NATIONAL SECRETARIAT

Level 7, 34 Hunter Street, SYDNEY NSW 2000
GPO Box 1595, SYDNEY NSW 2001
Telephone: (02) 9221 1983
Facsimile: (02) 9221 2639
E-mail: association@trustcorp.org.au
Website: www.trustcorp.org.au

Trustee Corporations Association of Australia

ANZ Trustees

Australian Executor Trustees

Equity Trustees

National Australia Trustees

New South Wales Trustee and Guardian

Perpetual

Public Trustee for the Australian Capital Territory

Public Trustee for the Northern Territory

The Public Trustee of Queensland

Public Trustee South Australia

The Public Trustee Tasmania

Public Trustee Western Australia

Sandhurst Trustees

State Trustees Victoria

Tasmanian Perpetual Trustees

The Trust Company

25 November 2011

Mr Tim Bryant
Secretary
Parliamentary Joint Committee on Corporations
and Financial Services
Dept of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Bryant

Corporations Amendment (Future of Financial Advice) Bill 2011

Thank you for your letter of 7 November inviting the TCA to make a submission to the Committee's inquiry into the above Bill.

We are pleased to provide the following comments.

1. Traditional trustee company services

As you may be aware, the *Corporations Legislation Amendment (Financial Services Modernisation) Act 2009,* which commenced in May last year, added a new Chapter 5D to the *Corporations Act 2001* dealing with "traditional trustee company services".

Section 601RAC (1) of the Act defines traditional trustee company services as:

(a) performing estate management functions (see subsection (2));

(b) preparing a will, a trust instrument, a power of attorney or an agency arrangement;

(c) applying for probate of a will, applying for grant of letters of administration, or electing to administer a deceased estate;

(d) establishing and operating common funds;

(e) any other services prescribed by the regulations for the purpose of this paragraph.

Subsection (2) defines 'estate management functions' as:

(a) acting as a trustee of any kind, or otherwise administering or managing a trust;

(b) acting as executor or administrator of a deceased estate;

(c) acting as agent, attorney or nominee;

(d) acting as receiver, controller or custodian of property;

(e) otherwise acting as manager or administrator (including in the capacity as guardian) of the estate of an individual;

(f) acting in any other capacity prescribed by the regulations for the purpose of this paragraph.

Traditional trustee company services are deemed to be financial services for the purposes of Chapter 7 of the *Corporations Act*, bringing them into the consumer protection regime set out in that Chapter.

However, we understand that traditional trustee company services are not intended to be captured by the provisions of the FOFA Bill.

2. Ongoing financial advice fees

The Bill provides that where a financial adviser, or their representatives, provides advice to a retail client which involves the charging of an ongoing fee, the adviser is required to discharge two separate (but related) obligations:

- disclosure obligation - in order to continue charging an ongoing fee for a period longer than 12 months, the fee recipient must provide a fee disclosure statement to the client outlining fee and service information relevant to the client.
- renewal notice obligation - in order to continue charging an ongoing fee for a period longer than 24 months, the fee recipient must provide both a fee disclosure statement and a renewal notice to the client.

We agree that this is a reasonable approach, representing a balance between the expected benefits for consumer and the likely administrative costs incurred by advisers (noting that the proposed arrangements will apply only to new clients from July 2012).

3. ASIC's powers

We believe that it is crucial to the integrity of the financial system that licensees, and their representatives, have a level of training and experience appropriate to the services being provided and that they are persons of good character.

Accordingly, we support the enhancement of the ability of ASIC to supervise the financial services industry through the proposed changes to its licensing and banning powers.

Yours faithfully

Ross Ellis

Executive Director

[cc: Senate Economics Committee]