SECOND READING SPEECH

TRUSTEE COMPANIES AMENDMENT BILL 2010

I move that the Bill be now read a second time.

A trustee company is a company under the *Corporations Act 2001* of the Commonwealth (the *Corporations Act*) authorised, under State and Territory legislation, to perform personal trustee and deceased estate administration services (which I will refer to as "traditional trustee company services" from now on).

Most trustee companies have expanded their activities into other areas of financial services, including acting as superannuation trustees, running managed funds, providing custodial or depository services, and acting as trustees for debenture holders. These activities, which are outside the traditional trustee services, are already regulated under Commonwealth legislation.

Some years ago the Standing Committee of Attorneys General approached the Commonwealth to seek assistance in the scrutiny of trustee companies in relation to the monies they managed under their traditional trustee services which did not fall under the Commonwealth's regulatory scrutiny and were seen as rather inadequately monitored in comparison.

At that time the Commonwealth was not prepared to become involved in this area but in June 2008, the Council of Australian Governments (*COAG*) agreed that the Commonwealth Government would take over responsibility for regulating trustee companies at the entity level. The traditional trustee role of a trustee company would, however, still be subject to State and Territory law.

In February 2009, the States, Territories and Commonwealth signed the '*National Partnerships Agreement to Deliver a Seamless National Economy*' *(*the National Partnerships Agreement*)*.

This National Partnerships Agreement requires the Commonwealth, the States and the Territories to enact the legislation necessary to give effect to 27 deregulation priorities, including the regulation of trustee companies.

The National Partnership Agreement provides for the payment by the Commonwealth to the State of 'reward' payments. These payments are contingent on the States and Territories meeting their obligations for the seamless national reform program, including the regulation of trustee companies.

If Tasmania does not meet its obligations for the regulation of trustee companies, the National Partnership Agreement reward payments are at risk.

The Commonwealth has already fulfilled its legislative obligations in relation to trustee companies' reform.

The *Corporations Legislation Amendment (Financial Services Modernisation) Act 2009* of the Commonwealth commenced on 6 May 2010.

Schedule 2 of that Act inserts a new Chapter 5D into the Corporations Act, and makes consequential amendments to Chapters 7 and 10 of the Corporations Act. These provisions (the Commonwealth trustee company provisions) implement the transfer of entity level trustee company regulation to the Commonwealth.

Under the Commonwealth trustee company provisions, traditional functions of trustee companies (administering charitable and other trusts, obtaining probate, acting as the executor of a deceased estate or under power of attorney) are deemed to be financial services for the purposes of the *Corporations Act*.

The people who create trusts, those who make wills or the beneficiaries of trusts, wills and intestacies will be 'retail clients' of trustee companies for the purposes of Chapter 7 of the *Corporations Act*. Retail clients are afforded greater protection under Chapter 7 than non retail clients.

The Commonwealth provisions provide that authorised trustee companies —

- must be an Australian registered public company or a wholly-owned subsidiary of a public company;
- will be regulated by ASIC;
- must hold an Australian Financial Services Licence with an appropriate authorisation to carry out traditional trustee companies services;
- will be subject to the consumer protection, licensing and conduct requirements of the *Corporations Act* and the *Australian Securities and Investment Commission Act 2001* of the Commonwealth;
- to the extent appropriate will be subject to the disclosure requirements of the *Corporations Act*;
- will be required to have suitable internal and external dispute resolution arrangements;
- will, in the case of charitable trusts, be subject to fee regulation, based on current State legislation;
- will, in the case of other trusts and estates, have their fees deregulated, provided that the fee schedule is disclosed on the Internet and that no more than the fees specified in the

published fee schedule at the time the administration of the trust/estate is begun are charged;

- will be subject to director and employee liability arrangements that are consistent with the obligations in place for other corporations under the *Corporations Act*;
- will have to demonstrate a $5 million capital adequacy requirement;
- will be subject to a cap of 15% on the shareholding in the company by a single shareholder or their associates (Tasmania's cap is currently 10%) with a Ministerial discretion to consent to share acquisitions above the cap (for example, for wholly-owned subsidiaries which the principal must meet appropriate criteria); and
- will continue to be permitted to hold common funds to invest trust funds.

Tasmania's obligations in respect of the regulation of trustee companies under the National Partnership Agreement are implemented in this Bill.

In Tasmania, the *Trustee Companies Act 1952* covers the regulation of trustee companies and only companies which are listed in Schedule 1 of that Act can provide traditional trustee company services in Tasmania.

In the 1950s there were five trustee companies in Tasmania but through a number of amalgamations, which were facilitated by legislation of this Parliament over the last 50 years, that number has reduced to a stage where there is only one trustee company, Tasmanian Perpetual Trustees Limited, listed and operating in Tasmania.

Many of the trustee companies nationally have been licensed or approved under the legislation of, and have operations in, many

jurisdictions but those bodies have not, at least in recent years, sought to be listed in Tasmania.

The process for gaining approval under the Tasmanian Act is quite involved as both Houses of Parliament and the Governor must approve a new body being listed and this process may have deterred interstate firms from seeking approval to operate here.

The trustee company industry nationally is small following significant rationalisation since the early 1900s when numbers were a lot higher.

Many trustee companies now operating nationally are related to each other with separate but related companies in different states. This new scheme will see all trustee companies registered at a national level which will allow for greater rationalisation of their structures and make interstate expansion easier.

Trustee companies (to the extent that they are not exempted under the *Trustee Companies Act*) are, like any other trustee, also required to comply with the *Trustee Act 1898* as well as legislation about wills, administration and probate.

This Bill amends the *Trustee Companies Act* to bring it into line with the Commonwealth Act by —

- replacing the definition of 'trustee company and linking the definition to "licensed trustee company" under Chapter 5D of the Corporations Act;
- Repealing the provisions that are inconsistent with the Commonwealth trustee company provisions which are covered in Chapter 5D, Chapter 7 and Chapter 10 of the C*orporations Act*);

- allowing for necessary transitional matters to be dealt with by regulation.

The Bill also amends the definition of 'trustee company' in other legislation as a consequence of the proposed amendments to the *Trustee Companies Act*.

The amendments remove matters such as shareholding limits and certain financial reporting requirements but ensure the retention of the controls over trustee companies in their capacity as trustees

I commend the Bill to the House.