

**TRUSTEE COMPANIES (AMENDMENT) ACT, 1979,
No. 186**

New South Wales



ANNO VICESIMO OCTAVO

ELIZABETHÆ II REGINÆ

Act No. 186, 1979.

An Act to amend the Trustee Companies Act, 1964, in relation to the fees charged by trustee companies and to their powers in relation to estates committed to their administration or management, and for other purposes. [Assented to, 21st December, 1979.]

See also Wills, Probate and Administration (Amendment) Act, 1979; Public Trustee (Amendment) Act, 1979; Trustee (Amendment) Act, 1979.

Trustee Companies (Amendment).

BE 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 :—

1. This Act may be cited as the "Trustee Companies **Short title.**
(Amendment) Act, 1979".

2. (1) Except as provided in subsection (2), this Act shall **Commence-**
commence on the date of assent to this Act. **ment.**

(2) Section 4, in its application to Schedule 1 (5)–(9), and Schedule 1 (5)–(9) shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. This Act contains the following Schedules :— **Schedules.**

SCHEDULE 1.—AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964.

SCHEDULE 2.—AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, BY WAY OF STATUTE LAW REVISION.

4. The Trustee Companies Act, 1964, is amended in the **Amendment**
manner set forth in Schedules 1 and 2. **of Act**
No. 6,
1964.

Trustee Companies (Amendment).

Sec. 4.

SCHEDULE 1.

AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964.

(1) Section 5—

Omit the section.

(2) Sections 6, 7—

Omit the sections, insert instead :—

Trustee
company
may be
authorised
to obtain
letters of
admini-
stration.

6. (1) In any case in which a person may apply for and obtain a grant of letters of administration of the estate of a deceased person (whether with or without the will annexed), that person may—

- (a) join with a trustee company in an application for a grant of letters of administration of the estate to himself and the trustee company jointly; or
- (b) instead of himself applying, authorise a trustee company to apply for and obtain a grant of letters of administration of the estate.

(2) Where—

- (a) a person joins with a trustee company in an application pursuant to subsection (1) (a); or
- (b) a trustee company makes an application that it has, pursuant to subsection (1) (b), been authorised to make,

the Court may grant letters of administration of the estate in accordance with the application.

Trustee Companies (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE TRUSTEE COMPANIES ACT,
1964—*continued.*

(3) Sections 15A–15C—

After section 15, insert :—

15A. Section 18A of the Public Trustee Act, 1913, applies to and in respect of a trustee company as if a reference in that section to—

Election
by trustee
company
to
administer
small
estates.

- (a) the public trustee were a reference to a trustee company;
- (b) an election under the hand of the public trustee or the hand of the chief trust officer or the solicitor to the public trustee and sealed with the public trustee's seal were a reference to an election under the hand of the managing director, manager, assistant manager or secretary of the trustee company; and
- (c) a memorandum under the hand of the public trustee or the hand of the chief trust officer or the solicitor to the public trustee were a reference to a memorandum under the hand of the managing director, manager, assistant manager or secretary of the trustee company.

15B. (1) In this section, “incapable person”, in relation to money in the hands of a trustee company, means a person who, in the opinion of the trustee company, is unable to give a good discharge.

Main-
tenance,
etc., of
minor or
incapable
person.

Trustee Companies (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE TRUSTEE COMPANIES ACT,
1964—*continued.*

(2) Where a minor or an incapable person is entitled to money in the hands of a trustee company, the trustee company may, notwithstanding any law to the contrary, from time to time—

- (a) pay that money to such person as the trustee company thinks fit, to be applied by that person for the maintenance, education, advancement or benefit of the minor or incapable person; or
- (b) so apply that money itself.

(3) A trustee company is not bound to see to the application of money paid to a person under subsection (2) (a).

(4) A trustee company may, at any time and from time to time, apply to the Court—

- (a) for directions as to the administration of any money referred to in subsection (2);
- (b) to vary directions which may already have been given in regard to that money; or
- (c) to determine any matter relating to that money, and any direction or determination of the Court shall, if given effect to by the trustee company, exonerate the trustee company from any claim or demand by any person.

(5) A reference in subsection (2) to a minor being entitled to money in the hands of a trustee company includes a reference to a minor who is entitled to that money contingently on attaining an age specified in the instrument creating the entitlement.

