

South Australia

# Trustee Companies Act 1988

An Act to make provision in relation to trustee companies.

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### Legislative history

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Trustee Companies Act 1988*.

#### 3—Interpretation

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

*appointment* includes nomination;

*Commonwealth Act* means the *Corporations Act 2001* of the Commonwealth;

*the Court* means the Supreme Court of South Australia;

*estate*, in relation to a trustee company, includes any real or personal property committed to the administration or management of the trustee company whether as executor, administrator or in any other capacity authorised by this Act, but does not include money deposited with the trustee company for the purpose only of investment in a common fund;

*letters of administration* means letters of administration of the estate of a deceased person, with or without the will annexed;

*officer*, of a trustee company, means a director or manager of the company or some other officer or employee of the company designated by the board of directors as an officer for the purposes of this Act;

*the Registrar* means the Registrar of Probates and includes an acting or deputy Registrar of Probates;

*trustee* includes a bare trustee or custodian trustee;

*trustee company* means a licensed trustee company within the meaning of Chapter 5D of the Commonwealth Act;

*trustee investment* means an investment in which a trustee is authorised by law to invest trust funds;

*will* includes codicil.

- (2) Where an unincorporated body is named in an instrument establishing a trust, the persons for the time being comprising the body will be taken to have been individually named in the instrument.
- (3) Subsection (2) applies for the purposes of this Act but not for the purposes of interpreting the trust instrument.

### Part 2—Powers of trustee companies

#### 4—Trustee company may act as executor or administrator

- (1) A trustee company has the same powers as a natural person to act as the executor of the will, or the administrator of the estate, of a deceased person.

- (2) A trustee company may apply for and obtain—
  - (a) probate of the will of a deceased person; or
  - (b) letters of administration of the estate of a deceased person,in the same circumstances as a natural person.
- (3) A trustee company may, with the approval of the Court or the Registrar and the consent of the person entitled to probate of the will or a grant of administration of the estate of a deceased person, apply for and obtain—
  - (a) probate of the will of the deceased person; or
  - (b) letters of administration of the estate of the deceased person,(as the case requires).
- (4) A trustee company may, with the approval of the Court, act on behalf, or in the place, of an executor of the will, or an administrator of the estate, of a deceased person, either on a permanent or a temporary basis.

#### **5—Trustee company may act as trustee, agent, attorney, manager or receiver**

A trustee company has the same powers as a natural person to act as trustee, agent, attorney, manager or receiver.

#### **6—Trustee company may act for children or persons who are unable to manage their affairs**

A trustee company may act—

- (a) as the guardian of a child; or
- (b) as the administrator, committee, guardian or manager of the estate of a person who is unable to manage his or her own affairs.

#### **7—Officers may represent or make affidavits etc for company**

- (1) Where a trustee company makes an application for probate or letters of administration or any other application under this Act or acts as executor, administrator or in any other capacity authorised by this Act, the company may be represented in any court or elsewhere by an officer of the company.
- (2) Where in any circumstances referred to in subsection (1) an affidavit, declaration or statement is required to be made by a trustee company whether on oath or otherwise, the affidavit, declaration or statement may be made on behalf of the company by an officer of the company.

#### **8—Trustee company may act jointly**

- (1) A trustee company may be appointed to act as executor, administrator, or in any other capacity authorised by this Act, either alone or jointly with another person.
- (2) Where a trustee company is appointed to act jointly with another person—
  - (a) any property held or controlled by the company and that other person jointly may, with the consent in writing of the other person, be dealt with by the company alone; and

- (b) in that event the other person is exonerated from liability that might (but for this paragraph) have arisen from the company's subsequent dealing with the property.

### **13—Investment of trust funds**

Subject to the terms of any relevant instrument of trust, a trustee company may invest any money held in trust by the company—

- (a) in a manner authorised by the instrument of trust; or
- (b) in a trustee investment; or
- (c) in a common fund (within the meaning of the Commonwealth Act) established by the company.

### **14—Money from several estates may be invested as one fund**

- (1) Subject to section 13, a trustee company may invest money from more than one estate that it holds as trustee or in any other capacity authorised by this Act as one fund in one or more investments.
- (2) Where money from more than one estate is invested under subsection (1), the company must—
  - (a) keep an account showing the current amount for the time being at credit in respect of each estate; and
  - (b) after deduction of any charges—
    - (i) divide any income arising from investment of the money between the estates in proportion to the amounts invested and the period of each investment; and
    - (ii) divide any profit or loss of a capital nature arising from investment of the money between the estates in proportion to the amounts invested.

