

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

I. P. K. VIDLER,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 21 March, 1972.*

New South Wales



ANNO VICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. , 1972.

An Act to increase the maximum commission chargeable by trustee companies in respect of certain estates; to enable trustee companies to charge certain fees; for these and other purposes to amend the Trustee Companies Act, 1964; and for purposes connected therewith.

BE

Trustee Companies (Amendment).

5 **B**E it enacted by the Queen'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:—

1. (1) This Act may be cited as the "Trustee Companies (Amendment) Act, 1972". Short title and commencement.

(2) This section and section two of this Act shall commence on the day upon which the assent of Her Majesty to this Act is signified.

(3) Sections three and four of this Act shall respectively commence on such day or days as may be appointed by the Governor in respect of each such section and notified by proclamation published in the Gazette.

15 (4) Section five of this Act and the Schedule to this Act shall commence on the day appointed and notified under subsection one of section two of the Supreme Court Act, 1970.

2. The Trustee Companies Act, 1964, is amended— Amendment of Act No. 6, 1964.

20 (a) by inserting next after the definition of "Minor" in subsection one of section three the following new definition :— Sec. 3. (Interpretation.)

"Regulations" means regulations under this Act.

25 (b) (i) by omitting from paragraph (a) of subsection one of section eighteen the word "or" where secondly occurring; Sec. 18. (Commission chargeable by trustee company.)

(ii)

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- 5 (ii) by omitting from paragraph (b) of the same subsection the word "is" and by inserting in lieu thereof the words "was, before the commencement of section two of the Trustee Companies (Amendment) Act, 1972,";
- 10 (iii) by omitting from the same paragraph the words "of the other capacities mentioned in the foregoing provisions" and by inserting in lieu thereof the words "capacity other than that referred to in paragraph (a)";
- (iv) by inserting at the end of the same paragraph the following word and new paragraph :—
- ; or
- 15 (c) Where the estate is, after the commencement of section two of the Trustee Companies (Amendment) Act, 1972, committed to the administration or management of the trustee company in any capacity other than
- 20 that referred to in paragraph (a) of this subsection—
- (i) four dollars twenty-five cents for every one hundred dollars of the corpus or capital value of the estate; and
- 25
- (ii) five dollars twenty-five cents for every one hundred dollars of the income received by the trustee company on account of
- 30 the estate.
- (v) by inserting in subsection two of the same section after the word "and" where secondly occurring the words "except where otherwise provided by this Act,";

(vi)

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- (vi) by omitting from the same subsection the symbol and word “, fee”;
- 5 (vii) by omitting from subsection three of the same section the words “the rate of commission” wherever occurring and by inserting in lieu thereof the words “the commission or any part thereof or the rate thereof”;
- 10 (viii) by omitting subsection six of the same section and by inserting in lieu thereof the following subsections :—

(6) In subsection one of this section, “corpus or capital value”, in relation to an estate committed to the administration or management of a trustee company—

- 15 (a) where the estate was so committed before the commencement of section two of the Trustee Companies (Amendment) Act, 1972, and the trustee company’s administration or management of the estate was completed before that commencement—
- 20 means the gross corpus or capital value of the estate without deduction of debts or liabilities secured or
- 25 unsecured;
- (b) where the estate was so committed before that commencement and the trustee company’s administration or management of the estate continues
- 30 after that commencement—means—
 - (i) in the case of any assets (whether real or personal) of the estate realised before that commencement—the gross

amount

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amount of the value of those assets as at the date on which the estate was so committed; and

- 5 (ii) in the case of any assets (whether real or personal) of the estate realised after that commencement—the gross amount realised for those assets,
- 10

without deduction of debts or liabilities secured or unsecured; and

- (c) where the estate is so committed after that commencement—means the gross amount realised for the assets (whether real or personal) of the estate without deduction of debts or liabilities secured or unsecured.
- 15

(6A) For the purposes of subsection six of this section—

20

- (a) where an asset of an estate comprises moneys (other than the proceeds of the realisation of any asset)—

(i) that asset shall be deemed to have been realised when it was collected on behalf of the estate; and

25

(ii) the amount realised for that asset shall be deemed to have been the amount of the moneys so collected; and

30

(b)

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5 (b) where an asset of an estate is distributed, transferred, appropriated, or released, without realisation, to beneficiaries, whether by or as a result of agreement between beneficiaries or otherwise—

10 (i) that asset shall be deemed to have been realised when it was so distributed, transferred, appropriated or released; and

15 (ii) the amount realised for that asset shall be deemed to have been the amount of the value of the asset as at the date of the distribution, transfer, appropriation or release.

(c) by inserting next after section eighteen the following **New sec. 18A.**
new section :—

18A. Where a trustee company— **Payment of commission.**

20 (a) is entitled by virtue of section eighteen of this Act to receive commission in respect of the corpus or capital value of an estate; or

25 (b) would be so entitled to receive that commission but for the fact that any or all of the assets of the estate have not been realised, as referred to in that section,

the following provisions have effect :—

(c) that commission may, subject to paragraph (d) of this section, be paid out of the

estate

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estate at any time after the estate was committed to the administration or management of the trustee company; and

- 5 (d) while any or all of the assets remain to be so realised, the commission which may be so paid out shall not exceed the commission which would be payable if those assets were so realised for an amount equal to the amount of their value at the time the estate was so committed, the amount of commission paid out, whether before or after the commencement of section two of the Trustee Companies (Amendment) Act, 1972, being adjusted when those assets respectively are so realised.
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- 15

- (d) by omitting section nineteen and by inserting in lieu thereof the following sections:—
- Subst. sec. 19, new secs. 19A-19D.

19. (1) A reference in this section to a relevant period applicable to an estate committed to the administration or management of a trustee company is a reference to—
- Fee for carrying on business.
- 20

- (a) the period between the commencement of section two of the Trustee Companies (Amendment) Act, 1972, and the anniversary of that committal that next succeeds that commencement;
- 25

(b) the year that next succeeds that anniversary; and

(c) each succeeding year.

(2)

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5 (2) While the administration or management of an estate committed to a trustee company involves, during a relevant period applicable to the estate, the carrying on of a business which belongs wholly to the estate, or in which the estate has an interest as partner, the trustee company shall be entitled to receive, from time to time, out of the estate, a fee at a rate not exceeding one-half of one per centum on the value of so much of the assets employed in the business as is owned by the estate, that value being determined as at the end of that relevant period.

15 19A. (1) A reference in this section to a relevant period applicable to an estate committed to the administration or management of a trustee company is—

Fee for collection of rent.

- (a) subject to paragraph (b) of this subsection, a reference to—
- 20 (i) the period between the commencement of section two of the Trustee Companies (Amendment) Act, 1972, and the anniversary of that committal that next succeeds that commencement;
- 25 (ii) the year that next succeeds that anniversary; and
- (iii) each succeeding year; or
- (b) where the regulations make provision for or with respect to the determination of some other period, a reference to that other period.
- 30

35 (2) Where during a relevant period applicable to an estate committed to the administration or management of a trustee company an officer of the trustee company collects rent in respect of property

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property belonging to the estate, the company shall be entitled to receive out of the estate a fee in respect of the gross amount of rent so collected during that period, and—

- 5 (a) if the regulations do not make provision for or with respect to the determination of the fee payable under this section in respect of that period—the fee shall, where that gross amount is within the description contained in an item in the First Column of the Table to this subsection, be the fee determined in the manner specified in the Second Column of that Table opposite that item; or
- 10
- 15 (b) if the regulations make provision for or with respect to the determination of the fee payable under this section in respect of that period—the fee shall be the fee determined in accordance with the regulations.

TABLE.

20	First Column.	Second Column.
	Gross Amount.	Fee.
	Not exceeding \$10,000.	7 per centum of the gross amount.
25	Exceeding \$10,000, but not exceeding \$20,000.	\$700 or 6 per centum of the gross amount, whichever is the greater.
	Exceeding \$20,000, but not exceeding \$50,000.	\$1,200 or 5 per centum of the gross amount, whichever is the greater.
30	Exceeding \$50,000.	\$2,500 or 4 per centum of the gross amount, whichever is the greater.

