

Trustee Companies Act 1964 No 6

[1964-6]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Trustee Companies Amendment Act 2009 No 109](#) (not commenced — Sch 1 (Sch 1 [6] excepted) to commence on the day on which Sch 2 to the [Corporations Legislation Amendment \(Financial Services Modernisation\) Act 2009](#) of the Commonwealth commences; Sch 1 [6] to commence on 1.7.2010)

Authorisation

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New South Wales

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Trustee Companies Act 1964 No 6



New South Wales

An Act to consolidate and amend the law relating to the restrictions, liabilities, privileges and powers of trustee companies; to repeal certain Acts relating to such law; and for purposes connected therewith.

Part 1 Preliminary

1 Name of Act and commencement

- (1) This Act may be cited as the *Trustee Companies Act 1964*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2 Repeal and savings

- (1) The several Acts mentioned in the First Schedule are hereby repealed.
- (2)
 - (a) All rights, powers, capacities, authorities, duties, liabilities and obligations as executor, administrator, trustee, receiver, committee, manager or guardian, guarantee or surety, attorney or agent acquired or incurred by a trustee company under or in consequence of any of the Acts repealed by this Act shall, as from the commencement of this Act, continue in force and be exercisable by, binding upon and enforceable against the trustee company in the same manner and to the same extent as if they had been acquired or incurred by the trustee company under or in consequence of this Act.
 - (b) All authorisations, appointments and delegations given or made to and all demands made upon a trustee company under any of the Acts repealed by this Act shall, as from the commencement of this Act, have and take effect as if they had been given or made under this Act, and this Act shall apply to them accordingly.
 - (c) All suits, actions and proceedings pending, immediately before the commencement of this Act, by or against a trustee company which arose under or in consequence of any of the Acts repealed by this Act or which were in any way

founded or dependent upon any of such Acts may, notwithstanding such repeal, be continued and completed and for the purpose shall, as from such commencement, be deemed to have arisen under or in consequence of or, as the case may be, to be founded or dependent upon the corresponding provision of this Act.

- (d) Any person appointed under or by virtue of the provisions of any of the Acts repealed by this Act for any purpose specified in any such Act whose appointment was still effective immediately before the commencement of this Act, shall continue in such appointment as if this Act had been in force at the time the person was so appointed and the person had been appointed hereunder, and this Act shall apply to that person accordingly.
 - (e) Where, immediately before the commencement of this Act, a trustee company was acting as executor under any grant of probate or as administrator under any grant of letters of administration, then, as from such commencement, such grant shall continue in force, and such trustee company shall continue in the office of executor or administrator, as the case may be, as if this Act had been in force at the time the grant was made and this Act shall apply accordingly.
 - (f) All debentures or inscribed stock which, immediately before the commencement of this Act, were held by the Treasurer in trust for a trustee company under any of the Acts repealed by this Act, and all moneys and investments, which, immediately before such commencement, were standing to the credit of the testamentary and trust fund in trust for any estate shall as from such commencement continue to be so held or to stand to the credit of such fund as if this Act had been in force at the time when the debentures or inscribed stock were vested in the Treasurer, or as the case may be, the unclaimed moneys were paid into the State Treasury to be placed to the credit of the testamentary and trust fund, and this Act shall apply accordingly.
 - (g) Notwithstanding the repeal of the Acts referred to in subsection (1), the provisions contained in such Acts relating to the entitlement of a trustee company to receive commission, salary or remuneration shall continue to apply to and in respect of estates the administration of which were committed to a trustee company before the commencement of this Act.
- (3) Except so far as expressly provided in this Act, a trustee company shall have the same rights, privileges and powers and be subject to the same restrictions, liabilities and penalties as it had and was subject to immediately before the commencement of this Act.
- (4) Where in any document or in any other Act a reference is made to any of the Acts repealed by this Act or to any provision of any such Act that reference shall be construed as a reference to this Act, or to the corresponding provision, if any, of this

Act.

(5) (Repealed)

3 Definitions

(1) In this Act, unless the contrary intention appears:

Commission means:

- (a) the Director-General of the Attorney General's Department, or
- (b) such other person or body as may be prescribed by the regulations.

Corporation has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

Court means Supreme Court.

Financial institution means:

- (a) a bank, building society or credit union,
- (b) an insurance company,
- (c) a financial corporation to which the *Financial Corporations Act 1974* of the Commonwealth, as amended and in force for the time being, applies,
- (d) the trustees or managers of a superannuation fund established by a law of the Commonwealth or of a State or Territory of the Commonwealth, or
- (e) a corporation in respect of which a declaration by the Minister under subsection (4) is in force.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

Insurance company means a corporation that is registered under the *Life Insurance Act 1945* of the Commonwealth, as amended and in force for the time being.

Manager includes general manager and acting manager.

Minor means a person under the age of 18 years.

New Tax System Price Exploitation law means:

- (a) the New Tax System Price Exploitation Code text, as applied as a law of New South Wales by the *Price Exploitation Code (New South Wales) Act 1999*, or
- (b) Part VB of the *Trade Practices Act 1974* of the Commonwealth.

Nominee corporation has the same meaning as in the [Corporations Act 2001](#) of the Commonwealth.

Regulations means regulations under this Act.

Related corporation of a body corporate means a body corporate that is related to that body corporate within the meaning of section 50 of the [Corporations Act 2001](#) of the Commonwealth.

Subordinated loan means a loan which is unsecured and the terms of which are evidenced by an instrument in writing which expressly provides that the rights of the lender are subordinated to all other creditors of the borrower.

Trustee company means any company mentioned in the First Part of the Third Schedule.

Voting share has the same meaning as in the [Corporations Act 2001](#) of the Commonwealth.

- (2) The powers conferred on trustee companies by this Act shall be in addition to and not in derogation of any powers conferred on trustee companies or on executors administrators or trustees by any other Act.
- (3) In this Act, a reference to entering into a transaction in relation to shares includes:
 - (a) a reference to entering into or becoming a party to an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied, in relation to shares, and
 - (b) a reference to exercising an option to have shares allotted.
- (4) The Minister, by notice published in the Gazette:
 - (a) may declare a corporation or a corporation included in a class of corporations to be a financial institution for the purposes of this Act, and
 - (b) may revoke or amend any such declaration.
- (5) A person is an associate of another person for the purposes of this Act if the person would be an associate of the other person under Division 2 of Part 1.2 of the [Corporations Act 2001](#) of the Commonwealth.
- (6) For the purposes of this Act, a person shall be taken to acquire shares in a trustee company (in this subsection referred to as the **shares concerned**) if, and only if:
 - (a) the person acquires a relevant interest in the shares concerned as a direct or indirect result of a transaction entered into by or on behalf of the person in relation to those shares, in relation to other securities of that company or in relation to securities of any other corporation, or

- (b) the person acquires any legal or equitable interest in securities of that company or in securities of any other corporation and, as a direct or indirect result of the acquisition, another person acquires a relevant interest in the shares concerned.
- (7) For the purposes of this Act, a person shall be taken to dispose of shares in a trustee company if, and only if, having a relevant interest in those shares, the person ceases to have a relevant interest in those shares as a result of the doing of any act, the entering into of any transaction or the occurrence of any circumstance.
- (8) For the purposes of this Act:
 - (a) the shares in a trustee company to which a person is entitled include:
 - (i) shares in which the person has a relevant interest, and
 - (ii) except where the person is a nominee corporation in respect of which a certificate of the Minister is in force under subsection (9)—shares in which an associate of the person has a relevant interest, and
 - (b) a person has a relevant interest in a share in a trustee company if, by reason of sections 608 and 609 of the *Corporations Act 2001* of the Commonwealth, the person has a relevant interest in the share for the purposes of that Act.
- (9) The Minister may, in the discretion of the Minister, issue to a nominee corporation a certificate declaring the nominee corporation to be an approved nominee corporation for the purposes of this Act and may at any time, in the discretion of the Minister, by notice in writing to the nominee corporation, revoke the certificate.
- (10) Unless the contrary intention appears, words and expressions used in this section have the same meanings as they have in the *Corporations Act 2001* of the Commonwealth.
- (11) A note included in this Act does not form part of this Act.

Part 2 Management of estates by trustee companies

4 Trustee company may act as executor and obtain probate

Where a trustee company is named either alone or jointly with any other person as executor in the last will or in any codicil thereto of any testator (whether the will or codicil was made before or after the commencement of this Act) that trustee company may act as executor and may apply for and obtain probate of such will and any codicil thereto and may perform and discharge all the acts and duties of an executor as fully and effectively as any other executor.

5 Person named as executor may authorise trustee company to take out administration

c.t.a.

Any person named expressly or by implication as executor who would be entitled to obtain probate of the will of any testator without leave being reserved to any other person to apply for probate may, instead of applying for probate, authorise a trustee company to apply for administration with the will annexed and a grant of administration with the will annexed may be made to the trustee company upon its own application when so authorised unless the testator by the will directed or intimated that the office of executor should not be delegated or that a trustee company should not act in the trusts of the will.

6 Trustee company may be authorised to obtain letters of administration

(1) In any case in which a person may apply for and obtain a grant of letters of administration of the estate of a deceased person (whether with or without the will annexed), that person may:

- (a) join with a trustee company in an application for a grant of letters of administration of the estate to that person and the trustee company jointly, or
- (b) instead of applying, authorise a trustee company to apply for and obtain a grant of letters of administration of the estate.

(2) Where:

- (a) a person joins with a trustee company in an application pursuant to subsection (1) (a), or
- (b) a trustee company makes an application that it has, pursuant to subsection (1) (b), been authorised to make,

the Court may grant letters of administration of the estate in accordance with the application.

7 (Repealed)

8 Trustee company may act as administrator notwithstanding its incorporation

Where administration of any estate with or without the will annexed is granted to a trustee company either alone or jointly with any other person that trustee company may do and perform all acts and duties which belong to the office of administrator or administrator with the will annexed, as the case may be, notwithstanding its incorporation.

9 Court to act on affidavit of managing director etc

In all cases in which a trustee company is empowered by this or any other Act to apply for probate of any will or letters of administration in respect of the estate of any deceased person the Court may receive and act upon an affidavit by the managing director, manager, assistant manager or the secretary, or by such other officer of the trustee

company as may from time to time be appointed by the board of directors of the trustee company for that purpose in place of any affidavit required by any Act or rule of Court to be made by the person making application for probate or for letters of administration.

