SUBMISSION 27

Inquiry into Harmonisation of Legal Systems

Submission to the Standing Committee on Legal and Constitutional Affairs

Parliament of Australia

May 2005

INTRODUCTION

ANZ is a provider of banking and financial services to all parts of Australia and is the largest bank in New Zealand by net assets and profit after acquiring the National Bank of New Zealand in 2003. ANZ therefore considers itself well placed to comment on the need for harmonisation of laws within Australia's legal system and between the legal systems of Australia and New Zealand.

A lack of national uniformity of laws can limit the efficiency of an organisation like ANZ in several ways. Lack of harmonisation can cause:

- **Increased complexity of compliance function**: lack of harmonisation adds to the complexity of compliance registers and compliance monitoring arrangements. Compliance registers must not only reflect the differences in substantive law across jurisdictions, but also the circumstances in which the laws of one jurisdiction apply over the laws of another

- **Increased complexity of compliance training:** differences in laws also adds length and complexity to compliance training which must communicate the compliance requirements of a number of legislative regimes. ANZ's compliance training must reach a large network of head office staff, branch staff, call centre staff, finance brokers, financial planners and financial advisers. It is important that any communication or training to such a large audience is clear and concise so that it is retained by the target audience. The material must also be meaningful to staff with a clear rationale – apparently needless complexity in compliance training is difficult to communicate effectively. The requirement to factor multiple legislative regimes into compliance training without a clear purpose can frustrate these objectives.

- **Compliance risks:** a lack of legislative harmonisation can increase the risk of compliance breaches because:

    - the compliance requirements of one jurisdiction are confused with another;

    - compliance requirements are never fully understood because the training material is necessarily complex; and

    - changes to one state or territory's legislation are more likely to be overlooked when it is only one part in a patchwork of State and Territory legislation

- **Increased professional advice costs:** the complexity of complying with multiple legislative requirements can increase reliance on professional advisers which in turn increases the operational costs of an organisation

- **Limitation in product offerings:** an organisation such as ANZ may at times apply the most onerous state or territory law in a particular area to avoid the complexity and risk associated with complying with multiple legislative requirements. To the extent this law limits the provision of a type of product or service, a customer in another jurisdiction could be refused access to a product or service even though it would not breach the laws of that customer's state or territory

This submission will identify areas which would benefit from more efficient uniform approaches. Part 1 will look at harmonisation issues between Australia and New Zealand and Part 2 is a discussion about the need for harmonisation of laws within Australia.

1. HARMONISATION BETWEEN AUSTRALIA AND NEW ZEALAND

1.1. Banking supervision

ANZ notes the recent establishment of a Joint Trans-Tasman Council on Banking Supervision to look initially at the harmonisation of approach between regulators with the ultimate aim of joint supervision in a single market for banking services. The Treasury Department has foreshadowed further involvement with industry and ANZ will participate in this process.

1.2. Trans Tasman taxes

ANZ notes that while Australian and New Zealand tax systems are unlikely to be harmonised, there is longstanding bilateral support for improving the degree of co-operation between the two systems. On 14 October 2004 the New Zealand Finance Minister, Dr Michael Cullen, explained the distinction as follows:[1]

> 'To turn finally to tax, the key point I should make is that the two countries are not moving towards harmonisation. There will be no capital gains tax for New Zealand, and it would be very difficult for Australia, I suspect, to move to a relatively simple GST system such as ours.
>
> The longstanding approach in the tax area is close co-operation. For example we are cooperating on a tax information exchange agreement, and last year both countries enacted legislation that made it possible for Australian companies to join New Zealand's imputation credit rules, and New Zealand companies to join the Australian franking credit rules. In this way a longstanding tax obstacle to trans-Tasman investment was reduced.
>
> The way we design tax rules can create unintended problems in Australia and vice versa. Problems have arisen in Australia from our rules on foreign trusts in New Zealand, and Australian unit trust rules have created similar problems for our tax system. This illustrates how our tax systems are closely related and why we need to co-operate.'

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[1] Address by the New Zealand Finance Minister, Dr Michael Cullen, to the Brookers Tax and Regulatory Seminar "Doing Business with Australia" in Wellington on 18 October 2004.

This part of the submission highlights the areas where the Australian and New Zealand tax laws could co-operate more closely.

1.2.1. The need for a new tax treaty

In his 14 October 2004 speech the NZ Finance Minister mentioned that the two countries were already co-operating on a tax information exchange agreement. On 26 May 2005 the Minister for Revenue and Assistant Treasurer announced that Australian and New Zealand officials had commenced discussions concerning a review of the Australia-New Zealand tax treaty. ANZ supports the review and submits that the new treaty should reflect Australia's modern "residence-based" treaty policy rather than its previous "source taxation" policy.

