the Council's 125 members (including trustee companies) managed more than $2.3 trillion, approximately 50% more than Australia's GDP ($1.58 trillion) making it the third largest pool of managed funds in the world. The CEOs of both Perpetual and Equity Trustees Limited are current board members of the FSC (Australian Bureau of Statistics, 2014; FSC, 2012b, 2014).

4.4 Trustee Companies and Philanthropy

Trustee companies are the largest administrators of grant-making philanthropic, charitable foundations in Australia. Together they administer 2,000 charitable trusts, with a capital base of $3.3 billion. Each year they distribute approximately $180 million to the Australian community in philanthropic grants. They are sole trustees or co-trustees of 40% of the putative 5,000 Australian trusts and foundations. These figures represent a large part of Australia's philanthropic monies, yet are a fraction of the total assets managed by trustee companies, as outlined above. These global aggregate figures are the only figures the companies provide publicly (FSC, 2012a).

The four largest companies as at 2012 managed 91% of all monies entrusted to trustee companies. They are also trustees of some of Australia's most valuable and significant cultural, medical, and scientific scholarships, prizes and awards. For example the Trust Company administers the Miles Franklin Literary Award, established by Miles Franklin in 1954. It also administers the Portia Geach Memorial Award for Art, and the Michael Kieran Harvey Scholarship for pianists. Perpetual is trustee for the Patrick White Literary Awards and the prestigious Ramaciotti Medal for medicine. Trustee companies also manage some of Australia's oldest foundations and bequests such as The Felton Bequest, established by Alfred Felton in 1904 initially administered by TEA, then ANZ Trustees and today by Equity Trustees. Equity Trustees also manages the R.M. Ansett Trust scholarship to study aviation as well as more recent celebrity foundations such as The Shane Warne Foundation (Cham, 2011, p.2).

The major services they provide for the charitable trusts they administer can be divided into three broad areas:

(i) *Governance.* This comprises such tasks as initial preparation of the trust deed, oversight of legal responsibilities in administering the trust, regulatory compliance, oversight of asset managers, tax and legal advice and record keeping. It also includes accounts, auditing and reporting. It can include the lodgement of relevant returns to the ATO and the management of tax deductions.

(ii) *Administration.* This is the largest duty once a trust is established. It includes the management of grant programs, grant research, grant recommendations and issuing the grant monies. It often involves the continuing development of IT systems to streamline and facilitate the grant application and funding process.

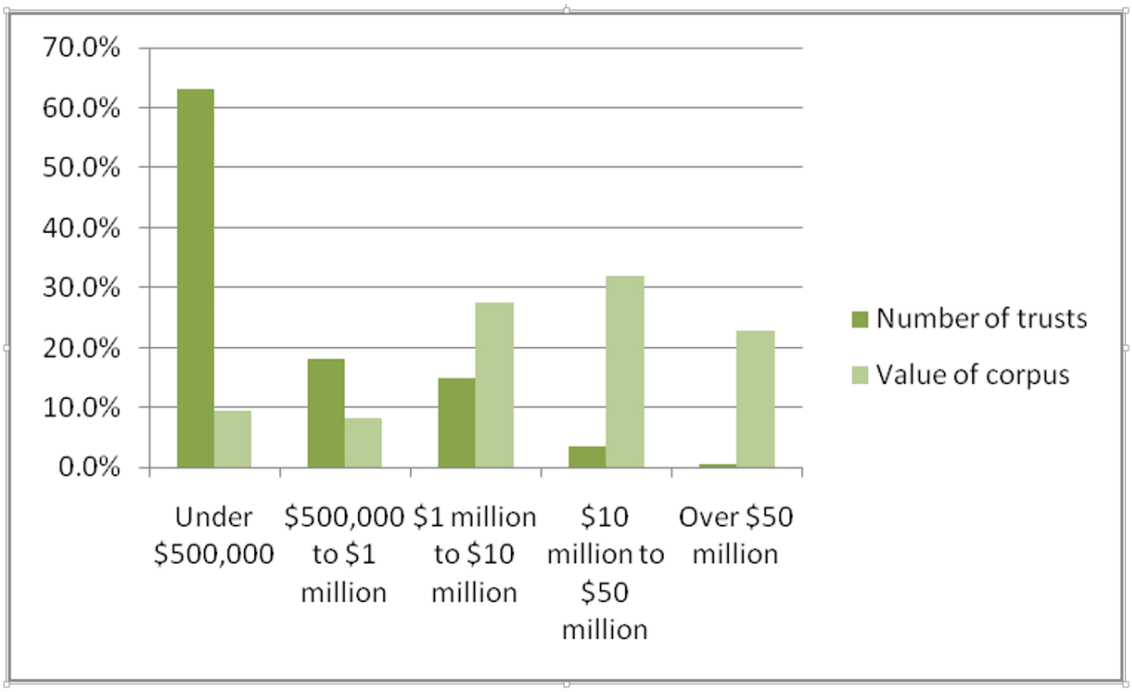
(iii) *Services to the board.* This includes the co-ordination of board meetings (with co-trustees or advisory committees), preparation of papers and minutes and all secretariat functions.

The size of foundations administered by trustee companies is uncertain. Leat & Lethlean claim that, as there is no quantitative data on Australian foundations, it is difficult to know whether the frequently quoted figure (2,000) is accurate (Leat & Lethlean, 2000). Being mindful of this, the following table represents a distribution of these foundations within trustee companies. It was compiled by the Australia Institute following interviews with a representative of trustee companies (Australia Institute, 2011).

Of the 2,000 charitable trusts, about 1,600 have a corpus of less than $1 million. About eighty have a corpus of over $10 million and there are probably only about ten with a corpus over $50 million. These larger trusts also include those run by the larger corporate trustees which pool together many very small trusts. While most are small, the larger ones dominate the total asset pool by value. The eighty trusts with a corpus of over $10 million represent over 50% by value of the charitable trusts.

The dominance of the four large trustee companies in philanthropy is illustrated in the following table.

FIGURE 4.1: Distribution by size of charitable trusts 2011.



Source: Australia Institute (2011, p.4).

TABLE 4.1: Foundations administered by four trustee companies - September 2012

Trustee Company	No. of Fondations	Capital Base	Grants
ANZ Trustees	235	$1.4 billion	not avail
Trust Company	850	$1 billion	$40 m
Perpetual	540	not av.	$50 m
Equity	200	$ 300 million	not av.

Source: anz.com.au; equ.com.au; perpetual.com.au; thetrustcompany.com.au.

4.4.1 Philanthropy in Trustee Marketing

The charitable operations of trustee companies might now be an infinitesimal part of their function but it has a disproportionately important role in their reputation and image as testaments of their longevity, respectability, reliability and prestige. The philanthropic responsibilities are the jewels in their marketing crown and valuable in attracting new business, as is evident from promotional material advocating their investment services. As trustee of the Miles Franklin Literary Award, the Trust Company announced in 2013 that it wanted to extend the audience of the iconic literary prize and would host 'Miles on the Road' events in Canberra

and Brisbane, giving the community an opportunity to meet the shortlisted authors. The same year the company launched the 'Miles of Reading Challenge' asking readers across the nation to read 'at least one novel from the long list'. It also reached out to readers online and launched 'Miles Franklin on Twitter'. Half the space announcing these developments was devoted to detailing the wide range of the financial services offered by the company (Trust Company 2013)[6].

An extensive advertising campaign in magazines during 2010 declared: 'The Investor Who Masters Change Thrives Through It'...Perpetual knows quite a lot about [it]. We've been protecting and growing Australians' wealth for over 124 years'.[7] Celebrating its 125th anniversary in 2013, Perpetual added the inscription 'Trusted for 125 Years' to its logo in a glossy brochure that asked and answered the question: Why Perpetual?

> *We have over 125 years' experience in advising and managing charitable foundations and endowments. We've helped with the establishment, investment and distribution of funds for medical, welfare, environmental, religious, cultural, international development and educational purposes. Our current funds under management exceed $1.1 billion* (Perpetual Brochure 2013)[8].

The websites for all trustee companies promote their long history as trustees of philanthropic foundations. Equity Trustees in the first paragraph on its Home Page, states: 'Equity Trustees was established...with the purpose of independently and impartially providing trustee and executor services and helping Australian families protect their wealth' (Equity Trustees, 2014b).

As a senior trustee company executive stated:

> *...not only do we have that awesome responsibility in terms of those wonderful charitable trusts, but it also represents a huge win-win for the company to get that message out, to promote the legacy of those individuals, to engage the community with respect to the distribution and then to create that virtuous cycle* (E Interview, 28 June 2013, p.1).

[6]The Trust Company of Australia was taken over by Perpetual in 18.12.2013

[7]These advertisements appeared in *The Age*, Weekend Magazine, throughout September 2010 and in *Sport & Style*, October 2010.

[8]This brochure was distributed widely.

Trustee companies' records of strong effective trusteeship do provide a sound case for potential philanthropists to avail themselves of their services. Corporate trustees argue that there are many advantages for individuals and families in appointing a trustee company.

> *Essentially trustee companies stand out because of their in-perpetuity value proposition and that we are structured....so that we are able to take sound long term decisions* (E Interview, 28 June 2013, p.2).

Trustee companies claim they can best protect the original wishes of the trust's founders, as they are bound strictly to the Trust Deed. Other parties, such as co-trustees, relatives or potential grant recipients, may seek to thwart the intentions of the trust founder for their own potential gain. For example, independent trustees may try to get charitable trust funds released for their own benefit (Australia Institute, 2011, p.12).

4.4.2 Lack of portability of charitable trusts

The notion of perpetuity is a central tenet of a trust's operations. The founder of the charitable trust is usually dead. The trustee company is generally specified in the Trust Deed which cannot normally be changed without the agreement of the court. Therefore, in the event of a merger or takeover, the successful trustee company 'inherits' the trust and foundation administered by the unsuccessful competitor.[9]

Not all aspects of perpetuity are necessarily seen as positive. Independent co-trustees – in the minority of cases where they exist – have no power to leave or change the foundation's 'service provider', despite this being a prevailing orthodoxy in today's market-driven, deregulated economy. Why? Those appointed as co-trustees to the boards of foundations and trusts are eminent, often powerful, citizens and usually prominent businessmen and women, so that the only way an individual trust or foundation can change its trustee company is to mount a court case, likely to cost hundreds of thousands of dollars. This must be funded by a personal contribution from the individual co-trustees as any payment from a trust

[9]Note that, because of the large number of mergers and acquisitions in the trustee industry, it is highly unlikely that the current trustee is actually named in the Trust Deed. It is more likely that a former trustee company long since merged or acquired into one of the dominant financial services providers is listed in the Trust Deed.

must be agreed to by all trustees, including the unlikely vote of the representative of the trustee company – a costly disincentive. Many co-trustees or independent trustees do not have the resources to mount a lengthy legal challenge and one with a very uncertain outcome.

This lack of portability is central to trust administration today. Nevertheless, when philanthropists now set up a new charitable trust they have a wide range of choices, both as to the structure of philanthropic vehicle they use and as to the provider of trustee services. The law since 2009 requires trustee companies to clearly state their fees up front and potential philanthropists can negotiate fee levels based on the size of the trusts and also on the workload involved in administration. This flexible fee structure benefits both the trustee companies and the many wealthy individuals and families who have used the modern philanthropic structure of choice, Private Ancillary Funds (PAFs).

Those with lesser funds in the order of $20,000 to $2 million, and who do not wish to establish PAFs, are encouraged to donate via the trustee company's pooled charitable foundations (such as the Perpetual Foundation or the then ANZ Trustees Foundation) where the maximum number of grant recipients each year is linked to the value of the individual trust's sub-account within the Foundation.[10] This solves the problems of administering small trusts. Those with very high amounts to donate will be in a strong position to negotiate reduced fees.

Unfortunately, none of these choices apply to the nearly 2,000 charitable trusts which were established in the past, including the thirty-two that form the case studies for this research.

4.5 Exodus

Prior to deregulation of the financial services industry in 1983, there were thirty-five trustee companies in Australia. In September 2012, due to amalgamations, takeovers and mergers, this number contracted to only eight private trustee companies. The four largest of these were – Perpetual, Equity Trustees, The Trust Company and ANZ Trustees which together:

- managed 91% of charitable funds under management ($3 billion)

[10]For example, in the Perpetual Foundation, those with $100,000 to $500,000 can nominate up to six grant recipients each year, but those with under $50,000 can only nominate two.

- administered 65% (1,300) of all charitable trusts and foundations
- distributed 89% ($160 million) of funds each year (my data)

Two years later (September 2014), due to further mergers and amalgamations, only two large private trustee companies, Perpetual and Equity remain. Equity now administers 450 trusts and foundations, with a capital base of $1.9 billion, and distributes $80 million to the community annually in grants. Perpetual administers 990 trusts and foundations with a capital base of $1.3 billion and it also distributes $80 million annually in grants (Equity Trustees, 2014a, p.1; Perpetual Limited, 2014a).

These mergers appear to have been the result of the last large independent trustee companies attempting to build scale and resist the competitive forces of the new family based philanthropic financial services offices (e.g. Myer Family Company) and the private banks, which were encroaching onto their traditional business.

In 2013, there were a number of takeover bids for one of Australia's oldest trustee companies, The Trust Company. The first bid was launched in February by Equity Trustees and was unsuccessful. This was followed in May by a higher offer from Perpetual and was supported by the Trust Company board. As such a merger could result in a lack of competition, the proposal was forwarded to the Australian Competition and Consumer Commission (ACCC) seeking clearance for the takeover.

On 16 May 2013, the ACCC commenced a public review of the proposed acquisition of The Trust Company by Perpetual. In its submission to the ACCC, Perpetual listed two major activities that it believed were important for the purposes of this competition assessment. The first was its Corporate Trust services to the financial services industry. These included custodial services for a range of assets, trustee services for unregistered funds, and trustee services for debt capital market products. The major customers of these services included fund managers, ASX-listed corporations engaged in market transactions, banks and finance companies.

As the second of its major activities, Perpetual listed its Private Trust Services including acting as a trustee for personal and charitable/philanthropic trusts of various descriptions and acting as an executor for estates. The main customers

for these services were wealthy individuals and families. This is one of the few references in the ACCC's report to charitable or philanthropic trusts.

The Commission reported that it consulted extensively, including contacting a large number of customers of trust services. The vast majority of those customers expressed no concerns about the proposed acquisition. Yet in announcing its preliminary finding, the ACCC stated that the Perpetual takeover 'could harm competition' (Australian Competition and Consumer Commission, 2013b).

A month later (19 September 2013) and after a change of government at a federal election, when the Commission issued its final report, its Chairman, Rod Sims, declared that the ACCC had revised its view and now it 'would not oppose the proposed acquisition' as this merger was 'unlikely to lead to a loss of competition'. The only condition the ACCC imposed on the merger was 'a court-enforceable undertaking from Perpetual to divest The Trust Company's existing ownership of a 13.4 per cent shareholding in competitor Equity Trustees Limited' (Australian Competition and Consumer Commission, 2013a).

On 1 March 2014 the Trust Company merged with Perpetual, which welcomed its new partner and announced on its website: 'Perpetual and the Trust Company. Two Great Businesses, Now One Great Company. The Trust Company Part of Perpetual'

> *This [merger] brings together two businesses that share a heritage that pre-dates Federation. It unites two businesses that are strong and growing and share a culture that puts the client first* (Perpetual Limited, 2014c).

Six months later, this time without any consideration or intervention by the ACCC, another merger occurred when Equity Trustees Limited acquired ANZ Trustees. Initially, this did not appear to be a classic merger as ANZ Private Bank announced that it had formed 'a strategic relationship with Equity Trustees for the delivery of trustee services... As part of this agreement ANZ Trustees has been sold to Equity Trustees'. Nevertheless, only a 'majority' of the Trustees' business would be transferred to Equity Trustees (ANZ Trustees, 2014). Despite this comment, by September 2014 all charitable trusts and foundations had been transferred to Equity Trustees.

In its new online newsletter, Equity welcomed the completion of the acquisition of ANZ Trustees and promised to achieve the trusts' founders' 'vision and goals':

> *...through effective grant-making and prudent investment...Equity Trustees and ANZ Trustees coming together represents an extraordinary opportunity to expand our assistance to charities working to enhance civil society, support the comunity and assist those in need. We are delighted to take a leadership role in Australia's philanthropic sector* (Equity Trustees, 2014a, p.1).

These two mergers have resulted in the two largest and oldest trustee companies, Perpetual and Equity, now being the trustee of over 1,440 trusts and foundations and managing the assets of these philanthropic entities, approximately $3.2 billion.

It is probable that both companies could be vulnerable to a takeover by a global asset manager, such as the attempted acquisition launched by Kohlberg Kravis Roberts & Company five years ago, when the Perpetual board seriously considered selling the company. Little thought was giving to the impact on the four hundred and twenty charitable trusts it then managed. What would an overseas independent asset manager, specialising in complex buy-outs, understand about the even more complex needs of Australian charities? (Washington, 2010).

The outcome of these and future corporate manoeuvres is of vital importance to Australia's not-for-profit sector. However, it is mostly unaware that they have occurred, much less how they may affect its fundraising potential and ultimately its operations. It is difficult to make a case that the further reduction in number of so few companies provides any benefit at all for the beneficiaries of philanthropic monies and these mergers mean less choice and potentially less access to the money intended for them as outlined in the Discussion.

4.6 The Recipients of Trustee Companies' Grant-making

Who can receive grants from trustee companies and other philanthropic foundations?

4.6.1 Legal Definition of Recipients

A brief sketch follows of the dominant legal framework that has helped define what constitutes the category 'grant recipients', in Australia and how this has changed over time.

Remarkably, *The Charitable Uses Act of 1601 'The Statute of Elizabeth'* defined who was eligible to receive charitable monies for most of the history of philanthropy in Australia. Despite its repeal in England in 1888, nearly three hundred years later the spirit of this Act continued to be the legal reference point because the repealing Act required that references to charities be understood 'within the meaning, purview and interpretation of the preamble to the [original] statute.' That preamble was itself an odd statement, at once detailed and incomplete, of 'charitable purposes':

> *The relief of the aged, impotent and poor people; the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars in universities; the repair of bridges, ports, havens, causeways, churches, sea-banks and highways; the education and preferement of orphans; the relief stock or maintenance of young tradesmen, handicraftsmen and persons decayed; the relief or redemption of prisoners or captives; and the aid or ease of any poor inhabitant concerning payment of fifteens, setting out of soldiers and other taxes* (quoted in Poynter, 2003, p.251).

In Australia, the relevant legislation that referenced this Act was the the various State *Administration and Probate Acts* from 1890, until the Commonwealth consolidated this function in *The Charities Act* (2013). Over the course of the twentieth century, the practice developed of these Acts naming key individual social infrastructure organisations as being covered by the legislation (e.g. The Royal Melbourne Hospital). As these organisations multiplied, further evolution occurred through Common Law as judges increasingly interpreted the individual as the general (e.g. particular hospitals now became the category). Other recipient groups that did not fit these specific categories were drawn together under the catch-all clause of 'general charitable purposes', provided they had received Deductible Grant Recipient (DGR) status from the Australian Taxation Office. Together these form Australia's not-for-profit sector (Crimm, 2002; Harding, 2014; McGregor-Lowndes & O'Halloran, 2010a,b).

In Victoria, the law required that foundations and trusts receiving the taxation advantage of not paying probate (death duties) were restricted to making grants within Victoria (Poynter, 2003, p.251).

The actual legal form of a non-profit body in Australia is variable. Sue Woodward found the following legal structures in her survey of the sector (Woodward, 2003, pp.102-133):

- 444,000 organisations were unincorporated
- 136,000 organisatons were incorporated
- 11,700 were companies limited by guarantee
- 1,850 were co-operative organisations

4.6.2 Australia's Charitable and Not-for-Profit Sector

There is a growing body of professional and academic research on some of its features. The term 'not-for-profit' is used to cover the broad range of organisations that operate for social or community purposes. The main characteristic of such organisations is that funds or profits are used by the organisation solely to further its social purpose, to enhance the common good. The term is intended to be much broader than the traditional, legal definition of a 'charity', which has been limited to the relief of poverty, advancement of education, advancement of religion and other purposes beneficial to the community.

The Productivity Commission of 2010 found the sector had grown rapidly, 7% per annum from 2000, and is now the major provider of most human services. Paul Smyth's research demonstrated they are stable organisations and that 84% of community sector organisations operating in 1990 were formed in the thirty years after the 1960s (Smyth, 2013); Knight & Gilchrist found 5% of the 38,341 charities they analysed were over one hundred years old (Knight & Gilchrist, 2014). The community values their work highly; eighty-three percent of Australians consistently indicate a high degree of trust in the sector. It should be noted that the sector includes philanthropic trusts and foundation which provide some of the monies for these charitable bodies (Productivity Commission, 2010). An extensive philanthropic research report in 2005 found the sector touched the lives of 87%

of Australians by providing services they used, through volunteering or providing funds (FACSIA, 2005).

Today, charities and not-for-profit organisations operate throughout the country. They have complex avenues of revenue generation including a reliance on volunteers. The majority are small organisations and have minimal resources. The governance of not-for-profit boards is unlike any other. The sector is governed by voluntary boards or committees of management. Increasingly they include 'consumer representatives'.[11]

As an indication of the sector's diversity, its 600,000 not-for-profit organistions are found in cultural, sports, environment, medical, educational, health, aged care, and recreation institutions. Not-for-profits have complex avenues of revenue generation, including a reliance on volunteers. To appreciate its scale the Australian Bureau of Statistics estimated that, in 2012/2013, the sector received over $107.5 billion worth of income (Australian Bureau of Statistics, 2014). In economic terms the sector contributes nearly $43 billion (approximately 4%) to Australia's GDP, almost double that of the agricultural industry. If one adds a valued contribution of the 4.6 million volunteers, a further $15 billion would be added. The sector employs nearly one million paid people (8.5%) of the workforce and the government provides $810 million in tax breaks to individuals who donate to it. One agency alone, Uniting Care, has an annual budget of $2.7billion, a footprint that is larger than McDonalds' Australian operations,and employs 36,000 staff and 24,000 volunteers—more people than the coal mining industry (pers. comm. 4 August 2012). Dalton & Butcher found evidence of a group of 'super-sized' Australian charities some whose resources and assets were greater than those of most Australian businesses(Dalton & Butcher, 2015). Nevertheless, thirty thousand organisations have resources and assets of less than $250,000, ten thousand have revenue of less than $500,000 and five thousand have revenue of more than $1 million (Australian Bureau of Statistics, 2014; Knight & Gilchrist, 2014; Productivity Commission, 2010).

The sector also includes philanthropic trusts and foundations, which provide some of the monies for these charitable bodies.

[11] For example an organisation working to advance mental health will include one or more board members with an experience of mental illness, e.g. SANE.

4.6.3 The Not-for-Profit Philosophy

Peter Drucker (1995) asks what is the bottom line when there is no bottom line? The core aspect of most not-for-profits is the centrality of values to the organisations' operations. Unlike the commercial motivation that necessarily underpins the trustee companies' corporate philosophy, the not-for-profit sector has a fundamental commitment to altruism, its *raison d'être* being to enhance the common good, not the company's financial good. The not-for-profit sector is positioned between the family, government and business. Its members voluntarily join together to provide services to facilitate activities or advance a cause (Lyons, 2001, p.31). Its mission is ameliorating long-term social problems and it can therefore be difficult to judge non-profits' organisational performance on purely corporate criteria.

Not-for-profit bodies are often referred to as providing a community's 'social glue'. National and international research confirms that not-for-profits and charitable organisations increase trust and social capital in societies (Onyx, 2014).[12] One of their vital roles is to advocate and disagree with government policy where this is necessary, in order to represent the interests of their constituents, who are often the most disadvantaged and fragile members of the community. Staples claims the sector is a critical source of ideas on the society we aspire to be (Staples, 2008, p.4).

The not-for-profit sector is thus clearly qualitatively different from the commercial sector and some scholars are warning that if it embraces too enthusiastically the modus operandi of the latter, it risks losing its purpose and credibility. Smyth warns that not-for-profits and charities are (Smyth, 2014):

> *Increasingly adopting a mode of operation based on commercial business model – in effect re-styling themselves as social enterprises or non-profit businesses – thus running the risk of compromising their mission and traditional communitarian values* (Smyth, 2014, p.2).

He is concerned that, by adopting these business practices, the sector will erode its distinctive contribution to society and forget its true purpose.

[12]There is a current scholarly debate on the assumption that high social capital creates only good outcomes (Cox, 2007; Leonard & Onyx, 2003).

4.7 The Impact of Grants from Trustee Companies

Trustee companies' role in distributing grants to the not-for-profit sector has been discussed above. What do we know about the impact of these grants on charitable organisations? The short answer is very little. The companies provide virtually no information about the individual asset value, income, fee structure, recipients of grants, the amounts granted or who is involved in the decision-making process for the foundations they administer. The lack of transparent information makes it very difficult to assess the impact of grants made from these charitable trusts.

> *One result of both the practice of giving via trustee companies and their own secretiveness is that there is no culture of foundation formation or even of philanthropic giving as a 'normal' or even possible thing to do. Foundation formation has traditionally been shrouded in mystery and seen as an enormously complex undertaking. Another result of the practice of giving via trustee companies and their secretiveness has been the great difficulty in making any estimate of the number and size of trusts/foundations in Australia* (Leat, 2004b, p.21).

4.8 Discussion

Trustee companies are a critical component of Australian philanthropy as they manage the largest pool of philanthropic monies. As trustees they administer the legacy of 2,000 Australian philanthropists. Therefore their legal and regulatory structure, their trusteeship and how they discharge this responsibility are of vital importance to the interests of the non-profit sector which the monies were intended to support.

Despite their pivotal position in philanthropy, there is very little data on trustee companies' practice of philanthropic trusteeship. Nor, apparently, is there any scholarly literature on these entities themselves with the exception of a chapter on the collapse of Australia's first trustee company in Trevor Sykes' volume on Australia's those companies that did not survive the country's 1980s recession.

The quality of the services these companies provide to the philanthropic sector is unquestionably proficient and there are many reasons for potential philanthropists to use them: their perpetual nature, their financial and administrative expertise, their independence, and their traditional commitment to privacy and confidentiality. However, this task is a very small part of trustee company business. To reiterate, altogether trustee companies manage $510 billion of which only $3.3 billion (0.65%) is the philanthropic component. Because the non-philanthropic financial aspect of their business is so dominant and necessarily governed by the fundamental principles of 21st century free market economics it is worth evaluating the extent to which this philosophy is appropriate to the companies' role as perpetual guardians of philanthropic monies. Is there a clash of missions?

The purpose (and legal fiduciary duty) of a modern financial services provider is wealth creation for its clients and shareholders. These providers operate in a competitive economic environment and one in which the market is expected to provide choice – indeed, the federal government established the Australian Competition and Consumer Commission (ACCC) to ensure that such choice is available to the consumer. On the other hand, the fundamental purpose of philanthropy is altruistic – to enhance the common good of the community, not the private wealth of an individual or company. Are there areas in which these two intentions are in conflict?

Investment outcomes for the two areas of operation are (apart from the desire to increase the philanthropic corpus) quite different. Financial effectiveness is measured relatively simply in dollar amounts and on a very short time line, typically annually. In strong contrast the impact and outcomes of philanthropic investment may not be apparent for many years and are complex as they often involve the most fragile and vulnerable members of the community. The motive to increase the philanthropic corpus may itself be seen as conflicted, since the legislative change that based a trust company's permitted fee on the size of this corpus.

Even a notion as basic as the identity of the service's client can be ambiguous. For the dominant financial services function, the client is the individual or the shareholder. For the philanthropic function of a trustee company is the client the benefactors, or the foundation they created, or the potential beneficiaries, i.e. the not-for-profit sector?

Mergers and takeovers are an accepted and legitimate practice in a financial or any other business, subject to the requirement to preserve some competition. From a business perspective, concentration of trustee companies may be logical and lead to increased efficiency and corporate leverage. However, the trustee company mergers outlined in this chapter have had an unintended deleterious effect in the philanthropic environment. They have significantly reduced the funding options available to not-for-profit agencies – the intended beneficiaries of these monies. This situation provides these companies with previously unprecedented hegemonic power within Australia's civil society.

The two remaining large trustee companies are potentially an attractive target for foreign takeover or merger. This was seriously considered with Perpetual in 2010. How would the interests of Australian philanthropy be protected in such a scenario? Would they even be part of the debate?

When the ACCC considered the proposed merger between Perpetual and the Trust Company, there was no public mention made of whether the small philanthropic element within the two companies was taken into account in its deliberations and if so, how much weight it received. Did it consider the potential impact of such a merger on the not-for-profit sector? It would appear that little or no thought had been given to the hundreds of perpetual foundations that would be transferred from the trustee designated by the benefactor to another trustee company. There is no record of any of the interested parties drawing attention to this issue.

The difference in mission in a for-profit organisation and a philanthropic body can also be seen in the different scope of public reporting for these two functions within a trustee company and probably relates to their imbalance of scale. The trustee companies provide a comprehensive, audited annual report of their total operations. Within this, their philanthropic activities receive little or no mention. Typically, if they are referred to at all, they appear in a list of committees, or as a generalised example of corporate social responsibility.

It seems inevitable that, because philanthropy is such a minute component of the trustee business, the business for-profit philosophy will overwhelm the philanthropic altruistic one, as the ACCC case outlined above illustrates. Despite this, there can be some reverse osmosis of purpose. For example, trustee company staff are encouraged to volunteer in the community and both Equity and Perpetual have established their own foundations.

Given the above concerns, should the question be posed: Is the trustee company model established over a century ago, but now functioning very differently, still the appropriate one in the 21st century for the trusteeship of perpetual philanthropic monies? The following chapter explores the companies' trusteeship for a sample of thirty-two case studies.

Chapter 5

Case Studies: Thirty-two Trust Deeds and Their Accompanying Probate Documents

5.1 Introduction

This chapter asks the question: What forms of accountability exist within trustee companies in their role as trustee? It is the first in-depth qualitative research study of a sample of Australian philanthropic trusts and foundations administered by trustee companies. Most importantly, it is the first time that the models of Australian philanthropic trusteeship have been identified and the implications of their differences examined. The chapter describes the process of data collection from trust deeds and probate documents for thirty-two trusts and foundations administered by trustee companies. This material has not previously been used as a primary source in research into this segment of Australian philanthropy. Indeed, such trusts and foundations have never been the subject of scholarly research. Other information examined from these source documents includes some sociological details of the benefactors, their wishes, and the purposes for which the trusts and foundations were established. The chapter then considers the power that trustees have, depending on the level of discretion accorded to them by the stated purposes of the trust deed. Because the sample fortuitously included trusts and foundations established over a century ago, another finding emerged that illustrated a point made in Chapter Four, the escalating reduction in the number of trustee companies responsible for administering philanthropic bodies. For the first time, the monetary value of the benefactors' estates – out of which the corpus

to establish their trusts and foundations was drawn – is presented from the probate documents and their consequent current value approximated. In the light of this, the thesis examines what information the trustee companies make publicly available. The case studies' key findings are then discussed.

5.2 Data Collection

The key primary documents for this chapter are the trust deeds, mainly wills, and the probate papers of thirty-two Australian perpetual, charitable, grant-making bodies established by philanthropists who appointed trustee companies to administer their legacy. The reason why these documents were selected for study is that (with the noble exception of The William Buckland Foundation) there is virtually no other publicly available data. The thirty-two trusts and foundations were selected by the process described below as case studies from those listed in the Australian Directory of Philanthropy (2010) as ones for which a trustee company is a sole or co-trustee. Thirty-one are Victorian and one was established in Sydney. As the current on-line edition of the Directory (2014) lists only twenty-five of this sample, data on the other seven trusts and foundations was sourced from the website of the Trust Company (2013) which administers them. The original trust deeds that established these philanthropic entities are located in the Public Records Office of Victoria as were all the probate documents. Although the sample of trusts and foundations was selected from the Directory, the difficulty of locating any primary source material for them cannot be overstated (Leat & Lethlean, 2000, pp.6-7). The Directory itself provides minimal summary information for its entries.

The documents obtained for this study therefore provide new primary source material which will now be accessible to the public. The data available for scrutiny about the sample's trusts and foundations is limited in all but one instance.[1] In most cases there is no public information concerning the actual commencement date of the foundation. This is held by the Australian Taxation Office and the trustee companies but is not in the public domain. The only verifiable date for the researcher is the year that probate was granted for the wills under examination.

[1]The William Buckland Foundation Annual Report (2001).

As mentioned elsewhere in this thesis, the great majority of trusts and foundations – not just those in this sample – do not produce a public report. Of those that do, only a small number provides a comprehensive annual report that includes financial accounts and investment information as well as a list of grant recipients and amounts granted. Some trusts and foundations provide only this latter information as a grant distribution report. As all four trustee companies are publicly listed companies (or subsidiaries) on the Australian Stock Exchange, their Annual Reports and websites were also examined.

To avoid bias as much as possible, the wills in which the trustee company is the sole trustee were randomly selected. However, in order to ensure that a diversity of trusteeships was represented, seven trusts/foundations were purposely selected that were known to have an independent co-trustee or trustees as well as the trustee company's representative. These trusts and foundations already have a public presence and therefore their practices are more transparent and available for examination.

5.2.1 This Research Sample

There are dangers in drawing lessons from such a small sample that is not statistically representative, although Yin argues that a single case study can represent a significant contribution to knowledge and theory building (Yin, 2013, pp.47-52). However, in the analysis of this data set, patterns have emerged and because of their consistency it is important to point to a broader clearer pattern among trustee companies and the trusts they administer. Although the trusts and foundations are small in number, their estimated 2014 value has been calculated as being possibly in excess of half a billion dollars, and they annually distribute approximately $30 million to the community in philanthropic grants.

The following table (5.1) lists the full names of the thirty-two benefactors, the name of the trust or foundation they created, the year probate was granted and the nature of the trusteeship, both specified and apparent. Explanation of the former is given in section 5.4 (also see Appendix B, p.212, for a sample of these wills).

The sample fortuitously includes a cross-section of probate dates from 1904 to 2005. Most decades saw the creation of three or four trusts and foundations. The

Table 5.1: The Case Studies – Trust and Foundations Examined
(Grouped according to trusteeship arrangements)

Probate Year	Name of Benefactor	Name of Foundation/Trust	Type of Trusteeship
1904	Felton, Alfred	The Felton Bequest	Sole Trustee
1905	Davies, Edward	Will of Edward Davies	Sole Trustee
1940	Ogg, Charles	The Charles Robert Eastgate Ogg Trust	Sole Trustee
1962	Brown, Isobel	Isobel Hill Brown Charitable Trust	Sole Trustee
1963	Pipkorn, Percival	P.F. Pipkorn Trust	Sole Trustee
1964	Hutchings, Blanch	The B.B. Hutchings Bequest	Sole Trustee
1972	Reid, Irene	Irene Emma Reid Trust	Sole Trustee
1974	McGauran, Rose	J & R McGauran Trust Fund	Sole Trustee
1975	Fleming, John	The John William Fleming Trust	Sole Trustee
1977	Howe, Edward	Edward J Howe Trust	Sole Trustee
1978	Bell, Mary	M.K.A. Bell Memorial Fund	Sole Trustee
1978	Herman, Ethel	The Ethel Herman Charitable Trust	Sole Trustee
1985	Wardell, Teresa	The Teresa Wardell Trust	Sole Trustee
1992	Lascelles, Walter	The Walter & Nancy Lascelles Memorial Trust	Sole Trustee
1996	Irwin, Enid	The Enid Irwin Charitable Trust	Sole Trustee
2000	Dodd, Ian	The Ian Dodd Trust.	Sole Trustee
2001	Ewart, Annie	Nancy Ewart & Grizelda Tennent Trust	Sole Trustee
2002	Quail, Cecil	Cecil & Neita Quail Charitable Trust	Sole Trustee
1928	Danks, Aaron	The Danks Foundation	Co-Trustee
1954	Baxter, Percy	The Percy Baxter Charitable Trust	Co-Trustee
1964	Buckland, William	The William Buckland Foundation	Co-Trustee
1972	Currie, Ian	The Ian Rollo Currie Estate Foundation	Co-Trustee
1975	Baxter, Hilda	The Baxter Charitable Foundation	Co-Trustee
1985	Williamson, Hugh	The Hugh D.T. Williamson Foundation	Co-Trustee
2005	Lawrence, Margaret	Margaret Lawrence Bequest	Co-Trustee

1938	Myer, Elcon	The EB Myer Charity Fund	Specified Co-Trustee
1943	White, Anna	The A.M. White Fund	Specified Co-Trustee
1958	Basan, Ernest	E.T.A. Basan Trust	Specified Co-Trustee
1958	Scott, Daniel	The Daniel Scott Trust	Specified Co-Trustee
1964	Basser, Adolf	Adolf Basser Trust	Specified Co-Trustee
1965	Hecht, Henri	H.& L. Hecht Trust	Specified Co-Trustee
1978	Knell, Hope	J. & Hope Knell Trust Fund	Specified Co-Trustee

Source: Thirty-two wills

largest number, nine, were created during the 1970s. An extract of the will signed by testatrix Anna Maria White on 26 May 1938 is shown to give an idea of the style of testamentary disposition (Figure 5.1, p.104).

5.3 Monetary Value of the Case Study Trusts and Foundations

To put the discussion of models of trusteeship and public accountability into context, it is worth examining the estimated current value of the capital base of each of the foundations under consideration. The current value of this sample of thirty-two perpetual trusts and foundations is almost half a billion dollars, although it must be emphasised that this is the maximum possible value, assuming the full sum at probate formed the corpus of the new trust/foundation. The estimate is based upon the Reserve Bank of Australia's inflation calculator.

From the point of view of the not-for-profit sector, the aggregate annual disbursement (as required by law and often written into the will) is at least 5%-6% of the capital base, therefore approximately $30 million annually so the sample is financially significant. The tables below show, for each category of trusteeship, the value of each benefactor's personal estate at the time probate was declared. As

noted above this may represent all or part of the sum that established the corpus of the new foundation or trust (see Table 5.2, p.103).

5.4 Models of Trusteeship/Trusteeship Structure of the Sample

In the administration of perpetual philanthropic charitable trusts and foundations there are two ways benefactors can appoint trustee companies to act as their trustees in perpetuity. The company can be appointed as a sole trustee or as a co-trustee (sharing the trusteeship with one or more independently appointed individual trustees). In this sample, another category became apparent, that has been designated 'specified co-trustees'. In these wills, the benefactor specified that there be a co-trustee but it appears that today these foundations are operating with a sole trustee – the trustee company. This was an entirely unexpected finding.

In this sample (Figure 5.2), eighteen (56%) of the benefactors appointed the trustee company as sole trustee, seven (22%) as co-trustee and seven (22%) are ambiguous as the will specifies that there be more than one trustee yet today the trustee company is apparently the sole trustee.

(i) The Trustee Company as Sole Trustee

Within the sample, the largest number of benefactors, eighteen, appointed the trustee company as sole trustee. Nine women and nine men chose this trusteeship arrangement. The following excerpts provide examples of this agreement as stipulated in the will:

> *I appoint as Executor and Trustee of this my Will The Perpetual Executors and Trustees Association of Australia Limited of 50 Queen Street Melbourne* (J. Fleming, 1973, p.1).

> *I appoint the Union Fidelity Trustee Company of Australia Limited, of 100 Exhibition Street Melbourne...Executor and Trustee of this my Will* (Mary Kathleen Alexander Bell, 1978, p.1).

Why did these eighteen elect the trustee company to be sole trustee? There is a deficit of verifiable information available on why philanthropists choose this arrangement. The Financial Services Council (FSC, 2012a, p.6), the

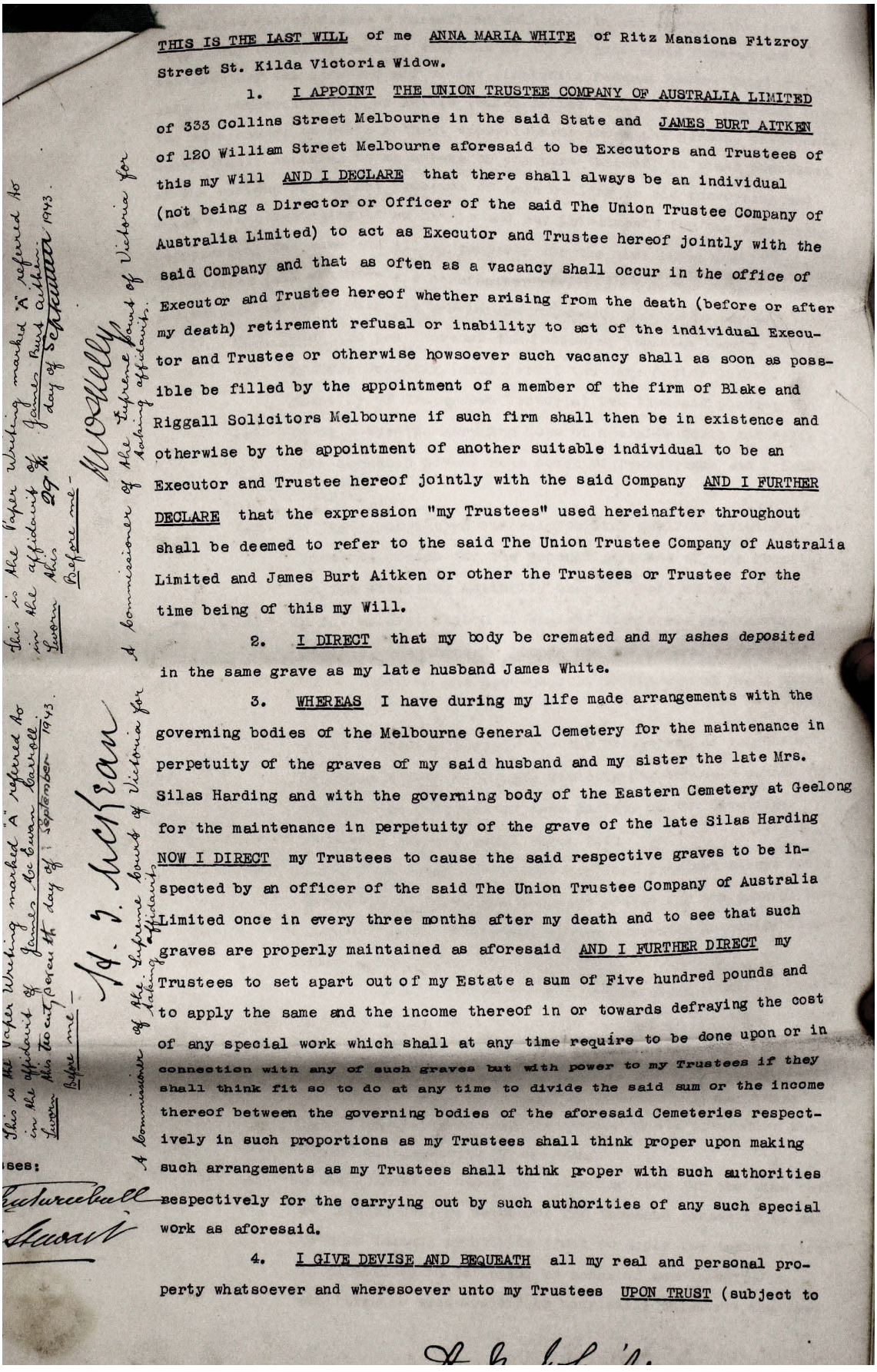
Table 5.2: Value of Estate at Probate and Estimated 2014 Value of Capital of Foundation / Trust

Year	Name of Foundation/Trust	Value at Probate*	Estimated 2014 value of capital**
1904	The Felton Bequest	£383,163	$54,832,767
1905	Will of Edward Davies	£54,832,767	$3,656,502
1928	The Danks Foundation	£195,728	$20,000,000
1938	The EB Myer Charity Fund	£121,281	$9,979,776.00
1940	The Charles Robert Eastgate Ogg Trust	£33,872	$2,623,229.00
1943	The AM White Fund	£376,382	$24,531,374.00
1954	The Percy Baxter Charitable Trust	£137,798	$65,000,000.00
1958	E.T.A. Basan Trust	£61,752	$1,769,226.00
1958	The Daniel Scott Trust	£136,937	$4,360,916.00
1962	The Isobel Hill Brown Charitable Trust	£367,258	$9,746,462.00
1963	P.F. Pipkorn Trust	£88,621	$2,336,884.00
1964	Adolf Basser Trust	£810,416	$20,774,750.00
1964	The B.B. Hutchings Bequest	£206,245	$5,287,023.00
1964	The William Buckland Foundation	£4,829,644	$123,806,353.00
1965	H.& L. Hecht Trust	£1,497,939	$37,134,535.00
1972	Irene Emma Reid Trust	$173,684	$1,634,208.00
1972	The Ian Rollo Currie Estate Foundation	$2,610,547	$24,562.87
1974	J & R McGauran Trust Fund	$491,758	$3,674,870.00
1975	The Baxter Charitable Foundation	$346,462	$15,000,000.00
1975	the John William Fleming Trust	$230,475	$1,495,558.00
1977	Edward J Howe Trust	$308,593	$2,002,468.00
1978	M.K.A. Bell Memorial Fund	$368,168	$1,737,988.00
1978	The Ethel Herman Charitable Trust	$635,509	$3,000,008.00
1978	J & Hope Knell Trust Fund	$182,124	$859,741.00
1985	The Hugh D. T. Williamson Foundation	$5,704,231	$35,300,000.00
1985	The Teresa Wardell Trust	$273,245	$720,990.00
1992	The Walter & Nancy Lascelles Memorial Trust	$545,036	$942,149.00
1996	The Enid Irwin Charitable Trust	$1,145,032	$1,907,618.00
2000	The Ian Dodd Trust.	$4,029,691	$7,792,116.00
2001	Nancy Ewart & Grizelda Tennent Trust	$2,058,001	$2,500.00
2002	Cecil & Neita Quail Charitable trust	$549,297	$989,595.00
2005	Margaret Lawrence Bequest	$5,224,825	$6,517,256.00

* Source: Thirty-two probate documents accompanying wills.

** Source: RBA inflation calculator at
`http://rba.gov.au/calculator/annualDecimal.html` and
`http://rba.gov.au/calculator/annualPreDecimal.html`

FIGURE 5.1: Source: Will of A.M. White: The first page of the Will of A.M. White, 26 May 1938.



THIS IS THE LAST WILL of me ANNA MARIA WHITE of Ritz Mansions Fitzroy Street St. Kilda Victoria Widow.

1. I APPOINT THE UNION TRUSTEE COMPANY OF AUSTRALIA LIMITED of 333 Collins Street Melbourne in the said State and JAMES BURT AITKEN of 120 William Street Melbourne aforesaid to be Executors and Trustees of this my Will AND I DECLARE that there shall always be an individual (not being a Director or Officer of the said The Union Trustee Company of Australia Limited) to act as Executor and Trustee hereof jointly with the said Company and that as often as a vacancy shall occur in the office of Executor and Trustee hereof whether arising from the death (before or after my death) retirement refusal or inability to act of the individual Executor and Trustee or otherwise howsoever such vacancy shall as soon as possible be filled by the appointment of a member of the firm of Blake and Riggall Solicitors Melbourne if such firm shall then be in existence and otherwise by the appointment of another suitable individual to be an Executor and Trustee hereof jointly with the said Company AND I FURTHER DECLARE that the expression "my Trustees" used hereinafter throughout shall be deemed to refer to the said The Union Trustee Company of Australia Limited and James Burt Aitken or other the Trustees or Trustee for the time being of this my Will.

2. I DIRECT that my body be cremated and my ashes deposited in the same grave as my late husband James White.

3. WHEREAS I have during my life made arrangements with the governing bodies of the Melbourne General Cemetery for the maintenance in perpetuity of the graves of my said husband and my sister the late Mrs. Silas Harding and with the governing body of the Eastern Cemetery at Geelong for the maintenance in perpetuity of the grave of the late Silas Harding NOW I DIRECT my Trustees to cause the said respective graves to be inspected by an officer of the said The Union Trustee Company of Australia Limited once in every three months after my death and to see that such graves are properly maintained as aforesaid AND I FURTHER DIRECT my Trustees to set apart out of my Estate a sum of Five hundred pounds and to apply the same and the income thereof in or towards defraying the cost of any special work which shall at any time require to be done upon or in connection with any of such graves but with power to my Trustees if they shall think fit so to do at any time to divide the said sum or the income thereof between the governing bodies of the aforesaid Cemeteries respectively in such proportions as my Trustees shall think proper upon making such arrangements as my Trustees shall think proper with such authorities respectively for the carrying out by such authorities of any such special work as aforesaid.

4. I GIVE DEVISE AND BEQUEATH all my real and personal property whatsoever and wheresoever unto my Trustees UPON TRUST (subject to

FIGURE 5.2: Trusteeship Structures for the Sample Wills



Source: Thirty-two wills

umbrella body representing trustee companies, claims that benefactors decided on this option because they believed that the trustee company would 'remain responsible for the trust in perpetuity'. In the examples above, we do know that neither John William Fleming nor Mary Kathleen Alexander Bell ever married, so one could speculate that their respective lack of immediate families led them to nominate the trustee company to administer their legacy.

(ii) The Trustee Company as Co-Trustee

There were seven wills in the sample in which the benefactor had appointed the trustee company as co-trustee and additionally appointed one or more independent trustees. These seven, with the number of co-trustees in brackets, are:

- The Danks Foundation (three other trustees)
- The Percy Baxter Charitable Trust (two other trustees)
- The William Buckland Foundation (four other trustees)

- The Ian Rollo Currie Estate Foundation (one other trustee)
- The Baxter Charitable Foundation (two other trustees)
- The Hugh D. T. Williamson Foundation (four other trustees)
- Margaret Lawrence Bequest (one other trustee)

For this category, there is a little more information about who the other co-trustees were and why they were chosen. Hugh Williamson, a senior executive of ANZ Bank, appointed the company's wholly-owned subsidiary company:

> *I appoint ANZ Executors and Trustee Company Ltd of 94 Queen Street Melbourne executor and trustee of this my will* (Hugh D.T. Williamson, 1985, p.1).

Williamson also named four independent trustees. He bequeathed $10,000 to one of these men as a 'mark of my affection' and he stressed that this gift was in no way pertinent to 'his office as trustee' of the foundation' (Hugh D.T. Williamson, 1985, p.3).

In three cases (Danks Foundation, Percy Baxter Charitable Trust and the Baxter Charitable Foundation), family members were named and their descendants continue today in this role. Nevertheless, even in this small sample those with family members did not always designate them as trustees of their legacy. An example is William Buckland, described as Australia's richest man at that time, who left a wife and children, yet appointed and named four independent trustees in addition to the trustee company to administer his eponymous foundation (Merrett, 2004).

