

CLAUSE NOTES

TRUSTEE COMPANIES AMENDMENT BILL 2010

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 to be appointed by proclamation.

Clause 3 provides that the Trustee Companies Act 1953 is referred to as the Principal Act

Clause 4 Amends section 3 of the Principal Act (Interpretation).

The amendments proposed to this section are consequential on the taking over of entity level regulation by the Commonwealth. In particular, a trustee company will, in the future, be defined as a licensed trustee company within the meaning of Chapter 5D of the *Corporations Act 2001* of the Commonwealth (the *Corporations Act*).

Clause 5 Repeals section 4 and 4A. Section 4 of the Principal Act outlines the mechanisms a trustee company must go through to be able to operate in Tasmania. These requirements are quite onerous, and it is thought that they may be the cause of a lack of national trustee companies seeking to operate in Tasmania. The provision is no longer required because trustee companies will now be licensed under the Commonwealth Act. Clause 4A is repealed as it is inconsistent with amendments made to the Commonwealth *Corporations Act*.

Clause 6 Repeals subsection (3) of section 7 of the Principal Act as it is inconsistent with amendments made to the *Commonwealth Corporations Act*.

Clause 7 Changes terminology used in section 11 of the Principal Act so that it is consistent with amendments made to the *Commonwealth Corporations Act*.

Clause 8 Repeals section 12 of the Principal Act which is no longer required.

Clause 9 Changes terminology used in section 13 of the Principal Act so that it is consistent with amendments made to the *Commonwealth Corporations Act*.

Clause 10 omits subsections (2), (3) and (4) of Section 15 of the Principal Act. These subsections deal with fees, fees will now be covered by Chapter 5D of the *Commonwealth Corporations Act*.

Clause 11 changes terminology used in section 17 of the Principal Act so that it is consistent with amendments made to the *Commonwealth Corporations Act*.

Clause 12 repeals section 17A of the Principal Act. Section 17A of the Principal Act addresses borrowing by trustee companies. This will now be dealt with under Chapter 5D of the *Commonwealth Corporations Act*.

Clause 13 repeals section 18 of the Principal Act and substitutes a new section. Section 18 addresses the commission chargeable by a company. The new section 18 will be consistent with Chapter 5D of the *Commonwealth Corporations Act*.

Clause 14 amends section 18A of the Principal Act which deals with management charges in relation to charitable trusts; they make provision for the fees, commission and other charges that may be charged by a trustee company in relation to the administration or management of an estate or perpetual trust. This section is to be amended as a result of the Commonwealth taking responsibility for the regulation of such matters.

Clause 15 repeals section 18C of the Principal Act (power of trustee companies to establish common funds) and substitutes a new section on the matter to clarify how common funds may be administered.

Clause 16 repeals section 18E of the Principal Act – investment by Trustee Company of its own funds. This matter is addressed in Chapter 5D of the Commonwealth *Corporations Act*.

Clause 17 repeals sections 18G (Trustee company to give information to Attorney-General where directed) and 18H (Declaration by trustee company) neither of which are required now the Commonwealth has taken over regulation of trustee companies.

Clause 18 repeals section 20 and 21 of the Principal Act. These sections are removed as the Commonwealth has taken over regulation of trustee companies.

Clause 19 repeals Division 1, Part 3 of the Principal Act – restrictions on classes of business that may be undertaken by trustee companies. The Commonwealth has assumed regulation of this matter.

Clause 20 repeals section 34A of the Principal Act – powers and duties of auditors of trustee companies. The Commonwealth has assumed regulation of this matter.

Clause 21 changes terminology used in section 36 so that it is consistent with Chapter 5 of the *Commonwealth Corporations Act*.

Clause 22 repeals sections 38, 39 and 39AA of the principal Act which are no longer required now that the Commonwealth has taken over regulation of trustee companies.

Clause 23 repeals sections 40 and 40AA of the Principal Act as these matters are now covered by Commonwealth legislation.

Clause 24 omits subsection (2) of section 40A. This subsection gives the Governor regulation making power in relation to the establishment and operation of common funds. This power is no longer required as the subject matter is now covered by the Commonwealth legislation.

Clause 25 repeals Schedules 2, 2A, 3 and 5 of the Principal Act. These matters dealt with in these Schedules are now covered by commonwealth legislation.

Clause 26 provides that in Part 3, the *Administration and Probate Act 1935* is referred to as the Principal Act.

Clause 27 amends section 25 of the *Administration and Probate Act 1935* so that the section applies to trustee companies

Clause 28 provides for the automatic repeal of this Act.
This is standard practice for amending legislation.