



ANNO VICESIMO SECUNDO

GEORGII V REGIS.

A.D. 1931.

No. 2030.

An Act to provide Protection for Trustees in connection with the Conversion of Securities under the Commonwealth Act, known as the Commonwealth Debt Conversion Act, 1931, and to make certain other provisions with respect to Trusts and Trustees, and for other purposes.

[*Assented to, November 26th, 1931.*]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof:

1. (1) This Act may be cited as the "Trustee Act (No. 2), 1931". Short title.

(2) The Trustee Acts, 1893 to 1931, and this Act may be cited together as the Trustee Acts, 1893 to 1931.

2. This Act is incorporated with the other Acts mentioned in **Incorporation**, section 1 of this Act, and those Acts and this Act shall be read as one Act.

3. This Act shall be deemed to have come into operation on the **Commencement**, day on which the Commonwealth Act, known as the Commonwealth Debt Conversion Act, 1931, came into operation.

4. In this Act, unless inconsistent with the context or subject **Interpretation**, matter—

"Court" means the Supreme Court or a Judge thereof:

"Existing

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“Existing securities” and “new securities” have the meanings given to the said expressions respectively in the Commonwealth Act:

“The Commonwealth Act” means the Commonwealth Act, known as the Commonwealth Debt Conversion Act, 1931:

“Trustee” means trustee within the meaning of the Trustee Acts, 1893 to 1931, and includes a Trustee Company incorporated by Act of Parliament, an executor, an administrator, the Public Trustee, a committee of the estate of any mental defective, and any other corporation or person acting in a fiduciary character.

Construction of power to invest in existing securities.
Vict., No. 3956, s. 4.

Apportionment of increase or decrease in value of securities on conversion.

Vict., No. 3956, s. 5.

5. Subject to the provisions of this Act, a power or direction whether subject or not to any restrictions or conditions to invest in any of the existing securities which may be converted under the Commonwealth Act shall extend to authorise an investment subject to the same conditions and restrictions (if any) in new securities.

6. Where any existing securities, which have been converted into new securities, represent trust funds held by a trustee for successive interests, the following provisions shall apply:—

(a) Where the face value of the new securities exceeds the face value of the existing securities, such excess, together with any cash premium received on the conversion, shall be deemed to be income for the purposes of the trust, and the trustee shall forthwith appropriate a sufficient portion of the new securities with the earliest date of maturity to represent such excess:

(b) The trustee may sell the new securities so appropriated at such time as the trustee shall think convenient and may invest the proceeds and the said cash premium in any investment allowed by law for the investment of trust funds:

(c) The income represented by such appropriated securities or the proceeds thereof and by the said cash premium shall be deemed to belong in the aggregate to the persons entitled to the income of the trust funds during the period from the first day of August, nineteen hundred and thirty-one, to the date on which the existing securities would have matured if they had not been converted. Where securities with different dates of maturity are amalgamated for the purposes of conversion the trustee may take a period, which in his opinion represents a fair average period:

(d) Such income together with interest (if any) arising from the investment thereof shall be apportioned over the said period among the persons entitled to such successive interests in such manner as the trustee shall think just:

(e) The

Trustee Act (No. 2).—1931.

- (e) The trustee may pay such income and interest (if any) so apportioned to the persons entitled thereto, their executors, administrators, and assigns, at such time or times during the said period as the trustee, in his absolute discretion, shall think convenient:
- (f) Where the face value of the new securities is less than the face value of the existing securities, the interest from the new securities shall, during the said period, be apportioned between income and *corpus*, so as to secure that income shall be credited with interest on the new securities at a rate which shall be Twenty-two and a Half per cent. less than the rate of interest which was payable on the existing securities prior to conversion, the balance of the interest from the new securities being credited to *corpus*: Provided that this subsection shall only apply so long as the trustee shall retain the new securities.

7. Where, in the execution of any trust or in the performance of any duty and whether in pursuance of the order of any Court or otherwise, any existing security or any mortgage or other investment has been appropriated to provide an annuity, and such existing security is converted under the Commonwealth Act into a new security or the trustee has reduced the rate of interest payable under such mortgage or other investment under the provisions of the Financial Emergency Act, 1931, or under the corresponding legislation of any State or of the Commonwealth, or where the interest from any securities, mortgages, or investments for the time being properly and lawfully substituted for the securities, mortgages, or investments appropriated as aforesaid is or has been by or under the operation of any of the said Acts reduced, whether compulsorily or by agreement, so as to be less than the amount required to pay the said annuity, the trust or duty shall, so far as relates to the payment of the annuity, be deemed to be executed or performed by the payment of the interest on the new security or at the reduced rate, as the case may be, notwithstanding that such interest shall not be of sufficient amount to pay such annuity in full: Provided that nothing in this section shall affect the right of the annuitant to have the deficiency in the annuity made up out of capital or *corpus*, or the right of the personal representatives of a deceased annuitant to have any deficiency in the annuity made up out of future income, if the terms of the trust so provide.

