

No. , 1937.

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## A BILL

To make certain provisions with respect to trusts for charitable purposes; to amend in certain respects the law relating to trustees and trust property; to amend in certain respects the law relating to executors and administrators; to validate certain matters; for these and other purposes to amend the Conveyancing Act, 1919-1932, the Trustee Act, 1925, the Wills, Probate and Administration Act, 1898-1932, the Public Trustee Act, 1913-1936, the Real Property Act, 1900, and certain other Acts in certain respects; and for purposes connected therewith.

[MR. L. O. MARTIN;—14 *December*, 1937.]



**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

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## PART I.

### PRELIMINARY.

Short title.

**1.** (1) This Act may be cited as the "Conveyancing, Trustee and Probate (Amendment) Act, 1937."

(2) The Conveyancing Act, 1919-1932, as amended by this Act, may be cited as the Conveyancing Act, 1919-1937. 10

(3) The Trustee Act, 1925, as amended by subsequent Acts and by this Act, may be cited as the Trustee Act, 1925-1937. 15

(4) The Wills, Probate and Administration Act, 1898-1932, as amended by this Act, may be cited as the Wills, Probate and Administration Act, 1898-1937.

(5) The Public Trustee Act, 1913-1936, as amended by this Act, may be cited as the Public Trustee Act, 1913-1937. 20

Division  
into Parts.

**2.** This Act is divided into Parts, as follows :—

PART I.—PRELIMINARY—ss. 1, 2.

PART II.—AMENDMENT OF CONVEYANCING ACT, 1919-1932—ss. 3, 4. 25

PART III.—AMENDMENT OF TRUSTEE ACT, 1925—s. 5.

PART IV.—AMENDMENT OF WILLS, PROBATE AND ADMINISTRATION ACT, 1898-1932—s. 6.

PART V.—AMENDMENT OF PUBLIC TRUSTEE ACT, 1913-1936—s. 7. 30

PART VI.—AMENDMENT OF REAL PROPERTY ACT, 1900—s. 8.

PART



PART II.

AMENDMENT OF CONVEYANCING ACT, 1919-1932.

3. The Conveyancing Act, 1919-1932, is amended—

Amendment  
of Act No. 6,  
1919.

(a) by inserting in Part II, next after section 37c, New Div. 6,  
the following new Division:— Part II.

DIVISION 6.—*Trusts for charitable purposes.*

37D. (1) No trust shall be held to be invalid by reason that some non-charitable and invalid purpose as well as some charitable purpose is or could be deemed to be included in any of the purposes to or for which an application of the trust funds or any part thereof is by such trust directed or allowed.

Inclusion of  
non-charit-  
able pur-  
poses not to  
invalidate  
trust.

cf. Property  
Law Act,  
1928 (Vict.),  
s. 131.

(2) Any such trust shall be construed and given effect to in the same manner in all respects as if no application of the trust funds or of any part thereof to or for any such non-charitable and invalid purpose had been or could be deemed to have been so directed or allowed.

(3) This section shall not apply to any trust declared before or to the will of any testator dying before the commencement of the Conveyancing, Trustee and Probate (Amendment) Act, 1937.

(b) by inserting in section two at the end of the matter relating to Part II the following words:—

Sec. 2.

(Division  
into Parts.)

DIVISION 6.—*Trusts for charitable purposes*  
—s. 37D.

4. The Conveyancing Act, 1919-1932. is further amended—

Further  
amendment of  
Act No. 6,  
1919.

(a) by inserting next after subsection one of section 96A the following new subsection:—

Sec. 96A.

(Notice of  
trusts  
affecting  
mortgage  
debts.)

(1A) For the purposes of this section the expression "mortgagee" includes a mortgagee who, pursuant to any power conferred by a trust instrument



instrument or by law has purchased or otherwise acquired the equity of redemption in the mortgaged property.

Sec. 106.  
(Leasing  
powers of  
mortgagor  
and of mort-  
gagee in  
possession.)

- (b) by inserting at the end of subsection sixteen of section one hundred and six the following proviso:— 5

Provided that, in any case where a trust corporation has been appointed receiver pursuant to subsection (6A) of section one hundred and fifteen of this Act, the delegation by that trust corporation in its capacity of mortgagee shall be sufficiently evidenced by a statement in the lease of the decision of that trust corporation to exercise the power conferred by this subsection. 15

Sec. 107.  
(Powers  
(with a  
view to the  
grant of an  
authorised  
lease) for  
mortgagor  
or mort-  
gagee in  
possession  
to accept  
surrenders  
of lease.)

