



27 June 2008

Financial Services and Credit Reform Green Paper
Corporations and Financial Services Division
Treasury
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Dear Sir/Madam

Plan B welcomes the opportunity to provide comments on the proposals presented in the recently released Green Paper on Financial Services and Credit Reform.

The Plan B Group is a holistic provider of financial services, and its operations cover many aspects covered in the Green Paper. With that in mind we have chosen to address the relevant areas in a single submission for convenience.

Plan B is a Perth based listed company, that provides its clients with the full spectrum of wealth management services including strategic advice, portfolio administration, funds management, estate planning, life insurance, superannuation, mortgage broking, margin lending and estate and trust management.

Each of these activities impose a stringent fiduciary responsibility upon Plan B, which we take very seriously, and accordingly operate to the highest standards. Plan B is currently responsible to the following regulators:

- APRA
- ASIC
- ATO
- ACCC
- Austrac
- Department of the Attorney General
- Department of Consumer and Employment Protection

We are very much in favour with the overall direction of the paper, that is, a consistent national regulation that focuses on consumer protection, reduces the regulatory burden on business and simplifies disclosure to consumers.

Mortgages, Mortgage Broking and Non-Deposit Taking Institutions

Plan B is supportive of the Commonwealth taking over the regulation of credit.

Plan B Finance Pty Ltd (PBF) is a wholly owned subsidiary of the Plan B Group and was established for the specific purpose of providing mortgage broking services to our clients. It is licensed to operate in WA through the Department of Consumer and Employment

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Protection. PBF is a member of the Mortgage and Finance Association of Australia and adheres to the codes of practice set down by that association.

PBF fully supports a Commonwealth framework specifically for regulation of mortgage broking that will create a level playing field between all states and territories. We believe this will provide better outcomes for consumers through greater protection mechanisms as well as disclosures. It should be a single regime avoiding onerous and unnecessary duplication of regulation between State and the Commonwealth. Requirements to comply with both Western Australian and Commonwealth licensing is viewed as being overly (and unnecessarily) onerous on businesses.

PBF urges Treasury to consider a fast-track provision to Commonwealth licensing for entities that are already licensed and comply with the comprehensive Western Australian State legislation for Mortgage Broking. ie. ASIC should recognise the broking licence of the Western Australian Finance Brokers Control Act 1975 by formalising an agreement between ASIC and DOCEP.

PBF supports the sentiment of the licensing, conduct and disclosure requirements listed in Table 4 of the Green Paper. However, if the government does proceed on this basis, a study should be conducted on the potential compliance costs associated with this change, as these costs would inherently be passed onto consumers. The aim would be to avoid a superannuation-like advice scenario where many consumers cannot afford the cost of financial advice. To alleviate this, the government and/or regulators could consider tools like the use of 'records of advice' and mortgage broking specific interpretation of Chapter 7 through a regulatory guide which would assist businesses in understanding what constitutes financial advice in relation to mortgage products. (Full statements of advice and completely shifting the 'duty of care' from consumers to brokers for all mortgage products is considered impractical.)

Trustee Corporations

Plan B Trustees Limited (PBTL) is a wholly owned subsidiary of the Group. Its origins arose from R&I Trustees, becoming Trustees of Western Australia in 1992 and ultimately PBTL in 2002. PBTL provides all of the traditional services including executor and estate administration, trust management as well as in a specialist field of Native Title Trusts.

As discussed with Diane Lewis of Treasury on 24 April 2008, PBTL is most supportive of a nationally defined legislation and regulation where by design it will not only encourage a national market but also reduce the regulatory and licensing burden to the trustee corporations industry.

As reported the main policy objectives for a Commonwealth regulatory framework are:

- *To enable approved corporations to act as trustees, executors and administrators with powers and duties similar to those of natural persons providing these services.*
- *To ensure there are adequate protection arrangements in place regarding the organisational capability and management of trust estates administered by trustee corporations to protect the interests and assets of their clients.*

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- The protection arrangements would be aimed at reducing the risks of inadequate management and protection of assets held on trust by trustee corporations for beneficiaries.*
- The protection arrangements would also ensure adequate information is available to allow clients to assess the performance of the trustee.*
- *Reduce the regulatory burden on business by rationalising the reporting and accountability requirements for trustee corporations in a way that is consistent with Australia's framework for financial sector regulation.*
- *Facilitate a competitive national market for trustee corporations.*

PBTL confirms that it supports each of these objectives.

