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In Their Own Voice:

The Views of Contemporary Australian Philanthropists on Public Accountability

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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. (Linderman, E. 1936, p. vii)

1. Abstract

On the eve of the new century, the Australian Prime Minister announced a series of measures to encourage greater personal and corporate philanthropy. The centrepiece of these incentives was a new form of philanthropy, the Prescribed Private Fund (PPF).

Modelled on the American private family foundation, PPFs grew quickly. Almost a decade after their introduction, the government decided to examine their practice. Subsequently, in November 2008 the Treasury released a Discussion Paper, *Improving the Integrity of Prescribed Private Funds (PPFs)* and called for public submissions. One of the issues identified in the Paper was the need for increased public accountability – the public provision of contact details.

The founders of PPFs objected vigorously to this minimal form of public accountability. This paper explores and analyses why contemporary Australian philanthropists thwarted an opportunity to debate and examine a fundamental question at the heart of philanthropy, how 'public' are 'private' foundations. This case study illustrates the pertinence of Antonio Gramsci's theory of hegemony and demonstrates its relevance in the practice of modern Australian philanthropy.

The major primary source for this conference paper is the one hundred and fourteen (114) submissions received by Treasury in response to its appeal. Forty-four were received from individuals and families who had established PPFs, the remainder from other stakeholders interested in this contemporary form of philanthropy, including not-for-profit organisations. The other main primary source is the annual Commonwealth Budget Papers for 2001-2009. Therefore, both qualitative and quantitative methodologies are utilised in this analysis.

2.1 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**).**

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) was 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 (ACPNS 2015, p.2). Almost a decade after their introduction, the government decided to review the practice of this recent form of organised philanthropy and subsequently, in November 2008 Treasury released a Discussion Paper *Improving the Integrity of Prescribed Private Funds (PPFs)* (The Paper).

This conference paper 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 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. It also asks the question; how do they perceive their foundations as providing private monies for public purposes?

2.2 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 can 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 (ACPNS 2008/6, p.1). 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; PMCBP2001: Fact Sheet 7)[2].

Prescribed Private Funds (PPFs) were designed to take advantage of the considerable wealth created in Australia during the previous twenty-five years (Leigh, A. 2013, pp.56-64). Prior to their creation,

[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. (www.partnerships.gov.au Fact Sheet 7).

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

Australia did not have a tax-effective giving vehicle that allowed families and individuals, *while living*[3], 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:

(i) are created by living donors;

(ii) are designed to grow the working capital;

(iii) are intended to inculcate a culture of giving within the donor family;

(iv) have no legal requirement to raise funds from public.[4]

2.3 The Impetus for the Inquiry

When releasing the *Discussion Paper (2008)*, 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 (Bowen, 2008). 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 2.1 below).

This interest in philanthropy had not been anticipated, as three earlier reports on giving by Australia's wealthy (Petre Foundation 2004, 2005; Madden & Scaife 2008) 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 reported that some 40% of Australia's wealthiest are 'likely to be engaged in minimal – if any – giving' (2008, p. ii).

Table 2.1: PPF donations, distributions, closing value and approvals 2001-2008

Date	Number of PAFs approved in the year	Total number of PAFs approved	Donations received ($m)	Distributions made ($m)	Closing value ($m)
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: ACPNS 2015:2

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

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

2.3.1 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 concern when they were provided at a reduced or zero rate of interest or not repaid); and
- providing funds to purchase property for use by the founder and/or their associates' (Treasury, 2008, p.3).

It was estimated that up to *$9.2 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 (Treasury 2008, pp.3-5; Suich, 2010). McGregor-Lowndes claims this was approximately 8% of all distributions (2009, p.10).

2.3.2 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 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, 2006, p.501).

Table 2.2

	Forecast Tax Foregone	*Actual Tax Foregone*
2001-02	Unavailable*	Unavailable
2002-03	$ 20 million	$ 23.931 million
2003-04	$ 25	$ 70.047
2004-05	$ 70	$ 86.7
2005-06	$ 85	$ 164.2

2006-07	$160	$ 239.9
2007-08	$350	$ 350.69
TOTAL:	**$710 million**	**$935.468**

(*estimate is not available in Tax Expenditures Statement. Source: Budget Papers -Forecast from Treasury Tax Expenditures Statement 2001-2009:A65:76; ACPNS 2015) http://archive.treasury.gov.au/documents/1719/PDF/TES_2009_Consolidated.pdf

2.3.3 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 2.3 below).

Table 2.3

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

Source: Source: Budget Papers -Forecast from Treasury Tax Expenditures Statement 2001-2009:A65:76; ACPNS 2015)
http://archive.treasury.gov.au/documents/1719/PDF/TES_2009_Consolidated.pdf

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 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).

2.4 The Inquiry

In The Paper, Treasury identified a number of issues that needed change and identified five key areas that needed 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 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 article examines only one aspect of this Inquiry, the call for and the reaction to increased public accountability. Treasury'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. These 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 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).

2.5 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%) of respondents requested privacy and Treasury granted it. Their submissions were not put on the public record.

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.

2.6 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 (2006) 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 <u>your</u> 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 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)[5].

[5] 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.

2.6.1 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 virtually have 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 of 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)

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.

2.6.2 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 four major categories:

(i) Deluge of unsolicited and unwanted funding applications;

(ii) Unnecessary and onerous burden on resources;

(iii) Perceived public accountability as intrusion that would be an additional disincentive to developing private philanthropy;

They are private and public accountability will further erode their independence; CONVERSATION 2

(iv) 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 JBWere 'We do not believe making it compulsory for PPF contact details to be available to the public adds to overall community sector support'(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, M 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&CO 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' (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 (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 13 January 2009).

