



Australian Capital Territory

# **Trustee Companies Act 1947      No 15**

## **Republication No 6**

Republication date: 13 September 2002

Last amendment made by Act 2001 No 56

Amendments incorporated to 13 September 2002

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Trustee Companies Act 1947* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 13 September 2002. It also includes any amendment, repeal or expiry affecting the republished law to 13 September 2002.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to  
13 September 2002



Australian Capital Territory

# Trustee Companies Act 1947

## Contents

---

	Page
1 Name of Act	2
2 Definitions for Act	2
3 Declaration of financial institution	3
3A Change of name	3
4 Company may act as executor and obtain probate	3
5 Authorisation given to trustee company to act by person entitled to probate	4
6 Authorisation given to trustee company to act by 1 of several executors	4
7 Authorisation given to trustee company to act by person entitled to administration with will annexed	5

---

## Contents

---

	Page	
8	Authorisation given to trustee company to act by person entitled to administration on intestacy	6
8A	Capacity of trustee company to act	6
9	Court to act on affidavit of managing director or manager in applications for probate or administration	6
10	Assets of company to be liable for proper administration of estates	7
11	Company may be appointed trustee, receiver or guardian of estate	7
12	Company may act under power of attorney by managing director, manager or 2 directors	9
13	Company may be appointed to act as temporary executor or administrator	9
14	Executor or administrator may appoint company to discharge duties	10
15	Application for consent to be by motion	10
16	Managing director or manager may attend on behalf of company	11
17	Manager and directors personally responsible to court	11
18	Estate fees	12
18A	Fees for preparation of returns	12
18B	Fees generally	12
19	Trustee company to be subject to same duties as individual	13
19A	Company may hold property as joint tenant	14
20	Company may be removed from office by court and provisions for relief against company or directors	14
21	Order for account on application of trustee etc	14
22	Supreme Court may order audit in any estate committed to the company	15
23	Voluntary winding-up of company or disposal of shares may be restrained by Supreme Court	16
24	Restriction on classes of business	16
25	Separate accounts of each estate to be kept	17
25A	Contributory investments	17
25B	Common trust funds	18
25C	Crediting of money to common trust fund	19
25D	Investment in and withdrawal from common trust fund	19
25E	Beneficial interest in common trust fund	20

	Page	
25F	Valuation of common trust fund	21
25G	Payment of income	22
25H	Realisation and acquisition of investments of common trust fund	22
25I	Trustee company acting jointly with another person	23
25J	Fees in relation to common trust fund	23
26	Improper dealings with money	24
27	Power to deposit money with certain banks	24
28	Payment of money unclaimed	25
29	Persons entitled may apply subsequently	26
30	Order for account on application of Minister	26
31	Quarterly financial declarations	27
31A	Information etc for Minister	28
31B	Inquiries and audits	29
32	Act not to preclude other companies from applying for similar powers to those given by this Act	30
33	Testators may appoint their own solicitors	31
34	Incorporation and powers of company except so far as specifically altered to remain	31
34A	Approved forms	31
35	Regulation-making power	31
 <b>Schedule 1</b>		 33
 <b>Endnotes</b>		
1	About the endnotes	34
2	Abbreviation key	34
3	Legislation history	35
4	Amendment history	38
5	Earlier republications	42

Amendments incorporated to  
13 September 2002



Australian Capital Territory

# Trustee Companies Act 1947

---

An Act relating to trustee companies

---

**1 Name of Act**

This Act is the *Trustee Companies Act 1947*.

**2 Definitions for Act**

In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

*books*—see the Corporations Act.

*financial institution* means—

- (a) a bank; or
- (b) an insurance company; or
- (c) a financial corporation to which the *Financial Corporations Act 1974* (Cwlth) applies; or
- (d) the trustee or managers of any superannuation fund established by any law of the Commonwealth or of a State or Territory; or
- (e) a corporation declared under section 3 (Declaration of financial institution) to be a financial institution.

*first valuation day*, in relation to a common trust fund, means the day determined under section 25B (6) for the purpose of valuing the fund.

*insurance company* means a company registered under the *Life Insurance Act 1995* (Cwlth), section 21.

*manager* includes acting manager.

*managing director* includes acting managing director.

*officer*—see the Corporations Act.

*related body corporate*—see the Corporations Act.

*the court* means the Supreme Court of the Territory.

**trustee company** means a company—

- (a) incorporated in the ACT and specified in schedule 1; or
- (b) that is a recognised company or a foreign company within the meaning of the Corporations Act, section 9 and authorised by or under any law in force in a State or Territory of the Commonwealth to act in that State or Territory as executor, administrator and trustee.

**valuation day**, in relation to a common trust fund, means—

- (a) a day referred to in section 25F (1) (a) (i) or (ii); or
- (b) any other day when, under section 25F (1) (b), a valuation of the fund is carried out.

### **3 Declaration of financial institution**

- (1) The Minister may, in writing, declare that a corporation is a financial institution.
- (2) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

### **3A Change of name**

If—

- (a) a company changes its name in accordance with the Corporations Act; and
- (b) the company, under its former name, is specified in schedule 1;

the reference in that schedule to the company under its former name is a reference to the company under its new name.

### **4 Company may act as executor and obtain probate**

If a trustee company is named expressly or by implication as executor in the last will and testament or in the codicil to the last will and testament of any testator, that company may act as

executor, and may apply for and obtain probate of the will of the testator and perform and discharge all the acts and duties of an executor.

**5 Authorisation given to trustee company to act by person entitled to probate**

- (1) If a person is named expressly or by implication as executor of the will of a deceased person and is entitled to apply for and obtain probate of the will without reserving leave to any other person to apply for probate, that firstmentioned person may—
  - (a) join with a trustee company in an application for a grant of probate of the will to that person and the trustee company jointly; or
  - (b) instead of applying personally, authorise a trustee company to apply for a grant of letters of administration with the will annexed.
- (2) If an application is made under subsection (1), the court may grant letters of administration with the will annexed in accordance with the application unless the testator by his or her will has expressed the desire that—
  - (a) the office of executor should not be delegated; or
  - (b) a trustee company or that particular trustee company should not act in the trusts of the will.

