

FIRST PRINT

TRUSTEE COMPANIES (AMENDMENT) BILL, 1985

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:—

Trustee (Trustees' Agents) Amendment Bill, 1985;

Wills, Probate and Administration (Trustee Companies) Amendment Bill, 1985.

The object of this Bill is to amend the Trustee Companies Act, 1964 ("the Act")—

- (a) to prohibit the acquisition of shares in a trustee company in certain cases where the acquisition would result in—
 - (i) a person's becoming the holder of a higher portion of the total voting shares of the company than the portion prescribed by regulations under the Act or by the articles of association of the company, whichever is the greater; or
 - (ii) an increase in the portion of the total voting shares held by a person who, before the acquisition, already held a portion not less than the percentage so prescribed,and to prohibit certain offers and invitations to treat in relation to share acquisitions of that kind (Schedule 1 (2)—proposed section 31A);
- (b) to enable the Supreme Court to take measures to set aside share acquisitions that contravene proposed section 31A (Schedule 1 (2)—proposed section 31C);
- (c) to enable the Minister, at the Minister's discretion, to take measures to set aside share acquisitions which result in—
 - (i) a person's becoming the holder of a higher portion of the total voting shares of a trustee company than the portion prescribed by regulations under the Act; or
 - (ii) an increase in the portion of the total voting shares held by a person who, immediately before the acquisition, already held a portion not less than the portion so prescribed,and to empower the Supreme Court to make orders in aid of the measures taken by the Minister (Schedule 1 (2)—proposed section 31D);

- (d) to authorise a trustee company, at the request of a person entitled to obtain probate of a will, to obtain a grant of administration with the will annexed (Schedule 2 (3));
- (e) to empower a trustee company to charge, in addition to the commissions and fees to which it is presently entitled, a fee for investment of money in a common trust fund established under the Act (Schedule 2 (4));
- (f) to prohibit the acceptance by a trustee company—
 - (i) of a deposit or loan by an estate administered or managed by the company; or
 - (ii) otherwise than as a trustee, of a deposit or loan from any person, except in certain specified cases (Schedule 2 (5)—proposed section 29);
- (g) to prohibit the making of a loan by a trustee company, from funds of an estate administered or managed by the company, to any related corporation (as defined in the Companies (New South Wales) Code) other than a bank (Schedule 2 (5)—proposed section 29A);
- (h) to limit the liability of an estate administered or managed by a trustee company with respect to guarantees given by the company to third parties (Schedule 2 (5)—proposed section 29B);
- (i) to require a trustee company to register share transfers, notwithstanding any provision of the memorandum or articles of association of the company to the contrary (Schedule 2 (5)—proposed section 29C); and
- (j) to make further provision with respect to the financial information to be furnished by trustee companies to the public, the Minister and the Corporate Affairs Commission (Schedule 2 (5)—proposed sections 29D and 29E).

The Bill contains other minor, consequential or ancillary provisions.

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- (b) to enable the Supreme Court to take measures to set aside share acquisitions that contravene proposed section 31A (Schedule 1 (2)—proposed section 31C);
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 - (ii) an increase in the portion of the total voting shares held by a person who, immediately before the acquisition, already held a portion not less than the portion so prescribed,
- and to empower the Supreme Court to make orders in aid of the measures taken by the Minister (Schedule 1 (2)—proposed section 31D);

- (d) to authorise a trustee company, at the request of a person entitled to obtain probate of a will, to obtain a grant of administration with the will annexed (Schedule 2 (3));
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- (i) to require a trustee company to register share transfers, notwithstanding any provision of the memorandum or articles of association of the company to the contrary (Schedule 2 (5)—proposed section 29C); and
- (j) to make further provision with respect to the financial information to be furnished by trustee companies to the public, the Minister and the Corporate Affairs Commission (Schedule 2 (5)—proposed sections 29D and 29E).

The Bill contains other minor, consequential or ancillary provisions.

TRUSTEE COMPANIES (AMENDMENT) BILL, 1985

No. , 1985.

A BILL FOR

An Act to amend the Trustee Companies Act, 1964, with respect to the acquisition of shares in trustee companies, with respect to the finances of trustee companies and for other purposes.

See also Trustee (Trustees' Agents) Amendment Bill, 1985; Wills, Probate and Administration (Trustee Companies) Amendment Bill, 1985.

Trustee Companies (Amendment) 1985

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:—

5 Short title.

1. This Act may be cited as the "Trustee Companies (Amendment) Act, 1985".

Commencement.

2. (1) Except as provided by subsections (2) and (3), this Act shall
10 commence on the date of assent to this Act.

(2) Schedule 1, and section 4 in its application to that Schedule, shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) Schedule 2, and section 4 in its application to that Schedule, shall
15 commence on such day (being a day that is not earlier than the day appointed and notified under subsection (2)) as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Schedules.

20 3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE TRUSTEE COMPANIES ACT,
1964, RELATING TO SHAREHOLDINGS IN TRUSTEE COMPANIES.

SCHEDULE 2.—FURTHER AMENDMENTS TO THE TRUSTEE COMPANIES
ACT, 1964.

25 Amendment of Act No. 6, 1964.

4. The Trustee Companies Act, 1964, is amended in the manner set forth in Schedules 1 and 2.

Trustee Companies (Amendment) 1985

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES.

- 5 (1) (a) Section 3 (1), definitions of "Bank", "Commission",
"Corporation"—

Before the definition of "Court", insert:—

"Bank" means—

- 10 (a) a bank as defined in section 5 of the Banking Act
1959 of the Commonwealth, as amended and in
force for the time being; or
- (b) a bank constituted under a law of a State or
Territory of the Commonwealth.

15 "Commission" means the Corporate Affairs Commission
constituted by the Corporate Affairs Commission Act,
1981.

"Corporation" has the same meaning as in the Companies
(New South Wales) Code.

- 20 (b) Section 3 (1), definitions of "Financial institution", "Insurance
company"—

After the definition of "Court", insert:—

"Financial institution" means—

- (a) a bank;
- (b) an insurance company;
- 25 (c) a financial corporation to which the Financial
Corporations Act 1974 of the Commonwealth, as
amended and in force for the time being, applies;
- (d) the trustees or managers of a superannuation
fund established by a law of the Commonwealth
or of a State or Territory of the Commonwealth;
- 30 or
- (e) a corporation in respect of which a declaration
by the Minister under subsection (4) is in force.

Trustee Companies (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

5 “Insurance company” means a corporation that is registered
 under the Life Insurance Act 1945 of the
 Commonwealth, as amended and in force for the time
 being.

(c) Section 3 (1), definition of “Nominee corporation”—

After the definition of “Minor”, insert:—

10 “Nominee corporation” has the same meaning as in the
 Companies (New South Wales) Code.

(d) Section 3 (1), definitions of “Related corporation”, “Subordinated
loan”—

After the definition of “Regulations”, insert:—

15 “Related corporation” has the same meaning as in the
 Companies (New South Wales) Code.

20 “Subordinated loan” means a loan which is unsecured and
 the terms of which are evidenced by an instrument in
 writing which expressly provides that the rights of the
 lender are subordinated to all other creditors of the
 borrower.

(e) Section 3 (1), definition of “Voting share”—

After the definition of “Trustee company”, insert:—

25 “Voting share” has the same meaning as in the Companies
 (New South Wales) Code.

