



Queensland

Trusts Bill 2024



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Trusts Bill 2024

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2024

A Bill

for

An Act to consolidate and amend the law relating to trusts, to repeal the *Trusts Act 1973*, and to amend this Act, the *Aboriginal Land Act 1991*, the *Corrective Services Act 2006*, the *District Court of Queensland Act 1967*, the *Funeral Benefit Business Act 1982*, the *Public Trustee Act 1978*, the *River Improvement Trust Act 1940*, the *Succession Act 1981*, the *Torres Strait Islander Land Act 1991*, the *United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942* and the legislation mentioned in schedule 2 for particular purposes

[s 1]

The Parliament of Queensland enacts—	1
Part 1 Preliminary	2
Division 1 Introduction	3
1 Short title	4
This Act may be cited as the <i>Trusts Act 2024</i> .	5
2 Commencement	6
This Act commences on a day to be fixed by proclamation.	7
3 Application of Act	8
(1) This Act applies in relation to a trust whether created before or after, or partly before and partly after, the commencement of this Act, except to the extent this Act or another Act provides otherwise.	9 10 11 12
<i>Note—</i>	13
For an example of an Act providing otherwise, see the <i>Land Act 1994</i> , section 90.	14 15
(2) Also, this Act applies despite a contrary intention in any trust instrument, except to the extent this Act provides otherwise.	16 17
(3) This Act does not prevent a settlor conferring on a trustee any powers additional to or greater than those conferred under this Act.	18 19 20
(4) Any additional or greater power conferred on a trustee by a settlor has effect and is exercisable in the same way, and with the same consequences, as a power conferred under this Act.	21 22 23
(5) Subsection (4) applies subject to an express contrary intention in the trust instrument.	24 25

(6)	The powers conferred on a trustee under this Act are in addition to the powers conferred on the trustee under any other Act.	1 2 3
(7)	In this section— <i>trustee</i> includes a person exercising the powers of a trustee under this Act.	4 5 6
4	Act binds all persons This Act binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.	7 8 9 10
Division 2	Interpretation	11
5	Definitions The dictionary in schedule 1 defines particular words used in this Act.	12 13 14
6	Meaning of <i>trust</i> <i>Trust</i> includes— (a) an implied, resulting, bare or constructive trust; and (b) the duties incidental to the office of a personal representative.	15 16 17 18 19
7	Meaning of <i>trustee</i> and <i>statutory trustee</i> (1) <i>Trustee</i> includes— (a) a trustee corporation; and (b) another corporation in which property subject to a trust is vested; and (c) a personal representative; and	20 21 22 23 24 25

[s 8]

- (d) a statutory trustee. 1
- (2) A person, other than a person under a legal incapacity, is a *statutory trustee* in relation to trust property comprising land if— 2
- (a) the person is beneficially entitled to possession of the land, or to the rents and profits of the land; and 3
- (b) apart from this section, there is no trustee of the land. 4
- Note—* 5
- See part 14 in relation to statutory trustees. 6
- 8 Meaning of *trust instrument*** 7
- (1) The *trust instrument*, in relation to a trust, is any instrument creating the trust, as modified by all validly executed amendments. 8
- (2) In this section— 9
- instrument* includes an Act. 10
- 9 Meaning of *trust property* and references to trust property** 11
- (1) *Trust property* includes— 12
- (a) property settled on any trust; and 13
- (b) property subject to any implied, resulting, bare or constructive trust; and 14
- (c) property subject to any trust or direction for sale, however arising; and 15
- (d) land vested in a person for an estate for the person’s own life or any other life, or for a term of years determinable on life not being a mere lease at rent, or for any greater estate not being a fee simple absolute; and 16
- (e) land in relation to which a person has, under a will, a personal licence to reside for the person’s own life or any other life, or for any lesser period; and 17

(f)	the estate of a deceased person.	1
(2)	A reference in this Act to trust property includes a reference to a part of the trust property.	2 3
10	Meaning of <i>capacity</i> and <i>impaired capacity</i>	4
(1)	A person has <i>capacity</i> for a matter only if the person is capable of—	5 6
(a)	understanding the nature and effect of decisions about the matter; and	7 8
(b)	freely and voluntarily making decisions about the matter; and	9 10
(c)	communicating the decisions in some way.	11
(2)	A person has <i>impaired capacity</i> for a matter if the person does not have capacity for the matter.	12 13
	<i>Example of a matter for this section—</i>	14
	administering a trust	15
11	Meaning of <i>charitable</i>	16
(1)	The established rules of law relating to what is <i>charitable</i> , as in force immediately before the commencement, continue to apply.	17 18 19
	<i>Examples of categories of charitable purposes—</i>	20
	• the relief of poverty	21
	• the advancement of education	22
	• the advancement of religion	23
(2)	Despite any rule of law to the contrary, it is declared that it is and always has been charitable to provide, or to help in providing, facilities for recreation or other leisure time activity, if the facilities are provided in the interests of social welfare.	24 25 26 27 28
(3)	For subsection (2), facilities are provided in the interests of social welfare only if—	29 30

[s 12]

(a)	the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended; and	1 2 3
(b)	either—	4
(i)	those persons have need of the facilities because of their youth, age, infirmity or disability, poverty or social and economic circumstances; or	5 6 7
(ii)	the facilities are to be available to the members of the public at large or to a substantial section of the public at large.	8 9 10
(4)	Nothing in this section limits the requirement that, in order to be charitable, a gift, trust or institution must be for the public benefit.	11 12 13
12	References to security when lending or investing trust funds	14 15
	In this Act, a reference to a trustee lending or investing trust funds on the security of property includes a reference to a trustee lending or investing trust funds on a new security or on the transfer of an existing security.	16 17 18 19
Part 2	Restrictions on appointment of trustees and related matters	20 21
13	Persons who can not be appointed as trustees	22
(1)	The following persons can not be appointed as a trustee—	23
(a)	a child;	24
(b)	an individual who is a bankrupt, or is taking advantage of the laws of bankruptcy as a debtor, under the <i>Bankruptcy Act 1966</i> (Cwlth) or a similar law of a foreign jurisdiction;	25 26 27 28
(c)	a corporation that is a Chapter 5 body corporate;	29

-
- (d) a person who is disqualified from being appointed as a trustee by an order made under section 173. 1
2
- (2) The purported appointment of a person mentioned in subsection (1)(a), (b), (c) or (d) is of no effect. 3
4
- (3) Subsections (1)(b) and (c) and (2) do not affect the appointment of— 5
6
- (a) an individual who becomes a bankrupt, or starts to take advantage of the laws of bankruptcy, as mentioned in subsection (1)(b) after the person’s appointment as trustee has taken effect; or 7
8
9
10
- (b) a corporation that becomes a Chapter 5 body corporate after the corporation’s appointment as trustee has taken effect. 11
12
13
- Note—* 14
- See, however— 15
- (a) sections 20, 23 and 29 in relation to the replacement and removal of a trustee who becomes a bankrupt or starts to take advantage of the laws of bankruptcy; and 16
17
18
- (b) sections 20 and 29 in relation to the replacement and removal of a trustee that becomes a Chapter 5 body corporate. 19
20
- (4) This section does not apply in relation to the appointment of a personal representative. 21
22

14 Limit on number of trustees of particular trusts 23

- (1) This section applies to a trust other than— 24
- (a) a charitable trust; or 25
- (b) a trust that is, or is created for the purpose of becoming, a self managed superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cwlth). 26
27
28
29
- (2) The trust may not have more than 4 trustees. 30
- (3) If more than 4 persons are named as trustees under the trust instrument— 31
32

[s 15]

(a)	the first 4 persons named, who are able and willing to act as trustees and whose appointments are otherwise able to take effect, are the trustees; and	1 2 3
	<i>Example of a person who is not able to act as a trustee—</i>	4
	a person who has impaired capacity for administering the trust	5
	<i>Example of a person whose appointment as a trustee is not otherwise able to take effect—</i>	6 7
	a person who can not, under section 13, be appointed as a trustee	8
(b)	the appointment of the other persons is of no effect.	9
(4)	A custodian trustee is not to be counted for the purpose of any limitation on the number of trustees the trust may have.	10 11
	<i>Note—</i>	12
	See part 4 in relation to custodian trustees.	13
(5)	This section applies subject to section 15.	14
15	Court approval of more than 4 trustees for particular trusts	15 16
(1)	This section applies in relation to a trust other than a trust mentioned in section 14(1)(a) or (b).	17 18
(2)	The court may, on application, make an order approving the appointment of more than 4 trustees of the trust if satisfied it is appropriate to do so in the particular circumstances of the case.	19 20 21 22
	<i>Note—</i>	23
	See section 168 in relation to the persons who may apply to the court for particular orders.	24 25
(3)	The number of trustees approved by an order made under subsection (2) is the <i>approved number</i> .	26 27
	<i>Example—</i>	28
	If the court approves the appointment of 6 trustees, the approved number is 6.	29 30
(4)	If the court makes an order under subsection (2) in relation to a trust, section 14 applies to the trust as if—	31 32

	(a) the reference in section 14(2) to 4 trustees were a reference to the approved number of trustees; and	1 2
	(b) a reference in section 14(3) to 4 persons were a reference to the approved number of persons.	3 4
16	Local government trustees may act in administration of trusts	5 6
	(1) If a local government is appointed as trustee of a trust, the local government may act in the administration of the trust for the purpose of, and according to, the trust, even if the purpose is not a function of local government.	7 8 9 10
	(2) Subsection (1) applies whether or not the local government is an original trustee of the trust.	11 12
	(3) However, if the local government is not an original trustee of the trust, subsection (1) applies subject to a contrary intention in the trust instrument.	13 14 15
Part 3	Appointment, discharge and removal of trustees and devolution of trusts	16 17 18
Division 1	Preliminary	19
17	Application of part	20
	This part applies in relation to a trustee who is the personal representative of the estate of a deceased person only if, and to the extent, the personal representative—	21 22 23
	(a) has completed the administration of all, or a part, of the estate; and	24 25
	(b) holds the estate, or a part of the estate, in the capacity of trustee only.	26 27

[s 18]

- 18 When appointors are not *able and willing to act*** 1
- (1) For this part, if there is 1 appointor for a trust, the appointor is 2
not *able and willing to act* as appointor for the trust if— 3
- (a) the appointor does not exercise the power of 4
appointment within a reasonable period; or 5
- (b) the appointor is otherwise not able and willing to act as 6
appointor. 7
- (2) For this part, if there are 2 or more appointors for a trust, the 8
appointors are not *able and willing to act* as appointors for the 9
trust if— 10
- (a) the appointors can not, within a reasonable period— 11
- (i) if the trust instrument provides for the appointors 12
to exercise the power of appointment by 13
majority—reach a majority decision on the 14
appointment; or 15
- (ii) otherwise—reach a unanimous decision on the 16
appointment; or 17
- (b) the appointors are otherwise not able and willing to act 18
as appointors. 19

Division 2 Appointment of trustees 20

- 19 Application of division** 21
- (1) If there is an appointor for a trust, the provisions of this 22
division relating to appointors apply, whether the appointment 23
of a trustee is to be made in a circumstance mentioned in this 24
division or in the trust instrument. 25
- (2) However, if an appointor is authorised under this division to 26
appoint a trustee in a circumstance that is also mentioned in 27
the trust instrument, an appointment made under this division 28
in that circumstance is subject to the terms applying under the 29
trust instrument to an appointment in that circumstance. 30

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- (3) If a will names a person as trustee of a trust created by the will and the person is dead, the provisions of this division that apply if a trustee is dead apply—
- (a) whether the person is named as a sole trustee or otherwise of the trust; and
 - (b) whether the death of the person happened before or after the death of the testator.
- 20 Appointment of trustees—replacement of trustee in particular circumstances**
- (1) This section applies if a trustee of a trust (a *relevant trustee*)—
- (a) is dead; or
 - (b) declares, by instrument, that the trustee wishes to be discharged from all or part of the trusts reposed in the trustee; or
 - (c) refuses to act as trustee; or
 - (d) is unfit to act as trustee; or
 - (e) is incapable of acting as trustee, including, for example, because of having impaired capacity for administering the trust; or
 - (f) becomes a bankrupt, or starts to take advantage of the laws of bankruptcy as a debtor, under the *Bankruptcy Act 1966* (Cwlth) or a similar law of a foreign jurisdiction; or
 - (g) is disqualified from managing corporations under the Corporations Act, part 2D.6 and either—
 - (i) does not have permission under section 206GAB or 206G of that Act to manage all corporations; or
 - (ii) has permission under section 206GAB or 206G of that Act to manage all corporations, but the permission is subject to exceptions or conditions; or
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[s 21]

(h)	is a corporation that—	1
(i)	stops carrying on business; or	2
(ii)	becomes a Chapter 5 body corporate; or	3
(iii)	is deregistered or otherwise ceases to exist; or	4
(i)	is removed under the trust instrument.	5
(2)	For subsection (1), it does not matter whether the relevant trustee is an original trustee of the trust or was appointed by the court or otherwise.	6 7 8
(3)	The following persons may, by instrument, appoint 1 or more persons as trustees to replace the relevant trustee—	9 10
(a)	if there is an appointor for the trust—the appointor;	11
(b)	if there is no appointor for the trust, or no appointor who is able and willing to act as an appointor—the continuing trustee of the trust or, if there is more than 1 continuing trustee, the continuing trustees.	12 13 14 15
	<i>Notes—</i>	16
1	See section 14 in relation to the limit applying to the number of trustees of particular trusts.	17 18
2	See also section 171 in relation to the court’s power to appoint and remove trustees.	19 20
(4)	Subject to a contrary intention in the trust instrument, an appointor for the trust may appoint themselves as a trustee under subsection (3)(a).	21 22 23
(5)	In this section—	24
	<i>continuing trustee</i> includes a relevant trustee mentioned in subsection (1)(b) or (c) who is willing to act under subsection (3)(b).	25 26 27
21	Appointment of trustees—replacement of last continuing trustee who is dead	28 29
(1)	This section applies if all of the following apply—	30
(a)	the last continuing trustee of a trust is dead;	31

-
- (b) there is no appointor for the trust, or no appointor who is able and willing to act under section 20 to appoint a trustee to replace the last continuing trustee; 1
2
3
- (c) if the trust instrument includes a mechanism, other than the appointment of an appointor, for appointing a trustee to replace the last continuing trustee—an appointment of a trustee under the mechanism has not taken effect within a reasonable period after the death of the last continuing trustee. 4
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- (2) For subsection (1), it does not matter whether the last continuing trustee was an original trustee of the trust or was appointed by the court or otherwise. 10
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12
- (3) The personal representative of the last continuing trustee may, by instrument, appoint 1 or more persons as trustees to replace the last continuing trustee. 13
14
15
- Notes—* 16
- 1 See section 14 in relation to the limit applying to the number of trustees of particular trusts. 17
18
- 2 See also section 171 in relation to the court’s power to appoint and remove trustees. 19
20
- (4) The personal representative of the last continuing trustee— 21
- (a) is taken to have always had the power of appointment conferred under subsection (3); and 22
23
- (b) if the personal representative is the executor, whether original or by representation, of the last continuing trustee’s will—may exercise the power of appointment conferred under subsection (3) without the agreement of any executor named in the trustee’s will who has not proved the trustee’s will. 24
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29
- (5) Subject to a contrary intention in the trust instrument, the personal representative of the last continuing trustee may appoint themselves as a trustee under subsection (3). 30
31
32
- (6) If there is more than 1 personal representative of the last continuing trustee, the personal representatives must exercise the power of appointment under subsection (3) jointly. 33
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[s 22]

(7)	In this section—	1
	<i>personal representative</i> , of the last continuing trustee of a trust, does not include an executor named in the trustee’s will who has not proved the trustee’s will.	2 3 4
22	Appointment of trustees—replacement of last continuing trustee with impaired capacity	5 6
(1)	This section applies if all of the following apply—	7
(a)	the last continuing trustee of a trust is incapable of acting as trustee because the trustee has impaired capacity for administering the trust;	8 9 10
(b)	there is no appointor for the trust, or no appointor who is able and willing to act under section 20 to appoint a trustee to replace the last continuing trustee;	11 12 13
(c)	if the trust instrument includes a mechanism, other than the appointment of an appointor, for appointing a trustee to replace the last continuing trustee—an appointment of a trustee under the mechanism has not taken effect within a reasonable period after the later of the following to happen to the last continuing trustee—	14 15 16 17 18 19
(i)	becoming the last continuing trustee;	20
(ii)	becoming a person with impaired capacity for administering the trust;	21 22
(d)	an administrator or attorney for the last continuing trustee is authorised, under their appointment as administrator or attorney, to exercise power for all financial matters for the trustee.	23 24 25 26
(2)	For subsection (1), it does not matter whether the last continuing trustee is an original trustee of the trust or was appointed by the court or otherwise.	27 28 29
(3)	The administrator or attorney may, by instrument, appoint 1 or more persons as trustees to replace the last continuing trustee.	30 31

Notes—

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|---|----------------------|
| | 1 |
| 1 See section 14 in relation to the limit applying to the number of trustees of particular trusts. | 2
3 |
| 2 See also section 171 in relation to the court's power to appoint and remove trustees. | 4
5 |
| (4) The administrator or attorney may appoint themselves as a trustee under subsection (3). | 6
7 |
| (5) If there is more than 1 administrator or more than 1 attorney for the last continuing trustee, the administrators or attorneys must exercise the power of appointment under subsection (3) jointly. | 8
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| (6) To remove any doubt, it is declared that— | 12 |
| (a) the exercise of the power of appointment under subsection (3) is not made in the capacity of administrator or attorney for the last continuing trustee; and | 13
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16 |
| (b) neither the <i>Guardianship and Administration Act 2000</i> nor the <i>Powers of Attorney Act 1998</i> applies in relation to the exercise of the power of appointment. | 17
18
19 |
| (7) This section applies subject to a contrary intention in— | 20 |
| (a) the trust instrument; or | 21 |
| (b) the order or instrument by which the administrator or attorney is appointed. | 22
23 |

23 Appointment of trustees—replacement of last continuing trustee who is bankrupt etc. 24
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|--|----------------------|
| (1) This section applies if all of the following apply— | 26 |
| (a) the last continuing trustee of a trust is a bankrupt, or is taking advantage of the laws of bankruptcy as a debtor, under the <i>Bankruptcy Act 1966</i> (Cwlth) or a similar law of a foreign jurisdiction; | 27
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30 |
| (b) there is no appointor for the trust, or no appointor who is able and willing to act under section 20 to appoint a trustee to replace the last continuing trustee; | 31
32
33 |

[s 24]

- (c) if the trust instrument includes a mechanism, other than the appointment of an appointor, for appointing a trustee to replace the last continuing trustee—an appointment of a trustee under the mechanism has not taken effect within a reasonable period after the later of the following to happen to the last continuing trustee—
- (i) becoming the last continuing trustee;
 - (ii) becoming a bankrupt, or starting to take advantage of the laws of bankruptcy as a debtor, under the *Bankruptcy Act 1966* (Cwlth) or a similar law of a foreign jurisdiction.
- (2) For subsection (1), it does not matter whether the last continuing trustee is an original trustee of the trust or was appointed by the court or otherwise.
- (3) Subject to a contrary intention in the trust instrument, the last continuing trustee may, by instrument, appoint 1 or more persons as trustees to replace themselves.
- Notes—*
- 1 See section 14 in relation to the limit applying to the number of trustees of particular trusts.
 - 2 See also section 171 in relation to the court’s power to appoint and remove trustees.
- (4) The power conferred under subsection (3) is a personal right only of the last continuing trustee.

24 Appointment of trustees—additional trustees

- (1) This section applies in relation to a trust if—
- (a) the number of trustees of the trust is less than the number of trustees permitted for the trust under section 14, including that section as applied by section 15(4); or
 - (b) section 14 does not apply to the trust.
- (2) The following persons may, by instrument, appoint 1 or more persons as additional trustees of the trust—
- (a) if there is an appointor for the trust—the appointor;

- (b) if there is no appointor for the trust, or no appointor who is able and willing to act as an appointor—the trustee of the trust or, if there is more than 1 trustee, the trustees. 1
2
3
- Notes—* 4
- 1 See section 14 in relation to the limit applying to the number of trustees of particular trusts. 5
6
- 2 See also section 171 in relation to the court’s power to appoint additional trustees. 7
8
- (3) However, the persons mentioned in subsection (2) are not required to exercise the power conferred under that subsection unless the appointment of 1 or more additional trustees is required under the trust instrument or an Act. 9
10
11
12
- (4) Subject to a contrary intention in the trust instrument, an appointor for the trust may appoint themselves as an additional trustee under subsection (2)(a). 13
14
15

25 **Appointment of trustees—separate trustees of separate trust property** 16 17

- (1) This section applies if, under a trust, a part of the trust property (the *separate trust property*) is held on a trust distinct from the trust relating to any other part of the trust property. 18
19
20
21
- (2) If a new trustee may be appointed under this division— 22
- (a) 1 or more separate trustees may be appointed of the separate trust property, whether or not a new trustee is, or is to be, appointed of any other part of the trust property; and 23
24
25
26
- (b) a continuing trustee may be appointed or continue as a trustee of the separate trust property; and 27
28
- (c) if only 1 trustee of the trust property was originally appointed—1 trustee may be appointed of the separate trust property. 29
30
31

[s 26]

26	Powers etc. of trustees appointed under division	1
(1)	A person appointed under this division as a trustee of trust property has all the powers, authorities and discretions of, and may in all matters act as, a person who had originally been appointed as a trustee of the trust property under the trust instrument.	2 3 4 5 6
(2)	Subsection (1) applies in relation to the trustee both before and after the trust property is vested in the trustee.	7 8
Division 3	Discharge and removal of trustees	9
27	Meaning of <i>minimum trustee requirements</i>	10
	For this division, the <i>minimum trustee requirements</i> for a trust are that—	11 12
(a)	the trust has at least 1 trustee that is a corporation; or	13
	<i>Examples of a corporation—</i>	14
	• the public trustee	15
	• a licensed trustee company	16
	• a company registered under the Corporations Act	17
	• a local government	18
	<i>Note—</i>	19
	See section 16 in relation to the power of a local government to act in the administration of a trust.	20 21
(b)	the trust has at least 2 trustees who are individuals; or	22
(c)	if only 1 trustee was originally appointed or the trust instrument allows the trust to have only 1 trustee who is an individual—the trust has at least 1 trustee who is an individual.	23 24 25 26
28	Discharge of trustee on appointment of new trustee	27
(1)	This section applies if—	28

	(a) a new trustee is appointed under division 2 to replace a trustee (the <i>replaced trustee</i>); and	1 2
	(b) on the appointment of the new trustee, the minimum trustee requirements for the trust are satisfied.	3 4
	(2) On the appointment of the new trustee, the replaced trustee is discharged from the trust.	5 6
	(3) However, if the replaced trustee has declared, as mentioned in section 20(1)(b), that the trustee wishes to be discharged from only part of the trusts reposed in the trustee and is replaced under section 20 in relation to that part only, the trustee is discharged from that part only.	7 8 9 10 11
29	Removal and discharge of trustee without appointment of new trustee	12 13
	(1) This section applies in relation to a relevant trustee mentioned in section 20(1)(c), (d), (e), (f), (g) or (h).	14 15
	(2) For subsection (1), it does not matter whether the relevant trustee is an original trustee of the trust or was appointed by the court or otherwise.	16 17 18
	(3) The following persons may, by instrument, remove the relevant trustee without appointing a new trustee to replace the relevant trustee—	19 20 21
	(a) if there is an appointor for the trust—the appointor;	22
	(b) if there is no appointor for the trust, or no appointor who is able and willing to act as an appointor—the continuing trustee of the trust or, if there is more than 1 continuing trustee, the continuing trustees.	23 24 25 26
	(4) However, subsection (3) applies only if, on the removal of the relevant trustee, the minimum trustee requirements for the trust will be satisfied.	27 28 29
	(5) On the removal of the relevant trustee under this section, the relevant trustee is discharged from the trust.	30 31

[s 30]

30	Discharge of trustee who wishes to be discharged	1
(1)	This section applies if—	2
(a)	a trustee declares, by instrument, that the trustee wishes to be discharged from all, or part (the <i>relevant part</i>), of the trusts reposed in the trustee; and	3 4 5
(b)	on the discharge, the minimum trustee requirements will be satisfied for the trust or relevant part; and	6 7
(c)	the trustee’s co-trustees and, if there is an appointor for the trust, the appointor, by instrument, agree to—	8 9
(i)	discharge the trustee from the trusts or relevant part; and	10 11
(ii)	vest the trust property in the co-trustees alone.	12
(2)	Subject to subsection (3), the trustee is discharged from the trusts or relevant part.	13 14
(3)	The discharge of the trustee takes effect—	15
(a)	to the extent it is necessary, in order to vest the trust property in the co-trustees alone, for a transfer of the trust property to be notified, registered or recorded under the requirements of another Act or of a law of another State or the Commonwealth—on the notification, registration or recording of the transfer; or	16 17 18 19 20 21
(b)	if, or to the extent, paragraph (a) does not apply—according to the terms of the instrument mentioned in subsection (1)(c).	22 23 24
(4)	If the trustee has declared, as mentioned in subsection (1)(a), that the trustee wishes to be discharged from only the relevant part of the trusts, this section applies as if a reference in subsections (1)(c)(ii) and (3)(a) to the trust property were a reference to the trust property held on trust under the relevant part.	25 26 27 28 29 30
(5)	To remove any doubt, it is declared that it is not necessary for a new trustee to be appointed to replace the trustee who is discharged.	31 32 33

Division 4	Notification of former delegate if trustee is replaced, removed or discharged	1 2 3
31	Particular persons to notify person who was trustee's delegate	4 5
(1)	This section applies if—	6
(a)	a trustee is—	7
(i)	replaced under division 2; or	8
(ii)	removed under section 29 or under the trust instrument, without being replaced; or	9 10
(iii)	discharged under section 30; and	11
(b)	when the trustee is replaced, removed or discharged, the relevant person has notice that the trustee had, under section 100, delegated a matter in relation to the trust.	12 13 14
(2)	For subsection (1)(b), it does not matter whether the relevant person has notice of the delegation of the matter because the trustee gave notice to the relevant person under section 104, or otherwise.	15 16 17 18
(3)	The relevant person must give the person to whom the delegation was made written notice that the trustee has been replaced, removed or discharged, as the case may be.	19 20 21
(4)	In this section—	22
	<i>relevant person</i> means—	23
(a)	in relation to a trustee who is replaced or removed as mentioned in subsection (1)(a)(i) or (ii)—the person replacing or removing the trustee; or	24 25 26
(b)	in relation to a trustee who is discharged as mentioned in subsection (1)(a)(iii)—any person whose agreement to the discharge is required under section 30.	27 28 29

[s 32]

Division 5	Vesting of trust property on appointment, removal or discharge of trustees	1 2 3
32	Application of division	4
(1)	This division applies if, by instrument (an <i>instrument of change</i>)—	5 6
(a)	a new trustee is appointed, whether under division 2 or under the trust instrument and whether to replace a trustee or to be an additional trustee; or	7 8 9
(b)	a trustee is—	10
(i)	removed under section 29; or	11
(ii)	discharged under section 30.	12
(2)	However, this division does not apply in relation to a new trustee if—	13 14
(a)	the new trustee is appointed to replace the last continuing trustee of a trust who is dead; or	15 16
(b)	the new trustee is appointed to replace the last continuing trustee of a trust who has impaired capacity for administering the trust, and the trust property has vested in the public trustee under section 45.	17 18 19 20
	<i>Notes—</i>	21
1	See division 7 in relation to the vesting of trust property on the death of the last continuing trustee of a trust.	22 23
2	See division 8 in relation to the vesting of trust property in circumstances where the last continuing trustee of a trust has impaired capacity for particular matters.	24 25 26
33	Definitions for division	27
	In this division—	28
	<i>instrument of change</i> see section 32(1).	29

post-change trustee, in relation to an instrument of change, means a person who, on the appointment of a new trustee, or the removal or discharge of a trustee, under the instrument, becomes or continues as a trustee of the trust to which the instrument relates.

pre-change trustee, in relation to an instrument of change, means a person who, immediately before the appointment of a new trustee, or the removal or discharge of a trustee, takes effect under the instrument, is a trustee of the trust to which the instrument relates.

