15 March 2013

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Mr John Kluver
Executive Director
CAMAC
Level 16, 60 Margaret Place
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Dear John,

Re: Submission to CAMAC's Inquiry into Charitable Trusts and Trustees Companies

Thank you for the opportunity to provide comment to this review of the Corporations Legalisation Amendment (Financial Services Modernisation) Act 2009 (CLAFSMA) by the Corporations and Markets Advisory Committee (CAMAC).

As you know, Philanthropy Australia circulated a draft submission to its Members following the original call for submissions. The draft did not receive endorsement and as a result Philanthropy Australia elected not to make a submission at that but reserved the right to make a future submission.

Since that time Philanthropy Australia has engaged in extensive research, consultation and review to develop a practical solution which will maximise the ability of charitable trusts to pursue their purposes whilst ensuring that licenced trustee companies are able to charge fair and reasonable fees for their services.

Given the significant legal impediments to achieving major legislative change within multiple jurisdictions, Philanthropy Australia believes that a solution which achieves its aims via regulation, and which can be implemented as part of the Government's current Not-for-Profit reform process, is both practical and achievable in a relatively short timeframe. The Australian Charities and Not-for-Profits Commission (ACNC) is the most appropriate regulator to have oversight over charitable trusts and to balance the interests of the community and trustees. Establishing an arm of government for regulation and oversight, whilst retaining the role of the court in reviewing that decision, is appropriate and follows corresponding developments in other jurisdictions.

Our attached submission therefore suggests that CAMAC recommend amendments (or additions) to the Governance Standards in regulations to be made under section 45-10(1) of the Australian Charities and Not-for-Profits Commission Act 2012 and the accompanying requirements for annual financial reports under the ACNC Framework.

Yours sincerely

Louise Walsh
Chief Executive Officer

PHILANTHROPY AUSTRALIA SUBMISSION: EXECUTIVE SUMMARY

This submission addresses: the current *Corporations and Markets Advisory Committee* (CAMAC) inquiry into the regulation of certain aspects of the activities of trustee companies under the *Corporations Act 2001* and the "portability" of their services;

It also simultaneously addresses: aspects of the *Governance Standards* released by the Assistant Treasurer on 8 March 2013 to be included in regulations made under section 45-10(1) of the *Australian Charities and Not-for-profits Commission (ANCC) Act 2012* (the Governance Standards)*;* together with aspects of the Exposure Draft Explanatory Material headed *Requirements for annual financial reports under ACNC framework* and accompanying Extract from draft *Australian Charities and Not-for-profits Commission Regulation 2012*, released by Treasury in December 2012 (the AFR Requirements).

Central to this submission, and underpinning its recommendations, is the principle that:

> *"All fees drawn from charitable trusts must be fair and reasonable"*.

While this is a requirement in current trust law, and contained on the general guidelines for both types of Ancillary Funds, it needs to be explicitly reaffirmed for all charitable trusts. This is particular so because the assets of every charitable trust are held, and income applied, for the public benefit.

To ensure the effective implementation of this principle, Philanthropy Australia believes that:

(a) Section 45.5 of the Governance Standards should include the requirement that charitable trusts, as registered entities, must ensure that:
   i. payments for work done, services provided, and other benefits to those associated with the operation of charitable trusts are only fair and reasonable; and
   ii. that such persons are only reimbursed in respect of reasonable expenses incurred on behalf of charitable trusts.

(b) The AFR Requirements include a requirement for responsible entities to produce a signed annual financial year report that explains, with information necessary to truly and fairly support the conclusion, the basis for a conclusion that the requirements in (a) i and ii above have been fully complied with.

In setting fair and reasonable fees regard should be given to current arms-length actual and reasonable market rates, work done and services provided.

Philanthropy Australia also believes that the above suggested reforms will largely address the current issues relating to the removal or replacement of trustees of charitable trusts. Should the ACNC determine that after due information gathering, negotiation and any fee changes, fees and/or expenses were still excessive in a particular case, then (subject to the normal review and appeal processes under the ANCC Act) a licensed trustee or other federally regulated trustee may be replaced by the ACNC.

Philanthropy Australia believes that the proposals detailed in this submission will address the issues before CAMAC in a practical way building on the governance, transparency and accountability changes which are already in train across the sector through the ACNC.

The recommendations we believe will ensure trustee fees are fair and reasonable while facilitating a degree of uniformity, and therefore coherence, and promote the principle of proportionality, in the treatment of all registered charitable entities.

Philanthropy Australia's Submission to CAMAC's Inquiry into Charitable Trusts and Trustees Companies

Dated: 15 March 2013

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1 Introduction

We refer to:

(1) The current *Corporations and Markets Advisory Committee* (**CAMAC**) inquiry into the regulation of certain aspects of the activities of trustee companies under the *Corporations Act 2001* (**Corporations Act**) and the "portability" of their services, begun on 20 September 2012 (**CAMAC Review**).

(2) (a) The *Governance Standards* released by the Assistant Treasurer on 8 March 2013 to be included in regulations made under section 45-10(1) of the *Australian Charities and Not-for-profits Commission Act 2012* (**ACNC Act**) (**Draft Governance Standards**).

(b) Exposure Draft Explanatory Material (**EM**) headed *Requirements for annual financial reports under ACNC framework* and accompanying Extract from draft *Australian Charities and Not-for-profits Commission Regulation 2012*, released by Treasury in December 2012 (**Draft AFR Requirements**).

This submission relates to all three matters.

In particular, we have prepared this single response to those three matters because:

- for the reasons explained in the **attachment**, the contentious issue of trustee fees is relevant to each matter, and
- that situation presents an opportunity for a common principled based solution to the fees issue.
- The focus of this submission is on charitable trusts as they are the only entities under consideration by CAMAC. As our proposed solution involves the ACNC governance regime, whether that solution should apply to a wider class of registered entities (such

as all registered entities that do not have members) is a matter for Government and the ACNC.

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2 Statement of Principle

Philanthropy Australia considers there is a need for a clear statement that:

“All fees drawn from charitable trusts must be fair and reasonable.”

While this is a requirement in current trust law, and contained in the tax Guidelines for both types of Ancillary Funds, it needs to be reaffirmed for all Charitable Trusts.

Furthermore, to ensure the effective implementation of this principle, the regulator of registered Charitable Trusts, the Australian Charities and Not-for-profit Commission (ACNC), should be able to use its powers to monitor, investigate and in appropriate cases take proportionate action through its oversight of governance arrangements.