(f) Section 3 (3)–(10)—

After section 3 (2), insert:—

(3) In this Act, a reference to entering into a transaction in
relation to shares includes—

30 (a) a reference to entering into or becoming a party to an
 agreement, arrangement, understanding or undertaking,

*Trustee Companies (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

- 5 whether formal or informal and whether express or implied, in relation to shares; and
- (b) a reference to exercising an option to have shares allotted.
- (4) The Minister, by notice published in the Gazette—
- 10 (a) may declare a corporation or a corporation included in a class of corporations to be a financial institution for the purposes of this Act; and
- (b) may revoke or amend any such declaration.
- 15 (5) A person is an associate of another person for the purposes of this Act if, for the purposes of section 7 (4) of the Companies (Acquisition of Shares) (New South Wales) Code, the person would be an associate of the other person for the purposes of section 7 (3) (b) of that Code.
- 20 (6) For the purposes of this Act, a person shall be taken to acquire shares in a trustee company (in this subsection referred to as the “shares concerned”) if, and only if—
- 25 (a) the person acquires a relevant interest in the shares concerned as a direct or indirect result of a transaction entered into by or on behalf of the person in relation to those shares, in relation to other securities of that company or in relation to securities of any other corporation; or
- 30 (b) the person acquires any legal or equitable interest in securities of that company or in securities of any other corporation and, as a direct or indirect result of the acquisition, another person acquires a relevant interest in the shares concerned.
- 35 (7) For the purposes of this Act, a person shall be taken to dispose of shares in a trustee company if, and only if, having a relevant interest in those shares, the person ceases to have a relevant interest in those shares as a result of the doing of any act, the entering into of any transaction or the occurrence of any circumstance.

Trustee Companies (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

(8) For the purposes of this Act—

5 (a) the shares in a trustee company to which a person is entitled include—

(i) shares in which the person has a relevant interest; and

10 (ii) except where the person is a nominee corporation in respect of which a certificate of the Minister is in force under subsection (9)— shares in which an associate of the person has a relevant interest; and

15 (b) a person has a relevant interest in a share in a trustee company if, by reason of section 9 of the Companies (Acquisition of Shares) (New South Wales) Code, the person would have a relevant interest in that share for the purposes of that Code.

20 (9) The Minister may, in the discretion of the Minister, issue to a nominee corporation a certificate declaring the nominee corporation to be an approved nominee corporation for the purposes of this Act and may at any time, in the discretion of the Minister, by notice in writing to the nominee corporation, revoke the certificate.

25 (10) Unless the contrary intention appears, words and expressions used in this section have the same meanings as they have in the Companies (Acquisition of Shares) (New South Wales) Code.

(2) Sections 31A–31D—

30 After section 31, insert:—

Restriction on acquisition of shares.

31A. (1) Except as provided by this Act, a person shall not, either alone or together with another person or other persons, acquire shares in a trustee company if any person who is not entitled to any

*Trustee Companies (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

5 voting shares in the trustee company or is entitled to less than the prescribed percentage of the voting shares in the trustee company would, immediately after the acquisition, be entitled to more than the prescribed percentage of the voting shares in the trustee company.

10 (2) Except as provided by this Act, a person shall not, either alone or together with another person or other persons, acquire shares in a trustee company if any person (in this subsection referred to as a “relevant person”) who is entitled to not less than the prescribed percentage of the voting shares in the trustee company would, immediately after the acquisition, be entitled to a greater percentage
15 of the voting shares in the trustee company than the percentage to which that relevant person was entitled immediately before the acquisition.

20 (3) Notwithstanding subsections (1) and (2), a person shall not, either alone or together with another person or other persons, acquire shares in a trustee company where the prescribed percentage of voting shares in the trustee company is more than 20 per cent if—

25 (a) any person who is not entitled to any voting shares in the trustee company or is entitled to less than 20 per cent of the voting shares in the trustee company would, immediately after the acquisition, be entitled to more than 20 per cent of the voting shares in the trustee company; or

30 (b) any person (in this paragraph referred to as a “relevant person”) who is entitled to not less than 20 per cent, but less than 90 per cent, of the voting shares in the trustee company would, immediately after the acquisition, be entitled to a greater percentage of the number of voting shares in the trustee company than the percentage to which that relevant person was entitled immediately before the acquisition,

unless—

35 (c) before the acquisition takes place, the Minister, pursuant to an application made as prescribed, gives approval in writing to the acquisition and, where that approval is subject to conditions, those conditions are complied with;

*Trustee Companies (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

- 5 (d) the acquisition is made as a result of the acceptance of offers to acquire those shares made under a take-over scheme or a take-over announcement in relation to that trustee company as provided in the Companies (Acquisition of Shares) (New South Wales) Code; and
- 10 (e) after the acquisition takes place, a person acquiring the shares is not entitled to more than the prescribed percentage of voting shares in the trustee company.
- (4) A person shall not offer to acquire, or issue an invitation in relation to, shares in a trustee company if the person is prohibited by subsection (1), (2) or (3) from acquiring those shares.
- 15 (5) Where, by reason of the acquisition by a person (whether alone or together with another person or other persons) of shares in a trustee company—
- 20 (a) any person who was not entitled to any voting shares in the trustee company or was entitled to less than the statutory percentage of the voting shares in the trustee company becomes, immediately after the acquisition, entitled to more than the statutory percentage of the voting shares in the trustee company; or
- 25 (b) any person (in this paragraph referred to as a “relevant person”) who was entitled to not less than the statutory percentage of the voting shares in the trustee company becomes, immediately after the acquisition, entitled to a greater percentage of the voting shares in the trustee company than the percentage to which that relevant person was
- 30 entitled immediately before the acquisition,
- the firstmentioned person shall, within 2 days after the acquisition, cause notice to be given to the Minister, in the prescribed manner and form, of the acquisition.
- 35 (6) A reference in subsection (5) to the statutory percentage of voting shares in a trustee company—
- (a) is, where no authorisation is provided as referred to in paragraph (b), a reference to the prescribed percentage of voting shares in the trustee company; or

Trustee Companies (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

5 (b) is a reference to the percentage that would, but for an
authorisation provided, for the purposes of subsection (12),
by the articles of association of the trustee company, be the
prescribed percentage of voting shares in the trustee
company,

as the case may require.

10 (7) A person who contravenes subsection (1), (2), (3) or (4), or who
fails to comply with subsection (5), is guilty of an offence and liable
to a penalty not exceeding \$2,000.

(8) The Minister may request the Commission to prepare a report
on an application for approval under subsection (3) (c).

15 (9) It is a defence to a prosecution for a contravention of this
section if the defendant establishes that the contravention was due
to a mistake of fact on the part of the defendant or to the defendant's
not being aware of a relevant fact or occurrence.

20 (10) An acquisition of shares is not invalid by reason of a
contravention of this section.

(11) A provision in the articles of association of a trustee company
that applies or purports to apply the provisions of subsection (1) or
(2) as if the reference to the prescribed percentage were a reference
to a lesser percentage is void.

25 (12) A reference in this section to the prescribed percentage of
voting shares in a trustee company is a reference to—

(a) 10 per cent or, where a higher percentage is prescribed by
regulations in force for the time being for the purposes of this
subsection, that higher percentage; or

30 (b) where the articles of association of the trustee company
authorise a higher percentage for the purposes of this
subsection—that higher percentage,

whichever is the greater.