34 Vesting of trust property 11

- (1) On the appointment of the new trustee, or the removal or discharge of the trustee, under the instrument of change, the instrument of change—
 - (a) divests the trust property from the pre-change trustees; and 15
 - (b) without any conveyance, transfer or assignment, vests the trust property in— 17
 - (i) the post-change trustee; or 19
 - (ii) if there is more than 1 post-change trustee—the post-change trustees, as joint tenants. 20
- (2) However, to the extent the divesting and vesting of the trust property have effect only if notified, registered or recorded under the requirements of another Act or of a law of another State or the Commonwealth— 22
 - (a) the divesting and vesting of the trust property are subject to the requirements of the other Act or law; and 26
 - (b) the instrument of change— 27
 - (i) vests in the post-change trustee a right to call for a transfer of the trust property; or 29
 - (ii) if there is more than 1 post-change trustee—vests in the post-change trustees jointly a right to call for a transfer of the trust property. 30

[s 35]

35	Transfer etc. of trust property	1
(1)	Each pre-change trustee and post-change trustee must do all things necessary to assist in the notification, registration or recording of the divesting and vesting of the trust property under a requirement mentioned in section 34(2).	2 3 4 5
(2)	The instrument of change is taken to be a conveyance of the trust property from the pre-change trustees to—	6 7
(a)	the post-change trustee; or	8
(b)	if there is more than 1 post-change trustee—the post-change trustees, as joint tenants.	9 10
(3)	However, the instrument of change does not have effect as a breach of covenant or condition, or give rise to the forfeiture, of any lease or agreement for lease or other property.	11 12 13
(4)	If the consent of a person is needed to the conveyance, transfer or assignment of the trust property—	14 15
(a)	the vesting of the property under this division is subject to the consent; but	16 17
(b)	the consent may be obtained after the execution of the instrument of change by the post-change trustee or, if there is more than 1 post-change trustee, the post-change trustees.	18 19 20 21
Division 6	Devolution of trusts on death of trustee	22 23
36	Exercise of trust powers etc. by surviving trustees	24
(1)	This section applies if—	25
(a)	a power is given to, or a trust is imposed on, 2 or more trustees jointly; and	26 27
(b)	1 or more of the trustees dies.	28

	(2) The surviving trustee or, if there is more than 1 surviving trustee, the surviving trustees may exercise the power or perform the trust, as the case may be.	1 2 3
Division 7	Vesting of trust property and devolution of trusts—death of last continuing trustee	4 5 6
37	Application of division	7
	This division applies if the last continuing trustee of a trust dies.	8 9
38	Vesting of trust property in public trustee	10
	(1) On the death of the last continuing trustee, the trust property devolves to and vests in the public trustee in the same way, and subject to the same provisions, as trust property vests in a post-change trustee under division 5.	11 12 13 14
	(2) However, it is not necessary for the public trustee to notify, register or record the vesting of the trust property under section 35, as applied by subsection (1), if—	15 16 17
	(a) the public trustee does not act in relation to the trust; or	18
	(b) the only action taken by the public trustee is the appointment of a new trustee.	19 20
	(3) The trust property remains vested in the public trustee until it is divested from the public trustee under section 40 or 41.	21 22
39	Powers etc. of public trustee	23
	(1) While the trust property is vested in the public trustee under section 38, the public trustee has all the powers, authorities and discretions of, and may in all matters act as, a person who had originally been appointed as a trustee of the trust property under the trust instrument.	24 25 26 27 28

[s 40]

- (2) However, unless the court, in special circumstances, otherwise directs, the public trustee is not required to exercise any of the powers, authorities or discretions or act in the administration of the trust. 1
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3
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- (3) This section does not limit any power of the public trustee under the *Public Trustee Act 1978*, section 61 or 62. 5
6
- 40 Vesting of trust property in new trustee 7**
- (1) This section applies if— 8
- (a) a new trustee is appointed to replace the last continuing trustee; and 9
10
- (b) for an appointment made other than by the public trustee—the new trustee gives the public trustee written notice of the appointment. 11
12
13
- (2) The trust property— 14
- (a) is divested from the public trustee; and 15
- (b) devolves to and vests in the new trustee in the same way, and subject to the same provisions, as trust property vests in a post-change trustee under division 5. 16
17
18
- 41 Vesting of trust property in holder of grant 19**
- (1) This section applies if— 20
- (a) a new trustee has not been appointed to replace the last continuing trustee; and 21
22
- (b) a grant of probate of the will, or letters of administration of the estate, of the last continuing trustee is made to a person, other than the public trustee; and 23
24
25
- (c) the holder of the grant gives the public trustee written notice of— 26
27
- (i) the making of the grant; and 28
- (ii) the holder’s intention to assume the trust of the trust property. 29
30

(2)	The trust property—	1
(a)	is divested from the public trustee; and	2
(b)	devolves to and vests in the holder of the grant in the same way, and subject to the same provisions, as trust property vests in a post-change trustee under division 5.	3 4 5
42	Powers etc. of holder of grant	6
	If the trust property vests in the holder of a grant under section 41, the holder—	7 8
(a)	is taken to be a person appointed as a new trustee by an appointor for the trust; and	9 10
(b)	has all the powers, authorities and discretions of, and may in all matters act as, a person who had originally been appointed as a trustee of the trust property under the trust instrument.	11 12 13 14
43	Liability of public trustee	15
(1)	This section applies if the public trustee—	16
(a)	is liable for any action taken by the public trustee in relation to the trust; and	17 18
(b)	is entitled to be indemnified out of the trust property for the liability.	19 20
(2)	On the divesting of the trust property from the public trustee under section 40 or 41—	21 22
(a)	the public trustee’s liability ends; and	23
(b)	a person who would, apart from paragraph (a), have had a remedy against the public trustee is taken to have the same remedy against the person in whom the trust property vests under section 40 or 41.	24 25 26 27

[s 44]

Division 8	Vesting of trust property and devolution of trusts—last continuing trustee with impaired capacity for particular matters	1 2 3 4
44	Application of division	5
(1)	This division applies if—	6
(a)	an administrator is appointed for all financial matters for the last continuing trustee of a trust; or	7 8
(b)	any of the following entities decides that the last continuing trustee of a trust has impaired capacity for all financial matters or for administering the trust—	9 10 11
(i)	the Supreme Court;	12
(ii)	the District Court;	13
(iii)	QCAT;	14
(iv)	a corresponding interstate entity.	15
(2)	In this section—	16
	<i>corresponding interstate entity</i> means—	17
(a)	the Supreme Court of another State; or	18
(b)	the District Court of another State or the County Court of Victoria; or	19 20
(c)	a tribunal established under the law of another State that exercises jurisdiction corresponding to the jurisdiction exercisable by QCAT under the <i>Guardianship and Administration Act 2000</i> .	21 22 23 24
45	Vesting of trust property in public trustee	25
(1)	On the appointment of the administrator or the making of the decision, the trust property devolves to and vests in the public trustee in the same way, and subject to the same provisions, as trust property vests in a post-change trustee under division 5.	26 27 28 29

-
- (2) However, it is not necessary for the public trustee to notify, register or record the vesting of the trust property under section 35, as applied by subsection (1), if—
- (a) the public trustee does not act in relation to the trust; or
 - (b) the only action taken by the public trustee is the appointment of a new trustee.
- (3) The trust property remains vested in the public trustee until it is divested from the public trustee under section 47.

46 Powers etc. of public trustee

- (1) While the trust property is vested in the public trustee under section 45, the public trustee has all the powers, authorities and discretions of, and may in all matters act as, a person who had originally been appointed as a trustee of the trust property under the trust instrument.
- (2) However, unless the court, in special circumstances, otherwise directs, the public trustee is not required to exercise any of the powers, authorities or discretions or act in the administration of the trust.
- (3) This section does not limit any power of the public trustee under the *Public Trustee Act 1978*, section 61 or 62.

47 Vesting of trust property in new trustee

- (1) This section applies if—
- (a) a new trustee is appointed to replace the last continuing trustee; and
 - (b) for an appointment made other than by the public trustee—the new trustee gives the public trustee written notice of the appointment.
- (2) The trust property—
- (a) is divested from the public trustee; and

[s 48]

	(b) devolves to and vests in the new trustee in the same way, and subject to the same provisions, as trust property vests in a post-change trustee under division 5.	1 2 3
48	Liability of public trustee	4
	(1) This section applies if the public trustee—	5
	(a) is liable for any action taken by the public trustee in relation to the trust; and	6 7
	(b) is entitled to be indemnified out of the trust property for the liability.	8 9
	(2) On the divesting of the trust property from the public trustee under section 47—	10 11
	(a) the public trustee’s liability ends; and	12
	(b) a person who would, apart from paragraph (a), have had a remedy against the public trustee is taken to have the same remedy against the person in whom the trust property vests under section 47.	13 14 15 16
Division 9	Disclaimer of testamentary trusts and related matters	17 18
49	Disclaimer of testamentary trust on renunciation of probate	19 20
	(1) This section applies if a person who is appointed by will as both executor of the will and trustee—	21 22
	(a) renounces probate of the will; or	23
	(b) fails to apply for probate of the will after being properly cited or summoned to apply.	24 25
	(2) The renunciation or failure is taken to be a disclaimer by the person of the trust contained in the will.	26 27

50	When grantee under letters of administration is taken to be trustee of testamentary trust	1 2
(1)	This section applies if—	3
(a)	a person who is appointed by will as both executor of the will and trustee—	4 5
(i)	is taken under section 49 to have disclaimed the trust contained in the will; or	6 7
(ii)	dies before probate of the will is granted to the person; and	8 9
(b)	letters of administration with the will are granted to another person (the <i>grantee</i>).	10 11
(2)	The grantee is taken to have been appointed trustee of the trust instead of the person.	12 13

Part 4 **Custodian trustees** 14

51	Meaning of <i>managing trustee</i>	15
	If a custodian trustee of trust property is appointed, each trustee of the trust, other than the custodian trustee, is a <i>managing trustee</i> of the trust.	16 17 18

52	Appointment of custodian trustee	19
(1)	A corporation may be appointed, in a way provided under subsection (2), as the custodian trustee of trust property.	20 21
(2)	The appointment may be made by—	22
(a)	the trust instrument; or	23
(b)	if there is an appointor for the trust—the appointor, by instrument; or	24 25
(c)	the trustees of the trust, by instrument; or	26
(d)	the court, by order.	27

[s 53]

- (3) Subsection (2)(b) and (c) applies subject to a contrary intention in the trust instrument. 1
2

53 Vesting of trust property in custodian trustee 3

- (1) On the appointment of a custodian trustee of trust property, the trust property vests in the custodian trustee as if the custodian trustee were the sole trustee. 4
5
6
- (2) The instrument of appointment of a custodian trustee— 7
- (a) is taken to be a conveyance of the trust property from the managing trustees to the custodian trustee; but 8
9
- (b) does not have effect as a breach of covenant or condition, or give rise to the forfeiture, of any lease or agreement for lease or other property. 10
11
12
- (3) Section 34(2) applies to the divesting and vesting of the trust property under this section as if— 13
14
- (a) the reference in section 34(2)(b) to the instrument of change were a reference to the instrument of appointment of the custodian trustee; and 15
16
17
- (b) the reference in section 34(2)(b)(i) to the post-change trustee were a reference to the custodian trustee. 18
19
- (4) The court may, on application, make vesting orders to give effect to subsection (1). 20
21

Note— 22

See section 168 in relation to the persons who may apply to the court for particular orders. 23
24

- (5) Subsection (1) applies subject to an express contrary intention in the trust instrument. 25
26

- (6) In this section— 27

instrument of appointment, of a custodian trustee, means the trust instrument, other instrument or court order by which the custodian trustee is appointed. 28
29
30

54	Trust powers, authorities and discretions of managing trustees not affected	1 2
(1)	This section applies if trust property vests in a custodian trustee under section 53.	3 4
(2)	The exercise of all powers, authorities and discretions exercisable by trustees under the trust, including the management of the trust property, remains vested in the managing trustees of the trust as fully and effectively as if there were no custodian trustee.	5 6 7 8 9
(3)	Without limiting subsection (2), the custodian trustee does not have the power to appoint a new trustee of the trust.	10 11
	<i>Note—</i>	12
	See, however, section 168(3) in relation to a custodian trustee’s power to apply to the court for an order appointing a new trustee of the trust.	13 14
(4)	This section applies subject to an express contrary intention in the trust instrument.	15 16
55	Function of custodian trustee	17
(1)	A custodian trustee’s function is to do the following, as the managing trustees, by instrument, direct—	18 19
(a)	get in and hold the trust property;	20
(b)	invest the trust property;	21
(c)	dispose of the trust property.	22
(2)	For performing the custodian trustee’s function under subsection (1), the custodian trustee must perform all acts and execute all documents as the managing trustees, by instrument, direct.	23 24 25 26
(3)	This section applies subject to an express contrary intention in the trust instrument.	27 28

[s 56]

56	Protection from liability for custodian trustee	1
(1)	A custodian trustee is not personally liable for an act done, or an omission made, under a direction of the managing trustees mentioned in section 55(1) or (2).	2 3 4
(2)	Also, a custodian trustee is not personally liable for an act done, or an omission made, by any of the managing trustees.	5 6
(3)	This section applies subject to an express contrary intention in the trust instrument.	7 8
57	Liability of managing trustees for acts and omissions of custodian trustee	9 10
(1)	This section applies if a custodian trustee does an act, or makes an omission, under a direction of the managing trustees mentioned in section 55(1) or (2).	11 12 13
(2)	The managing trustees are liable for the act done, or the omission made, as if it were the managing trustees' own act or omission.	14 15 16
(3)	This section applies subject to an express contrary intention in the trust instrument.	17 18
58	Application by custodian trustee for directions	19
(1)	A custodian trustee may apply to the court for directions if the custodian trustee believes a direction of the managing trustees mentioned in section 55(1) or (2)—	20 21 22
(a)	conflicts with the trust instrument or the law; or	23
(b)	exposes, or would expose, the custodian trustee to a personal liability; or	24 25
(c)	is otherwise objectionable.	26
(2)	The court may, on an application under subsection (1), make the orders and give the directions the court considers appropriate, including an order about the costs of the application.	27 28 29 30

(3)	An order made under subsection (2) giving directions binds the custodian trustee and the managing trustees.	1 2
59	Proceedings to be in name of custodian trustee	3
(1)	A proceeding in relation to trust property that is vested in a custodian trustee must be brought or defended, in the name of the custodian trustee, as the managing trustees, by instrument, direct.	4 5 6 7
(2)	If a custodian trustee brings or defends a proceeding under a direction of the managing trustees mentioned in subsection (1)—	8 9 10
(a)	the custodian trustee is not personally liable for the costs of bringing or defending the proceeding; but	11 12
(b)	the managing trustees are personally liable for the costs of bringing or defending the proceeding, as if it had been brought or defended by the managing trustees.	13 14 15
(3)	This section applies subject to an express contrary intention in the trust instrument.	16 17
60	Persons dealing with custodian trustee	18
	A person dealing with a custodian trustee—	19
(a)	is not required to inquire about—	20
(i)	any direction of the managing trustees about the dealing; or	21 22
(ii)	whether the managing trustees have agreed to the dealing; and	23 24
(b)	is not affected by notice of the fact the managing trustees have not agreed to the dealing.	25 26
61	Ending custodian trusteeship	27
(1)	The following persons may apply to the court to end a custodian trusteeship—	28 29

[s 62]

(a)	the custodian trustee;	1
(b)	a managing trustee of the trust;	2
(c)	a beneficiary of the trust.	3
(2)	The court may order the ending of the custodian trusteeship if satisfied that—	4 5
(a)	it is the general wish of the beneficiaries of the trust; or	6
(b)	it is expedient to end the custodian trusteeship on other grounds.	7 8
(3)	The court may, to give effect to the ending of the custodian trusteeship—	9 10
(a)	give the directions it considers appropriate; and	11
(b)	make the vesting orders it considers necessary.	12
62	Right to indemnity not affected	13
	Nothing in this part limits the right of the managing trustees of a trust, or of a custodian trustee of trust property, to be indemnified out of the trust property in relation to liabilities incurred in the proper administration of the trust.	14 15 16 17
Part 5	Trustees' duties	18
Division 1	Preliminary	19
63	Application of part	20
	This part does not limit any other duty to which a trustee is subject, whether under this Act or otherwise.	21 22
64	Definitions for part	23
	In this part—	24
	<i>professional trustee</i> means—	25

-
- (a) a trustee whose profession, business or employment is, or includes, acting as a trustee; or 1
2
 - (b) a custodian trustee whose profession, business or 3
employment is, or includes, acting as a custodian 4
trustee. 5
- trustee* includes a custodian trustee. 6

Division 2 **General duty to exercise care, 7
diligence and skill in administering 8
trusts** 9

65 **Duty of professional trustees** 10

- (1) This section applies to a trustee if the trustee is a professional 11
trustee. 12
- (2) The trustee has a duty, in administering a trust, to exercise the 13
care, diligence and skill that a prudent person engaged in the 14
trustee's profession, business or employment would exercise 15
in managing the affairs of other persons. 16

66 **Duty of particular non-professional trustees** 17

- (1) This section applies to a trustee if— 18
 - (a) the trustee is not a professional trustee; but 19
 - (b) the trustee has, or holds themselves out as having, special 20
knowledge or experience relevant to administering trusts 21
or trusts of a particular type. 22
- (2) The trustee has a duty, in administering a trust or a trust of the 23
particular type, to exercise the care, diligence and skill that a 24
prudent person having that special knowledge or experience 25
would exercise in managing the affairs of other persons. 26

67 **Duty of other trustees** 27

- (1) This section applies to a trustee if— 28

[s 68]

	(a) the trustee is not a professional trustee; and	1
	(b) section 66 does not apply to the trustee.	2
(2)	The trustee has a duty, in administering a trust, to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons.	3 4 5
Division 3	Duty to act honestly and in good faith	6 7
68	Duty to act honestly and in good faith	8
	A trustee has a duty, in administering a trust, to act honestly and in good faith—	9 10
	(a) if the trust is a charitable trust—to further the purposes of the trust; or	11 12
	(b) otherwise—for the benefit of the beneficiaries of the trust.	13 14
Division 4	Duties relating to accounts and other records	15 16
69	Duty to keep accounts and other records	17
(1)	A trustee has a duty, in administering a trust, to—	18
	(a) keep accurate accounts and records for the trust; and	19
	(b) keep the accounts and records for at least 3 years after the termination of the trust.	20 21
(2)	If a person is the trustee of more than 1 trust, the person must keep separate accounts and records for each trust.	22 23

70	Duty to make accounts available for inspection and to provide copies	1 2
(1)	A trustee has a duty, in administering a trust, to do the following on request by a beneficiary of the trust—	3 4
(a)	to make the accounts for the trust available for inspection by the beneficiary within a reasonable period after the request is made;	5 6 7
(b)	to provide copies of the accounts for the trust to the beneficiary, within a reasonable period after the request is made, on payment of the reasonable costs of providing the copies.	8 9 10 11
(2)	However, subsection (1) does not apply if the request is unreasonable in the circumstances.	12 13
	<i>Example of a request to provide copies of accounts that may be unreasonable in the circumstances—</i>	14 15
	a request by a beneficiary who has been provided with copies of the accounts to be provided with updated copies of the accounts at very short intervals	16 17 18
(3)	Subsection (1) does not limit any right of a beneficiary—	19
(a)	to obtain other information from the trustee; or	20
(b)	to apply to the court for an order that the trustee provide other information.	21 22
(4)	In this section—	23
	beneficiary , of a trust, includes a person in whose favour a power to distribute the trust property may be exercised.	24 25

Part 6 **Investments** 26

Division 1 **Preliminary** 27

71	Definitions for part	28
	In this part—	29

[s 72]

investment power means— 1

(a) a power of investment conferred on a trustee under the trust instrument; or 2
3

(b) a power conferred on a trustee under this part. 4

professional investor means a person whose profession, business or employment is, or includes, investing money for other persons. 5
6
7

Division 2 Duty of particular trustees to exercise care, diligence and skill in exercising investment powers 8 9 10

72 Duty of trustees who are professional investors 11

(1) This section applies to a trustee if the trustee is a professional investor. 12
13

(2) The trustee has a duty, in exercising an investment power, to exercise the care, diligence and skill that a prudent person engaged in the trustee's profession, business or employment would exercise in managing the affairs of other persons. 14
15
16
17

(3) This section applies subject to a contrary intention in the trust instrument. 18
19

Note— 20

See also part 5, division 2 in relation to a trustee's general duty in administering a trust. 21
22

73 Duty of particular trustees who are not professional investors 23 24

(1) This section applies to a trustee if— 25

(a) the trustee is not a professional investor; but 26

(b) the trustee has, or holds themselves out as having, special knowledge or experience in investing money for other persons. 27
28
29

(2) The trustee has a duty, in exercising an investment power, to exercise the care, diligence and skill that a prudent person having that special knowledge or experience would exercise in managing the affairs of other persons.

(3) This section applies subject to a contrary intention in the trust instrument.

Note—

See also part 5, division 2 in relation to a trustee’s general duty in administering a trust.

Division 3 Duties and powers in relation to investments

74 Power to invest

(1) A trustee may invest trust funds in any form of investment, other than a forbidden form of investment.

(2) Also, a trustee may, at any time—

(a) vary an investment of trust funds; or

(b) realise an investment of trust funds and reinvest an amount resulting from the realisation in any form of investment, other than a forbidden form of investment.

(3) A trustee must, in exercising power under subsection (1) or (2), comply with any provision of the trust instrument that is binding on the trustee and requires the trustee to—

(a) obtain a consent or approval in relation to trust investments; or

(b) comply with a direction in relation to trust investments.

(4) In this section—

forbidden form of investment, in relation to trust funds, means a form of investment that is expressly forbidden by the trust instrument.

[s 75]

Note—

See, however, section 80 for a power that can not be forbidden, or otherwise limited, by a trust instrument.

75 Matters to which trustee must have regard in exercising investment power

(1) A trustee must, in exercising an investment power, have regard to the following matters, to the extent they are appropriate to the circumstances of the trust—

- (a) the purposes of the trust and the needs and circumstances of the beneficiaries;
- (b) the desirability of diversifying the trust investments;
- (c) the nature of, and the risk associated with, the existing trust investments and other trust property;
- (d) the need to maintain the real value of the capital or income of the trust;
- (e) the risk of capital or income loss or depreciation;
- (f) the potential for capital appreciation;
- (g) the likely income return and the timing of income return;
- (h) the length of the term of the proposed investment;
- (i) the probable duration of the trust;
- (j) the liquidity and marketability of the proposed investment during, and at the end of, the term of the proposed investment;
- (k) the total value of the trust property;
- (l) the effect of the proposed investment for the tax liability of the trust;
- (m) the likelihood of inflation affecting the value of the proposed investment or other trust property;
- (n) the cost (including commissions, fees, charges and duties payable) of making the proposed investment;

(o)	the results of a review of the existing trust investments.	1
(2)	Subsection (1) does not limit the matters to which a trustee may have regard in exercising an investment power.	2 3
76	Advice for particular investment purposes	4
(1)	A trustee may obtain independent and impartial advice, from a person the trustee reasonably believes is competent to give the advice, if the advice is reasonably required for—	5 6 7
(a)	the investment of trust funds; or	8
(b)	the management of the trust investments.	9
(2)	If the trustee obtains advice under subsection (1), the trustee—	10 11
(a)	must consider the advice; and	12
(b)	may pay, out of the trust funds, the reasonable costs of obtaining the advice.	13 14
77	Duty to review investments	15
	A trustee must, at least every 12 months, review the performance, individually and as a whole, of the trust investments.	16 17 18
78	Law and equity preserved	19
(1)	A rule or principle of law or equity that imposes a duty on a trustee exercising an investment power continues to apply except to the extent it is inconsistent with this Act or another Act or with the trust instrument.	20 21 22 23
(2)	Without limiting subsection (1), the rules or principles mentioned in that subsection include a rule or principle imposing any of the following duties—	24 25 26
(a)	a duty to exercise the powers of a trustee in the best interests of all present and future beneficiaries of the trust;	27 28 29

[s 79]

(b)	a duty to invest trust funds in investments that are not speculative or hazardous;	1 2
(c)	a duty to act impartially towards beneficiaries and between different classes of beneficiaries;	3 4
(d)	a duty to obtain advice.	5
(3)	A rule or principle of law or equity relating to a provision in a trust instrument that purports to exempt, limit the liability of, or indemnify a trustee in relation to a breach of trust continues to apply.	6 7 8 9
(4)	If a trustee is under a duty to obtain advice, the reasonable costs of obtaining the advice are payable out of the trust funds.	10 11 12
79	Investment in securities under RITS system	13
(1)	A chose in action arising under the RITS system that entitles its holder to a security of a particular description (the <i>underlying security</i>) is, for this Act and a trust instrument, taken to be the same in all respects as the underlying security.	14 15 16 17
(2)	The holding or acquisition by a trustee of a chose in action mentioned in subsection (1) is taken to be an investment by the trustee in the underlying security.	18 19 20
(3)	It does not matter that the right conferred by the chose in action is a right in relation to securities of a particular description and not in relation to particular securities.	21 22 23
(4)	In this section— <i>RITS system</i> means the Reserve Bank Information and Transfer System operated by the Reserve Bank of Australia, as operating from time to time.	24 25 26 27
80	Power to provide residence for beneficiary to live in	28
(1)	A trustee may do any of the following for a beneficiary of the trust—	29 30

-
- (a) buy or construct a residence for the beneficiary to live in; 1
2
- (b) retain a residence that is part of the trust property for the beneficiary to live in; 3
4
- (c) enter into an agreement or arrangement to secure a right to use a residence for the beneficiary to live in. 5
6
- Example for paragraph (c)—* 7
- entering into a residence contract under the *Retirement Villages Act 1999* 8
9
- (2) Also, a trustee who exercises power under subsection (1) may make the residence available to the beneficiary to live in on the conditions the trustee considers appropriate. 10
11
12
- (3) However, a trustee may exercise power under subsection (1), or impose conditions under subsection (2), only if the exercise of the power, or the imposition of the conditions, is consistent with the extent of the beneficiary’s interest under the trust. 13
14
15
16
- (4) A trustee may retain a residence bought, constructed, retained or otherwise secured for use by a beneficiary under this section after the beneficiary has stopped living in the residence. 17
18
19
20
- (5) To remove any doubt, it is declared that subsection (4) does not limit the operation of the *Retirement Villages Act 1999* or any other Act. 21
22
23
- (6) Despite section 74, a trust instrument can not forbid the exercise of, or otherwise limit, a trustee’s power under this section. 24
25
26
- (7) In this section— 27
- residence** includes— 28
- (a) a building or part of a building designed, or converted or capable of being converted, for use as a residence; and 29
30
- (b) amenities or facilities for use in association with the use of a residence; and 31
32
- (c) an interest in a residence. 33

[s 81]

81	Power to authorise another person to exercise trustee’s investment powers	1 2
(1)	A trustee may, by instrument, authorise another person to exercise any of the trustee’s investment powers.	3 4
(2)	The authorisation may be made on the terms the trustee considers appropriate, including terms relating to remuneration.	5 6 7
(3)	However, the authorisation of the other person does not limit any duty or other requirement applying to the trustee under this part or part 5 in relation to the exercise of the trustee’s investment powers.	8 9 10 11
	<i>Note—</i>	12
	See also section 82 in relation to the liability of the trustee for the acts done, and the omissions made, by the person in exercising the trustee’s investment powers.	13 14 15
(4)	This section applies subject to an express contrary intention in the trust instrument.	16 17
Division 4	Liability of trustees in relation to exercise of investment powers	18 19
82	Liability of trustee for acts and omissions of person authorised to exercise trustee’s investment powers	20 21
(1)	This section applies if a trustee authorises another person under section 81 to exercise any of the trustee’s investment powers.	22 23 24
(2)	The trustee is liable for the acts done, and the omissions made, by the other person in exercising the trustee’s investment powers as if the acts and omissions were the trustee’s own acts and omissions.	25 26 27 28
(3)	This section applies subject to an express contrary intention in the trust instrument.	29 30

83	Particular loans by trustee not in breach of trust	1
(1)	This section applies if a trustee lends trust funds on the security of property.	2 3
(2)	The trustee is not in breach of trust only because of the comparison of the amount of the loan with the value of the property when the loan was made if—	4 5 6
(a)	it appears to the court that—	7
(i)	in making the loan, the trustee was acting on an independent valuation of the property; and	8 9
(ii)	the amount of the loan was not more than two-thirds of the value of the property stated in the independent valuation; and	10 11 12
(iii)	the loan was made in reliance on the independent valuation; or	13 14
(b)	the trustee is insured by a prescribed insurer against all loss that may arise because of the borrower’s default.	15 16
(3)	For this section, a valuation of a property made by a person is an <i>independent valuation</i> of the property if the trustee—	17 18
(a)	instructed and employed the person, independently of any owner of the property, to make the valuation; and	19 20
(b)	reasonably believed the person was competent to make the valuation.	21 22
(4)	In this section—	23
	<i>prescribed insurer</i> means an entity, prescribed by regulation, that carries on the business of insurance.	24 25
84	Limitation of liability of trustee for loss on improper investment	26 27
(1)	This section applies if—	28
(a)	a trustee improperly lends trust funds on the security of property; but	29 30

[s 85]

- (b) the loan would have been a proper investment if a lesser amount had been lent. 1
2
 - (2) For the trustee’s liability in relation to the investment— 3
 - (a) the security is taken to be a proper investment in relation to the lesser amount; and 4
5
 - (b) the trustee is liable only for the difference between the actual amount lent and the lesser amount, with interest. 6
7

- 85 Court may take into account investment strategy etc. in proceeding for breach of trust 8
9**
 - (1) This section applies in relation to a proceeding against a trustee for a breach of trust in relation to the exercise of an investment power. 10
11
12
 - (2) The court may, in considering the question of the trustee’s liability, take the following matters into account— 13
14
 - (a) the nature and purpose of the trust; 15
 - (b) the amount of the trust funds invested in the exercise of the investment power; 16
17
 - (c) whether the trustee had regard to the matters mentioned in section 75 to the extent they are appropriate to the circumstances of the trust; 18
19
20
 - (d) whether the trust investments have been made under an investment strategy formulated in accordance with the duty of a trustee under this part; 21
22
23
 - (e) the extent to which the trustee acted on advice that the trustee reasonably believed— 24
25
 - (i) was given by a person who was independent and competent to give the advice; and 26
27
 - (ii) was impartial. 28

86	Court may set off gains and losses	1
(1)	This section applies in relation to a proceeding against a trustee for a breach of trust in relation to an investment if a loss has been, or is expected to be, sustained by the trust.	2 3 4
(2)	The court may set off all or part of the loss resulting from the investment against all or part of any gain resulting from any other investment, whether or not the other investment is a breach of trust.	5 6 7 8
(3)	The power of set-off conferred under subsection (2) is in addition to any other power or entitlement to set off all or part of any loss against any property.	9 10 11

Part 7 **General powers of trustees** 12

Division 1 **Powers in relation to trust property** 13

87	General powers in relation to trust property	14
(1)	A trustee has, in relation to the trust property, all the powers of an absolute owner of the property.	15 16
	<i>Notes—</i>	17
	1 See, however, part 5 in relation to the duties of a trustee in administering a trust.	18 19
	2 See also the <i>Succession Act 1981</i> , section 49B in relation to particular limitations on a personal representative's power to carry on a business.	20 21 22
(2)	Without limiting subsection (1), the powers conferred on a trustee under subsection (1) include the following powers—	23 24
	(a) the power to sell the trust property;	25
	(b) the power to lease the trust property or to renew, extend or vary a lease of the trust property;	26 27
	(c) the power to mortgage the trust property or to renew, extend or vary a mortgage of the trust property;	28 29

