

Act No. 139

TRUSTEE (AMENDMENT) BILL 1987

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 Act 1925—

- (a) to restate and expand the range of authorised securities in which a trustee may invest trust funds;
- (b) to enable the advisory committee constituted by that Act to advise the Attorney General on all matters relating to the investment of trust funds; and
- (c) to make other amendments with respect to the investment of trust funds.

Clause 1 specifies the short title of the proposed Act.

Clause 2 specifies that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 is a formal provision which gives effect to the Schedule of amendments.

Clause 4 deems certain investments lawfully made before the commencement of the proposed Act to be authorised under the Principal Act as amended by the proposed Act and preserves the membership of the advisory committee constituted by the Principal Act.

Schedule 1 (1) omits sections 14 and 14A of the Principal Act and inserts into the Principal Act proposed sections 14–14E.

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Proposed section 14 states that the general equitable duties of a trustee (including the duty to exercise ordinary business prudence and the duty to act impartially) are not limited or affected by the Principal Act.

Proposed section 14A lists the securities in which a trustee may invest. Authorised securities will now include (in addition to securities authorised at present)—

- (a) a mortgage of land in any State or Territory of the Commonwealth;
- (b) a purchase of land in any State or Territory of the Commonwealth if certain conditions are complied with;
- (c) an interest bearing deposit in any bank authorised to carry on the business of banking under any law of the Commonwealth or of a State or Territory of the Commonwealth;
- (d) a certificate of deposit issued by a bank;
- (e) an investment with any dealer in the short term money market, approved by the Reserve Bank of Australia as an authorised dealer, that has established lines of credit with that bank as a lender of last resort;
- (f) certain bills of exchange;
- (g) debentures, promissory notes or other prescribed securities of a company or body which has a prescribed credit rating;
- (h) a common fund of a trustee company (the investment of which is restricted to authorised securities) or the common fund of the Public Trustee.

Investment in public funds, Government stock or Government securities of New Zealand, Fiji or the United Kingdom is no longer authorised.

The proposed section also requires that any matters to be prescribed under that section be prescribed by regulation made by the Governor-in-Council on the recommendation of the Attorney General and, in the case of securities of a company or other body, with the concurrence of the Treasurer.

Proposed section 14B contains provisions currently contained in section 14 (11)–(13) of the Principal Act relating to the varying of investments and the discretion of trustees.

Proposed section 14C contains provisions currently contained in section 14 (3), (4A), (5)–(7) and (9) of the Principal Act relating to investment in securities (other than land). In addition, the proposed section provides for any difference between the purchase price of a bill of exchange or a promissory note and the amount realised on the bill or promissory note to be treated as income of the trust and not capital.

Proposed section 14D contains provisions currently contained in section 14 (8)–(8B) of the Principal Act relating to investments in land. The proposed section also requires a trustee, when purchasing land, to obtain reports as to the suitability of the investment (except in the case of the purchase of a dwelling-house for the use of a beneficiary) and the value of the land.

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Proposed section 14E contains provisions currently contained in section 14A of the Principal Act relating to the constitution of the advisory committee. The functions of the committee are extended to include the giving of advice to the Attorney General on all matters relating to the investment of trust funds.

Schedule 1 (2), (4) and (5) amend sections 15, 21A and 24 of the Principal Act, respectively, as a consequence of the amendments made by Schedule 1 (1).

Schedule 1 (3) amends section 18 of the Principal Act to enable a trustee, when making a loan on the security of property, to lend up to 95 per cent of the value of the property (at present the limit is two-thirds) if the loan is insured.

Schedule 1 (6) omits section 83 of the Principal Act which requires a trustee when purchasing a dwelling-house for the use of a beneficiary to apply to the Supreme Court for permission.
