



AUSTRALIAN CAPITAL TERRITORY

Trustee Companies (Amendment) Act 1992

No. 49 of 1992

An Act to amend the *Trustee Companies Act 1947*

[Notified in ACT Gazette S148: 1 September 1992]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Trustee Companies (Amendment) Act 1992*.

Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If the provisions referred to in subsection (2) have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

Principal Act

3. In this Act, “Principal Act” means the *Trustee Companies Act 1947*.¹

Interpretation

4. Section 3 of the Principal Act is amended by inserting the following definitions:

“ ‘first valuation day’, in relation to a common trust fund, means the day determined under subsection 25B (6) for the purpose of valuing the fund;

“ ‘valuation day’, in relation to a common trust fund, means—

- (a) a day referred to in subparagraph 25F (1) (a) (i) or (ii); or
- (b) any other day on which, pursuant to paragraph 25F (1) (b), a valuation of the fund is carried out.”.

Substitution

5. Sections 5 to 8 (inclusive) of the Principal Act are repealed and the following sections substituted:

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

“5. (1) Where 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 first-mentioned 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) Where an application is made pursuant to 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.

Authorisation given to trustee company to act by one of several executors

“6. (1) Where 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 first-mentioned 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 manner as if the trustee company had been originally named as an executor of the will in addition to or in the place of that first-mentioned person.

“(2) Where an application is made pursuant to subsection (1), the 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.

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

“7. (1) Where 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) Where an application is made pursuant to 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 the office of administrator should not be held by a trustee company or that particular trustee company.

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

“8. (1) Where 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) Where an application is made pursuant to subsection (1), the Court may grant letters of administration of the estate in accordance with the application.

Capacity of trustee company to act

“8A. Where—

- (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.”.

Substitution

6. Section 18 of the Principal Act is repealed and the following sections are substituted:

Estate fees

“18. (1) A trustee company is entitled to charge fees for its services in respect of 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 respect of 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.

Fees for preparation of returns

“18A. (1) A trustee company is entitled to receive in respect of 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 subsection 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.

Fees generally

“18B. (1) The fees payable under sections 18 and 18A in respect of an estate committed to the administration or management of a trustee company are in addition to moneys properly expended by the company in the course of such administration or management and chargeable against the estate.

“(2) The fees payable under sections 18 and 18A in respect of an estate are payable out of moneys 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) Where, in relation to a fee payable in respect of an estate, the Court—

- (a) upon an application made to it by a person interested in the estate;
or

(b) of its own motion;

is satisfied that the fee is excessive, the Court may direct that the fee be reduced by such amount as it thinks fit.”.

Insertion

7. After section 25A of the Principal Act the following sections are inserted:

Common trust funds

“25B. (1) A trustee company may establish and maintain a fund or funds, each to be known as a common trust fund.

“(2) Where a trustee company establishes more than one common trust fund, each such 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 moneys to the credit of that fund may be invested by the company.

“(5) Moneys to the credit of a common trust fund shall not be invested otherwise than in a class of investment determined in respect of that fund.

“(6) Upon 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 succeeding month.

“(7) A determination under subsection (4) or (6) shall be made by instrument in writing.

Crediting of moneys to common trust fund

“25C. (1) A trustee company may carry to the credit of a common trust fund any moneys to the credit of a current account in the books of the company held by it—

- (a) as executor or administrator;
- (b) as trustee;
- (c) as receiver;
- (d) as guardian of the estate of an infant;
- (e) as agent or attorney; or

(f) while acting in any other capacity.

“(2) Moneys shall not be carried to the credit of a common trust fund—

- (a) if investment of the moneys 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 moneys are held by the trustee company that established the fund; or
- (b) unless investment of moneys to the credit of the fund is limited, by virtue of a determination under subsection 25B (4), to investments that would be lawful for those moneys if separately invested.

Investment in and withdrawal from common trust fund

“25D. (1) At any time to and including the last business day preceding 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) Where moneys 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 respect of the relevant investment at an amount per unit calculated in accordance with this section.

“(4) Where 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 respect of 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 respect of an investment in, or withdrawal from, the fund is—

- (a) where the investment is made pursuant to subsection (1)—\$1; and
- (b) where the investment or withdrawal is made pursuant to 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 on which the investment or withdrawal is made.

Beneficial interest in common trust fund

“25E. (1) An estate, trust or person beneficially entitled to moneys carried to the credit of a common trust fund under subsection 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 moneys 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 respect of 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.

Valuation of common trust fund

“25F. (1) A trustee company—

- (a) shall—
 - (i) on the first business day of each month; and
 - (ii) where 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, as the case may be, 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 moneys standing to the credit of the fund;
- (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) moneys held to the credit of the fund.

Payment of income

“25G. (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 respect of which the interest accrued.

“(2) The income to be paid or allocated to an estate, trust or person in respect of a period shall be calculated—

- (a) on a daily basis;
- (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) Where units held by an estate, trust or person in a fund maintained by a trustee company are redeemed before the expiration of a period in respect of 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 expiration of that period.

Realisation and acquisition of investments of common trust fund

“25H. (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 or performance of its powers, authorities, duties or 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.

Trustee company acting jointly with another person

“25I. Where a trustee company is appointed and acts jointly with any other person or persons as—

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

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 consent in writing of that person or each of those persons—
 - (i) exercise and perform, in relation to property jointly held or controlled, all or any of the powers, authorities, duties and functions that the trustee company would, if acting alone in relation to such a matter, be entitled to exercise or perform; and
 - (ii) deal with moneys under the control of the company and that person, or those persons, jointly in the same manner as moneys 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 which, but for this paragraph, may have been incurred by the person in connection with that matter.

Fees in relation to common trust fund

“25J. (1) A trustee company is entitled to receive out of the income received by a common trust fund maintained by the company such fee as 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 such amount as is calculated at the rate of 1 per cent per annum of the capital sums invested in the common trust fund during the period in respect of which the income is received or allocated; and

(c) is in addition to any fees which 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.”.

Application

8. The fees referred to in sections 18 and 18A of the Principal Act as amended by this Act are payable only in respect of estates committed to the administration or management of a trustee company on or after the date of commencement of those sections.

NOTE

1. Reprinted as at 30 September 1991. See also Act No. 23, 1992.

[Presentation speech made in Assembly on 25 June 1992]

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