[s 88]

- (d) for trust property that is securities of a corporation—the power to deal with the securities; 1
2
- (e) the power to settle a debt or claim in relation to the trust property; 3
4
- (f) the power to insure the trust property against the loss of or damage to the trust property or any risk or liability relating to the trust property. 5
6
7
- (3) A power conferred under subsection (1), other than a power mentioned in subsection (2)(a) to (f), may be excluded or modified by an express statement to that effect in the trust instrument. 8
9
10
11
- Note—* 12
- See, however, section 222 in relation to the exercise of particular powers under this section by a statutory trustee. 13
14

88 Power to postpone sale, calling in and conversion of particular trust property 15
16

- (1) A trustee may postpone the sale, calling in or conversion of trust property that the trustee has a duty to sell. 17
18
- (2) Subject to an express contrary intention in the trust instrument, if the trustee’s duty to sell arises because of a trust or direction for sale, the trustee may postpone the sale of the trust property for an indefinite and unlimited period, whether or not that period is longer than the period during which the trust or direction for sale remains valid. 19
20
21
22
23
24
- (3) However, this section does not apply if the trust property is of a wasting, speculative or reversionary nature. 25
26
- Notes—* 27
- 1 See, however, the *Succession Act 1981*, section 49B in relation to particular limitations on a personal representative’s power to carry on a business. 28
29
30
- 2 See also section 222 in relation to the exercise of power under this section by a statutory trustee. 31
32

89	Power to execute instruments etc.	1
	A trustee may, in relation to the trust property, do anything,	2
	make any omission, and execute any instrument, necessary to	3
	carry into effect the powers and authorities given under this	4
	Act or the trust instrument.	5
Division 2	Expenditure in relation to trust property	6
		7
90	Power to expend amounts	8
(1)	A trustee may, in relation to the trust property, expend an amount, including an amount from capital, that is subject to the same trusts for 1 or more of the following purposes—	9 10 11
(a)	to maintain or renovate the trust property, whether or not the work is necessary for the purpose of salvaging the property;	12 13 14
(b)	to improve or develop the trust property;	15
(c)	to pay calls on shares subject to the same trust;	16
(d)	to pay outgoings in relation to the trust property;	17
(e)	if the trust property is land or a water allocation—to subdivide the land or water allocation and pay related expenses;	18 19 20
(f)	to provide, construct or maintain any of the following for the trust property if they are likely to be beneficial to the property—	21 22 23
(i)	roads, footpaths and other works for pedestrian or vehicular use;	24 25
(ii)	utility services and other works.	26
(2)	If the trustee is a trustee corporation, the trustee may exercise the power conferred under subsection (1)(c) even if the shares on which the calls are made are shares in the trustee corporation.	27 28 29 30

[s 91]

(3)	In this section—	1
	<i>maintain</i> , in relation to property, includes repair the property and provide for the upkeep of the property.	2 3
	<i>outgoings</i> includes rates, premiums, taxes, assessments and insurance premiums.	4 5
91	Power to apportion expenditure between income and capital and recoup particular expenditure	6 7
(1)	A trustee may, in relation to the trust property, apportion expenditure made under section 90 between capital and income or otherwise among the persons entitled to the capital or income in the way the trustee considers equitable.	8 9 10 11
(2)	If all or part of the expenditure is made out of capital, the trustee may recoup the expenditure out of capital from income, if to do so would be equitable in all the circumstances.	12 13 14 15
(3)	If all or part of the expenditure is made out of income, the trustee may recoup the expenditure out of income from capital, if to do so would be equitable in all the circumstances.	16 17 18
(4)	The exercise of power under this section is subject to—	19
	(a) this Act; and	20
	(b) any direction of the court; and	21
	(c) an express contrary intention in the trust instrument.	22
Division 3	Appropriation	23
92	Definitions for division	24
	In this division—	25
	<i>entitled person</i> see section 95(1)(a) and (b).	26
	<i>extension application</i> see section 94(4).	27
	<i>interested person</i> see section 93(2).	28

variation application see section 94(1)(a). 1

- 93 Notice of proposed appropriation** 2
- (1) This section applies if a trustee proposes to appropriate trust 3
property under section 95. 4
- (2) Before making the appropriation, the trustee must give written 5
notice of the proposed appropriation to each person interested 6
in the appropriation (each an *interested person*). 7
- (3) However, if the trustee is an interested person, subsection (2) 8
does not require the trustee to give notice of the proposed 9
appropriation to themselves. 10
- (4) Subsection (5) applies if an interested person is— 11
- (a) an adult with impaired capacity for financial matters 12
relating to the proposed appropriation; or 13
- (b) a child. 14
- (5) The trustee may comply with subsection (2) in relation to the 15
interested person only by giving notice to— 16
- (a) if the interested person is an adult—each administrator 17
or attorney for the interested person who is authorised, 18
under their appointment as administrator or attorney, to 19
exercise power for financial matters relating to the 20
proposed appropriation; or 21
- (b) if the interested person is a child—each guardian of the 22
child. 23
- 94 Interested person may apply to vary proposed 24
appropriation or waive right to apply** 25
- (1) An interested person who is given notice under section 93 of a 26
proposed appropriation may— 27
- (a) make an application to the court to vary the proposed 28
appropriation (a *variation application*); or 29

[s 95]

- (b) by written notice given to the trustee at any time, waive the interested person's right to make a variation application. 1
2
3
- (2) Subject to subsections (3) and (4), a variation application must be started within 2 months after the interested person is given notice of the proposed appropriation. 4
5
6
- (3) The interested person may, by written notice given to the trustee within the period mentioned in subsection (2), shorten the period that would otherwise apply under subsection (2) to the shorter period stated in the notice. 7
8
9
10
- (4) The court may, on application (an *extension application*) made by the interested person at any time, allow a variation application to be started within a longer period. 11
12
13
- (5) The court may make the orders it considers appropriate in relation to a variation application or an extension application. 14
15
- (6) This section applies subject to section 96. 16
- 95 Appropriation to satisfy legacy or share generally** 17
- (1) A trustee may appropriate any part of the trust property to satisfy all or part of— 18
19
- (a) a legacy, payable out of the trust property, to which a person (an *entitled person*) is entitled; or 20
21
- (b) a share of the trust property, whether contingent or absolute, to which a person (also an *entitled person*) is entitled. 22
23
24
- (2) An appropriation of trust property under this section may be made only if— 25
26
- (a) the appropriation does not adversely affect any specific gift of the trust property; and 27
28
- (b) the entitled person consents to the appropriation; and 29
- (c) for an appropriation in relation to which the trustee is an interested person, the appropriation has been approved by— 30
31
32

-
- (i) each other interested person; or 1
- (ii) the court, on an ex parte application by the trustee 2
or otherwise; and 3
- (d) notice of the proposed appropriation has been given 4
under section 93; and 5
- (e) the circumstances mentioned in subsection (3)(a), (b) or 6
(c) apply. 7
- (3) For subsection (2)(e), the circumstances are— 8
- (a) all of the following apply— 9
- (i) the relevant application period for each interested 10
person has ended; 11
- (ii) no interested person has, within the relevant 12
application period for the person, started a 13
variation application and served the application on 14
the trustee; 15
- (iii) if any interested person has, since the end of the 16
relevant application period for the person, started 17
an extension application and served the application 18
on the trustee—the extension application has been 19
dismissed by the court; or 20
- (b) if any interested person has started a variation 21
application and served the application on the trustee 22
within the relevant application period for the person or 23
any longer period allowed by the court on an extension 24
application—the variation application has been 25
dismissed by the court; or 26
- (c) each interested person has given the trustee notice under 27
section 94(1)(b) waiving the person’s right to make a 28
variation application. 29
- (4) For making an appropriation under this section, the trustee 30
may, under section 122, fix the value of all or any part of the 31
trust property as at the day the appropriation is made. 32
- (5) An appropriation made under this section is conclusive and 33
binding on all persons who are, or may be, interested in the 34

[s 96]

trust property, unless varied by the court on a variation application.	1 2
(6) This section does not limit or otherwise affect any power of appropriation conferred under the trust instrument.	3 4
(7) This section applies subject to section 96.	5
(8) In this section—	6
<i>relevant application period</i> , for an interested person, means the following period within which a variation application by the interested person must be started—	7 8 9
(a) if paragraph (b) does not apply—the period mentioned in section 94(2);	10 11
(b) if the interested person has given the trustee notice under section 94(3)—the shorter period stated in the notice.	12 13 14
96 Exercise of power for particular interested persons and entitled persons	15 16
(1) If an interested person is a child, only the guardian of the child may—	17 18
(a) give notice under section 94(1)(b) waiving the interested person’s right to make a variation application; or	19 20
(b) give notice under section 94(3) shortening the period that would otherwise apply under section 94(2); or	21 22
(c) approve an appropriation of trust property, as mentioned in section 95(2)(c)(i).	23 24
(2) If an entitled person is a child, only the guardian of the child may give consent for the child to the making of an appropriation of trust property, as mentioned in section 95(2)(b).	25 26 27 28
(3) If there is more than 1 guardian of a child, the guardians must act jointly in exercising power for the child for a matter mentioned in subsection (1) or (2).	29 30 31
(4) Sections 94 and 95 do not limit or otherwise affect—	32

(a)	the operation of a provision of another Act that provides for how, or by whom, an application to the court may be made on behalf of a person under a legal incapacity; or	1 2 3
(b)	the powers of an administrator or attorney for a person with impaired capacity for a matter.	4 5
97	Appropriation to pay annuity	6
(1)	This section applies if a trust instrument provides for the payment of an annuity, whether or not the trust instrument provides that the annuity may be charged on the trust property.	7 8 9
(2)	The trustee may set aside and appropriate out of any trust property available for payment of the annuity an amount (the <i>appropriated amount</i>) that, in the trustee’s opinion at the time of appropriation, is enough, when invested, to provide out of the income of the investment the amount required to pay the annuity.	10 11 12 13 14 15
(3)	After the appropriation has been made—	16
(a)	the annuitant has the same right of recourse to the capital and income of the appropriated amount as the annuitant would have had against the trust property if no appropriation had been made; and	17 18 19 20
(b)	the trustee may distribute the residue of the trust property and the income of the trust property in accordance with the trust instrument.	21 22 23
(4)	On the distribution of the residue of the trust property and the income of the trust property under subsection (3)(b), the residue and the income cease to be liable for the annuity.	24 25 26
(5)	In this section— <i>annuity</i> includes any periodic payment.	27 28

[s 98]

98	Notice to relevant registrar if land or water allocation to be distributed after appropriation to pay annuity	1 2
(1)	This section applies if a trustee proposes to distribute, under section 97(3)(b), trust property that is land or a water allocation.	3 4 5
(2)	The trustee must give the relevant registrar written notice that the trust property may be distributed because of an appropriation made under section 97(2).	6 7 8
(3)	The relevant registrar is not required to inquire into whether the appropriated amount set aside under that section is enough to provide for payment of the annuity.	9 10 11
Division 4	Delegation	12
Subdivision 1	Preliminary	13
99	Definitions for division	14
	In this division—	15
	<i>delegate</i> see section 100(4)(b).	16
	<i>instrument of delegation</i> see section 100(2).	17
	<i>stated circumstances</i> , in relation to the delegation of a matter, see section 100(4)(a).	18 19
Subdivision 2	Delegation by trustees	20
100	Power to delegate matters	21
(1)	This section applies if a trustee—	22
(a)	is absent, or is about to be absent, from the State; or	23
(b)	is, or may be about to become, because of physical infirmity, temporarily incapable of performing the duties of a trustee.	24 25 26

-
- (2) The trustee may, by instrument (an *instrument of delegation*),
delegate the administration or exercise of all or any trusts,
powers, authorities and discretions vested in the trustee as
trustee to—
- (a) an individual who resides in the State, if—
- (i) for an individual who is a co-trustee of the
trustee—the individual is not the trustee’s only
co-trustee; or
- (ii) for another individual—section 13(1) would not
prevent the individual from being appointed as a
trustee; or
- (b) a trustee corporation that carries on business in the
State, if section 13(1) would not prevent the trustee
corporation from being appointed as a trustee.
- (3) For subsection (2), it does not matter whether the trusts,
powers, authorities and discretions are vested in the trustee
alone or jointly with 1 or more other persons.
- (4) The instrument of delegation must—
- (a) state the circumstances in which the delegation is to
operate (the *stated circumstances*); and
- (b) be signed by the trustee and the person to whom the
matters are delegated (the *delegate*).
- (5) This section applies despite any rule or principle of law or
equity to the contrary.

101 Period during which delegation is in effect

- (1) The delegation of a matter under section 100 commences—
- (a) on the happening of an event stated in the instrument of
delegation as the time the delegation commences; or
- (b) if the instrument of delegation does not state an event as
mentioned in paragraph (a)—
- (i) on the day stated in the instrument of delegation as
the day the delegation commences; or

[s 102]

(ii)	if no day is stated for that purpose—on the day the instrument of delegation is signed.	1 2
(2)	The delegation of the matter continues in effect until the first of the following happens—	3 4
(a)	the happening of an event stated in the instrument of delegation as the time the delegation ends;	5 6
(b)	the beginning of the day, if any, stated in the instrument of delegation as the day the delegation ends;	7 8
(c)	the beginning of the day that is 12 months after the day the delegation commences;	9 10
(d)	the delegation is revoked under subdivision 3;	11
(e)	the trustee is replaced or removed, or is otherwise discharged from the trust, whether under part 3 or otherwise;	12 13 14
(f)	the trustee dies.	15
102	Effect of delegation	16
(1)	If a trustee delegates a matter under section 100, the delegate has, within the scope of the delegation, the same trusts, powers, authorities, discretions, duties and liabilities in relation to the matter as the delegate would have if the delegate were the trustee, other than the power of delegation conferred under section 100.	17 18 19 20 21 22
(2)	However, the delegate may perform or exercise the delegated matter only in the stated circumstances.	23 24
(3)	The delegate is subject to the court’s jurisdiction and power in the administration of the trust as if the delegate were the trustee.	25 26 27
103	Liability of trustee for acts and omissions of delegate	28
	A trustee who delegates a matter under section 100 is liable for the acts done, and the omissions made, by the delegate in	29 30

relation to the matter as if they were the trustee's own acts and omissions. 1
2

104 Trustee to notify particular persons of delegation 3

- (1) A trustee who delegates a matter under section 100 must give written notice of the delegation to— 4
5
- (a) if the trustee has any co-trustees—each co-trustee; and 6
 - (b) if there is an appointor for the trust who is not also the trustee—the appointor. 7
8
- (2) If neither subsection (1)(a) nor (b) applies, the trustee must give written notice of the delegation to each beneficiary of the trust, to the extent it is practicable to do so. 9
10
11
- (3) Subsection (4) applies if a beneficiary to whom notice must be given under subsection (2) is— 12
13
- (a) an adult with impaired capacity for financial matters relating to the adult's interest under the trust; or 14
15
 - (b) a child. 16
- (4) The trustee may comply with subsection (2) in relation to the beneficiary only by giving notice to— 17
18
- (a) if the beneficiary is an adult—each administrator or attorney for the beneficiary who is authorised, under their appointment as administrator or attorney, to exercise power for financial matters relating to the beneficiary's interest under the trust; or 19
20
21
22
23
 - (b) if the beneficiary is a child—each guardian of the child. 24

Subdivision 3 Revocation of delegation 25

105 Revocation by trustee—instrument of revocation 26

If a trustee delegates a matter under section 100, the trustee may revoke the delegation by giving the delegate an instrument, signed by the trustee, revoking the delegation. 27
28
29

[s 106]

106	Revocation by trustee—impaired capacity for administering trust	1 2
	If a trustee delegates a matter under section 100, the delegation of the matter is revoked if the trustee becomes a person with impaired capacity for administering the trust.	3 4 5
107	Revocation by delegate	6
	The delegation of a matter under section 100 to a delegate is revoked if—	7 8
	(a) the delegate resigns by written notice given to the trustee; or	9 10
	(b) the delegate becomes disqualified from being appointed as a trustee by an order made under section 173; or	11 12
	(c) for a delegate who is an individual, the delegate—	13
	(i) becomes a person with impaired capacity for administering the trust; or	14 15
	(ii) becomes a bankrupt, or starts to take advantage of the laws of bankruptcy as a debtor, under the <i>Bankruptcy Act 1966</i> (Cwlth) or a similar law of a foreign jurisdiction; or	16 17 18 19
	(iii) dies; or	20
	(d) for a delegate that is a trustee corporation, the delegate—	21 22
	(i) stops carrying on business; or	23
	(ii) becomes a Chapter 5 body corporate; or	24
	(iii) is deregistered or otherwise ceases to exist.	25
Subdivision 4	Protections for third parties	26
108	Definition for subdivision	27
	In this subdivision—	28

	<i>delegate</i> includes a former delegate.	1
109	Validity of particular acts of delegate in favour of third party	2 3
(1)	This section applies if—	4
(a)	a delegate does an act, or signs an instrument, in favour of another person in the exercise, or purported exercise, of power under a delegation made under section 100; but	5 6 7
(b)	the delegate lacks the power to do the act, or sign the instrument, because the delegation of the matter, for any reason, is not in operation.	8 9 10
(2)	The act done or instrument signed by the delegate is, in favour of the other person, as valid and effective as it would be if the delegation of the matter had been in operation.	11 12 13
(3)	Subsection (2) does not apply if, when the act was done or the instrument was signed, the other person had actual notice that the delegation of the matter was not in operation.	14 15 16
(4)	For this section, the delegation of a matter is <i>in operation</i> at a particular time only if, at that time—	17 18
(a)	the delegation of the matter has commenced and is in effect; and	19 20
	<i>Note—</i>	21
	See section 101 in relation to when the delegation of a matter commences and is in effect.	22 23
(b)	the stated circumstances apply.	24
110	Effect of statutory declaration by delegate	25
(1)	This section applies if a delegate makes a statutory declaration relating to a trust stating that—	26 27
(a)	the delegation of a matter under section 100 has commenced and has not been revoked or otherwise ended, and the circumstances in which the delegation is to operate apply; or	28 29 30 31

[s 111]

	(b) in any transaction, the delegate is acting in the administration of the trust.	1 2
	(2) The statutory declaration is, in favour of a person dealing with the delegate, conclusive evidence of the matter stated.	3 4
111	Persons dealing with delegate in good faith not affected by notice of trust	5 6
	(1) This section applies if, in any transaction, it appears from the delegation of a matter under section 100, or from any evidence required for the purpose of a delegation under that section or otherwise, that the delegate is acting in the administration of a trust.	7 8 9 10 11
	(2) A person dealing in good faith with the delegate is not affected by notice of the trust.	12 13
Division 5	Appointment of agents	14
112	Appointment of agent	15
	(1) A trustee may, instead of acting personally, appoint an agent to transact business, or do another thing, required to be done in the administration of the trust.	16 17 18
	(2) Without limiting subsection (1), a trustee may appoint an agent to do 1 or more of the following—	19 20
	(a) receive and pay amounts;	21
	(b) give a receipt for property payable, transferable or deliverable to the trustee;	22 23
	(c) keep trust accounts.	24
	(3) The persons who may be appointed as an agent under this section include—	25 26
	(a) an accountant; and	27
	(b) a financial institution; and	28

(c)	a financial services licensee, within the meaning of the Corporations Act, section 9, whose Australian financial services licence under that Act covers dealing in, or providing advice about, securities; and	1 2 3 4
(d)	a solicitor; and	5
(e)	a trustee corporation.	6
(4)	Also, a trustee may appoint a co-trustee as an agent.	7
(5)	However, a trustee may not appoint a beneficiary of the trust as an agent even if the beneficiary is also a co-trustee.	8 9
113	Payment of agent and reimbursement of trustee	10
	If a trustee appoints an agent, the trustee—	11
(a)	may pay the agent; and	12
(b)	is entitled to be allowed and paid any charge or expense that is reasonably and properly incurred because of the agent’s appointment.	13 14 15
Division 6	Application of income by trustee-mortgagee in possession	16 17
114	Definitions for division	18
	In this division—	19
	<i>mortgage debt</i> see section 115(1)(a).	20
	<i>primary beneficiary</i> , in relation to a mortgage debt held on trust for persons in succession, means the person entitled to the interest of the mortgage debt.	21 22 23
	<i>priority outgoing</i> , in relation to land the subject of a mortgage, means any of the following—	24 25
(a)	rents, taxes, rates and other outgoings affecting the land;	26
(b)	premiums on insurance properly payable in respect of the land;	27 28

[s 115]

	(c) annual amounts or other payments and the interest on principal amounts having priority to the mortgage.	1 2
115	Application of income—priority outgoings accruing after trustee becomes mortgagee in possession	3 4
	(1) This section applies if—	5
	(a) a trustee is entitled, whether solely or as a co-mortgagee, to a debt that is secured, wholly or partly, by a mortgage of land (the <i>mortgage debt</i>); and	6 7 8
	(b) the mortgage debt is held on trust for persons in succession; and	9 10
	(c) the trustee becomes mortgagee in possession of the land.	11
	(2) The trustee must apply the income of the land received by the trustee to pay the priority outgoings in relation to the land, but only if, or to the extent, the priority outgoings accrue on or after the day the trustee becomes mortgagee in possession.	12 13 14 15
	(3) If a priority outgoing relates to a period partly before and partly after the day the trustee becomes mortgagee in possession, the priority outgoing is taken to accrue from day to day and must be apportioned accordingly.	16 17 18 19
	(4) Subject to the rights of the mortgagor, the trustee must hold the balance of the income of the land received by the trustee on the trusts to which the mortgage debt is subject.	20 21 22
116	Payment to primary beneficiary on recovery of all or part of mortgage debt	23 24
	(1) This section applies if—	25
	(a) all or part of the mortgage debt is recovered, whether by repayment or on realisation of the security or otherwise; and	26 27 28
	(b) under section 115, the trustee has applied income of the land received by the trustee to pay 1 or more priority outgoings in relation to the land; and	29 30 31

[s 117]

-
- (c) the income, or part of the income, applied by the trustee would otherwise have been payable to the primary beneficiary as interest of the mortgage debt. 1
2
3
- (2) As between the beneficiaries for whom the mortgage debt is held on trust— 4
5
- (a) the income, or the part of the income, applied by the trustee that would otherwise have been payable to the primary beneficiary is taken to be arrears of interest on the mortgage debt; and 6
7
8
9
- (b) the amount recovered by the trustee must be apportioned accordingly. 10
11
- (3) However, the primary beneficiary is not entitled to be paid interest on the amount taken to be arrears of interest under subsection (2)(a). 12
13
14
- 117 Application of income—priority outgoings accruing before trustee becomes mortgagee in possession 15
16**
- (1) This section applies in relation to a priority outgoing in relation to the land if, or to the extent, the priority outgoing accrued before the day the trustee became mortgagee in possession of the land. 17
18
19
20
- (2) If the trustee considers it necessary to do so in the administration of the trust, the trustee may apply the income of the land received by the trustee in payment of the priority outgoing. 21
22
23
24
- (3) However, the primary beneficiary is entitled to recoup out of the capital of the mortgage debt any payment made by the trustee under subsection (2). 25
26
27
- (4) This section applies despite any other provision of this division. 28
29

[s 118]

Division 7	Delivery of chattels	1
118	Delivery of chattels to beneficiary with life interest or other limited interest	2 3
(1)	This section applies if—	4
(a)	under a trust, a beneficiary is entitled to a life interest, or another limited interest, in any chattels; and	5 6
(b)	the beneficiary asks the trustee to deliver the chattels to the beneficiary.	7 8
(2)	The trustee may deliver the chattels to the beneficiary on being given a signed inventory for the chattels by the beneficiary.	9 10 11
119	Delivery of chattels to child	12
(1)	This section applies if, under a trust, a child is beneficially entitled to any chattels.	13 14
(2)	The trustee may deliver the chattels to the child or a guardian of the child.	15 16
(3)	The receipt of the child or the guardian is a complete discharge to the trustee for the chattels delivered under subsection (2).	17 18 19
(4)	The power conferred under this section is in addition to the power conferred under section 133 and, for section 133(4), the value of the chattels is not to be taken into account in any way.	20 21 22
Division 8	Other provisions	23
120	Application of insurance money	24
(1)	This section applies if—	25
(a)	an insurance policy has been kept up against—	26

-
- (i) the loss of, or damage to, trust property, whether by fire or otherwise; or 1
2
- (ii) any other risk or liability relating to trust property; and 3
4
- (b) the trustee receives an amount under the policy. 5
- (2) For subsection (1), it does not matter whether the insurance policy was kept up— 6
7
- (a) under the trust or under any power, whether statutory or otherwise; or 8
9
- (b) in performance of any obligation, whether statutory or otherwise. 10
11
- (3) For the purposes of the trust, the amount received by the trustee— 12
13
- (a) is to be treated as income to the extent it is consistent with the purpose for which the insurance policy was taken out; or 14
15
16
- (b) is to be treated as capital if, or to the extent, paragraph (a) does not apply. 17
18
- (4) The amount is to be held on trusts corresponding as nearly as possible with the trusts affecting the property in relation to which the amount was payable. 19
20
21
- (5) Also, the trustee may apply the amount, or part of the amount, in rebuilding, reinstating, replacing or repairing the property that was lost or damaged. 22
23
24
- (6) However, if the amount has been paid into court, subsection (5) applies subject to any direction of the court. 25
26
- (7) This section does not prejudice or affect— 27
- (a) the rights of a person to require the amount or part of the amount to be applied in rebuilding, reinstating, replacing or repairing the property that was lost or damaged; or 28
29
30
31
- (b) the rights of a mortgagee, lessor or lessee of the property, whether under an Act or otherwise. 32
33

[s 121]

121	Deposit of documents for safe custody	1
(1)	A trustee may deposit a document held by the trustee relating to the trust, or to the trust property, with a relevant entity whose business includes undertaking the safe custody of documents.	2 3 4 5
(2)	An amount payable for the deposit of the document is payable out of—	6 7
	(a) the income of the trust property; or	8
	(b) if there is no income or to the extent the income is insufficient—the capital of the trust property.	9 10
(3)	In this section—	11
	<i>relevant entity</i> means any of the following entities—	12
	(a) a law practice within the meaning of the <i>Legal Profession Act 2007</i> ;	13 14
	(b) a financial institution;	15
	(c) a corporation.	16
122	Valuations	17
(1)	A trustee may, for the purpose of giving effect to the trust or the trust instrument or a provision of this Act or another Act, ascertain and fix the value of—	18 19 20
	(a) the trust property; or	21
	(b) any property the trustee is authorised to buy or otherwise acquire.	22 23
(2)	The trustee may ascertain and fix the value in any way the trustee considers appropriate.	24 25
(3)	If the trustee is not personally qualified to ascertain the value of any property, the trustee—	26 27
	(a) must consult a properly qualified person, whether employed by the trustee or not, about the value of the property; but	28 29 30
	(b) is not bound to accept a valuation made by the person.	31

-
- (4) The value fixed by the trustee under this section and in accordance with the trustee's duties under part 5, divisions 2 and 3 is binding on all persons beneficially interested in the trust property.

123 Audit

- (1) A trustee—
- (a) may have the accounts of the trust property examined or audited by an accountant; and
 - (b) must, for that purpose, give the accountant the documents and information the accountant requires to conduct the examination or audit.
- (2) The costs of the examination or audit, including the accountant's fee, are payable out of the capital or income of the trust property, or partly out of the capital and partly out of the income, as the trustee considers appropriate.
- (3) However, in the absence of any direction by the trustee to the contrary in a special case—
- (a) costs attributable to capital are payable out of the capital; and
 - (b) costs attributable to income are payable out of the income.
- (4) Despite subsection (2), if the trustee or 1 of the trustees is a trustee corporation, the costs of the examination or audit are payable out of the trust property only if—
- (a) the examination or audit relates to a business forming part of the trust property; or
 - (b) the court approves of the costs being paid out of the capital or income of the trust property.

