

NATIONAL SECRETARIAT

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**Trustee
Corporations
Association
of Australia**

9 May 2011

Hon Adele Farina MLC
Chair
Standing Committee on Uniform Legislation
and Statutes Review
Parliament House
PERTH WA 6000

Dear Ms Farina

**Inquiry into Trustee Companies (Commonwealth Regulation)
Amendment Bill 2010**

The TCA is the peak representative body for the trustee corporations industry in Australia.

It represents 16 organisations, comprising all 8 regional Public Trustees and the great majority of the private licensed trustee companies.

We are pleased to provide comments in relation to the Committee's Inquiry into the above Bill.

As you are aware, the Bill is part of the package of legislation designed to facilitate the transfer of responsibility for the licensing and 'entity level' regulation of trustee companies from the States and Territories to the Commonwealth.

At the same time, trustee companies remain subject to the inherent jurisdiction of the regional Supreme Courts, along with other persons who act as trustees, executors, etc.

The TCA has long been a supporter of proposals to introduce uniform legislation for trustee companies, on the basis that harmonisation would reduce regulatory burden while creating a national market for trustee services.

ANZ Trustees
Australian Executor
Trustees
Equity Trustees
National Australia
Trustees
New South Wales
Trustee and Guardian
Perpetual
Public Trustee for the
Australian Capital
Territory
Public Trustee for the
Northern Territory
The Public Trustee of
Queensland
Public Trustee
South Australia
The Public Trustee
Tasmania
Public Trustee
Western Australia
Sandhurst Trustees
State Trustees
Victoria
Tasmanian Perpetual
Trustees
The Trust Company

It is true that in 2009 we expressed some concerns about the Exposure Draft of the *Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009*, which set out the proposed new national regime.

Those concerns mainly were in relation to:

- Uncertainty about the respective responsibilities of the States and Territories versus the Commonwealth.
- The national licensing process.
- Disclosure requirements for 'direct' clients (eg: testators) versus 'consequential' clients (eg: beneficiaries).
- Fee deregulation.
- Whether certain traditional services should be seen as legal services rather than financial services and not be covered by the new regime.
- The operation of common funds.
- Dispute resolution arrangements.
- Voluntary transfers (ie: to allow rationalisation of multiple licences within a trustee company group).

Following the release of that Exposure Draft, we continued to engage in fruitful consultations with Treasury and the Australian Securities and Investments Commission as the new regulatory regime was developed.

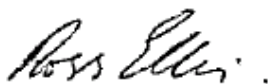
Many of our concerns have been addressed in the *Financial Services Modernisation Act (FSMA)*, the related 2010 Regulations, the recent amendments to the Act and ASIC's regulatory guides.

However, achieving the major benefit of reduced compliance costs through the smooth transfer of business from several existing trustee companies within a given group to one licensed trustee company in the same group unfortunately is taking longer than expected.

Although Treasury had contemplated that voluntary transfers could be facilitated by way of the 2010 Regulations, it transpired that such an approach was not constitutionally possible and rationalisation of licences needed to await the recent amendments to the FSMA, in addition to complementary regional legislation.

Accordingly, we are keen to see the WA amendments proceed as quickly as possible.

Yours faithfully,



Ross Ellis
Executive Director