

## Trustee Companies Amendment Bill 2009

### Explanatory note

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

#### Overview of Bill

In July 2008, the Council of Australian Governments agreed that the Commonwealth would assume responsibility for the regulation of trustee companies. Schedule 2 to the *Corporations Legislation Amendment (Financial Services Modernisation) Act 2009* of the Commonwealth (the **Commonwealth Act**) amends the *Corporations Act 2001* of the Commonwealth (the **Corporations Act**) to give effect to the Commonwealth regulation of trustee companies. Under the new regime, the Commonwealth will have exclusive responsibility for “entity” level regulation of trustee companies’ traditional services, including licensing of the companies and regulating the fees they can charge for those traditional services. The *Trustee Companies Act 1964* (the **Principal Act**), and the rules of common law and equity, will continue to govern the functions and powers of trustee companies in New South Wales.

The object of this Bill is to amend the Principal Act consequentially on the enactment and commencement of the Commonwealth Act. The Bill:

- (a) removes the State approval mechanism for trustee companies and defines trustee companies as licensed trustee companies under the Corporations Act, and
- (b) omits provisions that will be unnecessary when the proposed amendments to the Corporations Act take effect or that are inconsistent with that Act, and
- (c) facilitates the transfer of a trustee company’s business to another licensed trustee company when its licence is cancelled under the Corporations Act, and
- (d) provides for the making of transitional regulations and makes savings and transitional provisions to facilitate the transition to the new regime, and
- (e) makes consequential amendments to the *Trustee Companies Regulation 2005* and various Acts.

The Bill also amends the *Trustee Companies Regulation 2005* to prescribe certain matters under sections 15A and 15AA of the Principal Act as inserted by the *NSW Trustee and Guardian Act 2009* on 1 July 2009 relating to small estates.

#### 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 (with stated exceptions).

#### Schedule 1 Amendment of Trustee Companies Act 1964 No 6

**Schedule 1 [1]** removes spent savings and transitional provisions from the Principal Act.

**Schedule 1 [2]** omits definitions that will be unnecessary as a result of the repeal of various sections of the Principal Act.

**Schedule 1 [3]** redefines **Trustee company** as a licensed trustee company within the meaning of Chapter 5D of the Corporations Act as amended.

**Schedule 1 [4]** amends section 3 (2) of the Principal Act as a consequence of trustee companies being regulated under the Corporations Act as amended.

**Schedule 1 [5]–[10] and [12]** omit provisions that will be unnecessary as a consequence of trustee companies being regulated under the Corporations Act as amended. The provisions to be repealed relate to the following:

- (a) fees that may be charged by trustee companies for the provision of traditional trustee company services (as defined in section 601RAC of the Corporations Act as amended) and the disclosure of fees,
- (b) provision of accounts by trustee companies in relation to traditional trustee company services provided by the companies,
- (c) duties of officers and employees of trustee companies that provide traditional trustee company services, in their capacity as officers or employees of those companies,
- (d) regulation of the voting power that may be held in trustee companies that provide traditional trustee company services or that otherwise impose restrictions on the ownership or control of companies that provide such services,
- (e) the provision of financial statements,
- (f) minimum capital requirements, indemnity insurance and common funds.

**Schedule 1 [11]** inserts proposed sections 34A and 34B into the Principal Act.

Section 601WBA of the Corporations Act as amended enables the Australian Securities and Investments Commission (**ASIC**) to make a compulsory determination that there is to be a transfer of estate assets and liabilities from a trustee company whose licence ASIC has cancelled (the **transferring company**) to another licensed trustee company (the **receiving company**). To make this determination, ASIC must be satisfied (amongst other things) that legislation to facilitate the transfer that satisfies the requirements of section 601WBC of the Corporations Act as amended has been enacted in the State or Territory in which the transferring company and receiving company is situated. Proposed section 34A of the Principal Act will satisfy the requirements of section 601WBC for New South Wales legislation when an ASIC certificate of transfer comes into force.

Proposed section 34B exempts the transfer of the estate assets and liabilities of the transferring company to a receiving company from State taxes.

**Schedule 1 [13]** is an amendment by way of statute law revision to omit a provision that is superfluous because of section 42 of the *Interpretation Act 1987*.

**Schedule 1 [14]** omits the existing savings and transitional regulation-making power from the Principal Act. A replacement savings and transitional regulation-making power is inserted by Schedule 1 [15].

**Schedule 1 [15]** omits provisions that will be unnecessary as a consequence of trustee companies being regulated under the Corporations Act as amended and inserts savings and transitional provisions, including a savings and transitional regulation-making power.

## **Schedule 2 Amendment of other Acts and instrument**

**Schedule 2.4** amends the *Trustee Companies Regulation 2005* to omit provisions that will be unnecessary as a consequence of trustee companies being regulated by the Corporations Act as amended and inserts provisions relating to elections to administer small estates. In particular, the gross value of an estate which may be administered as a small estate is prescribed as being less than \$100,000.

**Schedule 2.1–2.3** make consequential amendments to various Acts.