

TRUSTEE COMPANIES (AMENDMENT) BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Trustee Companies Act 1964—

- (a) to remove restrictions on the amount of unpaid capital that may be called up by certain trustee companies and to require instead that those companies take out indemnity insurance or lodge a bank guarantee with the Attorney General; and
- (b) to remove the requirement that \$50,000 of the paid up capital of a trustee company be invested in the name of the Treasurer; and
- (c) to make it clear that a trustee company may exercise powers conferred by sections 15B and 15C of the Act in respect of estates it managed etc. before those sections commenced; and
- (d) in other minor respects.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation. The clause also requires Schedule 1 (7) not to be commenced until proposed section 36B has been approved by the Ministerial Council for Companies and Securities.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

Clause 4 is a transitional provision that requires investments of the share capital of trustee companies made in the name of the Treasurer (under section 10, which is to be substituted by Schedule 1 (1)) together with any income payable in respect of any such investment to be assigned by the Treasurer to the trustee companies.

Removal of requirement to invest \$50,000 and restrictions on bonds

Schedule 1 (1) substitutes section 10 to remove the requirement that \$50,000 of a trustee company's paid up capital be invested in debentures or inscribed stock in the name of the Treasurer. As a result of this amendment, trustee companies may be required to lodge bonds for the due administration of estates of less than \$50,000.

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Application of sections 15B and 15C

Schedule 1 (2) and (3) amend sections 15B and 15C, respectively, to make it clear that the powers conferred by those sections apply to functions and duties assumed or held by a trustee company before those sections commenced.

Indemnities

Schedule 1 (6) inserts proposed section 36A (Indemnities) which requires the Permanent Trustee Company Limited, the Perpetual Trustee Company Limited and Perpetual Trustees Australia Limited to arrange, and keep in force, a policy of indemnity insurance approved by the Attorney General. Alternatively, these companies may lodge with the Attorney General, as an indemnity, a bank guarantee approved by the Attorney General.

These indemnities are required as a protection in the event of the companies being wound up and are being imposed as an alternative to the restrictions on the calling up of unpaid capital which are being removed by Schedule 1 (8).

Removal of restrictions on calling up of unpaid capital

Schedule 1 (8) removes provisions relating to the share capital of the Permanent Trustee Company Limited, the Perpetual Trustee Company Limited and Perpetual Trustees Australia Limited. Among the provisions removed are provisions which prevent any more than half of the issued capital of each company being called up. Instead each of the 3 trustee companies is required to have a minimum amount of issued capital.

Schedule 1 (7) inserts proposed section 36B (Unpaid capital of Permanent Trustee Company Limited) which prevents section 114 (2) of the Companies (New South Wales) Code from operating to prevent the Permanent Trustee Company Limited from varying, by special resolution, the portion of its unpaid share capital that is not capable of being called up. This provision is being inserted as a result of the amendment made by Schedule 1 (8) which removes restrictions relating to the calling up of unpaid share capital.

Consequential amendments

Schedule 1 (4) amends section 25 as a result of the amendment made by Schedule 1 (8).

Schedule 1 (5) amends section 36 to omit a provision that is now unnecessary because of previous amendments to the Second Schedule.
