

TRUSTEE COMPANIES (AMENDMENT) ACT 1989 No. 42

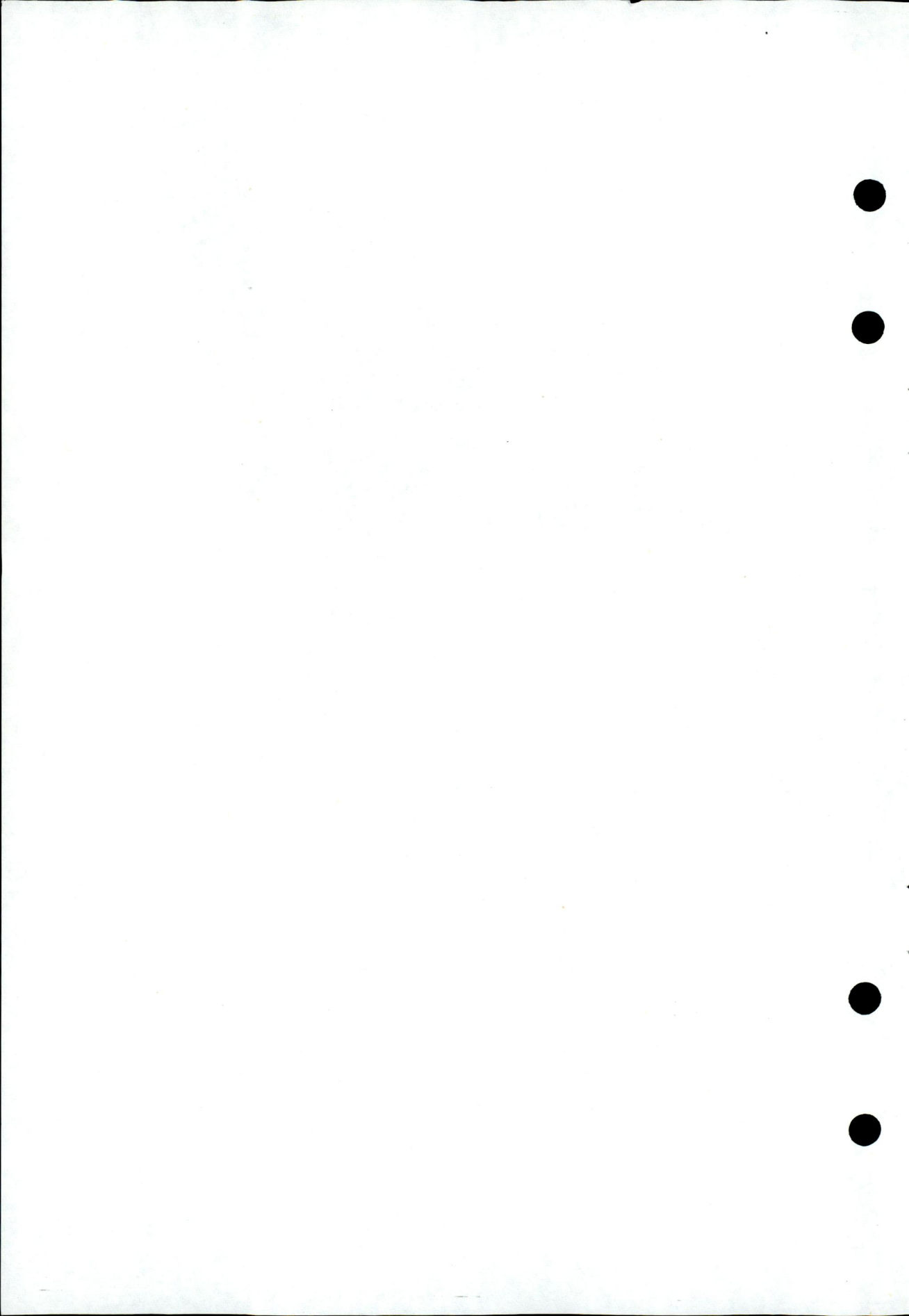
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Trustee Companies Act 1964 No. 6
4. Transitional provision

SCHEDULE 1—AMENDMENTS



TRUSTEE COMPANIES (AMENDMENT) ACT 1989 No. 42

NEW SOUTH WALES



Act No. 42, 1989

An Act to amend the Trustee Companies Act 1964 to replace restrictions relating to the share capital of certain trustee companies with a requirement to insure or provide a guarantee against certain liabilities; and for other purposes. [Assented to 11 May 1989]

Trustee Companies (Amendment) 1989

The Legislature of New South Wales enacts

Short title

1. This Act may be cited as the Trustee Companies (Amendment) Act 1989.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation.