10 Assets of trustee company liable for proper administration of estates

All the capital both paid and unpaid and all other assets of any trustee company shall be liable for the proper administration of all estates of which the trustee company acts as executor or administrator.

11 Company may be appointed trustee, receiver, committee, manager or guardian

- (1) Where any court, judge or other person has power to appoint any person as:
 - (a) trustee,
 - (b) receiver,
 - (c) committee of the estate of a mentally ill person or manager of the estate of an incapable person within the meaning of the [Mental Health Act 1958](#), or
 - (d) guardian of the estate of a minor,a trustee company may be so appointed.
- (2) Subject to this section a trustee company may be appointed or may continue to act as sole trustee in all cases notwithstanding that it is provided by the terms of the instrument (if any) creating the trust or of any power or otherwise that there shall be more than one trustee to perform the trust.
- (3) Where a trustee company and one or more individuals are co-trustees, any one or more of such individuals may retire, and the trustee company shall for the purposes of any Act now or hereafter in force relating to the retirement of trustees and the vesting of trust property be deemed to be equivalent to 2 trustees.
- (4) A trustee company shall not be appointed in any case in which the instrument creating the trust or power forbids the appointment of a trustee company.
- (5) A trustee company shall not be appointed or be entitled to act as sole trustee in any case in which the instrument creating the trust or power expressly provides that there shall be another trustee in addition to a trustee company or that a trustee company shall not be appointed or act as sole trustee.
- (6) In every case in which a trustee company is appointed or acts in any of the offices mentioned in subsection (1) all the capital of the trustee company, both paid and unpaid, and all other assets of the trustee company and the directors, manager and assistant manager thereof and their respective estates shall be individually and collectively responsible for the proper discharge during the respective tenures of their

offices as directors, manager and assistant manager respectively, of their duties of the office in which the trustee company was appointed or acted.

(7) No bond recognizance or other security for the proper discharge of such duties shall be required to be given by or on behalf of the trustee company.

12 Property vested in trustee company and another as trustees to be held jointly

Where any property is vested in a trustee company and an individual or in a trustee company and another body corporate to the intent that they should hold the same jointly in any fiduciary capacity or as mortgagees they shall be deemed to be joint tenants thereof and not tenants in common unless otherwise expressly provided.

13 Trustee company may act under power of attorney by managing director etc

It shall be lawful for a trustee company to act, either alone or jointly with any other person under any power of attorney by which such trustee company is appointed attorney by any person or by any company or corporation and all the powers conferred upon such trustee company by such power of attorney may be exercised and carried into execution by the managing director, manager, assistant manager or secretary or by such other officer of the trustee company as may from time to time be appointed by the board of directors for the purpose or by any 2 directors of the trustee company; but in all cases the capital, both paid and unpaid, and all other assets of the trustee company, shall be liable for the due execution of the powers so conferred on the trustee company: Provided that nothing in this section shall be deemed to authorise any person, company or corporation to confer any power upon the trustee company which cannot by law be delegated or performed by an attorney.

14 Power to delegate trusts to trustee company

It shall be lawful for an executor, administrator or trustee to delegate by deed to a trustee company either alone or jointly with any other corporation or person, as his or her attorney, all such trusts and powers as may by law be delegated, and all acts done by the trustee company within the scope of such delegation shall, in favour of any persons dealing with the trustee company without notice of the death of, or revocation of authority by, such executor, administrator or trustee, be valid and effectual notwithstanding such death or revocation.

15 Power to appoint trustee company to discharge duties of executor etc

It shall be lawful for the Court, on the application of any executor or administrator acting under any probate or letters of administration granted either before or after the commencement of this Act, to appoint a trustee company, either alone or jointly with any other corporation or person, to be administrator in his or her place or stead, and thereupon the company shall have the same powers and authorities as if it had been the original executor or administrator as the case may be; and in every such case the capital, both paid and unpaid, and all other assets of the trustee company, and the directors,

manager and assistant manager thereof and their respective estates shall be individually and collectively liable for the due administration during the respective tenure of their respective offices of the estates of which the trustee company is so appointed administrator.

15A Election to administer where no previous executor or administrator

- (1) A trustee company may file an election to administer the estate of a deceased person who died testate or intestate in the registry of the Court, instead of applying for probate or administration, if:
 - (a) the gross value of the estate in New South Wales, as estimated by the trustee company, is less than the amount prescribed by the regulations for the purposes of this section, and
 - (b) no person has obtained probate of the estate or taken out administration, and
 - (c) the trustee company is entitled to obtain probate or administration.
- (2) An election must be sealed by the trustee company and must set out:
 - (a) the name, residence and occupation (as far as it is known to the trustee company) of the deceased person, and
 - (b) particulars of property forming the deceased person's estate, and
 - (c) the date of the deceased person's death as then known to the trustee company, and
 - (d) if the deceased person died testate, state that, after due inquiries, the trustee company believes that the document annexed to the election is the testator's last will and that the will has been validly executed according to the law governing the execution of wills.
- (3) On an election being filed, the trustee company is taken to have been appointed by the Court as the executor of the estate or the administrator of the estate.

15AA Election to administer where previous executor or administrator

- (1) A trustee company may file an election to administer the unadministered property of the estate of a deceased person who died testate or intestate in the registry of the Court, instead of taking out administration de bonis non, if:
 - (a) the executor or administrator of the estate has died and no other person has taken out administration de bonis non in respect of the estate, and
 - (b) part of the estate is unadministered, and
 - (c) the gross value of the unadministered part of the estate in New South Wales is

less than the amount prescribed by the regulations for the purposes of this section, and

- (d) the trustee company is entitled to take out administration de bonis non.
- (2) An election must be sealed by the trustee company and must set out:
 - (a) the fact of the original grant, and
 - (b) the fact of the death of the executor or administrator, and
 - (c) particulars of the property left unadministered.
- (3) On an election being filed, the trustee company is taken to have been appointed by the Court as the administrator de bonis non of the unadministered part of the estate.

15AB Estate not small estate

- (1) If, after an election takes effect under section 15A or 15AA, the trustee company becomes aware that the gross value of the estate or the unadministered estate exceeds the amount prescribed for the purposes of making an election, the trustee company must file a notice to that effect in the registry of the Court.
- (2) The trustee company is not entitled to continue to administer the estate but must obtain probate or administration in the ordinary manner.

15AC Discovery of later will

- (1) If, after an election takes effect under section 15A or 15AA, a later will, or a will, is found, the trustee company must file a notice to that effect in the registry of the Court.
- (2) On filing the notice, the trustee company ceases to be the executor or administrator of the estate and may, if it is otherwise entitled to do so, obtain probate or administration in the ordinary manner or make a new election under section 15A or 15AA.
- (3) If the trustee company does not obtain probate or letters of administration or make a new election, the *Probate and Administration Act 1898* applies as if a grant of probate or administration to the trustee company had been revoked.

15AD Notice and form of elections and notices

- (1) A trustee company must publish, in accordance with the regulations, notice of an election made by it under section 15A or 15AA or notice filed under section 15AB.
- (2) An election under section 15A or 15AA or a notice under section 15AB is to be in the form (if any) prescribed by the rules of the Court and to contain the particulars prescribed by the regulations.

- (3) A notice that complies with this section is evidence that the trustee company is entitled to administer an estate.

15B Maintenance etc of minor or incapable person

- (1) In this section, ***incapable person***, in relation to money in the hands of a trustee company, means a person who, in the opinion of the trustee company, is unable to give a good discharge.
- (2) Where a minor or an incapable person is entitled to money in the hands of a trustee company, the trustee company may, notwithstanding any law to the contrary, from time to time:
- (a) pay that money to such person as the trustee company thinks fit, to be applied by that person for the maintenance, education, advancement or benefit of the minor or incapable person, or
 - (b) so apply that money itself.
- (3) A trustee company is not bound to see to the application of money paid to a person under subsection (2) (a).
- (4) A trustee company may, at any time and from time to time, apply to the Court:
- (a) for directions as to the administration of any money referred to in subsection (2),
 - (b) to vary directions which may already have been given in regard to that money, or
 - (c) to determine any matter relating to that money,
- and any direction or determination of the Court shall, if given effect to by the trustee company, exonerate the trustee company from any claim or demand by any person.
- (5) A reference in subsection (2) to a minor being entitled to money in the hands of a trustee company includes a reference to a minor who is entitled to that money contingently on attaining an age specified in the instrument creating the entitlement.
- (6) The powers conferred on a trustee company by this section may be exercised by the trustee company in respect of money held by the trustee company to which a minor or incapable person is entitled even though the trustee company held the money before the commencement of this section.

15C General powers of trustee company

Where a trustee company is appointed trustee, executor or administrator or is otherwise authorised to act under this Act (whether before or after the commencement of this section), then, unless expressly prohibited by this Act or by or under an instrument, it may, at its discretion, but in addition to and not as restricting any other powers, exercise the following powers:

- (a) sell property by public auction or private contract, altogether or in parts, and subject to such conditions as it thinks fit,
- (b) postpone the sale, calling in and conversion of any property that it has a duty to sell, other than property that is of a wasting, speculative or reversionary nature,
- (c) exchange property or join in a partition of property,
- (d) lease property for a term not exceeding 10 years and give to a lessee an option of renewal if the aggregate duration of the lease and any such renewal does not exceed 10 years,
- (e) enter into any share-farming agreement for a period not exceeding 3 years,
- (f) for the purpose of preserving trust property, borrow money upon the security of the property, and secure the payment thereof and interest by mortgage or charge of the property, with or without a power of sale, and enter into such covenants, provisions and agreements as may be agreed upon by the trustee company and the mortgagee, and, without affecting the generality of the foregoing, exercise the power to give any such security in respect of any debt or liability incurred prior to the trustee company's appointment, and pay interest secured by any such mortgage or charge out of the income or, if the income is insufficient, out of capital,
- (g) repair property and charge the cost of those repairs either to capital or to income or apportion the cost between capital and income as the trustee company may consider equitable.

