

LegalTalk Alert

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PRICEWATERHOUSECOOPERS 



Proposed amendments to *Trustees Companies Amendment Bill*

The proposed amendments to the *Trustees Companies Amendment Bill 2009* (NSW) (Trustees Bill) to the *Trustees Companies Act 1964* (NSW) (Trustees Act) are set to abolish the regulation of trustee companies at state level.

At federal level, the *Corporations Legislation Amendment (Financial Services Modernisation) Act 2009* (Cth) will introduce a new Chapter 5D in the existing *Corporations Act 2001* (Cth), which confers power on the Australian Securities and Investments Commission to regulate trustee companies.

The combined effect of the above amendments is the shift of regulation of trustees companies from the State to the Commonwealth. The changes will affect any new trustee companies and those currently under the regulation of the *Trustees Act*.

The rationale for the amendments includes:

- elimination of unnecessary regulatory burden
- removal of barriers to entry and improving competition for trustee companies, and
- consumer protection and access to cost-effective dispute resolution mechanisms.

Impact

Companies providing “traditional trustee company services” will be required to hold an Australian Financial Services Licence (AFSL). Traditional trustee company services include:

- acting as a trustee, receiver, attorney, manager or guardian
- acting as executor and to apply for and obtain probate of that will, and

- establishing and operating common funds.

The amendments introduce the following new regulatory regimes:

- fees charged by trustee companies and their disclosure
- duties of officers and employees of licensed trustee companies
- limits in relation to the control of trustee companies, and
- procedures in relation to the transfer of estate assets and liabilities where a trustee company loses its AFSL.

State laws, which currently confer power on trustees, are not affected by the amendments.

Timeframe

At the federal level, the changes are intended to take effect from 1 January 2010. The New South Wales Government has indicated that it also intends to conform to the Commonwealth timeframe.

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