(2) A day shall not be appointed for the commencement of Schedule 1 (7) unless the provision to be inserted by Schedule 1 (7) has been approved by the Ministerial Council for Companies and Securities in accordance with the agreement made on 22 December 1978 between the Commonwealth and the States (a copy of which is set out in Schedule 1 to the National Companies and Securities Commission (State Provisions) Act 1981).

Amendment of Trustee Companies Act 1964 No. 6

3. The Trustee Companies Act 1964 is amended as set out in Schedule 1.

Transitional provision

4. (1) The Treasurer shall, as soon as practicable after the commencement of Schedule 1 (1), transfer any debentures or inscribed stock purchased before that commencement in the name of the Treasurer under section 10 of the Trustee Companies Act 1964 to the trustee company for which the debentures are or inscribed stock is held in trust.

(2) Any interest and income accruing in respect of any debentures or inscribed stock on or after that commencement and before its transfer under this section shall be paid, on or before that transfer, by the Treasurer to the trustee company for which the debentures are or inscribed stock is held in trust.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 10—

Omit the section, insert instead:

Assets of trustee company liable for proper administration of estates

10. All the capital both paid and unpaid and all other assets of any trustee company shall be liable for the proper administration of all estates of which the trustee company acts as executor or administrator.

*Trustee Companies (Amendment) 1989*SCHEDULE 1—AMENDMENTS—*continued*(2) Section 15B (**Maintenance etc. of minor or incapable person**)—

After section 15B (5), insert:

(6) The powers conferred on a trustee company by this section may be exercised by the trustee company in respect of money held by the trustee company to which a minor or incapable person is entitled even though the trustee company held the money before the commencement of this section.

(3) Section 15C (**General powers of trustee company**)—

After “this Act” where firstly occurring, insert “(whether before or after the commencement of this section)”.

(4) Section 25—

Omit the section, insert instead:

Court may order winding-up

25. If it is proved that three-fourths or more—

- (a) of the amount of capital authorised by this Act to be called up by a trustee company (other than a trustee company referred to in paragraph (b)); or
- (b) in the case of the Permanent Trustee Company Limited, the Perpetual Trustee Company Limited or Perpetual Trustees Australia Limited, of the amount of capital called up by the trustee company,

has been lost by that trustee company, the Court may, on the application of any member or creditor of the trustee company or cestui que trust, make an order for the winding-up of the trustee company.

(5) Section 36 (**Provisions continued in force**)—

Section 36 (3)—

Omit the subsection.

(6) Section 36A—

After section 36, insert:

Indemnities

36A. (1) The Permanent Trustee Company Limited, the Perpetual Trustee Company Limited and Perpetual Trustees Australia Limited—

- (a) shall arrange with an approved insurer, and keep in force at all times, an approved policy of indemnity insurance for an amount that is not less than the amount prescribed in respect of the trustee company concerned; or

Trustee Companies (Amendment) 1989

SCHEDULE 1—AMENDMENTS—*continued*

(b) shall instead, with the approval of the Attorney General, lodge with the Attorney General an approved bank guarantee as an indemnity to secure the payment of an amount that is not less than the amount prescribed in respect of the trustee company concerned.

(2) A trustee company referred to in subsection (1) shall, at the request of the Attorney General, produce evidence of any insurance required to be arranged and kept in force by the trustee company under this section.

(3) In this section, “approved” means approved by the Attorney General.

(7) Section 36B—

Before section 37, insert:

Unpaid capital of Permanent Trustee Company Limited

36B. Nothing in section 114 (2) of the Companies (New South Wales) Code prevents the Permanent Trustee Company Limited from varying, by special resolution, the portion of its unpaid share capital that is not capable of being called up.

(8) Second Schedule—

(a) Omit the matter relating to the Permanent Trustee Company Limited, insert instead:

PERMANENT TRUSTEE COMPANY LIMITED

The issued capital of the company shall not be at any time reduced to less than \$12,000,000.

(b) Omit the matter relating to the Perpetual Trustee Company Limited, insert instead:

PERPETUAL TRUSTEE COMPANY LIMITED

The issued capital of the company shall not be at any time reduced to less than \$8,000,000.

(c) Omit “THE UNION-FIDELITY TRUSTEE COMPANY OF AUSTRALIA LIMITED”, insert instead “TRUST COMPANY OF AUSTRALIA LIMITED”.

