

**TRUSTEE COMPANIES (AMENDMENT) ACT.**

**New South Wales**



ANNO VICESIMO PRIMO

**ELIZABETHÆ II REGINÆ**

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**Act No. 45, 1972.**

An Act to increase the maximum commission chargeable by trustee companies in respect of certain estates; to enable trustee companies to charge certain fees; for these and other purposes to amend the Trustee Companies Act, 1964; and for purposes connected therewith. [Assented to, 11th April, 1972.]

BE

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**B**E it enacted by the Queen'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:—

Short title  
and com-  
mencement.

1. (1) This Act may be cited as the "Trustee Companies (Amendment) Act, 1972".

(2) This section and section two of this Act shall commence on the day upon which the assent of Her Majesty to this Act is signified.

(3) Sections three and four of this Act shall respectively commence on such day or days as may be appointed by the Governor in respect of each such section and notified by proclamation published in the Gazette.

(4) Section five of this Act and the Schedule to this Act shall commence on the day appointed and notified under subsection one of section two of the Supreme Court Act, 1970.

Amendment  
of Act No.  
6, 1964.

2. The Trustee Companies Act, 1964, is amended—

Sec. 3.  
(Interpre-  
tation.)

(a) by inserting next after the definition of "Minor" in subsection one of section three the following new definition:—

"Regulations" means regulations under this Act.

Sec. 18.  
(Commis-  
sion charge-  
able by  
trustee  
company.)

(b) (i) by omitting from paragraph (a) of subsection one of section eighteen the word "or" where secondly occurring;

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- (ii) by omitting from paragraph (b) of the same No. 45, 1972 subsection the word "is" and by inserting in lieu thereof the words "was, before the commencement of section two of the Trustee Companies (Amendment) Act, 1972,";
- (iii) by omitting from the same paragraph the words "of the other capacities mentioned in the foregoing provisions" and by inserting in lieu thereof the words "capacity other than that referred to in paragraph (a)";
- (iv) by inserting at the end of the same paragraph the following word and new paragraph :—
  - ; or
  - (c) Where the estate is, after the commencement of section two of the Trustee Companies (Amendment) Act, 1972, committed to the administration or management of the trustee company in any capacity other than that referred to in paragraph (a) of this subsection—
    - (i) four dollars twenty-five cents for every one hundred dollars of the corpus or capital value of the estate; and
    - (ii) five dollars twenty-five cents for every one hundred dollars of the income received by the trustee company on account of the estate.
- (v) by inserting in subsection two of the same section after the word "and" where secondly occurring the words ", except where otherwise provided by this Act,";

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- (vi) by omitting from the same subsection the symbol and word “, fee”;
- (vii) by omitting from subsection three of the same section the words “the rate of commission” wherever occurring and by inserting in lieu thereof the words “the commission or any part thereof or the rate thereof”;
- (viii) by omitting subsection six of the same section and by inserting in lieu thereof the following subsections :—

(6) In subsection one of this section, “corpus or capital value”, in relation to an estate committed to the administration or management of a trustee company—

(a) where the estate was so committed before the commencement of section two of the Trustee Companies (Amendment) Act, 1972, and the trustee company’s administration or management of the estate was completed before that commencement—means the gross corpus or capital value of the estate without deduction of debts or liabilities secured or unsecured;

(b) where the estate was so committed before that commencement and the trustee company’s administration or management of the estate continues after that commencement—means—

(i) in the case of any assets (whether real or personal) of the estate realised before that commencement—the gross

amount

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amount of the value of those No. 45, 1972  
assets as at the date on which  
the estate was so committed;  
and

- (ii) in the case of any assets  
(whether real or personal)  
of the estate realised after  
that commencement—the gross  
amount realised for those  
assets,

without deduction of debts or liabilities  
secured or unsecured; and

- (c) where the estate is so committed after  
that commencement—means the gross  
amount realised for the assets (whether  
real or personal) of the estate without  
deduction of debts or liabilities secured  
or unsecured.