- (c) by inserting at the end of subsection eleven of section one hundred and seven the following proviso:—

Provided that, in any case where a trust corporation has been appointed receiver pursuant to subsection (6A) of section one hundred and fifteen of this Act, the delegation by that trust corporation in its capacity of mortgagee shall be sufficiently evidenced by a statement in the deed or instrument of surrender of the decision of that trust corporation to exercise the power conferred by this subsection. 20 25

Sec. 115.  
(Appointment  
powers,  
remuneration,  
and duties of  
receiver.)

- (d) (i) by omitting from subsection (6A) of section one hundred and fifteen the words "Where a trust corporation being a mortgagee is entitled to appoint a receiver under the power in that behalf conferred by this Act or by the mortgage deed, or is in possession of the mortgaged property, such trust corporation may appoint itself receiver, and in that event" and by inserting in lieu thereof the words "Where a mortgagee or two or more co-mortgagees is or are entitled to appoint a receiver under the power in that 30 35



- 5 that behalf conferred by this Act or by the mortgage deed, or is or are in possession of the mortgaged property, and such mortgagee or one of such co-mortgagees is a trust corporation, such mortgagee or co-mortgagees may appoint such trust corporation receiver and in that event such trust corporation";
- 10 (ii) by omitting from the proviso to the same subsection the words "so appoints itself" and by inserting in lieu thereof the words "is so appointed";
- 15 (iii) by inserting in paragraph (d) of subsection eight of the same section after the word "interest" the words "due and unpaid and";
- (iv) by inserting next after the same paragraph the following word and new paragraph:—
- 20 and  
(e) in or towards discharge of the principal money due under the mortgage if so directed in writing by the mortgagee;
- 25 (v) by inserting in the same subsection after the word "residue" the words "if any";
- (vi) by inserting at the end of the same subsection the following proviso:—
- 30 Provided that, in any case where a trust corporation has been appointed receiver pursuant to subsection (6A) of this section, the decision of such trust corporation to effect the insurances mentioned in subsection seven of this section or to apply moneys received by it as receiver in payment of the costs of executing necessary or proper repairs or
- 35 in or towards discharge of the principal money due under the mortgage shall, for all purposes and on all occasions be deemed to be the equivalent of a direction in writing of



of that trust corporation in its capacity of mortgagee, so to apply the mortgage moneys:

Provided further that a direction by a mortgagee to apply moneys received by a receiver in or towards satisfaction of the principal moneys or a decision of a trust corporation so to apply moneys received by it as receiver shall not be carried into effect unless the mortgagee or trust corporation at the date of such application is entitled to exercise any power of sale contained or implied in the mortgage. 5 10

- (vii) by inserting at the end of the same section the following new subsection:— 15

(9) In any case in which a trustee who is entitled whether severally or as a co-mortgagee to a debt secured by a mortgage of land in trust as to the whole or part of such debt for persons by way of succession appoints or joins with his co-mortgagee in appointing a receiver under the power in that behalf conferred by this Act, nothing contained in subsection eight of this section shall affect the right of any person entitled to the income of the mortgage debt to recoupment out of the capital of the mortgage debt of the whole or any part of the moneys applied by the receiver under the provisions of that subsection in expenditure properly chargeable to capital. 20 25 30

Receiver—  
appointment  
of not to  
affect cer-  
tain rights.

Sec. 151D.  
(Power to  
appoint  
trustees of  
infants'  
property.)

- (e) by omitting paragraph (d) of subsection one of section 151D and by inserting in lieu thereof the following paragraph:—

(d) On such appointment— 35

- (i) the personal representatives, as such, shall be discharged from all further liability in respect of such devise, legacy, residue or share;

(ii)



- 5 (ii) the rights to which the infant is entitled in virtue of such devise, legacy, residue or share shall be restricted to the property which, by the operation of this section and section nine of the Trustee Act, 1925-1937, is vested in the trustees for the infant and shall not extend to any other property;
- 10 (iii) the devise, legacy, residue or share may be retained in its existing condition or state of investment or may be converted into money and such money may be invested in any authorised investment.
- 15 (r) by omitting the word "only" in subsection five of section one hundred and fifty-three and by inserting in the same subsection immediately before the word "after" the words "before or."
- Sec. 153 (5).

PART III.

AMENDMENT OF TRUSTEE ACT, 1925.

5. The Trustee Act, 1925, as amended by subsequent Acts, is amended—

Amendment of Act No. 14, 1925.

- 25 (a) (i) by inserting next after subsection three of section nine the following new subsection:—
- 30 (3A) In the case of any property subject to the provisions of the Closer Settlement Acts or the Mining Act, 1906-1935, or the Crown Lands Consolidation Act, 1913, or any other Act relating to Crown lands, the property shall not vest until either—
- 35 (a) the appropriate transfer is executed and registered so that the property is duly transferred; or
- (b)
- Sec. 9.  
(Vesting on appointment and retirement of trustees.)



- (b) an entry of the vesting is made in the appropriate register kept under the provisions of the Act to which such property is subject.