16 Common trust funds

- (1) A trustee company may establish and keep in its books one or more funds to be known as common trust funds and, if more than one, with an appropriate distinguishing number.
- (2) Before establishing a common trust fund the trustee company shall determine the class or classes of investment in which moneys to the credit of that common trust fund may be invested.
- (3) Subject to this Act, balances to the credit of any current account in the books of the trustee company at the commencement of this Act or at any time thereafter kept by it as executor or administrator or as holder of any of the offices mentioned in section 11 may be carried to the appropriate common trust fund: Provided that:
 - (a) Nothing in this section shall authorise the carrying to the credit of any common trust fund of any moneys the investment of which in a common trust fund is expressly forbidden by the instrument creating the trust or by the conditions subject to which such moneys are held by the trustee company.

- (b) The balance to the credit of any particular account shall not be carried to a common trust fund unless by the determination relating to that common trust fund investment is limited to such class or classes of investment as would be lawful investments for such balance if separately invested.
- (4) Investments made from moneys forming part of a common trust fund shall not be made in the name or on account of, nor shall they belong to, any particular estate, trust, property or person, but the trustee company shall keep an account in its books showing at all times the current amount for the time being at credit in the common trust fund on account of each estate, trust, property or person.
- (5) Any profits or losses upon realisation of any investment in a common trust fund shall be credited or debited (as the case may require) to the common trust fund and be received or borne proportionately by the several amounts constituting the common trust fund at the time of such realisation.
- (6) A trustee company may sell investments belonging to a common trust fund and may withdraw any of the moneys belonging to a common trust fund for any purpose or relating to the exercise and discharge of its powers, authorities, duties and functions.
- (7) A trustee company may, in its discretion, at any time withdraw from a common trust fund any amount at credit in the common trust fund on account of any estate, trust, property or person, and invest such amount on the separate account of such estate, trust, property or person.
- (8) Amounts so withdrawn from a common trust fund shall, as from the date of such withdrawal, cease to have any claim for interest or otherwise from the common trust fund.
- (9) If for the purpose of providing for any withdrawal any investment is realised, then, for the purposes of this section, that part of the moneys arising from such realisation which is equal to the amount of interest accrued on such investment shall be deemed to be income of the common trust fund and the balance shall be deemed to be capital.
- (10) The trustee company must, on at least one day during each calendar month, determine the value of the investments in each common trust fund as on that day.
- (11) Investments in and withdrawals from a common trust fund during a calendar month are to be effected on the basis of the value of the investments in the fund on the date of the last valuation made under subsection (10).
- (12) At intervals of not more than 6 months the trustee company shall pay or allocate the income arising from a common trust fund proportionately to or among the estates, trusts, properties and persons entitled to the income arising from the capital sums invested in the common trust fund according to the several sums so invested and the periods for which they remain so invested.

- (13) Where a trustee company is appointed and acts jointly with any other person as executor or administrator or as holder of any of the offices mentioned in section 11 the following provisions shall have effect:
- (a) the trustee company may, with the consent in writing of such other person, exercise and discharge in relation to any of the property jointly held or controlled all or any of the powers, authorities, duties and functions conferred or imposed by this section which the trustee company, if acting alone would have had or might have exercised or discharged,
 - (b) all moneys under the control of the trustee company and such other person jointly may with the consent in writing of such other person be dealt with by the trustee company alone in the same manner as moneys under the control of the trustee company alone,
 - (c) the person acting jointly with the trustee company shall be exonerated from any liability which, but for this paragraph, might have arisen in consequence of the exercise of the powers conferred by this subsection.
- (14) In addition to the commission, fees and remuneration which it is entitled to receive in accordance with this Act, a trustee company shall be entitled to charge and receive from or out of any income received by a common trust fund a fee (according to the value of the work done and the services rendered) calculated at a rate not exceeding one per cent per annum upon the capital sums invested in the common trust fund during the period in respect of which the income is received or allocated, for the establishment, keeping (including the keeping of books of account) and conduct of the common trust fund.

17 Contributory investments

Where a trustee company holds moneys belonging to more than one estate upon trusts, which require or permit the investment thereof, it shall be lawful for the trustee company to invest such moneys as one fund, and to distribute the income arising therefrom rateably among the several estates to which the money so invested belongs; and any loss arising from any such investment shall likewise be borne rateably by the several estates.

Any such investment shall be made either in investments in which a trustee may invest trust funds in accordance with the [Trustee Act 1925](#) or in investments authorised by each of the trust instruments.

17A Power to make advances

- (1) A trustee company may make advances from a common trust fund established under section 16 (1) for any purpose of or relating to any estate or trust in the course of administration by it.
- (2) Any sum advanced by a trustee company pursuant to subsection (1) shall bear

interest at a rate to be fixed by the trustee company.

- (3) Any sum advanced by a trustee company pursuant to subsection (1) and any interest thereon shall be a charge on the assets of the estate or trust or on the specific asset in respect of which the advance was made.
- (4) Where any sum advanced by a trustee company under subsection (1) is applied in or towards the discharge of any debt or liability, the charge under subsection (3) shall rank in the same order of priority as the debt or liability.
- (5) Any sum advanced from a common trust fund under subsection (1) shall, for the purposes of section 16 (2), be deemed to be invested in a class of investment in which money to the credit of that common trust fund may be invested.

18 Commission chargeable by trustee company

- (1) In respect of every estate which is, after the commencement of this Act, committed to the administration or management of a trustee company as executor, administrator, trustee or receiver or as committee or manager of the estate under the [Mental Health Act 1958](#) or as guardian of the estate of a minor or in any other capacity, the trustee company shall be entitled to receive out of the estate, in addition to all moneys properly expended by the trustee company and chargeable against the estate, a commission to be fixed from time to time by the directors of the trustee company but not in any case exceeding:
 - (a) Where the estate is committed to the administration and management of the trustee company as attorney acting under power of attorney—\$10 for every \$200 of all moneys, whether capital or income, received by the trustee company as such attorney,
 - (b) Where the estate was, before the commencement of section 2 of the [Trustee Companies \(Amendment\) Act 1972](#), committed to the administration or management of the trustee company in any capacity other than that referred to in paragraph (a):
 - (i) \$8 for every \$200 of the corpus or capital value of the estate, and
 - (ii) \$10 for every \$200 of the income received by the trustee company on account of the estate, or
 - (c) Where the estate is, after the commencement of section 2 of the [Trustee Companies \(Amendment\) Act 1972](#), committed to the administration or management of the trustee company in any capacity other than that referred to in paragraph (a):
 - (i) \$4.25 for every \$100 of the corpus or capital value of the estate, and
 - (ii) \$5.25 for every \$100 of the income received by the trustee company on

account of the estate if the estate is not one in respect of which a fee is payable under section 19B (2).

- (2) Such commission shall be payable out of the moneys in possession of the trustee company representing the estate upon which the same shall be chargeable, and shall be accepted by the trustee company in full satisfaction of any claim to remuneration for acting as such executor, administrator, trustee, receiver, committee, manager, guardian or in any other capacity, and, except where otherwise provided by this Act, no other charges beyond such commission and moneys so expended by the trustee company shall be made or allowed.
- (3) Where the Court is of opinion that the commission or any part thereof or the rate thereof charged in respect of any estate is excessive, the Court may of its own motion or on the application of any person interested in the estate, review the commission or any part thereof or the rate thereof and may, on such review, reduce the commission or any part thereof or the rate thereof.
- (4) The commission charged by a trustee company against any estate shall not exceed the amount of the published scale of charges of such trustee company at the time when the administration or management of such estate was committed to such trustee company.
- (5) Nothing in this section shall prevent the payment of any commission which a testator has in the testator's will directed to be paid either in addition to or in lieu of the commission provided for by this section.
- (6) In subsection (1), **corpus or capital value**, in relation to an estate committed to the administration or management of a trustee company:
 - (a) where the estate was so committed before the commencement of section 2 of the [Trustee Companies \(Amendment\) Act 1972](#) and the trustee company's administration or management of the estate was completed before that commencement—means the gross corpus or capital value of the estate without deduction of debts or liabilities secured or unsecured,
 - (b) where the estate was so committed before that commencement and the trustee company's administration or management of the estate continues after that commencement—means:
 - (i) in the case of any assets (whether real or personal) of the estate realised before that commencement—the gross amount of the value of those assets as at the date on which the estate was so committed, and
 - (ii) in the case of any assets (whether real or personal) of the estate realised after that commencement—the gross amount realised for those assets,without deduction of debts or liabilities secured or unsecured, and

(c) where the estate is so committed after that commencement—means the gross amount realised for the assets (whether real or personal) of the estate without deduction of debts or liabilities secured or unsecured.

(6A) For the purposes of subsection (6):

(a) where an asset of an estate comprises moneys (other than the proceeds of the realisation of any asset):

(i) that asset shall be deemed to have been realised when it was collected on behalf of the estate, and

(ii) the amount realised for that asset shall be deemed to have been the amount of the moneys so collected, and

(b) where an asset of an estate is distributed, transferred, appropriated, or released, without realisation, to beneficiaries, whether by or as a result of agreement between beneficiaries or otherwise:

(i) that asset shall be deemed to have been realised when it was so distributed, transferred, appropriated or released, and

(ii) the amount realised for that asset shall be deemed to have been the amount of the value of the asset as at the date of the distribution, transfer, appropriation or release.

(7) The commission, which a trustee company is entitled to receive under this section, shall not in any way be affected or diminished by the fact that any other person may, or may not be entitled to, or be allowed, commission in respect of the same estate.

18A Payment of commission

Where a trustee company:

(a) is entitled by virtue of section 18 to receive commission in respect of the corpus or capital value of an estate, or

(b) would be so entitled to receive that commission but for the fact that any or all of the assets of the estate have not been realised, as referred to in that section,

the following provisions have effect:

(c) that commission may, subject to paragraph (d), be paid out of the estate at any time after the estate was committed to the administration or management of the trustee company, and

(d) while any or all of the assets remain to be so realised, the commission which may be so paid out shall not exceed the commission which would be payable if those assets were so realised for an amount equal to the amount of their value at the time the

estate was so committed, the amount of commission paid out, whether before or after the commencement of section 2 of the *Trustee Companies (Amendment) Act 1972*, being adjusted when those assets respectively are so realised.