Australia and New Zealand entered into their current tax treaty on 27 January 1995. This treaty reflects the previous "emphasis on source taxation" to which the Board of Taxation referred in its 28 February 2003 report to the Australian Treasurer:[2]

> ‘The evidence on change in investment flows in and out of Australia is now well known, although its implications went largely unnoticed before the RBT. The need to protect source taxation is now far less significant than 20 years ago, when inbound investment was four times the level of outbound investment. The emphasis on source taxation creates significant tax obstacles to foreign investment by Australian-based multinationals, and leads to collection of tax in foreign countries rather than in Australia.’

The Board of Taxation went on to suggest that the need for such an emphasis had receded in recent years, and may already be outweighed by the economic efficiency gains that would flow from a residence-based policy:[3]

> ‘As Australia moves towards balance in investment inflows and outflows, the revenue need for source taxation recedes. Even though Australia may remain a net capital importer for many years to come, there will be significant levels of investment outflows as well as inflows. The distorting effects of source based taxes may mean that resulting economic efficiency gains for both inbound and outbound investment will exceed revenue foregone by moving to a residence-based policy for DTAs.’

The Board of Taxation's Recommendation 3.5, which the Australian Treasurer accepted in his press release dated 13 May 2003, was therefore in the following terms:[4]

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[2] Refer to paragraph 3.61 on page 91 of *International Taxation* (28 February 2003).

[3] Refer to paragraph 3.68 on page 93 of *International Taxation*.

[4] Refer to page 94 of *International Taxation*.

> 'The Board recommends a move towards a more residence-based treaty policy in substitution for the treaty model based on the source taxation of income.'

ANZ agrees with the Board of Taxation's views on the benefits of a residence-based policy:

- The removal of obstacles to investment by Australian multi-national companies in New Zealand;
- The collection of taxes in Australia rather than New Zealand;
- Removal of distortions that currently favour investments in Australia by Australian companies, and in New Zealand by New Zealand companies;
- Economic efficiency gains for investments from Australia into New Zealand, and from New Zealand into Australia;

These benefits are especially likely to be realised in relation to a country like New Zealand (with which Australia already has close economic ties).[5]

The negotiation of a new residence-based tax treaty this would also be consistent with the Board of Taxation's Recommendation 3.7:[6]

> 'The Board recommends that the Government set the following priorities:
>
> (a) review and keep the key country treaties up to date and in line with Recommendation 3.5; and
>
> (b) enter into treaty negotiations with other countries in the order of most important investment partners with Australia.'

1.2.2. Mutual recognition of company tax

In his 14 October 2004 speech the NZ Finance Minister also mentioned that the two countries had reduced a longstanding tax obstacle to trans-Tasman investment by allowing New Zealand companies to maintain an Australian franking account (and *vice versa*). ANZ submits that the two countries should now grant credits for each others' company tax.

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5 The New Zealand Ministry of Foreign Affairs and Trade advises that Australia is the largest investor in New Zealand and New Zealand is the sixth largest source of overall foreign investment in Australia. The Ministry also advises that on 31 March 2004 Australian investment in New Zealand stood at $51.3 billion and New Zealand's investment in Australia was $20.8 billion.

6 Refer to page 96 of *International Taxation*.

The change to the imputation and franking rules had its source in a 6 March 2002 joint discussion document entitled *Trans*-Tasman *triangular tax*. The document expressly acknowledged that double taxation represents a barrier to trans-Tasman investment:[7]

> 'Under present law, Australian shareholders in a New Zealand company operating in Australia are unable to access Australian franking credits. The same problem applies in reverse to New Zealand shareholders in Australian companies operating in New Zealand. In effect, both groups of shareholders are taxed twice on their income.
>
> We have agreed that the examination of triangular taxation is a worthwhile step in addressing possible barriers to trans-Tasman investment. This is a problem that obviously requires a bilateral solution – one that preserves the tax bases of both countries and is acceptable to government and business in both countries.'

The document mentioned four possible approaches to the problem:

- Pro rata allocation (which was eventually legislated);
- Mutual recognition including pro rata revenue sharing;
- Streaming; and
- Apportionment.

ANZ's view is that the trans-Tasman triangular taxation rules, although an improvement on the previous situation, do not go far enough. In particular, the pro rata allocation has not solved the problem of double taxation if a company (either Australian or New Zealand) raises equity capital in one country to fund an investment in the other. This may be one reason for the limited take-up of the new rules notwithstanding their potential to avoid double taxation in some situations.

Only the second of the above approaches will comprehensively solve the double taxation problem in relation to trans-Tasman investment.