Any such entry shall have the same effect as if the property were duly transferred. 5

- (ii) by omitting paragraph (b) of subsection four of the same section;

- (iii) by omitting from paragraph (c) of the same subsection the words "paragraphs (a) and (b) of this subsection" and by inserting in lieu thereof the words "subsections three and (3A) of this section." 10

Sec. 10.  
(Renuncia-  
tion of  
probate.)

- (b) (i) by omitting from subsection two of section ten the word "solely"; 15  
(ii) by inserting next after the same subsection the following new subsections:—

(2A) Where, pursuant to subsection one of section 75A of the Wills, Probate and Administration Act, 1898-1937, the Public Trustee or a trustee company has been appointed executor of a will in the place or stead of a person by such will appointed both executor and trustee thereof, and probate of such will has been granted to the Public Trustee or the trustee company, as the case may be, then, by virtue of such grant and without further appointment, the Public Trustee or the trustee company, as the case may be, shall be deemed to be appointed trustee of the will in the place or stead of such person. 20 25 30

(2B) In any of the following cases, that is to say—

- (a) where the Supreme Court or a Judge thereof, sitting in its probate or equity jurisdiction, appoints a trustee company administrator in the place or stead of a person 35



person who, by the will, was appointed both executor and trustee thereof; or

(b) where, pursuant to section eighteen of the Public Trustee Act, 1913-1936, the court, upon the application of any executor who was, by the will, appointed both executor and trustee thereof, by order, transfers to the Public Trustee, for administration, the estate of the deceased person; or

(c) where, pursuant to subsection two of section 75A of the Wills, Probate and Administration Act, 1898-1937, an executor who was, by the will, appointed both executor and trustee thereof, by deed appoints the Public Trustee or a trustee company to be executor in his place or stead,

then the trustee company or the Public Trustee, as the case may be, shall, by virtue of such appointment, order or deed, and without further appointment, be deemed to be appointed trustee of the will in the place or stead of the person thereby appointed.

(c) (i) by omitting from paragraph (f) of subsection two of section fourteen the words "in the Government Savings Bank of New South Wales" and by inserting in lieu thereof the words "in the Commonwealth Savings Bank of Australia or in the Rural Bank of New South Wales or in any bank or corporation prescribed by rules of court";

Sec. 14.  
(Authorised  
invest-  
ments.)

(ii) by inserting at the end of subsection eight of the same section the following words "or on mortgage of a conditional lease under the



the said Acts held in virtue of any such conditional purchase or in virtue of any conditional purchase which has become freehold, either alone or together with the conditional purchase or freehold in virtue of which it is held, or on mortgage of land of any other tenure under the said Acts or the Closer Settlement Acts which is or may be converted into freehold whether subject to a rent to the Crown or not or which is a lease in perpetuity.”

Sec. 20.  
(Release of  
part of the  
security.)

- (d) by omitting subsection one of section twenty and by inserting in lieu thereof the following subsection:—

(1) Where any property is held by a trustee by way of security and the trustee has power under this Act or otherwise to invest on mortgage and to vary investments, the trustee—

(a) may release part of the property from the mortgage, whether any part of the mortgage debt is repaid or not, provided that the unreleased part of the property would, at the time, be a proper investment in all respects for the amount remaining unpaid;

(b) may, on a sale by the mortgagor of part of the mortgaged property and on the receipt by the trustee of the whole of the purchase money thereof after deduction of the expenses of the sale, release such part from the mortgage.

Sec. 22.  
(New shares  
in a  
company.)

- (e) by inserting next after subsection two of section twenty-two the following new subsection:—

(2A) In any case in which the preferential right in subsection one of this section referred to is offered to him the trustee may in any case in which the shares the subject-matter of the right are subject to a special liability in the



the event of the winding-up of the company exercise the right and hold the said shares as if they were part of his original holding in the company.

- 5 (f) by inserting next after subsection four of section twenty-six the following new subsection:— Sec. 26.  
(Powers incident to sale.)

10 (4A) A contravention of subsection four of this section shall not invalidate or be deemed to have invalidated any instrument intended to affect or evidence the title to any land.

- (g) (i) by omitting from paragraph (b) of subsection three of section twenty-eight the word "equal"; Sec. 28.  
(Deferred payment on sale of land.)

15 (ii) by omitting from the same paragraph the words "two years" and by inserting in lieu thereof the words "three years";

(iii) by inserting at the end of the same paragraph the words—

20 No instalment which is made payable during the first three years from the date of the contract of sale shall be of an amount less than five per centum of the purchase money, and all instalments which are made payable after the third year from the date of the contract of sale shall be equal in amount.

- (h) by inserting next after section thirty-two the following new section:— New s. 32A.

