

1989

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**TRUSTEE COMPANIES (AMENDMENT) BILL 1989**

**EXPLANATORY MEMORANDUM**

**Circulated by Authority of the Attorney-General**

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## TRUSTEE COMPANIES (AMENDMENT) BILL 1989

### Outline

The Trustee Companies (Amendment) Bill (the Bill) will provide for the amendment of the Trustee Companies Act 1947 (the Principal Act) to extend the operation of joint applications by a person named as an executor, or performing the administration of a deceased person's estate, to join with a trustee company to handle the affairs of the estate. The Bill also contains amendments which provide for minor increases in commissions payable to trustee companies and the introduction of other fees for services provided by a trustee company.

The Bill will repeal sections 5 to 8 (inclusive) of the Principal Act and substitute provisions expanding on the repealed sections to allow authorisation to be given to a trustee company to act either jointly or alone, by the person entitled to the probate, or by one of several executors, or by the person entitled to administration with the will annexed, or by the person entitled to administration on intestacy. The Bill also details the capacity in which the trustee company will act.

The Bill will provide for the amendment of section 18 of the Principal Act to allow for minor increases in commissions payable to trustee companies for their services.

The Bill will also provide for the insertion, after section 18 of the Principal Act, of provisions dealing with the definition of capital value; the payment of commission; restrictions affecting the payment of commission; trust fees; fees for the preparation of returns; directors fees; and fees generally.

Details of the Bill are included in the attached notes on clauses.

### Financial Impact Statement

The Bill will have no effect on income or expenditure.

Notes on clauses

Trustee Companies (Amendment) Bill 1989

Clause 1 : Short Title

This clause cites the short title, when enacted, as the Trustee Companies (Amendment) Act 1989.

Clause 2 : Principal Act

This clause provides that where the term "Principal Act" is used, it refers to Trustee Companies Act 1947.

Clause 3 : Substitution

This clause repeals sections 5 to 8 of the Principal Act and substitutes new sections 5-8A.

New section 5 will provide that authorisation may be given to a trustee company by a person entitled to probate.

Subsection 5(1) will provide that where a person as executor is entitled to apply for and obtain probate of the will, that person may -

- (a) join with a trustee company; or
- (b) instead of applying personally, authorise a trustee company to apply.

Subsection 5(2) will provide that an application made pursuant to subsection (1) may be granted by the Court unless the testator by his or her will has expressed the desire that -

- (a) the office of executor should not be delegated; or
- (b) a trustee company or that particular trustee company should not act in the trusts of the will.

New section 6 will provide that authorisation may be given to a trustee company to act by one of several executors.

Subsection 6(1) will provide that where a person is named as executor and is entitled to apply for and obtain probate of the will jointly with any other person, that person may -

- (a) join the trustee company and any other person entitled to apply for probate; or
- (b) instead of applying personally, authorise a trustee company to apply for a grant of probate for the will, either

- (i) alone, with leave reserved for any person to come in and prove; or
- (ii) jointly with any other person entitled to apply for probate

in the same manner as if the trustee company had been originally named as executor of the will in addition to or in the place of that firstmentioned person.

Subsection 6(2) will provide that an application made pursuant to subsection (1) may be granted by a Court unless the testator by his or her will has expressed the desire that -

- (a) the office of executor should not be delegated; or
- (b) a trustee company or that particular trustee company should not act in the trusts of the will.

New section 7 will provide that authorisation may be given to a trustee company to act by a person entitled to administration with the will annexed. Subsection 7(1) will provide that a person entitled to apply for and obtain a grant of letters of administration with the will ~~the person~~ may -

- (a) join with a trustee company in an application; or
- (b) instead of applying personally, authorise a trustee company to apply for a grant of letters of administration.

Subsection 7(2) will provide that an application made pursuant to subsection (1) may be granted by a Court unless the testator by his or her will has expressed the desire that the office of administrator should not be held by a trustee company or that particular trustee company.

New section 8 will provide that authorisation may be given to a trustee company to act by a person entitled to administration on intestacy.

Subsection 8(1) will provide that a person entitled to obtain administration on intestacy may -

- (a) join with a trustee company in an application; or
- (b) instead of applying personally, authorise a trustee company to apply for a grant of letters of administration of the estate.

Subsection 8(2) will provide that an application made pursuant to subsection (1) may be granted by the Court in accordance with the application.

New section 8A provides a trustee company with the full capacity to act where

(a) the administration of an estate with or without the will annexed; or

(b) probate of a will;

is granted to a trustee company, either alone or jointly with another person.

**Clause 4 : Commission .**

This clause will marginally increase commission rates for trustee companies by the following amendments to section 18 of the Principal Act:

(i) modification of the wording and formulae in subsection 18(2) from dollars for every \$200 to a percentage;

(ii) in effect, increase the commission rate on the capital value of an estate from 4% to 4.5%;

(iii) in effect, increase the commission fee on gross annual income for an estate from 5% to 5.5%;

(iv) retain the commission fee for acting under a power of attorney at 5% of capital or gross income (the amendment simply changes the formula); and

(v) amend subsection 18(3) to stipulate that the commission rates are subject to the Principal Act and remove reference to other charges.

**Clause 5 : Insertion**

This clause will provide for the insertion of the following sections after section 18 of the Principal Act:

New section 18A will provide a definition of capital value to be applied to estates which have been committed to the management of a trustee company before the commencement date of these amendments, and to those estates which are to be managed by a trustee company after the amendments become effective.

New section 18B will provide for the payment of commission out of the estate at any time after the estate has been committed to the administration or management of a trustee company.

New section 18C will impose various restrictions affecting the payment of commission. These

restrictions will provide that a person associated with:

- (a) a trustee company; or
- (b) an executive officer of a trustee company;

is not entitled to receive any commission in respect of the performance of a function in relation to any property of an estate committed to the administration or management of the company unless expressly authorised under the estate or a trust instrument. Where such a commission is paid to a trustee company an appropriate adjustment will be made when the respective assets are realised. These restrictions do not apply to allowable commissions payable to a bank, or an approved person provided each beneficiary expressly authorises the approved person to perform a function in connection with the estate. Where commissions are paid at an excess rate above the allowable rate, the bank or approved person will repay the excess or pay interest at 20% per annum or at a prescribed rate for any unpaid excess amount.

New section 18D will deal with the issue of trustee fees and will provide that where a trustee company administers or manages an estate for a period of not less than 2 years, the company is entitled to receive a trust fee. The proposed new section provides a formula for when fees are payable and the rate applicable which in effect is 0.25 per cent of the capital value of the estate or \$500, whichever is the lesser.

New section 18E will provide that a trustee company shall be entitled to charge and receive a fee for preparing and lodging any necessary returns for taxes or duties in connection with the estate.

New section 18F will provide for the payment of directors' fees where an officer of a trustee company is required to act as a director of any corporation connected with the estate.

New section 18G will permit payment of necessary fees to a trustee company for specified services as additional to any commission for administration or management of the estate. A person interested in the estate may make application to a court to reduce the fee where such a fee is excessive.

**Clause 6 : Application-fees**

This clause will provide that the fees referred to in sections 18D, 18E and 18F of the Principal Act as amended by this Bill are payable only in respect of estates committed to the administration or management of a trustee company on or after the date of commencement of this Bill.