

## **INTERVIEW WITH PETER MARES**

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**SUBJECTS: Private Philanthropy Reforms**

### **INTERVIEWER:**

Private philanthropy has been enjoying a bit of a boom in Australia during recent years; there's a growing number of wealthy families and individuals that set up investment trusts and channel the profits into good works. The growth has been driven in part by legislative changes made seven years ago that provided tax breaks for money invested in philanthropic funds. As a result, the holdings of these "prescribed" private funds as they have so been called have grown from \$78m in 2001 to an estimated \$1.2b last year. Over this period these funds distributed over \$300m to various charities. The Federal Government is now planning the change the way these funds are administered and overseen. And joining us from the ABC's Burnie studio in Tasmania is the Assistant Treasurer Senator Nick Sherry. Senator Sherry welcome to the National Interest.

### **SHERRY:**

Good evening Peter and good evening to your listeners and I might say I'm as an outraged Tasmanian there should have been some Tassie beaches on that (inaudible, laughs)

### **INTERVIEWER:**

I'm sure they're very kid-friendly but they might be a bit chilly sometimes ....

### **SHERRY:**

Never – it's a lovely climate down here. No there are some beautiful beaches in Tassie, very family-friendly.

### **INTERVIEWER:**

Ok, you've got your plug for Tasmanian tourism in – now tell us ... this sector, this philanthropy sector has grown very quickly since the tax breaks were introduced eight years ago, is that what has driven them, this growth of philanthropy, private philanthropy in Australia, those changes made by the Coalition Government?

**SHERRY:**

Oh look, I think credit where credit's due, there's no doubt that the, the tax breaks, the valuable tax concessions are a very significant impetus to the growth in this sector, but credit to those who want to, businesses, families, individuals - want to contribute to private philanthropy, it's very, very important, it does a great deal of good to society.

**INTERVIEWER:**

How do the tax incentives actually work?

**SHERRY:**

Well if you donate money, start-up and ongoing, it's tax deductible.

**INTERVIEWER:**

So if I, say donate, say I was rich which unfortunately I'm not, and I you know, donated a million dollars, I made \$5000, five million dollars one year and I put a million of that into a trust, then that would be offset against my other income.

**SHERRY:**

That's correct. In the same way if you donated, say, \$10 to a particular cause it would be tax deductible and claimable by you.

**INTERVIEWER:**

So in effect the ... I presume most of these private philanthropists are in the top tax bracket since they've got that money so essentially, is a kind of subsidy in foregone tax of 45 cents in the dollar from the Federal Government?

**SHERRY:**

Yes there is, and that's a very important encouragement but the underlying approach for what will now be the prescribed private funds of course is they have to be used for a range of listed purposes, if I could use that description that broadly fits a charitable purpose.

**INTERVIEWER:**

What sort of purposes?

**SHERRY:**

Well for example, it may be providing assistance for the homeless; it may be providing assistance in a whole range of health areas, that tends to be particularly a popular area of providing assistance.

**INTERVIEWER:**

Could be research funding, for example.

**SHERRY:**

Exactly.

**INTERVIEWER:**

What are the changes, I mean you're now looking at amending legislation, the way it governs these private philanthropic trusts, what are the changes you're proposing to make?

**SHERRY:**

Well as you mentioned in your introduction, this is now a very large sector, it's over a billion dollars in money with 800 PPFs approved since 2001. The law, the supervisory oversight of this sector is in part supervised by state governments and in part per consequence of what is known as common law, in other words the rules in many areas for operation are not written down at all, it's a bit like superannuation up until 25 years ago where we've relied substantially on common law. Now given the growth in this sector where we're dealing with such an enormous sum of money, the government believes that it was necessary to modernise and update the, I'd refer to it as integrity measures, to ensure that given the significant size of the system, more than a billion dollars, the significant level of tax concessions, it wasn't open to abuse.

**INTERVIEWER:**

And specifically, you're putting greater oversight of the system in the hands of the tax commissioner, is that right?

**SHERRY:**

That's correct. There will be for the first time clear legislated rules as a consequence of a bill moving through Parliament with some appropriate regulations, and the individual who will oversight this, or the office, will be the Australian Tax Office, and this hasn't existed before.

**INTERVIEWER:**

There were proposals in discussion papers that funds should also be required to disperse about 15% of their market value very year, now this has been dropped down to 5%, why not the higher target?

