

BURNS PHILP TRUSTEE COMPANY LIMITED ACT 1990
No. 82

NEW SOUTH WALES



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**BURNS PHILP TRUSTEE COMPANY LIMITED
ACT 1990 No. 82**

NEW SOUTH WALES



Act No. 82,1990

An Act to provide for the transfer of certain trust business from Burns Philp Trustee Company Limited to Permanent Trustee Company Limited. [Assented to 7 December 1990]

The Legislature of New South Wales enacts:**Short title**

1. This Act may be cited as the Burns Philp Trustee Company Limited Act 1990.

Commencement

2. This Act commences on the date of assent.

Objects of this Act

3. The principal objects of this Act are:

- (a) to transfer to Permanent Trustee Company Limited certain property held by Burns Philp Trustee Company Limited in the capacity of trustee immediately before the date of assent to this Act; and
- (b) to provide that certain appointments or nominations (whenever made) of Burns Philp Trustee Company Limited in the capacity of trustee are taken to be appointments or nominations of Permanent Trustee Company Limited.

Definitions

4. In this Act:

“Burns Philp” means Burns Philp Trustee Company Limited;

“in the capacity of trustee” includes the following (whether alone or jointly with any other person):

- (a) as executor of a will of a deceased person;
- (b) as administrator of the estate of a deceased person;
- (c) as trustee or custodian trustee of any trust deed, declaration of trust, settlement, covenant, agreement OF will, whether originally so appointed or not and whether appointed under hand OF seal or by order of a court or otherwise;
- (d) as judicial trustee appointed by order of any court;
- (e) as manager of an estate under the Protected Estates Act 1983;
- (f) as representative under a deed which is or has been an “approved deed” for the purposes of Division 6 of Part IV of the Companies (New South Wales) Code;

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- (g) as representative under a deed which would have been an “approved deed” for the purposes of Division 6 of Part IV of the Companies (New South Wales) Code but for:
 - (i) regulations made under the Code declaring that a right or interest is an exempt right or interest for the purposes of that Division; or
 - (ii) an interest not being a participation interest within the meaning of the Code because of the exclusions contained in paragraphs (d)–(g) of the definition of that term in section 5 of the Code; or
 - (iii) an exemption or declaration under section 215C of the Code;
 - (h) as agent, attorney or nominee;
- “**new Trustee**” means Permanent Trustee Company Limited;
- “**will**” includes a codicil and any other testamentary writing.

Transfer of property to new Trustee

5. (1) On the date of assent to this Act, any property vested in Burns Philp in the capacity of trustee is divested from Burns Philp and is, to the extent and in the capacity that it was so vested, vested in the new Trustee, except as provided by section 7.

(2) Property vests pursuant to this section without the need for any conveyance, transfer, assignment or assurance.

(3) The new Trustee is, in respect of the property:

- (a) taken to be appointed to act in the capacity of trustee instead of Burns Philp; and
 - (b) entitled and obliged to exercise and discharge all rights, powers, capacities, authorities, duties, liabilities and obligations of Burns Philp in the capacity of trustee to the exclusion of Burns Philp; and
 - (c) to discharge the liabilities and obligations of Burns Philp in the capacity of trustee to the exclusion of Burns Philp,
- except as provided by sections 7, 8 and 9.

(4) In this section, “**liabilities**” includes the following:

- (a) present and future liabilities;
- (b) certain and contingent liabilities;
- (c) ascertained liabilities and liabilities for which only damages may be awarded;
- (d) all claims against Burns Philp and any officer of Burns Philp (in that capacity).

Substitution of new Trustee

6. (1) Any appointment or nomination of Bums Philp as trustee, executor or otherwise in the capacity of trustee is taken to be an appointment or nomination of the new Trustee, except as provided by section 7.

(2) This section applies to such an appointment or nomination:

- (a) whether made (or purporting to be made) before, on or after the date of assent to this Act; and
- (b) whether the appointment or nomination:
 - (i) is in effect on that date; or
 - (ii) takes effect after that date; or
 - (iii) has taken effect previously but some further act or thing is necessary to perfect the appointment to or undertaking of the office.

Property and trusts excluded from this Act

7. (1) This Act does not:

- (a) vest excluded property in the new Trustee; or
- (b) substitute the new Trustee for Burns Philp to act in the capacity of trustee of excluded trusts.