30 32A. A trustee unless expressly forbidden by the instrument, if any, creating the trust, may, in lieu of proceeding to foreclosure, purchase the equity of redemption of land in New South Wales the subject of a mortgage held by the trustee under which default has been made where the moneys expended in such purchase are subject to the same trusts as the mortgage debt: Provided that in no case shall the Power to purchase equity of redemption in lieu of foreclosure.



the moneys paid by way of consideration for such purchase exceed five per centum of the amount due under the mortgage.

Sec. 33.  
(Sale after  
right of  
redemption  
barred.)

- (i) by inserting next after the word "foreclosure" in subsection five of section thirty-three the words "or purchase of the equity of redemption."

Sec. 38.  
(Raising  
money.)

- (j) by inserting next after subsection one of section thirty-eight the following new subsection:—

(1A) Where a trustee holds land in respect of which moneys are due and payable for rates or taxes or in respect of which the trustee is under a statutory obligation to expend moneys and the trustee has no moneys subject to the same trusts as such land wherewith to pay such rates or taxes or discharge such statutory obligation the trustee shall have and shall be deemed always to have had power to raise the money required to make such payment or discharge such obligation by sale or mortgage of the whole or part of such land or by sale, conversion, calling in or mortgage of all or any part of the trust property for the time being in possession held upon the same trusts as such land.

New ss.  
39A, 39B.

- (k) by inserting next after section thirty-nine the following new sections:—

Application  
of income by  
trustee-  
mortgagee in  
possession.

39A. In any case in which a trustee is entitled whether severally or as a co-mortgagee to a debt secured by a mortgage of land in trust as to the whole or part of such debt for persons by way of succession, and such trustee has before the commencement of the Conveyancing, Trustee and Probate (Amendment) Act, 1937, entered into possession, or at any time after such commencement enters into possession of the mortgaged property, the trustee shall apply the



the income of the mortgaged property received by him after such commencement as follows, namely—

- 5 (a) in discharge of all rents, taxes, rates and outgoings affecting the mortgaged property;
- 10 (b) in payment of the premiums on any insurances properly payable under the mortgage instrument or under this Act and the costs of executing necessary repairs;
- 15 (c) in keeping down all annual sums and the interest on all principal sums having priority to the mortgage in right whereof he is in possession.

The rents, taxes, rates, outgoings, premiums, costs, annual sums, and interest so to be discharged, kept down and paid shall be those accruing due—

- 20 (i) where the trustee has entered into possession of the mortgaged property before the commencement of the Conveyancing, Trustee and Probate (Amendment) Act, 1937, after such
- 25 commencement;
- (ii) where the trustee enters into possession after the commencement of the Conveyancing, Trustee and Probate (Amendment) Act, 1937, after the trustee has
- 30 entered into possession:

35 Provided that if at the date of commencement of the Conveyancing, Trustee and Probate (Amendment) Act, 1937, or on the date on which after such commencement the trustee enters into possession of the mortgaged property, as the case may be, any rents, taxes, rates, outgoings, annual sums, interest or premiums mentioned in paragraphs (a), (b) or (c) of this section were or are overdue and unpaid,  
and



and such of those rents, taxes, rates, outgoings, annual sums and premiums as are periodical payments, were payable wholly or in part in respect of any period subsequent to such date of commencement or of entry into possession, as the case may be, then such last-mentioned rents, taxes, rates, outgoings, annual sums and premiums shall, for the purpose of this section, be considered as accruing from day to day and shall be apportionable in respect of time accordingly. 10

Subject to the rights of the mortgagor such trustee shall hold the residue of the income so received by him upon the trusts to which such mortgage debt is subject.

Validation  
of certain  
payments by  
trustee-  
mortgagee in  
possession.

39B. In any case in which, prior to the commencement of the Conveyancing, Trustee and Probate (Amendment) Act, 1937, a trustee was entitled either severally or as a co-mortgagee to a debt secured by a mortgage of land in trust as to the whole or part of such debt for persons by way of succession and the trustee, having entered into possession of the mortgaged property, has before such commencement, bona fide applied the income of the mortgaged property received by him in payment of any rates, taxes or insurance premiums on the mortgaged property or of the interest on prior incumbrances on the mortgaged property, or in executing necessary repairs thereto, then— 15 20 25

(a) the trustee shall not be liable for breach of trust by reason of his having so applied the income of the mortgaged property and shall not be liable personally to make any recoupment in respect of any income so applied by him prior to such commencement; and 30 35

(b) the person entitled to the income of the mortgage debt or his legal representative shall be entitled to recoupment out of the capital of the mortgage debt only in 40



in respect of such part of such income as was so applied by the trustee after the twenty-fifth day of May, one thousand nine hundred and thirty-three and before the commencement of the Conveyancing, Trustee and Probate (Amendment) Act, 1937.