### **16—Power of trustee company acting in representative capacity to hold its own shares etc**

A trustee company may in the administration or management of an estate hold shares or other securities issued by the company itself or a related body corporate within the meaning of the Commonwealth Act and forming part of that estate, but it must not exercise any power that it has in that capacity to purchase any such shares or securities unless—

- (a) it is authorised to do so by the terms on which the power is conferred; or
- (b) the shares or other securities form part of a new issue offered to existing holders of shares or securities in proportion to their existing holdings.

## Part 3—Duties and liabilities of trustee companies

### 23—Directors and managers responsible to the Court

Where a trustee company is appointed or acts as executor, administrator, or in any other capacity under this Act, the manager and directors of the company are individually and collectively responsible to the Court in the same way and to the same extent as if they had been personally appointed to act in that capacity.

### 24—Trustee company may be removed from office

A trustee company appointed or acting as executor, administrator, or in any other capacity under this Act is subject to the same control by the Court as a natural person acting in that capacity and is similarly liable to removal by the Court.

### 25—Appointment by Court of administrator of trustee company's affairs

- (1) Where it appears to the Court—
  - (a) that proceedings to wind up a trustee company have commenced; or
  - (b) that a trustee company is not in a position to carry out its fiduciary duties; or
  - (c) that a trustee company has committed serious breaches of its fiduciary duties such that the power conferred by this section should be exercised,the Court may, on application by the Minister, appoint an administrator to administer the company's affairs insofar as they involve the performance of fiduciary duties.
- (2) The Court may determine—
  - (a) the powers and duties of an administrator appointed under this section; and
  - (b) the terms and conditions on which the administrator is appointed.
- (3) The Court may at any time terminate an appointment made under this section.

## Part 3A—Transfer of estate assets and liabilities

### 25A—Interpretation

- (1) In this Part—

*ASIC* means the Australian Securities and Investments Commission;

*authorised ASIC officer* means a person authorised under section 25D to issue certificates under that section;

*certificate of transfer*—see section 25B(2);

*receiving company*—see section 25B(2);

*State tax* means—
  - (a) stamp duty; or
  - (b) any other tax, duty or impost that would, apart from an exemption under this Part, be payable in respect of the transaction under the law of the State;

*transferring company*—see section 25B(2).

- (2) If an expression is defined in the Commonwealth Act and is also used in this Part, the expression as used in this Part has, unless the contrary intention appears, the same meaning as in that Act.

### **25B—Purpose and application of Part**

- (1) The purpose of this Part is to facilitate transfers of estate assets and liabilities under Part 5D.6 of the Commonwealth Act.
- (2) This Part applies if ASIC—
- (a) makes a determination under section 601WBA of the Commonwealth Act that there is to be a transfer of estate assets and liabilities from a specified trustee company (the *transferring company*) to another trustee company (the *receiving company*); and
  - (b) issues a certificate of transfer under section 601WBG of the Commonwealth Act stating that the transfer is to take effect.

#### **Note—**

Section 601WBA of the Commonwealth Act enables ASIC to make a transfer determination if—

- (a) ASIC cancels the licence of the transferring company (in which case the determination is a *compulsory transfer determination*); or
- (b) the transferring company applies to ASIC for a transfer determination (in which case the determination is a *voluntary transfer determination*).

### **25C—Transfer of transferring company's estate assets and liabilities**

- (1) From the time a certificate of transfer comes into force in respect of the transfer of estate assets and liabilities from a transferring company to a receiving company, the receiving company is to be taken to be the successor in law of the transferring company, to the extent of the transfer.
- (2) If the transfer of estate assets and liabilities is a total transfer, all the assets and liabilities of the transferring company become respectively the assets and liabilities of the receiving company without any transfer, conveyance or assignment.
- (3) If the transfer of estate assets and liabilities is a partial transfer, all the assets and liabilities of the transferring company that are included in the list (referred to in section 601WBG(2)(c) of the Commonwealth Act) included in, or attached to, the certificate of transfer become respectively assets and liabilities of the receiving company without any transfer, conveyance or assignment.
- (4) To the extent of the transfer of estate assets and liabilities, the duties, obligations, immunities, rights and privileges applying to the transferring company apply to the receiving company and, in particular—
- (a) an appointment of the transferring company in a will, order of a court or instrument of any kind is to be taken to be an appointment of the receiving company (whether the appointment was made before, on or after the commencement of this Part and whether the appointment is in effect on that date, takes effect after that date or has taken effect previously but some further act or thing is necessary to perfect the appointment or undertaking of the office); and

