

Queensland



# TRUSTEE COMPANIES ACT 1968

**Reprinted as in force on 1 December 2000  
(includes amendments up to Act No. 58 of 2000)**

**Reprint No. 2B**

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## Information about this reprint

This Act is reprinted as at 1 December 2000. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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# TRUSTEE COMPANIES ACT 1968

[as amended by all amendments that commenced on or before 1 December 2000]

## An Act to consolidate the law relating to trustee companies and for purposes connected therewith

### PART 1—PRELIMINARY

#### Short title

1. This Act may be cited as the *Trustee Companies Act 1968*.

#### Definitions

4. In this Act—

“**administration with the will annexed**” includes administration with exemplification of probate or letters of administration with the will annexed or duplicate or copy probate of the will annexed;

“**books**” includes any register or other record of information and any accounts or accounting records, however compiled, recorded or stored, and also includes any document;

“**corporation**” means any body corporate, whether formed or incorporated within or outside the State, and includes any company, any foreign company and any recognised company but does not include—

- (a) a body corporate that is incorporated within Australia or an external Territory of the Commonwealth and is a public authority or an instrumentality or agency of the Crown;
- (b) a corporation sole;

“**Court**” means the Supreme Court of Queensland;

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**“director”** includes a local director;

**“estate”** includes all real and personal property of whatever nature or kind committed to the administration or management of a trustee company;

**“financial institution”** includes—

- (a) an insurance company; and
- (b) the trustees or managers of a superannuation fund established under a law of the Commonwealth or another State; and
- (c) a corporation, or a corporation included in a class of corporations declared under a regulation to be a financial institution.

**“financial institution’s books”** means—

- (a) books of a financial institution, including any documents used in the ordinary business of a financial institution; or
- (b) cheques, orders for the payment of money, bills of exchange and promissory notes in the possession or under the control of a financial institution; or
- (c) securities or documents of title to securities in the possession or under the control of a financial institution whether by way of pledge or otherwise.

**“foreign company”** has the meaning given by the Corporations Law;

**“insurance company”** means a corporation that is registered under the *Life Insurance Act 1945* (Cwlth);

**“Judge”** means a Judge of the Supreme Court;

**“new trustee company”** means a trustee company whose name is inserted in Part 1 of Schedule 2 on or after 21 June 1983;

**“officer of the trustee company”** means the managing director, general manager, State manager, manager, acting manager, assistant manager or secretary of the trustee company and includes in relation to any purpose or purposes of this Act any other officer of the trustee company designated as such by the board of directors for that purpose or those purposes;

**“probate”** includes ancillary probate;

**“recognised company”** has the meaning given by the Corporations Law;



**“registrar”** means the chief executive of the department;

**“related corporation”**, in relation to a corporation, means a corporation that is deemed to be related to the first mentioned corporation by virtue of section 4A(5);

**“trustee company”** means any company mentioned in Part 1 of Schedule 2.

**“unincorporated association”** means any unincorporated joint venture, partnership, trust or any other form of unincorporated association;

### **Powers conferred on trustee companies are additional powers**

**4AA.** 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, trustees, receivers, committees, guardians, liquidators, official liquidators, guarantors or sureties or attorneys by any other Act.

### **Subsidiaries, holding companies and related corporations**

**4A.(1)** For the purposes of this Act, a corporation shall, subject to subsection (3), be deemed to be a subsidiary of another corporation if—

- (a) that other corporation—
  - (i) controls the composition of the board of directors of the first mentioned corporation; or
  - (ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the first mentioned corporation; or
  - (iii) holds more than one-half of the issued share capital of the first mentioned corporation (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) the first mentioned corporation is a subsidiary of any corporation that is that other corporation’s subsidiary (including a corporation that is that other corporation’s subsidiary by another application or

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other applications of this paragraph).

(2) Without limiting by implication the circumstances in which the composition of a corporation's board of directors is to be taken to be controlled by another corporation, the composition of a corporation's board of directors shall be taken to be controlled by another corporation if that other corporation, by the exercise of some power exercisable whether with or without the consent or concurrence of any other person by that other corporation, can appoint or remove all or a majority of the directors, and for the purposes of this provision that other corporation shall be deemed to have power to make such an appointment if—

- (a) a person cannot be appointed as a director without the exercise in his or her favour by that other corporation of such a power; or
- (b) a person's appointment as a director follows necessarily from the person being a director or other officer of that other corporation.

(3) In determining whether one corporation is a subsidiary of another corporation—

- (a) any shares held or power exercisable by that other corporation in a fiduciary capacity shall be treated as not held or exercisable by it; and
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable—
  - (i) by any person as a nominee for that other corporation (except where that other corporation is concerned only in a fiduciary capacity); or
  - (ii) by, or by a nominee for, a subsidiary of that other corporation, not being a subsidiary that is concerned only in a fiduciary capacity;

shall be treated as held or exercisable by that other corporation; and

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first mentioned corporation, or of a trust deed for securing any issue of such debentures, shall be disregarded; and
- (d) any shares held or power exercisable by, or by a nominee for, that

other corporation or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, not being a transaction entered into with a person associated with the other corporation or its subsidiary.

(4) A reference in subsection (5) to the holding company of another corporation shall be read as a reference to a corporation of which that other corporation is a subsidiary.

(5) Where a corporation—

- (a) is the holding company of another corporation; or
- (b) is a subsidiary of another corporation; or
- (c) is a subsidiary of the holding company of another corporation;

that first mentioned corporation and that other corporation shall, for the purposes of this Act, be deemed to be related to each other.

(6) For the purposes of this Act, a corporation is the ultimate holding company of another corporation if—

- (a) the other corporation is a subsidiary of the corporation; and
- (b) the first mentioned corporation is not itself a subsidiary of any corporation.

## **PART 2—DUTIES, FUNCTIONS, OFFICES**

### **Trustee company may act as executor and obtain probate**

5.(1) Whenever a trustee company is named expressly or by implication either alone or jointly with any other person as executor of the last will of any testator (whether the will was made before or after the commencement

of this Act) the trustee company may act as executor and may apply to the Court for probate of the will of the testator.

(2) The Court may grant probate to the trustee company on an application pursuant to subsection (1).

(3) Where a grant of probate is made to a trustee company pursuant to this section, the trustee company may perform and discharge all the acts and duties of an executor as fully and effectually as a private individual may do when appointed executor.

**Persons entitled to obtain probate of the will or administration with the will annexed may authorise trustee company to apply for administration with will annexed**

**6.(1)** In all cases in which a private individual may apply for and obtain—

- (a) probate of the will without reserving leave to any other person to apply for probate; or
- (b) letters of administration with the will annexed of the estate;

of a deceased person, that individual may—

- (c) join with a trustee company in an application for—
  - (i) in a case where the individual may apply for and obtain probate—a joint grant of probate to himself or herself and letters of administration with the will annexed to the trustee company; or
  - (ii) a grant of letters of administration with the will annexed to himself or herself and the trustee company jointly; or
- (d) instead of himself or herself applying, authorise a trustee company to apply for and obtain letters of administration with the will annexed unless the testator by will has expressed the desire that the office of executor should not be delegated or that the trustee company should not act in the trusts of the will.

(2) Where—

- (a) a person joins with a trustee company in an application pursuant to subsection (1); or

- (b) a trustee company makes an application that it has, pursuant to that subsection been authorised to make;

the Court may make a joint grant of probate and letters of administration with the will annexed or a grant of letters of administration with the will annexed, as the case may be, in accordance with the application.

(3) This section applies to wills whether made before or after the commencement of this Act.

### **Person entitled to obtain administration on intestacy may authorise trustee company to obtain administration**

7.(1) Any person entitled to obtain administration of the estate of any intestate may—

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

(2) Where—

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

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

(3) This section applies whether the intestate died before or after the commencement of this Act.

### **Saving rights of other persons to administration**

8. Nothing in sections 6 and 7 shall be taken to prejudice or affect the right of any person interested in the estate of any deceased person (other than a person who has joined with a trustee company in, or has authorised a trustee company to make, an application under those sections) to apply for

and obtain letters of administration, with or without the will annexed or other appropriate grant.

**Person entitled to probate may join with trustee company in applying for letters of administration to the trustee company**

**9.(1)** Any person named expressly or by implication as executor who would be entitled to obtain probate of the will of any testator may, instead of himself or herself applying for probate join with a trustee company in an application for letters of administration with the will annexed to be granted to the trustee company.

**(2)** Where a person joins with a trustee company in an application pursuant to subsection (1), the Court may grant administration with the will annexed to the trustee company unless the testator by will has expressed the desire that the office of executor should not be delegated or that the trustee company should not act in the trusts of the will.

**(3)** An application for a grant of letters of administration with the will annexed pursuant to this section may be made in the first instance to the Registrar of the Supreme Court who—

- (a) shall have power to make the grant; or
- (b) may refer any question arising upon the application to a Judge; or
- (c) may require the application to be made to the Court.

**(4)** A grant of letters of administration with the will annexed under this section may be made to a trustee company notwithstanding that a person named expressly or by implication in the will as executor (other than the person joining with the trustee company in the application for the grant) has applied for and has been granted probate.

**(5)** Where a grant of probate has been made to a person and a grant of letters of administration with the will annexed has been made to a trustee company under this section, that person and the trustee company shall administer the estate jointly.

**(6)** A grant of letters of administration with the will annexed to a trustee company under this section may reserve leave for any person named expressly or by implication in the will as executor (other than the person joining with the trustee company in the application for the grant) to come in

and apply for probate at any time subsequent to the grant.

(7) This section applies to wills whether made before or after the commencement of this Act.

(8) A person beneficially interested under the will is entitled to be heard in opposition to a grant being made under this section to a trustee company, and the Court after considering any objection by such a person may—

- (a) make a grant to the trustee company; or
- (b) upon the same application, grant probate to the person joining with the trustee company in the application.

### **Trustee company may act as administrator notwithstanding its incorporation**

10. Where the administration of any estate, with or without the will annexed, is granted to a trustee company, pursuant to this Act, the trustee company may perform and discharge all acts and duties which belong to the office of administrator or administrator with the will annexed, as the case may be, as fully and effectually as a private individual may do when granted such letters of administration.

### **Reseal of probate and letters of administration**

11. A trustee company as attorney lawfully authorised for that purpose by the executor or administrator under any probate or letters of administration within the meaning of the *British Probates Act 1898* granted by a court of probate in a part of Her Majesty's Dominions to which that Act applies or by a British court in a foreign country within the meaning of that Act, may make application to a Registrar of the Court to seal the probate or letters of administration or an exemplification, duplicate or copy thereof under the said Act and the Registrar shall have authority to seal the grant in question or an exemplification, duplicate or copy thereof.

### **Power of trustee companies to elect to administer small estates without grant of administration**

12.(1) Where any person has died intestate or testate, whether in or out of Queensland and whether before or after the commencement of this Act,

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leaving property situated in Queensland, the gross value of which as estimated by any trustee company does not at the time of the election hereinafter mentioned exceed \$100 000, and no person has taken out administration in Queensland, the trustee company, in any case where it would be entitled to obtain such a grant, may, in accordance with this section, instead of obtaining such a grant, file in the Court an election in writing, under the seal of the company, to administer the estate of the deceased person.

(2) On any such election being filed, the trustee company shall be deemed to be the executor of the will or the administrator of the estate, as the case may be, in like manner and to the same extent in all respects as if administration had been duly granted to it.

(3) Every such election shall set forth the name, residence, and occupation of the deceased so far as they are then known to the trustee company, and the date of the death of the deceased and the property situated in Queensland of the deceased as then known.

(4) The election shall contain in every case where the deceased died intestate a statement to that effect, and in every case where the deceased died testate a statement that after due inquiries the trustee company believes that the document annexed to the election is the testator's last will (or an exemplification thereof where administration has been granted out of Queensland) and that the will has been validly executed according to the law governing the execution of wills.

(5) No such election may be filed under this section unless there is endorsed thereon a certificate by a solicitor (whether in the employment of the trustee company or not) that (as the case may require) the solicitor is satisfied that the Court would, on application duly made, grant to the trustee company—

- (a) probate of the will to which the election relates; or
- (b) letters of administration with the will to which the election relates annexed; or
- (c) letters of administration of the estate of the deceased person without a will annexed.

(6) Any such election to administer shall be filed in any registry of the Court in which an application for a grant of administration of the will or



estate of the deceased person may be filed.

(7) If after filing any such election as aforesaid the gross value of the property situated in Queensland to be administered is found to exceed the sum of \$120 000, the trustee company shall as soon as practicable thereafter file in the registry of the Court in which the election to administer was filed a memorandum under the seal of the trustee company stating the fact, and shall thereupon proceed in the ordinary manner to obtain a grant of administration in Queensland, and for that purpose may uplift from the Court any will or exemplification filed with the election.

(8) Notice of an election under this section shall be advertised once in the Gazette in a form approved by the person who for the time being holds the office of the registrar.