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3 Suggested changes to (I) Draft Governance Standards and (II) Draft AFR Requirements

In the light of the Context referred to in part 1 of the **attachment**, this submission suggests two appropriate, and relatively simple, initial steps (set out below and detailed in parts 7.3 and 8.2 of the **attachment**) that –

- should address most of the fundamental problems which are the subject of the CAMAC Review,
- is capable of filling or covering relevant gaps in the regulation and oversight of charitable entities registered with the ACNC (**registered charitable entitles**),
- is capable of bringing about relevant degree of uniformity, and therefore coherence, in the regulation and oversight of charitable trusts,
- importantly, also reflect the principle of proportionality in their application to different registered charitable entities, and

- will potentially provide a point of principle agreement to take the sector forward in a positive manner.

Our **Suggested Changes** are:

- [Step 1] include in paragraph (2) Governance Standard 1 (*purposes and not-for-profit nature of a registered entity*) in proposed section 45.5 of the Governance Standards along the following lines:

"A registered entity must:

(d) in the case of a trust registered as a charity:

(i) without limiting paragraphs (a) to (c),ensure that:

(a) payments and other benefits to those associated with the operation of the entity (including the responsible entities and other service providers), including for work done or services provided, are only fair and reasonable;

(b) such persons are only reimbursed in respect of reasonable expenses incurred on behalf of the entity; and

(ii)be able to record and demonstrate compliance with sub paragraph (i), by contemporaneous or other information and documents, appropriate to its particular circumstances including the character and size of the entity and the quantum and nature of payments to those associated with the operation of the entity."

Note: We envisage in (a) (i) above regard would be given to current arm's length actual market rates, work done and services provided and in appropriate cases the records under (d) (ii) above would specifically address the criteria of the kind set out in Section 601TEA (3) of The Corporations Act.

- [Step 2]In the Draft AFR Requirements:
  - add a new paragraph (d) in draft Regulation 7 as follows:

    "(d) in the case of a trust registered as a charity, the registered entity's *responsible entities' report* for the year."; and
  - add a new Regulation 10 along the following lines:

"**10 Responsible entities' report**

(1) The *responsible entities' report* is a report for the financial year by the responsible entities that explains, with information necessary to truly and fairly support the conclusion, the basis for a conclusion that:

(a) payments and other benefits to those associated with the operation of the entity (including the responsible entities and other service providers), including for work done or services provided, are only fair and reasonable, and

(b) such persons are only reimbursed in respect of reasonable expenses incurred on behalf of the entity.

(2) The report must be signed by a responsible entity that is authorised to do so by the responsible entities."

Note: In determining what are fair and reasonable payments, regard should be given to current arm's length market rates, work done and services provided.

Philanthropy Australia originally circulated a first draft submission to members for comment which did not receive member endorsement. Because of the importance of this issue, the Philanthropy Australia then committed further significant time, extensive research and resources, including engaging external expertise, to develop the highly principled and practical approach set out in this submission.

As a result and due to CAMAC's strict deadlines, members were provided only limited time to comment on a draft of this submission before finalisation. Discussions were held with representatives of the Licensed Trustee Companies that are members with a view to obtaining detailed comments and, in particular, agreement with the core statement of principle that underpins this submission, namely, that fees must be fair and reasonable.

However ANZ Trustees Limited, AET, Perpetual, The Trust Company and Equity Trustees have requested the following Disclaimer be included in this submission:

"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 the drafting process and were not given a reasonable opportunity to consider all make comment on the draft document.

- ANZ Trustees Limited
- AET
- Perpetual
- The Trust Company
- Equity Trustees”

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PHILANTHROPY
Australia

Philanthropy Australia's Submission to CAMAC's Inquiry into Charitable Trusts and Trustees Companies

Dated: 15 March 2013

Attachment

1 Context

Before referring to specific issues, and our Suggested Changes, it is appropriate to refer to some aspects of the underlying legal and regulatory context.

As will be seen, our Suggested Changes seek to achieve a degree of uniformity, and therefore coherence, despite the disparate legal and regulatory regimes referred to below.

The context includes the following:

- The operation of the *ACNC Act* is presently confined to charities. (However, the Government's intention is to eventually expand the coverage to all not-for-profits (**NFPs**). That can easily be done, simply by expanding the list of items in the table in section 25-5(5) of the *ACNC Act*.)
- However, the charitable entities covered by the *ACNC Act* (and listed in items 1 to 7 of the table in section 25-5(5) of the *ACNC Act*) can take a variety of different legal forms. This is because the term "entity" in the *ACNC Act* includes a trust, a company or other body corporate, an unincorporated association, another body of individuals, and an individual.
- While the *ACNC Act* regulates all those entities (though some provisions are limited to federally regulated entities), other general and statutory laws apply to some but not other entities. That can result in an illogical lack of coherence on certain issues (which this submission seeks to address in part).
- For example:
    - A charitable **trust** is subject to State laws regarding charitable **trusts**, and the inherent jurisdiction of the courts of that State over charitable trusts. Whereas,

generally, other charitable bodies corporate (such as a charitable **company**) are **not** subject to any of those laws (because assets held for the incorporated body's general purposes are generally not held by it on any trust; rather, they are held on the terms of the body corporate's constitution).

- Licensed trustee companies (**LTCs**) are subject to Chapter 5D of the *Corporations Act*, whereas other trustees of charitable trusts are not.

- Most (but not all) Public and Private Ancillary Funds (**PuAFs** and **PAFs**, respectively) are charitable trusts, and therefore subject to the special laws applicable to *charitable* trusts. Whereas those PuAFs and PAFs which are not formed as charitable trusts are not subject to those laws (but are only subject to the laws applicable to *non-charitable* trusts).

- All PuAFs and PAFs (whether or not formed as charitable trusts) are subject to specific Commonwealth Guidelines, in the form of regulations made under the *Taxation Administration Act 1953*. Whereas other charitable trusts and other charitable entities (such as charitable companies) are not subject to any such Guidelines or other equivalent Commonwealth regulation.

- PuAFs and PAFs are subject to a specific limit on the trustee's remuneration and expenses under their respective model trust deeds. In particular, under clause 15 of each model deed (which is aimed at compliance with Guideline 43 in each case):

    - The trustee is only permitted to pay **fair and reasonable remuneration** for the services of the trustee in administering the trust, at a rate **not exceeding** 1.056% annually (GST inclusive) of the gross value of the trust fund; and

    - the trustee is only entitled to be reimbursed for reasonable expenses incurred as trustee of the trust.

    That regime is different from that applicable under Part 5D of the *Corporations Act*.

This is a hotchpotch Federal and State legal and regulatory regime. Whereas the *ACNC Act* and regulations made under it together comprise a uniform regime applicable to all charitable

entities, irrespective of their legal form (though some provisions only apply to federally regulated entities).

