



New South Wales

Trustee Companies Amendment Regulation 1997

under the

Trustee Companies Act 1964

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Trustee Companies Act 1964*.

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Attorney General

Explanatory note

The *Trustee Companies Amendment Act 1997* removed the power of a trustee company to charge a fixed commission on the income received on account of any estate committed to its administration or management for 2 years or more and introduced instead a progressive scale of trust fees chargeable by a trustee company in respect of any such long-term estate.

This Regulation makes provision for the new fee system to be phased in, by inserting proposed clauses 10 and 11 in the *Trustee Companies Regulation 1994*.

Proposed clause 10 applies to estates committed to the administration or management of a trustee company more than 3 years before the commencement of the relevant amending provisions. Under that clause, a trustee company will be entitled to be paid trust fees, under section 19B of the Act, at the old fixed rate for work done in respect of an estate up until the date of commencement of this Regulation. The trustee company will be entitled to be paid trust fees at the new progressive rate for work done after that commencement.

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Explanatory note

Under the *Trustee Companies Act 1964*, trust fees are calculated and payable at the “prescribed time” each year, which is generally the anniversary of the date on which the estate was committed to the administration or management of the relevant trustee company. As a result, the prescribed time differs for different trusts. For this reason, the proposed clause provides for the two fee payments to be adjusted depending on how recently the prescribed time occurred (that is, how recently an annual fee was payable). For example, a trustee company that recently became entitled to be paid an annual fee in respect of an estate will be entitled to receive only a small proportion of its next “annual” trust fee (payable at the old rate) in respect of that estate. When that trustee company is first entitled to be paid a quarterly trust fee in respect of that estate, the trust fee (which will be payable at the new rate) will also be adjusted for the fact that trust fees were payable at the old rate for part of that quarter. After that time trust fees will be payable in accordance with the provisions of the Act as amended by the *Trustee Companies Amendment Act 1997*.

Proposed clause 11 applies to estates committed to the administration or management of a trustee company no more than 3 years before the commencement of the relevant amending provisions. Under section 19D (9) of the Act, a trustee company is entitled to a quarterly trust fee under section 19B at the new rate for work done in respect of such an estate in the 3 month period before the estate reaches its third anniversary. Proposed clause 11 will permit such a trustee company to recover trust fees at the old rate for the 9 months before that time. As a result, the trustee company will be paid two instalments of trust fees for the year between the estate’s second and third anniversaries: the first instalment will cover the first 9 months of that year and the second will cover the last 3 months. After that time trust fees will be payable in accordance with the provisions of the Act as amended by the *Trustee Companies Amendment Act 1997*.

This Regulation also makes provision for the commission chargeable by a trustee company under section 18 (1) (c) (ii) of the Act to be payable until the beginning of the period for which trust fees under section 19D of the Act are first payable at the new rates.

This Regulation also prescribes the maximum hourly rate chargeable for work undertaken by or on behalf of the Director-General of the Attorney General’s Department to review a financial statement.

This Regulation is made under the *Trustee Companies Act 1964*, including section 19D (10) and (11) and section 29D (10) (as inserted by the *Trustee Companies Amendment Act 1997*).

Trustee Companies Amendment Regulation 1997

1 Name of Regulation

This Regulation is the *Trustee Companies Amendment Regulation 1997*.

2 Commencement

This Regulation commences on 14 November 1997.

3 Amendment of Trustee Companies Regulation 1994

The *Trustee Companies Regulation 1994* is amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of this Regulation.

Schedule 1 Amendments

(Clause 2)

[1] Clause 6 Financial statement of trustee company

Insert at the end of clause 6:

- (2) For the purposes of section 29D (10) of the Act, the costs recoverable for any work undertaken by or on behalf of the Director-General of the Attorney General's Department to review a financial statement are to be calculated at a rate, and in a manner, to be determined by the Director-General of that Department. However, the rate at which the costs are calculated must not exceed \$100 for each hour or part of an hour of work.

[2] Clauses 10 and 11

Insert after clause 9:

10 Payment of commission and fees under sections 18 and 19B in respect of certain long term trusts

- (1) This clause applies to estates committed to the administration or management of a trustee company before 1 September 1994.
- (2) The annual fee provided for under the old section 19B of the Act continues to apply in respect of an estate until, and is payable on, 14 November 1997, as follows:
 - (a) the fee is to be calculated as if 14 November 1997 were the prescribed time referred to in the old section 19B of the Act, and
 - (b) the fee to which a trustee company is entitled is to be calculated in accordance with the following formula:

$$F_1 = \frac{A \times N}{365}$$

Where:

F_1 is the fee to which a trustee company is entitled.

A is the annual fee calculated in accordance with the old section 19B.

N is the number of days between the last occurrence of the prescribed date before 14 November 1997 and 14 November 1997.

- (3) The quarterly fee provided for under the new section 19B of the Act is payable on and from the first occurrence of the prescribed time (within the meaning of the new section 19B of the Act) after 14 November 1997.
- (4) However, the quarterly fee to which a trustee company is entitled on the first occurrence of the prescribed time after 14 November 1997 is to be calculated in accordance with the following formula:

$$F_2 = \frac{Q \times N \times 4}{365}$$

Where:

F_2 is the fee to which a trustee company is entitled.

Q is the quarterly fee calculated in accordance with the new section 19B of the Act.

N is the number of days between the date of commencement of this clause and the first occurrence of the prescribed time (within the meaning of the new section 19B of the Act) after that date.

- (5) Each subsequent quarterly fee is to be calculated in accordance with the provisions of the new section 19B of the Act.
- (6) The commission provided for under section 18 (1) (c) (ii) of the Act (as in force immediately before 1 September 1997) is payable in respect of an estate until 14 November 1997.

- (7) In this clause:

the new section 19B means section 19B of the Act as amended by Schedule 1 [1]–[5] to the *Trustee Companies Amendment Act 1997*, which commenced on 1 September 1997.

the old section 19B means section 19B of the Act as in force immediately before the commencement of Schedule 1 [1]–[5] to the *Trustee Companies Amendment Act 1997*, which commenced on 1 September 1997.

11 Payment of commission and fees under sections 18 and 19B in respect of certain other long-term trusts

- (1) This clause applies to estates committed to the administration or management of a trustee company on or after 1 September 1994.
- (2) The annual fee payable under the old section 19B of the Act continues to apply in respect of an estate until, and is payable on, a date (the *calculation date*) that is 3 months before the date on which the quarterly fee provided for under the new section 19B is first payable in accordance with section 19D (9) of the Act.
- (3) On the calculation date, a trustee company is entitled to receive three-quarters of the fee calculated under the old section 19B of the Act as if the calculation date were the prescribed time referred to in the old section 19B (2) of the Act.
- (4) The commission provided for under section 18 (1)(c) (ii) of the Act (as in force immediately before 1 September 1997) is payable in respect of an estate until the commencement of the 3 month period for which the quarterly fee provided for under the new section 19B of the Act is first payable in accordance with section 19D (9) of the Act.
- (5) This clause applies whether the calculation date occurs before or after 14 November 1997 (the date of commencement of this clause). If the calculation date occurred before that date, the relevant fee under section 19B of the Act is to be calculated as at the calculation date, but is payable on 14 November 1997.

(6) In this clause:

the new section 19B means section 19B of the Act as amended by Schedule 1 [1]–[5] to the *Trustee Companies Amendment Act 1997*, which commenced on 1 September 1997.

the old section 19B means section 19B of the Act as in force immediately before the commencement of Schedule 1 [1]–[5] to the *Trustee Companies Amendment Act 1997*, which commenced on 1 September 1997.