- (b) in each case where the transferring company is acting as a trustee, the receiving company is appointed as the trustee in place of the transferring company and the receiving company—
  - (i) is entitled to exercise any rights, powers, capacities or authorities in respect of or arising from each such appointment; and
  - (ii) to the extent provided in this Act, is obliged to discharge the liabilities and obligations of the transferring company in respect of and arising from each such appointment.
- (5) If the certificate of transfer includes provisions of a kind referred to in section 601WBG(3) of the Commonwealth Act—
  - (a) specifying that particular things are to happen or are taken to be the case, those things are taken to happen, or to be the case, in accordance with those provisions; or
  - (b) specifying a mechanism for determining things that are to happen or are taken to be the case, things determined in accordance with that mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism.

### **25D—Certificates evidencing operation of Part**

- (1) An authorised ASIC officer may, by a certificate in writing signed by the officer, certify that a specified asset or liability of the transferring company has become an asset or liability of the receiving company under this Part.
- (2) For all purposes and in all proceedings, a certificate purporting to be issued under subsection (1) is evidence of the matters certified.
- (3) ASIC is empowered to authorise, in writing, a person who is a member of ASIC, or of its staff, to issue certificates under this section.

### **25E—Registration or record of transfer**

The Registrar-General or any other person or authority required or authorised under a law of the State to register or record transactions affecting assets or liabilities, or documents relating to such transactions, must, on application under this section accompanied by a certificate issued under section 25D, register or record in an appropriate manner the transfer or transfers to which the certificate relates.

### **25F—Exemption from State taxes**

No State taxes are chargeable under any Act in respect of a transfer of estate assets or liabilities facilitated under this Part.

### **25H—Relationship of Part with other laws**

- (1) This Part has effect despite anything in a contract, deed, undertaking, agreement, will or other instrument.
- (2) Nothing done by or under this Part—
  - (a) places a receiving company, a transferring company or another person in breach of contract or confidence or otherwise makes any of them guilty of a civil wrong; or

- (b) places a receiving company, a transferring company or another person in breach of—
    - (i) a law of the State; or
    - (ii) a contractual provision prohibiting, restricting or regulating the assignment or transfer of an asset or liability or the disclosure of information; or
  - (c) releases a surety, wholly or partly, from all or any of the surety's obligations.
- (3) Without limiting subsection (1), if, apart from this section, the advice or consent of a person would be necessary in a particular respect, the advice is taken to have been obtained or the consent is taken to have been given.

## **Part 4—Miscellaneous**

### **26—False or misleading statements**

A trustee company must not make or include in any document required by or for the purposes of this Act any statement that is false or misleading in a material particular.

Maximum penalty: \$20 000.

### **28—Evidentiary provision**

- (1) A certificate under the seal of a trustee company certifying that a person named in the certificate is an officer of the company is to be accepted in any legal proceedings, in the absence of proof to the contrary, as proof that the person is an officer of the company.
- (2) A certificate under seal of the company—
  - (a) certifying that the company is authorised to act as executor of the will, or administrator of the estate, of a deceased person, or in any other capacity authorised by this Act; and
  - (b) including a photographic copy of the probate or letters of administration with or without the will annexed, or other order or document of appointment,is, notwithstanding any other law, sufficient evidence that the company is authorised to act as executor of the will, or administrator of the estate, of the deceased person, or in that other capacity.
- (3) A certificate under subsection (2) is equivalent, for registration purposes, to the probate, letters of administration, trust instrument or other order or document of appointment.

### **29—Act not to affect other Acts or remedies**

- (1) The provisions of this Act are in addition to, and do not derogate from, the provisions of any other Act.
- (2) Nothing in this Act derogates from any right of action or other right or remedy that a person has apart from this Act.