The joint discussion document acknowledged that the second approach was equivalent to implementing a comprehensive residence-based policy for the taxation of company profits:[8]

> 'The effect of pro rata revenue sharing is equivalent to each government's company tax being treated as a withholding tax on behalf of the other. Both countries would preserve full residence taxation while giving up some source taxation.'

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7 Refer to the preface to the joint discussion document.

8 Refer to paragraph 3.21 on page 17 of the joint discussion document.

The Australian Treasurer has already agreed to move from a source taxation policy to residence-based taxation in relation to our tax treaties in a press release dated 13 May 2003. It would now be appropriate to revisit the implicit rejection of the "mutual recognition including pro rata revenue sharing" approach in relation to trans-Tasman investments.

1.2.3. Rules to deal with foreign corporate transactions

In his 14 October 2004 speech the NZ Finance Minister also mentioned that the way one country designs its tax rules can create unintended problems in the other. ANZ notes that similar problems may arise from the forms that corporate transactions can take in each country.

One example involves "amalgamations" under New Zealand company law. Such transactions allow two or more companies to combine and continue as one company (which may be one of the amalgamating companies or a completely new company).

Australia's tax laws already include special rules to deal with corporate transactions such as share buy-backs, liquidations, scrip-for-scrip exchanges, and demergers. Some of these rules merely provide certainty as to the taxation implications of a particular transaction. Others provide a specific tax concession that is considered to better reflect the substance of the transaction.

However, Australia's tax laws do not currently include special rules to deal with corporate transactions that are more common in New Zealand (such as amalgamations). The Australian tax implications of such a transaction may nonetheless be relevant if an amalgamating company has Australian assets, operations or shareholders. These implications are currently quite uncertain and may not necessarily reflect the substance of the transaction. This in turn leads to inefficiencies and increased costs for such companies. ANZ has direct experience of these inefficiencies and increased costs by virtue of its recent amalgamation of existing New Zealand companies with a newly-acquired group of companies.

In ANZ's view, the more common corporate transactions should be reviewed to confirm that they are taxed consistently in both countries.

1.3. Competition Laws

ANZ supports the findings and recommendations of the Productivity Commission in its December 2004 study into *Harmonisation of the Australian and New Zealand Competition and Consumer Protection Regimes*.

In particular, ANZ supports moves towards a more efficient, streamlined regulatory structure for the clearance of trans-Tasman mergers, acquisitions and joint ventures and is therefore encouraged by the Productivity Commission's recommendation that:

- the Australian and New Zealand governments agree that a "single track" procedure be made available to those businesses requiring approval in both countries and

- a coordination protocol should be agreed between the Australian Competition and Consumer Commission and the New Zealand Commerce Commission to operationalise the "single track" procedures. (Recommendation 6.7).

Current differences in approval approaches across jurisdictions complicate trans-Tasman economic activity.

1.4. Company and Commercial Law issues

1.4.1. Listing Rule requirements – Australia (ASX) and New Zealand (NZX)

ANZ's ordinary shares are listed on the Australian Stock Exchange (ASX) and on the equity market operated by NZX (NZX). As the ASX is ANZ's "home exchange", ANZ is considered an "overseas listed issuer" for the purpose of the NZX Listing Rules.

The NZX Listing Rules deem that ANZ satisfies and complies with all of the NZX Listing Rules as long as it:

- remains listed on ASX and

- it gives to NZX the same information and notices it is required to give to ASX and provides this information at the same time it is required to provide it to the ASX.

ANZ supports this approach as an effective means to limit the costs of entities wishing to list securities on both the ASX and NZX.

1.4.2. Timing differences on the settlement of ASX and NZX trades

Trades of securities listed on ASX – through its SEATS trading platform – are settled on a T + 3 basis. That is, the trade is completed, and title to the security transferred, on the third trading day after the contract to trade was entered into. Under the NZX trading platform – the FASTER settlement system – transactions are settled on a T + 1 basis.

The timing differences can create difficulties in setting timetables for transactions that involve a class of securities listed on both ASX and NZX. For example, in ANZ's 2003 renounceable rights issue, the differences in settlement procedures meant that ANZ ordinary shares traded on ASX were quoted excluding the entitlement to rights 3 trading days before the record date. On the other hand, ANZ ordinary share traded on NZX were quoted excluding the entitlement to rights the day after the record date.

Greater consistency between the two trading platforms would simplify the process for listed companies undertaking rights issues for shares listed on both the ASX and NZX. It would also prevent the situation of an entity seeking to avoid the difficulties by choosing to extend a capital raising to shareholders in one jurisdiction and denying the opportunity to shareholders in the other.

