

TRUSTEE (AMENDMENT) ACT, 1979, No. 189

New South Wales



ANNO VICESIMO OCTAVO

ELIZABETHÆ II REGINÆ

Act No. 189, 1979.

An Act to amend the Trustee Act, 1925, to confer additional powers on the public trustee and trustee companies, and for other purposes. [Assented to, 21st December, 1979.]

Trustee (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 (Amendment) Act, Short title. 1979".

2. The Trustee Act, 1925, is amended in the manner set forth in Schedule 1. Amendment
of Act No.
14, 1925.

SCHEDULE 1.

Sec. 2.

AMENDMENTS TO THE TRUSTEE ACT, 1925.

(1) Section 5, definition of "Regulation"—

After the definition of "Purchaser", insert :—

"Regulation" means regulation made under this Act.

(2) Section 6 (3)—

Omit the subsection, insert instead :—

(3) The person to be appointed a trustee may be the person, or one of the persons, by whom or with whose consent the appointment is or may be made.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE TRUSTEE ACT, 1925—*continued.*

(3) Section 7 (3)—

Omit the subsection, insert instead :—

(3) The person to be appointed a trustee may be the person, or one of the persons, by whom or with whose consent the appointment is or may be made.

(4) (a) Section 10 (2), (2A), (2B)—

Omit the subsections, insert instead :—

(2) Where a person is, by a will, appointed both executor and trustee thereof but probate of the will or administration with the will annexed is, by or under this or any other Act, granted or transferred to the public trustee or a trustee company in the place of that person or in addition to that person, then the public trustee or trustee company shall, without further appointment, be deemed to be appointed trustee or one of the trustees of the will, as the case may require.

(b) Section 10 (3)—

Omit “or grant”, insert instead “grant or transfer”.

(5) (a) Section 21 (1A)—

After section 21 (1), insert :—

(1A) Where any security of a company is held by a trustee, and the trustee can lawfully hold or retain the security, the trustee may, in like manner as if he were beneficially entitled to the security, accept and carry out any proposal made in writing by or on

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE TRUSTEE ACT, 1925—*continued.*

behalf of another company for the purchase by that other company of any securities in the first-mentioned company in consideration of the allotment of securities in that other company whether with or without any other consideration in any case where—

- (a) the proposal is conditional upon the holders of a proportion (not being less than 75 per cent) in value of such of the securities in the first-mentioned company as have not already been acquired by that other company agreeing to deal with those securities in accordance with the proposal; and
- (b) a sufficient number of the holders of the securities in question (including the trustees) agree in writing to deal with the shares in accordance with the proposal.

(b) Section 21 (2)—

Omit “description of the reconstructed or new or purchasing company.”, insert instead :—

description of—

- (a) in the case of a scheme or arrangement referred to in subsection (1)—the reconstructed, new or purchasing company;
or
- (b) in the case of a proposal referred to in subsection (1A)—the company that purchased the security.

(c) Section 21 (5)—

After “this section”, insert “(subsection (1A) excepted)”.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE TRUSTEE ACT, 1925—*continued.*

(6) Section 44 (7)—

Omit “only and if and as far as”, insert instead “only if and as far as”.

(7) Section 45A—

After section 45, insert :—

Equitable life tenant.

Equitable
life tenant—
conditions
on entry
into
possession.

45A. (1) In this section, “prescribed trustee” means the public trustee or a trustee company.

(2) Where the equitable life tenant of land which is comprised in an estate committed to the administration or management of a prescribed trustee is entitled to the possession of that land or to the receipt of the rents and profits of that land, the prescribed trustee may, by notice in writing served on that life tenant, require him to comply with such conditions as to—

- (a) the keeping in repair of the buildings and other erections upon the land;
- (b) the payment of rents, taxes, rates and other outgoings affecting the land that are not of a capital nature; and
- (c) the payment of premiums in respect of policies of insurance against the loss of or damage to the buildings and other erections upon the land,

as the prescribed trustee thinks fit.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE TRUSTEE ACT, 1925—*continued.*

(3) If an equitable life tenant of land breaches any condition which a prescribed trustee has required him to comply with pursuant to subsection (2), the prescribed trustee may serve a notice on him stating that unless the breach is rectified within a reasonable time specified in the notice the prescribed trustee will be entitled to enter into possession of the land and to receive the rents and profits of the land for the purpose of rectifying the breach.

(4) If a breach of a condition is not rectified within the time specified in the notice served on an equitable life tenant of land under subsection (3)—

- (a) the prescribed trustee is entitled to enter into possession of the land and to receive the rents and profits of the land for the purpose of rectifying the breach; and
- (b) the life tenant ceases to be so entitled until the breach is rectified.