[s 124]

124	Trustee may sue and be sued by himself in another capacity	1 2
(1)	A trustee, in that capacity, may sue and be sued by himself in another capacity, including the trustee’s personal capacity.	3 4
(2)	However, the trustee must obtain the directions of the court in which the proceeding is taken about the way the differing interests are to be represented.	5 6 7
125	Inquiries about beneficiaries	8
(1)	A trustee may make the inquiries, by way of advertisement or otherwise, that the trustee considers necessary to ascertain the existence or whereabouts of a beneficiary of the trust.	9 10 11
(2)	The costs, expenses and charges incurred by the trustee in making the inquiries about the beneficiary are payable out of the legacy, amount or distributive share to which the beneficiary is entitled.	12 13 14 15
(3)	Subsection (2) applies subject to an express contrary intention in the trust instrument.	16 17
126	Exercise of trustee powers when particular beneficiaries are absolutely entitled	18 19
(1)	This section applies in relation to a trust other than a trust created by a court order.	20 21
(2)	A trustee may exercise the powers conferred under this part in relation to the trust property even though—	22 23
(a)	all the beneficiaries are absolutely entitled to the trust property; and	24 25
(b)	each beneficiary is an adult—	26
(i)	who has capacity for financial matters relating to their interest in the trust property; or	27 28
(ii)	for whom an administrator or attorney is authorised, under their appointment as administrator or attorney, to exercise power for	29 30 31

	financial matters relating to the beneficiary's interest in the trust property.	1 2
(3)	However, subsection (2) does not apply to the extent a power conferred under this part is expressly revoked by all the beneficiaries, by written notice given to the trustee by—	3 4 5
(a)	each beneficiary mentioned in subsection (2)(b)(i); and	6
(b)	the administrator or attorney for each beneficiary mentioned in subsection (2)(b)(ii).	7 8
127	Effect of conversion of land or personal property under statutory power	9 10
(1)	This section applies if, as a result of the exercise of power under this Act—	11 12
(a)	land is converted into personal property; or	13
(b)	personal property is converted into land.	14
(2)	The personal property or land must be held—	15
(a)	if, before conversion, the personal property or land was subject to a trust—on a trust corresponding, as nearly as the law and circumstances permit, with the trust affecting the personal property or land before conversion; or	16 17 18 19 20
(b)	if, before conversion, the personal property or land was not subject to a trust—subject to the limitations, conditions, powers or directions corresponding, as nearly as the law and circumstances permit, with those affecting the personal property or land before conversion.	21 22 23 24 25 26

[s 128]

Part 8	Maintenance, education and advancement	1 2
Division 1	Preliminary	3
128	Definition for part	4
	In this part—	5
	<i>relevant capital</i> see section 133(2).	6
Division 2	Application of trust income	7
129	Child beneficiaries—application of trust income for maintenance etc.	8 9
(1)	This section applies if, under a trust, a trustee holds trust property for a beneficiary who is a child.	10 11
(2)	The trustee may pay all or part of the income of the trust property to the beneficiary’s guardian (if any), or otherwise apply all or part of the income, for or towards the beneficiary’s maintenance, education or advancement (including past maintenance or education).	12 13 14 15 16
(3)	The power conferred under subsection (2) may be exercised—	17
(a)	whether the beneficiary’s interest in the trust property is a vested interest or a contingent or future interest or is absolute or liable to be divested; and	18 19 20
(b)	whether or not—	21
(i)	there is another fund that may be applied for the beneficiary’s maintenance, education or advancement; or	22 23 24
(ii)	there is another person who is bound by law to provide for the beneficiary’s maintenance or education.	25 26 27

-
- (4) However, despite subsection (3)(a), if the beneficiary's interest in the trust property is a contingent or future interest, the power conferred under subsection (2) may be exercised only if the interest includes the intermediate income of the trust property.
- (5) For subsection (4) and without limiting the *Succession Act 1981*, section 33H, a contingent or future interest in the trust property is taken, during the beneficiary's minority and while the beneficiary's interest continues, to include the intermediate income if—
- (a) the interest would not, apart from this section, include the intermediate income; and
 - (b) the intermediate income is not expressly or specifically disposed of, but would pass to some other person—
 - (i) only because of an interest to which the person is entitled under a residuary or a general disposition in the trust instrument; or
 - (ii) in the absence of a disposition mentioned in subparagraph (i), on intestacy or as a resulting trust.
- 130 Child beneficiaries—investment and application of unexpended trust income**
- (1) Subsection (2) applies if—
- (a) under section 129, a trustee may pay or apply the income of trust property for or towards a beneficiary's maintenance, education or advancement; but
 - (b) some or all of the income of the trust property (the *remaining income*) has not been paid or applied under section 129 during the beneficiary's minority and while the beneficiary's interest continues.
- (2) The trustee must—

[s 130]

- (a) invest the remaining income (and the income achieved by investing the remaining income) in authorised investments; and
- (b) hold the amount of the authorised investments (including the income of the investments) as provided under subsection (3) or (4).
- (3) The amount is to be held for the beneficiary absolutely if—
- (a) the beneficiary becomes an adult and the beneficiary’s interest in the income during the beneficiary’s minority was a vested interest; or
- (b) the beneficiary, on becoming an adult, is entitled to the property from which the income arose in fee simple, absolute or determinable, or absolutely.
- (4) If neither subsection (3)(a) nor (b) applies—
- (a) the amount is to be held as an accretion to the capital of the trust property from which the income arose; and
- (b) the amount and the capital are to form a single fund for all purposes.
- (5) For subsection (4), it does not matter whether the beneficiary had a vested interest in the income.
- (6) Despite subsection (2)(b), the trustee may, at any time during the beneficiary’s minority and while the beneficiary’s interest continues, pay or apply all or part of the amount of the authorised investments (including the income of the investments) for or towards the beneficiary’s maintenance, education or advancement under section 129 as if it were income arising in the current year.
- (7) This section applies subject to a contrary intention in the trust instrument.
- (8) In this section—
- authorised investment* means an investment of trust funds that—
- (a) is authorised by the trust instrument; or

	(b) is made exercising a power of investment conferred under part 6 or under an order made under section 184; or	1 2 3
	(c) is authorised by another Act or the general law.	4
131	Adult beneficiaries—application of trust income for maintenance etc.	5 6
	(1) This section applies if, under a trust—	7
	(a) a trustee holds trust property for a beneficiary who is an adult; and	8 9
	(b) the beneficiary has a contingent interest in the trust property; and	10 11
	(c) the beneficiary’s interest includes the intermediate income of the trust property.	12 13
	(2) The trustee may pay all or part of the income of the trust property to the beneficiary, or otherwise apply all or part of the income, for or towards the beneficiary’s maintenance, education or advancement (including past maintenance or education).	14 15 16 17 18
132	Vested annuities	19
	(1) Sections 129 to 131 apply in relation to a vested annuity as if—	20 21
	(a) the annuity were the income of trust property that is held by a trustee on trust to pay the income of the trust property to the annuitant; and	22 23 24
	(b) the reference in sections 129(5) and 130(1)(b) and (6) to the period during the beneficiary’s minority and while the beneficiary’s interest continues were a reference to the period for which the annuity is payable.	25 26 27 28
	(2) However, despite section 130(2)(b), the amount of the authorised investments (including the income of the investments made during the period for which the annuity is	29 30 31

[s 133]

payable) must be held on trust for the annuitant or the annuitant's personal representative absolutely. 1
2

Division 3 Application of trust capital 3

133 Application of trust capital for beneficiary's maintenance etc. 4 5

- (1) This section applies if, under a trust, a beneficiary is entitled to the capital, or any share of the capital, of the trust property. 6
7
- (2) The capital, or the share of the capital, to which the beneficiary is entitled is the *relevant capital*. 8
9
- (3) Subject to section 134, the trustee may— 10
- (a) pay or apply amounts out of the relevant capital for or towards the beneficiary's maintenance, education or advancement (including past maintenance or education); or 11
12
13
14
 - (b) apply any part of the relevant capital for or towards any of those purposes. 15
16
- (4) The amounts of the relevant capital paid or applied and the value of the parts of the relevant capital applied must not, in total, be more than the greater of the following amounts— 17
18
19
- (a) the prescribed amount under section 135; 20
 - (b) one-half the relevant capital. 21
- Note—* 22
- See, however, section 138 in relation to amounts that are taken not to have been paid or applied. 23
24
- (5) However, the court may, on application, authorise the trustee to— 25
26
- (a) pay or apply greater amounts out of the relevant capital; or 27
28
 - (b) apply part of the relevant capital of greater value. 29

(6)	The power to pay or apply amounts, or apply part of the relevant capital, may be exercised—	1 2
(a)	whether the beneficiary is entitled to the relevant capital absolutely or contingently on the beneficiary reaching a stated age or on the happening of another event; or	3 4 5
(b)	whether the beneficiary is entitled in possession, in remainder or in reversion.	6 7
(7)	Also, it does not matter whether the beneficiary’s entitlement to the relevant capital—	8 9
(a)	is liable to be defeated by the exercise of a power of appointment or revocation; or	10 11
(b)	is liable to be diminished by an increase of the class to which the beneficiary belongs.	12 13
134	Restriction on application of trust capital	14
(1)	A trustee may not pay or apply an amount out of relevant capital, or apply a part of relevant capital, under section 133 if the payment or application would prejudice a person who is entitled to a prior life interest or other interest, whether vested or contingent, in the amount or part.	15 16 17 18 19
(2)	However, the amount or part of the relevant capital may be paid or applied if—	20 21
(a)	the person whose interest may be prejudiced—	22
(i)	is an adult who has capacity for financial matters relating to the payment or application; and	23 24
(ii)	consents in writing to the payment or application; or	25 26
(b)	the court, on application by the trustee, orders the amount to be paid or the part of the relevant capital to be applied.	27 28 29
135	Prescribed amount for application of trust capital	30
(1)	For section 133(4)(a), the <i>prescribed amount</i> is—	31

[s 136]

- (a) for the initial period—\$100,000; or 1
- (b) for the financial year starting immediately after the end 2
of the initial period—\$100,000 plus the CPI increase for 3
the financial year, rounded to the nearest dollar 4
(rounding one-half upwards); or 5
- (c) for a later financial year—the prescribed amount for the 6
previous financial year plus the CPI increase for the 7
later financial year, rounded to the nearest dollar 8
(rounding one-half upwards). 9
- (2) The chief executive must, before the start of each financial 10
year, publish on the department’s website the prescribed 11
amount for the financial year. 12
- (3) In this section— 13
- CPI* means the all groups consumer price index for Brisbane 14
published by the Australian Bureau of Statistics. 15
- CPI increase*, for a financial year, means the amount worked 16
out by multiplying the prescribed amount for the previous 17
financial year by the percentage increase, if any, in the CPI 18
between— 19
- (a) the March quarter for the financial year before the 20
previous financial year; and 21
- (b) the March quarter for the previous financial year. 22
- initial period* means the period— 23
- (a) starting on the commencement of this section; and 24
- (b) ending on 30 June following the first anniversary of the 25
commencement of this section. 26
- 136 Trust capital paid or applied to be brought into account 27**
- (1) This section applies if an amount is paid or applied out of 28
relevant capital, or a part of relevant capital is applied, under 29
this division in relation to a beneficiary. 30
- (2) The amount paid or applied, or the value of the part applied, 31
as the case may be, must be brought into account as part of the 32

share in the trust property to which the beneficiary is or
becomes absolutely or indefeasibly entitled. 1
2

Note— 3

See, however, section 138 in relation to amounts that are taken not to
have been paid or applied. 4
5

Division 4 Imposition of conditions 6

137 Trustee may impose conditions 7

- (1) This section applies to a trustee in exercising a power, whether
under division 2 or 3 or the trust instrument— 8
9
 - (a) to pay or apply an amount of trust income for a
beneficiary’s maintenance, education or advancement
(including past maintenance or advancement); or 10
11
12
 - (b) to pay or apply an amount out of relevant capital, or
apply a part of relevant capital, for any of those
purposes. 13
14
15
- (2) The trustee may impose conditions on the payment or
application of the amount or on the application of the part of
the relevant capital. 16
17
18
- (3) Without limiting subsection (2), a condition may require— 19
 - (a) the repayment of— 20
 - (i) the amount paid or applied; or 21
 - (ii) the value of the part of the relevant capital applied;
or 22
23
 - (b) the payment of interest on the amount or value; or 24
 - (c) the giving of security for the amount or value. 25
- (4) However, at any time after imposing a condition under
subsection (2), the trustee may— 26
27
 - (a) waive all or part of the condition; or 28
 - (b) release all or part of an obligation undertaken, or
security given, because of the condition. 29
30

[s 138]

(5)	A trustee, when imposing a condition about giving security, is not affected by any restriction on the investment of trust funds, whether imposed under this Act or otherwise.	1 2 3
138	Amounts repaid or recovered taken not to have been paid or applied	4 5
(1)	This section applies if a trustee, in exercising a power mentioned in section 137(1), imposes a condition under section 137(2).	6 7 8
(2)	An amount repaid to the trustee, or recovered by the trustee, is taken not to have been paid or applied by the trustee.	9 10
139	Trustee not liable for losses	11
	A trustee is not liable for any loss that may be incurred in relation to an amount of trust income or of relevant capital that is paid or applied, or a part of relevant capital that is applied, as mentioned in section 137(1) if the loss arises—	12 13 14 15
(a)	because of a failure to impose any or adequate conditions under section 137(2); or	16 17
(b)	without limiting paragraph (a), because of a failure to take security or adequate security; or	18 19
(c)	because of a failure to take action to protect any security taken; or	20 21
(d)	through the release or abandonment, without payment, of any security taken; or	22 23
(e)	from any other matter in relation to the conditions imposed or the waiver of any condition.	24 25

Part 9	Indemnities and protection of trustees and other persons	1 2
Division 1	Distributing trust property	3
140	Giving notice of intention to distribute	4
(1)	A trustee who intends to distribute trust property may give notice of that intention by—	5 6
(a)	publishing, under subsection (2) or (3), a notice that requires any person having any claim to, or against, the trust property, whether as a creditor or beneficiary or otherwise, to send particulars of the person’s claim to the trustee by a stated day (the <i>closing day</i>) that is at least 2 months after the day the notice is published; and	7 8 9 10 11 12
(b)	giving any other notices the court may direct.	13
(2)	If the notice under subsection (1)(a) is included in a notice of intention to apply for a grant, the notice of intention to apply for a grant must be published in the way required under the <i>Uniform Civil Procedure Rules 1999</i> .	14 15 16 17
(3)	If the notice under subsection (1)(a) is not included in a notice of intention to apply for a grant, the notice must be published—	18 19 20
(a)	in a newspaper circulating throughout the State and sold at least once each week; or	21 22
(b)	on a website approved for the purpose—	23
(i)	by regulation; or	24
(ii)	by the Chief Justice, by notice published on the Queensland Courts website.	25 26
(4)	In this section—	27
	<i>notice of intention to apply for a grant</i> means a notice, in the approved form under the <i>Supreme Court of Queensland Act</i>	28 29

[s 141]

1991, of intention to apply for a grant within the meaning of
the *Succession Act 1981*, section 5. 1
2

141 Protection of trustee distributing after closing day 3

- (1) A trustee who gives notice under section 140 of the trustee's
intention to distribute trust property— 4
5
- (a) may, after the closing day, distribute the trust property 6
having regard only to the claims, whether formal or not, 7
of which the trustee has notice at the time of the 8
distribution; and 9
- (b) is not liable, in respect of any of the trust property 10
distributed after the closing day, to any person of whose 11
claim the trustee had no notice at the time of the 12
distribution. 13
- (2) If the trustee gives more than 1 notice under section 140, a 14
reference in subsection (1) to the closing day is a reference to 15
the latest in time of the closing days stated in the notices. 16
- (3) For subsection (1)(a), it does not matter whether the trustee 17
has notice of a claim because it has been made in response to 18
the notice given under section 140 or has otherwise come to 19
the trustee's notice. 20
- (4) This section does not affect the right of any person to enforce 21
a remedy for the person's claim against a person to whom a 22
distribution of any of the trust property has been made. 23
- Note—* 24
- See division 3 in relation to remedies for the wrongful distribution of 25
trust property. 26
- (5) Subsection (4) does not limit section 149 or any other defence 27
available, under an Act or at law or in equity, to the person to 28
whom the distribution is made. 29
- (6) In this section— 30
closing day see section 140(1)(a). 31

Division 2	Claims against trust property and trustees	1 2
142	Definitions for division	3
	In this division—	4
	<i>claim</i> , in relation to a trust—	5
	(a) means a claim—	6
	(i) to or against the trust property; or	7
	(ii) against the trustee personally because the trustee is under a liability for which the trustee is entitled to reimbursement out of the trust property; but	8 9 10
	(b) does not include—	11
	(i) a claim under the <i>Succession Act 1981</i> , part 4; or	12
	(ii) a claim that is an application to revoke a grant of probate or letters of administration; or	13 14
	(iii) a claim for which insurance is required to be, and is, maintained under an Act.	15 16
	<i>claimant</i> means a person who makes a claim in relation to a trust, whether as a creditor or beneficiary or otherwise.	17 18
	<i>potential claimant</i> means a person who may make a claim in relation to a trust, whether as a creditor or beneficiary or otherwise.	19 20 21
143	Trustee may require claimant or potential claimant to start proceeding	22 23
	(1) This section applies if a trustee does not accept a claim in relation to the trust that has been made, or that the trustee has reason to believe may be made, by a claimant or potential claimant.	24 25 26 27
	(2) The trustee may, by written notice given to the claimant or potential claimant, require the claimant or potential claimant—	28 29 30

[s 144]

(a)	to start a proceeding to enforce the claim within 6 months after the day the notice is given; and	1 2
(b)	to prosecute the proceeding with appropriate diligence.	3
144	Trustee may apply to court for orders in relation to claim	4
(1)	The trustee may, not earlier than 6 months after notice is given to the claimant or potential claimant under section 143, apply to the court for orders under section 145 in relation to the claim.	5 6 7 8
(2)	If the trustee has given notice under section 143 to 2 or more claimants or potential claimants—	9 10
(a)	the trustee may seek orders against any or all of the claimants or potential claimants in a single application; but	11 12 13
(b)	the application may not be made earlier than 6 months after the latest day notice is given under section 143 to any of the claimants or potential claimants.	14 15 16
145	Court may make orders in relation to claim	17
(1)	This section applies if, on the hearing of an application made by the trustee under section 144, the claimant or potential claimant does not satisfy the court that the claimant or potential claimant—	18 19 20 21
(a)	has started a proceeding to enforce the claim; and	22
(b)	is prosecuting the proceeding with appropriate diligence.	23 24
(2)	The court may, by order—	25
(a)	extend the period for the claimant or potential claimant to start a proceeding to enforce the claim; or	26 27
(b)	bar the claim (including for all purposes); or	28
(c)	enable the trust property to be dealt with without regard to the claim.	29 30

-
- (3) Also, the court may make the other orders and give the directions about the proceeding or the claim that the court considers appropriate, including, for example, any of the following orders or directions—
- (a) an order or direction that a beneficiary of the trust be given notice of the application;
 - (b) an order that a beneficiary of the trust be made a respondent to the application;
 - (c) an order imposing conditions;
 - (d) an order about the costs of and incidental to the application.
- (4) If, under section 144(2), the application seeks orders against 2 or more claimants or potential claimants, the court may make orders against any or all of the claimants or potential claimants.

146 Contesting trustee’s right to indemnity

- (1) This section applies if a beneficiary of the trust—
- (a) is not a party to an application made by the trustee under section 144; and
 - (b) is not made a respondent to the application by an order made under section 145(3)(b).
- (2) An order made by the court on the application does not affect the beneficiary’s right to contest a claim of the trustee to be entitled to indemnify themselves out of the trust property.

Division 3 Remedies for wrongful distribution of trust property

147 Definition for division

In this division—
recipient see section 148(2).

[s 148]

148	Enforcement of remedies for wrongful distribution	1
(1)	This section applies if a trustee has wrongfully distributed trust property.	2 3
(2)	A person who suffers loss because of the wrongful distribution may enforce the same remedies against the trustee, and against any person to whom the distribution has been made (a <i>recipient</i>), as the person could enforce against a personal representative who has wrongfully distributed the estate of a deceased person.	4 5 6 7 8 9
(3)	The person is not required to exhaust all remedies that may be available to the person against the trustee before seeking to enforce a remedy against a recipient.	10 11 12
149	Effect of change of position of recipient	13
(1)	This section applies if—	14
(a)	a person who suffers loss because of the wrongful distribution of trust property seeks to enforce a remedy against a recipient; and	15 16 17
(b)	the recipient has received the distribution in good faith and has so changed the recipient’s position in reliance on the propriety of the distribution that, in the court’s opinion, it would be inequitable to enforce the remedy.	18 19 20 21
(2)	The court may make an order it considers to be just in all the circumstances.	22 23
150	Other defences available to recipient not limited	24
	Section 149 does not limit any other defence that may be available to the recipient under an Act, or at law or in equity.	25 26 27

Division 4	Particular protections for trustees	1
151	Protection relating to notice when person is trustee of more than 1 trust	2 3
(1)	This section applies to a trustee who is acting for more than 1 trust.	4 5
(2)	The trustee is not, in the absence of fraud, to be taken to have notice of any matter in relation to a trust only because notice of the matter is, or was, given to the trustee when acting for another trust.	6 7 8 9
(3)	In this section— <i>matter</i> includes an instrument, a fact and a thing.	10 11
152	Protection in relation to receipts	12
(1)	This section applies if—	13
(a)	a trustee signs a receipt for the payment of an amount or for securities in order to comply with the requirements in relation to the giving of receipts by trustees; and	14 15 16
(b)	the trustee does not receive all, or any, of the amount or securities.	17 18
(2)	The trustee is accountable only for the amount or securities actually received by the trustee.	19 20
153	Protection in relation to acts and omissions of other persons and losses	21 22
(1)	A trustee—	23
(a)	is personally liable only for the trustee’s own acts or omissions; and	24 25
(b)	is not personally liable for the acts or omissions of—	26
(i)	another trustee; or	27
(ii)	an agent appointed by the trustee; or	28

[s 154]

- (iii) a financial institution, broker or other person with whom any trust funds are deposited. 1
2
 - (2) A trustee is not personally liable for the insufficiency or deficiency of any security, or any other loss, unless the insufficiency, deficiency or loss results from the trustee’s own breach of trust. 3
4
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 - Note—* 7
 - See section 86 for the court’s power to set off gains and losses. 8
 - (3) This section applies subject to sections 57, 59, 82 and 103. 9
- 154 Expenses reasonably incurred in administering trust** 10
 - A trustee may— 11
 - (a) reimburse themselves out of the trust property for the expenses reasonably incurred in administering the trust; 12
or 13
14
 - (b) pay or discharge from the trust property the expenses reasonably incurred in administering the trust. 15
16
- 155 Protection against liability for rents etc. under lease** 17
 - (1) This section applies if— 18
 - (a) a trustee is, for any reason, liable in relation to— 19
 - (i) any rent, covenant or agreement reserved by or contained in a lease; or 20
21
 - (ii) any indemnity given for any rent, covenant or agreement mentioned in subparagraph (i); and 22
23
 - (b) before assigning the lease as mentioned in subsection (2), the trustee— 24
25
 - (i) satisfies all liabilities under the lease that may have accrued, and been claimed, up to the date of the assignment; and 26
27
28
 - (ii) if necessary, sets apart a fund that is enough to pay any future claim that may be made in relation to a 29
30

-
- fixed and ascertained amount that the lessee agreed 1
to expend on the leased property (even if the time 2
for expending the amount has not arrived). 3
- (2) If the trustee assigns the lease to a person entitled to call for an 4
assignment of the lease, the trustee— 5
- (a) is not required to appropriate any further amount from 6
the trust property to meet any future liability under the 7
lease; and 8
- (b) may distribute the remaining trust property, other than 9
any fund set apart as mentioned in subsection (1)(b)(ii), 10
to the persons entitled to the trust property. 11
- (3) A trustee who acts under subsection (1)(b) and distributes the 12
remaining trust property under subsection (2)(b) is not 13
personally liable for any later claim under the lease. 14
- (4) Nothing in this section affects the right of the lessor, or a 15
person deriving title under the lessor, to follow the trust 16
property into the hands of the persons to whom the trust 17
property has been distributed. 18
- (5) In this section— 19
- lease* includes— 20
- (a) an agreement for a lease; and 21
- (b) an instrument giving an indemnity as mentioned in 22
subsection (1)(a)(ii) or varying the liabilities under the 23
lease. 24
- person entitled*, to call for an assignment of a lease, includes a 25
purchaser and a beneficiary under the will, or on the intestacy, 26
of a deceased person. 27

[s 156]

Division 5	General	1
156	Evidence about vacancy in trust or removal of trustee	2
(1)	This section applies in relation to a statement in an instrument, under which a new trustee is appointed or a trustee is removed, about—	3 4 5
(a)	the circumstances in which the vacancy in the office of trustee arose; or	6 7
(b)	the circumstances in which the trustee was removed.	8
(2)	The statement is conclusive evidence of the circumstances in favour of any of the following persons acting in good faith—	9 10
(a)	a subsequent purchaser;	11
(b)	a debtor making payment to a new or continuing trustee of the trust;	12 13
(c)	the relevant registrar or another person registering or otherwise recording a dealing with the trust property.	14 15
(3)	Also, the vesting of the trust property on the appointment of the new trustee, or on the removal of the trustee, is as valid in favour of a subsequent purchaser acting in good faith as it would be if the statement were true.	16 17 18 19
157	Protection for persons registering dealings with trust property	20 21
(1)	If a trustee has joined with another person in the sale of trust property, the relevant registrar or another person registering or otherwise recording a dealing with the trust property is not, when registering or recording a dealing relating to the sale—	22 23 24 25
(a)	affected by notice of the circumstances of the apportionment of the proceeds of sale; or	26 27
(b)	required to inquire into those circumstances.	28
(2)	Also, the relevant registrar is not required to inquire into the surrender, by a trustee, of—	29 30

(a)	freehold or leasehold land; or	1
(b)	a water allocation or a lease of a water allocation.	2
158	Protection for purchasers and mortgagees	3
	A purchaser or mortgagee paying or lending an amount to a trustee on a sale or mortgage of trust property is not required to inquire into—	4 5 6
(a)	whether the amount is needed or is not more than is needed; or	7 8
(b)	whether the trustee has power to effect the sale or mortgage; or	9 10
(c)	how the amount is applied.	11
159	Receipts given by trustees	12
	If a person pays an amount, or transfers or delivers property, to a trustee—	13 14
(a)	the written receipt of the trustee, or an agent appointed by the trustee to give receipts, is a sufficient discharge for the amount or property; and	15 16 17
(b)	the person paying the amount or transferring or delivering the property—	18 19
(i)	is not required to see to the application of the amount or property; and	20 21
(ii)	is not answerable for any loss or misapplication of the amount or property.	22 23
160	Power of court to relieve trustee from personal liability	24
(1)	This section applies if it appears to the court that a trustee is, or may be, personally liable for a breach of trust.	25 26
(2)	The court may relieve the trustee either wholly or partly from personal liability for the breach of trust if the court is satisfied—	27 28 29

[s 161]

- (a) the trustee has acted honestly and reasonably; and 1
 - (b) the trustee ought fairly to be excused— 2
 - (i) for the breach of trust; and 3
 - (ii) for omitting to obtain the court’s directions in the 4
matter in which the trustee committed the breach 5
of trust. 6
- Note—* 7
- See part 11, division 8 in relation to applications to the 8
court for directions about matters relating to a trust. 9

161 Power of court to make beneficiary indemnify for breach of trust 10
11

- (1) This section applies if a trustee commits a breach of trust at 12
the instigation or request, or with the written consent, of a 13
beneficiary. 14
- (2) The court may, if it considers it appropriate, make an order 15
indemnifying the trustee, or a person claiming through the 16
trustee, out of the beneficiary’s interest in the trust property. 17

162 Indemnity for acts done under court order 18

Each order purporting to be made under this Act is a complete 19
indemnity to a person for any act done under the order. 20

Part 10 Remuneration of trustees 21

163 Definitions for part 22

In this part— 23

professional charges, of a professional trustee, means all 24
usual professional or business charges for business transacted, 25
time expended, and acts done by the trustee or the trustee’s 26
firm, including acts that a trustee who is not in a profession or 27
business could have done personally. 28

<i>professional trustee</i> has the meaning given by section 64.	1
<i>trustee</i> includes a custodian trustee.	2
164 Remuneration of professional trustees	3
(1) A professional trustee for whom no benefit or remuneration is provided in the trust instrument is entitled to charge, and to be paid out of the trust property, the trustee’s professional charges in relation to the trust.	4 5 6 7
(2) This section applies subject to an express contrary intention in the trust instrument.	8 9
165 Remuneration of trustees under court order	10
(1) The court may, on application by a trustee (including a professional trustee), make an order authorising the trustee to charge, and to be paid out of the trust property, the remuneration for the trustee’s services that the court considers appropriate if the circumstances appear to the court to justify the charge.	11 12 13 14 15 16
(2) If the application is made by a professional trustee, the court may take into account any professional charges that have been paid out of the trust property to the trustee under section 164.	17 18 19
166 Court may reduce excessive amounts for commission and professional charges	20 21
(1) This section applies if the court considers that either of the following amounts charged, or proposed to be charged, by a trustee in respect of a trust is excessive—	22 23 24
(a) an amount for commission;	25
(b) an amount for professional charges.	26
(2) The court may, on application by a person interested in the trust or on its own initiative, review the amount and, on the review, reduce the amount.	27 28 29

[s 167]

- (3) Subsection (2) applies despite any provision of an Act, or of the trust instrument, authorising the charging of the amount. 1
2
- (4) However, this section does not apply in relation to a trustee that is— 3
4
- (a) a licensed trustee company; or 5
- (b) the public trustee, to the extent an amount mentioned in subsection (1)(a) or (b) is charged, or proposed to be charged, by the public trustee as fees and charges under the *Public Trustee Act 1978*, section 17. 6
7
8
9
- (5) In this section— 10
amount includes part of an amount. 11

Part 11 Court powers 12

Division 1 Preliminary 13

167 Definition for part 14

In this part— 15

possessed, of property, includes— 16

- (a) entitled to the receipt of income of property; and 17
- (b) entitled to any vested estate (less than a life interest), at law or in equity, in possession or in expectancy, in land. 18
19

Division 2 Applications for orders 20

168 Persons who may apply for particular orders relating to trusts and trust property 21 22

- (1) This section applies in relation to an application to the court for any of the following orders in relation to a trust— 23
24

(a)	an order under section 15 approving the appointment of more than 4 trustees of the trust;	1 2
(b)	an order under section 171 appointing a new trustee;	3
(c)	an order under section 171 removing a trustee;	4
(d)	an order under section 173 disqualifying a person from being appointed as a trustee or removing the person as a trustee;	5 6 7
(e)	an order under this Act relating to the trust property.	8
(2)	The application may be made by—	9
(a)	a trustee; or	10
(b)	a person applying to be appointed as a trustee; or	11
(c)	a person who is beneficially interested in the trust property; or	12 13
(d)	a person in whose favour a power to distribute the trust property may be exercised.	14 15
(3)	Also, a custodian trustee may apply for an order mentioned in subsection (1)(b).	16 17
(4)	Subsection (2) does not apply if another provision of this Act provides for the persons who may apply to the court in relation to the particular matter.	18 19 20
169	Persons who may apply for orders relating to interests in mortgaged property	21 22
(1)	This section applies in relation to an application to the court for an order under this Act in relation to an interest in any property subject to a mortgage.	23 24 25
(2)	The application may be made by—	26
(a)	a person who is beneficially interested in the property; or	27 28
(b)	a person who is interested in the amount secured by the mortgage.	29 30

[s 170]

(3)	Subsection (2) does not apply if another provision of this Act provides for the persons who may apply to the court in relation to the particular matter.	1 2 3
170	Persons who may apply for orders relating to other property	4 5
(1)	This section applies in relation to an application to the court for an order under this Act in relation to property other than—	6 7
(a)	trust property; or	8
(b)	property subject to a mortgage.	9
(2)	The application may be made by a person with an interest in the property.	10 11
(3)	Subsection (2) does not apply if another provision of this Act provides for the persons who may apply to the court in relation to the particular matter.	12 13 14
Division 3	Appointment and removal of trustees and other office holders and related matters	15 16 17
171	Power to appoint and remove trustees	18
(1)	This section applies if—	19
(a)	it is expedient for a new trustee of a trust to be appointed or for a trustee of a trust to be removed; and	20 21
(b)	it is inexpedient, difficult, impracticable or impossible for the trustee to be appointed or removed without an order of the court.	22 23 24
(2)	The court may, on application or on its own initiative, make 1 or more of the following orders in relation to the trust—	25 26
(a)	an order appointing a new trustee to replace a trustee who has been removed;	27 28

(b)	an order appointing a new trustee to be an additional trustee or because there is no existing trustee;	1 2
(c)	an order removing a trustee.	3
(3)	Without limiting subsection (2)(a), the appointment of a new trustee may be made to replace a trustee—	4 5
(a)	who wishes to be discharged; or	6
(b)	who appears to the court, for any reason, to be undesirable as a trustee.	7 8
(4)	If the court could appoint a new trustee under subsection (2)(a) to replace a trustee, the court may remove the trustee under subsection (2)(c) without appointing a new trustee, but only if, on the removal of the trustee, the trust will have at least 1 trustee.	9 10 11 12 13
(5)	An order appointing a new trustee or removing a trustee (and any consequential vesting order or conveyance) has effect to discharge a former trustee only to the extent the appointment or removal would have that effect if it were made under a power for that purpose contained in the trust instrument.	14 15 16 17 18
(6)	This section does not confer power to appoint or remove a personal representative.	19 20
172	Powers etc. of trustees appointed by court	21
(1)	A person appointed by an order made under section 171(2) as the trustee of trust property has all the powers, authorities and discretions of, and may in all matters act as, a person who had originally been appointed as a trustee of the trust property under the trust instrument.	22 23 24 25 26
(2)	Subsection (1) applies in relation to the trustee both before and after the trust property is vested in the trustee.	27 28
173	Power to disqualify persons from appointment as trustees and remove them as trustees of other trusts	29 30
(1)	This section applies if the court—	31

[s 174]

(a)	removes a person as trustee of a trust under section 171(2)(c); and	1 2
(b)	is satisfied—	3
(i)	the person has committed 1 or more breaches of trust; and	4 5
(ii)	the nature and seriousness of the breaches make the person unfit to act as a trustee.	6 7
(2)	The court may, by order—	8
(a)	disqualify the person from being appointed as a trustee of any trust for a stated period; and	9 10
(b)	if the person is a trustee of another trust when an order is made under paragraph (a)—remove the person as trustee of the other trust.	11 12 13
174	Power to appoint and remove particular office holders	14
(1)	This section applies if—	15
(a)	it is expedient for a person to be appointed to, or removed from, a relevant office in relation to a trust; and	16 17
(b)	it is inexpedient, difficult, impracticable or impossible for the person to be appointed or removed without an order of the court.	18 19 20
(2)	The court may, on application or on its own initiative, by order—	21 22
(a)	appoint a person to the relevant office; or	23
(b)	remove a person from the relevant office; or	24
(c)	remove a person from the relevant office and appoint another person to the office.	25 26
(3)	The application may be made by—	27
(a)	a trustee of the trust; or	28
(b)	the person who holds the relevant office; or	29

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- (c) a person who is beneficially interested in the trust property; or
 - (d) a person in whose favour a power to distribute the trust property may be exercised.
- (4) A person may be appointed to, or removed from, the relevant office for any reason a person may be appointed, or removed, as a trustee of a trust under section 171.
- (5) In this section—
- relevant office*, in relation to a trust, means an office created under the trust instrument, other than the office of trustee, under which a person holding the office—
- (a) may exercise a power in relation to the trust or the trust property; and
 - (b) must act in a fiduciary capacity in exercising the power.

