

TRUSTEE COMPANIES (AMENDMENT) BILL 1990

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 and the Wills, Probate and Administration Act 1898.

The amendment to the Trustee Companies Act 1964 will enable:

- * a trustee company to expend capital or income or both on the repair of estate property as may presently be done by the Public Trustee
- * a trustee company to certify, as the Public Trustee may presently do, that it has taken out representation or is entitled to administer an estate, either alone or jointly, and for that certificate to be prima facie evidence of that fact and of the death of the deceased
- * the name of Austrust Limited to be entered in the Schedule of trustee companies in place of Elder's Trustee and Executor Company, Limited
- * National Australia Trustees Limited and NZ Guardian Trust Australia Limited to each act as a trustee company, these companies being required to maintain indemnity insurance or a bank guarantee as approved by the Attorney General

The amendments to the Wills, Probate and Administration Act 1898 will enable:

- * a trustee company to be appointed as executor or co-executor of a will in place of a nominated executor (as has formerly been the case) in the same manner as may occur with the Public Trustee
 - * a trustee company to be appointed, as the Public Trustee may be, as a special administrator if the appointed executor or administrator is residing outside the jurisdiction
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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clauses 3 and 4 are formal provisions that give effect to the Schedules of amendments to the Trustee Companies Act 1964 and the Wills, Probate and Administration Act 1898

Clause 5 contains a provision validating any appointments of trustee companies as executors or co-executors in place of nominated executors if the appointments would have been valid had one of the amendments to be made by the proposed Act been in force when they were made.

SCHEDULE 1 - AMENDMENT OF TRUSTEE COMPANIES ACT 1964

General powers of trustee company (proposed section 15C (g))

Schedule 1 (1) enables a trustee company to apply the capital or income of an estate under its administration, or a portion of each, to the repair of estate property.

Certificate of trustee company to be evidence (proposed section 32A)

Schedule 1 (2) provides that a certificate of a trustee company as to its appointment as legal personal representative, either alone or with another person, or its entitlement to administer an estate is to be accepted as prima facie evidence of the death of the deceased and such appointment or entitlement without production of other proof.

Indemnities (section 36A)

Schedule 1 (3) requires National Australia Trustees Limited and NZ Guardian Trust Australia Limited to secure and maintain indemnity insurance or a bank guarantee as approved by the Attorney General.

Trustee Company (Third Schedule - First Part)

Schedule 1 (4) records the change of name of Elder's Trustee and Executor Company, Limited to Austrust Limited and proposes that National Australia Trustees Limited and NZ Guardian Trust Australia Limited be included in the Schedule of trustee companies.

SCHEDULE 2 - AMENDMENT OF WILLS, PROBATE AND ADMINISTRATION ACT 1898

Delegation (section 75A)

Schedule 2 (1) proposes that the provision which enables a nominated executor to appoint the Public Trustee in his or her place be amended to provide the alternative of appointment of a trustee company.

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Appointment of special administrator if executor or administrator out of jurisdiction (section 76)

Schedule 2 (2) proposes that the provision which enables the Public Trustee to be appointed as a special administrator if the appointed executor or administrator is out of the jurisdiction be amended to provide the alternative of appointment of a trustee

Making of affidavit by special administrator (section 77)

Schedule 2 (3) provides that, in applying for a special grant when an appointed executor or administrator is out of the jurisdiction, the Public Trustee or a trustee company will not be required to swear that such absence is delaying the getting in of assets to which the Public Trustee or trustee company is entitled.
