



New South Wales

Trustee Regulation 2010

under the

Trustee Act 1925

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Trustee Act 1925*.

JOHN HATZISTERGOS, MLC
Attorney General

Explanatory note

The object of this Regulation is to remake, with minor changes, the provisions of the *Trustee Regulation 2005* which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the guidelines with respect to the investment of trust funds by trustees where the value of the funds subject to the trust does not exceed \$50,000,
- (b) the bodies that are approved insurers for the purposes of insuring repayment of loans secured by property,
- (c) the persons that may act as agents for receiving payments and giving receipts in connection with the execution of trusts and the administration of estates,
- (d) savings and formal matters.

This Regulation is made under the *Trustee Act 1925*, including sections 14DB (1), 18 (3), 53 (4) and 104A (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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1 Name of Regulation

This Regulation is the *Trustee Regulation 2010*.

2 Commencement

This Regulation commences on 1 September 2010 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Trustee Regulation 2005* which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

- (1) In this Regulation:
the Act means the *Trustee Act 1925*.
- (2) Notes included in this Regulation do not form part of this Regulation.

4 Guidelines for trustees

- (1) For the purposes of section 14DB (1) of the Act, this clause sets out guidelines with respect to the investment of trust funds by trustees where the value of the funds subject to the trust does not exceed \$50,000.
- (2) The following investments are investments that a trustee might reasonably consider appropriate for the investment of trust funds:
 - (a) any public funds or Government stock or Government securities of the Commonwealth or any State,
 - (b) any debentures or securities guaranteed by the Government of New South Wales,
 - (c) any debentures or securities:
 - (i) issued by a public or local authority, or a statutory body representing the Crown, constituted by or under any law of the Commonwealth, or of any State or Territory, and
 - (ii) guaranteed by the Commonwealth, any State or the Northern Territory,

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- (d) any debentures or securities issued by the Northern Territory and guaranteed by the Commonwealth,
- (e) interest-bearing deposits in a bank,
- (f) any deposit with, withdrawable shares in, or loan of money to, an authorised deposit-taking institution.

Note. The obligations of a trustee are set out in section 14A of the Act, in other sections of the Act and in other rules and principles of law and equity. A trustee does not comply with the requirements of section 14A of the Act merely by investing trust funds in accordance with the guidelines set out in this clause. See, in particular, section 14DB (2) of the Act.

5 Prescribed insurers

- (1) For the purposes of section 18 (3) of the Act, the following corporations are prescribed insurers:
 - ANZ Lenders Mortgage Insurance Pty. Limited (ACN 008 680 055),
 - Genworth Financial Mortgage Insurance Pty Limited (ACN 106 974 305),
 - Mortgage Risk Management Pty Ltd. (ACN 082 740 010),
 - Permanent LMI Pty Limited (ACN 076 974 000),
 - QBE Lenders' Mortgage Insurance Limited (ACN 000 511 071) (previously PMI Mortgage Insurance Ltd).
- (2) For the purposes of section 18 (3) of the Act, the following corporations are prescribed insurers but only in respect of the insurance of loans that were taken out before the commencement of this Regulation:
 - A.F.G. Insurances Limited (ACN 004 094 357),
 - Genworth Financial Mortgage Indemnity Limited (ACN 001 825 725),
 - The Mortgage Insurance Company Pty. Limited (ACN 000 559 553).

Note. A trustee is not chargeable with a breach of trust arising from loans made on the security of property so long as the requirements of section 18 are complied with. One of the requirements is that the amount of a loan must not exceed two-thirds of the value of the property unless repayment of the loan is insured by a prescribed insurer, in which case the amount of the loan is not to exceed 95 per cent of the value. The effect of this clause is to prescribe insurers for that purpose.

6 Prescribed agents for receipts and payments

For the purposes of section 53 (4) of the Act, the following are prescribed persons and classes of persons:

Austraclear Limited (ACN 002 060 773)

Museum of Contemporary Art Limited (ACN 003 765 517)

NSW Trustee and Guardian

trustee companies

Note. The effect of this clause is to enable trustees to employ specified persons to act on their behalf in the receipt and payment of money. Under section 53 (4) of the Act, banks, solicitors, stockbrokers and real estate agents may also be employed for that purpose.

7 Savings

Any act, matter or thing that, immediately before the repeal of the *Trustee Regulation 2005*, had effect under that Regulation continues to have effect under this Regulation.