### **Elections in respect of unadministered balance of an estate**

**13.(1)** Where a grant of administration (“**the original grant**”) has been made in Queensland in respect of the estate of any deceased person (the “**original estate**”) and the persons to whom the original grant or any substituted grant of administration was made have died, whether before or after the commencement of this Act, leaving part of the original estate unadministered, and the gross value of the property situated in Queensland so left unadministered, as estimated by the trustee company at the time of the election hereinafter mentioned, does not exceed the sum of \$100 000, and no person has since the death of the last administrator taken out letters of administration *de bonis non* in Queensland in respect of the original estate, the trustee company may, in accordance with this section, instead of applying for letters of administration *de bonis non* in Queensland, file in the registry of the Court out of which the original grant was issued an election in writing under the seal of the company setting forth the fact of the original grant, the death of the executors or other administrators, and the particulars of the property situated in Queensland so left unadministered, and electing to administer the part of the original estate so left unadministered.

(2) On the election being filed, the trustee company shall be deemed to be administrator of the original estate left unadministered in like manner and to the same extent in all respects as if letters of administration *de bonis non* had been duly granted to it.

(3) No such election may be filed under this section unless there is

endorsed thereon a certificate by a solicitor (whether in the employment of the trustee company or not) that the solicitor is satisfied that the Court would, on application duly made, grant to the trustee company letters of administration *de bonis non* in respect of the part of the original estate so left unadministered.

(4) If after the filing of any such election the gross value of the property situated in Queensland to be administered by the trustee company is found to exceed the sum of \$120 000, the trustee company shall, as soon as practicable thereafter, file in the said registry of the Court a memorandum under the seal of the trustee company stating the fact, and shall thereupon proceed in the ordinary manner to obtain in Queensland letters of administration *de bonis non* (either with or without the will annexed, as the case may be) in respect of the said estate, and for that purpose may uplift from the Court any will or exemplification filed with the election.

(5) Notice of an election under this section shall be advertised once in the Gazette in a form approved by the person who for the time being holds the office of the registrar.

### **Commissioner of Stamp Duties to be notified of filing of election**

14. Every trustee company shall notify the Commissioner for Stamp Duties in the form required by the Commissioner in all cases where it files an election under section 12 or 13.

### **Operation of election to administer as regards property out of State**

15. In determining the value of the property of any person that is situated in Queensland for the purposes of sections 12 and 13, that property shall not include or be deemed to include property situated out of Queensland at the time of the filing of any election to administer, whether or not the property may afterwards be transferred to Queensland (whether to the trustee company or to any other person) in due course of administration, whether for the purposes of distribution to the persons beneficially entitled thereto or otherwise howsoever, but in all other respects every election referred to in sections 12 and 13 shall extend and apply to and include the property situated out of Queensland in the same manner and to the same extent in all respects as a grant of administration obtained by the trustee company would

in the circumstances of each particular case extend or apply to or include that property.

### **Revocation of elections filed in error**

**16.(1)** Where any trustee company has, pursuant to any of the provisions of sections 12 and 13, filed an election to administer the estate of a deceased person, and the trustee company subsequently discovers that the election is invalid or ineffective by reason of the discovery of a will or a later will, or of the revocation or invalidity of a will, or for any other reason, then and in any such case the trustee company shall file in the registry of the Court in which the election to administer was filed a memorandum under the seal of the trustee company setting out the facts and certifying that the election already filed is invalid or ineffective.

**(2)** Upon any such memorandum being filed, the election to administer previously filed shall cease to be of any effect whatsoever, and thereafter an application for administration may be made or a fresh election may be filed in all respects as if the election to administer previously filed had not been filed.

### **Effect of joint grant on application under s.6**

**17.(1)** Where a person—

- (a) is named in a will, whether made before or after the commencement of this Act, as the only trustee of the lands of the testator in Queensland subject to the trusts of the will; and
- (b) pursuant to section 6,<sup>1</sup> joins with a trustee company in an application for—
  - (i) a joint grant of probate to himself or herself and letters of administration with the will annexed to the trustee company; or
  - (ii) a grant of letters of administration with the will annexed to himself or herself and the trustee company jointly;

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<sup>1</sup> Section 6 (Persons entitled to obtain probate of the will or administration with the will annexed may authorise trustee company to apply for administration with will annexed)

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a joint grant on such an application of—

- (c) probate to the person and letters of administration with the will annexed to the trustee company; or
- (d) letters of administration with the will annexed to the person and the trustee company;

as the case may be, has, for all purposes (including the right to be registered under the *Land Title Act 1994* as personal representative), the force and effect of a vesting order made by the Court vesting the lands in respect of which the person joining with the trustee company in the application is named in the will as the only trustee, in that person and the trustee company as trustees on the trusts of the will for all the right, title and interest therein of the testator.

(2) Where a person—

- (a) is named in a will, whether made before or after the commencement of this Act, as a trustee jointly with any other person or persons of lands of the testator in Queensland subject to the trusts of the will; and
- (b) pursuant to section 6, joins with a trustee company in an application for—
  - (i) a joint grant of probate to himself or herself and letters of administration with the will annexed to the trustee company; or
  - (ii) a grant of letters of administration with the will annexed to himself or herself and the trustee company jointly;

a joint grant on such an application of—

- (c) probate to the person and letters of administration with the will annexed to the trustee company; or
- (d) letters of administration with the will annexed to the person and the trustee company;

as the case may be, has, for all purposes (including the right to be registered under the *Land Title Act 1994* as personal representative), the force and effect of a vesting order made by the Court vesting the lands in respect of which the person joining with the trustee company in the application is named in the will as a trustee, in that person, the trustee company and the

other person or persons so named in the will or such of them as are living at the date of the grant and have not disclaimed the trust before that date, as trustees on the trusts of the will for all the right, title and interest therein of the testator.

### **Effect of disclaimer of trustee on authorisation under s.6**

#### **18.(1) Where any person—**

- (a) who is named in a will, whether made before or after the commencement of this Act, as the only trustee of lands of the testator in Queensland subject to the trusts of the will; and
- (b) who pursuant to section 6<sup>2</sup> authorises a trustee company to apply for and obtain letters of administration with the will annexed;

disclaims the trust in the authorisation, a grant of letters of administration with the will annexed made to the trustee company on an application made pursuant to the authorisation has, for all purposes (including the right to be registered under the *Land Title Act 1994* as personal representative), the force and effect of a vesting order made by the Court vesting the lands in respect of which the person giving the authorisation is named in the will as the only trustee, in the trustee company as trustee on the trusts of the will for all the right, title and interest therein of the testator.

#### **(2) Where any person—**

- (a) who is named in a will, whether made before or after the commencement of this Act, as a trustee jointly with any other person or persons of lands of the testator in Queensland subject to the trusts of the will; and
- (b) who pursuant to section 6 authorises a trustee company to apply for and obtain letters of administration with the will annexed;

disclaims the trust in the authorisation, a grant of letters of administration with the will annexed made to the trustee company on an application made pursuant to the authorisation has, for all purposes (including the right to be registered under the *Land Title Act 1994* as personal representative), the

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<sup>2</sup> Section 6 (Persons entitled to obtain probate of the will or administration with the will annexed may authorise trustee company to apply for administration with will annexed)

force and effect of a vesting order made by the Court vesting the lands in respect of which the person giving the authorisation is named in the will as a trustee, in the trustee company and the other person or persons so named in the will or such of them as are living at the date of the grant and have not disclaimed the trust before that date, as trustees on the trusts of the will for all the right, title and interest therein of the testator.

(3) This section does not apply in any case in which the testator has by will expressed the desire that the trustee company should not act in the trusts of the will.

### **Effect of disclaimer of trustee on joint application under s.9**

**19.(1)** Where any person—

- (a) who is named in a will, whether made before or after the commencement of this Act, as the only trustee of lands of the testator in Queensland subject to the trusts of the will; and
- (b) who, pursuant to section 9,<sup>3</sup> joins with a trustee company in an application for the grant of letters of administration with the will annexed to the trustee company;

disclaims the trust in the application, a grant of letters of administration with the will annexed made to the trustee company on the application has, for all purposes (including the right to be registered under the *Land Title Act 1994* as personal representative), the force and effect of a vesting order made by the Court vesting the lands in respect of which the person joining in the application is named in the will as the only trustee, in the trustee company as trustee on the trusts of the will for all the right, title and interest therein of the testator.

**(2)** Where any person—

- (a) who is named in a will, whether made before or after the commencement of this Act, as a trustee jointly with any other person or persons of lands of the testator in Queensland, subject to the trusts of the will; and
- (b) who pursuant to section 9 joins with a trustee company in an

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<sup>3</sup> Section 9 (Person entitled to probate may join with trustee company in applying for letters of administration to the trustee company)

application for the grant of letters of administration with the will annexed to the trustee company;

disclaims the trust in the application, a grant of letters of administration with the will annexed made to the trustee company on the application has, for all purposes (including the right to be registered under the *Land Title Act 1994* as personal representative), the force and effect of a vesting order made by the Court vesting the lands in respect of which the person joining in the application is named in the will as a trustee, in the trustee company and the other person or persons so named in the will or such of them as are living at the date of the grant and have not disclaimed the trust before that date, as trustees on the trusts of the will for all the right, title and interest therein of the testator.

(3) This section does not apply in any case in which the testator has by will expressed the desire that the trustee company should not act in the trusts of the will.

### **Executor or administrator may appoint trustee company in his or her place**

20.(1) With the consent of the Court or a Judge, any executor, whether appointed before or after the commencement of this Act, may, before or after taking out probate, appoint a trustee company as an executor in his or her place.

(2) With the consent of the Court or a Judge, an administrator with or without the will annexed, whether appointed before or after the commencement of this Act may appoint a trustee company as an administrator in his or her place.

(3) A trustee company shall not be appointed under this section in any case in which the testator has by will expressly prohibited the appointment of the trustee company to the office in question.

(4) Upon an appointment under this section, the trustee company shall have the same powers authorities functions and duties as if it had been the original executor or administrator, as the case may be.

**Trustee company may be appointed trustee receiver etc.**

**21.(1)** Subject to this section, any court, Judge or person (not being himself or herself a trustee) who has power to appoint or approve of any person as—

- (a) trustee; or
- (b) receiver; or
- (d) guardian of any person or of his or her estate; or
- (e) liquidator or official liquidator; or
- (f) guarantor or surety for any person appointed as administrator whether solely or jointly with any person;

may appoint or approve of the appointment of, a trustee company either solely or jointly with any other person to any of those offices or positions in respect of which it or he or she has the said power.

**(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 1 trustee to perform the trust.

**(3)** Where a trustee company and 1 or more individuals are co-trustees, any 1 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 two 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 the trustee company to the relevant office or position.

**(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)** Where a trustee company is appointed to any of the offices or positions referred to in subsection (1) the trustee company may perform, exercise and discharge all the powers and duties and shall be liable to all the obligations pertaining to the office or position to which it is appointed.



(7) Notwithstanding any Act or rule of law, a trustee, or other person having power to appoint a trustee, may appoint a trustee company to be a trustee without the consent of the Court in any case in which he or she has power to appoint a new trustee.

(8) Notwithstanding anything contained in or omitted from the memorandum or articles of association of a trustee company, the trustee company may be appointed and may act—

- (a) as guardian of the person and the estate of any person; and
- (b) as liquidator or official liquidator of any company under the provisions of the Corporations Law.

**Trustee company may act under power of attorney by an officer of the company etc.**

22.(1) A trustee company may act, either alone or jointly with any other person, under any power of attorney by which the trustee company is appointed attorney by any person or by any company or other corporation (including a power of attorney to apply for and obtain a grant of probate, letters of administration with the will annexed, letters of administration or other appropriate grant or the sealing thereof or an exemplification, duplicate or a copy thereof) as attorney for the person company or corporation, as the case may be, and all the powers conferred upon the trustee company by the power of attorney may be exercised and carried into execution by an officer of the trustee company.

(2) Nothing in this section shall be taken to authorise any person, company or other corporation to confer any power upon the trustee company which cannot be legally conferred upon a private individual.

**A holder of certain offices and positions may appoint a trustee company to discharge duties**

23.(1) Any executor or administrator acting under any probate or letters of administration, whether granted before or after the commencement of this Act, and any trustee, receiver, committee, guardian, liquidator or official liquidator whether appointed before or after that commencement, with the consent of the Court may appoint a trustee company to perform and discharge all the acts and duties of the executor, administrator, trustee,

receiver, committee, guardian, liquidator or official liquidator, as the case may be, and the trustee company shall have power to perform and discharge all those acts and duties accordingly.

(2) Where a trustee company is appointed under this section to perform and discharge the acts and duties of an office or position, the executor, administrator, trustee, receiver, committee, guardian, liquidator or official liquidator so appointing the trustee company shall be released from liability in respect of all acts done by or omitted to be done by the trustee company acting under the appointment.

### **Trustee may appoint a trustee company a trustee**

24.(1) Subject to subsection (2), any trustee may appoint a trustee company to be trustee in his or her place.