2 Principal focus of this submission

The principal focus of this submission is on the **fees** of the governing bodies of charitable entities (and in particular the trustees of charitable trusts), and related matters.

But all of the comments in part 1 above regarding the current hotchpotch legal and regulatory environment apply equally to that subject matter.

It follows, in particular, that the easiest and perhaps the best way to uniformly regulate the level of those fees (and to prevent the payment of fees that are not fair and reasonable) is via the *ACNC Act* and regulations under that Act.

We will now turn to the principal focus of this submission. Because of the CAMAC Review, we will focus on charitable trusts (as distinct from other charitable entities).

3 Response to CAMAC Review - Overview

An inherent and essential feature of every charitable trust (or other charitable entity) is that the whole of its assets and income are held for the public benefit.

In most cases, the trustees of charitable trusts are volunteers.

But, in the case of many testamentary trusts and other large charitable trusts, a licensed trustee company (**LTC**) is the sole or a joint trustee.

LTCs provide a valuable service to charitable trusts in respect of which they act as the sole or a joint trustee. In this regard:

- They should be entitled to receive **reasonable** fees for the work that they actually and properly do, and having regard to their actual responsibilities and the scope of their potential liability (as well as any limitations on their responsibilities and liability).
- But equally, given that charitable trusts operate solely for the **public benefit**, any fees that they charge should not exceed what is reasonable in the circumstances for the services actually and properly provided**.**

- Other submissions to the CAMAC review assert (by reference to what are stated to be real life examples) that the reforms effected by the *Corporations Legislation Amendment (Financial Services Modernisation) Act 2009* (**CLAFSMA**) fail to deliver this outcome and permit the opposite (that is excessive fees and seemingly arbitrary increases in fees) to occur.

- Our Suggested Changes involve a potential solution to this anomaly.

4 Background (1) – the level of LTC fees can be set without regard to actual services provided; often with no opportunity to negotiate; and often effectively cannot be challenged

4.1 Level of Fees

The fees that LTCs charge for their services to charitable trusts as a fiduciary should not exceed what is reasonable in the particular circumstances for the services actually and properly provided.

Relevantly:

- Depending on the terms of the trust and other matters, the amount of work properly performed by a trustee for a trust of a certain size (in terms of investment management, grant making and other administration) may vary considerably.

- Despite that, fees are permitted (regulated) under the *Corporations* Act in a uniform way (which, as noted above, differs from that applicable to all PuAFs and PAFs under their respective Guidelines and clause 15 of their respective model trust deeds).

- In some submissions already made to the CAMAC Review, it is asserted that some LTCs are charging the **maximum** permitted fees, without particular regard to the amount of work actually involved in the particular case, and without regard to whether or not those fees are reasonable for the work actually done.

- Those submissions also assert that in some cases, the level of fees may be substantially more (potentially up to 5 times more) than might be charged by another LTC or arm's length licensed commercial trustee of a charitable trust for the same work.

4.2 Inherent Structural Weaknesses

Further, there are a number of relevant inherent structural weaknesses or other deficiencies which seem to have the potential to materially weaken (1) the governance, and (2) the transparency and accountability, of charitable trusts. These include:

- Generally, there is no-one other than the relevant Attorney-General who can enforce the terms of the trust or challenge the reasonableness of the fees charged by the trustee (such as an LTC trustee) of a longstanding charitable trust. In this regard:
    - A charitable trust, of its very nature, is a trust solely for **purposes**. [Those purposes correspond to the beneficiaries (or class of potential beneficiaries) in the case of a private or **non**-charitable trust. This is the case even where the charitable trust is primarily intended to benefit a named entity (such as a hospital not controlled by government).] Hence, under the general law there is generally no person with a proper interest to challenge the reasonableness of any fees charged by the trustee.
    - Section 601RAD(1)(b)(iv)-(vi) of the *Corporations Act* modifies the general law slightly. But the practical reality is that, in the case of many of the most substantial and longstanding trusts of which an LTC is the sole or a joint trustee, there is no-one who could qualify so as to be able to apply to the Court under section 601TEA(4) for a review of the reasonableness of the fees charged by the LTC. Even co-trustees are not such a person under that provision, even though it explicitly recognises that there may be more than one trustee ("… or *trustees* …" in sub-paragraph (b)(v)). This seems a ridiculous situation as under current law and practice, a co-trustee may be the only person in possession of sufficient information to come to an informed view of the reasonableness of the fees of an LTC for the work actually and properly done by the LTC.
- Further, and in any event, any applicant (such as a volunteer co-trustee or potential beneficiary) wishing to challenge the reasonableness of any trustee fees is required to go to court (at great expense) to mount the challenge, and is also exposed to an order for costs against them if they are unsuccessful (thereby at least doubling their exposure). That severe financial risk is a substantial impediment and deterrent (and especially for a volunteer or another charity), which in practice effectively rules out any challenge even where someone did have legal standing to mount a reasonable argument that the fees of a trustee (such as an LTC trustee) in a particular case were excessive. [The Financial Services Council (**FSC**) submissions (on behalf of the LTCs)

to the CAMAC Review and to Treasury on the December 2012 Draft Governance Standards seek to maintain the status quo in this regard – they wish to leave this issue solely in the hands of the courts, with all the obvious attendant expense and severe financial risk that this entails.]

- For all the above reasons, in the case of most longstanding charitable trusts of which they are the sole or a joint trustee, an LTC is effectively at liberty to charge fees **up to** the statutory limit under the *Corporations Act*, irrespective of the work that they actually do (or have to do) in a particular case and irrespective of any concerns as to the reasonableness of those fees for the services actually and properly provided in a particular case. This is confirmed in the LTC submission to the CAMAC Review, which states: *"In our view, 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."* (Page 22 of the FSC Submission).

By way of stark contrast, the trustees of all Public and Private Ancillary Funds are now subject to explicit overriding statutory requirements that:

- their fees be no more than is **fair and reasonable**; and
- they are only entitled to be reimbursed for **reasonable expenses** on behalf of the fund. (PuAF Guideline 43; PAF Guideline 43.)

[As will be seen in part 7.2 below, these explicit overriding requirements reflect the general law applicable to all charitable trusts.

Further, as noted in part 1 above, clause 15 of the PuAF and PAF model trust deeds also caps their fees at 1.056% (GST inclusive) of the gross value of the relevant trust fund.]

This raises the obvious question, why are those particular types of charitable trusts subject to such overriding statutory "reasonableness" constraints (and consequent regulatory oversight by the Australian Taxation Office) when there is no such constraint on any other charitable trust of which an LTC is the sole or a joint trustee? As will be seen below, in our opinion, the distinction is illogical and arbitrary, and can have materially adverse consequences in particular cases and perhaps simply relates to the fact Ancillary Fund Guidelines were developed before the ACNC Act.