**SHERRY:**

Well, there are some funds that are established in perpetuity, now if you had a requirement of a 15 distribution rate, a 15% distribution rate; the earnings rate on the long-term average earnings rate would be around about 5, 6, 7, percent. So if you require at 15% to be distributed each year, then clearly the fund could not last in perpetuity because the capital would be significantly eroded, it probably wouldn't last more than seven, eight maybe 10 years, depending on the earnings rate. So five percent it was felt was more appropriate to ensure that the fund could continue in perpetuity. There are quite a number of funds as I understand that have already been established before the new rules come into effect, and we didn't want to undermine, effectively retrospectively the intent of those that were established in perpetuity.

**INTERVIEWER:**

Now you've said that the idea is more accountability to make sure these funds aren't abused, but there's still a lack of transparency as you say they report to the Tax Commissioner – why not require them to actually make public, you know, reports every year? So that we as taxpayers who are supporting them can see what they've done with their money, where it's gone and so on?

**SHERRY:**

That's a ... it's an interesting point. There are in fact many who contribute privately, family, individuals, who for I have to say for are the right reasons, do not want public acknowledgement of that. Some do, but many don't. In fact I've met with a number of individuals who discussed the proposed new supervision, who are not publicly known and they're not making their contribution for the tax breaks, they're making the contribution for the public good and they don't ...

**INTERVIEWER:**

But they're still getting the tax breaks?

**SHERRY:**

Yes but ...

**INTERVIEWER:**

They're benefiting from that public support and therefore isn't it fair enough to require a level of disclosure?

**SHERRY:**

Yeah, well in fact we will have a level, what will occur is that firstly the rules are being tighter, the Tax Commissioner must be satisfied, and secondly there will be reports to the Tax Commissioner for the first time, there'll be detailed tax operational reports, and then if the Tax Commissioner believes that they're not being operated properly, for the first time they will have the power to penalise, at the moment the power is a very black and white one, you either, you either close the fund totally even if there's a relatively minor breach in operation. Trustees are being held more accountable, etc, and I've asked the Commissioner to provide a report on the operation of the funds, so that the public can see - without going to the individual funds – but we do get a good detailed overview of the way this sector is operating which we haven't had before.

**INTERVIEWER:**

We don't even have contact details for these funds, so if I, you know I can even find like a list of these foundations to say would you like to support my very good cause.

**SHERRY:**

Yeah, the final list of, the final detail of accountability provisions will be in the regulations and we haven't closed consultation on that yet, so I don't want to pre-empt the consultation phase. But I can say there will be significantly great accountability and secondly, the extent to which they are made public, I mean, obviously some are public because they request donations, and there are some that do that, the final level of accountability will be completed when the consultation on the regulations ...

**INTERVIEWER:**

So you're open to the idea that they may, those details may be required to be made public ... office number and name, things like that because our office has told, your office has told us that those kind of contact details won't be required.

**SHERRY:**

Yeah, look I'm open to it, however, I don't want to pre-empt the outcome of the final consultation, but I do accept that there are a number of individuals and businesses who for quite, quite reasonable reasons don't want it publicly known that they do contribute in this area – I mean the

other – they're generally people who tend to be elderly, and they don't want to leave the money to their family. And that's the other option, and pass it on to their family in part or whole so ...

**INTERVIEWER:**

They don't necessarily want the kids to know what they're doing. Giving away the petrol money?

**SHERRY:**

That's true. Some of them don't. So there are legitimate reasons, we'll weigh that up when we finalise those regulations. The important thing is for the first time we'll have a robust regime overlooking the trustees, the way they behave it'll be codified in law, certainly and I might say a very small number, very small number of these PPFs who for example were making loans to donors and then the loans not repaid, which is a form of ..

**INTERVIEWER:**

Form of corruption...

**SHERRY:**

Well certainly tax minimisation and certainly not the intended purpose of a charitable trust like this, certainly that not allowed and as I say at the moment a lot of the law is either in the state jurisdiction so you've got different laws and also much of the supervision is in common law so it's not codified. So it'll be a big improvement. And that's for the good of the sector and it's broadly consistent with the approach the Rudd Labor Governments taken to modernise the supervision of our financial system, where you've got substantial amounts of money, where you've got tax concessions, and certainly over a billion dollars is a substantial amount of money, we need to modernise it and bring it in to the 21st Century, the regulatory and supervisory areas.

**INTERVIEWER:**

Senator Sherry, thanks very much for joining us.

**SHERRY:**

Thank you, good afternoon.

**INTERVIEWER:**

Senator Nick Sherry, who is the Assistant Treasurer and multi-tasking there, he was running the Burnie studio on his own because there were no staff available to let him in.