

# Trustee Companies Act 1964 No 6

[1964-6]



New South Wales

## Status Information

### Currency of version

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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](#), Sch 1 [6] (not commenced — to commence on 1.7.2010)

### Authorisation

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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### 2 (Repealed)

### 3 Interpretation

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

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

**Court** means Supreme Court.

**Manager** includes general manager and acting manager.

**Minor** means a person under the age of 18 years.

**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.

**Trustee company** means a licensed trustee company within the meaning of Chapter 5D of 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 or the *Corporations Act 2001* of the Commonwealth.

(3)–(9) (Repealed)

(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 of 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-19F (Repealed)**

## **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-25 (Repealed)**

## **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.

## **29-29E (Repealed)**

## **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**

- (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)-(6) (Repealed)

## **Part 3**

## **31A-31E (Repealed)**

## 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 (Repealed)

### 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.

### 34A Compulsory transfer determinations

- (1) This section applies if:
  - (a) the Australian Securities and Investments Commission (**ASIC**) cancels the licence of a trustee company (the **transferring company**) and makes a determination under section 601WBA of the [Corporations Act 2001](#) of the Commonwealth that there is to be a transfer of estate assets and liabilities from the transferring company to another licensed trustee company (the **receiving company**), and
  - (b) ASIC issues a certificate of transfer under section 601WBG of that Act for the transfer, and
  - (c) either the transferring company or the receiving company (or both) is registered in New South Wales.
- (2) When the certificate of transfer comes into force, the receiving company is taken to be the successor in law in relation to estate assets and liabilities of the transferring company, to the extent of the transfer.

**Note—**

Section 601WBG of the [Corporations Act 2001](#) of the Commonwealth requires the certificate of transfer to state when it is to come into force.

- (3) Without limiting subsection (2):
  - (a) if the transfer is a total transfer—all of the assets and liabilities of the transferring company become assets and liabilities of the receiving company (without the need

for any further conveyance, transfer, assignment or assurance), and

- (b) if the transfer is a partial transfer—the assets and liabilities listed as referred to in section 601WBG (2) (c) of the [Corporations Act 2001](#) of the Commonwealth of the transferring company become assets and liabilities of the receiving company (without the need for any further conveyance, transfer, assignment or assurance), and
- (c) to the extent of the transfer, the duties, obligations, immunities, rights and privileges applying to the transferring company apply to the receiving company, and
- (d) if the certificate includes provisions of the kind referred to in section 601WBG (3) of the [Corporations Act 2001](#) of the Commonwealth specifying:
  - (i) that particular things are to happen or are taken to be the case—those things are, by force of this section, taken to happen, or to be the case, in accordance with those provisions, and
  - (ii) a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with the mechanism are, by force of this section, taken to happen, or to be the case, as determined in accordance with that mechanism.

(4) The operation of this section is not to be regarded as:

- (a) a breach of contract or confidence or otherwise as a civil wrong, or
- (b) a breach of any instrument (including, without limitation, any provision prohibiting, restricting or regulating the assignment or transfer of assets or liabilities), or
- (c) an event of default under any contract or other instrument, or
- (d) giving rise to any remedy by a party to a contract or other instrument, or as causing or permitting the termination of, or exercise of rights under, any contract or other instrument.

### **34B Exemption from State tax**

(1) In this section:

**exempt matter** means the transfer of the estate assets and liabilities of a transferring company to a receiving company under Division 2 of Part 5D.6 of the [Corporations Act 2001](#) of the Commonwealth.

**State tax** means application or registration fees, duty under the [Duties Act 1997](#) or any other tax, duty, fee or charge imposed by any Act or law of the State.

(2) State tax is not payable in relation to:

- (a) an exempt matter, or
- (b) anything done because of, or for a purpose connected with or arising out of, an exempt matter.

### **35-36B (Repealed)**

### **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), (3) (Repealed)

### **37A (Repealed)**

### **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.

## **Schedule 1 Savings, transitional and other provisions**

### **Part 1 Preliminary**

#### **1 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*

*Trustee Companies Amendment Act 2009*

(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 on the NSW legislation website, 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.

## **Part 2 Provisions consequent on enactment of [Trustee Companies Amendment Act 2009](#)**

### **2 Definitions**

In this Part:

**amending Act** means the [Trustee Companies Amendment Act 2009](#).

**trustee company** means a trustee company within the meaning of this Act as in force before the commencement of this clause.

### **3 General**

The provisions of this Part are subject to any regulations made under clause 1.

### **4 BNY Trust Company of Australia Limited**

Subject to the other provisions of this Part, this Act, as in force immediately before the commencement of Schedule 1 [3] to the amending Act, continues to apply to and in respect of any estate management function (within the meaning of section 601RAC of the [Corporations Act 2001](#) of the Commonwealth) carried out by BNY Trust Company of Australia Limited under any grant of administration in force before that commencement.

### **5 Court may review rate of commission**

Section 18 (3), as in force immediately before its repeal by the amending Act, continues to apply with respect to any application to the Court to review the commission (in whole or in part) or rate of commission charged in respect of an estate that was made before that repeal.

### **6 Charge on assets of estate or trust for advances**

Section 17A, as in force immediately before its repeal by the amending Act, continues to apply to any sum advanced before that repeal.

### **7 Court may order account**

Sections 20A–22, as in force immediately before their repeal by the amending Act, continue to apply to an application made to the Court with respect to the filing of an account, an order for an account or for an audit (as the case requires) made before that repeal.

## **8 Financial statements**

Section 29D, as in force immediately before its repeal by the amending Act, continues to apply to any financial statement required to be forwarded under section 29D (2) within a period occurring before that repeal.

## **First-Third Schedules (Repealed)**