Division 4 Vesting orders and related matters

175 Application of division

- (1) This division applies if—
- (a) a new trustee is appointed under the trust instrument, under this Act or another Act, or otherwise by the court; or
 - (b) a trustee—
 - (i) is replaced or removed, or is discharged under section 30; or
 - (ii) is under a legal incapacity; or
 - (iii) is out of the court’s jurisdiction; or
 - (iv) can not be found; or
 - (c) a trustee that is a corporation—
 - (i) stops carrying on business; or
 - (ii) becomes a Chapter 5 body corporate; or

[s 175]

- (iii) is deregistered or otherwise ceases to exist; or 1
 - (d) a trustee, who is directed in writing to do so by a person 2
absolutely entitled to the trust property or to the 3
dividends or income of the trust property, neglects or 4
refuses, within 28 days after being given the direction, 5
to— 6
 - (i) convey the trust property; or 7
 - (ii) receive the dividends or income of the trust 8
property; or 9
 - (iii) sue for or recover the trust property; or 10
 - (e) the last continuing trustee of a trust has died and 1 of the 11
following applies— 12
 - (i) there is no personal representative of the last 13
continuing trustee; 14
 - (ii) the personal representative of the last continuing 15
trustee can not be found; 16
 - (iii) it is uncertain who the personal representative of 17
the last continuing trustee is; or 18
 - (f) it is uncertain whether the last trustee of a trust known to 19
have been entitled to, or possessed of, any trust property 20
is alive or dead; or 21
 - (g) in circumstances where 2 or more trustees were jointly 22
entitled to, or possessed of, trust property, it is uncertain 23
who the survivor of the trustees was; or 24
 - (h) trust property is vested in a trustee and it appears to the 25
court to be expedient to make a vesting order. 26
- (2) Also, this division applies if— 27
 - (a) a person, who is required to do so under a court order, 28
neglects or refuses to— 29
 - (i) convey any property; or 30
 - (ii) receive the dividends or income of any property; or 31
 - (iii) sue for or recover any property; or 32

[s 176]

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- (b) a deceased person was entitled to, or possessed of, any property and the deceased person's personal representative is under a legal incapacity; or
- (c) any property is subject to a contingent right in an unborn person, or in unborn persons of a class, who, on coming into existence, would become entitled to, or possessed of, the property under a trust; or
- (d) in a proceeding, the court—
- (i) directs the sale or mortgage, or the release of a mortgage, of land; or
- (ii) makes an order for the specific performance of a contract concerning land; or
- (e) a person entitled to, or possessed of, property by way of mortgage is under a legal incapacity.
- (3) For this section, a trustee is entitled to, or possessed of, trust property even if—
- (a) the trust property is held jointly with another person; or
- (b) the trustee is entitled to, or possessed of, the trust property by way of mortgage or otherwise.

176 Court may make vesting and other orders etc.

- (1) The court may, on application or on its own initiative, make an order (a *vesting order*) vesting the trust property or other property in any person in any way and for any estate or interest that the court directs.
- (2) Subsection (1) applies subject to section 177.
- (3) As well as, or instead of, making a vesting order in relation to the trust property or other property, the court may make any declaration or order, or give any direction, in relation to the property that it considers appropriate, including—
- (a) for the purpose of making a vesting order under subsection (1), a declaration that a person is a trustee, within the meaning of this Act, of the property; and

[s 177]

- (b) an order releasing a contingent right or disposing of a contingent right to any person as the court directs; and 1
2
- (c) an order appointing a person to convey the property or release a contingent right. 3
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- (4) If the court makes a vesting order in relation to the trust property or other property, it may also make a declaration, or give a direction, about the way the right to transfer the property is to be exercised. 5
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- (5) In this section— 9
- contingent right*, in relation to property, includes— 10
- (a) a contingent right of an unborn person, or of unborn persons of a class, who, on coming into existence, would become entitled to, or possessed of, the property under a trust; and 11
12
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14
- (b) the estate or interest in the property that an unborn person, or unborn persons of a class, mentioned in paragraph (a) would become entitled to, or possessed of, on coming into existence. 15
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- 177 Restrictions on vesting orders in particular circumstances** 19
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- (1) If a vesting order is to be made consequential on the appointment of a new trustee, including on the appointment of a new trustee to replace a trustee, the trust property must be vested in the persons who, on the appointment, are the trustees. 21
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- (2) If a vesting order is to be made consequential on the removal of 1 or more of a number of trustees without being replaced, or on the discharge of a trustee under section 30, the trust property must be vested in the continuing trustees alone. 26
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- (3) A vesting order may vest shares that are not fully paid up in a person only if— 30
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- (a) the person applies for the order or consents to the order being made; or 32
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- (b) the court directs that the person’s consent be dispensed with. 1
2

178 Effect of vesting and other orders 3

- (1) A vesting order— 4
- (a) divests the trust property or other property to which the order relates from the persons in whom the property was vested immediately before the order was made; and 5
6
7
- (b) without any conveyance, transfer or assignment, vests the property in— 8
9
- (i) the person named, as trustee or otherwise, in the order; or 10
11
- (ii) if more than 1 person is named, as trustee or otherwise, in the order—the persons named in the order, as joint tenants. 12
13
14
- (2) However, to the extent the divesting and vesting of the trust property or other property have effect only if notified, registered or recorded under the requirements of another Act or of a law of another State or the Commonwealth, the divesting and vesting of the property are subject to the requirements of the other Act or law. 15
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- (3) If an order is made under section 176(3)(c), a conveyance or release by the appointed person in accordance with the order has the same effect as a vesting order. 21
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179 Transfer of property under vesting order 24

- (1) The person in whom the trust property or other property is vested under a vesting order must, for the purpose of effecting the notification, registration or recording of the order under a requirement mentioned in section 178(2)— 25
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- (a) produce the order to the relevant registrar or other person having the function of receiving notification of, or registering or recording, the vesting; and 29
30
31

[s 180]

(b)	do any other act that is required by the relevant registrar or other person for that purpose.	1 2
(2)	The vesting order, or the notification, registration or recording of the order, does not have effect as a breach of covenant or condition, or give rise to the forfeiture, of any lease or agreement for lease or other property.	3 4 5 6
(3)	If the consent of a person is needed to the conveyance, transfer or assignment of any property—	7 8
(a)	the vesting of the property under a vesting order is subject to the consent, unless the order otherwise provides; but	9 10 11
(b)	the consent may be obtained after the making of the vesting order by the persons named in the order.	12 13
180	Powers etc. of person named in vesting order as trustee	14
(1)	This section applies if a vesting order vests property in a person as trustee.	15 16
(2)	The person named in the vesting order as trustee has all the powers, authorities and discretions of, and may in all matters act as, a person who had originally been appointed as a trustee of the trust property under the trust instrument.	17 18 19 20
(3)	However, the court may—	21
(a)	under the vesting order, limit the trustee’s powers as the court considers appropriate; or	22 23
(b)	under section 184 or 188, enlarge the trustee’s powers as the court considers appropriate.	24 25
181	Circumstances relating to validity of vesting and other orders etc.	26 27
(1)	This section applies in relation to a vesting order or any other order, declaration or direction made, or given, under section 176.	28 29 30

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- (2) The fact that the order, declaration or direction is founded, or purports to be founded, on an allegation of the existence of a circumstance mentioned in section 175(1) or (2) is conclusive evidence of the circumstance alleged in any court on any question about the validity of the order, declaration or direction. 1
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- (3) However, if the order, declaration or direction has been improperly obtained, nothing in this Act prevents the court from— 7
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- (a) in the case of a vesting order—directing a reconveyance of the property the subject of the order; or 10
11
- (b) making an order in relation to the payment of costs occasioned by the improper obtaining of the order, declaration or direction; or 12
13
14
- (c) making a further order or declaration, or giving a further direction, under section 176. 15
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Division 5 **Orders in relation to property and claims of children** 17
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182 **Court may make orders in relation to property or claim of child** 19
20

- (1) If a child is beneficially entitled to property of which there is no trustee, the court may, on application by the child’s litigation guardian, make an order, on the terms the court considers appropriate, appointing the litigation guardian or another person the court considers appropriate— 21
22
23
24
25
- (a) to deal with the property; or 26
- (b) to exercise in relation to the property the powers conferred on a trustee under this Act. 27
28
- (2) If a child has a claim to property, the court may, on application by the child’s litigation guardian, make an order appointing the litigation guardian or another person the court considers appropriate to settle or compromise the claim. 29
30
31
32

[s 183]

- (3) However, subsection (2) does not apply if the settlement or compromise may be sanctioned under the *Public Trustee Act 1978*, section 59 by a court or the public trustee. 1
2
3
- (4) The court must not make an order under subsection (1) or (2) unless it appears to the court that the order is for the benefit of— 4
5
6
- (a) the child; or 7
- (b) the child and another person. 8
- (5) An act done under an order made under this section is binding on the child. 9
10
- (6) In this section— 11
deal, with property, includes sell, convey, lease, mortgage, charge and sue for and recover the property. 12
13

Division 6 Conferral of additional management powers 14 15

183 Definition for division 16

In this division— 17

management power, in relation to a trust, means any power for the management or administration of the trust or the trust property, including, for example— 18
19
20

- (a) the power to surrender, release or otherwise dispose of the trust property; and 21
22
- (b) the power to retain the trust property; and 23
- (c) the power to buy, invest in or acquire trust property or engage in another transaction for the trust; and 24
25
- (d) the power to expend an amount out of trust funds. 26

184	Court may confer additional management powers	1
(1)	This section applies in relation to a trust if the court is satisfied—	2 3
(a)	the exercise of a particular management power—	4
(i)	would be expedient in the management or administration of the trust property; or	5 6
(ii)	would be in the best interests of the persons, or the majority of the persons, beneficially interested in the trust property; and	7 8 9
(b)	the management power can not be exercised because—	10
(i)	it is inexpedient, difficult or impracticable to exercise the power without a court order; or	11 12
(ii)	the trustee does not have the management power under this Act, the trust instrument or otherwise.	13 14
(2)	For subsection (1)(b)(ii), it does not matter that the trustee does not have the particular management power because—	15 16
(a)	this Act allows the power, which would otherwise be conferred on the trustee under this Act, to be excluded or modified under the trust instrument; and	17 18 19
(b)	the trust instrument excludes or modifies the power.	20
	<i>Note—</i>	21
	See section 87(3) in relation to the powers that may be excluded or modified under the trust instrument.	22 23
(3)	The court may, by order, confer the management power on the trustee, either generally or in a particular matter, and on the terms and subject to any conditions the court considers appropriate.	24 25 26 27
(4)	Without limiting subsection (3), the court may direct—	28
(a)	how an amount authorised to be expended is to be paid; and	29 30
(b)	how the costs of any transaction are to be borne; and	31
(c)	the extent to which the amount or the costs are to be apportioned between capital and income.	32 33

[s 185]

185	Court may revoke or vary order	1
(1)	The court may, by further order, revoke or vary an order made under section 184.	2 3
(2)	The revocation or variation of an order made under section 184 does not affect any act or thing done in reliance on the order before the person doing the act or thing became aware of the application to the court to revoke or vary the order.	4 5 6 7
186	Persons who may apply for order	8
	An application for an order under section 184 or 185 in relation to a trust may be made by—	9 10
(a)	any trustee of the trust; or	11
(b)	any person beneficially interested in the trust property.	12
Division 7	Variations of trusts	13
187	Meaning of <i>protective trust</i>	14
(1)	For this division, a trust is a <i>protective trust</i> if, under the trust, income is, without prejudice to any prior interest—	15 16
(a)	held on trust for the benefit of a person (the <i>principal beneficiary</i>)—	17 18
(i)	for the period of the principal beneficiary’s life or a lesser period (in either case the <i>trust period</i>); or	19 20
(ii)	until the trust (the <i>primary trust</i>) sooner fails or determines because of an intervening event; and	21 22
(b)	if the primary trust fails or determines during the trust period—held on trust for the remainder of the trust period to be applied, as the trustee considers appropriate, for the maintenance, education or advancement (including past maintenance or education) of 1 or more of the following persons—	23 24 25 26 27 28

-
- (i) the principal beneficiary and the principal beneficiary's spouse or issue; 1
2
- (ii) if the principal beneficiary has no spouse or issue—the principal beneficiary and the persons who would, if the principal beneficiary were dead, be entitled to the trust property or the income of the trust property. 3
4
5
6
7
- (2) For this division, a trust is also a *protective trust* if it has a similar effect to a trust mentioned in subsection (1). 8
9
- (3) In this section— 10
- income* includes an annuity and any other periodic payment of income. 11
12
- intervening event*, in relation to a primary trust, means an event provided for under the trust instrument that, if it happens, results in— 13
14
15
- (a) the principal beneficiary of the primary trust being deprived of the right to receive the income, or part of the income, of the trust; and 16
17
18
- (b) the consequent failure or determination of the primary trust. 19
20

188 Power of court to authorise variations of trust 21

- (1) The court may make an order under this section approving an arrangement in relation to a trust for any of the following persons (each a *restricted beneficiary*)— 22
23
24
- (a) a person under a legal incapacity who has an interest under the trust, whether directly or indirectly and whether vested or contingent; 25
26
27
- (b) a person (whether ascertained or not) who may become entitled, directly or indirectly, to an interest under the trust at a future date or on the happening of a future event (each later in time than the date of an application to the court under this section) because the person becomes— 28
29
30
31
32
33

[s 188]

- (i) a person of a particular description; or 1
 - (ii) a member of a particular class of persons; 2
- (c) an unborn person; 3
- (d) a person who, if a protective trust failed or determined, 4
would be a member of the class of persons mentioned in 5
section 187(1)(b)(i) or (ii). 6
- (2) An arrangement may— 7
 - (a) vary or revoke all or any of the trusts; or 8
 - (b) enlarge the powers of the trustees to manage or 9
administer any of the trust property. 10
- (3) An arrangement may be approved only if carrying out the 11
arrangement would be for the benefit of the restricted 12
beneficiary. 13
- (4) However, subsection (3) does not apply if the restricted 14
beneficiary is— 15
 - (a) an unascertained person whose entitlement is dependent 16
on a future event that the court is satisfied is unlikely to 17
happen; or 18
 - (b) a person mentioned in subsection (1)(d). 19
- (5) An order approving an arrangement may be made regardless 20
of— 21
 - (a) who has proposed the arrangement; or 22
 - (b) whether there is any other person beneficially interested 23
in the trust property who is capable of assenting to the 24
arrangement. 25
- (6) Notice of an application to the court for an order under this 26
section must be given to all persons as the court directs. 27
- (7) This section does not limit the court’s powers under division 28
6. 29
- (8) This section does not apply in relation to a trust affecting 30
property settled by an Act. 31

Division 8	Applications for directions	1
189	Court may give directions about particular matters	2
(1)	The court may, on application by a trustee, give the directions it considers appropriate about—	3 4
(a)	the trust property; or	5
(b)	the management or administration of the trust property; or	6 7
(c)	the exercise of any power or discretion vested in the trustee.	8 9
(2)	An application for directions under subsection (1) must be served on each person having an interest in the application or any of them that the court considers expedient.	10 11 12
190	Protection of trustee acting under court directions	13
(1)	If a trustee acts in accordance with a direction of the court given under section 189, the trustee is taken, in relation to the trustee's own liability, to have discharged the trustee's duty as trustee in the matter the subject of the direction.	14 15 16 17
(2)	Subsection (1) applies even if the direction is later varied or set aside.	18 19
(3)	However, this section does not protect the trustee from liability for an act done under the direction if, in obtaining the direction, or in agreeing (either expressly or impliedly) with the court in making the order giving the direction, the trustee—	20 21 22 23 24
(a)	commits a fraud; or	25
(b)	wilfully conceals a material matter; or	26
(c)	misrepresents a material matter.	27
(4)	In this section—	28
	<i>varied or set aside</i> includes invalidated, overruled and declared to be of no effect.	29 30

[s 191]

Division 9	Review of decisions and apprehended decisions	1 2
191	Application of division	3
	This division applies if a person (an <i>aggrieved person</i>)—	4
	(a) has—	5
	(i) an interest, whether direct or indirect or vested or contingent, in trust property; or	6 7
	(ii) a right of proper administration in relation to a trust; and	8 9
	(b) either—	10
	(i) is aggrieved by a decision of a trustee or another person in the exercise of a relevant power; or	11 12
	(ii) has reasonable grounds to apprehend a decision of a trustee or another person in the exercise of a relevant power by which the person will be aggrieved.	13 14 15 16
192	Definitions for division	17
	In this division—	18
	<i>aggrieved person</i> see section 191.	19
	<i>decision</i> includes an act and an omission.	20
	<i>relevant power</i> , in relation to a trustee or another person, means a power in relation to trust property or a trust that—	21 22
	(a) is conferred on the trustee or other person under this Act or otherwise; and	23 24
	(b) must be exercised in a fiduciary capacity.	25
193	Application for review or directions	26
	The aggrieved person may apply to the court—	27

(a)	to review the decision of the trustee or other person; or	1
(b)	to give directions in relation to the apprehended decision of the trustee or other person.	2 3
194	Grounds for review or directions	4
(1)	The court may review the decision, or give directions about the apprehended decision, on the ground—	5 6
(a)	the decision or apprehended decision was not, or would not be, an appropriate exercise of the relevant power by the trustee or other person; or	7 8 9
(b)	without limiting paragraph (a), the relevant power was, or would be, exercised by the trustee or other person—	10 11
(i)	in bad faith; or	12
(ii)	without real or genuine consideration; or	13
(iii)	contrary to the purposes of the trust.	14
(2)	The court may require the trustee or other person to appear before it to substantiate and uphold the grounds of the decision or apprehended decision.	15 16 17
195	Orders and directions	18
(1)	The court may, on the application, make the orders and give the directions it considers appropriate, including an order about the costs of the application.	19 20 21
(2)	However, an order must not—	22
(a)	disturb a distribution of the trust property, made without breach of trust, before the trustee or other person became aware of the making of the application to the court; or	23 24 25 26
(b)	affect a right acquired by a person in good faith and for valuable consideration.	27 28

Division 10	Other matters	1
196	Court may decide proceeding in absence of trustee	2
(1)	This section applies if—	3
(a)	a person is, as trustee, a defendant in a proceeding; and	4
(b)	the court is satisfied—	5
(i)	a diligent search has been made for the person; and	6
(ii)	the person can not be found.	7
(2)	The court may—	8
(a)	decide the proceeding in the absence of service on the person; and	9 10
(b)	give judgment against the person, as trustee, as if the person had been properly served.	11 12
(3)	Subject to section 197, judgment given against the person, as trustee, does not affect any interest the person may have in the matters in question in the proceeding in another capacity.	13 14 15
197	Court may appoint representative or make orders in absence of party or interested person	16 17
(1)	This section applies if, at the time of the hearing of a proceeding in relation to a trust, a party to the proceeding or an interested person in relation to the proceeding—	18 19 20
(a)	is not within the jurisdiction; or	21
(b)	is under a legal incapacity; or	22
(c)	can not be found; or	23
(d)	is unborn; or	24
(e)	is not capable of being identified or ascertained.	25
(2)	The court may—	26
(a)	make an order appointing a person to represent the party or interested person; or	27 28

(b)	proceed in the absence of the party or interested person.	1
(3)	An order made in the proceeding is binding on the party or interested person.	2 3
(4)	In this section—	4
	<i>interested person</i> , in relation to a proceeding, means a person, or persons of a class, who the court considers—	5 6
(a)	should be made a party or parties to the proceeding; or	7
(b)	should be given an opportunity to attend and be heard in the proceeding.	8 9
198	Court may charge costs on property	10
	The court may order that the costs of an application under this Act—	11 12
(a)	be paid or raised out of—	13
(i)	the property to which the application relates; or	14
(ii)	the income of the property to which the application relates; or	15 16
(b)	be borne and paid in the way and by the persons the court considers just.	17 18
199	Payment of particular trust property into court by trustees	19 20
(1)	This section applies in relation to trust property comprising trust funds or securities.	21 22
(2)	A trustee who holds the trust property, or has the trust property under the trustee’s control, may pay the trust property into court.	23 24 25
(3)	The receipt of the proper officer of the court is a sufficient discharge to the trustee for the payment of the trust property into court.	26 27 28
(4)	Subject to rules of court, the trust property is to be dealt with as the court, by order, directs.	29 30

[s 200]

- (5) If the trust property is held by, or is under the control of, more than 1 trustee, the trust property may be paid into court on a decision of a majority of the trustees. 1
2
3
- (6) If a majority of the trustees in whom the trust property is vested wish to pay the trust property into court but the agreement of the remaining trustees can not be obtained, the court may order— 4
5
6
7
- (a) that the trust property be paid into court without the agreement of the remaining trustees; and 8
9
- (b) if the trust property is deposited with a financial institution, broker or other depository—that the trust property be paid or delivered to the majority of the trustees for payment into court. 10
11
12
13
- (7) The payment or delivery of the trust property under an order made under this section is as valid and effective as it would be if the payment or delivery were made by all of the trustees of the trust property. 14
15
16
17

Part 12 Charitable trusts 18

Division 1 Trusts containing non-charitable and invalid purposes 19 20

200 Inclusion of non-charitable and invalid purpose not to invalidate trust 21 22

- (1) This section applies if, under a trust, the purposes for which the trust property is directed or allowed to be applied include, or could be taken to include, both a charitable purpose and a non-charitable and invalid purpose. 23
24
25
26
- (2) The trust— 27
- (a) is not invalid only because of the inclusion of the non-charitable and invalid purpose; and 28
29

[s 201]

-
- (b) is to be construed, and has effect, as if the trust did not
direct or allow the trust property to be applied for the
non-charitable and invalid purpose.
- (3) This section does not apply in relation to a trust declared
before, or to the will of a testator dying before, 1 July 1973.

Division 2 Applications to court in relation to charitable trusts

201 Who may apply

Any of the following entities may apply to the court for an
order under this part in relation to a charitable trust—

- (a) the Attorney-General or a person authorised by the
Attorney-General;
- (b) a trustee of the trust;
- (c) a person, or charity, interested in the proper
administration of the trust.

202 Notice of application

- (1) The applicant must give written notice of the application to—
- (a) if the applicant is the Attorney-General or a person
authorised by the Attorney-General—the trustees of the
charitable trust; or
- (b) if the applicant is a trustee of the charitable trust—
- (i) the Attorney-General; and
- (ii) any trustee of the trust who is not a party to the
application; or
- (c) if the applicant is a person, or charity, interested in the
proper administration of the charitable trust—
- (i) the Attorney-General; and
- (ii) the trustees of the trust.

