

# TRUSTEE COMPANIES (AMENDMENT) ACT 1990 No. 98

NEW SOUTH WALES



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2. Commencement
3. Amendment of Trustee Companies Act 1964 No. 6
4. Amendment of Wills, Probate and Administration Act 1898 No. 13
5. Validation

SCHEDULE 1 - AMENDMENT OF TRUSTEE COMPANIES ACT 1964

SCHEDULE 2 - AMENDMENT OF WILLS, PROBATE AND  
ADMINISTRATION ACT 1898

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**TRUSTEE COMPANIES (AMENDMENT) ACT  
1990 No. 98**

NEW SOUTH WALES



**Act No. 98, 1990**

An Act to amend the Trustee Companies Act 1964 to add certain trustee companies and to make provision for trustee companies in other respects; and to amend the Wills, Probate and Administration Act 1898 with respect to the appointment of trustee companies as executors or administrators. [Assented to 12 December 1990]

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Trustee Companies (Amendment) Act 1990.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Trustee Companies Act 1964 No. 6**

3. The Trustee Companies Act 1964 is amended as set out in Schedule 1.

**Amendment of Wills, Probate and Administration Act 1898 No. 13**

4. The Wills, Probate and Administration Act 1898 is amended as set out in Schedule 2.

**Validation**

5. If an appointment was purportedly made under section 75A (1) of the Wills, Probate and Administration Act 1898 before the amendment of that section by this Act and would have been validly made had that section, as so amended, been in force at the time of the appointment:

- (a) the appointment is to be taken to have been, and always to have been, validly made; and
  - (b) section 75A, as so amended, is to be taken to have applied to and in respect of the appointment, and the acts and omissions of the appointee, from the time of the appointment.
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**SCHEDULE 1 - AMENDMENT OF TRUSTEE COMPANIES  
ACT 1964**

(Sec. 3)

(1) Section 15C (**General powers of trustee company**):

After section 15C (f), insert:

- (g) repair property and charge the cost of those repairs either to capital or to income or apportion the cost between capital and income as the trustee company may consider equitable.

(2) Section 32A:

After section 32, insert:

**Certificate evidence**

32A. (1) When a trustee company is executor or administrator, or is by law authorised to administer the estate of any deceased person, a certificate issued under the seal of the trustee company, certifying:

- (a) that the trustee company has taken out probate or letters of administration, or is authorised to administer the estate; and
- (b) the date when such probate or letters of administration was or were granted, or when and how the trustee company became authorised to administer the estate; and
- (c) the name, residence and occupation of the deceased person,

is, despite any Act or other law to the contrary, to be accepted for all purposes as prima facie evidence (without production of any other proof):

- (d) of the death of the deceased person; and
- (e) of the appointment of the trustee company as executor or administrator, or of the right of the trustee company to administer the estate.

(2) If a trustee company is appointed and acts jointly with any other person (in this subsection referred to as "co-administrator") as executor or administrator, a certificate issued under the seal of the trustee company, certifying:

**SCHEDULE 1 - AMENDMENT OF TRUSTEE COMPANIES  
ACT 1964 - *continued***

- (a) that the trustee company and such co-administrator have taken out probate or letters of administration; and
- (b) the date when such probate or letters of administration was or were granted; and
- (c) the name, residence and occupation of the deceased person,

is, despite any Act or other law to the contrary, to be accepted for all purposes as prima facie evidence (without production of any other proof):

- (d) of the death of the deceased person; and
- (e) of the appointment of the trustee company and the co-administrator as executors or administrators.

**(3) Section 36A (Indemnities):**

In section 36A (1), after "The", insert "National Australia Trustees Limited, the NZ Guardian Trust Australia Limited, the".

**(4) Third Schedule - First Part (Trustee Company):**

- (a) Omit "Elder's Trustee and Executor Company, Limited", insert instead "Austrust Limited".
- (b) Insert at the end of the Part:  
National Australia Trustees Limited  
NZ Guardian Trust Australia Limited

**SCHEDULE 2 - AMENDMENT OF WILLS, PROBATE AND  
ADMINISTRATION ACT 1898**

(Sec. 4)

**(1) Section 75A (Delegation):**

In section 75A (1), after "Trustee", insert "or a trustee company".

**(2) Section 76 (If executor or administrator out of jurisdiction special administrator may be appointed):**

After "Trustee" wherever occurring, insert "or a trustee company".

SCHEDULE 2 - AMENDMENT OF WILLS, PROBATE AND  
ADMINISTRATION ACT 1898 - *continued*

(3) Section 77 (**Special administrator to make certain affidavits**):

In section 77 (b), before "the applicant", insert "except in  
the case of the Public Trustee or a trustee company,".

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[*Minister's second reading speech made in -  
Legislative Assembly on 14 November 1990  
Legislative Council on 4 December 1990*]

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FIRST PRINT

## TRUSTEE COMPANIES (AMENDMENT) BILL 1990

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The object of this Bill is to amend the Trustee Companies Act 1964 and the Wills, Probate and Administration Act 1898.