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5 (3) Notwithstanding anything in section eighteen of this Act, where an officer of a trustee company collects rent in respect of property belonging to an estate, the trustee company shall not be entitled to receive commission under that section in respect of the rent so collected.

10 (4) Notwithstanding anything in subsection two of this section, a trustee company shall not be entitled to receive a fee under this section in respect of rent collected by an officer of the trustee company if some other method of collecting the rent is expressly or impliedly directed in the will or other relevant instrument (if any).

15 19B. (1) A trustee company shall, in respect of a perpetual trust committed to its administration or management, be entitled to receive, at the prescribed time, out of the corpus or income of the perpetual trust a fee not exceeding one dollar for every one hundred dollars of the assets of the trust at that time. Fee on twentieth anniversary of perpetual trust.

20 (2) In subsection one of this section, "prescribed time", in relation to a perpetual trust committed to the administration or management of a trustee company, means—

25 (a) where the perpetual trust is committed after the commencement of section two of the Trustee Companies (Amendment) Act, 1972, or was so committed before that commencement but not earlier than twenty years before that commencement—

- 30 (i) the conclusion of the period of twenty years commencing at the date of committal; and
- 35 (ii) the conclusion of each subsequent period of twenty years; or

(b)

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(b) where the perpetual trust was so committed earlier than twenty years before the commencement of section two of the Trustee Companies (Amendment) Act, 1972—

- 5 (i) that commencement;
- (ii) the conclusion of the period of twenty years after that commencement; and
- 10 (iii) the conclusion of each subsequent period of twenty years.

19c. (1) Where an estate committed to the administration or management of a trustee company has an interest in a corporation and an officer of the trustee company, in his capacity as such an officer, acts as a director of the corporation for purposes connected with the administration or management of the estate—

- 15
- 20 (a) the trustee company shall be entitled to receive from the corporation and to retain any director's fees which would be payable to the officer had he so acted otherwise than in his capacity as such an officer; and
- 25 (b) neither the officer nor the estate shall be entitled to receive the fees which the trustee company is entitled to receive under paragraph (a) of this subsection.

30 (2) Where the estate of a deceased person has been committed to the administration or management of a trustee company and that person had, immediately before his death, an interest in any property as a joint tenant, the trustee company shall be entitled to charge and to receive from the surviving joint tenant or tenants a fee according to the value of the work done and services

rendered

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rendered for the purpose of providing information as to that interest to or for the benefit of that tenant or those tenants.

5 19D. (1) The fees payable under sections nineteen, 19A, 19B and 19C of this Act in respect of an estate committed to the administration or management of a trustee company are, subject to subsection three of section 19A of this Act, in addition to all moneys properly expended by the trustee company and chargeable against the estate and to commission payable under section eighteen of this Act. General provisions in respect of fees.

10 (2) The fees payable under sections nineteen and 19A of this Act in respect of an estate shall be payable out of moneys belonging to the estate.

15 (3) Where, in respect of an estate, any judge sitting in the equitable jurisdiction of the Court is of opinion that the fee payable under section nineteen, 19A or 19B or subsection two of section 19C of this Act is excessive, the judge may, of his own motion or on the application of any person interested in the estate, review the fee and may, on the review, reduce the fee.

20 (4) Nothing in section nineteen, 19A or 19B or subsection one of section 19C of this Act prevents the payment of any fee which the will or other relevant instrument (if any) directs to be paid either in addition to or in lieu of the fee payable under any of those sections.

25 (5) The fees provided for under sections nineteen, 19A, 19B and 19C of this Act are payable in respect of estates committed to the administration or management of a trustee company before the commencement

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5 commencement of section two of the Trustee Companies (Amendment) Act, 1972 (whether before, on or after the day appointed and notified under subsection two of section one of this Act) and to estates so committed after that commencement.

10 (6) Nothing in this Act authorises any of the fees payable under section nineteen, 19A or 19C of this Act to be charged or received in relation to—

- (a) any business in so far as it was carried on before the commencement of section two of the Trustee Companies (Amendment) Act, 1972;
- 15 (b) any rent collected before that commencement;
- (c) any director's fee payable in respect of any period before that commencement; or
- 20 (d) any information provided before that commencement.

(e) by omitting from subsection two of section twenty-^{Sec. 29.} nine the words "Registrar of Companies" and by ^(Returns.) inserting in lieu thereof the words "Corporate Affairs Commission";

25 (f) by inserting next after section thirty-six the follow-^{New sec.} ing new section :—^{37.}

30 37. (1) The Governor may make regulations^{Regulations.} not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may be made so as to differ according to time, place or circumstances.

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3. The Trustee Companies Act, 1964, is further amended— Further amendment of Act No. 6, 1964.
- (a) by omitting from the Second Schedule the words Second Schedule.
“PERMANENT TRUSTEE COMPANY OF NEW SOUTH WALES (LIMITED).” and by inserting in lieu thereof the words “PERMANENT TRUSTEE COMPANY LIMITED.”; 5
- (b) by omitting from the First Part of the Third Schedule the words “Permanent Trustee Company of New South Wales (Limited)” and by inserting in lieu thereof the words “Permanent Trustee Company Limited”. 10
4. The Trustee Companies Act, 1964, is further amended— Further amendment of Act No. 6, 1964.
- (a) by omitting from the Second Schedule the words Second Schedule.
“PERPETUAL TRUSTEE COMPANY (LIMITED).” and by inserting in lieu thereof the words “PERPETUAL TRUSTEE COMPANY LIMITED.”; 15
- (b) by omitting from the First Part of the Third Schedule the words “Perpetual Trustee Company (Limited)” and by inserting in lieu thereof the words “Perpetual Trustee Company Limited”. 20
5. A provision of the Trustee Companies Act, 1964, as Further amendment of Act No. 6, 1964.
amended by this Act, specified in the First Column of the Schedule to this Act is amended in the manner specified in the Second Column opposite thereto.

Trustee Companies (Amendment).

SCHEDULE.

Sec. 5.

First Column.	Second Column.
Provision of Act No. 6, 1964.	Manner of Amendment.
5 Subsection (1) of section 3. Section 6. Section 9.	Omit the definition of "Judge". Omit "court"; insert "Court". Omit "court" wherever occurring; insert "Court".
10 Section 10. Section 15.	Omit "court or a judge" wherever occurring; insert "Court". Omit "court or a judge"; insert "Court".
15 Subsection (3) of section 18.	Omit "any judge sitting in the equitable or probate jurisdiction of". Omit "such judge may of his"; insert "the Court may of its".
20 Subsection (3) of section 19D.	Omit "any judge sitting in the equitable jurisdiction of". Omit "judge may, of his"; insert "Court may, of its".
Subsection (1) of section 21.	Omit "court or a judge"; insert "Court".
25 Subsection (2) of section 21.	Omit "court or judge" wherever occurring; insert "Court".
Subsection (3) of section 21.	Omit "court or judge" wherever occurring; insert "Court".
30 Subsection (4) of section 21.	Omit "court or judge"; insert "Court".
Subsection (1) of section 22.	Omit "or he". Omit "court or a judge"; insert "Court".
35 Subsection (3) of section 22.	Omit "court or judge"; insert "Court".
Section 24.	Omit "court or a judge" wherever occurring; insert "Court".
Section 25.	Omit "court"; insert "Court".
40 Paragraph (a) of subsection (7) of section 26.	Omit "court"; insert "Court".
Section 27.	Omit "court" wherever occurring; insert "Court".

SCHEDULE

*Trustee Companies (Amendment).*SCHEDULE—*continued.*

First Column.	Second Column.
5 Provision of Act No. 6, 1964.	Manner of Amendment.
Section 28.	Omit "court" wherever occurring; insert "Court".
Section 30.	Omit subsections (1), (2), (3) and (4).
10 Subsection (5) of section 30.	Omit "court or judge" wherever occurring; insert "Court". Omit "such application"; insert "application under this Act to the Court".
15 Subsection (2) of section 33.	Omit "court" wherever occurring; insert "Court".

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1972

[15c]

No. , 1972.

A BILL

To increase the maximum commission chargeable by trustee companies in respect of certain estates; to enable trustee companies to charge certain fees; for these and other purposes to amend the Trustee Companies Act, 1964; and for purposes connected therewith.

[MR McCaw—7 March, 1972.]