**6 Authorisation given to trustee company to act by 1 of several executors**

- (1) If a person is named expressly or by implication as executor of the will of a deceased person and is entitled to apply for and obtain probate of the will jointly with any other person, that firstmentioned person may—
  - (a) join with a trustee company and any other person entitled to apply for probate in an application for a grant of probate of the

---

will to that person, the trustee company and any other such person jointly; or

- (b) instead of applying personally, authorise a trustee company to apply for a grant of probate of the will, either—
  - (i) alone, with leave reserved for any person to come in and prove; or
  - (ii) jointly with any other person entitled to apply for probate;

in the same way as if the trustee company had been originally named as an executor of the will in addition to or in the place of that firstmentioned person.

- (2) If an application is made under subsection (1), the Supreme Court may grant probate of the will in accordance with the application unless the testator by his or her will has expressed the desire that—
  - (a) the office of executor should not be delegated; or
  - (b) a trustee company or that particular trustee company should not act in the trusts of the will.

## **7 Authorisation given to trustee company to act by person entitled to administration with will annexed**

- (1) If a person is entitled to apply for and obtain a grant of letters of administration with the will annexed of the estate of a deceased person, the person may—
  - (a) join with a trustee company in an application for a grant of letters of administration with the will annexed to the person and the trustee company jointly; or
  - (b) instead of applying personally, authorise a trustee company to apply for a grant of letters of administration with the will annexed.
- (2) If an application is made under subsection (1), the Supreme Court may grant letters of administration with the will annexed in

accordance with the application unless the testator by his or her will has expressed the desire that the office of administrator should not be held by a trustee company or that particular trustee company.

## **8 Authorisation given to trustee company to act by person entitled to administration on intestacy**

- (1) If a person is entitled to obtain administration of the estate of a person who died intestate, the person may—
  - (a) join with a trustee company in an application for a grant of letters of administration of the estate to the person and the trustee company jointly; or
  - (b) instead of applying personally, authorise a trustee company to apply for a grant of letters of administration of the estate.
- (2) If an application is made under subsection (1), the Supreme Court may grant letters of administration of the estate in accordance with the application.

## **8A Capacity of trustee company to act**

If—

- (a) administration of an estate with or without the will annexed; or
- (b) probate of a will;

is granted to a trustee company, either alone or jointly with another person, the trustee company may perform and discharge all the acts and duties of administrator, administrator with the will annexed or executor, as the case may be.

## **9 Court to act on affidavit of managing director or manager in applications for probate or administration**

If a trustee company is empowered under this Act to apply for probate or for letters of administration, the Supreme Court may receive and act on an affidavit made by the managing director or manager of the company in place of any affidavit required to be

made by persons making application for probate or for letters of administration.

**10 Assets of company to be liable for proper administration of estates**

- (1) If probate or letters of administration are granted to a trustee company, all the capital both paid and unpaid and all other assets of the company shall be liable for the proper administration of the estate committed to the company and, so long as a trustee company possesses a paid-up capital of not less than \$40 000, of which paid-up capital \$20 000 is invested in the purchase of debentures or inscribed stock in any of the public funds of the Commonwealth that the directors of the company select, in the name of the Treasurer of the Commonwealth, in trust for the company concerned, but transferable only on the joint consent of the Treasurer and the company or on the order of the court, the liability of the capital and assets of the company shall be deemed to be sufficient security in place of the bond taken in the case of a private individual to whom letters of administration are granted or the bond required by subsection (2) to be given.
- (2) Subject to subsection (1), a trustee company that is a foreign company shall, in relation to the grant of probate to the company, be subject to the like obligations in relation to the giving of a bond with sureties as are applicable to a private individual to whom letters of administration are granted, and any such bond shall be deemed to be an administration bond for the *Administration and Probate Act 1929*.

**11 Company may be appointed trustee, receiver or guardian of estate**

- (1) If any court, judge or person has power to appoint any person as —
  - (a) trustee; or
  - (b) receiver; or

- (c) guardian of the estate of a child;  
a trustee company may be so appointed.
- (2) Subject to this section, a trustee company may be appointed, or may continue to act, as sole trustee in all cases notwithstanding that it is provided by the terms of the instrument (if any) creating the trust or of any power or otherwise that there shall be more than 1 trustee to perform the trust.
- (3) If a trustee company and 1 or more individuals are co-trustees, any 1 or more of those individuals may retire, and the company shall, for the purposes of any law relating to the retirement of trustees and the vesting of the trust property, be deemed to be equivalent to 2 trustees.
- (4) A trustee company shall not be appointed in any case in which the instrument creating the trust or power forbids the appointment of a trustee company or of that particular trustee company.
- (5) A trustee company shall not be appointed or be entitled to act as sole trustee in any case in which the instrument creating the trust or power expressly provides that there shall be another trustee in addition to a trustee company or that a trustee company or that particular trustee company shall not be appointed or act as sole trustee.
- (6) If a trustee company is appointed or acts in any of the offices mentioned in subsection (1), all the capital of the company, both paid and unpaid, and all other assets of the company and the directors, manager, and assistant manager and their respective estates shall be liable for the proper discharge of the duties of that office.
- (7) No bond, recognisance, or other security for the proper discharge of such duties shall be required to be given by or on behalf of a trustee company.

**12 Company may act under power of attorney by managing director, manager or 2 directors**

- (1) A trustee company may act under any power of attorney by which the trustee company is appointed attorney by any person, and all the powers given to the trustee company by any such power of attorney may be exercised and carried into execution by the managing director or manager or 2 of the directors of the trustee company, but in all cases the capital both paid and unpaid and all other assets of the trustee company shall be liable for the due execution of the powers so given to the trustee company.
- (2) This section shall not authorise any person to give any power to a trustee company that cannot be legally given to a private individual.

**13 Company may be appointed to act as temporary executor or administrator**

An executor or administrator or trustee may appoint a trustee company to act as executor or administrator or trustee in his or her place, and a trustee company if appointed by deed filed in accordance with any law providing for the filing of powers of attorney may act within the scope of the authority given to it as effectually as the executor or administrator or trustee could have acted and may exercise all discretionary and other powers delegated by the principal as fully as the principal could have exercised them, and after the filing of the deed and before the registration of the death of the principal or of the revocation of the authority given by the principal every act of the trustee company within the scope of the authority given shall, in favour of any person who deals with the trustee company, bona fide, and without notice of the death of the principal or of his or her revocation of the authority, be valid and effectual notwithstanding the revocation by, or death of, the principal.

