

NATIONAL SECRETARIAT

11 May 1998

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



**Trustee
Corporations
Association
of Australia**

Dear Mr Matthews,

**Amendments to Part IIIA of the Income Tax Assessment Act 1936 -
Impact upon Beneficiaries of Discretionary Trusts**

I refer to our letter dated 9 April 1998 and to your separate telephone conversations last week with Mr Keith Drewery, Senior Tax Manager of Perpetual Trustee Company Limited, Mr Brett Davis, Manager Taxation and Estate Planning State Trustees Limited, and myself.

The Association continues to be deeply concerned about the potential impact of this legislation.

We hold this view as we do not believe that most of the trusts that we mentioned in our submission dated 9 April would qualify as "family trusts" and be able to pass the family control tests as set out in sections 272-87.

The interests of the beneficiaries of most of the 20,000 trusts mentioned in our submission are either contingent, or they have no legal interest as the trust is discretionary. Many of the trusts that are administered are established by legislation or by a Court and the beneficiaries do not have the powers mentioned in sections 272-87.

Where the beneficiaries do have an absolute interest, the tests mentioned in sections 272-87 would be satisfied, however, we believe that this would only amount to a small percentage of the trusts. For example, State Trustees (Victoria) has estimated that of the 7,00 trusts that it administers in this category, only 100 - 200 trusts would satisfy the tests in sections 272-87.

In considering these matters, we would be pleased to assist you in preparing a definition which would cover the issues we have raised and have regard to State legislation, the nature of Workcover trusts and the like.

If you wish the Association to assist, or if you wish to discuss any of the issues raised, please contact me on 9221 1983.

Yours sincerely


Kerrie Kelly
National Director

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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