(5) Where a prescribed trustee rectifies a breach of a condition imposed on an equitable life tenant of land, any money received by the prescribed trustee pursuant to subsection (4) that was not applied for the purpose of rectifying the breach shall be paid to that life tenant.

(6) A prescribed trustee shall not require an equitable life tenant of land to comply with any condition pursuant to this section if—

- (a) any instrument by which the estate concerned was committed to the administration or management of the prescribed trustee—
 - (i) expressly prohibits the prescribed trustee from exercising the power conferred by this section; or

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SCHEDULE 1—*continued.*AMENDMENTS TO THE TRUSTEE ACT, 1925—*continued.*

(ii) expressly excuses the life tenant from complying with the condition; or

(b) the Court so orders.

(7) A notice under this section may be served either personally or by post.

(8) Section 46, heading—

Omit “, and payment to the public trustee”.

(9) (a) Section 47, heading—

Before section 47, insert :—

Payment to the public trustee or a trustee company.

(b) Section 47 (1)—

After “public trustee” where firstly occurring, insert “or, except where the money is held in trust for a person who cannot be found, a trustee company”.

(c) Section 47 (1)—

After “public trustee” where secondly and thirdly occurring, insert “or trustee company, as the case may be,”.

(d) Section 47 (2)—

After “public trustee”, insert “or trustee company”.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE TRUSTEE ACT, 1925—*continued.*

(e) Section 47 (3)—

Omit “may at his”, insert instead “or trustee company may at his or its”.

(f) Section 47 (3)—

After “public trustee” where secondly occurring, insert “or trustee company, as the case may be,”.

(10) Section 82 (1)—

Omit “for any minor, or in trust for any persons in succession”.

(11) (a) Section 82A (1)—

Omit “for any minor or in trust for any person in succession”.

(b) Section 82A (1)—

Omit “one thousand dollars or one-third of the value of the land whichever is the less”, insert instead “the prescribed amount”.

(c) Section 82A (1A)—

After section 82A (1), insert :—

(1A) For the purpose of subsection (1), the prescribed amount is—

- (a) in the case of a trustee other than the public trustee or a trustee company—\$1,000 or one-third of the value of the land whichever is the lesser; or

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SCHEDULE 1—*continued.*AMENDMENTS TO THE TRUSTEE ACT, 1925—*continued.*

(b) in the case of the public trustee or a trustee company—

- (i) \$10,000 or, where some other amount is prescribed by the regulations, that other amount; or
- (ii) if all the persons beneficially interested in the land are able to give a good discharge, an amount agreed upon between the public trustee or the trustee company and all those persons,

whichever is the greater.

(12) (a) Section 83 (1)—

Omit the subsection, insert instead :—

(1) Where any property is held in trust for a person, the Court may authorise the trustee to pay or apply capital money subject to the trust for the purpose of providing a home for the person either solely or together with any other person.

(b) Section 83 (5A)–(5C)—

After section 83 (5), insert :—

(5A) Where any property is held by the public trustee or a trustee company in trust for a person, the public trustee or trustee company, as the case may be, may, without the authority of the Court, pay or apply capital money subject to the trust for the purpose of providing a home for the person either solely or together with any other person.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE TRUSTEE ACT, 1925—*continued.*

(5B) Where the public trustee or a trustee company considers it expedient to exercise the power conferred by subsection (5A), the public trustee or trustee company, as the case may be, may, without the authority of the Court, exercise any of the powers specified in subsections (3) and (4).

(5C) Notwithstanding anything to the contrary in subsections (5A) and (5B), the public trustee or a trustee company is not authorised by those subsections to purchase or lease land unless—

- (a) the land is situated in New South Wales or the Australian Capital Territory; and
- (b) the public trustee or trustee company, as the case may be, is authorised by this or any other Act or by an Ordinance of the Australian Capital Territory to invest capital money subject to the trust by way of mortgage of an interest in land of the kind so purchased or leased.

(c) Section 83 (6)—

Omit “minor” wherever occurring, insert instead “person”.

(d) Section 83 (7)—

Omit the subsection, insert instead :—

(7) This section applies—

- (a) whether the trust is for a person solely or together with any other person
- (b) whether the interest of the person is or is not in possession; and

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- (c) whether the interest of the person is limited to a life estate or is not so limited.

(13) Section 104A—

After section 104, insert :—

Regu- 104A. (1) The Governor may make regulations, not
lations. inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed by regulation.

(2) 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.