(2) Unless under the instrument creating the power or trust or under some other Act the trustee is authorised to appoint another person as trustee any appointment under subsection (1) is subject to the consent of the Court.

(3) Section 21(2) to (5) shall apply to an appointment under this section.

(4) Where a trustee company is appointed a trustee under this section, the trustee company may perform and discharge all the acts and duties, and shall be liable to all the obligations, pertaining to the office of the trustee in whose place it is appointed and the person so appointing the trustee company is released from liability in respect of all acts done by or omitted to be done by the trustee company acting under an appointment pursuant to this section.

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

25. Where any property is vested in a trustee company and a private 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.

**Payment of legacies of infants to trustee company**

**26.(1)** With the consent of the trustee company, any trustee may pay to any trustee company any money, being the whole amount, or the whole remaining amount, of any legacy or share in any estate to which an infant is entitled, whether absolutely or contingently, under a will, instrument, trust, or intestacy, and by writing in a form approved by the trustee company direct the trustee company to account for the legacy or share according to the provisions of the will, instrument, trust, or intestacy.

**(2)** The writing shall declare that the amount therein stated is the whole amount or, as the case may be, the whole remaining amount to which the infant is so entitled, and how much of the amount is capital and how much thereof is income and how much (if any) of the capital and income has been expended, whether for the maintenance, education, advancement, or benefit of the infant or otherwise, and (in the case of money to which the infant is contingently entitled) the person or persons who will become entitled to the money or so much as remains in the event of the infant failing to become absolutely entitled, and the shares and interests of those persons, and such other matters as the trustee company may require.

**(3)** The writing shall be certified correct by the trustee, and, without limiting the effect of the provisions (where applicable) of subsection (5), the trustee company shall not be under any obligation to inquire into the accuracy of the certificate nor shall the trustee company incur any liability through acting upon any statement contained in the writing.

**(4)** Upon subsections (1) to (3) being complied with in any case, the writing shall vest in the trustee company all the powers of the trustee in respect of the legacy or share, whether conferred by the will or trust instrument or by any enactment or in any other manner howsoever.

**(5)** The trustee shall, at the time of completing the certificate and directions referred to in subsections (1) to (4), furnish to the trustee company where applicable a true copy of the will or trust instrument affecting the legacy or share, and the trustee company shall act in pursuance of the trusts therein contained.

**(6)** The provisions of this section shall extend to all wills, trusts, trust instruments, intestacies, and transactions, whether they took effect before or after the commencement of this Act.

**(7)** In this section—

“**trustee**” includes an executor or administrator with or without the will annexed.

### **Appointment of trustee company where person whose consent is required refuses or is unable to consent**

27. Where the consent of any person is requisite to the appointment of an administrator or trustee and the person refuses to consent to a specified trustee company being appointed, or where the person to consent is not of full age or full mental capacity or is under any other disability, an appointment of the trustee company may be made without that consent if the Court consents thereto.

## **PART 3—POWERS**

### **General powers of trustee company**

28.(1) Notwithstanding anything in any other Act, a trustee company may, unless expressly prohibited by or under the terms of the instrument (if any) creating the trust exercise the following powers—

- (a) subject to subsection (2), sell property by public auction or private contract, altogether or in parts, and subject to such conditions as the trustee company deems fit;
- (b) purchase land in fee simple in Queensland;
- (c) for the purpose of the sale (including a sale in the exercise of a power of sale as mortgagee) of any real or leasehold property, subdivide the same into allotments, and for that purpose construct and dedicate all such roads, footpaths, and streets, and do all such other things as the trustee company having regard to all the circumstances of the case deems necessary, or as are required by any Act or by-law relating to subdivisions;
- (d) exchange property or join in a partition of property;
- (e) where in connection with any estate, the trustee company is lawfully holding any shares in, or debentures, debenture stock,

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notes (secured or otherwise), variable interest stock or like investment of a company, corporation (other than a company), institution or authority and on a reconstruction or change in constitution thereof (by takeover or otherwise) the shareholders, debenture holders, debenture stock holders, notes holders, variable interest stock holders or like investment holders are offered an option to take up shares, debentures, debenture stock, notes (secured or otherwise), variable interest stock or like investment in addition thereto or in substitution therefor, the trustee company may, on behalf of the estate, take up the additional or substitutional shares, debentures, debenture stock, notes (secured or otherwise) variable interest stock or like investment or any of them, and for that purpose may apply funds belonging to the estate, or advance on the security of the estate, such sums as may be necessary;

- (f) subject to subsection (3), appropriate any part of any estate in or towards satisfaction of any legacy or share (whether settled, contingent or absolute) to which any person entitled, and whether any beneficiaries so entitled are minors or not, and for that purpose value the whole or any part of the estate in such manner as the trustee company in the circumstances of the case may determine;
- (g) consult with and employ such persons as the trustee company deems expedient for advising or assisting it in the administration or management of any estate, and remunerate any such person at such rate and in such manner as the trustee company may determine to be proper;
- (h) subject where the sum to be expended exceeds \$50 000 in the aggregate to the consent of the Court or the beneficiaries, from time to time expend portion of the capital of any estate under its administration on the improvement or development of the estate, or in the purchase of livestock, machinery, plant, implements and other chattels, and for the like purposes advance money on the security of the estate;
- (i) subject where the sum of the additional moneys to be expended exceeds \$50 000 in the aggregate to the consent of the Court or the beneficiaries, in the case of total or partial destruction of

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buildings or other improvements utilise any insurance moneys received in respect thereof together with such additional moneys of the estate as may be necessary for the construction or restoration of the buildings or improvements or any of them;

- (j) from time to time postpone the conversion of any real or personal estate for such time as the trustee company determines is proper in the circumstances;
- (k) where a power of sale is conferred by this Act or by any instrument, give a lease of the property with an optional or compulsory purchasing clause;
- (l) lease property for a term not exceeding 21 years and renew any such lease or enter into any sharefarming agreement and renew any such sharefarming agreement;
- (m) surrender or concur in surrendering any lease, and accept a new lease;
- (n) repair any property;
- (o) insure any property against fire or accident or against any loss whatsoever in respect of, or arising out of the use of, the property;
- (p) pay rates, taxes, assessments, insurance premiums and other outgoings;
- (q) subject to the consent of the Court or the beneficiaries where the sum borrowed exceeds the sum of \$50 000, borrow money upon the security of property and secure the payment of the money and interest thereon by mortgage or charge of the property that may include a power of sale and such covenants, provisions and agreements as may be agreed upon by the trustee company and the mortgagee or chargee;
- (r) secure the payment of any debt or liability incurred before the date of the trustee company's appointment or authority by a mortgage or charge of property securing payment thereof and interest on the amount thereof which mortgage or charge may include a power of sale and such covenants provisions and agreements as may be agreed upon by the trustee company and the mortgagee or chargee, and pay the interest secured by the mortgage or charge out of income or, if the income is insufficient for that purpose, out

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of capital;

- (s) grant and acquire easements and enter into party wall agreements;
- (t) do or omit all acts and things, and execute all instruments, necessary to carry into effect any of the trustee company's powers and authorities;
- (u) out of moneys in which any person is beneficially interested for a life estate or greater interest or which may be applied for the use or benefit of any person, purchase land in Queensland held in fee simple for the purpose of providing or erecting thereon a home for that person.

(2) No sale of real property under subsection (1)(a) shall be made by private contract unless or until after the same has been offered for sale by public auction and not sold or unless the beneficiaries consent in writing to sale by private contract.

(3) The following provisions apply to an appropriation under subsection (1)(f)—

- (a) before any appropriation is effectual, notice thereof must be given to all persons sui juris who are interested in the appropriation, and whose whereabouts are known to the trustee company;
- (b) the trustee company may alter or amend the appropriation and notice within 1 month from the giving of notice;
- (c) any such person may within 1 month of the receipt of the notice referred to in paragraph (a) or of notice of amendment where amendment is notified, apply to the Court to vary the appropriation;
- (d) the appropriation shall be conclusive save as otherwise directed by the Court;
- (e) where—
  - (i) any person interested is out of the jurisdiction; or
  - (ii) the whereabouts of any person interested are unknown to the trustee company;

the period of 1 month referred to in paragraph (c) may be extended by the Court, for such period as the Court thinks fit, on

the application of the trustee company or of any person interested.

(4) The powers conferred by this section are in addition to and not in restriction of any other powers conferred on a trustee company by this or any other Act or by the instrument (if any) creating the trust.

### **Administrator carrying on intestate's business**

**29.(1)** Where—

- (a) administration of the estate of any intestate has been granted to a trustee company; and
- (b) the property or any part of the property of the deceased intestate was at the time of his or her death employed by him or her in any business or undertaking; and
- (c) the persons or 1 or more of the persons beneficially entitled to the property so employed are infants or is an infant;

it is lawful for the trustee company with the sanction of the Court and with the consent of and after hearing such other person or persons (if any) as the Court may direct—

- (d) to postpone the sale and conversion of the property into money; and
- (e) to manage and carry on the business or undertaking with or in connection with such property and for such period during the minority of the infant or infants as the Court may think fit for the benefit of the persons entitled to that property.

(2) The sanction of the Court may be obtained on summons to be served on such persons as the Court or a Judge may direct, and the Court or a Judge may direct the costs of and incidental to the summons to be borne and paid by such persons as may be just.

### **Power of company in certain cases of devises of realty**

**30.(1)** Where a trustee company is pursuant to this Act administering the estate of any deceased testator, who has by will devised land—

- (a) to any person who at the date of the death of the testator is under the age of 18 years; or



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- (b) when the trustee company is satisfied that the debts and liabilities of the testator due at the testator's death or the funeral expenses of the testator or the expenses of administration cannot be fully satisfied without recourse to the land so devised, to any person;

the trustee company shall, notwithstanding any law to the contrary, be entitled to have transmission of the land so devised entered up to it as trustee in the proper registry, and shall have the same powers and authority to deal with that land as though the land had by the will of the testator been devised to it upon trust for the devisee.

(2) Without limiting the powers of the trustee company in other respects it shall, notwithstanding any provision of the testator's will, have power to raise such sum or sums of money as it deems sufficient for the purpose of discharging any debts or liabilities charged upon the testator's estate, or for the payment of which that estate may be made available, by—

- (a) mortgage (at such rate of interest and repayable within such period as it thinks proper); or
- (b) sale at public auction; or
- (c) subject to offer for sale at public auction, at the best price obtainable thereafter (on such terms and conditions as it thinks proper); or
- (d) lease (of such duration as it thinks proper) at the best rent obtainable;

of the land devised by the testator as mentioned in subsection (1) or any part thereof.

**Power to apply income, or capital, for maintenance etc.**

**31.(1)** Where an infant is entitled to a share in an estate, whether testate or intestate, under administration by a trustee company, the trustee company may in its discretion apply for the maintenance, education, advancement or otherwise for the benefit of that infant, during minority—

- (a) the whole or any part of the income of the share to which the infant is entitled in possession; and
- (b) any part or parts of the corpus or capital of the share to which the infant is entitled in possession or reversion immediately expectant

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on a prior life interest but no application of a reversionary share shall be made without the previous consent in writing of the person on whose death the prior interest is determinable.

(2) A trustee company may, instead of itself applying income, corpus or capital, under subsection (1), pay the same to any person to be applied for the purposes specified in that subsection without seeing to the application or being answerable for the misapplication or non-application thereof.

(3) In any case in which there are sufficient moneys available for the purpose, the trustee company may for the purposes specified in subsection (1), apply the corpus of the share to which any infant is entitled in possession in excess of the limit prescribed in that subsection.

(4) Nothing in subsection (1) or (3) shall apply to a case—

- (a) where provision is expressly made for the maintenance, education, advancement, or otherwise for the benefit of an infant, unless such provision is insufficient, of which insufficiency the trustee company is sole judge; or
- (b) where provision is expressly made against any such application.

(5) In addition to and not by way of limitation of the powers conferred by subsections (1) and (3) where any property is held by a trustee company in trust for an infant, either for life or for any greater interest, whether absolutely or contingently upon the infant attaining a specified age, or on the occurrence of any event before attaining that age, the trustee company may in its discretion—

- (a) apply for the infant's maintenance, education, advancement or otherwise for his or her benefit the income of that property or any part thereof, whether there is any fund available for the same purpose, or any person is bound by law to provide for the infant's maintenance or education, or not; or
- (b) pay that income to any person to be applied for the purposes specified in this subsection without seeing to the application or being answerable for the misapplication or non-application thereof.

(6) The trustee company shall—

- (a) accumulate all the residue of the income of the property referred to in subsection (5) in the way of compound interest by investing

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the same and the resulting income thereof; and

- (b) hold the accumulations for the benefit of the persons who ultimately become entitled to the property from which the same arise, but so that the trustee company may at any time at its discretion apply those accumulations or any part thereof as if the same were income arising in the then current year.