19 Management fees

- (1) A trustee company shall be entitled to receive out of any estate committed to its administration or management in respect of any prescribed service provided by the trustee company in its administration or management of that estate such management fee as is reasonable having regard to the work involved in providing that service.
- (2) A management fee which a trustee company is entitled to receive under subsection (1) in respect of any service shall be fixed by the trustee company but shall not exceed the maximum amount (if any) prescribed in respect of that service.
- (3) A trustee company shall be entitled to receive out of any estate committed to its administration or management in respect of any service of an unusual nature provided by the trustee company in its administration or management of that estate such management fee as is reasonable having regard to the work involved in providing that service if a majority of the persons interested in the estate has agreed to that service being provided and to the amount of the fee.
- (4) Management fees payable under this section are payable at such times and subject to such conditions as may be prescribed.

19A (Repealed)

19B Trust fees

- (1) In this section:

corpus or capital value, in relation to an estate committed to the administration or management of a trustee company, means the gross amount of the value of the assets (whether real or personal) of the estate without deduction of debts or liabilities secured or unsecured.

prescribed time, in relation to any estate committed to the administration or management of a trustee company, means:

- (a1) where the estate is so committed on or after 1 September 1994:

- (i) the conclusion of the period of 2 years and 3 months commencing at that date of committal, and
- (ii) the conclusion of each subsequent period of 3 months, and
- (iii) the date on which the trustee company's administration or management of the estate is so completed, or

- (a) where the estate is so committed before 1 September 1994 but after the commencement of Schedule 1 (5)-(9) to the *Trustee Companies (Amendment) Act 1979* or was so committed before that commencement but not earlier than 3 years before that commencement:
 - (i) the conclusion of the period of 3 years commencing at the date of committal,
 - (ii) the conclusion of each subsequent period of 3 months, and
 - (iii) the date on which the trustee company's administration or management of the estate is completed, or
 - (b) where the estate was so committed earlier than 3 years before the commencement of Schedule 1 (5)-(9) to the *Trustee Companies (Amendment) Act 1979*:
 - (i) that commencement,
 - (ii) the conclusion of the period of 12 months after that commencement,
 - (iii) the conclusion of each subsequent period of 3 months, and
 - (iv) the date on which the trustee company's administration or management of the estate is completed.
- (2) A trustee company is entitled to receive a quarterly trust fee, in respect of any estate committed to its administration or management for 2 years or more, not exceeding the maximum fee determined in accordance with subsection (2A).
- (2A) The maximum quarterly trust fee is:
- (a) if the corpus or capital value of the estate at the time of calculation is \$250,000 or less, an amount equal to 12.5 cents for every \$100 of the corpus or capital value, or
 - (b) if the corpus or capital value of the estate at the time of calculation is greater than \$250,000 and not more than \$500,000, an amount equal to the sum of:
 - (i) \$312.50, and
 - (ii) 18.75 cents for every \$100 of the amount by which the corpus or capital value exceeds \$250,000, or
 - (c) if the corpus or capital value of the estate at the time of calculation is more than \$500,000, an amount equal to the sum of:
 - (i) \$781.25, and
 - (ii) 25 cents for every \$100 of the amount by which the corpus or capital value exceeds \$500,000.

- (2B) The trust fee to which a trustee company is entitled under this section is to be calculated as at the prescribed time and is payable on the date of its calculation.
- (3) The trust fee which is, but for this subsection, payable under subsection (2) at the time that a trustee company's administration or management of an estate is completed shall be reduced by a sum that is equal to one-third of that trust fee for each whole month and each part of any month between the time that the trustee company's administration or management of the estate is completed and the time that a trust fee would have been next payable under subsection (2) if the estate had continued to be administered or managed by the trustee company.
- (4) The trust fee to which a trustee company is entitled under this section may be paid wholly from the corpus or capital of the estate or partly from the corpus or capital of the estate and partly from the income of the estate. However, not more than half of the amount of the fee may be paid from the income.
- (5) The trustee company is to consult with the beneficiaries, if it is practicable to do so, before determining from where a trust fee is to be paid. The trustee company must attempt such consultation at least once every two years.

19C Director's and other fees

- (1) Where an estate committed to the administration or management of a trustee company has an interest in a corporation and an officer of the trustee company, in his or her capacity as such an officer, acts as a director of the corporation for purposes connected with the administration or management of the estate:
 - (a) the trustee company shall be entitled to receive from the corporation and to retain any director's fees which would be payable to the officer had the officer so acted otherwise than in his or her capacity as such an officer, and
 - (b) neither the officer nor the estate shall be entitled to receive the fees which the trustee company is entitled to receive under paragraph (a).
- (2) (Repealed)

19D General provisions in respect of fees

- (1) The fees payable under sections 19, 19B and 19C in respect of an estate committed to the administration or management of a trustee company are in addition to all moneys properly expended by the trustee company and chargeable against the estate and to commission payable under section 18.
- (2) The fees payable under sections 19 and 19B in respect of an estate shall be payable out of moneys belonging to the estate.
- (3) Where, in respect of an estate, the Court is of the opinion that a fee payable under section 19 or 19B is excessive, the Court may, of its own motion or on the application

of any person interested in the estate, review the fee and may, on that review, reduce the fee.

- (3A) Where a fee is reduced pursuant to subsection (3) by more than 10 per cent, the trustee company to which the fee is payable shall, unless the Court in special circumstances otherwise orders, pay the costs of the review.
- (4) Nothing in section 19, 19B or 19C prevents the payment of any fee which the will or other relevant instrument (if any) directs to be paid either in addition to or in lieu of the fee payable under any of those sections.
- (5) The fees provided for under section 19C are payable in respect of estates committed to the administration or management of a trustee company before the commencement of section 2 of the *Trustee Companies (Amendment) Act 1972* (whether before, on or after the day appointed and notified under section 1 (2) of this Act) and to estates so committed after that commencement.
- (6) Nothing in this Act authorises the fees payable under section 19C to be charged or received in relation to any director's fee payable in respect of any period before the commencement of section 2 of the *Trustee Companies (Amendment) Act 1972*.
- (7) The fees provided for under sections 19 and 19B are payable in respect of estates committed to the administration or management of a trustee company before the commencement of Schedule 1 (5)–(9) to the *Trustee Companies (Amendment) Act 1979* (whether before, on or after the day appointed and notified under section 1 (2) of this Act) and to estates so committed after that commencement.
- (8) Nothing in this Act authorises any fee payable under section 19 to be charged or received in relation to any service provided by a trustee company before the commencement of Schedule 1 (5)–(9) to the *Trustee Companies (Amendment) Act 1979* unless the service so provided is a service referred to in section 19 or 19A, as in force immediately before that commencement, and was provided after the trustee company was last entitled to receive a fee in respect of that service under that section, as so in force.
- (9) The fees provided for under sections 18 and 19B, as amended by Schedule 1 [1]–[5] to the *Trustee Companies Amendment Act 1997*, are payable in respect of estates committed to the administration or management of a trustee company no more than 3 years before the commencement of those provisions on and from the first occurrence of the prescribed time after that commencement.
- (10) The fees provided for under sections 18 and 19B, as amended by Schedule 1 [1]–[5] to the *Trustee Companies Amendment Act 1997*, are payable in respect of estates committed to the administration or management of a trustee company more than 3 years before the commencement of those provisions on and from a date or dates determined in accordance with the regulations made for the purposes of this

subsection.

- (11) The fees payable under sections 18 and 19B, as in force immediately before the commencement of Schedule 1 [1]–[5] to the *Trustee Companies Amendment Act 1997*, continue to apply until the fees provided for under sections 18 and 19B (as amended by those provisions) are payable, in accordance with the regulations.
- (12) The fees payable under section 19B, as amended by Schedule 1.28 to the *Statute Law (Miscellaneous Provisions) Act (No 2) 1997*, are, in respect of any estate committed to the administration or management of a trustee company on or after 1 September 1995, first payable on the first occurrence of the prescribed time after 1 September 1997.
- (13) The following provisions apply to estates committed to the administration or management of a trustee company between 1 September 1994 and 31 August 1995 (both inclusive):
 - (a) the commission and annual fee payable under sections 18 (1) (c) (ii) and 19B (as in force immediately before 1 September 1997) continue to apply to an estate until the first occurrence of the prescribed time after 1 September 1997,
 - (b) the annual fee payable under section 19B (as in force immediately before 1 September 1997) for the period between the second anniversary of the date of committal of the estate and the first occurrence of the prescribed time after 1 September 1997 is to be calculated on a pro-rata basis as at the end of that period,
 - (c) that annual fee is payable on the first occurrence of the prescribed time after 1 September 1997,
 - (d) the quarterly fee payable under section 19B (as in force after 1 September 1997) is first payable on the second occurrence of the prescribed time after 1 September 1997,
 - (e) that quarterly fee is not payable in respect of any period for which a fee was payable under clause 11 of the *Trustee Companies Regulation 1994*.

19E Application of certain amendments to certain estates

- (1) This section applies to any estate that is a charitable trust and that is committed to the administration or management of a trustee company (whether the estate was committed to the administration or management of the trustee company before or after the commencement of the relevant amendments).
- (2) The maximum commission that a trustee company is entitled to receive out of an estate to which this section applies is the maximum commission applicable under section 18 as in force immediately before the date of commencement of the relevant

amendments.

- (3) The maximum fee that a trustee company is entitled to receive out of an estate to which this section applies is the maximum fee applicable under section 19B as in force immediately before the date of commencement of the relevant amendments.
- (4) This section has effect despite section 19D (9), (10) and (11).
- (5) In this section:

charitable trust means a trust established for charitable purposes and includes a trust established for charitable purposes and also for non-charitable purposes.

relevant amendments means the amendments made by Schedule 1 [1]-[5] to the [Trustee Companies Amendment Act 1997](#).

19F GST may be added to charges by trustee companies

- (1) A trustee company may, in addition to any commission, fee or other charge payable to it or recoverable by it under this Act, charge or recover the amount of any GST payable in respect of services supplied by it as a trustee company that are covered by the commission, fee or charge.
- (2) Nothing in this section permits a trustee company to charge or recover an additional amount that is greater than:
 - (a) 10% of the maximum amount payable to it or recoverable by it apart from this section, or
 - (b) the amount permitted under the New Tax System Price Exploitation law,whichever is the lesser.
- (3) This section has effect despite any other provision of this Act, or of any regulation made under this Act, limiting an amount that may be charged or recovered by a trustee company.
- (4) The charging, or recovery, by a trustee company of an amount of GST payable before the commencement of this section in respect of services supplied or to be supplied by it as a trustee company is validated if that amount could have been charged or recovered had this section been in force.

