



10 February 2012

The General Manager
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600
Via email: trust_rewrite@treasury.gov.au

Dear Sir or Madam

The Taxation Committee of the Business Law Section of the Law Council of Australia (the **Committee**) is appreciative of this opportunity to participate in the Government's consultation process to modernise the taxation of trust income.

The Committee welcomes the Government's recognition of the ongoing issues surrounding the taxation of trust income and its commitment to updating the trust income tax provisions in Division 6 of Part III of the ITAA 1936. The exploration of these issues and the reform options presented in the Government discussion paper entitled "Modernising the taxation of trust income – options for reform" (the **Discussion Paper**) are an important first step towards a more effective, fair and consistent taxation of trusts.

Set out below is the Committee's submission on the Discussion Paper.

Separately attached as an Appendix answers to each of your Questions for Consultation.

1. Executive summary

- 1.1 The Discussion Paper proposes three new models for trust taxation: the Patch Model, the Proportionate within Class Model and the Trustee Assessment and Deduction Model.
- 1.2 The Trustee Assessment and Deduction Model would represent a significant and fundamental change to the taxation of trusts. The Committee does not support its introduction. Under this model it would be inappropriate to assess the trustee at a penal rate of 46.5%. If a lesser rate is imposed the Committee is concerned it appears inevitable that extremely complicated integrity provisions would be

introduced similar to those used for companies to seek to protect against any potential loss of tax revenue. It appears to us that that this would be practically difficult to implement without effectively taxing trusts in a similar manner to companies. As the Discussion Paper notes, this is not the objective of the reform. It would also add significant and unnecessary complexity to the taxation of trusts.

- 1.3 The Patch Model and the Proportionate within Class Model may address two specific issues with the existing regime of trust taxation. The Patch Model may address the issue of defining the "income of the trust estate". The Proportionate within Class Model addresses the issue of how different tax attributes can be appropriately streamed to beneficiaries who have different interests in the trust. Consistently with this, the Discussion Paper suggests that the Patch Model and the Proportionate within Class Model may usefully be combined.
- 1.4 The Committee submits that an optional Patch Model and the Proportionate within Class Model should be adopted in combination. In implementing the Patch Model, it should be optional rather than mandatory for the income of the trust estate to be defined to be equal to the section 95 net income, as adjusted appropriately. In implementing the Proportionate within Class Model, this should be done in a way such that minimal, if any, amendments are required to trust deeds.
- 1.5 The Committee agrees that one of the underlying policy principles for the taxation of trust income should be, in general terms, that tax liabilities in respect of the income and gains of a trust should "follow the money" in that they attach to the entities that receive the economic benefits from the trust.
- 1.6 Whilst the Committee agrees with this proposition in general terms, it should not mean that a beneficiary should be taxed using a quantum approach – that is, only taxed on the quantum of any trust distributions or economic benefits they receive from the trust.
- 1.7 There are a number of significant problems associated with a quantum based approach. First, it creates ambiguity as to the way in which the benefit which the beneficiary becomes entitled to is determined. Second, it creates the possibility of a penal tax outcome in the event that the quantum of distributions is less than the relevant taxable income.
- 1.8 Alternatively, if a quantum based approach was designed to avoid a penal tax outcome (by, for example, imposing a lessened rate of tax on a trustee), then in order to protect the revenue it may be regarded as creating (as is the case in relation to the trustee assessment and deduction model), a need for complicated integrity provisions, such as those used in relation to companies.
- 1.9 The basis for advocating for a quantum based approach being the policy principle that the tax liability must follow the money appears to be based on two general concerns. First, that there will be inappropriate tax outcomes if you split economic benefit and tax liability. In short, there are avoidance opportunities. The Committee considers these concerns are overstated.
- 1.10 In the Committee's view, given the existing specific integrity provisions and the general anti-avoidance rule in Part IVA, it seems likely that no further integrity measures would be required. However, if as the details are worked through,

issues arise to which further integrity measures may be an appropriate response, the Committee would welcome the opportunity to be involved in any consultation on such issues.

- 1.11 It is suggested that a difference between the economic benefit and the tax liability provides distortions between the beneficiaries. The Committee believes that this issue can be dealt with in most cases, through adopting an optional patch model in conjunction with the Proportionate within Class model.
- 1.12 The Discussion Paper also correctly notes a range of issues independent of the Patch Model, the Proportionate within Class Model and the Trustee Assessment and Deduction Model that need attention.