### 31—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
  - (a) make provisions of a saving or transitional nature—
    - (i) consequent on the amendment of this Act by a relevant Act; or
    - (ii) relevant to the interaction between this Act and a relevant Commonwealth Act; and
  - (b) prescribe a fine, not exceeding \$1 250, for breach of or non-compliance with a provision of the regulations.
- (3) A provision of a regulation made under subsection (2)(a) may, if the regulation so provides, take effect from the commencement of a relevant Act or relevant Commonwealth Act or from a later day.
- (4) In this section—

*relevant Act* means the *Trustee Companies (Commonwealth Regulation) Amendment Act 2010*;

*relevant Commonwealth Act* means—

- (a) the *Corporations Legislation Amendment (Financial Services Modernisation) Act 2009* of the Commonwealth; or
- (b) any other Act of the Commonwealth relevant to the interaction between this Act and the *Corporations Act 2001* of the Commonwealth.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Trustee Companies Act 1988* repealed the following:

*ANZ Executors & Trustee Company (South Australia) Limited Act 1985*

*Bagot's Executor Company Act 1910*

*Elder's Executor Company's Act 1910*

*Executors Company's Act 1885*

*Farmers' Co-operative Executors Act 1919*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1988	102	<i>Trustee Companies Act 1988</i>	15.12.1988	20.4.1989 ( <i>Gazette 20.4.1989 p1080</i> )
1990	73	<i>Trustee Companies Act Amendment Act 1990</i>	20.12.1990	31.10.1991 ( <i>Gazette 31.10.1991 p1198</i> )
1993	92	<i>Statutes Amendment (Attorney-General's Portfolio No. 2) Act 1993</i>	4.11.1993	4.11.1993
1996	78	<i>ANZ Executors &amp; Trustee Company (South Australia) Limited (Transfer of Business) Act 1996</i>	28.11.1996	1.1.1997 ( <i>Gazette 19.12.1996 p1918</i> )
1999	56	<i>Statutes Amendment (Trusts) Act 1999</i>	12.8.1999	Pt 3 (ss 8—14) & Sch—18.10.1999 ( <i>Gazette 30.9.1999 p1341</i> )
2000	23	<i>Statutes Amendment (Public Trustee and Trustee Companies—GST) Act 2000</i>	8.6.2000	8.6.2000
2001	23	<i>Statutes Amendment (Corporations) Act 2001</i>	14.6.2001	Pt 32 (ss 119—121)—15.7.2001 being the day on which the <i>Corporations Act 2001</i> of the Commonwealth came into operation: <i>Commonwealth of Australia Gazette</i> No. S 285, 13 July 2001 ( <i>Gazette 21.6.2001 p2270</i> )

2002	33	<i>Statutes Amendment (Attorney-General's Portfolio) Act 2002</i>	28.11.2002	Pt 12 (s 20)—3.3.2003 ( <i>Gazette</i> 27.2.2003 p807)
2005	36	<i>Trustee Companies (Elders Trustees Limited) Amendment Act 2005</i>	14.7.2005	15.8.2005 ( <i>Gazette</i> 11.8.2005 p3012)
2006	44	<i>Statutes Amendment (Justice Portfolio) Act 2006</i>	14.12.2006	Pt 31 (s 67)—18.1.2007 ( <i>Gazette</i> 18.1.2007 p234)
2010	12	<i>Trustee Companies (Commonwealth Regulation) Amendment Act 2010</i>	5.8.2010	Pt 2 (ss 4—17) & Sch 1 (cll 8 & 9)—20.12.2010 ( <i>Gazette</i> 9.12.2010 p5580)
<b>2012</b>	<b>45</b>	<b><i>Trustee Companies (Transfers) Amendment Act 2012</i></b>	<b>22.11.2012</b>	<b>22.11.2012</b>

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 12/2010 s 4(1), (2)	20.12.2010
Pt 1		
<i>s 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>15.8.2005</i>
s 3		
s 3(1)	s 3 redesignated as s 3(1) by 56/1999 s 8(b)	18.10.1999
appointment	inserted by 12/2010 s 5(1)	20.12.2010
<i>business day</i>	<i>deleted by 12/2010 s 5(1)</i>	<i>20.12.2010</i>
<i>common fund</i>	<i>deleted by 12/2010 s 5(1)</i>	<i>20.12.2010</i>
Commonwealth Act	inserted by 12/2010 s 5(1)	20.12.2010
<i>investor</i>	<i>deleted by 12/2010 s 5(2)</i>	<i>20.12.2010</i>
<i>person who has a proper interest or person with a proper interest</i>	inserted by 56/1999 s 8(a)	18.10.1999
<i>trustee company</i>	<i>deleted by 12/2010 s 5(3)</i>	<i>20.12.2010</i>
trustee company	substituted by 12/2010 s 5(4)	20.12.2010
s 3(2) and (3)	inserted by 56/1999 s 8(b)	18.10.1999
Pt 2		
s 9	<i>deleted by 12/2010 s 6</i>	<i>20.12.2010</i>
<i>s 10 before deletion by 12/2010</i>		
s 10(1)	<i>amended by 56/1999 s 9(a)</i>	<i>18.10.1999</i>
s 10(2)	<i>amended by 56/1999 s 9(b)</i>	<i>18.10.1999</i>
s 10(2a)	<i>inserted by 56/1999 s 9(c)</i>	<i>18.10.1999</i>
s 10(4)—(6)	<i>inserted by 56/1999 s 9(d)</i>	<i>18.10.1999</i>
ss 10—12	<i>deleted by 12/2010 s 6</i>	<i>20.12.2010</i>
s 13	amended by 12/2010 s 7	20.12.2010