(6A) For the purposes of subsection six of  
this section—

- (a) where an asset of an estate comprises  
moneys (other than the proceeds of  
the realisation of any asset)—
  - (i) that asset shall be deemed to  
have been realised when it was  
collected on behalf of the  
estate; and
  - (ii) the amount realised for that  
asset shall be deemed to have  
been the amount of the moneys  
so collected; and

(b)

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(b) where an asset of an estate is distributed, transferred, appropriated, or released, without realisation, to beneficiaries, whether by or as a result of agreement between beneficiaries or otherwise—

(i) that asset shall be deemed to have been realised when it was so distributed, transferred, appropriated or released; and

(ii) the amount realised for that asset shall be deemed to have been the amount of the value of the asset as at the date of the distribution, transfer, appropriation or release.

**New sec.  
18A.**

(c) by inserting next after section eighteen the following new section :—

**Payment of  
commission.**

18A. Where a trustee company—

(a) is entitled by virtue of section eighteen of this Act to receive commission in respect of the corpus or capital value of an estate; or

(b) would be so entitled to receive that commission but for the fact that any or all of the assets of the estate have not been realised, as referred to in that section,

the following provisions have effect :—

(c) that commission may, subject to paragraph (d) of this section, be paid out of the

estate

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estate at any time after the estate was committed to the administration or management of the trustee company; and

- (d) while any or all of the assets remain to be so realised, the commission which may be so paid out shall not exceed the commission which would be payable if those assets were so realised for an amount equal to the amount of their value at the time the estate was so committed, the amount of commission paid out, whether before or after the commencement of section two of the Trustee Companies (Amendment) Act, 1972, being adjusted when those assets respectively are so realised.

- (d) by omitting section nineteen and by inserting in lieu thereof the following sections :—

Subst. sec.  
19, new  
secs. 19A-  
19D.

19. (1) A reference in this section to a relevant period applicable to an estate committed to the administration or management of a trustee company is a reference to—

Fee for  
carrying  
on business.

- (a) the period between the commencement of section two of the Trustee Companies (Amendment) Act, 1972, and the anniversary of that committal that next succeeds that commencement;
- (b) the year that next succeeds that anniversary;  
and
- (c) each succeeding year.

(2)

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(2) While the administration or management of an estate committed to a trustee company involves, during a relevant period applicable to the estate, the carrying on of a business which belongs wholly to the estate, or in which the estate has an interest as partner, the trustee company shall be entitled to receive, from time to time, out of the estate, a fee at a rate not exceeding one-half of one per centum on the value of so much of the assets employed in the business as is owned by the estate, that value being determined as at the end of that relevant period.

Fee for  
collection  
of rent.

19A. (1) A reference in this section to a relevant period applicable to an estate committed to the administration or management of a trustee company is—

(a) subject to paragraph (b) of this subsection, a reference to—

(i) the period between the commencement of section two of the Trustee Companies (Amendment) Act, 1972, and the anniversary of that committal that next succeeds that commencement;

(ii) the year that next succeeds that anniversary; and

(iii) each succeeding year; or

(b) where the regulations make provision for or with respect to the determination of some other period, a reference to that other period.

(2) Where during a relevant period applicable to an estate committed to the administration or management of a trustee company an officer of the trustee company collects rent in respect of property



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property belonging to the estate, the company shall No. 45, 1972 be entitled to receive out of the estate a fee in respect of the gross amount of rent so collected during that period, and—

- (a) if the regulations do not make provision for or with respect to the determination of the fee payable under this section in respect of that period—the fee shall, where that gross amount is within the description contained in an item in the First Column of the Table to this subsection, be the fee determined in the manner specified in the Second Column of that Table opposite that item; or
- (b) if the regulations make provision for or with respect to the determination of the fee payable under this section in respect of that period—the fee shall be the fee determined in accordance with the regulations.

TABLE.

First Column.	Second Column.
Gross Amount.	Fee.
Not exceeding \$10,000.	7 per centum of the gross amount.
Exceeding \$10,000, but not exceeding \$20,000.	\$700 or 6 per centum of the gross amount, whichever is the greater.
Exceeding \$20,000, but not exceeding \$50,000.	\$1,200 or 5 per centum of the gross amount, whichever is the greater.
Exceeding \$50,000.	\$2,500 or 4 per centum of the gross amount, whichever is the greater.

