Chapter 6

Schedule 5—managed funds

6.1 Schedule 5 to this bill amends Division 6C of the *Income Tax Assessment Act 1936* (ITAA 1936) to streamline and modernise the eligible investment business rules for managed funds.

6.2 These amendments aim to:

- clarify the scope and meaning of investing in land for the purpose of deriving rent;
- introduce a 25 per cent safe harbour allowance for non-rental, non-trading income from investments in land;
- expand the range of financial instruments that a managed fund may invest in or trade; and
- provide a 2 per cent safe harbour allowance at the whole of trust level for non-trading income.

6.3 The introduction of these amendments will make it easier for managed funds, in particular property trusts, to comply with the law by reducing the scope for them to breach inadvertently Division 6C.

6.4 These amendments will clarify the scope and meaning of 'investing in land for the purpose of deriving rent'. It achieves this by ensuring that this clause is taken to include investing in fixtures on the land and movable property (i.e. chattels) customarily supplied, incidental and relevant to the renting of the land and ancillary to the ownership and utilisation of the land.

6.5 These amendments will introduce a 25 per cent safe harbour allowance for non-rental, non-trading income from investments in land. The allowance is to operate as a safe harbour in conjunction with the existing rental purpose tests on an overall land portfolio basis. If a trust does not meet this safe harbour, it can assess whether it is investing in land for the purpose, or primarily for the purpose of deriving rent under the existing law (i.e. paragraph (a) of the definition of 'eligible investment business' in section 102M).

6.6 The explanatory memorandum provides the following example of the proposed law:

> A public unit trust invests in land used as a shopping centre. The property includes some fittings and moveable furnishings in the common areas that

> are for use by centre customers. The investment in the fittings and moveable property are included as part of the investment in land.[1]

6.7 The Property Council of Australia submitted that these proposed changes will help modernise Australia's Real Estate Investment trust rules:

> The new safe harbour framework provides clearer boundaries regarding the types of income a trust can earn, which makes it easier to understand the ground rules for distributing untaxed income to beneficiaries.[2]

6.8 Beyond the comment offered by the Property Council of Australia, the committee received no submissions on the proposed changes contained in Schedule 5.

Senator Annette Hurley

Chair

1 Explanatory memorandum, p. 60.

2 Property Council of Australia, *Submission 2*, p. 2.