<i>s 15 before deletion by</i>		
<i>12/2010</i>		
<i>s 15(2)</i>	<i>substituted by 56/1999 s 10(a)</i>	<i>18.10.1999</i>
<i>s 15(3a)</i>	<i>inserted by 56/1999 s 10(b)</i>	<i>18.10.1999</i>
<i>s 15</i>	<i>deleted by 12/2010 s 8</i>	<i>20.12.2010</i>
<i>ss 15A and 15B</i>	<i>inserted by 56/1999 s 11</i>	<i>18.10.1999</i>
	<i>deleted by 12/2010 s 8</i>	<i>20.12.2010</i>
<i>s 16</i>	<i>amended by 23/2001 s 119</i>	<i>15.7.2001</i>
	<i>amended by 12/2010 s 9</i>	<i>20.12.2010</i>
<i>s 16A</i>	<i>inserted by 23/2000 s 4</i>	<i>8.6.2000</i>
	<i>deleted by 12/2010 s 10</i>	<i>20.12.2010</i>
Pt 3		
<i>s 17 before deletion by</i>		
<i>12/2010</i>		
<i>s 17(1)</i>	<i>amended by 56/1999 s 14 (Sch)</i>	<i>18.10.1999</i>
<i>s 17</i>	<i>deleted by 12/2010 s 11</i>	<i>20.12.2010</i>
<i>s 18 before deletion by</i>		
<i>12/2010 s 11</i>		
<i>s 18(2) and (4)</i>	<i>amended by 56/1999 s 14 (Sch)</i>	<i>18.10.1999</i>
<i>s 18</i>	<i>deleted by 12/2010 s 11</i>	<i>20.12.2010</i>
<i>s 19 before deletion by</i>		
<i>12/2010</i>		
<i>s 19(1)</i>	<i>amended by 56/1999 s 14 (Sch)</i>	<i>18.10.1999</i>
<i>s 19(2)</i>	<i>amended by 56/1999 s 14 (Sch)</i>	<i>18.10.1999</i>
	<i>amended by 23/2001 s 120(a)</i>	<i>15.7.2001</i>
<i>s 19(2a)</i>	<i>inserted by 56/1999 s 12(a)</i>	<i>18.10.1999</i>
<i>s 19(3)</i>	<i>amended by 56/1999 s 12(b)</i>	<i>18.10.1999</i>
<i>s 19(4)</i>		
<i>financial year</i>	<i>amended by 23/2001 s 120(b)</i>	<i>15.7.2001</i>
<i>registered company auditor</i>	<i>substituted by 23/2001 s 120(c)</i>	<i>15.7.2001</i>
<i>s 19</i>	<i>deleted by 12/2010 s 11</i>	<i>20.12.2010</i>
<i>s 20 before deletion by</i>		
<i>12/2010 s 11</i>		
<i>s 20(1)</i>	<i>amended by 56/1999 s 14 (Sch)</i>	<i>18.10.1999</i>
<i>s 20(3)</i>	<i>amended by 23/2001 s 121</i>	<i>15.7.2001</i>
<i>s 20</i>	<i>deleted by 12/2010 s 11</i>	<i>20.12.2010</i>
<i>s 21 before deletion by</i>		
<i>12/2010</i>		
<i>s 21(1)</i>	<i>amended by 56/1999 s 14 (Sch)</i>	<i>18.10.1999</i>
<i>ss 21 and 22</i>	<i>deleted by 12/2010 s 11</i>	<i>20.12.2010</i>
Pt 3A	<i>inserted by 12/2010 s 12</i>	<i>20.12.2010</i>
<b>Div 1 heading</b>	<b><i>deleted by 45/2012 s 3</i></b>	<b><i>22.11.2012</i></b>
<b>s 25A</b>		
<b>s 25A(1)</b>		