> *I APPOINT the TRUSTEES EXECUTORS AND AGENCY COMPANY LIMITED of 401 Collins Street Melbourne, SIR GEORGE PATON of the University of Melbourne, C.G. MCGRATH Chairman of Directors of Repco Limited, HUGH WILLIAMSON of the Australia and New Zealand Bank Limited, Melbourne, G.J. GALE Manager of New Zealand Loan and Mercantile Agency Company Limited and HUGH SYME of Mernda Road, Kooyong, Executors and Trustees of this my Will* (William Lionel Buckland, 1961, p.1).

He further directed that there 'shall always be five Trustees of this my WILL including the said Trustees Executors and Agency Company Limited'. He

also allowed for his trustees to appoint 'a new or additional Trustee' (William Lionel Buckland, 1961, p.15).

The remaining two founders in the sample (Ian Rollo Currie Estate Foundation and the Margaret Lawrence Bequest) left no family as far as can be determined, and therefore appointed independent trustees with whom they had had a professional relationship.

(iii) Specified Trustee

In the course of the analysis of the thirty-two wills, the following seven (22%) demonstrated a surprising anomaly.

- The E.B. Myer Charity Fund (1938)
- The A.M. White Fund (1943)
- E.T.A. Basan Trust (1958)
- The Daniel Scott Trust (1958)
- Adolf Basser Trust (1964)
- H. & L. Hecht Trust (1965)
- J. & Hope Knell Trust Fund (1978)

While their trust deeds (the wills) clearly provide for one or more co-trustees in addition to the trustee company, the publicly available information appears to suggest that today these seven operate under the sole trusteeship of the relevant trustee company. For example, Hans Henri Hecht in his trust instrument declared:

> *...it to be my wish that the number of trustees of this my will shall at all times be kept up to not less than three and that in the event of the number becoming at any time by death or otherwise reduced below that number the vacancy or vacancies shall as soon as circumstances will conveniently admit be filled up so as to restore that number but nevertheless any acts or proceedings of the trustees or trustee for the time being in the interval before the filling up of such vacancy or vacancies shall not be invalidated by reason of the same not having been done* (Hans Henri Hecht, 1959, pp.10-11).

Another example is the will of Elcon Baevski Myer, brother of one of Australia's best known philanthropists, Sidney Myer, who also requested: '...that there shall never be less than two Trustees of my estate...' (E.B. Myer, 1939, p.1).

None of these seven wills makes provision for subsequent changing of trusteeship, i.e. the number of co-trustees. Legal opinion was therefore sought as to how such a reduction might be made. Corrs Chambers Westgarth stated:

> *There are three main ways that a trustee can be removed from a trust:*
>
> (a) *under the trust instrument, e.g. by an express power given to the appointer;*
>
> (b) *by private appointment (without the need to approach the Court) under s.41 of the* Trustee Act 1958 *(Vic) (Trustee Act); or*
>
> (c) *by the Court under s.48 (1) of the Trustee Act or in its inherent jurisdiction* (Corrs Chambers Westgarth, Opinion, 27 February 2014, p.2).

In their opinion, the trust instrument of Hans Henri Hecht clearly provided an obligation on the trustee company or the remaining trustees to ensure a replacement trustee is found in the event that the number of trustees falls below three. For the other six wills:

> *In the absence of specific empowering terms in the relevant trust instruments, a trustee company would have been required to:*
>
> (a) *make an application to the Court for the removal of a trustee; or*
>
> (b) *a cy pres application to the court for the terms of the trust to be changed so that there is no longer a requirement that more than one trustee administer the relevant trust (although this is an unlikely method)* (Corrs Chambers Westgath, Opinion, 27 February 2014, p.3).

None of the wills contains express provisions for the removal of a trustee. In general terms, misconduct or a breach of trust is most often the grounds for removal of a trustee.

It is worth reiterating that the trustee company is appointed in perpetuity and that co-trustees are unable to dismiss the company and find other administrators for the trust/foundation should they be dissatisfied with its administration of the trust.

5.5 Who Established These Trusts and Foundations?

5.5.1 Gender & Occupation of Benefactors

Of this sample of thirty-two, thirteen trusts were established by women and nineteen by men. Of the testatrixes, two were married, six were widows and five were unmarried. The wills record different data according to the gender of the benefactor, regardless of the year probate was declared for the estate. None of the women appears to have had a profession; their marital status is stated in the will in lieu of this. Six are described in their wills as 'widow', three as 'spinster', two as 'gentlewoman' (this descriptor being used as recently as 2005) and one is described simply as a 'housewife'. Only one is described as 'retired' but there is no information about what profession or work she retired from. If the trusts were established in the year probate was granted, then the first of these women's trusts was created in 1943, another two in the 1960s, four in the 1970s, one in the 1980s and one in 2005. Significantly, nearly half of the women in the sample (six) designated the trustee company as their sole trustee, underlining their faith that it would always be guardian of their legacy.

By contrast, the wills of all nineteen men describe their professions. Three are 'gentlemen', three company directors, three graziers, and two are merchants. Within this sample, there was also one businessman, one manufacturing chemist, one engineer, one bank manager, one farmer, one architect, one investor and one is described as 'retired'.

Although marital status is not recorded, a spouse can be inferred in seven of these case studies where the will leaves legacies for a wife or children. In the remaining nine cases, there is no useful information, the testators' legacies making no mention of spouse or offspring.

5.5.2 Parental Status

Twenty-five of the benefactors did not have children and seven did. These offspring in all but one case have acted as co-trustee for their parent's foundation/trust and, as in the case of the Baxter and Danks foundations, the grandchildren have taken over this role. In this position, they have the capacity to act as advocates on behalf of their deceased relative/s. There are a number of recent instances in which these children and grandchildren have challenged decisions proposed by the trustee company (for details see Chapter 7).

5.5.3 Location

Twenty-five of the benefactors lived in the city, including the sole Sydney case, four in provincial cities and three in rural Victoria. Examining the addresses, it is striking, albeit unsurprising, that most resided in upper socio-economic locations or suburbs.

5.5.4 Geographic Scope

Thirty-one of the benefactors in this sample lived in Victoria and only one in New South Wales, reflecting either sample error or the widely held assumption that the majority of Australian foundations are located in Victoria. The latter is attributed to the impact of the tax incentive – an exemption from probate duty provided by the Victorian State Government to individuals who established perpetual philanthropic foundations for the benefit of the community. No other Australian State government provided comparable incentives (Section 160, *Administration and Probate Act 1928*; Section 117 of the *Administration and Probate Act 1953*; Section 21 of *Probate Duty Act 1962*). All of the pertinent sections of these Acts relating to foundations were repealed when death duties were abolished in Victoria in 1977 (Gilding, 2010).

5.5.5 Religion

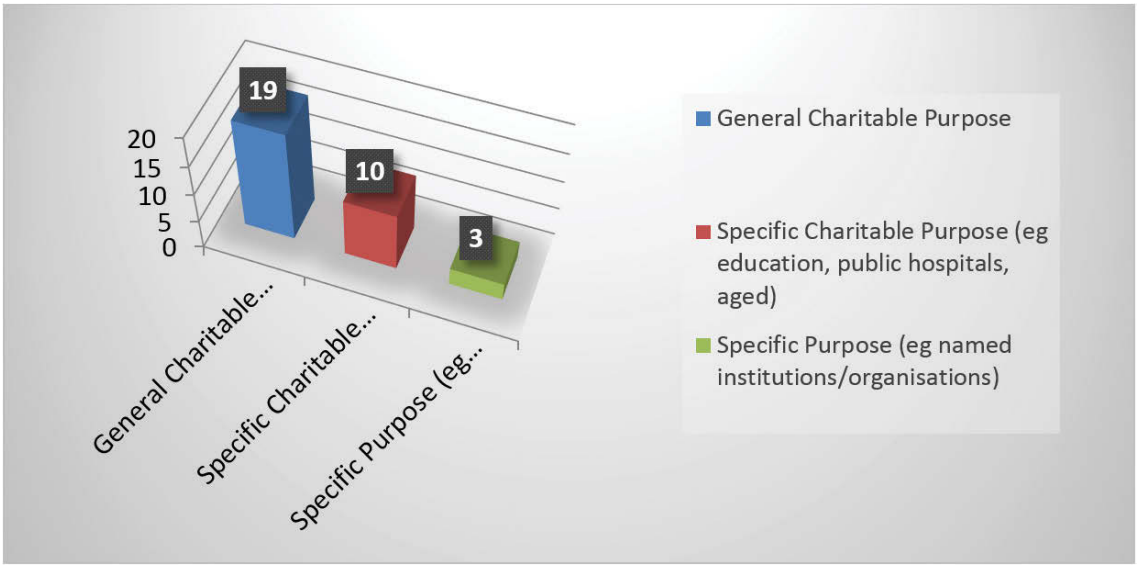
Only three women and two men in this sample stipulated that their legacy be provided to specific religious organisations. There is no evidence in the other wills to suggest that the benefactors had any religious affiliation. Bekkers & Wiepking demonstrate in their extensive literature review that religion is not a motivating factor in the philanthropic giving by individuals (Bekkers & Wiepking, 2011). Odendhal, in her study of one hundred and forty American philanthropists, found that only Jews and fundamentalist Southern Protestants stressed their religion as a motive for their organised philanthropy. However, she emphasises that statistics about Jewish wealth and philanthropy are 'scanty' and that 'social scientists run the risk of perpetuating myths in their search for trends' (Odendhal, 1990, pp.138-142). There appears to be no scholarly research on whether religion is a motivating factor in the establishment of structured organised philanthropic giving by wealthy individuals and families in Australia.

5.6 Purpose of the Trust/Foundation

Under Australian law, the benefactor must always state the purpose of the trust/-foundation. These purposes act as instructions to his or her trustees. The purposes of their thirty-two trusts fall into three groups. The first is those in which the will specifies 'general charitable purposes'. These charitable purposes include the relief of poverty or sickness or the needs of the aged. The second consists of those whose purposes fall into broadly defined categories, e.g. 'education' or 'public hospitals'. The third is those that are highly specific, where the benefactor nominates a particular organisation or institution. Nevertheless, trustees still have total discretion in how monies may be spent within the named category, organisation or institution if they choose to exercise it.

Except for this last category of the sample (Figure 5.3), the wording of 'general charitable purposes' and more broadly-specified categories is usually a direct quotation from the relevant legislation of the time, e.g. Trustee Acts in each State.

FIGURE 5.3: Purpose of Grant-Making Charitable Trusts



5.7 Trustees' Powers

In terms of the power of the role of trustees, the less prescriptive the will is about the purpose of the trust, the more discretion and responsibility for total discretion is available to the trustee company. The benefactors who provide discretion to their trustees do so in recognition that the needs, social concerns and institutions of their time will inevitably change in the future. The freedom of a general charitable purpose is invaluable for perpetual foundations in making grants that are appropriate for any subsequent period.

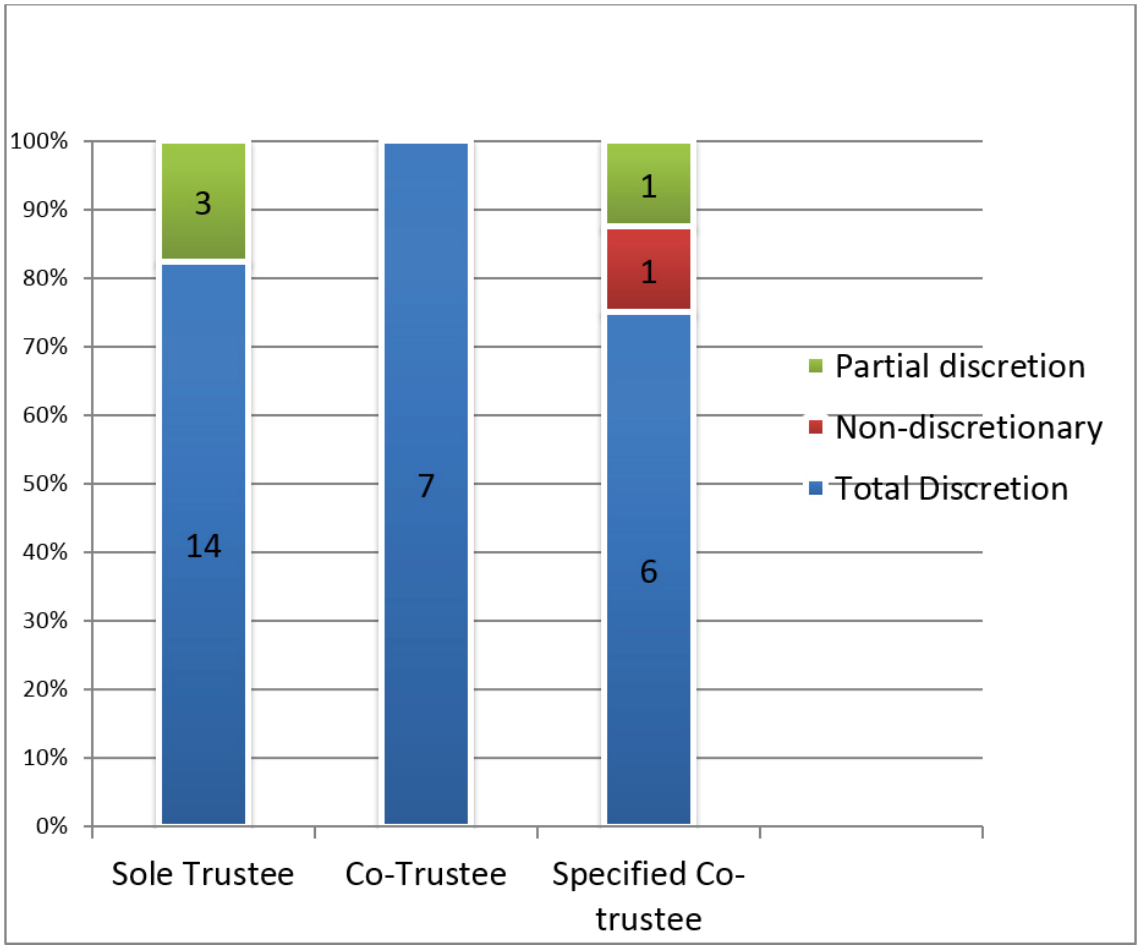
5.7.1 Definitions

Philanthropic trusts describe their grant-making abilities and powers as:

- *Totally discretionary* in the case of trusts set up for general charitable purposes and broad categories;
- *Partially discretionary* in the case of trusts with a mixture of specified discrete purposes as well as provision for more general grant-making;
- *Non-discretionary* for trusts with prescribed purposes

Of the case studies (see Figure 5.4), twenty-seven benefactors permitted their trustees' total discretion, within the limits of charitable law, in the administration of their trust/foundation. Where the trustee company was the sole trustee (18) the company was allowed total discretion in fourteen instances. There were only three wills that stipulated part-discretion for the sole trustee. There were no instances in which the company was sole trustee and the trust deed gave no discretion or power. Where the trustee company is a co-trustee (7), all the wills allow the trustees total discretion. Where the will states there must be two or more trustees including the trustee company (7), six are totally discretionary, one is non-discretionary and one has some discretion.

FIGURE 5.4: Discretionary Powers of Trustees (n= 32)



Some benefactors prescribed limits to discretionary powers. An example is a philanthropist such as Percival Pipkorn, a Minyip farmer. Although he provided total

discretion to his original trustees, the Union Fidelity Trustee Company of Ballarat, he nevertheless expressed a wish that his trustees:

> *...shall have due regard to any suggestion communicated to them by the Councillors for the time being representing the North Riding of the Shire of Dunmunkle and to the needs of the aforementioned organisations and societies situated in the said Riding...* (P.F. Pipkorn, 12 March 1958, p.3).

Eight years ago, the Trust Company, as the sole trustee, delegated the grant-making responsibilities of the Pipkorn Trust to the Minyip Progress Association. Under this new arrangement the Trust Company sends the Progress Association a cheque for the amount available for distribution in grants each year. The Association then advertises widely and invites applications from 'incorporated community groups' (Minyip Progress Association, 2014)[2]. The local newssheet lists the successful recipient organisations ensuring the entire application process is publicly transparent and accountable. During this eight-year period, the Association has distributed the total $80,000 provided by the trustee company to the Minyip community.[3]

A relatively small percentage (8%) of the sample was very specific, often expressing a desire for a specific organisation or geographic area. Four allowed partial discretion, such as John William Fleming who instructed that:

> *...1/6 be provided to the Queen Elizabeth Home Ballarat, 2/6 to the Royal Children's Hospital and 3/6 to aged poor charities...* (John William Fleming, 1975).

Only one will in this sample is non-discretionary, i.e. specifically identifies the organisations trustees must benefit with monies from the trust/foundation. The Will names three organisations, 'The Gordon Institute, Melbourne Orphanage, Old Colonists...' (Edward Davies, 1905), and still enables the trustees discretion in determining how specifically the monies will be spent.

[2]Minyip Progress Association list of grants for 2014 provided to author by the association on 1 October 2014

[3]In 1963 The P.F. Pipcorn Trust was established with £44,310; its estimated 2014 value is $2,336,884.

5.8 Trustee Company Changes

The grant-making provisions of the benefactors' wills may be set in legal concrete, but the existence of their nominated trustee company has proved to be more fluid over time. One of the features of Australian philanthropy as described in chapter four, has been the steady concentration over the past thirty years in the number of trustee companies. When one trustee company takes over or merges with another, it assumes responsibility for trusts and foundations administered by the latter. Only the trustee company name is different; all other provisions remain those of the original trust deed. The table below gives the trusteeship history of the philanthropic bodies selected for this case study.

Table 5.3: History of Trusteeship of This Sample of Wills

Probate Year	Name of Foundation/Trust (bold indicates change of trusteeship)	Previous Trustee/s	Current Trustee
1904	**The Felton Bequest**	TEA*/ANZ Trustees	Equity
1905	Will of Edward Davies	2 Individuals	Perpetual
1928	The Danks Foundation	Equity Trustees	Equity
1938	The EB Myer Charity Fund	Perpetual Executors &Trustees	Perpetual
1940	The Charles Robert Eastgate Ogg Trust	Perpetual Executors &Trustees	Perpetual
1943	**The AM White Fund**	Union Trustee**/Trust Co.	Perpetual
1954	The Percy Baxter Charitable Trust	Perpetual Executors & Trustees	Perpetual
1958	**E.T.A. Basan Trust**	Union Trustee/Trust Co.	Perpetual
1958	The Daniel Scott Trust	Perpetual Executors &Trustees	Perpetual
1962	The Isobel Hill Brown Charitable Trust	Perpetual Executors & Trustees	Perpetual
1963	**P.F. Pipkorn Trust**	Fidelity/Trust Co	Perpetual
1964	Adolf Basser Trust	Perpetual Executors & Trustees	Perpetual
1964	**The William Buckland Foundation**	TEA/ANZ Trustees	Equity
1964	The B.B. Hutchings Bequest	Perpetual Executors & Trustees	Perpetual
1965	H.& L. Hecht Trust	Perpetual Executors & Trustees	Perpetual

1972	**The Ian Rollo Currie Estate Foundation**	Union Fidelity/Trust Co.	Perpetual
1972	**Irene Emma Reid Trust**	Union Fidelity/Trust Co.	Perpetual
1974	J & R McGauran Trust Fund	Perpetual Executors & Trustees	Perpetual
1975	The Baxter Charitable Foundation	Perpetual Executors & Trustees	Perpetual
1975	The John William Fleming Trust	Perpetual Executors & Trustees	Perpetual
1977	Edward J Howe Trust	National Trustees/Perpetual	Perpetual
1978	M.K.A. Bell Memorial Fund	Union Fidelity/Trust Co.	Perpetual
1978	The Ethel Herman Charitable Trust	Perpetual Executors & Trustees	Perpetual
1978	J & Hope Knell Trust Fund	Perpetual Executors & Trustees	Perpetual
1985	**The Teresa Wardell Trust**	National Trustees/Perpetual	Perpetual
1985	**The Hugh D. T. Williamson Foundation**	ANZ Executors & Trustees	Equity
1992	The Walter & Nancy Lascelles Memorial Trust	Trust Co of Australia	Perpetual
1996	The Enid Irwin Charitable Trust	Perpetual	Perpetual
2000	The Ian Dodd Trust	Perpetual	Perpetual
2001	Nancy Ewart & Grizelda Tennent Trust	Perpetual	Perpetual
2002	Cecil & Neita Quail Charitable trust	Trust Company	Perpetual
2005	Margaret Lawrence Bequest	Perpetual	Perpetual

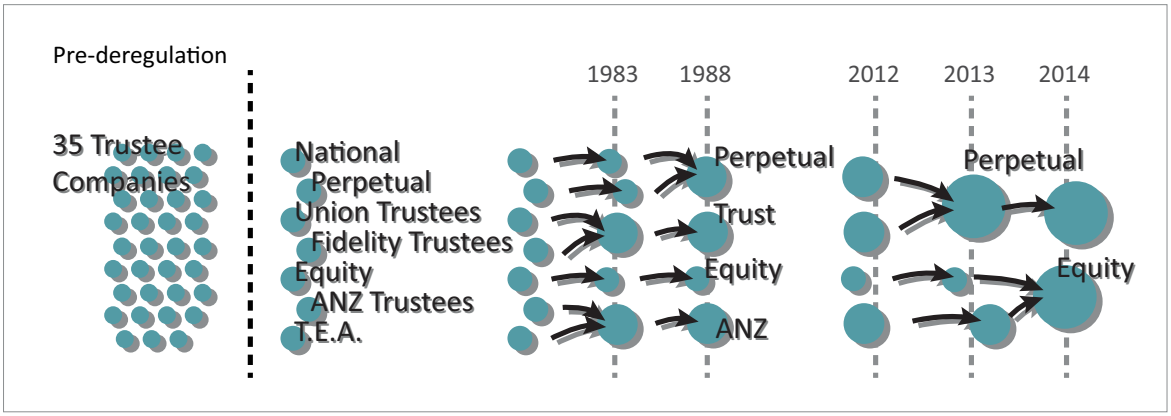
* Trustees & Executor Agency Company (TEA) taken over by ANZ Executors & Trustee Company in 1983; name changed to ANZ Trustees.

** Union Trustees merged with Fidelity Trustees to become Union Fidelity Trustees in 1962; name changed to Trust Company of Australia in 1988; later changed to Trust Company.

Source: Financial Services Council, 2014.

In this sample (Table 5.3), the number of trustee companies administering the sample's trusts and foundations has shrunk from eight to two. At the commencement of this research, nineteen of the thirty-two trusts and foundations in this sample were administered by Perpetual. The second largest representation was the Trust Company, administering nine of these wills. ANZ Trustees administered three and Equity Trustees one. On 18 December 2013 Perpetual took over the Trust Company and in June 2014 Equity Trustees merged with ANZ Trustees. As noted in the previous chapter this was partly due to the Federal government's 1983 deregulation of the financial services industry (see Figure 5.5).

FIGURE 5.5: History of Trust Administrators in this Sample



5.9 Types of Trusteeship by Trustee Company as at 2012

Within this sample, Perpetual is sole trustee of ten of the nineteen trusts and foundations it administered and co-trustees of three. Perpetual also administered six (listed below) of the eight trusts and foundations that specify that there should be co-trustees, but which seem to operate today with the trustee as sole trustee.

- Adolf Basser Trust
- Edward Davies – Will of
- H. & L. Hecht Trust

- E. B. Myer Charity Fund
- Daniel Scott Trust
- J. & Hope Knell Trust Fund

The Trust Company in 2012 was sole trustee of six of the trusts it administered in this sample and acted as co-trustee for one trust. This trustee company administered two – E.T.A. Basan Charitable Trust and A.M. White Estate – of the trusts and foundations that specify that there should be co-trustees, but today apparently have the trustee company as sole trustee.

In 2012, ANZ Trustees was sole trustee of only one in this sample, The Felton Bequest and co-trustee of two – the William Buckland Foundation and the Hugh D.T. Williamson Foundation. The Equity Trustee Company administered one of the wills (Aaron Danks) in this sample and in this instance acted as co-trustee. The company does not act as sole trustee for any of the wills investigated.

5.9.1 A Unique Trusteeship – The Felton Bequest

Of the case studies, The Alfred Felton Bequest is unique in the trusteeship arrangements that Felton stipulated in his will. Although he appointed the Trustees and Executors & Agency Company Limited (TEA) as sole Trustee, he directed that a committee of five (The Felton Bequests' Committee) also be established and be responsible for administering his philanthropy in perpetuity.

Felton divided his legacy into two halves. One half of the annual income was for the acquisition of artwork for the National Gallery of Victoria 'which is judged to have an educational value and to be calculated to raise and improve public taste...' The second half was for charitable purposes, 'first charities for children, secondly charities for women and thirdly such organisations as General Hospitals, Societies for the relief of the educated poor and other charitable institutions of a general character' (Poynter, 2003, p.251).

Under the Will, the Committee's role was restricted to providing recommendations to the trustee company on the purchase of artworks and the charitable grant-making; legally the trustee company must accept its advice. The trustee company had sole and total responsibility for all fiduciary matters (Poynter, 2003, pp.231-232).

Since 2008 the Bequests' Committee has published an annual distribution report, not a full annual report as the Committee has no access to the financial details of the Bequest (The Felton Bequests' Committee, 2014).

5.10 Public Information 2012

There is no publicly available information for sixteen of the trusts and foundations where trustee companies are the sole trustees or for two instances where the company is a co-trustee. There is also no public information for the seven instances in which the benefactor specified co-trustees but the trustee company appears today to be the sole trustee, there is also no public information. Such information is available in one instance where the trustee company is sole trustee, the Felton Bequest. Public data, often limited, is available in five instances where the trustee company is co-trustee.

There is no information made available to the community on the grants made by twenty-nine of the trusts and foundations administered by the four trustee companies. Only three such foundations provide details of the grants distributed to eligible organisations. They are: The Felton Bequest, P.F. Pipcorn Trust and the Hugh Williamson Foundation. These provide the name of the recipient not-for-profit organisation, what monies were granted and the purpose for which they were granted (see Figure 5.6).

5.10.1 Published Annual Reports by Trusteeships

A critical finding of these case studies is that: where there is no co-trustee and the trustee company is sole trustee, there is no publicly available information, such as a full annual report or even a grant distribution report. Where there are co-trustees, there is at least a possibility that some information will be in the public arena. Three foundations published partial annual reports although these did not include full financial data. Twenty-nine did not publish any form of annual report.

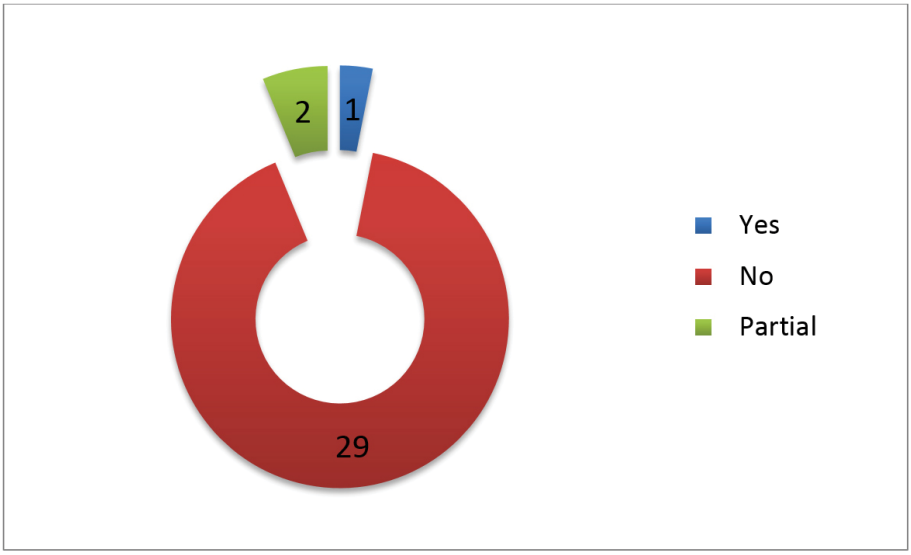
All four trustee companies are listed on the Australian Stock Exchange (ASX) and therefore produce extensive publicly available annual reports about the bulk of their financial services (excluding philanthropy). These annual reports provide an opportunity for the trustee companies to inform the public about their trusteeship

FIGURE 5.6: Public Information about Grants Distributed



of their philanthropic clients, but this typically only receives a general paragraph (see Figure 5.7).

FIGURE 5.7: Publicly Available Annual Reports



Only one foundation among the case studies, The William Buckland Foundation, administered by ANZ Trustees until June 2014 (when ANZ Trustees was taken

over by Equity Trustees), publishes a full annual report. The Foundation was the first in Australia to publish a full annual report in 2001. The Chairman, Mr Barry Capp, stated that, although the foundation had been making grants to the community for nearly forty years, his fellow trustees had decided to publish 'our first public report...[as] it is important for the Foundation to have its processes and decisions transparent and accountable' (William Buckland Foundation, 2001, p.2).

The report format is discussed in detail because it illustrates the breadth and depth of knowledge that the community (especially the not-for-profit sector) can have of the workings of a philanthropic body. This and all its subsequent reports have presented the Foundation's governance details including the names of the four independent trustees and the trustee company's nominee. The report provides a brief portrait of the founder and relevant extracts from the will expressing his philanthropic wishes. The foundation's current grant-making policy framework was also described in some detail, a selection of recent significant programmes explained and all of that year's grants listed. To assist potential grant recipients, the foundation's grant-making process is clearly expounded including meeting dates and reporting requirements. Grant-seekers were informed that the Foundation's researcher, who would investigate their application, would also contact them and they could be invited to attend a trustee meeting. The Foundation is rare among Australian foundations in that trustees invite one or two of the applicant organisations to each of their quarterly meetings. This exchange allows the trustees to be more informed in their decision-making and to understand the community they serve better. The annual report summarises all grants made by the Trustees during the previous twelve months, including the recipient organisations, the amount granted and the duration of the grant. The trustees also explain what comprises the granting income of the foundation:

> *Under the terms of the Will, all income is to be distributed and capital cannot be distributed. Capital gains on any investments are retained within the corpus of the trust thus protecting its real value against inflation. Other investment earnings such as dividends, interest, rents and the refund of imputation credits associated with dividends from Australian equities, comprise the income from which expenses are paid and grants are made to eligible charities* (William Buckland Foundation, 2005, p.13).

The second half of the annual report provides financial details and the foundation's investment policies, guidelines and objectives. As the foundation is a perpetual trust, the community is the beneficiary and perpetuity is the time frame, the trustees explain their investment philosophy in some detail. This includes the asset mix:[4]

> *Up to 100% of the Foundation's assets are to be invested in equity (as distinct from debt) assets...In no circumstances is the long term real value of the Foundation's assets to be compromised by attempting to maximise income* (William Buckland Foundation, 2005, p.14).

In February-March 2000, the trustees determined to entrust the day-to-day management of the foundation's assets to professional investment managers. Prior to this, the corpus had been directly invested by the trustees (William Buckland Foundation, 2001, p.12).

The Buckland reports also include the historical investment performance up to and including the current financial year of each report. This information is incorporated even when the foundation has underperformed according to the benchmark, and the trustees identify the investment managers responsible for the positive or negative result. The trustees also provide the Management to Expenses Ratio (MER) for 2013 was 1.08% (William Buckland Foundation, 2014, p.15).

The annual report even provides figures on the administration fee paid to the Trustee Company. In 2002 the annual fee was $194,534; this did not include the cost for the preparation of the annual audit ($13,534) or the cost of the annual report ($11,130) (William Buckland Foundation, 2002, p.26). In 2013, the annual administration fee was $499,192, the audit costs were $8,211 and the costs of the annual report were $4,253 (William Buckland Foundation, 2013, p.13).

Just prior to the Foundation's 50th anniversary (2014) the trustees reported that, since its inception in 1964, the Foundation's corpus had grown from £4 million to $106,657,512, and during the same period in excess of $80 million had been distributed to the Victorian community in philanthropic grants (William Buckland Foundation, 2013, p.10).

[4]The MER, expressed as a percentage of the net assets of the Foundation (averaged over the year), includes the administration fees, investment management fees and other expenses.

5.11 Key Findings of the Case Studies

(i) Where the trustee company is the sole trustee, there is no public information about the trusts and foundations it administers.

(ii) Where the trustee company is co-trustee (i.e. there are other independent trustees) some public information exists, although this is often limited.

(iii) There is no public information about trusts and foundations where today the trustee company is apparently the sole trustee, despite the benefactor specifically requested that at all times there be more than one trustee.

(iv) There has been an increasing concentration of ownership of trustee companies over the lifetime of the case studies.

5.12 Discussion

This study considerably expands what we know about at least a handful of Australian philanthropic foundations and trusts administered by trustee companies using material not previously exploited by researchers – the benefactors' wills and probate information. For the most part, this is the first time this information is available to the public in this form. It means, therefore, that we have a little more flesh on some of our portraits of Australian philanthropists. The examination of the wills has provided some new, very basic, information about them—as basic as their full names in some cases, as existing public information often only uses initials. The documents have enabled some limited social analysis, for example, that the majority of founders in this sample did not have children and that this could be one of the main motivations in the establishment of a perpetual legacy for the general community. The data undermines the assumption that during the last century (20th), women had little control over financial resources. In this sample, there was an almost equal mix of male and female benefactors (Birkett, 1989).

The wills (trust deeds) also nominate trustee companies from a much wider field than is available to today's benefactors. These thirty-two wills alone nominate six trustee companies, most of which have subsequently been amalgamated into other trustee companies so that at the time of writing (September 2014), two trustee companies jointly manage 91% ($3 billion) of philanthropic monies administered

by Australian trustee companies. Perpetual appears to be co-trustee or sole trustee of 1,250 trusts and foundations and Equity is trustee of 430. Together they are sole trustee or co-trustee of 1,680 of the assumed 2,000 administered by trustee companies.

This chain of takeovers appears to be an almost relentless movement towards monopolisation of Australian trustee companies – indeed it is now a virtual duopoly. One consequence of this is the loss of diversity and opportunities for the intended recipients – the not-for-profit sector charities – because it reduces the number of grant applications they can make. Perpetual, for example, permits only a single annual grant application for its multitude of trusts and foundations. The concentration of companies also represents a loss of market choice for future philanthropists. A far more dangerous possibility is that of a potential foreign takeover of one or both of the two remaining major companies which could have serious consequences for the Australian not-for-profit sector.

In terms of the principal concern of this thesis, another effect of this diminution is the potential for decreasing public accountability. An example of this is provided by the case of ANZ Trustees (the trustee company in the sample for two foundations which are also two of the largest Australian foundations – the Felton Bequest and the William Buckland Foundation). From 2011 to 2013 this trustee company provided quarterly reports on its website that detailed, for each of the discretionary trusts and foundations it administered: the name of the recipient, the amount of the grant made, its purpose and the philanthropic entity that was the funder. It also provided the total amount distributed in each quarter. In December 2013, Equity Trustees acquired ANZ Trustees and it is unclear whether this information will continue to be publicly available as Equity has not previously provided such data for its trusts.

The other primary source material used for the first time in Australian philanthropic academic research was probate documents which give the actual amount of money left by the thirty-two testators. In most cases this may have included some other testamentary dispositions, but in some we know the amount that became the corpus of the new trust or foundation. For those wills in which the trustee company was named as sole trustee, this is the only information available on the potential capital base of their foundations or trusts.

While the wills, the probate documents, company reports and websites were mined for whatever data they could reveal, the net result is a fraction of what could be known and, I would contend, ought to be made publicly available. The critical finding from these case studies is that, with the exception of The William Buckland Foundation, there is simply a dearth of information about their trusts and foundations that is known outside the trustee companies and the Australian Taxation Office. None provides even a comprehensive list of the trusts and foundations they administer for the public record. Despite this, all companies proudly describe their respective long histories as trustees and produce aggregate figures (but little other information) for the number of trusts and foundations and the philanthropic funds under their management.

As the key findings demonstrate, the amount of information that a trustee company releases to the community about the trusts and foundations it manages seems to reflect whether it is the sole trustee of those philanthropic entities or shares its guardianship with others outside the company. There is a culture of privacy that exists about all aspects of their trusteeship for almost all trusts/foundations in the study where trustee companies are the sole trustee and for many in which they are co-trustee. We do not know who the individual grant recipients were, the amount they received or the purpose of the grant. Nor do we know how grant-making decisions or policy decisions are made or who the people are who are making them. Are the decision-makers the directors of the trustee company's boards, or some sub-set of this, or an internal or external committee? The Australian public does not even know if the trustee company is fulfilling its responsibility to distribute the legal percentage of annual income.

Possibly more concerning is the lack of public information on whether the benefactor's original wishes have been adhered to. It gives new meaning to the word 'trust'. The public must assume that moneys left for its benefit are being honourably and legally distributed. Evidence gleaned from grant recipient sources can support this assumption. For example, one of the case study foundations, that established by Ian Rollo Currie, in which the company is a co-trustee, continues to respect his wish that Euroa (the Victorian country town where he and his family had been graziers) be considered by his trustees in their grant-making. We know this, not from the Foundation's annual report, but from the most recent Old Colonists Annual Report (2012) which provides details about their newest age care residence built in Euroa with funding from the Ian Rollo Currie Estate

Foundation. One of the key findings of the Corporations and Markets Advisory Committee (see Chapter 8) report into charitable foundations administered by trustee companies was that the older the sole trustee trust, the less likely it is to have descendants of the donor or other interested persons to inquire how the trust funds have been managed and whether distributions have been made in the manner envisaged by the donor (CAMAC, 2013, p.18).

As indicated, the complementary finding is that, by contrast, where there are independent trustees as well as the trustee company, there is some public information. In the case studies examined, The William Buckland Foundation is the outstanding exemplar, providing Australia's first comprehensive annual report in 2001. The William Buckland Foundation's Annual Reports are a gold standard of responsible philanthropic accountability and transparency. Because of its willingness to open up its operations to public scrutiny, the Foundation is really an outlier in this sample, or indeed in Australian philanthropy at large. For the scholar, if Australia is ever to have serious academic research of its philanthropy, it needs information and data such as that provided by the William Buckland Foundation. Were all foundations to provide a similar full annual report, the community would have information that would help potential grant-seekers and also allow the community to judge the impact of the foundation.

Another variation in the pattern is the Felton Bequests. While not a co-trustee foundation, this body makes its grant-making decisions on the basis of the advice of the Bequests' Committee as mandated in the will. From 2012, it has provided an annual distribution report and governance details. Its investment decisions, however, are the sole responsibility of the trustee company. So where outside input exists, at least some information is put into the public domain.

One assumes that the trustee companies in the case studies share the fears of other privacy-protecting Australian philanthropists (see Chapter 6) about public disclosure. However, neither the Felton Bequest nor the much more accountable William Buckland Foundation has experienced any dire consequences from their public revelations. On the contrary, the latter has garnered much respect within and outside philanthropic circles as a best practitioner.

The most surprising feature to emerge from this case study research was the apparent anomaly of foundations established with co-trustees but that apparently

operate today under the sole trusteeship of the trustee company. The legal basis for this change is unclear and beyond the scope of this thesis.

The questions raised here are legitimate queries for the community to be making about the nature and operation of organisations administering money intended for public charitable purposes. It is unlikely that the Australian Taxation Office – to which trustee companies report – is asking such questions. To the extent that it does scrutinise these reports, the ATO is likely to be more concerned with whether grant recipient organisations meet the requirements for tax deductibility under *The Taxation Act*.

This case study exercise reveals some of what can be learnt about Australian philanthropy and Australian philanthropists. It also illustrates the lacunae in the knowledge base of our philanthropy and begs the question of what this might mean for contemporary Australian democracy. In the words of Eduard C. Linderman, a US sociologist who undertook the first rigorous study of foundations in that country in 1936: 'A democratic society cannot survive unless the people have access to relevant facts' (Lindeman, 1936, p.xv).

The case studies proved to be a rich resource for examining how trustee companies have managed the legacy of some Australian philanthropists. They also revealed where more information would have been valuable and have demonstrated, where best practice is implemented, just how much the Australian community can learn about this important segment of our society. It is difficult to extrapolate the information found in the case studies to the wider philanthropic population because it is either not easy or impossible to access their data. One has to ask the question, why?

This chapter provides empirical evidence that demonstrates Gramsci's theory of hegemony as practised by trustee companies in their governance of philanthropic foundations, particularly where they act as sole trustee.

Chapter 6

In Their Own Voice: Contemporary Australian Philanthropists Speak About Public Accountability

> *My first surprise was to discover that those who managed foundations and trusts did not wish to have their instruments investigated even to disclose the basic quantitative facts* (Lindeman, 1936, p.vii).

6.1 Background to this Research

Since the beginning of their income regimes, countries including the United Kingdom, the United States of America, Canada and Australia have all granted a deduction or tax credit for gifts to certain public policy organisations, charitable organisations and institutions including not-for-profit bodies. In the last decade all these countries have used policy measures including tax incentives, to encourage philanthropy (McGregor-Lowndes *et al.*, 2006, p.494). This chapter asks how do contemporary philanthropists view public accountability for philanthropy and do they perceive their foundations as providing private monies for public purposes?

In Australia, the Prime Minister announced a series of measures to encourage greater personal and corporate philanthropy in 1999.This group of incentives had

been designed by the Taxation Working Group of the Prime Minister's Community Business Partnership (McGregor-Lowndes *et al.*, 2006).[1]

Introduced in June 2001, this new form of philanthropy, Prescribed Private Funds (PPFs)[2], were modelled on the American independent family foundation and grew quickly. By 2008, seven hundred and sixty-nine PPFs had been established with an operating capital base of $1.5 billion and $117 million had been distributed in grants to the community (McGregor-Lowndes & Crittall, 2014, p.1). Almost a decade after their introduction, the government decided to examine the practice of this new form of organised philanthropy and subsequently, in November 2008 Treasury released a Discussion Paper, Improving the Integrity of Prescribed Private Funds (PPFs).

This thesis chapter explores the centrepiece of one of these incentive instruments – the allowance of gift deductibility to establish private and corporate foundations known as Prescribed Private Funds (PPFs). The major primary source for the chapter is a specific data set consisting of one hundred and fourteen (114) submissions received by the Treasury in response to its Discussion Paper from individuals and families who had established PPFs and other stakeholders interested in this contemporary form of philanthropy. The other main source is the annual Commonwealth Budget Papers for 2001-2009 that estimate the tax expenditure on PPFs and the following year nominate the actual taxation expenditure. Therefore, both qualitative and quantitative methodologies were utilised in the analysis of this documentation. This is the first attempt to identify the voice of modern Australian philanthropists and explore their views regarding public accountability for philanthropy.

[1] On 26 March 1999, the Prime Minister, Mr John Howard issued a press release listing all measures introduced to encourage greater philanthropy. Other measures included: deductibility of gifts of property over $5,000; ability of donors to spread donation deductions over a 5 year period; simplification of workplace giving deductions; deductibility of conservation covenants; capital gains tax exemption for cultural gifts. (Prime Minister's Community Business Partnership, Fact Sheet 7, 2007). Members of the Taxation Working Group were: David Gonski (Chair); Philanthropy Australia (Author); Mission Australia Patrick McClure.

[2] In October 2009 under new legislation, PPFs were renamed Private Ancillary Funds. The old name is retained throughout this chapter as the Treasury process preceded this change.

6.2 What is a Prescribed Private Fund?

A Prescribed Private Fund is a private, perpetual charitable philanthropic grant-making foundation to which donors can make tax deductible donations in the form of money, shares or property. The income then generated in a PPF is also income tax exempt. PPFs also have the ability to attract a number of other Commonwealth and State taxation and duty concessions. They have been described as a 'tax effective vehicle' for individuals, families and corporations to establish their philanthropic giving (McGregor-Lowndes & Crittall, 2014, p.2). The name 'Prescribed Private Fund' is defined in the taxation legislation and the sole legal purpose of PPFs is to make distributions to institutions and organisations that have been endorsed by the Australian Taxation Office to be Deductible Gift Recipients (DGRs), or those listed by name in the income tax law, i.e. 'charities' (Treasury, 2008, p.1).[3] Prescribed Private Funds (PPFs) were designed to take advantage of the considerable wealth created in Australia during the previous twenty-five years (Leigh, 2013, pp.56-64). Prior to their creation, Australia did not have a tax-effective giving vehicle that allowed families and individuals, *while living*[4], to make tax-deductible gifts, accumulate a corpus and have total control of their grant-making. In contrast to trusts and foundations set up under other legislation, critical features of PPFs are that they:

- are created by living donors;
- are designed to grow the working capital;
- are intended to inculcate a culture of giving within the donor family;
- have no legal requirement to raise funds from public.[5]

[3] In Australia tax deductible gifts can only be received by Deductible Gift Recipients (DGRs) which may or may not be legal charities.

[4] Previous tax-effective provisions applied only to those vehicles established by deceased donors.

[5] Previously 'prescribed funds' needed to raise funds from the public before a fund would be endorsed as a DGR. This requirement had been understood to be a major barrier to the growth of private philanthropy.

6.3 The Impetus for the Inquiry

When releasing The Paper, the Assistant Treasurer (Chris Bowen) stated the government's purpose was to provide trustees of PPFs with 'greater certainty as to their philanthropic obligations'. He added that the government intended to amend the legislation relating to PPFs. No mention was made of the four main factors which had prompted the Treasury Inquiry. The first was the unexpectedly strong and fast growth of PPFs. Despite the considerable wealth created in Australia during the preceding twenty-five years, internal Treasury forecasts had not predicted that the PPF structure would be embraced so enthusiastically. For example, during the year preceding the inquiry, one hundred and seventy (170) new PPFs were established, an increase of 28% on the previous twelve months (see Table 6.1).

This interest in philanthropy had not been anticipated, as indicated by three earlier reports (Madden & Scaife, 2008; Petre Foundation, 2005; Tracey & Baker, 2004) on giving by Australia's wealthy found that Australia's rich give at a lower rate than their counterparts in comparable countries such as U.K., Canada and the U.S.A. Madden & Scaife had reported that some 40% of Australia's wealthiest are 'likely to be engaged in minimal – if any – giving' (Madden & Scaife, 2008, p.ii).

Table 6.1: PPF donations, distributions, closing value and approvals 2001-2008

Date	Number of PAFs approved in the year	Total number of PAFs approved	Donations received (in millions)	Distributions made (in millions)	Closing value (in millions)
2000-01	22	22	$ 79.13	$ 0	$ 78.62
2001-02	59	81	$ 53.04	$ 6.69	$ 133.71
2002-03	51	132	$ 53.18	$ 18.42	$ 179.33
2003-04	89	221	$ 155.66	$ 27.46	$ 332.02
2004-05	94	315	$ 192.69	$ 57.43	$ 525.90
2005-06	125	440	$ 364.94	$ 84.47	$ 848.51
2006-07	159	599	$ 533.26	$ 133.42	$ 1,483.93
2007-08	170	769	$ 779.33	$ 140.57	$ 1,889.64

Source: (McGregor-Lowndes & Crittall, 2014, p.2)

The other three reasons were Treasury's concerns regarding:

- the breaches of PPF guidelines;

- the higher than forecast level of tax foregone;
- the low level of distributions.

6.3.1 Breaches of Guidelines

One of the principles of the rules governing PPFs was that donors and/or their associates should not benefit from their foundation. When examining the practice of PPFs, Treasury officials discovered that a number had breached the guidelines. These breaches included PPFs:

- *carrying on businesses;*
- *making loans offshore and/or to associates of the founder or major donor (these loans were of particular concern when they were provided at a reduced or zero rate of interest or not repaid); and*
- *funds being used to purchase property for use by the founder and/or their associates* (Treasury, 2008, p.3).

It was estimated that up to $9 million had been misappropriated and the current laws did not allow for the recovery of the tax avoided or for the offenders to be punished (Suich, 2010; Treasury, 2008, pp.3-5). McGregor-Lowndes maintains that in 2007 'it appears that up to $9.2 million, being about 8 per cent of all distributions, was distributed to ineligible organisations...a significant leakage of distributions' (McGregor-Lowndes, 2009, p.10).

6.3.2 Higher than Forecast Level of Tax Foregone

As mentioned earlier, the government had not anticipated such an engagement by generous Australians with this initiative. In each year of PPFs' operation, Treasury underestimated the amount of money that their establishment would take from the public purse in the form of taxation incentives. The table below (6.2) shows the known underestimate of this foregone tax to be $225.5 million in total over the seven year period. Policy and legislative change was clearly required and the Discussion Paper was the first step in examining how to do this (McGregor-Lowndes *et al.*, 2006, p.501).

Table 6.2: Forecast Tax Expenditure

Year	Forecast Tax Foregone	Actual Tax Foregone
2001-02	Unavailable*	Unavailable*
2002-03	$ 20 million	$ 23.931 million
2003-04	$ 25 million	$ 70.047 million
2004-05	$ 70 million	$ 86.7 million
2005-06	$ 85 million	$ 164.2 million
2006-07	$ 160 million	$ 239.9 million
2007-08	$ 350 million	$ 350.69 million
TOTAL:	**$ 710 million**	**$ 935.468 million**

*estimate is not available in Tax Expenditures Statement.
Source: Commonwealth Budget papers for each year given;
McGregor-Lowndes & Crittall (2014).

6.3.3 Low Levels of Distribution

Another concern was the low level of distributions (grants) being made from PPFs to the community. One of the underlying principles of PPFs was that distributions should be of a quantity and regularity such that the PPF could be characterised as 'philanthropic'. Therefore, PPFs 'should provide a benefit to the charitable sector that is much more than if the Government had taken the revenue forgone (by way of PPF tax concessions) and given it directly to the sector' (Treasury, 2008, p.3). Instead of this principle being adhered to, Treasury discovered that the creators of PPFs were accumulating capital through taxpayer-funded incentives rather than making adequate distributions. By July 2008, the capital base of PPFs had grown to $2,142 billion and only $447 million had been distributed in grants to the community, a little less than 1%. Further analysis identified an even greater concern – the philanthropists who had created PPFs were receiving almost 50% more in tax incentives than they were distributing in grants. During the first seven years of their operation, a total amount of $461.77 million had been distributed in grants to the community by PPFs and $935.468 million taken from the public purse by PPFs as tax incentives. Therefore, $473.698 or nearly 50% more was taken in tax breaks than was distributed in grants (see Table 6.3).

This discrepancy was concerning as were the results of the inspection by the Australian Taxation Office (ATO) of the annual information return of PPFs. In 2007-08, the ATO reported that it 'completed 45 reviews of PPF endorsements, resulting

Table 6.3: Tax Expenditure Foregone

Year	Distributions Made	Actual Tax Expenditure
2001-02	$ 6.69 million	Unavailable
2002-03	$ 18.42 million	$ 23.931 million
2003-04	$ 27.46 million	$ 70.047 million
2004-05	$ 57.43 million	$ 86.7 million
2005-06	$ 84.47 million	$ 164.2 million
2006-07	$ 133.42 million	$ 239.9 million
2007-08	$ 140.57 million	$ 350.69 million
TOTAL:	**$ 461.77 million**	**$935.468 million**

Source: Commonwealth Budget papers for each year given.

in 21 cases receiving written advice to implement changes to ensure future compliance with tax obligations. Not all of these were mere technical breaches as the ATO was concerned with general adherence to the prescription of the fund, use of offshore investments to gain benefits, inappropriate access to fund property, excessive expenses and benefits to trustees or founders and distributions to non-eligible recipients' (McGregor-Lowndes, 2009, p.10).

