

PUBLIC CONSULTATION – COMMENTS AND AMENDMENTS

Submissions were received from:

- Supreme Court of NSW
- Association of Independent Retirees (A.I.R) Limited
- The New South Wales Bar Association
- Trustee Corporations Association of Australia
- The Law Society of New South Wales

Responses received were all supportive of the proposed Regulation.

Amendments

Following public consultation, the following minor amendments were made to the proposed Regulation:

1. Following comment from the Supreme Court, an exception similar to s19E of the *Trustee Companies Act* was included, excluding charitable trusts from the operation of the new long term trust fees.
2. Cl 15(5) of the proposed Regulation deals with the payment of the long term trust fee from capital and income of the trust property. The consultation draft stated that not more than half may be paid from income. This requirement has been removed following comment from the Public Trustee. The requirement was copied from the corresponding clause in the *Trustee Companies Act*. However, while it may have been considered adequate for Trustee Corporations (as most of their long term trusts are testamentary trusts where the income and capital beneficiaries are different entities eg a life tenant and remainder person), the Public Trustee has a different profile of trusts. The Public Trustee has approximately ten thousand trusts, the majority of which are compensation trusts where the beneficiary to income and capital are the same person. To limit the payment of the long term trust fee from income at 50% provides a disadvantage to most of the Public Trustee's clients: it only allows 50%, not 100%, of the total fee if chargeable to be a tax deductible charge within the trust. Removing the requirement that not more than half of the long term trust fee may be paid from the income of a trust will allow the Public Trustee to better meet its obligations to each trust.
3. Cl 15(2) has been amended to make it easier to understand, giving the long term trust fees as an annual percentage (rather than as a number of cents per \$100 per quarter). It has been further amended to give the Public Trustee the flexibility to charge the long term trust fees at fixed times in each year (as opposed to the quarterly anniversary of each trust). These changes do not change the amount that was previously proposed to be charged.