

[Act 1997 No 46]



New South Wales

Trustee Companies Amendment Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Trustee ,Companies Act 1964* so as to do the following:

- (a) to remove 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,
 - (b) to introduce instead a progressive scale of trust fees chargeable by a trustee company in respect of any such long-term estate,
 - (c) to provide for the trustee company to determine, in consultation with the beneficiaries, if the fee should be paid from the corpus or capital of the estate or from the income of the estate,
 - (d) to provide for the recovery of costs associated with the review of the financial statements of a trustee company.
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Outline of provisions

Clause 1 sets out the name (also called 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.

Clause 3 is a formal provision giving effect to the amendments to the *Trustee Companies Act 1964* set out in Schedule 1.

Schedule 1 Amendments

Commissions and trust fees in respect of estates and trusts

Currently, a trustee company may charge a commission of no more than \$5.25 for each \$100 of the income of an estate or trust administered or managed by the company. (In addition, other trust fees may be charged by a trustee company in respect of an estate or trust administered or managed for more than 2 years.) The proposed Act removes the power to charge such a commission in respect of estates committed to the administration or management of a trustee company for more than 2 years. (Schedule 1 [1])

Trust fees in respect of long term estates and trusts

Currently, a trustee company may charge a fee of no more than \$590 for the management of an estate or trust committed to its administration or management for more than 2 years. The proposed Act replaces this fee with a fee based on the amount of the corpus or capital value of the estate. That fee is calculated, and payable, every 3 months. The trustee company is to consult with the beneficiaries (if it is practicable to do so) as to whether the fee is to be paid from the income of the estate or from the corpus or capital of the estate. (Schedule 1 [2]–[5])

The new fee arrangements will not apply immediately to long term estates currently administered or managed by trustee companies. The Governor is empowered to make regulations to phase in the new fee structure in respect of such trustee companies. (Schedule 1 [6])

Recovery of costs relating to the review of financial statements

Section 29D of the *Trustee Companies Act 1964* requires a trustee company to prepare and submit financial statements. The proposed Act amends that section so as to provide for the review of those financial statements by the Director-General of the Attorney General's Department and for the recovery by the Director-General of the costs of any review of such financial statements. (Schedule 1 [S]).

Schedule 1 [7] updates a reference to the Corporate Affairs Commission, which is now taken to refer to the Director-General of the Attorney General's Department.