6.4 The Inquiry

In The Paper, Treasury identified a number of issues that needed change and called for public submissions. Five key areas were specified as needing attention:

- a mandatory annual distribution of 15 per cent of a foundation's assets
- increased public accountability – provision of contact details
- the Commissioner of Taxation not the Treasurer would have sole responsibility for PPFs
- regular valuation of assets at market rates
- minimum PPF size

While all of these issues are important, the two that aroused the most vehement response and were of most concern to PPFs and the subject of most of the submissions were the first two – an increased distribution rate (15% of income) and

improving public accountability (making contact details of PPFs publicly available). As mentioned above, this thesis chapter examines only one aspect of this Inquiry, the call for and the reaction to increased public accountability. The Paper's suggestion for greater accountability was minimal, being only that the government was considering making contact details publicly available as this 'would allow charities seeking funding to make representations to PPFs'. Trustees were reminded again that PPFs receive significant tax concessions.

> *The majority of donors to PPFs are private individuals on the highest marginal tax rate (45 per cent). As the Government effectively provides a subsidy of 45 cents for each dollar donated to a PPF, the government expects that this revenue foregone will be directed to the charitable sector in a relatively short period of time* (Treasury, 2008, p.5).

Treasury offered consultation questions as a guide for respondents and for increased public accountability. They were:

- Are there any relevant issues that need to be considered in improving and standardising the public accountability of PPFs?
- Are there any concerns with the proposal to require that the contact details of PPFs be provided to the public? What information should be provided publicly? (Treasury, 2008, p.6).

Consultation on The Paper was conducted between 26 November 2008 and 14 January 2009. Further discussions were held with representative bodies after 14 January 2009, although there is no public information about who these 'representative bodies' were. This paper is concerned with only one aspect of the Treasury Inquiry – the first step towards increased public accountability, the provision of PPF contact details. In the words of the Paper:

> *As PPFs receive significant tax concessions akin to public funds, the public should be able to identify the PPFs and be satisfied that PPFs are operating in an acceptable and transparent manner* (Treasury, 2008, p.6).

6.5 Overview of Submissions

The Inquiry received one hundred and thirty-eight submissions, but only one-hundred and fourteen were made publicly available on the Treasury website and therefore available for this research. Twenty-four (17%) respondents requested privacy and Treasury granted it. Their submissions were not put on the public record (The full table of submissions appears as Appendix C, p.246).

The largest number (44) of the 114 was from PPFs, representing 18% of the total number of PPFs (769) established by June 2008. Four were received from other forms of philanthropic foundations, thirty-three from not-for-profit bodies, six from individuals and one from a union. Twenty-six were from organisations that provide professional advice and services to philanthropists, such as banks, financial advisers, law firms, trustee companies and accountants.

6.6 The Philanthropic Voice

Before focusing on the reaction of philanthropists to the issue of public accountability of PPFs, limited as it was to the publication of contact details, their submissions also reveal that their personal motivation for establishing their own PPF mirrored the government's original purpose in creating this new form of philanthropy. For example, an important intention of the creators of the Kloeden and Maramingo Foundations was to inculcate a culture of giving within the donor family and to facilitate cross-generational structural learning:

> *...my wife and two adult children started the Foundation to bring a family approach to providing assistance to those in need...a way for our family to strategically engage with the community over a long period of time* (Kloeden Foundation, Submission, no date, January 2009).

> *...we saw the establishment of our PPF as a way for our family to strategically engage with the community* (Maramingo Foundation, Submission, no date, December 2008).

Others, like the Clitheroe family had established a PPF because it complied with another critical design feature – it did not have the requirement of previous philanthropic structures to raise funds from the public. Its appeal was that it was more 'private' (Clitheroe Foundation, Submission, no date).

These two major motivating factors of contemporary philanthropists – inculcating a generational responsibility and perceiving this organised giving as private – more than partly explains their hostile response to Treasury's suggestion that the contact details of PPFs become publicly available. Only four of the forty-four philanthropists were in broad agreement with this suggestion of limited public accountability, among them the Petre Foundation whose research report into philanthropy found that philanthropy was not a priority for Australia's wealthy. However, the overwhelming voice was negative.

At times, the voice of PPFs approaches near-hysteria such as that of Mr R.J.B. Family Foundation Member (no address, no date):

> *When our PPF members' names and addresses become freely available, I will advise our members to forward all mail received from the 30,000+ registered charities directly to your private address, Minister. (Let's see how you like it!!!)* (emphasis in original).

Another was equally hostile to the idea of the foundation's contact details being publicly available:

> *What's more, you [The Treasury] didn't even have the decency to write to me about your plan to alter the terms of our agreement. I found out about it from a friend 5 days before you closed submissions! I cannot tell you how angry I am* (Ross Knowles Foundation, Submission, 9 January 2009, p.2).

The submission from Philanthropy Australia (PA), the national peak body for philanthropy in Australia and whose members are grant-making foundations and trusts, argued that PPFs had provided an 'attractive, well-monitored, audited and relatively simple structure' to grow philanthropy. Further, the PPF structure had been 'enormously influential' in developing a culture of philanthropy and the majority of donors were new to structured giving (PA, Submission, 8 January 2009, pp.2-5).

Philanthropy Australia supported 'increased transparency' yet contended that public accountability of PPFs was a 'complex issue'. As mentioned above, PA maintained that PPFs were already well-monitored through their provision of an audited annual report to the Taxation Office. It considered that mandating the release of contact details would be an 'intrusion' and a disincentive to growing philanthropy (PA, Submission, 8 January 2009, p.8).

Philanthropy Australia insisted that educating new donors would be a more productive measure and informed the government that a new handbook for trustees of philanthropic foundations had been developed and was available free on the internet (PA, Submission, 8 January 2009, p.8).[6]

6.6.1 The NGO Voice

Of all submissions made to the inquiry, thirty-three (29% of the total 114 submissions) were from not-for-profit organisations (NGOs). Seven of these did not address the issue of public accountability at all; their only concern was the proposed 15% annual distribution rate which they argued strongly against. Three, although not endorsing publicly available contact details, were supportive of some form of fund register, 'which would allow both parties a less time-consuming yet more targeted and filtered approach to grant making' (NonProfit Australia, Submission, 2009, p.3).

The remaining twenty-three (70%) supported PPFs' preference for almost total public invisibility. It is intriguing to ask why not-for-profits, for whom PPFs were created to provide funds, argued so strongly that their colleagues in the not-for-profit sector should have virtually no access to this pool of philanthropic monies, and this is discussed further below. The NGO voice is an echo of – often in identical words to – the philanthropic benefactors:

> *...Zoos Victoria feels that this [providing contact details] would deter many new entrants to the field as it is the very privacy that a PPF structure offers, that seems to be of crucial importance to our PPF supporters* (Zoos Victoria, Submission, 6 January 2009, p.3).

[6]The author of this handbook was Treasurer of Philanthropy Australia and Director of ANZ Trustees. The handbook was funded by a number of PA members – JB Were, ANZ Trustees, Perpetual, UBS and Macquarie Foundation.

During the previous twelve months the organisation had received over $450,000 from PPFs. (Zoos Victoria, Submission, 6 January 2009, p.2).

The Centre for Independent Studies (CIS) recommended against the publication of PPF contact details, claiming only privacy:

- increases the efficiency of the philanthropic sector so money would go where it is needed most;
- allows donors to build a 'philanthropic brand' which increases the benefits of giving;
- provides increased efficiency of giving and increased benefits from giving which lead to more giving (CSI, Submission, undated, pp.5-6).

No evidence was presented to substantiate any of these three claims. The second one appears contradictory, building a brand and yet recommending no public information.

It is important to remember that the view reflected here comes from thirty-three of the 38,000 NGOs with DGR status, which is itself a fraction of the 700,000 Australian not-for-profit organisations. It therefore represents a miniscule proportion (0.0005%) of the entire not-for-profit sector and cannot be representative.

6.6.2 The Professional Advisers' Voice

Twenty-six submissions (24%) were received from a range of businesses that provide advice or other services to philanthropists, including lawyers, accountants, investment banks and financial services organisations. All emphasised how PPFs, in a relatively short period, had contributed greatly to improving the culture of philanthropy in Australia. All recommended that PPF contact details should not be made public.

Arguments fell into three major categories:

(i) there would be onerous increased volumes of unsolicited funding applications;

(ii) this perceived intrusion would be an additional disincentive to developing private philanthropy;

(iii) PPFs are established by 'knowledgeable people' who are best able to decide where and how to distribute their funds.

Some of the submissions made other assumptions, including Goldman Sachs JB-Were 'We do not believe making it compulsory for PPF contact details to be available to the public adds to overall community sector support' (Goldman Sachs JBWere, Submission, 14 January 2009, p.2).

It is understandable why professional advisers to philanthropy would overwhelmingly support their clients' views for they, like their clients, focus on philanthropy through a business lens. As an anonymous investment banker disclosed, his motivation and concern is always growing business:

> *[Philanthropy] gets us alongside the families and the succeeding generations. If we do our job properly, we have an over-the-horizon engagement with the whole family and its assets, not just the corner where the philanthropic funds lie* (Suich, 2010).

The view of another major international financial adviser, HSC, was

> *HSC endorses the proposal that PPFs maintain an ABN number and appear on the Australian Business Registers. Making public details of PPFs would not only be intrusive but would almost certainly attract increased unsolicited requests* (HSC, Submission, 6 January 2009, p.6).

Goldman Sachs did not believe in making it compulsory for PPFs to make their contact details public. Mandating availability could 'act a deterrent for some individuals and families to establish PPFs' (Goldman Sachs JBWere, Submission, 14 January 2009).

Law firm Arnold Bloch Leibler wrote on behalf of their fifty PPF clients who believed their foundations would be inundated with submissions (Arnold Bloch Leibler, Submission, 3 January 2009). The firm, like other advisers, including the Myer Family Office, claimed sufficient regulation already existed for PPFs. They stated that PPFs were already tightly regulated, needing to provide an annual information return to the ATO, have an ABN number and be registered on the Australian Business Register (Myer Family Office, Submission, 13 January 2009).

6.6.3 The Individuals' Voice

Six individuals (4% of the total of 114) made submissions. All had a long term involvement and understanding of fundraising for charities and not for-profits. Three did not address the question of public accountability; their focus was the potential increase in the annual distribution rate to 15%. Two believed contact details should not be publicly available (Steve Davidson). One argued that PPFs should provide public information similar in content to that required by a public company (Shuetrin, C.). One stated that compliance was already too cumbersome and should be streamlined (Tina Price).

6.6.4 The Union Voice

The Australian Services Union (ASU) was the only union to make a submission. Representing approximately 120,000 employees, many of whom work in the not-for-profit sector, the A.S.U. is one of Australia's largest unions. Theirs was the only submission that argued unequivocally for the necessity of public accountability for PPFs. This submission was also the only one of the 138 received, to argue for a 15%, rather than 5% distribution rate.

The union argued that as PPFs are private funds established for public purposes and government policy provides significant tax concessions, it is vitally important for the community to know if PPFs fulfil their public obligation. If they provide no public information, how can this be judged? Taxpayers are forgoing significant tax revenue in supporting these funds. If they are not providing a substantial contribution to the community, it would be more beneficial for the government to tax these individuals and businesses and use that revenue to directly fund not-for-profits.

The union reiterated the Paper's claim that the tax concessions PPFs receive are 'akin to public funds'.

> *PPFs currently operate with surprisingly little scrutiny. There is no public information on the size of the fund, how and where they spend their money or even how to contact them. No other type of organisation is allowed to operate like this* (ASU, Submission, 14 January 2009, p.3).

> *There is no reasonable argument to be made for withholding contact details. These funds have public obligations, due to their tax exemption status and due to the commitments to the public interest they make in their mission statements; be that the Arts, International Aid or Indigenous Health. Private philanthropy can only benefit from contact with the community* (ASU, Submission, 14 January 2009, p.7).

6.6.5 The Trustee Company Voice

Like most independent foundations and PFFs, Trustee companies are coy about providing much information on the charitable trusts and foundations they administer. Their websites offer details about their business services for potential philanthropists, particularly those wishing to establish Prescribed Private Funds. Financial advantages to donors who establish PPFs are clearly identified:

- any income produced within the Fund is tax-free;
- generous tax concessions are available for donations;
- franking credits are available to donors.

Despite these generous tax benefits, the Trustee Corporations Association of Australia (TCA), the peak representative body for trustee companies in Australia argued in its submission for no public accountability. It reiterated that its members had a long history of providing philanthropic services to wealthy individuals, families and businesses. It noted that trustee companies currently act as trustee or co-trustee for a number [unspecified] of PPFs. TCA opposed the suggestion that PPF contact details should be made publicly available. In its opinion, PPFs were already operating in an acceptable and transparent manner as they provided annual audited accounts to the ATO. Further, the community had access to yearly aggregate data on PPFs including distributions (broken up into several categories of recipients) and their capital base. In their judgement, providing contact details would result in a 'time-consuming deluge' of applications. It concluded that individual PPFs should determine whether they wished 'to advertise their existence in order to distribute their gifts' (TCA, Submission, 14 January 2009, p. 4).

Only two of TCA's seventeen members, Perpetual (Perpetual Limited) and Trust (Trust Company Ltd), provided individual submissions to The Paper. Perpetual

'strongly recommended' as trustee of 49 PPFs, with a capital base of $250 million, that the contact details of PPFs not be provided to the public. As Australia's largest manager of private charitable trusts and foundations, the company believed this and the proposed 15% annual distribution rate would 'effectively stifle philanthropy in Australia' (Perpetual, Submission, 12 January 2009, p.1-8).

The company maintained that 'private philanthropy is private philanthropy' and therefore there is no need for public accountability. It regarded providing contact details as 'an invitation' for thousands of unwanted applications. Further, it saw publication as unnecessarily discriminatory against individuals who establish PPFs, compared to those who choose to directly fund charities and not-for-profits, who also receive tax deductions (Perpetual, 12 January 2009, p.8).

Trust (since renamed The Trust Company) stated that PPFs should be required to have an ABN and be noted as a PPF on the Australian Business Register. It also argued that contact details should not be publicly available, citing the burden of acknowledging and processing unwanted applications.

> *Since income tax exemptions are given to provide a public benefit; if a PPF supports a particular charitable interest, charities within that should not be precluded from applying (indeed it would be impossible to prevent them doing so* (Trust, Submission, 23 December 2008, p.4).

6.7 Overall Response about Public Accountability

It should be noted again that this thesis chapter is primarily concerned with only one issue cited in The Paper, the public provision of PPF contact details. A most surprising finding from this primary data is that, with the exception of the nine who did not oppose publication of contact details, all organisations and individuals were speaking with a single voice. A possible implication of this is discussed below. The reasons given in support of non-disclosure fell into four main categories and most overlapped.

- Discouragement of Philanthropy
- Application Deluge

- Waste of Resources
- Retrospectivity Concerns

6.7.1 Discouragement of Philanthropy

The first reason given for opposing the Treasury proposal was that respondents believed providing their contact details to the public would actually discourage philanthropy, presumably because of the loss of privacy. Most submissions commenced with a statement praising the government for the introduction of PPFs and claiming how in a relatively short time they had changed the culture of philanthropy in Australia. This was followed by a declaration that if the rules suggested in the Paper were implemented, the majority of PPFs would close down and it would discourage new ones being established. Of the forty-four submissions received from PPFs, thirty (67%) categorically stated the suggested rules would discourage new philanthropy.

The Andyinc Foundation declared 'we would not have established a PPF under the rules suggested by this Discussion Paper' (Andyinc Foundation, Submission, 18 January 2008, p.1). Further if the rules were introduced, the majority of PPFs would close down, 'resulting in very few new PPFs being established...In conclusion could we suggest that Australia should be encouraging families to commence traditions of giving, not discouraging them, as the proposals in this Discussion Paper will do' (Andyinc Foundation, Submission, 18 January 2008, p. 4).

The Barr Family Foundation repeated these claims. 'If the suggested rules are applied, it will result in very few new PPFs being established (Barr Family Foundation, Submission, no date, December 2008, p.1). Bruce Parncutt, a Trustee of the Parncutt Family Foundation argued that a 'number of the proposals in the discussion paper would be likely to retard rather than accelerate philanthropic giving' (Parncutt Family Foundation, Submission, no date, January 2009, p.3).

6.7.2 Application Deluge

The second concern was that PPFs would be 'inundated' with 'uninvited applications'. Thirty-two of the forty-five submissions from PPFs argued strongly that if

required to provide their contact details they would be overwhelmed with requests for funds.

> *Your proposal to publish my contact details is also totally unfair, and certainly in my case would be counterproductive, generating unwanted, unsolicited requests from agencies when we already have a firm plan for our donations* (Ross Knowles Foundation, Submission, 9 January 2009, p.1).

Almost a quarter (24%) claimed they would receive applications from the estimated 20,000 deductible gift recipient organisations in Australia.

> *If PPFs are requested to publicly provide their contact details, we would be inundated with requests for funds. We understand there are over 20,000 deductible gift recipients (DGRs) in Australia...once a list of PPF addresses is made publicly available we would expect a vast number of these DGRs would likely write to each PPF seeking funding...* (Kloeden Foundation, Submission, no date, January 2009, p.2).

> *...[we] would expect to be inundated with applications from the over 20,000 deductible gift recipients (DGRs) in Australia'. Many of these would fall outside the mission and scope of the Foundation* (Andyinc Foundation, Submission, 18 December 2008).

> *The proposal to publish contact details of PPFs would create the heaviest cost impost as 20,000 deductible gift recipients (DGRs) would seek information or make applications that need to be considered and responded to. To encourage this futile activity would increase the cost ratio of the DGRs as well as the PPFs* (Keir Foundation, Submission, no date, January 2009, p.3).

The Goodeve Foundation believed publishing contact details 'would only result in nuisance calls from other charities and individuals seeking money' (Goodeve Foundation, Submission, no date, p.2).

The Australian Services Union argued that charities did not have the administrative capacity to 'flood PPFs with grant applications' and it was spurious to suggest that every charity was going to contact every PPF (ASU, Submission, 14 January 2009, p.7). They also suggested receiving grant applications might expose PPFs and their trustees:

> *...to the funding realities and needs of charities and the people and activities they support and might inspire a greater level of distribution than has occurred in the past eight years* (ASU, Submission, 14 January 2009, p.7).

6.7.3 Waste of Resources

The third concern was that it would waste the scant resources not only of the recipient sector, the not-for-profit bodies, but also of the foundation.

> *If the Foundation was to be inundated with funding requests it is likely that staff would need to be employed to manage this process. This would have a material adverse impact on grants made by the Foundation each year. We foresee this resulting in a significant waste of resources for charities* (Maramingo Foundation, Submission, December 2008, p.2).

The Berg family was concerned that 'large numbers of uninvited applications would be expensive to administer...' (Berg Family Foundation, Submission, 2009). Law firm Blake Dawson, representing an unstated number of clients, agreed that the receipt of unsolicited requestions for donations 'may significantly add to the administrative costs for PPFs' (Blake Dawson, Submission, 16 January 2009, p.5).

As most PPFs do not have staff, and trustees provide their time voluntarily, there was concern that foundations would need to spend too much time going through unwanted applications. Therefore, they would need to employ staff to deal with the additional workload reducing the pool of money for grants to the community.

> *To minimise costs, our foundation does not employ staff. If the Foundation was to be inundated with funding requests it is likely that staff would need to be employed to manage the process. This would have a material adverse impact on grants made by the Foundation* (Robert & Mem Kirby Foundation, Submission, no date, December 2008, p.2).

6.7.4 Retrospectivity Concerns

Unsurprisingly, it was mainly the PPFs who cited this concern (29 of the 45). They and eleven of the professional service providers claimed they would not have

set up their fund had they been required to provide contact details to the public. Retrospective legislation would signify a breach of faith.

> *I am extremely dismayed at the proposals in your Discussion Paper for PPFs...I established the PPF in good faith, based on a belief that I had a contract with the government...The Treasury paper now proposes a retrospective change in the rules!! I would never have gone to the time, effort and expense of establishing a PPF if I had known this was a possibility. The proposed actions, if enacted, would represent a total breach of faith* (Ross Knowles Foundation, Submission, 9 January 2009, p.1).

> *It appears that any decision to make public the contact details of individuals who contribute to private philanthropy is retrospective to the intent of the PPF legislation, and will erode trust in any future government process to encourage philanthropy* (Perpetual, Submission, 12 January 2009, p.4).

Ethinvest requested the government consider 'grandfathering' arrangements for existing PPFs, as it was 'unfair' to change the rules for existing PPFs.

> *Many philanthropists wish their charitable giving to be anonymous. You are proposing that if they use a PPF for their charitable giving, then this right be taken away from them. Again, this is clearly unfair, particularly if it is applied retrospectively to existing PPFs, where the members would not have been given a choice to maintain their anonymity by making alternate arrangements for their giving* (Ethinvest, Submission, 12 January 2009, p.2).

Law firm Arnold Bloch Leibler also claimed the proposed new arrangements would adversely affect existing PPFs.

> *...and thereby prejudice, retrospectively, those PPFs which were established within the then applicable regulatory framework. It would be fundamentally unfair for the reasons outlined in this submission to change the ground rules for existing PPFs. Only PPFs established after the new Guidelines come into effect should be subject to the new requirements* (Arnold Bloch Leibler, Submission, 13 January 2009, p.2).

6.8 The United Voice of Philanthropy and the Not-for-Profit Sector

Why would not-for-profits (for whose benefit PPFs were established) so strongly echo the case for no increase in public accountability? The arguments they posit are essentially identical.

The submissions from some of the not-for-profits state that they were prepared in direct response to a request from one of their major PPF funders – the Belnaves Foundation, a Sydney-based supporter of mainly cultural institutions. Five arts organisations specifically identify themselves in their submissions as recipients of grants from this foundation. The Australian Centre of Contemporary Art (ACCA) stated The Paper had been brought to their 'attention by The Balnaves Foundation' (ACCA, Submission, 12 January 2009, p.1). The Chief Executive of the Sydney Opera House wrote:

> *I am writing on behalf of the Sydney Opera House to express our full support for the submission made to Treasury on 23 December 2008 by the Balnaves Foundation...The Balnaves Foundation supports our community access program...* (Sydney Opera House, Submission, 13 January 2009, p.1).

Another two are not as specific, but the foundation is listed as a supporter on their websites. Two other non-arts bodies, a university and a youth welfare organisation also referred to the Balnaves Foundation as a funder.

Three of the welfare organisations explicitly acknowledged their financial support from another PPF, The Greenlight Foundation. The Foundation itself decried the call to provide contact details. The wording of this section of the three not-for-profits submissions is identical. One will suffice as an example. AngliCord, an organisation of Anglicans co-operating in overseas relief and development, states:

> *We are a DGR and a beneficiary of the Greenlight Foundation. The Foundation is a PPF and we are greatly concerned for the long-term viability of this important source of funding for our work* (AngliCord, Submission, 9 January 2009, p.1).

Others imply that reforms could damage their relationships with PPFs and their funding base. Zoos Victoria 'has significant relationships with a number of PPFs and in the past 12 months our organisation has received gifts totalling over $450,000 from PPFs' (Zoos Victoria, Submission, 6 January 2009).

This concordance of position appears to undermine the credibility of the not-for-profit organisations who submitted, as presenting an independent voice to the Inquiry. The lack of diversity of views resulted in Treasury inevitably concluding that the status quo should be maintained.[7] Therefore, despite the concerns (none of which were addressed), Australian PPFs are not required to divulge even their contact details.

6.9 Discussion

The Treasury Inquiry into Prescribed Private Funds (PPFs) presented an opportunity to debate and examine a fundamental question at the heart of philanthropy, how 'public' are 'private' foundations? And is philanthropic money solely private and philanthropy therefore a purely private activity of the wealthy? Unfortunately, the community did not get an opportunity to explore this issue; instead the founders of PPFs fought and won the right to retain total privacy. They expressed no interest in engaging with potential recipients of their philanthropic money, much less participating in a community debate about the nature of philanthropy. The submissions were a reflexive, defensive response to genuine Treasury concerns.

There was no acknowledgement in the submissions that Australian public policy provides significant tax benefits to the founders of these philanthropic foundations. This acknowledgement is surely the first step necessary for philanthropists to understand that philanthropy is not solely private, a debate that is long overdue in this country.

The answer to the question of how these contemporary philanthropists view public accountability, judging from the submissions to the Treasury inquiry, is as an imposition. They want the impetus for their grant-making to be 'top-down not

[7]Treasury's proposal to increase distributions to 15% of income was rejected; the current distribution rate is 5% of income. Also Prescribed Private Funds (PPFs) were renamed Private Ancillary Funds (PAFs).

bottom up'. They argue consistently that they have sufficient understanding of social needs to be able to select their chosen grant-recipients. They appear not to understand that any form of public engagement or accountability is essential to enable their foundations to have the social impact they desire.

The reason for their refusal to engage, as expressed in the submissions, was the cost of managing solicited applications, the most minimal form of engagement with the not-for-profit sector. At the centre of the practice of philanthropy is engagement with potential recipients, because the only way philanthropy can truly understand society's needs is to have a dialogue with those experts whose fieldwork this is. The PPFs attitude is puzzling because most of these are successful businessmen and women who readily purchase advice from relevant experts (legal, financial, commercial, profession-based etc.) for their commercial endeavours. The cost of employing staff to manage engagement with the not-for-profit sector is modest in comparison.

The purpose of the tax concession received by these philanthropists is to benefit the common good through making grants. The financial focus in their submissions appears to be on growing the corpus of their foundations for its own sake. Nowhere in the submissions is there a response to Treasury's concern that the tax benefits received by PPFs in a seven-year period ($935.468 million) was more than double the amount returned to the community in grants ($461.77 million).

This chapter provides another example of Gramsci's hegemonic power being exercised in the Australian polity by philanthropists. It clearly illustrates how contemporary philanthropists through their position as trustees of philanthropic foundations exercised political influence by defeating Treasury's attempt to introduce a minimal form of public accountability. The entire exercise is also a demonstration of how soft power was employed by the founders of Prescribed Private Funds (PPFs) to retain their privacy and to defeat Treasury, the most powerful Commonwealth government department.

The fact that Treasury chose not to insist on the most minimal form of public accountability underlines the power of those in philanthropy. This is an example of Gramsci's hegemony where without coercion, unequal class rule is accepted. Not only do the 'subordinate classes' come to accept their place in society, but also the place of the 'dominant group' the ruling class. This is seen as the natural order, what Gramsci calls the 'common sense' of society.

Chapter 7

Trustees and Their Trusteeship

> *It is the trustees who revisit, reaffirm, or reshape the foundation's original program focuses and their relative priority. It is the trustees who decide whether and how a foundation will be strategically focused and what risk profile it will assume. It is the trustees who instill an ethic of staff accountability and evidence-based decision-making into the governance dynamic of a foundation – or fail to do so...The trustees, then, are crucial to the success of the foundation* (Fleishman, 2009, p.286).

7.1 Background

Given the pre-eminent role of trustees in philanthropic foundations, it is surprising there has been so little scholarship into their own view of their trusteeship responsibilities. There has been a small amount of research on this in the U.S.A but nothing in Australia.[1]

This chapter takes a case study approach to illustrate how at least a small sample of trustees understands their role within Australian philanthropy and whether their understanding demonstrates the nuanced U.S.A. comprehension suggested by Fleishman and quoted above (Fleishman, 2009).

[1]The U.S. Centre for Effective Philanthropy (2005) surveyed 607 trustees of 53 large American foundations. The focus of this research was foundation governance. This appears to be the largest study of trustees of philanthropic foundations in the U.S.A.

7.2 Trusteeship and its Responsibilities

7.2.1 Trusteeship

The concept of trusteeship has ancient sacred roots and historically was strongly identified with stewardship as depicted in the Judeo-Christian heritage (Weaver, 1967). There is an extensive theological scholarly literature on this, particularly as it relates to the Old and New Testaments (Hall, 2004).

Jeavons argues that today this historical connotation has been almost forgotten and trusteeship is now narrowly viewed almost exclusively through an economic lens. He maintains that the idea of trusteeship has been demeaned and weakened by being associated solely with issues and practices relating to fundraising and financial management. Consequently, the responsibilities of trustees appear to be framed only as an obligation to be efficient and effective mangers of funds. He argues that trusteeship has at its core a moral rather than an economic obligation and that stewardship is a 'sacred' concept. Trustees therefore have a responsibility to work in the public interest, rather than their own, and must possess a deep commitment to serve the common good (Jeavons, 1994, pp.107-122).

There is substantial scholarship on the legal role and responsibilities of trustees and their trusteeship (Harding, 2014; Harding *et al.*, 2014). In addition, there is an increasing scholarly literature on boards of not-for-profit organisations (Ostrower & Stone, 2006). Nevertheless, most of this literature does not examine the role of trustees of philanthropic trusts and foundations, which is the sole focus of this chapter and the main question is how do trustees view their role?

7.2.2 Responsibilities

Like most of the other literature on philanthropy, the scholarship on trustees of philanthropic boards is primarily from the United States. Weaver, in his early classic examination of philanthropic foundations, asserts that the ultimate legal authority and responsibility for all the foundation's activities resides with the trustees (Weaver, 1967, p.106). Frumkin claims trustees have three major responsibilities – to the public, to the donor's wishes and a fiduciary duty (Frumkin, 2006a, p.173). Fosdick contends it is the trustees who determine the policies and

programs and are therefore responsible for the overall strategy and direction of the foundation (Fosdick, 1989, p.297). Fleishman reminds us that one of the key responsibilities of trustees is the appointment of a CEO as these individuals are the representation of the foundation to the public and to government (Fleishman, 2009, p.286).

In Australia, trustee companies publicly describe a long list of their duties as trustees which includes some of the above:

- being familiar with the terms of the will/deed,
- obtaining control of the assets,
- adhering to and carrying out the terms of the trust,
- acting impartially when dealing with the beneficiaries,
- keeping accurate accounts and providing information when required,
- not delegating the trustee/s' duties or powers,
- discretion,
- advice,
- paying and transferring the trust property and the income to the correct beneficiaries,
- investing the trust funds (Equity Trustees, 2014c).

7.3 The Research Process

This chapter is based on interviews with six individuals. These were: one senior executive of a trustee company; four independent trustees and a financial adviser to a family trust (who as a family member was serving an 'apprenticeship' to become a trustee). Because the primary focus of this thesis is trustee companies, interviews were sought with senior executives of all the four largest companies, but only one consented to being interviewed.

The four independent trustees were chosen from the research sample (outlined in Chapter 5) of trusts and foundations that have trustees independent of the

administering trustee company (i.e. co-trustees). All four chaired the foundation involved.

To supplement the interview material, the Internet was searched exhaustively but yielded little information. The other primary source investigated was *Who's Who in Australia*, which listed only two of the chairmen.

Transcripts of the six interviews are the major primary source material and form the basis of examination and analysis of this chapter. It examines the responses by the interviewees to the following questions: how trustees are appointed; how they view their guardianship of the benefactors' wishes; their relationship with the trustee company; and their views on public accountability of their foundations.

The semi-structured interviews were conducted in July and October 2013 and generally lasted for more than one hour. The interviews were taped, transcribed and copies of the transcriptions were provided to the interviewees. All the interviewees agreed to be quoted on condition that their anonymity was maintained.

The individuals who agreed to be interviewed are all highly respected, well-educated businessmen who live in Melbourne. In view of their prominence, there was surprisingly little publicly-available secondary source material about them. Despite its ubiquity, the Internet yielded virtually no data. Those interviewees who were chairmen of their trust/foundation in the course of the interviews, did offer some personal history and views which are the subject of the analysis below.

My insider status within this network allowed access to this group of trustees without this entree would have been difficult. Insider research refers to when researchers conduct research with groups of which they are also members. There are both positive and negative aspects of insider and outsider status. Asselin (2003) claims there are many benefits of being an insider when interviewing. Insider status provides a level of trust, acceptance, access to otherwise closed groups and the researcher shares an identity, language and experiential base with the study participants. Kanuha (2000) also suggests that the insider role allows researchers more rapid and more complete acceptance. Potential problems include role confusion, greater researcher subjectivity that could be detrimental to data analysis and a lack of awareness of ones own personal biases and perspectives. Dwyer and Buckle maintain to present these concepts in a dualistic manner is 'overly simplistic and restrictive' and suggest it may be time to abandon 'these constructed dichotomies

and embrace and explore the complexity and richness of the space between these entrenched perspectives' (Dwyer & Buckle, 2009, p.62).

However, I am no longer an insider of that network of people, no longer in that position. Conflict of interest issues were considered and examined during the ethics committee process.

7.3.1 Trusteeship in Foundations without Independent Trustees

For charitable trusts where the trustee company is sole-trustee, once a trustee company is lawfully appointed it retains that office for the duration of the trust. Most charitable trusts administered by trustee companies are established in perpetuity and therefore have this form of permanent tenure (CAMAC, 2013, p.40). How this was operationalised was outlined during one interview:

> *The board of the public company is the legal trustee, but the usual practice is they delegate their authority to a sub-committee. What it means is that the board has a sub-committee that is focused on the delivery of philanthropy in the community and they say to me, how are we going? Are we going to our plan? It's not small line items that are featured in a general board meeting. It's a dedicated two-or three-hour meeting every quarter talking about philanthropy. So the board has backed it* (E Interview, 28 June 2013, p.13).

The trustee company is always the other partner at the board table and it has a different perspective about its role. The trustee company executive interviewed emphasised that appointing a licensed trustee company has many advantages. The first is securing trusteeship services in perpetuity. The second advantage is that it gives the trustee a long-term perspective on the charitable trusts so they are able to adopt an enduring philosophy in their grant-making.

> *...in perpetuity you've got to structure it in a very defensive way in terms of the capitalisation – you don't take debt, and you effectively service your portfolio with that perpetuity mindset* (E Interview, 28 June 2013 p.2).

This executive stated very strongly that, although the trustee company was seen as a financial business, because it was always promoting its fiduciary responsibility

it was more than that. 'We are the trustees, we're not the administrator. '[For some trustee companies] the fund management business is the tail now wagging the dog' (E Interview, 28 June 2013 p.3).

He emphasised that the company took its fiduciary responsibilities seriously, and legally needed to act in the shareholder's best interest but that a trustee company was different to other corporate entities, as 'the needs of their client came first and foremost' (E Interview, 28 June 2013 p.3).

The current position in Australian law is that a trustee company may be replaced only in the following circumstances:

- if the donor is alive and with the legal capacity to do so,
- if the terms of the trust instrument itself allow for replacement i.e. where a person is given a power in the instrument to replace the trustee, or (very rarely) where the instrument itself makes provision for change, such as a periodic 'spill' of the trustees,
- if legislation is enacted,
- if a regulator investigates and finds illegal or improper behavior,
- if the courts declare a trustee should be replaced.

All are difficult and uncommon and are rarely invoked.

7.4 Appointment and Succession

For the purpose of this chapter, the issues of appointment and succession of trustees are of major interest. The comprehensive qualities sought in potential candidates for appointment are proposed in the U.S. literature. Nason asks what the qualities of a good trustee are and concludes there is no standard answer. Instead he proposes that trustees must be engaged and prepared to work hard, they must have excellent judgement and a capacity for teamwork. For general purpose foundations, specialist knowledge may be desirable, although he argued intangible qualities such as vision and imagination were more important (Nason, 1989, p.58). Fosdick believed trustees needed the capacity to 'brood' not only over

the performance and aims of the foundation but also how to create more opportunities for a better society (Fosdick, 1989, p.297). Fleishman reported that his interviewees also favoured intangible qualities, citing leadership, fine judgement, courage, statesmanship and unpretentiousness as imperative qualities for trustees (Fleishman, 2009, p.301).

Forty years earlier, when Weaver examined the trustees of four major foundations, he found they all had prominent international reputations and were a group of 'absolutely top-flight persons – men of experience, of special talent, of wisdom and of integrity' (Weaver, 1967, p.106). He claims it makes little sense to suggest foundation boards should represent the public and that trustees should be chosen from the broader community. He claimed foundations he knew and had worked for, all self-perpetuating, did represent the public interest. Furthermore, he could not conceive of a 'procedure of public selection that would produce boards more intelligent, unselfish and dedicated than those which result under the existing procedures' (Weaver, 1967, p.107). As explained earlier, very little information exists on the public record in Australia to make a comparable analysis.

The interviews with the chairmen revealed that one of their major motivating factors for serving as a chairman was a personal relationship with the benefactor. One chairman explained how he was initially approached:

> *He just rang up and said – he was fairly close to dying by the time he finalised it all – he rang up and asked if I would be chairman of the Trust, and I said I would do it. And that was it. I didn't know much about it at all. I had no idea really. I was a bit surprised...I met him through cultural and business institutions and we also socialised at golf clubs etc* (A Interview, 17 May 2013, p.4).

For family foundations, the personal relationship is obviously much closer. In one case, the current trustees are all family members and their main motivation for acting in this capacity is a sense of family culture and duty. Other family foundations had a strikingly similar culture. They both described how they served an 'apprenticeship', often for as long a decade, before taking on the role of trustee and then chairman.

> *...I'm fifth generation ...we have all spent at least ten years in the understudy role, sitting beside our father or grandfather watching the process, listening to the reasons why they support this, or don't support*

> *that...and that's just bred into you...we don't have a chair elected but the family takes the chair position* (D Interview, 4 June 2013, p.3).

In terms of succession, Australian philanthropic foundation boards are self-replicating entities which do not have an external selection process. New and replacement members are proposed and selected by the current trustees. Unlike large business or non-profit organisations, who select board members through nominating committees or even by advertising, philanthropic foundation boards have no such structure, nor do they advertise through search agencies to fill board vacancies.

As one chairman said: 'We self-select. We are a small group known to each other...we wouldn't appoint someone who was unacceptable' (A Interview, 17 May 2013, p.5). He further acknowledged that the trustees had been remiss in his nearly thirty years as chairman in having no female trustee. 'When one of the original trustees died... we decided we should appoint a woman, we decided we were a bit short on feminine power.' He described the woman the trustees appointed:

> *[She] is a lawyer...My daughter knows her and through that I met her and she came along and stayed with us [as an 'apprentice'] for a while and we appointed her as trustee* (A Interview 17 May 2013, p.5).

The chairman recounted how selection of trustees is not always successful:

> *We appointed [another] trustee. He had been a trustee for five years, and then he decided that he wanted to do other things. Nice guy and a nice family but he wasn't prepared to give the time that we were prepared to give to it. He wanted to be more efficient and have only four meetings a year, accept more advice from the Trustee Company and we felt it wasn't quite what we wanted, so we parted ways and that is really what happened* (A Interview, 17 May 2013, p.5).

A chairman from another foundation, when asked how he was appointed, said:

> *The [then] Chairman approached me and asked me whether I wanted to be a trustee. I was busy at the time and he came back within twelve months and asked me again, and I had fewer commitments and accepted* (C Interview, 23 May 2013, p.2).

When asked how other trustees joined the board, he confirmed that they were appointed by existing trustees:

> *My predecessor was known to the then Chairman...Well, X had a lot of experience in one of our major appeals and our Chairman had been involved with that appeal, and so X was approached* (C Interview, 23 May 2013, pp.2-3).

The foundation often looks for specific expertise:

> *...the foundation wanted someone with scientific experience, given the benefactor's wishes...and Y had this experience and was appointed...We appointed Z because of his financial knowledge. We need people with a breadth of experience* (C Interview, 23 May 2013, p.3).

This chairman also acknowledged the importance of women now as trustees:

> *Well, the influence of women is very important for the trust now...Women have established themselves as the dominant force in philanthropy. I don't know whether this is because of flexibility of employment, but philanthropy is dominated by women and the foundation should acknowledge that* (C Interview, 23 May 2013, p.3).

When asked if he could see a time when the foundation might advertise for trustees, rather than select them from their circle of friends and acquaintances, he replied, 'Well, we did look at other people when X was appointed. We interviewed other people, and we all decided on X (C Interview, 23 May 2013, p.3).

In one of the family foundations, the trustee company is named in the trust deed. The deed also appointed three family members. 'These three family trustees have been replaced on their death by three family members from the next generation' (Interview G, 6 June 2013, p.6).

Longevity is one of the strong features of foundation trusteeship. Indeed, Frumkin reluctantly claimed 'ossification' can occur in some parts of institutional philanthropy (Frumkin, 2006a, p.173). The traditional practice within Australian philanthropy is that the chairmen and trustees have unspecified tenure. It is not unusual for trustees to remain on the board for two, three and even four decades. One of the chairmen interviewed for this research has occupied his position for thirty years. Longevity of tenure is also a strong feature of trusteeship outside this sample. For instance, at the time the Ian Potter Foundation celebrated its fiftieth anniversary; its chairman had served twenty-five years as a trustee and twenty as chairman (Ian Potter Foundation, 2014, pp.10-11).

7.5 Relationship with Trustee Company

In all the interviews cited above, the trustee company is a co-trustee. All chairmen interviewed stressed that decisions were made unanimously. There may be some conflict with the trustee company, but they always try to find common ground. Rarely was there an issue on which they could not agree. During the last two years (2012-2014), all foundations in this sample that have independent co-trustees have been in conflict with their trustee company over the issue of fees charged for services. Historically, trustee companies have charged between 5-6% of income as their fee for administering the trust or foundation. As noted in Chapter 4, when the Commonwealth took over responsibility of trustee companies from the States in 2009, a different fee was legislated. The new fee is now 1.056% of capital.

> *We have found the most unpleasant business has been the past two years, and this is when we have had the problem with the trustee company...So now we have a position where they are charging us what we regard as a highly excessive amount...and we are resisting that* (A Interview, 17 May 2013, p.11).

He went on further to say that the trustee company now provided several people to attend meetings when traditionally only one person had attended.

> *We said we only need one person, as we used to have, one person who took notes and if necessary made a comment from the point of view of the trustee company. We now have four people minimum, and those four people have come in without discussion with the Chairman, without discussion with the other trustees, to attend our meetings regularly. I might add that we perceive the services provided by the trustee company have been substantially reduced* (C Interview, 23 May 2013, pp.1-2).

One family foundation chairman was scathing in his criticism of the trustee company and felt it was unfair that the family was legally bound to deal with it. His criticisms were extensive and varied. This foundation had been in conflict with the trustee company for more than three years over its new fee structure. Before the legislative change, the trustee company fee had been calculated on income at the rate of 2.5%. With the new Commonwealth law, the fee for foundations would be massively increased (D Interview, 4 June 2013, pp.8-10).

One chairman had nothing but praise for the trustee company that his family had dealt with for almost a century:

> *I've got no criticism of [the trustee company] in the way they handle their position. They support the meeting. They minute the meeting. They attend the meeting. There's always four or five people there from different parts of their organisation and they encouraged [the family] to be involved...I've got no criticism about [the trustee company] and the way they operate and the process of interfacing with them at all* (B Interview, 29 October 2013, p.3).

Others were more qualified in their views:

> *Trustee Companies are still relevant, and still perform an effective role. Legislation enables them to charge fees that don't reflect the service that they provide. I personally would like to see the Government introduce portability; this would enable co-trustees to go to market and pay for the best service* (C Interview, 23 May 2013, p.6).

7.6 Grant Administration

A chairman of a family foundation described the administration of their foundation's grants:

> *We have two meetings a year...the way that the applications work is that they have to go through [the trustee company's] website...Ultimately all that we can consider is people who have applied through the website...the company checks whether applicants have the required tax-deductibility status and the other legal requirements... So normally we have the first round for our major decisions and the most money is handed out at that main meeting...there are always more applications than there is money* (B Interview, 29 October 2013, pp.3-5).

Grant administration is an aspect of trustee service that has changed significantly over the last decade. The upsurge in the number of grant applications has had an effect on co-trustees' relationship with the trustee company.

When many of the charitable trusts were first established, grant-giving was often highly localised, discrete and managed by word of mouth. Distributions were more frequent and often involved personal relationships between administrator and recipient. Today, grant administration has become more streamlined, Internet based and at arms' length. A trustee company executive explained some of the pressures behind the need to streamline the grant administration process when interviewed by the Australia Institute:

> *In 2008, we received six hundred applications for grants. In 2009, we received eight hundred applications. In 2010, nine hundred applications were received and in 2011, the number of grant applications jumped to one thousand one hundred and thirty-four. This represents nearly a 100% increase in the number of grant applications over a four year period. In 2011 we will award 160 grants, so about 85% of applicants will be unsuccessful* (Australia Institute, 2011, p.14).

In response to the increase in both the number of charities seeking assistance and in their sophistication in seeking grants, corporate trustees have streamlined and computerised the grant process, including:

- reducing the number of rounds of grants;
- reducing the visibility of charitable trust aims and charters, so that grant seekers are unable to fit their activities to artificially meet a trust's goals; and,
- Invested in computer systems to streamline the application process, a particularly important move given there are so many applications that some 80% of them will not be successful.

To many co-trustees this has appeared as a reduction in service provision. Coupled with an increase in fees, it has caused them great concern and was the catalyst for a number of co-trustees establishing the Charitable Alliance (see Chapter 8).

7.7 Public Accountability

There were differing views among those interviewed regarding public accountability and transparency of their foundation. One stated:

> *I believe in public accountability for foundations because we gain benefits from the government – we pay no tax and we receive franking credits [in 2012, the foundation received $1,485,154 in franking credits][2]...I also feel that foundations like ours should be proud of the work they do, and should be able to tell the public* (C Interview, 23 May 2013, p.6).

He went on, however, to qualify the above statement:

> *But I don't believe that PAFs should be publicly accountable. They do receive the same benefits but they will be inundated with applications and people who set them up see them as private. I think that when there are more of them established and there is a maturity, that possibly then they could be publicly accountable, but for now it's too early* (C Interview, 23 May 2013, p.6).

A chairman of a family foundation maintained:

> *As a trustee I think that accountability and a level of disclosure is a good thing. There should be more information disseminated about charitable trusts, their investments, the fees charged by trustee companies, other costs and overheads of administering philanthropic trusts and the grants that these organisations actually make and to whom they are made. And the reason this information would be public is that the government Tax Office and therefore the nation's taxpayers are supporting the charities. Because it is a tax-free donation, the whole philanthropic industry is actually supported by the taxpayers* (B Interview, 29 October 2013, p.8).

Despite the views expressed above, the foundation provides no information to the public about its operations.

Another chairman interpreted public accountability as the foundation seeking publicity:

> *We get four to five invitations to go to some opening or show every week, and the sheer number of invitations is too hard to keep up with. So, as a group of trustees, we are not out there looking to put our name onto too many things... Naming rights are not a motivator for*

[2]The source for this figure cannot be cited as it will identify the trustee and the foundation.

> *the family, not a motivator for the gifting at all* (D Interview, 4 June 2013, p.6).

A different chairman, whose foundation produced its first public report earlier this century, acknowledged that the trustees decided to produce only a small report periodically:

> *We decided we needed to be accountable and even though it was the benefactor's money, we were getting public taxation support...The enormous [tax benefit] is the retention of the credits. That represents about 25% of our granting. Howard [Liberal government] brought that in. That was a massive development for us. Imputation credits, that's really important for us. We can survive without it, but it does mean a lot* (A Interview, 17 May 2013, pp.9-11).

The trustee company executive interviewed emphasised the significant effort the company had made during the last four years in being more publicly transparent. For this company, engaging with the public was a legitimate business decision:

> *[it is] our responsibility to get the stories out, invest in the scholarships and awards, re-promote our engagement and model around distributions...Not only because it is important for them [trusts], but also commercially...Philanthropy is an enormously vibrant space and we are not in the game. We had really missed the pack and I was determined that by repositioning and restructuring the business, to give it that prominence and putting some investment behind it to make sure the company be recognised as a real contributor to the future of philanthropy...* (E Interview, 28 June 2013, p.1).

All of the chairmen interviewed, but particularly those in the family foundations, were adamant that their foundation had no desire for publicity. As one stated, 'we don't want to bang on from the rooftops about what it is we do' but he stressed that this desire not to seek publicity had nothing to do with wanting to keep the foundation's activity 'a secret...no one's trying to hide anything. That would be the last thing. But do we want to be in the public eye? No, not necessarily, we're a private family' (G Interview, 6 June 2013, p.5).

7.8 Policy Making

Leat maintains that, before trustees become grant-givers they need to determine what kind of grant-maker they want to be. She proposes that there are three major typologies of grant-making. The first, the 'gift-givers', are trusts and foundations that have given little if any thought to their priorities. Usually the gifts are small, given for only one year, often to purchase something specific. For these 'gift-givers', research or other forms of investigation are not necessary as they are not interested in success or failure, only in providing a gift (Leat, 1995, p.319).

The second are 'investors'. Like their counterparts in the stock market, philanthropic 'investors' carry out extensive research prior to determining their grant-making. They may take risks with some investments, yet also invest in secure options that produce a reliable result. These grant-makers are interested in success and therefore invest for a period of years. They often monitor and evaluate their grants (Leat, 1995, pp.319-320).

The third is the 'collaborative entrepreneur'. In this form of grant-making the foundation forms a partnership with the relevant not-for-profit and they work collaboratively to achieve 'mutually agreed objectives'. The foundation or trust may also be directly involved in the governance of the project. This form of philanthropy requires long-term commitment of funds, and monitoring and evaluation are an integral part of the initial design (Leat, 1995, pp.320-321).

Leat argues that each of these three models has strengths and weakness. The critical issue is for trustees to determine which practice they will adopt. She claims some trusts and foundations may wish to adopt all three models. 'What matters is that they know which approaches they are adopting in any particular grant decision' (Leat, 1995, p.321).

What are the grant-making policies of trusts and foundations represented by these interviewees?

Some of their trust and foundation benefactors may have had a special interest in certain organisations but were aware that their foundations are perpetual entities and that social conditions and social needs change over time. They therefore provided trustees with total discretion within the typically very broad indicators specified in the trust deed and the law ('public charitable purposes').

All those interviewed stated that the benefactor's will was the instrument that determined the foundation's grant-making policy, although the trustees have total discretion in the way they interpret the will:

> *The will and then the trustees interpret the will. Our founder wrote his will over fifty years ago. The world has changed, and there is no way he would want the trustees not to acknowledge the huge social changes since his death* (C Interview, 23 May 2013, p.4).

> *The will is basically very broad and we have to interpret the will as trustees* (B Interview, 29 October 2013, p.2).

> *[In our trust] there is provision for poverty, education or religion...it's the will* (D Interview, 4 June 2013, p.4).

It was not apparent from the interviews that the philanthropic strategy outlined by Leat was adopted by those foundations. Other approaches were used. For example, one foundation divided the corpus into segments and decided to provide 30% of the income to science and 70% to what the chairman referred to as 'true philanthropic pursuits, that is, caring for the disadvantaged and marginalised in our society' (B Interview, 29 October 2013, p.4).