5 Background (2) – lack of transparency and accountability re the fees charged, and the services actually and properly provided, by an LTC

Only a "person with a proper interest" (as defined in section 601RAD(1)(b) of the *Corporations Act*) in an estate has standing under section 601SBB to require the provision of accounts in respect of a charitable trust. Relevantly, that definition only covers:

- [(iv)] a person who is **named** in the instrument establishing the trust as a **person** who may receive payments from the trust; and
- [(vi)] a **person** of a **class** that the trust is intended to benefit.

As is well known, because a charitable trust is, of its very nature, a **purpose** trust, it will generally be the case that no-one who **may** benefit from a particular charitable trust will qualify as a "person with a proper interest". This has the consequence that, in effect, only a State Attorney-General would have the power to compel the production of financial statements, including details of trustee fees (including commissions) and expenses.

As a consequence, there is effectively no legal requirement for transparency and no accountability (and therefore no regulatory or community oversight) in relation to either:

- the work actually and properly done by an LTC in relation to many substantial longstanding charitable trusts; or
- the quantum of fees and expenses referable to the different types of work that it actually and properly does as trustee (and the reasonableness of those fees and expenses).

Instead, the only control is very limited under section 601TEA of The Corporations Act with potentially only the relevant State Attorney General or Australian Securities and Investments Commission (ASIC) having standing to initiate an application to the court to exercise its powers under this section.

Contrast an arrangement where fees are charged on a fee for-service-basis (often having regard to the time actually spent, or to a reasoned budgeted estimate of the time likely to be taken) – in other words, component pricing. Other submissions to the CAMAC Review, which cite particular (but unnamed) case studies, assert that fees calculated on this basis can be as little as about 20% (on average) of the fees which are often typically charged by an LTC for the same or similar services (as published on their websites).

Such a lack of transparency and accountability should be unacceptable from a public policy point of view, where the relevant assets are all held for the **public benefit** – which is an inherent and essential feature of every charitable trust. And especially so having regard to the fact that, according to the FSC's 15 February 2013 submission to the Treasury in relation to the then Draft Governance Standards, the aggregate value of the assets of the more than 2,100 charitable trusts of which LTCs are the trustees (and in many cases the sole trustee) is of the order of $3.2 billion.

A 'fair and reasonable' fee-for-service model (as distinct from solely relying on the current cap model) would correctly acknowledge that there is no necessary uniformity in the services actually and properly provided by an LTC to a charitable trust of a particular size. The criteria listed in section 601TEA (3) of The Corporations Act provide a good starting point for such as determination. For example:

- all the assets in a charitable trust could be invested in a common fund, and all the net income paid to one or several named donees (this would all involve relatively minimal work);
- whereas, in other cases, assets of the same gross value could be actively managed and there may also need to be extensive research, an application and assessment process, individual evaluations, comparisons, review of reporting or other acquittal, and other work in relation to annual or term grant making, including convening and servicing meetings of trustees (obviously, relatively, all this involves much more work).

Such differences in service levels also highlight why a simple regulated uniform fee cap, without any proportionate relationship to the work actually and properly done in each particular case (as distinct from a requirement of reasonableness, having regard to the work actually and properly done, such as could be justified under a fee-for-service model), is manifestly insufficient on its own.

The fee cap applicable under the *Corporations Act* can be maintained, but (consistent with what we understand to be the legislative intention) should be a **maximum** in any case, and not an automatic entitlement, as of right, irrespective of reasonableness.

6 Possible solution to fundamental problems identified in other CAMAC Review submissions and referred to above - summary

Among reform steps that could be taken, we believe there are two appropriate, and relatively simple, initial steps (our **Suggested Changes**) that would go some way towards dealing with the fundamental problems identified in other submissions to the CAMAC Review and referred to above.

Briefly, they involve:

- [**Step 1**] Incorporating a **"fair and reasonable"** requirement in relation to the fees and expenses of **any** charitable trust in the Draft Governance Standards, as well as a requirement that the basis of any determination of fairness and reasonableness be recorded in writing, so that an auditor or reviewer (and in an appropriate case regulator (such as the ACNC), court or other interested person) can evaluate whether the basis was reasonable in the particular circumstances of the charitable entity in question. This Step is detailed in part 7 below.

- [**Collateral and contemporaneous Step 2**] Incorporating into the regulations regarding annual financial reports (the **Draft AFR Requirements**) a requirement that the report include specific information to better enable that fairness and reasonableness to be assessed by the ACNC and possibly other interested parties, in an appropriate case. This Step is detailed in part 8 below.

We envisage that those steps would, in turn, be supplemented by specific Guidance and educational material for charitable entities generally, charitable trusts, or LTCs in particular, that would be developed by the ACNC, in consultation with the sector. For example, the Guidance material may suggest that trustees develop appropriate processes and records to address the kind of criteria listed in section 601TEA (3) of The Corporations Act.

Very importantly in this regard, we note that the FSC, in its submission on behalf of the LTCs to the CAMAC Review, has already stated on their behalf that they *"would have no difficulty with the standing to bring such [court] proceedings being extended to the ACNC Commissioner, thereby providing a mechanism for serious grievances to be appropriately addressed …"*. (Final paragraph in part 3 of the FSC submission)

The two reforms suggested above build on this express willingness by facilitating a proportional and cost effective response to the reasonable concerns expressed in other submissions to the

CAMAC Review. More detail regarding the specific changes that we have in mind is outlined in parts 7 and 8 below, respectively.

7 Step 1: Incorporating *'fair and reasonable'* fees requirement in the proposed ACNC Governance Standards

7.1 Preliminary comments

The December 2012 Treasury Consultation Paper headed *Development of Governance Standards* set out six draft governance standards.

Arguably, at least some of those draft standards could have been improved by recognising some fundamental differences between –

- charitable **trusts** on the one hand, and
- **other** charitable **entities** (such as companies, incorporated associations and other bodies corporate or in some cases charitable unincorporated bodies) on the other hand.

But this did not occur in the Draft Governance Standards released on 8 March 2013.