1.4.3. Mutual recognition of securities offerings

ANZ notes the initial steps by Australia and New Zealand to harmonise the laws in each country regulating offerings of securities into the other country. ANZ supports these efforts and the principles set out in the "Trans-Tasman Mutual Recognition of Securities Offerings" discussion paper. ANZ provided a submission dated 23 July 2004 to the Department of Treasury in response to the discussion paper.

2. HARMONISATION WITHIN AUSTRALIA

2.1. Consumer Protection laws

In 1983, the Commonwealth, State and Territory consumer affairs Ministers agreed to adopt a uniform scheme of consumer protection legislation. The uniform State and Territory legislation was modeled on the consumer protection provisions of Part V of the Trade Practices Act 1974 (Cth). The result of this agreement was a fair trading Act in each State and Territory.

This scheme arose out of the constitutional limitations of the Trade Practices Act, which largely applies to corporations only, and the need for State and Territory legislation to provide consumer protection provisions applicable to individuals.

Despite the intention for a uniform set of fair trading Acts across the country, there have been several legislative developments in various States and Territories in recent years that have created some inconsistencies in consumer protection laws across the country. It appears State and Territory Governments are increasingly using fair trading legislation as a means to drive consumer protection initiatives which do not necessarily have national support.

An example of this inconsistency occurred last year when NSW and Victoria both introduced similar, but in part inconsistent Fair Trading Act amendments in relation to unsolicited marketing[9]. The regimes shared a common objective to impose standards of conduct and disclosure requirements on marketers who attempt to sell products and services during unsolicited customer contact. While the majority of ANZ direct marketing efforts are excluded from both the NSW and

[9] In Victoria: Fair Trading (Further Amendment) Act 2003; Fair Trading (Consumer Contracts) Act 2004 and Fair Trading (Amendment) Regulations 2004. In NSW: Fair Trading Amendment Act 2003 and Fair Trading (General) Amendment (Direct Commerce) Regulation 2004

Victorian direct commerce regimes, ANZ notes the standards and requirements contained in those regimes differ in several ways.

While major inconsistencies between the regimes were addressed by late amendments, the residual inconsistencies which cause concern are summarised below:

Provision	NSW	Victoria
Scope	Applies to a 'direct commerce contract' defined as supply of goods or services, the negotiations for which take place during: • a meeting at a location other than the supplier's business premises • over the telephone where the consumer did not invite the meeting or telephone call	Applies to a 'telephone marketing agreement' defined as a supply of goods and services, the negotiations for which take place over the telephone, where: • the supplier made the call and • the consumer did not invite the call
Exclusions	Exclusions apply to agreements: • for 'financial products' • for UCCC-regulated credit (but only from requirement to provide customer a cooling off period) Legislation does not apply to contracts for the supply of goods and services for business purposes	Exclusions apply to agreements: • for 'financial products' • solely for the provision of credit Legislation confined to the supply of goods and services of a kind ordinarily used for personal, household or domestic use
Cooling-off period	Consumer has 5 days after a direct commerce contract is made to cancel the agreement Supplier must provide consumer a written information of consumer's right to cancel the contract. There is no required format for this information	Supplier must within 5 days of a TMA, provide consumer with a prescribed document summarising the agreement and a prescribed cancellation notice. Consumer can cancel contract by returning notice within 10 days of receiving documentation.

Provision	NSW	Victoria
Specific consent before contract	No equivalent provision	A consumer must provide explicit informed consent before a TMA can be made. Consent must be recorded in writing or by means of a recording device

Any national organisation undertaking direct marketing that falls within these regimes would need to maintain different compliance arrangements and apply different rules and standards depending on whether the customer resides in NSW or Victoria. If the customer is in Victoria, the caller must ensure prescribed documentation is sent after the agreement is made and must obtain and record the consent of the customer before any sale is complete. The same call to a NSW resident does not require the prescribed documentation or consent. However, the NSW requirements will apply to conduct not covered by the Victorian regime – that is to contracts negotiated at an unsolicited meeting held at a venue other than the supplier's business premises.

This makes it difficult for a national organisation to maintain clear and consistent rules for its staff. ANZ believes the inconsistency highlights the potential for the fair trading Act scheme to become unwieldy. If individual State and Territory parliaments continue to pass amendments to fair trading legislation without co-operation to ensure consistency, the initial agreement to create a uniform scheme of consumer protection legislation will be frustrated.

ANZ is encouraged by a recent announcement by the Parliamentary Secretary to the Federal Treasurer, the Hon Chris Pearce MP, outlining the Government's commitment to work with the Ministerial Council on Consumer Affairs to achieve a nationally consistent consumer policy framework.