(2) In this section:

“**excluded property**” means property the subject of excluded trusts;

“**excluded trusts**” means the following trusts:

- (a) Bums Philp Group Share Plans, being:
 - (i) the Bums Philp Executive Share Plan established by Bums Philp by deed dated 27 November 1981 (including any trusts established in connection with that Plan); and
 - (ii) the Bums Philp Incentive Plan established by Burns Philp by deed dated 23 February 1988; and
 - (iii) the Bums Philp Employee Share Plan established by Bums Philp by deed dated 6 May 1988;
- (b) Estate Mortgage Trusts, being the following trusts established by deeds between Bums Philp and Estate Mortgage Managers Limited:
 - (i) Estate Mortgage Income Trust No. 1 established by a deed dated 2 February 1976;
 - (ii) Estate Mortgage Investment. Trust established by deed dated 8 June 1982;

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- (iii) Estate Mortgage Depositors Trust established by deed dated 28 November 1983;
- (iv) Estate Mortgage Depositors Trust No. 2 established by deed dated 18 September 1987;
- (v) Estate Mortgage Depositors Trust No. 3 established by deed dated 15 March 1988;
- (vi) Estate Mortgage Depositors Trust No. 4 established by deed dated 7 September 1989.

Common trust funds to be retained by Burns Philp

8. (1) Nothing in this Act:

- (a) vests in the new Trustee any investment funds invested in a Burns Philp common trust fund; or
- (b) is taken to appoint the new Trustee, instead of Burns Philp, as trustee in respect of those investment funds.

(2) Trust funds invested in a Burns Philp common trust fund may remain in the fund after the funds vest in the new Trustee under section 5, and if so:

- (a) the trust funds are to be administered by Burns Philp on behalf of the new Trustee; and
- (b) Burns Philp is to account to the new Trustee for the funds whenever required to do so by the new Trustee; and
- (c) Burns Philp is to remit the whole or part of the funds to the new Trustee if the new Trustee so requests.

(3) Nothing in this section requires Burns Philp:

- (a) to account to the new Trustee for funds invested in a common trust fund; or
- (b) to remit those funds to the new Trustee,

otherwise than in accordance with the rules (if any) of the common trust fund that applied on 19 October 1990.

(4) In this section:

“**Burns Philp common trust fund**” means a common trust fund established by Burns Philp under section 16 of the Trustee Companies Act 1964;

“**investment funds**” means funds other than trust funds;

“**trust funds**” means funds held by Burns Philp in the capacity of trustee immediately before the date of assent to this Act and does not include funds deposited in a Burns Philp common trust fund pursuant to a prospectus issued in relation to that common trust fund.

Liabilities for breach of, trust etc. not affected by this Act

9. (1) Nothing in this Act affects any liabilities of Burns Philp for breach of trust, misfeasance, non-feasance or the exercise of or failure to exercise any discretion in the capacity of trustee occurring before the appointment of a provisional liquidator to Burns Philp on 19 October 1990.

(2) Nothing in this Act affects any rights of Burns Philp to indemnity in respect of those liabilities.

Evidence of transfer of property

10. (1) The production of a copy of this Act is, in any legal proceedings, conclusive evidence of the vesting of property pursuant to this Act.

(2) A certificate under the seal of the new Trustee to the effect that property specified in the certificate has been vested in it pursuant to this Act is conclusive evidence of the matters certified for the following purposes:

- (a) any application by the new Trustee to be registered under the Real Property Act 1900;
- (b) any application by the new Trustee or a successor in title of the new Trustee to bring land under the Real Property Act 1900;
- (c) any transfer, conveyance, reconveyance, mortgage or other instrument or dealing whatever in respect of any interest in any land (whether or not under the Real Property Act 1900);
- (d) any creation of an easement or other interest in respect of any land (whether or not under the Real Property Act 1900).

Exemption from stamp duty etc.

11. (1) An instrument executed only for:

- (a) the purpose of giving effect to this Act; or
- (b) a purpose ancillary to, or consequential on, the operation of this Act,

is exempt from stamp duty.

(2) On the application of the new Trustee, the Registrar-General is to give effect to the vesting of property in the new Trustee pursuant to this Act without payment of any fee.

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Income etc. received by Burns Philp

12. Burns Philp is to promptly account to the new Trustee for any income or other distribution received by Burns Philp after the date of assent to this Act if the income or distribution arises from property vested pursuant to this Act.

Joinder of new Trustee in legal proceedings

13. The new Trustee may be joined as a party to any legal proceedings in addition to, or instead of, Burns Philp if

- (a) the new Trustee or Burns Philp makes such an application; and
- (b) it appears to the court to be necessary or proper having regard to the provisions of this Act.

Access to records

14. Burns Philp is, at the request of the new Trustee, to give the new Trustee access to all corporate, accounting and other records, documents or information in its possession which relate to property in respect of which the new Trustee is to act in the capacity of trustee pursuant to this Act.

Trust property unable to be transferred

15. (1) Burns Philp and the new Trustee are to do everything necessary to vest in the new Trustee any property held by Burns Philp in the capacity of trustee if that property cannot be vested in the new Trustee under this Act (for example, because the vesting of the property is not governed by the laws of New South Wales).

- (2) This section does not apply in relation to:
 - (a) excluded property referred to in section 7; or
 - (b) investment funds referred to in section 8.

*[Minister's second reading speech made in—
Legislative Assembly on 21 November 1990
Legislative Council on 28 November 1990]*
