



ITSA

INSOLVENCY AND TRUSTEE SERVICE AUSTRALIA

OFFICE OF THE CHIEF EXECUTIVE AND
INSPECTOR-GENERAL

26 February 2003

Mr John Carter
A/g Committee Secretary
Joint Committee of Public Accounts and Audit
Parliament House
CANBERRA ACT 2600
Dear Mr Carter

I refer to your letter dated 13 February 2003 about the Review of the draft Financial Framework Legislation Amendment Bill and thank you for the opportunity of making a submission to the Committee.

ITSA is an executive agency within the Attorney-General's portfolio and administers and regulates Australia's personal insolvency system under the *Bankruptcy Act 1966* (the Bankruptcy Act). ITSA also participates in the proceeds of crime initiative by controlling restrained property and disposing of forfeited property under the *Proceeds of Crime Act 1987* (Proceeds of Crime Act). ITSA acts on behalf of the Official Trustee.

In short, the proposed amendments in the FFLAB would ensure that both relevant provisions in the Bankruptcy Act and the Proceeds of Crime Act align with the concepts and references in the *Financial Management and Accountability Act 1997*. The amendments will not impact in a practical way on the arrangements ITSA currently has in place to administer the relevant provisions of either Act.

The changes proposed by the draft *Financial Framework Legislation Amendment Bill (FFLAB) 2003* would amend the legislation that ITSA administers as follows:

Relevantly, the Bankruptcy Act:

establishes the Common Investment Fund (CIF), into which all monies received by the Official Trustee under the Act are paid (s 20B);

establishes the Equalization Reserve, into which all interest earned by the investment of CIF monies must be credited (s 20G); and

prescribes the purposes for which monies may be transferred to or from the CIF and the Equalization Reserve (including payments to the Consolidated Revenue Fund) (s 20H).

The Official Trustee administers bankrupt estates and other administrations under Parts IX, X and XI of the Bankruptcy Act and in the course of that realises assets and recovers income from contributor bankrupts and pays those funds into the CIF, pending payment of fees and costs and distribution of funds through dividends to creditors. The CIF comprises funds from all those administrations. Monies in the CIF are invested and those earnings are initially paid into the Equalisation Reserve. Ultimately, interest earned is transferred to the CRF.

In this context the FFLAB proposes:

replacing references to transfers to and from the Consolidated Revenue Fund with references to transfers to and from the Commonwealth; and
replacing references to the Equalization Reserve with references to the Equalization Account;
and it recognises that the Equalization Account is a Special Account.

Relevant sections of the *Proceeds of Crime Act 1987* establish the following:
the Confiscated Assets Reserve (s 34A) into which proceeds of confiscated assets, including pecuniary penalty orders, must be transferred; and
definitions of the types of payments permitted out of the Reserve (ss 34C and D).

The Official Trustee gives effect to court orders for the restraint and forfeiture of the property of defendants under the *Proceeds of Crime Act*, pending the outcome of relevant criminal proceedings under that Act, and also relevant provisions of the *Customs Act 1901* and the *Crimes Act 1914*. ITSA also manages the Confiscated Assets Reserve.

The FFLAB replaces references to the Confiscated Assets Reserve with references to the Confiscated Assets Special Account, and replaces references to the Consolidated Revenue Fund with references to the Commonwealth.

I mention that the *Proceeds of Crime Act 2002* which applies separately and in addition to the 1987 Act is drafted in accordance with the structure of the *Financial Management and Accountability Act 1997*.

I confirm that the proposed FFLAB changes would not have any practical effect on ITSA's operational responsibilities.

Yours sincerely
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