ANZ also notes and supports the recommendation made by the Productivity Commission in its recent Inquiry Report, *Review of National Competition Policy Reforms*, 28 February 2005, that the Australian Government, in consultation with the States and Territories, should establish a national review into consumer protection policy and administration in Australia focussing on, among other things, mechanisms for coordinating policy development and application across jurisdictions and for avoiding regulatory duplication.

One such mechanism could be to revisit the 1983 agreement between the Commonwealth and the States and Territories to include some positive obligations on the State and Territory fair trading departments to ensure consistency in consumer protection laws. A possible model is the 'template model', reflected in the Australian Uniform Credit Laws Agreement 1993, which if adopted for consumer protection laws, would require State and Territories to enact laws to adopt a template Fair Trading Act (along with any amendments) and for any changes to this template legislation to be approved by a majority of the Ministerial Council of Consumer Affairs.

2.2. Finance Broker regulation

The regulation of finance brokers varies markedly across States and Territories. Western Australia, Victoria, New South Wales and the ACT have passed legislation specifically regulating finance brokers. South Australia, Tasmania, the Northern Territory and Queensland are yet to legislate specifically on the topic.

The regimes of NSW, Victoria and the ACT are similar and focus primarily on the disclosure requirements for brokers. They apply only to brokers dealing in consumer credit. The regime in Western Australia goes further by also establishing a licensing regime, code of conduct, and functions for a ‘regulator’ which has an ongoing industry oversight role. It also has a wider scope, applying to intermediaries who deal in commercial as well as consumer credit.

This patchwork of legislation presents difficulties for a financier like ANZ with a national network of finance brokers. While ANZ does not have direct compliance responsibility under the various laws, it provides compliance training and support for many brokers and has an obvious interest in ensuring its brokers are competent, appropriately qualified and law abiding. It is much easier for ANZ to set standards for the good character and conduct of its brokers if those standards can be based on one nationally uniform legislative regime with one set of licensing, conduct and disclosure requirements. The difficulties of inconsistent legislation is compounded for national broking companies, which do have direct responsibility for compliance with this legislation.

ANZ is encouraged by and supports moves to develop nationally uniform finance broker legislation and provided a submission in response to a recent Discussion Paper[10] on a proposed regime. ANZ understands draft provisions will be released by the New South Wales Office of Fair Trading in the near future for wide consultation and ANZ will be involved in this consultation.

2.3. Workplace Surveillance

ANZ is concerned about recent developments in Workplace Surveillance reform toward state-based legislation.

There are sound reasons why a financial institution like ANZ needs to carry out surveillance in the workplace. These reasons include protection and safety of the workplace, particularly of branch staff, and the detection of fraud and other criminal activities. Banks also have prudential obligations with respect to

[10] Office of Fair Trading (NSW), *National Finance Broking Regulation – Discussion Paper* 2004.

operational risk and business continuity management. A bank's surveillance of its systems and activities (as well as those of its employees) is essential to the prudent management of risks such as technological risk, reputational risk, fraud, compliance risk, legal risk, outsourcing risk, business continuity planning and key person risk. The management of these risks is an important part of a bank's overall prudential obligations.

The 2001 private sector amendments to the Privacy Act 1988 were introduced for a number of reasons, one being because individual States were proposing to enact their own legislation. The States agreed at the time that acceptable national legislation governing the private sector was the preferred alternative and the Privacy Act amendments were the result.

In recent developments, the NSW Government has introduced the *Workplace Surveillance Bill 2004* (NSW) into Parliament and the Victorian Law Reform Commission is considering regulatory options related to surveillance in the Victorian workplace.

A move toward state-based workplace privacy regulation would re-open the prospect of non-uniform laws throughout Australia. Nationally operating entities such as ANZ could be subjected to contradictory laws affecting their national workforces. This would be likely to create significant additional compliance costs due to systems modifications, altered practices and staff training in order to manage the differences and ensure compliance. A state-by-state approach also fails to recognise that technology does not recognise borders, and the provisions in these developments ignore the technologically neutral objective of the Federal Privacy Act. Technology neutrality is an essential principle of the Act and assists organisations to comply with the Act. It also maintains the Act's relevance regardless of technology developments. Specifically requiring privacy requirements on systems could destroy this principle and result in a difficult to administer compliance framework for organisations.

This inconsistency was raised in a number of submissions to the Federal Privacy Commissioner's recent review of the private sector provisions of the Privacy Act, including that of ANZ. In her recently released report on the review, the Privacy Commissioner made a recommendation that the Government consider mechanisms to address inconsistencies that have come about, and will come about, in the area or workplace surveillance. The report also recommends that the Government review the Act to ensure it remains technology neutral and is therefore able to cover issues such as workplace surveillance under the nationally consistent National Privacy Principles. ANZ's submission to the review also suggested that the Office of the Federal Privacy Commissioner (OFPC) could develop national guidelines for workplace surveillance practices. The OFPC has the power under the Privacy Act to develop guidelines on activities of organisations that may impact on the privacy of an individual.

