

CONCURRENCE COPY

TRUSTEE COMPANIES (AMENDMENT) BILL, 1983

EXPLANATORY NOTE

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

The objects of this Bill are to provide for the transfer of the trust business of TEA (1983) Limited (formerly The Trustees, Executors, and Agency Company, Limited) ("the Old Trustee") to ANZ Executors & Trustee Company Limited ("the New Trustee") and to amend the Trustee Companies Act, 1964, consequent upon the transfer of that business.

The Bill contains the following provisions:—

Clause 1. Short title.

Clauses 2 and 3. Interpretation.

Clause 4 transfers certain assets, rights, liabilities, obligations, benefits, records and undertakings from the Old Trustee to the New Trustee and appoints the New Trustee to act in the capacity of trustee where formerly the Old Trustee so acted, and contains certain provisions ancillary to those purposes.

Clause 5 contains certain evidentiary provisions that are intended to facilitate the registration of the New Trustee as the registered proprietor of land vested in the New Trustee by or under the proposed Act.

Clause 6 and Schedule 1 effect certain amendments to the Trustee Companies Act, 1964, in particular the insertion of provisions into the Second Schedule to that Act for the purposes of regulating the shareholding in the New Trustee and of providing for the sum of \$1,400,000 of the share capital in the New Trustee to remain uncalled, except in the event of the winding up of the New Trustee.

TRUSTEE COMPANIES (AMENDMENT) BILL, 1983

No. , 1983.

A BILL FOR

An Act to provide for the transfer of certain business from TEA (1983) Limited (formerly The Trustees, Executors, and Agency Company, Limited) to ANZ Executors & Trustee Company Limited, to provide for certain matters ancillary to the transfer of that business, and to amend the Trustee Companies Act, 1964, consequent upon the transfer of that business.

[MR WALKER—27 *September*, 1983.]

Trustee Companies (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 Short title.

1. This Act may be cited as the "Trustee Companies (Amendment) Act, 1983".

Principal Act.

2. The Trustee Companies Act, 1964, is referred to in this Act as the
10 Principal Act.

Interpretation.

3. In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Bank" means Australia and New Zealand Banking Group Limited;

15 "excluded items" means—

- (a) all assets held by or for the Old Trustee of which the Old Trustee is the beneficial owner (other than the assets included in the definition of "the trust business of the Old Trustee");
- 20 (b) all rights of the Old Trustee to any security deposits or similar sums or assets lodged with any court, public officer or authority (including debentures or inscribed stock invested in by the Old Trustee pursuant to section 10 of the Principal Act);
- 25 (c) all liabilities of the Old Trustee present or future, certain or contingent, ascertained or sounding only in damages and all claims by persons against the Old Trustee and any officer of the Old Trustee in respect of breach of trust,

Trustee Companies (Amendment).

- misfeasance, non-feasance or the exercise of or failure to exercise discretion in acting in the capacity of trustee, including claims in respect of any deficiency in trust assets whether or not the claims have been notified or ascertained;
- 5 (d) the right of the Old Trustee to indemnity under any insurance policy held by it other than in the capacity of trustee; and
- (e) all the assets, undertakings and liabilities of the Old Trustee in its businesses of property developer, packager of projects, entrepreneur, property owner, renovator and dealer, short-term money market dealer, mortgage lender of its own money, dealer in securities and any other businesses it conducted on its own behalf;
- 10

15 “in the capacity of trustee” means (whether alone or jointly with any other person)—

- (a) as trustee or custodian trustee of any trust deed, settlement, covenant, agreement or will, whether originally so appointed or not and whether appointed under hand or seal or by order of a court or otherwise;
- 20 (b) as executor of a will of a deceased person;
- (c) as administrator of the estate of a deceased person;
- (d) as judicial trustee appointed by order of any court;
- (e) as agent, attorney or nominee; or
- 25 (f) as committee of a protected person’s estate under section 38 of the Mental Health Act, 1958, as manager of an incapable person’s property under section 39 of that Act or as a guarantor or surety for or a guardian of a minor or of a mentally ill person within the meaning of that Act;

“land” includes any estate, interest or right in, over or under land;

30 “New Trustee” means ANZ Executors & Trustee Company Limited;

“Old Trustee” means TEA (1983) Limited, formerly The Trustees, Executors, and Agency Company, Limited;

Trustee Companies (Amendment).

