



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**

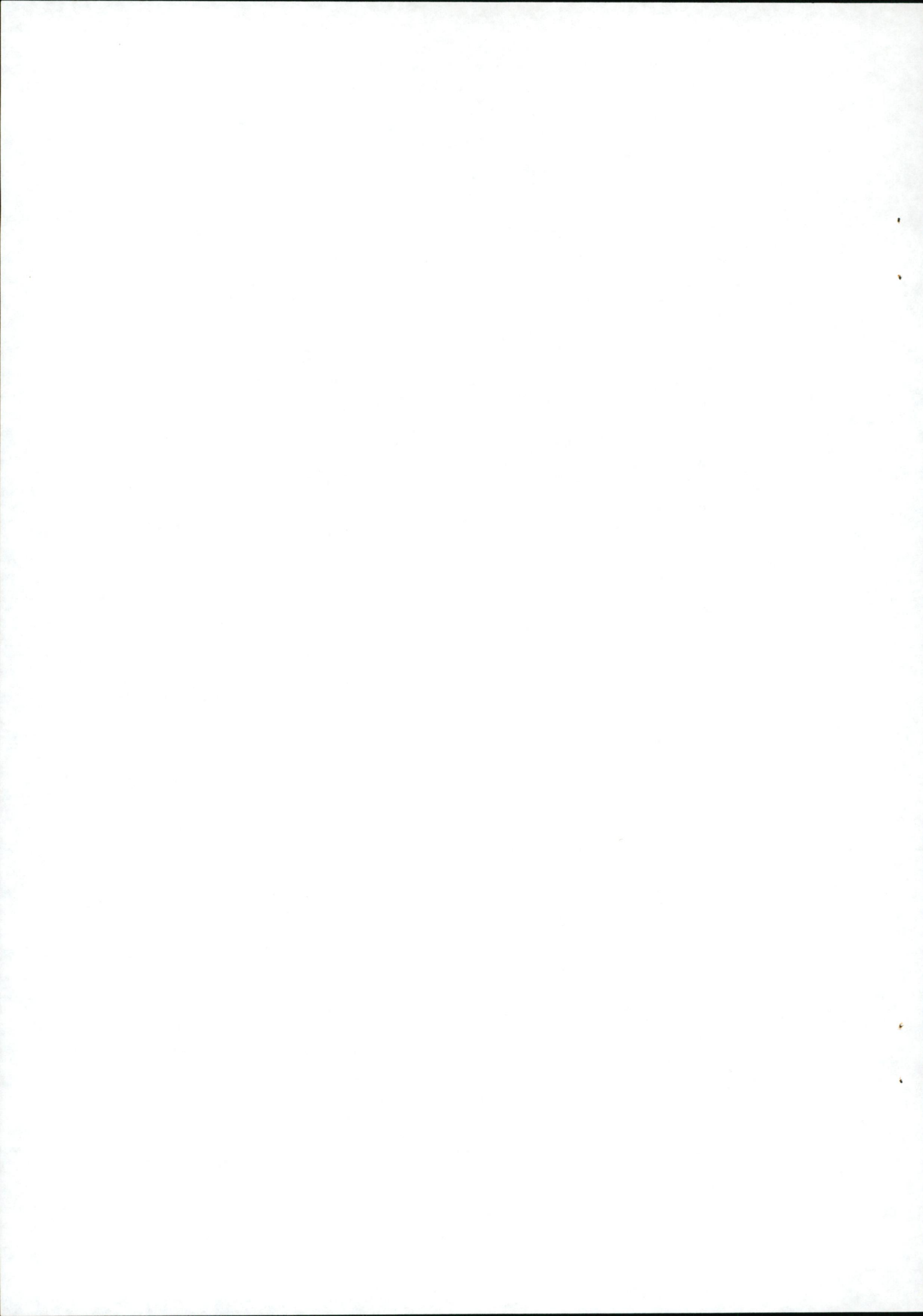
Currently, a trustee company may charge a fee of no more than \$590 for the management of an estate or trust committed to its administration or management for more than 2 years. The proposed Act replaces this fee with a fee based on the amount of the corpus or capital value of the estate. That fee is 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 [8]).

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.