2. The Committee's submissions

2.1 The Committee submits that:

- (a)) The Patch Model should be adopted, but the section 95 net income concept that trust law should be aligned with should be adjusted to better reflect the actual amount available for distribution to the beneficiaries of the trust . It should be optional rather than mandatory to align section 95 net income with trust law income. It is not appropriate to introduce a mandatory patch approach.
- (b) The Proportionate within Class Model should be adopted, along the lines discussed in detail below. It may also be adopted in conjunction with an optional Patch Model, as discussed in the previous point.
- (c) The Trustee Assessment and Deduction Model should **not** be adopted. The Australian taxation of trusts should remain based on a proportionate model.
- (d) The scope of Division 6 should be limited in the manner discussed in detail below to exclude particular trusts, such as "bare trusts" and custodial or nominee arrangements.
- € The trustee should, for tax purposes, have up until the time of lodgement of the trust tax return for the year to validly determine entitlements in respect of that year for tax purposes. At a minimum, the Committee submits that the two months after the end of the income year administrative treatment allowed by IT 328 should be legislatively reinstated
- (f) The 46.5% penal trustee rate of tax is not appropriate in all cases. The Commissioner should have a discretion to reduce it where the weighted average of the beneficiary tax rates for recent distributions is a lower amount.
- (g) Section 99B does not serve a useful purpose and should be repealed.
- (h) A trust should be considered to be a "fixed trust" where beneficiaries have **vested** entitlements to all of the income and capital of the trust. It should not be necessary that the vested entitlements should be indefeasible.

- (i) Necessary transitional relief should be available, in particular, appropriate capital gains relief in respect of any consequential changes to trust deeds.

3. Assessable income attribution models

3.1 Summary

- (a) A Patch Model aligning section 95 net income with trust law income should be introduced, but should be optional not mandatory. It is not appropriate to introduce a mandatory statutory minimum distribution requirement for all trusts, which the Patch Model contemplates.
- (b) The Discussion Paper notes that the Patch Model would "require adjustments to be made to the concept of taxable income to better reflect the actual amount available for distribution to the beneficiaries of the trust". The Committee also submits that, even where the Patch Model does not apply and a proportionate model is retained, these adjustments should be made in applying the proportionate approach. The Committee submits that this would be a conceptually robust solution that would minimise both the anomalous results and opportunities to minimise tax liabilities that are under the current law.
- (c) The Discussion Paper envisages that the Patch Model may be combined with the Proportionate within Class Model. The Committee submits that the Proportionate within Class method should be adopted. It could be combined with those elements of the Patch Model that we have recommended above.
- (d) The Committee recommends that the implementation of a Proportionate within Class Model should not require changes to a trust deed. It should apply automatically where there are different beneficiaries with different entitlements to different classes, either as result of the clauses of the trust deed providing for entitlement to different classes, or as a result of the exercise of discretion by the trustee to allocate different classes of income.
- (e) The Committee submits that in relation to expenses, the best approach would be to introduce a general legislative rule to largely codify a principle that expenses should be apportioned on a fair and reasonable basis to the class of income or capital to which the expense relates.
- (f) By adopting the optional Patch Model and the Proportional within Class Model in this way, the tax liabilities in respect of the income and gains of a trust should be capable of being allocated to the relevant beneficiaries that derive the corresponding economic gains without requiring an exact matching as provided for under a quantum based approach. In the Committee's view, between the existing specific integrity provisions and the general anti-avoidance rule in Part IVA, it seems likely that no further integrity measures would be required.
- (g) The Committee submits that the Trustee Assessment and Deduction Model is not an appropriate avenue of reform. The Australian taxation of trusts should remain based on a proportionate model.

3.2 Patch Model

Mandatory Patch model

- (a) As the Consultation Paper states on page 2:

The Government considers that, where used appropriately, trusts are a legitimate structure through which Australians should be able to conduct their personal and business affairs – not a form of tax avoidance.

- (b) Changing the law to make it mandatory to determine the income of the trust estate by reference to tax concepts is inconsistent with the first principle of the review

Optional Patch model

- (c) The Consultation Paper suggests on page 14 that there is significant scope for anomalous outcomes for beneficiaries due to mismatches between trust law income and section 95 net income. To deal with this possibility, the Committee considers that the law should be amended to permit trustees to determine each year that the trust law income of the trust is to be the same as its section 95 net income. In this way, trustees can prevent the anomalous outcome for beneficiaries in appropriate circumstances.