- (1) (i) by inserting in subsection one of section forty-four after the words "such person" the words "or where such person is an infant, for the maintenance, education, advancement or benefit of such person";

- (ii) by inserting at the end of the same subsection the following new subsection:—

(1A) The power conferred by this section to pay or apply any capital money subject to the trust for the maintenance or education of a person who is an infant shall not be exercised in any case where the trust property or the share thereof to which the infant is entitled exceeds two thousand pounds.

- (m) (i) by inserting in subsection two of section forty-six immediately after the word "extend" the words "and apply";

- (ii) by inserting at the end of paragraph (b) of subsection two of section forty-six the following new paragraph:—

(c) setting apart a sum of money in or towards the satisfaction of a legacy share or interest;

- (iii) by inserting at the end of subsection four of the same section the following words: "which may be dealt with or disposed of freed from any such rights";

- (iv) by inserting next after subsection eight of the same section the following new subsection:—

(8A) Notwithstanding anything contained in paragraph (b) of subsection one or in subsection



subsection five or subsection seven of this section the consent of the annuitant shall not be necessary in any case in which the trustee, after having set apart a fund to answer the annuity, which fund at the time of appropriation would be sufficient, if it were invested in Government securities of the Commonwealth of Australia at par, to provide an income exceeding the annuity by at least twenty per centum thereof, has actually invested the fund in such securities. 5 10

(v) by inserting in subsection twelve of the same section before the word "disposition" the words "appropriation or";

Sec. 49.  
(Compound-  
ing.)

(vi) by inserting next after paragraph (a) of subsection one of section forty-nine the following new paragraph:—

(a1) sever and apportion any blended trust funds or property.

Sec. 54.  
(Banks.)

(n) (i) by inserting in subsection one of section fifty-four after the words "two trustees" the words "or where there are two trustees one of whom is the Public Trustee or a trustee company";

(ii) by omitting from the same subsection the words "but not on any one occasion for a period exceeding three months";

(iii) by inserting in paragraph (a) of the same subsection after the word "authority" the words "or by the Public Trustee or a trustee company if one of the trustees and so named in that behalf in the authority"; 25 30

(iv) by inserting at the end of paragraph (b) of the same subsection the words "or if the indorsement is for collection and credit of any account of the trustees with the bank the indorsement of any one or more of the trustees so named"; 35

(v)



- (v) by inserting at the end of the same subsection the following proviso:—

Provided that, except where the trustee or one of the trustees named in any such authority is the Public Trustee or a trustee company the duration of the authority shall be limited to a period not exceeding three months on any one occasion.

- (o) by inserting next after section fifty-four the following new section:—

54A. (1) Where two or more persons in a fiduciary position (other than trustees under a will, settlement or like instrument) have deposited with a banker moneys which have been received by them as such fiduciaries, it shall be lawful for the banker, when so authorised by such persons—

Banker may recognise certain signatures and endorsements.

(a) to pay cheques drawn on the banker by any one or more of them or any agent authorised by them;

(b) to recognise as a valid endorsement upon any bill of exchange or promissory note payable to the order of such persons an endorsement by any one or more of them or any agent authorised by them.

(2) Where any person in a fiduciary position (other than a trustee under a will, settlement or like instrument) has deposited with a banker moneys which have been received by him as such fiduciary, it shall be lawful for the banker when so authorised by such person—

(a) to pay cheques drawn on the banker by any agent authorised by him;

(b) to recognise as a valid endorsement on any bill of exchange or promissory note payable to the order of such person an endorsement by any agent authorised by him.

(3)



(3) Nothing in this section contained shall affect any liability of such persons or person to the persons towards whom they are or he is in a fiduciary position.

New s. 61A.

- (p) by inserting next after section sixty-one the following new section:— 5

Personal liability of legal representative or trustee.

Act. No. 3972, 1928 (Vict.), s. 28.

61A. The legal representative or trustee of the will of a deceased person who was registered as the holder of shares not fully paid up in any incorporated company may distribute the assets 10 of the estate of such deceased person as soon as such legal representative or trustee has procured the registration of some other person as the holder of the shares without reserving any portion of the estate for the payment of any 15 calls made after the date of such registration whether made by the company or its directors or by its liquidators in a winding up, but nothing herein contained shall affect any right which the company or its liquidator may have to follow 20 the assets of such deceased person into the hands of any persons to or amongst whom the same have been transferred or distributed.

Sec. 64. (Execution of trust.)

- (q) by omitting from subsection five of section sixty-four the words "whether as trustee or as delegate either one other trustee or the public trustee or a trustee company" and by inserting in lieu thereof the words "the public trustee or a trustee company or two persons whether as trustee or as delegate"; 30

Sec. 81. (Advantageous dealings.)