20 Removal from office

A trustee company which has been appointed executor, administrator, trustee, receiver, committee, manager, guardian or attorney, whether before or after the commencement of this Act, shall be subject in all respects to the same control and to removal or restraint from acting and generally to the jurisdiction of the courts, in the same manner as any other executor, administrator, trustee, receiver, committee, manager, guardian or

attorney.

20A Trustee company not required to file accounts

- (1) A trustee company, when acting alone in relation to any estate, is not required to file or file and pass accounts relating to the estate unless the Court, of its own motion or on application by or on behalf of some person interested in the estate, so orders.
- (2) Where a trustee company is appointed and acts jointly with any other person in relation to any estate, the trustee company and that other person are not required to file or file and pass accounts relating to the estate unless that other person desires to claim commission for his or her pains and trouble or unless the Court, of its own motion or on application by or on behalf of some person interested in the estate, so orders.
- (3) This section applies to estates committed to the administration or management of a trustee company before the commencement of this section and to estates so committed after that commencement.

21 Court may order account

- (1) Any trustee, cestui que trust, executor, legatee, administrator, spouse, next of kin, creditor or minor entitled to or interested in any estate which is for the time being under the management or control of a trustee company, who is, upon application to the managing director or manager of the trustee company, unable to obtain a sufficient account of the property and assets of which such estate consists and of the disposal and expenditure thereof or thereout, may apply to the Court for an account.
- (2) If the Court is of opinion that sufficient account has not been rendered by the trustee company, the Court shall order such account to be rendered by the trustee company as to the Court shall seem just.
- (3) If the Court is of opinion that no sufficient case has been established to require the trustee company to furnish an account or that a sufficient account had been furnished, the Court may dismiss the application.
- (4) The Court may make such order as to costs either against the trustee company or against the applicant or as to payment of costs out of the estate as it thinks fit.
- (5) In this section:

spouse includes a party to a de facto relationship within the meaning of the [Property \(Relationships\) Act 1984](#).

22 Court may order audit

- (1) The Court may, on any application under section 21, in addition to or in substitution for any account to be rendered by the trustee company under subsection (2) of that

section order that a person to be named in such order shall examine the books and accounts of the trustee company relating to the estate in respect of which the order is made.

- (2) Upon the making of any such order the trustee company shall deliver to the person named in such order a list of all the books kept by it and shall produce to such person at the office of the trustee company at all reasonable times when required all books, accounts, vouchers, papers and other documents of the trustee company relating to the estate, and shall afford the person all necessary information and all other necessary facilities for enabling the person to make the said examination.
- (3) The Court shall have the same power as to the costs of such examination as is given by section 21 in respect of costs of or occasioned by an application under that section.

23 Application of secs 21 and 22

Sections 21 and 22 apply to all estates for the time being under the administration of a trustee company whether the administration was committed to the trustee company before or after the commencement of this Act.

24 Court may restrain sale of shares or voluntary winding-up

- (1) So long as any estate in respect of which a trustee company is executor, administrator, trustee, receiver, committee, manager or guardian, remains in whole or in part unadministered it shall not be lawful to proceed to wind up the trustee company voluntarily unless with the sanction of the Court.
- (2) Any person interested in an estate or who has any claim in respect of any such estate may apply to the Court:
 - (a) to restrain any director or shareholder from disposing of any shares such director or shareholder may hold in the trustee company,
 - (b) to restrain the voluntary winding-up of the trustee company.

25 Court may order winding-up

If it is proved that three-fourths or more:

- (a) of the amount of capital authorised by this Act to be called up by a trustee company (other than a trustee company referred to in paragraph (b)), or
- (b) in the case of the Trust Company Fiduciary Services Limited, the Perpetual Trustee Company Limited or Perpetual Limited, of the amount of capital called up by the trustee company,

has been lost by that trustee company, the Court may, on the application of any member or creditor of the trustee company or cestui que trust, make an order for the winding-up of

the trustee company.

26 Unclaimed moneys

- (1) All moneys which form part of any estate of which a trustee company is executor, administrator or trustee and which remain unclaimed by the person entitled to the same for a period of 5 years after the time when the same became payable to that person, except where payment is restrained by injunction of a court of competent jurisdiction, shall, together with interest accrued thereon, be paid by the trustee company to the Treasurer to be placed to the credit of the testamentary and trust fund, distinguishing the particular estates in respect of which such moneys are paid.
- (2) All moneys which were paid into the Treasury and placed to the credit of the testamentary and trust fund in accordance with directions contained in any of the Acts repealed by this Act and which, or the residue of which, immediately before the commencement of this Act, stood to the credit of the account in that fund of any particular estate shall, as from such commencement, be held by the Treasurer as if this Act had been in force at the time such moneys were so paid in, and this Act shall apply accordingly.
- (3) All moneys for the time being in the testamentary and trust fund shall constitute one common fund and shall be available for investment as provided in this section.
- (4) The Treasurer may from time to time invest the moneys to the credit of the testamentary and trust fund in:
 - (a) any Government debentures, stock or securities of the Commonwealth of Australia, or
 - (b) any debentures stock or securities guaranteed by the State of New South Wales.
- (5) Interest received from investments from the common fund shall be credited to an account to be called the "interest account" within the testamentary and trust fund. Moneys for the time being in the interest account shall be kept separately from the common fund but may be invested in any of the investments authorised by subsection (4).
- (6) The Treasurer shall determine from time to time the amount of interest which shall be allowed on the balances at credit of the account of any estate in the testamentary and trust fund and any such determination shall have regard to the interest earned by the testamentary and trust fund, and to the period during which such balances were included in that fund.
- (7) All debentures, stock and securities constituting investments by the Treasurer under subsection (4) shall be purchased by the Treasurer as such without any name, addition or description and in all transfers of the debentures, stock and securities the Treasurer shall be so styled without any name, addition or description.

- (7A) The Treasurer shall not pay over any money or sign any transfer of debentures, stock or securities standing to the credit of the testamentary and trust fund except in accordance with section 27 (2) or (4).
- (7B) The Treasurer may realise any investments made under the authority of this section for the purpose of granting an application, or complying with an order of the Court, under section 27.
- (8) Each trustee company shall at intervals of 6 months deliver to the Treasurer a statement of all unclaimed moneys as defined in subsection (1) which during the preceding 6 months have been in its hands, setting out:
- (a) the estates in respect of which the same have been received, and
 - (b) the dates and amounts of the payments of the same to the Treasurer under this section.
- (9) If the unclaimed moneys referred to in subsection (8) or any part thereof have not been paid to the Treasurer with a statement of the reason for the delay of such payments, or if default is made by the trustee company in compliance with the provisions of this section, the trustee company shall be liable to a penalty not exceeding 0.1 penalty unit for every day while such default continues, and every director, manager or assistant manager of the trustee company who knowingly and wilfully authorises or permits such default shall incur the like penalty.
- (10) The period of 5 years referred to in subsection (1) and the period of 6 months referred to in subsection (8) respectively include a period before or after or partly before and partly after the commencement of this Act.

27 Applications by persons entitled to trust funds

- (1) Any person entitled to any money forming part of the testamentary and trust fund may:
- (a) where the amount claimed is less than \$10,000—apply in writing to the Treasurer requesting payment of the money to the person, or
 - (b) where the amount claimed is \$10,000 or more—apply to the Court for an order directing payment of the money to the person.
- (2) If the Treasurer is satisfied that an applicant under subsection (1) (a) is entitled to the whole or part of the amount claimed, the Treasurer may pay over any money standing to the credit of the testamentary and trust fund to which the person, in the Treasurer's opinion, is entitled.
- (3) An applicant under subsection (1) (a) whose claim the Treasurer has refused to accept in whole or in part may apply to the Court for an order directing payment of any money to which the applicant is entitled and which has not been paid to the applicant

by the Treasurer.

- (4) Where the Court makes an order directing payment of any money and specifies the amount which the claimant is entitled to be paid from the amount at credit of the particular estate in the testamentary and trust fund, the Treasurer shall not pay over any money or for that purpose sign any transfer of investments standing to the credit of the fund unless:
 - (a) a copy of the order and particulars of the name, addition or description of the claimant to whom the money is to be paid has been left at the office of the Treasurer, and
 - (b) the purchase money of any investments to be sold has been received by the Treasurer.
- (5) If the Treasurer appears on an application to the Court under this section, the Treasurer shall be entitled to such costs against the applicant or out of the testamentary and trust fund as the Court may direct.

28 Treasurer may apply for account

- (1) The Treasurer may, after demand in writing made to the managing director, manager or assistant manager of a trustee company for a sufficient account of the property and assets of which any estate included in or which ought to be or to have been included in the statement of unclaimed moneys consists and of the disposal and expenditure thereof, apply to the Court for an account.
- (2) If the Court is of opinion that no sufficient account has been rendered by the trustee company, the Court shall order such account to be rendered by the trustee company as to the Court seems fit, or if the Court is of opinion that in the circumstances the trustee company was not bound to furnish any account, or that any account furnished by the trustee company was sufficient, the Court may dismiss the application.
- (3) The Court may make such order as to costs either against the trustee company or as to payment of costs out of the estate as the Court thinks fit.

29 Borrowing by trustee company

- (1) A trustee company shall not:
 - (a) accept a deposit of money with, or a loan of money to, the trustee company from any estate under its administration or management, or
 - (b) except as provided by this Act, accept a deposit of money with, or a loan of money to, the trustee company in its own behalf from any other person.

Maximum penalty: 20 penalty units.

- (2) Notwithstanding subsection (1), a trustee company may borrow money if:
- (a) the money is:
 - (i) borrowed from a financial institution, or
 - (ii) a subordinated loan from a related corporation (if any) of the trustee company, and
 - (b) the total of all borrowings and liabilities of the trustee company (other than contingent liabilities) and the amount of the proposed loan together do not exceed an amount equal to three times the total amount of the net tangible assets of the trustee company specified in the last financial statement provided by the trustee company under section 29D.
- (3) Nothing in this section shall affect or limit the investment of money of any estate by a trustee company in a common trust fund constituted under this Act.