Patch adjustment to taxable income to reflect distributable amounts

- (d) The first three policy principles of the review are expressed to be:
- Tax liabilities in respect of the income and gains of a trust should ‘follow the money’ in that they should attach to the entities that receive the economic benefits of the relevant income or gains from the trust
 - The provisions governing the taxation of trust income should be conceptually robust, so as to minimise both anomalous results and opportunities to manipulate tax liabilities
 - The provisions governing the taxation of trust income should provide certainty and minimise compliance costs and complexity.
- (e) By retaining a proportional approach but, as recommended by the Consultation Paper, making adjustments “to the concept of taxable income to better reflect the actual amount available for distribution to the beneficiaries of the trust”, each of these three policy principles should be advanced (and the change should be neutral as regards the remaining two policy principles). By adjusting for notional amounts, the tax liabilities in respect of the income and gains of a trust should be more closely aligned to the amounts distributed.
- (f) Retaining a proportional approach, but changing the law to ensure that beneficiaries should generally be taxed in the same way as if they had derived

those economic benefits directly rather than through a trust would be a conceptually robust solution that would minimise both anomalous results and opportunities to manipulate tax liabilities, thereby advancing the second policy principle. In particular, the Committee notes that since this change would effectively be widening an integrity measure in the current law, opportunities to manipulate tax liabilities should be reduced.

- (g) Similarly, this should go some way towards providing certainty and minimising compliance costs and complexity, thereby advancing the third policy principle.
- (h) The Consultation Paper also notes on page 36 that the Patch model would "require adjustments to be made to the concept of taxable income to better reflect the actual amount available for distribution to the beneficiaries of the trust (that is to account for notional income and expense amounts)". A critical issue is the taxation of notional income and in particular the extent to which it is to be borne by the beneficiaries where they have no entitlement to it, or the extent to which it is to be borne by the trustee even though it may exceed the value of the trust assets, thereby resulting in insolvency and possible liability for individuals who are trustees or directors of corporate trustees. Currently it is borne by beneficiaries in accordance with their respective Division 6E present entitlements to the income of the trust estate.
- (i) If, as the Committee considers preferable, notional amounts are to be assessed to the beneficiaries, one model would be a modification of the recently enacted section 100AB, which reduces an exempt entity's present entitlement to the income to a proportion commensurate with its entitlement to the accretion to the trust estate. The modifications are needed to ensure that the notional income would be assessed to the beneficiaries in accordance with their present entitlements and to include notional income arising from the application of Part IVA. Another modification to be considered is the taxation of notional amounts relating to capital gains and franked distributions (eg under Part IVA or the non arms length dealing provisions) to the beneficiaries who obtain the benefit of the underlying capital profit or distributions.

Summary

- (j) The Committee submits that the Patch Model should be introduced, but it should be optional not mandatory to align trust law income with section 95 net income since as a general principle the taxation treatment should flow from the commercial decisions, not the other way around.
- (k) However, the adjustments recommended by the Discussion Paper under the Patch Model "to the concept of taxable income to better reflect the actual amount available for distribution to the beneficiaries of the trust" should be made in any case, even where trust law income is not aligned with section 95 net income. These may be based on the same principles as the section 100AB adjustment.

3.3 Assessable income attribution models – Proportionate within Class Model

- (a) In the proportionate within class worked example in Appendix A to the Discussion Paper, it is stated: "Further, the distributable income is defined as for the Patch

Model above". The Committee agrees that the Patch Model and the Proportionate within Class Model may be usefully combined.

- (b) The Proportionate within Class Model is conceptually similar to the measures in *Tax Laws Amendment (2011 Measures No. 5) Act 2011* dealing with franking and capital gains; that is, to make separate provision for amounts that may be taxed differently in the hands of different beneficiaries (although this is more complicated in the case of dividends and capital gains because of the franking and CGT discount rules).
- (c) The implementation of a Proportionate within Class Model may not require changes to a trust deed where there are different beneficiaries that can have different entitlements to different classes of income under the trust deed, either expressly under the trust deed or as a result of the exercise of a discretion by the trustee.
- (d) A Proportionate within Class Model could simply provide that any amount that could be differently taxed in the hands of different beneficiaries would be a separate class, without listing specific classes.
- (e) The Committee notes that implementing a Proportionate within Class Model should not make a practical difference to those trusts that do not have different beneficiaries with different entitlements to different classes.
- (f) The Committee agrees that there should be transitional relief for any changes made to trust deeds to accommodate the proposed reform. This transitional relief should apply retrospectively to include any changes made to trust deeds to accommodate the measures in *Tax Laws Amendment (2011 Measures No. 5) Act 2011*.
- (g) The Committee submits that in relation to expenses, the best approach would be to introduce a general legislative rule to seek to largely codify a principle that expenses should be apportioned on a fair and reasonable basis to the class to which they relate. Consistently with the principle on page 8 of the Discussion Paper that changes to the trust loss rules should be revenue neutral, trust losses should not be quarantined between classes.
- (h) The Committee also notes that the Proportionate within Class Model avoids the need for complex provisions to ensure that net income which is taxed to the trustee is not made available to beneficiaries who would otherwise have paid a higher rate of tax on that net income.