“the trust business of the Old Trustee” means the business of the Old Trustee of acting in the capacity of trustee and includes—

- 5 (a) the assets held on trust by the Old Trustee including all records, securities and other documents and information whether recorded on paper, microfilm, magnetic tape or disc or otherwise held or maintained by the Old Trustee in its capacity of trustee;
- 10 (b) the liabilities and obligations properly incurred by the Old Trustee acting in the capacity of trustee including undertakings to courts and public officers and authorities;
- (c) the rights of indemnity of the Old Trustee against trust assets in respect of liabilities incurred by the Old Trustee acting as trustee;
- 15 (d) the rights of the Old Trustee to commission, remuneration, fees and reimbursement for disbursements whether billed or unbilled in respect of its acting in the capacity of trustee;
- 20 (e) the benefits and obligations under contracts of employment with employees of the Old Trustee who are employed primarily in the trust business of the Old Trustee including obligations with respect to holiday pay, long service leave, sick leave and other benefits applicable to those employees other than the liability to make any payments to any superannuation scheme that should have been but have not been made before the date of assent to this Act;
- 25 (f) the benefits of and obligations under rental or leasing contracts in respect of the computers used by the Old Trustee in the trust business of the Old Trustee;
- 30 (g) all rights of the Old Trustee in respect of the use of the computer programmes used by the Old Trustee in the trust business of the Old Trustee;
- (h) the corporate and accounting records of the Old Trustee to the extent to which they relate to the trust business of the Old Trustee;
- 35 (i) the liability to perform further administration of any trust or other administration undertaken by the Old Trustee;

Trustee Companies (Amendment).

(j) all assets of trusts and other appointments of the Old Trustee in its business of acting in the capacity of trustee; and

5 (k) all other assets and undertakings of the Old Trustee being part of or incidental to or used in its business of acting in the capacity of trustee,

but does not include the excluded items;

“will” includes a codicil and any other testamentary writing.

**Transfer of the trust business and appointments of the Old Trustee to
10 the New Trustee.**

4. (1) Upon the date of assent to this Act, the trust business of the Old Trustee as at that date shall be transferred to and vest in the New Trustee.

(2) In each case where the Old Trustee acts in the capacity of trustee,
15 the New Trustee is hereby appointed in its stead to act in the capacity of trustee and the New Trustee—

(a) shall be entitled and obliged to exercise and discharge all rights, powers, capacities, authorities, duties and obligations of the Old Trustee in respect of and arising from every such appointment; and

20 (b) to the extent provided in this Act, shall discharge the liabilities and obligations of the Old Trustee in respect of and arising from every such appointment.

(3) The Old Trustee shall account to the New Trustee for all assets and liabilities and obligations held or to which it is subject in its business
25 of acting in the capacity of trustee.

(4) Any appointment or nomination of the Old Trustee as trustee, executor or otherwise in the capacity of trustee in any will or instrument whether the appointment was or purported to be made before, on or after the date of assent to this Act and whether the appointment or nomination
30 is in effect on that date or takes effect after that date or has taken effect previously but where some further act or thing is necessary to perfect the appointment or undertaking of the office shall be deemed to be an appointment or nomination of the New Trustee.

Trustee Companies (Amendment).

(5) The production of a copy of this Act printed by the Government Printer shall be conclusive evidence in all courts and proceedings of the transfer of the trust business of the Old Trustee and all property held by the Old Trustee on trust in the capacity of trustee to the New Trustee and of
5 their vesting in the New Trustee and without prejudice to the generality of the foregoing any such copy of this Act shall in relation to all land and all marketable securities operate as a duly executed transfer by the Old Trustee to the New Trustee of that land or those securities.

(6) If any portion of the undertaking or property held by the Old
10 Trustee in the capacity of trustee cannot be or is not vested in the New Trustee by virtue of this Act whether because transfers of the portion are governed otherwise than by the law of the State of New South Wales or otherwise notwithstanding that the portion relates to the trust business of the Old Trustee in New South Wales then the Old Trustee shall do all such things
15 necessary after the date of assent to this Act for the purpose of securing that the portion is effectively and promptly transferred to the New Trustee.

(7) Where, on the application of the New Trustee, it appears to any court to be necessary or proper having regard to the provisions of this Act, the New Trustee may be joined as a party to any legal proceedings in
20 addition to or in lieu of the Old Trustee.

Evidence.