*Trustee Companies (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

5 (13) A reference in this section to 20 per cent shall, where a lesser percentage is prescribed by regulations in force for the time being for the purposes of this subsection, be deemed to be a reference to that lesser percentage.

10 (14) A reference in this section to a trustee company is a reference to a trustee company that is a company within the meaning of the Companies (New South Wales) Code.

Acquisitions to which section 31A does not apply.

31B. Section 31A does not apply to or in relation to an acquisition of shares in accordance with the Companies (Acquisition of Shares) (New South Wales) Code—

15 (a) that is an acquisition of shares to or in relation to which section 11 of the Companies (Acquisition of Shares) (New South Wales) Code does not apply by reason of section 12 of that Code, other than an acquisition by virtue of an allotment or purchase referred to in section 12 (g), (n) or (o) of that Code;

20 (b) that is an acquisition of any other kind and is made in a prescribed manner or in prescribed circumstances; or

(c) that is an acquisition approved by the Minister in writing.

Orders where prohibited acquisitions take place.

25 31C. (1) Where a person has acquired shares in a trustee company in contravention of section 31A, the Court may, on the application of the Commission, the trustee company, a member of the trustee company or the person from whom the voting shares were acquired, make such order or orders as it thinks fit, including, but
30 without limiting the generality of the foregoing, one or more of the following orders:—

(a) an order restraining the person who acquired the shares from disposing of, or of any interest in, the shares or such of the shares as are specified in the order;

*Trustee Companies (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

- 5 (b) an order restraining the exercise of any voting or other rights attached to the shares or such of the shares as are specified in the order;
- 10 (c) an order directing the trustee company not to make payment, or to defer making payment, of any sum or sums due from the trustee company in respect of the shares or such of the shares as are specified in the order;
- (d) an order directing the disposal of, or of any interest in, the shares or such of the shares as are specified in the order;
- (e) an order vesting in the Commission—
- 15 (i) the shares, or such of the shares as are specified in the order; or
- (ii) any interest in the shares, or in such of the shares as are specified in the order;
- 20 (f) an order cancelling a contract, arrangement or offer for or in connection with the acquisition of the shares or of such of the shares as are specified in the order;
- (g) an order declaring a contract, arrangement or offer for or in connection with the acquisition of the shares, or of such of the shares as are specified in the order, to be voidable;
- 25 (h) an order directing the trustee company not to register the transfer or transmission of the shares or such of the shares as are specified in the order;
- (i) an order that any exercise of the voting or other rights attached to the shares, or such of the shares as are specified in the order, be disregarded;
- 30 (j) for the purpose of securing compliance with any order referred to in any of the preceding paragraphs, an order directing the trustee company or any other person to do or refrain from doing a specified act.
- 35 (2) Where, at the hearing of an application under subsection (1), it is proved to the satisfaction of the Court that—

Trustee Companies (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

- 5 (a) a person is entitled to shares in a trustee company by reason
that another person who is an associate of the firstmentioned
person has a relevant interest in those shares; and
- 10 (b) that other person became entitled to that relevant interest by
reason of an acquisition of shares (whether in that trustee
company or in another corporation) that took place within 6
months immediately preceding the filing of the application
with the Court,

15 then, in determining for the purposes of the application whether the
acquisition referred to in paragraph (b) was made in contravention
of section 31A, the proof to the satisfaction of the Court of the
matters mentioned in paragraphs (a) and (b) constitutes prima facie
evidence that the other person was an associate of the firstmentioned
person immediately after the acquisition took place.

20 (3) The Court shall not make an order under this section, other
than an order referred to in subsection (1) (a), (b) or (i), if it is
satisfied—

- 25 (a) that the contravention of section 31A by the person who
acquired the shares was due to a mistake of fact on the part
of the person or to the person's not being aware of a relevant
fact or occurrence; and
- (b) that, in all the circumstances, the contravention ought to be
excused.

Powers of the Minister in certain other cases.

31D. (1) Where—

- 30 (a) a person has acquired, otherwise than in contravention of
section 31A, shares in a trustee company;
- (b) the acquisition of those shares by that person was an
acquisition of which notice was required to be given to the
Minister under section 31A (5); and

*Trustee Companies (Amendment) 1985*SCHEDULE 1—*continued*.AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued*.

- (c) the Minister is satisfied, having regard to—
- 5 (i) the interests of persons to whom the trustee company stands in a fiduciary relationship; and
- (ii) the public interest,
- that an order or orders under this section is or are warranted in the circumstances of the case,
- 10 the Minister may make any one or more of the following orders:—
- (d) an order restraining the person who acquired the shares from disposing of, or of any interest in, the shares or such of the shares as are specified in the order;
- 15 (e) an order directing the trustee company not to make payment, or to defer making payment, of any sum or sums due from the trustee company in respect of the shares or such of the shares as are specified in the order;
- (f) an order directing the disposal of, or of any interest in, the shares or such of the shares as are specified in the order;
- 20 (g) an order vesting—
- (i) the shares, or such of the shares as are specified in the order; or
- (ii) any interest in the shares, or in such of the shares as are specified in the order,
- 25 in the Commission;
- (h) an order directing the trustee company not to register the transfer or transmission of the shares or such of the shares as are specified in the order;
- 30 (i) for the purpose of securing compliance with any order referred to in any of the preceding paragraphs, an order directing the trustee company or any other person to do or refrain from doing a specified act.

*Trustee Companies (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

- 5 (2) Except as provided by subsection (3), an order under subsection (1) has effect upon service of a notice specifying the terms of the order, given under the hand of the Minister, on the trustee company or other person to whom the order is directed.
- (3) An order under subsection (1) (i)—
- 10 (a) has effect upon service of a notice containing the order, given under the hand of the Minister, on the person who acquired the shares; and
- (b) has effect notwithstanding any contract, arrangement or offer for or in connection with the acquisition of the shares or any of them.
- 15 (4) A trustee company or other person who fails to comply with an order under subsection (1) is guilty of an offence and liable to a penalty not exceeding \$2,000.
- (5) The Commission may—
- 20 (a) cause any shares, or any interest therein, vested in it by an order under subsection (1) (i) to be offered for sale;
- (b) sell the shares or interest so offered for sale;
- (c) appoint a person to execute a transfer of the shares or interest and to receive, account for, and give a good discharge in respect of, the purchase money;
- 25 (d) cause the transfer relating to the sale to be registered; and
- (e) cause all such matters and things to be done as may be necessary to dispose of the shares or interest therein.
- 30 (6) Purchase money received pursuant to subsection (5), after payment thereof of all costs, expenses, commissions and fees in respect of or incidental to the sale of the shares concerned, shall be paid by the Commission to the person from whom the shares were divested by the Minister's order or to such other person as may appear to the Commission to be entitled to it.

Trustee Companies (Amendment) 1985

SCHEDULE 1—*continued.*AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

5 (7) The Court, on the application of the Minister or the
Commission, may make orders, being—

- (a) orders of the kind referred to in section 31C (1); or
- (b) such other orders as the Court considers appropriate,

in aid of the exercise by the Minister or the Commission, as the case
may be, of the powers conferred by this section.