[s 203]

(2)	Also, the applicant must give written notice of the application to any other person or charity as directed by the court.	1 2
203	Orders	3
	The court may make any of the following orders in relation to the charitable trust—	4 5
(a)	an order giving directions about the administration of the trust;	6 7
(b)	an order requiring a trustee to carry out the trust;	8
(c)	an order requiring a trustee to comply with a scheme approved in relation to the trust, whether under this part or otherwise;	9 10 11
(d)	an order requiring a trustee to satisfy the trustee’s liability for a breach of the trust;	12 13
(e)	an order about costs;	14
(f)	an order about another matter that the court considers just.	15 16
Division 3	Schemes to allow trust property to be applied cy pres	17 18
Subdivision 1	Preliminary	19
204	References to purposes of charitable trust	20
	A reference in this division to the purposes of a charitable trust is a reference to—	21 22
(a)	if paragraph (b) does not apply—the original purposes of the trust; or	23 24
(b)	if the application of the trust property has been changed or regulated by a scheme approved under this division or	25 26

otherwise—the purposes for which the trust property
may, for the time being, be applied. 1
2

**205 Circumstances in which purposes of charitable trust may
be changed under sdiv 2 or 3 3
4**

- (1) The circumstances in which the purposes of a charitable trust
may be changed under subdivision 2 or 3 to allow the trust
property to be applied cy pres are as follows— 5
6
7
- (a) the purposes, wholly or in part— 8
- (i) have been, as far as may be, fulfilled; or 9
- (ii) can not be carried out; or 10
- (iii) can not be carried out according to the directions
given and to the relevant considerations; 11
12
- (b) the purposes provide a use for part only of the trust
property; 13
14
- (c) the trust property and other property that may be applied
for similar purposes— 15
16
- (i) can be more effectively used in conjunction; and 17
- (ii) can be appropriately applied to common purposes,
having regard to the relevant considerations; 18
19
- (d) the purposes refer to— 20
- (i) an area that was, but has since ceased to be, a unit
for some other purpose; or 21
22
- (ii) a class of persons, or an area, that has ceased to be
suitable, having regard to the relevant
considerations, or to be practical in administering
the trust; 23
24
25
26
- (e) the purposes, wholly or in part— 27
- (i) have been adequately provided for in other ways;
or 28
29
- (ii) have ceased to be charitable; or 30

[s 206]

	(iii) have, in any other way, ceased to provide a suitable and effective way of using the trust property, having regard to the relevant considerations.	1 2 3
(2)	For subsection (1), the <i>relevant considerations</i> are—	4
	(a) the spirit of the trust; and	5
	(b) the social and economic conditions prevailing at the time of the proposed change to the purposes of the trust.	6 7
(3)	Subsection (1) does not affect the conditions that, apart from this Act, must be satisfied in order that property given for charitable purposes may be applied cy pres, except to the extent the conditions require a failure of the purposes.	8 9 10 11
206	Relationship with Charitable Funds Act 1958	12
	This division does not affect the application of the <i>Charitable Funds Act 1958</i> to the funds to which that Act applies.	13 14
Subdivision 2	Approval of schemes by court	15
207	Court may approve scheme	16
(1)	This section applies if—	17
	(a) an application is made to the court for an order approving a scheme to change the purposes of a charitable trust to allow the trust property to be applied cy pres; and	18 19 20 21
	<i>Note—</i>	22
	See section 201 for who may apply to the court.	23
	(b) the court is satisfied that 1 or more of the circumstances mentioned in section 205(1)(a) to (e) apply in relation to the charitable trust.	24 25 26
(2)	The court may—	27
	(a) grant, or refuse to grant, the order; and	28

- (b) make any other order the court considers just. 1

Subdivision 3 Approval of schemes by Attorney-General 2
3

208 Trustee may apply to Attorney-General to approve scheme 4
5

- (1) This section applies if— 6
- (a) the trustee of a charitable trust seeks approval of a scheme to change the purposes of the trust to allow the trust property to be applied cy pres; and 7
8
9
 - (b) the purposes of the trust have not previously been changed by the court under subdivision 2 or otherwise; and 10
11
12
 - (c) the value of all the trust property does not exceed the monetary limit under the *District Court of Queensland Act 1967*, section 68. 13
14
15
- (2) The trustee may, instead of applying to the court under subdivision 2 or otherwise, apply to the Attorney-General to approve the scheme. 16
17
18
- (3) The application must— 19
- (a) be in the approved form; and 20
 - (b) comply with any requirements prescribed by regulation for the application; and 21
22
 - (c) be accompanied by any fee prescribed by regulation for the application. 23
24

209 Requirements for public notice etc. 25

- (1) On receiving the application, the Attorney-General must, by written notice given to the trustee, require the trustee to give public notice of the application in a stated way the Attorney-General considers appropriate. 26
27
28
29

[s 210]

- (2) The trustee must give public notice of the application in the way stated in the notice given under subsection (1). 1
2
- (3) The public notice must— 3
- (a) invite persons and charities interested in the proper administration of the charitable trust to make written submissions to the Attorney-General within a stated period of at least 28 days after the notice is published (the *submission period*); and 4
5
6
7
8
- (b) state how submissions to the Attorney-General may be made. 9
10
- 210 Powers of Attorney-General** 11
- (1) The Attorney-General may do 1 or more of the following— 12
- (a) ask the trustee to provide any information, opinions or advice the Attorney-General considers appropriate; 13
14
- (b) make any other investigations and inquiries the Attorney-General considers appropriate; 15
16
- (c) propose a variation of the scheme. 17
- (2) If the Attorney-General proposes a variation of the scheme, the Attorney-General must consult the trustee on the proposed variation. 18
19
20
- 211 Deciding application** 21
- (1) The Attorney-General must consider the application and decide to— 22
23
- (a) approve the scheme; or 24
- (b) approve the scheme with a variation proposed under section 210(1)(c); or 25
26
- (c) refuse to approve the scheme. 27
- (2) In making the decision, the Attorney-General must have regard to any written submissions made to the Attorney-General, within the submission period, by a person 28
29
30

-
- or charity interested in the proper administration of the charitable trust. 1
2
- (3) The Attorney-General may decide to approve the scheme 3
under subsection (1)(a) or (b) only if satisfied that— 4
- (a) the value of all the trust property does not exceed the 5
monetary limit under the *District Court of Queensland* 6
Act 1967, section 68; and 7
- (b) 1 or more of the circumstances mentioned in section 8
205(1)(a) to (e) apply in relation to the charitable trust; 9
and 10
- (c) the trustee has given public notice of the application in 11
compliance with section 209(2) and (3); and 12
- (d) for an approval under subsection (1)(b)—the trustee 13
consents to the variation of the scheme proposed by the 14
Attorney-General. 15
- (4) The Attorney-General must decide to refuse to approve the 16
scheme if the Attorney-General considers it more appropriate 17
that the application be dealt with by the court— 18
- (a) because of the contentious nature of the application; or 19
- (b) because a special question of law or fact arises; or 20
- (c) for another reason. 21
- (5) If the Attorney-General decides to refuse to approve the 22
scheme, the Attorney-General must give the trustee written 23
notice of the decision, including the reasons for the decision. 24
- (6) In this section— 25
submission period see section 209(3)(a). 26

212 Public notice of Attorney-General's decision 27

- (1) The Attorney-General must give public notice, in the way the 28
Attorney-General considers appropriate, of the 29
Attorney-General's decision in relation to the scheme. 30
- (2) If the decision is to approve the scheme, the public notice 31
must also state— 32

[s 213]

- (a) that, under section 214, a person aggrieved by the decision may, within 28 days after the notice is given, appeal against the decision to the Supreme Court; and
- (b) the day the scheme takes effect if an appeal against the decision is not started under section 214.

213 Effect of decision to approve scheme

- (1) If the Attorney-General decides under section 211 to approve the scheme, the scheme takes effect on—
 - (a) if an appeal against the decision is started under section 214—the day the Supreme Court affirms the decision or dismisses the appeal; or
 - (b) otherwise—the day that is 28 days after public notice of the decision is given under section 212 or, if the public notice states a later day, the later day.
- (2) On taking effect, the scheme is as effective, for all purposes, as it would be if it were approved by an order of the court under subdivision 2.

214 Appeal against decision to approve scheme

- (1) If the Attorney-General decides under section 211 to approve the scheme, a person aggrieved by the decision may appeal against the decision to the Supreme Court.
- (2) The appeal must be started within 28 days after public notice of the decision to approve the scheme is given under section 212.

215 Application for court approval not prevented by decision to refuse to approve scheme

If the Attorney-General decides under section 211 to refuse to approve the scheme, the decision does not prevent the trustee applying to the court under subdivision 2 or otherwise to approve the scheme.

216	Register of approvals	1
(1)	The chief executive must keep a register of all schemes approved by the Attorney-General under section 211.	2 3
(2)	The register may—	4
(a)	be kept in any form, including electronically, that the chief executive decides; and	5 6
(b)	include any other information relating to a scheme mentioned in subsection (1) that the chief executive considers appropriate, including, for example, details of any appeal started under section 214 against the Attorney-General’s decision to approve the scheme.	7 8 9 10 11
(3)	The register must—	12
(a)	if kept electronically—be published on, or accessible through, the department’s website; or	13 14
(b)	otherwise—be available for public inspection, during the department’s ordinary business hours, at a place decided by the chief executive.	15 16 17
Subdivision 4	Duty of trustees to make cy pres applications	18 19
217	Duty of trustee in relation to application of property cy pres	20 21
(1)	This section applies to the trustee of a charitable trust if the circumstances permit the trust property to be applied cy pres.	22 23
(2)	The trustee has a duty to secure the effective use of the trust property for charitable purposes by making an appropriate application under this division or otherwise to have the property applied cy pres.	24 25 26 27

[s 218]

Part 13	Gifts by particular trustees for philanthropic purposes	1 2
218	Definitions for part	3
	In this part—	4
	<i>eligible recipient</i> means a deductible gift recipient within the meaning of the <i>Income Tax Assessment Act 1997</i> (Cwlth) that—	5 6 7
	(a) is mentioned in section 30-15, table, item 1 of that Act; and	8 9
	(b) is not a charity because of its connection with government or being a government entity; and	10 11
	(c) would be a charity if it did not have the connection with government or were not a government entity.	12 13
	<i>government entity</i> has the meaning given by the <i>Charities Act 2013</i> (Cwlth), section 4.	14 15
	<i>prescribed power</i> , for a prescribed trust, see sections 219(2) and 220(3).	16 17
	<i>prescribed trust</i> means—	18
	(a) a fund mentioned in the <i>Income Tax Assessment Act 1997</i> (Cwlth), section 30-15, table, item 2; or	19 20
	(b) a trust that—	21
	(i) is established and maintained for charitable or philanthropic purposes; and	22 23
	(ii) is of a class prescribed by regulation.	24
219	Prescribed trust—express power in trust instrument to give to eligible recipients	25 26
	(1) The trust instrument for a prescribed trust may include an express power for the trustees to provide money, property or benefits—	27 28 29

(a)	to or for an eligible recipient; or	1
(b)	for the establishment of an eligible recipient.	2
(2)	An express power mentioned in subsection (1) that is included in the trust instrument for a prescribed trust is a <i>prescribed power</i> for the trust.	3 4 5
220	Prescribed trust—no express power in trust instrument to give to eligible recipients	6 7
(1)	This section applies if the trust instrument for a prescribed trust does not include an express power mentioned in section 219(1).	8 9 10
(2)	The trustees' powers for the prescribed trust include the power to provide money, property or benefits—	11 12
(a)	to or for an eligible recipient; or	13
(b)	for the establishment of an eligible recipient.	14
(3)	The power conferred under subsection (2) in relation to the prescribed trust is a <i>prescribed power</i> for the trust.	15 16
(4)	Subsection (2)—	17
(a)	applies despite any provision to the contrary in the trust instrument; but	18 19
(b)	does not apply in relation to a particular eligible recipient, or to eligible recipients of a particular class, to the extent there is an express prohibition in the trust instrument against the provision by the trustees of money, property or benefits—	20 21 22 23 24
(i)	to or for that eligible recipient or eligible recipients of that class; or	25 26
(ii)	for the establishment of that eligible recipient or eligible recipients of that class.	27 28

[s 221]

221	Application of Act to prescribed trust	1
(1)	This Act applies in relation to a prescribed trust as if a prescribed power for the trust were a power exercisable for a charitable purpose.	2 3 4
(2)	Without limiting subsection (1)—	5
(a)	neither the existence nor the exercise of the prescribed power affects the validity or status of the prescribed trust as a charitable trust; and	6 7 8
(b)	the prescribed trust is to be construed and given effect to as if—	9 10
(i)	the prescribed power were a power exercisable for a charitable purpose; and	11 12
(ii)	any payment or application of the trust property or the trust income, or any part of either of them, in the way allowed by the power were to or for a charitable purpose; and	13 14 15 16
(c)	the existence or exercise of the prescribed power does not affect the control of the prescribed trust by the Supreme Court in the exercise of the court’s general jurisdiction in relation to charitable trusts; and	17 18 19 20
(d)	the jurisdiction mentioned in paragraph (c) extends to the prescribed power as if the power were exercisable for a charitable purpose.	21 22 23

Part 14 **Statutory trustees** 24

222	Restriction on exercise of particular powers by statutory trustees	25 26
	Despite sections 87 and 88, a statutory trustee may exercise the following powers in relation to the trust property only with the approval of the court—	27 28 29
(a)	the powers mentioned in section 87(2)(a) and (c);	30

-
- (b) the power mentioned in section 87(2)(b), other than to the extent the power is exercised to—
 - (i) lease the trust property at a reasonable rent for a term of not more than 1 year, or from year to year, or for a weekly, monthly or other periodic tenancy, or a tenancy at will; or
 - (ii) renew a lease or tenancy mentioned in subparagraph (i);
 - (c) the power to vary the terms of a lease of the trust property or accept, or join with any other persons in accepting, the surrender of a lease of the trust property;
 - (d) the powers mentioned in section 88.

223 Rights, duties and protections of statutory trustees 13

- (1) In exercising a power under this Act, a statutory trustee—
 - (a) has all the rights of a trustee; and
 - (b) has all the duties and liabilities of a trustee for the parties beneficially interested in the trust property; and
 - (c) is entitled to all the indemnities and protections to which a trustee is entitled.
- (2) However, despite subsection (1)(b), a statutory trustee is not liable to impeachment of waste in relation to the exercise of a power under this Act.
- (3) This section applies subject to any order made, or direction given, by the court.

Part 15 Miscellaneous 25

224 Regulation-making power 26

The Governor in Council may make regulations under this Act. 27
28

[s 225]

225	Approved forms	1
	The chief executive may approve forms for use under this Act.	2
Part 16	Repeal	3
226	Repeal of Trusts Act 1973	4
	The Trusts Act 1973, No. 24 is repealed.	5
Part 17	Transitional and validation provisions	6
		7
Division 1	Preliminary	8
227	Definition for part	9
	In this part—	10
	<i>repealed Act</i> means the repealed <i>Trusts Act 1973</i> .	11
228	Application of Acts Interpretation Act 1954	12
	This part does not limit or otherwise affect the <i>Acts Interpretation Act 1954</i> , section 20 or 20A.	13
		14
Division 2	Restrictions on appointment of trustees	15
		16
229	Existing trustees not affected by particular restrictions on appointment	17
		18
	Section 13 does not apply to the appointment of a person as trustee that took effect before the commencement.	19
		20

230	Existing trusts with more than 4 trustees	1
(1)	This section applies in relation to trust property if—	2
(a)	immediately before the commencement—	3
(i)	the repealed Act, section 11(1) applied in relation to the trust property; and	4
(ii)	there were more than 4 trustees of the trust property; and	6
(b)	on the commencement, section 14 would, but for this section, apply to the trust.	8
(2)	Despite section 14, the repealed Act, section 11(1) continues to apply in relation to the trust property until the earlier of the following to happen—	10
(a)	the number of trustees of the trust is reduced to 4 or less;	13
(b)	the court approves the appointment of more than 4 trustees of the trust under section 15.	14
		15
231	Existing certificates of Minister approving of more than 4 trustees	16
(1)	This section applies in relation to trust property if—	18
(a)	before the commencement, the Minister gave a certificate mentioned in the repealed Act, section 11(3)(b) approving of a greater number of trustees than 4 in whom the trust property was, or was to be, vested; and	19
(b)	immediately before the commencement, the certificate was still in effect.	24
(2)	Despite the repeal of the repealed Act, the certificate continues to have effect for the trust to approve the number of trustees approved under the certificate.	26
(3)	Also, section 14 applies to the trust as if—	29
(a)	the reference in section 14(2) to 4 trustees were a reference to the number of trustees approved under the certificate; and	30
		31
		32

[s 232]

- (b) a reference in section 14(3) to 4 persons were a reference to the number of persons that was approved under the certificate as the number of trustees.

Division 3 **Provisions for appointment, discharge and removal of trustees and devolution of trusts**

- 232** **Appointment of trustees—replacement of trustee in particular circumstances happening or starting before commencement**
- (1) Section 20 applies in relation to a relevant trustee whether a circumstance mentioned in section 20(1) happened, or started to apply, in relation to the relevant trustee before or after the commencement.
- (2) Also, section 20 applies as if a reference in the section to a relevant trustee included a reference to a trustee who—
- (a) was appointed as trustee before the commencement; and
- (b) is a child.
- 233** **Appointment of trustees—replacement of last continuing trustee who is dead**
- (1) Section 21 applies in relation to the last continuing trustee of a trust who is dead, whether the death happened before or after the commencement.
- (2) However, for a trust created before the commencement, section 21(5) applies to the personal representative of the last continuing trustee as if the provision were not expressed to be subject to a contrary intention in the trust instrument.

234	Appointment of trustees—replacement of last continuing trustee with impaired capacity or who is bankrupt etc.	1 2
	Sections 22 and 23 apply only in relation to a trust created after the commencement.	3 4
235	Appointment of trustees—additional trustees	5
(1)	This section applies if, under section 231, a certificate mentioned in the repealed Act, section 11(3)(b) continues to have effect for a trust.	6 7 8
(2)	Section 24 applies in relation to the trust as if the reference in section 24(1)(a) to the number of trustees permitted for the trust under section 14 were a reference to the number of trustees approved for the trust under the certificate.	9 10 11 12
(3)	However, for a trust created before the commencement, section 24(4) applies to an appointor for the trust as if the provision were not expressed to be subject to a contrary intention in the trust instrument.	13 14 15 16
236	Vesting of trust property in existing trustees	17
(1)	This section applies if—	18
(a)	before the commencement, 1 or more trustees were appointed under the repealed Act, section 12; and	19 20
(b)	immediately before the commencement, any assurance or thing required for vesting the trust property or any part of the trust property jointly in the persons who were the trustees had not been executed or done under the repealed Act, section 12(2)(d).	21 22 23 24 25
(2)	The repealed Act, section 12(2)(d) continues to apply in relation to the vesting of the trust property as if this Act had not been enacted.	26 27 28

[s 237]

237	Powers etc. of existing trustees appointed under repealed Act, s 12	1 2
	The reference in section 26(1) to a person appointed under part 3, division 2 as a trustee of trust property is taken to include a reference to a person—	3 4 5
	(a) who was appointed as a trustee of trust property under the repealed Act, section 12; and	6 7
	(b) whose appointment was still in effect immediately before the commencement.	8 9
238	Removal and discharge of trustees in particular circumstances happening or starting before commencement	10 11 12
	(1) Section 29 applies in relation to a relevant trustee mentioned in section 20(1)(c), (d), (e), (f), (g) or (h) whether a circumstance mentioned in those paragraphs happened, or started to apply, in relation to the relevant trustee before or after the commencement.	13 14 15 16 17
	(2) Also, section 29 applies as if a reference in the section to a relevant trustee mentioned in section 20(1)(c), (d), (e), (f), (g) or (h) included a reference to a trustee who—	18 19 20
	(a) was appointed as trustee before the commencement; and	21
	(b) is a child.	22
239	Application of requirement to notify former delegate of trustee’s replacement, removal or discharge	23 24
	Section 31 applies in relation to the replacement, removal or discharge of a trustee only if the replacement, removal or discharge happens after the commencement.	25 26 27
240	Vesting and divesting of particular trust property if trustees appointed or discharged before commencement	28 29
	(1) This section applies if—	30

(a)	before the commencement, it was required under the repealed Act, section 15(3) that the vesting of trust property in a new trustee, or the divesting of trust property from a discharged trustee, should be notified to or registered or recorded by the registrar or another person mentioned in that section; and	1 2 3 4 5 6
(b)	immediately before the commencement, the trustees had not complied with the repealed Act, section 15(3) in relation to the vesting or divesting of the trust property.	7 8 9
(2)	The repealed Act, section 15 continues to apply in relation to the vesting or divesting of the trust property as if this Act had not been enacted.	10 11 12
241	Exercise of trust powers etc. by surviving trustees	13
	Section 36 applies to a surviving trustee whether the trustee they survive died before or after the commencement.	14 15
242	Vesting of trust property and devolution of trusts—death of last continuing trustee before commencement	16 17
(1)	If, immediately before the commencement, trust property remained vested in the public trustee under the repealed Act, section 16(2), the repealed Act, section 16 continues to apply in relation to the following matters as if this Act had not been enacted—	18 19 20 21 22
(a)	the devolution and vesting of the trust property;	23
(b)	the public trustee’s powers, authorities and discretions in relation to the trust property.	24 25
(2)	Despite its repeal, the repealed Act, section 16(6) continues to apply to a person—	26 27
(a)	in whom trust property vested before the commencement under the repealed Act, section 16(2)(b); or	28 29 30

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	(b) in whom trust property vests after the commencement under the repealed Act, section 16(2)(b) as applied by subsection (1).	1 2 3
(3)	Subsection (4) applies if—	4
	(a) before the commencement, trust property was divested from the public trustee under the repealed Act, section 16(2)(a) or (b); or	5 6 7
	(b) after the commencement, trust property is divested from the public trustee under the repealed Act, section 16(2)(a) or (b) as applied by subsection (1).	8 9 10
(4)	Despite its repeal, the repealed Act, section 16(7) continues to apply in relation to—	11 12
	(a) the liability of the public trustee in respect of any action taken by the public trustee with regard to the trust property; and	13 14 15
	(b) any person who, but for paragraph (a), would have had a remedy against the public trustee.	16 17
243	Vesting of trust property and devolution of trusts—death of last continuing trustee after commencement	18 19
	Part 3, division 7 applies only if the last continuing trustee of a trust dies after the commencement.	20 21
244	Vesting of trust property and devolution of trusts—last continuing trustee with impaired capacity for particular matters	22 23 24
	Part 3, division 8 applies only if an appointment or a decision mentioned in section 44(1)(a) or (b) is made for, or in relation to, the last continuing trustee of a trust after the commencement.	25 26 27 28

245	Mortgage estates vested in public trustee before commencement	1 2
(1)	This section applies if, immediately before the commencement, an estate or interest in property by way of mortgage was vested in the public trustee under the repealed Act, section 17(1).	3 4 5 6
(2)	The repealed Act, section 17 continues to apply in relation to the estate or interest in the property as if this Act had not been enacted.	7 8 9
246	Grantee under letters of administration taken to be trustee of testamentary trust after disclaimer before commencement	10 11 12
	Section 50 applies in relation to a person who is appointed by will as both executor of the will and trustee as if the reference in section 50(1)(a)(i) to the person being taken under section 49 to have disclaimed the trust contained in the will included a reference to the person's conduct being deemed under the repealed Act, section 18(1) to be a disclaimer of the trust contained in the will.	13 14 15 16 17 18 19
Division 4	Provisions for custodian trustees	20
247	Definition for division	21
	In this division—	22
	<i>existing custodian trustee</i> means a custodian trustee—	23
(a)	who was appointed under the repealed Act, section 19(1); and	24 25
(b)	whose appointment was still in effect immediately before the commencement.	26 27

[s 248]

248	Application of pt 4 to existing trusts	1
	Part 4 applies in relation to a trust created before the commencement as if the reference in sections 53(5), 54(4), 55(3), 56(3), 57(3) and 59(3) to an express contrary intention in the trust instrument were a reference to the provisions of the trust instrument.	2 3 4 5 6
249	Application of Act to existing custodian trustees	7
	Without limiting section 248, this Act applies in relation to an existing custodian trustee as if—	8 9
	(a) the existing custodian trustee had been appointed as a custodian trustee under section 52; and	10 11
	(b) the trust property had vested in the existing custodian trustee under section 53; and	12 13
	(c) the reference in sections 55(1) and (2) and 59(1) to an instrument included a reference to an instrument made before the commencement and still in effect immediately before the commencement.	14 15 16 17
Division 5	Provisions for investments	18
250	Investment advice obtained before commencement	19
	(1) This section applies in relation to advice obtained by a trustee under the repealed Act, section 24(2) if, immediately before the commencement, the trustee had not—	20 21 22
	(a) considered the advice; or	23
	(b) paid the reasonable costs of obtaining the advice out of trust funds.	24 25
	(2) Section 76(2) applies in relation to the advice as if the advice had been obtained under section 76(1).	26 27

251	First review of existing trust investments	1
(1)	This section applies in relation to trust investments held by a trustee immediately before the commencement.	2 3
(2)	Despite section 77, the first review of the performance of the trust investments must be conducted—	4 5
(a)	if the most recent review of the trust investments under the repealed Act, section 22(3) was conducted more than 12 months before the commencement, or a review of the trust investments was never conducted under that section—within 12 months after the commencement; or	6 7 8 9 10
(b)	otherwise—within 12 months after the most recent review of the trust investments was conducted under the repealed Act, section 22(3).	11 12 13
252	Dwelling house purchased etc. as residence before commencement	14 15
(1)	This section applies if—	16
(a)	before the commencement, a trustee purchased, retained or otherwise secured a dwelling house for a beneficiary to use as a residence under the repealed Act, section 28; and	17 18 19 20
(b)	immediately before the commencement—	21
(i)	the trustee had not yet made the dwelling house available to the beneficiary to use as a residence; or	22 23
(ii)	the beneficiary was using the dwelling house as a residence; or	24 25
(iii)	if the beneficiary’s use of the dwelling house had ended—the trustee had retained the dwelling house or an interest or rights in the dwelling house under the repealed Act, section 28(4).	26 27 28 29
(2)	Section 80 applies in relation to the dwelling house as if—	30
(a)	the dwelling house were a residence bought, retained or otherwise secured by the trustee under section 80(1); and	31 32 33

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	(b) any conditions on which the dwelling house was being made available to the beneficiary immediately before the commencement had been imposed under section 80(2) and (3).	1 2 3 4
253	Liability for particular loans made by trustee before commencement	5 6
	Sections 83 and 84 apply in relation to a loan of trust funds on the security of property whether made before or after the commencement.	7 8 9
254	Proceedings against trustees for breach of trust in relation to exercise of investment power	10 11
	(1) Section 85 applies in relation to the exercise of an investment power whether the power was exercised before or after the commencement.	12 13 14
	(2) However, section 85 does not apply in relation to a proceeding started before the commencement.	15 16
	(3) For this section and section 85 as applied by subsection (1), a reference to an investment power is taken to include a reference to a power conferred on a trustee under the repealed Act, part 3.	17 18 19 20
	(4) Without limiting subsection (3), for a proceeding in relation to an investment power exercised before the commencement, section 85 applies as if—	21 22 23
	(a) the section did not include section 85(2)(b); and	24
	(b) the reference in section 85(2)(c) to section 75 included a reference to the repealed Act, section 24.	25 26
	(5) The repealed Act, section 30B continues to apply in relation to a proceeding started before the commencement as if this Act had not been enacted.	27 28 29

255	Set off of gains and losses in proceedings for breach of trust	1 2
(1)	Section 86 applies in relation to an investment whether made before or after the commencement.	3 4
(2)	However, section 86 does not apply in relation to a proceeding started before the commencement.	5 6
(3)	The repealed Act, section 30C continues to apply in relation to a proceeding started before the commencement as if this Act had not been enacted.	7 8 9
256	Particular references in documents to authorised investments etc.	10 11
(1)	Subsection (2) applies if a provision in a document, whether or not the document creates a trust, authorises or requires a person to invest an amount in the investments authorised by the <i>Trusts Act 1973</i> as in force immediately before the commencement of the <i>Trusts (Investments) Amendment Act 1999</i> .	12 13 14 15 16 17
(2)	The provision is to be read as if it authorised or required the person to invest the amount according to the provisions of part 6 in relation to the investment of trust funds.	18 19 20
(3)	Subsection (4) applies to a reference in a document to—	21
(a)	an authorised investment under the repealed <i>Trustees and Executors Act 1897</i> , section 4; or	22 23
(b)	an authorised investment under the <i>Trusts Act 1973</i> as in force immediately before the commencement of the <i>Trusts (Investments) Amendment Act 1999</i> .	24 25 26
(4)	The reference may, if the context permits, be taken to be a reference to an investment that—	27 28
(a)	could be made by a trustee exercising an investment power under part 6; or	29 30
(b)	is authorised by an order made under section 184; or	31
(c)	is authorised by another Act for the investment of trust funds or the general law.	32 33

[s 257]

Division 6	Provisions for general powers of trustees	1 2
257	Application of general powers in relation to existing trust property	3 4
(1)	To remove any doubt, it is declared that the powers conferred on a trustee in relation to trust property under section 87 apply in relation to trust property held by a trustee immediately before the commencement.	5 6 7 8
(2)	Without limiting subsection (1), the powers mentioned in section 87(2)(b) and (c) to renew, extend or vary a lease or mortgage of trust property apply in relation to a lease or mortgage in existence immediately before the commencement.	9 10 11 12 13
258	Power to apportion particular expenditure and payments made before commencement	14 15
(1)	This section applies if—	16
(a)	before the commencement, a trustee expended money or made a payment under the repealed Act, section 33(1)(a) to (f); and	17 18 19
(b)	immediately before the commencement, the trustee had not apportioned the expenditure or payment under the repealed Act, section 33(1)(g).	20 21 22
(2)	Section 91 applies to the trustee as if the reference in section 91(1) to expenditure made under section 90 included a reference to the expenditure or payment made under the repealed Act, section 33(1)(a) to (f).	23 24 25 26
259	Existing notices of appropriation	27
(1)	This section applies if—	28
(a)	before the commencement, notice of an appropriation of trust property was given to 1 or more persons under the repealed Act, section 33(1)(i)(ii); and	29 30 31

(b)	immediately before the commencement—	1
(i)	the appropriation had not been made; or	2
(ii)	if an application to vary the appropriation had been made—the application had not been decided.	3 4
(2)	The repealed Act, section 33(1)(1) and (2) to (4) continues to apply in relation to the appropriation as if this Act had not been enacted.	5 6 7
260	Appropriation before commencement to pay annuity or periodic payment	8 9
(1)	This section applies if, under the repealed Act, section 33(1)(m), a trustee set aside and appropriated out of the trust property and invested a sum to pay an annuity or other periodic payment.	10 11 12 13
(2)	The repealed Act, section 33(1)(m)(i) continues to apply to the annuitant as if this Act had not been enacted.	14 15
(3)	Also, if immediately before the commencement, the trustee had not distributed the residue of the trust property and the income from the residue—	16 17 18
(a)	the repealed Act, section 33(1)(m)(ii) continues to apply to the trustee as if this Act had not been enacted; and	19 20
(b)	if the residue of the trust property is or includes land subject to the provisions of the <i>Land Title Act 1994</i> or any other Act—the repealed Act, section 33(5) continues to apply as if this Act had not been enacted.	21 22 23 24
261	Distribution of land after notice given to registrar or other person before commencement	25 26
(1)	This section applies if—	27
(a)	before the commencement, a trustee gave the relevant official notice under the repealed Act, section 33(5) that land subject to the provisions of the <i>Land Title Act 1994</i> or another Act was distributable because of an appropriation mentioned in that subsection; and	28 29 30 31 32

[s 262]

	(b) immediately before the commencement, the relevant official had not registered or recorded the dealing effecting the distribution of the land.	1 2 3
(2)	The repealed Act, section 33(5) continues to apply in relation to the relevant official as if this Act had not been enacted.	4 5
(3)	In this section—	6
	<i>relevant official</i> , in relation to land subject to the provisions of the <i>Land Title Act 1994</i> or another Act, means the registrar or other person, if any, having the duty or function of registering or recording dealings under that Act.	7 8 9 10
262	Conveyance of property sold before commencement on terms of deferred payment	11 12
(1)	This section applies if—	13
	(a) before the commencement, a trustee sold property on terms of deferred payment under the repealed Act, section 37; and	14 15 16
	(b) immediately before the commencement, the balance of the purchase money and any interest payable on the balance of the purchase money under that section had not been paid.	17 18 19 20
(2)	The repealed Act, section 37 continues to apply in relation to the sale as if this Act had not been enacted.	21 22
263	Delegation of matter by power of attorney in operation before commencement	23 24
(1)	This section applies if, immediately before the commencement, a power of attorney delegating a matter under the repealed Act, section 56(1) was in operation under section 56(5) of that Act.	25 26 27 28
(2)	Subject to subsection (3), the repealed Act, section 56 continues to apply in relation to the power of attorney as if this Act had not been enacted.	29 30 31

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- (3) The repealed Act, section 56(2) continues to apply only until the earliest of the following to happen—
- (a) the power of attorney is revoked under the repealed Act, section 56(5);
 - (b) the power of attorney, to the extent it provides for the delegation, otherwise ends;
 - (c) the end of the day that is 1 year after the day this section commences.
- 264 Existing appointments of agents**
- (1) This section applies if, immediately before the commencement, the appointment of an agent under the repealed Act, section 54 was still in effect.
 - (2) The appointment of the agent is taken to have been made under section 112 on the same terms and conditions that applied to the agent before the commencement.
 - (3) Despite section 112(5), subsection (2) applies whether or not the agent is a beneficiary of the trust to which the appointment relates.
- 265 Application of income by trustee-mortgagee in possession**
- (1) Part 7, division 6 applies only in relation to a trustee who becomes mortgagee in possession of land in the circumstances mentioned in section 115(1) after the commencement.
 - (2) If a trustee became mortgagee in possession of mortgaged land before the commencement in the circumstances mentioned in the repealed Act, section 42(1), the repealed Act, section 42 continues to apply as if this Act had not been enacted.