BE

Trustee Companies (Amendment).

5 **BE** it enacted by the Queen'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:—

1. (1) This Act may be cited as the "Trustee Companies (Amendment) Act, 1972".

Short title and commencement.

(2) This section and section two of this Act shall commence on the day upon which the assent of Her Majesty to this Act is signified.

(3) Sections three and four of this Act shall respectively commence on such day or days as may be appointed by the Governor in respect of each such section and notified by proclamation published in the Gazette.

15 (4) Section five of this Act and the Schedule to this Act shall commence on the day appointed and notified under subsection one of section two of the Supreme Court Act, 1970.

2. The Trustee Companies Act, 1964, is amended—

Amendment of Act No. 6, 1964.

20 (a) by inserting next after the definition of "Minor" in subsection one of section three the following new definition:—

Sec. 3. (Interpretation.)

"Regulations" means regulations under this Act.

25 (b) (i) by omitting from paragraph (a) of subsection one of section eighteen the word "or" where secondly occurring;

Sec. 18. (Commission chargeable by trustee company.)

(ii)

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- 5 (ii) by omitting from paragraph (b) of the same subsection the word "is" and by inserting in lieu thereof the words "was, before the commencement of section two of the Trustee Companies (Amendment) Act, 1972,";
- 10 (iii) by omitting from the same paragraph the words "of the other capacities mentioned in the foregoing provisions" and by inserting in lieu thereof the words "capacity other than that referred to in paragraph (a)";
- (iv) by inserting at the end of the same paragraph the following word and new paragraph :—

; or

- 15 (c) Where the estate is, after the commencement of section two of the Trustee Companies (Amendment) Act, 1972, committed to the administration or management of the trustee company in any capacity other than
- 20 that referred to in paragraph (a) of this subsection—

- 25 (i) four dollars twenty-five cents for every one hundred dollars of the corpus or capital value of the estate; and
- 30 (ii) five dollars twenty-five cents for every one hundred dollars of the income received by the trustee company on account of the estate.

- (v) by inserting in subsection two of the same section after the word "and" where secondly occurring the words " , except where otherwise provided by this Act,";

(vi)

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- (vi) by omitting from the same subsection the symbol and word “, fee”;
- 5 (vii) by omitting from subsection three of the same section the words “the rate of commission” wherever occurring and by inserting in lieu thereof the words “the commission or any part thereof or the rate thereof”;
- 10 (viii) by omitting subsection six of the same section and by inserting in lieu thereof the following subsections :—

(6) In subsection one of this section, “corpus or capital value”, in relation to an estate committed to the administration or management of a trustee company—

15 (a) where the estate was so committed before the commencement of section two of the Trustee Companies (Amendment) Act, 1972, and the trustee company’s administration or
20 management of the estate was completed before that commencement—means the gross corpus or capital value of the estate without deduction of debts or liabilities secured or
25 unsecured;

(b) where the estate was so committed before that commencement and the trustee company’s administration or
30 management of the estate continues after that commencement—means—

(i) in the case of any assets (whether real or personal) of the estate realised before that commencement—the gross

amount

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amount of the value of those assets as at the date on which the estate was so committed; and

- 5 (ii) in the case of any assets (whether real or personal) of the estate realised after that commencement—the gross amount realised for those
- 10 assets,

without deduction of debts or liabilities secured or unsecured; and

- 15 (c) where the estate is so committed after that commencement—means the gross amount realised for the assets (whether real or personal) of the estate without deduction of debts or liabilities secured or unsecured.

20 (6A) For the purposes of subsection six of this section—

- (a) where an asset of an estate comprises moneys (other than the proceeds of the realisation of any asset)—

25 (i) that asset shall be deemed to have been realised when it was collected on behalf of the estate; and

30 (ii) the amount realised for that asset shall be deemed to have been the amount of the moneys so collected; and

(b)

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5 (b) where an asset of an estate is distributed, transferred, appropriated, or released, without realisation, to beneficiaries, whether by or as a result of agreement between beneficiaries or otherwise—

10 (i) that asset shall be deemed to have been realised when it was so distributed, transferred, appropriated or released; and

15 (ii) the amount realised for that asset shall be deemed to have been the amount of the value of the asset as at the date of the distribution, transfer, appropriation or release.

(c) by inserting next after section eighteen the following ^{New sec.} new section :— _{18A.}

18A. Where a trustee company— Payment of commission.

20 (a) is entitled by virtue of section eighteen of this Act to receive commission in respect of the corpus or capital value of an estate; or

25 (b) would be so entitled to receive that commission but for the fact that any or all of the assets of the estate have not been realised, as referred to in that section,

the following provisions have effect :—

(c) that commission may, subject to paragraph (d) of this section, be paid out of the

estate

Trustee Companies (Amendment).

estate at any time after the estate was committed to the administration or management of the trustee company; and

- 5 (d) while any or all of the assets remain to be so realised, the commission which may be so paid out shall not exceed the commission which would be payable if those assets were so realised for an amount equal to the amount of their value at the time the estate was so committed, the amount of commission paid out, whether before or after the commencement of section two of the Trustee Companies (Amendment) Act, 1972, being adjusted when those assets respectively are so realised.
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- 15

- (d) by omitting section nineteen and by inserting in lieu thereof the following sections :—
- Subst. sec. 19, new secs. 19A-19D.

19. (1) A reference in this section to a relevant period applicable to an estate committed to the administration or management of a trustee company is a reference to—

Fee for carrying on business.

20

- (a) the period between the commencement of section two of the Trustee Companies (Amendment) Act, 1972, and the anniversary of that committal that next succeeds that commencement;
- 25

(b) the year that next succeeds that anniversary; and

(c) each succeeding year.

(2)

Trustee Companies (Amendment).

5 (2) While the administration or management of an estate committed to a trustee company involves, during a relevant period applicable to the estate, the carrying on of a business which belongs wholly to the estate, or in which the estate has an interest as partner, the trustee company shall be entitled to receive, from time to time, out of the estate, a fee at a rate not exceeding one-half of one per centum on the value of so much of the assets employed in the business as is owned by the estate, that value being determined as at the end of that relevant period.

15 19A. (1) A reference in this section to a relevant period applicable to an estate committed to the administration or management of a trustee company is—

Fee for collection of rent.

(a) subject to paragraph (b) of this subsection, a reference to—

20 (i) the period between the commencement of section two of the Trustee Companies (Amendment) Act, 1972, and the anniversary of that committal that next succeeds that commencement;

25 (ii) the year that next succeeds that anniversary; and

(iii) each succeeding year; or

30 (b) where the regulations make provision for or with respect to the determination of some other period, a reference to that other period.

35 (2) Where during a relevant period applicable to an estate committed to the administration or management of a trustee company an officer of the trustee company collects rent in respect of property

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property belonging to the estate, the company shall be entitled to receive out of the estate a fee in respect of the gross amount of rent so collected during that period, and—

- 5 (a) if the regulations do not make provision for or with respect to the determination of the fee payable under this section in respect of that period—the fee shall, where that
- 10 gross amount is within the description contained in an item in the First Column of the Table to this subsection, be the fee determined in the manner specified in the Second Column of that Table opposite that item; or
- 15 (b) if the regulations make provision for or with respect to the determination of the fee payable under this section in respect of that period—the fee shall be the fee determined in accordance with the regulations.

TABLE.

20	First Column.	Second Column.
	Gross Amount.	Fee.
	Not exceeding \$10,000.	7 per centum of the gross amount.
25	Exceeding \$10,000, but not exceeding \$20,000.	\$700 or 6 per centum of the gross amount, whichever is the greater.
	Exceeding \$20,000, but not exceeding \$50,000.	\$1,200 or 5 per centum of the gross amount, whichever is the greater.
30	Exceeding \$50,000.	\$2,500 or 4 per centum of the gross amount, whichever is the greater.

Trustee Companies (Amendment).

5 (3) Notwithstanding anything in section eighteen of this Act, where an officer of a trustee company collects rent in respect of property belonging to an estate, the trustee company shall not be entitled to receive commission under that section in respect of the rent so collected.

10 (4) Notwithstanding anything in subsection two of this section, a trustee company shall not be entitled to receive a fee under this section in respect of rent collected by an officer of the trustee company if some other method of collecting the rent is expressly or impliedly directed in the will or other relevant instrument (if any).