As a growing and expanding company, for PBTL to be recognised as a truly national company, registration in each state is very desirable. However, the current repetitive and differing requirements for licensing and reporting in each state are prohibitive when considering expansion. A national uniform approach would provide for a much needed simplification and consistent approach for all companies seeking to operate nationally.

Our preference for Commonwealth regulation of trustee corporations is for the consumer protection supervision approach, which in our opinion will deliver more effective outcomes. In our opinion ASIC will be better placed to deal with licensing and oversight in line with its current oversight of Responsible Entities.

PBTL does however have a number of concerns around the implementation process of Commonwealth legislation, which if not given proper consideration at the outset, could give rise to significant and unintended difficulties:

- It is important that harmonisation of remaining relevant State and Territory legislation is undertaken, to ensure consistency of approach, including Trustees Act, Administration Act, Property Law Act, Wills Act and Inheritance (Family & Dependents Provision) Act.
- In operating between each state it would be preferable for common documentation to be adopted providing valuable efficiencies not only to the trustee companies but also to the regulators.
- As with most legislation, the "devil" is in the detail, and extensive consultation on draft regulations will be critical to the success of the new regime.
- We note that the Public Trustees, lawyers and accountants do not appear to be drawn into this regulation of Trustees and although acting in similar capacities would escape these regulatory requirements, thereby not creating a level competitive playing field.
- It is important that should any Minimum Capital Adequacy or NTA requirement be imposed that it is not in addition to pre-existing requirements for other areas of operation of the trustee company. PBTL currently maintains \$5m NTA for the purposes of meeting requirements under its AFSL and RSE licences.
- The inability of trustee companies to charge generally for legal services should be addressed. The recent amendment to the Trustee Companies Act 1987 to include Section 18A should be widened to incorporate any work ancillary to the primary business such as conveyancing, taxation, deeds etc.

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- The fees and commissions charged should not necessarily be regulated as to quantum but should be sufficiently controlled to be transparent and easily comparable so that clients can make informed decisions as to costs against service provided.
- We believe the definition of a client contained in the paper is too narrow. The legislation needs to recognise that there are two categories of Trustee Services clients – the Testator, to whom we have a contractual obligation, and the Beneficiaries, to whom we have a fiduciary obligation.
- Consideration needs to be given to a suitable dispute resolution mechanism. This should be universally available for clients to challenge Trustee under-performance – that is where the Trustee is, say, a lawyer/accountant/family member and not just where the person providing the services is employed by a licensed Trustee company. Otherwise we again do not achieve a level playing field.
- That the current licensed organisations be considered for an exemption or grandfathering and not burden them with a new application if certain criteria are met.

As PBTL is already regulated by both ASIC and APRA in our differing capacities, the main consideration for this company is actually achieving the efficiencies this paper envisages. This can only be achieved by avoiding duplication and overly burdensome regulation. Plan B takes its fiduciary responsibilities seriously and is the first Australian company to achieve accreditation by CEFEX, an independent global certification organisation that provides comprehensive assessments of risk and trustworthiness of investment fiduciaries.

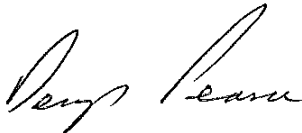
Margin Lending

Plan B Trustees Limited (PBTL) currently operates a margin lending plan for clients of the Plan B Group. The plan is accessed by licensed financial advisers and therefore on this basis full disclosure is made to the client including details of risks. PBTL would not be adverse to margin loans being determined as a financial product under the Corporations Act and apply the Chapter 7 regime. We believe this would bring about consistency in the market and afford consumers greater protection through disclosure and by having regard to their individual circumstances.

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Plan B is keen to embrace the improvements, simplification and standardisation of the measures introduced by the Green Paper. In that regard, Plan B would be most happy to provide any additional information or participate in further consultations during this process of change. Should you wish to discuss any aspect of our submission, please contact Mr Graeme Douglas on 08 3246020.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Denys Pearce', written in a cursive style.

Denys Pearce
Managing Director