(7) Subsections (5) and (6) apply only if and so far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(8) In addition to and not by way of limitation of any of the powers conferred by subsections (1) to (7), with the consent of the persons having prior estates or interests in property, whether corpus or capital or income, held under an instrument, whether the income is directed to be accumulated or not, if such corpus, capital, or income is made payable to a class of persons, and the members of that class, or some of them, would ultimately, on attaining a specified age or on the happening of an event, be entitled to a share of such corpus, capital, or income and by survivorship or otherwise may become entitled to the shares of the other members of the class, the contingencies being equal, the Court may authorise the application of, or the trustee company may with the like consent apply, the presumptive or contingent shares of infants belonging to the class towards their maintenance, education, advancement, or benefit, notwithstanding that there may be future members of the class who may come into existence.

(9) Where any member of the class referred to in subsection (8) has attained the required age or become entitled by age or otherwise, then the consent of that person is necessary to any application under that subsection.

(10) Applications under subsection (8) to the Court may be made by a trustee company or by an infant, but nothing in this subsection shall be taken as limiting a trustee company's power to act under that subsection without an authorisation by the Court.

(11) In construing and giving effect to the respective provisions of this section, the one shall be taken in aid of the other, and so that each of the provisions can be exercised independently the one of the other.

**Power to distribute assets of estate after notice on failure of action by claimant creditor**

**32.(1)** Where a trustee company refuses to recognise in whole or in part the claim of any person who claims to be a creditor against the estate of any deceased person, the trustee company may give notice in writing of that refusal to the person so claiming.

**(2)** If the person to whom a notice has been given under subsection (1) does not within 6 months after the receipt of the notice institute any proceeding to enforce the claim, the trustee company may distribute the assets of the deceased person without regard to the claim or to so much thereof as the trustee company has by the notice refused to recognise, and thereupon the right of the person to whom such notice was given to recover from the trustee company the amount of the claim or the part thereof which the trustee company has by the notice refused to recognise shall be absolutely barred.

**(3)** For the purposes of this section, a notice may be served on any person claiming to be a creditor against the estate by posting it to the person in a registered post letter addressed to the address given in the claim, and every such notice shall be deemed to have been received by that person in the ordinary course of post unless the trustee company has notice to the contrary before the distribution of the assets.

**Power to distribute estate where possible claimants have not claimed**

**33.(1)** Where—

- (a) a trustee company has been granted probate of a will or administration of an estate; and
- (b) the trustee company has been informed of the existence at any time of a person who if the person had survived the testator or intestate would have been entitled to a legacy under the will or to the whole or a distributive share of the estate; and
- (c) the person referred to in paragraph (b) has not nor has any person claiming through the person or as one of the person's issue made a claim in respect of such legacy estate or share within 3 years after the grant of probate or of administration;

the trustee company after advertising as in this section directed may, without

being under any liability to the person or to any person claiming through the person or to the person's issue, distribute the estate as if such first mentioned person had predeceased the testator or intestate without issue.

(2) The trustee company shall, before making any distribution pursuant to subsection (1), make a report to a Judge setting out the material facts relating to the matter and obtain a direction from the Judge as to the form and number of the advertisements to be inserted and the places in which they are to be published and fixing a time after the insertion of the last of such advertisements at the expiration of which a distribution may be made.

(3) Nothing in this section shall prejudice the right of any person to follow the assets or any part thereof into the hands of the person or persons who have received the same.

### **When trustee company may pay claims without legal proof**

34. Where—

- (a) an estate is being administered by a trustee company; and
- (b) advertisements have been published calling upon the creditors of the person whose estate is being administered to come in and prove their debts by an appointed time;

the trustee company may after the expiration of 6 months from the time so appointed—

- (c) if no debt is proved; or
- (d) if all creditors who have proved are paid;

pay any sum not exceeding \$200 to any person claiming to the satisfaction of the trustee company to be a party in distribution or to be a legatee under a will, without legal proof of the right or title of the party so claiming.

### **Shares of infants during infancy**

35.(1) Where under any will or estate committed to a trustee company, a legacy or share of such estate is payable to an infant, then the trustee company shall (subject to the terms of any will or trust instrument) hold that legacy or share as trustee for the infant until such infancy ceases whereupon

it shall account to the infant in terms of the will or trust instrument (if any).

(2) Without prejudice to the liability of the trustee company to account as provided in subsection (1) for such legacy or share when infancy ceases, a certificate under the hand of an officer of the trustee company that such legacy or share is so held in terms of this section shall be deemed a proper discharge therefor for all purposes and rules of law.

### **Common funds**

**36.(1)** A trustee company may establish and keep in its books 1 or more funds to be called a “**common fund**” and, if more than 1, with an appropriate distinguishing number.

(2) A common fund established in the books of a trustee company after the commencement of the *Trustee Companies Act and Another Act Amendment Act 1989* shall be established only in accordance with this subsection.

(2A) The board of directors of the trustee company shall pass a minute establishing a common fund, which minute shall contain details of—

- (a) any limitation on the amount of money that will form the common fund;
- (b) the class or classes of investments in which the common fund may be invested;
- (c) the procedure to be followed for valuing the investments;
- (d) the type of expert advice (if any) that will be obtained in relation to the investments;
- (e) the duration of the common fund (if possible);
- (f) the minimum amount (if any) that may be invested in the common fund on the separate account of each estate, trust, property or person investing in the common fund;
- (g) fees that are to be paid out of the common fund and by each estate, trust, property or person investing in the common fund;
- (h) the policy to be adopted with respect to withdrawals from the common fund;
- (i) procedures with respect to an audit of the common fund.

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**(2B)** A copy of the minute shall be forwarded to the registrar within 14 days of the passing of the minute.

**(2C)** A copy of the minute referred to in subsections (2A) and (2B) shall be made available to any beneficiary of the estate, trust or property or person to which or to whom moneys invested in a common fund belong who applies for the same.

**(2D)** After the commencement of the *Trustee Companies Act and Another Act Amendment Act 1989* a trustee company that establishes a common fund other than in accordance with the provisions of this subsection commits an offence against this Act.

Maximum penalty—150 penalty units.

**(3)** A trustee company may in its discretion invest any moneys in its hands either—

- (a) on the separate account of the estate, trust, property or person to which or to whom the moneys belong; or
- (b) if the moneys are not directed to be invested in some other specified manner and investment in a common fund is not inconsistent with the terms of the trust instrument (if any) governing the said moneys, as part of a common fund established and kept in the books of the trustee company the investment of which is limited to such class or classes of investments as the moneys might lawfully be invested in on the separate account of the estate, trust, property or person to which or to whom the moneys belong.

**(4)** Moneys in the hands of a trustee company (whether forming part of a common fund or not) may be invested—

- (a) in any manner in which trust moneys may be invested by a trustee under the *Trusts Act 1973*, or any other Act; or
- (b) on deposit (interest bearing fixed deposit or otherwise) with any financial institution.

**(5)** Investments made from moneys forming part of a common 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 fund on account of each estate, trust,

property or person.

(6) A trustee company may sell investments belonging to a common fund and may withdraw any of the moneys belonging to a common fund for any purpose of or relating to the exercise and discharge of its powers, authorities, duties and functions under this Act.

(7) A trustee company may at any time withdraw from a common fund any amount at credit in the common fund on account of any estate, trust, property or person and invest such amount on the separate account of that estate, trust, property or person.

(8) Amounts withdrawn under subsection (7) from a common fund shall, as from the date of the withdrawal, cease to have any claim for interest or otherwise from the common fund.

(9) Any profits or losses upon realisation of any investment in a common fund shall be credited or debited (as the case may require) to the common fund and be received or borne proportionately by the several amounts invested in the common fund at the time of the realisation.

(10) The trustee company shall determine the value of the investments in each common fund as at the first business day of each month and, if the trustee company thinks fit, as at such other times as may be appropriate according to the nature of the particular fund.

(10A) In subsection (10)—

“**business day**” means a day other than a Saturday, Sunday or public holiday.

(11) For the purposes of a valuation under subsection (10), in respect of investments listed on a stock exchange the quotations published by that stock exchange on the day of the valuation are conclusive evidence of value and if there are no such quotations on that day, the valuation of the chairperson or the secretary of the stock exchange is conclusive evidence of value but where at any time any of the investments is listed on more than 1 stock exchange, the trustee company shall from time to time, nominate the stock exchange the quotations of which or the valuation of the chairperson or secretary of which shall be used in relation to the investment for the purposes of this subsection.

(12) Investments in and withdrawals from a common fund shall be effected on the basis of the valuation last made pursuant to subsection (10).



(13) The trustee company shall pay or allocate the income arising from a common fund proportionately to or among the estates, trusts, properties or persons entitled to the income arising from the capital sums invested in the common fund according to the several sums so invested and the periods for which they remain so invested.

(14) It is hereby declared that moneys held by a trustee company in a common fund are deemed to be held on trust by the trustee company for those persons on whose behalf the moneys have been deposited with it.

### **Cash common fund**

**36A.** The provisions of section 36 shall extend to the establishment of a common fund which provides for the payment of interest determined from day to day but if, and only if, the investment of that fund is in accordance with the *Trusts Act 1973*, part 3.<sup>4</sup>

### **Contributory investments**

**37.(1)** Where a trustee company holds moneys belonging to more than 1 estate, trust property or person upon trusts, which require or permit the investment thereof, the trustee company may invest such moneys as 1 fund, and distribute the income arising therefrom rateably among the several estates, trusts, properties or persons to which the money so invested belongs, and any profit or loss arising from any such investment shall likewise be received or borne rateably by the several estates, trusts, properties or persons.

(2) Any such investment shall be made either—

- (a) in investments for the time being authorised by the *Trusts Act 1973* or any other Act for the investment of trust funds; or
- (b) in investments authorised by each of the trust instruments.

### **Co-administrator may exercise powers of trustee company**

**38.** The powers conferred by this Act upon a trustee company may also

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<sup>4</sup> *Trusts Act 1973*, part 3 (Investments)

be exercised by the trustee company and any person holding the office of executor, trustee or administrator jointly with the trustee company.

### **Certificate by trustee company as to its legal status in any matter**

**39.(1)** Where a trustee company is executor or administrator or is by law authorised to administer the estate of any deceased person, or where it is acting as trustee, receiver, committee, guardian, liquidator or official liquidator or in any other capacity, a certificate by the trustee company under the seal of the trustee company—

- (a) stating, in the case of a deceased person, the name, residence, and occupation of the deceased person at the time of the person's death, and the date of the person's death, and certifying that the trustee company has obtained a grant of probate or letters of administration or is otherwise authorised to administer the estate and stating the date when the probate or letters of administration was granted and the reference number thereof or the manner in which and the time at which the trustee company became authorised to administer; and
- (b) in any case where the trustee company is acting as trustee, receiver, committee, guardian, liquidator or official liquidator or in any other capacity—certifying that the trustee company is authorised to act as such trustee, receiver, committee, guardian, liquidator or official liquidator or in such other capacity, and stating the manner in which and the time at which it became so authorised to act;

shall, notwithstanding any law or statutory provision to the contrary, be accepted by all courts, officers, and persons, whether acting under any Act or not, as sufficient evidence—

- (c) in the case of a deceased person, of the death of that person, and of the appointment of the trustee company as executor or other administrator, and of its right to administer; and
- (d) in any of the other cases mentioned, of the trustee company's right to act;

without any other proof whatsoever.

**(2)** Such certificate shall be sufficient for the purpose of bringing any

land under the *Land Title Act 1994*, or of recording the trustee company as owner or proprietor of land under that Act, or of any shares, stock, or property in any company, corporation (other than a company), body, or association, and if any land is subject to the last mentioned Acts, such certificate may be registered against such land as in the case of probate or letters of administration, and shall have the same force and effect.

(3) Such certificate shall be equivalent for registration purposes to the probate, letters of administration with or without the will, election to administer, trust instrument or other order or document of appointment, and without prejudice to the right of the Registrar of Titles to require lodgement of the will, or an office copy thereof issued out of the Court, it shall not be necessary to register the probate, letters of administration with or without the will, election, will, trust instrument or other order or document of appointment.

(4) A statement of the purport of any trust instrument, order, power of attorney, or other document or authority in any assurance, certificate, or instrument by a trustee company under the seal of the trustee company shall be sufficient evidence thereof, and no one shall be concerned to inquire beyond that statement.

### **Application of Part 3**

40. The powers conferred upon a trustee company under this Part may be exercised in relation to an estate, trust or property whether or not the estate, trust or property was constituted or created or was committed to the administration or management of the trustee company before or after the commencement of this Act and whether or not the instrument (if any) governing the estate, trust or property was made before or after the commencement of this Act.

## **PART 4—COMMISSION, FEES ETC.**

### **Commission chargeable by a trustee company**

41.(1) In respect of every estate which is, after the commencement of this

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Act, committed to the administration or management of a trustee company as executor, administrator, trustee, receiver, committee, guardian, liquidator or official liquidator or in any other capacity, the trustee company shall be entitled to receive, in addition to all moneys properly expended by the trustee company and chargeable against the estate, a commission at a rate to be fixed from time to time by the board of directors of the trustee company but not in any case exceeding, after discounting for any GST payable on any supply the commission relates to—

- (a) \$5 for every \$100 of the capital value of the estate; and
- (b) \$6 for every \$100 of the income received by the trustee company on account of the estate.

