

Serial 92
Companies (Trustees and Personal Representatives) (National Uniform
Legislation) Implementation Bill 2010
Ms Lawrie

A Bill for an Act to amend the *Companies (Trustees and Personal
Representatives) Act* and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

COMPANIES (TRUSTEES AND PERSONAL REPRESENTATIVES)
(NATIONAL UNIFORM LEGISLATION) IMPLEMENTATION BILL 2010

Act No. [] of 2010

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2010

An Act to amend the *Companies (Trustees and Personal Representatives) Act* and for related purposes

[Assented to [] 2010]
[Second reading [] 2010]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Companies (Trustees and Personal Representatives) (National Uniform Legislation) Implementation Bill 2010*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Companies (Trustees and Personal Representatives) Act

3 Act amended

This Part amends the *Companies (Trustees and Personal Representatives) Act*.

4 Repeal of section 4

Section 4

*repeal***5 Amendment of section 5 (Definitions)**

(1) Section 5

omit

Act, unless the contrary intention appears –

substitute

Act:

(2) Section 5, definitions **authorized company**, **manager** and **trustee company***omit*

(3) Section 5

*insert (in alphabetical order)***chief executive officer**, in relation to a trustee company, means the person who is primarily and directly responsible to the directors for the general and overall management of the company.**trustee company** means a licensed trustee company as defined in section 601RAA of the Corporations Act 2001.(4) Section 5, definition **estate***omit*

committed in pursuance of this Act to the administration or management of a trustee company or authorized company

6 Repeal of sections 6 to 13, 25, 27 and 27A

Sections 6 to 13, 25, 27 and 27A

repeal

7 Repeal and substitution of section 29

Section 29

*repeal, substitute***29 Administration bond or security not required**

No order can be made requiring a trustee company:

- (a) to enter into an administration bond under the *Administration and Probate Act*, or
- (b) to give any other security for the administration of an estate.

8 Repeal of sections 30 to 33, 36, 38 and 39

Sections 30 to 33, 36, 38 and 39

*repeal***9 Repeal of Parts IIA and III**

Parts IIA and III

*repeal***10 Repeal of Part IV heading**

Part IV, heading

*repeal***11 Repeal of section 48**

Section 48

*repeal***12 Repeal and substitution of sections 53 to 56**

Sections 53 to 56

*repeal, substitute***53 Effect of compulsory transfer under Corporations Act 2001**

(1) This section applies if:

- (a) ASIC:

- (i) cancels the licence of a trustee company (the **transferring company**); and
 - (ii) makes a determination under section 601WBA of the Corporations Act 2001 that there is to be a transfer of estate assets and liabilities from the transferring company to another trustee company (the **receiving company**); and
 - (iii) issues a certificate under section 601WBG of that Act (a **certificate of transfer**) that the transfer is to take effect; and
- (b) the transferring company or receiving company, or both, are registered in the Territory.
- (2) When the certificate of transfer comes into force, the receiving company becomes the successor in law in relation to the estate assets and liabilities of the transferring company, to the extent of the transfer.
- (3) Without limiting subsection (2), when the certificate of transfer comes into force:
- (a) the following become assets and liabilities of the receiving company (in the same capacity as they were assets and liabilities of the transferring company) without any transfer, conveyance or assignment:
 - (i) if the transfer is a total transfer – all the estate assets and liabilities of the transferring company;
 - (ii) if the transfer is a partial transfer – all the estate assets and liabilities included in the list mentioned in section 601WBG(2)(c) of the Corporations Act 2001; and
 - (b) the duties, obligations, immunities, rights and privileges applying to the transferring company apply to the receiving company to the extent of the transfer; and
 - (c) if a certificate of transfer includes provisions of a kind mentioned in section 601WBG(3) of the Corporations Act 2001:
 - (i) if the provisions specify that particular things are to happen or are taken to be the case – those things are taken to happen, or to be the case, in accordance with those provisions; and

- (ii) if the provisions specify a mechanism for determining things that are to happen or are taken to be the case – things determined in accordance with the mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism; and
 - (d) any appointment or nomination of the transferring company to a particular capacity (for example, as trustee, executor or administrator) in relation to transferred estate assets and liabilities is taken to be an appointment or nomination of the receiving company to that capacity in relation to those assets and liabilities.
- (4) Terms used in this section and also in Part 5D.6 of the Corporations Act 2001 have the same meanings in this section as they have in that Part.