2.6.3 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).

2.6.4 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.[1]

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).

2.6.5 The Trustee Company Voice

Like most independent foundations and PPFs, 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).

2.7 Overall Response about Public Accountability

It should be noted again that this article is primarily concerned with only one issue cited in The Paper, the public provision of PPF contact details. (The full table of submissions appears as Appendix A).

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*

2.7.1 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' (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' (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 (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' (Submission, no date, January 2009, p.3).

2.7.2 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.[6]

> *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*

[6] This figure (20,000) is used extensively throughout the submissions; its source is unknown.

> *publicly available we would expect a vast number of these DGRs would likely write to each PPF seeking funding…(*Kloeden Foundation Submission, 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, January 2009, p.3)

The Goodeve Foundation believed publishing contact details 'would only result in nuisance calls from other charities and individuals seeking money' (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).

2.7.3 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, no date 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)

2.7.4 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' (Submission 6 Jan 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

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

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 outrageous imposition. They want the impetus for their grant-making to be 'top-down not 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).

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.

APPENDIX A

Submissions to Treasury Discussion Paper, *Improving the Integrity of Prescribed Private Funds*

http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2008/Improving-the-integrity-of-Prescribed-Private-Funds/Submissions

Andyinc Foundation	114KB

Anglicare Victoria	28KB
AngliCORD	52KB
Anonymous 01	28KB
Anonymous 02	885KB
Arnold Bloch Leibler	117KB
Art Gallery NSW	78KB
Australia Business Arts Foundation	127KB
Australia Council for the Arts	66KB
Australian Centre of Contemporary Art	121KB
Australian Services Union	1.0MB
Balnaves Foundation	201KB
Barr Family Foundation	77KB
Bennelong Foundation	59KB
Berg Family Foundation	134KB
Blake Dawson	414KB
Bond University	178KB
Bush Heritage Australia	45KB
Cambooya	637KB

Charities Aid Foundation Australia	923KB
Childrens Cancer Institute Australia	241KB
Clitheroe Foundation	26KB
David Henning Memorial Foundation	17KB
de Groots Wills Estate Lawyers	499KB
Destiny Rescue	82KB
Donkey Wheel Ltd	1.0MB
Ethinvest	45KB
Financial Planning Association	44KB
Foresters	114KB
Four Winds Foundation	347KB
Frank Clune Son Chartered Accountants	730KB
Goldman Sachs JBWere	661KB
Goodeve Foundation	26KB
Greenlight Foundation	261KB
Group of Eight	47KB
H K Johnston Family Foundation	10KB
HSC Company Pty Ltd	638KB

Inspire Foundation	71KB
Investstone Wealth Management	135KB
John Lamble Foundation	25KB
Kaldor Public Art Projects	70KB
Kloeden Foundation	104KB
Law Institute of Victoria	137KB
Louise and Martyn Myer Foundation	96KB
Maccabi Victoria Sports Foundation	41KB
Macquarie Bank	279KB
Mallesons Stephen Jaques and Stewart Partners	75KB
Mannkal Economic Education Foundation	306KB
Maple-Brown Family Charitable Foundation	48KB
Maramingo Foundation	77KB
Mater Foundation	87KB
McClelland Gallery Sculpture Park	50KB
Mission Australia	63KB
Mr Brice	41KB
Mr Charrington	15KB

Mr Cuffe	72KB
Mr Davidson	22KB
Mr Donough and Mr Middleton	375KB
Mr Gelski	14KB
Mr Girgensohn	11KB
Mr Hocknull	186KB
Mr Lander	25KB
Mr RJB	12KB
Mr Shuetrim	90KB
Mrs Price	12KB
Ms Brice	16KB
Myer Family Office	2.0MB
Ngaanyatjarra Pitjantjatjara Yankunytjatjara Womens Council	42KB
Nonprofit Australia	141KB
Parncutt Family Foundation	124KB
Paterson Foundation	216KB
Perpetual	51KB
Peter and Lyndy White Foundation	33KB

Petre Foundation	113KB
Philanthropy Australia	133KB
Philoria	23KB
Pitcher Partners	418KB
Playoust Family Foundation	170KB
Research Australia	102KB
Rewarded Risk Pty Limited	509KB
Robert Mem Kirby Foundation	84KB
Salter Foundation	28KB
Sara Halvedene Foundation	161KB
Scanlon Foundation	57KB
Sculpture by the Sea	112KB
Sherry-Hogan Foundation	86KB
Speed and Stracey Lawyers	923KB
Stand Like Stone Foundation	108KB
Surf Life Saving Australia	280KB
Sydney Eisteddfod	54KB
Sydney Opera House	510KB

The AMPAG and the Australian Youth Orchestra	331KB
The Angel Fund	137KB
The Arts Centre	112KB
The Bruce Bain Foundation	170KB
The Catherine Freeman Foundation	100KB
The Centre for Independent Studies	835KB
The Katz Family Foundation	62KB
The Keir Foundation	164KB
The McMeckan Family Foundation	102KB
The Myer Foundation and Sidney Myer Fund	66KB
The Reach Foundation	53KB
The Smith Family	98KB
The Sweetpee PeePee PPF	119KB
The Yulgibar Foundation	60KB
Thomson Playford Cutlers	56KB
Tom Davis Foundation	40KB
Trust Company Ltd	431KB
Trustee Corporations Associatio of Australia	199KB

UBS Wealth Management	125KB
University of Melbourne	346KB
UNSW Faculty of Medicine	46KB
Youth Insearch	562KB
Zoos Victoria	100KB

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