29A Loans from estates to related corporations prohibited

A deposit or loan shall not be made from an estate administered or managed by a trustee company under this Act to any related corporation other than a bank, building society or credit union.

Maximum penalty: 20 penalty units.

29B Liability under guarantee

An estate administered or managed by a trustee company shall not be held liable for the payment of money under a guarantee from the trustee company otherwise than under a guarantee lawfully given by the trustee company on behalf of an estate.

29C Trustee company not to refuse to register shares

Subject to this Act, but notwithstanding anything in the memorandum of association or articles of association of a trustee company, the trustee company shall not refuse to register a transfer to any person of shares in the trustee company made on or after the commencement of this section.

Maximum penalty: 20 penalty units.

29D Financial statement of trustee company

- (1) A trustee company must prepare a financial statement in the prescribed form, in accordance with a resolution of the directors of the company and signed by at least 2 directors of the company, for each of the following periods:
- (a) the period commencing on 1 January in each year and ending on 30 June in that year, and

(b) the period commencing on 1 July in each year and ending on 31 December in that year.

(2) A trustee company must ensure that a copy of each such financial statement:

(a) is forwarded to the Director-General of the Attorney General's Department within 56 days after the last day of the period to which the statement relates, and

(b) is given to any person on request, and

(c) is, within the period referred to in paragraph (a), put up in a conspicuous place in the registered office of the trustee company and in each branch office or place where the business of the trustee company is carried on.

(3) If a trustee company fails to comply with subsection (1) or (2), the trustee company shall be liable to a penalty not exceeding 20 penalty units and each director or manager of the trustee company who knowingly and wilfully authorises or permits the default shall incur a like penalty.

(4) A financial statement under this section shall not be required to show:

(a) liabilities incurred by the trustee company while acting as trustee or in any representative capacity to the extent to which the trustee company has a valid and subsisting right of indemnity out of any assets in respect of those liabilities and those assets are sufficient to satisfy that right of indemnity, and

(b) assets consisting of the value, if any, of any such right of indemnity arising from the incurring of those liabilities.

(5) A trustee company must not, in any financial statement provided by the trustee company under this section, make any statement or representation that is false or misleading in a material particular.

Maximum penalty: 100 penalty units.

(6) If a trustee company contravenes, whether by act or omission, subsection (5), each person who is a director of the trustee company is to be taken to have contravened that subsection if the person knowingly authorised or permitted the contravention.

(7) A person may be proceeded against and convicted under subsection (5) pursuant to subsection (6) whether or not the trustee company has been proceeded against or been convicted under subsection (5).

(8) Nothing in subsection (6) or (7) affects any liability imposed on a trustee company for an offence committed by the trustee company under subsection (5).

(9) The Director-General of the Attorney General's Department may review any financial statement forwarded to him or her under this section, or may arrange for any other

person to review it.

- (10) The regulations may make provision for or with respect to the calculation of the costs recoverable for any work undertaken to review a financial statement under this section. Such regulations may provide for costs to be determined at a prescribed hourly rate, or in some other manner.
- (11) Unless the Minister otherwise directs, the cost of any review of a financial statement under this section is to be borne by the trustee company and may be recovered by the Minister in any court of competent jurisdiction as a debt due to the Crown.

29E Trustee company to give information to Minister or Commission

- (1) A trustee company shall furnish to the Minister or the Commission, as the case may be, such information in writing or statements in respect of its business as the Minister or the Commission directs within such time as is specified by the Minister or the Commission.

Maximum penalty: 20 penalty units.

- (2) The Commission may inspect without charge any book kept by a trustee company, including any book relating to estates managed or administered by the trustee company.
- (3) The Minister may, where it appears to the Minister to be necessary or advisable, cause to be carried out:
- (a) a review of the operations of a trustee company,
 - (b) an audit of the books and accounts of a trustee company (including the books and accounts of any of the estates managed or administered by the trustee company),
or
 - (c) both the review and the audit.
- (4) For the purposes of any review or audit under subsection (3), a trustee company shall:
- (a) deliver to any person authorised by the Minister to that effect a list of all books kept by it,
 - (b) produce to that person at all reasonable times when required the books kept by it and all accounts, vouchers, papers and other documents of the trustee company, and
 - (c) afford that person all necessary information and all other necessary facilities for enabling that person to carry out that review or audit.

Maximum penalty: 20 penalty units.

- (5) Unless the Minister otherwise directs, the cost of any review or audit under this section shall be borne by the trustee company and may be recovered by the Minister in any court of competent jurisdiction as a debt due to the Crown.

30 Applications to Court

(1)-(4) (Repealed)

- (5) The Court may order the costs and expenses of and incidental to any application under this Act to the Court to be paid or raised out of the estate in respect of which the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the Court seems just.

31 Managing director and others may represent trustee company and be personally responsible

- (1) In all cases in which the personal attendance of an executor, administrator, trustee, receiver, committee, manager or guardian is required in any court or elsewhere, a trustee company shall be entitled to make such attendance in the person of the managing director, manager, assistant manager or secretary or by such other officer of the trustee company as may from time to time be appointed by the board of directors for the purpose.
- (2) All declarations, affidavits, statements of defence or other statements required by law to be made on oath may be made and sworn on behalf of a trustee company by the managing director, manager, assistant manager or secretary or by such other officer of the trustee company as may from time to time be appointed by the board of directors for the purpose.
- (3) In every case where a trustee company obtains a grant of probate or letters of administration or acts as trustee, receiver, committee, manager or guardian, the directors, managing director, manager and assistant manager of the trustee company in their proper persons and estates shall be individually and collectively responsible for the due administration during the respective tenures of their respective offices of the estates entrusted to the trustee company and shall in their own proper persons be liable by process of attachment, commitment for contempt or by other process to all courts having jurisdiction in that behalf in the event of disobedience to the rules, orders and decrees of such courts made against the trustee company in the same manner and to the same extent as if such managing director, manager, assistant manager and director had personally obtained the grant of probate or letters of administration and had acted as executor, administrator, trustee, receiver, committee, manager or guardian and as if the rule, order or decree had been made against them personally instead of against the trustee company.
- (4) Notwithstanding the personal liability of the managing director, manager, assistant manager and directors the capital both paid and unpaid and all other assets of the

trustee company shall remain liable for any pecuniary loss which may be occasioned by or which may happen through any breach of trust or duty committed, or any neglect in the performance of any trust or duty by the trustee company or any of its officers, whether such trust or duty is implied by the law or expressly conferred or imposed by the instrument under which the trustee company acts.

- (5) At least 3 directors of every trustee company shall be natural persons who ordinarily reside within Australia.
- (6) One of the directors referred to in subsection (5) shall, where a trustee company has a managing director, be the managing director.

Part 3 Shareholdings in trustee companies

31A Restriction on acquisition of shares

- (1) Except as provided by this Act, a person shall not, either alone or together with another person or other persons, acquire shares in a trustee company if any person who is not entitled to any voting shares in the trustee company or is entitled to less than the prescribed percentage of the voting shares in the trustee company would, immediately after the acquisition, be entitled to more than the prescribed percentage of the voting shares in the trustee company.
- (2) Except as provided by this Act, a person shall not, either alone or together with another person or other persons, acquire shares in a trustee company if any person (in this subsection referred to as a **relevant person**) who is entitled to not less than the prescribed percentage of the voting shares in the trustee company would, immediately after the acquisition, be entitled to a greater percentage of the voting shares in the trustee company than the percentage to which that relevant person was entitled immediately before the acquisition.
- (3) Notwithstanding subsections (1) and (2), a person shall not, either alone or together with another person or other persons, acquire shares in a trustee company where the prescribed percentage of voting shares in the trustee company is more than 20 per cent if:
 - (a) any person who is not entitled to any voting shares in the trustee company or is entitled to less than 20 per cent of the voting shares in the trustee company would, immediately after the acquisition, be entitled to more than 20 per cent of the voting shares in the trustee company, or
 - (b) any person (in this paragraph referred to as a **relevant person**) who is entitled to not less than 20 per cent, but less than 90 per cent, of the voting shares in the trustee company would, immediately after the acquisition, be entitled to a greater percentage of the number of voting shares in the trustee company than the percentage to which that relevant person was entitled immediately before the

acquisition,

unless:

(c) before the acquisition takes place, the Minister, pursuant to an application made as prescribed, gives approval in writing to the acquisition and, where that approval is subject to conditions, those conditions are complied with,

(d) the acquisition is made as a result of the acceptance of offers to acquire those shares made under a takeover bid in relation to that trustee company in accordance with the *Corporations Act 2001* of the Commonwealth, and

(e) after the acquisition takes place, a person acquiring the shares is not entitled to more than the prescribed percentage of voting shares in the trustee company.

(4) A person shall not offer to acquire, or issue an invitation in relation to, shares in a trustee company if the person is prohibited by subsection (1), (2) or (3) from acquiring those shares.

(5) Where, by reason of the acquisition by a person (whether alone or together with another person or other persons) of shares in a trustee company:

(a) any person who was not entitled to any voting shares in the trustee company or was entitled to less than the statutory percentage of the voting shares in the trustee company becomes, immediately after the acquisition, entitled to more than the statutory percentage of the voting shares in the trustee company, or

(b) any person (in this paragraph referred to as a **relevant person**) who was entitled to not less than the statutory percentage of the voting shares in the trustee company becomes, immediately after the acquisition, entitled to a greater percentage of the voting shares in the trustee company than the percentage to which that relevant person was entitled immediately before the acquisition,

the firstmentioned person shall, within 2 days after the acquisition, cause notice to be given to the Minister, in the prescribed manner and form, of the acquisition.

(6) A reference in subsection (5) to the statutory percentage of voting shares in a trustee company:

(a) is, where no authorisation is provided as referred to in paragraph (b), a reference to the prescribed percentage of voting shares in the trustee company, or

(b) is a reference to the percentage that would, but for an authorisation provided, for the purposes of subsection (12), by the articles of association of the trustee company, be the prescribed percentage of voting shares in the trustee company,

as the case may require.