**14 Executor or administrator may appoint company to discharge duties**

- (1) An executor or administrator acting under any probate or letters of administration, whether granted before or after the date when this Act comes into operation, or a trustee, receiver or guardian of a child may, with the consent of the Supreme Court, appoint a trustee company to exercise and discharge all the acts and duties of that executor, administrator, trustee, receiver or guardian.
- (2) The trustee company may, on being so appointed, exercise and discharge all the acts and duties of the executor, administrator, trustee, receiver or guardian.
- (3) In every such case, all the capital both paid and unpaid and all other assets of the trustee company shall be liable for the proper discharge, from the date of the appointment, of the acts and duties of the executor, administrator, trustee, receiver or guardian, and the executor, administrator, trustee, receiver or guardian shall be released from liability in relation to all acts done by, or omitted to be done by, the trustee company acting under an appointment under this section.

**15 Application for consent to be by motion**

- (1) Every application for consent under section 14 shall be by motion, and notice of the intended application and of the date when it is intended to be made shall be advertised once in 1 daily newspaper published in the ACT at least 7 days before the making of the application.
- (2) The Supreme Court may require any person entitled to the immediate receipt of any of the income or corpus of the estate in relation to which the application is made to be served with notice of the application.
- (3) The costs of the application shall be in the discretion of the Supreme Court and may be ordered to be paid out of the estate.

- (4) The Supreme Court shall not give consent in the case of any will in which the testator has expressed his or her wish that the trusts of the will should not be delegated or that a trustee company or the particular trustee company in relation to which the application is made should not act in the trusts of the will.

**16 Managing director or manager may attend on behalf of company**

If the personal attendance of an executor, administrator, trustee, receiver or guardian is required, a trustee company may attend in the person of its managing director or manager and the personal duties of executor, administrator, trustee, receiver or guardian may be discharged on behalf of the company by the managing director or manager.

**17 Manager and directors personally responsible to court**

- (1) If a trustee company obtains probate or letters of administration or is appointed and acts as trustee, receiver or guardian, the manager and directors shall be individually and collectively in their own proper persons responsible to the Supreme Court, and shall in their own proper persons be liable, by process of attachment, commitment for contempt or by other process, to all courts having jurisdiction in that behalf for the proper discharge of their duties and for obedience to the rules, orders and decrees of those courts in the same way and to the same extent as if the manager and directors had personally obtained probate or letters of administration and had acted as executor, administrator, trustee, receiver or guardian.
- (2) Notwithstanding anything contained in subsection (1), the capital, both paid and unpaid, and all the assets of the company shall remain liable for any pecuniary loss that is occasioned or that happens through the imperfect or improper discharge, or through the neglect of the trustee company concerned, or of any of its officers, of any act or duty in relation to any office, appointment or engagement held or entered on by the company.

## **18 Estate fees**

- (1) A trustee company is entitled to charge fees for its services in relation to the administration or management of an estate being fees that are in accordance with the published scale of fees of the company in force at the time the estate was committed to it.
- (2) The directors of a trustee company may, from time to time, determine and publish a scale of fees for the services of the company in relation to estates, including different classes of estates, placed under its administration or management.
- (3) The scale of fees referred to in subsection (2) may include directions in relation to the application and manner of payment of fees.

### **18A Fees for preparation of returns**

- (1) A trustee company is entitled to receive in relation to an estate committed to the administration or management of the company a reasonable fee for work performed by it involving the preparation and lodging of returns in connection with assessments of any duties or taxes, other than probate, death, succession or estate duties.
- (2) The scale of fees referred to in section 18 (2) shall include a statement to the effect that, in addition to the scale fees under section 18, a trustee company may charge a reasonable fee for work performed by it involving the preparation and lodgment of returns in connection with assessments of any duties or taxes, other than probate, death, succession or estate duties.

### **18B Fees generally**

- (1) The fees payable under sections 18 and 18A in relation to an estate committed to the administration or management of a trustee company are in addition to any amount properly expended by the company in the course of the administration or management and chargeable against the estate.

- (2) The fees payable under sections 18 and 18A in relation to an estate are payable out of money of the estate at any time after the estate has been committed to the administration or management of the trustee company in accordance with any relevant directions in relation to the application or manner of payment of such fees.
- (3) Nothing in sections 18 and 18A prevents the payment of a fee that a testator or other person has, in a will or other instrument, directed to be paid—
  - (a) in addition to the fees payable under those sections; or
  - (b) instead of the fee payable under either of those sections.
- (4) If, in relation to a fee payable in relation to an estate, the Supreme Court—
  - (a) on an application made to it by a person interested in the estate; or
  - (b) on its own initiative;

is satisfied that the fee is excessive, the court may direct that the fee be reduced by the amount that it considers appropriate.

## **19 Trustee company to be subject to same duties as individual**

- (1) A trustee company shall, subject to the provisions of this Act, in every case in which it is appointed or acts as an executor, administrator, trustee, receiver or guardian, in addition to the liabilities and restrictions imposed by this Act be subject to the same respective rights, duties and obligations to which an individual acting as executor, administrator, trustee, receiver or guardian would be subject.
- (2) If any individual acting in any such capacity would be liable in his or her own proper person to attachment, commitment or other process, the managers and directors of a trustee company shall, if the company is acting in any of those capacities, be liable each for

his or her own individual act and not further or otherwise in his or her own proper person to attachment, commitment or other process.

**19A Company may hold property as joint tenant**

- (1) A trustee company is capable of acquiring and holding property as a joint tenant with an individual in the same way as an individual may acquire and hold property as a joint tenant.
- (2) If a trustee company that is a joint tenant of property is dissolved, the property devolves on the other joint tenant.

**20 Company may be removed from office by court and provisions for relief against company or directors**

- (1) If a trustee company is appointed or acts as executor, administrator, trustee, receiver, guardian or attorney, it shall, in addition to the liabilities and restrictions imposed by this Act, be subject in all respects to the same control and liable to removal as a private individual who acts as executor, administrator, trustee, receiver, guardian or attorney.
- (2) Any person claiming relief against a trustee company for any act done or assumed to be done, or in relation to any act omitted to be done, by the company, its directors or officers, under any of the powers given by this Act, may proceed in the Supreme Court, either by action or other ordinary procedure of the court or in any summary way by motion against the trustee company or against any of its directors or officers.
- (3) In any such proceedings, the Supreme Court may make any order that it considers appropriate.

