

TRUSTEE COMPANIES (AMENDMENT) ACT 1990 No. 98

NEW SOUTH WALES



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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.

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)

Section 75A (**Delegation**):

- (1) 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,".

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