Trustee Companies (Amendment) 1989

SCHEDULE 1—AMENDMENTS—*continued*

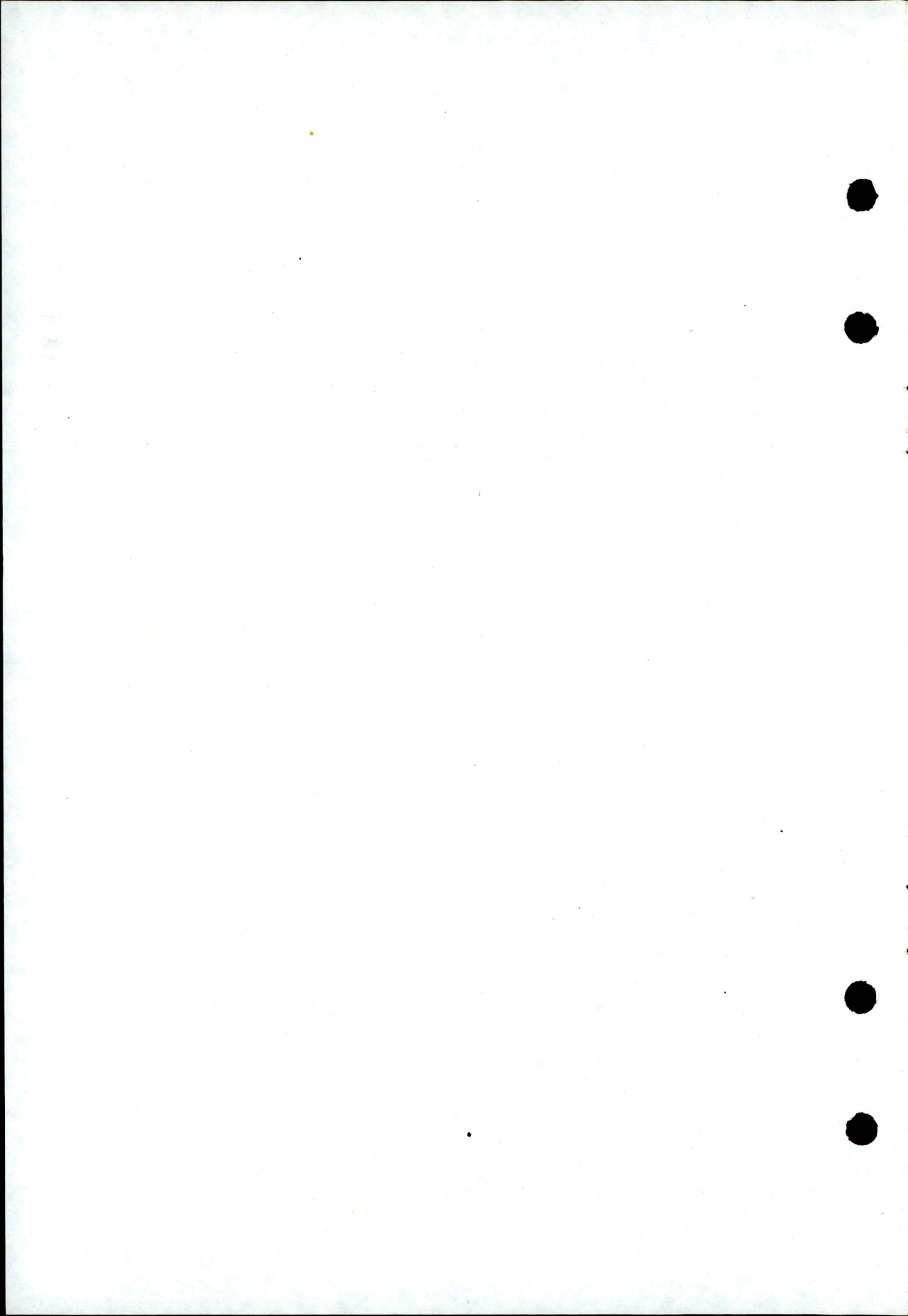
- (d) Omit the matter relating to Perpetual Trustees Australia Limited, insert instead:

PERPETUAL TRUSTEES AUSTRALIA LIMITED

The issued capital of the company shall not be at any time reduced to less than \$24,000,000.