**21 Order for account on application of trustee etc**

- (1) A trustee, cestui que trust, executor, legatee, administrator, wife, husband, next of kin, creditor or child entitled to or interested in any estate that comes into the possession, or under the control, of a trustee company, who is, on application to the managing director or manager of the company, unable to obtain a sufficient account of the

property or assets of which the estate consists and of the disposal and expenditure of or out of the property or assets, may apply to the Supreme Court or a judge, on motion or summons, after notice to the company, but without action or petition for an account.

- (2) If the Supreme Court or judge is of opinion that a sufficient account has not been rendered by the company, the court or judge may order the account to be rendered by the company that the court or judge considers just.
- (3) The Supreme Court or judge may, if the court or judge considers that a sufficient case has not been established to require the company to give an account, dismiss the application.
- (4) The Supreme Court or judge may make any order about costs either against the trustee company, or against the applicant, or about payment of costs out of the estate, that the court or judge considers appropriate.

## **22 Supreme Court may order audit in any estate committed to the company**

- (1) The Supreme Court or a judge may, on any application under section 21, order, in addition to or in substitution for any account to be rendered by a trustee company, that a person, to be named in the order, shall examine the books and accounts of the company relating to the estate in relation to which the order is made.
- (2) On the making of any such order, the company shall give to the person named in the order a list of all books kept by it, and shall produce to that person at all reasonable times, when required, all books, accounts, vouchers, papers and other documents of the company relating to the estate, and shall give the person all necessary information and all other necessary facilities for enabling him or her to make the examination.

Maximum penalty: 250 penalty units.

- (3) The Supreme Court or judge shall have the same power about the costs of the examination as is given by section 21 in relation to costs of, or occasioned by, an application under that section.

### **23 Voluntary winding-up of company or disposal of shares may be restrained by Supreme Court**

- (1) So long as an estate in relation to which a trustee company is executor, administrator, trustee, receiver or guardian remains in whole or in part unadministered, the company shall not, except with the approval of the Supreme Court or a judge, be voluntarily wound up.
- (2) Any person interested in the estate or who has a claim in relation to the estate may apply to the Supreme Court or a judge in a summary way to restrain a director or shareholder from disposing of any share that the person holds in the company or to restrain the winding-up voluntarily of the company, and the court or judge may on any such application make any order that the court or judge considers appropriate.

### **24 Restriction on classes of business**

- (1) Notwithstanding anything contained in the Corporations Act or in the memorandum or articles of association of a trustee company, the trustee company shall not engage in, carry on or be concerned in, any business, trade, venture or undertaking of any kind except—
  - (a) such as is expressly authorised by this Act or by any law of a State or Territory; or
  - (b) general agency business; or
  - (c) the deposit of its own funds with the Commonwealth Bank of Australia or with a corporation lawfully carrying on the business of banking in Australia or in any Territory; or
  - (d) the investment of those funds in the stock, debentures or marketable securities of any government or any corporation or company or on purchase of mortgage of real property or Crown

leasehold or, for a foreign company, in any way in which it is lawful for the company to invest its funds under the law of the place of its incorporation; or

- (e) the management of its investments and other property.
- (2) However, a trustee company may guarantee the safety of the principal and the regular payment of the interest of trust funds committed to its management as executor or administrator or trustee, and may give, or enter into, any bond or guarantee for the purpose of enabling any person to obtain administration of the estate of any deceased person in any case where the estate is placed under the management or control of the company by the administrator.
- (3) A trustee company that contravenes subsection (1) commits an offence.

Maximum penalty: 1 000 penalty units.

- (4) An officer of a trustee company who is wilfully concerned in a breach of any provision of subsection (1) commits an offence.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **25 Separate accounts of each estate to be kept**

An account of the money paid or received and of investments made and money advanced by a trustee company on account of each estate of which it has control shall be kept by the company separate and distinct from that of any other estate.

### **25A Contributory investments**

- (1) Subject to this section, if a trustee company holds money that belongs to more than 1 estate on trusts that require or permit the money to be invested, the company may invest the money in 1 fund and distribute the income from the fund rateably among those estates.

- (2) A loss arising from investment of money under subsection (1) shall be borne rateably by the estates to which the money belongs.
- (3) A trustee company shall not invest money under subsection (1) except as investments—
  - (a) for the time being authorised by the *Trustee Act 1925*; or
  - (b) in each case authorised by the instrument creating the trust to which the relevant money belongs.
- (4) This section does not entitle a trustee company to make any kind of investment of money belonging to an estate if investment of that kind is expressly prohibited by the instrument creating the relevant trust.

## **25B Common trust funds**

- (1) A trustee company may establish and maintain a fund or funds, each to be known as a common trust fund.
- (2) If a trustee company establishes more than 1 common trust fund, each common trust fund shall be given an appropriate distinguishing number or description.
- (3) A common trust fund shall be structured so that it consists of units.
- (4) A trustee company that proposes to establish a common trust fund shall determine the class or classes of investment in which money to the credit of that fund may be invested by the company.
- (5) Money to the credit of a common trust fund shall not be invested otherwise than in a class of investment determined in relation to that fund.
- (6) On establishing a common trust fund, the trustee company shall determine the day as at which the first valuation of the fund is to be carried out by the company, being a day not later than the first business day of the next month.
- (7) A determination under subsection (4) or (6) shall be made in writing.

---

**25C Crediting of money to common trust fund**

- (1) A trustee company may carry to the credit of a common trust fund any money to the credit of a current account in the books of the company held by it—
  - (a) as executor or administrator; or
  - (b) as trustee; or
  - (c) as receiver; or
  - (d) as guardian of the estate of a child; or
  - (e) as agent or attorney; or
  - (f) while acting in any other capacity.
- (2) Money shall not be carried to the credit of a common trust fund—
  - (a) if investment of the money in such a fund is expressly forbidden by—
    - (i) the will or other instrument creating the relevant trust; or
    - (ii) the conditions subject to which the money is held by the trustee company that established the fund; or
  - (b) unless investment of money to the credit of the fund is limited, under a determination under section 25B (4), to investments that would be lawful for the money if separately invested.

**25D Investment in and withdrawal from common trust fund**

- (1) At any time to and including the last business day before the first valuation day investments in a common trust fund may be made on any business day.
- (2) From and including the first valuation day, investments in and withdrawals from a common trust fund may be made only on a valuation day.
- (3) If money is are invested in a common trust fund maintained by a trustee company on account of an estate, trust or person, the trustee

company shall issue units in the fund to that estate, trust or person in relation to the relevant investment at an amount per unit calculated in accordance with this section.