Provision as to
annuities.
Cf. Vict., No. 3956,
s. 6.

8. (1) Where any existing securities are converted into new securities, the new securities and the interest thereon shall, subject to the provisions of this Act, be subject to the same trusts, powers, testamentary and other dispositions, provisions, and incumbrances as affect the securities so converted and the interest thereon respectively.

Effect of conversion
on securities subject
to trusts and other
dispositions.
Ibid., s. 7.

(2) In any Act passed or instrument executed before the passing of this Act, references to any existing security liable to be converted by the Commonwealth Act, may, if the existing security is so converted

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converted, be construed as references to new securities; and, in the case of any testamentary instrument executed before the passing of this Act, any disposition which but for the passing of this Act would have operated as a specific bequest of any such existing security shall, if the same is so converted, be construed as a specific bequest of the new securities for which such existing security has been converted.

Power to sell new securities notwithstanding trust instrument.

Vict., No. 3956, s. 8.

9. When any new securities are held by a trustee by way of conversion of existing securities under the Commonwealth Act, such trustee shall be at liberty to sell the same and to invest the proceeds arising from such sale, either in any manner authorised by the trust or in any of the securities authorised by law for the investment of trust moneys, notwithstanding anything to the contrary contained in the instrument creating the trust.

Applications to Court for directions
Ibid., s. 9.

10. If by reason of the conversion of any existing securities into new securities in pursuance of the Commonwealth Act any question arises as to the powers or duties of any trustee or as to the application of the interest or principal of any new securities, and in particular as to the cases in which, and the extent to which, capital may be applied towards meeting any deficiency in income, the Court, on the application of the trustee or of any person interested in the security, may, by order, determine the question.

Alternative schemes for carrying out trust instrument.
Ibid., s. 10.

11. (1) If by reason of the operation of the Commonwealth Act on securities constituting the whole or any portion of any trust fund, or if by reason of the reduction of interest on any mortgage or investment, a substantial modification of the interests of the beneficiaries *inter se*, as provided under the trust instrument, is occasioned, the trustee of such fund may propose and submit for the sanction of the Court a scheme for the administration of the said trust, so as to give effect more nearly to the provisions of the trust instrument.

(2) Notice in writing of any such proposed scheme shall be served on each beneficiary likely to be affected thereby not less than twenty-eight days before application for sanction of the Court is made: Provided that in the case of a beneficiary who is absent from the State, or under a disability, such notice shall be served in such manner and within such time as the Court may direct.

(3) The Court may sanction or vary the scheme as proposed, or reject it.

(4) Where any trustee has *bona fide* submitted a scheme for the sanction of the Court as aforesaid, such trustee shall not be made personally liable for any costs occasioned thereby or incidental thereto.

(5) This section shall be read and construed as in aid of, and not in derogation from, any powers conferred by this Act on any trustee, and not as in any way limiting any power of the Court under the last preceding section or otherwise existing.

12. (1) Where

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12. (1) Where trust funds are invested in any mortgage (including in such term a mortgage as defined by the Financial Emergency Act, 1931), and the interest payable under such mortgage has fallen into arrear, the trustee may, in his discretion if he thinks it in the best interests of the trust, abandon or release the mortgagor from the liability for such arrears of interest or any part thereof, and such abandonment or release shall be effective in law if made in writing signed by the trustee and communicated to the mortgagor, notwithstanding that such writing shall not be under seal. No trustee being the mortgagor shall exercise any of the powers given under this section without the sanction of the Court.

Power of trustee to
remit arrears of
interest.

(2) Nothing contained in this section shall affect the rights of the persons entitled to the income and *corpus* respectively *inter se* on the payment or realisation of such mortgage, and any interest so released shall be deemed to be a loss, and shall be apportionable as the circumstances may require: Provided that for the purpose of making such apportionment interest shall be calculated as from the twenty-third day of July, nineteen hundred and thirty-one, at a rate which shall be Twenty-two and a Half per cent. per annum less than the rate fixed by the mortgage, or at the rate of Five per cent. per annum, whichever shall be the higher.

13. The powers given to trustees by the Financial Emergency Act, 1931, shall be exercisable by the trustees, notwithstanding any direction to the contrary given to the trustees by any beneficiary or beneficiaries, and notwithstanding that such beneficiary or beneficiaries may be absolutely entitled to the trust funds.

Powers of trustees
exercisable notwith-
standing directions
of beneficiaries.

14. Notwithstanding any law to the contrary a trustee on any sale of trust real property effected within two years from the commencement of this Act, may leave unpaid purchase-money thereof invested on the security of the property sold to any extent which the trustee deems expedient in the circumstances.

Power of trustee to
take mortgage for
purchase-money.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

A. HORE-RUTHVEN, Governor.