For family foundations interviewed, established relationships with not-for-profit organisations appear to be the most significant factor in their large-scale grant-making.[3] One chairman referred to the foundation's million dollar grants:

> *...where we do a much deeper level of investigation and get to know the people on the ground and what they're trying to achieve, then we will give them the money* (D Interview, 4 June 2013, p.12).

An independent foundation had given considerable thought to its policy-making. The chairman understood that foundations had financial power but also they could be purveyors of 'soft power'. According to the Leat model, the trustees of this foundation were 'collaborative entrepreneurs' who sought out partners in the community to achieve their aims. They also leveraged the foundation's gift with money from State or Federal Governments. They understood that the impact in the community would be long-lasting:

[3]This concurs with the findings of two Australian studies (FACSIA, 2005; Scaife *et al.*, 2011) that demonstrated that known not-for-profits tended to attract more donations.

> *Our main effort was to get the State Government to put money in. We approached the Arts Minister at the time, and we talked to him a lot and he was a great enthusiast. Shortly before an election the government provided $8 million, remember the foundation had contributed the first million...What I am trying to get across is that we do try to get things that are creative to start off, and weren't there before and will continue giving benefits* (A Interview, 17 May 2013, p.7).

The same chairman made it clear that, although the foundation was interested in a long-term relationship and understood the benefits of this, its ultimate aim was to ensure that the organisations themselves find other resources to sustain the project.

> *We're not there to sustain them in perpetuity because that will limit our ability to take on fresh projects, but we will develop and fund them hopefully to a point where they can get on themselves and be sustainable* (A Interview, 17 May 2013, p.8).

The executive of the trustee company explained that the new grant-making philosophy of the company was based on long-term engagement with charitable organisation. It was no longer interested in project funding. Instead it wanted to build capacity within organisations and help them operate more efficiently and effectively.

> *I had this feeling that the company had built up an enormous amount of infrastructure around itself in the form of on-line application forms, and 1800 numbers and web addresses and was doing its grant-making in a closed door environment with very little engagement with the sector* (E, 28 June 2013, p.8).

> *Philanthropy also has a huge opportunity to be taking early risks and also to provide capacity funding and we have had a deliberate focus with our model – the organisational level...I am happy to fund capacity...because what I am really doing is backing an organisation and its partnership model and its social change objective* (E Interview, 28 June 2013, p.9).

7.8.1 Grant-making

Frumkin lists ten different forms of grant-making. The first is a Project Grant, where money is provided for a specific project or program. It is not for the core activity of the organisation. The second he refers to as Short-term Grants, grants that are offered to seed projects of three to five years. The third form is Matching Grants. These grants are made to leverage other funding from foundations or goverment departments (Frumkin, 2006b).

The fourth type is what Frumkin describes as Large Grants. Foundations who use this form of grant-making, are interested in 'wholesale' rather that 'retail' funding. The fifth form of grant making is usually made by foundations that refuse to accept applications. Instead, they send out a request for proposals, usually to a limited group of not-for profit organisations. The sixth form is High Engagement Grant Making, where the philanthropist is determined to increase his or her experience within the organisation, often taking a position on the board. Overseas Funding was another form of granting identified by Frumkin.

The foundations in this sample are legally unable to make grants beyond the geographic boundary of the State of Victoria. Joint Funding or Collaborative Funding is currently favoured by many large foundations, including some in this research sample. Finally, Technical Assistance Grants are funds that assist organisations strategic planing and development (Frumkin, 2006b, pp.190-197).

The processes of those interviewed reflect many of the grant-making forms listed above. The chairman of one family foundation said that historically the family had provided relatively small grants to a lot of organisations. They preferred smaller projects that were often ignored by the larger trusts and foundations and also ignored by government (G Interview, 6 June 2013, p.5).

Another was fortunate in having three honorary advisors who provided them with research on potential projects within regional cities that are specified in the will. These advisors are friends of the family and are actively engaged in their local community. 'They write us a report detailing who they recommend and why – so we get a list of recommendations that is almost always adopted' (B Interview, 29 October 2013, p.5).

Yet another family foundation receives applications and the trustees themselves spend considerable time reading the applications and making summary notes.

They have an extensive data base of the charities that the foundation has funded and usually do not fund organisations that the trustees do not have a relationship with.

> *We do not generally interview or go and visit any of the charities; we just do not have the time. There are charities that I know because of long-standing associations...most of our money goes to capital works or asset acquisition for existing charities* (D Interview, 6 June 2013, p.8).

One chairman stated that he and his fellow trustees use the freedom allowed to perpetual foundations and simultaneously made both large and small grants:

> *We deliberately tried to grow the portfolio so that we could make larger grants...These grants are often from $400,000 - $1,000,000 each year, for three years... but we also provide small grants to very needy groups. So we provide things like a holiday in the snow, or something they wouldn't get otherwise* (A Interview, 17 May 2013, pp.7-8).

Similarly, a chairman of an independent foundation stated, 'Now we do multi-year grants, [with] a more strategic approach and this is the tendency that has happened throughout the philanthropic sector' (C Interview, 23 May 2013, p.4).

Another chairman claimed he and his colleague trustees had not determined the size of grants they wanted the foundation to make; sometimes they provided million dollar grants and simultaneously made small grants. They preferred to provide funding for pieces of equipment rather than for capacity building. Their view of funding administration (salaries) appears to mirror that of the Australian community, administrative costs are not charitable.[4] 'We tend to keep away from day to day administration' (D, 4 June 2013, p.12).

It is clear that, for most of those interviewed, their understanding of their role as trustees in grant-making was not as nuanced and thoughtful as that outlined in the literature.

[4]Surveys continually demonstrate this view.

7.9 Discussion

These interviews provide a rare insight into the private world of the boards of philanthropic trusts and foundations administered by trustee companies. They also make available otherwise inaccessible information. Importantly they also present an insight into the trustees' views concerning their role as trustees, their trusteeship of the original benefactor's wishes and the culture, structure and functioning of these boards. The trustees interviewed give both their time and expertise voluntarily, with occasionally a token honorarium. It is apparent they view their duty as being custodians of the benefactor's money, spending it wisely and being loyal to the donor's wishes. This component of the responses conforms to the responsibilities outlined in the scholarly literature.

The literature examines the responsibilities of trustees especially in selecting a CEO and ensuring benefactors' wishes are adhered to. It does not address the situation of co-trustees who share their role with a trustee company. The complexity of this arrangement is illustrated by the fact that the trustees in this sample do not appoint a CEO, as the administration is carried out by the trustee company. One of the consequences is that is unclear who represents the foundation to the government, the not-for-profit sector and the broader community. This underlines the ambiguity of these relationships.

A key finding of these case studies is that the responses clearly divide into two categories: those trustees who are members of a family foundation see their philanthropy as principally private, whereas the second group (who may or may not have known the benefactor) view their foundation as being public rather than private. These views were reflected in determining whether foundations should be publicly accountable. The trustees from family foundations did not consider their foundations should provide the public with a full account of their foundation's practices. By contrast, the trustees from 'independent' foundations understood they had a responsibility to the public and provided an extensive account of their financial and grant-making activities.

This small sample identifies varying levels of sophistication in grant-making which mirrors international philanthropic practice. Another global tendency that is reflected in these interviews is a reluctance to spend money on research to gain

a greater understanding of the needs of potential grant recipients. This unwillingness to spend foundation monies on grant-making expertise and advice is in contrast to the significant amounts of money spent on financial investment assistance. Trustees spend time and money ensuring they meet their fiduciary duties in an exemplary way and the evidence confirms their success in this. However, they are reluctant to spend any of the foundation's income on research or advisers who have expertise in the fields they have chosen to fund. Most foundations are proud of employing no staff or boast of their minimal staff costs.

These boards, like their counterparts in the U.S.A., are mainly homogeneous and do not reflect the demographics of contemporary Australian society. The trustees are drawn from those groups that are financially successful, socially influential and culturally uniform. They bring enormous financial and business acumen to their fiduciary decision making. It is less clear how deep their knowledge is of the not-for-profit sector or their understanding of the educational, social, cultural, scientific, and environmental or welfare needs of contemporary Australia.

Another significant feature that emerges from the interviews is the importance trustees assign to the independence of the foundation they serve The interviews in this chapter suggest trustees perceive most forms of government control as an encroachment on their independence and an erosion of the fundamental value of private philanthropic foundations. They regard government regulation as interfering with this core value and perceive it an infringement on the performance of their duty as trustees.

This view is also strongly expressed in the previous chapter where it is clear that the founders of PPFs also consider independence as an essential value of their family foundation. For these contemporary Australian philanthropists independence and privacy are linked and these values are aligned against regulation. In their submissions to the Treasury Inquiry they articulate their understanding that government regulation will mean a diminution of their power. There is a strong culture of privacy and independence often merging resulting in a strong fear that governments will tell trustees what to do and how to do it.

It is important to note that in the USA regulation requiring public accountability during the last forty- fife years appears not to have reduced the independence of foundations. Pharoah's (2012) research in England during the last decade also illustrates the importance of the principle of independence for trustees; nevertheless

there is no indication that this has been compromised as a result of the need for public accountability.

This chapter also illustrate that trustees of philanthropic trusts and foundations have soft power through the appointment of self-selected co-trustees. These appointments ensure only certain ideas are propagated through their grant-making, ideas that help maintain and retain the status quo. This is another example of Australian philanthropists exercising and practising Gramsci's theory of hegemony.

Chapter 8

Philanthropy and Regulation: Root and Branch Reform or Business as Usual?

8.1 Introduction

Unlike governments in both the USA and the UK, until recently governments in Australia has showed little interest in regulating philanthropy (Leat, 2004b, p.98). This chapter acknowledges that philanthropy and regulation is an enormous topic in its own right therefore it only examines two recent attempts to legislate new structures to regulate Australian charities including philanthropy.

Nevertheless, this thesis was written during a time of significant change in the law and regulation affecting charities, including philanthropic foundations. Critically, given the focus of this thesis, the change processes and outcomes represented a lost opportunity to ensure that Australian philanthropic bodies become as accountable as other Australian charities are required to be.

Two attempts at reform are examined, one legislative and the other regulatory and their outcomes as they affect philanthropy. The first was the establishment of Australia's first independent regulator for the not-for-profit sector – the Australian Charities and Not-for-Profits Commission (ACNC). The second case is the government-commissioned Corporations and Markets Advisory Committee (CAMAC) on the administration of charitable trusts managed by licensed trustee companies (LTCs).[1] My understanding is that CAMAC's Report was the first attempt by any government authority to examine this segment of philanthropy.

[1]This is the first time the word 'licensed' was attached to trustee companies and therefore trustee companies are referred to in this way for the remainder of the chapter.

The primary sources used in the first case are the rich and extensive public archive generated by the seven-year legislative process that led to the formation of the ACNC. This unique resource is used to critically review the government's policy in establishing the Commission and to question whether the outcomes are consistent with its stated aims. It will identify some of the gaps and contradictions in the government's policy particularly how the requirement for reporting by philanthropic foundations become watered down, especially in contrast to the accountability requirements of all other legally classified charities.

The primary source material used for examining the CAMAC review is the three major submissions made to it by umbrella bodies that represent three significant collective voices in philanthropy – Financial Services Council (representing trustee companies), Philanthropy Australia, and the Charitable Alliance (an informal group of co-trustees and grant recipients).

The fundamental question underlying this chapter's analysis is: why does public accountability regulation matter for philanthropic foundations? – a question never raised in either of the cases examined.

8.2 Background to the Reforms leading to the ACNC

In 2007, the new Labor government in Australia came to power on the promise of an extensive reform agenda. Part of this was reform of the charities and not-for-profit sector, including philanthropic foundations and trustes. This assurance was treated with a degree of scepticism as for decades governments of all persuasions had ignored the non-profit sector's incessant pleas for its own regulatory reform.

During the preceding fifteen years, there were four government inquiries including a Parliamentary Senate Inquiry and the Productivity Commission's 1995 report on the community services component of the not for profit sector.[2] All of these recommended that a single, independent, national regulator be established for the whole sector. All commented on the complex and conflicting State and Federal regulation, its haphazard growth and the need for a national framework. The

[2]The Productivity Commission is an independent Commonwealth agency which is the Government's principal review and advisory body on microeconomic policy and regulation.

inquiries reported to both Labor and Liberal governments. All of these reviews had resulted in only piecemeal reforms and few recommendations were adopted, resulting in little change to the sector (Industry Commission, 1995; Productivity Commission, 2010; Senate Standing Committee on Economics, 2008).

This time however, it appeared the promises would be translated into tangible and significant reforms. Within months of assuming office, the Prime Minister, Kevin Rudd, announced that the government would ask the Productivity Commission to conduct a landmark inquiry into the charities and not-for-profit sector, including the value of its volunteers. Simultaneously, a commitment was made to restore the sector's independence that had been undermined through a series of regulations during the previous decade. The restrictions are worth outlining because they stimulated a reaction from some philanthropic groups to help the sector overcome some of these barriers.

On coming to government in 1996, Liberal Prime Minister John Howard had surprised the sector by declaring not-for-profits to be unelected 'single-issue groups' and 'elites', and he pledged the government would not be owned by any special interests. He encouraged, funded and commended those who, for example, provided soup kitchens for the poor or recruited volunteers to plant trees or pick up rubbish, but defunded and attacked those critical of government policy, in particular its stance on refugees, and accused them of engaging in public advocacy, of being political. In response a number of foundations changed their policies and now provided funding for material aid and advocacy to non-profits who supported refugees in the community.

The Howard government's analysis and treatment of the sector had overturned a traditional philosophy that viewed non-profit organisations as an integral component of a pluralist democracy. One of its vital roles was seen as its power to lobby and disagree with government policy where this was necessary, in order to represent the interests of the sector's constituents, often the most disadvantaged and fragile members of the community. The sector was also acknowledged as being the source of ideas on the society we could aspire to develop. (Hamilton & Maddison, 2007, pp.78-89; Staples, 2006, p.4).

The Rudd government in 2007 announced five major reforms that it would implement during the next three years. The first was the introduction of a Compact

with the non-profit sector. This was a formal policy framework to guide the government's relationships with the latter. During the previous two decades, other Commonwealth countries such as the U.K., Canada and New Zealand had introduced such agreements (Butcher, 2011, pp.35-42).

Second, the government made a commitment to remove the 'gag' clauses imposed by the previous government. These confidentiality provisions were contained in funding agreements and prevented organisations from speaking to the media or publicly criticising the government (Staples, 2006, 2008).

Third, the government undertook to legislate the creation of a new national regulator for the Australian not-for-profit sector, The Australian Charities and Not-for-Profit Commission (ACNC). This independent statutory office would be a single destination for regulation and reporting. The legislation to enact this reform was passed by both Houses of Parliament on 1 November 2012 (Hansard, 2012, pp.12920-12934).

Fourth, the government would introduce a statutory definition of charity. It accepted that the existing definition was outmoded, was based on over 400 years of English common law, was unnecessarily complex, and lacked clear guiding principles. The new definition would also replace 178 pieces of legislation and 180 different State and Federal regulations.[3] The government claimed this suite of reforms was being 'lauded around the world' as the 'most progressive and substantive not-for-profit governance package of bills, a best practice model for other jurisdictions' (Stephens, 2007).

The fifth reform would be a comprehensive review of non-profit tax concessions. A Senate Committee heard that taxpayers were providing subsidies of between $1 billion and $8 billion a year and there had not been a review of this for decades. The government was convinced these concessions could be more effectively targeted.

The most significant of these reforms was the creation of Australia's first independent, national regulator, the ACNC.

[3]The government in 2001 had established a committee to examine a new definition of charity. Its recommendations were not implemented.

8.3 The Australian Charities and Not-for-Profits Commission (ACNC)

After the Productivity Commission released its report in February 2010, the federal government announced its acceptance of the recommendations in it and undertook to legislate the creation of a new national regulator for the Australian not-for-profit sector and associated reforms.

Legislation to enact this reform was passed by both Houses of Parliament on 1 November 2012. The Australian Charities and Not-for-Profits Commission was officially launched in Melbourne on 10 December 2012. To demonstrate the seriousness of its intent, the 2011 federal budget allocated $53.6 million over four years to support these new arrangements.

8.3.1 The Aims of the ACNC

The newly-formed ACNC had three objectives:

- To maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector;
- To support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector;
- To promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector (ACNC, 2013, p.15).

Part of the government's thinking in establishing the ACNC was to reduce the regulatory burden on not-for-profit bodies. This independent statutory office would be a 'one stop shop' for regulation and reporting. All existing and future charities would be required to register with the ACNC. It would work with other government departments to develop a 'report once, use often' reporting framework or 'Charity Passport'. It was anticipated this would reduce the need for registered charities to reproduce their corporate and financial information every time they dealt with a government agency (ACNC, 2013, pp.14-16).

The ACNC would also be in a position to provide data and information which could be used to inform policy and educate the Australian community about the unique contribution the sector makes to a civil society.

8.4 Philanthropy Regulation and the ACNC

Public accountability provides the catalyst for academic enquiry. Two extensive recent scholarly articles, Butcher (2015) and Murray (2014), analyse these new not-for-profit reforms in Australia and their impact on charities. There is no mention in either of these works of philanthropy or philanthropic foundations – an indication perhaps of how the lack of public information about them results in the inability to scrutinise philanthropy and its practice. This section explores how philanthropic foundations were considered by the ACNC.

At this stage, the ACNC had no legislative mandate for non-profits that are not charities. It was only looking at the 58,000 charities that wished to access any Commonwealth charities taxation or other concession or benefit (about one third of these have tax deductible status.) The estimated other 542,000[4] incorporated and unincorporated associations have no reporting requirements laid on them. This is understandable if one is only looking through a taxation lens. However, it is a lost opportunity for government and the broader public to fully understand the extraordinary contribution the people within these organisations make to ensuring Australia is a civil society.[5]

The reforms were welcomed by the not-for-profit sector but, given the Government's stated aim of improving and 'enhancing public trust and confidence in the Australian not-for-profits sector', there remained a gap in the regulatory framework. The ACNC legislation did provide for reporting by philanthropic foundations. However, presumably because of lobbying by influential philanthropists and Philanthropy Australia, there was a transitional provision which delayed the time at which their details would first appear on the public register and when their first annual information statement to the ACNC would be required. There was also a provision to allow foundations to request the ACNC Commissioner to grant an exemption from their information appearing on the public register.

[4]Productivity Commission (2010) figure.
[5]See ACNC (2013).

Prior to the establishment of the ACNC, the vast majority of charitable trusts, including those managed by trustee companies, did not report to any regulator. In the Explanatory Memorandum to the ACNC Bill it was noted that:

> *Charitable trusts do not report to stakeholders,*[6] *however, for internal purposes are required to maintain up-to-date financial information. Information needed to meet reporting obligations under this option would already be collected by charitable trusts. Therefore, regular reporting to the NFP regulator would have minor compliance costs for these entities and would amount to inserting already collected information into a standard form* (Hansard, 2012, p.290).

Private Ancillary Funds (PAFs), formerly known as PPFs, are required to register with the ACNC, yet their details were, as a transitional measure and for those granted their withholding request, permanently withheld. Therefore, unlike all other registered charities, details including the foundation's name, its contact details, governance documents and names of trustees may be withheld from the public register (ACNC, 2014).

Only twelve months after its establishment, the new Liberal government proclaimed it would abolish the ACNC. The Minister, Mr Kevin Andrews, claimed the new regulator was another 'great big new bureaucracy' which would impose a heavy administrative burden and cost on the sector. He promised to replace it with a small, independent organisation whose main purpose would be education and training. The ACNC's regulatory responsibility would be returned to the Australian Taxation Office (Seccombe, 2014, pp.1-4).

During the next two years, despite strong opposition from the sector[7], the government commenced a process to repeal the ACNC legislation. One of the few bodies to support the abolition of the independent regulator was the Financial Services Council (FSC). In a submission to a Senate Committee examining the Repeal Bill, the FSC stated its trustee company members welcomed the abolition of the regulator. A number of reasons were offered, the main one being the estimated cost of complying with the ACNC's reporting obligations. The FSC claimed it would cost each trustee company 'between 100-150K per/year', resulting in an annual

[6] Trustee companies report to ASIC and PAFs report to the ATO.

[7] 80% of submissions to the Senate Economics Legislation Committee supported retention of the ACNC. Polls continue to show 82%-83% of the sector supports the regulator (Senate Economics Legislation Committee, 2014).

cost of 'approximately $1 million' for all of its members. They were concerned this money would therefore not be available for charitable purposes (FSC, 2014, p.3).

At the time of writing, the future of the ACNC is still in doubt, although with the appointment of a new minister (Scott Morrison 2015), there appears to be a reprieve for the newly-established ACNC.[8] The not-for-profit sector continues to advocate for the retention of the ACNC and, as discussed later in this chapter, CAMAC recommends a number of roles for the regulator including stewardship audits of charitable trusts administered by trustee companies.

8.5 Background to the CAMAC Report

The Corporations and Markets Advisory Committee (CAMAC) was initially established in 1978 as the Companies and Securities Law Review Committee. In 1989 it changed its name to CAMAC and retained the same purpose of providing the government with independent advice on the law and practice of corporate and financial markets.

On 20 September 2012, the Parliamentary Secretary to the Treasurer, the Hon. Bernie Ripoll requested that CAMAC provide him with advice on the administration of charitable trusts administered by licensed trustee companies (LTCs). This review was the result of agitation from the Charitable Alliance[9], an informal group of co-trustees, recipients of and advisers to charitable trusts and foundations. The thirty-three members who signed the submission had come together as they were concerned at what they saw as the (unintended) consequences of the passing of the *Corporations Amendment (Financial Services Modernisation) Act 2009* (CAFSMA). This Bill passed the regulation of trustee companies from the States to the Commonwealth and also altered the fee structure of perpetual charitable trusts. (Historically, trustee companies had charged fees on income, traditionally 5-6%; this legislation allowed them to charge up to 1.056% on the asset base, which represented in some cases an effective quadrupling of annual fees to the trustee companies).

[8] Legislation to abolish the ACNC was tabled in the Parliament on the last sitting day 4 December 2014, but did not go to a vote. The new Minister for Social Services, Scott Morrison announced on 7 February 2015 that he had 'no immediate plans' to abolish the ACNC. The sector continues to lobby for its retention.

[9] The writer was a founding member of the Charitable Alliance.

8.5.1 The Review Process

CAMAC invited written submissions from interested parties and received submissions from the Charitable Alliance and five of its individual members – The Myer Foundation and the Sidney Myer Fund, the Danks Foundation, the Percy Baxter Foundation, the Baxter Charitable Trust – provided substantial responses. Other submissions were received from the Financial Services Council (FSC), representing its trustee company members, Philanthropy Australia (PA), RBS Morgan and unspecified others. Philanthropy Australia informed CAMAC that, while its submission was written on behalf of its members, it did not represent the entire membership's views. Five of PA's trustee company members refused to be signatories (Philanthropy Australia 2013). All submissions were originally publicly available on the CAMAC website, however, within a short period CAMAC withdrew submissions from public access after receiving a request from the FSC on behalf of a number of its trustee company members to remove a number of submissions from public access (pers. comm., Trustee Interviewed, 2013).

The Assistant Treasurer had foreshadowed in his letter establishing the terms of reference that CAMAC would host 'roundtables with relevant stakeholders' as part of the public process. Despite this, no public roundtables were held. Instead, an invited group had a roundtable meeting in Melbourne on 11 April 2013 (CAMAC, 2013, p.4).

CAMAC's terms of reference contained six questions. Four dealt with various aspects of the fees charged by trustee companies in their administration of charitable trusts. One dealt with the process of replacing the trustee company of a charitable trust (referred to as 'portability'), and the final question was a broad general one seeking to address what other issues had an impact on the charitable purposes of these trusts and foundations. CAMAC was asked to report to the Government in May 2013 (CAMAC, 2013, p.2).

8.6 Submissions to the CAMAC Inquiry

The CAMAC report states that it received submissions from the organisations named above as well as from 'others'. As the website stripped all submissions, who these were is unknown. At the time submissions were available, those from

the Charitable Alliance, the Financial Services Council and Philanthropy Australia were down-loaded for the purpose of this thesis as they represented the views of the three major umbrella bodies most concerned.

8.6.1 The Charitable Alliance Submission

The Charitable Alliance (referred to below as The Alliance) was an informal group, initiated by concerned co-trustees of grant-making trusts and foundations including Private Ancillary Funds (PAFs), charities, not-for-profits and advisers to charitable trusts. It was jointly chaired by Graeme Danks, Chairman and Honorary Trustee of the Danks Trust, Sandy Clark, Chairman of The William Buckland Foundation and Tim Costello AO, Chairman of the Community Council of Australia. The two foundations are administered by trustee companies. The Community Council of Australia (CCA) is an umbrella body representing over fifty, mainly large charities, whose main aim is to provide an independent voice for the not-for-profit sector (see Appendix D, p.250).

The Alliance submission addressed all CAMAC's terms of reference and included a number of case studies illustrating fees charged by trustee companies and what fee arrangements are available on the open market. The first part of the submission was a strong values statement concerning the unique role charitable trusts perform in enhancing the common good. It argued that any change contemplated to charitable trust regulation must consider the philosophical question of how this would enhance their capacity to fulfil their charitable purpose. Arguments were presented that claimed trustee companies had ceased to be 'trusted guardians' of philanthropic monies bequeathed to the Australian community and instead today were 'an arm of ASX listed profit driven financial services companies.' Additionally, it was maintained that trustee company directors have 'a conflict of interest' between their fiduciary duties to shareholders and their duty to the community as trustee of charitable trusts (Alliance, Submission, 2012, pp.4-5).

8.6.2 Fees

The Alliance raised a number of issues concerned with a fee based on capital (CAFSMA legislation allowed LTCs to charge 1.056% of capital). First, such a fee had no relationship to the cost of providing services. Second, LTCs investment

decisions could be influenced 'inappropriately' to generate capital rather than income for distribution and in many cases this would generate significantly larger fees. Three examples were presented illustrating the potential fees generated by such a structure (Alliance, Submission, 2012, pp.7-8).

The submission recommended that 'just and reasonable' fees be mandated under *The Corporations Act* and the following factors should be taken into account in determining whether fees are 'reasonable':

- The extent to which the work is 'reasonably necessary';
- The quality and complexity of the work;
- 'Extraordinary issues' the trustee company may need to deal with;
- Whether there was a higher level of risk or responsibility than is usually the case (Alliance, Submission, 2012, p.10).

It further recommended that fees not be linked to a percentage of capital, but instead that maximum fees be capped at 5.5% of income (annually). Additionally, it recommended that a one-off establishment fee, also based on a percentage of income, be charged in recognition of the additional work involved in the creation of a foundation. The current 'grandfathering' legislation should be repealed and replaced 'by a provision requiring trustee companies to charge charitable trusts at the same rate as they were actually charged prior to the introduction of CAFSMA' (Alliance, Submission, 2012, p.10).

The Alliance proposed that the new regulator (ACNC) create a review mechanism of fees charged. This was particularly important for those trusts where the trustee company was sole trustee (the Alliance referred to these as 'Orphan Trusts'). Every five years, LTCs would be required to present their fee structure to the ACNC Commissioner who would assess whether they were 'reasonable' and that funds were being managed properly. If the LTC disagreed with this assessment, it could appeal this decision to a Court (Alliance, Submission, 2012, p.15).

8.6.3 Financial Services Council (FSC) Submission

8.6.3.1 Introduction

The Financial Services Council (FSC) stated it welcomed the CAMAC review and that its submission was written on behalf of its eight trustee company members.[10] All members strongly opposed portability, the notion of allowing the removal or replacement of trustees when they had been found to have acted in breach of trust. LTCs made two recommendations regarding fees. First, they reiterated their support for the continuation of the grandfathered fee arrangement of established charitable trusts. (This provision allows the continuation of the fee that existed prior to new legislation). Second, they proposed that fees should be deregulated for new charitable trusts. This submission also a new terminology: FSC members were no longer 'trustee companies; they were now described as 'licensed trustee companies' and co-trustees were labelled 'lay trustees'.

The FSC informed CAMAC that its LTCS were sole trustee or co-trustee for more than 1,500 charitable trusts and foundations with assets of around $3.2billion (FSC, Submission, 2012, p.1). It acknowledged that further information on the specific number and the asset value of charitable trusts administered by its individual trustee company members was not available (FSC, Submission, 2012, p.15). The FSC further acknowledged that public understanding of trustee companies, their duties and the legislation governing them was 'limited' (FSC, Submission, 2012, p.25).

The FSC submission had a fourfold thrust: the level of existing legal compliance requirements, the tangible and intangible services provided as they relate to the fee structure, the issue of portability and other issues raised by the Charitable Alliance that it objected to.

8.6.3.2 Existing Compliance Requirements

The first part of the submission provided great detail about LTCs' distinctive role and the exacting legal requirements that subjected them to higher standards of financial accountability than unlicensed trustee companies. The FSC claimed that these latter entities were often established as 'shelf companies' for the purpose of

[10]It reminded CAMAC that a further three trustee companies were not members.

allowing an accountant, financial adviser or lawyer to act as a trustee. As well as their higher fiduciary duties, LTCs were required to comply with: sections of the *Commonwealth Corporations Act*, with corporate regulations relating to their financial services license, and Australian Securities and Industries Commission (ASIC) regulations – including an external dispute resolution scheme operated by the Financial Ombudsman's Service. Unlike their unlicensed competitors, LTCs were required to publish their fee scales and the services they provide. ASIC also has the power to remove their license to operate (FSC, Submission, 2012, p.3).

The FSC reminded CAMAC that acting as trustee of a charitable trust was only one particular service provided by LTCs. Therefore, any change in the law or regulation considered as part of this review should be cognisant of the potential adverse reputation impact. (FSC, Submission, 2012, p.4).

8.6.3.3 Services Provided in Context of Fees

The next section of the submission specified the tangible and intangible services provided to charitable trusts by LTCs and the fee structure. The following seven features and their accompanying intangible services were described in detail:

(i) *Independent* – LTCs are independent trustees, they are not beneficiaries. Therefore, they are objective decision-makers whose primary allegiance is to the benefactor and his/her wishes, rather than to any specific recipient.

(ii) *Perpetual* – Benefactors choose to appoint an LTC with the full knowledge that the trustee company will remain responsible for their charitable trust in perpetuity.

(iii) *Prudent* – Historically, the law only allowed trustees to invest in capital-guaranteed investments, such as government bonds. In 1995, this was broadened to allow any form of investment and simultaneously, professional trustees were legally obliged to adhere to a more demanding 'prudent person' test when investing.

(iv) *Responsible* – The law requires LTCs to be more responsible in their fiduciary duties than lay trustees.

(v) *Impartial* – As well as needing to remain independent, an LTC must remain impartial. 'In order to discharge its higher fiduciary duty, a professional

trustee must take all measures possible to ensure that it remains free from influence, even in circumstances where it must work with a lay co-trustee who is also affiliated with a doner of the trust or is conflicted in some other way'.

(vi) *Expertise* – LTCs have extensive expertise within their organisation including tax, legal, investment, financial, risk management, compliance/audit, grant-making and governance. All of these are required in the establishment, administration and management of charitable trusts.

(vii) *Regulated* – As stated above, LTCs are highly regulated and must comply with a large number of laws and regulations (FSC, Submission, 2012, pp.6-7).

The tangible services provided by LTCs were listed in a two page table. This comprehensive list falling under five headings was presented to allow CAMAC to understand that LTCs' fees are based on two distinct categories of service – trusteeship and investment services. After describing the fee structure in some detail, the FSC submission proposed that 'new charitable trust fees should not be capped and that the fees for trusteeship should be deregulated' (FSC, Submission, 2012, p.21). This new arrangement would allow trustee companies to compete with each other and allow the market to determine fees charged for services. If the recommendation to deregulate fees were implemented, deregulation would not apply to existing charitable trusts. Instead, the fees for these trusts would be 'grandfathered', i.e. remain at the current rate (FSC, Submission, 2012, p.21).

The FSC did not agree with CAMAC's suggestion that some form of independent assessment or review of fee arrangements could be established. If an LTC is breaking the law in relation to fees, then this question should be determined by a court. Therefore, 'a form of independent assessment and review of fees is not necessary where fees are capped and LTCs are not able (legally) to charge fees in excess of the cap' (FSC, Submission, 2012, p.22).

The submission argued strongly that the benefactor, the individual or individuals who established charitable trusts were always fully aware of their fees would be charged. They were prepared to pay a higher price for the expertise and the stewardship that was required to manage substantial assets in perpetuity (FSC, Submission, 2012, p.26).

8.6.3.4 Removal of Trustee – Portability

A significant part of the submission was devoted to the question of portability, i.e. the removal and replacement of a trustee. This was supplemented with a thirty-three page opinion that was co-authored by a law firm (Freehills) and a QC (Robin Brett). LTCs argued in favour of maintaining the status quo, leaving the removal of trustees in the hands of the courts (with all the expense and severe financial risk this entails).

The FSC argued that removal and/or replacement of a trustee is a 'significant penalty' as it involves serious damage to the trustee's reputation. Therefore, a trustee should not be removed from office for any other reason than 'breach of trust or maladministration' (FSC, Submission, 2012, p.23).

> *Only a court, which is compelled to apply the rules of evidence, and which has the benefit of more than a century of precedent, is competent to make this determination and impose such a penalty. This has always been a fundamental feature of the law of trusts* (FSC, Submission, 2012, p.23).

It further argued that, as the benefactor had made 'an informed decision' to appoint an LTC, then the government could not legislate to deny their wishes (FSC, Submission, 2012, p.23). The submission then repeated a list of laws and regulations that ensured the current position allowed any person with a legitimate claim to bring an action to remove and replace a trustee. In the view of the FSC, there 'is no reason of policy or principle to create another removal mechanism that applies only to LTCs and not to other non-licensed professional trustees or lay trustees' (FSC, Submission, 2012, p.24).

8.6.3.5 Response to Charitable Alliance Concerns

The FSC expended considerable time in refuting some of the claims made by the Charitable Alliance. It was concerned that this informal group had 'misrepresented' a number of issues to CAMAC and therefore to the broader community (FSC, Submission, 2012, p.8). The first critical issue raised by the Charitable Alliance was the need for 'portability'. The FSC reiterated its opposition to this potential change – 'we do not believe there are any grounds for such a profound change' (FSC, Submission, 2012, p.8).

Other contested issues included the philosophical origins and early history of LTCs and how benefactors had chosen trustee companies for their traditional values and practices, and how these bore little relationship to the modern trustee company. The FSC argued that it was difficult if not impossible for any client 'to fathom what a corporation might look like...one hundred years or more from now' (FSC, Submission, 2012, p.8). It argued that other issues raised such as what a settlor[11] might think about current fee levels was subjective. The FSC maintained that, as most philanthropists have significant financial resources, they are therefore financially literate and operate in a complex legal and financial environment (FSC, Submission, 2012, p.9).

The Charitable Alliance had advocated that the investment management function should be separated from the trusteeship role. The LTCs rejected this recommendation and claimed there was no conflict in their role as trustee and investment manager.

> *LTCs have prudently managed, for more than 100 years, the legally permissible conflict between their duty to beneficiaries, which prevails, and their secondary duty to shareholders...The reason why this type of conflict is legal and able to be managed is because the interests of beneficiaries/donees and the interests of shareholders are not in direct conflict. Long term investment portfolio growth and enhanced income generation are good outcomes for both trustee companies and beneficiaries/donees* (FSC, Submission, 2012, p.9).

The FSC further refuted arguments that it was improper for LTCs to invest in their own-branded investment products, particularly internal common funds:

> *Investment in-house is often the most appropriate strategy for the trust because it provides maximum protection of the trust assets and ensures that the trustee achieves a high level of oversight, control and the ability to manage performance outcomes* (FSC, Submission, 2012, p.10).

Another claim made by the Charitable Alliance was that the legal costs of attempting to remove a trustee through a court case were prohibitive and therefore this option was unavailable for most not-for-profits and individual co-trustees. LTCs agreed that court proceedings were expensive and again emphasised the

[11] A term used in the FSC submission for benefactor of the trust.

deleterious impact such an action would have on the trustee company's reputation. Instead, LTCs suggested that the ACNC Commissioner's powers might be extended 'thereby providing a mechanism for serious grievances to be appropriately addressed at little or no expense to individual charitable organisations (FSC, Submission, 2012, p.13).

One section of the FSC submission was headed 'The Inherent Conflict of Interest of Lay Co-trustees and Donees' where it was asserted that:

> *...lay co-trustees can be often in direct conflict with the interests of the settlor*[12] *[the LTC] is the only entity that stands between the self interest of the co-trustee and the wishes, clearly expressed of the settlor* (FSC, Submission, 2012, p.14).

'Lay' co-trustees were depicted as unethical in a fictitious case study that was provided as an illustration of such conflict. A further claim was that 'lay' co-trustees, unlike LTCs, often find it difficult to distinguish their personal investment approach from that of the trust. 'Lay co-trustees sometimes form the view that the correct investment strategy, for the trust is merely an extension of their own personal investment strategy' (FSC, Submission, 2012, p.14).

8.6.4 Philanthropy Australia Submission

Understanding the importance to its members of issues raised by CAMAC, Philanthropy Australia asked for and received a three-month extension to consult its members and circulated a draft submission to them (Philanthropy Australia, Submission, 2013, p.4). This elicited a strong response from its trustee company members, so PA asked for and received another three-month extension by CAMAC to allow it to consult further. PA then committed significant resources and sought legal assistance for a second draft that was also circulated to members for further comment. The final submission was presented to CAMAC on 18 March 2013. Although discussions were held with their five trustee company members, these requested that the submission be lodged with the disclaimer:

> *The following full members of Philanthropy Australia do not in any way agree with or endorse any part of the attached submission to the CAMAC Inquiry. The listed members were not effectively consulted during*

[12] A term used in the FSC submission for benefactor of the trust.

> *the drafting process and were not given a reasonable opportunity to consider or make comment on the draft document. ANZ Trustees Limited, AET, Perpetual, The Trust Company, Equity Trustees* (Philanthropy Australia, Submission, 2013, p.5).

PA acknowledged that the issue of fees in respect of charitable trusts administered by trustee companies was not new and that this Inquiry provided an opportunity for longstanding disagreements between LTCs and some of their co-trustees to be resolved. The PA submission focused on two major questions. The first was that 'all fees drawn from charitable trusts must be fair and reasonable' given that charitable trusts operate solely for 'the public benefit' (Philanthropy Australia, Submission, 2013, p.8). The second was 'the removal and replacement of trustees of a charitable trust', i.e. 'portability'.

8.6.4.1 Fees

PA acknowledged the anomaly that most trustees of charitable trusts are volunteers and receive no remuneration. Nevertheless LTCs as sole trustee or co-trustee are 'entitled to receive *reasonable* fees' for the valuable services they provide (Philanthropy Australia, Submission, 2013, p.8). It further acknowledged that currently LTC fees are set without any regard to the 'actual services' they provide, that there is often 'no opportunity' to negotiate these and effectively no possibility to challenge the fees charged (PA 2013:9). It argued that there was an inherent structural weakness in the fact that no-one other than the Attorney-General was able to challenge the reasonableness of the fees charged by trustee companies, particularly, as a co-trustee 'may be the only person in possession of sufficient information' to assess the fairness of this (Philanthropy Australia, Submission, 2013, p.10). PA recommended that the new independent regulator (ACNC) should be given the oversight role to ensure that, at 'all times, all fees are fair and reasonable' (Philanthropy Australia, Submission, 2013, p.25).

8.6.4.2 Portability

The term portability, the submission explained, was first used in the context of the Australian financial services industry in 2002 when it was introduced as part of the *Superannuation Industry (Supervision) Act*. Until then, individuals could not

transfer their superannuation into another fund. The introduction of portability mandated that all superannuation funds could be transferred at the request of the member. This recognised that the funds belonged to an individual and that he/she should be able to choose how they invested their own savings (Philanthropy Australia, Submission, 2013, p.23).

PA did not endorse the FSC view that 'only the courts...should be able to force the replacement of an LTC as a trustee.' Nor did PA endorse adopting the Superannuation Industry's version of portability which would allow a trust or foundation to change its trustee (company). Instead it noted that despite the prevailing belief that only a court could change a trustee, both in the past and more recently, takeovers and mergers of trustee companies had defacto 'led to a change of trustee.' This had occurred solely for commercial reasons and not at the instigation of the courts. The PA compromise proposal was that, following appropriate legislative change the ACNC should have this power. This would ensure that co-trustees did not face the great expense and often severe financial risk in having to mount a court challenge (Philanthropy Australia, Submission, 2013, pp.24-25).

While the Charitable Alliance had placed great weight in its submission on the issue of grant-making contributing to the public benefit, the peak body for grant-makers did not raise this issue nor the consequential one of public accountability in this review.

8.7 The CAMAC Report

The Corporations and Markets Advisory Committee (CAMAC) Report was published in May 2013.[13] It emphasised that only one segment of the philanthropic sector, those charitable trusts administered by trustee companies, was examined. The report also pointed out that charitable trusts are different from private and commercial trusts because of their public benefit role. Its first observation was that the issues raised were long-standing and contentious and the submissions received reflected this. In investigating these competing perspectives, CAMAC adopted

[13]The Report's twelve-member Advisory Committee included experts in finance, law and business (CAMAC, 2013, p.16).

as its guiding principle the 'donor's primary intent' and concluded that administrative arrangements should only be assessed according to 'the extent [these] benevolent and philanthropic purposes are achieved' (CAMAC, 2013, p.6).

8.7.1 Report Summary

8.7.1.1 Lack of Information

CAMAC reported that its task had been hampered by 'a deficit of relevant and indisputable' information, particularly in relation to the trusts where the trustee company was sole trustee. What quantitative information did exist was contradictory and often contentious (CAMAC, 2013, p.18).

As part of the report process CAMAC had requested the FSC to survey its LTC members concerning the number of charitable trusts and foundations they administer. The data collected provide some new information and contradict what had previously been publicly available.[14] The FSC stated that its LTC members administer 'approximately' 1,500 charitable trusts, 90% as sole trustees and the remaining 10% as co-trustees. The FSC also estimated that the entire charitable trust sector is valued at 'around' $7 billion and LTCs administer $3.4 billion of this (CAMAC, 2013, p.17).

8.7.1.2 Recommendation – Stewardship Audits

CAMAC recommended that the government implement 'stewardship audits' of a cross-section of charitable trusts administered by trustee companies. These audits could be conducted or co-ordinated by the new regulator and the ACNC would select the trusts to be included in this process. These audits would enable rigorous data collection and help rectify the current paucity of information concerning the administration of these charitable trusts, particularly where LTCs are the sole trustee. A further purpose would be to obtain information on how 'LTCs have performed their administrative responsibilities in the context of the philanthropic and benevolent purposes of these trusts' (CAMAC, 2013, p.18).

[14]For example, the figure that has been available in the public domain is 2,000 trusts and foundations administered by trustee companies. The FSC figure provided to CAMAC is 1,500 charitable trusts and foundations. The total capitalisation figure remains the same $3.4 billion (CAMAC, 2013, p.17).

CAMAC proposed that participation in these stewardship audits would be voluntary. However, if any LTC refused to fully co-operate in the audit process there may be a need for 'greater external oversight', although what form this might take was not specified. A further recommendation was that the ACNC should determine what information would ultimately be published:

> *...the most appropriate and useful information for public release would be overall assessments of the state of administration of this segment of the charities sector, not information concerning the administration of particular identified charitable trusts* (CAMAC, 2013, p.20).

The audits would consider the history and current administration of LTCs of a sample of charitable trusts focusing on the level and type of active administration employed, including the history of distributions and investment management practices. Importantly, these audits would go well beyond the type of information required under the disclosure and reporting requirements of the ACNC (CAMAC, 2013, p.19).

Finally, CAMAC stressed the major purpose of these audits was to move beyond the current situation, with its 'elements of conjecture, assertion and allegation...to a more fully informed understanding of what is happening in practice' (CAMAC, 2013, p.20).

CAMAC also considered whether annual compliance statements should be made publicly available but rejected this accountability requirement, instead, accepting that LTCs should provide an annual statement in respect 'of each of the charitable trusts it administers' to the designated regulator (CAMAC, 2013, p.37).

8.7.2 Trustee Fees

CAMAC examined a number of alternative approaches to the charging and regulation of fees suggested in the submissions. These ranged across the spectrum from total deregulation of fees to more extensive regulation. Other submissions advocated abolition of the current fee caps and the introduction of a fee for service approach, including the establishment of a stand-alone investment fee. All of these proposals were examined closely and the report summarised the extensive arguments advanced for and against such potential new policies (CAMAC, 2013, pp.21-31).

CAMAC argued it was not in a position to recommend any major change given the inadequate nature of the available information. Nevertheless, it would be possible to reach a more informed view and recommend changes to the fee structure once the information from the stewardship audits had been assessed and analysed. Ultimately, none of the suggested proposals by the Charitable Alliance was adopted.

A proposal that periodically (possibly every five years) a regulator be empowered to review the fairness of fees and their competitiveness in the market-place was also rejected. CAMAC had 'considerable reservations' about the practicality of such a proposal. It considered the ACNC already had sufficient powers to examine fees and could also seek a court injunction to prevent the charging of excessive fees. CAMAC did not consider it appropriate for any regulator to become closely involved in 'reviewing the operation of each relevant charitable trust and in making decisions on fees on a trust-by-trust basis' (CAMAC, 2013, p.33).

8.7.2.1 Recommendations

CAMAC recommended that there be a requirement for fees and costs charged to charitable trusts and foundations to be 'fair and reasonable'[15] and that this principle be enshrined in legislation or in the 'governance standards of a regulator' (CAMAC, 2013, p.34).

A further recommendation concerning fees was to expand the jurisdiction of the court to deal with disputes where it is alleged excessive fees have been charged. CAMAC proposed that the current dispute resolution mechanism be enhanced whereby potential applicants have easier access to the court and that the remedial powers be broadened (CAMAC, 2013, p.13).

In May 2010, in the legislation that allowed the transfer of charitable trust regulation from the States to the Commonwealth, a 'grandfathering' clause[16] was included to permit the fee arrangements that had existed prior to this to continue. CAMAC noted that submissions presented contrary views of the meaning of this part of the Act. The FSC claimed it did not mean that trustee companies were

[15]The report describes in detail the elements that constitute a 'fair and reasonable' requirement (CAMAC, 2013, pp.35-36).

[16]'Grandfathering' generally means that, when rules change, current arrangements remain unaffected for existing bodies and the new rules only apply to bodies created after the change.

unable to charge more than was being charged prior to the passing of the legislation. The Charitable Alliance interpreted the clause as meaning the existing fees must be retained. CAMAC acknowledged this as another policy decision that should be revisited following the stewardship audits (CAMAC, 2013, pp.28-29).

8.7.3 Portability & Governance

CAMAC considered all the arguments that were presented for the removal and replacement of a trustee company/trustee and in the end recommended maintaining the status quo, with the exception of an enhanced role for the courts. One of the main reasons for rejecting proposals for changing the current position on the removal of trustees was the potential reputational damage and financial risk to LTCs.

> *CAMAC is of the view that the power to replace a particular LTC as trustee...should reside in the court, not in a non-judicial body, given the potential reputational as well as financial damage to that entity from being removed as trustee* (CAMAC, 2013, p.44).

The report rejected the analogy between removing the trustee of a charitable trust and removing a trustee of a superannuation fund or other investment scheme. The rationale for this was that the only 'investor' in a charitable trust is the donor; therefore it is 'unproductive' to equate benefactors with individuals who invest in the market (CAMAC, 2013, p.41).

The report also argued that providing co-trustees or others with the power to replace the trustee would be contrary:

> *...to the intention of the donor and would be at odds with trust law. It would also give those other parties undue influence, such as seeking to have the trust operate or make distributions, in a manner contrary to the donor's original intention* (CAMAC, 2013, p.40).

The Charitable Alliance had proposed in the case of 'orphan' [sole] trustee entities (90% of the trusts administered by trustee companies) that one non-LTC trustee should be appointed as an 'independent honorary trustee'. CAMAC suggested that administration arrangements for sole-trustee trusts be reviewed after audits

were concluded. This evidence base would then be used to inform decision-making (CAMAC, 2013, p.14).

8.8 Discussion

The process that led to the formation of the ACNC and the CAMAC review were the first instances of government conducting a public examination of philanthropic bodies in Australia, although the latter was limited to those administered by trustee companies. It is clear from the outcomes that the prevailing unchallenged orthodoxy in Australia that philanthropic monies are private was not only endorsed but was used as the rationale for some of the key decisions made in both cases. Although the ACNC, inter alia, was intended as a means of obtaining full public accountability from all philanthropic foundations (including PPFs), the then Labor government had to soften this stance to have the legislation passed due to special pleading by philanthropic bodies, particularly the PPFs. The regulations that permitted a transitional arrangement for accountability and the suppression of details in some cases represent the compromise made. Licensed trustee companies and some PPFs, unhappy with this continued to lobby for the abolition of the ACNC as evidenced by the FSC submission to the Senate Inquiry.

The Explanatory Memorandum accompanying the ACNC Implementation legislation allows foundations not to publicly reveal their contact details if they are granted an exemption and was originally included to allow charities such as women's refugees (for obvious reasons) not to disclose their location. It was not designed to protect foundations from receiving applications from not-for-profit organisations, which is the inevitable consequence of non-disclosure. This is especially concerning as governments of all persuasions are now encouraging public institutions and organisations to supplement their income from other sources, especially philanthropy.

In the case of CAMAC, there appears to be no recognition that the raison d'être of a philanthropic foundation is that the benefactor's money be spent to enhance the common good. This is a major omission. One side of the philanthropic operation is a fiduciary one; the other is investment in the community – grant-making. In the report CAMAC lists the eleven separate financial services provided by

trustee companies and makes no mention at all of the services relating to grant-making. The report omits the critical grant-making role of philanthropic trusts and foundations, their very reason for existing.

Instead, the CAMAC report's recommendations are framed almost exclusively in terms of protecting the financial reputation of trustee companies. The lens through which the issues were examined appears to have been a financial services one. The report appears not to have accepted concerns of the Charitable Alliance – the group representing co-trustees and charitable organisations. CAMAC rejected proposals to change the current legislative arrangements, to replace trustees, to review fees every five years, but recommended that fees charged be 'fair and reasonable'.

CAMAC proclaimed that the primary intent of the donor should be the policy cornerstone which underpins consideration of all the administrative arrangements of operating a charitable trust including fees and portability from one trustee company to another. The CAMAC report makes no mention of the fact that, as described in chapter 5, with the massive reduction in numbers of trustee companies, the donor's original intention of preferred administrator (apart from the two still remaining) is lost.

The language used throughout the FSC submission to CAMAC, a language that was also adopted by the CAMAC report, is telling. Co-trustees were redefined as 'lay' trustees with the implication of a lesser level of understanding of the area; trustee companies were labelled 'licensed' trustee company which conveys a greater degree of professional expertise.