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(3) Notwithstanding anything in section eighteen of this Act, where an officer of a trustee company collects rent in respect of property belonging to an estate, the trustee company shall not be entitled to receive commission under that section in respect of the rent so collected.

(4) Notwithstanding anything in subsection two of this section, a trustee company shall not be entitled to receive a fee under this section in respect of rent collected by an officer of the trustee company if some other method of collecting the rent is expressly or impliedly directed in the will or other relevant instrument (if any).

Fee on  
twentieth  
anniversary  
of perpet-  
ual trust.

19B. (1) A trustee company shall, in respect of a perpetual trust committed to its administration or management, be entitled to receive, at the prescribed time, out of the corpus or income of the perpetual trust a fee not exceeding one dollar for every one hundred dollars of the assets of the trust at that time.

(2) In subsection one of this section, "prescribed time", in relation to a perpetual trust committed to the administration or management of a trustee company, means—

(a) where the perpetual trust is committed after the commencement of section two of the Trustee Companies (Amendment) Act, 1972, or was so committed before that commencement but not earlier than twenty years before that commencement—

(i) the conclusion of the period of twenty years commencing at the date of committal; and

(ii) the conclusion of each subsequent period of twenty years; or

(b)

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- (b) where the perpetual trust was so committed No 45, 1972  
earlier than twenty years before the com-  
mencement of section two of the Trustee  
Companies (Amendment) Act, 1972—
- (i) that commencement;
  - (ii) the conclusion of the period of  
twenty years after that commence-  
ment; and
  - (iii) the conclusion of each subsequent  
period of twenty years.

19c. (1) Where an estate committed to the Director's  
administration or management of a trustee com- and other  
pany has an interest in a corporation and an officer fees.  
of the trustee company, in his capacity as such an  
officer, acts as a director of the corporation for  
purposes connected with the administration or  
management of the estate—

- (a) the trustee company shall be entitled to  
receive from the corporation and to retain  
any director's fees which would be payable  
to the officer had he so acted otherwise  
than in his capacity as such an officer; and
- (b) neither the officer nor the estate shall be  
entitled to receive the fees which the trustee  
company is entitled to receive under para-  
graph (a) of this subsection.

(2) Where the estate of a deceased person  
has been committed to the administration or  
management of a trustee company and that person  
had, immediately before his death, an interest in  
any property as a joint tenant, the trustee company  
shall be entitled to charge and to receive from  
the surviving joint tenant or tenants a fee accord-  
ing to the value of the work done and services

rendered

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rendered for the purpose of providing information as to that interest to or for the benefit of that tenant or those tenants.

General provisions in respect of fees.

19D. (1) The fees payable under sections nineteen, 19A, 19B and 19C of this Act in respect of an estate committed to the administration or management of a trustee company are, subject to subsection three of section 19A of this Act, in addition to all moneys properly expended by the trustee company and chargeable against the estate and to commission payable under section eighteen of this Act.

(2) The fees payable under sections nineteen and 19A of this Act in respect of an estate shall be payable out of moneys belonging to the estate.

(3) Where, in respect of an estate, any judge sitting in the equitable jurisdiction of the Court is of opinion that the fee payable under section nineteen, 19A or 19B or subsection two of section 19C of this Act is excessive, the judge may, of his own motion or on the application of any person interested in the estate, review the fee and may, on the review, reduce the fee.

(4) Nothing in section nineteen, 19A or 19B or subsection one of section 19C of this Act prevents the payment of any fee which the will or other relevant instrument (if any) directs to be paid either in addition to or in lieu of the fee payable under any of those sections.

(5) The fees provided for under sections nineteen, 19A, 19B and 19C of this Act are payable in respect of estates committed to the administration or management of a trustee company before the

commencement

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commencement of section two of the Trustee Companies (Amendment) Act, 1972 (whether before, on or after the day appointed and notified under subsection two of section one of this Act) and to estates so committed after that commencement.