(2) The commission in respect of the capital value of the estate is payable out of moneys, whether capital or income, received by the trustee company and the commission in respect of the income received on account of the estate is payable out of that income.

(3) Subject to this Act—

- (a) the commission shall be accepted by the trustee company in full satisfaction of any claim to remuneration for acting as such executor, administrator, trustee, receiver, committee, guardian, liquidator, official liquidator or in any other capacity; and
- (b) no other charges beyond such commission and moneys so expended by the trustee company shall be made or allowed.

(4) Where the Court or a Judge is of opinion that the rate of commission charged in respect of any estate is excessive, the Court or Judge may, on the application of any person interested in the estate, review the rate of commission and may, on such review, reduce the rate of commission.

(5) If the administration or management of an estate was committed to a trustee company before 1 July 2000, the commission charged by the trustee company against the estate must not exceed, after discounting for any GST payable on any supply the commission relates to, the amount of the published scale of charges of the trustee company when the administration or management of the estate was committed to the trustee company.

(5A) If the administration or management of an estate was committed to a trustee company on or after 1 July 2000, the commission charged by the trustee company against the estate must not exceed the amount of the

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published scale of charges of the trustee company when the administration or management of the estate was committed to the trustee company.

(6) Despite subsections (5) and (5A), in the case of income received in respect of any perpetual trust committed to a trustee company (whether before or after the commencement of this Act), the scale of charges published from time to time by the trustee company as being applicable to income of trust estates is applicable to the income received in respect of the trust while that published scale of charges is current.

(7) Nothing in this section shall prevent—

- (a) the payment of any commission which a testator in his or her will or a settlor has directed to be paid;
- (b) the payment of any commission or fee which has been agreed upon between the trustee company and the parties interested therein;

either in addition to or in lieu of the commission provided for by this section.

(8) In this section—

“**capital value**” means the gross amount realised for the assets real and personal of the estate in question, without deduction in respect of debts or liabilities secured or unsecured and for this purpose—

- (a) the gross amount realised for assets specifically devised or bequeathed is the sum at which the same are assessed for purposes of succession duty or any other duty levied by the State in substitution therefor; and
- (b) the gross amount realised for assets distributed in specie or transferred or appropriated to beneficiaries without realisation, whether by or as the result of agreement between beneficiaries or otherwise, is the value put upon the same for the purposes of such distribution in specie, transfer or appropriation.

(9) 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.

**When commission payable**

**42.(1)** Subject to subsection (2), any commission which a trustee company is entitled to receive in respect of the capital value of an estate, the administration or management of which is committed to it on or after the date of the commencement of this Act, may be paid out of or deducted from the estate at any time after the administration or management of the estate has been committed to the trustee company.

(2) A trustee company shall not be entitled to draw commission in respect of any portion of the estate that has not been realised over and above one-half of an amount of commission calculated on the value of that portion at the time the administration or management of the estate was so committed to the trustee company, the amount of commission so drawn being adjusted when that portion of the estate has been realised.

(3) The Commission shall be calculated at the rate chargeable at the time when the administration or management of the estate is committed to the trustee company.

**When legatee to bear commission on legacy**

**43.(1)** Subject to subsection (2) unless a testator by will, whether made before or after the commencement of this Act, directs that the testator's testamentary expenses (which shall be deemed to include the commission payable to a trustee company under this Act) be paid out of the testator's estate, the commission payable to a trustee company under this Act on all devises and legacies, whether specific, demonstrative, or pecuniary, is payable by the devisee or legatee entitled, as the case may be.

(2) Where a testator by will, whether made before or after the commencement of this Act, directs that any devise or legacy be free of duty, such commission is payable out of that portion of the estate of the testator out of which the duty is, pursuant to the direction, payable if that portion is sufficient to enable the payment in full of the commission as well as the duty.

**Additional fee for carrying on business**

**44.(1)** Where in the administration or management of any estate granted or committed to a trustee company after the commencement of this Act, the

trustee company is authorised to carry on any business or undertaking which belongs wholly to the estate, or in which the estate has an interest as partner, the Court or a Judge may, on the application of the trustee company, either in lieu of or in addition to the commission or any part of the commission mentioned in section 41, allow to the trustee company such salary or remuneration as the Court or a Judge thinks fit for its pains and trouble in carrying on that business or undertaking.

(2) An application pursuant to this section may be made by summons served on such persons (if any) as the Court or a Judge may direct.

### **Fee for work and services**

**45.(1)** In addition to the commission and the other moneys specified that it is entitled to receive under sections 41 and 44, a trustee company shall, in respect of any estate under its administration or management, be entitled to charge and receive—

- (a) from or out of the estate a fee (according to the value of the work done and the services rendered) for the undermentioned matters—
  - (i) arrangement of insurances;
  - (ii) acting as auctioneer or real estate or other agent in the sale of any property;
  - (iii) preparation, lodging and finalisation of succession accounts and estate duty returns and like accounts or returns required to be lodged or filed pursuant to any Act with any person or authority consequent upon the death of any person;
  - (iv) preparation of income and land taxation returns;
  - (v) inspection and report upon real and personal estate;
  - (vi) keeping of books of account (including the preparation of balance sheets and profit and loss accounts) in respect of any business or undertaking;
  - (vii) where no application is made under section 44 in respect of carrying on any business or undertaking, carrying on or supervision of any business or undertaking that the trustee company is authorised to carry on; and

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- (b) from or out of any income received by a common fund established and kept pursuant to section 36<sup>5</sup> a fee (according to the value of the work done and the services rendered) calculated at a rate not exceeding, after discounting for any GST payable on any supply the fee relates to, 1% per annum upon the capital sums invested in the common fund on account of the estates, trusts, properties or persons concerned 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 fund; and
- (c) from or out of the estate or the income received by the trustee company on account of the estate, in respect of a perpetual trust, at the end of each 5 year period computed from the date the administration or management of the estate is granted or committed to the trustee company and occurring after the commencement of the *Trustee Companies Act Amendment Act 1975*, a fee calculated at the rate of, after discounting for any GST payable on any supply the fee relates to, 0.1% upon the value of the assets real and personal of the estate, without deduction in respect of debts or liabilities secured or unsecured, as at the end of any such period;

but if, in any case, the Court or a Judge is of opinion that a fee charged and received pursuant to this subsection is excessive it shall be competent for the Court or Judge on the application of any person interested in the estate, to review and reduce the amount of that fee.

(2) A fee to which subsection (1)(a) relates may be paid wholly or partly out of the estate or out of any moneys earned from any other source in relation to the matter in question.

(3) This section does not authorise the charging or receipt by a trustee company of a fee in respect of any work done or service rendered before the commencement of this Act.

### **Recovery of GST**

**45A.(1)** This section applies if—

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<sup>5</sup> Section 36 (Common funds)



- (a) a commission or fee is chargeable by a trustee company against an estate; and
- (b) the trustee company is required to pay to the Commissioner of Taxation under the *Taxation Administration Act 1953* (Cwlth) an amount for GST on a supply the commission or fee relates to.

(2) To remove doubt, it is declared that the amount for GST may be charged against the estate as part of the total commission or fee.

## **PART 5—SUPERVISION BY COURT**

### **Court to act upon affidavit of officer of trustee company**

**46.** In all cases in which a trustee company is empowered by this Act—

- (a) to apply for probate of any will or letters of administration, with or without the will annexed, in respect of the estate of any deceased person; or
- (b) to apply for sealing of any probate or letters of administration granted by a court referred to in section 11<sup>6</sup> or an exemplification, duplicate or copy thereof;

the Court in which, or an order of the Court before whom, an application is made may receive and act upon an affidavit by an officer of the trustee company in place of any affidavit required by any Act or rule of court to be made by a person making a similar application.

### **Application for consent to be by motion**

**47.(1)** Every application for consent under sections 20, 23 and 24<sup>7</sup> shall be by motion.

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<sup>6</sup> Section 11 (Reseal of probate and letters of administration)

<sup>7</sup> Sections 20 (Executor or administrator may appoint trustee company in his or her place), 23 (A holder of certain offices and positions may appoint a trustee company to discharge duties) and 24 (Trustee may appoint a trustee company a trustee)

(2) Notice of the application shall be advertised once in a daily newspaper published in Brisbane not more than 14 nor less than 7 days before the making of the application, and in case of an executor or administrator of a testator or intestate dying in Queensland, elsewhere than in Brisbane, a like notice shall be also advertised once within the like period in some local newspaper (if any) circulating in the district in which the testator or intestate had his or her usual place of residence immediately prior to his or her decease.

(3) The Court may require any person resident in Queensland and entitled to the immediate receipt of any part of the income or corpus of the estate in respect of which the application is made to be served with notice thereof.

(4) The costs of the application shall be in the discretion of the Court and may be ordered to be paid out of the estate.

(5) Consent shall not be given in any case of a will in which the testator has expressed his or her desire that the trusts thereof should not be delegated or that the trustee company should not act therein.

### **An officer may attend on behalf of a trustee company, and be personally responsible**

**48.(1)** In all cases in which the personal attendance of an executor, administrator, trustee, receiver, committee, guardian, liquidator, or official liquidator is required or permitted in a Court or elsewhere, a trustee company shall be entitled to make the attendance in the person of an officer of the trustee company, and the personal duties of executor, administrator, trustee, receiver, committee, guardian, liquidator, or official liquidator may be discharged on behalf of the trustee company by an officer of the company.

(2) In every case where—

- (a) a trustee company obtains probate or letters of administration with or without the will annexed; or
- (b) a trustee company is appointed trustee, receiver, committee, guardian, liquidator, or official liquidator;

the officers of the trustee company, and the directors of the trustee company are individually and collectively in their own proper persons responsible—

- (c) to the Court; and
- (d) to any trustee, beneficiary, executor, legatee, administrator, next of kin, creditor or infant entitled to or interested in any estate that is for the time being under the administration or management of 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 case of the improper discharge of their duties or disobedience to the rules, orders, and decrees of those courts in the same manner and to the same extent as if each such officer of the trustee company and each director, had personally obtained probate or letters of administration, or been appointed trustee, receiver, committee, guardian, liquidator, or official liquidator.

### **Removal from office**

**49.(1)** A trustee company that has been appointed executor, administrator, trustee, receiver, committee, guardian, liquidator, official liquidator 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, guardian, liquidator, official liquidator or attorney is subject.

**(2)** All persons who may claim relief against a trustee company for any act done or assumed to be done, or in respect of any act omitted to be done, by the trustee company, its directors or officers, under any of the powers conferred by this Act, may proceed in the Court or in any other court of competent jurisdiction, either by action or other ordinary proceeding of the court, or in a summary way by motion against the trustee company, or against any of the directors or officers of the trustee company, and the court in which the proceeding is brought may make and enforce such order in the matter as to the court seems just.

### **Filing and passing accounts by trustee company**

**50.(1)** If default is made by a trustee company in complying with the Rules of the Supreme Court relating to the filing of inventories, and the

filing and passing of accounts, by every person to whom a grant of probate or administration is made as in force from time to time, the trustee company shall be liable to a penalty of \$10 for every day while the default continues, and every director or officer of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty but nothing in this subsection shall limit any personal responsibility of the directors and officers of the trustee company pursuant to section 48.

(2) The filing by a trustee company in the appropriate registry of the Court—

- (a) within the time limited by the rules of court for the filing of an inventory, of a copy statement of assets and liabilities in the estate as rendered to a residuary beneficiary, or a person entitled in an intestacy to a distributive share, in the estate verified by the affidavit of an officer of the trustee company; and
- (b) within the time so limited for the filing of accounts, of a copy statement showing transactions in the estate from the date of death of the testator or intestate person until the date on which the administration of the estate was substantially completed or a date not less than 6 months after the date of the grant whichever is earlier as rendered to a residuary beneficiary or a person entitled in an intestacy to a distributive share, in the estate verified as provided in paragraph (a);

shall, unless a Judge on the application of the Registrar of the Supreme Court or a person entitled to or interested in the estate otherwise orders, be deemed to be a sufficient compliance with the Rules of the Supreme Court relating to the filing of inventories and the filing of accounts.

(3) Upon the taking of any account filed in the office of the Registrar of the Supreme Court pursuant to the said Rules of the Supreme Court, where the account has been audited by a registered company auditor (within the meaning of the Corporations Law), the account may be passed on the production of a certificate by the auditor as to the correctness of the account without revouching.

### **Court may order account**

**51.(1)** Any trustee, beneficiary, executor, legatee, administrator, next of kin, creditor or infant entitled to or interested in any estate that is for

the time being under the administration or management of a trustee company (whether the administration or management was committed to the trustee company before or after the commencement of this Act), who is, upon application in writing to an officer of the trustee company, unable to obtain a sufficient account of the property and assets of which that estate consists and of the disposal and expenditure thereof or thereout, may, after notice to the trustee company, apply to the Court or a Judge by motion for an account but without action or petition.

