



Trustee Amendment (Prescribed Insurers) Regulation 2012

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*.

GREG SMITH, MP
Attorney General

Explanatory note

The object of this Regulation is to prescribe, for the purposes of section 18 of the *Trustee Act 1925*, certain classes of insurers that may insure the repayment of loans that are made by trustees on the security of property. The loans concerned are loans exceeding two-thirds, but not exceeding 95 per cent, of the value of the property.

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

2012 No 37

Clause 1 Trustee Amendment (Prescribed Insurers) Regulation 2012

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Trustee Act 1925

1 Name of Regulation

This Regulation is the *Trustee Amendment (Prescribed Insurers) Regulation 2012*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

3 Amendment of Trustee Regulation 2010

Clause 5

Omit the clause. Insert instead:

5 Prescribed insurers

For the purposes of section 18 of the Act, an insurer is a prescribed insurer, in respect of the insurance of the repayment of a loan, if the insurer:

- (a) is authorised under section 12 of the *Insurance Act 1973* of the Commonwealth (*the Commonwealth Act*) to provide the insurance concerned, or
- (b) is a Lloyd's underwriter who is authorised under Part VII of the Commonwealth Act to provide the insurance concerned, or
- (c) is a person (whether or not a Lloyd's underwriter) in respect of whom a determination is in force under section 7 (1) of the Commonwealth Act and the effect of the determination is to exempt the insurer from being required to be authorised under that Act to provide the insurance concerned.

Note. A trustee lending money on the security of property is not chargeable with a breach of trust by reason only of the ratio of the loan to the value of the property so long as the trustee complies with the requirements of section 18 of the Act. One of those

requirements is that the amount of the 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 must not exceed 95 per cent of that value. This clause prescribes insurers for that purpose.