Trustee Companies (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE TRUSTEE COMPANIES ACT,
1964—*continued.*

15c. Where a trustee company is appointed trustee, ^{General} executor or administrator or is otherwise authorised to act ^{powers of} under this Act, then, unless expressly prohibited by this ^{trustee} Act or by or under an instrument, it may, at its discretion, ^{company.} but in addition to and not as restricting any other powers, ^{cf. Public} exercise the following powers :— ^{Trustee Act,} ^{1913, s. 35.}

- (a) sell property by public auction or private contract, altogether or in parts, and subject to such conditions as it thinks fit;
- (b) postpone the sale, calling in and conversion of any property that it has a duty to sell, other than property that is of a wasting, speculative or reversionary nature;
- (c) exchange property or join in a partition of property;
- (d) lease property for a term not exceeding 10 years and give to a lessee an option of renewal if the aggregate duration of the lease and any such renewal does not exceed 10 years;
- (e) enter into any share-farming agreement for a period not exceeding 3 years;
- (f) for the purpose of preserving trust property, borrow money upon the security of the property, and secure the payment thereof and interest by mortgage or charge of the property, with or without a power of sale, and enter into such covenants, provisions and agreements as may be agreed upon by the trustee company and the mortgagee, and, without affecting the generality of the foregoing, exercise the power to give any

Trustee Companies (Amendment).

 SCHEDULE 1—*continued.*

 AMENDMENTS TO THE TRUSTEE COMPANIES ACT,
 1964—*continued.*

such security in respect of any debt or liability incurred prior to the trustee company's appointment, and pay interest secured by any such mortgage or charge out of the income or, if the income is insufficient, out of capital.

(4) Section 17A—

After section 17, insert :—

Power to
make
advances.

17A. (1) A trustee company may make advances from a common trust fund established under section 16 (1) for any purpose of or relating to any estate or trust in the course of administration by it.

(2) Any sum advanced by a trustee company pursuant to subsection (1) shall bear interest at a rate to be fixed by the trustee company.

(3) Any sum advanced by a trustee company pursuant to subsection (1) and any interest thereon shall be a charge on the assets of the estate or trust or on the specific asset in respect of which the advance was made.

(4) Where any sum advanced by a trustee company under subsection (1) is applied in or towards the discharge of any debt or liability, the charge under subsection (3) shall rank in the same order of priority as the debt or liability.

(5) Any sum advanced from a common trust fund under subsection (1) shall, for the purposes of section 16 (2), be deemed to be invested in a class of investment in which money to the credit of that common trust fund may be invested.

Trustee Companies (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE TRUSTEE COMPANIES ACT,
1964—*continued.*

(5) Section 19—

Omit the section, insert instead :—

19. (1) A trustee company shall be entitled to receive out of any estate committed to its administration or management in respect of any prescribed service provided by the trustee company in its administration or management of that estate such management fee as is reasonable having regard to the work involved in providing that service. ^{Management fees.}

(2) A management fee which a trustee company is entitled to receive under subsection (1) in respect of any service shall be fixed by the trustee company but shall not exceed the maximum amount (if any) prescribed in respect of that service.

(3) A trustee company shall be entitled to receive out of any estate committed to its administration or management in respect of any service of an unusual nature provided by the trustee company in its administration or management of that estate such management fee as is reasonable having regard to the work involved in providing that service if a majority of the persons interested in the estate has agreed to that service being provided and to the amount of the fee.

(4) Management fees payable under this section are payable at such times and subject to such conditions as may be prescribed.

(6) Section 19A—

Omit the section.

Trustee Companies (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE TRUSTEE COMPANIES ACT,
1964—*continued.*

(7) Section 19B—

Omit the section, insert instead :—

Trust fees.

19B. (1) In this section—

“corpus or capital value”, in relation to an estate committed to the administration or management of a trustee company, means the gross amount of the value of the assets (whether real or personal) of the estate without deduction of debts or liabilities secured or unsecured;

“prescribed time”, in relation to any estate committed to the administration or management of a trustee company, means—

- (a) where the estate is so committed after the commencement of Schedule 1 (5)–(9) to the Trustee Companies (Amendment) Act, 1979, or was so committed before that commencement but not earlier than 3 years before that commencement—
- (i) the conclusion of the period of 3 years commencing at the date of committal;
 - (ii) the conclusion of each subsequent period of 12 months; and
 - (iii) the date on which the trustee company’s administration or management of the estate is completed; or

Trustee Companies (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE TRUSTEE COMPANIES ACT,
1964—*continued.*

- (b) where the estate was so committed earlier than 3 years before the commencement of Schedule 1 (5)–(9) to the Trustee Companies (Amendment) Act, 1979—
 - (i) that commencement;
 - (ii) the conclusion of the period of 12 months after that commencement;
 - (iii) the conclusion of each subsequent period of 12 months; and
 - (iv) the date on which the trustee company's administration or management of the estate is completed.