54 Exemption from tax for compulsory transfer

- (1) Territory tax is not chargeable in relation to anything:
 - (a) that occurs by operation of a compulsory transfer provision; or
 - (b) done:
 - (i) under a compulsory transfer provision; or
 - (ii) to give effect to a compulsory transfer provision; or
 - (iii) for a purpose connected with, or arising out of, giving effect to a compulsory transfer provision.
- (2) In this section:

compulsory transfer provision means section 53 of this Act or Part 5D.6, Division 2 of the Corporations Act 2001.

Territory tax means:

- (a) stamp duty under the *Stamp Duty Act*; or
- (b) any application or registration fee or other tax, duty, fee or charge imposed by any law of the Territory.

13 Amendment of section 57 (Only certain companies to act as executor, &c.)

(1) Section 57(a), at the end

insert

or

(2) Section 57(b)

omit

14 Repeal and substitution of section 59

Section 59

repeal, substitute

59 Regulations

The Administrator may make regulations under this Act.

15 New Part 4

After section 59

insert

Part 4 Transitional matters for Companies (Trustees and Personal Representatives) (National Uniform Legislation) Implementation Bill 2010**60 Definitions**

In this Part:

2010 Act means the *Companies (Trustees and Personal Representatives) (National Uniform Legislation) Implementation Bill 2010*.

commencement day means the day on which the 2010 Act commences.

old Act means this Act as in force immediately before the 2010 Act commenced.

61 Authorized company may continue to act

- (1) This section applies if, immediately before the commencement day, a company:
 - (a) was an authorized company as defined in the old Act; and
 - (b) was acting as an executor of the will, or trustee of the estate, of a deceased person.
- (2) Despite the amendment of the old Act by the 2010 Act:
 - (a) the company may continue to act as executor or trustee until the administration of the estate of that deceased person is completed; and
 - (b) the old Act continues to apply to the company acting in that capacity.

62 Savings and transitional regulations

- (1) The Administrator may make regulations of a savings or transitional nature consequent on the enactment of the 2010 Act.
- (2) The regulations may have retrospective operation only to the extent to which they:
 - (a) do not have effect before the commencement day; and
 - (b) do not disadvantage a person (other than the Territory or a Territory authority) by decreasing the person's rights or imposing liabilities on the person.
- (3) This section and any regulations made under it expire 2 years after the commencement day.

16 Repeal of Schedule 2

Schedule 2

repeal

17 Further amendments

The Schedule has effect.

Part 3 Repeal of Companies (Trustees and Personal Representatives) Regulations

18 Repeal

The *Companies (Trustees and Personal Representatives) Regulations* (Subordinate Legislation No. 36 of 1981) are repealed.

Schedule Further amendments of Companies (Trustees and Personal Representatives) Act

section 17

Provision	Amendment	
	<i>omit</i>	<i>substitute</i>
Part I, heading	Part I	Part 1
Part II, heading	Part II	Part 2
section 19(1)(a)	company, its manager or	company or its chief executive officer or
section 28(1)	its managing director, director, manager or secretary certifying –	a director of the company or its chief executive officer or secretary certifying any of the following:
section 28(1)(g)	estate; and	estate;
section 28(2)(a)	act;	act; and
section 49(1)	a company	a trustee company
section 49(1)(a)	whole paragraph	(a) a director of the company or its chief executive officer or secretary; or
section 49(4)	a company	a trustee company
section 50, heading	manager	chief executive officer
section 50(1)	a company its manager the manager	a trustee company chief executive officer chief executive officer
section 50(2)	the manager of a company	chief executive officer of a trustee company
section 51(1) and (2)	a company	a trustee company

section 52, heading	Company	Trustee company
section 52(1) and (2)	a company	a trustee company
Part V, heading	Part V	Part 3