15 19B. (1) A trustee company shall, in respect of a perpetual trust committed to its administration or management, be entitled to receive, at the prescribed time, out of the corpus or income of the perpetual trust a fee not exceeding one dollar for every one hundred dollars of the assets of the trust at that time. Fee on twentieth anniversary of perpetual trust.

(2) In subsection one of this section, "prescribed time", in relation to a perpetual trust committed to the administration or management of a trustee company, means—

25 (a) where the perpetual trust is committed after the commencement of section two of the Trustee Companies (Amendment) Act, 1972, or was so committed before that commencement but not earlier than twenty years before that commencement—

- 30 (i) the conclusion of the period of twenty years commencing at the date of committal; and
- 35 (ii) the conclusion of each subsequent period of twenty years; or

(b)

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- 5 (b) where the perpetual trust was so committed earlier than twenty years before the commencement of section two of the Trustee Companies (Amendment) Act, 1972—
- (i) that commencement;
 - (ii) the conclusion of the period of twenty years after that commencement; and
 - 10 (iii) the conclusion of each subsequent period of twenty years.

15 19c. (1) Where an estate committed to the administration or management of a trustee company has an interest in a corporation and an officer of the trustee company, in his capacity as such an officer, acts as a director of the corporation for purposes connected with the administration or management of the estate—

- 20 (a) the trustee company shall be entitled to receive from the corporation and to retain any director's fees which would be payable to the officer had he so acted otherwise than in his capacity as such an officer; and
- 25 (b) neither the officer nor the estate shall be entitled to receive the fees which the trustee company is entitled to receive under paragraph (a) of this subsection.

30 (2) Where the estate of a deceased person has been committed to the administration or management of a trustee company and that person had, immediately before his death, an interest in any property as a joint tenant, the trustee company shall be entitled to charge and to receive from the surviving joint tenant or tenants a fee according to the value of the work done and services

rendered

Trustee Companies (Amendment).

rendered for the purpose of providing information as to that interest to or for the benefit of that tenant or those tenants.

5 19D. (1) The fees payable under sections nineteen, 19A, 19B and 19C of this Act in respect of an estate committed to the administration or management of a trustee company are, subject to subsection three of section 19A of this Act, in addition to all moneys properly expended by the trustee company and chargeable against the estate and to commission payable under section eighteen of this Act. General provisions in respect of fees.

10 (2) The fees payable under sections nineteen and 19A of this Act in respect of an estate shall be payable out of moneys belonging to the estate.

15 (3) Where, in respect of an estate, any judge sitting in the equitable jurisdiction of the Court is of opinion that the fee payable under section nineteen, 19A or 19B or subsection two of section 19C of this Act is excessive, the judge may, of his own motion or on the application of any person interested in the estate, review the fee and may, on the review, reduce the fee.

20 (4) Nothing in section nineteen, 19A or 19B or subsection one of section 19C of this Act prevents the payment of any fee which the will or other relevant instrument (if any) directs to be paid either in addition to or in lieu of the fee payable under any of those sections.

25 (5) The fees provided for under sections nineteen, 19A, 19B and 19C of this Act are payable in respect of estates committed to the administration or management of a trustee company before the commencement

Trustee Companies (Amendment).

5 commencement of section two of the Trustee Companies (Amendment) Act, 1972 (whether before, on or after the day appointed and notified under subsection two of section one of this Act) and to estates so committed after that commencement.

10 (6) Nothing in this Act authorises any of the fees payable under section nineteen, 19A or 19C of this Act to be charged or received in relation to—

- 15 (a) any business in so far as it was carried on before the commencement of section two of the Trustee Companies (Amendment) Act, 1972;
- (b) any rent collected before that commencement;
- (c) any director's fee payable in respect of any period before that commencement; or
- 20 (d) any information provided before that commencement.

(e) by omitting from subsection two of section twenty-Sec. 29. nine the words "Registrar of Companies" and by (Returns.) inserting in lieu thereof the words "Corporate Affairs Commission";

25 (f) by inserting next after section thirty-six the follow-New sec. ing new section :—37.

30 37. (1) The Governor may make regulations Regulations. not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may be made so as to differ according to time, place or circumstances.

Trustee Companies (Amendment).

3. The Trustee Companies Act, 1964, is further amended— Further amendment of Act No. 6, 1964.
- (a) by omitting from the Second Schedule the words Second Schedule.
“PERMANENT TRUSTEE COMPANY OF NEW SOUTH WALES (LIMITED).” and by inserting in lieu thereof the words “PERMANENT TRUSTEE COMPANY LIMITED.”; 5
- (b) by omitting from the First Part of the Third Schedule the words “Permanent Trustee Company of New South Wales (Limited)” and by inserting in lieu thereof the words “Permanent Trustee Company Limited”. 10
4. The Trustee Companies Act, 1964, is further amended— Further amendment of Act No. 6, 1964.
- (a) by omitting from the Second Schedule the words Second Schedule.
“PERPETUAL TRUSTEE COMPANY (LIMITED).” and by inserting in lieu thereof the words “PERPETUAL TRUSTEE COMPANY LIMITED.”; 15
- (b) by omitting from the First Part of the Third Schedule the words “Perpetual Trustee Company (Limited)” and by inserting in lieu thereof the words “Perpetual Trustee Company Limited”. 20
5. A provision of the Trustee Companies Act, 1964, as Further amended by this Act, specified in the First Column of the amendment of Act No. 6, 1964. Schedule to this Act is amended in the manner specified in the Second Column opposite thereto.

Trustee Companies (Amendment).

SCHEDULE.

Sec. 5.

First Column.	Second Column.
Provision of Act No. 6, 1964.	Manner of Amendment.
5 Subsection (1) of section 3. Section 6. Section 9.	Omit the definition of "Judge". Omit "court"; insert "Court". Omit "court" wherever occurring; insert "Court".
10 Section 10. Section 15.	Omit "court or a judge" wherever occurring; insert "Court". Omit "court or a judge"; insert "Court".
15 Subsection (3) of section 18.	Omit "any judge sitting in the equitable or probate jurisdiction of". Omit "such judge may of his"; insert "the Court may of its".
20 Subsection (3) of section 19D.	Omit "any judge sitting in the equitable jurisdiction of". Omit "judge may, of his"; insert "Court may, of its".
Subsection (1) of section 21.	Omit "court or a judge"; insert "Court".
25 Subsection (2) of section 21.	Omit "court or judge" wherever occurring; insert "Court".
Subsection (3) of section 21.	Omit "court or judge" wherever occurring; insert "Court".
30 Subsection (4) of section 21.	Omit "court or judge"; insert "Court".
Subsection (1) of section 22.	Omit "or he". Omit "court or a judge"; insert "Court".
35 Subsection (3) of section 22.	Omit "court or judge"; insert "Court".
Section 24.	Omit "court or a judge" wherever occurring; insert "Court".
Section 25.	Omit "court"; insert "Court".
40 Paragraph (a) of subsection (7) of section 26.	Omit "court"; insert "Court".
Section 27.	Omit "court" wherever occurring; insert "Court".

SCHEDULE

Trustee Companies (Amendment).

.B.002

SCHEDULE—*continued.*

First Column.	Second Column.
5 Provision of Act No. 6, 1964.	Manner of Amendment.
Section 28.	Omit "court" wherever occurring; insert "Court".
Section 30.	Omit subsections (1), (2), (3) and (4).
10 Subsection (5) of section 30.	Omit "court or judge" wherever occurring; insert "Court". Omit "such application"; insert "application under this Act to the Court".
15 Subsection (2) of section 33.	Omit "court" wherever occurring; insert "Court".