5. (1) Where an application is made by the New Trustee to vest any property in the New Trustee and the application is accompanied by a certificate under subsection (2) that the property has vested in the New
25 Trustee and the appropriate certificate of title or other instrument, the Registrar-General shall, without fee, give effect in the Register kept pursuant to the Real Property Act, 1900, to the vesting by registering the New Trustee as proprietor of the property.

(2) A certificate under the seals of the New Trustee and the Old
30 Trustee to the effect that the estate or interest of persons therein specified in land so specified is an estate or interest vested in the New Trustee by this Act shall, for the purposes of—

(a) any application by the New Trustee to be registered under the Real Property Act, 1900, as the proprietor of that estate or interest
35 pursuant to the vesting;

Trustee Companies (Amendment).

- (b) any application by the New Trustee or a successor in title of the New Trustee to bring land under the Real Property Act, 1900;
- (c) any transfer, conveyance, reconveyance, mortgage or other instrument or dealing whatsoever in respect of any interest in any such land (whether or not under the Real Property Act, 1900); and
- (d) any creation of an easement or other interest in respect of any such land (whether or not under the Real Property Act, 1900),
- be conclusive evidence of the matters certified.

Amendment of Act No. 6, 1964.

6. The Principal Act is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

(Sec. 6.)

AMENDMENTS TO THE PRINCIPAL ACT.

- (1) Section 31 (5) (a)—
- Omit "The Trustees, Executors, and Agency Company, Limited", insert instead "ANZ Executors & Trustee Company Limited".
- (2) Second Schedule—
- After the matter relating to The Union-Fidelity Trustee Company of Australia Limited, insert:—
- ANZ EXECUTORS & TRUSTEE COMPANY LIMITED.**
- (a) No member other than Australia and New Zealand Banking Group Limited shall hold more than 1,000 shares in the member's own right but, if the capital of the company is increased by the issue of new shares, the number of shares which may be held by each member shall be proportionately increased.

Trustee Companies (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (b) The capital of the company shall be and remain divided into shares of not less than \$1 each and the number of shares in the company shall not be at any time reduced to less than 2,500,000.

10 (c) An amount of \$1,400,000, being part of the amount remaining uncalled on the shares actually held in the company, shall not be called up except in the event of and for the purpose of the winding-up of the company and every member shall in such event be liable to contribute the unpaid balance of every share held by the member. And it shall not be lawful for the company to mortgage, charge or in any way encumber the uncalled capital on the aforesaid shares.

15 (d) No more than four-fifths of the profits made by the company in any one year shall be distributed as dividends or otherwise until there has been accumulated out of profits a fund of \$130,000. Such fund shall constitute a special reserve and shall not be in any manner distributed amongst the shareholders except in the event of the winding-up of the company.

(3) Third Schedule, First Part—

20 From the column headed "Trustee Company.", omit "The Trustees, Executors, and Agency Company, Limited", insert instead "ANZ Executors & Trustee Company Limited".

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983

TRUSTEE COMPANIES (AMENDMENT) ACT, 1983, No. 82

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 82, 1983.

An Act to provide for the transfer of certain business from TEA (1983) Limited (formerly The Trustees, Executors, and Agency Company, Limited) to ANZ Executors & Trustee Company Limited, to provide for certain matters ancillary to the transfer of that business, and to amend the Trustee Companies Act, 1964, consequent upon the transfer of that business. [Assented to, 6th October, 1983.]

Trustee Companies (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Trustee Companies (Amendment) Act, 1983".

Principal Act.

2. The Trustee Companies Act, 1964, is referred to in this Act as the Principal Act.

Interpretation.

3. In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Bank" means Australia and New Zealand Banking Group Limited;

"excluded items" means—

- (a) all assets held by or for the Old Trustee of which the Old Trustee is the beneficial owner (other than the assets included in the definition of "the trust business of the Old Trustee");
- (b) all rights of the Old Trustee to any security deposits or similar sums or assets lodged with any court, public officer or authority (including debentures or inscribed stock invested in by the Old Trustee pursuant to section 10 of the Principal Act);
- (c) all liabilities of the Old Trustee present or future, certain or contingent, ascertained or sounding only in damages and all claims by persons against the Old Trustee and any officer of the Old Trustee in respect of breach of trust,

Trustee Companies (Amendment).