3.4 Trustee Assessment and Deduction Model

- (a) Implementing the Trustee Assessment and Deduction model would require some difficult policy choices to be made about:
 - For the reasons given in paragraph 6.1 below, the appropriate trustee rate of tax (a penal 46.5% rate of tax applicable in all cases) is clearly inappropriate under a model where any excess of section 95 net income over distributable income would be assessed to the trustee; and

- Whether character pass through to beneficiaries would be retained, and if so, how it would work where there is an excess of section 95 net income over distributable income.
- (b) As Appendix B to the Discussion Paper shows, these issues have been dealt with in a range of very different ways in the jurisdictions that have a Trustee Assessment and Deduction Model. Any of the possible answers would represent a fundamental change of trust taxation that would be extremely complicated and would almost certainly leave some taxpayers disadvantaged. They would add considerable complexity to the taxation of trusts, and dramatically increase compliance costs for existing trusts.
- (c) Accordingly, the Committee considers that the Trustee Assessment and Deduction Model is not an appropriate avenue of reform.
- (d) In particular, the Committee notes that the Discussion Paper stated:
- This is not a 'crack down' on the use of trusts. The Government considers that, where used appropriately, trusts are a legitimate structure through which Australians should be able to conduct their personal and business affairs — not a form of tax avoidance.*
- (e) On the basis that a penal 46.5% rate of tax on income retained in the trust would be clearly inappropriate, the Committee is concerned extremely complicated integrity provisions would be introduced similar to those used for companies, such as a Division 7A and a franking equivalent regime for trusts. It appears to the Committee that that this would be practically difficult to implement without effectively cracking down on the use of trusts by taxing them substantially similarly to companies.

4. Scope of Division 6

- 4.1 The Committee suggests that Division 6 applies to a trust only if;
- (i) The trust is recognised in equity as an express trust; and
 - (ii) The trust is not a bare trust, or a trust arising from a custodial, agency or nominee relationship; and
 - (iii) the trust is not a resulting trust arising by operation of law.
- 4.2 The Committee also submits that the above test should apply for all other income tax and GST purposes (including for the purposes of compliance requirements such as the requirement to lodge tax returns).
- 4.3 As Jacobs Law of Trusts in Australia explains, a trust will be an express trust if, and only if, the following three conditions are met:
- (a) there is certainty of intention to create the trust;
 - (b) there is certainty of the subject matter of the trust; and

- (c) there is certainty of intention of the objects of the trust.
- 4.4 This is a substance based test that is not subject to manipulation by altering the form of the arrangements. As Mason CJ and Dawson J stated in *Bahr v Nicolay (No 2)* [1988] HCA 16:
- If the inference to be drawn is that the parties intended to create or protect an interest in a third party and the trust relationship is the appropriate means of creating or protecting that interest or of giving effect to the intention, then there is no reason why in a given case an intention to create a trust should not be inferred. The present is just such a case. The trust is an express, not a constructive, trust.*
- 4.5 The Committee submits that each of the three above criteria should be satisfied before Division 6 applies to a trust. This would exclude constructive and resulting trusts from the operation of Division 6.
- 4.6 A bare trust or the trust that may arise in case of an equitable assignment may be an express trust in some cases. It is clearly inappropriate from a policy point of view that Division 6 would apply to these trusts. Accordingly, the Committee submits that the second limb of the test is necessary.
- 4.7 As a general principle, the Committee considers that unusual trusts that arise in a way not easy to specify (such as, arguably, the trust said to arise from an equitable assignment discussed in TDP 2011/1 – Securitisation and TOFA) should almost invariably be outside the scope of Division 6. For this reason, the Committee considers that, as a general principle, an inclusion approach would be preferable to an exclusion approach.