The significance of this will be apparent from the following:

- As noted in part 1 above (and as acknowledged in part 1 of the FSC submission to the CAMAC Review), currently, a range of different requirements apply to different types of **charitable trusts**:
    - PuAFs and PAFs are subject to explicit **fair and reasonable** requirements under Guideline 43 of their respective Guidelines (and a specific fee cap under clause 15 of their respective model trust deeds) in relation to fees and expenses, irrespective of the identity of the trustee(s) and, in particular, even if the trustee is an LTC;
    - where the trustee is an LTC and the trust is not a PuAF or a PAF, the fees of the trustee may be subject to an overall cap under Part 5D of the *Corporations Act*; but
    - there is no cap, nor any explicit legislative or regulatory fair and reasonable requirement, in relation to the fees and expenses of the corporate trustees of other charitable trusts. Rather, these are only challengeable in court, either at

the instigation, or with the approval, of a State Attorney-General in the relevant jurisdiction (which rarely, if ever, happens in practice in the case of a charitable trust).

There is no apparent justification or logic for these different regimes (or, in the last case, lack of any regime).

For all those reasons, it seems to us that there is a case for greater uniformity in the relevant controls applicable to **all** charitable trusts, using a principles based approach.

In that regard, it seems to us that the PAF and later PuAF Guidelines represent a useful starting point or benchmark.

The comments above underlie our suggested approach in parts 7.2 and 7.3 below.

7.2 Fees and the governance of charitable entities

Public benefit is at the core of the concept of a charitable trust or other charitable entity.

A corollary is that there should be no generation of unreasonable **private** profit or benefit. In this regard –

> *"Payments to those associated with the operation of the charity, **or to service providers**, that are **excessive by reference to reasonable market rates**, … can be viewed as de facto distributions of private profit, and therefore **infringe the proscription against private profit**."*
>
> (Professor) GE Dal Pont, *Law of Charity* 2010, at paragraph [3.24] (page 61) – the leading Australian text on the law of charity (emphasis added).

It seems to us that three things follow from this:

- First, the universality of a principle that payments to associated persons (including service providers such as trustees) should not exceed reasonable market rates – a requirement of fairness and reasonableness in **all** cases.
- Secondly, that this principle:
  - is at the heart of the concept of a charitable trust,
  - therefore goes to the purposes and character of the trust as an NFP entity, and, importantly,

- therefore is an essential and critical aspect of the **governance** of the trust.

- Thirdly, that it is not only appropriate, but also probably essential, that this principle be embodied in a specific Governance Standard applicable to all charitable **trusts** registered with the ACNC.

7.3 Suggested specific Governance Standard

Accordingly (putting aside the issue referred to in part 7.1 regarding whether the standards should vary slightly, depending on the legal form of the charitable or other NFP entity), we suggest that **draft Standard 1** (*purposes and not-for-profit nature of a registered entity*) **should include a specific Standard along the following lines**:

"A registered entity must:

(d) in the case of a trust registered as a charity,:

(i) without limiting paragraphs (a) to (c),ensure that :

(a) payments and other benefits to those associated with the operation of the entity (including the responsible entities and other service providers), including for work done or services provided, are only fair and reasonable;

(a) such persons are only reimbursed in respect of reasonable expenses incurred on behalf of the entity; and

(ii)be able to record and demonstrate compliance with sub paragraph (i), by contemporaneous or other information and documents, appropriate to its particular circumstances including the character and size of the entity and the quantum and nature of payments to those associated with the operation of the entity."

Note: We envisage in (a) (i) above regard would be given to current arm's length actual and reasonable market rates, work done and services provided and in appropriate cases the records under (d) (ii) above would specifically address the criteria of the kind set out in Section 601TEA (3) of The Corporations Act.

Paragraph (d) (i) reflects the general law applicable to all charitable trusts, and is broadly similar to the requirements of Guideline 43 in each of the PAF and PuAF Guidelines. (See also

Guidelines 36 and 41-42.) However, we have adopted the language of Professor Dal Pont quoted in part 7.2, rather than merely repeated the language in Guideline 43, because:

- the principle may not be limited to the trustee of a charitable trust, but may also cover other charitable entities (such as any charitable or other registered entity that does not have members);
- we think it desirable to add some criteria by which to measure reasonableness, to counter any argument that the **maximum** fees allowable under Part 5D of the *Corporations Act* are automatically reasonable, irrespective of the work actually and properly done.

That is why the words "including for work done or service provided" are included.

Paragraph (d) (ii) requires that, in appropriate cases, there be some contemporaneous record justifying a conclusion of fairness and reasonableness (and not excessive). The words *"appropriate to the character and size of the entity and the quantum and nature of payments to those associated with the entity"* are designed to achieve **proportionality** in any record keeping. For example:

- A small charitable trust (by reference to the gross value of its assets) with volunteer trustees and employed staff whose pay and benefits were patently within sector norms would likely need to do nothing (or virtually nothing).
- Whereas the trustee(s) of a large (by reference to the gross value of its assets) and long established charitable trust would probably need to maintain a written record to justify any fees for any services they provide.
- Similar principles could apply to other (non-trust) charitable entities.

We envisage that the ACNC would issue Guidance and educational material about the kind of records that, in its view, a charitable trust (or if applicable other registered entity)entity should keep in particular classes of cases, reflecting the principle of **proportionality,** drawing on criteria listed in section 601TEA (3) of The Corporations Act.

Because of the in-built proportionality principle, there should not be any particular need to single out LTCs for any particular treatment. But, it should follow that any fee cap under the *Corporations Act* should properly be viewed as a maximum (consistent with what we understand to be the legislative intent), and not an automatic entitlement, as of right; and,

therefore, in practice, it may be appropriate for the ACNC to develop particular Guidance material targeted particularly at LTCs.

Finally, we note in passing that the FSC (on behalf of the LTCs) submission to the Treasury in relation to the December 2012 Draft Governance Standards focused on Standard 6 but did not comment on Standard 1 which states:

> "For example, a medium registered entity has a process in place to assess the remuneration of its staff against benchmarks from that particular part of the NFP sector. This ensures that the entity is operating as an NFP entity, and is not carried own for the profit or gain of its managers or members through excessive remuneration."

8 Collateral and contemporaneous Step 2: Incorporating a specific reporting requirement in the regulations relating to annual financial reports

8.1 Preliminary comments

Under the *ACNC Act* (Subdivision 60-C), medium and large registered entities must lodge with the ACNC annual financial reports, together with any required reviewer's or auditor's report, respectively (see section 60-10).

Under section 60-15(1), the financial report must comply with the requirements set out in the regulations. No regulations have yet been made. However, a draft Regulation and accompanying Explanatory Material have been released for public comment. (Comments were sought by 15 February 2013.)

Under section 60-15(2) any information that the regulations require to be provided must be –

> *"information that relates to, or has the purpose of, enabling recognised* ***assessment activities*** *to be carried out in relation to registered entities".* (emphasis added.)

8.2 Suggested additional requirement in the draft Regulation

The draft Regulation only provides for the following three elements:

- the financial statements;
- the notes to the financial statements; and
- the declaration made by the responsible entities about the financial statements and the notes.

