

Explanatory Notes

FOR

Amendment To Be Moved During Consideration In Detail By The Honourable Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity

Trusts Bill 2025

Objectives of the Amendment

The policy objective of the amendment to be moved during consideration in detail of the Trusts Bill 2025 (the Bill) is to provide that a person who suffered loss because of a trustee's wrongful distribution of trust property (the claimant) who is subject to an order under section 113(2) of the *Trusts Act 1973* (Trusts Act) may apply to the court to have the order set aside after the commencement of the Bill.

The court must set aside the order if satisfied that the claimant had not, before commencement, started a proceeding against the trustee to enforce a remedy in respect of the wrongful distribution.

Achievement of the Objectives

Under the current Trusts Act, a person who suffers loss because of a wrongful distribution of trust property (a claimant) cannot take legal action against the person who received the distribution (the recipient) without first exhausting any legal remedies against the trustee who made the wrongful distribution, unless the court has granted the claimant leave to take action against the recipient.

The Bill changes the law and enables the claimant to enforce a remedy against the recipient without first exhausting their remedies against the trustee and without seeking the leave of the court.

Clause 275 of the Bill is a transitional provision that applies if the claimant was refused leave by the court under the current Trusts Act, but had not started a proceeding against the trustee before the commencement of the Bill, so that the person can enforce the remedy in the way permitted by clause 143 of the Bill.

Clause 275(2) provides that the order (under section 113 of the Trusts Act) refusing leave to bring an action against the recipient of the wrongful distribution without first exhausting all remedies against the trustee who made the wrongful distribution ceases to have effect.

To avoid any suggestion that the transitional provision undermines the independence of the court which refused leave, clause 275 is being replaced with a new clause that provides the claimant with a right to apply to the court to set aside the order refusing leave. The new clause provides that the court must set aside the order if it is satisfied that, before commencement of the Bill, the claimant had not started a proceeding against the trustee to enforce a remedy in respect of the wrongful distribution.

If the order is set aside, clause 143 of the Bill will apply to the claimant for the purpose of enforcing a remedy in respect of the wrongful distribution of trust property.

Alternative Ways of Achieving Policy Objectives

There is no alternative way to achieve the policy objectives other than by legislative amendment.

Estimated Cost for Government Implementation

The amendment to be moved during consideration in detail does not introduce any new costs.

Consistency with Fundamental Legislative Principles

The amendment is consistent with Fundamental Legislative Principles.

Consultation

The Justice, Integrity and Community Safety Committee conducted a public inquiry into the Bill.

No consultation was undertaken in relation to the amendment proposed to the Bill.

NOTES ON PROVISIONS

Clause 1 omits current clause 275 and inserts a new clause 275, which is a transitional provision that applies if, before the commencement a person (the claimant): suffered loss because of a wrongful distribution of trust property; the claimant applied for leave under section 113(2) of the repealed Act; and the court made an order refusing the person's application (a relevant order). The claimant may apply to the court to have the relevant order set aside. The court must set aside the relevant order if satisfied that the claimant had not, before the commencement, started a proceeding against the trustee to enforce a remedy in respect of the wrongful distribution.