

FIRST PRINT

**WILLS, PROBATE AND ADMINISTRATION (TRUSTEE
COMPANIES) AMENDMENT BILL, 1985**

EXPLANATORY NOTE

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

This Bill is cognate with the Trustee Companies (Amendment) Bill, 1985.

The object of this Bill is to amend the Wills, Probate and Administration Act, 1898, with respect to the powers that may be exercised by a trustee company in its capacity as executor or administrator.

**WILLS, PROBATE AND ADMINISTRATION (TRUSTEE
COMPANIES) AMENDMENT BILL, 1985**

No. , 1985.

A BILL FOR

An Act to amend the Wills, Probate and Administration Act, 1898, with respect to the powers that may be exercised by a trustee company in its capacity as executor or administrator.

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 "Wills, Probate and Administration (Trustee Companies) Amendment Act, 1985".

Amendment of Act No. 13, 1898.

2. The Wills, Probate and Administration Act, 1898, is amended in the
10 manner set forth in Schedule 1.

SCHEDULE 1.

(Sec. 2.)

AMENDMENTS TO THE WILLS, PROBATE AND ADMINISTRATION ACT, 1898.

(1) Section 44 (2)—

15 At the end of section 44, insert:—

(2) Upon the grant, to the Public Trustee or a trustee company, of probate of the will or administration of the estate of a person dying after the commencement of the Wills, Probate and Administration (Trustee Companies) Amendment Act, 1985, the
20 Public Trustee or the trustee company, as the case may be, shall be—

(a) the executor, by representation, of any will of which the person had been granted probate; and

(b) the administrator, by representation, of any estate of which the person had been granted administration.

25 (2) Section 75 (1) (ii)—

After "Trustee", insert "or a trustee company".

(3) Section 75A (1)—

Omit "or a trustee company".

SCHEDULE 1—*continued.*AMENDMENTS TO THE WILLS, PROBATE AND ADMINISTRATION ACT, 1898—
continued.

(4) Section 93 (3)–(6)—

5 After section 93 (2), insert:—

(3) Where—

(a) in its capacity as executor or administrator, a trustee company—

10 (i) disputes any claim upon an estate (whether the claimant claims to be a creditor or to have a beneficial interest in the estate); and

(ii) has served on the claimant a notice in accordance with subsection (1); and

15 (b) the claimant has not, within the period of 3 months referred to in the notice served in accordance with subsection (1), commenced proceedings to enforce the claim,

20 the trustee company may serve a further notice on the claimant that unless, within the period of 2 months from the date of service of that further notice, the trustee company is duly served with process of court issued in proceedings to enforce the claim, the trustee company will distribute the estate without regard to the claim.

25 (4) If, within the period of 2 months referred to in a notice served on a claimant in accordance with subsection (3), a trustee company has not been duly served with process as referred to in that subsection, the claimant's claim shall thereupon be barred and become irrecoverable as against the trustee company and the trustee company may proceed to distribute the estate without regard to the claim.

30 (5) A trustee company may, if it thinks fit, waive any objection which it might, by virtue of subsection (4), take to proceedings commenced by a claimant after the expiration of the period of 2

SCHEDULE 1—*continued.*

AMENDMENTS TO THE WILLS, PROBATE AND ADMINISTRATION ACT, 1898—
continued.

5 months referred to in a notice served on the claimant in accordance with subsection (3).

(6) The powers conferred on a trustee company by subsections (3) and (4) are in addition to the powers exercisable under subsection (2).

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1985

**WILLS, PROBATE AND ADMINISTRATION (TRUSTEE
COMPANIES) AMENDMENT ACT, 1985, No. 90**

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* * * * *

Act No. 90, 1985.

An Act to amend the Wills, Probate and Administration Act, 1898, with respect to the powers that may be exercised by a trustee company in its capacity as executor or administrator. [Assented to, 4th June, 1985.]

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 "Wills, Probate and Administration (Trustee Companies) Amendment Act, 1985".

Amendment of Act No. 13, 1898.

2. The Wills, Probate and Administration Act, 1898, is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

(Sec. 2.)

AMENDMENTS TO THE WILLS, PROBATE AND ADMINISTRATION ACT, 1898.

(1) Section 44 (2)—

At the end of section 44, insert:—

(2) Upon the grant, to the Public Trustee or a trustee company, of probate of the will or administration of the estate of a person dying after the commencement of the Wills, Probate and Administration (Trustee Companies) Amendment Act, 1985, the Public Trustee or the trustee company, as the case may be, shall be—

- (a) the executor, by representation, of any will of which the person had been granted probate; and
- (b) the administrator, by representation, of any estate of which the person had been granted administration.

(2) Section 75 (1) (ii)—

After "Trustee", insert "or a trustee company".

(3) Section 75A (1)—

Omit "or a trustee company".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE WILLS, PROBATE AND ADMINISTRATION ACT, 1898—
continued.

(4) Section 93 (3)–(6)—

After section 93 (2), insert:—

(3) Where—

(a) in its capacity as executor or administrator, a trustee company—

(i) disputes any claim upon an estate (whether the claimant claims to be a creditor or to have a beneficial interest in the estate); and

(ii) has served on the claimant a notice in accordance with subsection (1); and

(b) the claimant has not, within the period of 3 months referred to in the notice served in accordance with subsection (1), commenced proceedings to enforce the claim,

the trustee company may serve a further notice on the claimant that unless, within the period of 2 months from the date of service of that further notice, the trustee company is duly served with process of court issued in proceedings to enforce the claim, the trustee company will distribute the estate without regard to the claim.

(4) If, within the period of 2 months referred to in a notice served on a claimant in accordance with subsection (3), a trustee company has not been duly served with process as referred to in that subsection, the claimant's claim shall thereupon be barred and become irrecoverable as against the trustee company and the trustee company may proceed to distribute the estate without regard to the claim.

(5) A trustee company may, if it thinks fit, waive any objection which it might, by virtue of subsection (4), take to proceedings commenced by a claimant after the expiration of the period of 2

SCHEDULE 1—*continued.*AMENDMENTS TO THE WILLS, PROBATE AND ADMINISTRATION ACT, 1898—
continued.

months referred to in a notice served on the claimant[†] in accordance with subsection (3).

(6) The powers conferred on a trustee company by subsections (3) and (4) are in addition to the powers exercisable under subsection (2).

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

J. A. ROWLAND,
Governor.

*Government House,
Sydney, 4th June, 1985.*

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1985