



FINANCIAL SERVICES FEDERATION

5 March 2018

Justice Committee
Parliament Buildings
Wellington

By email: justice@parliament.govt.nz

Dear Committee members,

The Financial Services Federation (“**FSF**”) wishes to comment on the above Bill (the “**Bill**”).

By way of background, the FSF is the industry body representing responsible and ethical finance and leasing providers in New Zealand. The FSF has over fifty members and affiliates providing first-class financing, leasing, and credit-related insurance products and services to over 1 million New Zealand consumers and businesses. The FSF’s affiliate members include internationally recognised legal and consulting partners.

Many of the FSF’s members frequently have dealings with trusts, including with private trusts (which borrowers use for private financing), trustee corporations (as non-bank deposit taker members are required by law to have a trust deed in favour of a trustee corporation supervisor), and trustees for securitisation programs (which is a source of funding for some members).

General Powers Provisions

The FSF does not believe that clause 52, the general powers of trustees, has been drafted broadly enough to achieve consistency with the Companies Act 1993 in relation to the capacity and powers of a company. While clause 52(b) has given broader scope to these powers than the earlier consultation draft of the Bill, we still believe it should be consistent with the Companies Act. The approach in the Companies Act was also adopted successfully for local authorities.

The Companies Act permits 'full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction'. However the proposed Bill wording is only 'all powers necessary to manage the trust property including, in relation to the trust property, all the powers of an absolute owner of the property'.

The FSF submits the wording of the trustees' general powers provision should mirror that in

section 16 of the Companies Act, and provide 'full rights, powers and privileges' for trustees, effectively granting them the powers of a natural person, rather than limiting them to the power to deal with trust property.

The FSF believes adopting a model that is well-tested with companies and local authorities will reduce legal uncertainty in trust law and, in turn, this will decrease the upfront costs of borrowing for trusts.

Trustee Corporation Association Submissions:

The FSF has had the benefit of reviewing Trustee Corporations Association's submissions on the Bill. The FSF agrees with its submissions in Part A, including in relation to the role of trustee companies acting as supervisors (which they do for some of FSF's members).

New Zealand Bankers Association Submissions:

The FSF has had the benefit of reviewing the New Zealand Bankers' Association submissions in relation to trusts involved in securitisation. The FSF agrees with, and supports, its submissions with regards to securitisation.

The FSF trusts that its above comments are helpful and thanks the Committee for the opportunity to submit on the Bill.



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EXECUTIVE DIRECTOR