

# TO: THE PRODUCTIVITY COMMISSION JOINT STUDY

ON: STRENGTHENING TRANS-TASMAN ECONOMIC RELATIONS

18 OCTOBER 2012





## INTRODUCTION

- 1 This submission is from Chapman Tripp, PO Box 993, Wellington 6140.

## ABOUT CHAPMAN TRIPP

- 3 Chapman Tripp is one of New Zealand's leading corporate law firms. We have a national presence, with offices in Christchurch, Wellington and Auckland. We include among our clients most of New Zealand's largest companies, including many with a dual listing on the NZX and the ASX.

## THE 'THIRD FREEDOM': CAPITAL FLOWS

- 4 We note that you have identified capital flows as the third of four freedoms in your framework for strengthening economic integration – the other three being trade in goods, trade in services and people movements.
- 5 This submission identifies a particular restriction to the free flow of capital between Australia and New Zealand, which is not mentioned in your discussion paper but which is an issue for our clients. We also propose a possible solution for your consideration.

## PROBLEM IDENTIFICATION

- 6 The restriction arises from the fact that most of the Australian Funds established to manage compulsory superannuation contributions appear to be held under trusts which require allocations of Australasian listed equity securities to be confined to securities which are listed on the ASX.
- 7 We note that the New Zealand equivalent – the KiwiSaver schemes – are not subject to any such parochial requirement.
- 8 We recognise that the trust deeds are legally constituted private contracts. However, as the Funds were formed for reasons of public policy, to collect and manage mandatory superannuation savings, we consider that they should recognise mutual recognition principles and allow the relevant Fund managers to invest in NZX listed entities on the same basis as ASX listed entities.
- 9 The current position creates significant compliance costs for New Zealand companies wishing to have full access to Australian capital markets as it requires them to seek a dual listing on the ASX.



- 10 Even more frustrating is that, after jumping through these hoops, the Funds prefer to trade in New Zealand securities on the NZX because this is the more active market and is where true price discovery is found.

#### PROPOSED SOLUTION

- 11 An elegant solution would be for the Australian Government to implement a legislative deeming provision that, pursuant to trans-Tasman mutual recognition principles, any reference to ASX listed securities in the context of any "legal list" of permitted investments prescribed in a trust deed or other investment policy document for an Australian complying superannuation scheme be deemed to mean **ASX or NZX listed securities**.
- 12 Such a provision would be enabling rather than directive so would not intrude into the private contracts of the Fund mandates.
- 13 We also recognise that it is within the remit of the Australian Productivity Commission in Australia and the New Zealand Productivity Commission in New Zealand to recommend courses of action to non-governmental organisations. We therefore ask you, in addition to the recommendation above, to urge the Funds to review and remove a requirement which:
  - 13.1 is out of step with the aspirations of the Single Economic Market
  - 13.2 has been rendered anachronistic by the significant integration of our two economies in the last 30 years
  - 13.3 is an irritant to the trans-Tasman relationship, and
  - 13.4 creates significant compliance costs for New Zealand businesses.

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