- (7) A person who contravenes subsection (1), (2), (3) or (4), or who fails to comply with subsection (5), is guilty of an offence and liable to a penalty not exceeding 20 penalty units.
- (8) The Minister may request the Commission to prepare a report on an application for approval under subsection (3) (c).
- (9) It is a defence to a prosecution for a contravention of this section if the defendant establishes that the contravention was due to a mistake of fact on the part of the defendant or to the defendant's not being aware of a relevant fact or occurrence.
- (10) An acquisition of shares is not invalid by reason of a contravention of this section.
- (11) A provision in the articles of association of a trustee company that applies or purports to apply the provisions of subsection (1) or (2) as if the reference to the prescribed percentage were a reference to a lesser percentage is void.
- (12) A reference in this section to the prescribed percentage of voting shares in a trustee company is a reference to:
 - (a) 10 per cent or, where a higher percentage is prescribed by regulations in force for the time being for the purposes of this subsection, that higher percentage, or
 - (b) where the articles of association of the trustee company authorise a higher percentage for the purposes of this subsection—that higher percentage, whichever is the greater.
- (13) A reference in this section to 20 per cent shall, where a lesser percentage is prescribed by regulations in force for the time being for the purposes of this subsection, be deemed to be a reference to that lesser percentage.
- (14) A reference in this section to a trustee company is a reference to a trustee company that is a company within the meaning of the *Corporations Act 2001* of the Commonwealth that is taken to be registered in New South Wales for the purposes of that Act.
- (15) Despite any provision of this or any other Act or law, this section does not apply to an acquisition of shares by a trustee company in itself or that results in a trustee company acquiring shares in itself.
- (16) Subsection (15) applies to any acquisition of shares whether occurring before or after the commencement of that subsection. A person is not guilty of an offence under this section in respect of any acquisition of shares in a trustee company, as referred to in that subsection, that occurred before that commencement.

31B Acquisitions to which sec 31A does not apply

Section 31A does not apply to or in relation to an acquisition of shares in accordance with the *Corporations Act 2001* of the Commonwealth that is:

- (a) an exempt acquisition under Part 6.2 of the *Corporations Act 2001* of the Commonwealth, other than an acquisition referred to in item 1, 2, 7, 9, 10, 11, 19 or 20 of the table to section 611 of that Act, or
- (b) an acquisition of any other kind and is made in a prescribed manner or in prescribed circumstances, or
- (c) an acquisition approved by the Minister in writing.

31C Orders where prohibited acquisitions take place

(1) Where a person has acquired shares in a trustee company in contravention of section 31A, the Court may, on the application of the Commission, the trustee company, a member of the trustee company or the person from whom the voting shares were acquired, make such order or orders as it thinks fit, including, but without limiting the generality of the foregoing, one or more of the following orders:

- (a) an order restraining the person who acquired the shares from disposing of, or of any interest in, the shares or such of the shares as are specified in the order,
- (b) an order restraining the exercise of any voting or other rights attached to the shares or such of the shares as are specified in the order,
- (c) an order directing the trustee company not to make payment, or to defer making payment, of any sum or sums due from the trustee company in respect of the shares or such of the shares as are specified in the order,
- (d) an order directing the disposal of, or of any interest in, the shares or such of the shares as are specified in the order,
- (e) an order vesting in the Commission:
 - (i) the shares, or such of the shares as are specified in the order, or
 - (ii) any interest in the shares, or in such of the shares as are specified in the order,
- (f) an order cancelling a contract, arrangement or offer for or in connection with the acquisition of the shares or of such of the shares as are specified in the order,
- (g) an order declaring a contract, arrangement or offer for or in connection with the acquisition of the shares, or of such of the shares as are specified in the order, to be voidable,

- (h) an order directing the trustee company not to register the transfer or transmission of the shares or such of the shares as are specified in the order,
- (i) an order that any exercise of the voting or other rights attached to the shares, or such of the shares as are specified in the order, be disregarded,
- (j) for the purpose of securing compliance with any order referred to in any of the preceding paragraphs, an order directing the trustee company or any other person to do or refrain from doing a specified act.

(2) Where, at the hearing of an application under subsection (1), it is proved to the satisfaction of the Court that:

- (a) a person is entitled to shares in a trustee company by reason that another person who is an associate of the firstmentioned person has a relevant interest in those shares, and
- (b) that other person became entitled to that relevant interest by reason of an acquisition of shares (whether in that trustee company or in another corporation) that took place within 6 months immediately preceding the filing of the application with the Court,

then, in determining for the purposes of the application whether the acquisition referred to in paragraph (b) was made in contravention of section 31A, the proof to the satisfaction of the Court of the matters mentioned in paragraphs (a) and (b) constitutes prima facie evidence that the other person was an associate of the firstmentioned person immediately after the acquisition took place.

(3) The Court shall not make an order under this section, other than an order referred to in subsection (1) (a), (b) or (i), if it is satisfied:

- (a) that the contravention of section 31A by the person who acquired the shares was due to a mistake of fact on the part of the person or to the person's not being aware of a relevant fact or occurrence, and
- (b) that, in all the circumstances, the contravention ought to be excused.

31D Powers of the Minister in certain other cases

(1) Where:

- (a) a person has acquired, otherwise than in contravention of section 31A, shares in a trustee company,
- (b) the acquisition of those shares by that person was an acquisition of which notice was required to be given to the Minister under section 31A (5), and
- (c) the Minister is satisfied, having regard to:

(i) the interest of persons to whom the trustee company stands in a fiduciary relationship, and

(ii) the public interest,

that an order or orders under this section is or are warranted in the circumstances of the case,

the Minister may make any one or more of the following orders:

(d) an order restraining the person who acquired the shares from disposing of, or of any interest in, the shares or such of the shares as are specified in the order,

(e) an order directing the trustee company not to make payment, or to defer making payment, of any sum or sums due from the trustee company in respect of the shares or such of the shares as are specified in the order,

(f) an order directing the disposal of, or of any interest in, the shares or such of the shares as are specified in the order,

(g) an order vesting:

(i) the shares, or such of the shares as are specified in the order, or

(ii) any interest in the shares, or in such of the shares as are specified in the order,

in the Commission,

(h) an order directing the trustee company not to register the transfer or transmission of the shares or such of the shares as are specified in the order,

(i) for the purpose of securing compliance with any order referred to in any of the preceding paragraphs, an order directing the trustee company or any other person to do or refrain from doing a specified act.

(2) Except as provided by subsection (3), an order under subsection (1) has effect upon service of a notice specifying the terms of the order, given under the hand of the Minister, on the trustee company or other person to whom the order is directed.

(3) An order under subsection (1) (i):

(a) has effect upon service of a notice containing the order, given under the hand of the Minister, on the person who acquired the shares, and

(b) has effect notwithstanding any contract, arrangement or offer for or in connection with the acquisition of the shares or any of them.

(4) A trustee company or other person who fails to comply with an order under

subsection (1) is guilty of an offence and liable to a penalty not exceeding 20 penalty units.

(5) The Commission may:

(a) cause any shares, or any interest therein, vested in it by an order under subsection (1) (i) to be offered for sale,

(b) sell the shares or interest so offered for sale,

(c) appoint a person to execute a transfer of the shares or interest and to receive, account for, and give a good discharge in respect of, the purchase money,

(d) cause the transfer relating to the sale to be registered, and

(e) cause all such matters and things to be done as may be necessary to dispose of the shares or interest therein.

(6) Purchase money received pursuant to subsection (5), after payment thereof of all costs, expenses, commissions and fees in respect of or incidental to the sale of the shares concerned, shall be paid by the Commission to the person from whom the shares were divested by the Minister's order or to such other person as may appear to the Commission to be entitled to it.

(7) The Court, on the application of the Minister or the Commission, may make orders, being:

(a) orders of the kind referred to in section 31C (1), or

(b) such other orders as the Court considers appropriate,

in aid of the exercise by the Minister or the Commission, as the case may be, of the powers conferred by this section.

Part 4 Miscellaneous

32 Recovery of penalties

Any penalty imposed by this Act may be recovered in a summary way before the Local Court.

32A Certificate evidence

(1) When a trustee company is executor or administrator, or is by law authorised to administer the estate of any deceased person, a certificate issued under the seal of the trustee company, certifying:

(a) that the trustee company has taken out probate or letters of administration, or is authorised to administer the estate, and

(b) the date when such probate or letters of administration was or were granted, or when and how the trustee company became authorised to administer the estate, and

(c) the name, residence and occupation of the deceased person,

is, despite any Act or other law to the contrary, to be accepted for all purposes as prima facie evidence (without production of any other proof):

(d) of the death of the deceased person, and

(e) of the appointment of the trustee company as executor or administrator, or of the right of the trustee company to administer the estate.

(2) If a trustee company is appointed and acts jointly with any other person (in this subsection referred to as **co-administrator**) as executor or administrator, a certificate issued under the seal of the trustee company, certifying:

(a) that the trustee company and such co-administrator have taken out probate or letters of administration, and

(b) the date when such probate or letters of administration was or were granted, and

(c) the name, residence and occupation of the deceased person,

is, despite any Act or other law to the contrary, to be accepted for all purposes as prima facie evidence (without production of any other proof):

(d) of the death of the deceased person, and

(e) of the appointment of the trustee company and the co-administrator as executors or administrators.

32B Excluded matters under section 5F of [Corporations Act 2001](#) of the Commonwealth

(1) The regulations may declare any relevant matter (other than a declared matter) to be an excluded matter for the purposes of section 5F of the [Corporations Act 2001](#) of the Commonwealth in relation to:

(a) the whole of the Corporations legislation to which Part 1.1A of the [Corporations Act 2001](#) of the Commonwealth applies, or

(b) a specified provision of that legislation, or

(c) that legislation other than a specified provision, or

(d) that legislation otherwise than to a specified extent.

Note—

Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

(2) In this section:

declared matter means a matter that is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth by another provision of this Act.

matter includes act, omission, body, person or thing.

relevant matter means:

(a) any matter that is prohibited, required, authorised or permitted by or under this Act or the regulations, or

(b) any other matter that is dealt with by this Act or the regulations.