We believe that a strong case can be made for the inclusion of a **fourth element**, consistent with:

- the fact that charitable trusts and all **other** charitable entities operate for the **public benefit**,
- the desirability that the charitable or other NFP character of a registered entity, and the fact that the entity does not generate unreasonable private profit for any person or entity associated with it, be demonstrated to the public (as reflected in draft Governance Standard 1),
- the suggested inclusion of a specific Governance Standard requiring only fair and reasonable fees etc (see part 7.3 above), and
- the language of section 60-15(2) regarding the inclusion of information to enable relevant and important **assessment activities** to be carried out.

We suggest that the fourth element should consist of:

- a **responsible entities' report** regarding fees and expenses, as outlined below.

This could be easily achieved by adding:

- **a new paragraph (d) in draft Regulation 7** as follows:

  "(d) in the case of a trust e registered as a charity, the registered entity's ***responsible entities' report*** for the year.";

  and

- **a new Regulation 10 along the following lines**:

> "**10 Responsible entities' report**
>
> (1) The *responsible entities' report* is a report for the financial year by the responsible entities that explains, with information necessary to truly and fairly support the conclusion, the basis for a conclusion that:
>
> (a) payments and other benefits to those associated with the operation of the entity (including the responsible entities and other service providers), including for work done or services provided, are only fair and reasonable, and
>
> (b) that such persons are only reimbursed in respect of reasonable expenses incurred on behalf of the entity.
>
> (2) The report must be signed by a responsible entity that is authorised to do so by the responsible entities."
>
> Note: In determining what are fair and reasonable payments, regard should be given to current arm's length actual and reasonable market rates, work done and services provided.

Such a report:

- would complement the suggested new Governance Standard (see part 7.3 above), and
- has its own in-built **proportionality**, in that:
  - It only applies to medium and large entities (because they are the only registered entities required to lodge annual financial statements under the *ACNC Act*).
  - The suggested Governance Standard refers to *"information and documents **appropriate to the character and size of the entity and the quantum and nature of payments to those associated with the operation of the entity**"*.
  - So, even between entities of the same size (in terms of the gross value of their assets or their turnover or income, and whether both medium or both large entities), the detail in any such report need not be uniform, but would reflect the particular circumstances of the relevant entity (for example, whether the trustee(s) charged fees or were volunteers).

If it was felt that the medium and large entities categories did not capture all the entities in respect of which such a disclosure should be made, then the ACNC could possibly exercise its powers under Subdivision 60-E (and in particular, section 60-80) of the *ACNC Act* to require such specific reporting by a particular class or classes of other registered entities (for example, charitable trusts with assets having a current gross market value in excess of a nominated monetary threshold, other than medium and large entities where any of the trustees charged fees (or fees in excess of a nominated monetary threshold)). Similar provisions already exist in the PuAF Guidelines (Guidelines 26.2 and 28), including a requirement for auditing or a review.

This kind of report and declaration is aimed at:

- requiring compliance with arm's length standards similar to those required under Guidelines 36 and 41-43 of the PuAF and PAF Guidelines, appropriate to any NFP entity,
- requiring that medium and large entities specifically consider, record and be able to demonstrate (if appropriate), and explicitly confirm (in a manner similar to the *responsible entities' declaration*), that compliance, and
- permit that disclosure to be made available to the ACNC consistent with the fact that all charitable entities operate for the **public benefit**, thus achieving a degree of desirable transparency and accountability.

Consistent with the underlying objective of section 60-15(2), the ACNC could then:

- carry out any **assessment activities** that it thought necessary or appropriate, based on the content of such responsible entities' reports,
- determine in particular cases whether there had been a possible or likely breach of the new Governance Standard suggested in part 7.3 above. (The process from there would be no different from that applicable to any other possible breach of a Governance Standard.), and
- where a breach is identified apply the principle of proportionate response inherent in the ACNC regulation framework.
- Note: We only request a responsible entities' report for charitable trusts. Whether such a report should be required for a wider class of entities is a matter for Government and the ACNC.

9 Replacing Trustees and "Portability"

9.1 Background

The penultimate dot point in the list of issues upon which the CAMAC Review is to report to the Government relates to "*the removal and replacement of the trustees of a charitable trust*".

CAMAC's subsequent list of questions for interested parties groups relevant questions under the heading "*Portability*".

9.2 Preliminary comments

In its submission to the CAMAC Review, the FSC (on behalf of the LTCs) asserts that only the courts should have the power to remove an LTC trustee (see its response to Questions 3.1 to 3.3). [It effectively repeats the same assertion in its later submission to Treasury in relation to the December 2012 Draft Governance Standards (see, for example, the final sentence on the unnumbered page headed "Standard 6(b)"), again repeatedly using what seems to us to be an inappropriate, and deliberately pejorative, reference to "penalty provisions".]

The Charitable Alliance, on the other hand, argues for "portability".

These positions require some analysis and comment.

By way of background:

- The term "portability" was first coined in the context of Australian financial services in 2002 when the then Government introduced portability into the *Superannuation Industry (Supervision) Act* (**SIS Act**). Until that time superannuation funds were only *required* to transfer the funds of a member to another fund, when they received a request from the member and if this were stipulated in individual trust deeds.

- The introduction of portability made it mandatory for *all* superannuation funds to transfer the funds of a Member to another superannuation fund if they received a direction to do so. This recognised that the funds belonged to the Member and they should be able to invest their retirement savings in the fund of their choice.

- The term has since been extended to apply to Private Ancillary Funds and the sub-funds of Public Ancillary Funds, to allow portability between these structures. This new flexibility has received widespread support throughout the philanthropic sector. It

recognises that circumstances can change over time and that therefore some flexibility in structure can lead to greater efficiency.

For all the above reasons, applying the term “portability” to charitable trusts arguably involves considerable care.

- In our opinion, it is therefore better simply to refer to the grounds and mechanism for replacing trustees, as per Question 3.4 in CAMAC’s list of Questions: (1) Who should be able to initiate an action for change of trustee; and (2) Who should decide whether a trustee should be replaced?

- Accordingly, we will interpret the term “portability” in the present context as referring to those two issues.

As noted above, the FSC (on behalf of the LTCs) argues that only the courts, following legal action by an interested party, should be able to force the replacement of an LTC as a trustee.

However, in our view, the facts do not support this position:

- There can be a substitution of a trustee company without reference to a settler or founder of the charitable trust. This is a change that was sought by the LTCs and included in the *Corporations Legalisation Amendment (Financial Services Modernisation) Act 2009* (**CLAFSMA**). See Part 5D.6 of The Corporations Act.