The amendments to the Trustee Companies Act 1964 will enable:

- \* a trustee company to expend capital or income or both on the repair of estate property as may presently be done by the Public Trustee
- \* a trustee company to certify, as the Public Trustee may presently do, that it has taken out representation or is entitled to administer an estate, either alone or jointly, and for that certificate to be prima facie evidence of that fact and of the death of the deceased
- \* the name of Austrust Limited to be entered in the Schedule of trustee companies in place of Elder's Trustee and Executor Company, Limited
- \* National Australia Trustees Limited and NZ Guardian Trust Australia Limited to each act as a trustee company, these companies being required to maintain indemnity insurance or a bank guarantee as approved by the Attorney General

The amendments to the Wills, Probate and Administration Act 1898 will enable:

- \* a trustee company to be appointed as executor or co-executor of a will in place of a nominated executor (as has formerly been the case) in the same manner as may occur with the Public Trustee
  - \* a trustee company to be appointed, as the Public Trustee may be, as a special administrator if the appointed executor or administrator is residing outside the jurisdiction
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## *Trustee Companies (Amendment) 1990*

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

**Clauses 3 and 4** are formal provisions that give effect to the Schedules of amendments to the Trustee Companies Act 1964 and the Wills, Probate and Administration Act 1898.

**Clause 5** contains a provision validating any appointments of trustee companies as executors or co-executors in place of nominated executors if the appointments would have been valid had one of the amendments to be made by the proposed Act been in force when they were made.

### **SCHEDULE 1 - AMENDMENT OF TRUSTEE COMPANIES ACT 1964**

#### **General powers of trustee company (proposed section 15C (g))**

Schedule 1 (1) enables a trustee company to apply the capital or income of an estate under its administration, or a portion of each, to the repair of estate property.

#### **Certificate of trustee company to be evidence (proposed section 32A)**

Schedule 1 (2) provides that a certificate of a trustee company as to its appointment as legal personal representative, either alone or with another person, or its entitlement to administer an estate is to be accepted as prima facie evidence of the death of the deceased and such appointment or entitlement without production of other proof.

#### **Indemnities (section 36A)**

Schedule 1 (3) requires National Australia Trustees Limited and NZ Guardian Trust Australia Limited to secure and maintain indemnity insurance or a bank guarantee as approved by the Attorney General.

#### **Trustee Company (Third Schedule - First Part)**

Schedule 1 (4) records the change of name of Elder's Trustee and Executor Company, Limited to Austrust Limited and proposes that National Australia Trustees Limited and NZ Guardian Trust Australia Limited be included in the Schedule of trustee companies.

### **SCHEDULE 2 - AMENDMENT OF WILLS, PROBATE AND ADMINISTRATION ACT 1898**

#### **Delegation (section 75A)**

Schedule 2 (1) proposes that the provision which enables a nominated executor to appoint the Public Trustee in his or her place be amended to provide the alternative of appointment of a trustee company.

*Trustee Companies (Amendment) 1990*

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**Appointment of special administrator if executor or administrator out of jurisdiction (section 76)**

Schedule 2 (2) proposes that the provision which enables the Public Trustee to be appointed as a special administrator if the appointed executor or administrator is out of the jurisdiction be amended to provide the alternative of appointment of a trustee company.

**Making of affidavit by special administrator (section 77)**

Schedule 2 (3) provides that, in applying for a special grant when an appointed executor or administrator is out of the jurisdiction, the Public Trustee or a trustee company will not be required to swear that such absence is delaying the getting in of assets to which the Public Trustee or trustee company is entitled.

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**TRUSTEE COMPANIES (AMENDMENT) BILL 1990**

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**TRUSTEE COMPANIES (AMENDMENT) BILL 1990**

NEW SOUTH WALES



No. , 1990

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**A BILL FOR**

An Act to amend the Trustee Companies Act 1964 to add certain trustee companies and to make provision for trustee companies in other respects; and to amend the Wills, Probate and Administration Act 1898 with respect to the appointment of trustee companies as executors or administrators.

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**Validation**

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- (b) the date when such probate or letters of administration was or were granted, or when and how the trustee company became authorised to administer the estate; and
- (c) the name, residence and occupation of the deceased person,

is, despite any Act or other law to the contrary, to be accepted for all purposes as prima facie evidence (without production of any other proof):

- (d) of the death of the deceased person; and
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(2) If a trustee company is appointed and acts jointly with any other person (in this subsection referred to as "co-administrator") as executor or administrator, a certificate issued under the seal of the trustee company, certifying:

**SCHEDULE 1 - AMENDMENT OF TRUSTEE COMPANIES  
ACT 1964 - *continued***

- (a) that the trustee company and such co-administrator have taken out probate or letters of administration; and
  - (b) the date when such probate or letters of administration was or were granted; and
  - (c) the name, residence and occupation of the deceased person,
- is, despite any Act or other law to the contrary, to be accepted for all purposes as prima facie evidence (without production of any other proof):
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*Trustee Companies (Amendment) 1990*

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SCHEDULE 2 - AMENDMENT OF WILLS, PROBATE AND  
ADMINISTRATION ACT 1898 - *continued*

- (3) **Section 77 (Special administrator to make certain affidavits):**  
In section 77 (b), before "the applicant", insert "except in  
the case of the Public Trustee or a trustee company,".
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