- (4) If an investment is withdrawn from a common trust fund maintained by a trustee company on account of an estate, trust or person, the trustee company shall pay to that estate, trust or person, in relation to the units in the fund being redeemed for the purposes of the withdrawal, an amount per unit calculated in accordance with this section.
- (5) The amount payable for the issue or redemption of a unit in a common trust fund in relation to an investment in, or withdrawal from, the fund is—
  - (a) if the investment is made under subsection (1)—\$1; and
  - (b) if the investment or withdrawal is made under subsection (2)—the amount ascertained by dividing the capital value of the fund by the number of units in the fund as at the valuation day when the investment or withdrawal is made.

## **25E Beneficial interest in common trust fund**

- (1) An estate, trust or person beneficially entitled to money carried to the credit of a common trust fund under section 25C (1) does not have a beneficial interest in—
  - (a) any particular money standing to the credit of that fund; or
  - (b) any particular investment made from money standing to the credit of that fund;but the estate, trust or person has a beneficial interest in that fund determined in accordance with the proportion that the number of units issued to the estate, trust or person in relation to the fund bears to the total number of units in the fund.
- (2) A beneficial interest in a common trust fund to which an estate, trust or person is entitled shall not be assigned, transferred, disposed of or otherwise dealt with by the estate, trust or person.

---

**25F Valuation of common trust fund**

- (1) A trustee company—
  - (a) shall—
    - (i) on the first business day of each month; and
    - (ii) if the first valuation day is a day other than the first business day of a month—on the first valuation day; and
  - (b) may, on any other day;value, as at that day, the capital and accrued income of the common trust fund, or each common trust fund, maintained by the company.
- (2) In valuing the capital of a common trust fund, the trustee company shall not take account of income of the fund accrued but not paid or allocated in accordance with section 25G.
- (3) In valuing the capital of a common trust fund, the trustee company shall take account of costs and expenses incurred by the company—
  - (a) in making investments from money standing to the credit of the fund; and
  - (b) in protecting the investments; and
  - (c) in disposing of assets of the fund.
- (4) In valuing the accrued income of a common trust fund, the trustee company shall take account of costs and expenses, other than costs and expenses of a kind referred to in subsection (3), incurred by the company in connection with the maintenance or administration of the fund.
- (5) In this section:  
**capital**, in relation to a common trust fund, means—
  - (a) the investments held by the fund; and
  - (b) money held to the credit of the fund.

### **25G Payment of income**

- (1) A trustee company shall, at intervals of not more than 6 months, pay or allocate the income of a common trust fund maintained by the company to or among the estates, trusts and persons by whom units in the fund were held during the period in relation to which the interest accrued.
- (2) The income to be paid or allocated to an estate, trust or person in relation to a period shall be calculated—
  - (a) on a daily basis; and
  - (b) according to the number of units held by the estate, trust or person in the fund during that period; and
  - (c) according to the number of days during that period those units were held in the fund.
- (3) If units held by an estate, trust or person in a fund maintained by a trustee company are redeemed before the end of a period in relation to which interest would be required to be paid or allocated to the estate, trust or person, the trustee company may pay or allocate that interest—
  - (a) at the time the units are redeemed; or
  - (b) at the end of that period.

### **25H Realisation and acquisition of investments of common trust fund**

- (1) A trustee company may realise investments belonging to, and acquire investments from money standing to the credit of, a common fund maintained by the company for any purpose relating to the exercise its functions.
- (2) Any profit or loss resulting from the realisation of an investment belonging to a common trust fund shall be credited or debited, as the case requires, to the fund.

**25I Trustee company acting jointly with another person**

If a trustee company is appointed and acts jointly with any other person or persons as—

- (a) executor or administrator; or
- (b) trustee; or
- (c) receiver; or
- (d) guardian of the estate of a child;

for the purposes of any matter connected with the establishment, maintenance or administration of a common trust fund—

- (e) the trustee company may, with the written consent of that person or each of those persons—
  - (i) exercise, in relation to property jointly held or controlled, all or any of the functions that the trustee company would, if acting alone in relation to such a matter, be entitled to exercise; and
  - (ii) deal with money under the control of the company and that person, or those persons, jointly in the same way as money under the control of the trustee company alone; and
- (f) a person by whom a consent is given in accordance with this section is exempt from any liability that, apart from this paragraph, may have been incurred by the person in connection with that matter.

**25J Fees in relation to common trust fund**

- (1) A trustee company is entitled to receive out of the income received by a common trust fund maintained by the company the fee that is reasonable, having regard to the work and services involved, for the establishment, maintenance (including the keeping of books of account) and administration of the fund.

- (2) The fee referred to in subsection (1)—
  - (a) shall be determined by the trustee company;
  - (b) shall not exceed the amount that is calculated at the rate of 1% per annum of the capital sums invested in the common trust fund during the period in relation to which the income is received or allocated; and
  - (c) is in addition to any fees that a trustee company is entitled to receive in accordance with this Act.
- (3) A trustee company is not entitled to receive any fee or commission or make any charge in connection with the establishment, maintenance, administration or winding-up of a common trust fund other than the fee referred to in this section.

## **26 Improper dealings with money**

A director, member or officer of a trustee company who knowingly and wilfully—

- (a) appropriates or deals with any real or personal property of which the company has control under the powers given to it by this Act; or
- (b) lends or otherwise deals with any money received by the company under those powers;

otherwise than in accordance with this Act, the instrument creating the trust, or the law for the time being in force, commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

## **27 Power to deposit money with certain banks**

Notwithstanding anything contained in section 26 a trustee company may deposit any money of which it has control under the powers given to it by this Act with the Commonwealth Bank of Australia or

with any corporation lawfully carrying on the business of banking in Australia or in any Territory.

## **28 Payment of money unclaimed**

- (1) A trustee company shall pay to the Minister all sums of money that form part of any estate of which it is at any time executor or administrator or trustee under the powers given by this Act and that remain unclaimed by the person entitled to them for 5 years after they have become payable to that person.
- (2) However, the company may retain any sums of money in relation to which payment is restrained by the injunction of a court of competent jurisdiction.
- (3) A trustee company that fails to comply with subsection (1) commits an offence.

Maximum penalty: 250 penalty units.

- (4) An officer of a trustee company who is wilfully concerned, directly or indirectly, in the commission of an offence against subsection (3) commits an offence.

Maximum penalty: 50 penalty units.