- misfeasance, non-feasance or the exercise of or failure to exercise discretion in acting in the capacity of trustee, including claims in respect of any deficiency in trust assets whether or not the claims have been notified or ascertained;
- (d) the right of the Old Trustee to indemnity under any insurance policy held by it other than in the capacity of trustee; and
 - (e) all the assets, undertakings and liabilities of the Old Trustee in its businesses of property developer, packager of projects, entrepreneur, property owner, renovator and dealer, short-term money market dealer, mortgage lender of its own money, dealer in securities and any other businesses it conducted on its own behalf;

“in the capacity of trustee” means (whether alone or jointly with any other person)—

- (a) as trustee or custodian trustee of any trust deed, settlement, covenant, agreement or will, whether originally so appointed or not and whether appointed under hand or seal or by order of a court or otherwise;
- (b) as executor of a will of a deceased person;
- (c) as administrator of the estate of a deceased person;
- (d) as judicial trustee appointed by order of any court;
- (e) as agent, attorney or nominee; or
- (f) as committee of a protected person’s estate under section 38 of the Mental Health Act, 1958, as manager of an incapable person’s property under section 39 of that Act or as a guarantor or surety for or a guardian of a minor or of a mentally ill person within the meaning of that Act;

“land” includes any estate, interest or right in, over or under land;

“New Trustee” means ANZ Executors & Trustee Company Limited;

“Old Trustee” means TEA (1983) Limited, formerly The Trustees, Executors, and Agency Company, Limited;

Trustee Companies (Amendment).

“the trust business of the Old Trustee” means the business of the Old Trustee of acting in the capacity of trustee and includes—

- (a) the assets held on trust by the Old Trustee including all records, securities and other documents and information whether recorded on paper, microfilm, magnetic tape or disc or otherwise held or maintained by the Old Trustee in its capacity of trustee;
- (b) the liabilities and obligations properly incurred by the Old Trustee acting in the capacity of trustee including undertakings to courts and public officers and authorities;
- (c) the rights of indemnity of the Old Trustee against trust assets in respect of liabilities incurred by the Old Trustee acting as trustee;
- (d) the rights of the Old Trustee to commission, remuneration, fees and reimbursement for disbursements whether billed or unbilled in respect of its acting in the capacity of trustee;
- (e) the benefits and obligations under contracts of employment with employees of the Old Trustee who are employed primarily in the trust business of the Old Trustee including obligations with respect to holiday pay, long service leave, sick leave and other benefits applicable to those employees other than the liability to make any payments to any superannuation scheme that should have been but have not been made before the date of assent to this Act;
- (f) the benefits of and obligations under rental or leasing contracts in respect of the computers used by the Old Trustee in the trust business of the Old Trustee;
- (g) all rights of the Old Trustee in respect of the use of the computer programmes used by the Old Trustee in the trust business of the Old Trustee;
- (h) the corporate and accounting records of the Old Trustee to the extent to which they relate to the trust business of the Old Trustee;
- (i) the liability to perform further administration of any trust or other administration undertaken by the Old Trustee;

Trustee Companies (Amendment).

- (j) all assets of trusts and other appointments of the Old Trustee in its business of acting in the capacity of trustee; and
- (k) all other assets and undertakings of the Old Trustee being part of or incidental to or used in its business of acting in the capacity of trustee,

but does not include the excluded items;

“will” includes a codicil and any other testamentary writing.

Transfer of the trust business and appointments of the Old Trustee to the New Trustee.

4. (1) Upon the date of assent to this Act, the trust business of the Old Trustee as at that date shall be transferred to and vest in the New Trustee.

(2) In each case where the Old Trustee acts in the capacity of trustee, the New Trustee is hereby appointed in its stead to act in the capacity of trustee and the New Trustee—

- (a) shall be entitled and obliged to exercise and discharge all rights, powers, capacities, authorities, duties and obligations of the Old Trustee in respect of and arising from every such appointment; and
- (b) to the extent provided in this Act, shall discharge the liabilities and obligations of the Old Trustee in respect of and arising from every such appointment.

(3) The Old Trustee shall account to the New Trustee for all assets and liabilities and obligations held or to which it is subject in its business of acting in the capacity of trustee.

(4) Any appointment or nomination of the Old Trustee as trustee, executor or otherwise in the capacity of trustee in any will or instrument whether the appointment was or purported to be made before, on or after the date of assent to this Act and whether the appointment or nomination is in effect on that date or takes effect after that date or has taken effect previously but where some further act or thing is necessary to perfect the appointment or undertaking of the office shall be deemed to be an appointment or nomination of the New Trustee.

