



New South Wales

Trustee Regulation 2015

under the

Trustee Act 1925

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

GABRIELLE UPTON, MP
Attorney General

Explanatory note

The object of this Regulation is to remake, with minor changes, the provisions of the *Trustee Regulation 2010* which is repealed on 1 September 2015 by section 10 (2) of the *Subordinate Legislation Act 1989*.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 2015*.

2 Commencement

This Regulation commences on 1 September 2015 and is required to be published on the NSW legislation website.

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 This Regulation replaces the *Trustee Regulation 2010* which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.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

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.

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 2010*, had effect under that Regulation continues to have effect under this Regulation.