10 (3) Second Schedule—

- (a) From the matter relating to the Permanent Trustee Company
Limited, omit paragraph (a).
 - (b) From the matter relating to the Perpetual Trustee Company
Limited, omit paragraph (a).
 - 15 (c) From the matter relating to the Union-Fidelity Trustee
Company of Australia Limited, omit paragraph (a).
 - (d) From the matter relating to the ANZ Executors & Trustee
Company Limited, omit paragraph (a).
 - 20 (e) From the matter relating to the Burns Philp Trustee Company
Limited, omit paragraph (c).
 - (f) From the matter relating to the Winchcombe Carson Trustee
Company Limited, omit paragraph (c).
 - (g) From the matter relating to Perpetual Trustees Australia
Limited, omit clause 1 and clauses 4–14.
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Trustee Companies (Amendment) 1985

SCHEDULE 2.

(Sec. 4.)

FURTHER AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964.

(1) Part I, heading—

Before section 1, insert:—

5

PART I.

PRELIMINARY.

(2) Part II, heading—

Before section 4, insert:—

10

PART II.

MANAGEMENT OF ESTATES BY TRUSTEE COMPANIES.

(3) Section 5—

After section 4, insert:—

15

Person named as executor may authorise trustee company to take out administration c.t.a.

20

5. Any person named expressly or by implication as executor who would be entitled to obtain probate of the will of any testator without leave being reserved to any other person to apply for probate may, instead of applying for probate, authorise a trustee company to apply for administration with the will annexed and a grant of administration with the will annexed may be made to the trustee company upon its own application when so authorised unless the testator by the will directed or intimated that the office of executor should not be delegated or that a trustee company should not act in the trusts of the will.

25

(4) Section 16 (14)—

After section 16 (13), insert:—

(14) In addition to the commission, fees and remuneration which it is entitled to receive in accordance with this Act, a trustee

*Trustee Companies (Amendment) 1985*SCHEDULE 2—*continued.*FURTHER AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964—
continued.

5 company shall be entitled to charge and receive from or out of any
income received by a common trust fund a fee (according to the
value of the work done and the services rendered) calculated at a
rate not exceeding one per cent per annum upon the capital sums
invested in the common trust fund during the period in respect of
10 which the income is received or allocated, for the establishment,
keeping (including the keeping of books of account) and conduct of
the common trust fund.

(5) Sections 29–29E—

Omit section 29, insert instead:—

Borrowing by a trustee company.

15 29. (1) Notwithstanding anything in the Companies (New South
Wales) Code or in the memorandum or articles of association of a
trustee company, a trustee company shall not—

- 20 (a) accept a deposit of money with, or a loan of money to, the
trustee company from any estate under its administration or
management; or
- (b) except as provided by this Act, accept a deposit of money
with, or a loan of money to, the trustee company in its own
behalf from any other person.

Penalty: \$2,000.

25 (2) Notwithstanding subsection (1), a trustee company may
borrow money if—

- (a) the money is—
- 30 (i) borrowed from a financial institution; or
- (ii) a subordinated loan from a related corporation (if
any) of the trustee company; and
- (b) the total of all borrowings and liabilities of the trustee
company (other than contingent liabilities) and the amount
of the proposed loan together do not exceed an amount equal

*Trustee Companies (Amendment) 1985*SCHEDULE 2—*continued.*FURTHER AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964—
continued.

5 to three times the total amount of the net tangible assets of
the trustee company specified in the last declaration made by
the trustee company under section 29D.

(3) Nothing in this section shall affect or limit the investment of
money of any estate by a trustee company in a common trust fund
constituted under this Act.

10 **Loans from estates to related corporations prohibited.**

29A. A deposit or loan shall not be made from an estate
administered or managed by a trustee company under this Act to
any related corporation other than a bank.

Penalty: \$2,000.

15 **Liability under guarantee.**

29B. An estate administered or managed by a trustee company
shall not be held liable for the payment of money under a guarantee
from the trustee company otherwise than under a guarantee lawfully
given by the trustee company on behalf of an estate.

20 **Trustee company not to refuse to register shares.**

29C. Subject to this Act, but notwithstanding anything in the
memorandum of association or articles of association of a trustee
company, the trustee company shall not refuse to register a transfer
to any person of shares in the trustee company made on or after the
25 commencement of this section.

Penalty: \$2,000.

Declaration by trustee company.

29D. (1) The manager, the chief financial officer and two other
30 directors of a trustee company shall, during the prescribed months
in each year during which the trustee company carries on business,
make a statutory declaration in or to the effect of the prescribed
form.

(2) A copy of each declaration made under subsection (1)—

35 (a) shall, within 7 days after the making of the declaration, be
forwarded to the Commission;

*Trustee Companies (Amendment) 1985*SCHEDULE 2—*continued.*FURTHER AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964—
continued.

(b) shall be given to any person upon request; and

5 (c) shall, within 7 days after the making of the declaration, be put up in a conspicuous place in the registered office of the trustee company and in each branch office or place where the business of the trustee company is carried on.

10 (3) If a trustee company fails to comply with the provisions of this section, the trustee company shall be liable to a penalty not exceeding \$2,000 and each director or manager of the trustee company who knowingly and wilfully authorises or permits the default shall incur a like penalty.

15 (4) A declaration under this section shall not be required to show—

20 (a) liabilities incurred by the trustee company while acting as trustee or in any representative capacity to the extent to which the trustee company has a valid and subsisting right of indemnity out of any assets in respect of those liabilities and those assets are sufficient to satisfy that right of indemnity; and

(b) assets consisting of the value, if any, of any such right of indemnity arising from the incurring of those liabilities.

25 (5) In this section, “prescribed months” means the months of January, April, July and October or such other months as the Minister, on the application of a trustee company, may approve in respect of the trustee company.

Trustee company to give information to Minister or Commission.

30 29E. (1) A trustee company shall furnish to the Minister or the Commission, as the case may be, such information in writing or statements in respect of its business as the Minister or the Commission directs within such time as is specified by the Minister or the Commission.

Penalty: \$2,000.

*Trustee Companies (Amendment) 1985*SCHEDULE 2—*continued.*FURTHER AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964—
continued.

5 (2) A reference in section 11 of the Companies (New South Wales) Code to books shall, in relation to the powers of the Commission, be construed as including a reference to books kept by a trustee company relating to estates managed or administered by the trustee company.

10 (3) The Minister may, where it appears to the Minister to be necessary or advisable, cause to be carried out—

(a) a review of the operations of a trustee company;

(b) an audit of the books and accounts of a trustee company (including the books and accounts of any of the estates managed or administered by the trustee company); or

15 (c) both the review and the audit.

(4) For the purposes of any review or audit under subsection (3), a trustee company shall—

(a) deliver to any person authorised by the Minister to that effect a list of all books kept by it;

20 (b) produce to that person at all reasonable times when required the books kept by it and all accounts, vouchers, papers and other documents of the trustee company; and

25 (c) afford that person all necessary information and all other necessary facilities for enabling that person to carry out that review or audit.

Penalty: \$2,000.

30 (5) Unless the Minister otherwise directs, the cost of any review or audit under this section shall be borne by the trustee company and may be recovered by the Minister in any court of competent jurisdiction as a debt due to the Crown.

*Trustee Companies (Amendment) 1985*SCHEDULE 2—*continued.*FURTHER AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964—
continued.

(6) Part III, heading—

5 After section 31, insert:—

PART III.

SHAREHOLDINGS IN TRUSTEE COMPANIES.

(7) Part IV, heading—

Before section 32, insert:—

10

PART IV.

MISCELLANEOUS.