The claims made by the Financial Services Council to the Senate Committee on the Repeal Bill (ACNC), that public reporting on the trusts managed by trustee companies would be unconscionably costly and onerous, appear exaggerated, if judged by the strong case made in favour of the ACNC by the majority of the charitable sector. The strength of the trustee companies' objection to the proposal is surprising given that the philanthropic component represents a tiny fraction of their total business, for the remainder of which they already report extensively to the Australian Securities and Investment Commission (ASIC). Although the report they make to this body contains global figures, to obtain these they need to aggregate their existing individual data on each trust. They do not need to create new data. It should also be remembered that LTCs already receive a separate fee from each trust for its administration.

In both instances, the lack of publicly available information was clear. The CAMAC report itself supports the contention of this thesis on this gap. CAMAC's major recommendation in the area of improving data collection was the introduction of stewardship audits (which would not be publicly released) and that these should be conducted by the ACNC. It should be noted however, that CAMAC has been dissolved and the future of the ACNC is unclear, so this provision may come to nothing. The signs for survival of the regulator may appear a little more encouraging now (2015). However, there has been no formal change in the government's policy to abolish the body so it is still vulnerable.

The cases analysed above provide two recent opportunities for the introduction of full public accountability for philanthropic trusts and foundations, particularly those administered by trustee companies. Instead, CAMAC and to some extent the ACNC examples demonstrate a determination to maintain the underlying philosophical view that philanthropic foundations are private and therefore have no responsibility to report publicly.

Both these cases illustrate the soft power of trustee companies. First as they endeavoured to influence the legislature to repeal an Act of Parliament that had established Australia's first independent regulator for charities and not-for-profits. Second, as they worked to block any reforms that were suggested to CAMAC by the Charities Alliance. CAMAC took their advice and no recommendations suggesting their powers should be changed appeared in its final report.

Chapter 9

Findings, Discussion and Recommendations

9.1 Context

During the last fifteen years, philanthropy has developed a place in public discourse as a feasible way to solve national and international problems. High-profile authors (Clinton, 2007) have advanced the view that philanthropy, super-wealthy individuals, rather than government policy, will be the force that changes the world for the better. Business journalists (Bishop & Green, 2010) reaffirm and expand this view claiming 'philanthrocapitalists' will save the world. Edwards derisively argues that the masters of the universe now wanted to be 'saviours of the world' (Edwards, 2010).

The discussion about philanthropy and its role in a modern society is played out against the backdrop of social policy. Throughout the 20th century Australia had a social architecture that created and sustained a fairer and more equal society, at least for white males. Within that social environment, organised philanthropy did not flourish here during most of the 20th century. An unacknowledged development of the implementation of neo-liberal political and economic principles, both here and globally, has been the growing inequality within societies and the now immense divide between the richest and the poorest and the acceptance of this as an inevitable part of the social fabric. Oxfam has predicted that the richest one per cent of the world's population will own half of the world's wealth by 2016 (Credit Suisse, 2014; Oxfam, 2015; Piketty, 2014).

The current social divide is starker than what existed in America at the turn of the twentieth century[1] and which signalled the beginning of the first golden age of philanthropy. In Australia and overseas, philanthropy is now, in what has been termed its 'second golden age' and philanthropy has assumed a more compelling importance in Australia's public policy (Douglas *et al.*, 2014; Leigh, 2013; Senate Community Affairs Reference Committee, 2014). Philanthropy, after all responds to social need.

This thesis has attempted to deepen the understanding of Australian philanthropy, in particular by addressing the question of its public accountability and with a focus on those foundations administered by trustee companies. These were selected for study as they comprise the largest number of trusts and foundations in Australia.

This thesis provides empirical evidence of the practice of hegemony as exercised by philanthropic foundations. The research data uncovered, particularly the information and records analysed in chapters five, six, seven and eight demonstrate foundations exercise hegemonic power socially, culturally and politically.

9.2 Research Findings

The principal research findings for each chapter follow.

9.2.1 Chapter 1: Introduction, research questions and literature review

One of the key findings of the literature review is that there is a general paucity of scholarly literature on such significant institutions in modern democracies as perpetual, grant-making philanthropic trusts and foundations. Within this country, there are no serious studies of the culture, organisation or power of Australian philanthropy. A further finding is that the last-named is largely ignored and unexplored by scholars and the reason for this is that there is virtually no quantitative or qualitative data or information to interrogate.

[1] When 8% of American families controlled three-quarters of the nation's 'real and movable property' (Sealander, 1997, p.1).

Another finding, is that since the beginning of the new millennium, there is an emerging scholarly interest in Australia and Europe in the field, as evidenced by the number of new philanthropy centres and institutes established on both regions.

9.2.2 Chapter 2: Philanthropic Foundations

The key finding of this chapter on foundations and their purposes is that Australian foundations share three characteristics with their counterparts in the U.S.A: they exist in perpetuity, have their own capital fund and their trustee boards are self-selected. One major difference is that Australian foundations do not have any public accountability requirement. As a result, it is difficult to determine whether the theoretical purposes of foundations as proposed by scholars have relevance for Australia. There is still no debate around foundation governance and accountability.

9.2.3 Chapter 3: Research Methodology

The methodology of using detailed examination of a selection of case studies both of trust deeds and of interviews with a sample of trustees has proven to be a rich source of qualitative information about an almost invisible, but critical section of Australian philanthropy – the trusts and foundations administered by trustee companies and in particular those in which the benefactors appointed the trustee company as their sole trustee.

The other principal finding of this chapter is that the Internet, usually acclaimed as a powerful tool for facilitating scholarship, has proved to be one of the structural impediments to retrieving critical data about foundations within trustee companies. Scholars rely on permanent and reliable sources that allow interrogation. During the last three years, critical information for this thesis was withdrawn from the Internet as this material was perceived to have a detrimental impact on corporate reputations. Other information changed as it was updated and replaced what has existed before thereby inadvertently frustrating the collection of data for a particular time.

9.2.4 Chapter 4: Australian Trustee Companies

This chapter responded to the questions of what a trustee company is and its philanthropic role, it found that trustee companies evolved within a colonial framework. In Australia, they are distinguished from their counterparts elsewhere by the sheer scale of the philanthropic monies they administer (40% of the putative total of Australian philanthropic capital).

A major finding is that the trusteeship of foundations administered by trustee companies is now reduced to only two major trustee companies. This has occurred through mergers and take-overs during the last thirty years. The continuing amalgamations and mergers have led to a lack of choice and diversity for the not-for-profit sector for which these monies are intended.

Another finding is that, with the development of trustee companies' financial services, philanthropy is now a miniscule part (0.7%) of their overall business ($3.5 billion of $510 billion), suggesting that 'yes' is probably the answer to the research question of whether there is a clash of purpose in their philanthropic and other roles.

If the pace of mergers and acquisitions continues at the current pace (2015) there is a danger that the two trustee companies managing the majority of philanthropic foundations are attractive to overseas investors and also vulnerable for international take-over.

It is important to remember that until 1983 (deregulation of the finance market by Hawke/Keating government), trustee companies enjoyed statutory protection from takeover to ensure that control of these companies could not pass into the hands of those whose purposes might not be in the best interests of the beneficiaries.

9.2.5 Chapter 5: Case Studies

A strong finding from the data in response to the question of the forms of accountability, was that, despite the random selection of trust deeds, there is a strong correlation between whether the trustee company was sole trustee and the amount of public information available. An unexpected finding was the comparatively large number (almost a quarter) of deeds where there was lack of clarity about how the

number of trustees had apparently changed from the provision made in the trust deed.

9.2.6 Chapter 6: In Their Own Voice

An almost unanimous agreement was found among this sample of contemporary philanthropists that public accountability was unwanted. They argued against even the most minimal form, the availability of contact details and that they see their foundations as private. All arguments were familiar and identical to the ones used in the U.S.A. prior to the introduction of legislation mandating public accountability. The other major finding is that PPFs received almost 50% more in taxation benefits than these foundations distributed in grants to the community. This had been one of the major concerns for Treasury and had prompted its Inquiry into this new form of philanthropy.

9.2.7 Chapter 7: Trustees and Their Trusteeship

This chapter explode the question of how a sample of trustees viewed their role. The delineating factor found within this group of trustees regarding public accountability was whether the foundation was a family foundation or not. Family foundation trustees interviewed regarded the foundation as more private than public and non-family ones viewed the foundation as more public than private.

9.2.8 Chapter 8: Philanthropy and Regulation

The Corporations and Markets Advisory Committee (CAMAC) confirmed the contention of this thesis that no reliable information exists regarding trusts and foundations administered by trustee companies.

CAMAC recommended that the new independent regulator, the ACNC, should be maintained and resourced to undertake audits of the trusts and foundations where the trustee company is sole trustee.

9.2.9 Overall Finding

The research question of why philanthropy is viewed as being a solely private activity in Australia is threaded through every chapter – and the answer is because it has mostly always kept its information away from the public gaze, so its status and operations cannot be readily questioned. It is such a prevailing orthodoxy that it was used as the rationale for key decisions in the final report of the ACNC process and the CAMAC review.

9.3 Discussion

Despite its undoubted influence and its privileged taxation position, Australian philanthropy still overwhelmingly maintains a culture of secrecy. However, some foundations as described above do provide some information about their practices.

There is a strong case for reform of Australian philanthropic accountability. The first step on this long journey is that the Australian public be given easily-accessible basic data: names and contact details of trusts and foundations. With this amount of information, the non-profit sector, which is the intended beneficiary of philanthropic benefactors, would be able to access this money.

In Australia, there is no conceptual framework that philanthropic money is not solely private, that philanthropic foundations begin with private wealth but that this is enhanced by tax relief and is applied to public purposes. This understanding of the language is an essential precursor to the necessary debate here on the fundamental underlying principles of how philanthropy operates and what its role is in the contemporary Australian democracy. It is Australian citizens – by foregoing the tax revenue referred to above – who underpin philanthropic foundations.

A foundation here is essentially a self-regulating charitable body that enjoys generous taxation privilege and whose only form of mandatory reporting (which is treated as private) is to the ATO. To date, there is no impetus to change this situation. There is instead very strong resistance to any attempt to do so.

Philanthropic foundations are unlike any other institutions in modern democracies. At their best, they are an important source of independent funds for the not-for-profit sector, its venture capital to encourage risk-taking, creativity, innovation

and diversity. As such, they are essential to the functioning of a pluralist civil society.

Today, governments of all persuasions are encouraging foundations' growth by providing favoured-taxation status in acknowledgement of their role in enhancing the common good. Individual philanthropists' altruism is celebrated in the old and the new media. Despite their increasing prominence, there is little understanding in Australia of these complex entities beyond the notion that wealthy people are doing good – which they undoubtedly are. However, the effect of this philanthropic 'halo' obscures the need for an extensive scholarly research agenda, the results of which could inform important policy discussions concerning philanthropy. This debate cannot commence until researchers can readily access and interrogate information about this important segment of our society.

The U.S.A. has collected qualitative data on philanthropic foundations since 1936. The passage of *The Taxation Reform Act* in 1969 was a catalyst for the creation of a major information centre, the Foundation Center, established in 1972. Today the centre is the pre-eminent collector of information and data on philanthropic foundations. This accumulated information can allow legislators to make informed policy decisions. Brad Smith (the Foundation Center's CEO) has contributed to the continuing debate about philanthropy stating clearly that foundations are more public than private. Australia has no information centre, although if not repealed, the ACNC has a platform for part of such a role.

> *So far as there is a justification – and I am sure there is – for the existence of these institutions [philanthropic foundations] it is that they serve the public good. If they are not willing to tell what they do to serve the public good, then as far as I am concerned, they ought to be closed down* (Smith, 2010).

Armed with data and information over time, scholars overseas have raised more controversial questions, such as what is the role of these complex legal structures that permit the founder and subsequent trustees, to have the privilege of using private wealth for public purposes? Critics began to describe foundations as undemocratic or even anti-democratic institutions, which are unaccountable for their grant-making. There is no requirement for them to be fair or equitable; the only constraint on their total independence is their trust deed and the law of trusts. Other scholars began to discuss the deep ambiguity inherent in using private wealth

for public purposes in a modern democracy. Recent scholarship is exploring an even more nuanced question: what gives philanthropic foundations legitimacy to operate? There appears to be no scholarship on any of these questions here.

The research for this thesis illustrates the lack of reliable, verifiable information on Australian philanthropy, particularly trusts and foundations within trustee companies. This lack of data makes it impossible to answer the most fundamental question, how many trusts and foundations are administered by trustee companies. CAMAC confirmed the paucity of information available and that what is available is unreliable, making analysis difficult. A critical question needing exploration is whether there is a clash of purpose for trustee companies in their legal responsibility to make profits for their shareholders and their responsibility as sole trustee of charitable trusts and foundations to distribute monies to the community to enhance the common good.

The umbrella body for trustee companies itself appeared to recognise this clash of purpose. In a submission to a Senate Committee[2], the Financial Services Council argued that its trustee company members should not be regulated by the ACNC which was established as an independent regulator for the not-for-profit sector. They are privately listed companies on the Australian Stock Exchange and it would be 'inappropriate' for them to report to the charity regulator.

Given their influence, particularly in the realm of ideas, there is a need in a democratic society for the philanthropic sector to be publicly accountable – they should have 'glass pockets' and account to the community for all their activities. This would inspire confidence rather than suspicion.

The U.S.A. example illustrates the benefits of accountability: it builds public trust, facilitates greater collaboration, makes scholarship possible and encourages broader debate. The arguments that were cited there in opposition to accountability echo almost precisely the same arguments in Australia as outlined in Chapter 5. Accountability did not lead to a decrease in the growth of philanthropy. In fact philanthropy in the U.S.A. has grown exponentially since the reform act. In Australia, there remains strong opposition to public revelation from philanthropy in general, including that segment administered by trustee companies. There appears to be a lack of understanding that these monies are not solely private and that universally democracies account for public monies. The U.S. experience illustrates

[2]The Senate Economics Legislation Committee (Australian Charities and Not-for-Profits Commission (Repeal) (No.1) Bill 2014, submission 102, 2 May 2014, p.1.

that the privilege philanthropists have today of deploying their private wealth in ways that are unavailable to any other entities in society was not diminished by public accountability, nor has there been any diminution in their independence and individuality.

9.4 Policy Recommendations

This thesis is exploratory, so the following policy recommendations are suggestions. That:

(i) All foundations be required to make their name and contact details publicly available so not-for-profit organisations have the capacity to access these philanthropic monies.

(ii) Australian foundations make information about all their activities publicly available: they should adopt the American philosophy of having "glass pockets".

(iii) The ACNC be retained and strengthened as its role is critical and it should be the body that collects and disseminates information about philanthropic bodies.

(iv) The ATO prepares a report to the Parliament on the aggregate amount of money distributed annually in grants by philanthropic foundations to the not-for-profit sector.

(v) Once this information and data has been collected, as recommended by CAMAC, an appropriate Parliamentary Committee consider what is the most effective structure to administer these trusts and foundations currently administered by trustee companies.

9.5 Conclusion

One of the critical questions CAMAC did not pose was: is the Trustee Company structure established nearly one hundred and thirty years ago still an appropriate arrangement for the administration of these trusts and foundations? What other

refinements might benefit grant-making and or what alternative structures might be feasible?

One needs to ask the question: is there a clash of purposes for an ASX-listed company between its legally-charged 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. This thesis recommends that these questions also be examined by policy-makers.

An even more important question is: why has philanthropy historically been viewed as being a solely private activity in Australia and why has there been no public policy debate regarding its munificent taxation status and the need for public accountability.

As this thesis finishes, the ACNC is just beginning to implement its mandate to receive basic data, including financial information, from Australian foundations. However, much of this information may not be publicly available if exemptions are made, especially in the face of such rigorous philanthropic opposition as that from the PPFs. The ACNC data, when available, will also ultimately rely upon this body's continuation. As it has been subjected to intense political debate, this is still unclear.

Even this amount of information still does not address some of the legitimate public interests in philanthropy – how it makes its decisions, and who makes them, especially in the cases where the trustee companies are sole trustee (90% of those trusts they administer).

This thesis was able to uncover the details of thirty-two philanthropists whose legacies are administered by trustee companies. Who are the remaining philanthropists of the putative 2,000 philanthropists in this category? Why don't we know?

The one government inquiry that examined the practice of at least a section of philanthropy, the PPFs, discovered financial improprieties and that almost 50% more monies were taken in taxation benefits than were given in grants. This surely underlines the essential need for public accountability of Australian philanthropy.

Eventually Australia will need to address this question and understand that it is not simply a tax reform issue, but rather a philosophical, social, political and cultural question for the nation.

Appendix A

Ethics Approval

A.1 Letter of Approval from Ethics Committee

Dear Jennifer and Elizabeth,

Thank you for your response to the Committee's comments for your project titled, "The Role of Trustee Companies in Australian Philanthropy". Your response satisfactorily addresses the concerns and questions raised by the Committee who agreed that the application now meets the requirements of the NHMRC National Statement on Ethical Conduct In Human Research (2007). I am pleased to inform you that ethics approval is now granted.

Your approval number is UTS HREC REF NO. 2013000134

You should consider this your official letter of approval. If you require a hardcopy please contact the Research Ethics Officer (Research.Ethics@uts.edu.au).

Please note that the ethical conduct of research is an on-going process. The National Statement on Ethical Conduct in Research Involving Humans requires us to obtain a report about the progress of the research, and in particular about any changes to the research which may have ethical implications. This report form must be completed at least annually, and at the end of the project (if it takes more than a year). The Ethics Secretariat will contact you when it is time to complete your first report.

I also refer you to the AVCC guidelines relating to the storage of data, which require that data be kept for a minimum of 5 years after publication of research.

However, in NSW, longer retention requirements are required for research on human subjects with potential long-term effects, research with long-term environmental effects, or research considered of national or international significance, importance, or controversy. If the data from this research project falls into one of these categories, contact University Records for advice on long-term retention.

If you have any queries about your ethics approval, or require any amendments to your research in the future, please do not hesitate to contact the Ethics Secretariat at the Research and Innovation Office, on 02 9514 9772.

Yours sincerely,

Professor Marion Haas
Chairperson
UTS Human Research Ethics Committee

C/- Research & Innovation Office
University of Technology, Sydney
Level 14, Tower Building
Broadway NSW 2007
Ph: 02 9514 9772
Fax: 02 9514 1244
Web: `http://www.research.uts.edu.au/policies/restricted/ethics.htm`

A.2 Proforma Interview Consent Form

UNIVERSITY OF TECHNOLOGY SYDNEY

CONSENT FORM

I Trustee or Co-Trustee agree to participate in the research project The Role of Trustee Companies in Australian Philanthropy, being conducted by Elizabeth Cham (Tel:) of the University of Technology, Sydney for her doctoral degree Funding for this research has been provided by an Australian Postgraduate Award ($23,728 per annum for three years).

I understand that the purpose of this study is to identify, examine and analyse the governance and public accountability structures employed by Australian Trustee Companies in their administration of perpetual, discretionary, grant-making trusts and foundations for which they are the legal sole trustee or co-trustee.

I understand that I have been asked to participate in this research because of my relevant experience as a sole trustee or co-trustee of a perpetual, grant-making philanthropic charitable trust or foundation. My participation in this research will only involve a 1 hour interview (semi-structured) at a time and place that is convenient to me. I understand permission will be sought to audio record the entire interview. I also understand that I can withdraw from this process at any time. Privacy and confidentiality will be maintained throughout. A copy of my interview will be provided when transcribed. Original audio tapes and transcription will be stored safely.

I am aware that I can contact __Elizabeth Cham or her supervisory, Professor Jennifer Onyx (email: jennifer.onyx@uts.edu.au or Tel: 02 9514.3633) if I have any concerns about the research. I also understand that I am free to withdraw my participation from this research project at any time I wish, without consequences, and without giving a reason.

I agree that Elizabeth Cham has answered all my questions fully and clearly. (To gain participation by trustees I will need to telephone each one individually.)

I agree that the research data gathered from this project may be published in a form that does not identify me in any way.

_____ ____/____/____
Signature (participant)

_____ ____/____/____
Signature (researcher or delegate)

NOTE:
This study has been approved by the University of Technology, Sydney Human Research Ethics Committee. If you have any complaints or reservations about any aspect of your participation in this research which you cannot resolve with the researcher, you may contact the Ethics Committee through the Research Ethics Officer (ph: +61 2 9514 9772 Research.Ethics@uts.edu.au) and quote the UTS HREC reference number. Any complaint you make will be treated in confidence and investigated fully and you will be informed of the outcome.

Appendix B

Extract of Wills

The following pages provide an extract from Wills showing the Trustee Company appointed by the benefactor. The date of the will is also provided.

The Benefactors were:

1. *BASAN, Ernest* - 27 September 1957 (Appendix B.1, p.214)
2. *BAXTER, Hilda Gertrude* - 21 March 1969 (Appendix B.2, p.215)
3. *BAXTER, John Percy Hamilton* - 25 August 1949 (Appendix B.3, p.216)
4. *BELL, Mary Kathleen* - 28 July 1975 (Appendix B.4, p.217)
5. *BROWN, Isobel Hill* - 2 May 1962 (Appendix B.5, p.218)
6. *BUCKLAND, William* - 17 February 1961 (Appendix B.6, p.219)
7. *CURRIE, Ian Rollo* - 15 April 1971 (Appendix B.7, p.220)
8. *DANKS, Aaron Turner* - 27 August 1928 (Appendix B.8, p.221)
9. *DAVIES, Edward* - 5 May 1905 (Appendix B.9, p.222)
10. *DODD, Ian William* - 23 June 1989 (Appendix B.10, p.223)
11. *EWART, Nancy* - 21 April 1995 (Appendix B.11, p.224)
12. *FELTON, Alfred* - 20 August 1900 (Appendix B.12, p.225)
13. *FLEMING, John William* - 18 October 1973 (Appendix B.13, p.226)
14. *HECHT, Hans Henri* - 17 March 1959 (Appendix B.14, p.227)

15. *HERMAN, Ethel* - 10 November 1976 (Appendix B.15, p.228)

16. *HOWE, Edward John* - 31 October 1975 (Appendix B.16, p.229)

17. *HUTCHINGS, Blanch Brooke* - 24 July 1958 (Appendix B.17, p.230)

18. *IRWIN, Enid Campbell* - 10 August 1994 (Appendix B.18, p.231)

19. *KNELL, Hope* - 10 March 1978 (Appendix B.19, p.232)

20. *LASCELLES, Walter George* - 2 March 1990 (Appendix B.20, p.233)

21. *LAWRENCE, Margaret* - 17 September 2002 (Appendix B.21, p.234)

22. *McGAUREN, Rose Lucy* - 4 April 1974 (Appendix B.22, p.235)

23. *MYER, Elkon Baevski* - 28 October 1937 (Appendix B.23, p.236)

24. *OGG, Charles Robert Eastgate* - 30 June 1940 (Appendix B.24, p.237)

25. *PIPKORN, Percival Francis* - 12 March 1958 (Appendix B.25, p.238)

26. *QUAIL, Cecil Gordon* - 18 September 1990 (Appendix B.26, p.239)

27. *REID, Irene Emma* - 8 September 1972 (Appendix B.27, p.240)

28. *SCOTT, Daniel* - 10 November 1954 (Appendix B.28, p.241)

29. *TENNANT, Edith Grizelda* - 2 September 2000 (Appendix B.29, p.242)

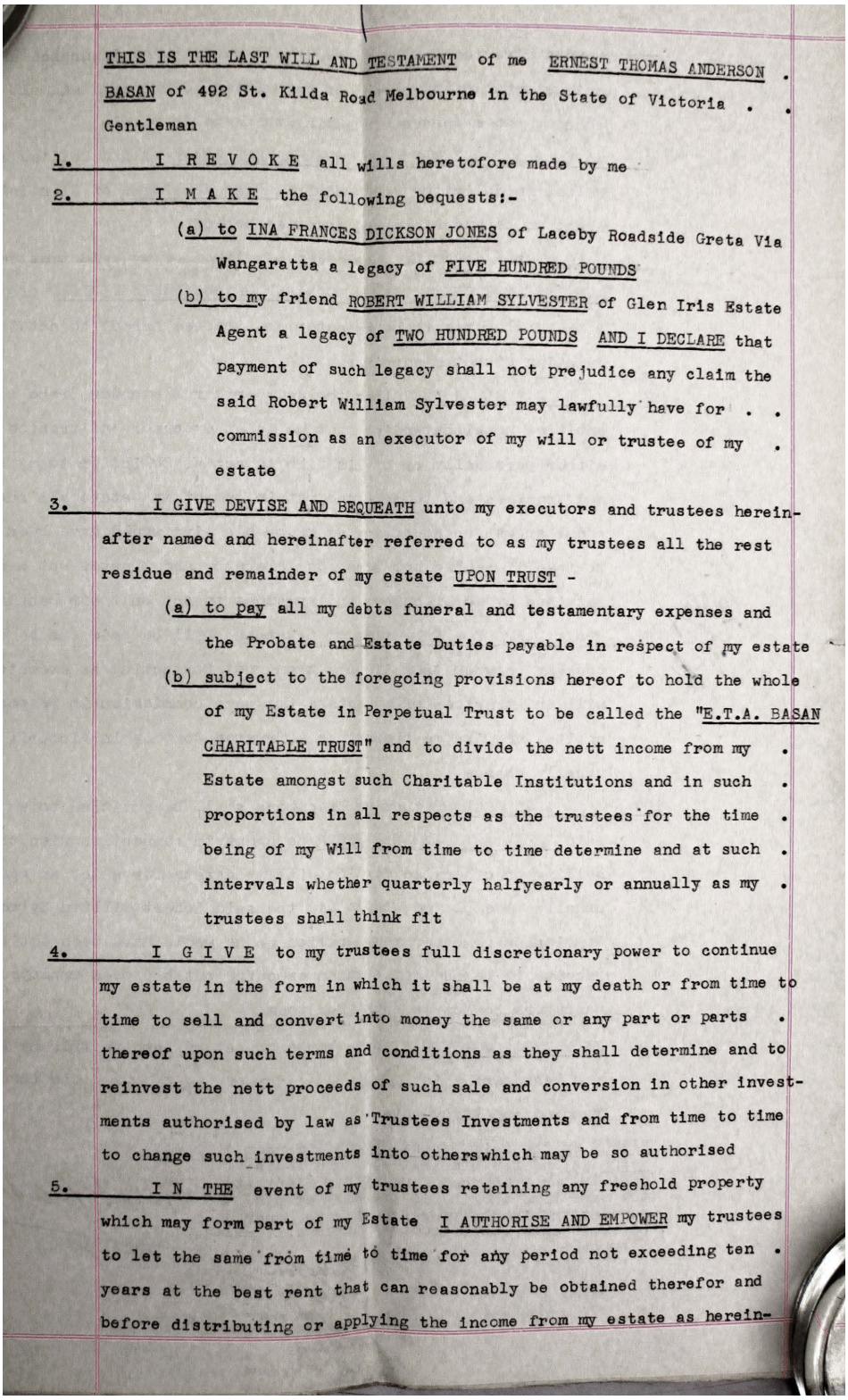
30. *WARDELL, Teresa Mary* - 28 September 1983 (Appendix B.30, p.243)

31. *WHITE, Anna Maria* - 28 May 1938 (Appendix B.31, p.244)

32. *WILLIAMSON, Hugh* - 4 November 1985 (Appendix B.32, p.245)

B.1 BASAN, Ernest - 27 September 1957

Will Extract – Page 1



THIS IS THE LAST WILL AND TESTAMENT of me ERNEST THOMAS ANDERSON BASAN of 492 St. Kilda Road Melbourne in the State of Victoria Gentleman

1. I R E V O K E all wills heretofore made by me

2. I M A K E the following bequests:-

(a) to INA FRANCES DICKSON JONES of Laceby Roadside Greta Via Wangaratta a legacy of FIVE HUNDRED POUNDS

(b) to my friend ROBERT WILLIAM SYLVESTER of Glen Iris Estate Agent a legacy of TWO HUNDRED POUNDS AND I DECLARE that payment of such legacy shall not prejudice any claim the said Robert William Sylvester may lawfully have for commission as an executor of my will or trustee of my estate

3. I GIVE DEVISE AND BEQUEATH unto my executors and trustees hereinafter named and hereinafter referred to as my trustees all the rest residue and remainder of my estate UPON TRUST -

(a) to pay all my debts funeral and testamentary expenses and the Probate and Estate Duties payable in respect of my estate

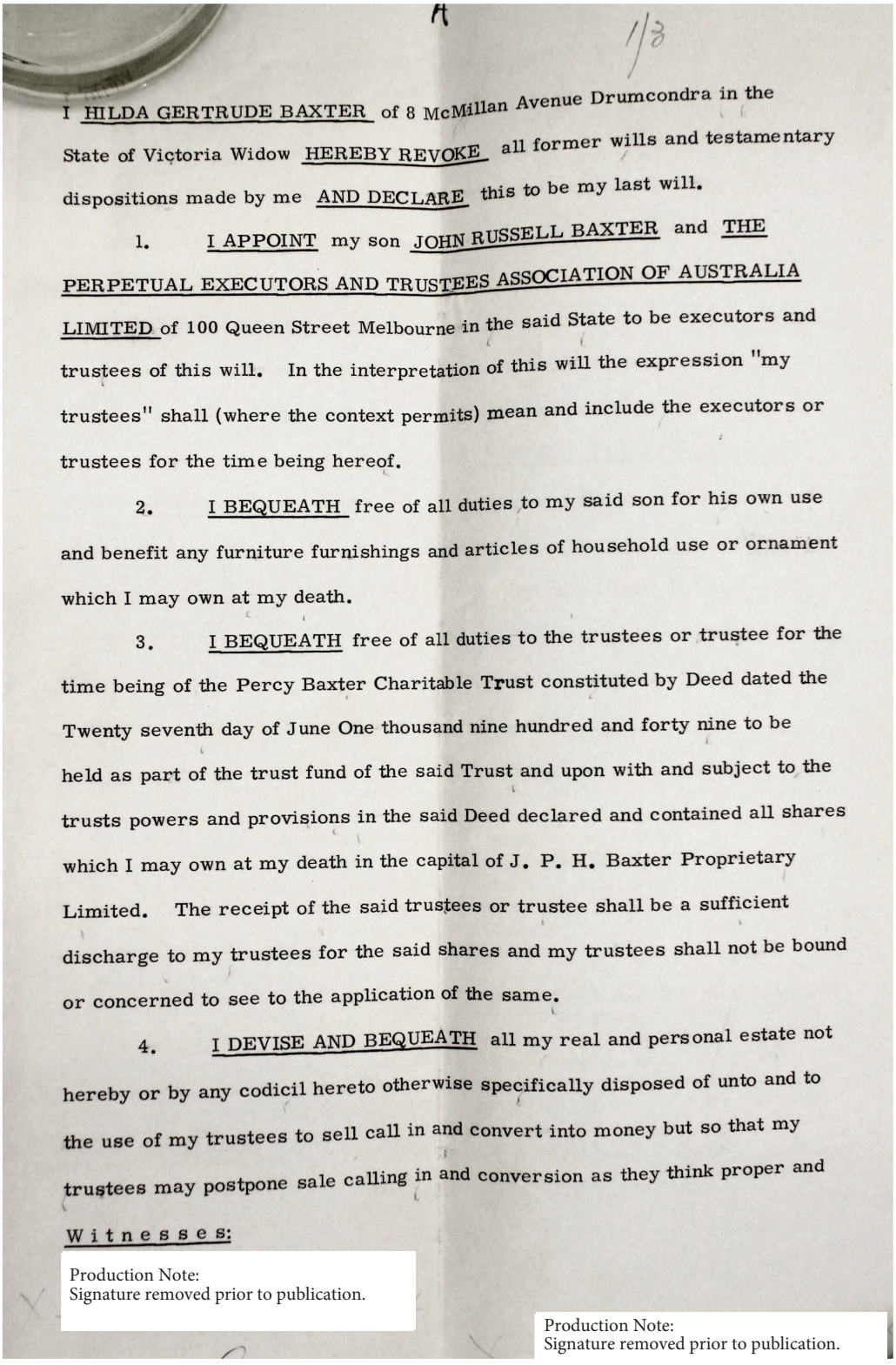
(b) subject to the foregoing provisions hereof to hold the whole of my Estate in Perpetual Trust to be called the "E.T.A. BASAN CHARITABLE TRUST" and to divide the nett income from my Estate amongst such Charitable Institutions and in such proportions in all respects as the trustees for the time being of my Will from time to time determine and at such intervals whether quarterly halfyearly or annually as my trustees shall think fit

4. I G I V E to my trustees full discretionary power to continue my estate in the form in which it shall be at my death or from time to time to sell and convert into money the same or any part or parts thereof upon such terms and conditions as they shall determine and to reinvest the nett proceeds of such sale and conversion in other investments authorised by law as Trustees Investments and from time to time to change such investments into others which may be so authorised

5. I N THE event of my trustees retaining any freehold property which may form part of my Estate I AUTHORISE AND EMPOWER my trustees to let the same from time to time for any period not exceeding ten years at the best rent that can reasonably be obtained therefor and before distributing or applying the income from my estate as herein-

B.2 BAXTER, Hilda Gertrude - 21 March 1969

Will Extract – Page 1



A

1/3

I HILDA GERTRUDE BAXTER of 8 McMillan Avenue Drumcondra in the State of Victoria Widow HEREBY REVOKE all former wills and testamentary dispositions made by me AND DECLARE this to be my last will.

1. I APPOINT my son JOHN RUSSELL BAXTER and THE PERPETUAL EXECUTORS AND TRUSTEES ASSOCIATION OF AUSTRALIA LIMITED of 100 Queen Street Melbourne in the said State to be executors and trustees of this will. In the interpretation of this will the expression "my trustees" shall (where the context permits) mean and include the executors or trustees for the time being hereof.

2. I BEQUEATH free of all duties to my said son for his own use and benefit any furniture furnishings and articles of household use or ornament which I may own at my death.

3. I BEQUEATH free of all duties to the trustees or trustee for the time being of the Percy Baxter Charitable Trust constituted by Deed dated the Twenty seventh day of June One thousand nine hundred and forty nine to be held as part of the trust fund of the said Trust and upon with and subject to the trusts powers and provisions in the said Deed declared and contained all shares which I may own at my death in the capital of J. P. H. Baxter Proprietary Limited. The receipt of the said trustees or trustee shall be a sufficient discharge to my trustees for the said shares and my trustees shall not be bound or concerned to see to the application of the same.

4. I DEVISE AND BEQUEATH all my real and personal estate not hereby or by any codicil hereto otherwise specifically disposed of unto and to the use of my trustees to sell call in and convert into money but so that my trustees may postpone sale calling in and conversion as they think proper and

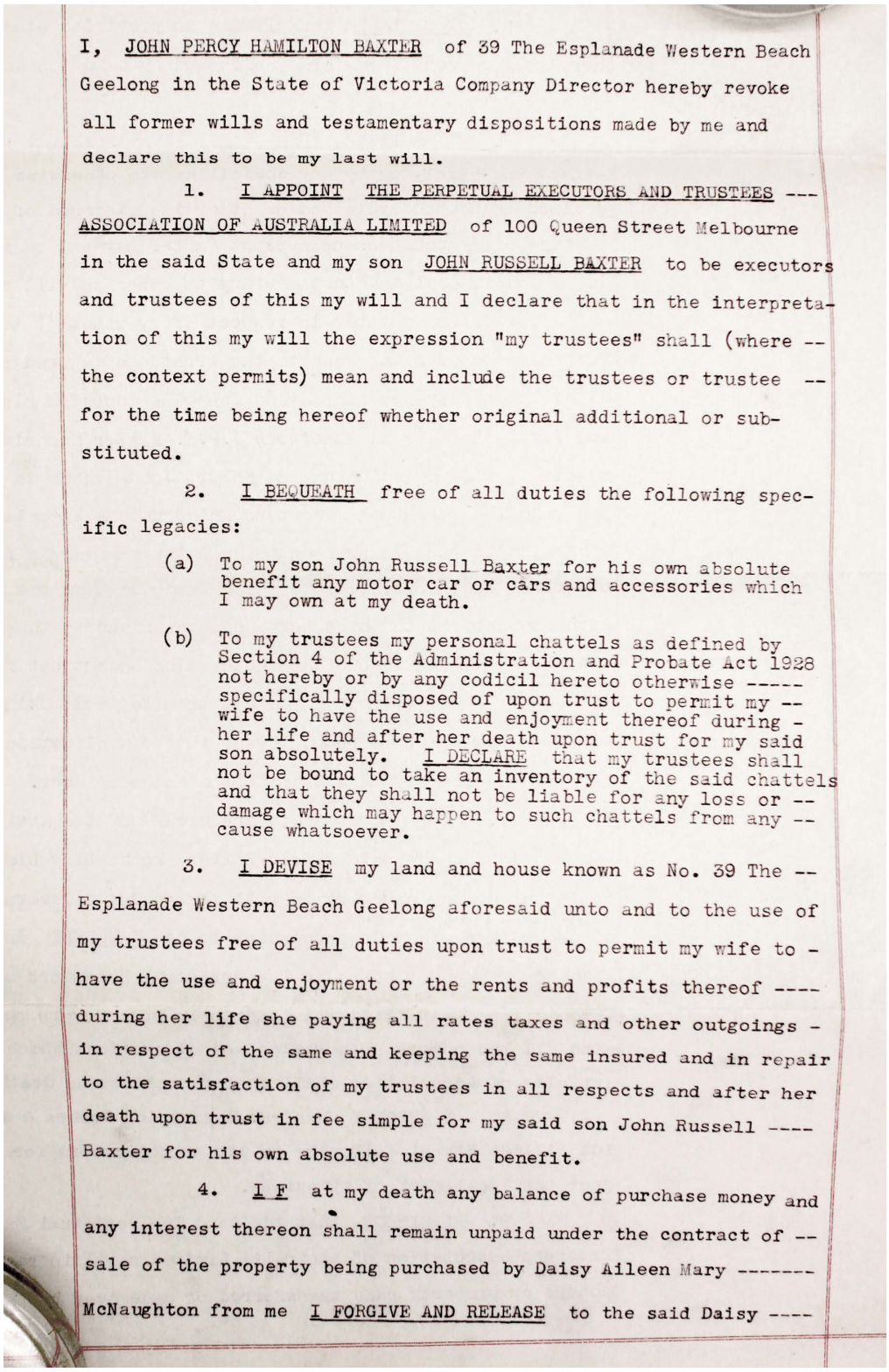
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B.3 BAXTER, John Percy H. - 25 August 1949

Will Extract – Page 1



I, JOHN PERCY HAMILTON BAXTER of 39 The Esplanade Western Beach Geelong in the State of Victoria Company Director hereby revoke all former wills and testamentary dispositions made by me and declare this to be my last will.

1. I APPOINT THE PERPETUAL EXECUTORS AND TRUSTEES --- ASSOCIATION OF AUSTRALIA LIMITED of 100 Queen Street Melbourne in the said State and my son JOHN RUSSELL BAXTER to be executors and trustees of this my will and I declare that in the interpretation of this my will the expression "my trustees" shall (where -- the context permits) mean and include the trustees or trustee -- for the time being hereof whether original additional or substituted.

2. I BEQUEATH free of all duties the following specific legacies:

(a) To my son John Russell Baxter for his own absolute benefit any motor car or cars and accessories which I may own at my death.

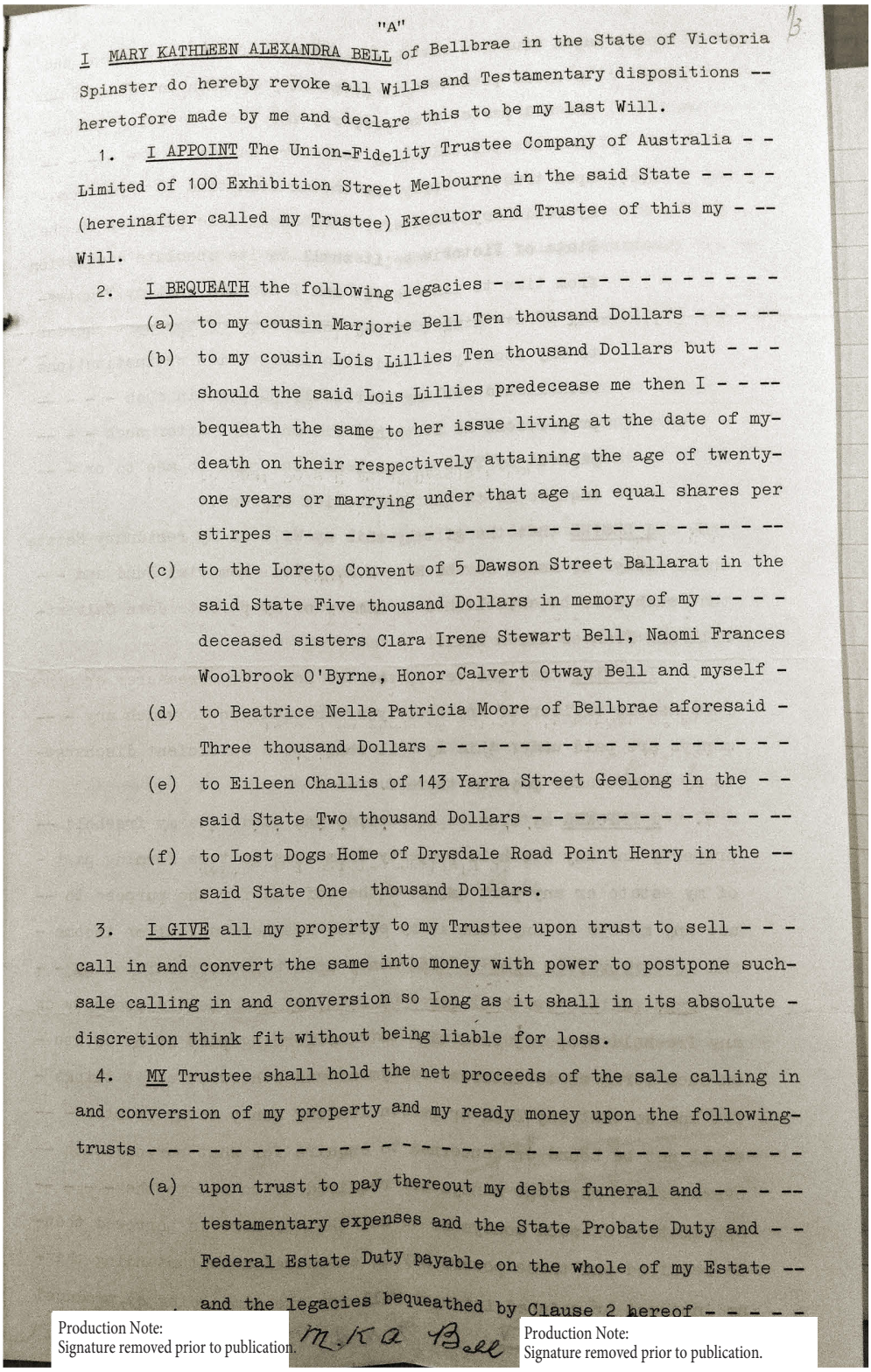
(b) To my trustees my personal chattels as defined by Section 4 of the Administration and Probate Act 1928 not hereby or by any codicil hereto otherwise ----- specifically disposed of upon trust to permit my -- wife to have the use and enjoyment thereof during - her life and after her death upon trust for my said son absolutely. I DECLARE that my trustees shall not be bound to take an inventory of the said chattels and that they shall not be liable for any loss or -- damage which may happen to such chattels from any -- cause whatsoever.

3. I DEVISE my land and house known as No. 39 The -- Esplanade Western Beach Geelong aforesaid unto and to the use of my trustees free of all duties upon trust to permit my wife to - have the use and enjoyment or the rents and profits thereof ---- during her life she paying all rates taxes and other outgoings - in respect of the same and keeping the same insured and in repair to the satisfaction of my trustees in all respects and after her death upon trust in fee simple for my said son John Russell ---- Baxter for his own absolute use and benefit.

4. I F at my death any balance of purchase money and any interest thereon shall remain unpaid under the contract of -- sale of the property being purchased by Daisy Aileen Mary ------- McNaughton from me I FORGIVE AND RELEASE to the said Daisy ----

B.4 BELL, Mary Kathleen - 28 July 1975

Will Extract – Page 1



"A"

I MARY KATHLEEN ALEXANDRA BELL of Bellbrae in the State of Victoria Spinster do hereby revoke all Wills and Testamentary dispositions -- heretofore made by me and declare this to be my last Will.

1. I APPOINT The Union-Fidelity Trustee Company of Australia - - Limited of 100 Exhibition Street Melbourne in the said State - - - - (hereinafter called my Trustee) Executor and Trustee of this my - -- Will.

2. I BEQUEATH the following legacies - - - - - - - - - - - - - - -

(a) to my cousin Marjorie Bell Ten thousand Dollars - - - - --

(b) to my cousin Lois Lillies Ten thousand Dollars but - - - should the said Lois Lillies predecease me then I - - -- bequeath the same to her issue living at the date of my- death on their respectively attaining the age of twenty- one years or marrying under that age in equal shares per stirpes --

(c) to the Loreto Convent of 5 Dawson Street Ballarat in the said State Five thousand Dollars in memory of my - - - - deceased sisters Clara Irene Stewart Bell, Naomi Frances Woolbrook O'Byrne, Honor Calvert Otway Bell and myself -

(d) to Beatrice Nella Patricia Moore of Bellbrae aforesaid - Three thousand Dollars - - - - - - - - - - - - - - - - - -

(e) to Eileen Challis of 143 Yarra Street Geelong in the - - said State Two thousand Dollars - - - - - - - - - - - - --

(f) to Lost Dogs Home of Drysdale Road Point Henry in the -- said State One thousand Dollars.

3. I GIVE all my property to my Trustee upon trust to sell - - - call in and convert the same into money with power to postpone such- sale calling in and conversion so long as it shall in its absolute - discretion think fit without being liable for loss.

4. MY Trustee shall hold the net proceeds of the sale calling in and conversion of my property and my ready money upon the following- trusts -

(a) upon trust to pay thereout my debts funeral and - - - - -- testamentary expenses and the State Probate Duty and - - Federal Estate Duty payable on the whole of my Estate -- and the legacies bequeathed by Clause 2 hereof - - - - -

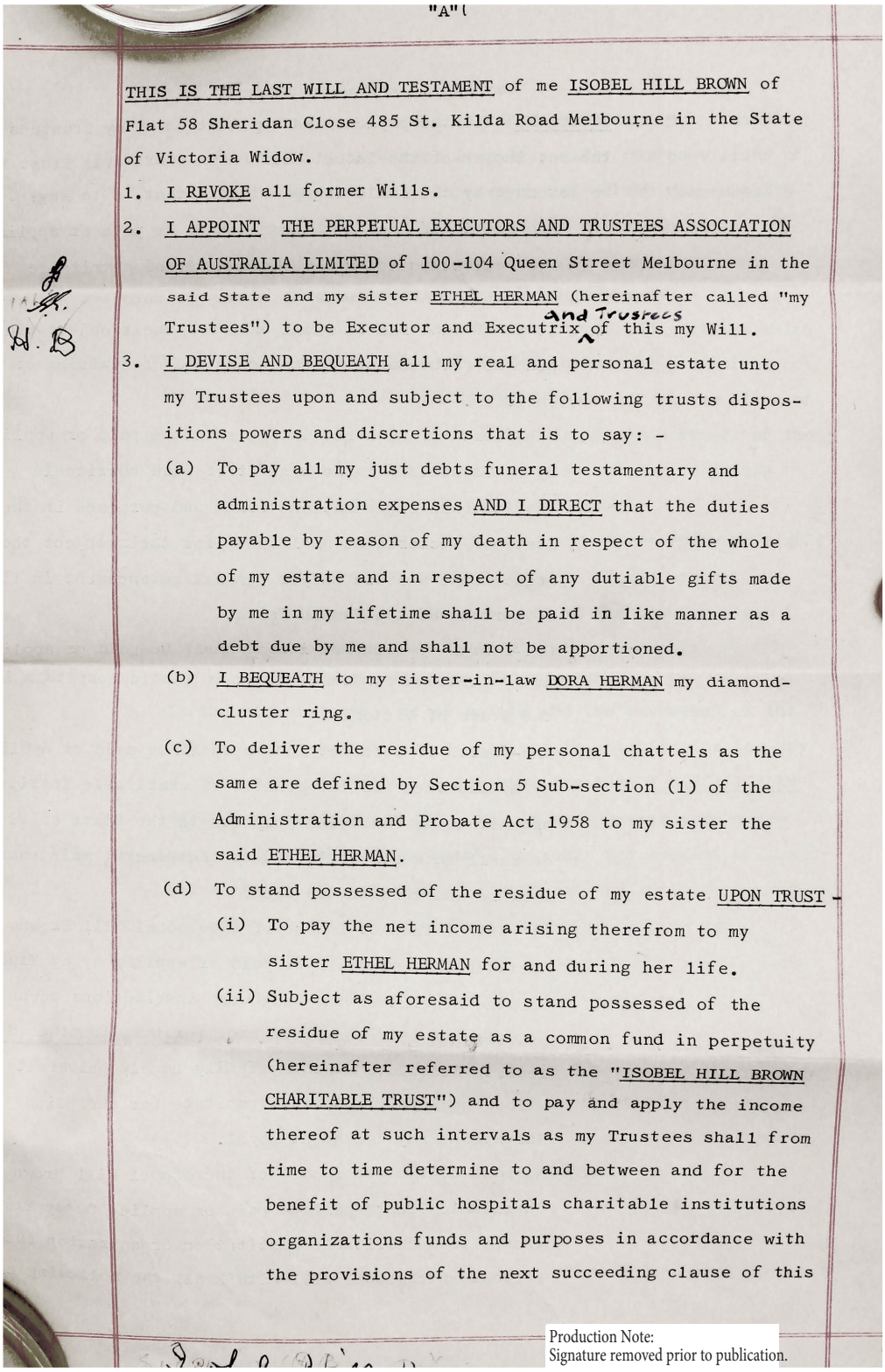
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M. K. A. Bell

Production Note:
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B.5 BROWN, Isobel Hill - 2 May 1962

Will Extract – Page 1



"A"

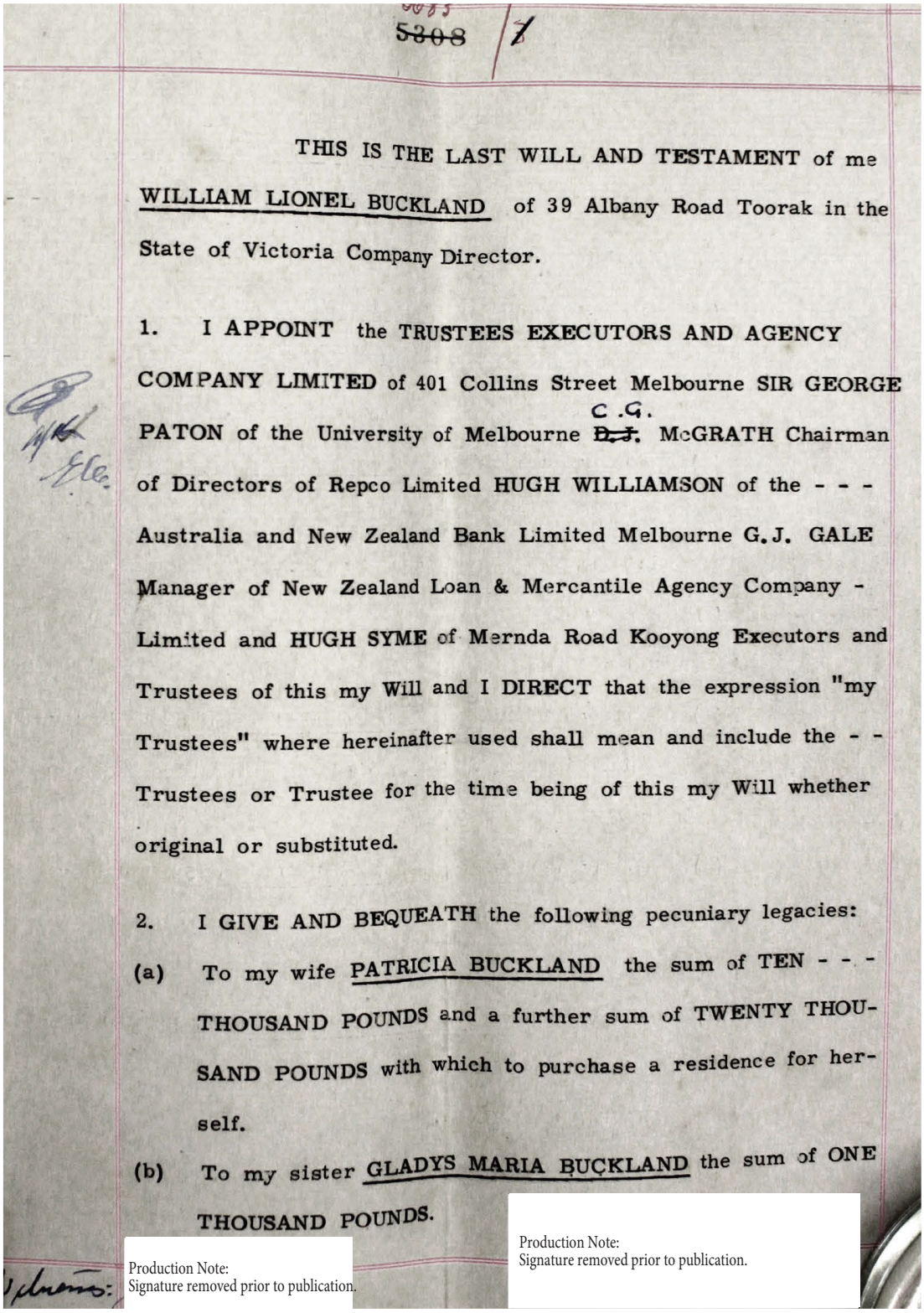
THIS IS THE LAST WILL AND TESTAMENT of me ISOBEL HILL BROWN of Flat 58 Sheridan Close 485 St. Kilda Road Melbourne in the State of Victoria Widow.