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1972

[15c]

TRUSTEE COMPANIES (AMENDMENT) BILL, 1972

EXPLANATORY NOTE

THE objects of this Bill are—

- (a) to increase the maximum commission payable to a trustee company in respect of new estates—
 - (i) in the case of corpus commission—from 4 per centum to 4.25 per centum; and
 - (ii) in the case of income commission—from 5 per centum to 5.25 per centum;
- (b) to provide that corpus commission payable in respect of estates is to be assessed on the gross realised value thereof;
- (c) to enable corpus commission to be deducted from an estate at any time after committal to a trustee company;
- (d) to impose the following fees payable to a trustee company from an estate committed to it:—
 - (i) a fee of $\frac{1}{2}$ per centum per annum on the assets of an estate employed in the carrying on of a business;
 - (ii) a fee (in lieu of income commission), at rates which may be varied by regulations, in respect of rents collected by an officer of the trustee company; and
 - (iii) a fee of 1 per centum on the assets of a perpetual trust, payable on each twentieth anniversary of the trust's committal to the trustee company;
- (e) to authorise a trustee company to charge a fee for providing information as to the interest of a deceased person in property that was held by him as a joint tenant;
- (f) to enable the Supreme Court to reduce any of the above fees in any case;
- (g) to provide that, where an officer of a trustee company acts as director of a corporation in which an estate committed to the trustee company has an interest, any director's fees shall be payable to the trustee company;
- (h) to make provisions consequent on the change of names of two of the trustee companies; and
- (i) to make other provisions of a minor, ancillary or consequential nature.

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PROOF

No. , 1972.

A BILL

To increase the maximum commission chargeable by trustee companies in respect of certain estates; to enable trustee companies to charge certain fees; for these and other purposes to amend the Trustee Companies Act, 1964; and for purposes connected therewith.

[MR McCaw—7 March, 1972.]

BE

Trustee Companies (Amendment).

5 **BE** it enacted by the Queen'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:—

1. (1) This Act may be cited as the "Trustee Companies (Amendment) Act, 1972".

Short title and commencement.

(2) This section and section two of this Act shall commence on the day upon which the assent of Her Majesty to this Act is signified.

(3) Sections three and four of this Act shall respectively commence on such day or days as may be appointed by the Governor in respect of each such section and notified by proclamation published in the Gazette.

15 (4) Section five of this Act and the Schedule to this Act shall commence on the day appointed and notified under subsection one of section two of the Supreme Court Act, 1970.

2. The Trustee Companies Act, 1964, is amended—

Amendment of Act No. 6, 1964.

20 (a) by inserting next after the definition of "Minor" in subsection one of section three the following new definition:—

Sec. 3. (Interpretation.)

"Regulations" means regulations under this Act.

25 (b) (i) by omitting from paragraph (a) of subsection one of section eighteen the word "or" where secondly occurring;

Sec. 18. (Commission chargeable by trustee company.)

(ii)

Trustee Companies (Amendment).

5 (ii) by omitting from paragraph (b) of the same subsection the word "is" and by inserting in lieu thereof the words "was, before the commencement of section two of the Trustee Companies (Amendment) Act, 1972,";

10 (iii) by omitting from the same paragraph the words "of the other capacities mentioned in the foregoing provisions" and by inserting in lieu thereof the words "capacity other than that referred to in paragraph (a)";

(iv) by inserting at the end of the same paragraph the following word and new paragraph :—

; or

15 (c) Where the estate is, after the commencement of section two of the Trustee Companies (Amendment) Act, 1972, committed to the administration or management of the trustee company in any capacity other than that referred to in paragraph (a) of this subsection—

20 (i) four dollars twenty-five cents for every one hundred dollars of the corpus or capital value of the estate; and

25 (ii) five dollars twenty-five cents for every one hundred dollars of the income received by the trustee company on account of the estate.

30 (v) by inserting in subsection two of the same section after the word "and" where secondly occurring the words ", except where otherwise provided by this Act,";

(vi)

Trustee Companies (Amendment).

- (vi) by omitting from the same subsection the symbol and word “, fee”;
- 5 (vii) by omitting from subsection three of the same section the words “the rate of commission” wherever occurring and by inserting in lieu thereof the words “the commission or any part thereof or the rate thereof”;
- 10 (viii) by omitting subsection six of the same section and by inserting in lieu thereof the following subsections :—
- (6) In subsection one of this section, “corpus or capital value”, in relation to an estate committed to the administration or management of a trustee company—
- 15 (a) where the estate was so committed before the commencement of section two of the Trustee Companies (Amendment) Act, 1972, and the trustee company’s administration or
- 20 management of the estate was completed before that commencement—means the gross corpus or capital value of the estate without deduction of debts or liabilities secured or
- 25 unsecured;
- (b) where the estate was so committed before that commencement and the trustee company’s administration or
- 30 management of the estate continues after that commencement—means—
- (i) in the case of any assets (whether real or personal) of the estate realised before that commencement—the gross

amount

Trustee Companies (Amendment).

amount of the value of those assets as at the date on which the estate was so committed; and

- 5 (ii) in the case of any assets (whether real or personal) of the estate realised after that commencement—the gross amount realised for those assets,
- 10

without deduction of debts or liabilities secured or unsecured; and

- (c) where the estate is so committed after that commencement—means the gross amount realised for the assets (whether real or personal) of the estate without deduction of debts or liabilities secured or unsecured.
- 15

(6A) For the purposes of subsection six of this section—

20

- (a) where an asset of an estate comprises moneys (other than the proceeds of the realisation of any asset)—

(i) that asset shall be deemed to have been realised when it was collected on behalf of the estate; and

25

(ii) the amount realised for that asset shall be deemed to have been the amount of the moneys so collected; and

30

(b)

Trustee Companies (Amendment).

5 (b) where an asset of an estate is distributed, transferred, appropriated, or released, without realisation, to beneficiaries, whether by or as a result of agreement between beneficiaries or otherwise—

10 (i) that asset shall be deemed to have been realised when it was so distributed, transferred, appropriated or released; and

15 (ii) the amount realised for that asset shall be deemed to have been the amount of the value of the asset as at the date of the distribution, transfer, appropriation or release.

(c) by inserting next after section eighteen the following ^{New sec.} new section : — _{18A.}

18A. Where a trustee company—

Payment of
commission.

20 (a) is entitled by virtue of section eighteen of this Act to receive commission in respect of the corpus or capital value of an estate; or

25 (b) would be so entitled to receive that commission but for the fact that any or all of the assets of the estate have not been realised, as referred to in that section,

the following provisions have effect : —

(c) that commission may, subject to paragraph (d) of this section, be paid out of the

estate

Trustee Companies (Amendment).

estate at any time after the estate was committed to the administration or management of the trustee company; and

- 5 (d) while any or all of the assets remain to be so realised, the commission which may be so paid out shall not exceed the commission which would be payable if those assets were so realised for an amount equal to the amount of their value at the time the estate was so committed, the amount of commission paid out, whether before or after the commencement of section two of the Trustee Companies (Amendment) Act, 1972, being adjusted when those assets respectively are so realised.
- 10
- 15

- (d) by omitting section nineteen and by inserting in lieu thereof the following sections :—
- Subst. sec. 19, new secs. 19A-19D.

19. (1) A reference in this section to a relevant period applicable to an estate committed to the administration or management of a trustee company is a reference to—

Fee for carrying on business.

20

- 25 (a) the period between the commencement of section two of the Trustee Companies (Amendment) Act, 1972, and the anniversary of that committal that next succeeds that commencement;
- (b) the year that next succeeds that anniversary; and
- (c) each succeeding year.

Trustee Companies (Amendment).

5 (2) While the administration or manage-
ment of an estate committed to a trustee company
involves, during a relevant period applicable to the
estate, the carrying on of a business which belongs
wholly to the estate, or in which the estate has an
interest as partner, the trustee company shall be
entitled to receive, from time to time, out of the
estate, a fee at a rate not exceeding one-half of one
10 per centum on the value of so much of the assets
employed in the business as is owned by the estate,
that value being determined as at the end of that
relevant period.

15 19A. (1) A reference in this section to a rele-
vant period applicable to an estate committed to
the administration or management of a trustee
company is—

Fee for
collection
of rent.

(a) subject to paragraph (b) of this subsection,
a reference to—

20 (i) the period between the commence-
ment of section two of the Trustee
Companies (Amendment) Act,
1972, and the anniversary of that
committal that next succeeds that
commencement;

25 (ii) the year that next succeeds that
anniversary; and

(iii) each succeeding year; or

30 (b) where the regulations make provision for
or with respect to the determination of some
other period, a reference to that other
period.

