

CLAUSE NOTES

TRUSTEE COMPANIES AMENDMENT BILL 2009

Clause 1: Short Title

Clause 2: Commencement

The Act will commence on Royal Assent

Clause 3: Principal Act

The Trustee Companies Act 1953 is being amended by this Bill.

Clause 4: Section 3 amended (Interpretation)

Section 3 is amended to insert a definition of “trustee holding company” which refers to the new section 4A.

Clause 5: Section 4A inserted

The New Section 4A defines a trustee holding company as a body holding 100% of the issued shares of a trustee company. The section provides that when a body become a trustee holding company it can be listed in the new Schedule 2A which is being created by this Bill (Schedule 2 lists trustee companies) and if it ceases to operate or changes its name the listing can be changed.

Clause 6: Section 18F amended (Duty of Trustee Company no to acquire shares in itself)

Section 18F currently prevents a trustee company from acquiring shares in itself – the changes will apply the same restriction to buying and holding shares in the holding company or any of its subsidiaries.

Clause 7: Section 39AA amended (Provisions relating to holding etc of shares in trustee companies and trustee holding companies)

Section 39AA applies the criteria in Schedule 5 to trustee companies and the changes will apply the Schedule to the holding company.

Clause 8: Schedule 2 amended (Trustee Companies)

Schedule 2 is an out of date list of the trustee companies allowed under the Act to operate in Tasmania. The last merger in 2001 saw the creation of Tasmanian Perpetual Trustees Limited and Perpetual Trustees Tasmania Limited is being deleted as it is no longer in existence.

Clause 9: Schedule 2A inserted

The Schedule is currently blank but will list any trustee holding companies that meet the requirements of Schedule 5. Once the MyState/Perpetual merger has been accomplished the Ministerial order will list the new body in the Schedule.

Clause 10: Schedule 5 amended (Provisions relating to holding etc of shares in trustee companies and trustee holding companies.

The terminology of Schedule 5 refers to its various components as paragraphs which is contrary to the current drafting style and not compatible with the programs used to generate Bills and the legislation database so the opportunity is being taken to change paragraph to clause throughout the Schedule

Subclause (a) of CI 8 changes the heading

Subclause (b) of CI 8 omits subclause 1 from clause (2) of the Schedule and inserts three new subclauses:

New Subclause 2(1) to the Schedule continues to apply the 10 per cent limitation on shareholding to trustee companies and applies the same limit on a holding company which owns a trustee company.

New Subclause 2(1AA) to the Schedule allows the Minister to approve a [holding] company acquiring and holding all the shares of a trustee company. This will enable the Minister to approve the new MyState holding company when it is in a position to start acquiring the shares of the members of Tasmanian Perpetual.

New subclause 2(1AB) to the Schedule provides that Ministerial approval shall not be granted unless the holding company also meets and is likely to continue to meet the shareholding limitations.

Subclauses (c),(d),(e),(g),(h),(j),(l),(n),(p),(q),(t),(v),(w),(x),(z), (za),(zb),(zd),(ze),(zg),(zh),(zk),(zm),(zn),(zp),(zs) of CI 8 - merely change references to paragraphs so they become references to clauses which is the current drafting style for Schedules.

Subclauses (f),(i),(k),(m),(o),(r),(s),(u),(y),(zc),(zf),(zi),(zl), (zo),(zq),(zr),& (zt) all insert references to a holding company so that the provisions which regulate shareholding and share dealing in relation to shares in a trustee company apply equally to a trustee holding company (ie the owner of the trustee company). Amongst other controls the provisions prevent the issue of shares and voting on shares where the issue or voting would be in contravention of the 10 per cent rule. An onus will be placed on the directors of the holding company (in the same way as currently applies to a trustee company) to ensure the disposal of shares of any shareholders if the holding would exceed the 10 per cent rule.

Subclauses (zi) and (zj) make a minor amendment to remove a provision which refers to another subclause which had been removed from the Act in 1993.