

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

TRUSTEE COMPANIES (AMENDMENT) ORDINANCE 1985

No. 34 of 1985

The main purpose of this Ordinance is to amend the Trustee Companies Ordinance 1947 (the "Principal Ordinance") to enable the Attorney-General to obtain information from a trustee company about its activities, to authorize an inquiry into the affairs of a trustee company, or to authorize an audit of a trustee company's books and accounts.

The Ordinance also imposes more stringent reporting requirements on trustee companies, revises penalty provisions and enables trustee companies to combine funds from more than one estate or trust in a single investment.

The amendments providing for obtaining information, inquiry, audit and more stringent reporting requirements derive from recommendations of a Working Party set up by the Victorian Government following the collapse of the Trustees, Executors and Agency Company Ltd. These recommendations were subsequently implemented in Victorian legislation. There are some differences between the amendments and the Victorian recommendations because of differences between conditions and trustee legislation in the A.C.T. and Victoria. The amendment enabling combinations of funds in a single investment will enable increased income to be obtained for beneficiaries of small estates and trusts.

Details of the Ordinance are as follows:

Section 1 provides that the proposed Ordinance may be cited as the Trustee Companies (Amendment) Ordinance 1985.

Section 2 provides that in the proposed Ordinance the words "Principal Ordinance" mean the Trustee Companies Ordinance 1947.

Section 3 defines a number of words and phrases used in the proposed Ordinance.

Section 4 amends section 24 of the Principal Ordinance to make it an offence for a trustee company to contravene sub-section 24(1) of the Principal Ordinance (which prescribes which activities may lawfully be carried on by a trustee company in the A.C.T.), and to increase the penalty which can be imposed on an officer of a trustee company wilfully concerned in a breach of sub-section 24(1).

Section 5 inserts a new section 25A in the Principal Ordinance. Section 25A enables a trustee company to combine moneys belonging to more than one estate in order to invest these moneys together in one fund. The income earned from the investment is to be distributed rateably between the estates from which the contributing moneys are taken. Investment of combined moneys is only to be made in investments authorized by the Trustee Ordinance or by each of the instruments creating the trusts to which the moneys belong. No investment may be made which is of a kind that is expressly prohibited by the instrument creating the relevant trust.

This provision enables, for example, moneys from a number of smaller trusts to be combined in a single investment (e.g. a mortgage) in order to obtain better returns for the estates than would be possible if the moneys were invested separately.

Section 6 amends section 26 of the Principal Ordinance to increase the penalty which may be imposed for a breach of section 26 (which deals with improper dealings with moneys by a director, member or officer of a trustee company).

Section 7 amends section 28 of the Principal Ordinance to prescribe maximum penalties which may be imposed on a trustee company for failure to comply with provisions of section 28 requiring payment of certain unclaimed trust moneys to the Attorney-General and requiring statements setting out certain information relating to unclaimed moneys to be delivered to the Attorney-General. Formerly a penalty was set for each day the offence continues. This section also amends section 28 to make it an offence for any officer of a trustee company to be wilfully concerned in a commission of an offence by a trustee company against the provisions of section 28 (rather than only directors and managers of the company as was the case) and to set penalties that may be imposed for this offence.

Section 8 amends section 31 of the Principal Ordinance to require statutory declarations about the financial position of a trustee company to be made quarterly (rather than half-yearly as was the case), to require a copy of such declarations to be sent to the Attorney-General (in addition to the Registrar of the Supreme Court) and to be given to any person applying for it (rather than only members or creditors of the company as was the case).

The section also amends section 31 to prescribe maximum penalties that may be imposed on a trustee company for a breach of section 31, to make it an offence for an officer of a trustee company to be wilfully concerned in the commission of such an offence by the trustee company (rather than every director and manager of the company who authorizes or permits the offence to be committed, as was the case) and prescribes a new maximum penalty for such an offence.

Section 9 inserts new sections 31A and 31B in the Principal Ordinance.

Section 31A enables the Attorney-General to require a trustee company to provide him with information regarding the affairs of the company or its activities as executor, administrator, trustee, receiver, guardian or attorney.

The Attorney-General can exercise this power if it appears to him that the trustee company may be in breach of the Principal Ordinance, of another law of the Territory relevant to its activities under the Ordinance or of its obligations as a trustee.

It is an offence for a trustee company to fail, without reasonable excuse, to comply with the requirement or for an officer of the trustee company to be wilfully concerned in the commission of an offence by a trustee company against this section.

Section 31B enables the Attorney-General to authorize a person to undertake an inquiry into the affairs of a trustee company or its activities as executor, administrator, trustee, receiver, guardian or attorney, or to conduct an audit of the books of account of the company, including those relating to any estate, trust or property managed or administered by the company. The Attorney-General can authorize a person to undertake an inquiry or audit where it appears to the Attorney-General that the trustee company may be in breach of the Principal Ordinance, of another law of the Territory relevant to its activities under the Ordinance, or of its obligations as a trustee.

The section also requires a trustee company to make available its books and information for the purposes of an inquiry or audit. Failure to do so without reasonable excuse is an offence. It is also an offence for an officer of the trustee company to be wilfully concerned in the commission of an offence against the section by a trustee company.

Section 10 amends section 35 of the Principal Ordinance to allow the Attorney-General to prescribe penalties of up to \$500 for breaches of any regulations made under the Ordinance, rather than \$200 as was formerly provided.

Section 11 amends the heading of the First Schedule of the Principal Ordinance in order to conform with the reference to that Schedule in section 3 of the Principal Ordinance.

Section 12 substitutes a more comprehensive form of financial declaration for that previously set out in the Second Schedule to the Principal Ordinance.

Section 13 makes various minor amendments to the Principal Ordinances to give effect to changes in drafting style and, in one case, to correct a printing error.

Authorized by the
Attorney-General