(2) Subject to subsection (3), a trustee company shall, in respect of any estate committed to its administration or management for at least 2 years, be entitled to receive, at the prescribed time, out of the estate a trust fee not exceeding—

- (a) an amount equal to one-quarter of one per cent of the corpus or capital value of the estate at that time; or
- (b) \$100 or, where some other amount is prescribed, that other amount,

whichever is the lesser amount.

(3) The trust fee which is, but for this subsection, payable under subsection (2) at the time that a trustee company's administration or management of an estate is completed shall be reduced by a sum that is equal to one-twelfth of that trust fee for each whole month and each part of any month between the time that the trustee company's administration or management of the estate is

Trustee Companies (Amendment).

 SCHEDULE 1—*continued.*

 AMENDMENTS TO THE TRUSTEE COMPANIES ACT,
 1964—*continued.*

completed and the time that a trust fee would have been next payable under subsection (2) if the estate had continued to be administered or managed by the trustee company.

(8) Section 19C (2)—

Omit the subsection.

(9) (a) Section 19D (1)—

Omit “19A” where firstly occurring.

(b) Section 19D (1)—

Omit “, subject to subsection (3) of section 19A,”.

(c) Section 19D (2)—

Omit “19A”, insert instead “19B”.

(d) Section 19D (3), (3A)—

Omit section 19D (3), insert instead :—

(3) Where, in respect of an estate, the Court is of the opinion that a fee payable under section 19 or 19B is excessive, the Court may, of its own motion or on the application of any person interested in the estate, review the fee and may, on that review, reduce the fee.

(3A) Where a fee is reduced pursuant to subsection (3) by more than 10 per cent, the trustee company to which the fee is payable shall, unless the Court in special circumstances otherwise orders, pay the costs of the review.

Trustee Companies (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE TRUSTEE COMPANIES ACT,
1964—*continued.*

(e) Section 19D (4)—

Omit “19A or 19B or subsection (1) of section 19C”,
insert instead “19B or 19C”.

(f) Section 19D (5)—

Omit “sections 19, 19A, 19B and 19C”, insert instead
“section 19C”.

(g) Section 19D (6), (7), (8)—

Omit section 19D (6), insert instead :—

(6) Nothing in this Act authorises the fees payable under section 19C to be charged or received in relation to any director's fee payable in respect of any period before the commencement of section 2 of the Trustee Companies (Amendment) Act, 1972.

(7) The fees provided for under sections 19 and 19B are payable in respect of estates committed to the administration or management of a trustee company before the commencement of Schedule 1 (5)–(9) to the Trustee Companies (Amendment) Act, 1979, (whether before, on or after the day appointed and notified under section 1 (2) of this Act) and to estates so committed after that commencement.

(8) Nothing in this Act authorises any fee payable under section 19 to be charged or received in relation to any service provided by a trustee company before the commencement of Schedule 1 (5)–(9) to the Trustee Companies (Amendment) Act, 1979, unless the service so provided is a service referred to in section 19 or 19A, as in force immediately before that commencement, and was provided after the trustee company was last entitled to receive a fee in respect of that service under that section, as so in force.

Trustee Companies (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE TRUSTEE COMPANIES ACT,
1964—*continued.*

(10) Section 20A—

After section 20, insert :—

Trustee
company
not
required
to file
accounts.
cf.
Public
Trustee
Act, 1913,
s. 35A.

20A. (1) A trustee company, when acting alone in relation to any estate, is not required to file or file and pass accounts relating to the estate unless the Court, of its own motion or on application by or on behalf of some person interested in the estate, so orders.

(2) Where a trustee company is appointed and acts jointly with any other person in relation to any estate, the trustee company and that other person are not required to file or file and pass accounts relating to the estate unless that other person desires to claim commission for his pains and trouble or unless the Court, of its own motion or on application by or on behalf of some person interested in the estate, so orders.

(3) This section applies to estates committed to the administration or management of a trustee company before the commencement of this section and to estates so committed after that commencement.

(11) Second Schedule—

Omit paragraph (b) under the heading "PERMANENT TRUSTEE COMPANY LIMITED".

Trustee Companies (Amendment).

SCHEDULE 2.

Sec. 4.

AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, BY WAY
OF STATUTE LAW REVISION.

(1) Section 2 (5)—

Omit "Interpretation Act of 1897, as amended by subsequent Acts", insert instead "Interpretation Act, 1897".

(2) Section 11 (1) (c)—

Omit ", as amended by subsequent Acts".

(3) Section 17—

Omit ", as amended by subsequent Acts".

(4) Section 18 (1)—

Omit ", as amended by subsequent Acts".

(5) Section 37 (3)—

After section 37 (2), insert :—

(3) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.

(6) Third Schedule, Second Part—

Omit ", as amended by subsequent Acts".