First print



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New South Wales

# Trustee Companies Amendment Bill 1997

No. , 1997

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## **A Bill for**

An Act to amend the *Trustee Companies Act 1964* in respect of the fees and commissions to which a trustee company is entitled; and for other purposes.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Trustee Companies Amendment Act 1997*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation. 5

**3 Amendment of Trustee Companies Act 1964 No 6**

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



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## Schedule 1 Amendments

(Section 3)

### [1] Section 18 Commission chargeable by trustee company

Insert "if the estate is not one in respect of which a fee is payable under section 19B (2)" after "estate" in section 18 (1) (c) (ii).

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### [2] Section 19B Trust fees

Omit "12 months" wherever occurring in paragraphs (a) (ii) and (b) (iii) of the definition of *prescribed time* in section 19B (1).  
Insert instead "3 months".

### [3] Section 19B (2)–(2B)

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Omit section 19B (2). Insert instead:

(2) A trustee company is entitled to receive a quarterly trust fee, in respect of any estate committed to its administration or management for 2 years or more, not exceeding the maximum fee determined in accordance with subsection (2A).

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(2A) The maximum quarterly trust fee is:

(a) if the corpus or capital value of the estate at the time of calculation is \$250,000 or less, an amount equal to 12.5 cents for every \$100 of the corpus or capital value, or

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(b) if the corpus or capital value of the estate at the time of calculation is greater than \$250,000 and not more than \$500,000, an amount equal to the sum of:

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(i) \$312.50, and

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- (ii) 18.75 cents for every \$100 of the amount by which the corpus or capital value exceeds \$250,000, or
  - (c) if the corpus or capital value of the estate at the time of calculation is more than \$500,000, an amount equal to the sum of:
    - (i) \$781.25, and
    - (ii) 25 cents for every \$100 of the amount by which the corpus or capital value exceeds \$500,000.
- (2B) The trust fee to which a trustee company is entitled under this section is to be calculated as at the prescribed time and is payable on the date of its calculation.
  
- [4] Section 19B (3)**  
Omit "one-twelfth". Insert instead "one-third".
  
- [5] Section 19B (4) and (5)**  
Insert after section 19B (3):
  - (4) The trust fee to which a trustee company is entitled under this section may be paid wholly from the corpus or capital of the estate or partly from the corpus or capital of the estate and partly from the income of the estate. However, not more than half of the amount of the fee may be paid from the income.
  - (5) The trustee company is to consult with the beneficiaries, if it is practicable to do so, before determining from where a trust fee is to be paid. The trustee company must attempt such consultation at least once every two years.

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**[6] Section 19D General provisions in respect of fees**

Insert after section 19D (8):

- (9) The fees provided for under sections 18 and 19B, as amended by Schedule 1 [1]–[5] to the *Trustee Companies Amendment Act 1997*, are payable in respect of estates committed to the administration or management of a trustee company no more than 3 years before the commencement of those provisions on and from the first occurrence of the prescribed time after that commencement. 5  
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- (10) The fees provided for under sections 18 and 19B, as amended by Schedule 1 [1]–[5] to the *Trustee Companies Amendment Act 1997*, are payable in respect of estates committed to the administration or management of a trustee company more than 3 years before the commencement of those provisions on and from a date or dates determined in accordance with the regulations made for the purposes of this subsection. 15
- (11) The fees payable under sections 18 and 19B, as in force immediately before the commencement of Schedule 1 [1]–[5] to the *Trustee Companies Amendment Act 1997*, continue to apply until the fees provided for under sections 18 and 19B (as amended by those provisions) are payable, in accordance with the regulations. 20

**[7] Section 29D Financial statement of trustee company**

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Omit “Commission” from section 29D (2) (a).

Insert instead “Director-General of the Attorney General’s Department”.

**[8] Section 29D (9)–(11)**

Insert after section 29D (8):

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- (9) The Director-General of the Attorney General’s Department may review any financial statement forwarded to him or her under this section, or may arrange for any other person to review it.