[s 266]

266	Application of insurance money	1
(1)	Section 120 applies in relation to the application of an amount received by a trustee under an insurance policy whether the policy was taken out before or after the commencement.	2 3 4
(2)	However, section 120 applies only in relation to an amount received after the commencement.	5 6
(3)	The repealed Act, section 48 continues to apply in relation to the application of an amount received by a trustee under an insurance policy before the commencement as if this Act had not been enacted.	7 8 9 10
267	Payment for deposit of documents for safe custody before commencement	11 12
(1)	This section applies if, immediately before the commencement, any sum payable in respect of the deposit by a trustee of a document under the repealed Act, section 49 had not been paid.	13 14 15 16
(2)	The repealed Act, section 49 continues to apply in relation to the payment of the sum as if this Act had not been enacted.	17 18
268	Valuations if required consultation undertaken before commencement	19 20
(1)	This section applies if—	21
(a)	before the commencement, a trustee, for the purpose of fixing the value of any property under the repealed Act, section 51, consulted a duly qualified person as to the value of the property; and	22 23 24 25
(b)	immediately before the commencement, the trustee had not fixed the value of the property.	26 27
(2)	Section 122 applies to the trustee as if the consultation mentioned in subsection (1)(a) were consultation undertaken under section 122(3)(a) about the value of the property.	28 29 30

269	Audit conducted before commencement	1
(1)	This section applies if—	2
(a)	before the commencement, the accounts of trust property were examined or audited under the repealed Act, section 52(1); and	3 4 5
(b)	immediately before the commencement, the costs of the examination or audit had not been charged against the capital or income of the trust property.	6 7 8
(2)	The repealed Act, section 52(2) and (3) continues to apply in relation to the costs of the examination or audit as if this Act had not been enacted.	9 10 11
270	Costs etc. of inquiries about beneficiaries	12
(1)	Section 125 applies in relation to the costs, expenses and charges incurred by a trustee in making inquiries to ascertain the existence or whereabouts of a beneficiary of the trust, whether the costs, expenses and charges were incurred before or after the commencement.	13 14 15 16 17
(2)	However, for a trust created before the commencement, section 125 applies as if the reference in section 125(3) to an express contrary intention in the trust instrument were a reference to a contrary intention in the trust instrument.	18 19 20 21
271	Effect of conversion of land or personal property before commencement under statutory power	22 23
	A reference in section 127 to the exercise of power under this Act is taken to include a reference to the exercise of power under the repealed Act.	24 25 26
272	Businesses carried on before commencement	27
(1)	This section applies if, immediately before the commencement, a trustee was carrying on a business under the repealed Act, section 57.	28 29 30

[s 273]

(2)	The repealed Act, section 57 continues to apply to the trustee in relation to the business as if this Act had not been enacted.	1 2
Division 7	Provisions for maintenance, education and advancement	3 4
273	Accumulations of surplus trust income held before commencement	5 6
(1)	This section applies if, immediately before the commencement, a trustee held accumulations of the income of trust property under the repealed Act section 61(2), including that section as applied by the repealed Act, section 61(5).	7 8 9 10 11
(2)	Section 130, including that section as applied by section 132, applies in relation to the accumulations as if they were amounts invested and held by the trustee under section 130(2).	12 13 14
274	Application of trust capital if capital paid or applied before commencement	15 16
(1)	This section applies if, before the commencement, a trustee exercised power under the repealed Act, section 62 to pay or apply an amount out of the trust capital in relation to a beneficiary of the trust.	17 18 19 20
(2)	For exercising power under section 133 in relation to the beneficiary, the reference in section 133(4) to the amounts of the relevant capital paid or applied is taken to include a reference to the amount paid or applied out of the trust capital in relation to the beneficiary under the repealed Act, section 62.	21 22 23 24 25 26
(3)	Also, section 136 applies in relation to the beneficiary as if the reference in that section to an amount paid or applied out of relevant capital under part 8, division 3 included a reference to an amount paid or applied out of the trust capital in relation to the beneficiary under the repealed Act, section 62.	27 28 29 30 31

275	Requirement for chief executive to publish prescribed amount for financial year	1 2
	The first financial year in relation to which section 135(2) applies is the financial year mentioned in section 135(1)(b).	3 4
276	Conditions imposed before commencement on advances for maintenance etc.	5 6
	(1) This section applies if, immediately before the commencement, a condition imposed under the repealed Act, section 63 was still in effect.	7 8 9
	(2) Part 8, division 4 applies in relation to the condition as if it were a condition imposed under section 137(2) in exercising a power mentioned in section 137(1).	10 11 12
277	Existing protective trusts	13
	(1) This section applies if, immediately before the commencement, income (including any annuity or other periodical income payment) was directed to be held on protective trusts for the benefit of any person for the period of the person's life or for any less period.	14 15 16 17 18
	(2) Until the end of the period mentioned in subsection (1), the income continues to be held on the trusts provided for under the repealed Act, section 64 as if this Act had not been enacted.	19 20 21 22
Division 8	Provisions for indemnities and protection of trustees and other persons	23 24 25
278	Protection against liability for rents and covenants if accrued liabilities satisfied before commencement	26 27
	(1) This section applies if—	28

[s 279]

- (a) before the commencement, a personal representative or trustee who was liable under a lease, grant or indemnity for a matter mentioned in the repealed Act, section 66(1)(a), (b) or (c) satisfied all liabilities that had accrued and, if necessary, set apart a fund as mentioned in the repealed Act, section 66(1); but
 - (b) immediately before the commencement, the personal representative or trustee had not distributed the residuary real and personal estate of the deceased testator or intestate, or the trust estate, under the repealed Act, section 66(1)(d).
 - (2) The repealed Act, section 66 continues to apply in relation to the distribution of the residuary real and personal estate, or the trust estate, as if this Act had not been enacted.
- 279 Existing notices of intended distribution of trust property or estate**
- (1) This section applies if—
 - (a) before the commencement, a trustee or personal representative gave notice under the repealed Act, section 67(1) in relation to the distribution of any trust property or estate; and
 - (b) either—
 - (i) the date fixed in the notice for the sending of particulars of claims was a date on or after the commencement; or
 - (ii) if subparagraph (i) does not apply—immediately before the commencement, the trust property or estate had not been distributed.
 - (2) The repealed Act, section 67 continues to apply in relation to the distribution of the trust property or estate as if this Act had not been enacted.

280	Existing notices calling on claimants and potential claimants to take legal proceedings etc.	1 2
(1)	This section applies in relation to a claim mentioned in the repealed Act, section 68(1) if—	3 4
(a)	before the commencement, a trustee served a notice under the repealed Act, section 68(1) calling on the claimant or a person who may become a claimant, within a period of 6 months from the date of service of the notice, to take legal proceedings to enforce the claim and also to prosecute the proceedings with all due diligence; and	5 6 7 8 9 10 11
(b)	immediately before the commencement—	12
(i)	the period of 6 months had not ended; or	13
(ii)	the claimant or other person had not complied with the notice.	14 15
(2)	The repealed Act, section 68 continues to apply in relation to the claim, and a proceeding started under the repealed Act, section 68(2) must be heard and decided as if this Act had not been enacted.	16 17 18 19
(3)	However, for deciding the proceeding, the reference in the repealed Act, section 68(3)(a) to barring the claim is taken to be a reference to barring the claim (including for all purposes).	20 21 22 23
281	Existing proceedings for orders in relation to proceedings not taken or prosecuted in compliance with notice served before commencement	24 25 26
(1)	This section applies if a proceeding under the repealed Act, section 68(2) was started, but not finally decided, before the commencement.	27 28 29
(2)	The repealed Act, section 68 continues to apply in relation to the proceeding, and the proceeding must be heard and decided, as if this Act had not been enacted.	30 31 32
(3)	However, for deciding the proceeding, the reference in the repealed Act, section 68(3)(a) to barring the claim is taken to	33 34

[s 282]

be a reference to barring the claim (including for all
purposes). 1
2

282 Remedies for wrongful distribution of trust property 3

(1) Part 9, division 3— 4

(a) applies in relation to the enforcement of a remedy for
the wrongful distribution of trust property whether the
wrongful distribution was made before or after the
commencement; but 5
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(b) does not apply in relation to a proceeding started before
the commencement. 9
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(2) Also, subsection (3) applies if— 11

(a) before the commencement— 12

(i) a person who suffered loss because of a trustee's
wrongful distribution of trust property applied for
the leave of the court, as mentioned in the repealed
Act, section 113(2), to enforce a remedy against
another person in respect of the wrongful
distribution without first exhausting all remedies
that may have been available to the person against
the trustee; and 13
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(ii) the court made an order refusing leave for the
person to enforce the remedy in the way mentioned
in subparagraph (i); and 21
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(b) immediately before the commencement, the person had
not started a proceeding to enforce the remedy against
the trustee. 24
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(3) On the commencement, the order ceases to have effect and,
without limiting subsection (1), section 148(3) applies to the
person for the purpose of enforcing the remedy in respect of
the wrongful distribution. 27
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(4) The repealed Act, section 113 continues to apply in relation to
a proceeding started before the commencement to enforce a 31
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	remedy for the wrongful distribution of trust property as if this Act had not been enacted.	1 2
283	Expenses reasonably incurred before commencement in administering trust	3 4
	Section 154 applies in relation to expenses reasonably incurred in administering a trust whether incurred before or after the commencement.	5 6 7
284	Statement in existing instrument about vacancy in trust or removal of trustee	8 9
	Section 156 applies in relation to an instrument under which a new trustee is appointed or a trustee is removed, whether made before or after the commencement.	10 11 12
285	Power of court to relieve trustee from personal liability for breach of trust committed before commencement	13 14
	Section 160 applies in relation to a breach of trust whether committed before or after the commencement.	15 16
286	Power of court to make beneficiary indemnify for breach of trust committed before commencement	17 18
	Section 161 applies in relation to a breach of trust whether committed before or after the commencement.	19 20
287	Indemnity for acts done under particular court orders	21
	To remove any doubt, it is declared that a reference in section 162 to an order purporting to be made under this Act includes a reference to an order purporting to be made under a provision of the repealed Act that, under a provision of this Act, continues to apply after the commencement.	22 23 24 25 26

[s 288]

Division 9	Provisions for remuneration of trustees	1 2
288	Existing proceedings for remuneration of trustees	3
(1)	This section applies if a proceeding under the repealed Act, section 101(1) was started, but not finally decided, before the commencement.	4 5 6
(2)	The repealed Act continues to apply in relation to the proceeding, and the proceeding must be heard and decided, as if this Act had not been enacted.	7 8 9
289	Proceedings for remuneration of trustees for whom charges have been paid out under repealed Act	10 11
(1)	This section applies if—	12
(a)	before the commencement, charges were paid out of trust property to a trustee under the repealed Act, section 101(2); and	13 14 15
(b)	after the commencement, the trustee starts a proceeding under section 165.	16 17
(2)	Section 165 applies in relation to the proceeding as if the reference in section 165(2) to professional charges paid out of the trust property to the trustee under section 164 included a reference to charges paid out of the trust property to the trustee under the repealed Act, section 101(2).	18 19 20 21 22
290	Application of s 166 to amounts charged, or proposed to be charged, for commission or professional charges	23 24
	Section 166 applies only in relation to an amount for commission or professional charges that is charged, or proposed to be charged, after the commencement.	25 26 27

Division 10	Provisions for court powers	1
291	Existing proceedings under particular provisions of repealed Act	2 3
(1)	This section applies if, immediately before the commencement, a proceeding started under any of the following provisions of the repealed Act had not been finally decided—	4 5 6 7
(a)	section 8;	8
(b)	part 7, division 2 or 3;	9
(c)	part 7, division 4, other than section 101.	10
(2)	The repealed Act continues to apply in relation to the proceeding, and the proceeding must be heard and decided under the repealed Act, as if this Act had not been enacted.	11 12 13
292	Powers etc. of trustees appointed by court under repealed Act, s 80	14 15
	The reference in section 172(1) to a person appointed by an order made under section 171(2) as the trustee of trust property is taken to include—	16 17 18
(a)	a reference to a person appointed as a trustee under the repealed Act, section 80 whose appointment was still in effect immediately before the commencement; and	19 20 21
(b)	a reference to a person appointed as a trustee after the commencement under the repealed Act, section 80 as applied by section 291.	22 23 24
293	Power to disqualify particular persons from appointment and remove them as trustees of other trusts	25 26
	The reference in section 173(1)(a) to a person removed as trustee of a trust under section 171(2)(c) is taken to include a reference to a person who is replaced as a trustee, after the commencement, on the making of an order appointing a new	27 28 29 30

[s 294]

	trustee in substitution for the person under the repealed Act, section 80 as applied by section 291.	1 2
294	Circumstances relating to validity of vesting and other orders made under repealed Act	3 4
(1)	This section applies in relation to a vesting order or any other order, declaration or direction, other than a relevant property order, made or given—	5 6 7
(a)	before the commencement under the repealed Act, part 7, division 3; or	8 9
(b)	after the commencement under the repealed Act, part 7, division 3 as applied by section 291.	10 11
(2)	Section 181 applies in relation to the vesting order or the other order, declaration or direction as if it had been made, or given, under section 176.	12 13 14
(3)	In this section—	15
	<i>relevant property order</i> means an order under the repealed Act, section 86 or 87.	16 17
295	Agreements entered into for infants by court-appointed persons	18 19
(1)	This section applies if—	20
(a)	immediately before the commencement, a person appointed by an order made under the repealed Act, section 86(1) to enter into an agreement for or on behalf of an infant had not entered into the agreement; or	21 22 23 24
(b)	after the commencement, the court makes an order under the repealed Act, section 86(1) as applied by section 291.	25 26 27
(2)	The repealed Act, section 86(2) continues to apply to an agreement entered into under the order after the commencement in accordance with the repealed Act, section 86.	28 29 30 31

296	Orders authorising dealings etc. in relation to particular property to which infants are beneficially entitled	1 2
(1)	This section applies if—	3
(a)	immediately before the commencement, an order made under the repealed Act, section 87(1)(a) or (b) was still in effect; or	4 5 6
(b)	after the commencement, an order is made under the repealed Act, section 87(1)(a) or (b) as applied by section 291.	7 8 9
(2)	The repealed Act, section 87(2) continues to apply to an act done under the order after the commencement in accordance with the repealed Act, section 87.	10 11 12
297	Vesting orders made under repealed Act	13
(1)	This section applies if—	14
(a)	immediately before the commencement, the trustees of a trust had not complied with the repealed Act, section 90(3) in relation to the notification, registration or recording of a vesting order made under the repealed Act, part 7, division 3; or	15 16 17 18 19
(b)	after the commencement, a vesting order is made under the repealed Act, part 7, division 3 as applied by section 291.	20 21 22
(2)	The repealed Act, section 90(1) to (5) continues to apply in relation to the vesting order, and the notification, registration or recording of the vesting order, as if this Act had not been enacted.	23 24 25 26
298	Powers of persons in whose favour vesting order as trustee made under repealed Act	27 28
(1)	This section applies in relation to a person if—	29
(a)	before the commencement, a vesting order as trustee was made in favour of the person under the repealed Act, part 7, division 3; or	30 31 32

[s 299]

- (b) after the commencement, a vesting order as trustee is made in favour of the person under the repealed Act, part 7, division 3 as applied by section 291. 1
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- (2) The repealed Act, section 90(6) continues to apply to the person as if this Act had not been enacted. 4
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- 299 Conveyance or release by person appointed by court under repealed Act, s 92** 6
7
- (1) This section applies if— 8
- (a) immediately before the commencement, land had not been conveyed, or a contingent right had not been released, by a person appointed for that purpose by an order made under the repealed Act, section 92; or 9
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- (b) after the commencement, the court makes an order under the repealed Act, section 92 as applied by section 291 appointing a person to convey land or release a contingent right. 13
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16
- (2) The repealed Act, section 92 continues to apply to the conveyance of the land, or the release of the contingent right, by the person in conformity with the order after the commencement as if this Act had not been enacted. 17
18
19
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- 300 Revocation or variation of orders made under repealed Act, s 94** 21
22
- A reference in section 185 to an order made under section 184 is taken to include— 23
24
- (a) a reference to an order made under the repealed Act, section 94(1) that, immediately before the commencement, was still in effect; and 25
26
27
- (b) a reference to an order made after the commencement under the repealed Act, section 94(1) as applied by section 291. 28
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301	Directions made under repealed Act, s 96	1
(1)	This section applies if, after the commencement, a trustee acts in accordance with—	2 3
(a)	a direction given in a proceeding under the repealed Act, section 96 that was still in effect immediately before the commencement; or	4 5 6
(b)	a direction given after the commencement in a proceeding under the repealed Act, section 96 as applied by section 291.	7 8 9
(2)	Section 190 applies to the trustee as if the direction had been given in a proceeding under section 189.	10 11
302	Application of provisions about proceedings in absence of particular persons	12 13
(1)	Sections 196 and 197 apply only in relation to a proceeding started after the commencement.	14 15
(2)	The repealed Act, section 99 continues to apply in relation to a proceeding started before the commencement as if this Act had not been enacted.	16 17 18
303	Application of provisions for orders about costs	19
	The repealed Act, section 100 continues to apply in relation to a proceeding started before the commencement as if this Act had not been enacted.	20 21 22
304	Payment into court—orders made before commencement	23
(1)	This section applies if, immediately before the commencement—	24 25
(a)	money or securities ordered to be paid into court under the repealed Act, section 102(3) had not been paid into court; or	26 27 28

[s 305]

	(b) money or securities ordered to be paid or delivered to the majority of trustees under the repealed Act, section 102(4) had not been paid or delivered to the trustees.	1 2 3
	(2) The repealed Act, section 102(5) continues to apply to any payment or delivery of the money or securities made in accordance with the order after the commencement as if this Act had not been enacted.	4 5 6 7
305	Payment into court—money or securities paid before commencement	8 9
	(1) This section applies if, immediately before the commencement, money or securities paid into court under the repealed Act, section 102 had not been paid out of court.	10 11 12
	(2) Section 199(4) applies to the money or securities as if they had been paid into court under section 199(2).	13 14
Division 11	Provision for charitable trusts	15
306	Existing proceedings in relation to charitable trusts	16
	(1) This section applies in relation to a proceeding under the repealed Act, section 106 that was started, but not finally decided, before the commencement.	17 18 19
	(2) The repealed Act continues to apply in relation to the proceeding, and the proceeding must be heard and decided, as if this Act had not been enacted.	20 21 22
Division 12	Provision for particular philanthropic gifts	23 24
307	Validation provision for exercise of former prescribed power	25 26
	(1) This section applies if, during the relevant period, the trustees of a prescribed trust exercised, or purported to exercise, the	27 28

prescribed power mentioned in the repealed Act, section 110(1)(b) (the *former prescribed power*) in relation to the trust.

- (2) The exercise, or purported exercise, of the former prescribed power is taken to be, and always to have been, as valid as it would be or would have been if—
- (a) a declaration mentioned in the repealed Act, section 109(3) were in force for the prescribed trust; and
- (b) the trustees had complied with—
- (i) any limitation that applied under the repealed Act, section 109(4) and (5) in relation to the prescribed trust; and
- (ii) the repealed Act, section 109(6).

(3) In this section—

prescribed trust has the meaning given by section 218.

relevant period means the period—

- (a) starting on the commencement of the *Criminal Proceeds Confiscation and Other Acts Amendment Act 2009*, part 5; and
- (b) ending immediately before the commencement of this section.

Note—

See also the repealed Act, part 12 in relation to the validation of particular matters.

Division 13 **Provision for particular statutory trustees under repealed Act**

308 **Continued application of repealed Act to statutory trustees of settled land**

- (1) This section applies if, immediately before the commencement, a person was a statutory trustee within the

[s 309]

meaning of the repealed Act in respect of land mentioned in the repealed Act, section 6(1)(a) (the *settled land*). 1
2

- (2) The repealed Act continues to apply to the statutory trustee in respect of the settled land as if this Act had not been enacted. 3
4

Division 14 Other matters 5

309 Requirements for particular transfers to local governments to end 6 7

- (1) This section applies if— 8
- (a) before the commencement, an instrument of transfer of land to which the repealed Act, section 117 applied was lodged for registration under the *Land Title Act 1994*, but the instrument of transfer was not accompanied by a statutory declaration mentioned in the repealed Act, section 117; and 9
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14
 - (b) immediately before the commencement, the instrument of transfer had not been registered. 15
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- (2) To remove any doubt, it is declared that, on the commencement, the repealed Act, section 117 ceases to apply in relation to the instrument of transfer. 17
18
19

310 References to repealed Act 20

A reference in an instrument to the repealed Act may, if the context permits, be taken to be a reference to this Act. 21
22

311 Transitional regulation-making power 23

- (1) A regulation (a *transitional regulation*) may make provision about a matter for which— 24
25
- (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the repealed Act to the operation of this Act; and 26
27
28
29

(b)	this Act does not provide or sufficiently provide.	1
(2)	A transitional regulation may have retrospective operation to a day not earlier than the day this section commences.	2 3
(3)	A transitional regulation must declare it is a transitional regulation.	4 5
(4)	This section and any transitional regulation expire on the day that is 2 years after the day this section commences.	6 7
Part 18	Amendment of Acts	8
Division 1	Amendment of this Act	9
312	Act amended	10
	This division amends this Act.	11
313	Amendment of long title	12
	Long title, from ‘, to repeal’—	13
	<i>omit.</i>	14
Division 2	Amendment of Aboriginal Land Act 1991	15 16
314	Act amended	17
	This division amends the <i>Aboriginal Land Act 1991</i> .	18
	<i>Note—</i>	19
	See also the amendments in schedule 2.	20

[s 315]

315	Amendment of pt 21, div 2, hdg (Powers of Supreme Court)	1 2
	Part 21, division 2, heading, after ‘Supreme Court’—	3
	<i>insert</i> —	4
	and District Court	5
316	Insertion of new s 268A	6
	Before section 269—	7
	<i>insert</i> —	8
	268A Definition for division	9
	In this division—	10
	<i>court</i> , in relation to a proceeding relating to trust property of a land trust, means—	11 12
	(a) in any case—the Supreme Court; or	13
	(b) if the value of all the trust property of the land trust does not exceed the monetary limit under the <i>District Court of Queensland Act 1967</i> , section 68—the District Court.	14 15 16 17
317	Amendment of s 269 (Jurisdiction of Supreme Court)	18
	(1) Section 269, ‘Supreme Court’—	19
	<i>omit, insert</i> —	20
	court	21
	(2) Section 269, ‘ <i>Trusts Act 1973</i> ’—	22
	<i>omit, insert</i> —	23
	<i>Trusts Act 2024</i>	24
318	Amendment of sch 1 (Dictionary)	25
	Schedule 1—	26

<i>insert—</i>	1
<i>court</i> , in relation to a proceeding relating to trust property of a land trust, for part 21, division 2, see section 268A.	2 3 4
Division 3	
Amendment of Corrective Services Act 2006	5 6
319 Act amended	7
This division amends the <i>Corrective Services Act 2006</i> .	8
<i>Note—</i>	9
See also the amendments in schedule 2.	10
320 Amendment of s 311 (Prisoners trust fund)	11
(1) Section 311—	12
<i>insert—</i>	13
(3A) The <i>Trusts Act 2024</i> does not apply in relation to the prisoners trust fund.	14 15
(2) Section 311(3A) to (7)—	16
<i>renumber</i> as section 311(4) to (8).	17
321 Amendment of s 315 (Investment of prisoners trust fund)	18
Section 315(1)—	19
<i>insert—</i>	20
<i>Note—</i>	21
See section 311(4) in relation to the non-application of the <i>Trusts Act 2024</i> to the prisoners trust fund.	22 23
322 Insertion of new s 319KA	24
After section 319K—	25

[s 323]

<i>insert—</i>	1	
319KA Relationship with Trusts Act 2024	2	
The <i>Trusts Act 2024</i> does not apply in relation to a victim trust fund.	3 4	
Division 4	Amendment of District Court of Queensland Act 1967	5 6
323 Act amended		7
This division amends the <i>District Court of Queensland Act 1967</i> .		8 9
324 Amendment of s 68 (Civil jurisdiction)		10
Section 68(1)(b)—		11
<i>insert—</i>		12
(viiiia)for an application under the <i>Trusts Act 2024</i> relating to a trust or trust property, where the value of all the trust property of the trust does not exceed the monetary limit;		13 14 15 16
(viiiib)for another application under the <i>Trusts Act 2024</i> , where the value of the property to which the application relates does not exceed the monetary limit;		17 18 19 20
		21
Division 5	Amendment of Funeral Benefit Business Act 1982	22 23
325 Act amended		24
This division amends the <i>Funeral Benefit Business Act 1982</i> .		25

<i>Note—</i>	1	
See also the amendment in schedule 2.	2	
326 Amendment of s 79 (Application of Trusts Act 1973)	3	
(1) Section 79, heading, ‘Trusts Act 1973’—	4	
<i>omit, insert—</i>	5	
Trusts Act 2024	6	
(2) Section 79(1), after ‘applies’—	7	
<i>insert—</i>	8	
if a payment is made by or on behalf of a contributor under a funeral benefit agreement	9 10	
(3) Section 79(2) and (3)—	11	
<i>omit, insert—</i>	12	
(2) The <i>Trusts Act 2024</i> applies in relation to the payment in the way, and to the extent, prescribed by regulation.	13 14 15	
327 Replacement of pt 9, hdg (Transitional provisions for Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Act 2013)	16 17 18	
Part 9, heading—	19	
<i>omit, insert—</i>	20	
Part 9	Transitional provisions	21
Division 1	Transitional provisions for Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Act 2013	22 23 24 25 26

[s 328]

328	Amendment of s 90 (Definitions for pt 9)	1
(1)	Section 90, heading, ‘pt 9’—	2
	<i>omit, insert</i> —	3
	division	4
(2)	Section 90, ‘part’—	5
	<i>omit, insert</i> —	6
	division	7
329	Insertion of new pt 9, div 2	8
	Part 9—	9
	<i>insert</i> —	10
	Division 2	Transitional provisions for
		Trusts Act 2024
		12
	97	Definition for division
		13
	In this division—	14
	<i>new</i> , for a provision of this Act, means the	15
	provision as in force from the commencement.	16
	98	Application of Trusts Act 2024 to particular
		payments made before commencement
		17
	New section 79(2) applies in relation to a payment	18
	made to an entity as mentioned in new section	19
	79(1) whether the payment was made before or	20
	after the commencement.	21
		22
	99	Continued application of repealed Trusts Act
		1973 in particular circumstances
		23
	(1)	This section applies if, on the commencement, a
		regulation has not been made under new section
		79(2).
		24
		25
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- (2) Until a regulation is first made under new section 79(2), the repealed Trusts Act provisions continue to apply in relation to a payment made to an entity as mentioned in new section 79(1) as if—
- (a) the *Trusts Act 2024* had not been enacted; and
 - (b) the entity were a trustee, and the payment were trust property, within the meaning of the repealed *Trusts Act 1973*.
- (3) Subsection (2) applies whether the payment was made before or after the commencement.
- (4) In this section—
- repealed Trusts Act provisions* means the following provisions of the repealed *Trusts Act 1973*—
- (a) part 1;
 - (b) part 2, other than sections 17 and 18;
 - (c) part 3, other than sections 28, 30 and 30A;
 - (d) part 4, other than sections 32 to 48, 53 and 57;
 - (e) part 5;
 - (f) part 6, other than sections 66, 67, 73 to 75 and 78;
 - (g) part 7, other than sections 84, 86 to 89, 93 and 95;
 - (h) part 10, other than sections 114, 116 and 117.