35 (2) Where during a relevant period appli-
cable to an estate committed to the administration
or management of a trustee company an officer of
the trustee company collects rent in respect of
property

Trustee Companies (Amendment).

property belonging to the estate, the company shall be entitled to receive out of the estate a fee in respect of the gross amount of rent so collected during that period, and—

- 5 (a) if the regulations do not make provision for or with respect to the determination of the fee payable under this section in respect of that period—the fee shall, where that gross amount is within the description contained in an item in the First Column of the Table to this subsection, be the fee determined in the manner specified in the Second Column of that Table opposite that item; or
- 10
- 15 (b) if the regulations make provision for or with respect to the determination of the fee payable under this section in respect of that period—the fee shall be the fee determined in accordance with the regulations.

TABLE.

20	First Column.	Second Column.
	Gross Amount.	Fee.
	Not exceeding \$10,000.	7 per centum of the gross amount.
25	Exceeding \$10,000, but not exceeding \$20,000.	\$700 or 6 per centum of the gross amount, whichever is the greater.
	Exceeding \$20,000, but not exceeding \$50,000.	\$1,200 or 5 per centum of the gross amount, whichever is the greater.
30	Exceeding \$50,000.	\$2,500 or 4 per centum of the gross amount, whichever is the greater.

Trustee Companies (Amendment).

5 (3) Notwithstanding anything in section eighteen of this Act, where an officer of a trustee company collects rent in respect of property belonging to an estate, the trustee company shall not be entitled to receive commission under that section in respect of the rent so collected.

10 (4) Notwithstanding anything in subsection two of this section, a trustee company shall not be entitled to receive a fee under this section in respect of rent collected by an officer of the trustee company if some other method of collecting the rent is expressly or impliedly directed in the will or other relevant instrument (if any).

15 19B. (1) A trustee company shall, in respect of a perpetual trust committed to its administration or management, be entitled to receive, at the prescribed time, out of the corpus or income of the perpetual trust a fee not exceeding one dollar for every one hundred dollars of the assets of the trust at that time. Fee on twentieth anniversary of perpetual trust.

(2) In subsection one of this section, "prescribed time", in relation to a perpetual trust committed to the administration or management of a trustee company, means—

25 (a) where the perpetual trust is committed after the commencement of section two of the Trustee Companies (Amendment) Act, 1972, or was so committed before that commencement but not earlier than twenty years before that commencement—

30 (i) the conclusion of the period of twenty years commencing at the date of committal; and

35 (ii) the conclusion of each subsequent period of twenty years; or

(b)

Trustee Companies (Amendment).

(b) where the perpetual trust was so committed earlier than twenty years before the commencement of section two of the Trustee Companies (Amendment) Act, 1972—

5

(i) that commencement;

(ii) the conclusion of the period of twenty years after that commencement; and

10

(iii) the conclusion of each subsequent period of twenty years.

19c. (1) Where an estate committed to the administration or management of a trustee company has an interest in a corporation and an officer of the trustee company, in his capacity as such an officer, acts as a director of the corporation for purposes connected with the administration or management of the estate—

15

Director's
and other
fees.

20

(a) the trustee company shall be entitled to receive from the corporation and to retain any director's fees which would be payable to the officer had he so acted otherwise than in his capacity as such an officer; and

25

(b) neither the officer nor the estate shall be entitled to receive the fees which the trustee company is entitled to receive under paragraph (a) of this subsection.

30

(2) Where the estate of a deceased person has been committed to the administration or management of a trustee company and that person had, immediately before his death, an interest in any property as a joint tenant, the trustee company shall be entitled to charge and to receive from the surviving joint tenant or tenants a fee according to the value of the work done and services

rendered

Trustee Companies (Amendment).

rendered for the purpose of providing information as to that interest to or for the benefit of that tenant or those tenants.

5 19D. (1) The fees payable under sections nineteen, 19A, 19B and 19C of this Act in respect of an estate committed to the administration or management of a trustee company are, subject to subsection three of section 19A of this Act, in addition to all moneys properly expended by the trustee company and chargeable against the estate and to commission payable under section eighteen of this Act. General provisions in respect of fees.

10 (2) The fees payable under sections nineteen and 19A of this Act in respect of an estate shall be payable out of moneys belonging to the estate.

15 (3) Where, in respect of an estate, any judge sitting in the equitable jurisdiction of the Court is of opinion that the fee payable under section nineteen, 19A or 19B or subsection two of section 19C of this Act is excessive, the judge may, of his own motion or on the application of any person interested in the estate, review the fee and may, on the review, reduce the fee.

20 (4) Nothing in section nineteen, 19A or 19B or subsection one of section 19C of this Act prevents the payment of any fee which the will or other relevant instrument (if any) directs to be paid either in addition to or in lieu of the fee payable under any of those sections.

25 (5) The fees provided for under sections nineteen, 19A, 19B and 19C of this Act are payable in respect of estates committed to the administration or management of a trustee company before the commencement

Trustee Companies (Amendment).

5 commencement of section two of the Trustee Companies (Amendment) Act, 1972 (whether before, on or after the day appointed and notified under subsection two of section one of this Act) and to estates so committed after that commencement.

10 (6) Nothing in this Act authorises any of the fees payable under section nineteen, 19A or 19C of this Act to be charged or received in relation to—

(a) any business in so far as it was carried on before the commencement of section two of the Trustee Companies (Amendment) Act, 1972;

15 (b) any rent collected before that commencement;

(c) any director's fee payable in respect of any period before that commencement; or

20 (d) any information provided before that commencement.

(e) by omitting from subsection two of section twenty-^{Sec. 29.} nine the words "Registrar of Companies" and by ^(Returns.) inserting in lieu thereof the words "Corporate Affairs Commission";

25 (f) by inserting next after section thirty-six the follow-^{New sec.} ing new section :—^{37.}

30 37. (1) The Governor may make regulations^{Regulations.} not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may be made so as to differ according to time, place or circumstances.

Trustee Companies (Amendment).

3. The Trustee Companies Act, 1964, is further amended— Further amendment of Act No. 6, 1964.
- (a) by omitting from the Second Schedule the words "PERMANENT TRUSTEE COMPANY OF NEW SOUTH WALES (LIMITED)." and by inserting in lieu thereof the words "PERMANENT TRUSTEE COMPANY LIMITED."; Second Schedule.
- 5
- (b) by omitting from the First Part of the Third Schedule the words "Permanent Trustee Company of New South Wales (Limited)" and by inserting in lieu thereof the words "Permanent Trustee Company Limited". Third Schedule.
- 10
4. The Trustee Companies Act, 1964, is further amended— Further amendment of Act No. 6, 1964.
- (a) by omitting from the Second Schedule the words "PERPETUAL TRUSTEE COMPANY (LIMITED)." and by inserting in lieu thereof the words "PERPETUAL TRUSTEE COMPANY LIMITED."; Second Schedule.
- 15
- (b) by omitting from the First Part of the Third Schedule the words "Perpetual Trustee Company (Limited)" and by inserting in lieu thereof the words "Perpetual Trustee Company Limited". Third Schedule.
- 20
5. A provision of the Trustee Companies Act, 1964, as amended by this Act, specified in the First Column of the Schedule to this Act is amended in the manner specified in the Second Column opposite thereto. Further amendment of Act No. 6, 1964.

SCHEDULE.

Trustee Companies (Amendment).

SCHEDULE.

Sec. 5.

First Column.	Second Column.
5 Provision of Act No. 6, 1964.	Manner of Amendment.
Subsection (1) of section 3. Section 6. Section 9.	Omit the definition of "Judge". Omit "court"; insert "Court". Omit "court" wherever occurring; insert "Court".
10 Section 10. Section 15.	Omit "court or a judge" wherever occurring; insert "Court". Omit "court or a judge"; insert "Court".
15 Subsection (3) of section 18.	Omit "any judge sitting in the equitable or probate jurisdiction of". Omit "such judge may of his"; insert "the Court may of its".
20 Subsection (3) of section 19D.	Omit "any judge sitting in the equitable jurisdiction of". Omit "judge may, of his"; insert "Court may, of its".
Subsection (1) of section 21.	Omit "court or a judge"; insert "Court".
25 Subsection (2) of section 21.	Omit "court or judge" wherever occurring; insert "Court".
Subsection (3) of section 21.	Omit "court or judge" wherever occurring; insert "Court".
30 Subsection (4) of section 21.	Omit "court or judge"; insert "Court".
Subsection (1) of section 22.	Omit "or he". Omit "court or a judge"; insert "Court".
35 Subsection (3) of section 22.	Omit "court or judge"; insert "Court".
Section 24.	Omit "court or a judge" wherever occurring; insert "Court".
Section 25.	Omit "court"; insert "Court".
40 Paragraph (a) of subsection (7) of section 26.	Omit "court"; insert "Court".
Section 27.	Omit "court" wherever occurring; insert "Court".