- (r) by inserting next after subsection two of section eighty-one the following new subsection:—

(2A) The Court may, subject to such conditions as it thinks fit, by order sanction the past exercise by the trustees of any power which it 35 could have conferred upon the trustees under the provisions of paragraph (a) of subsection one or of subsection two of this section and by the same



same or any subsequent order give the directions in paragraph (b) of subsection one mentioned.

- (s) by inserting next after section eighty-two the following new section:— New s. 82A.

82A. (1) Where any leasehold or freehold land is vested in a trustee for any infant or in trust for any person in succession and in the opinion of the trustee it is expedient in the interest of all persons beneficially interested in the land to expend capital moneys subject to the trust for any one or more of the purposes specified in paragraphs (a) to (f) both inclusive of subsection one of section eighty-two of this Act the trustee may, without the authority of the Court, expend on all or any of such purposes capital moneys subject to the trust not exceeding in all five hundred pounds or one-third of the value of the land whichever is the less. Improve-  
ments and  
repairs  
without  
authority  
of the court.

(2) Where in the opinion of the trustee it is expedient to exercise the power conferred by subsection one of this section he may without the authority of the Court exercise any of the powers specified in subsection four of section eighty-two of this Act, and he shall throw upon the respective interests of the persons beneficially interested a proper proportion of the moneys so expended.

(3) Subsection eight of section eighty-two of this Act shall apply mutatis mutandis to any sale or mortgage made by a trustee in exercise of the powers conferred by this section.

(4) This section applies to trusts created either before or after the commencement of the Conveyancing, Trustee and Probate (Amendment) Act, 1937.



## PART IV.

: AMENDMENT OF WILLS, PROBATE AND ADMINISTRATION  
ACT, 1898-1932.

- Amendment  
of Act No.  
13, 1898.
- Sec. 31.  
(Official  
copy of  
whole or  
part of  
will may be  
obtained.)
- Sec. 40D.  
(Effect of  
revoking  
grant.)
- Sec. 42.  
(Application  
for probate  
or adminis-  
tration may  
be made  
by motion.)
- 6.** The Wills, Probate and Administration Act, 1898-1932, is amended—
- (a) (i) by inserting in section thirty-one after the word “will” the words “or such other document as the Probate Judge shall approve”;
  - (ii) by inserting in the same section after the words “grant of any” the words “probate or”;
  - (b) (i) by omitting from subsection one of section 40D the words “under section 40c of this Act”;
  - (ii) by omitting from subsection three of the same section the words “the person himself or if he has died since the date of the grant the executor or administrator to whom a grant of probate or administration is made consequent on the revocation or any other person” and by inserting in lieu thereof the words “any person”;
  - (iii) by inserting in subsection four of the same section immediately before the words “the person” the following words “In any case where a grant of probate or administration is revoked under section 40c of this Act”;
  - (c) (i) by omitting from subsection one of section forty-two all words after the word “by” and by inserting in lieu thereof the words “motion to the Court in such manner as may be prescribed by rules of Court”;
  - (ii) by omitting from subsection two of the same section the words “in the Gazette and in one Sydney newspaper” and by inserting

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in



in lieu thereof the words "in such newspaper or newspapers as may be prescribed by rules of Court";

- 5 (d) by omitting from section fifty the words "five Sec. 50.  
hundred" wherever therein appearing and by  
substituting therefor the words "one thousand";
- (e) by inserting next after section seventy-five the New s. 75A.  
following new section:—

10 75A. (1) Any person who has been appointed Delegation.  
executor of the will of a deceased person and has  
not renounced probate or taken probate thereof  
may by deed appoint the Public Trustee or a  
trustee company to be executor of the will in his  
place or stead and upon the registration and  
15 filing by subsections eight and nine of this section  
directed such will shall be construed and take  
effect in all respects as if the name of the  
appointee had been originally inserted in such  
will as the executor or one of the executors  
20 thereof in lieu of the person in whose stead it  
has been appointed.

(2) Any executor who has obtained probate or any administrator who has obtained letters of administration notwithstanding that he  
25 has acted in the administration of the deceased's estate and notwithstanding the existence of any other executor or administrator may by deed appoint the Public Trustee or a trustee company to be executor or administrator in his place or  
30 stead and upon the registration and filing by subsections eight and nine of this section directed the estate and interest of the appointor as such executor or administrator in and to the estate of the deceased left unadministered and all rights and obligations in respect thereof shall  
35 without any conveyance or other assurance except as otherwise provided in this section vest in the appointee as executor or administrator as the case may be, or, when the appointor is one of several executors or administrators then in  
40 the



the appointee and the continuing executors or administrators as joint tenants, and, subject to the provisions of this Act, the appointee shall have all the powers of such executor or administrator and such executor or administrator shall not be in any way liable in respect of any act or default in reference to such estate subsequent to the registration and filing of such deed other than the act or default of himself or of persons other than himself for whose conduct he is in law responsible: 5 10