While recognising that State-based consideration of legislation on this issue derives from a desire to ensure privacy protection for workers, the development of nationally applicable standards would be preferable. This approach would avoid a patchwork of State and Territory legislation while delivering an agreed standard of privacy protection for workers balanced with the needs of employers to protect their business and customers.

2.4. Conveyancing laws

As a national financier of real estate transactions, ANZ encounters difficulty in complying with its obligations as a lender under a patchwork of State and Territory laws. These laws contain different requirements relating to:

- the calculation of stamp duty;
- the registration of mortgages; and
- the form of documents that require filing/registration with the relevant State or Territory government agency.

For example, in Queensland and the Northern Territory, a registration of mortgage must be witnessed by a Justice of the Peace or legal practitioner. In all other States and Territories, the document need only be witnessed by a person over 18 years of age.

The rules around the lapsing of caveats and the documentary requirements around notification and withdrawal of caveats also differ according to the home jurisdiction of the transaction.

These complexities are compounded for multi-jurisdictional transactions (eg where a Victorian purchases property in Queensland) which require bank staff to be familiar not only with the documentation and processes required of the purchaser's jurisdiction, but also those of the jurisdiction of the purchase property. The inconsistency in requirements across States and Territories adds significant complexity to bank staff compliance training as well as a substantial risk of non-compliance with largely technical requirements.

ANZ welcomes the developments in Victoria to establish a national e-conveyancing system, which if successful, will rationalise into one form the information a user of the system must provide to State and Territory authorities, even where the transaction occurs across jurisdictions. ANZ hopes this project will act as a driver for more national uniformity in conveyancing laws.

2.5. State Taxes

2.5.1. Payroll tax and workers' compensation levies

Prior to 1971, payroll tax was a tax imposed by the Commonwealth uniformly across the States and Territories. Since payroll tax became controlled by the States and Territories in 1971, the amendments made by individual States and Territories have now resulted in significant differences in the application and operation of payroll tax between States and Territories.

Differences include exemptions thresholds, the rates at which payroll tax is imposed, exemptions, the amounts included in calculating taxable wages and differing treatment of contractors and employment agencies. These differences cause significant compliance difficulties for employers employing staff on a national basis or staff who move around the country.

In addition to differences between States and Territories, within an individual State or Territory there are also commonly differences between remuneration as calculated for workers compensation purposes and taxable wages calculated for payroll tax purposes. This creates complexity not only for national employers, but also smaller individual State based employers.

Even where the law is expressed in identical terms, different revenue authorities may interpret the law in different ways. This is another source of differences between States and Territories and therefore additional complexity.

Although the possibility of a payroll tax rewrite was raised several years ago, nothing further has been proposed to date and differences continue to arise.

2.5.2. Stamp duty

There is a strong case for the harmonisation of stamp duty laws throughout the Australian States and Territories. This outcome was attempted through the rewrite of State-based Duties Acts to incorporate the previous uniform provisions. However, only Victoria, Tasmania, New South Wales and the Australian Capital Territory adopted a common rewrite model (although a number of initial differences were retained and there have been subsequent amendments resulting in further differences).

Queensland undertook its own rewrite, which is not entirely consistent with the other rewrite jurisdictions. Additionally, Western Australia has adopted some aspects of the rewrite, for example the mortgage duty and hire of goods duty provisions, but remains different in many other respects.

A number of taxes, such as Financial Institutions Duty and Bank Account Debits Tax have now been abolished, or are scheduled for abolition in the near future, eliminating or reducing some areas where different provisions and interpretations have previously caused difficulties.

However, significant differences can still be seen, for example, in the way the ‘land rich’ rules apply in each State (such as different thresholds for land holdings and acquisitions, and in relation to the entities to which the rules apply), and in the way each State calculates its proportion for the purposes of multi-jurisdictional mortgage stamping (ie with 5 States imposing mortgage duty, 4 different methods are used to calculate the appropriate proportion). Even where the legislation is the same, differences in interpretation/application arise between revenue authorities. These differences make it difficult to operate a business on a national basis.

Attachment 1 is a matrix showing various State stamp duties imposed by the States and Territories. Although it is not sufficiently detailed to show the variations where a similar head of tax is imposed by more than one State or Territory, it shows the variations between the States and Territories in terms of the transactions and arrangements that are taxed. For example, the table shows:

- Deed Duty is payable only in South Australia, Western Australia and the Northern Territory and even then, the amount payable differs among these States and Territories;
- both Corporate Trustee Duty and Credit Business Duty are payable in Queensland but not in any other State or Territory; and
- the time for payment of duty varies markedly across the States and Territories, ranging from 30 days from liability arising in Queensland, to 3 months after liability in NSW and Victoria.