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- (10) The regulations may make provision for or with respect to the calculation of the costs recoverable for any work undertaken to review a financial statement under this section. Such regulations may provide for costs to be determined at a prescribed hourly rate, or in some other manner. 5
- (11) Unless the Minister otherwise directs, the cost of any review of a financial statement under this section is to be borne by the trustee company and may be recovered by the Minister in any court of competent jurisdiction as a debt due to the Crown. 10



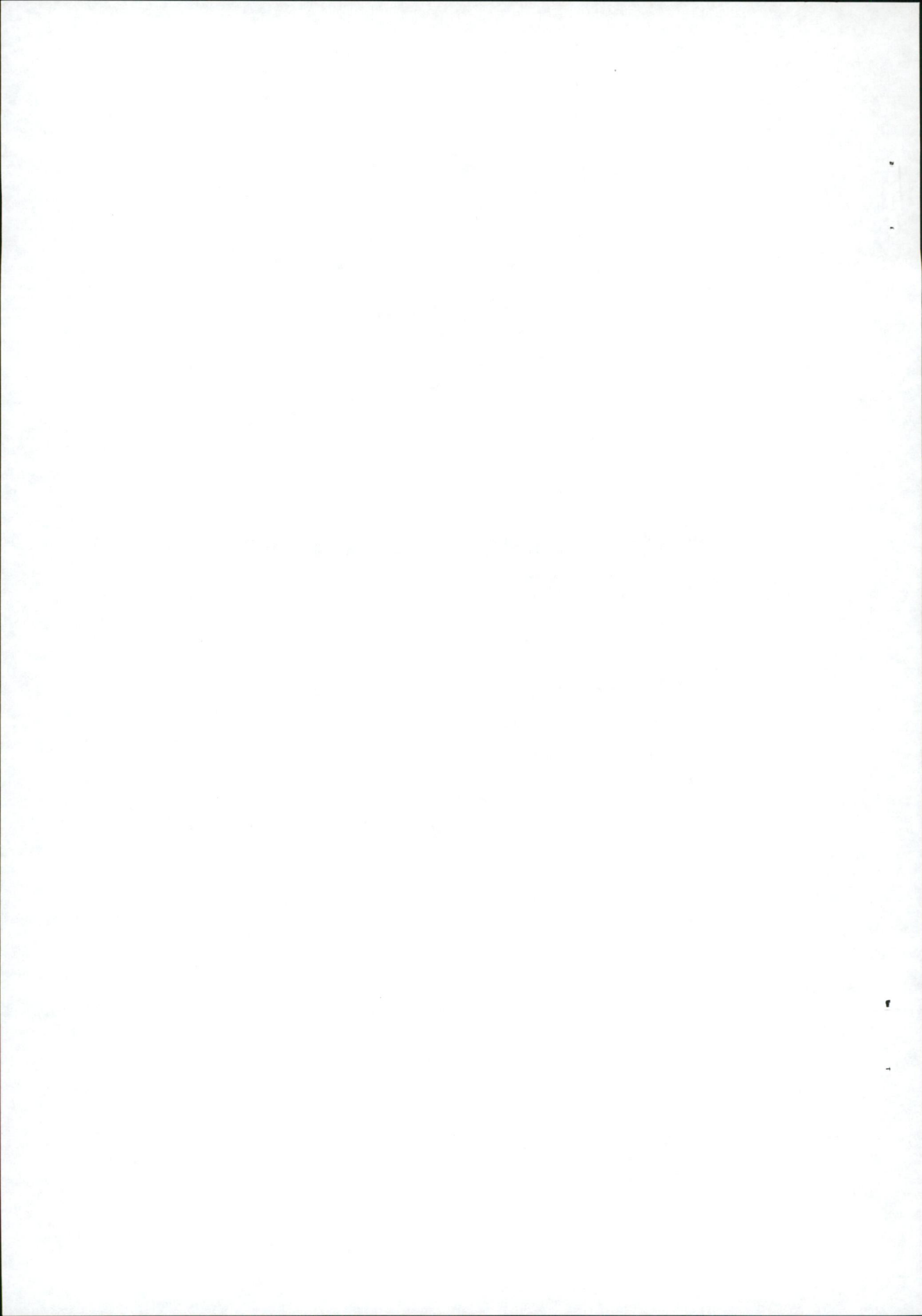
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New South Wales

# **Trustee Companies Amendment Act 1997 No 46**

Act No 46, 1997

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An Act to amend the *Trustee Companies Act 1964* in respect of the fees and commissions to which a trustee company is entitled; and for other purposes.  
[Assented to 2 July 1997]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Trustee Companies Amendment Act 1997*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Trustee Companies Act 1964 No 6**

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



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## Schedule 1 Amendments

(Section 3)

### [1] Section 18 Commission chargeable by trustee company

Insert "if the estate is not one in respect of which a fee is payable under section 19B (2)" after "estate" in section 18 (1) (c) (ii).