- (5) The Minister shall pay all money received by him or her under this section to the credit of a fund to be called the testamentary and trust fund which shall be a trust account within the meaning of the *Audit Act 1901* (Cwlth), section 62A.
- (6) A trustee company shall, within 14 days after 30 June in each year, give the Minister a statement of all such unclaimed money that during the 12 months ending on that 30 June have been in its hands, distinguishing the estates in relation to which the money has been received, and, if the money or any part of the money has not been paid to the Minister, stating the reason for the delay in the making of the payment.

- (7) A trustee company that fails to comply with subsection (6) commits an offence.

Maximum penalty: 100 penalty units.

- (8) An officer of a trustee company who is wilfully concerned, directly or indirectly, in the commission of an offence against subsection (7) commits an offence.

Maximum penalty: 20 penalty units.

## **29 Persons entitled may apply subsequently**

- (1) The Supreme Court or a judge may at any time—
- (a) on the application of any person claiming to be entitled to any money paid by a trustee company in accordance with section 28; and
- (b) on being satisfied by affidavit, or other sufficient evidence, that that person is so entitled;

make an order for payment of the money, or any part of the money, but—

- (c) without interest on the money from the time of payment by the trustee company in accordance with that section; and
- (d) after deduction of any costs and expenses that have been incurred in relation to the application.
- (2) The Minister, on being served with the order, shall, within a reasonable time, pay the amount mentioned in the order to the person named in the order, and the receipt of that person shall be a sufficient voucher for the payment.

## **30 Order for account on application of Minister**

- (1) If the managing director or manager of a trustee company fails, on written application by the Minister, to give a sufficient account of—

- (a) the property and assets of which any estate money of which have been included in, or ought to be or to have been included in, the statement of unclaimed money mentioned in section 28, consists; and
  - (b) the disposal or expenditure of or out of the property or assets;
- the Minister may apply to the Supreme Court or a judge, on motion or summons after notice to the trustee company but without action or petition for an account, for an order requiring a sufficient account to be rendered.
- (2) The Supreme Court or judge may, if it, he or she is of opinion that no sufficient account has been rendered by the trustee company, order the account to be rendered by that company that the court or judge considers just.
  - (3) If the Supreme Court or judge is of the opinion that no sufficient case has been established to require the trustee company to give an account, the court or judge may dismiss the application.
  - (4) The court or judge may in all such cases make any order about costs, either against the company or against the applicant or about payment of costs out of the estate, that it, he or she considers appropriate.

### **31 Quarterly financial declarations**

- (1) The managing director or manager of a trustee company shall, during the months of January, April, July and October in each year, make a declaration, verified by statutory declaration, and—
  - (a) a copy of the declaration shall, not later than 7 days after the day when the declaration was made, be filed with the registrar of the Supreme Court; and
  - (b) a copy of the declaration shall, not later than 7 days after the day when the declaration was made, be sent to the Minister; and

(c) a copy of the declaration shall be displayed in a conspicuous place in the registered office of the company in the ACT and in every branch office or place in the ACT where the business of the company is carried on;

and a copy of the declaration shall be given to any person on application.

*Note* If a form is approved under s 34A (Approved forms) for a declaration, the form must be used.

(2) A trustee company that fails to comply with any provision of subsection (1) commits an offence.

Maximum penalty: 100 penalty units.

(3) An officer of a trustee company who is wilfully concerned, directly or indirectly, in the commission of an offence under subsection (2) commits an offence.

Maximum penalty: 20 penalty units.

### **31A Information etc for Minister**

(1) If it appears to the Minister that a trustee company—

- (a) may be failing, or may have failed, to comply with a requirement under this Act; or
- (b) may be, or may have been, in breach of a Territory law relevant to its activities under this Act; or
- (c) may be failing, or may have failed, to comply with a legal obligation as a trustee;

the Minister may, in writing, require the company, within a time specified in the instrument, to give the Minister the information or statements in writing, generally or in relation to particular matters, in relation to—

- (d) the affairs of the company; or

(e) the activities of the company as executor, administrator, trustee, receiver, guardian or attorney;

that the instrument specifies.

- (2) A trustee company that fails, without reasonable excuse, to comply with a requirement made under subsection (1) commits an offence.

Maximum penalty: 250 penalty units.

- (3) An officer of a trustee company who is wilfully concerned, directly or indirectly, in the commission of an offence under subsection (2) commits an offence.

Maximum penalty: 50 penalty units.

### **31B Inquiries and audits**

- (1) The Minister may, in writing, on grounds specified in the instrument, authorise a person specified in the instrument to undertake, whether generally or in relation to particular matters, any of the following:

- (a) an inquiry into the affairs of the company;
- (b) an inquiry into the activities of the company as executor, administrator, trustee, receiver, guardian or attorney;
- (c) an audit of the books and accounts of the company (including books and accounts of or relating to any estate, trust or property managed or administered by the company).

- (2) The grounds that may be specified for the purposes of an inquiry or audit under subsection (1) are any of the following:

- (a) that it appears to the Minister that the relevant trustee company may be failing, or may have failed, to comply with a requirement under this Act;
- (b) that it appears to the Minister that the company may be, or may have been, in breach of a Territory law relevant to its activities under this Act;

- (c) that it appears to the Minister that the company may be failing, or may have failed, to comply with a legal obligation as a trustee.
- (3) For the purposes of an inquiry or audit under subsection (1), a trustee company shall—
  - (a) give to a person authorised by the Minister in accordance with that subsection a list of all books kept by the company; and
  - (b) produce to a person so authorised the books of the company that the person requires; and
  - (c) give to a person so authorised the information and facilities that the person requires.
- (4) A trustee company that fails, without reasonable excuse, to comply with subsection (3) commits an offence.  
Maximum penalty: 250 penalty units.
- (5) An officer of a trustee company who is wilfully concerned, directly or indirectly, in the commission of an offence under subsection (4) commits an offence.  
Maximum penalty: 50 penalty units.
- (6) The costs of an inquiry or audit under this section shall, unless the Minister otherwise directs, be borne by the relevant trustee company and may be recovered by the Minister as a debt due to the Commonwealth.

**32 Act not to preclude other companies from applying for similar powers to those given by this Act**

Nothing in this Act shall entitle a trustee company to oppose the granting of any powers similar to those given to certain companies by this Act to any other company or to corporations generally, or to claim or to seek compensation in consequence of the powers being given to any other company or to corporations generally.