2.6. Workers' Compensation

As a national employer, ANZ is required to comply with a variety of State and Territory Workers' Compensation laws.

These laws differ according to:

- the calculation of weekly benefits for eligible employees;
- the documentation required to be provided to employees outlining mutual rights and responsibilities;
- the financial and prudential requirements required by employers by each state authority to safeguard obligations;
- the reporting requirements of employers (eg. headcount information, remuneration levels, workers' compensation claims and other statistical data); and
- the audit requirements of each state authority, requiring multiple jurisdiction specific process manuals, information collection protocols and documentation.

This patchwork of State-based legislation means ANZ is unable to centralise its management of Workers Compensation issues and benefit from a more efficient allocation of resources. ANZ retains staff in Queensland, ACT, Tasmania, South Australia and Western Australia to ensure compliance with the State-specific reporting and financial obligations, even though ANZ employs a relatively small number of staff in these states and even though the workers' compensation claims in these areas can number as few as one or two at any one time.

2.7. Statutory Trusts

Various legislation in each State and Territory regulates the conduct of solicitors and real estate agents. One of the common obligations imposed on real estate agents and solicitors under these laws is the requirement to pay client money and other funds into trust accounts. These trust accounts must commonly be maintained with a financial institution authorised to accept deposits of statutory trust funds under the relevant legislation.

Unfortunately the calculation and treatment of interest earned on statutory trust funds is not uniform across these pieces of legislation. The interest rates required to be paid on accounts can also differ across jurisdictions. As a result, a financial institution like ANZ, which is authorised to receive these deposits, must ensure its accounting and IT systems across the country adequately differentiate the calculation and treatment of interest on these accounts depending on the State or Territory in which the deposit was received - or risk (in some cases) breaching the law. The cost imposed on financial institutions is considerable - costs that are more likely than not recovered from account holders. These could be significantly reduced if a uniform regime imposing one standard treatment of statutory trust interest was implemented.

2.8. Trade Promotions Legislation

Each State and Territory has its own lotteries legislation which regulates trade promotions (or competitions). The legislation differs in many respects, most significantly in the circumstances in which a business requires a permit to conduct a competition. A permit is not required in Queensland, Tasmania and Western Australia. A permit is required in South Australia if the total prize pool exceeds $500 and in Victoria if the prize value exceeds $5000. A permit is required in NSW and ACT regardless of the total prize pool value.

The various State and Territory laws also impose varying requirements in relation to:

- the fees payable for the issue of permits;
- the level of information required on material advertising the competition;
- the requirement for a scrutineer at the draw and procedures around the authorisation of a person to draw the winner(s)
- the location of the draw (the NSW legislation requires the draw of any competition open to NSW residents to take place in NSW)
- the form, content and disclosure of competition terms and conditions

These differences add unnecessary complexity to the conduct of national competitions and increase the risk of technical non-compliance with the requirement of one or more jurisdictions. ANZ's view is that there is a strong case for these divergent laws to be harmonised.

3. CONCLUDING COMMENTS

Lack of uniformity in laws reduces the efficiency of an organisation that operates nationally and in New Zealand through the increased complexity of staff training, complexity of compliance effort and the associated professional advice and administration costs. In this submission, ANZ has identified the areas of inconsistency that have the greatest impact on its operations. Where there is no real perceived policy benefit in retaining distinct and different regimes, harmonisation would, in our view, be desirable.

ANZ would be pleased to provide any further information about this submission as required, and can be contacted as follows:

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ATTACHMENT 1

STATE AND TERRITORY DUTIES

TYPE OF DUTY	VIC[i]	NSW[ii]	QLD[iii]	SA[iv]	WA[v]	TAS[vi]	NT[vii]	ACT[viii]
Deed duty	✗	✗	✗	✓ Sch 2 Pt 1 item 8 $10	✓ Sch 2 item 8 $20	✗	✓ SDA sch 1 item 6 $20	✗
Mortgage duty	✗	✓ Ch 7	✓ Ch 5	✓ Pt 3 Div 10	✓ Pt IIIE	✓ Ch 6	✗	✗
Counterpart duty	✗	✓ s271 $2	✗	✗	✓ s34, sch 2 item 9 $5	✗	✓ SDA sch 1 item 22 $5	✗ / ✓ s227 $20 if lodged separately
Collateral mortgage duty	✗	✓ s218B $10	✗	✗	✗	✓ s153 $20	✗	✗
Corporate trustee duty	✗	✗	✓ Ch 3 Pt 2	✗	✗	✗	✗	✗
Credit business duty	✗	✗	✓ Ch 6	✗	✗	✗	✗	✗