- (e) Omit “NATIONAL TRUSTEES EXECUTORS AND AGENCY COMPANY OF AUSTRALASIA LIMITED”, insert instead “NATIONAL MUTUAL TRUSTEES LIMITED”.
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[*Minister's second reading speech made in—
Legislative Assembly on 12 April 1989
Legislative Council on 3 May 1989*]



TRUSTEE COMPANIES (AMENDMENT) BILL 1989

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 Companies Act 1964—

- (a) to remove restrictions on the amount of unpaid capital that may be called up by certain trustee companies and to require instead that those companies take out indemnity insurance or lodge a bank guarantee with the Attorney General; and
- (b) to remove the requirement that \$50,000 of the paid up capital of a trustee company be invested in the name of the Treasurer; and
- (c) to make it clear that a trustee company may exercise powers conferred by sections 15B and 15C of the Act in respect of estates it managed etc. before those sections commenced; and
- (d) in other minor respects.

Clause 1 specifies 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. The clause also requires Schedule 1 (7) not to be commenced until proposed section 36B has been approved by the Ministerial Council for Companies and Securities.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

Clause 4 is a transitional provision that requires investments of the share capital of trustee companies made in the name of the Treasurer (under section 10, which is to be substituted by Schedule 1 (1)) together with any income payable in respect of any such investment to be assigned by the Treasurer to the trustee companies.

Removal of requirement to invest \$50,000 and restrictions on bonds

Schedule 1 (1) substitutes section 10 to remove the requirement that \$50,000 of a trustee company's paid up capital be invested in debentures or inscribed stock in the name of the Treasurer. As a result of this amendment, trustee companies may be required to lodge bonds for the due administration of estates of less than \$50,000.

Trustee Companies (Amendment) 1989

Application of sections 15B and 15C

Schedule 1 (2) and (3) amend sections 15B and 15C, respectively, to make it clear that the powers conferred by those sections apply to functions and duties assumed or held by a trustee company before those sections commenced.

Indemnities

Schedule 1 (6) inserts proposed section 36A (Indemnities) which requires the Permanent Trustee Company Limited, the Perpetual Trustee Company Limited and Perpetual Trustees Australia Limited to arrange, and keep in force, a policy of indemnity insurance approved by the Attorney General. Alternatively, these companies may lodge with the Attorney General, as an indemnity, a bank guarantee approved by the Attorney General.

These indemnities are required as a protection in the event of the companies being wound up and are being imposed as an alternative to the restrictions on the calling up of unpaid capital which are being removed by Schedule 1 (8).

Removal of restrictions on calling up of unpaid capital

Schedule 1 (8) removes provisions relating to the share capital of the Permanent Trustee Company Limited, the Perpetual Trustee Company Limited and Perpetual Trustees Australia Limited. Among the provisions removed are provisions which prevent any more than half of the issued capital of each company being called up. Instead each of the 3 trustee companies is required to have a minimum amount of issued capital.

Schedule 1 (7) inserts proposed section 36B (Unpaid capital of Permanent Trustee Company Limited) which prevents section 114 (2) of the Companies (New South Wales) Code from operating to prevent the Permanent Trustee Company Limited from varying, by special resolution, the portion of its unpaid share capital that is not capable of being called up. This provision is being inserted as a result of the amendment made by Schedule 1 (8) which removes restrictions relating to the calling up of unpaid share capital.

Consequential amendments

Schedule 1 (4) amends section 25 as a result of the amendment made by Schedule 1 (8).

Schedule 1 (5) amends section 36 to omit a provision that is now unnecessary because of previous amendments to the Second Schedule.

TRUSTEE COMPANIES (AMENDMENT) BILL 1989

NEW SOUTH WALES



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2. Commencement
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4. Transitional provision

SCHEDULE 1—AMENDMENTS



TRUSTEE COMPANIES (AMENDMENT) BILL 1989

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to amend the Trustee Companies Act 1964 to replace restrictions relating to the share capital of certain trustee companies with a requirement to insure or provide a guarantee against certain liabilities; and for other purposes.

Trustee Companies (Amendment) 1989

The Legislature of New South Wales enacts

Short title

1. This Act may be cited as the Trustee Companies (Amendment) Act 1989.

5 Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation.

(2) A day shall not be appointed for the commencement of Schedule 1 (7) unless the provision to be inserted by Schedule 1 (7) has been approved
10 by the Ministerial Council for Companies and Securities in accordance with the agreement made on 22 December 1978 between the Commonwealth and the States (a copy of which is set out in Schedule 1 to the National Companies and Securities Commission (State Provisions) Act 1981).