1. I REVOKE all former Wills.
2. I APPOINT THE PERPETUAL EXECUTORS AND TRUSTEES ASSOCIATION OF AUSTRALIA LIMITED of 100-104 Queen Street Melbourne in the said State and my sister ETHEL HERMAN (hereinafter called "my Trustees") to be Executor and Executrix and Trustees of this my Will.
3. I DEVISE AND BEQUEATH all my real and personal estate unto my Trustees upon and subject to the following trusts dispositions powers and discretions that is to say: -
   (a) To pay all my just debts funeral testamentary and administration expenses AND I DIRECT that the duties payable by reason of my death in respect of the whole of my estate and in respect of any dutiable gifts made by me in my lifetime shall be paid in like manner as a debt due by me and shall not be apportioned.
   (b) I BEQUEATH to my sister-in-law DORA HERMAN my diamond-cluster ring.
   (c) To deliver the residue of my personal chattels as the same are defined by Section 5 Sub-section (1) of the Administration and Probate Act 1958 to my sister the said ETHEL HERMAN.
   (d) To stand possessed of the residue of my estate UPON TRUST -
      (i) To pay the net income arising therefrom to my sister ETHEL HERMAN for and during her life.
      (ii) Subject as aforesaid to stand possessed of the residue of my estate as a common fund in perpetuity (hereinafter referred to as the "ISOBEL HILL BROWN CHARITABLE TRUST") and to pay and apply the income thereof at such intervals as my Trustees shall from time to time determine to and between and for the benefit of public hospitals charitable institutions organizations funds and purposes in accordance with the provisions of the next succeeding clause of this

Production Note:
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B.6 BUCKLAND, William - 17 February 1961

Will Extract – Page 1



5308 /1

THIS IS THE LAST WILL AND TESTAMENT of me WILLIAM LIONEL BUCKLAND of 39 Albany Road Toorak in the State of Victoria Company Director.

1. I APPOINT the TRUSTEES EXECUTORS AND AGENCY COMPANY LIMITED of 401 Collins Street Melbourne SIR GEORGE PATON of the University of Melbourne ~~D.J.~~ C.G. McGRATH Chairman of Directors of Repco Limited HUGH WILLIAMSON of the - - - Australia and New Zealand Bank Limited Melbourne G.J. GALE Manager of New Zealand Loan & Mercantile Agency Company - Limited and HUGH SYME of Mernda Road Kooyong Executors and Trustees of this my Will and I DIRECT that the expression "my Trustees" where hereinafter used shall mean and include the - - Trustees or Trustee for the time being of this my Will whether original or substituted.

2. I GIVE AND BEQUEATH the following pecuniary legacies:

(a) To my wife PATRICIA BUCKLAND the sum of TEN - - - THOUSAND POUNDS and a further sum of TWENTY THOUSAND POUNDS with which to purchase a residence for herself.

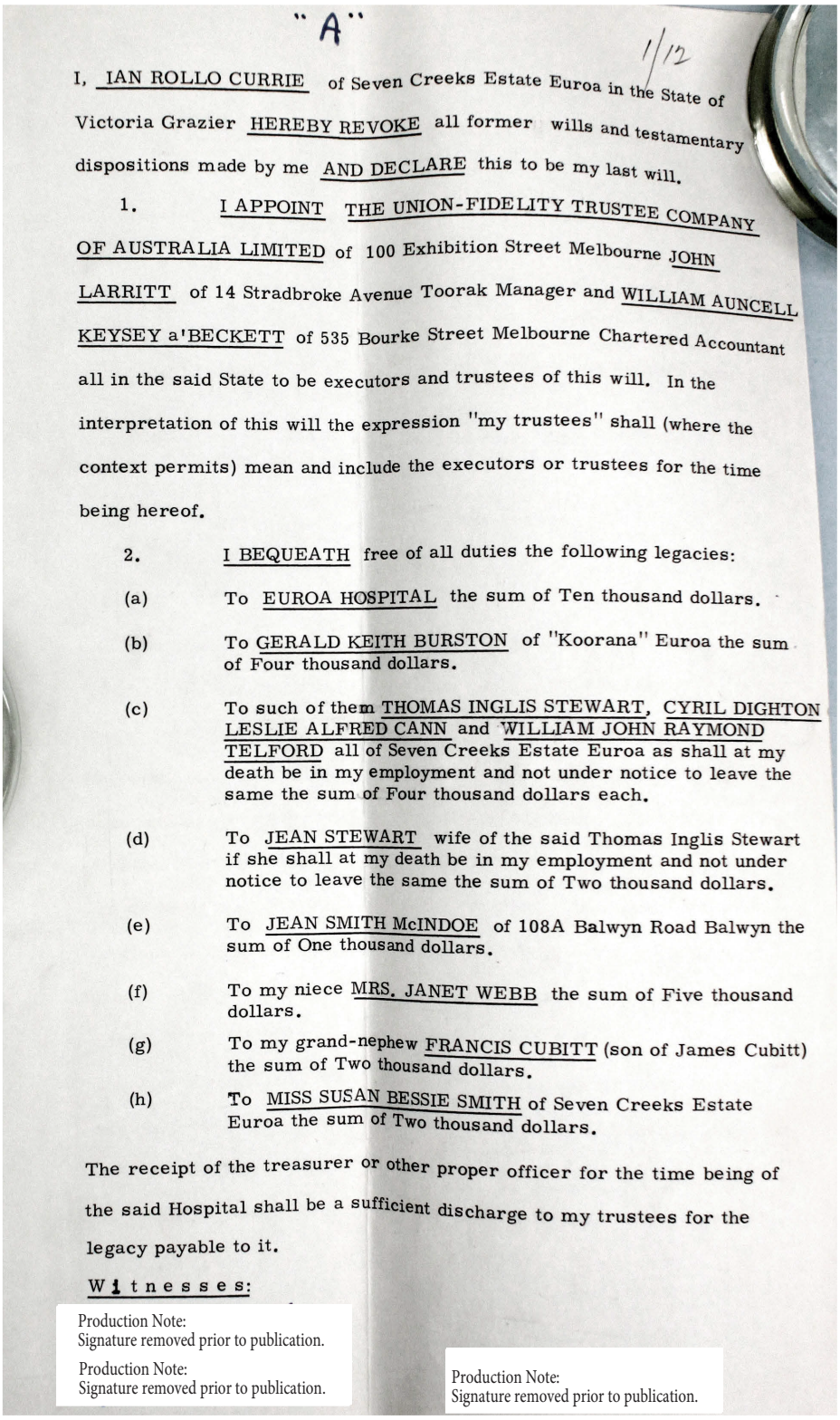
(b) To my sister GLADYS MARIA BUCKLAND the sum of ONE THOUSAND POUNDS.

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B.7 CURRIE, Ian Rollo - 15 April 1971

Will Extract – Page 1



"A"

1/12

I, IAN ROLLO CURRIE of Seven Creeks Estate Euroa in the State of Victoria Grazier HEREBY REVOKE all former wills and testamentary dispositions made by me AND DECLARE this to be my last will.

1. I APPOINT THE UNION-FIDELITY TRUSTEE COMPANY OF AUSTRALIA LIMITED of 100 Exhibition Street Melbourne JOHN LARRITT of 14 Stradbroke Avenue Toorak Manager and WILLIAM AUNCELL KEYSEY a'BECKETT of 535 Bourke Street Melbourne Chartered Accountant all in the said State to be executors and trustees of this will. In the interpretation of this will the expression "my trustees" shall (where the context permits) mean and include the executors or trustees for the time being hereof.

2. I BEQUEATH free of all duties the following legacies:

(a) To EUROA HOSPITAL the sum of Ten thousand dollars.

(b) To GERALD KEITH BURSTON of "Koorana" Euroa the sum of Four thousand dollars.

(c) To such of them THOMAS INGLIS STEWART, CYRIL DIGHTON LESLIE ALFRED CANN and WILLIAM JOHN RAYMOND TELFORD all of Seven Creeks Estate Euroa as shall at my death be in my employment and not under notice to leave the same the sum of Four thousand dollars each.

(d) To JEAN STEWART wife of the said Thomas Inglis Stewart if she shall at my death be in my employment and not under notice to leave the same the sum of Two thousand dollars.

(e) To JEAN SMITH McINDOE of 108A Balwyn Road Balwyn the sum of One thousand dollars.

(f) To my niece MRS. JANET WEBB the sum of Five thousand dollars.

(g) To my grand-nephew FRANCIS CUBITT (son of James Cubitt) the sum of Two thousand dollars.

(h) To MISS SUSAN BESSIE SMITH of Seven Creeks Estate Euroa the sum of Two thousand dollars.

The receipt of the treasurer or other proper officer for the time being of the said Hospital shall be a sufficient discharge to my trustees for the legacy payable to it.

Witnesses:

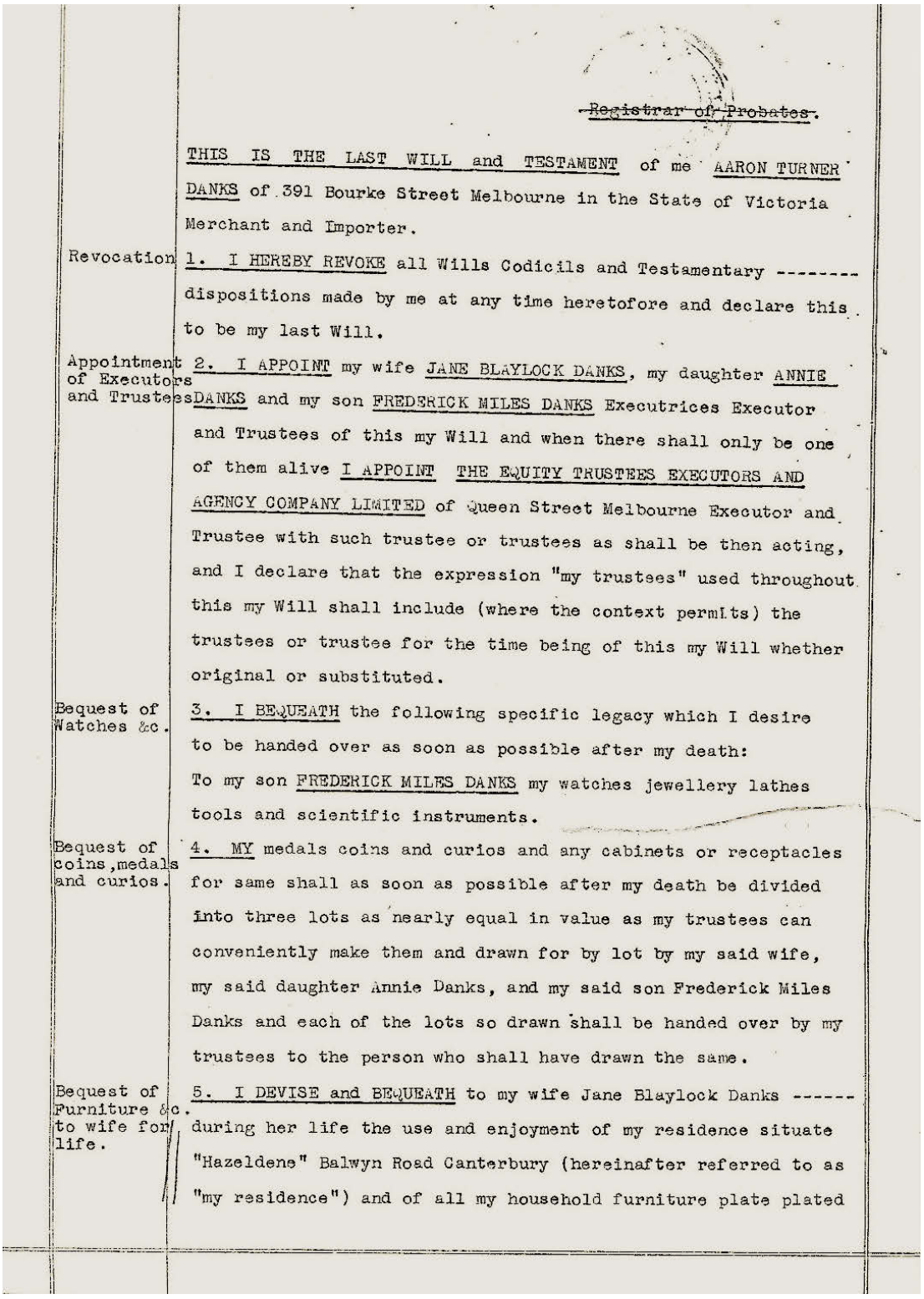
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B.8 DANKS, Aaron Turner - 27 August 1928

Will Extract – Page 1



~~Registrar of Probates.~~

THIS IS THE LAST WILL and TESTAMENT of me AARON TURNER DANKS of 391 Bourke Street Melbourne in the State of Victoria Merchant and Importer.

Revocation

1. I HEREBY REVOKE all Wills Codicils and Testamentary ------- dispositions made by me at any time heretofore and declare this to be my last Will.

Appointment of Executors and Trustees

2. I APPOINT my wife JANE BLAYLOCK DANKS, my daughter ANNIE DANKS and my son FREDERICK MILES DANKS Executrices Executor and Trustees of this my Will and when there shall only be one of them alive I APPOINT THE EQUITY TRUSTEES EXECUTORS AND AGENCY COMPANY LIMITED of Queen Street Melbourne Executor and Trustee with such trustee or trustees as shall be then acting, and I declare that the expression "my trustees" used throughout this my Will shall include (where the context permits) the trustees or trustee for the time being of this my Will whether original or substituted.

Bequest of Watches &c.

3. I BEQUEATH the following specific legacy which I desire to be handed over as soon as possible after my death:
To my son FREDERICK MILES DANKS my watches jewellery lathes tools and scientific instruments.

Bequest of coins, medals and curios.

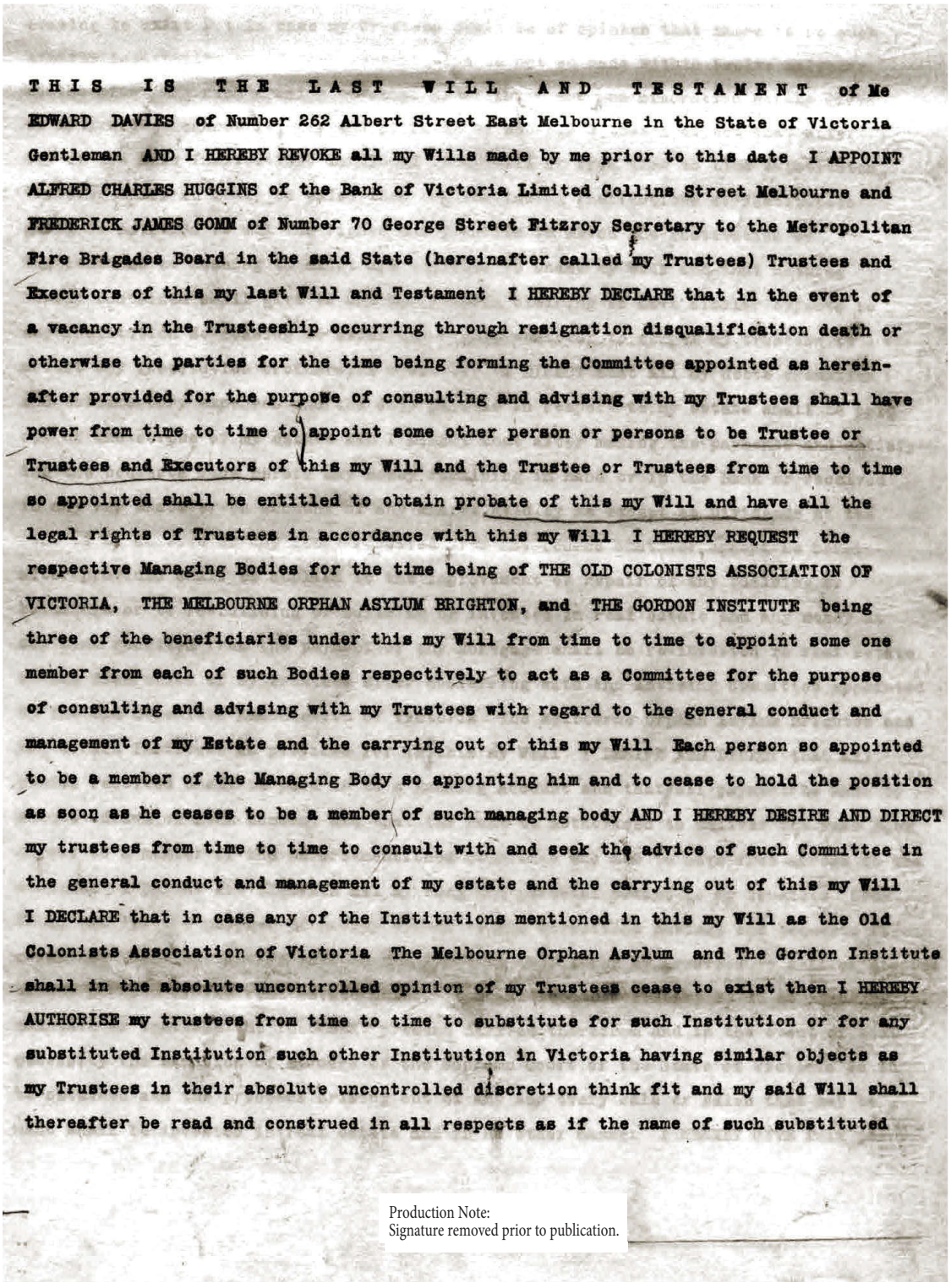
4. MY medals coins and curios and any cabinets or receptacles for same shall as soon as possible after my death be divided into three lots as nearly equal in value as my trustees can conveniently make them and drawn for by lot by my said wife, my said daughter Annie Danks, and my said son Frederick Miles Danks and each of the lots so drawn shall be handed over by my trustees to the person who shall have drawn the same.

Bequest of Furniture &c. to wife for life.

5. I DEVISE and BEQUEATH to my wife Jane Blaylock Danks ------ during her life the use and enjoyment of my residence situate "Hazeldene" Balwyn Road Canterbury (hereinafter referred to as "my residence") and of all my household furniture plate plated

B.9 DAVIES, Edward - 5 May 1905

Will Extract – Page 1



THIS IS THE LAST WILL AND TESTAMENT of Me EDWARD DAVIES of Number 262 Albert Street East Melbourne in the State of Victoria Gentleman AND I HEREBY REVOKE all my Wills made by me prior to this date I APPOINT ALFRED CHARLES HUGGINS of the Bank of Victoria Limited Collins Street Melbourne and FREDERICK JAMES GOMM of Number 70 George Street Fitzroy Secretary to the Metropolitan Fire Brigades Board in the said State (hereinafter called my Trustees) Trustees and Executors of this my last Will and Testament I HEREBY DECLARE that in the event of a vacancy in the Trusteeship occurring through resignation disqualification death or otherwise the parties for the time being forming the Committee appointed as hereinafter provided for the purpose of consulting and advising with my Trustees shall have power from time to time to appoint some other person or persons to be Trustee or Trustees and Executors of this my Will and the Trustee or Trustees from time to time so appointed shall be entitled to obtain probate of this my Will and have all the legal rights of Trustees in accordance with this my Will I HEREBY REQUEST the respective Managing Bodies for the time being of THE OLD COLONISTS ASSOCIATION OF VICTORIA, THE MELBOURNE ORPHAN ASYLUM BRIGHTON, and THE GORDON INSTITUTE being three of the beneficiaries under this my Will from time to time to appoint some one member from each of such Bodies respectively to act as a Committee for the purpose of consulting and advising with my Trustees with regard to the general conduct and management of my Estate and the carrying out of this my Will Each person so appointed to be a member of the Managing Body so appointing him and to cease to hold the position as soon as he ceases to be a member of such managing body AND I HEREBY DESIRE AND DIRECT my trustees from time to time to consult with and seek the advice of such Committee in the general conduct and management of my estate and the carrying out of this my Will I DECLARE that in case any of the Institutions mentioned in this my Will as the Old Colonists Association of Victoria The Melbourne Orphan Asylum and The Gordon Institute shall in the absolute uncontrolled opinion of my Trustees cease to exist then I HEREBY AUTHORISE my trustees from time to time to substitute for such Institution or for any substituted Institution such other Institution in Victoria having similar objects as my Trustees in their absolute uncontrolled discretion think fit and my said Will shall thereafter be read and construed in all respects as if the name of such substituted

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B.10 DODD, Ian William - 23 June 1989

Will Extract – Page 1

1/3

THIS IS THE LAST WILL of me IAN WILLIAM DODD of 69 Manningtree Road Hawthorn in the State of Victoria, Investor.

1. I HEREBY REVOKE all prior Wills and Testamentary Dispositions.
2. I APPOINT THE PERPETUAL EXECUTORS AND TRUSTEES ASSOCIATION OF AUSTRALIA LIMITED to be Executors and Trustees (hereinafter called "my Trustees") of this my Will.
3. I GIVE DEVISE AND BEQUEATH the whole of my estate both real and personal whatsoever and wheresoever situate to my Trustees upon trust to pay thereout all my just debts funeral and testamentary expenses Probate and Estate Duties and all moneys payable as a result of my death and subject thereto upon the following trusts that is to say :-
   (a) As to my books on Architecture for the ARCHITECTURE SCHOOL at the UNIVERSITY OF MELBOURNE
   (b) As to my books and models on motoring for the ROLLS ROYCE OWNERS CLUB OF AUSTRALIA Victoria Branch (Incorporated);
   (c) As soon as practicable after my death to permit DAVID LLEWELLYN CHISHOLM KENWAY of 29 Kerferd Road, Glen Iris to choose any one item of my personal effects;
   (d) As to the sum of TEN THOUSAND DOLLARS ($10,000.00) free of Probate and Estate Duties for MAUREEN MAGENNIS of 12 Mangarra Road, Canterbury;
   (e) As to the sum of FIVE THOUSAND DOLLARS ($5,000.00) free of Probate and Estate Duties for each of the following institutions:-
      (i) THE MELBOURNE CHURCH OF ENGLAND GRAMMAR SCHOOL for credit to any fund in existence at the date of my death for extensions to or the erection of any school buildings or if there be no such fund in existence at the date of my death then for such purposes as shall in the opinion of my Trustees be designed to assist the school in its educational activities;

J.W. Dodd Kenyon Greene

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B.11 EWART, Nancy - 21 April 1995

Will Extract – Page 1

"B"

THIS IS THE LAST WILL of me ANNIE ISABEL EWART also known as NANCY EWART of 12 May Street Deepdene in the State of Victoria, Retired Accountant.

1. I REVOKE all prior testamentary dispositions.
2. I APPOINT TRUST COMPANY OF AUSTRALIA LIMITED A.C.N. 004 027 749 of 151 Rathdowne Street, Carlton South in the said State to be my Executor and Trustee and the expression "my Trustee" (whenever the context permits) means the Trustee or Trustees of this Will for the time being and the trusts arising under it.
3. I GIVE the following legacies free of contribution to taxes and duties:
   (a) TO my cousin MARJORY G. TULLOCH of 14 Reform Lane, Lerwick, Shetland, Scotland the sum of TWENTY THOUSAND DOLLARS ($20,000).
   (b) TO my cousin ROSEMARY TAIT of 3/5 Caithness Place, Edinburgh, Scotland the sum of FIVE THOUSAND DOLLARS ($5,000).
   (c) TO my friend BEATRICE JOYCE LLOYD of 20 Nairn Avenue, Ascot Vale, Victoria the sum of FIVE THOUSAND DOLLARS ($5,000).
   (d) TO MARGARET ELIZABETH GRIEG of 13/2 Park Tower, 201 Spring Street, Melbourne, Victoria the sum of FIVE THOUSAND DOLLARS ($5,000).
   (e) TO my cousin MARJORIE JANE SINCLAIR HOUSTON of 103 Charterhall Grove, Edinburgh, Scotland the sum of SEVENTY-FIVE THOUSAND DOLLARS ($75,000).
   (f) TO THE BROTHERHOOD OF ST. LAURENCE of Brunswick Street, Fitzroy, Victoria the sum of FIVE THOUSAND DOLLARS ($5,000).
   (g) TO THE FRANK PATON MEMORIAL UNITING CHURCH of Burke Road, Deepdene, Victoria the sum of FIVE THOUSAND DOLLARS ($5,000) to be used for such purposes as the Council of Elders of the said church shall at their absolute discretion determine.

   AND I DECLARE that the receipt of the Secretary Treasurer or other proper officer of such organisations named in Sub-Clauses (f) and (g) shall be a full and sufficient discharge to my Trustee who shall not be required to see to the application thereof AND I FURTHER DIRECT that should any of the said organisations have ceased to exist at my date of death then my Trustee in its sole discretion may substitute a similar charitable organisation as it may determine which in the opinion of my Trustee is carrying out similar charitable purposes.
4. I GIVE free of duties and taxes all my personal chattels as defined by Section 5 of the Administration and Probate Act 1958 to my Trustee AND I EXPRESS the wish without creating any binding trust

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Testatrix

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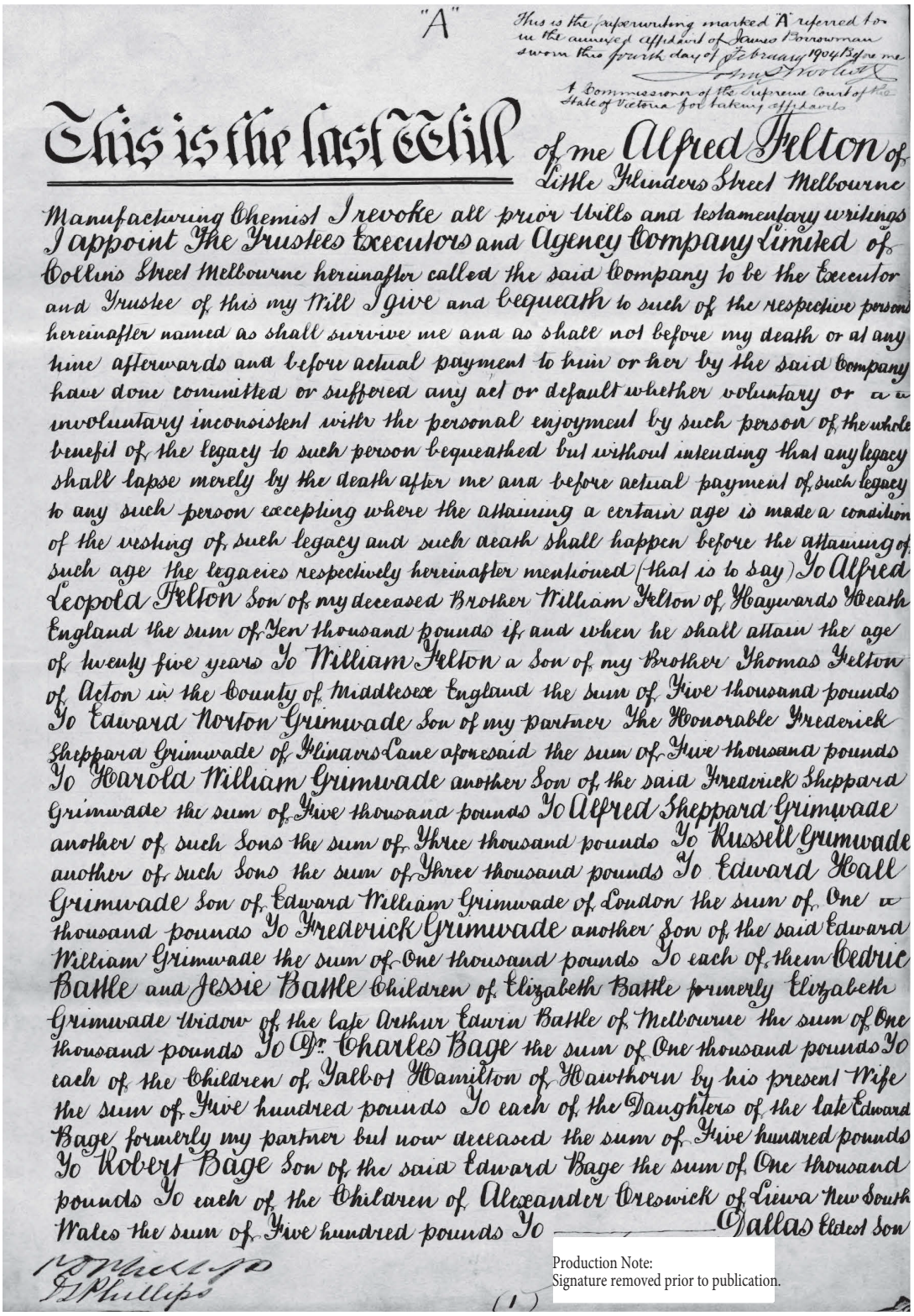
Witness

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Witness

B.12 FELTON, Alfred - 20 August 1900

Will Extract – Page 1



"A"

This is the paper writing marked "A" referred to in the annexed affidavit of James Borrowman sworn this fourth day of February 1904 Before me

A Commissioner of the Supreme Court of the State of Victoria for taking affidavits

This is the last Will of me Alfred Felton of Little Flinders Street Melbourne Manufacturing Chemist I revoke all prior Wills and testamentary writings I appoint The Trustees Executors and Agency Company Limited of Collins Street Melbourne hereinafter called the said Company to be the Executor and Trustee of this my Will I give and bequeath to such of the respective persons hereinafter named as shall survive me and as shall not before my death or at any time afterwards and before actual payment to him or her by the said Company have done committed or suffered any act or default whether voluntary or involuntary inconsistent with the personal enjoyment by such person of the whole benefit of the legacy to such person bequeathed but without intending that any legacy shall lapse merely by the death after me and before actual payment of such legacy to any such person excepting where the attaining a certain age is made a condition of the vesting of such legacy and such death shall happen before the attaining of such age the legacies respectively hereinafter mentioned (that is to say) To Alfred Leopold Felton Son of my deceased Brother William Felton of Haywards Heath England the sum of Ten thousand pounds if and when he shall attain the age of twenty five years To William Felton a Son of my Brother Thomas Felton of Acton in the County of Middlesex England the sum of Five thousand pounds To Edward Norton Grimwade Son of my partner The Honorable Frederick Sheppard Grimwade of Flinders Lane aforesaid the sum of Five thousand pounds To Harold William Grimwade another Son of the said Frederick Sheppard Grimwade the sum of Five thousand pounds To Alfred Sheppard Grimwade another of such Sons the sum of Three thousand pounds To Russell Grimwade another of such Sons the sum of Three thousand pounds To Edward Hall Grimwade Son of Edward William Grimwade of London the sum of One thousand pounds To Frederick Grimwade another Son of the said Edward William Grimwade the sum of One thousand pounds To each of them Cedric Battle and Jessie Battle Children of Elizabeth Battle formerly Elizabeth Grimwade Widow of the late Arthur Edwin Battle of Melbourne the sum of One thousand pounds To Dr. Charles Bage the sum of One thousand pounds To each of the Children of Talbot Hamilton of Hawthorn by his present Wife the sum of Five hundred pounds To each of the Daughters of the late Edward Bage formerly my partner but now deceased the sum of Five hundred pounds To Robert Bage Son of the said Edward Bage the sum of One thousand pounds To each of the Children of Alexander Creswick of Liewa New South Wales the sum of Five hundred pounds To _____ Dallas Eldest Son

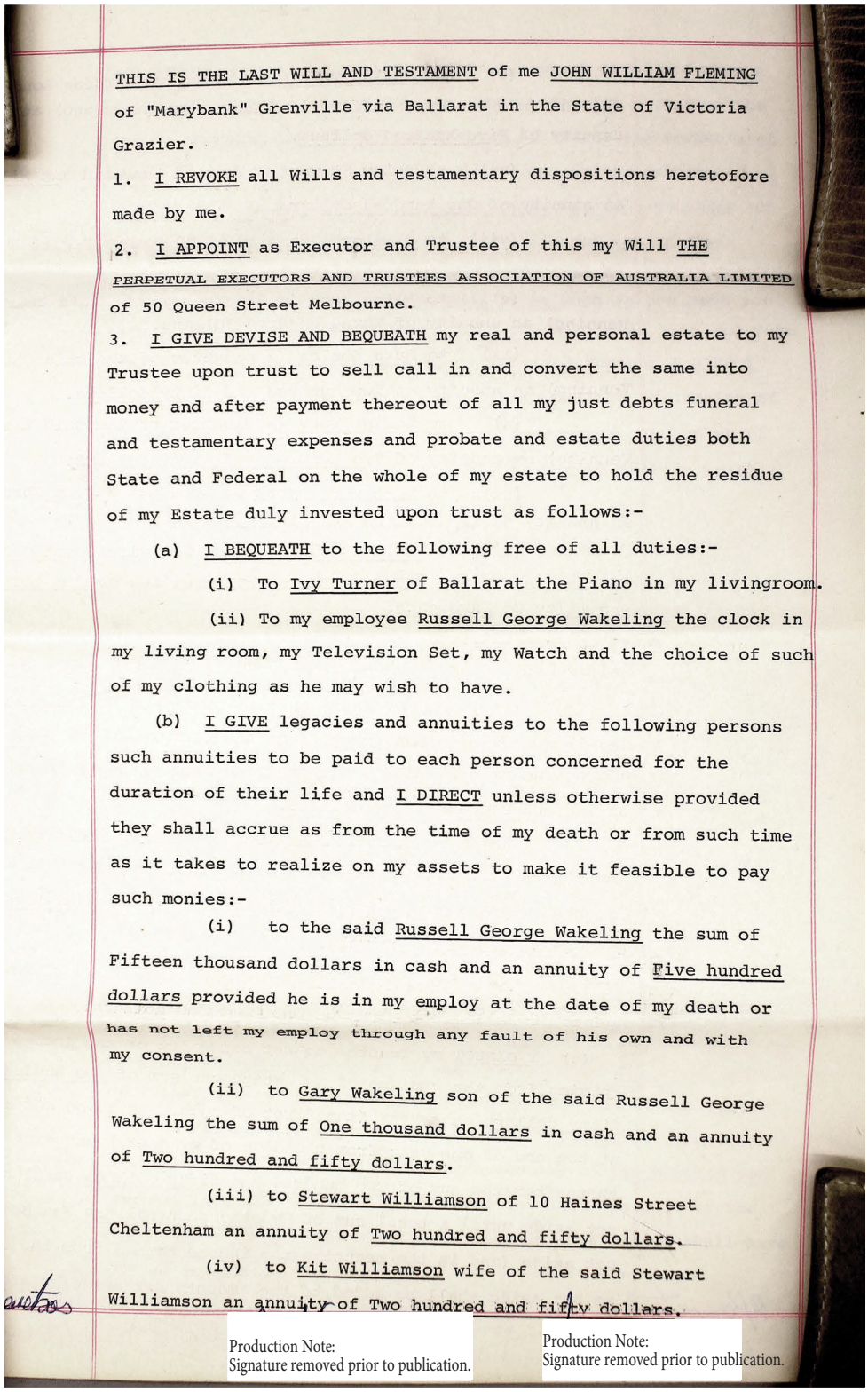
J Phillips

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B.13 FLEMING, John William - 18 October 1973

Will Extract – Page 1



THIS IS THE LAST WILL AND TESTAMENT of me JOHN WILLIAM FLEMING of "Marybank" Grenville via Ballarat in the State of Victoria Grazier.

1. I REVOKE all Wills and testamentary dispositions heretofore made by me.

2. I APPOINT as Executor and Trustee of this my Will THE PERPETUAL EXECUTORS AND TRUSTEES ASSOCIATION OF AUSTRALIA LIMITED of 50 Queen Street Melbourne.

3. I GIVE DEVISE AND BEQUEATH my real and personal estate to my Trustee upon trust to sell call in and convert the same into money and after payment thereout of all my just debts funeral and testamentary expenses and probate and estate duties both State and Federal on the whole of my estate to hold the residue of my Estate duly invested upon trust as follows:-

(a) I BEQUEATH to the following free of all duties:-

(i) To Ivy Turner of Ballarat the Piano in my livingroom.

(ii) To my employee Russell George Wakeling the clock in my living room, my Television Set, my Watch and the choice of such of my clothing as he may wish to have.

(b) I GIVE legacies and annuities to the following persons such annuities to be paid to each person concerned for the duration of their life and I DIRECT unless otherwise provided they shall accrue as from the time of my death or from such time as it takes to realize on my assets to make it feasible to pay such monies:-

(i) to the said Russell George Wakeling the sum of Fifteen thousand dollars in cash and an annuity of Five hundred dollars provided he is in my employ at the date of my death or has not left my employ through any fault of his own and with my consent.

(ii) to Gary Wakeling son of the said Russell George Wakeling the sum of One thousand dollars in cash and an annuity of Two hundred and fifty dollars.

(iii) to Stewart Williamson of 10 Haines Street Cheltenham an annuity of Two hundred and fifty dollars.

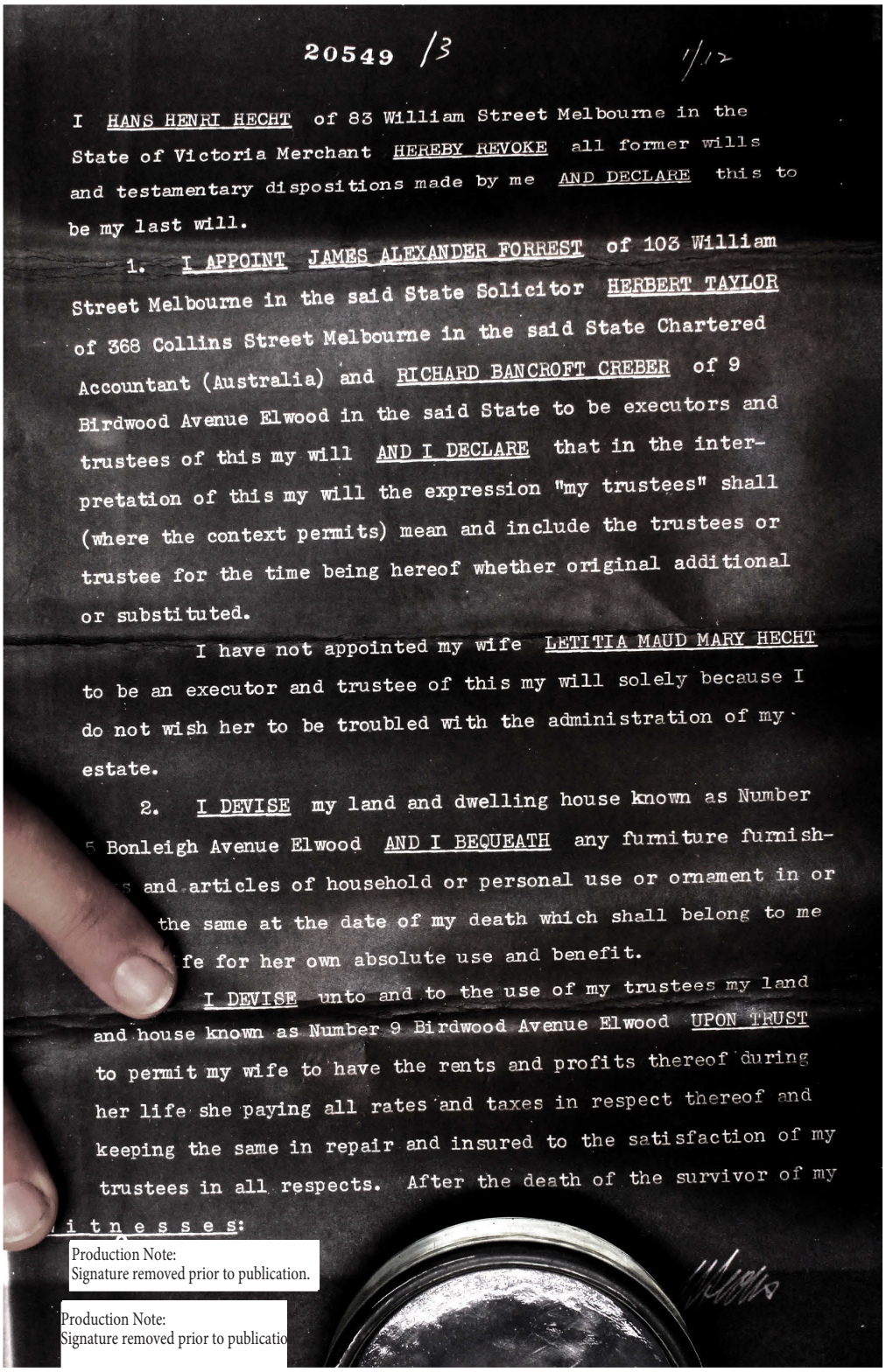
(iv) to Kit Williamson wife of the said Stewart Williamson an annuity of Two hundred and fifty dollars.

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B.14 HECHT, Hans Henri - 17 March 1959

Will Extract – Page 1



20549 /3 1/12

I HANS HENRI HECHT of 83 William Street Melbourne in the State of Victoria Merchant HEREBY REVOKE all former wills and testamentary dispositions made by me AND DECLARE this to be my last will.

1. I APPOINT JAMES ALEXANDER FORREST of 103 William Street Melbourne in the said State Solicitor HERBERT TAYLOR of 368 Collins Street Melbourne in the said State Chartered Accountant (Australia) and RICHARD BANCROFT CREBER of 9 Birdwood Avenue Elwood in the said State to be executors and trustees of this my will AND I DECLARE that in the interpretation of this my will the expression "my trustees" shall (where the context permits) mean and include the trustees or trustee for the time being hereof whether original additional or substituted.

I have not appointed my wife LETITIA MAUD MARY HECHT to be an executor and trustee of this my will solely because I do not wish her to be troubled with the administration of my estate.

2. I DEVISE my land and dwelling house known as Number 5 Bonleigh Avenue Elwood AND I BEQUEATH any furniture furnishings and articles of household or personal use or ornament in or the same at the date of my death which shall belong to me fe for her own absolute use and benefit.

I DEVISE unto and to the use of my trustees my land and house known as Number 9 Birdwood Avenue Elwood UPON TRUST to permit my wife to have the rents and profits thereof during her life she paying all rates and taxes in respect thereof and keeping the same in repair and insured to the satisfaction of my trustees in all respects. After the death of the survivor of my

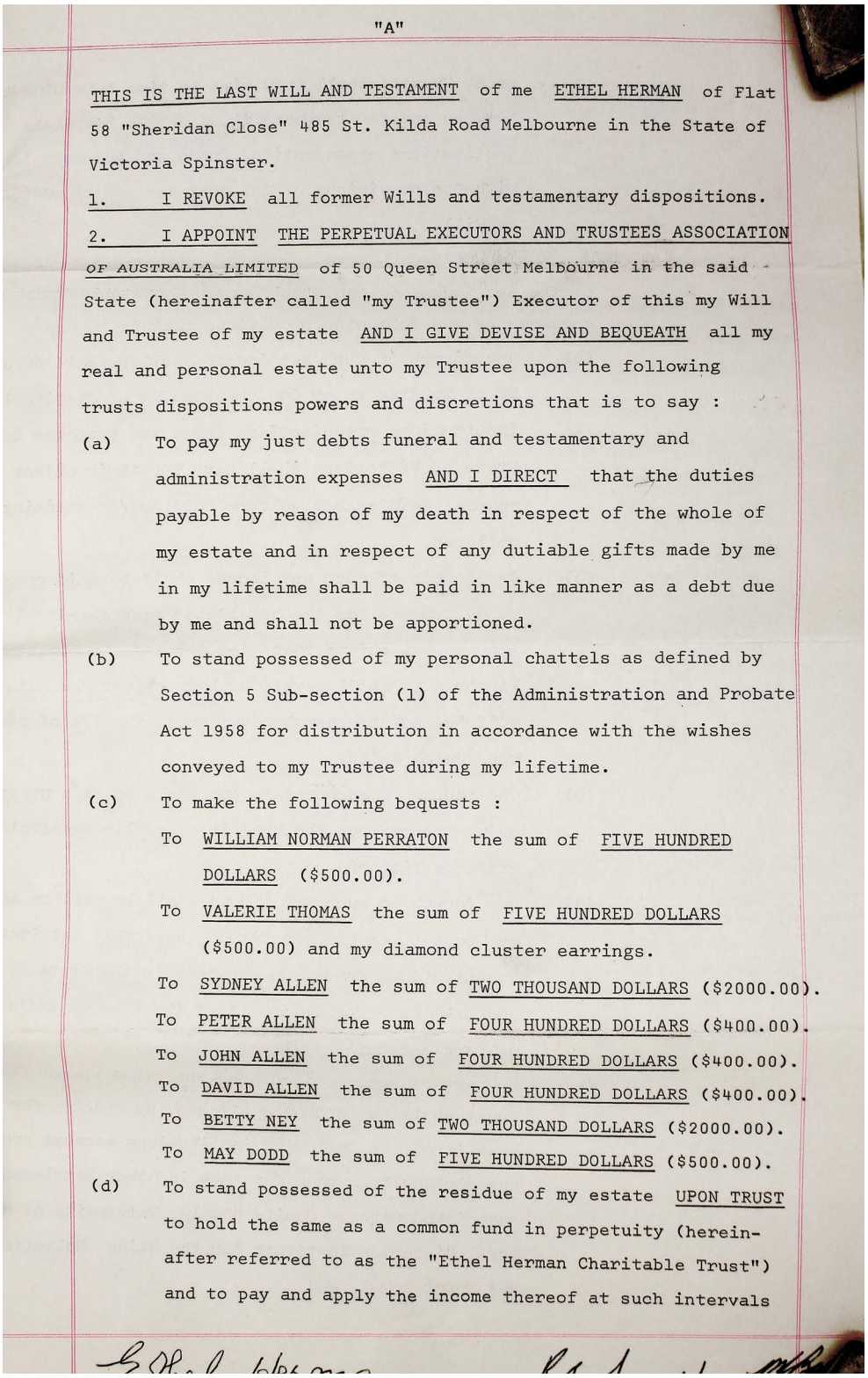
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B.15 HERMAN, Ethel - 10 November 1976

Will Extract – Page 1



"A"

THIS IS THE LAST WILL AND TESTAMENT of me ETHEL HERMAN of Flat 58 "Sheridan Close" 485 St. Kilda Road Melbourne in the State of Victoria Spinster.

1. I REVOKE all former Wills and testamentary dispositions.

2. I APPOINT THE PERPETUAL EXECUTORS AND TRUSTEES ASSOCIATION OF AUSTRALIA LIMITED of 50 Queen Street Melbourne in the said State (hereinafter called "my Trustee") Executor of this my Will and Trustee of my estate AND I GIVE DEVISE AND BEQUEATH all my real and personal estate unto my Trustee upon the following trusts dispositions powers and discretions that is to say :

(a) To pay my just debts funeral and testamentary and administration expenses AND I DIRECT that the duties payable by reason of my death in respect of the whole of my estate and in respect of any dutiable gifts made by me in my lifetime shall be paid in like manner as a debt due by me and shall not be apportioned.

(b) To stand possessed of my personal chattels as defined by Section 5 Sub-section (1) of the Administration and Probate Act 1958 for distribution in accordance with the wishes conveyed to my Trustee during my lifetime.

(c) To make the following bequests :

To WILLIAM NORMAN PERRATON the sum of FIVE HUNDRED DOLLARS ($500.00).

To VALERIE THOMAS the sum of FIVE HUNDRED DOLLARS ($500.00) and my diamond cluster earrings.

To SYDNEY ALLEN the sum of TWO THOUSAND DOLLARS ($2000.00).

To PETER ALLEN the sum of FOUR HUNDRED DOLLARS ($400.00).

To JOHN ALLEN the sum of FOUR HUNDRED DOLLARS ($400.00).

To DAVID ALLEN the sum of FOUR HUNDRED DOLLARS ($400.00).