Provided that where any portion of such estate is—

- (a) subject to the provisions of the Real Property Act, 1900, such portion shall not vest until either— 15
  - (i) the appropriate transfer is executed and registered so that such portion is duly transferred; or
  - (ii) an entry of the vesting is made by the Registrar-General. Any such entry shall have the same effect as if the portion were duly transferred; or 20
- (b) subject to the provisions of the Closer Settlement Acts or the Mining Act, 1906-1935, or the Crown Lands Consolidation Act, 1913, or any other Act relating to Crown lands such portion shall not vest until either— 25 30
  - (i) the appropriate transfer is executed and registered so that such portion is duly transferred; or
  - (ii) an entry of the vesting is made in the appropriate register kept under the provisions of the Act to which such portion is subject. Any such entry shall have the same effect as if the portion were duly transferred. 35 40

Until



Until such transfer is so executed and registered or such entry of the vesting is made, such executor or administrator shall not be discharged from the trusts in respect of such portion of the estate.

(3) No such appointment shall be made under subsection one or subsection two of this section if the testator has by his will directed or intimated that the office of executor should not be delegated or that the appointee should not act in the trusts of the will.

(4) Prior to making any appointment under subsection one or subsection two of this section the person proposing to make such appointment shall give twenty-eight days' notice in writing thereof to—

(a) the co-executor or co-administrator (if any) of such person; and

(b) (i) such beneficiaries under the will whereof such person is named or has been appointed executor or which is annexed to the grant of administration to such person as are ordinarily resident in the Commonwealth of Australia and of the full age of twenty-one years; or

(ii) in the case of any other administrator to such of the next of kin of the intestate as are ordinarily resident in the Commonwealth of Australia and of the full age of twenty-one years.

(5) Any person who is or who ought to be served or who if he were ordinarily resident in the Commonwealth ought to be served with the notice required by subsection four of this section may at any time prior to the expiration of the said period of twenty-eight days lodge with the Registrar a notice in the form prescribed that he objects to such appointment being made



made and serve a copy of such notice on the person proposing to make the appointment mentioned in subsection one or subsection two of this section.

(6) In the event of any such notice of objection being filed and a copy thereof served as aforesaid— 5

(a) the person proposing to make an appointment under subsection one of this section may apply to the Court for leave to make such appointment and the Court may grant such application after service of notice of such application on such persons as the Court may direct or as may be prescribed; 15

(b) the person proposing to make an appointment under subsection two of this section shall not make such appointment under that subsection.

(7) In the case of the appointment of a trustee company the capital both paid and unpaid and all other assets of the company and the manager, assistant manager and directors and their respective estates shall be liable for the due administration of the estates of which the company shall be so appointed executor or administrator. 20 25

(8) Any such deed as is referred to in subsection two of this section shall be registered in the office of the Registrar-General in the manner and on payment of the fees prescribed by regulation under the Conveyancing Act, 1919-1937. 30

(9) A duly verified copy of any such deed as is referred to in subsection one or in subsection two of this section shall be filed in the office of the Registrar of Probates. 35

(10) For the purposes of this section the words "trustee company" shall have the same meaning as in the Trustee Act, 1925. 40

(f)



- (f) by inserting in subsection one of section eighty-five immediately before the word "pass" the words "file or file and";
- 5 (g) by inserting in section eighty-six after subsection two the following new subsection:—  
 (3) Where any executor, administrator or trustee renounces his right to such commission in respect of any particular year, he shall be entitled to indemnity out of the said assets for the amount of his solicitor's charges and disbursements, as moderated in accordance with the relevant professional scale, for non-professional work performed in that year, to an amount not exceeding that which the executor, administrator or trustee would have been in the opinion of the Registrar allowed by way of such commission for that year had he not so renounced but had applied therefor.
- 10
- 15
- 20 (h) (i) by inserting in subsection one of section eighty-seven immediately before the word "pass" the words "file or file and";  
 (ii) by omitting from subsection two of section eighty-seven the words "exhibit such account to" and substituting the words "file or file and pass such accounts in";
- 25
- (i) (i) by omitting subsection one of section ninety;  
 (ii) by omitting from subsection two of the same section the word "such";
- 30 (j) by omitting from section ninety-eight the words "District Court" and substituting therefor the words "Court of Petty Sessions";
- (k) (i) by omitting from section one hundred and one the word "three" and substituting therefor the word "five";  
 (ii) by omitting from the same section the words "if the fixed abode of the deceased at the time of his death has been more than thirty miles from Sydney, then," and the words "nearest to such place of abode";
- 35
- (1)

Sec. 85.

(Executor or administrator to pass accounts.)

Sec. 86.

(Executors, &c., may be allowed commission.)

Sec. 87.

(If accounts not exhibited Registrar to summon administrator before Judge, who may inflict penalty.)

Sec. 90.