(8) Section 32—

Omit “court of petty sessions”, insert instead “Local Court constituted by a Magistrate sitting alone”.

15 (9) Section 37 (2)—

Omit the subsection, insert instead:—

(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- 20 (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

25 or may do any combination of those things.

(10) (a) Third Schedule—

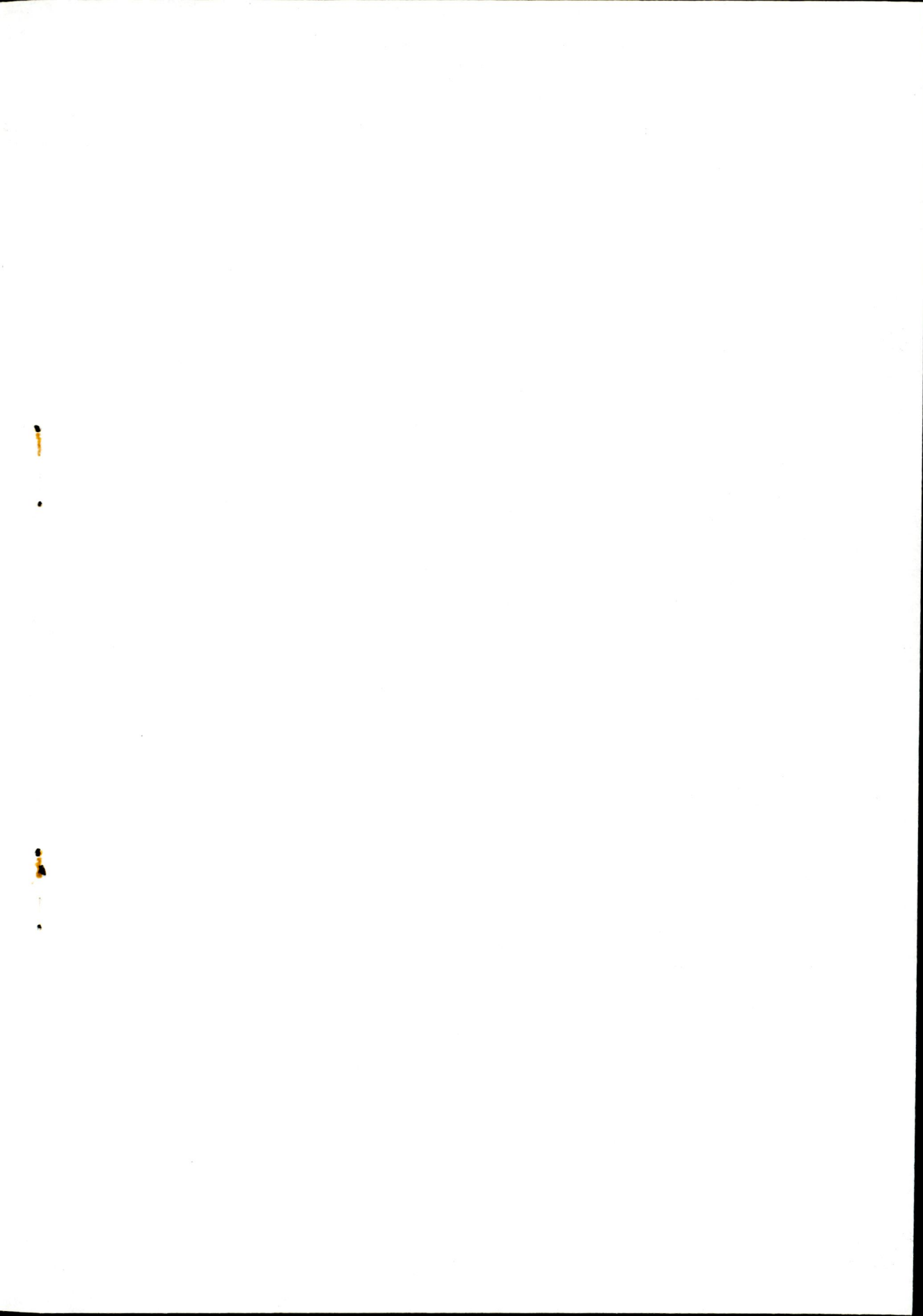
Omit “Sec. 29”, insert instead “Sec. 3 (1)”.

Trustee Companies (Amendment) 1985

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964—
continued.

- (b) Third Schedule, First Part—
5 Omit the second and third columns.
- (c) Third Schedule—
 Omit the Second Part.



TRUSTEE COMPANIES (AMENDMENT) ACT, 1985, No. 88

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* * * * *

Act No. 88, 1985.

An Act to amend the Trustee Companies Act, 1964, with respect to the acquisition of shares in trustee companies, with respect to the finances of trustee companies and for other purposes. [Assented to, 4th June, 1985.]

See also Trustee (Trustees' Agents) Amendment Act, 1985; Wills, Probate and Administration (Trustee Companies) Amendment Act, 1985.

Trustee Companies (Amendment) 1985

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.

1. This Act may be cited as the "Trustee Companies (Amendment) Act, 1985".

Commencement.

2. (1) Except as provided by subsections (2) and (3), this Act shall commence on the date of assent to this Act.

(2) Schedule 1, and section 4 in its application to that Schedule, shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) Schedule 2, and section 4 in its application to that Schedule, shall commence on such day (being a day that is not earlier than the day appointed and notified under subsection (2)) as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Schedules.

3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO SHAREHOLDINGS IN TRUSTEE COMPANIES.

SCHEDULE 2.—FURTHER AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964.

Amendment of Act No. 6, 1964.

4. The Trustee Companies Act, 1964, is amended in the manner set forth in Schedules 1 and 2.

Trustee Companies (Amendment) 1985

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES.

- (1) (a) Section 3 (1), definitions of "Bank", "Commission",
"Corporation"—

Before the definition of "Court", insert:—

"Bank" means—

- (a) a bank as defined in section 5 of the Banking Act 1959 of the Commonwealth, as amended and in force for the time being; or
- (b) a bank constituted under a law of a State or Territory of the Commonwealth.

"Commission" means the Corporate Affairs Commission constituted by the Corporate Affairs Commission Act, 1981.

"Corporation" has the same meaning as in the Companies (New South Wales) Code.

- (b) Section 3 (1), definitions of "Financial institution", "Insurance company"—

After the definition of "Court", insert:—

"Financial institution" means—

- (a) a bank;
- (b) an insurance company;
- (c) a financial corporation to which the Financial Corporations Act 1974 of the Commonwealth, as amended and in force for the time being, applies;
- (d) the trustees or managers of a superannuation fund established by a law of the Commonwealth or of a State or Territory of the Commonwealth; or
- (e) a corporation in respect of which a declaration by the Minister under subsection (4) is in force.

Trustee Companies (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

“Insurance company” means a corporation that is registered under the Life Insurance Act 1945 of the Commonwealth, as amended and in force for the time being.

(c) Section 3 (1), definition of “Nominee corporation”—

After the definition of “Minor”, insert:—

“Nominee corporation” has the same meaning as in the Companies (New South Wales) Code.

(d) Section 3 (1), definitions of “Related corporation”, “Subordinated loan”—

After the definition of “Regulations”, insert:—

“Related corporation” has the same meaning as in the Companies (New South Wales) Code.

“Subordinated loan” means a loan which is unsecured and the terms of which are evidenced by an instrument in writing which expressly provides that the rights of the lender are subordinated to all other creditors of the borrower.