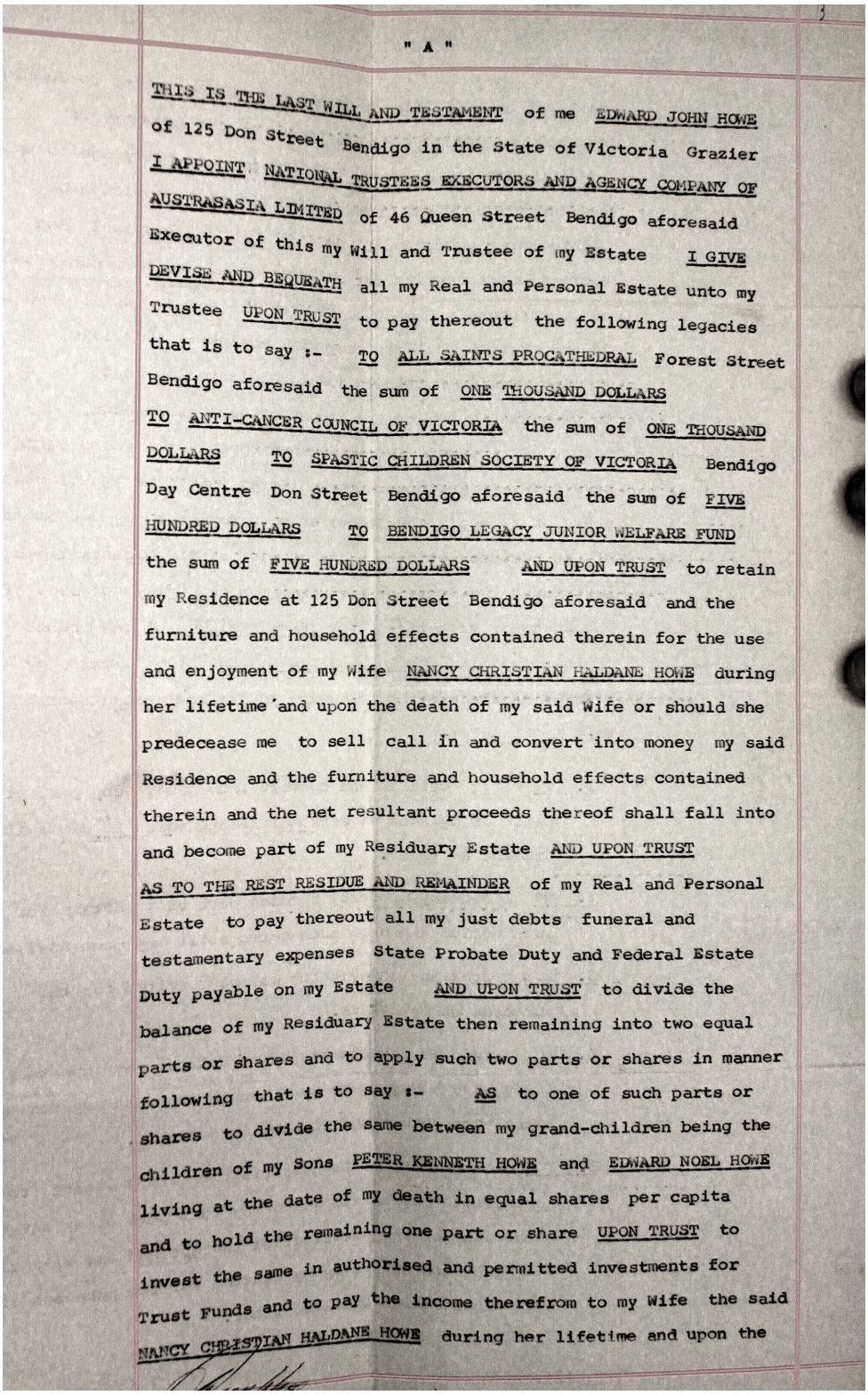
To BETTY NEY the sum of TWO THOUSAND DOLLARS ($2000.00).

To MAY DODD the sum of FIVE HUNDRED DOLLARS ($500.00).

(d) To stand possessed of the residue of my estate UPON TRUST to hold the same as a common fund in perpetuity (hereinafter referred to as the "Ethel Herman Charitable Trust") and to pay and apply the income thereof at such intervals

B.16 HOWE, Edward John - 31 October 1975

Will Extract – Page 1

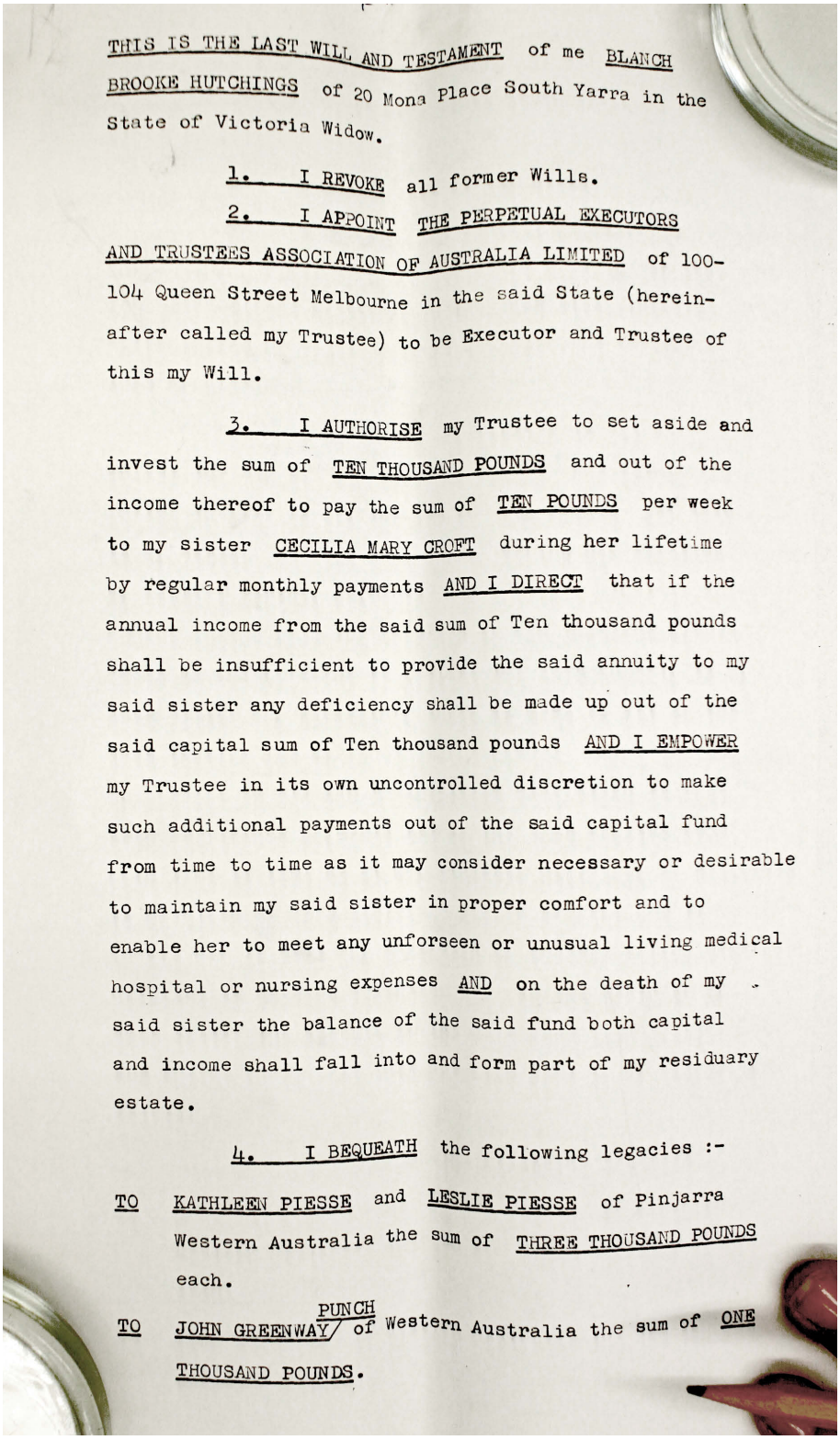


" A "

THIS IS THE LAST WILL AND TESTAMENT of me EDWARD JOHN HOWE of 125 Don Street Bendigo in the State of Victoria Grazier I APPOINT NATIONAL TRUSTEES EXECUTORS AND AGENCY COMPANY OF AUSTRASASIA LIMITED of 46 Queen Street Bendigo aforesaid Executor of this my Will and Trustee of my Estate I GIVE DEVISE AND BEQUEATH all my Real and Personal Estate unto my Trustee UPON TRUST to pay thereout the following legacies that is to say :- TO ALL SAINTS PROCATHEDRAL Forest Street Bendigo aforesaid the sum of ONE THOUSAND DOLLARS TO ANTI-CANCER COUNCIL OF VICTORIA the sum of ONE THOUSAND DOLLARS TO SPASTIC CHILDREN SOCIETY OF VICTORIA Bendigo Day Centre Don Street Bendigo aforesaid the sum of FIVE HUNDRED DOLLARS TO BENDIGO LEGACY JUNIOR WELFARE FUND the sum of FIVE HUNDRED DOLLARS AND UPON TRUST to retain my Residence at 125 Don Street Bendigo aforesaid and the furniture and household effects contained therein for the use and enjoyment of my Wife NANCY CHRISTIAN HALDANE HOWE during her lifetime and upon the death of my said Wife or should she predecease me to sell call in and convert into money my said Residence and the furniture and household effects contained therein and the net resultant proceeds thereof shall fall into and become part of my Residuary Estate AND UPON TRUST AS TO THE REST RESIDUE AND REMAINDER of my Real and Personal Estate to pay thereout all my just debts funeral and testamentary expenses State Probate Duty and Federal Estate Duty payable on my Estate AND UPON TRUST to divide the balance of my Residuary Estate then remaining into two equal parts or shares and to apply such two parts or shares in manner following that is to say :- AS to one of such parts or shares to divide the same between my grand-children being the children of my Sons PETER KENNETH HOWE and EDWARD NOEL HOWE living at the date of my death in equal shares per capita and to hold the remaining one part or share UPON TRUST to invest the same in authorised and permitted investments for Trust Funds and to pay the income therefrom to my Wife the said NANCY CHRISTIAN HALDANE HOWE during her lifetime and upon the

B.17 HUTCHINGS, Blanch - 24 July 1958

Will Extract – Page 1



THIS IS THE LAST WILL AND TESTAMENT of me BLANCH BROOKE HUTCHINGS of 20 Mona Place South Yarra in the State of Victoria Widow.

1. I REVOKE all former Wills.

2. I APPOINT THE PERPETUAL EXECUTORS AND TRUSTEES ASSOCIATION OF AUSTRALIA LIMITED of 100-104 Queen Street Melbourne in the said State (hereinafter called my Trustee) to be Executor and Trustee of this my Will.

3. I AUTHORISE my Trustee to set aside and invest the sum of TEN THOUSAND POUNDS and out of the income thereof to pay the sum of TEN POUNDS per week to my sister CECILIA MARY CROFT during her lifetime by regular monthly payments AND I DIRECT that if the annual income from the said sum of Ten thousand pounds shall be insufficient to provide the said annuity to my said sister any deficiency shall be made up out of the said capital sum of Ten thousand pounds AND I EMPOWER my Trustee in its own uncontrolled discretion to make such additional payments out of the said capital fund from time to time as it may consider necessary or desirable to maintain my said sister in proper comfort and to enable her to meet any unforseen or unusual living medical hospital or nursing expenses AND on the death of my said sister the balance of the said fund both capital and income shall fall into and form part of my residuary estate.

4. I BEQUEATH the following legacies :-

TO KATHLEEN PIESSE and LESLIE PIESSE of Pinjarra Western Australia the sum of THREE THOUSAND POUNDS each.

TO JOHN GREENWAY PUNCH of Western Australia the sum of ONE THOUSAND POUNDS.

B.18 IRWIN, Enid Campbell - 10 August 1994

Will Extract – Page 1

1125068 "B" 1/3

THIS IS THE LAST WILL AND TESTAMENT of me **ENID CAMPBELL IRWIN** of 2 Gascoyne Street Canterbury in the State of Victoria Gentlewoman.

1. **I REVOKE** all Wills and testamentary dispositions heretofore made by me **AND DECLARE** this to be my last Will.

2. **I APPOINT PERPETUAL TRUSTEES VICTORIA LIMITED** of 50 Queen Street Melbourne in the said State (hereinafter called "my Trustee") to be Executor of this my Will and sole Trustee of my Estate.

3. **I GIVE** the following bequests and legacies free of all duties:

   (a) all my jewellery and a legacy of ONE HUNDRED THOUSAND DOLLARS ($100,000) to **ANNE M KIRBY** (daughter of my cousin **RONA MARGARET LESTER**).

   (b) a legacy of ONE HUNDRED THOUSAND DOLLARS ($100,000) to each of them my cousins **MARION ESPIE PATMAN** and **RONA MARGARET LESTER** as survive me.

   (c) a legacy of FIFTEEN THOUSAND DOLLARS ($15,000) to **RONALD KEITH BRYANT** of 6 Blanche Avenue Parkdale in appreciation of his care and friendship over many years.

4. **SUBJECT AS AFORESAID I GIVE DEVISE AND BEQUEATH** all my real and personal Estate to my Trustee **UPON TRUST** in its discretion to retain my Estate in the same form of investment as it is at my death or to sell call in and convert the same into money at such time or times and in such manner and upon such terms and conditions as it thinks fit and after payment thereout of all my just debts funeral and testamentary expenses and all death duties and taxes of whatsoever nature payable in respect of my

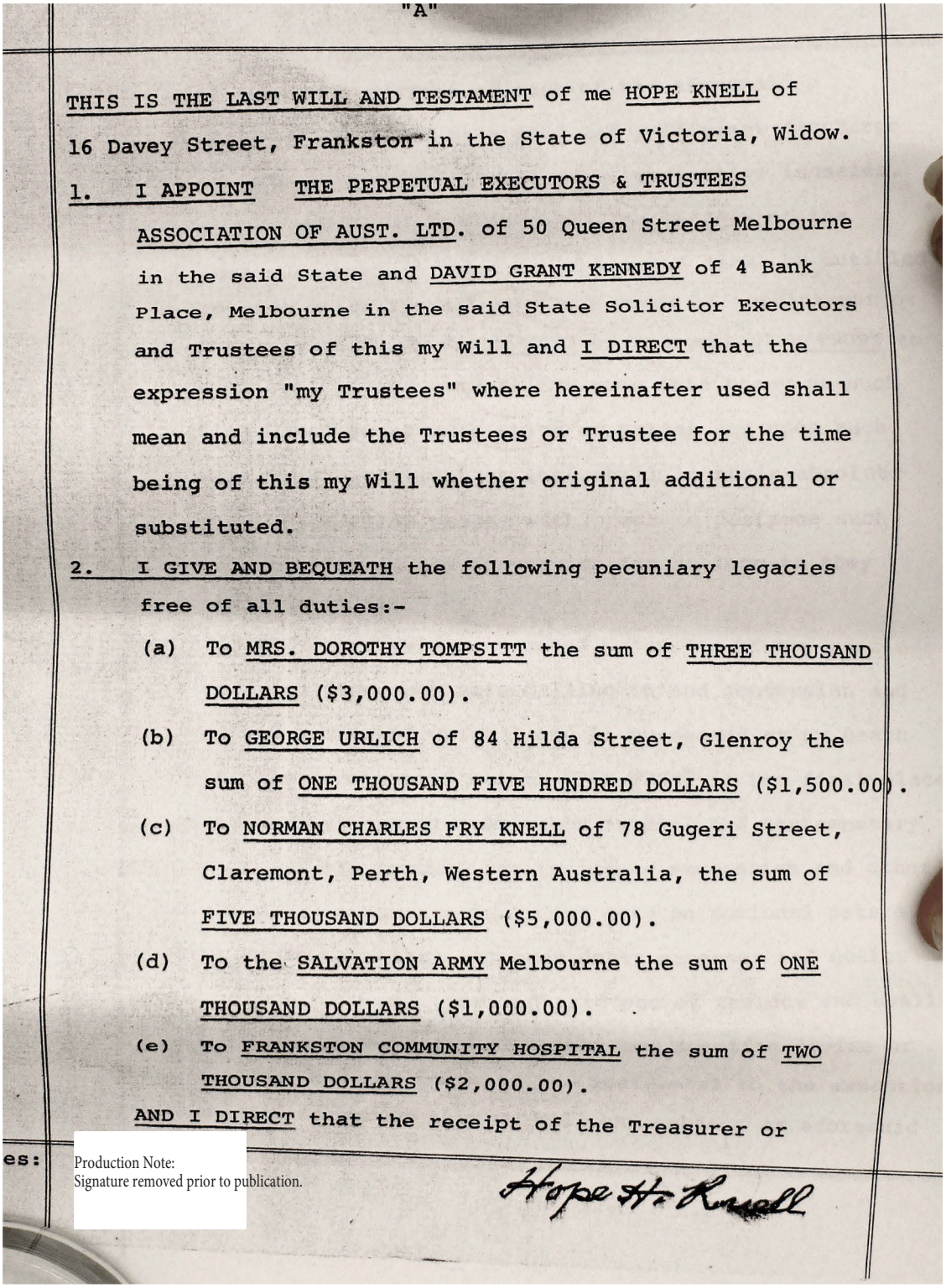
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B.19 KNELL, Hope - 10 March 1978

Will Extract – Page 1



"A"

THIS IS THE LAST WILL AND TESTAMENT of me HOPE KNELL of 16 Davey Street, Frankston in the State of Victoria, Widow.

1. I APPOINT THE PERPETUAL EXECUTORS & TRUSTEES ASSOCIATION OF AUST. LTD. of 50 Queen Street Melbourne in the said State and DAVID GRANT KENNEDY of 4 Bank Place, Melbourne in the said State Solicitor Executors and Trustees of this my Will and I DIRECT that the expression "my Trustees" where hereinafter used shall mean and include the Trustees or Trustee for the time being of this my Will whether original additional or substituted.

2. I GIVE AND BEQUEATH the following pecuniary legacies free of all duties:-

(a) To MRS. DOROTHY TOMPSITT the sum of THREE THOUSAND DOLLARS ($3,000.00).

(b) To GEORGE URLICH of 84 Hilda Street, Glenroy the sum of ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500.00).

(c) To NORMAN CHARLES FRY KNELL of 78 Gugeri Street, Claremont, Perth, Western Australia, the sum of FIVE THOUSAND DOLLARS ($5,000.00).

(d) To the SALVATION ARMY Melbourne the sum of ONE THOUSAND DOLLARS ($1,000.00).

(e) To FRANKSTON COMMUNITY HOSPITAL the sum of TWO THOUSAND DOLLARS ($2,000.00).

AND I DIRECT that the receipt of the Treasurer or

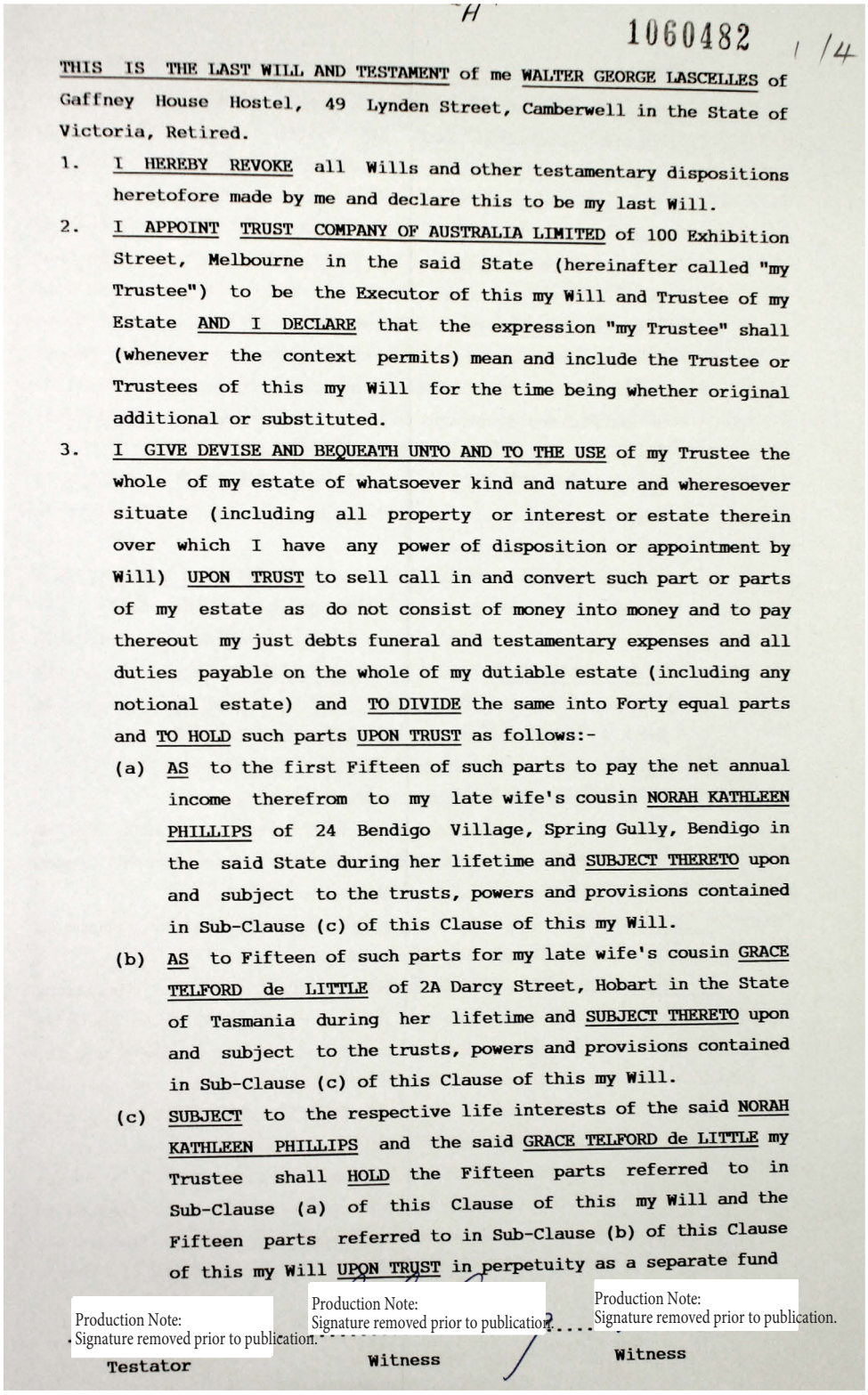
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Hope H. Knell

B.20 LASCELLES, Walter George - 2 March 1990

Will Extract – Page 1



H

1060482 1/4

THIS IS THE LAST WILL AND TESTAMENT of me WALTER GEORGE LASCELLES of Gaffney House Hostel, 49 Lynden Street, Camberwell in the State of Victoria, Retired.

1. I HEREBY REVOKE all Wills and other testamentary dispositions heretofore made by me and declare this to be my last Will.
2. I APPOINT TRUST COMPANY OF AUSTRALIA LIMITED of 100 Exhibition Street, Melbourne in the said State (hereinafter called "my Trustee") to be the Executor of this my Will and Trustee of my Estate AND I DECLARE that the expression "my Trustee" shall (whenever the context permits) mean and include the Trustee or Trustees of this my Will for the time being whether original additional or substituted.
3. I GIVE DEVISE AND BEQUEATH UNTO AND TO THE USE of my Trustee the whole of my estate of whatsoever kind and nature and wheresoever situate (including all property or interest or estate therein over which I have any power of disposition or appointment by Will) UPON TRUST to sell call in and convert such part or parts of my estate as do not consist of money into money and to pay thereout my just debts funeral and testamentary expenses and all duties payable on the whole of my dutiable estate (including any notional estate) and TO DIVIDE the same into Forty equal parts and TO HOLD such parts UPON TRUST as follows:-
   (a) AS to the first Fifteen of such parts to pay the net annual income therefrom to my late wife's cousin NORAH KATHLEEN PHILLIPS of 24 Bendigo Village, Spring Gully, Bendigo in the said State during her lifetime and SUBJECT THERETO upon and subject to the trusts, powers and provisions contained in Sub-Clause (c) of this Clause of this my Will.
   (b) AS to Fifteen of such parts for my late wife's cousin GRACE TELFORD de LITTLE of 2A Darcy Street, Hobart in the State of Tasmania during her lifetime and SUBJECT THERETO upon and subject to the trusts, powers and provisions contained in Sub-Clause (c) of this Clause of this my Will.
   (c) SUBJECT to the respective life interests of the said NORAH KATHLEEN PHILLIPS and the said GRACE TELFORD de LITTLE my Trustee shall HOLD the Fifteen parts referred to in Sub-Clause (a) of this Clause of this my Will and the Fifteen parts referred to in Sub-Clause (b) of this Clause of this my Will UPON TRUST in perpetuity as a separate fund

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Testator

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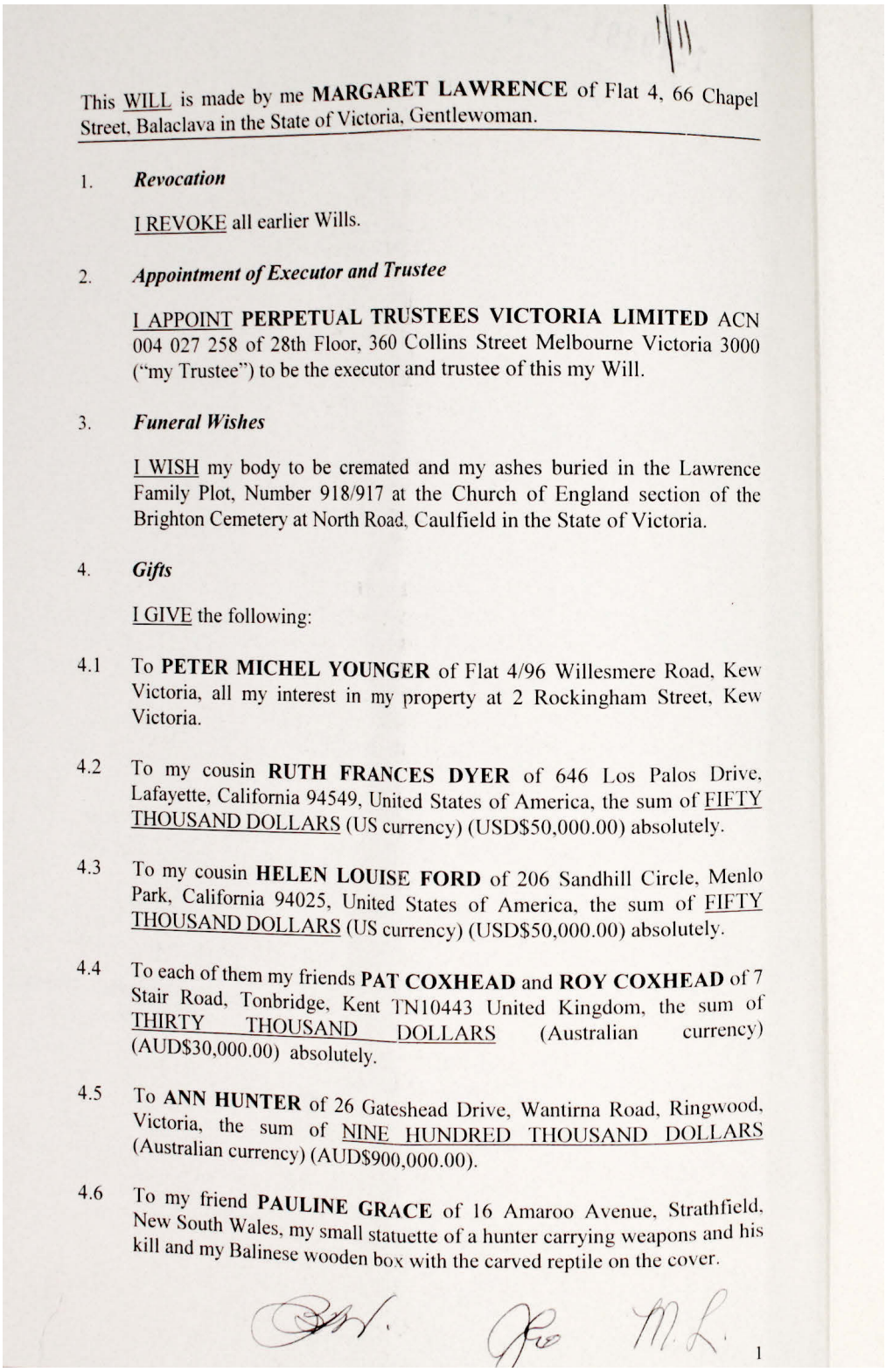
Witness

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Witness

B.21 LAWRENCE, Margaret - 17 September 2002

Will Extract – Page 1



This WILL is made by me **MARGARET LAWRENCE** of Flat 4, 66 Chapel Street, Balaclava in the State of Victoria, Gentlewoman.

1. ***Revocation***

I REVOKE all earlier Wills.

2. ***Appointment of Executor and Trustee***

I APPOINT **PERPETUAL TRUSTEES VICTORIA LIMITED** ACN 004 027 258 of 28th Floor, 360 Collins Street Melbourne Victoria 3000 ("my Trustee") to be the executor and trustee of this my Will.

3. ***Funeral Wishes***

I WISH my body to be cremated and my ashes buried in the Lawrence Family Plot, Number 918/917 at the Church of England section of the Brighton Cemetery at North Road, Caulfield in the State of Victoria.

4. ***Gifts***

I GIVE the following:

4.1 To **PETER MICHEL YOUNGER** of Flat 4/96 Willesmere Road, Kew Victoria, all my interest in my property at 2 Rockingham Street, Kew Victoria.

4.2 To my cousin **RUTH FRANCES DYER** of 646 Los Palos Drive, Lafayette, California 94549, United States of America, the sum of FIFTY THOUSAND DOLLARS (US currency) (USD$50,000.00) absolutely.

4.3 To my cousin **HELEN LOUISE FORD** of 206 Sandhill Circle, Menlo Park, California 94025, United States of America, the sum of FIFTY THOUSAND DOLLARS (US currency) (USD$50,000.00) absolutely.

4.4 To each of them my friends **PAT COXHEAD** and **ROY COXHEAD** of 7 Stair Road, Tonbridge, Kent TN10443 United Kingdom, the sum of THIRTY THOUSAND DOLLARS (Australian currency) (AUD$30,000.00) absolutely.

4.5 To **ANN HUNTER** of 26 Gateshead Drive, Wantirna Road, Ringwood, Victoria, the sum of NINE HUNDRED THOUSAND DOLLARS (Australian currency) (AUD$900,000.00).

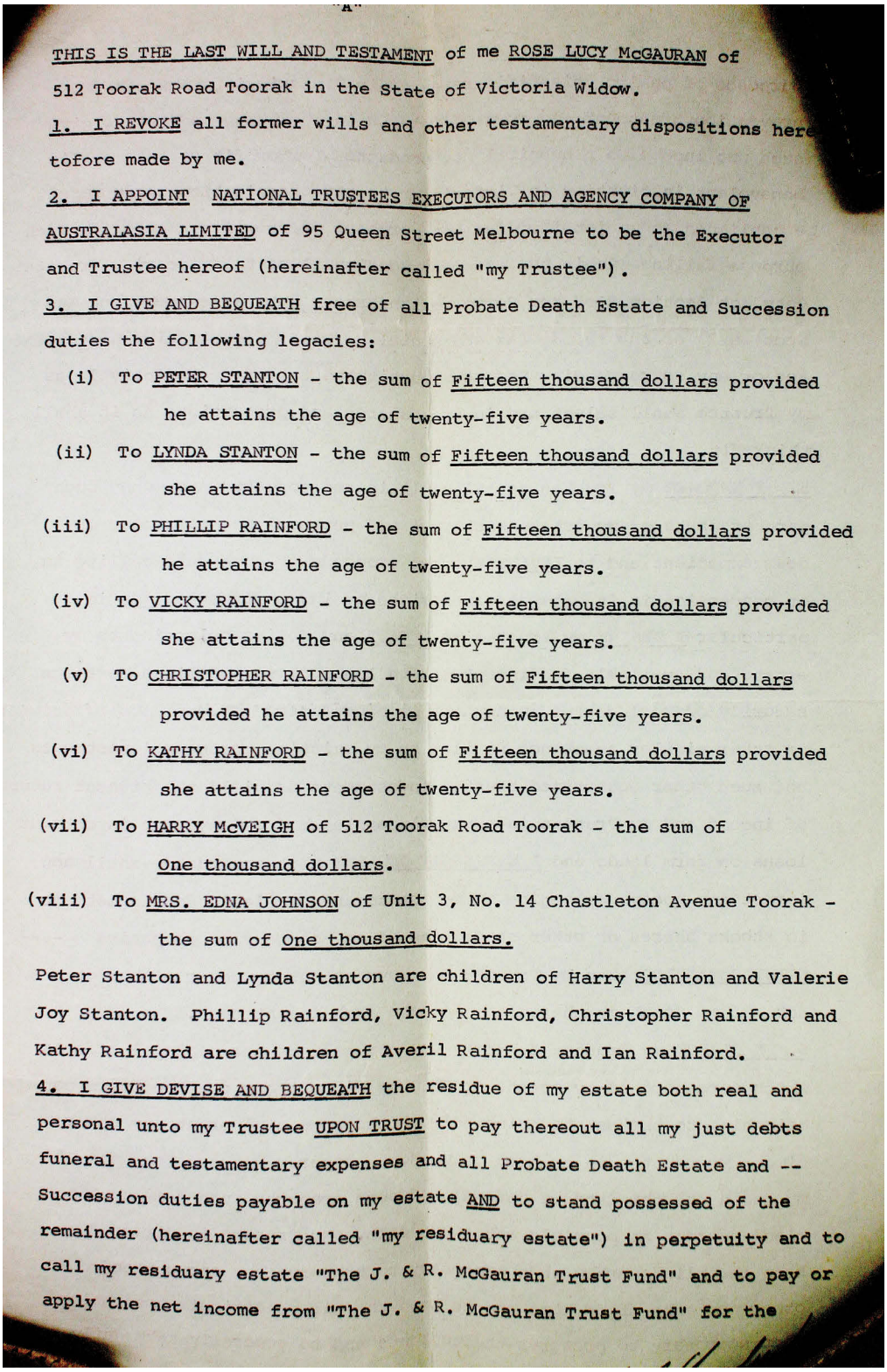
4.6 To my friend **PAULINE GRACE** of 16 Amaroo Avenue, Strathfield, New South Wales, my small statuette of a hunter carrying weapons and his kill and my Balinese wooden box with the carved reptile on the cover.

M.L.

1

B.22 McGAUREN, Rose Lucy - 4 April 1974

Will Extract – Page 1



"A"

THIS IS THE LAST WILL AND TESTAMENT of me ROSE LUCY McGAURAN of 512 Toorak Road Toorak in the State of Victoria Widow.

1. I REVOKE all former wills and other testamentary dispositions here tofore made by me.

2. I APPOINT NATIONAL TRUSTEES EXECUTORS AND AGENCY COMPANY OF AUSTRALASIA LIMITED of 95 Queen Street Melbourne to be the Executor and Trustee hereof (hereinafter called "my Trustee").

3. I GIVE AND BEQUEATH free of all Probate Death Estate and Succession duties the following legacies:

(i) To PETER STANTON - the sum of Fifteen thousand dollars provided he attains the age of twenty-five years.

(ii) To LYNDA STANTON - the sum of Fifteen thousand dollars provided she attains the age of twenty-five years.

(iii) To PHILLIP RAINFORD - the sum of Fifteen thousand dollars provided he attains the age of twenty-five years.

(iv) To VICKY RAINFORD - the sum of Fifteen thousand dollars provided she attains the age of twenty-five years.

(v) To CHRISTOPHER RAINFORD - the sum of Fifteen thousand dollars provided he attains the age of twenty-five years.

(vi) To KATHY RAINFORD - the sum of Fifteen thousand dollars provided she attains the age of twenty-five years.

(vii) To HARRY McVEIGH of 512 Toorak Road Toorak - the sum of One thousand dollars.

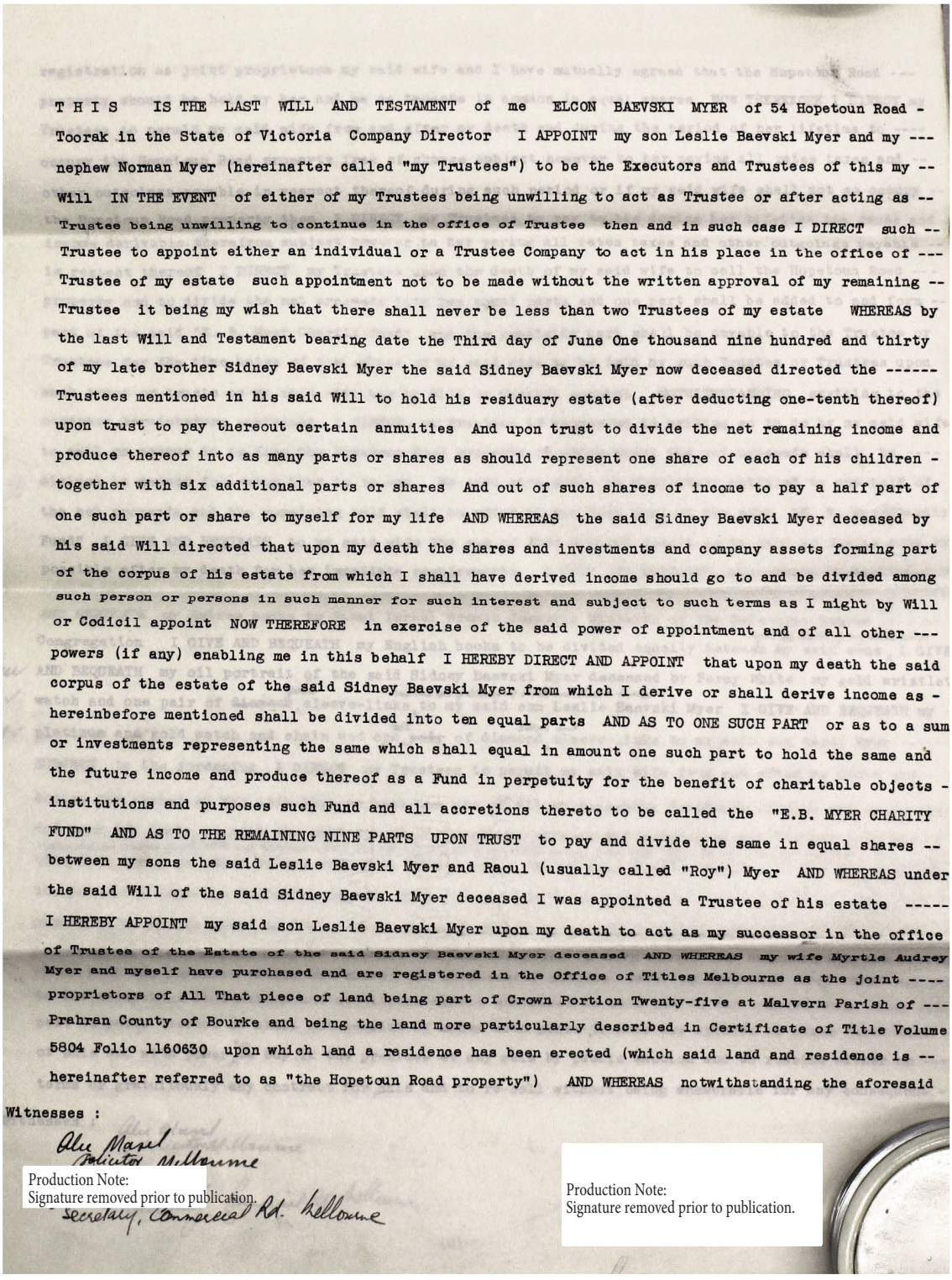
(viii) To MRS. EDNA JOHNSON of Unit 3, No. 14 Chastleton Avenue Toorak - the sum of One thousand dollars.

Peter Stanton and Lynda Stanton are children of Harry Stanton and Valerie Joy Stanton. Phillip Rainford, Vicky Rainford, Christopher Rainford and Kathy Rainford are children of Averil Rainford and Ian Rainford.

4. I GIVE DEVISE AND BEQUEATH the residue of my estate both real and personal unto my Trustee UPON TRUST to pay thereout all my just debts funeral and testamentary expenses and all Probate Death Estate and -- Succession duties payable on my estate AND to stand possessed of the remainder (hereinafter called "my residuary estate") in perpetuity and to call my residuary estate "The J. & R. McGauran Trust Fund" and to pay or apply the net income from "The J. & R. McGauran Trust Fund" for the

B.23 MYER, Elkon Baevski - 28 October 1937

Will Extract – Page 1



THIS IS THE LAST WILL AND TESTAMENT of me ELCON BAEVSKI MYER of 54 Hopetoun Road - Toorak in the State of Victoria Company Director I APPOINT my son Leslie Baevski Myer and my --- nephew Norman Myer (hereinafter called "my Trustees") to be the Executors and Trustees of this my -- Will IN THE EVENT of either of my Trustees being unwilling to act as Trustee or after acting as -- Trustee being unwilling to continue in the office of Trustee then and in such case I DIRECT such -- Trustee to appoint either an individual or a Trustee Company to act in his place in the office of --- Trustee of my estate such appointment not to be made without the written approval of my remaining -- Trustee it being my wish that there shall never be less than two Trustees of my estate WHEREAS by the last Will and Testament bearing date the Third day of June One thousand nine hundred and thirty of my late brother Sidney Baevski Myer the said Sidney Baevski Myer now deceased directed the ------ Trustees mentioned in his said Will to hold his residuary estate (after deducting one-tenth thereof) upon trust to pay thereout certain annuities And upon trust to divide the net remaining income and produce thereof into as many parts or shares as should represent one share of each of his children - together with six additional parts or shares And out of such shares of income to pay a half part of one such part or share to myself for my life AND WHEREAS the said Sidney Baevski Myer deceased by his said Will directed that upon my death the shares and investments and company assets forming part of the corpus of his estate from which I shall have derived income should go to and be divided among such person or persons in such manner for such interest and subject to such terms as I might by Will or Codicil appoint NOW THEREFORE in exercise of the said power of appointment and of all other --- powers (if any) enabling me in this behalf I HEREBY DIRECT AND APPOINT that upon my death the said corpus of the estate of the said Sidney Baevski Myer from which I derive or shall derive income as - hereinbefore mentioned shall be divided into ten equal parts AND AS TO ONE SUCH PART or as to a sum or investments representing the same which shall equal in amount one such part to hold the same and the future income and produce thereof as a Fund in perpetuity for the benefit of charitable objects - institutions and purposes such Fund and all accretions thereto to be called the "E.B. MYER CHARITY FUND" AND AS TO THE REMAINING NINE PARTS UPON TRUST to pay and divide the same in equal shares -- between my sons the said Leslie Baevski Myer and Raoul (usually called "Roy") Myer AND WHEREAS under the said Will of the said Sidney Baevski Myer deceased I was appointed a Trustee of his estate ----- I HEREBY APPOINT my said son Leslie Baevski Myer upon my death to act as my successor in the office of Trustee of the Estate of the said Sidney Baevski Myer deceased AND WHEREAS my wife Myrtle Audrey Myer and myself have purchased and are registered in the Office of Titles Melbourne as the joint ---- proprietors of All That piece of land being part of Crown Portion Twenty-five at Malvern Parish of --- Prahran County of Bourke and being the land more particularly described in Certificate of Title Volume 5804 Folio 1160630 upon which land a residence has been erected (which said land and residence is -- hereinafter referred to as "the Hopetoun Road property") AND WHEREAS notwithstanding the aforesaid

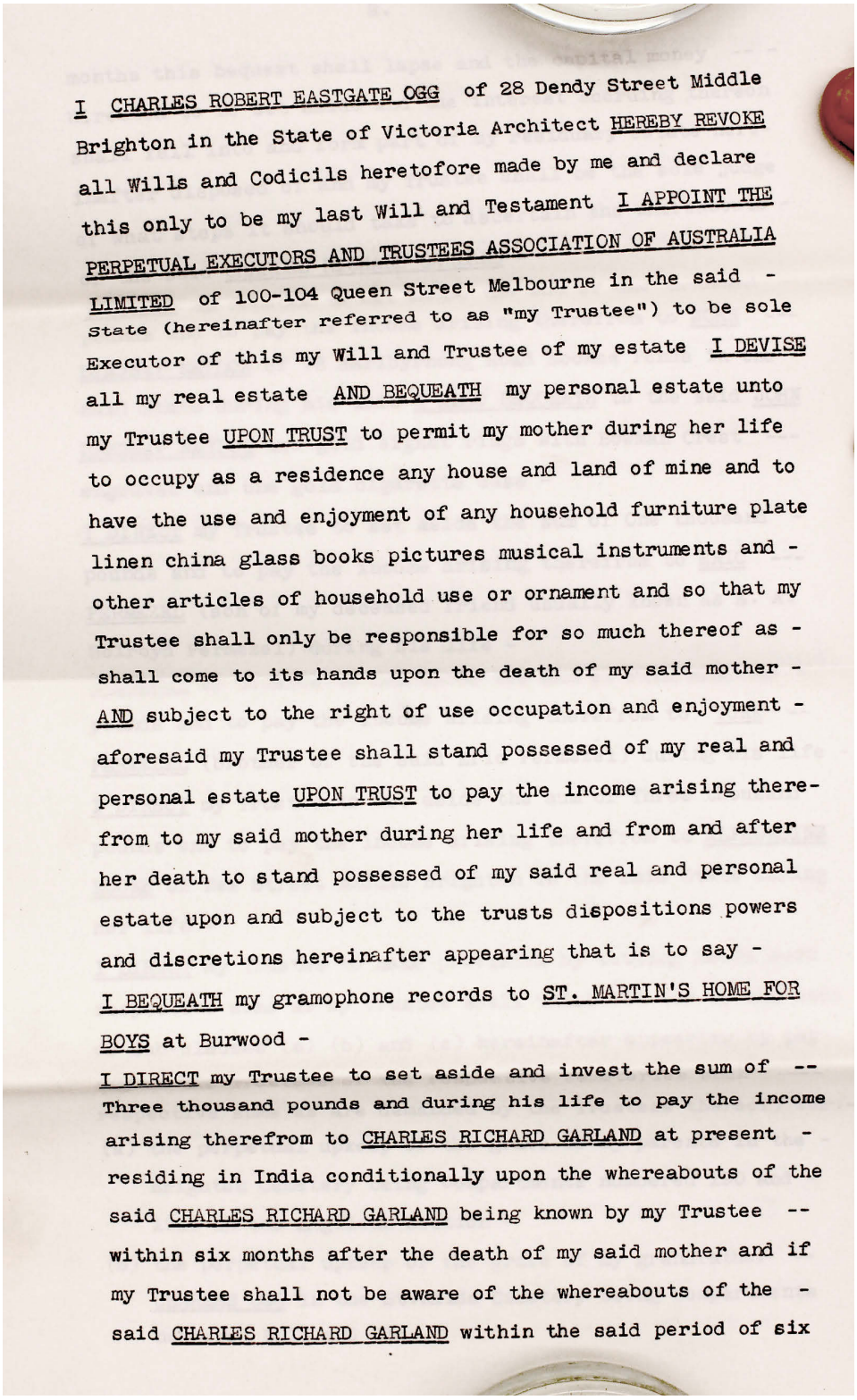
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B.24 OGG, Charles - 30 June 1940

Will Extract – Page 1



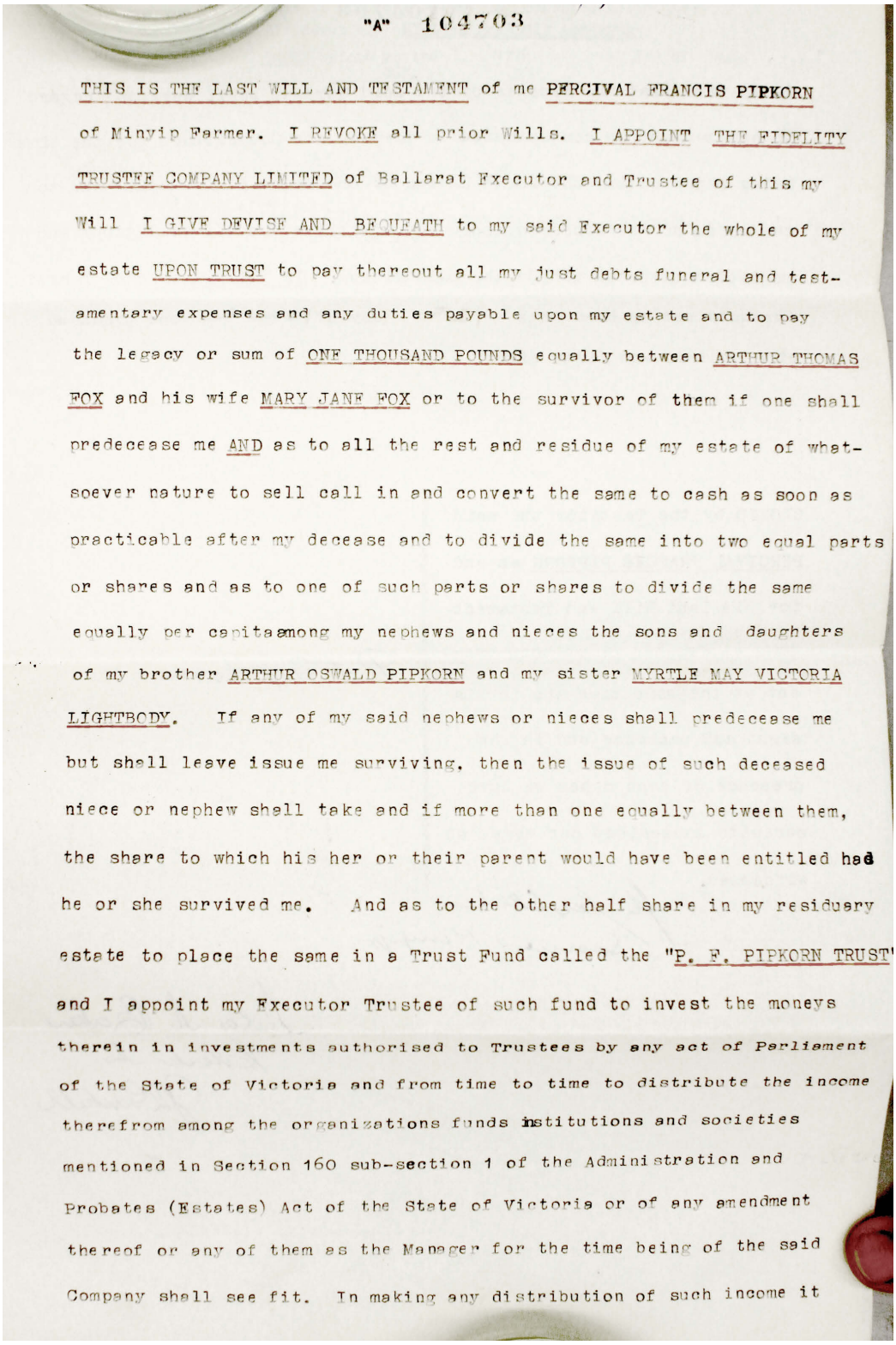
I CHARLES ROBERT EASTGATE OGG of 28 Dendy Street Middle Brighton in the State of Victoria Architect HEREBY REVOKE all Wills and Codicils heretofore made by me and declare this only to be my last Will and Testament I APPOINT THE PERPETUAL EXECUTORS AND TRUSTEES ASSOCIATION OF AUSTRALIA LIMITED of 100-104 Queen Street Melbourne in the said - State (hereinafter referred to as "my Trustee") to be sole Executor of this my Will and Trustee of my estate I DEVISE all my real estate AND BEQUEATH my personal estate unto my Trustee UPON TRUST to permit my mother during her life to occupy as a residence any house and land of mine and to have the use and enjoyment of any household furniture plate linen china glass books pictures musical instruments and - other articles of household use or ornament and so that my Trustee shall only be responsible for so much thereof as - shall come to its hands upon the death of my said mother - AND subject to the right of use occupation and enjoyment - aforesaid my Trustee shall stand possessed of my real and personal estate UPON TRUST to pay the income arising therefrom to my said mother during her life and from and after her death to stand possessed of my said real and personal estate upon and subject to the trusts dispositions powers and discretions hereinafter appearing that is to say -

I BEQUEATH my gramophone records to ST. MARTIN'S HOME FOR BOYS at Burwood -

I DIRECT my Trustee to set aside and invest the sum of -- Three thousand pounds and during his life to pay the income arising therefrom to CHARLES RICHARD GARLAND at present - residing in India conditionally upon the whereabouts of the said CHARLES RICHARD GARLAND being known by my Trustee -- within six months after the death of my said mother and if my Trustee shall not be aware of the whereabouts of the - said CHARLES RICHARD GARLAND within the said period of six

B.25 PIPKORN, Percival - 12 March 1958

Will Extract – Page 1

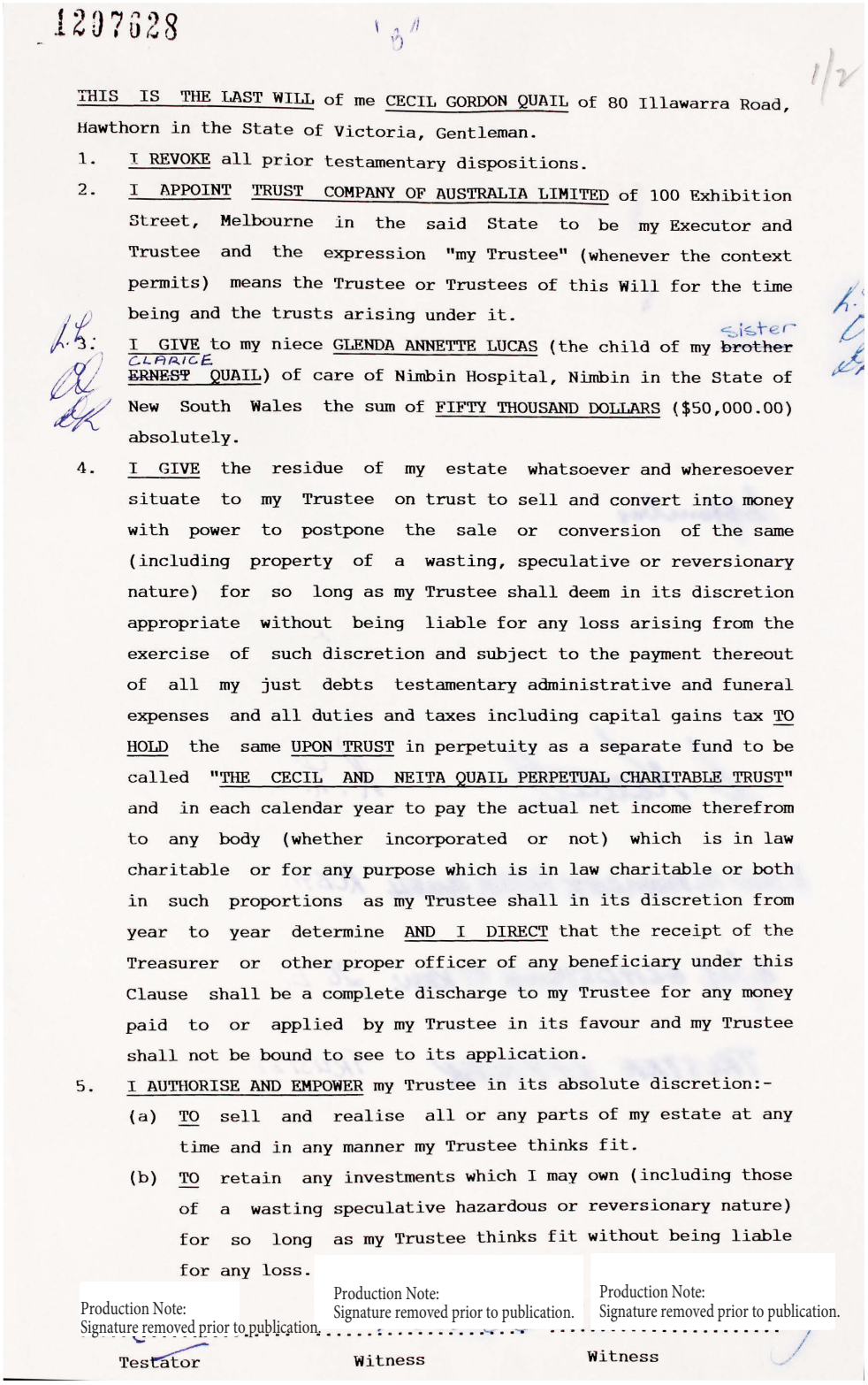


"A" 104703

THIS IS THE LAST WILL AND TESTAMENT of me PERCIVAL FRANCIS PIPKORN of Minyip Farmer. I REVOKE all prior Wills. I APPOINT THE FIDELITY TRUSTEE COMPANY LIMITED of Ballarat Executor and Trustee of this my Will I GIVE DEVISE AND BEQUEATH to my said Executor the whole of my estate UPON TRUST to pay thereout all my just debts funeral and testamentary expenses and any duties payable upon my estate and to pay the legacy or sum of ONE THOUSAND POUNDS equally between ARTHUR THOMAS FOX and his wife MARY JANE FOX or to the survivor of them if one shall predecease me AND as to all the rest and residue of my estate of whatsoever nature to sell call in and convert the same to cash as soon as practicable after my decease and to divide the same into two equal parts or shares and as to one of such parts or shares to divide the same equally per capita among my nephews and nieces the sons and daughters of my brother ARTHUR OSWALD PIPKORN and my sister MYRTLE MAY VICTORIA LIGHTBODY. If any of my said nephews or nieces shall predecease me but shall leave issue me surviving, then the issue of such deceased niece or nephew shall take and if more than one equally between them, the share to which his her or their parent would have been entitled had he or she survived me. And as to the other half share in my residuary estate to place the same in a Trust Fund called the "P. F. PIPKORN TRUST" and I appoint my Executor Trustee of such fund to invest the moneys therein in investments authorised to Trustees by any act of Parliament of the State of Victoria and from time to time to distribute the income therefrom among the organizations funds institutions and societies mentioned in Section 160 sub-section 1 of the Administration and Probates (Estates) Act of the State of Victoria or of any amendment thereof or any of them as the Manager for the time being of the said Company shall see fit. In making any distribution of such income it

B.26 QUAIL, Cecil Gordon - 18 September 1990

Will Extract – Page 1



1207628

"B"

THIS IS THE LAST WILL of me CECIL GORDON QUAIL of 80 Illawarra Road, Hawthorn in the State of Victoria, Gentleman.

