



**ANZTSR**  
AUSTRALIAN & NEW ZEALAND  
THIRD SECTOR RESEARCH

## ANZTSR RESPONSE

Productivity Commission's Draft Report Future  
Foundations for Giving November 2023

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## 1. Background

ANZTSR (Australian & New Zealand Third Sector Research Assoc.), is a 30-year-old regional network of scholars and practitioners whose research focus is the not-for-profit and philanthropy sector. Our research identifies and disseminates evidence-based best practice models that are critical to informing both good public policy and service delivery. We also examine the philosophy and practice of philanthropy and its place in a democracy.

This response will focus only on the perpetual philanthropic Trusts and Foundations administered by Licensed Trustee Companies.

## 2. Information Request 8.3 - Regulatory Requirements for Charitable Trusts by licensed trustee companies

### 2.1 Trustee Companies & Australian Philanthropy

Trustee companies have a long history in Australia. The first Trustee company, Trustees Executors and Agency Co Ltd was established in Melbourne in 1879. Prior to the then Treasurer Hon. Paul Keating, deregulating the finance market, there were thirty-five trustee companies in Australia. There are now only two such entities in Australia following a series of amalgamations and take-overs – Perpetual Limited and Equity Trustees. While the majority of their business is wealth management, they are also co- or sole trustees to an estimated 2,000 perpetual, charitable, grant-making trusts and foundations. As ASX listed companies they administer approximately 40% of Australia’s philanthropic capital (approximately \$6 billion), making them the largest administrators of grant-making philanthropic trusts and foundations.

Today, these two trustee companies, manage 2,000 trusts and foundations and distribute approximately \$200 million in grants to the community. Perpetual’s website claims the company manages 1,000 charitable trusts and a \$3.6 billion in capital (as at June 2022) and distribute \$120 million in grants to the community annually. The company does not provide

any further details about these important entities that were established to enhance the common good.

Equity lists the names of the trusts and foundations it manages but provides no further information. Their Annual Giving Review (2022) asserts they manage \$2.4 billion in capital and administers 652 perpetual trusts and foundations and distributed \$92.2 million in grants in 2022.<sup>i</sup>

## 2.2 The Nature and rationale for any proposed changes

### 2.2.1 Data Gaps

The reports, while offering good aggregated information about the companies' stewardship of their perpetual grant-making trusts and foundations, have major data gaps. The lack of names of the Perpetual's trusts is the most obvious. Neither company provides information about their trusts' individual asset value, income, fees, date of establishment, the field of funding, the individual amounts made in grants or who is involved in the decision-making process. It would also be useful to know which ones have the company as the sole-trustee – important data because this is the situation for an estimated 90% of their trusts.

## 2.3 Accompanying evidence, such as data or case studies

### 2.3.1 Case Studies

There is a paucity of literature on Australian philanthropy, and despite their pivotal position in philanthropy, virtually nothing written about Trustee Companies until Cham (2016)<sup>ii</sup> This PhD examined thirty-two trust deeds and their accompanying probate documents administered by trustee companies. This material had 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.

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 examined what information the trustee companies make publicly available.

### 2.3.2 The case studies' key findings

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 where the companies are sole 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.

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 wishes have been adhered to.

The complimentary finding is that, 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 2002.

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.

### 2.3.3 Recommendation

That the Productivity Commission recommends that the Federal Government mandate public accountability for all the grant-making trusts and foundations administered by Australia's trustee companies.

## 2.4 Any potential role or implications for Australian regulators

### 2.4.1 Corporations and Markets Advisory Committee (CAMAC)

Until it was abolished in 2018, government policy-making in the area of corporate and market law reform was assisted by CAMAC. This body was charged by Treasury in 2012 to review the administration of charitable trusts and foundations managed by licensed trustee companies. Its subsequent Report (2013) noted that its task had been hampered by “a deficit of relevant and indisputable information, particularly in relation to the trusts and foundations where the company was the sole trustee. What quantitative information that did exist was contradictory and often contentious”.

CAMAC's review recommended that the ACNC audit those trusts for which trustee companies were the sole trustee. None of the CAMC recommendations were accepted by the then government.

### 2.4.1 RECOMMENDATION

That resources be provided to the ACNC to conduct audits of those trusts and foundations for which trustee companies are the sole trustee.

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Chair, ANZTSR

9 February 2024

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<sup>i</sup> Such information as is available is often contested and contradictory.

<sup>ii</sup> Cham, E (2016) *Trustee Companies: Their Role in Australian Philanthropy* (PhD UTS)