33 Settlers or testators may appoint own solicitors

(1) Where by any settlement, will, codicil or other testamentary writing made before or after the commencement of this Act, a settlor or testator directs that any practising solicitor shall conduct the legal business of the settlor's or testator's estate, such solicitor shall be entitled to act therein accordingly, but in such case a trustee company shall not be liable for the negligence, misfeasance, nonfeasance or misconduct of such solicitor.

(2) Such solicitor may be removed by the Court upon the application of the trustee company or of any person interested in the said estate upon cause shown, and the Court may appoint a solicitor nominated by the trustee company in his or her place.

34 Other companies may apply for similar powers

Nothing in this Act shall entitle a trustee company to oppose the granting of powers similar to those conferred upon trustee companies by this Act to any other company or to corporations generally, or to claim or to seek compensation in consequence of such powers being conferred upon any other company or upon corporations generally, or in the event of the repeal of this Act.

35 Liability of directors

The following provisions with respect to the liability of directors of a trustee company shall be and remain in force notwithstanding any alteration which may be made in the articles of association of that trustee company.

In the event of a trustee company being wound up, every person who has been a director of such trustee company at any time within the period of 2 years preceding the

commencement of the winding-up shall be liable for the balance unpaid on every share which the person may have transferred during such 2 years, in addition to the person's liability upon any such shares held by the person at the commencement of the winding-up, in the event of the holder of such shares being unable to pay the said balance per share in full.

36 Provisions continued in force

- (1) The provisions set out in the Second Schedule under the short headings comprising the names of the trustee companies shall be and remain in force with respect to the respective trustee companies named in such short headings notwithstanding the repeal of the Acts mentioned in the First Schedule, and notwithstanding any alteration which may be made in the articles of association of the trustee company so named.
- (2) The minimum issued capital requirement for Perpetual Limited set out in the Second Schedule under the heading "Perpetual Limited" is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of section 254N of that Act.
- (3) The provisions set out in the Second Schedule under the heading "Perpetual Limited" have effect despite any special resolution passed by the Company or anything contained in the constitution of the Company.

36A Indemnities

- (1) The National Australia Trustees Limited, BNY Trust Company of Australia Limited, the Trust Company Fiduciary Services Limited, the Perpetual Trustee Company Limited, Perpetual Limited and such other trustee companies named in the Second Schedule as are declared by a proclamation under section 36AA to be trustee companies to which this section applies:
 - (a) shall arrange with an approved insurer, and keep in force at all times, an approved policy of indemnity insurance for an amount that is not less than the amount prescribed in respect of the trustee company concerned, or
 - (b) shall instead, with the approval of the Attorney General, lodge with the Attorney General an approved guarantee from a bank, building society or credit union as an indemnity to secure the payment of an amount that is not less than the amount prescribed in respect of the trustee company concerned.
- (2) A trustee company referred to in subsection (1) shall, at the request of the Attorney General, produce evidence of any insurance required to be arranged and kept in force by the trustee company under this section.
- (3) In this section, **approved** means approved by the Attorney General.
- (4) The Attorney General, before approving a policy of indemnity insurance or a

guarantee from a bank, building society or credit union under this section, is to consult the Australian Financial Institutions Commission established by the *Australian Financial Institutions Commission Act 1992* of Queensland as to the appropriate value of the indemnity or guarantee concerned.

36AA Extension of section 36A to other trustee companies

- (1) The Governor may, by proclamation published on the NSW legislation website, declare a trustee company named in the Second Schedule to be a trustee company to which section 36A applies.
- (2) Any such proclamation may also amend the Second Schedule by omitting from it such of its provisions as impose (in whatever terms) any of the following requirements or restrictions on the trustee company concerned:
 - (a) a requirement that the portion of the trustee company's share capital which is not capable of being called up except in the event of and for the purposes of the company being wound up be not less than a specified amount,
 - (b) a restriction on the amount of share capital that the trustee company may call up or receive,
 - (c) a restriction on the distribution, as dividends or otherwise, of the trustee company's profits before the accumulation out of those profits of a special reserve of a specified amount,
 - (d) a restriction on the distribution of a special reserve.
- (3) This section has effect despite the other provisions of this Act, and, accordingly, nothing in this Act prevents:
 - (a) the making of a proclamation under this section, or
 - (b) a proclamation made under this section from having effect according to its terms.

36B Unpaid capital of Trust Company Fiduciary Services Limited

- (1) A variation matter is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of section 254N of that Act.
- (2) In this section, **variation matter** means any variation, by special resolution of Trust Company Fiduciary Services Limited, of the portion of its unpaid share capital that is not capable of being called up.

37 Regulations

- (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are

necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A provision of a regulation may:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
- (b) apply differently according to different factors of a specified kind, or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(3) (Repealed)

37A Savings and transitional regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Trustee Companies Amendment Act 2000

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

38 Repeal of Act does not affect operation of savings and transitional provisions

(1) Despite the repeal of the *Trustee Companies (Amendment) Act 1983*, sections 3–5 of that Act continue to have effect and are taken to have been transferred to this Act.

(2) Sections 3–5 of the *Trustee Companies (Amendment) Act 1983* are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

First Schedule

(Section 2)

Short title of Act

Permanent Trustee Company of New South Wales (Limited) Act
Perpetual Trustee Company (Limited) Act
The Union Trustee Company of Australia, Limited, Act
Permanent Trustee Company of New South Wales Limited (Amendment) Act 1918
Perpetual Trustee Company (Limited) Amendment Act 1918
The Union Trustee Company of Australia, Limited (Amendment) Act of 1919
Elder's Trustee and Executor Company, Limited, Act 1920
Executor Trustee and Agency Company of South Australia, Limited, Act 1925
The Trustees, Executors, and Agency Company, Limited, Act 1927
Burns Philp Trust Company Limited Act
Trustee Companies Act 1952

Second Schedule

(Section 36)

Trust Company Fiduciary Services Limited

The issued capital of the company shall not be at any time reduced to less than \$12,000,000.

Perpetual Trustee Company Limited

The issued capital of the company shall not be at any time reduced to less than \$8,000,000.

Trust Company Limited

(a), (b) (Repealed)

(c) Subject to the provisions of section 24, but notwithstanding any other provisions of this Act, the company may alter its share capital in any manner permitted by the *Companies Act 1961* other than by reducing its share capital.

ANZ Executors & Trustee Company Limited

(a) (Repealed)

(b) The capital of the company shall be and remain divided into shares of not less than \$1 each and the number of shares in the company shall not be at any time reduced to less than 2,500,000.

(c) An amount of \$1,400,000, being part of the amount remaining uncalled on the shares actually held in the company, shall not be called up except in the event of and for the purpose of the winding-up of the company and every member shall in such event be liable to contribute the unpaid balance of every share held by the member. And it shall not be lawful for the company to mortgage, charge or in any way encumber the uncalled capital on the aforesaid shares.

(d) No more than four-fifths of the profits made by the company in any one year shall be distributed as dividends or otherwise until there has been accumulated out of profits a fund of \$130,000. Such fund shall constitute a special reserve and shall not be in any manner distributed amongst the shareholders except in the event of the winding-up of the company.

Burns Philp Trustee Company Limited

(a) Not more than 10 cents shall be called up or received by the company on 300,000 of the

subscribed shares of \$1 each in the capital of the company except in the event of and for the purpose of the winding-up of the company and every member shall in such event be liable to contribute the unpaid balance of every share held by the member. And it shall not be lawful for the company to mortgage, charge or in any way encumber the uncalled capital on those 300,000 shares.

- (b) Partly paid up shares in the company shall not be transferable unless in any case the proposed transferee is in the opinion of the directors possessed of such an amount of property as they consider reasonable.
- (c) (Repealed)
- (d) The capital of the company shall be and remain divided into shares of \$1 each and the number of shares in the company shall not be at any time reduced to less than 200,000.
- (e) No more than four-fifths of the profits made by the company in any one year shall be distributed as dividends or otherwise until there has been accumulated out of profits a fund of \$130,000. Such fund shall constitute a special reserve and shall not be in any manner distributed amongst the shareholders except in the event of the winding-up of the company.

Australian Executor Trustees (NSW) Limited

- (a) Not more than 20 cents shall be called up or received by the company on 150,000 of the subscribed shares of \$2 each in the capital of the company except in the event of and for the purpose of the winding-up of the company and every member shall in such event be liable to contribute the unpaid balance of every share held by the member. And it shall not be lawful for the company to mortgage, charge or in any way encumber the uncalled capital on those 150,000 shares.
- (b) Partly paid up shares in the company shall not be transferable unless in any case the proposed transferee is in the opinion of the directors possessed of such an amount of property as they consider reasonable.
- (c) (Repealed)
- (d) The capital of the company shall be and remain divided into shares of \$2 each and the number of shares in the company shall not be at any time reduced to less than 100,000.
- (e) No more than four-fifths of the profits made by the company in any one year shall be distributed as dividends or otherwise until there has been accumulated out of profits a fund of \$130,000. Such fund shall constitute a special reserve and shall not be in any manner distributed amongst the shareholders except in the event of the winding-up of the company.

Perpetual Limited

The issued capital of the company shall not be at any time reduced to less than \$24,000,000.

AXA Trustees Limited

- (a) The reserve liability of the company, being that portion of the company's share capital which is not capable of being called up except in the event of and for the purposes of a winding-up of the company, shall be not less than \$300,000 and every member shall in that event be liable to

contribute the unpaid balance of every share held by the member.

- (b) The capital of the company shall be and remain divided into shares of \$1 each and the number of shares in the company shall not at any time be reduced to less than 300,000.
- (c) A special reserve of at least \$100,000 shall be maintained and shall not be in any manner distributed among the shareholders except in the event of the winding-up of the company.
- (d) Partly paid up shares in the company shall not be transferable unless in any case the proposed transferee is, in the opinion of the directors, possessed of such an amount of property as they consider reasonable.

Third Schedule

(Section 3 (1))

First Part

Trustee Company

Trust Company Fiduciary Services Limited
Perpetual Trustee Company Limited
Trust Company Limited
Australian Executor Trustees Limited
Executor Trustee Australia Limited
ANZ Executors & Trustee Company Limited
Burns Philp Trustee Company Limited
Australian Executor Trustees (NSW) Limited
Perpetual Limited
Sandhurst Trustees Limited
AXA Trustees Limited
National Australia Trustees Limited
BNY Trust Company of Australia Limited

Second Part

(Repealed)