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**Trustee
Corporations
Association
of Australia**

ANZ Executors &
Trustee Company Ltd

Austrust Ltd

Equity Trustees Ltd

Guardian Trust
Australia Ltd

IOOF Australia
Trustees Ltd

National Australia
Trustees Ltd

National Mutual
Trustees Ltd

Permanent Trustee
Company Ltd

Perpetual Trustees
Australia Ltd

Perpetual Trustees
Tasmania Ltd

Public Trust Office SA

Public Trustee of Qld

Public Trust Office NSW

Sandhurst Trustees Ltd

State Trustees Ltd

Tasmanian Trustees Ltd

Trustees of Western
Australia Ltd

13 May 1998

Mr Simon Matthews
Australian Taxation Office
PO Box 900
Civic Square
CANBERRA ACT 2608

**Amendments To Part IIIA Of The Income Tax Assessment Act 1936 –
Impact Upon Beneficiaries Of Discretionary Trusts**

I refer to my letter dated 11 May and to our telephone conversation on 12 May 1998.

As discussed and agreed, I now provide the following information to assist the Australian Taxation Office in preparing the draft legislation.

As previously stated to you the Association believes that the exclusion in proposed section 160APHJ should, in addition to family trusts, include trusts of a kind referred to in section 102AG(2). We therefore submit that the exclusion in subsection 160APHJ(3) should read:-

(3) *if the trust:*

- (a) *is not a family trust within the meaning of Schedule 2F; and*
- (b) *is not a trust of a kind which has income that is excepted trust income pursuant to section 102AG(2);*

the following paragraphs have effect:.....

For your information the types of trusts mentioned in section 102AG(2) are:-

- 1 a trust estate that resulted from
 - (i) a will, codicil, intestacy or an order of a court that varied or modified the provisions of a will or codicil; or
 - (ii) an intestacy or an order of a court that varied or modified the application, in relation to the estate of a deceased person, of the provisions of the law relating to the distribution of the estates of persons who die intestate;

- 2 a trust estate consisting of any property transferred to the trustee for the benefit of the beneficiary:-
- (i) by way of, or in satisfaction of a claim for damages in respect of:-
 - (A) loss by the beneficiary of parental support, or
 - (B) personal injury to the beneficiary, any disease suffered by the beneficiary or any impairment of the beneficiary's physical or mental condition;
 - (ii) pursuant to any law relating to workers compensation;
 - (iii) pursuant to any law relating to the payment of compensation in respect of criminal injuries;
 - (iv) directly as a result of the death of a person and out of a provident, benefit, superannuation or retirement fund
 - (v) directly as a result of the death of a person by an employer of the deceased person;
 - (vi) out of a public fund established and maintained exclusively for the relief of persons in necessitous circumstances; or
 - (vii) as a result of a family breakdown.
- 3 a trust estate consisting of any property:-
- (i) that devolved for the benefit of the beneficiary from the estate of a deceased person;
 - (ii) that was transferred to the trustee for the benefit of the beneficiary by another person out of property that devolved upon that other person from the estate of a deceased person and was so transferred within 3 years after the date of the death of the deceased person; or
 - (iii) being a verifiable prize in a legally authorised and conducted lottery and being a prize of which the beneficiary is the beneficial owner; or
- 4 a trust estate consisting of any property that, in the opinion of the Commissioner, represents accumulations of;
- (i) assessable income derived by the trustee during a year of income in relation to which Division 6AA of Part III applies, being assessable income that, in relation to the beneficiary, is excepted trust income;
 - (ii) assessable income derived by the trustee during a year of income in relation to which Division 6AA of Part III does not apply, being assessable income that would, in the opinion of the Commissioner, have been excepted trust income in relation to the beneficiary if Division 6AA of Part III were applicable in relation to the year of income during which the assessable income was derived; or
 - (iii) exempt income derived by the trustee to which subparagraph 102AG(2)(e)(i) or (ii) would, in the opinion of the Commissioner, apply if that exempt income had been assessable income.

The Association believes it is necessary that the exclusion covers all trusts mentioned in section 102AG(2) rather than simply nominating one or two types, as the legislation covering many of the trusts mentioned in that section varies from State to State, with the effect that a beneficiary may have only a contingent interest in one State but could have an absolute interest under the corresponding legislation in other States. Similarly, trusts (as mentioned in point 2 above) containing superannuation monies also vary between deeds with beneficiary's interests varying from absolute to contingent.

Trusts of a type mentioned at 1 and 3 above would include situations where a beneficiary under a will has only a contingent interest, eg the beneficiary must attain a certain age, or no legal interest as the trustee of the deceased estate must exercise a discretion in their favour, eg where a life tenant is only entitled to the income that the trustee determines.

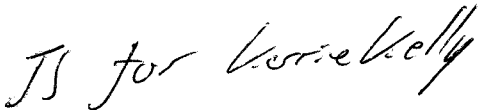
Unfortunately, since our conversation last night we have only had the time to ascertain the following examples of trusts caught by the proposed legislation:

State Trustees has approximately 1,000 of type 1 trusts but only administers 2-3% of all deceased estates in Australia. Accordingly, there is probably between 25,000 – 35,000 deceased estates of type 1.

An example of type 2 trusts would include Victorian Workcover award trusts which the High Court has held are discretionary in nature, as well as superannuation proceeds trusts where the beneficiary has a contingent interest. State Trustees administers approximately 8,000 Workcover trusts which have approximately 13,000 beneficiaries.

If you have any questions in relation to the above or require further information please contact me on 02 9221 1983.

Yours sincerely

A handwritten signature in cursive script that reads "JS for Kerrie Kelly".

Kerrie Kelly
National Director