- Therefore, the *principle* that the trustee of a charitable trust can be changed without reference to the courts, or even other persons with “proper interests”, has recently been promoted by LTCs themselves and accepted by Treasury and the Government.

- In addition, the shareholders of LTCs can pass, and have in the past passed, resolutions or accepted takeover offers (or agreed to schemes of arrangement) which have in effect led to a change in trustee, when one trustee company has acquired another. It is possible that this will happen again soon, as Equity Trustees has recently launched a bid for Trust Company. In those cases too, a change of trustee effectively occurs solely for commercial reasons and at the instigation of persons other than merely the courts.

In the case of a change in trustee under Part 5D.6, ASIC provides oversight to ensure that “the transfer is in the interests of the clients of the transferring company as a group”, but not in the case of a takeover or merger.

Our proposal for the ACNC (following the implementation of the specific changes suggested in parts 7.3 and 8.2 above) to have an oversight role over charitable trusts through the Governance Standards and the requirements for annual financial reports has the potential to balance the interests of the community, on the one hand, and LTCs, other trustee companies and all other charitable entities, on the other hand, to ensure that, at *all* times, all fees are fair and reasonable. In any case where, after due information gathering, negotiation and any fee changes, the ACNC determined that fees and/or expenses were still excessive in a particular case, then (subject to the normal review and appeal processes under the *ACNC Act*, including application to the relevant court) an LTC trustee or other federally regulated trustee may be replaced.

We note in passing that the FSC (on behalf of the LTCs) submission to the Treasury in relation to the December 2012 Draft Governance Standards effectively argues that, because only federally regulated entities are subject to this power, no trustee (or at least no LTC trustee) should be subject to that replacement power. That issue was the subject of extensive consideration prior to the passage of the *ACNC Act* by Parliament and is an inherent (even though not ideal) feature of (or limitation in) the Act. It should be accepted as such, and not used as a justification for seeking to exempt LTCs from what would otherwise be a breach of a Governance Standard.

10 Concluding comments

The proposals in this submission seek to build on governance, transparency and accountability changes which are already in train, rather than to require new legislation or joint Commonwealth-State action.

They are therefore put forward as a very practical approach to immediately improving and potentially resolving the longstanding disagreements between licensed trustee companies and some of their co-trustees or other interested persons about the level of LTC fees in respect of charitable trusts, as well as providing for regulatory oversight of charitable trusts for which trustee companies are the sole or joint trustees.

It is also put forward as a desirable approach which would facilitate a degree of uniformity, and therefore coherence, and promote the principle of proportionality, in the treatment of all registered charitable entities.

In addition, if the reforms suggested in this submission are accepted, Philanthropy Australia recommends building in a further review in three years' time.

Louise Walsh
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Appendix 1: Probity and Disclosure Statement

1. Philanthropy Australia Council Members Interests

No Member of Philanthropy Australia's Council has a current financial or other interest in any Trustee Company.

However, Members of Council make the following disclosures:

- Bruce Bonyhady AM, President of Philanthropy Australia, is a former Chairman of ANZ Trustees Ltd.
- David Ward, Treasurer of Philanthropy Australia, is a former Director of ANZ Trustees and is is Director of Australian Philanthropic Services
- Christopher Thorn, Council member of Philanthropy Australia is Partner and Head of Philanthropy and Charitable Services at Evans and Partners Pty Ltd.

Mr Bruce Bonyhady AM, President
Bruce Bonyhady (B Appl. Ec, M. Ec) is Chairman of Acadian Asset Management Australia Limited, a Director of Director of Dexus Wholesale Property Limited and Deputy Chair of the COAG Advisory Panel on Disability Reform.

Community positions held by Bruce include: Chairman of Yooralla and Chairman of the Advisory Panel to Solve! at the Royal Childrens Hospital, Melbourne. He was formerly Chairman of ANZ Trustees Limited, a Member of the Felton Bequests' Committee and a Member of the Disability Investment Group.

In June 2010 Bruce was appointed a Member of the Order of Australia for his service to people with disabilities, their families and carers, particularly as Chairman of Yooralla, and to the community as a contributor to a range of charitable organisations.

Ms Dur-e Dara OAM, Vice President
Dur-e Dara is a restauranteur, business woman and musician. She describes herself as Indian by race, Malaysian by birth and an Australian citizen by choice. She is the Convenor of the Victorian Women's Trust, on the board of management of La Mama Theatre, and Patron of the Victorian Foundation for Survivors of Torture.

Dur-e was awarded the Medal of The Order of Australia in 1997 for services to the community and promotional and fundraising activities for women's groups.

Mr David Ward, Treasurer
David Ward BSc (Hons) is a trustee, governance and structure consultant in the philanthropic community. He is Director of Australian Philanthropic Services, ShareGift Australia, Bug Blitz, Te Anau Consulting and of several PAFs.
David was the author of the Trustee Handbook: Role and Duties of Trustees of Charitable Trusts and Foundations (2008 & 2012), the Private Ancillary Funds Trustee Handbook (2009) and the Public Ancillary Funds Trustee Handbook (2012) for Philanthropy Australia and is the presenter of Trustee and Governance Workshops for Philanthropy Australia. David is also a Sessional Lecturer at Asia Pacific Centre for Social Investment & Philanthropy, Swinburne University, Melbourne.

David was a member of the international panel that developed the Investment Management Code of Conduct for Endowments, Foundations and Charitable Organisations for the CFA Institute (2009-

2010). He had 20 years' experience as a financial market executive with ANZ including four years as CEO of ANZ Trustees, which manages over 200 charitable trusts.

Louise Walsh, Chief Executive Officer
Louise Walsh brings extensive corporate, government, not for profit and philanthropic leadership and planning experience to her role as CEO of Philanthropy Australia.

A former corporate lawyer with Allens Arthur Robinson, Louise worked on Sydney's Olympic Bid, and corporate partnerships for the 2000 Olympic Games and the City of Sydney, before becoming Director of Development for the Sydney Symphony.
Most recently, Louise has been founding Director of Artsupport Australia, an initiative of the Federal Government agency, the Australia Council for the Arts, to grow cultural philanthropy. During her 10 year tenure, Artsupport Australia facilitated over $77 million of philanthropic funds nationally for cultural sector across hundreds of organisations and individual artists.

Mr Paul Clitheroe AM
Paul Clitheroe is a director of ipac securities, a company he founded in 1983 with four partners. ipac manages more than $13 billion dollars for clients. Paul is a leading media commentator on financial issues. His books have sold over 600,000 copies. Paul hosted the Money Program on Channel 9 from 1993 to 2002 and Money for Jam in 2009. He also hosts talking money which runs nationally on radio.