SCHEDULE

*Trustee Companies (Amendment).*SCHEDULE—*continued.*

First Column.	Second Column.
5 Provision of Act No. 6, 1964.	Manner of Amendment.
Section 28.	Omit "court" wherever occurring; insert "Court".
Section 30.	Omit subsections (1), (2), (3) and (4).
10 Subsection (5) of section 30.	Omit "court or judge" wherever occurring; insert "Court". Omit "such application"; insert "application under this Act to the Court".
15 Subsection (2) of section 33.	Omit "court" wherever occurring; insert "Court".

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1972

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

I. P. K. VIDLER,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 22 March, 1972.*

New South Wales



ANNO VICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. 45, 1972.

An Act to increase the maximum commission chargeable by trustee companies in respect of certain estates; to enable trustee companies to charge certain fees; for these and other purposes to amend the Trustee Companies Act, 1964; and for purposes connected therewith. [Assented to, 11th April, 1972.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

L. A. PUNCH,
Chairman of Committees of the Legislative Assembly.

Trustee Companies (Amendment).

BE it enacted by the Queen'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:—

Short title
and com-
mencement.

1. (1) This Act may be cited as the "Trustee Companies (Amendment) Act, 1972".

(2) This section and section two of this Act shall commence on the day upon which the assent of Her Majesty to this Act is signified.

(3) Sections three and four of this Act shall respectively commence on such day or days as may be appointed by the Governor in respect of each such section and notified by proclamation published in the Gazette.

(4) Section five of this Act and the Schedule to this Act shall commence on the day appointed and notified under subsection one of section two of the Supreme Court Act, 1970.

Amendment
of Act No.
6, 1964.

2. The Trustee Companies Act, 1964, is amended—

Sec. 3.
(Interpre-
tation.)

(a) by inserting next after the definition of "Minor" in subsection one of section three the following new definition:—

"Regulations" means regulations under this Act.

Sec. 18.
(Commis-
sion charge-
able by
trustee
company.)

(b) (i) by omitting from paragraph (a) of subsection one of section eighteen the word "or" where secondly occurring;

(ii)

Trustee Companies (Amendment).

- (ii) by omitting from paragraph (b) of the same subsection the word "is" and by inserting in lieu thereof the words "was, before the commencement of section two of the Trustee Companies (Amendment) Act, 1972,";
- (iii) by omitting from the same paragraph the words "of the other capacities mentioned in the foregoing provisions" and by inserting in lieu thereof the words "capacity other than that referred to in paragraph (a)";
- (iv) by inserting at the end of the same paragraph the following word and new paragraph :—

; or

(c) Where the estate is, after the commencement of section two of the Trustee Companies (Amendment) Act, 1972, committed to the administration or management of the trustee company in any capacity other than that referred to in paragraph (a) of this subsection—

- (i) four dollars twenty-five cents for every one hundred dollars of the corpus or capital value of the estate; and
- (ii) five dollars twenty-five cents for every one hundred dollars of the income received by the trustee company on account of the estate.

- (v) by inserting in subsection two of the same section after the word "and" where secondly occurring the words ", except where otherwise provided by this Act,";

(vi)

Trustee Companies (Amendment).

- (vi) by omitting from the same subsection the symbol and word “, fee”;
- (vii) by omitting from subsection three of the same section the words “the rate of commission” wherever occurring and by inserting in lieu thereof the words “the commission or any part thereof or the rate thereof”;
- (viii) by omitting subsection six of the same section and by inserting in lieu thereof the following subsections :—

(6) In subsection one of this section, “corpus or capital value”, in relation to an estate committed to the administration or management of a trustee company—

- (a) where the estate was so committed before the commencement of section two of the Trustee Companies (Amendment) Act, 1972, and the trustee company’s administration or management of the estate was completed before that commencement—means the gross corpus or capital value of the estate without deduction of debts or liabilities secured or unsecured;
- (b) where the estate was so committed before that commencement and the trustee company’s administration or management of the estate continues after that commencement—means—
 - (i) in the case of any assets (whether real or personal) of the estate realised before that commencement—the gross

amount

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amount of the value of those assets as at the date on which the estate was so committed; and

- (ii) in the case of any assets (whether real or personal) of the estate realised after that commencement—the gross amount realised for those assets,

without deduction of debts or liabilities secured or unsecured; and

- (c) where the estate is so committed after that commencement—means the gross amount realised for the assets (whether real or personal) of the estate without deduction of debts or liabilities secured or unsecured.

(6A) For the purposes of subsection six of this section—

- (a) where an asset of an estate comprises moneys (other than the proceeds of the realisation of any asset)—

- (i) that asset shall be deemed to have been realised when it was collected on behalf of the estate; and

- (ii) the amount realised for that asset shall be deemed to have been the amount of the moneys so collected; and

(b)

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(b) where an asset of an estate is distributed, transferred, appropriated, or released, without realisation, to beneficiaries, whether by or as a result of agreement between beneficiaries or otherwise—

(i) that asset shall be deemed to have been realised when it was so distributed, transferred, appropriated or released; and

(ii) the amount realised for that asset shall be deemed to have been the amount of the value of the asset as at the date of the distribution, transfer, appropriation or release.

**New sec.
18A.**

(c) by inserting next after section eighteen the following new section : —

**Payment of
commission.**

18A. Where a trustee company—

(a) is entitled by virtue of section eighteen of this Act to receive commission in respect of the corpus or capital value of an estate; or

(b) would be so entitled to receive that commission but for the fact that any or all of the assets of the estate have not been realised, as referred to in that section,

the following provisions have effect :—

(c) that commission may, subject to paragraph (d) of this section, be paid out of the

estate

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estate at any time after the estate was committed to the administration or management of the trustee company; and

- (d) while any or all of the assets remain to be so realised, the commission which may be so paid out shall not exceed the commission which would be payable if those assets were so realised for an amount equal to the amount of their value at the time the estate was so committed, the amount of commission paid out, whether before or after the commencement of section two of the Trustee Companies (Amendment) Act, 1972, being adjusted when those assets respectively are so realised.

- (d) by omitting section nineteen and by inserting in lieu thereof the following sections:—

Subst. sec.
19, new
secs. 19A-
19D.

19. (1) A reference in this section to a relevant period applicable to an estate committed to the administration or management of a trustee company is a reference to—

Fee for
carrying
on business.

- (a) the period between the commencement of section two of the Trustee Companies (Amendment) Act, 1972, and the anniversary of that committal that next succeeds that commencement;
- (b) the year that next succeeds that anniversary;
and
- (c) each succeeding year.

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(2) While the administration or management of an estate committed to a trustee company involves, during a relevant period applicable to the estate, the carrying on of a business which belongs wholly to the estate, or in which the estate has an interest as partner, the trustee company shall be entitled to receive, from time to time, out of the estate, a fee at a rate not exceeding one-half of one per centum on the value of so much of the assets employed in the business as is owned by the estate, that value being determined as at the end of that relevant period.

Fee for
collection
of rent.

19A. (1) A reference in this section to a relevant period applicable to an estate committed to the administration or management of a trustee company is—

(a) subject to paragraph (b) of this subsection, a reference to—

(i) the period between the commencement of section two of the Trustee Companies (Amendment) Act, 1972, and the anniversary of that committal that next succeeds that commencement;

(ii) the year that next succeeds that anniversary; and

(iii) each succeeding year; or

(b) where the regulations make provision for or with respect to the determination of some other period, a reference to that other period.