Amendment of Trustee Companies Act 1964 No. 6

15 3. The Trustee Companies Act 1964 is amended as set out in Schedule 1.

Transitional provision

4. (1) The Treasurer shall, as soon as practicable after the commencement of Schedule 1 (1), transfer any debentures or inscribed stock
20 purchased before that commencement in the name of the Treasurer under section 10 of the Trustee Companies Act 1964 to the trustee company for which the debentures are or inscribed stock is held in trust.

(2) Any interest and income accruing in respect of any debentures or inscribed stock on or after that commencement and before its transfer under
25 this section shall be paid, on or before that transfer, by the Treasurer to the trustee company for which the debentures are or inscribed stock is held in trust.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

30 (1) Section 10—

Omit the section, insert instead:

Assets of trustee company liable for proper administration of estates

35 10. All the capital both paid and unpaid and all other assets of any trustee company shall be liable for the proper administration of all estates of which the trustee company acts as executor or administrator.

Trustee Companies (Amendment) 1989

SCHEDULE 1—AMENDMENTS—*continued*

(2) Section 15B (**Maintenance etc. of minor or incapable person**)—

After section 15B (5), insert:

5 (6) The powers conferred on a trustee company by this section may be exercised by the trustee company in respect of money held by the trustee company to which a minor or incapable person is entitled even though the trustee company held the money before the commencement of this section.

(3) Section 15C (**General powers of trustee company**)—

10 After “this Act” where firstly occurring, insert “(whether before or after the commencement of this section)”.

(4) Section 25—

Omit the section, insert instead:

Court may order winding-up

15 25. If it is proved that three-fourths or more—

(a) of the amount of capital authorised by this Act to be called up by a trustee company (other than a trustee company referred to in paragraph (b)); or

20 (b) in the case of the Permanent Trustee Company Limited, the Perpetual Trustee Company Limited or Perpetual Trustees Australia Limited, of the amount of capital called up by the trustee company,

25 has been lost by that trustee company, the Court may, on the application of any member or creditor of the trustee company or cestui que trust, make an order for the winding-up of the trustee company.

(5) Section 36 (**Provisions continued in force**)—

Section 36 (3)—

Omit the subsection.

(6) Section 36A—

30 After section 36, insert:

Indemnities

36A. (1) The Permanent Trustee Company Limited, the Perpetual Trustee Company Limited and Perpetual Trustees Australia Limited—

35 (a) shall arrange with an approved insurer, and keep in force at all times, an approved policy of indemnity insurance for an amount that is not less than the amount prescribed in respect of the trustee company concerned; or

*Trustee Companies (Amendment) 1989*SCHEDULE 1—AMENDMENTS—*continued*

(b) shall instead, with the approval of the Attorney General, lodge with the Attorney General an approved bank guarantee as an indemnity to secure the payment of an amount that is not less than the amount prescribed in respect of the trustee company concerned.

(2) A trustee company referred to in subsection (1) shall, at the request of the Attorney General, produce evidence of any insurance required to be arranged and kept in force by the trustee company under this section.

(3) In this section, "approved" means approved by the Attorney General.

(7) Section 36B—

Before section 37, insert:

Unpaid capital of Permanent Trustee Company Limited

36B. Nothing in section 114 (2) of the Companies (New South Wales) Code prevents the Permanent Trustee Company Limited from varying, by special resolution, the portion of its unpaid share capital that is not capable of being called up.

(8) Second Schedule—

(a) Omit the matter relating to the Permanent Trustee Company Limited, insert instead:

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The issued capital of the company shall not be at any time reduced to less than \$12,000,000.

(b) Omit the matter relating to the Perpetual Trustee Company Limited, insert instead:

PERPETUAL TRUSTEE COMPANY LIMITED

The issued capital of the company shall not be at any time reduced to less than \$8,000,000.

(c) Omit "THE UNION-FIDELITY TRUSTEE COMPANY OF AUSTRALIA LIMITED", insert instead "TRUST COMPANY OF AUSTRALIA LIMITED".

(d) Omit the matter relating to Perpetual Trustees Australia Limited, insert instead:

PERPETUAL TRUSTEES AUSTRALIA LIMITED

The issued capital of the company shall not be at any time reduced to less than \$24,000,000.

(e) Omit "NATIONAL TRUSTEES EXECUTORS AND AGENCY COMPANY OF AUSTRALASIA LIMITED", insert instead "NATIONAL MUTUAL TRUSTEES LIMITED".