(2) If the Court or Judge is of opinion that a sufficient account has not been rendered by the trustee company, the Court or Judge shall order such account to be rendered by the trustee company as to the Court or Judge seems just.

(3) If the Court or Judge is of opinion that no sufficient case has been established to require the trustee company to furnish an account or that sufficient account has been rendered, the Court or Judge may dismiss the application.

(4) The Court or Judge 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 the Court or Judge thinks fit.

### **Court may order audit**

**52.(1)** The Court or a Judge may, on any application under section 51, in addition to or in substitution for any account to be rendered by the trustee company under section 51(2), order that a person to be named in the 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 that order a list of all the books kept by it and shall produce to that 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 examination.

(3) The Court or Judge shall have the same power as to the costs of the examination as is given by section 51 in respect of costs of or occasioned by an application under that section.

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

**53.(1)** So long as any estate in respect of which a trustee company is executor, administrator, trustee, receiver, committee, guardian, liquidator, official liquidator or attorney 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 or a Judge.

**(2)** Any person interested in an estate referred to in subsection (1) or who has any claim in respect of the estate may apply to the Court or a Judge in a summary way by motion—

- (a) to restrain any director or shareholder from disposing of any shares that the director or shareholder may hold in the trustee company; or
- (b) to restrain the winding-up voluntarily of the trustee company.

**(3)** The Court or a Judge shall, in any application under this section, have power to make such order in the matter as the circumstances of the case appear to the Court or Judge to require.

**PART 6—SECURITY FOR DUE ADMINISTRATION****Quantum of paid-up capital of trustee companies.**

**54.** A trustee company shall before obtaining any grant of probate of any will or letters of administration, with or without the will annexed, or before making any application pursuant to section 11<sup>8</sup> possess a paid-up capital of not less than—

- (a) if the trustee company is a new trustee company—\$1 500 000; or
- (b) if the trustee company is not a new trustee company—\$200 000.

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<sup>8</sup> Section 11 (Reseal of probate and letters of administration)

**Capital and other assets of trustee company liable for proper discharge of functions**

**55.(1)** All the capital both paid and unpaid, and all other assets of a trustee company (including subject to section 59 the sum invested as required by section 56) shall be liable—

- (a) for the proper administration of all estates of which the trustee company acts, or is deemed to act as executor or administrator; and
- (b) for the proper discharge of the duties committed to the trustee company in every case in which the trustee company is appointed or acts in any office or position pursuant to section 21;<sup>9</sup> and
- (c) for the due execution of the powers conferred by power of attorney on the trustee company pursuant to section 22;<sup>10</sup> and
- (d) for the proper discharge of the duties which the trustee company is appointed, pursuant to section 23,<sup>11</sup> to perform and discharge; and
- (e) for the proper discharge of the duties and obligations of every trustee in whose place the trustee company is appointed under section 24;<sup>12</sup> and
- (f) for the authenticity of any certificate pursuant to section 39.<sup>13</sup>

**(2)** Notwithstanding the personal responsibility of the directors and officers of a trustee company under section 48<sup>14</sup> 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 by the trustee company or

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<sup>9</sup> Section 21 (Trustee company may be appointed trustee receiver etc.)

<sup>10</sup> Section 22 (Trustee company may act under power of attorney by an officer of the company etc.)

<sup>11</sup> Section 23 (A holder of certain offices and positions may appoint a trustee company to discharge duties)

<sup>12</sup> Section 24 (Trustee may appoint a trustee company a trustee)

<sup>13</sup> Section 39 (Certificate by trustee company as to its legal status in any matter)

<sup>14</sup> Section 48 (An officer may attend on behalf of a trustee company, and be personally responsible)

any of its officers in respect of any office, appointment, or engagement held or entered upon by the trustee company, whether such trust or duty is implied by the law or expressly conferred or imposed by the instrument under which the trustee company acts.

### **Investment of capital in name of Treasurer**

**56.(1)** Subject to subsection (2), each trustee company shall invest part of its paid-up capital (to such extent as is specified in subsection (1A)) in such securities and investments as the board of directors of the trustee company may select, in the name of the Treasurer of the State of Queensland in trust for the trustee company but transferable only with the joint consent of the Treasurer and the trustee company under its common seal or upon the order of the Court or a Judge.

**(1A)** The part of its paid-up capital that each trustee company is required by subsection (1) to invest is such sum as is directed under a regulation from time to time in respect of trustee companies generally or a particular trustee company.

**(2)** Of the sum required to be invested under subsection (1A) not less than 40% shall be in inscribed stock or other securities in the public funds of the Commonwealth or in securities of which the payment of principal and interest is guaranteed by the Treasurer and remaining part of the sum so required to be invested may be invested in any investments approved by the Treasurer.

**(3)** All interest and income to accrue from time to time from or in respect of the securities and investments held pursuant to this section by the Treasurer in trust for any trustee company shall be paid by the Treasurer to that trustee company as and when the same shall respectively become payable.

### **No bond required in certain cases**

**57.(1)** While the sum of money that a trustee company is required by section 56 to invest remains so invested, the Court may grant an application by the trustee company under this Act for letters of administration with or without the will annexed or to seal a grant of letters of administration without the bond required by law to be given by or on behalf of a private



individual in respect of or on such an application by such a person.

(2) No bond recognisance or other security for the proper discharge of the duties and obligations pertaining to an office or position to which a trustee company is appointed pursuant to section 21<sup>15</sup> shall be required to be given by or on behalf of the trustee company unless the Court or a Judge otherwise orders.

### **Court may order winding-up**

**58.** If it is proved that three-fourths or more of the amount of capital authorised by this Act to be called up by a trustee company and subscribed has been lost by that trustee company, the Court may upon the application of an member or creditor of the trustee company or beneficiary entitled to or interested in any estate that is for the time being under the administration or management of that trustee company make an order for the winding-up of the trustee company.

### **Trusts of s.56 moneys**

**59.(1)** The sum of moneys that a trustee company is required by section 56 to invest shall be held by the Treasurer as a security for the due performance by the trustee company in question of the duties of the office of executor or administrator under any grant obtained in pursuance of this Act.

(2) The said sum shall in the event of the winding-up of the trustee company be applied in satisfaction *pari passu* of any claims established by any persons entitled as beneficiaries under any probate or letters of administration granted to the trustee company, in priority to all other creditors of the trustee company, and, if the said sum shall be insufficient to satisfy the claims so established, in addition to the said security, those persons shall rank as ordinary creditors of the trustee company for any balance.

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<sup>15</sup> Section 21 (Trustee company may be appointed trustee receiver etc.)

## **PART 7—COMPANY REGULATION**

### **Insolvent director to vacate office**

**60.** If at any time a director of a trustee company becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit, the director shall thereupon cease to hold office as a director.

### **Liability of directors**

**61.** 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 the trustee company—

In the event of the winding-up of a trustee company, every person who has been a director of the trustee company at any time within the period of 2 years preceding the commencement of the winding-up is liable for the balance unpaid on every share which the person may have transferred during that period, in addition to the person's liability upon any shares held by the person at the commencement of the winding-up, in the event of the holder of the shares transferred being unable to pay the said balance per share in full.

### **Appointment of attorney by trustee company**

**62.** Any trustee company that is incorporated in a State (other than Queensland) or a Territory of the Commonwealth may, by instrument in writing under its common seal, empower any person, either generally or in respect of specified matters, as its attorney to execute deeds, bonds and other documents on its behalf in Queensland, and every deed, bond or other document signed by such attorney on behalf of the trustee company and under the person's seal shall be binding on the trustee company, and have the same effect as if it were under the common seal of the trustee company.

### **Provisions with respect to capital and liability of shareholders etc.**

**63.(1)** The respective provisions set out in Part 2 of Schedule 2 under the

short headings comprising the names of the trustee companies shall apply with regard to the capital and the liability of shareholders of and otherwise in relation to, the trustee company so named as if enacted in the body of this Act and shall be and remain in force notwithstanding any alteration in the memorandum or articles of association of such trustee company.

(2) In Part 2 of Schedule 2—

“**member**”, if used in a provision that limits the number of shares that may be held by a member, includes, in its application to a corporation, a corporation that is a related body corporate within the meaning of section 50<sup>16</sup> of the Corporations Law.

### **Separate accounts to be kept**

**64.(1)** All trust moneys received by a trustee company shall be placed to a separate trust account, and shall not be mixed with the general funds of the trustee company.

(2) An account of the moneys paid or received, and of investments made and moneys advanced, by a trustee company on account of each estate of which it has control, shall be kept by the trustee company separate and distinct from any other such estate.

(3) The trustee company shall furnish to each beneficiary of the estate entitled thereto—

- (a) at least once each year; and
- (b) on request by the beneficiary but not more than once in any 3 monthly period;

an extract from the account referred to in subsection (2) setting out all transactions that have been entered in the account since the last extract was furnished to the beneficiary.

(4) There shall be included in or attached to the extract of the account a copy of sections 51<sup>17</sup> and 64A.

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<sup>16</sup> Section 50 (Filling and passing accounts by trustee company)

<sup>17</sup> Section 51 (Court may order account)

**Trustee company to give information to Minister**

**64A.(1)** A trustee company shall furnish to the Minister such information in writing or statements in respect of its business as the Minister directs within such time as is specified by the Minister.

Maximum penalty—20 penalty units.

**(2)** The Minister, where it appears to the Minister to be necessary or advisable to do so, may cause to be carried out—

- (a) a review of the operations of a trustee company; or
- (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 audit.

**(3)** For the purposes of any review or audit under subsection (2), a trustee company shall—

- (a) deliver to any person authorised by the Minister to that effect a list of all books kept by it; and
- (b) produce to that person at all reasonable times when required by that person 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 to enable that person to carry out that review or audit.

Maximum penalty—20 penalty units.

**(4)** A financial institution's books of a trustee company shall be open for inspection without charge by a person authorised by the Minister for the purposes of this section.

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

**Declaration as to state of trustee company's affairs to be made yearly**

**65.(1)** An officer of each trustee company shall, within a period of 14 days after the annual general meeting of the trustee company in every year, make a statutory declaration in a form approved by the chief executive.

**(1A)** The declaration must contain the following particulars—

- (a) a statement that the liability of the members of the company is limited;
- (b) the number and face value of the shares making up the capital of the company;
- (c) the number of shares issued;
- (d) the extent to which calls have been made on shares and the amount received on the calls;
- (e) details of company assets;
- (f) details of company liabilities;
- (g) any other matter determined by the chief executive.

**(2)** A copy of such declaration shall be displayed in a conspicuous place in the registered office of the trustee company in Queensland and, in every branch office or place where the business of the trustee company is carried on in Queensland, and shall be given to any member or creditor of the trustee company or any beneficiary entitled to or interested in any estate that is for the time being under the administration or management of the trustee company who applies for the same.

**(3)** If default is made in complying with the provisions of this section, the trustee company shall be liable to a penalty not exceeding 1 penalty unit for every day during which the default continues, and any officer of the trustee company who knowingly and wilfully authorises or permits the default shall incur the like penalty.

**Balance sheet**

**66.** An officer of each trustee company shall transmit to the registrar, within 14 days after the annual general meeting of the trustee company, a copy of the balance sheet laid before the shareholders at that meeting certified to as correct by the trustee company's auditor and the Minister shall

lay that balance sheet before the Legislative Assembly within 14 sitting days from the receipt thereof by the registrar.

### **Borrowing by trustee company**

**66A.(1)** Notwithstanding anything in the Corporations Law or in the memorandum or articles of association of a trustee company, 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.

**(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 of the trustee company and the prior approval of the Minister to the borrowing of the money by way of the loan is obtained; and
- (b) the money is to be used by the trustee company in the exercise and discharge of its powers, authorities, duties and functions under this Act.

**(2A)** Subsection (2) must not be construed so as to prohibit a trustee company from borrowing money for the provision of premises and facilities for the purpose of the exercise and discharge of its power, authorities, duties and functions under this Act.

**(3)** Nothing in this section shall affect or limit the investment of moneys of any estate by a trustee company in a common fund established under this Act.

### **Restriction on giving guarantees**

**66B.** A trustee company shall not give a guarantee except—

- (a) a guarantee given on behalf of any estate that is for the time being under the administration or management of the trustee company; or
- (b) in respect of the performance by a subsidiary corporation of the trustee company of the powers, authorities, duties and functions under this Act of the trustee company on behalf of the estate.

### **Loans etc. from estates to related corporations prohibited**

**66C.** A deposit of money with or a loan of money to a related corporation (other than a financial institution) of a trustee company shall not be made from an estate under the administration or management of the trustee company unless—

- (a) the will or trust instrument otherwise specifically so provides; or
- (b) adequate disclosure has been made to the beneficiary entitled to or interested in the estate of the nature of the relationship between the trustee company and the related corporation prior to accepting the deposit or loan and the beneficiary consents to the deposit or loan.

Maximum penalty—50 penalty units.