[s 330]

Division 6	Amendment of Public Trustee Act 1978	1 2
330 Act amended		3
	This division amends the <i>Public Trustee Act 1978</i> .	4
	<i>Note—</i>	5
	See also the amendment in schedule 2.	6
331 Replacement of s 40 (When public trustee being custodian trustee or statutory trustee may act as general trustee)		7 8 9
	Section 40—	10
	<i>omit, insert—</i>	11
	40 When public trustee as custodian trustee may act as managing trustee	12 13
	(1) This section applies if—	14
	(a) the public trustee has been appointed under the <i>Trusts Act 2024</i> , section 52 as the custodian trustee of trust property; and	15 16 17
	(b) because of a circumstance mentioned in section 20(1)(a) to (i) of that Act, there is no managing trustee of the trust capable of acting in the execution of the trust.	18 19 20 21
	(2) Until a new managing trustee of the trust is appointed, the public trustee—	22 23
	(a) may act as managing trustee of the trust; and	24
	(b) for that purpose, has all the powers, authorities and discretions of a managing trustee of the trust.	25 26 27
	<i>Note—</i>	28
	See the <i>Trusts Act 2024</i> , section 54.	29
	(3) However, the public trustee is not required to act	30

in the execution of the trust.	1
(4) This section does not affect the power of any court or person to appoint a new managing trustee of the trust, but an appointment of a managing trustee does not take effect until written notice of the appointment is given to the public trustee.	2 3 4 5 6
(5) In this section— <i>managing trustee</i> has the meaning given by the <i>Trusts Act 2024</i> , section 51.	7 8 9
40A When public trustee as statutory trustee may act as trustee	10 11
(1) This section applies if, apart from this section, the public trustee is a statutory trustee within the meaning of the <i>Trusts Act 2024</i> .	12 13 14
(2) Until a new trustee of the trust is appointed, the public trustee—	15 16
(a) may act as a trustee of the trust who is not a statutory trustee; and	17 18
(b) for that purpose, has all the powers, authorities and discretions of a trustee who is not a statutory trustee within the meaning of the <i>Trusts Act 2024</i> .	19 20 21 22
332 Insertion of new pt 10, div 4	23
Part 10—	24
<i>insert—</i>	25
Division 4 Transitional provisions for Trusts Act 2024	26 27

[s 333]

150 When public trustee as custodian trustee may act as managing trustee—existing appointment	1 2 3
Section 40, as inserted by the <i>Trusts Act 2024</i> , applies as if—	4 5
(a) the reference in section 40(1)(a) to the <i>Trusts Act 2024</i> , section 52 included a reference to the repealed <i>Trusts Act 1973</i> , section 19; and	6 7 8 9
(b) the reference in section 40(1)(b) to the <i>Trusts Act 2024</i> , section 20(1)(a) to (i) included a reference to the repealed <i>Trusts Act 1973</i> , section 12(1)(a) to (h) or (3).	10 11 12 13

151 Application of former s 40(3) to particular statutory trustees	14 15
(1) This section applies if, immediately before the commencement, the public trustee was, apart from former section 40(3), a statutory trustee within the meaning of the repealed <i>Trusts Act 1973</i> of land mentioned in section 6(1)(a) of that Act.	16 17 18 19 20 21
(2) Former section 40(3) continues to apply to the public trustee as if the <i>Trusts Act 2024</i> had not been enacted.	22 23 24
(3) In this section— <i>former section 40(3)</i> means section 40(3) as in force immediately before the commencement.	25 26 27

Division 7	Amendment of River Improvement Trust Act 1940	28 29
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333 Act amended		30
	This division amends the <i>River Improvement Trust Act 1940</i> .	31

334	Insertion of new s 5BA	1	
	After section 5B—	2	
	<i>insert</i> —	3	
	5BA Relationship with Trusts Act 2024	4	
	The <i>Trusts Act 2024</i> , section 14 does not apply to a trust established under this Act.	5 6	
335	Replacement of pt 9, hdg (Transitional provision for Water Legislation Amendment Act 2016)	7 8	
	Part 9, heading—	9	
	<i>omit, insert</i> —	10	
	Part 9	Transitional and validation provisions	11 12
	Division 1	Transitional provision for Water Legislation Amendment Act 2016	13 14 15
336	Insertion of new pt 9, div 2	16	
	Part 9—	17	
	<i>insert</i> —	18	
	Division 2	Validation provision for Trusts Act 2024	19 20
	25 Relationship with Trusts Act 1973	21	
	The <i>Trusts Act 1973</i> , section 11 is taken—	22	
	(a) never to have applied to a trust established under this Act; and	23 24	

[s 337]

- (b) never to have affected the appointment of a member of a trust made, before the commencement of this section, under part 3, division 1 of this Act.

Division 8 Amendment of Succession Act 1981

337 Act amended

This division amends the *Succession Act 1981*.

Note—

See also the amendments in schedule 2.

338 Insertion of new ss 49B–49D

After section 49A—

insert—

49B Power to carry on business

- (1) This section applies if, at the time of a deceased person’s death, the person was engaged in carrying on a business.
- (2) The personal representative of the deceased person may carry on the business, but only for—
 - (a) the period, of not more than 2 years from the deceased person’s death, that is reasonably necessary for realising the business; and
 - (b) any further period approved by the court under section 49D.
- (3) For the purpose of carrying on the business, the personal representative may—
 - (a) use any part of the deceased person’s estate that is reasonably necessary; and
 - (b) increase or reduce, as necessary, usage of the estate under paragraph (a); and

-
- (c) buy stock, machinery, implements and chattels; and 1
2
- (d) employ the managers, agents, workers and other persons the personal representative considers appropriate; and 3
4
5
- (e) at any time, enter into a partnership agreement to take the place of any partnership agreement subsisting immediately before, or at any time after, the deceased person's death; and 6
7
8
9
10
- (f) enter into share-farming agreements. 11
- (4) For subsection (3)(e), it does not matter that the personal representative was a partner of the deceased person in the personal representative's own right. 12
13
14
15
- (5) Nothing in this section affects any other authority to do the acts authorised to be done under this section. 16
17
18
- (6) If the deceased person's estate is being administered under the deceased person's will, this section is subject to a contrary intention appearing in the will. 19
20
21
22
- (7) Without limiting subsection (6), a provision of the deceased person's will that confers on the personal representative the power to postpone the sale of any relevant business property is, for that subsection, taken to be a contrary intention appearing in the deceased person's will. 23
24
25
26
27
28
- (8) This section applies— 29
- (a) despite the *Trusts Act 2024*, sections 87 and 88; but 30
31
- (b) subject to the other provisions of the *Trusts Act 2024* and any other Act. 32
33
- (9) In this section— 34

[s 338]

relevant business property, in relation to a 1
deceased person, means property that, at the time 2
of the deceased person's death, was being used by 3
the person in carrying on a business. 4

Note— 5

See, however, the *Trusts Act 2024*, section 272 in 6
relation to the continued application of the repealed 7
Trusts Act 1973, section 57 to a trustee who, 8
immediately before the commencement, was carrying 9
on a business under that section. 10

49C Power to subscribe to particular funds if 11 carrying on business 12

- (1) This section applies if the personal representative 13
of a deceased person is carrying on a business 14
under section 49B. 15
 - (2) The personal representative may subscribe to a 16
relevant fund in connection with the business if 17
the personal representative considers it would, if 18
the personal representative were acting for 19
themselves, be prudent to subscribe to the fund. 20
 - (3) Subscriptions to the relevant fund must be paid 21
from the business income of the deceased 22
person's estate. 23
 - (4) This section does not affect any other authority 24
the personal representative may have to subscribe 25
to the relevant fund. 26
 - (5) If the deceased person's estate is being 27
administered under the deceased person's will, 28
this section is subject to a contrary intention 29
appearing in the will. 30
 - (6) In this section— 31
- relevant fund*, in connection with a business, 32
means a fund that— 33
- (a) is created for objects or purposes in support 34
of any business of a similar nature; and 35

-
- (b) is subscribed to by other persons engaged in 1
a similar business. 2

**49D Court may approve period for carrying on 3
business 4**

- (1) This section applies if, at the time of a deceased 5
person's death, the person was engaged in 6
carrying on a business. 7
- (2) The court may, on application by the personal 8
representative of the deceased person or a 9
beneficiary of the deceased person's estate— 10
- (a) by order, approve that the personal 11
representative may carry on the business for 12
a stated period, including on the conditions 13
the court considers appropriate; and 14
- (b) make the order retrospective to a stated date. 15
- (3) An application for an order under subsection (2) 16
may be made at any time, whether or not any 17
previous authority to carry on the business, 18
including a previous approval under this section, 19
has ended. 20

339 Insertion of new s 53A 21

After section 53— 22

insert— 23

**53A Protection of personal representatives for 24
calls made after transfer of shares 25**

- (1) This section applies if, on a deceased person's 26
death, the person was registered as the holder of 27
shares in a company that have not been fully paid 28
up. 29
- (2) The personal representative of the deceased 30
person may distribute the deceased person's 31
estate as soon as the personal representative has 32

[s 340]

obtained the registration of some other person as the holder of the shares.	1 2
(3) It is not necessary for a distribution under subsection (2) for the personal representative to reserve any portion of the estate for the payment of calls made after the date of the registration, whether the call is made by the company or its directors or by its liquidator in a winding-up.	3 4 5 6 7 8
(4) This section does not affect any right the company or its liquidator may have to follow the assets of the deceased person's estate into the hands of the persons to whom the assets have been distributed.	9 10 11 12
(5) In this section— <i>personal representative</i> , of a deceased person, includes a trustee of the will or estate of the deceased person.	13 14 15 16
340 Insertion of new s 61AA	17
After section 61—	18
<i>insert—</i>	19
61AA Abolition of rule in Allhusen v Whittell	20
(1) This section applies if—	21
(a) under the will of a person who dies on or after 1 July 1973, any property included in a disposition of the residuary estate is settled in succession (the <i>settled property</i>); and	22 23 24 25
(b) income is derived from the settled property.	26
(2) The personal representative of the deceased person must not apply any part of the income of the settled property to pay any of the following (each a <i>capital expense</i>)—	27 28 29 30
(a) the debts and liabilities that have accrued at the date of the deceased person's death;	31 32

-
- (b) the funeral, testamentary and administration expenses; 1
2
- (c) any legacies bequeathed by the will. 3
- (3) Subsection (2) does not apply in relation to— 4
- (a) any commission payable to the personal representative in relation to the income of the settled property; or 5
6
7
- (b) any testamentary or administration expenses that, apart from that subsection, would be payable wholly out of income. 8
9
10
- (4) The personal representative must— 11
- (a) apply the income of the settled property, in priority to any other property, to pay the interest (if any) that accrues on a capital expense after the date of the deceased person's death and up to the payment of the capital expense; and 12
13
14
15
16
17
- (b) pay the balance of the income of the settled property to the person for the time being entitled to the income. 18
19
20
- (5) If, after the deceased person's death, income is derived from property that is ultimately applied (wholly or in part) to pay a capital expense, for this section, the income is taken to be income of the residuary estate. 21
22
23
24
25
- (6) This section— 26
- (a) affects only the rights of the beneficiaries under the deceased person's will; and 27
28
- (b) does not affect the rights of creditors of the deceased person's estate. 29
30
- (7) This section applies subject to— 31
- (a) a contrary intention appearing in the deceased person's will; and 32
33

[s 341]

	(b) the provisions of any Act about charges on the property of the deceased person's estate.	1 2
	(8) In this section—	3
	<i>personal representative</i> , of a deceased person, includes a trustee of the will of the deceased person.	4 5 6
Division 9	Amendment of Torres Strait Islander Land Act 1991	7 8
341 Act amended		9
	This division amends the <i>Torres Strait Islander Land Act 1991</i> .	10 11
	<i>Note—</i>	12
	See also the amendments in schedule 2.	13
342 Amendment of pt 15, div 2, hdg (Powers of Supreme Court)		14 15
	Part 15, division 2, heading, after 'Supreme Court'—	16
	<i>insert—</i>	17
	and District Court	18
343 Insertion of new s 173A		19
	Before section 174—	20
	<i>insert—</i>	21
	173A Definition for division	22
	In this division—	23
	<i>court</i> , in relation to a proceeding relating to trust property of a land trust, means—	24 25
	(a) in any case—the Supreme Court; or	26

[s 344]

	(b) if the value of all the trust property of the land trust does not exceed the monetary limit under the <i>District Court of Queensland Act 1967</i> , section 68—the District Court.	1 2 3 4
344	Amendment of s 174 (Jurisdiction of Supreme Court)	5
	(1) Section 174, ‘Supreme Court’— <i>omit, insert—</i> court	6 7 8
	(2) Section 174, ‘ <i>Trusts Act 1973</i> ’— <i>omit, insert—</i> <i>Trusts Act 2024</i>	9 10 11
345	Amendment of sch 1 (Dictionary)	12
	Schedule 1— <i>insert—</i> <i>court</i> , in relation to a proceeding relating to trust property of a land trust, for part 15, division 2, see section 173A.	13 14 15 16 17
Division 10	Amendment of United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942	18 19 20 21
346	Act amended	22
	This division amends the <i>United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942</i> .	23 24

[s 347]

347	Replacement of s 3D (Unauthorised investments by board subject to approval of grand lodge)	1 2
	Section 3D—	3
	<i>omit, insert—</i>	4
	3D Investment of moneys by board	5
	The board may invest moneys held by it in an investment only if the investment—	6 7
	(a) could be made by a trustee exercising an investment power under the <i>Trusts Act 2024</i> , part 6; or	8 9 10
	(b) is authorised under a power conferred on the board by an order made under the <i>Trusts Act 2024</i> , section 184.	11 12 13
Part 19	Other amendments	14
348	Legislation amended	15
	Schedule 2 amends the legislation it mentions.	16

Schedule 1	Dictionary	1
	section 5	2
	<i>able and willing to act</i> , as appointor for a trust, for part 3, see section 18.	3 4
	<i>accountant</i> means—	5
	(a) a member of CPA Australia who is entitled to use the letters ‘CPA’ or ‘FCPA’; or	6 7
	(b) a member of Chartered Accountants Australia and New Zealand who is entitled to use the letters ‘CA’ or ‘FCA’; or	8 9 10
	(c) a member of the Institute of Public Accountants who is entitled to use the letters ‘MIPA’ or ‘FIPA’.	11 12
	<i>administrator</i> means—	13
	(a) an administrator under the <i>Guardianship and Administration Act 2000</i> appointed for 1 or more financial matters for a person; or	14 15 16
	(b) another person authorised by an order registered under the <i>Guardianship and Administration Act 2000</i> , section 169 to do anything in relation to 1 or more financial matters for a person.	17 18 19 20
	<i>advancement</i> , in relation to a beneficiary, includes benefit.	21
	<i>agent</i> means an agent appointed under section 112.	22
	<i>aggrieved person</i> , for part 11, division 9, see section 191.	23
	<i>appointor</i> , for a trust, means a person nominated in the trust instrument for the purpose of appointing new trustees of the trust.	24 25 26
	<i>approved form</i> means a form approved under section 225.	27
	<i>attorney</i> means a person appointed as an attorney, and authorised to do anything in relation to 1 or more financial matters for another person, by an enduring power of attorney—	28 29 30 31

(a) made by the other person under the <i>Powers of Attorney Act 1998</i> ; or	1 2
(b) made by the other person in another jurisdiction and recognised under section 34 of that Act.	3 4
benefit , in relation to the advancement of a person, includes insurance on the life of the person.	5 6
capacity , for a matter, see section 10(1).	7
Chapter 5 body corporate see the Corporations Act, section 9.	8
charitable see section 11.	9
charitable trust means a trust created for a charitable purpose.	10
charity means an institution, whether or not incorporated, that is established for a charitable purpose.	11 12
claim , in relation to a trust, for part 9, division 2, see section 142.	13 14
claimant , for part 9, division 2, see section 142.	15
contingent right , in relation to land, includes—	16
(a) a contingent or executory interest and a possibility coupled with an interest, whether or not the object of the gift or limitation of the interest or possibility is ascertained; and	17 18 19 20
(b) a right of entry, whether immediate or future, and whether vested or contingent.	21 22
continuing trustee includes a surviving trustee.	23
court means—	24
(a) in relation to any matter under this Act—the Supreme Court; or	25 26
(b) in relation to a matter under this Act for which the District Court has jurisdiction under the <i>District Court of Queensland Act 1967</i> —the District Court.	27 28 29
create , a trust, includes establish a trust.	30
custodian trustee means a corporation appointed as a custodian trustee under section 52.	31 32

<i>decision</i> , for part 11, division 9, see section 192.	1
<i>delegate</i> —	2
(a) for part 7, division 4, generally—see section 100(4)(b); or	3 4
(b) for part 7, division 4, subdivision 4—see section 108.	5
<i>eligible recipient</i> , for part 13, see section 218.	6
<i>entitled person</i> , for part 7, division 3, see section 95(1)(a) and (b).	7 8
<i>extension application</i> , for part 7, division 3, see section 94(4).	9
<i>financial matter</i> —	10
(a) in relation to an adult for whom an attorney is appointed—see the <i>Powers of Attorney Act 1998</i> , schedule 2, section 1; or	11 12 13
(b) in relation to any other adult—see the <i>Guardianship and Administration Act 2000</i> , schedule 2, section 1.	14 15
<i>government entity</i> , for part 13, see section 218.	16
<i>guardian</i> , in relation to a child, means—	17
(a) a parent of the child; or	18
(b) another person who has the legal parental responsibility for making decisions about the long-term care, wellbeing and development of the child.	19 20 21
<i>impaired capacity</i> , for a matter, see section 10(2).	22
<i>instrument of change</i> , for part 3, division 5, see section 32(1).	23
<i>instrument of delegation</i> , for part 7, division 4, see section 100(2).	24 25
<i>interested person</i> , for part 7, division 3, see section 93(2).	26
<i>investment power</i> , for part 6, see section 71.	27
<i>last continuing trustee</i> includes a sole trustee.	28
<i>lease</i> includes bailment.	29
<i>licensed trustee company</i> see the Corporations Act, section 9.	30

<i>management power</i> , in relation to a trust, for part 11, division 6, see section 183.	1 2
<i>managing trustee</i> , of a trust, see section 51.	3
<i>minimum trustee requirements</i> , for a trust, for part 3, division 3, see section 27.	4 5
<i>mortgage debt</i> , for part 7, division 6, see section 115(1)(a).	6
<i>payment</i> , in relation to securities, includes the deposit or transfer of the securities.	7 8
<i>possessed</i> , of property, for part 11, see section 167.	9
<i>post-change trustee</i> , in relation to an instrument of change, for part 3, division 5, see section 33.	10 11
<i>potential claimant</i> , for part 9, division 2, see section 142.	12
<i>pre-change trustee</i> , in relation to an instrument of change, for part 3, division 5, see section 33.	13 14
<i>prescribed power</i> , for a prescribed trust, for part 13, see sections 219(2) and 220(3).	15 16
<i>prescribed trust</i> , for part 13, see section 218.	17
<i>primary beneficiary</i> , in relation to a mortgage debt held on trust for persons in succession, for part 7, division 6, see section 114.	18 19 20
<i>priority outgoing</i> , in relation to land the subject of a mortgage, for part 7, division 6, see section 114.	21 22
<i>professional charges</i> , of a professional trustee, for part 10, see section 163.	23 24
<i>professional investor</i> , for part 6, see section 71.	25
<i>professional trustee</i> —	26
(a) for part 5—see section 64; or	27
(b) for part 10—see section 163.	28
<i>protective trust</i> , for part 11, division 7, see section 187.	29
<i>public trustee</i> means the public trustee under the <i>Public Trustee Act 1978</i> .	30 31

<i>recipient</i> , for part 9, division 3, see section 148(2).	1
<i>relevant capital</i> , for part 8, see section 133(2).	2
<i>relevant power</i> , in relation to a trustee or another person, for part 11, division 9, see section 192.	3 4
<i>relevant registrar</i> means—	5
(a) in relation to land—the registrar under the <i>Land Title Act 1994</i> or other person having the function of registering or recording dealings with the land; or	6 7 8
(b) in relation to a water allocation—the registrar under the <i>Water Act 2000</i> .	9 10
<i>requirement</i> , of another Act or of a law of another State or the Commonwealth, includes a requirement the other Act or law authorises or permits to be imposed.	11 12 13
<i>sale</i> , of property, includes an exchange of property.	14
<i>securities</i> includes stock and debentures.	15
<i>stated circumstances</i> , in relation to the delegation of a matter, for part 7, division 4, see section 100(4)(a).	16 17
<i>statutory trustee</i> see section 7(2).	18
<i>stock</i> includes shares.	19
<i>trust</i> see section 6.	20
<i>trustee</i> —	21
(a) generally—see section 7(1); or	22
(b) for part 5—see section 64; or	23
(c) for part 10—see section 163.	24
<i>trustee corporation</i> means—	25
(a) the public trustee; or	26
(b) a licensed trustee company.	27
<i>trust instrument</i> see section 8.	28
<i>trust property</i> see section 9.	29
<i>variation application</i> , for part 7, division 3, see section 94(1)(a).	30 31

<i>vesting order</i> see section 176(1).	1
<i>water allocation</i> means a water allocation under the <i>Water Act 2000</i> .	2 3

Schedule 2	Other amendments	1
	section 348	2
	Aboriginal Land Act 1991	3
1	Part 21, heading, ‘Trusts Act 1973’—	4
	<i>omit, insert—</i>	5
	Trusts Act 2024	6
2	Section 267, heading, ‘Trusts Act 1973’—	7
	<i>omit, insert—</i>	8
	Trusts Act 2024	9
3	Section 267(1), (2) and (3), ‘Trusts Act 1973’—	10
	<i>omit, insert—</i>	11
	<i>Trusts Act 2024</i>	12
4	Section 268, heading, ‘Trusts Act 1973’—	13
	<i>omit, insert—</i>	14
	Trusts Act 2024	15
5	Section 268(1), ‘Trusts Act 1973’—	16
	<i>omit, insert—</i>	17
	<i>Trusts Act 2024</i>	18

6	Sections 270(1), 271(2) and 272(1), ‘Supreme Court’—	1
	<i>omit, insert—</i>	2
	court	3
7	Section 273(1), ‘Supreme Court’s’—	4
	<i>omit, insert—</i>	5
	court’s	6
8	Sections 273, 274(1), 275 and 276, ‘Supreme Court’—	7
	<i>omit, insert—</i>	8
	court	9
	 Building Industry Fairness (Security of Payment) Act 2017	 10 11
1	Section 56A, heading, ‘Trusts Act 1973’—	12
	<i>omit, insert—</i>	13
	Trusts Act 2024	14
2	Section 56A, ‘the <i>Trusts Act 1973</i>’—	15
	<i>omit, insert—</i>	16
	the <i>Trusts Act 2024</i>	17

Charitable Funds Act 1958		1
1	Section 3(3), ‘the Supreme Court or of any judge’—	2
	<i>omit, insert—</i>	3
	the Supreme Court or the District Court, or the	4
	powers of the Attorney-General,	5
2	Section 3(3)—	6
	<i>insert—</i>	7
	<i>Note—</i>	8
	See the <i>Trusts Act 2024</i> , part 12, division 3 in relation to	9
	the approval of particular schemes by the Supreme	10
	Court, the District Court and the Attorney-General.	11
3	Section 21(c), from ‘is vested in any persons’—	12
	<i>omit, insert—</i>	13
	is vested in any persons—	14
	(i) the order vesting the property has the same	15
	effect as if it were a vesting order under the	16
	<i>Trusts Act 2024</i> made in relation to property	17
	of the same type; and	18
	(ii) the <i>Trusts Act 2024</i> , part 11, division 4	19
	applies, with any necessary modifications,	20
	in relation to the order as if it were a vesting	21
	order mentioned in subparagraph (i);	22
Corrective Services Act 2006		23
1	Section 311A(7), definition <i>allowable balance</i>, ‘section	24
	311(6)(b)’—	25
	<i>omit, insert—</i>	26

	section 311(7)(b)	1
2	Section 311A(7), definition <i>allowable receipt amount</i>, ‘section 311(6)(a)’—	2
	<i>omit, insert—</i>	3
	section 311(7)(a)	4
		5
	Court Funds Act 1973	6
1	Section 11(2), from ‘<i>Trusts Act 1973</i>, part 3’—	7
	<i>omit, insert—</i>	8
	<i>Trusts Act 2024</i> , section 74 in accordance with—	9
	(a) the duties under sections 75 and 78 of that Act; and	10
		11
	(b) any duty that applies under—	12
	(i) part 6, division 2 of that Act; or	13
	(ii) part 5, division 2 of that Act, to the extent that division applies in relation to the exercise of an investment power.	14
		15
		16
2	Section 11—	17
	<i>insert—</i>	18
	(3) In this section—	19
	<i>investment power</i> has the meaning given by the <i>Trusts Act 2024</i> , section 71.	20
		21

Funeral Benefit Business Act 1982	1
1 Section 40(1)(a), ‘Trusts Act 1973, part 3’—	2
<i>omit, insert—</i>	3
<i>Trusts Act 2024, part 6</i>	4
 Guardianship and Administration Act 2000	 5
1 Schedule 4, definition <i>authorised investment</i>, paragraph (a), from ‘would be’—	6
<i>omit, insert—</i>	7
would be an investment in accordance with the	8
<i>Trusts Act 2024</i> ; or	9
	10
 Land Act 1994	 11
1 Section 90, ‘Trusts Act 1973’—	12
<i>omit, insert—</i>	13
<i>Trusts Act 2024</i>	14
 Land Valuation Act 2010	 15
1 Section 210(2)—	16
<i>omit, insert—</i>	17
(2) Despite the <i>Trusts Act 2024</i> , section 83(3), the	18

	valuer-general's certificate is taken to be an independent valuation of the property for section 83(2)(a) of that Act.	1 2 3
2	Section 210(4), definition <i>trustee</i>, 'Trusts Act 1973, section 5'— <i>omit, insert—</i> <i>Trusts Act 2024, section 7(1)</i>	4 5 6 7
	Legal Aid Queensland Act 1997	8
1	Section 45(2), 'Trusts Act 1973'— <i>omit, insert—</i> <i>Trusts Act 2024</i>	9 10 11
	Limitation of Actions Act 1974	12
1	Section 5(1), definition <i>trust</i>, 'Trusts Act 1973'— <i>omit, insert—</i> <i>Trusts Act 2024, section 6</i>	13 14 15
2	Section 5(1), definition <i>trustee</i>, 'Trusts Act 1973'— <i>omit, insert—</i> <i>Trusts Act 2024, section 7(1)</i>	16 17 18

	Nature Conservation Act 1992	1
1	Section 31(5), ‘Trusts Act 1973’—	2
	<i>omit, insert—</i>	3
	<i>Trusts Act 2024</i>	4
	Powers of Attorney Act 1998	5
1	Section 84(4), definition <i>authorised investment</i>, paragraph (a), from ‘would be’—	6
	<i>omit, insert—</i>	7
	would be an investment in accordance with the <i>Trusts Act 2024</i> ; or	8
		9
		10
	Property Law Act 1974	11
1	Section 38(3A), ‘Trusts Act 1973, section 90’—	12
	<i>omit, insert—</i>	13
	<i>Trusts Act 2024</i> , sections 178 to 180	14
2	Section 222(2), ‘Trusts Act 1973’—	15
	<i>omit, insert—</i>	16
	<i>Trusts Act 2024</i>	17

Property Law Act 2023 1

- 1 **Section 38(1), ‘Trusts Act 1973, section 90’—** 2
omit, insert— 3
Trusts Act 2024, sections 178 to 180 4

Public Trustee Act 1978 5

- 1 **Sections 19(1)(d) and 41(7), ‘Trusts Act 1973’—** 6
omit, insert— 7
Trusts Act 2024 8

Retirement Villages Act 1999 9

- 1 **Sections 95 and 101, ‘an authorised investment under the Trusts Act 1973.’—** 10
omit, insert— 11
an investment made under the *Trusts Act* 13
2024, section 74 in accordance with the 14
duties under— 15
(a) sections 75 and 78 of that Act; and 16
(b) either— 17
(i) part 6, division 2 of that Act; or 18
(ii) part 5, division 2 of that Act, to 19
the extent that division applies in 20
relation to the exercise of an 21
investment power. 22

2	Sections 95 and 101—	1
	<i>insert—</i>	2
	(2) In this section—	3
	<i>investment power</i> has the meaning given by the	4
	<i>Trusts Act 2024</i> , section 71.	5
 Succession Act 1981		6
1	Section 5, definition <i>trustee</i>, paragraph (b), ‘<i>Trusts Act 1973</i>’—	7 8
	<i>omit, insert—</i>	9
	<i>Trusts Act 2024</i>	10
2	Section 6(4), ‘<i>Trusts Act 1973</i>’—	11
	<i>omit, insert—</i>	12
	<i>Trusts Act 2024</i>	13
3	Section 36(12), ‘<i>Trusts Act 1973</i>, section 67(3)’—	14
	<i>omit, insert—</i>	15
	<i>Trusts Act 2024</i> , section 141(1)	16
4	Section 45(5), ‘and notwithstanding the provisions of the <i>Trusts Act 1973</i>, section 16,’—	17 18
	<i>omit.</i>	19
5	Section 49(1), ‘<i>Trusts Act 1973</i>’—	20
	<i>omit, insert—</i>	21
	<i>Trusts Act 2024</i>	22

	Torres Strait Islander Land Act 1991	1
1	Section 155(2), note—	2
	<i>omit, insert—</i>	3
	<i>Note—</i>	4
	See also section 173 in relation to the application of the	5
	<i>Trusts Act 2024.</i>	6
2	Part 15, heading, ‘Trusts Act 1973’—	7
	<i>omit, insert—</i>	8
	Trusts Act 2024	9
3	Section 173, heading, ‘Trusts Act 1973’—	10
	<i>omit, insert—</i>	11
	Trusts Act 2024	12
4	Section 173(1), (2) and (3), ‘Trusts Act 1973’—	13
	<i>omit, insert—</i>	14
	<i>Trusts Act 2024</i>	15
5	Sections 175(1), 176(2) and 177(1), ‘Supreme Court’—	16
	<i>omit, insert—</i>	17
	court	18
6	Section 178(1), ‘Supreme Court’s’—	19
	<i>omit, insert—</i>	20
	court’s	21

7	Sections 178, 179(1), 180 and 181, ‘Supreme Court’—	1
	<i>omit, insert—</i>	2
	court	3
	 Trustee Companies Act 1968	 4
1	Section 37(2)(a)—	5
	<i>omit, insert—</i>	6
	(a) in investments that—	7
	(i) could be made by a trustee exercising	8
	an investment power under the <i>Trusts</i>	9
	<i>Act 2024</i> , part 6; or	10
	(ii) are authorised by any other Act for the	11
	investment of trust funds; or	12

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