(2) Where during a relevant period applicable to an estate committed to the administration or management of a trustee company an officer of the trustee company collects rent in respect of property

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property belonging to the estate, the company shall be entitled to receive out of the estate a fee in respect of the gross amount of rent so collected during that period, and—

- (a) if the regulations do not make provision for or with respect to the determination of the fee payable under this section in respect of that period—the fee shall, where that gross amount is within the description contained in an item in the First Column of the Table to this subsection, be the fee determined in the manner specified in the Second Column of that Table opposite that item ; or
- (b) if the regulations make provision for or with respect to the determination of the fee payable under this section in respect of that period—the fee shall be the fee determined in accordance with the regulations.

TABLE.

First Column.	Second Column.
Gross Amount.	Fee.
Not exceeding \$10,000.	7 per centum of the gross amount.
Exceeding \$10,000, but not exceeding \$20,000.	\$700 or 6 per centum of the gross amount, whichever is the greater.
Exceeding \$20,000, but not exceeding \$50,000.	\$1,200 or 5 per centum of the gross amount, whichever is the greater.
Exceeding \$50,000.	\$2,500 or 4 per centum of the gross amount, whichever is the greater.

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(3) Notwithstanding anything in section eighteen of this Act, where an officer of a trustee company collects rent in respect of property belonging to an estate, the trustee company shall not be entitled to receive commission under that section in respect of the rent so collected.

(4) Notwithstanding anything in subsection two of this section, a trustee company shall not be entitled to receive a fee under this section in respect of rent collected by an officer of the trustee company if some other method of collecting the rent is expressly or impliedly directed in the will or other relevant instrument (if any).

Fee on
twentieth
anniversary
of perpet-
ual trust.

19B. (1) A trustee company shall, in respect of a perpetual trust committed to its administration or management, be entitled to receive, at the prescribed time, out of the corpus or income of the perpetual trust a fee not exceeding one dollar for every one hundred dollars of the assets of the trust at that time.

(2) In subsection one of this section, "prescribed time", in relation to a perpetual trust committed to the administration or management of a trustee company, means—

- (a) where the perpetual trust is committed after the commencement of section two of the Trustee Companies (Amendment) Act, 1972, or was so committed before that commencement but not earlier than twenty years before that commencement—
 - (i) the conclusion of the period of twenty years commencing at the date of committal; and
 - (ii) the conclusion of each subsequent period of twenty years; or

(b)

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- (b) where the perpetual trust was so committed earlier than twenty years before the commencement of section two of the Trustee Companies (Amendment) Act, 1972—
- (i) that commencement;
 - (ii) the conclusion of the period of twenty years after that commencement; and
 - (iii) the conclusion of each subsequent period of twenty years.

19c. (1) Where an estate committed to the administration or management of a trustee company has an interest in a corporation and an officer of the trustee company, in his capacity as such an officer, acts as a director of the corporation for purposes connected with the administration or management of the estate—

Director's
and other
fees.

- (a) the trustee company shall be entitled to receive from the corporation and to retain any director's fees which would be payable to the officer had he so acted otherwise than in his capacity as such an officer; and
- (b) neither the officer nor the estate shall be entitled to receive the fees which the trustee company is entitled to receive under paragraph (a) of this subsection.

(2) Where the estate of a deceased person has been committed to the administration or management of a trustee company and that person had, immediately before his death, an interest in any property as a joint tenant, the trustee company shall be entitled to charge and to receive from the surviving joint tenant or tenants a fee according to the value of the work done and services

rendered

Trustee Companies (Amendment).

rendered for the purpose of providing information as to that interest to or for the benefit of that tenant or those tenants.

General provisions in respect of fees.

19D. (1) The fees payable under sections nineteen, 19A, 19B and 19C of this Act in respect of an estate committed to the administration or management of a trustee company are, subject to subsection three of section 19A of this Act, in addition to all moneys properly expended by the trustee company and chargeable against the estate and to commission payable under section eighteen of this Act.

(2) The fees payable under sections nineteen and 19A of this Act in respect of an estate shall be payable out of moneys belonging to the estate.

(3) Where, in respect of an estate, any judge sitting in the equitable jurisdiction of the Court is of opinion that the fee payable under section nineteen, 19A or 19B or subsection two of section 19C of this Act is excessive, the judge may, of his own motion or on the application of any person interested in the estate, review the fee and may, on the review, reduce the fee.

(4) Nothing in section nineteen, 19A or 19B or subsection one of section 19C of this Act prevents the payment of any fee which the will or other relevant instrument (if any) directs to be paid either in addition to or in lieu of the fee payable under any of those sections.

(5) The fees provided for under sections nineteen, 19A, 19B and 19C of this Act are payable in respect of estates committed to the administration or management of a trustee company before the
commencement

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commencement of section two of the Trustee Companies (Amendment) Act, 1972 (whether before, on or after the day appointed and notified under subsection two of section one of this Act) and to estates so committed after that commencement.

(6) Nothing in this Act authorises any of the fees payable under section nineteen, 19A or 19C of this Act to be charged or received in relation to—

- (a) any business in so far as it was carried on before the commencement of section two of the Trustee Companies (Amendment) Act, 1972;
 - (b) any rent collected before that commencement;
 - (c) any director's fee payable in respect of any period before that commencement; or
 - (d) any information provided before that commencement.
- (e) by omitting from subsection two of section twenty-Sec. 29. nine the words "Registrar of Companies" and by (Returns.) inserting in lieu thereof the words "Corporate Affairs Commission";
- (f) by inserting next after section thirty-six the follow-New sec. ing new section :—37.
37. (1) The Governor may make regulations Regulations. not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may be made so as to differ according to time, place or circumstances.

Trustee Companies (Amendment).

- Further amendment of Act No. 6, 1964.
- Second Schedule.
- Third Schedule.
- Further amendment of Act No. 6, 1964.
- Second Schedule.
- Third Schedule.
- Further amendment of Act No. 6, 1964.
5. A provision of the Trustee Companies Act, 1964, as amended by this Act, specified in the First Column of the Schedule to this Act is amended in the manner specified in the Second Column opposite thereto.
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SCHEDULE.

Trustee Companies (Amendment).

SCHEDULE.

Sec. 5.

First Column.	Second Column.
Provision of Act No. 6, 1964.	Manner of Amendment.
Subsection (1) of section 3. Section 6. Section 9.	Omit the definition of "Judge". Omit "court"; insert "Court". Omit "court" wherever occurring; insert "Court".
Section 10.	Omit "court or a judge" wherever occurring; insert "Court".
Section 15.	Omit "court or a judge"; insert "Court".
Subsection (3) of section 18.	Omit "any judge sitting in the equitable or probate jurisdiction of". Omit "such judge may of his"; insert "the Court may of its".
Subsection (3) of section 19D.	Omit "any judge sitting in the equitable jurisdiction of". Omit "judge may, of his"; insert "Court may, of its".
Subsection (1) of section 21.	Omit "court or a judge"; insert "Court".
Subsection (2) of section 21.	Omit "court or judge" wherever occurring; insert "Court".
Subsection (3) of section 21.	Omit "court or judge" wherever occurring; insert "Court".
Subsection (4) of section 21.	Omit "court or judge"; insert "Court". Omit "or he".
Subsection (1) of section 22.	Omit "court or a judge"; insert "Court".
Subsection (3) of section 22.	Omit "court or judge"; insert "Court".
Section 24.	Omit "court or a judge" wherever occurring; insert "Court".
Section 25.	Omit "court"; insert "Court".
Paragraph (a) of subsection (7) of section 26.	Omit "court"; insert "Court".
Section 27.	Omit "court" wherever occurring; insert "Court".

SCHEDULE

*Trustee Companies (Amendment).*SCHEDULE—*continued.*

First Column.	Second Column.
Provision of Act No. 6, 1964.	Manner of Amendment.
Section 28.	Omit "court" wherever occurring; insert "Court".
Section 30.	Omit subsections (1), (2), (3) and (4).
Subsection (5) of section 30.	Omit "court or judge" wherever occurring; insert "Court".
	Omit "such application"; insert "application under this Act to the Court".
Subsection (2) of section 33.	Omit "court" wherever occurring; insert "Court".

In the name and on behalf of Her Majesty I assent to this Act.

L. J. HERRON, C.J.
*By Deputation from
 His Excellency the Governor.*

*Government House,
 Sydney, 11th April, 1972.*