Sec. 98.

(District agents to receive applications in estates under £300.)

Sec. 101.

(Application to be made direct to Registrar or to district agent.)



## Sec. 104.

(Registrar to issue probate or administration in the name of the Court.)

- (l) by omitting from paragraph (b) of subsection one of section one hundred and four the word "three" and substituting therefor the word "five";

## Sec. 107.

(Probates and letters of administration granted in other colonies or the United Kingdom to be of like force as if granted in New South Wales on being resealed.)

- (m) by inserting after subsection three of section one hundred and seven the following new subsection:—

(4) For the purposes of this Division of this Part of this Act the word "executor" shall be deemed to include executor by representation. 10

## Sec. 152.

(Registrar to keep records.)

- (n) (i) by inserting at the end of subsection one of section one hundred and fifty-two the following new paragraph:—

(d) all deeds copies whereof are filed pursuant to subsection four of section 75A of this Act. 15

- (ii) by inserting at the end of subsection two of the same section the following new paragraph:—

(g) the dates and the names of parties to the deeds whereof copies are filed pursuant to subsection four of section 75A of this Act. 20

## PART V.

## AMENDMENT OF PUBLIC TRUSTEE ACT, 1913-1936. 25

Amendment of Act No. 19, 1913.

## 7. The Public Trustee Act, 1913-1936, is amended—

## Sec. 18.

(Grant of probate or administration to the Public Trustee.)

- (a) by inserting in subsection one of section eighteen after the words "next of kin shall" the words "if an application has been lodged by them or any of them";

30

(b)



- (b) by inserting at the end of the same subsection the following new paragraph:—  
 The fact that an application for the grant of letters of administration to the Public Trustee is supported by a majority in value of the interests under the intestacy shall be deemed to be good cause within the meaning of this subsection.
- (c) (i) by inserting in paragraph (d) of subsection one of section thirty-five after the word “property” the following words:—  
 “and the cost of any such repairs shall be charged either to capital or to income or apportioned between capital and income as the Public Trustee may consider equitable.”
- (ii) by omitting from paragraph (n) of subsection two of the same section the words “five hundred pounds” and by inserting in lieu thereof the words “one thousand pounds”;
- (iii) by omitting from paragraph (p) of the same subsection the words “five hundred pounds” and by inserting in lieu thereof the words “one thousand pounds.”

## PART VI.

### 25 AMENDMENT OF REAL PROPERTY ACT, 1900.

8. (1) The Real Property Act, 1900, as amended by subsequent Acts, is amended—

- (a) by inserting at the end of section twelve the following new paragraph:—
- (f) He may, if he thinks fit, enter a notification in the register book or a caveat for the protection of any person interested in the land.

Amendment  
of Act No.  
25, 1900.

Sec. 12.  
(Powers of  
the Registrar-  
General.)

Where



cf. Convey-  
ancing Act,  
1919-1932,  
s. 88 (3).

Where any such notification is so entered—

- (i) the entry of the same shall not give the interest any greater operation or effect than it would otherwise have; 5
- (ii) the interest notified shall be deemed to be an interest within the meaning of section forty-two of this Act.

Sec. 72.  
(Caveat may  
be lodged.)

- (b) by inserting next after subsection three of section seventy-two the following new subsection:— 10

(3A) Where the Registrar-General is satisfied that notice cannot be served on the caveator the Registrar-General may, if he deem fit, by writing under his hand, direct— 15

- (a) that notice be served in such manner (by advertisement or otherwise) and upon such persons (if any) as he may prescribe; or
- (b) that service of notice be dispensed with. 20

Sec. 73.  
(When  
caveat to  
lapse.)

- (c) by inserting at the end of section seventy-three the following words:—

“or where a direction pursuant to subsection (3A) of section seventy-two of this Act has been given by the Registrar-General upon the expiration of fourteen days after the last notice to the like effect has been served in accordance with such direction or after the date of the direction by the Registrar-General where such direction is that service of notice be dispensed with, as the case may be.” 25 30

Sec. 94.  
(Registra-  
tion of  
executors,  
etc., by  
trans-  
mission.)

- (d) by inserting next after subsection one of section ninety-four the following new subsection:—

(1A) The Registrar-General may, if he thinks fit, accept an application by a person to be registered as proprietor of an estate of freehold in the land of a deceased proprietor where such person claims title otherwise than consequent upon 35



upon the death, will or intestacy of a deceased proprietor, and may deal with such application under this section.

5 Any such application shall be accompanied by the consent of the executor or administrator of the deceased proprietor, unless the Registrar-General thinks fit to dispense with such consent.

(2) Any caveat or notification entered and any application accepted and dealt with by the Registrar-General before the commencement of this Act which could lawfully have been entered or accepted and dealt with if the amendments made by subsection one of this section had then been in operation is hereby validated.