### **Investments may be retained**

**66D.** Where a person whose estate is being administered or managed by a trustee company has invested moneys in a related corporation of the trustee company the trustee company may—

- (a) continue the investment; and
- (b) re-invest any dividends derived from the investment in the investment; and
- (c) accept any bonus or take up any rights issue arising out of the investment.

### **Declaration by trustee company**

**66E.(1)** The managing director or manager, the chief financial officer and 2 other directors of each trustee company, during the prescribed months in

*Trustee Companies Act 1968*

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each year during which the company exercises and discharges its powers, authorities, duties and functions under this Act, shall make a statutory declaration in a form approved by the chief executive.

**(1A)** The declaration must contain the following particulars—

- (a) the number and face value of the shares making up the authorised capital of the company;
- (b) the number and face value of the shares making up the issued capital of the company;
- (c) the amount of paid-up capital;
- (d) the amount of uncalled capital;
- (e) the extent to which calls have been made on shares and the amount received on the calls;
- (f) the amount of company assets;
- (g) the amount of company liabilities;
- (h) the nature and amount of credit and standby facilities available to the company at balance date;
- (i) details of the company balance sheet;
- (j) any other matter determined by the chief executive.

**(2)** A copy of each declaration made under subsection (1)—

- (a) within 7 days after the making of the declaration shall be—
  - (i) forwarded to the registrar; and
  - (ii) displayed in a conspicuous place in the registered office or principal place of business of the trustee company in Queensland and in each branch office or place in Queensland where the business of the trustee company is carried on; and
- (b) given to any member or creditor of the trustee company or any beneficiary entitled to or interested in any estate that is for the time being under the administration or management of the trustee company who applies for the same.

**(3)** If a trustee company fails to comply with the provisions of this section, the trustee company shall be liable to a penalty of 1 penalty unit for each day during which the default continues and each director or officer of



*Trustee Companies Act 1968*

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the trustee company who knowingly and wilfully authorises or permits the default shall be liable to a like penalty.

(4) A declaration under this section shall not be required to show—

- (a) liabilities incurred by the trustee company whilst 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) In this section—

**“prescribed months”** means the months of January, April, July and October or such other months as the Minister, on the application of a trustee company, may approve in respect of that trustee company.

## **Insurance**

**66F.(1)** Each trustee company shall effect and continue in force at all times insurance policies in such amounts as the trustee company thinks fit for the purpose of indemnifying itself against claims that may be brought against it in respect of—

- (a) the fraudulent misappropriation by any officer of the trustee company or any employee or agent of the trustee company of property held by it as trustee; and
- (b) any negligent act or omission on the part of the trustee company in the exercise and discharge of its powers, authorities, duties and functions under this Act.

**(1A)** A trustee company whose name, at the date of commencement of the *Trustee Companies Act and Another Act Amendment Act 1989*, is mentioned in Part 1 of Schedule 2—

- (a) if it is not the holder of insurance policies referred to in subsection (1)—shall comply with the subsection within 1 month after that date of commencement; or
- (b) if it is such a holder—shall forward to the registrar copies of the

*Trustee Companies Act 1968*

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latest certificates of renewal (certified by 1 of the persons specified in section 66E(1)) of those policies within 14 days after that date of commencement.

**(1B)** A trustee company whose name is inserted in Part 1 of Schedule 2 after the date of commencement of the *Trustee Companies Act and Another Act Amendment Act 1989* shall comply with subsection (1) within 1 month after that date of insertion.

**(1C)** A trustee company referred to in subsection (1A)(a) or (1B), shall furnish to the registrar certified copies of the acceptance certificates relating to the insurance policies in subsection (1) (certified by 1 of the persons specified in section 66E(1)) within 14 days after the acceptances.

**(2)** Every year each trustee company, in respect of insurance policies held by it that conform to the insurance policies specified in subsection (1), shall forward to the registrar copies of the certificates of renewal (certified by 1 of the persons specified in section 66E(1)) of those policies within 14 days after the renewals.

**(3)** Where the Governor in Council is not satisfied with the amounts of insurance policies effected by a trustee company under subsection (1) the Minister may give a direction to the trustee company to effect insurance policies in such amounts as are specified in the direction.

**Trustee company's liability in unincorporated association limited**

**66G.(1)** A trustee company shall not become a member of, or participate in, an unincorporated association unless—

- (a) it is necessary to do so for any purpose of or relating to the exercise and discharge of its powers, authorities, duties and functions under this Act; and
- (b) the liability of the trustee company to contribute towards the liabilities of the unincorporated association is limited to the extent of the assets of the trust or estate on behalf of which the trustee company is a member of, or is participating in, the unincorporated association.

**(2)** Subsection (1) shall not be construed so as to prohibit a trustee company from being or becoming a member of any association the objects of which are—

- (a) to promote the interests of and cooperation among trustee companies; or
- (b) to formulate and provide for the adoption and observance by trustee companies of conditions, standards, practices, procedures and guidelines governing the carrying on of their businesses as trustee companies; or
- (c) to advocate and promote such legislation, practices and reforms as may be conducive to the objects of the association.

## **PART 8—GENERAL**

### **Penalty provisions**

**67.(1)** A person who contravenes or fails to comply with a provision of this Act commits an offence against this Act and, in the absence of another penalty expressly provided for in this Act, is liable to a penalty of 10 penalty units.

**(2)** Proceedings with respect to an offence against this Act shall be taken in a summary manner under the *Justices Act 1886*.

### **Settlors or testators may appoint own solicitors**

**68.(1)** Where by any settlement or will (whether made before or after the commencement of this Act), a settlor or testator directs that any practising solicitor shall conduct the legal business of his or her estate, that solicitor is entitled to act therein accordingly, but in such case a trustee company concerned shall not be liable for any loss occasioned by the negligence, misfeasance, nonfeasance or misconduct of the solicitor unless such loss could have been prevented or avoided by the exercise of due care on the part of the trustee company.

**(2)** A solicitor entitled to conduct the legal business of an estate under subsection (1) may be removed by the Court or a Judge upon the application of the trustee company or of any person interested in that estate upon cause shown, and the Court or Judge may appoint a solicitor

nominated by the trustee company to conduct such legal business in the first solicitor's place.

### **Other companies may apply for similar powers**

**69.** Nothing in this Act shall be deemed to 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.

### **Evidence of failure to give notice to a trustee company**

**70.** Whenever it is necessary to prove that any notice has not been given or that any disclosure or discovery has not been made to a trustee company, proof that no such notice has been given or that no such disclosure or discovery has been made to the manager for the time being of the trustee company shall be prima facie evidence that no such notice has been given or that no such disclosure or discovery has been made to the trustee company.

### **Delegations**

**71.** The registrar may delegate the registrar's powers under this Act to an officer or employee of the department.

### **Provisions relating to ex trustee companies**

**73.(1)** On the omission from Schedule 2 of the name of a company that is to be a trustee company no longer—

- (a) the company shall continue to have such legal capacities and powers as are conferred on and available to trustee companies under this Act in respect of every estate then under the administration or management of the company; and
- (b) the company shall continue to be subject to and obliged to comply with all the duties and obligations imposed on trustee companies under this Act in respect of every estate then under the

administration or management of the company and the company and every officer of the company shall continue to be responsible for his or her actions and omissions as if the name of the company had not been omitted from Schedule 2.

(2) Subsection (1) is in addition to and in no way derogates from other powers and duties affecting the company and the estates under its administration or management at the time the name of the company is omitted from Schedule 2.

(3) Without prejudice to other powers that may be available, the Court may, on the application of the Minister—

- (a) revoke the appointment of a company the name of which has been omitted from Schedule 2 as executor, administrator, trustee, receiver, committee, guardian, liquidator, official liquidator or attorney held by the company and appoint a trustee company or the Public Trustee of Queensland instead;
- (b) make such ancillary orders as the Court considers necessary or desirable to facilitate the administration of any estate previously subject to the administration or management of the company.

### **Regulation making power**

**73A.** The Governor in Council may make regulations under this Act.

**SCHEDULE 2**

sections 4 and 63

**PART 1**

ANZ Executors & Trustee Company Limited  
National Australia Trustees Limited  
Permanent Trustee Company Limited  
Perpetual Trustees Australia Limited  
Perpetual Trustees Queensland Limited  
Trust Company of Australia Limited

**PART 2****ANZ EXECUTORS & TRUSTEE COMPANY LIMITED**

- (a) No member (other than Australia and New Zealand Banking Group Limited) shall hold more than 1 000 shares in the member's own right, but if the capital of the company shall be increased by the issue of new shares the number of shares which may be held by each member shall be proportionately increased.
- (b) The capital of the company shall be and remain divided into shares of not less than \$1 each and the number of subscribed shares in the company shall not be at any time reduced to less than 2 500 000 and no shares shall be held by or transferred to a minor.
- (c) The company shall have a board of directors in Queensland consisting of not less than 3 persons who shall be called local directors.
- (d) In the event of a breach of any of the foregoing provisions the powers and privileges of the company conferred by this Act shall,

**SCHEDULE 2 (continued)**

so long as such breach continues, cease so far as regards the undertaking of any new business, and the liability of the members in respect of any obligations contracted or functions undertaken by the company while the breach continues shall be unlimited.

- (e) Subject to this Act the company may alter its share capital in any manner permitted by the Corporations Law other than by reducing its share capital.

**NATIONAL AUSTRALIA TRUSTEES LIMITED**

The paid-up capital of the company must be at least \$2 500 000.

**PERMANENT TRUSTEE COMPANY LIMITED**

- (a) Subject to section 63(2), a member must not be the beneficial holder of more than 15% of the capital of the company from time to time on issue.
- (b) The paid-up capital of the company must be at least \$5 000 000.

**PERPETUAL TRUSTEES AUSTRALIA LIMITED**

- (a) No member shall hold more than 30 000 shares in the member's own right, but if the capital of the company shall be increased by issues of new shares, the number of shares which may be held by each member shall be proportionately increased.
- (b) The capital of the company shall be and remain divided into shares of not less than \$2 each and the number of subscribed shares in the company shall not be at any time reduced to less than 500 000 and no shares shall be held by or transferred to a minor.

## SCHEDULE 2 (continued)

- (c) The company shall have a board of directors in Queensland consisting of not less than 5 persons who shall be called local directors and each of whom shall be the holder of 200 shares at least in the company.
- (d) In the event of a breach of any of the foregoing provisions the powers and privileges of the company conferred by this Act shall, so long as such breach continues, cease so far as regards the undertaking of any new business, and the liability of the members in respect of any obligations contracted or functions undertaken by the company while the breach continues shall be unlimited.

**PERPETUAL TRUSTEES QUEENSLAND LIMITED**

- (a) No member (other than the corporation incorporated according to the law of the State of New South Wales relating to companies on 31 July 1963 and called Perpetual Trustees Australia Limited but only so long as it is authorised by the law of that State to apply for and obtain a grant of probate or letters of administration in its own right) shall hold more than 5 000 shares in the member's own right, but if the capital of the company shall be increased by the issue of new shares, the number of shares which may be held by each member shall be proportionately increased.
- (b) The capital of the company shall be and remain divided into shares of not less than \$4 each and the number of subscribed shares in the company shall not be at any time reduced to less than 100 000 and no shares shall be held by or transferred to a minor.
- (c) In the event of a breach of any of the foregoing provisions, the powers and privileges of the company conferred by this Act shall, so long as such breach continues, cease so far as regards the undertaking of any new business, and the liability of the members in respect of any obligations contracted or functions undertaken by the company while the breach continues shall be unlimited.



## SCHEDULE 2 (continued)

**TRUST COMPANY OF AUSTRALIA LIMITED**

- (a) No member shall hold more than 1% of the capital of the company from time to time on issue or such higher percentage (not exceeding 12%) thereof as may be permitted by the articles of association of the company.
- (b) No shares shall be held by or transferred to a minor.
- (c) The company shall have a local board of directors in Queensland consisting of not less than 5 persons who shall be called local directors and each of whom shall be the holder of shares in the company of the total nominal amount of \$1 000 at the least.
- (d) In the event of a breach of any of the foregoing provisions, the powers and privileges of the company conferred by this Act shall, so long as such breach continues, cease so far as regards the undertaking of any new business, and the liability of the members in respect of any obligations contracted or functions undertaken by the company while the breach continues shall be unlimited.
- (e) Subject to this Act the company may alter its share capital in any manner permitted by the Corporations Law other than by reducing its share capital.