1. I REVOKE all prior testamentary dispositions.
2. I APPOINT TRUST COMPANY OF AUSTRALIA LIMITED of 100 Exhibition Street, Melbourne in the said State to be my Executor and Trustee and the expression "my Trustee" (whenever the context permits) means the Trustee or Trustees of this Will for the time being and the trusts arising under it.
3. I GIVE to my niece GLENDA ANNETTE LUCAS (the child of my ~~brother~~ sister ~~ERNEST~~ CLARICE QUAIL) of care of Nimbin Hospital, Nimbin in the State of New South Wales the sum of FIFTY THOUSAND DOLLARS ($50,000.00) absolutely.
4. I GIVE the residue of my estate whatsoever and wheresoever situate to my Trustee on trust to sell and convert into money with power to postpone the sale or conversion of the same (including property of a wasting, speculative or reversionary nature) for so long as my Trustee shall deem in its discretion appropriate without being liable for any loss arising from the exercise of such discretion and subject to the payment thereout of all my just debts testamentary administrative and funeral expenses and all duties and taxes including capital gains tax TO HOLD the same UPON TRUST in perpetuity as a separate fund to be called "THE CECIL AND NEITA QUAIL PERPETUAL CHARITABLE TRUST" and in each calendar year to pay the actual net income therefrom to any body (whether incorporated or not) which is in law charitable or for any purpose which is in law charitable or both in such proportions as my Trustee shall in its discretion from year to year determine AND I DIRECT that the receipt of the Treasurer or other proper officer of any beneficiary under this Clause shall be a complete discharge to my Trustee for any money paid to or applied by my Trustee in its favour and my Trustee shall not be bound to see to its application.
5. I AUTHORISE AND EMPOWER my Trustee in its absolute discretion:-
   (a) TO sell and realise all or any parts of my estate at any time and in any manner my Trustee thinks fit.
   (b) TO retain any investments which I may own (including those of a wasting speculative hazardous or reversionary nature) for so long as my Trustee thinks fit without being liable for any loss.

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Testator

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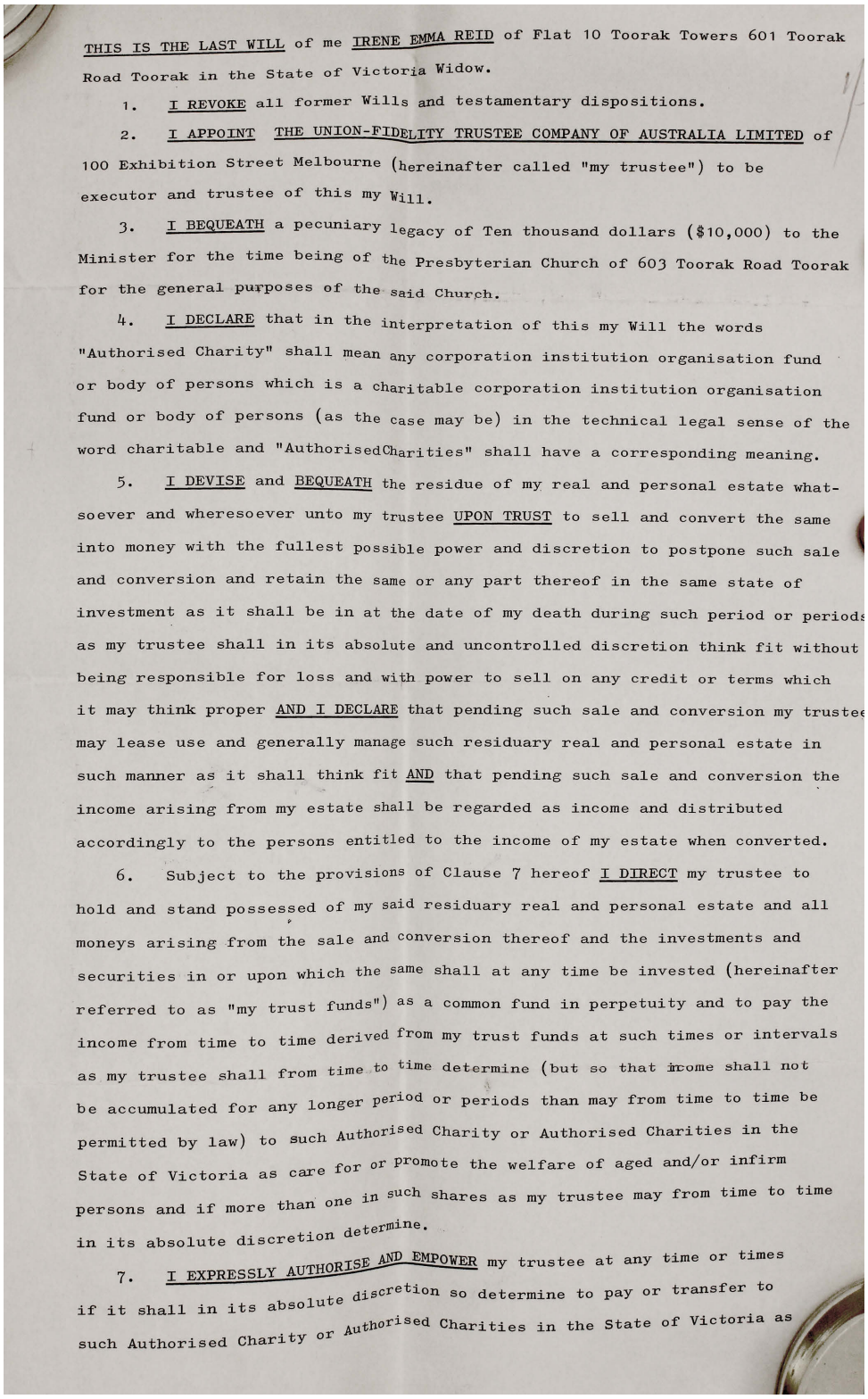
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Witness

B.27 REID, Irene Emma - 8 September 1972

Will Extract – Page 1



THIS IS THE LAST WILL of me IRENE EMMA REID of Flat 10 Toorak Towers 601 Toorak Road Toorak in the State of Victoria Widow.

1. I REVOKE all former Wills and testamentary dispositions.

2. I APPOINT THE UNION-FIDELITY TRUSTEE COMPANY OF AUSTRALIA LIMITED of 100 Exhibition Street Melbourne (hereinafter called "my trustee") to be executor and trustee of this my Will.

3. I BEQUEATH a pecuniary legacy of Ten thousand dollars ($10,000) to the Minister for the time being of the Presbyterian Church of 603 Toorak Road Toorak for the general purposes of the said Church.

4. I DECLARE that in the interpretation of this my Will the words "Authorised Charity" shall mean any corporation institution organisation fund or body of persons which is a charitable corporation institution organisation fund or body of persons (as the case may be) in the technical legal sense of the word charitable and "AuthorisedCharities" shall have a corresponding meaning.

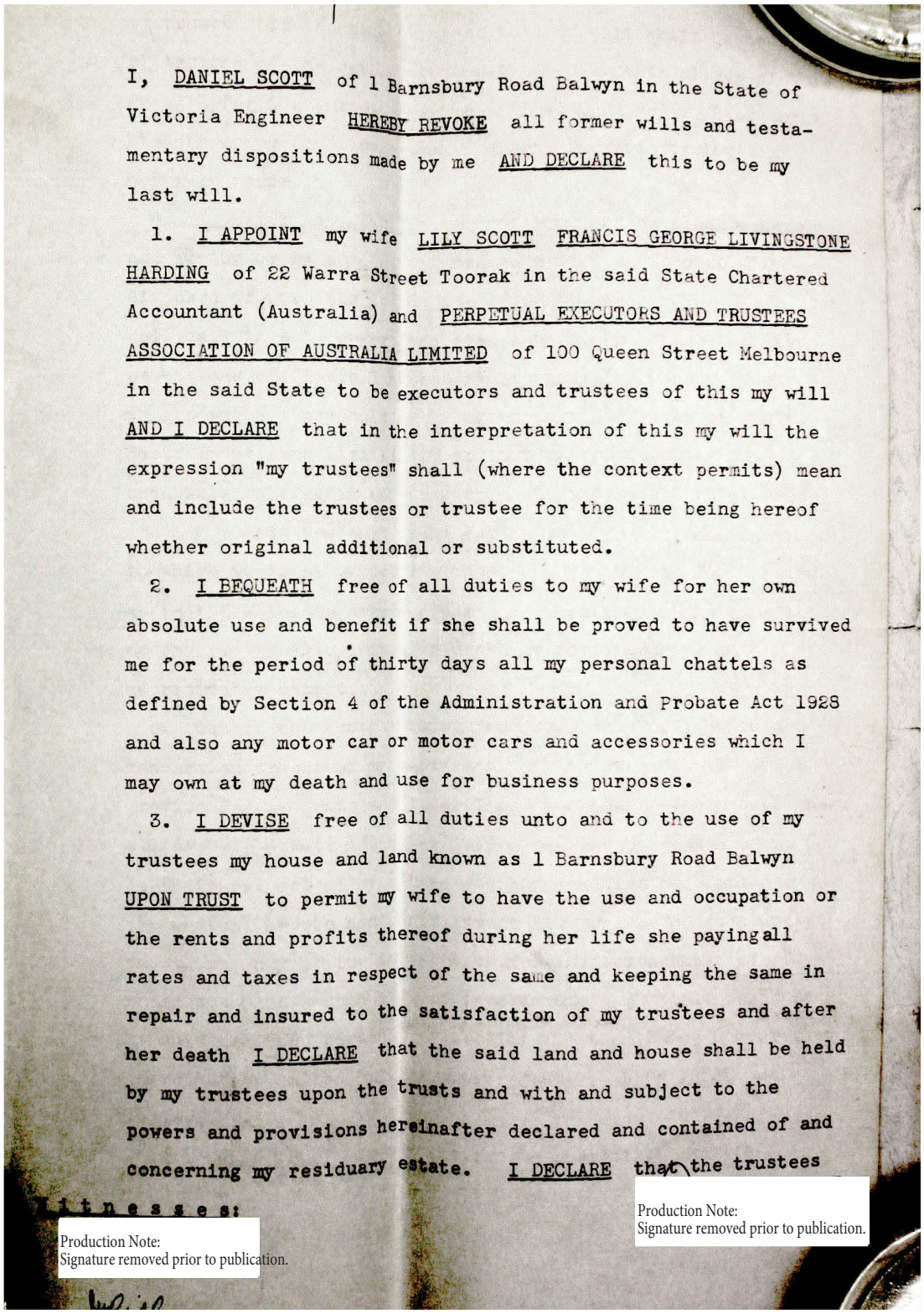
5. I DEVISE and BEQUEATH the residue of my real and personal estate whatsoever and wheresoever unto my trustee UPON TRUST to sell and convert the same into money with the fullest possible power and discretion to postpone such sale and conversion and retain the same or any part thereof in the same state of investment as it shall be in at the date of my death during such period or periods as my trustee shall in its absolute and uncontrolled discretion think fit without being responsible for loss and with power to sell on any credit or terms which it may think proper AND I DECLARE that pending such sale and conversion my trustee may lease use and generally manage such residuary real and personal estate in such manner as it shall think fit AND that pending such sale and conversion the income arising from my estate shall be regarded as income and distributed accordingly to the persons entitled to the income of my estate when converted.

6. Subject to the provisions of Clause 7 hereof I DIRECT my trustee to hold and stand possessed of my said residuary real and personal estate and all moneys arising from the sale and conversion thereof and the investments and securities in or upon which the same shall at any time be invested (hereinafter referred to as "my trust funds") as a common fund in perpetuity and to pay the income from time to time derived from my trust funds at such times or intervals as my trustee shall from time to time determine (but so that income shall not be accumulated for any longer period or periods than may from time to time be permitted by law) to such Authorised Charity or Authorised Charities in the State of Victoria as care for or promote the welfare of aged and/or infirm persons and if more than one in such shares as my trustee may from time to time in its absolute discretion determine.

7. I EXPRESSLY AUTHORISE AND EMPOWER my trustee at any time or times if it shall in its absolute discretion so determine to pay or transfer to such Authorised Charity or Authorised Charities in the State of Victoria as

B.28 SCOTT, Daniel - 10 November 1954

Will Extract – Page 1



I, DANIEL SCOTT of 1 Barnsbury Road Balwyn in the State of Victoria Engineer HEREBY REVOKE all former wills and testamentary dispositions made by me AND DECLARE this to be my last will.

1. I APPOINT my wife LILY SCOTT FRANCIS GEORGE LIVINGSTONE HARDING of 22 Warra Street Toorak in the said State Chartered Accountant (Australia) and PERPETUAL EXECUTORS AND TRUSTEES ASSOCIATION OF AUSTRALIA LIMITED of 100 Queen Street Melbourne in the said State to be executors and trustees of this my will AND I DECLARE that in the interpretation of this my will the expression "my trustees" shall (where the context permits) mean and include the trustees or trustee for the time being hereof whether original additional or substituted.

2. I BEQUEATH free of all duties to my wife for her own absolute use and benefit if she shall be proved to have survived me for the period of thirty days all my personal chattels as defined by Section 4 of the Administration and Probate Act 1928 and also any motor car or motor cars and accessories which I may own at my death and use for business purposes.

3. I DEVISE free of all duties unto and to the use of my trustees my house and land known as 1 Barnsbury Road Balwyn UPON TRUST to permit my wife to have the use and occupation or the rents and profits thereof during her life she paying all rates and taxes in respect of the same and keeping the same in repair and insured to the satisfaction of my trustees and after her death I DECLARE that the said land and house shall be held by my trustees upon the trusts and with and subject to the powers and provisions hereinafter declared and contained of and concerning my residuary estate. I DECLARE that the trustees

Witnesses:

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B.29 TENNANT, Edith - 2 September 2000

Will Extract – Page 1

"PS-2"

THIS IS THE LAST WILL AND TESTAMENT of me **EDITH GRIZELDA GASTINEAU TENNENT** of 45/23 Maleela Street, Balwyn in the State of Victoria Retired.

1. **I HEREBY REVOKE** all prior testamentary acts.
2. **I APPOINT TRUST COMPANY OF AUSTRALIA LIMITED** A.C.N. 004 027 749 OF 151 Rathdowne Street, Carlton South in the said State to be the Executor and Trustee of this my Will ("my Trustee").
3. **I GIVE** the following free of duties and taxes:

   01 **TO** my cousin **PHILLIPPA WILSON** my sketch portrait of my grandmother Edith Jessie Tennent.

   02 **TO** my cousin **NOREEN STREET** of 31 Petworth Avenue, Goring-by-sea, Worthing BN12-4QL, West Sussex, England, my small silver jug marked "Edith", my silver tea caddy, my pearl-set star brooch, my 5 ruby and pearl ring, my gold necklace (1/2" wide), my gold 2 strand twisted rope necklace, my single diamond gold ring with diamond shoulders, and all other jewellery, including costume jewellery, for her own use or to distribute to family members as she thinks fit.

   03 **TO** my cousin **SHEILA LIDSTER** of 4 Micklebring Lane, Braithwell, Rotherham, South Yorkshire S66 7AS England my three hand painted cups.

   04 **TO** my cousin **KATHLEEN GROSART** of 42 Bennett Road, Four Oaks, Sutton Coalfield, West Midlands B74 4TH England my three blue and gold cups.

   05 **TO ROSE TENNENT** of 10 Davidson Street, Rotorua, North Island, New Zealand my gold pearl-set flower pendant with pearl set chain.

   06 **TO** my friend **MARGARET ELIZABETH GREIG** of 2/13/201 Spring Street, Melbourne my small round tapestry footstool.

   07 **TO** my friend **LOIS RICHARDS** of 18 Second Street, Black Rock my

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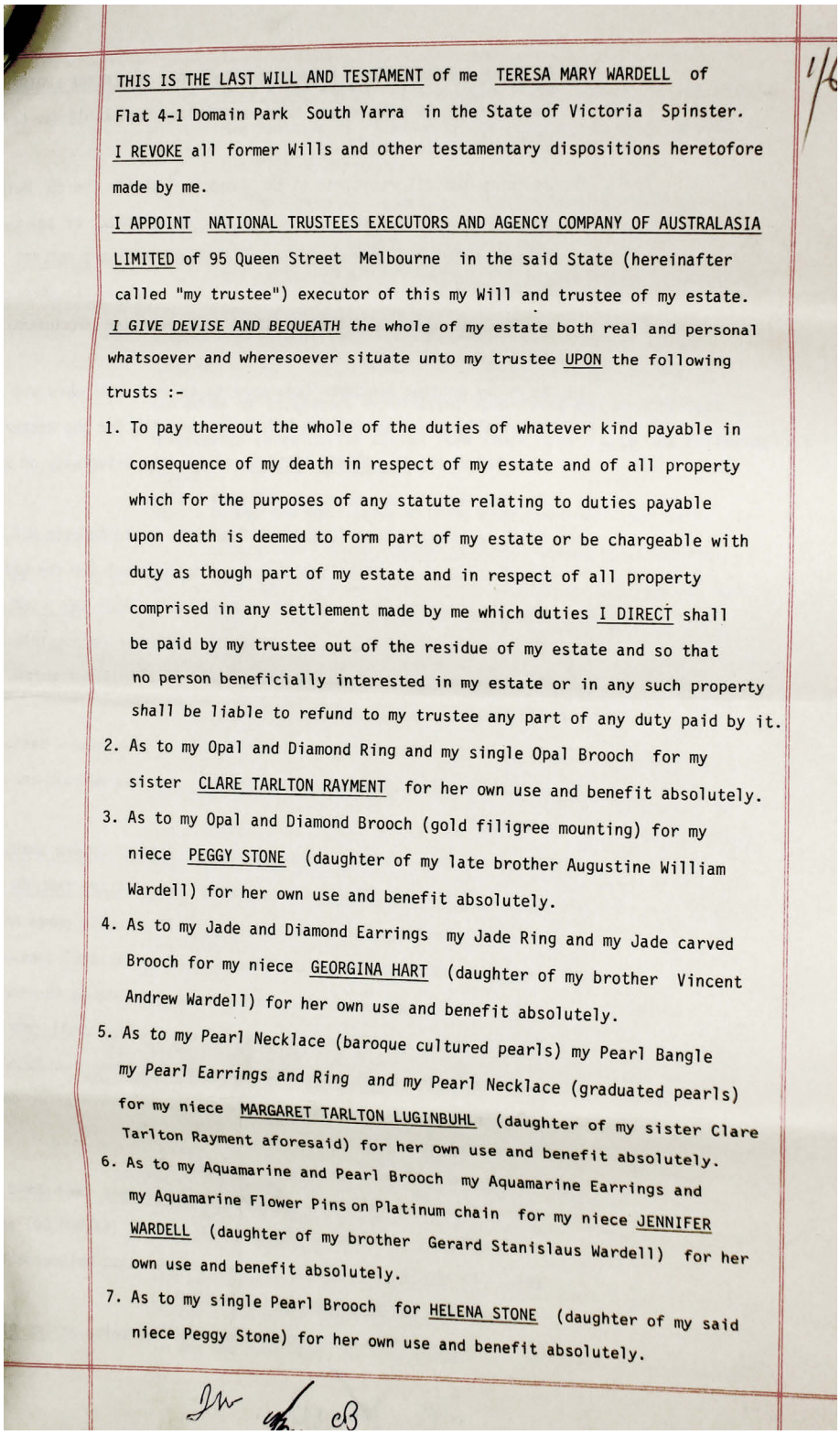
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(Willmaker) (Witness) (Witness)

B.30 WARDELL, Teresa - 28 September 1983

Will Extract – Page 1



THIS IS THE LAST WILL AND TESTAMENT of me TERESA MARY WARDELL of Flat 4-1 Domain Park South Yarra in the State of Victoria Spinster.

I REVOKE all former Wills and other testamentary dispositions heretofore made by me.

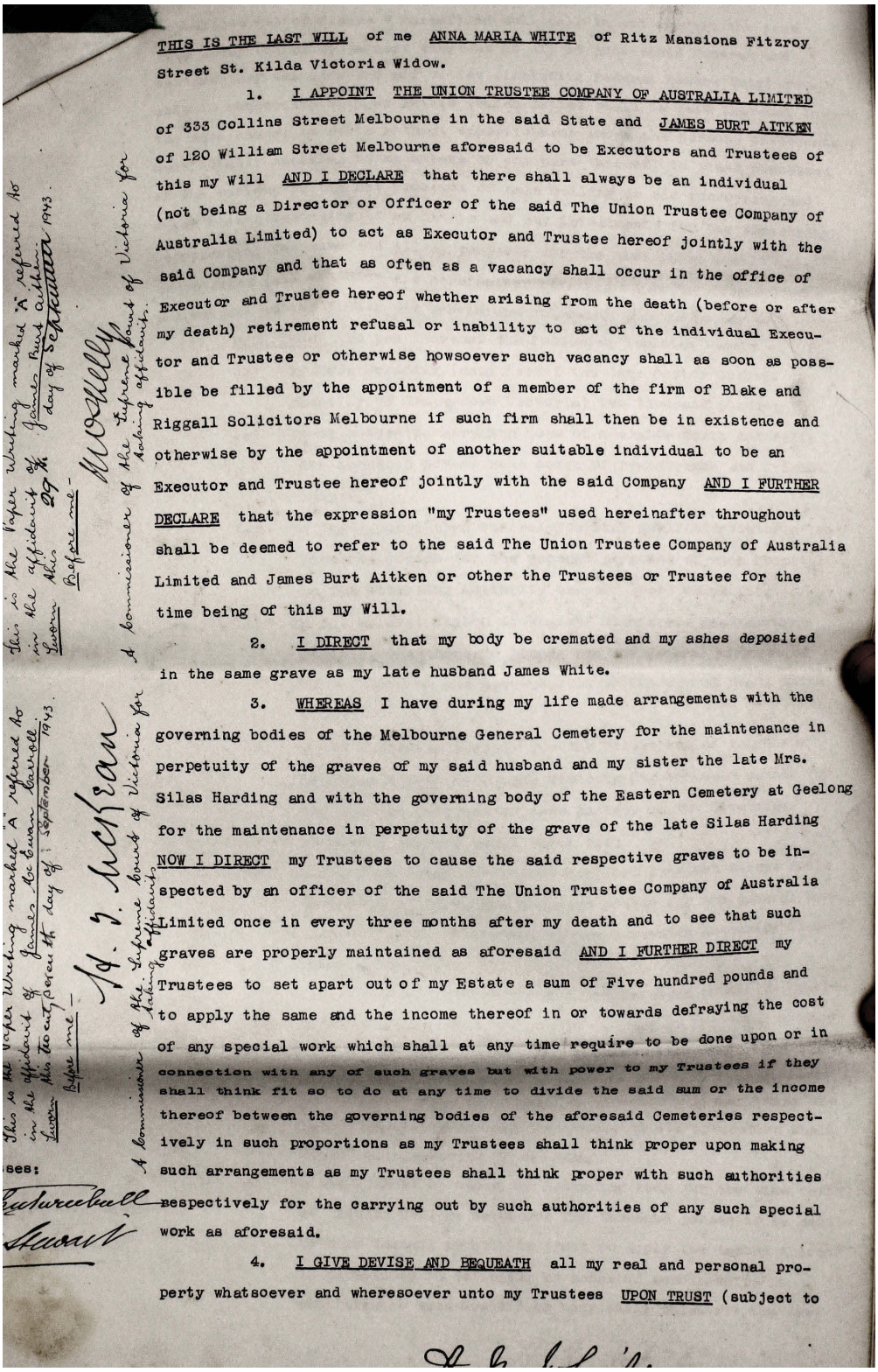
I APPOINT NATIONAL TRUSTEES EXECUTORS AND AGENCY COMPANY OF AUSTRALASIA LIMITED of 95 Queen Street Melbourne in the said State (hereinafter called "my trustee") executor of this my Will and trustee of my estate.

I GIVE DEVISE AND BEQUEATH the whole of my estate both real and personal whatsoever and wheresoever situate unto my trustee UPON the following trusts :-

1. To pay thereout the whole of the duties of whatever kind payable in consequence of my death in respect of my estate and of all property which for the purposes of any statute relating to duties payable upon death is deemed to form part of my estate or be chargeable with duty as though part of my estate and in respect of all property comprised in any settlement made by me which duties I DIRECT shall be paid by my trustee out of the residue of my estate and so that no person beneficially interested in my estate or in any such property shall be liable to refund to my trustee any part of any duty paid by it.
2. As to my Opal and Diamond Ring and my single Opal Brooch for my sister CLARE TARLTON RAYMENT for her own use and benefit absolutely.
3. As to my Opal and Diamond Brooch (gold filigree mounting) for my niece PEGGY STONE (daughter of my late brother Augustine William Wardell) for her own use and benefit absolutely.
4. As to my Jade and Diamond Earrings my Jade Ring and my Jade carved Brooch for my niece GEORGINA HART (daughter of my brother Vincent Andrew Wardell) for her own use and benefit absolutely.
5. As to my Pearl Necklace (baroque cultured pearls) my Pearl Bangle my Pearl Earrings and Ring and my Pearl Necklace (graduated pearls) for my niece MARGARET TARLTON LUGINBUHL (daughter of my sister Clare Tarlton Rayment aforesaid) for her own use and benefit absolutely.
6. As to my Aquamarine and Pearl Brooch my Aquamarine Earrings and my Aquamarine Flower Pins on Platinum chain for my niece JENNIFER WARDELL (daughter of my brother Gerard Stanislaus Wardell) for her own use and benefit absolutely.
7. As to my single Pearl Brooch for HELENA STONE (daughter of my said niece Peggy Stone) for her own use and benefit absolutely.

B.31 WHITE, Anna Maria - 28 May 1938

Will Extract – Page 1



THIS IS THE LAST WILL of me ANNA MARIA WHITE of Ritz Mansions Fitzroy Street St. Kilda Victoria Widow.

1. I APPOINT THE UNION TRUSTEE COMPANY OF AUSTRALIA LIMITED of 333 Collins Street Melbourne in the said State and JAMES BURT AITKEN of 120 William Street Melbourne aforesaid to be Executors and Trustees of this my Will AND I DECLARE that there shall always be an individual (not being a Director or Officer of the said The Union Trustee Company of Australia Limited) to act as Executor and Trustee hereof jointly with the said Company and that as often as a vacancy shall occur in the office of Executor and Trustee hereof whether arising from the death (before or after my death) retirement refusal or inability to act of the individual Executor and Trustee or otherwise howsoever such vacancy shall as soon as possible be filled by the appointment of a member of the firm of Blake and Riggall Solicitors Melbourne if such firm shall then be in existence and otherwise by the appointment of another suitable individual to be an Executor and Trustee hereof jointly with the said Company AND I FURTHER DECLARE that the expression "my Trustees" used hereinafter throughout shall be deemed to refer to the said The Union Trustee Company of Australia Limited and James Burt Aitken or other the Trustees or Trustee for the time being of this my Will.

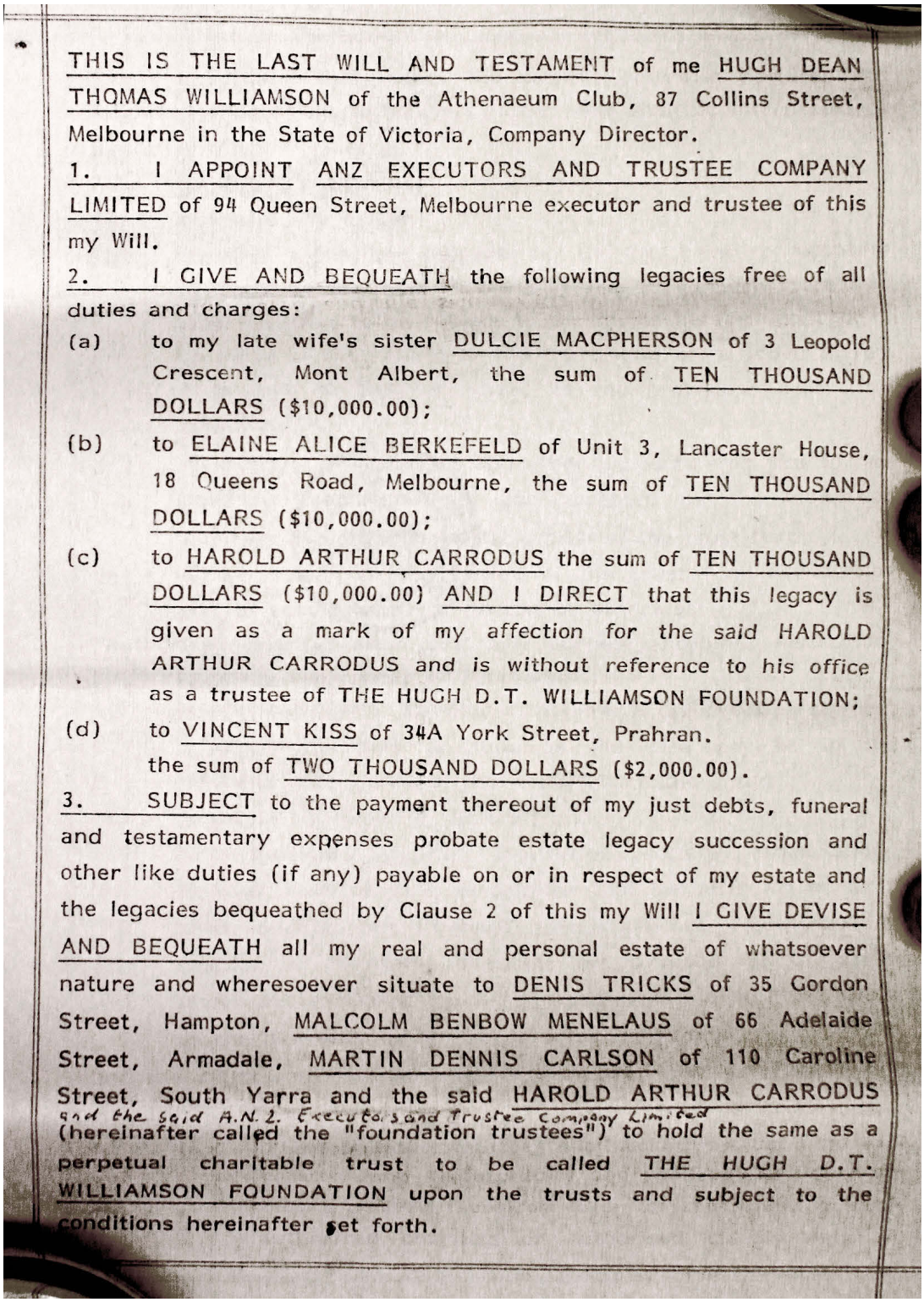
2. I DIRECT that my body be cremated and my ashes deposited in the same grave as my late husband James White.

3. WHEREAS I have during my life made arrangements with the governing bodies of the Melbourne General Cemetery for the maintenance in perpetuity of the graves of my said husband and my sister the late Mrs. Silas Harding and with the governing body of the Eastern Cemetery at Geelong for the maintenance in perpetuity of the grave of the late Silas Harding NOW I DIRECT my Trustees to cause the said respective graves to be inspected by an officer of the said The Union Trustee Company of Australia Limited once in every three months after my death and to see that such graves are properly maintained as aforesaid AND I FURTHER DIRECT my Trustees to set apart out of my Estate a sum of Five hundred pounds and to apply the same and the income thereof in or towards defraying the cost of any special work which shall at any time require to be done upon or in connection with any of such graves but with power to my Trustees if they shall think fit so to do at any time to divide the said sum or the income thereof between the governing bodies of the aforesaid Cemeteries respectively in such proportions as my Trustees shall think proper upon making such arrangements as my Trustees shall think proper with such authorities respectively for the carrying out by such authorities of any such special work as aforesaid.

4. I GIVE DEVISE AND BEQUEATH all my real and personal property whatsoever and wheresoever unto my Trustees UPON TRUST (subject to

B.32 WILLIAMSON, Hugh - 4 November 1985

Will Extract – Page 1



THIS IS THE LAST WILL AND TESTAMENT of me HUGH DEAN THOMAS WILLIAMSON of the Athenaeum Club, 87 Collins Street, Melbourne in the State of Victoria, Company Director.

1. I APPOINT ANZ EXECUTORS AND TRUSTEE COMPANY LIMITED of 94 Queen Street, Melbourne executor and trustee of this my Will.

2. I GIVE AND BEQUEATH the following legacies free of all duties and charges:

(a) to my late wife's sister DULCIE MACPHERSON of 3 Leopold Crescent, Mont Albert, the sum of TEN THOUSAND DOLLARS ($10,000.00);

(b) to ELAINE ALICE BERKEFELD of Unit 3, Lancaster House, 18 Queens Road, Melbourne, the sum of TEN THOUSAND DOLLARS ($10,000.00);

(c) to HAROLD ARTHUR CARRODUS the sum of TEN THOUSAND DOLLARS ($10,000.00) AND I DIRECT that this legacy is given as a mark of my affection for the said HAROLD ARTHUR CARRODUS and is without reference to his office as a trustee of THE HUGH D.T. WILLIAMSON FOUNDATION;

(d) to VINCENT KISS of 34A York Street, Prahran.

the sum of TWO THOUSAND DOLLARS ($2,000.00).

3. SUBJECT to the payment thereout of my just debts, funeral and testamentary expenses probate estate legacy succession and other like duties (if any) payable on or in respect of my estate and the legacies bequeathed by Clause 2 of this my Will I GIVE DEVISE AND BEQUEATH all my real and personal estate of whatsoever nature and wheresoever situate to DENIS TRICKS of 35 Gordon Street, Hampton, MALCOLM BENBOW MENELAUS of 66 Adelaide Street, Armadale, MARTIN DENNIS CARLSON of 110 Caroline Street, South Yarra and the said HAROLD ARTHUR CARRODUS and the said A.N.Z. Executors and Trustee Company Limited (hereinafter called the "foundation trustees") to hold the same as a perpetual charitable trust to be called THE HUGH D.T. WILLIAMSON FOUNDATION upon the trusts and subject to the conditions hereinafter set forth.

Appendix C

Submissions to Treasury Inquiry into Improving the Integrity of Prescribed Private Funds (PPFs)

Treasury received 138 submissions in response to this consultation. Of these submissions, 24 were confidential.

Find download links for each submission: www.treasury.gov.au.

C.1 List of submissions

Andyinc Foundation
Anglicare Victoria
Australian Services Union
The Myer Foundation and Sidney Myer Fund
The Reach Foundation
The Smith Family
The Sweetpee PeePee PPF
The Yulgibar Foundation
Thomson Playford Cutlers
Tom Davis Foundation
Trust Company Ltd
Trustee Corporations Associatio of Australia
UBS Wealth Management
Balnaves Foundation

University of Melbourne
UNSW Faculty of Medicine
Youth Insearch
Zoos Victoria
Barr Family Foundation
Bennelong Foundation
Berg Family Foundation
Blake Dawson
Bond University
Bush Heritage Australia
Cambooya
Charities Aid Foundation Australia
AngliCORD
Childrens Cancer Institute Australia
Clitheroe Foundation
David Henning Memorial Foundation
de Groots Wills Estate Lawyers
Destiny Rescue
Donkey Wheel Ltd
Ethinvest
Financial Planning Association
Foresters
Four Winds Foundation
Anonymous 01
Frank Clune Son Chartered Accountants
Goldman Sachs JBWere
Goodeve Foundation
Greenlight Foundation
Group of Eight
H K Johnston Family Foundation
HSC Company Pty Ltd
Inspire Foundation
Investstone Wealth Management
John Lamble Foundation
Anonymous 02
Kaldor Public Art Projects

Kloeden Foundation
Law Institute of Victoria
Louise and Martyn Myer Foundation
Maccabi Victoria Sports Foundation
Macquarie Bank
Mallesons Stephen Jaques and Stewart Partners
Mannkal Economic Education Foundation
Maple-Brown Family Charitable Foundation
Maramingo Foundation
Arnold Bloch Leibler
Mater Foundation
McClelland Gallery Sculpture Park
Mission Australia
Mr Brice
Mr Charrington
Mr Cuffe
Mr Davidson
Mr Donough and Mr Middleton
Mr Gelski
Mr Girgensohn
Art Gallery NSW
Mr Hocknull
Mr Lander
Mr RJB
Mr Shuetrim
Mrs Price
Ms Brice
Myer Family Office
Ngaanyatjarra Pitjantjatjara Yankunytjatjara Womens Council
Nonprofit Australia
Parncutt Family Foundation
Australia Business Arts Foundation
Paterson Foundation
Perpetual
Peter and Lyndy White Foundation
Petre Foundation

Philanthropy Australia
Philoria
Pitcher Partners
Playoust Family Foundation
Research Australia
Rewarded Risk Pty Limited
Australia Council for the Arts
Robert Mem Kirby Foundation
Salter Foundation
Sara Halvedene Foundation
Scanlon Foundation
Sculpture by the Sea
Sherry-Hogan Foundation
Speed and Stracey Lawyers
Stand Like Stone Foundation
Surf Life Saving Australia
Sydney Eisteddfod
Australian Centre of Contemporary Art
Sydney Opera House
The AMPAG and the Australian Youth Orchestra
The Angel Fund
The Arts Centre
The Bruce Bain Foundation
The Catherine Freeman Foundation
The Centre for Independent Studies
The Katz Family Foundation
The Keir Foundation
The McMeckan Family Foundation

Appendix D

Members of The Charitable Alliance

D.1 The Charitable Alliance

Tim Costello AO, Chairman, Community Council for Australia (CCA)
Sandy Clark, Chairman, William Buckland Foundation
Graeme Danks, Honorary Trustee, Danks Trust
Peter Yates AM, Chairman Designate, Royal Children's Hospital Foundation, Melbourne
Simon McKeon, 2011 Australian of the Year
Ian Smith, Director, Baker IDI Heart & Diabetes Institute Holdings Ltd (Partner, Bespoke Approach)
David Crosbie, CEO, CCA & Member, Not-for-Profit Sector Reform Council
Richard Leder, Deputy Chairman, Royal Children's Hospital Foundation, Melbourne
Sue Hunt, Executive Director, Royal Children's Hospital Foundation, Melbourne
Graeme Sinclair, Trustee, William Buckland Foundation
Jane Gilmour OAM, Trustee, William Buckland Foundation
Martyn Myer AO, President, The Myer Foundation
Leonard Vary, CEO, The Myer Foundation & Sidney Myer Fund
Peter Winneke, Head of Philanthropic Services, The Myer Family Company
Peter Whitehead, Director, Traditional Trustee Company Services, Myer Family Company (formerly NSW Public Trustee, Nat'l President TCA & Nat'l Mgr Fiduciary Solutions, Perpetual)
Dr John Baxter, Chairman, Percy Baxter Charitable Trust
Denis Tricks AM, Chairman, Hugh Williamson Foundation

Martin Carlson OAM, Trustee, Hugh Williamson Foundation
Steve Killelea, Chairman & Founder, The Charitable Foundation & Global Peace Index
Clyde McConaghy, Trustee, The Charitable Foundation & Global Peace Index
Martin Armstrong, Director (of Corp. Trustee of), Jack Brockoff Foundation
Barry Capp, Former Chairman, William Buckland Foundation & Philanthropy Australia
Elizabeth Cham, IPCS & Former CEO, Philanthropy Australia
Jill Reichstein OAM, Chair, Reichstein Foundation
Esther Abram, Chief Executive Officer, Changemakers
Alan Froud, Deputy Director, National Gallery of Australia
Andrew Danks and *Mike Danks*, Honorary Trustees, Danks Trust
Alan Froud, Trustee, Ord Poynton Dequest
Sylvia Admans, CEO, RE Ross Trust
Darvell Hutchinson, Chairman, Helen Macpherson Smith Trust
Andrew Brookes, Chief Executive, Helen Macpherson Smith Trust
David Leeton, Director, Victor Smorgon Charitable Fund & CFO, The Victor Smorgon Group
Gerard O'Neill, CEO, Bush Heritage

D.2 The Community Council of Australia (CCA) Board

Tim Costello, CCA Chair and CEO World Vision Australia
Stephen Judd, CEO, HammondCare
Brett Williamson, CEO, Surf LIfe Saving Australia
Mary Jo Capps, CEO, Musica Viva
David Crosbie, CEO, CCA
Jayne Meyer-Tucker, CEO, Good Beginnings
Lisa O'Brien, CEO, The Smith Family.
Toby Hall, CEO, Mission Australia
Steve Persson, CEO, The Big Issue In Australia
Dennis Young, CEO, Drug Arm
Heather Neil, CEO, RSPCA

Anne Hollonds, CEO, The Benevolent Society
Keith Garner, CEO, Wesley Mission

D.3 CCA Membership as at August 2012

1. Aboriginal Employment Strategy Ltd – Danny Lester
2. Access Community Group – Samantha Hill
3. Alcohol and other Drugs Council of Australia – David Templeman
4. Alcohol Tobacco and Other Drugs Association ACT – Carrie Fowlie
5. Associations Forum Pty Ltd – John Peacock
6. Australian Charities Fund – Edward Kerr
7. Australian Council For International Development – Marc Purcell
8. Australian Indigenous Leadership Centre – Rachelle Towart
9. Australian Institute of Superannuation Trustees – Fiona Reynolds
10. Australian Major Performing Arts Group – Bethwyn Serow
11. Catholic Social Services Australia – Paul O'Callaghan
12. Church Communities Australia – Chris Voll
13. Connecting Up Australia – Doug Jacquier
14. Consumers Health Forum of Australia – Carol Bennett
15. Drug-Arm Australia – Dr Dennis Young (CCA Board Director)
16. Foundation for Alcohol Research and Education – Michael Thorn
17. Fundraising Institute of Australia – Rob Edwards
18. Good Start Childcare – Julia Davison
19. Good Beginnings Australia – Jayne Meyer Tucker (CCA Board Director)
20. HammondCare – Stephen Judd (CCA Board Director)
21. HETA Incorporated – Sue Lea
22. Hillsong Church – George Aghajanian
23. Illawarra Retirement Trust – Nieves Murray
24. Lifeline Australia – Dr Maggie Jamieson
25. Maroba Lodge Ltd – Viv Allanson
26. Melbourne City Mission – Rev Ric Holland
27. Mental Health Council of Australia – Frank Quinlan
28. Mission Australia – Toby Hall (CCA Board Director)
29. Musica Viva Australia – Mary Jo Capps (CCA Board Director)
30. Opportunity International Australia – Rob Dunn

31. Philanthropy Australia – Deborah Seifert
32. Principals Australia – Jim Davies
33. ProBono Australia – Karen Mahlab
34. RSPCA Australia – Heather Neil (CCA Board Director)
35. St John Ambulance Australia – Peter Lecornu
36. Social Ventures Australia – Michael Traill
37. Surf Life Saving Australia – Brett Williamson (CCA Board Director)
38. The ANZCA Foundation – Ian Higgins
39. The Benevolent Society – Anne Hollonds (CCA Board Director)
40. The Big Issue – Steven Persson (CCA Board Director)
41. The Centre for Social Impact – Peter Shergold
42. The Smith Family – Dr Lisa O'Brien (CCA Board Director)
43. The Ted Noffs Foundation – Wesley Noffs
44. Volunteering Australia Inc. – Cary Pedicini
45. Wesley Mission – Rev. Keith Garner (CCA Board Director)
46. WorkVentures Ltd – Arsenio Alegre
47. World Vision Australia – Rev. Tim Costello (CCA Chair of Board)
48. YMCA Australia – Ron Mell
49. Youth Off The Streets – Fr Chris Riley
50. YWCA Australia – Dr Caroline Lambert

Source: Extract from Charitable Alliance submission to CAMAC Review (December 2012).

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