TYPE OF DUTY	VIC[i]	NSW[ii]	QLD[iii]	SA[iv]	WA[v]	TAS[vi]	NT[vii]	ACT[viii]
Credit card duty	×	×	×	×	×	✓ (to be abolished from 1 July 2005)	×	×
Electronic debit transaction duty	×	×	×	×	×	×	✓ (to be abolished from 1 July 2005) TAA Div 3B, SDA sch 1 item 3B	×
Gaming machine duty	×	×	×	✓ Pt 3 Div 7	×	×	×	×
Hire of goods/rental business duty	✓ Ch 6	✓ Ch 6	✓ Ch 7	✓ Pt 3 Div 2	✓ Pt IVB sch 2 item 18	×	✓ TAA Pt III Div 13, SDA sch 1 items 9-9A	✓ Ch 6
Insurance duty	✓ Ch 8	✓ Ch 8	✓ Ch 8	✓ Pt 3 Div 3	✓ Pt IIIF	✓ Ch 7	✓ TAA Pt III Divs 6-7A, SDA sch 1 items 17-18, sch 2 items 30-32A	✓ Ch 8

TYPE OF DUTY	VIC[i]	NSW[ii]	QLD[iii]	SA[iv]	WA[v]	TAS[vi]	NT[vii]	ACT[viii]
Land rich acquisition duty	✓ Ch 3 Pt 2	✓ Ch 4A	✓ Ch 3 Pt 1	✓ Pt 4	✓ Pt IIIBA	✓ Ch 3 Pt 2	✓ TAA Pt III Div 8A	✓ Ch 3 Pts 3.1-3.2
Land rich disposal duty	×	✓ Ch 4A Pt 3	×	×	×	×	×	×
Lease duty	× (note s7(1)(b)(v))	✓ Ch 5	✓ Ch 4	×	× (note Pt IIID)	×	✓ TAA Pt III Div 8, SDA sch 1 item 12, sch 2 items 5, 6B, 7	✓ Ch 5
Motor vehicle duty	✓ Ch 9	✓ Ch 9	✓ Ch 9	✓ Pt 3 Div 4	✓ Pt IIIC	✓ Ch 8	✓ TAA Pt III Div 9, SDA sch 1 item 16, sch 2 item 37	✓ Ch 9
Sale of livestock	✓ Ch 10 Diseased cattle, sheep, pigs and goats	×	×	×	✓ Sch 2 item 3 Cattle	×	×	×
Transfer duty	✓ Ch 2	✓ Ch 2	✓ Ch 2	✓ Pt 3 Divs 1 and 6	✓ Pt IIIB	✓ Ch 2	✓ SDA s8, sch 1, items 5, 7, sch 2, items 6-9B, 23	✓ Ch 2

TYPE OF DUTY	VIC[i]	NSW[ii]	QLD[iii]	SA[iv]	WA[v]	TAS[vi]	NT[vii]	ACT[viii]
Vendor duty	×	✓ Ch 4	×	×	×	×	×	×
Listed marketable securities duty	×	×	×	×	× (note potential for land-rich duty)	×	×	×
Unlisted marketable securities duty	×	✓ ss8, 11, 13, 33, 59A, 66	✓ ss8-10, 16-18, 24(1), 148, 484	✓ Pt 3A Divs 1 and 5, sch 2 item 14	× except transfer of units in private unit trusts (Pt IIIB)	×	✓ TAA Pt III Div 11, SDA sch 1 item 20, sch 2 items 15-22	✓ ss7, 9-12, 14, 16, 32, 60A, 70, 75, 248
Time for stamping / payment	3 months after liability for duty arises s16	3 months after liability for duty arises s12	30 days after liability for duty arises (specified in separate sections for each head of duty)	2 months after liability for duty arises or 6 months if instrument never in SA s20	Lodgement within 2 months of liability for duty arising (s17B) Payment within 1 month of notice of assessment (s17A(2))	3 months after the liability for duty arises s15	60 days after liability for duty arises TAA s9	90 days after liability for duty arises s16

[i] *Duties Act 2000* (VIC).
[ii] *Duties Act 1997* (NSW).
[iii] *Duties Act 2001* (Qld).
[iv] *Stamp Duties Act 1923* (SA).
[v] *Stamp Act 1921* (WA).
[vi] *Duties Act 2001* (Tas).
[vii] *Stamp Duty Act 1978* (NT) (**SDA**) or *Taxation (Administration) Act 1978* (NT) (**TAA**), as referred to.
[viii] *Duties Act 1999* (ACT).