

EXECUTION OF TRUSTS (WAR FACILITIES) ACT.

Act No. 26, 1917.

An Act to facilitate the execution of trusts, and to amend the law relating to the limitation of actions and suits during the present war, and for a certain period thereafter; to validate certain powers of attorney, deeds, and acts; and for purposes consequent thereon or incidental thereto. [Assented to, 7th November, 1917.]

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BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the “Execution of Trusts (War Facilities) Act, 1917.”

Short title.

(2) In this Act unless the context otherwise requires—“trustee” includes an executor and an administrator as defined in the Wills, Probate and Administration Act, 1898.

(3) This Act shall not apply to any trustee under an implied or constructive trust.

2. (1) A trustee (whether a sole trustee or a trustee with others) may, notwithstanding any rule of law or equity to the contrary, by power of attorney, attested by one or more witnesses, delegate to any person, including a co-trustee, capable of being appointed to be a trustee of the trust, the execution, during any period for which the trustee is engaged on war service within the meaning of this Act, and a further period of six months thereafter of any trust of which he is trustee.

Delegation of
Trusts.
cf. 5 Geo. V,
c. 13, s. 1.

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(2) For the purposes of this Act the words "engaged on war service" shall mean—

- (a) engaged on active service in connection with the present war as a member of the military or naval forces of the Crown or of any of His Majesty's allies; or
- (b) engaged on active service abroad as a member of the Medical Corps Nursing Service of the military or naval forces of the Crown or of any of His Majesty's allies; or
- (c) engaged on active service abroad in connection with the Army Medical Service or of any of His Majesty's allies; or
- (d) engaged on service in any work abroad, in connection with the present war, of the British or Australian Red Cross Society, or the Saint John Ambulance Association, or of any religious or patriotic organisation; or
- (e) being in connection with the present war a prisoner of war in the enemy's country or being interned in the country of a neutral power; or
- (f) engaged abroad in making munitions, or in any other service in connection with the war.

(3) All jurisdiction and powers of any court shall apply to the donee of a power of attorney given under this Act so far as respects the execution of the trusts in the same manner as if the donee were a trustee of the trust.

cf. 5 Geo. V,
c. 13, s. 3.

(4) A statutory declaration by the donee of a power of attorney under which the execution of a trust is delegated, that the donor is engaged on war service within the meaning of this Act, or that in any transaction the donee is acting in execution of the trust, shall be accepted as sufficient evidence of the fact by any person dealing with the donee.

(5) The powers conferred by this section may also be exercised by any trustee not engaged on war service in relation to any period during which, being out of New South Wales, he is for any reason connected with the present war unable to return to New South Wales.

3. In favour of any person dealing with the donee of a power of attorney made under this Act, any act done or instrument executed by the attorney shall, notwithstanding that the power has become revoked by the act of the donor of the power or by his death or otherwise, be as valid and effectual as if the donor of the power were alive and of sound mind and had himself done such act or executed such instrument, unless such person had actual notice of the revocation of the power or of the death or unsoundness of mind of the donor of the power before such act was done or instrument executed.

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Revocation of
power of
attorney.
5 & 6 Geo. V,
c. 76, s. 3.

4. A trustee to whom this Act applies shall, for the purposes of this Act, be presumed to remain alive until definite news of his death has been received or such death has been presumed by a court of competent jurisdiction, and the fact that he is reported "missing" or "missing and believed to be killed" shall not be construed as giving to persons having knowledge of such report actual notice of his death, although in fact it has occurred.

Persons
reported
missing.
1915, c. 76,
s. 3.

5. Every such power of attorney executed, before the commencement of this Act, by a trustee who was at the time of the execution of the power or who has since been engaged on war service, and every deed, act, matter, or thing heretofore or hereafter executed or done by virtue of such power of attorney, shall be deemed to have been and to be as good, valid, and effectual as if this Act had been in force at the time of the execution of such power of attorney.

Validation.

6. Every power of attorney or other delegation under this Act made by a member of the Australian Imperial Forces who is absent from Australia on war service, signed by such member and purporting to be witnessed by an officer of such forces of or above the rank of major shall be deemed to be duly executed.

Delegation
by soldiers
on active
service.

7. The provisions of this Act shall not affect the provisions of the Trustees Delegation of Powers Act, 1915, or of any Act consolidating or amending that Act.

Act of 1915
not affected.

8. Any right of entry or distress, and any right to commence any action, suit, or other proceeding, possessed by any person on active service at the time he

Certain rights
of persons on
active service
preserved.

enters

George V., enters such service, or which accrues to him during
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during such service or within twelve months thereafter,
of the period of limitation fixed by any Act with respect
to any such right.

In the event of such expiration such person shall be
entitled to make such entry or distress, or commence
such action, suit, or proceeding at any time before the
expiration of the said period of twelve months.

This section shall take effect whether such service
began or such right accrued before or after the com-
mencement of this Act.
