

TRUSTEE COMPANIES AMENDMENT BILL 2009

Second Reading

Ms GIDDINGS (Franklin - Minister for Justice - 2R) - Mr Speaker, I move –

That the bill be now read the second time.

Mr Speaker, the Trustee Companies Act 1953 sets out a number of criteria which a trustee company must meet to operate in Tasmania. Principal amongst those criteria is a limit on the ownership of shares in a trustee company by an individual shareholder. The act imposes a requirement that no person may own more than 10 per cent of the issued shares.

With the various mergers which have taken place over a long period of time of trustee companies which were operating in Tasmania there is currently only one trustee company operating in Tasmania.

Late last year in a joint statement the representatives of MyState Financial (the credit union) and Tasmanian Perpetual Trustees Limited (the trustee company) indicated their intention of creating a new body which would own all the shares in both the credit union and the trustee company. The intention is that the current entities would become wholly owned subsidiaries of the new body but continue to operate the businesses in which they are currently involved.

Because this arrangement would be contrary the 10 per cent limitation under the Trustee Companies Act the Government was approached with a view to changing the act so that if the holding company which will wholly own Tasmanian Perpetual Trustee complies with the 10 per cent limitation on individual shareholdings Tasmanian Perpetual Trustees could continue to maintain its position as a trustee company under the act.

The intent of the 10 per cent limit is essentially to ensure that no person had a significant level of control over an entity which was in the business of dealing with other people's money on trust. The Commonwealth imposes similar limits under the Financial Sector (Shareholdings) Act 1998. Under that act, a financial sector company (which includes any authorised deposit-taking institution as defined in the Banking Act 1959 of which MyState Financial is one or a holding company of such a company) are subject to a 15 per cent shareholding limit. The Commonwealth Treasurer may approve a higher percentage limit on national interest grounds. Section 19 of the Commonwealth Act applies to a 100 per cent subsidiary of a holding company.

This new provisions of the Tasmanian legislation will mean that the new holding company will need to meet the more restrictive Tasmanian restrictions on ownership in respect of both its primary operations - banking and trustee company. As the proponents of the Scheme should, because of the current diversity of ownership, have no difficulty in meeting the 10 per cent limit this will not cause any obvious problems but the Government would consider any proposal to bring the two sets of requirements into line.

This bill does not deal with the processes which MyState Financial and Tasmanian Perpetual Trustees will have to follow to facilitate the merger – they involve shareholder votes and various approvals from Commonwealth authorities.

All this bill will do (apart from updating some of the terminology of the schedule to the act) allow the current trustee company to continue to operate in Tasmania if or when it becomes a wholly owned subsidiary of the new holding company which itself meets the 10 per cent shareholding limits.

If the proposal proceeds as proposed the current shareholders of MyState and Perpetual Trustee will receive shares in the new holding company based on the value and number of shares they hold in those two bodies. With the diversity of ownership of current share holdings the holding company should be able to easily comply with the 10 per cent limit under the act. It will be the responsibility of the Board of Directors of the new entity to ensure that changes in ownership of shares in the future will not allow any shareholder to control more than 10 per cent of the shares.

I commend the bill to the House.