Trustee Companies (Amendment).

(5) The production of a copy of this Act printed by the Government Printer shall be conclusive evidence in all courts and proceedings of the transfer of the trust business of the Old Trustee and all property held by the Old Trustee on trust in the capacity of trustee to the New Trustee and of their vesting in the New Trustee and without prejudice to the generality of the foregoing any such copy of this Act shall in relation to all land and all marketable securities operate as a duly executed transfer by the Old Trustee to the New Trustee of that land or those securities.

(6) If any portion of the undertaking or property held by the Old Trustee in the capacity of trustee cannot be or is not vested in the New Trustee by virtue of this Act whether because transfers of the portion are governed otherwise than by the law of the State of New South Wales or otherwise notwithstanding that the portion relates to the trust business of the Old Trustee in New South Wales then the Old Trustee shall do all such things necessary after the date of assent to this Act for the purpose of securing that the portion is effectively and promptly transferred to the New Trustee.

(7) Where, on the application of the New Trustee, it appears to any court to be necessary or proper having regard to the provisions of this Act, the New Trustee may be joined as a party to any legal proceedings in addition to or in lieu of the Old Trustee.

Evidence.

5. (1) Where an application is made by the New Trustee to vest any property in the New Trustee and the application is accompanied by a certificate under subsection (2) that the property has vested in the New Trustee and the appropriate certificate of title or other instrument, the Registrar-General shall, without fee, give effect in the Register kept pursuant to the Real Property Act, 1900, to the vesting by registering the New Trustee as proprietor of the property.

(2) A certificate under the seals of the New Trustee and the Old Trustee to the effect that the estate or interest of persons therein specified in land so specified is an estate or interest vested in the New Trustee by this Act shall, for the purposes of—

- (a) any application by the New Trustee to be registered under the Real Property Act, 1900, as the proprietor of that estate or interest pursuant to the vesting;

Trustee Companies (Amendment).

- (b) any application by the New Trustee or a successor in title of the New Trustee to bring land under the Real Property Act, 1900;
 - (c) any transfer, conveyance, reconveyance, mortgage or other instrument or dealing whatsoever in respect of any interest in any such land (whether or not under the Real Property Act, 1900); and
 - (d) any creation of an easement or other interest in respect of any such land (whether or not under the Real Property Act, 1900),
- be conclusive evidence of the matters certified.

Amendment of Act No. 6, 1964.

6. The Principal Act is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

(Sec. 6.)

AMENDMENTS TO THE PRINCIPAL ACT.

- (1) Section 31 (5) (a)—

Omit "The Trustees, Executors, and Agency Company, Limited", insert instead "ANZ Executors & Trustee Company Limited".

- (2) Second Schedule—

After the matter relating to The Union-Fidelity Trustee Company of Australia Limited, insert:—

ANZ EXECUTORS & TRUSTEE COMPANY LIMITED.

(a) No member other than Australia and New Zealand Banking Group Limited shall hold more than 1,000 shares in the member's own right but, if the capital of the company is increased by the issue of new shares, the number of shares which may be held by each member shall be proportionately increased.

Trustee Companies (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) The capital of the company shall be and remain divided into shares of not less than \$1 each and the number of shares in the company shall not be at any time reduced to less than 2,500,000.

(c) An amount of \$1,400,000, being part of the amount remaining uncalled on the shares actually held in the company, shall not be called up except in the event of and for the purpose of the winding-up of the company and every member shall in such event be liable to contribute the unpaid balance of every share held by the member. And it shall not be lawful for the company to mortgage, charge or in any way encumber the uncalled capital on the aforesaid shares.

(d) No more than four-fifths of the profits made by the company in any one year shall be distributed as dividends or otherwise until there has been accumulated out of profits a fund of \$130,000. Such fund shall constitute a special reserve and shall not be in any manner distributed amongst the shareholders except in the event of the winding-up of the company.

(3) Third Schedule, First Part—

From the column headed "Trustee Company.", omit "The Trustees, Executors, and Agency Company, Limited", insert instead "ANZ Executors & Trustee Company Limited".

In the name and on behalf of Her Majesty I assent to this Act.

L. W. STREET,
Lieutenant-Governor.

*Government House,
Sydney, 6th October, 1983.*