5. Time for determining entitlements

- 5.1 Subject to the terms of the trust, the Committee submits that the trustee should, for tax purposes, have up until the time of lodgement of the trust tax return for the year to determine entitlements in respect of that year for tax purposes. This would not seek to alter the basis upon which the relevant trust deed operated. At a minimum, the Committee submits that the two months after the end of the income year administrative treatment allowed by IT 328 should be legislatively reinstated.
- 5.2 A legislative provision extending the time for determining entitlements after the end of the income year would not apply where entitlements actually had been determined by 30 June under the trust deed, by way of default beneficiary clauses or otherwise.

6. Penal trustee rates of tax

- 6.1 The Committee submits that the 46.5% penal trustee rate of tax is not appropriate in all cases. Section 99 already recognises exceptions and should be extended to include cases where:
- (a) A trustee reasonably believes that it does not have an income tax liability for an income year; and

- (b) The trustee subsequently receives an assessment or amended assessment imposing on it an income tax liability for that income year; and
- (c) The weighted average marginal tax rate of the beneficiaries of the trust is less than 46.5%; then
- (d) If the Commissioner reasonably considers that it would be fair to do so, the Commissioner shall determine the tax rate applicable to the trustee for that income year to be a percentage less than 46.5% that based on the weighted average marginal tax rate of the beneficiaries of the trust.

7. Time limits on trustee assessments

- 7.1 The Committee agrees that the Commissioner should only be able to raise an assessment of a trustee within four years from the later of the due date or the actual lodgement date of the trust's return.

8. Sections 99B and 99C

- 8.1 The Committee considers that section 99B do not serve a useful purpose and should be repealed. At present, it is questionable whether section 99B has any application, other than to deal with the problem in *Union Fidelity Trustee Company of Australia Ltd. v. FCT* 69 ATC 4084. These sections are also unnecessary given that Parliament has now comprehensively dealt with the tax treatment of such payments and distributions of trust property through subdivision 104-E of the ITAA97 and, in particular, sections 104-7 and 104-72.

9. Fixed trusts

- 9.1 The Committee submits that any trust where beneficiaries of the trust have vested entitlements to all of the income and capital of the trust should be a fixed trust.
- 9.2 Consistent with this, beneficiaries should be regarded as having "vested" entitlements where the trustee has no discretion to alter the entitlements. A power of amendment of the trust deed should not be treated as affecting the fixed nature of the trust.
- 9.3 The Committee does not consider it is necessary for the fixed trust test to require that entitlements be vested and indefeasible because the value shifting rules in Part 3-95 of the Income Tax Assessment Act apply to trusts, and Part IVA may also apply where a vested interest is defeased on non-arms length terms.

10. Debt/Equity for Trusts

10.1 The review should also give consideration to the interaction between the debt/equity rules and the trust taxation rules. In particular, the current law does not adequately provide for the situation in which a trust vehicle issues membership interests that are characterised as debt interests for tax purposes. There is uncertainty as to:

- (a) whether a return paid in respect of a trust membership interest that is a debt interest would be deductible in determining the net income of the trust (e.g. having regard to the operation of section 25-85);
- (b) if deductions were available, how this should affect the application of section 97 to the beneficiary who holds the debt interest, as the net income of the trust would be reduced by the amount of any return paid on the debt interest, but the beneficiary's share of the income of the trust estate would (in the absence of special provisions or powers in the trust deed - Bamford) take into account, or would be comprised by, that same return; and
- © whether such a return would be taxable as ordinary income to a resident under section 6-5 or section 15-15 (e.g. refer IT 2512 in relation to financing unit trusts) or subject to interest withholding tax under section 128B for a non-resident. If the return were taxable under one of these sections, there is also scope for double taxation under sections 97 and 98.

11. Transitional relief

The Committee submits that, income tax relief should be available in respect of any consequential changes to trust deeds as a result of these amendments. This would extend to the capital gains tax provisions and other provisions creating taxable events, as well as the carry forward loss provisions. Depending on the nature of the reform, other transitional relief may also be necessary.

If you have any questions in relation to this submission, in the first instance please contact the Committee Chair, Teresa Dyson, on 07-3259 7000 or via email: teresa.dyson@blakedawson.com

Yours faithfully,



Margery Nicoll
Secretary-General

APPENDIX – Answers to Questions for Consultation

1. Do the policy principles outlined in Chapter 1 accurately reflect the existing framework for the taxation of trusts?

As the Committee noted above, it has some concerns in relation to a strict application of a principle which suggests that tax liabilities in respect of that income and gains should "follow the money". These are discussed in more detail above.

