



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**HOUSE OF REPRESENTATIVES**

**Main Committee**

**CORPORATIONS LEGISLATION  
AMENDMENT (FINANCIAL SERVICES  
MODERNISATION) BILL 2009**

**Second Reading**

**SPEECH**

**Monday, 14 September 2009**

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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## SPEECH

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<b>Questioner</b>	<b>Responder</b>
<b>Speaker</b> Robert, Stuart, MP	<b>Question No.</b>

**Mr ROBERT** (Fadden) (4.30 pm)—I rise to make a few brief statements in support of the Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009. Ostensibly the bill looks to bring margin lending, trustee companies and promissory notes under nationally uniform regulation in the Corporations Act. The regulation of all financial services in a nationally consistent manner has long been considered a desirable outcome by industry, government and consumers. Indeed, the last Howard government tried to achieve the same ends. Perhaps they were stopped by the intransigence of some of the states. Whether that is the case or not, the good result is that this bill brings the last vestiges under federal control and, more importantly, under the statutory authority's watch—that being ASIC.

It is disappointing that it takes cataclysmic events in investment and financial losses to achieve end-states that had previously been pushed for. In the recent collapse of Westpoint disaster, debentures provided to retail clients were subject to the Corporations Act, chapter 7, Disclosures and consumer protection provisions, but promissory notes were not, and Westpoint proved to be a disaster for those investing in the promissory note financial products. Of course the massive regulatory problems surrounding margin lending in the collapse of Storm Financial in 2008 have been highlighted to the inquiry by the Parliamentary Joint Committee on Corporations and Financial Services. Being a sitting member of that committee and having attended many of the inquiries, I have noted that the publicly available submissions and the evidence given in public have pointed to a lack of consistency and regulation and to significant confusion over advisers' and lenders' responsibilities.

Who was responsible in providing a margin call to consumers? We know that in June 2008, according to Reserve Bank information, there were over 206,000 clients using margin lending facilities. We know that by September 2008 there were something like 2,000 margin calls a day being exercised. Yet, ironically, none were being exercised on Storm Financial customers. Even the Ts and Cs of the bank lenders, like Colonial First State as part of Commonwealth, showed clearly that the bank would provide the margin call to the consumer. There is some indication that the bank had an arrangement with Storm Financial that meant Storm would represent the client. Indeed, clients never received margin calls, were never able to exercise those options, index funds were sold down and \$3 billion to \$4 billion was lost. Any move to provide a degree of regulation that is sensible and open, that people can look at and understand to avoid huge losses, is certainly a wise move.

The federal regulation of consistent oversight by ASIC can only be a good thing. In terms of actual objectives of the bill with margin lending, there will be a licensing of lenders and advisers, and all will require an Australian financial services licence. There will be a clarification under chapter 7 of the Corporations Act of margin call responsibilities—who is responsible for the margin call, who is responsible to ensure communication, and how that will be achieved to the person receiving the margin call.

Enhanced investor protections are also being put in place, which include responsible lending provisions that are subsequently being put through by regulation. At present I am not across what the regulation is. It would be preferable if this predilection towards regulation would obey, and the legislative instrument—the act itself—would contain, the provisions. However, my understanding is that responsible lending provisions will come about through regulation. There is also a move to standardise disclosure documents, and that is a healthy thing.

The national uniformity with respect to trustee companies will allow companies to operate across multiple state jurisdictions, obviously without the different laws and the complying costs that go with that. It is understanding that financial services cross state boundaries and that they are, indeed, Australian financial services. This is long overdue. Of course, promissory notes will be regulated in the same manner as debentures, and they will be subject to additional disclosure and regulatory requirements.

To be able to stand here and look at the last vestiges of financial services being brought across to the Commonwealth is a great thing for the industry. It is a good thing that margin lending, trustee companies and promissory notes will come under uniform national regulation, especially under chapter 7 of the Corporations Act as it regards regulation and disclosure, and that one statutory authority, in the form of ASIC, will be responsible

for compliance and regulatory oversight. As communications break down our state boundaries more and more, we need to look towards nationalising key areas like financial services so that there is one regime in which people operate, one body which provides oversight and one body of legislation which provides the necessary guidance. I commend the bill to the House.