

**1992**

**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY**

**TRUSTEE (AMENDMENT) BILL 1992**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of  
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## TRUSTEE (AMENDMENT) BILL 1992

### Outline:

The law relating to trustees is contained in the *Trustee Act, 1925-1942* of the State of New South Wales in its application to the Australian Capital Territory. That Act is referred to in this Explanatory Memorandum as the "Trustee Act".

The Trustee Act has in the past been amended in its application to the Territory by the *Trustee Act 1957*. However, the Trustee (Amendment) Bill 1992 (the "Bill") directly amends the Trustee Act.

The Bill amends the Trustee Act to expand the range of investments which are authorised trustee investments and to make a number of minor changes consequential upon amendments to other legislation.

### Financial Considerations:

The Bill will have no effect on Government finances.

### Main Amendment:

#### *Clause 4 - Authorised investments*

The main amendment is the inclusion in subsection 14(1) of the Trustee Act of new paragraphs (j), (k) and (m). This is done by subclause 4(h), which also replaces a reference to the old *Companies Act 1981* in paragraph 14(1)(h) with a reference to the Corporations Law.

New paragraph (j) provides that a trustee may invest money held on trust on deposit with a body corporate established by a law of the Commonwealth, a State or a Territory provided that repayment of the deposit is guaranteed by the Commonwealth or relevant State or Territory. Such deposits are secure investments and the provision complements paragraph 14(1)(b) which allows trustees to invest in debentures or securities guaranteed by the Commonwealth or a State.

New paragraph (k) allows trustees to invest trust monies in bills of exchange which when purchased have a maturity date of 200 days or less and which give the purchaser a right of recourse against a bank for the amount of the face value of the bill. Such bills are accepted as authorised trustee investments in New South Wales, Victoria, Queensland and South Australia, and are consistent with the other bank investments presently listed in the Trustee Act as authorised trustee investments.

New paragraph (m) allows trustees to invest in the common trust funds of trustee companies. However, the only common funds which are eligible are those which are restricted, on establishment, to investment in the kinds of investment which are authorised by section 14 of the Trustee Act. This allows trustees, both individuals and companies, to obtain the benefits of collective investment through an

established common fund but ensures that the monies are invested only in things which are considered secure enough to be authorised trustee investments.

#### Other Amendments:

##### *Clause 3 - Interpretation*

In order to clarify the position of banks under the Trustee Act, clause 3 adds a definition of the term 'bank'. This makes it clear that the term refers to any bank within the definition of that word contained in the Commonwealth *Banking Act* 1959 which regulates the general operation of banks in Australia and places them under Reserve Bank supervision.

##### *Clause 4 - Authorised investments*

Paragraph 14(1)(c) of the Trustee Act allows the Minister to declare certain securities to be authorised trustee investments. As a result of changes arising out of the introduction of self-government for the Territory, an anomaly has arisen in that this provision allows the Minister to make a declaration in respect of securities of bodies corporate created by an Act of a State or Territory but not one created by a Commonwealth Act. Subclause 4(d) of the Bill corrects that anomaly.

Subclauses 4(e) and 4(f) of the Bill make alterations to the references to banks in section 14 of the Trustee Act. The changes are in accordance with changes in the Commonwealth legislation which regulates the operation of banks in Australia.

##### *Clause 5 - Interim investment*

Clause 5 removes from section 15 of the Trustee Act words which are unnecessary as a result of the definition inserted by clause 3.

##### *Clause 6 - Advancement*

Clause 6 removes subsection 44(1A) of the Trustee Act. That provision prevents the use of the capital of a trust for the maintenance and education of an infant if the trust property or the share to which the infant is entitled exceeds \$10,000. Not only is it difficult to see the original purpose of this provision, but the figure has not been reviewed for many years and may now run counter to the intentions and wishes of many testators and settlors of trusts.

#### Formal and Technical Matters:

##### *Clause 1 - Short title*

##### *Clause 2 - Principal Act*

Clauses 1 and 2 contain the formal citation provisions of the Bill.

##### *Clause 4 - Authorised investments*

Subclause 4(a) clarifies the language of subsection 14(1) of the Trustee Act without changing its meaning.

Subclause 4(g) replaces outdated legislative references in subparagraph 14(1)(g)(ii) of the Trustee Act with references to the current legislation.

**Subclauses (b) and (c) bring paragraphs 14(1)(a) and 14(1)(b) respectively up to date by including reference to the Territories. As a result Government securities of a Territory and debentures or securities guaranteed by the Government of a Territory are included among authorised trustee investments.**