The Committee believes that there are some additional principles which should apply in determining the appropriate taxation of trusts. They are:

- 1 The assessment regime should not expose taxpayers to a disproportionate tax penalty when in a tax dispute. For example, where there is a dispute regarding the section 95 net income of the trust. In short, penal rates of tax should not apply if the net income of a trust is disputed. The current proportionate view ensures that this is not the case.
- 2 The integrity rules which apply to trusts should be targeted at the appropriate integrity problem to which they relate and should not be too broadly expressed. This would create uncertainty, which these amendments are intended to remove.

2. The Government has identified a number of areas of the trust income tax provisions that require immediate reform. Are these the areas in most need of immediate reform? If not, what areas should the Government seek to reform as a priority?

Yes, the areas identified by the Government are the areas in most need of immediate reform.

3. Should the trust income tax provisions be updated and rewritten as part of a single process or would it be more appropriate to conduct this reform through a staged approach?

If it is practicable to do this as part of a single process this would obviously be preferable. The Committee considers that the reforms recommended by its submissions are essentially incremental and the Committee hopes is that it would be practicable to implement them through a single process.

4. Uncertainty about the scope of Division 6 is arguably one of the key issues hampering the effective taxation of trust income. If the scope of Division 6 is clarified, under either an inclusion or exclusion approach, should a general principle or a comprehensive list be adopted?

The Committee refers to its more detailed discussion above.

5. What types of trust might it be appropriate to carve out of the operation of Division 6? Are there any other areas of the tax law where a similar carve out for these types of trust may or may not be appropriate?

The Committee refers to its more detailed discussion above. In general, the Committee considers that the Division 6 carve out should apply for all income tax and GST purposes.

6. Is there sufficient uncertainty with the current treatment of expenses to warrant a legislative solution?

The Committee considers that the best approach would be to introduce a general legislative rule to largely codify the existing common law principle that expenses should be apportioned on a fair and reasonable.

7. If the concept of distributable income is to be defined using tax concepts, what adjustment will need to be made to existing tax concepts to allow for a workable definition?

The Committee refers to its more detailed discussion above.

8. Should character flow-through and 'streaming' be provided on a general basis with specific limitations or alternatively through the use of specific provisions? If 'streaming' is provided using specific provisions, in addition to capital gains and franked distributions what other types of income should be afforded this treatment?

The Committee refers to its more detailed discussion above.

9. How should losses be dealt with where character flow-through of different classes of income is recognised?

The Committee refers to its more detailed discussion above.

10. In addition to those areas of the tax law highlighted in Chapter 4, are there any other areas that may need to be updated if changes are made to the current operation of Division 6?

The Committee considers that the Discussion Paper has done a good job in identifying potential interaction issues with other areas of the tax law, but this issue should be revisited once the direction of the reform becomes clearer.

11. Are there issues with the operation of the provisions highlighted in Chapter 4 that may need to be addressed, in addition to any changes that may need to be made to ensure that these provisions are able to operate effectively with an updated version of Division 6?

The Committee considers that the Discussion Paper has done a good job in identifying potential interaction issues with other areas of the tax law, but this issue should be revisited once the direction of the reform becomes clearer.

12. Should there be one generic or multiple targeted tax regimes for the taxation of trust income? If a generic regime is desirable, which of the three approaches outlined in Chapter 8 should be adopted? Are there any other models that could be considered in updating the operation of Division 6?

The Committee refers to its more detailed discussion above.

13. If a 'proportionate within class' model was adopted would it be necessary to define the concept of distributable income in the same ways as outlined under the 'patch' model?

As discussed in more detail above, the Committee considers that this would be desirable.

14. As highlighted in Chapter 8 the adoption of a TAD model may result in increased trustee assessments. If a TAD model was adopted is there an appropriate way to reduce the potential effects of the top marginal tax rate applying to unallocated amounts?

The Committee does not consider that there is a simple and appropriate solution to this issue. This is a major reason why the Committee does not consider that this model is an appropriate approach.

15. If a TAD model was adopted, how should the tax law define the concept of a 'distribution'?

Again, the Committee does not consider that there is a simple and appropriate solution to this issue, which is a major reason why the Committee does not consider that this model is an appropriate approach.

16. If significant changes are made to the current operation of Division 6 what transitional measures do you consider the Government may need to provide?

This issue should be revisited once the direction of the reform becomes clearer, but at a minimum there should be appropriate resettlement relief in respect of any consequential changes to trust deeds.