**ENDNOTES****1 Index to endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 December 2000. Future amendments of the Trustee Companies Act 1968 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
amdt	=	amendment	prov	=	provision
ch	=	chapter	pt	=	part
def	=	definition	pubd	=	published
div	=	division	R[X]	=	Reprint No.[X]
exp	=	expires/expired	RA	=	Reprints Act 1992
gaz	=	gazette	reloc	=	relocated
hdg	=	heading	renum	=	renumbered
ins	=	inserted	rep	=	repealed
lap	=	lapsed	s	=	section
notfd	=	notified	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
om	=	omitted	SIA	=	Statutory Instruments Act 1992
orig	=	original	SIR	=	Statutory Instruments Regulation 1992
p	=	page	SL	=	subordinate legislation
para	=	paragraph	sub	=	substituted
prec	=	preceding	unnum	=	unnumbered
pres	=	present			
prev	=	previous			

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 38 of 1993	23 December 1993
1A	to Act No. 58 of 1995	4 September 1996
1B	to Act No. 79 of 1996	3 March 1997
1C	to Act No. 17 of 1997	4 July 1997
2	to Act No. 69 of 1999	3 March 2000
2A	to Act No. 20 of 2000	28 July 2000

### 5 Tables in earlier reprints

#### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	1
Renumbered provisions	1

## **6 List of legislation**

### **Trustee Companies Act 1968 No. 56**

date of assent 24 December 1968

s 1 commenced on date of assent

remaining provisions commenced 1 April 1969 (proc pubd gaz 22 March 1969 p 937)

as amended by—

### **Age of Majority Act 1974 No. 57 s 8 sch**

date of assent 27 September 1974

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 1975 (proc pubd gaz 16 November 1974 p 1083)

### **Trustee Companies Act Amendment Act 1975 No. 50**

date of assent 4 November 1975

ss 1–2 commenced on date of assent

remaining provisions commenced 13 November 1975 (proc pubd gaz 15 November 1975 p 1099)

### **Trustee Companies Act Amendment Act 1977**

date of assent 3 October 1977

ss 1–2 commenced on date of assent

remaining provisions commenced 12 June 1980 (proc pubd gaz 14 June 1980 p 1188)

### **Trustee Companies Act Amendment Act 1980 No. 40**

date of assent 26 May 1980

ss 1–2 commenced on date of assent

commenced 19 June 1980 (proc pubd gaz 21 June 1980 p 1499)

### **Companies (Consequential Amendments) Act 1981 No. 111 pt 6**

date of assent 16 December 1981

commenced 1 July 1982 (see s 2(4) and proc pubd gaz 29 June 1982 p 2102)

### **ANZ Executors & Trustee Company Act 1983 pt 3**

date of assent 22 December 1983

commenced 2 February 1984 (proc pubd gaz 4 February 1984 p 428)

### **Trustee Companies Act Amendment Act 1984 No. 49**

date of assent 10 May 1984

commenced on date of assent

### **Trustee Companies Act and Another Act Amendment Act 1989 No. 77**

date of assent 24 August 1989

ss 1–2, 25 and 27 commenced on date of assent

s 25(1) commenced 20 November 1984 (see s 25(2))

remaining provisions commenced 5 November 1990 (proc pubd gaz 27 October 1990 p 1027)

**Justice Legislation (Miscellaneous Amendments) Act 1991 No. 42 ss 1–3 sch**

date of assent 5 August 1991  
commenced on date of assent

**Queensland Office of Financial Supervision Act 1992 No. 12 ss 1–2, 66 sch**

date of assent 6 May 1992  
ss 1–2 commenced on date of assent  
remaining provisions commenced 29 May 1992 (1992 SL No. 109)

**Justice Legislation (Miscellaneous Provisions) Act 1992 No. 40 ss 1, 2(1)(i), 163 sch 1**

date of assent 14 August 1992  
amdts 7, 14 and 27 commenced 13 December 1993 (1993 SL No. 452)  
remaining provisions commenced on date of assent

**Trustee Companies Amendment Act 1993 No. 38**

date of assent 7 September 1993  
ss 1–2 commenced on date of assent  
remaining provisions commenced 16 October 1993 (1993 SL No. 374)

**Land Title Act 1994 No. 11 ss 1–2, 194 sch 2**

date of assent 7 March 1994  
ss 1–2 commenced on date of assent  
remaining provisions commenced 24 April 1994 (1994 SL No. 132)

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995  
commenced on date of assent

**Justice Legislation (Miscellaneous Provisions) Act 1996 No. 79 pts 1, 32**

date of assent 12 December 1996  
ss 1–2 commenced on date of assent  
remaining provisions commenced 28 February 1997 (1997 SL No. 35)

**Miscellaneous Acts (Non-bank Financial Institutions) Amendment Act 1997 No. 17 ss 1–2 pt 12**

date of assent 15 May 1997  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 1997 (1997 SL No. 163)

**Trusts (Investments) Amendment Act 1999 No. 69 pt 1, s 7 sch**

date of assent 6 December 1999  
ss 1–2 commenced on date of assent  
remaining provisions commenced 3 February 2000 (2000 SL No. 16)

**Guardianship and Administration Act 2000 No. 8 ss 1–2, 263 sch 3**

date of assent 20 April 2000  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 2000 (2000 SL No. 125)

**GST and Related Matters Act 2000 No. 20 ss 1, 2(4), 29 sch 3**

date of assent 23 June 2000  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 2000 (see s 2(4))

**Justice and Other Legislation (Miscellaneous Provisions) Act 2000 No. 58 ss 1–2 sch**

date of assent 17 November 2000

commenced on date of assent

**7 List of annotations****Short title****prov hdg** amd 1995 No. 58 s 4 sch 1**s 1** amd 1995 No. 58 s 4 sch 1**Division of Act into Parts****s 2** om R1 (see RA s 36)**Repeal and savings****s 3** om 1992 No. 40 s 163 sch 1**Definitions****prov hdg** sub 1995 No. 58 s 4 sch 1**s 4** amd 1995 No. 58 s 4 sch 1def “**bank**” ins 1989 No. 77 s 4

om 1994 No. 11 s 194 sch 2

def “**bankers’ books**” ins 1989 No. 77 s 4

om 1997 No. 17 s 61(1)

def “**books**” ins 1989 No. 77 s 4def “**corporation**” ins 1989 No. 77 s 4def “**financial institution**” ins 1989 No. 77 s 4

amd 1995 No. 58 s 4 sch 1

sub 1997 No. 17 s 61(1)–(2)

def “**financial institution’s books**” ins 1997 No. 17 s 61(2)def “**foreign company**” ins 1989 No. 77 s 4

sub 1992 No. 40 s 163 sch 1

def “**insurance company**” ins 1989 No. 77 s 4

amd 1995 No. 58 s 4 sch 1

def “**new trustee company**” ins 1989 No. 77 s 4def “**recognised company**” ins 1989 No. 77 s 4

sub 1992 No. 40 s 163 sch 1

def “**registrar**” ins 1989 No. 77 s 4

sub 1992 No. 40 s 163 sch 1

def “**related corporation**” ins 1989 No. 77 s 4def “**unincorporated association**” ins 1989 No. 77 s 4def “**will**” om 1994 No. 11 s 194 sch 2**Powers conferred on trustee companies are additional powers****prov hdg** ins 1996 No. 58 s 4 sch 1**s 4AA** (prev s 4(2)) renum 1995 No. 58 s 4 sch 1**Subsidiaries, holding companies and related corporations****s 4A** ins 1989 No. 77 s 5

**Person entitled to probate may join with trustee company in applying for letters of administration to the trustee company**

s 9            amd 1989 No. 77 s 6

**Power of trustee companies to elect to administer small estates without grant of administration**

s 12            amd 1989 No. 77 s 7; 1996 No. 79 s 111

**Elections in respect of unadministered balance of an estate**

s 13            amd 1989 No. 77 s 8; 1996 No. 79 s 112

**Effect of joint grant on application under s.6**

s 17            amd 1994 No. 11 s 194 sch 2

**Effect of disclaimer of trustee on authorisation under s.6**

s 18            amd 1994 No. 11 s 194 sch 2

**Effect of disclaimer of trustee on joint application under s.9**

s 19            amd 1994 No. 11 s 194 sch 2

**Trustee company may be appointed trustee receiver etc.**s 21            amd 1981 No. 111 s 23 sch; 1992 No. 40 s 163 sch 1; 2000 No. 8  
                  s 263 sch 3**General powers of trustee company**

s 28            amd 1996 No. 79 s 113

**Power of company in certain cases of devises of realty**

s 30            amd 1974 No. 57 s 8 sch

**Power to apply income, or capital, for maintenance etc.**

prov hdg    amd 1996 No. 79 s 114(1)

s 31            amd 1996 No. 79 s 114(2)

**Common funds**

s 36            amd 1989 No. 77 s 9; 1993 No. 38 s 4; 1997 No. 17 s 62

**Cash common fund**

s 36A          ins 1989 No. 77 s 10

amd 1992 No. 12 s 66 sch; 1997 No. 17 s 63; 1999 No. 69 s 7 sch

**Contributory investments**

s 37            amd 1993 No. 38 s 5

**Certificate by trustee company as to its legal status in any matter**

s 39            amd 1994 No. 11 s 194 sch 2

**Commission chargeable by a trustee company**

s 41            amd 1975 No. 50 s 3; 2000 No. 20 s 29 sch 3

**Fee for work and services**

s 45            amd 1975 No. 50 s 4; 1984 No. 49 s 3; 2000 No. 20 s 29 sch 3

**Recovery of GST**

s 45A          ins 2000 No. 20 s 29 sch 3

**An officer may attend on behalf of a trustee company, and be personally**

**responsible**

s 48 amd 1989 No. 77 s 11

**Filing and passing accounts by trustee company**

s 50 amd 1989 No. 77 s 12; 1993 No. 38 s 6

**Court may order account**

s 51 amd 1989 No. 77 s 12A

**Quantum of paid-up capital of trustee companies**

prov hdg sub 1989 No. 77 s 13(a)

s 54 amd 1989 No. 77 s 13(b)

**Investment of capital in name of Treasurer**

s 56 amd 1989 No. 77 s 14; 1995 No. 58 s 4 sch 1

**No bond required in certain cases**

s 57 amd 1989 No. 77 s 15

**Court may order winding-up**

s 58 amd 1989 No. 77 s 16

**Trusts of s.56 moneys**

prov hdg sub 1989 No. 77 s 17(a)

s 59 amd 1989 No. 77 s 17(b)-(c)

**Provisions with respect to capital and liability of shareholders etc.**

s 63 amd 1981 No. 111 s 23 sch; 1992 No. 40 s 163 sch 1

**Separate accounts to be kept**

s 64 amd 1989 No. 77 s 18

**Trustee company to give information to Minister**

prov hdg amd 1992 No. 40 s 163 sch 1

s 64A ins 1989 No. 77 s 19

amd 1992 No. 40 s 163 sch 1; 1997 No. 17 s 64

**Declaration as to state of trustee company's affairs to be made yearly**

s 65 amd 1989 No. 77 s 20; 1992 No. 40 s 163 sch 1

**Balance sheet**

s 66 amd 1989 No. 77 s 21; 1992 No. 40 s 163 sch 1

**Borrowing by trustee company**

s 66A ins 1989 No. 77 s 22

amd 1992 No. 40 s 163 sch 1

**Restriction on giving guarantees**

s 66B ins 1989 No. 77 s 22

**Loans etc. from estates to related corporations prohibited**

s 66C ins 1989 No. 77 s 22

amd 1997 No. 17 s 65

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s 66D ins 1989 No. 77 s 22



**Declaration by trustee company**

**s 66E** ins 1989 No. 77 s 22  
amd 1992 No. 40 s 163 sch 1

**Insurance**

**s 66F** ins 1989 No. 77 s 22

**Trustee company's liability in unincorporated association limited**

**s 66G** ins 1989 No. 77 s 22  
amd 1992 No. 40 s 163 sch 1

**Penalty provisions**

**s 67** sub 1989 No. 77 s 23

**Delegations**

**s 71** sub 1992 No. 40 s 163 sch 1

**Power to amend Schedules**

**s 72** sub 1989 No. 77 s 24  
amd 1992 No. 40 s 163 sch 1  
om 1993 No. 38 s 7

**Provisions relating to ex trustee companies**

**s 73** ins 1989 No. 77 s 24  
amd 1992 No. 40 s 163 sch 1

**Regulation making power**

**s 73A** ins 1995 No. 58 s 4 sch 1

**Trustee companies that are subsidiary corporations to be guaranteed**

**s 74** ins 1989 No. 77 s 24  
om 1993 No. 38 s 8

**SCHEDULE 1**

om 1992 No. 40 s 163 sch 1

**SCHEDULE 2**

amd 1977 s 3; o in c pubd gaz 24 December 1977 p 1688; 1980 No. 40 s 3; 1982 No. 111 s 23 sch; o in c pubd gaz 21 June 1983 p 1253; 1983 s 9; o in c pubd gaz 8 June 1985 p 1083 (validated by 1989 No. 77 s 27); 1989 No. 77 s 25(1); 1991 No. 42 s 3 sch; 1992 No. 40 s 163 sch 1; 1993 No. 38 s 9; 1996 No. 79 s 115; 2000 No. 58 s 2 sch

**SCHEDULE 3**

om 1992 No. 40 s 163 sch 1

**SCHEDULE 4—FINANCIAL DECLARATION BY A TRUSTEE COMPANY**

ins 1989 No. 77 s 26  
om 1992 No. 49 s 163 sch 1