### [2] Section 19B Trust fees

Omit "12 months" wherever occurring in paragraphs (a) (ii) and (b) (iii) of the definition of *prescribed time* in section 19B (1).  
Insert instead "3 months".

### [3] Section 19B (2)-(2B)

Omit section 19B (2). Insert instead:

(2) A trustee company is entitled to receive a quarterly trust fee, in respect of any estate committed to its administration or management for 2 years or more, not exceeding the maximum fee determined in accordance with subsection (2A).

(2A) The maximum quarterly trust fee is:

- (a) if the corpus or capital value of the estate at the time of calculation is \$250,000 or less, an amount equal to 12.5 cents for every \$100 of the corpus or capital value, or
- (b) if the corpus or capital value of the estate at the time of calculation is greater than \$250,000 and not more than \$500,000, an amount equal to the sum of:
  - (i) \$312.50, and

- (ii) 18.75 cents for every \$100 of the amount by which the corpus or capital value exceeds \$250,000, or
  - (c) if the corpus or capital value of the estate at the time of calculation is more than \$500,000, an amount equal to the sum of:
    - (i) \$781.25, and
    - (ii) 25 cents for every \$100 of the amount by which the corpus or capital value exceeds \$500,000.
- (2B) The trust fee to which a trustee company is entitled under this section is to be calculated as at the prescribed time and is payable on the date of its calculation.

**[4] Section 19B (3)**

Omit "one-twelfth". Insert instead "one-third".

**[5] Section 19B (4) and (5)**

Insert after section 19B (3):

- (4) The trust fee to which a trustee company is entitled under this section may be paid wholly from the corpus or capital of the estate or partly from the corpus or capital of the estate and partly from the income of the estate. However, not more than half of the amount of the fee may be paid from the income.
- (5) The trustee company is to consult with the beneficiaries, if it is practicable to do so, before determining from where a trust fee is to be paid. The trustee company must attempt such consultation at least once every two years.

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**[6] Section 19D General provisions in respect of fees**

Insert after section 19D (8):

- (9) The fees provided for under sections 18 and 19B, as amended by Schedule 1 [1]–[5] to the *Trustee Companies Amendment Act 1997*, are payable in respect of estates committed to the administration or management of a trustee company no more than 3 years before the commencement of those provisions on and from the first occurrence of the prescribed time after that commencement.
- (10) The fees provided for under sections 18 and 19B, as amended by Schedule 1 [1]–[5] to the *Trustee Companies Amendment Act 1997*, are payable in respect of estates committed to the administration or management of a trustee company more than 3 years before the commencement of those provisions on and from a date or dates determined in accordance with the regulations made for the purposes of this subsection.
- (11) The fees payable under sections 18 and 19B, as in force immediately before the commencement of Schedule 1 [1]–[5] to the *Trustee Companies Amendment Act 1997*, continue to apply until the fees provided for under sections 18 and 19B (as amended by those provisions) are payable, in accordance with the regulations.

**[7] Section 29D Financial statement of trustee company**

Omit “Commission” from section 29D (2) (a).

Insert instead “Director-General of the Attorney General’s Department”.

**[8] Section 29D (9)–(11)**

Insert after section 29D (8):

- (9) The Director-General of the Attorney General’s Department may review any financial statement forwarded to him or her under this section, or may arrange for any other person to review it.

- (10) The regulations may make provision for or with respect to the calculation of the costs recoverable for any work undertaken to review a financial statement under this section. Such regulations may provide for costs to be determined at a prescribed hourly rate, or in some other manner.
- (11) Unless the Minister otherwise directs, the cost of any review of a financial statement under this section is to be borne by the trustee company and may be recovered by the Minister in any court of competent jurisdiction as a debt due to the Crown.

[Minister's second reading speech made in—  
Legislative Council on 23 April 1997  
Legislative Assembly on 26 June 1997 a.m.]

BY AUTHORITY