(e) Section 3 (1), definition of “Voting share”—

After the definition of “Trustee company”, insert:—

“Voting share” has the same meaning as in the Companies (New South Wales) Code.

(f) Section 3 (3)–(10)—

After section 3 (2), insert:—

(3) In this Act, a reference to entering into a transaction in relation to shares includes—

(a) a reference to entering into or becoming a party to an agreement, arrangement, understanding or undertaking,

Trustee Companies (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

whether formal or informal and whether express or implied, in relation to shares; and

(b) a reference to exercising an option to have shares allotted.

(4) The Minister, by notice published in the Gazette—

(a) may declare a corporation or a corporation included in a class of corporations to be a financial institution for the purposes of this Act; and

(b) may revoke or amend any such declaration.

(5) A person is an associate of another person for the purposes of this Act if, for the purposes of section 7 (4) of the Companies (Acquisition of Shares) (New South Wales) Code, the person would be an associate of the other person for the purposes of section 7 (3) (b) of that Code.

(6) For the purposes of this Act, a person shall be taken to acquire shares in a trustee company (in this subsection referred to as the "shares concerned") if, and only if—

(a) the person acquires a relevant interest in the shares concerned as a direct or indirect result of a transaction entered into by or on behalf of the person in relation to those shares, in relation to other securities of that company or in relation to securities of any other corporation; or

(b) the person acquires any legal or equitable interest in securities of that company or in securities of any other corporation and, as a direct or indirect result of the acquisition, another person acquires a relevant interest in the shares concerned.

(7) For the purposes of this Act, a person shall be taken to dispose of shares in a trustee company if, and only if, having a relevant interest in those shares, the person ceases to have a relevant interest in those shares as a result of the doing of any act, the entering into of any transaction or the occurrence of any circumstance.

Trustee Companies (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

(8) For the purposes of this Act—

(a) the shares in a trustee company to which a person is entitled include—

(i) shares in which the person has a relevant interest; and

(ii) except where the person is a nominee corporation in respect of which a certificate of the Minister is in force under subsection (9)—
shares in which an associate of the person has a relevant interest; and

(b) a person has a relevant interest in a share in a trustee company if, by reason of section 9 of the Companies (Acquisition of Shares) (New South Wales) Code, the person would have a relevant interest in that share for the purposes of that Code.

(9) The Minister may, in the discretion of the Minister, issue to a nominee corporation a certificate declaring the nominee corporation to be an approved nominee corporation for the purposes of this Act and may at any time, in the discretion of the Minister, by notice in writing to the nominee corporation, revoke the certificate.

(10) Unless the contrary intention appears, words and expressions used in this section have the same meanings as they have in the Companies (Acquisition of Shares) (New South Wales) Code.

(2) Sections 31A–31D—

After section 31, insert:—

Restriction on acquisition of shares.

31A. (1) Except as provided by this Act, a person shall not, either alone or together with another person or other persons, acquire shares in a trustee company if any person who is not entitled to any

Trustee Companies (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

voting shares in the trustee company or is entitled to less than the prescribed percentage of the voting shares in the trustee company would, immediately after the acquisition, be entitled to more than the prescribed percentage of the voting shares in the trustee company.

(2) Except as provided by this Act, a person shall not, either alone or together with another person or other persons, acquire shares in a trustee company if any person (in this subsection referred to as a “relevant person”) who is entitled to not less than the prescribed percentage of the voting shares in the trustee company would, immediately after the acquisition, be entitled to a greater percentage of the voting shares in the trustee company than the percentage to which that relevant person was entitled immediately before the acquisition.

(3) Notwithstanding subsections (1) and (2), a person shall not, either alone or together with another person or other persons, acquire shares in a trustee company where the prescribed percentage of voting shares in the trustee company is more than 20 per cent if—

- (a) any person who is not entitled to any voting shares in the trustee company or is entitled to less than 20 per cent of the voting shares in the trustee company would, immediately after the acquisition, be entitled to more than 20 per cent of the voting shares in the trustee company; or
- (b) any person (in this paragraph referred to as a “relevant person”) who is entitled to not less than 20 per cent, but less than 90 per cent, of the voting shares in the trustee company would, immediately after the acquisition, be entitled to a greater percentage of the number of voting shares in the trustee company than the percentage to which that relevant person was entitled immediately before the acquisition,

unless—

- (c) before the acquisition takes place, the Minister, pursuant to an application made as prescribed, gives approval in writing to the acquisition and, where that approval is subject to conditions, those conditions are complied with;

Trustee Companies (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

- (d) the acquisition is made as a result of the acceptance of offers to acquire those shares made under a take-over scheme or a take-over announcement in relation to that trustee company as provided in the Companies (Acquisition of Shares) (New South Wales) Code; and
- (e) after the acquisition takes place, a person acquiring the shares is not entitled to more than the prescribed percentage of voting shares in the trustee company.

(4) A person shall not offer to acquire, or issue an invitation in relation to, shares in a trustee company if the person is prohibited by subsection (1), (2) or (3) from acquiring those shares.

(5) Where, by reason of the acquisition by a person (whether alone or together with another person or other persons) of shares in a trustee company—

- (a) any person who was not entitled to any voting shares in the trustee company or was entitled to less than the statutory percentage of the voting shares in the trustee company becomes, immediately after the acquisition, entitled to more than the statutory percentage of the voting shares in the trustee company; or
- (b) any person (in this paragraph referred to as a “relevant person”) who was entitled to not less than the statutory percentage of the voting shares in the trustee company becomes, immediately after the acquisition, entitled to a greater percentage of the voting shares in the trustee company than the percentage to which that relevant person was entitled immediately before the acquisition,

the firstmentioned person shall, within 2 days after the acquisition, cause notice to be given to the Minister, in the prescribed manner and form, of the acquisition.

(6) A reference in subsection (5) to the statutory percentage of voting shares in a trustee company—

- (a) is, where no authorisation is provided as referred to in paragraph (b), a reference to the prescribed percentage of voting shares in the trustee company; or

Trustee Companies (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

- (b) is a reference to the percentage that would, but for an authorisation provided, for the purposes of subsection (12), by the articles of association of the trustee company, be the prescribed percentage of voting shares in the trustee company,

as the case may require.

(7) A person who contravenes subsection (1), (2), (3) or (4), or who fails to comply with subsection (5), is guilty of an offence and liable to a penalty not exceeding \$2,000.

(8) The Minister may request the Commission to prepare a report on an application for approval under subsection (3) (c).

(9) It is a defence to a prosecution for a contravention of this section if the defendant establishes that the contravention was due to a mistake of fact on the part of the defendant or to the defendant's not being aware of a relevant fact or occurrence.

(10) An acquisition of shares is not invalid by reason of a contravention of this section.

(11) A provision in the articles of association of a trustee company that applies or purports to apply the provisions of subsection (1) or (2) as if the reference to the prescribed percentage were a reference to a lesser percentage is void.

(12) A reference in this section to the prescribed percentage of voting shares in a trustee company is a reference to—

- (a) 10 per cent or, where a higher percentage is prescribed by regulations in force for the time being for the purposes of this subsection, that higher percentage; or
- (b) where the articles of association of the trustee company authorise a higher percentage for the purposes of this subsection—that higher percentage,

whichever is the greater.