(6) Nothing in this Act authorises any of the fees payable under section nineteen, 19A or 19C of this Act to be charged or received in relation to—

- (a) any business in so far as it was carried on before the commencement of section two of the Trustee Companies (Amendment) Act, 1972;
  - (b) any rent collected before that commencement;
  - (c) any director's fee payable in respect of any period before that commencement; or
  - (d) any information provided before that commencement.
- (e) by omitting from subsection two of section twenty-nine the words "Registrar of Companies" and by inserting in lieu thereof the words "Corporate Affairs Commission";
- (f) by inserting next after section thirty-six the following new section :—

37. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may be made so as to differ according to time, place or circumstances.

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**No. 45, 1972 3.** The Trustee Companies Act, 1964, is further amended—

Further  
amendment  
of Act No.  
6, 1964.

Second  
Schedule.

(a) by omitting from the Second Schedule the words "PERMANENT TRUSTEE COMPANY OF NEW SOUTH WALES (LIMITED)." and by inserting in lieu thereof the words "PERMANENT TRUSTEE COMPANY LIMITED.";

Third  
Schedule.

(b) by omitting from the First Part of the Third Schedule the words "Permanent Trustee Company of New South Wales (Limited)" and by inserting in lieu thereof the words "Permanent Trustee Company Limited".

Further  
amendment  
of Act No.  
6, 1964.

**4.** The Trustee Companies Act, 1964, is further amended—

Second  
Schedule.

(a) by omitting from the Second Schedule the words "PERPETUAL TRUSTEE COMPANY (LIMITED)." and by inserting in lieu thereof the words "PERPETUAL TRUSTEE COMPANY LIMITED.";

Third  
Schedule.

(b) by omitting from the First Part of the Third Schedule the words "Perpetual Trustee Company (Limited)" and by inserting in lieu thereof the words "Perpetual Trustee Company Limited".

Further  
amendment  
of Act No.  
6, 1964.

**5.** A provision of the Trustee Companies Act, 1964, as amended by this Act, specified in the First Column of the Schedule to this Act is amended in the manner specified in the Second Column opposite thereto.

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SCHEDULE.

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## SCHEDULE.

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Sec. 5.

First Column.	Second Column.
Provision of Act No. 6, 1964.	Manner of Amendment.
Subsection (1) of section 3. Section 6. Section 9.	Omit the definition of "Judge". Omit "court"; insert "Court". Omit "court" wherever occurring; insert "Court".
Section 10.	Omit "court or a judge" wherever occurring; insert "Court".
Section 15.	Omit "court or a judge"; insert "Court".
Subsection (3) of section 18.	Omit "any judge sitting in the equitable or probate jurisdiction of". Omit "such judge may of his"; insert "the Court may of its".
Subsection (3) of section 19D.	Omit "any judge sitting in the equitable jurisdiction of". Omit "judge may, of his"; insert "Court may, of its".
Subsection (1) of section 21.	Omit "court or a judge"; insert "Court".
Subsection (2) of section 21.	Omit "court or judge" wherever occurring; insert "Court".
Subsection (3) of section 21.	Omit "court or judge" wherever occurring; insert "Court".
Subsection (4) of section 21.	Omit "court or judge"; insert "Court". Omit "or he".
Subsection (1) of section 22.	Omit "court or a judge"; insert "Court".
Subsection (3) of section 22.	Omit "court or judge"; insert "Court".
Section 24.	Omit "court or a judge" wherever occurring; insert "Court".
Section 25.	Omit "court"; insert "Court".
Paragraph (a) of subsection (7) of section 26.	Omit "court"; insert "Court".
Section 27.	Omit "court" wherever occurring; insert "Court".

SCHEDULE

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SCHEDULE—*continued.*

First Column.	Second Column.
Provision of Act No. 6, 1964.	Manner of Amendment.
Section 28.	Omit "court" wherever occurring; insert "Court".
Section 30.	Omit subsections (1), (2), (3) and (4).
Subsection (5) of section 30.	Omit "court or judge" wherever occurring; insert "Court".
	Omit "such application"; insert "application under this Act to the Court".
Subsection (2) of section 33.	Omit "court" wherever occurring; insert "Court".

SUPPLY