### **33 Testators may appoint their own solicitors**

- (1) If by any will, codicil or other testamentary writing a testator directs that any solicitor shall conduct the legal business of his or her estate, the solicitor shall be entitled to conduct that legal business accordingly, but in such case the trustee company concerned shall not be liable for the negligence, misfeasance, nonfeasance or misconduct of the solicitor, and that solicitor may be removed by order of the Supreme Court or a judge on the application of the trustee company or of any person interested in the estate on cause shown.
- (2) If any such solicitor is removed by any such order, the Supreme Court or judge may appoint a solicitor nominated by the trustee company.

### **34 Incorporation and powers of company except so far as specifically altered to remain**

Except as otherwise provided in this Act, a trustee company shall remain and be subject to the same restrictions, liabilities, penalties, privileges and powers as it is subject to under its incorporation, and this Act shall not otherwise affect the incorporation of the company.

#### **34A Approved forms**

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

### **35 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

**36 Transitional**

The fees mentioned in sections 18 and 18A are payable only in relation to estates committed to the administration or management of a trustee company on or after 1 December 1992.

## Schedule 1

(see s 2)

Permanent Trustee Company (Canberra) Limited

Perpetual Trustee Company (Canberra) Limited

ANZ Executors and Trustee Company (Canberra) Limited

Burns Philp Trustee Company (Canberra) Limited

Union Trustee Company (Canberra) Limited

Winchcombe Carson Trustee Company (Canberra) Limited

## Endnotes

1 About the endnotes

---

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	s = section/subsection
LRA = Legislation (Republication) Act 1996	sch = schedule
mod = modified / modification	sdiv = subdivision
No = number	sub = substituted
num = numbered	SL = Subordinate Law
o = order	<u>underlining</u> = whole or part not commenced or to be expired
om = omitted/repealed	

### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Trustee Companies Ordinance 1947* No 15 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

After 11 May 1989 and before 10 November 1999, Acts commenced on their notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) s 25).

#### Legislation before becoming Territory enactment

##### **Trustee Companies Act 1947 No 15**

notified 18 December 1947

commenced 18 December 1947

as amended by

##### **Companies Ordinance 1954 No 14**

notified 20 August 1954

commenced 1 October 1954

##### **Trustee Companies Ordinance 1954 No 16**

notified 26 August 1954

commenced 26 August 1954

##### **Trustee Companies Ordinance 1960 No 7**

notified 22 September 1960

commenced 22 September 1960

##### **Trustee Companies Ordinance 1961 No 19**

notified 27 July 1961

commenced 27 July 1961

## Endnotes

3 Legislation history

---

**Companies Ordinance 1962 No 7**

notified 21 June 1962  
commenced 1 July 1962

**Trustee Companies Ordinance 1962 No 11**

notified 13 September 1962  
commenced 13 September 1962

**Trustee Companies Ordinance 1965 No 4**

notified 6 May 1965  
commenced 6 May 1965

**Trustee Companies Ordinance 1966 No 12**

notified 4 August 1966  
commenced 4 August 1966

**Ordinances Revision (Decimal Currency) Ordinance 1966 No 19**

notified 23 December 1966  
commenced 23 December 1966

**Trustee Companies Ordinance 1968 No 8**

notified 18 April 1968  
commenced 18 April 1968

**Ordinances Revision (Companies Amendments) Ordinance 1982 No 38**

notified 30 June 1982  
commenced 1 July 1982

**Ordinances Revision (Companies Amendments) Ordinance (No 2) 1982 No 93**

notified 17 December 1982  
commenced 17 January 1983 (Cwlth Gaz 1983 No S7)

**Trustee Companies (Amendment) Ordinance 1984 No 6**

notified 15 March 1984  
commenced 15 March 1984

**Trustee Companies (Amendment) Ordinance 1985 No 34**

notified 20 August 1985  
commenced 20 August 1985

---

**Administrative Arrangements (Consequential Amendments)  
Ordinance 1988 No 17 sch 2**

notified 22 April 1988  
commenced 22 April 1988

**Self-Government (Consequential Amendments) Ordinance 1989  
No 38 sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)  
s 1, s 2 commenced 10 May 1989 (s 2 (1))  
sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989  
No S164)

**Legislation after becoming Territory enactment****Statute Law Revision (Miscellaneous Provisions) Act 1992 No 23  
sch 1**

notified 4 June 1992 (Gaz 1992 No S71)  
commenced 4 June 1992

**Trustee Companies (Amendment) Act 1992 No 49**

notified 1 September 1992 (Gaz 1992 No S148)  
ss 1-3 commenced 1 September 1992 (s 2 (1))  
remainder commenced 1 December 1992 (s 2 (2) and Gaz 1992 No 47)

**Trustee Companies (Amendment) Act 1993 No 53**

notified 27 August 1993 (Gaz 1993 No S165)  
commenced 27 August 1993 (s 2)

**Statute Law Revision Act 1994 No 26 sch, note**

notified 31 May 1994 (Gaz 1994 No S93)  
commenced 31 May 1994 (s 2)

**Statute Law Revision Act 1995 No 46 sch**

notified 18 December 1995 (Gaz 1995 No S306)  
amnds commenced 18 December 1995 (s 2)

**Legal Practitioners (Consequential Amendments) Act 1997 No 96  
sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

## Endnotes

4 Amendment history

---

### **Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)  
s 1, s 2 commenced 27 November 1998 (s 2 (1))  
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

### **Financial Sector Reform (ACT) Act 1999 No 33 sch**

notified 25 June 1999 (Gaz 1999 No S34)  
s 1, s 2, dict commenced 25 June 1999 (s 2 (1))  
sch commenced 1 July 1999 (s 2 (2) and Cwlth Gaz 1999 No S283)

### **Statute Law Amendment Act 2000 No 80 amdt 3.28**

notified 21 December 2000 (Gaz 2000 No S69)  
commenced 21 December 2000 (s 2)

### **Legislation (Consequential Amendments) Act 2001 No 44 pt 396**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 396 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

### **Statute Law Amendment Act 2001 (No 2) 2001 No 56 pt 3.50**

notified 5 September 2001 (Gaz 2001 No S65)  
commenced 5 September 2001 (s 2 (1))