Trustee Companies (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

(13) A reference in this section to 20 per cent shall, where a lesser percentage is prescribed by regulations in force for the time being for the purposes of this subsection, be deemed to be a reference to that lesser percentage.

(14) A reference in this section to a trustee company is a reference to a trustee company that is a company within the meaning of the Companies (New South Wales) Code.

Acquisitions to which section 31A does not apply.

31B. Section 31A does not apply to or in relation to an acquisition of shares in accordance with the Companies (Acquisition of Shares) (New South Wales) Code—

- (a) that is an acquisition of shares to or in relation to which section 11 of the Companies (Acquisition of Shares) (New South Wales) Code does not apply by reason of section 12 of that Code, other than an acquisition by virtue of an allotment or purchase referred to in section 12 (g), (n) or (o) of that Code;
- (b) that is an acquisition of any other kind and is made in a prescribed manner or in prescribed circumstances; or
- (c) that is an acquisition approved by the Minister in writing.

Orders where prohibited acquisitions take place.

31C. (1) Where a person has acquired shares in a trustee company in contravention of section 31A, the Court may, on the application of the Commission, the trustee company, a member of the trustee company or the person from whom the voting shares were acquired, make such order or orders as it thinks fit, including, but without limiting the generality of the foregoing, one or more of the following orders:—

- (a) an order restraining the person who acquired the shares from disposing of, or of any interest in, the shares or such of the shares as are specified in the order;

Trustee Companies (Amendment) 1985

SCHEDULE 1—*continued.*AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

- (b) an order restraining the exercise of any voting or other rights attached to the shares or such of the shares as are specified in the order;
 - (c) an order directing the trustee company not to make payment, or to defer making payment, of any sum or sums due from the trustee company in respect of the shares or such of the shares as are specified in the order;
 - (d) an order directing the disposal of, or of any interest in, the shares or such of the shares as are specified in the order;
 - (e) an order vesting in the Commission—
 - (i) the shares, or such of the shares as are specified in the order; or
 - (ii) any interest in the shares, or in such of the shares as are specified in the order;
 - (f) an order cancelling a contract, arrangement or offer for or in connection with the acquisition of the shares or of such of the shares as are specified in the order;
 - (g) an order declaring a contract, arrangement or offer for or in connection with the acquisition of the shares, or of such of the shares as are specified in the order, to be voidable;
 - (h) an order directing the trustee company not to register the transfer or transmission of the shares or such of the shares as are specified in the order;
 - (i) an order that any exercise of the voting or other rights attached to the shares, or such of the shares as are specified in the order, be disregarded;
 - (j) for the purpose of securing compliance with any order referred to in any of the preceding paragraphs, an order directing the trustee company or any other person to do or refrain from doing a specified act.
- (2) Where, at the hearing of an application under subsection (1), it is proved to the satisfaction of the Court that—

*Trustee Companies (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

- (a) a person is entitled to shares in a trustee company by reason that another person who is an associate of the firstmentioned person has a relevant interest in those shares; and
- (b) that other person became entitled to that relevant interest by reason of an acquisition of shares (whether in that trustee company or in another corporation) that took place within 6 months immediately preceding the filing of the application with the Court,

then, in determining for the purposes of the application whether the acquisition referred to in paragraph (b) was made in contravention of section 31A, the proof to the satisfaction of the Court of the matters mentioned in paragraphs (a) and (b) constitutes prima facie evidence that the other person was an associate of the firstmentioned person immediately after the acquisition took place.

(3) The Court shall not make an order under this section, other than an order referred to in subsection (1) (a), (b) or (i), if it is satisfied—

- (a) that the contravention of section 31A by the person who acquired the shares was due to a mistake of fact on the part of the person or to the person's not being aware of a relevant fact or occurrence; and
- (b) that, in all the circumstances, the contravention ought to be excused.

Powers of the Minister in certain other cases.

31D. (1) Where—

- (a) a person has acquired, otherwise than in contravention of section 31A, shares in a trustee company;
- (b) the acquisition of those shares by that person was an acquisition of which notice was required to be given to the Minister under section 31A (5); and

Trustee Companies (Amendment) 1985

SCHEDULE 1—*continued.*AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

- (c) the Minister is satisfied, having regard to—
- (i) the interests of persons to whom the trustee company stands in a fiduciary relationship; and
 - (ii) the public interest,

that an order or orders under this section is or are warranted in the circumstances of the case,

the Minister may make any one or more of the following orders:—

- (d) an order restraining the person who acquired the shares from disposing of, or of any interest in, the shares or such of the shares as are specified in the order;
- (e) an order directing the trustee company not to make payment, or to defer making payment, of any sum or sums due from the trustee company in respect of the shares or such of the shares as are specified in the order;
- (f) an order directing the disposal of, or of any interest in, the shares or such of the shares as are specified in the order;
- (g) an order vesting—
 - (i) the shares, or such of the shares as are specified in the order; or
 - (ii) any interest in the shares, or in such of the shares as are specified in the order,in the Commission;
- (h) an order directing the trustee company not to register the transfer or transmission of the shares or such of the shares as are specified in the order;
- (i) for the purpose of securing compliance with any order referred to in any of the preceding paragraphs, an order directing the trustee company or any other person to do or refrain from doing a specified act.

Trustee Companies (Amendment) 1985

SCHEDULE 1—*continued.*AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

(2) Except as provided by subsection (3), an order under subsection (1) has effect upon service of a notice specifying the terms of the order, given under the hand of the Minister, on the trustee company or other person to whom the order is directed.

(3) An order under subsection (1) (i)—

- (a) has effect upon service of a notice containing the order, given under the hand of the Minister, on the person who acquired the shares; and
- (b) has effect notwithstanding any contract, arrangement or offer for or in connection with the acquisition of the shares or any of them.

(4) A trustee company or other person who fails to comply with an order under subsection (1) is guilty of an offence and liable to a penalty not exceeding \$2,000.

(5) The Commission may—

- (a) cause any shares, or any interest therein, vested in it by an order under subsection (1) (i) to be offered for sale;
- (b) sell the shares or interest so offered for sale;
- (c) appoint a person to execute a transfer of the shares or interest and to receive, account for, and give a good discharge in respect of, the purchase money;
- (d) cause the transfer relating to the sale to be registered; and
- (e) cause all such matters and things to be done as may be necessary to dispose of the shares or interest therein.

(6) Purchase money received pursuant to subsection (5), after payment thereof of all costs, expenses, commissions and fees in respect of or incidental to the sale of the shares concerned, shall be paid by the Commission to the person from whom the shares were divested by the Minister's order or to such other person as may appear to the Commission to be entitled to it.

Trustee Companies (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964, RELATING TO
SHAREHOLDINGS IN TRUSTEE COMPANIES—*continued.*

(7) The Court, on the application of the Minister or the Commission, may make orders, being—

- (a) orders of the kind referred to in section 31C (1); or
- (b) such other orders as the Court considers appropriate,

in aid of the exercise by the Minister or the Commission, as the case may be, of the powers conferred by this section.

(3) Second Schedule—

- (a) From the matter relating to the Permanent Trustee Company Limited, omit paragraph (a).
 - (b) From the matter relating to the Perpetual Trustee Company Limited, omit paragraph (a).
 - (c) From the matter relating to the Union-Fidelity Trustee Company of Australia Limited, omit paragraph (a).
 - (d) From the matter relating to the ANZ Executors & Trustee Company Limited, omit paragraph (a).
 - (e) From the matter relating to the Burns Philp Trustee Company Limited, omit paragraph (c).
 - (f) From the matter relating to the Winchcombe Carson Trustee Company Limited, omit paragraph (c).
 - (g) From the matter relating to Perpetual Trustees Australia Limited, omit clause 1 and clauses 4–14.
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Trustee Companies (Amendment) 1985

SCHEDULE 2.