certificate of transfer	amended by 45/2012 s 4(1)	22.11.2012
receiving company	amended by 45/2012 s 4(2)	22.11.2012
transferring company	amended by 45/2012 s 4(3)	22.11.2012
<i>Div 2 heading</i>	<i>deleted by 45/2012 s 5</i>	22.11.2012
s 25B		
s 25B(1)	amended by 45/2012 s 6(1), (2)	22.11.2012
s 25B(2)	substituted by 45/2012 s 6(3)	22.11.2012
s 25C		
s 25C(4)	amended by 45/2012 s 7	22.11.2012
s 25D		
s 25D(1)	amended by 45/2012 s 8	22.11.2012
s 25F	amended by 45/2012 s 9(1), (2)	22.11.2012
<i>Div 3</i>	<i>deleted by 45/2012 s 10</i>	22.11.2012
<i>Div 4 heading</i>	<i>deleted by 45/2012 s 11</i>	22.11.2012
Pt 4		
s 26	amended by 56/1999 s 14( Sch)	18.10.1999
s 27	<i>deleted by 12/2010 s 13</i>	20.12.2010
s 30	<i>deleted by 12/2010 s 14</i>	20.12.2010
s 31		
s 31(2)	amended by 56/1999 s 14 (Sch) substituted by 12/2010 s 15	18.10.1999 20.12.2010
s 31(3) and (4)	inserted by 12/2010 s 15	20.12.2010
<i>Sch 1</i>	<i>amended by 73/1990 s 3</i>	31.10.1991
	<i>amended by 92/1993 s 5</i>	4.11.1993
	<i>amended by 78/1996 Sch</i>	1.1.1997
	<i>amended by 56/1999 s 13</i>	18.10.1999
	<i>amended by 33/2002 s 20</i>	3.3.2003
	<i>amended by 36/2005 s 4</i>	15.8.2005
	<i>amended by 44/2006 s 67(1)—(4)</i>	18.1.2007
	<i>deleted by 12/2010 s 16</i>	20.12.2010
<i>Sch 2</i>	<i>deleted by 12/2010 s 17</i>	20.12.2010

## Transitional etc provisions associated with Act or amendments

### *Trustee Companies (Commonwealth Regulation) Amendment Act 2010, Sch 1 Pt 5*

#### 8—Interpretation

In this Part—

*appointment* includes nomination;

*Commonwealth Act* means the *Corporations Act 2001* of the Commonwealth;

*principal Act* means the *Trustee Companies Act 1988*;

*Schedule 1 trustee company* means a company listed in Schedule 1 of the principal Act immediately before the repeal of that Schedule by Part 2 of this Act.

## 9—Transitional provision

- (1) The repeal of Schedule 1 of the principal Act by Part 2 of this Act does not affect the appointment of a Schedule 1 trustee company made before the repeal as—
  - (a) the executor of a will, or the administrator of an estate of a deceased person; or
  - (b) a trustee, agent, attorney, manager or receiver; or
  - (c) the guardian of a child; or
  - (d) the administrator, committee, guardian or manager of the estate of a person who is unable to manage his or her own affairs.
- (2) Except to the extent of any inconsistency with the Commonwealth Act—
  - (a) any duties, obligations, immunities, rights and privileges of a Schedule 1 trustee company arising before the repeal of that Schedule are not affected by the repeal; and
  - (b) the assets and liabilities of a Schedule 1 trustee company are not affected by the repeal; and
  - (c) any action taken or notice given by a Schedule 1 trustee company before the repeal of that Schedule or the amendment of the principal Act by this Act is not affected by the repeal or amendment; and
  - (d) the principal Act (as amended by this Act) continues to apply to a Schedule 1 trustee company.
- (3) Proceedings relating to a Schedule 1 trustee company that have been commenced but not determined before the repeal of that Schedule are not affected by the repeal.

## Historical versions

Reprint No 1—15.1.1992

Reprint No 2—4.11.1993

Reprint No 3—1.1.1997

Reprint No 4—18.10.1999

Reprint No 5—8.6.2000

Reprint No 6—15.7.2001

Reprint No 7—3.3.2003

15.8.2005

18.1.2007

20.12.2010