## 4 Amendment history

### **Definitions for Act**

s 2 orig s 2 am 1985 No 34  
om 1992 No 23 sch 1  
(prev s 3) am 1954 No 16; 1982 No 38; 1985 No 34; 1988 No 17 sch 2  
renum as s 2 2001 No 44 amdt 1.4109  
def **bank** om 1999 No 33 sch  
def **books** am 1995 No 46 sch  
def **financial institution** am 2001 No 44 amdt 1.4108  
def **first valuation day** ins 1992 No 49 s 4  
def **officer** am 1995 No 46 sch  
def **related corporation** om 1995 No 46 sch  
def **related body corporate** ins 1995 No 46 sch  
def **trustee company** am 1992 No 23 sch 1; 1995 No 46 sch  
def **valuation day** ins 1992 No 49 s 4

### **Declaration of financial institution**

s 3 ins 2001 No 44 amdt 1.4110

**Change of name**

s 3A ins 1993 No 53 s 4

**Authorisation given to trustee company to act by person entitled to probate**

s 5 sub 1992 No 49 s 5

**Authorisation given to trustee company to act by 1 of several executors**

s 6 hdg sub 1994 No 26 note

s 6 sub 1992 No 49 s 5

**Authorisation given to trustee company to act by person entitled to administration with will annexed**

s 7 sub 1992 No 49 s 5

**Authorisation given to trustee company to act by person entitled to administration on intestacy**

s 8 sub 1992 No 49 s 5

**Capacity of trustee company to act**

s 8A ins 1992 No 49 s 5

**Assets of company to be liable for proper administration of estates**

s 10 am 1966 No 19; 1985 No 34

**Company may be appointed trustee, receiver or guardian of estate**

s 11 am 1985 No 34; 1994 No 26 sch

**Company may act under power of attorney by managing director, manager or 2 directors**

s 12 am 1985 No 34

**Company may be appointed to act as temporary executor or administrator**

s 13 am 1993 No 53 sch

**Application for consent to be by motion**

s 15 am 1985 No 34; 1993 No 53 sch; 1994 No 26 sch

**Manager and directors personally responsible to court**

s 17 am 1985 No 34

**Estate fees**

s 18 am 1954 No 16; 1966 No 19; 1985 No 34

sub 1992 No 49 s 6

**Fees for preparation of returns**

s 18A ins 1992 No 49 s 6

**Fees generally**

s 18B ins 1992 No 49 s 6

**Trustee company to be subject to same duties as individual**

s 19 am 1993 No 53 sch

**Company may hold property as joint tenant**

s 19A ins 1954 No 16

## Endnotes

4 Amendment history

---

### **Order for account on application of trustee etc**

s 21 am 1993 No 53 sch

### **Supreme Court may order audit in any estate committed to the company**

s 22 am 1985 No 34; 1993 No 53 sch; 1998 No 54 sch

### **Voluntary winding-up of company or disposal of shares may be restrained by Supreme Court**

s 23 am 1993 No 53 sch

### **Restriction on classes of business**

s 24 am 1954 No 14; 1962 No 7; 1966 No 19; 1982 No 93; 1985 No 34; 1995 No 46 sch; 1998 No 54 sch; ss renum R5 LA

### **Contributory investments**

s 25A ins 1985 No 34  
am 1994 No 26 sch; 2001 No 56 amdt 3.858

### **Common trust funds**

s 25B ins 1992 No 49 s 7  
am 1994 No 26 sch

### **Crediting of money to common trust fund**

s 25C ins 1992 No 49 s 7

### **Investment in and withdrawal from common trust fund**

s 25D ins 1992 No 49 s 7

### **Beneficial interest in common trust fund**

s 25E ins 1992 No 49 s 7

### **Valuation of common trust fund**

s 25F ins 1992 No 49 s 7

### **Payment of income**

s 25G ins 1992 No 49 s 7

### **Realisation and acquisition of investments of common trust fund**

s 25H ins 1992 No 49 s 7

### **Trustee company acting jointly with another person**

s 25I ins 1992 No 49 s 7

### **Fees in relation to common trust fund**

s 25J ins 1992 No 49 s 7

### **Improper dealings with money**

s 26 am 1966 No 19; 1985 No 34; 1998 No 54 sch

### **Power to deposit money with certain banks**

s 27 am 1985 No 34

### **Payment of money unclaimed**

s 28 am 1966 No 19; 1985 No 34; 1988 No 17 sch 2; 1993 No 53 sch; 1998 No 54 sch; ss renum R5 LA

**Persons entitled may apply subsequently**

s 29 am 1985 No 34; 1988 No 17 sch 2

**Order for account on application of Minister**

s 30 am 1985 No 34; 1988 No 17 sch 2; 1993 No 53 sch

**Quarterly financial declarations**

s 31 am 1966 No 19; 1985 No 34; 1988 No 17 sch 2; 1998 No 54 sch; 2001 No 44 amdt 1.4111, amdt 1.4112; pars renum R5 LA

**Information etc for Minister**

s 31A ins 1985 No 34  
am 1988 No 17 sch 2; 1993 No 53 sch; 1998 No 54 sch

**Inquiries and audits**

s 31B ins 1985 No 34  
am 1988 No 17 sch 2; 1998 No 54 sch

**Testators may appoint their own solicitors**

s 33 am 1993 No 53 sch; 1997 No 96 sch 1

**Approved forms**

s 34A ins 2001 No 44 amdt 1.4113  
(4)-(7) exp 12 September 2002 (s 34A (7))

**Regulation-making power**

s 35 am 1966 No 19; 1985 No 34; 1988 No 17 sch 2; 1989 No 38 sch 1; 1998 No 54 sch  
sub 2001 No 44 amdt 1.4114

**Transitional**

s 36 ins 2000 No 80 amdt 3.28

**Specified trustee companies**

sch 1 hdg sub 1985 No 34  
sub 2001 No 44 amdt 1.4115  
sch 1 am 1954 No 16; 1960 No 7; 1961 No 19; 1962 No 11; 1965 No 4; 1966 No 12; 1968 No 8; 1984 No 6

**Quarterly financial declaration**

sch 2 am 1966 No 19  
sub 1985 No 34  
am 1994 No 26 sch; 1995 No 46 sch  
om 2001 No 44 amdt 1.4116

## Endnotes

5 Earlier republications

---

### 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Ord 1989 No 38	30 September 1991
2	Act 1992 No 49	31 July 1993
3	Act 1995 No 46	1 January 1996
4	Act 1998 No 54	31 March 1999
5	Act 2001 No 56	9 August 2002

Authorised when accessed at [www.legislation.act.gov.au](http://www.legislation.act.gov.au) or in authorised printed form

© Australian Capital Territory 2002