Paul is Chairman of the Australian Governments Financial Literacy Board. It has established a national strategy to improve the financial skills of all Australians and is now implementing this strategy in schools and the workplace. Over 1 million people have visited the moneysmart website.

He is also, Chairman of Money magazine, Chairman of the youth anti-drink driving body, RADD, a Council Member of Philanthropy Australia, Chairman of the Australian String Quartet and a member of the Sydney University Medical School Advisory Board.

In 2008, Paul was appointed a Member of the Order of Australia (AM) in the Queen's Birthday Honours for service to the financial sector through the promotion of financial literacy, and to the community.

In 2012 Macquarie University appointed Paul as Chair of Financial Literacy. He is a Professor with the School of Business and Economics.

Mr Timothy Fairfax AM
Mr Timothy Fairfax AM is a businessman, pastoralist and philanthropist.
He is Chancellor of Queensland University of Technology; Chairman of the Vincent Fairfax Family Foundation, Tim Fairfax Family Foundation and Salvation Army Brisbane Advisory Board; Member of the National Gallery of Australia Council; President Queensland Art Gallery Foundation, Director of the Foundation for Rural and Regional Renewal and Director of Australian Philanthropic Services.

Tim is also a Member of Philanthropy Australia Council, Councillor Royal National Association Queensland and Patron of AMA Queensland Foundation, The University of Sunshine Coast Foundation and Volunteers for Isolated Students Education.

Tim's business interests include being director of Cambooya Pty Ltd, Building Solutions Pty Ltd, Rawbelle Management Pty Ltd and Principal of TV Fairfax Pastoral, Strathbogie Pastoral Company and JH Fairfax & Son; which operate ten rural properties in Queensland and New South Wales involving beef cattle, fine wool and grain.

Mrs Ann Johnson

Ann Johnson is a director of the W & A Johnson Family Foundation. Ann and her husband Warwick established their PAF in 2006. She is a trustee of the Sydney Theatre Company Foundation and a director of Ecotrust Australia.

Ann trained as a lawyer and has worked in Sydney and Tokyo for law firms.

Robert McLean AM
Robert is a company director and private equity investor. He is a director of LJ Hooker, Thoughtweb Inc. and the Reserve Bank of Australia Payments System Board. He is a Senior Advisor to McKinsey & Co Inc. where he served as the Managing Director for Australia and New Zealand.

His non-profit roles include serving as a director of the Centre for Independent Studies, the Nature Conservancy Australia Program Advisory Board, the Asia Pacific Council of the Nature Conservancy, the UNSW Medicine Advisory Council and as a board member of Philanthropy Australia.

Dr Noel Purcell
Noel is Principal of Simply Good Business which specialises in strategic advice to corporations, government and not-for-profit organisations in the areas of corporate governance, responsibility and sustainability.

Noel retired from Westpac Banking Corporation in September 2008, having spent 23 years in senior executive roles, as well as a former Trustee of the Westpac Foundation. Prior to joining Westpac, Noel had served at senior executive level within the Federal Public Service within Prime Minister and Cabinet, the Office of National Assessments, and the Australian Bureau of Statistics.

Noel currently sits on several boards including as Chair of the Global Governing Board of the Caux Round Table, Chair of the Advisory Board of ANZSustain, Board member of Bestest Inc, and a Council member of Philanthropy Australia.

Mr Christopher Thorn
Christopher Thorn (BComm, FFin, MSDIA) is a Partner and Head of Philanthropy and Charitable Services at Evans and Partners Pty Ltd. Christopher provides investment advice to a diverse client group including individuals, families, endowments, foundations and community organisations, and consults to government, corporations and not for profit groups on Philanthropic, Community Engagement and Social Finance issues.

Christopher enjoyed a 28 year career at JBWere commencing in 1984 where he worked in Melbourne as a Retail and Institutional Adviser. In 1993 he moved to New York where he provided advice on Australian and New Zealand equities to US Institutional clients. Upon returning to Australia in 1996 he was appointed Manager of the firm's Queensland business, and made a Partner in 1997.

On returning to Melbourne in 2001, he held a variety of senior management roles within JBWere's Private Wealth Management business, including business integration and strategy. In 2002, Christopher established the firm's Philanthropic Services division.

Until 2011 he was the Executive Director of JBWere's Philanthropic Services team. His primary responsibilities included raising awareness of philanthropic issues and providing advice on investment and capital management to individuals and organisations wishing to implement a philanthropic strategy. He has developed a particular interest in fostering relationships between interested parties in order to facilitate the giving process including encouraging the development of a Social Capital market in Australia.

Christopher is Chairman of ShareGift Australia, President of the Camberwell Grammar School Foundation, and a member of the Melbourne Advisory Council of the Centre for Social Impact.

He was formerly Chair of the MLC Community Foundation Advisory Board, founding Chairman of StreetSmart Australia and an inaugural board member of Giving West.

2. Financial Interests

Licenced Trustee Companies which are Members of Philanthropy Australia:

- ANZ Trustees Ltd
- Perpetual Ltd
- Equity Trustees
- The Trust Company
- Australian Executors Trustees Ltd
- The Myer Family Company
- State Trustees VIC (Not a LTC for the purposes of the CAMAC review)

Total Membership fees from these entities: $34,540.

In addition, ANZ provides Philanthropy Australia with office space in Melbourne.

Estimated annual value of office space: $100,800.

Members and Associate Members of Philanthropy Australia which have co-trustees, beneficiaries or other related individuals who are members of the Charitable Alliance[1]:

- William Buckland Foundation
- Danks Trust
- Hugh Williamson Foundation
- The Myer Foundation
- Sidney Myer Fund
- Reichstein Foundation
- Percy Baxter Charitable Trust
- Helen Macpherson Smith Trust
- R.E. Ross Trust
- Myer Family Company
- Royal Children's Hospital Foundation
- Baker IDI Heart & Diabetes Institute

Total Membership fees from these entities: $64,670.

Other Members of Philanthropy Australia which are managed by a Trustee Company:

- The Felton Bequest
- Margaret Lawrence Bequest

[1] This list is based on the signatories to Charitable Alliance submission to the CAMAC Review.

- The SBA Foundation
- Ronald Geoffrey Arnott Foundation
- Ruffin Falkiner Foundation

Total Membership fees from these entities: $10,300

3. Philanthropy Australia CAMAC Review Working Group

- Bruce Bonyhady, President
- David Ward, Treasurer
- Christopher Thorn, Council Member
- Noel Purcell, Council Member
- Louise Walsh, CEO
- Anna Draffin, Deputy CEO
- Vanessa Meachen, Research & Policy Manager
- John King, Consultant, Prolegis Lawyers