(Sec. 4.)

FURTHER AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964.

(1) Part I, heading—

Before section 1, insert:—

PART I.

PRELIMINARY.

(2) Part II, heading—

Before section 4, insert:—

PART II.

MANAGEMENT OF ESTATES BY TRUSTEE COMPANIES.

(3) Section 5—

After section 4, insert:—

Person named as executor may authorise trustee company to take out administration c.t.a.

5. Any person named expressly or by implication as executor who would be entitled to obtain probate of the will of any testator without leave being reserved to any other person to apply for probate may, instead of applying for probate, authorise a trustee company to apply for administration with the will annexed and a grant of administration with the will annexed may be made to the trustee company upon its own application when so authorised unless the testator by the will directed or intimated that the office of executor should not be delegated or that a trustee company should not act in the trusts of the will.

(4) Section 16 (14)—

After section 16 (13), insert:—

(14) In addition to the commission, fees and remuneration which it is entitled to receive in accordance with this Act, a trustee

*Trustee Companies (Amendment) 1985*SCHEDULE 2—*continued.*FURTHER AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964—
continued.

company shall be entitled to charge and receive from or out of any income received by a common trust fund a fee (according to the value of the work done and the services rendered) calculated at a rate not exceeding one per cent per annum upon the capital sums invested in the common trust fund during the period in respect of which the income is received or allocated, for the establishment, keeping (including the keeping of books of account) and conduct of the common trust fund.

(5) Sections 29–29E—

Omit section 29, insert instead:—

Borrowing by a trustee company.

29. (1) Notwithstanding anything in the Companies (New South Wales) Code or in the memorandum or articles of association of a trustee company, a trustee company shall not—

- (a) accept a deposit of money with, or a loan of money to, the trustee company from any estate under its administration or management; or
- (b) except as provided by this Act, accept a deposit of money with, or a loan of money to, the trustee company in its own behalf from any other person.

Penalty: \$2,000.

(2) Notwithstanding subsection (1), a trustee company may borrow money if—

- (a) the money is—
 - (i) borrowed from a financial institution; or
 - (ii) a subordinated loan from a related corporation (if any) of the trustee company; and
- (b) the total of all borrowings and liabilities of the trustee company (other than contingent liabilities) and the amount of the proposed loan together do not exceed an amount equal

*Trustee Companies (Amendment) 1985*SCHEDULE 2—*continued.*FURTHER AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964—
continued.

to three times the total amount of the net tangible assets of the trustee company specified in the last declaration made by the trustee company under section 29D.

(3) Nothing in this section shall affect or limit the investment of money of any estate by a trustee company in a common trust fund constituted under this Act.

Loans from estates to related corporations prohibited.

29A. A deposit or loan shall not be made from an estate administered or managed by a trustee company under this Act to any related corporation other than a bank.

Penalty: \$2,000.

Liability under guarantee.

29B. An estate administered or managed by a trustee company shall not be held liable for the payment of money under a guarantee from the trustee company otherwise than under a guarantee lawfully given by the trustee company on behalf of an estate.

Trustee company not to refuse to register shares.

29C. Subject to this Act, but notwithstanding anything in the memorandum of association or articles of association of a trustee company, the trustee company shall not refuse to register a transfer to any person of shares in the trustee company made on or after the commencement of this section.

Penalty: \$2,000.

Declaration by trustee company.

29D. (1) The manager, the chief financial officer and two other directors of a trustee company shall, during the prescribed months in each year during which the trustee company carries on business, make a statutory declaration in or to the effect of the prescribed form.

(2) A copy of each declaration made under subsection (1)—

(a) shall, within 7 days after the making of the declaration, be forwarded to the Commission;

Trustee Companies (Amendment) 1985

SCHEDULE 2—*continued.*FURTHER AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964—
continued.

(b) shall be given to any person upon request; and

(c) shall, within 7 days after the making of the declaration, be put up in a conspicuous place in the registered office of the trustee company and in each branch office or place where the business of the trustee company is carried on.

(3) If a trustee company fails to comply with the provisions of this section, the trustee company shall be liable to a penalty not exceeding \$2,000 and each director or manager of the trustee company who knowingly and wilfully authorises or permits the default shall incur a like penalty.

(4) A declaration under this section shall not be required to show—

(a) liabilities incurred by the trustee company while acting as trustee or in any representative capacity to the extent to which the trustee company has a valid and subsisting right of indemnity out of any assets in respect of those liabilities and those assets are sufficient to satisfy that right of indemnity; and

(b) assets consisting of the value, if any, of any such right of indemnity arising from the incurring of those liabilities.

(5) In this section, “prescribed months” means the months of January, April, July and October or such other months as the Minister, on the application of a trustee company, may approve in respect of the trustee company.

Trustee company to give information to Minister or Commission.

29E. (1) A trustee company shall furnish to the Minister or the Commission, as the case may be, such information in writing or statements in respect of its business as the Minister or the Commission directs within such time as is specified by the Minister or the Commission.

Penalty: \$2,000.

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SCHEDULE 2—*continued.*FURTHER AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964—
continued.

(2) A reference in section 11 of the Companies (New South Wales) Code to books shall, in relation to the powers of the Commission, be construed as including a reference to books kept by a trustee company relating to estates managed or administered by the trustee company.

(3) The Minister may, where it appears to the Minister to be necessary or advisable, cause to be carried out—

- (a) a review of the operations of a trustee company;
- (b) an audit of the books and accounts of a trustee company (including the books and accounts of any of the estates managed or administered by the trustee company); or
- (c) both the review and the audit.

(4) For the purposes of any review or audit under subsection (3), a trustee company shall—

- (a) deliver to any person authorised by the Minister to that effect a list of all books kept by it;
- (b) produce to that person at all reasonable times when required the books kept by it and all accounts, vouchers, papers and other documents of the trustee company; and
- (c) afford that person all necessary information and all other necessary facilities for enabling that person to carry out that review or audit.

Penalty: \$2,000.

(5) Unless the Minister otherwise directs, the cost of any review or audit under this section shall be borne by the trustee company and may be recovered by the Minister in any court of competent jurisdiction as a debt due to the Crown.

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SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964—
continued.

(6) Part III, heading—

After section 31, insert:—

PART III.

SHAREHOLDINGS IN TRUSTEE COMPANIES.

(7) Part IV, heading—

Before section 32, insert:—

PART IV.

MISCELLANEOUS.

(8) Section 32—

Omit “court of petty sessions”, insert instead “Local Court constituted by a Magistrate sitting alone”.

(9) Section 37 (2)—

Omit the subsection, insert instead:—

(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(10) (a) Third Schedule—

Omit “Sec. 29”, insert instead “Sec. 3 (1)”.

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SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE TRUSTEE COMPANIES ACT, 1964—
continued.

- (b) Third Schedule, First Part—
Omit the second and third columns.
- (c) Third Schedule—
Omit the Second Part.

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

J. A. ROWLAND,
Governor.

*Government House,
Sydney, 4th June, 1985.*



