

# AUSTRALIAN CAPITAL TERRITORY.

No. 7 of 1944.

## AN ORDINANCE

**To facilitate the Execution of Trusts during the Present War and for twelve months thereafter.**

**B**E it ordained by the Governor-General of the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act 1909-1938* and the *Seat of Government (Administration) Act 1910-1940*, as follows:—

1. This Ordinance may be cited as the *Trustee (Emergency Provisions) Ordinance 1944*.<sup>\*</sup> Short title.

2.—(1.) In this Ordinance—

“engaged on war service” means serving during any war in which His Majesty is or may be engaged—

Interpretation and application.

- (a) as a member of any naval, military or air force of the Commonwealth or of any other part of His Majesty's dominions;
- (b) with any nursing service, women's auxiliary service, voluntary aid detachment, red cross society, ambulance association or any similar body or organization attached to or accompanying any of those forces;
- (c) as a representative, attached to or accompanying any such force, of any organization which is providing philanthropic, welfare or medical services for members of that force; or
- (d) as the master or a member of the crew of a vessel registered in Australia or in any other part of His Majesty's dominions or voyaging from or to an Australian port.

and includes undergoing detention as a prisoner of war or internment in a country under the sovereignty or in the occupation of the enemy or internment in a neutral country immediately after so serving.

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<sup>\*</sup> Notified in the *Commonwealth Gazette* on 1st June, 1944.  
5150.—PRICE 3D.

(2.) This Ordinance shall be read and construed with the *Trustee Act*, 1898 of the State of New South Wales, in its application to the Territory.

(3.) A deed of a kind authorized by this Ordinance shall, for the purposes of this Ordinance, be deemed to have been executed under the authority of this Ordinance notwithstanding that the deed does not purport to have been so executed, or purports to have been executed under the authority of a law of a State.

(4.) Where, at any time after the tenth day of November, One thousand nine hundred and forty, but before the commencement of this Ordinance, any person has executed a deed which, if it had been executed after the commencement of this Ordinance, would have been deemed to be a deed executed under the authority of this Ordinance, that deed shall, if it is unrevoked, for the purposes of this Ordinance be deemed, as from the commencement of this Ordinance, to be a deed executed under the authority of this Ordinance.

Delegation  
of trusts.

3.—(1.) Notwithstanding anything contained in any law of the Territory, a trustee (whether a sole trustee or a trustee with others) may, subject to sub-section (2.) of this section, by deed, delegate to any person the execution, during any period for which the trustee is engaged on war service and a further period of twelve months thereafter, of any trust of which he is trustee, and may, by deed, revoke any such deed.

(2.) Nothing in sub-section (1.) of this section shall authorize the delegation of the execution of—

- (a) a trust to any person who is not capable of being appointed a trustee of that trust;
- (b) any implied or constructive trust;
- (c) a trust by one of two trustees to the other unless that other is a trustee company; or
- (d) a trust by one of two or more trustees to any person to whom the execution of the trust has been delegated, whether under the authority of this section or otherwise, by the other trustee or, as the case may be, by all the other trustees, unless that person is a trustee company.

(3.) A delegation given under the authority of this section by a trustee who is the legal representative of a deceased person shall, unless the contrary is expressed in the deed of delegation, operate to delegate not only the execution of the duties incident to the office of legal representative of that deceased person (including the exercise and discharge of all the powers, authorities, duties and functions of the trustee as such legal representative) but also the execution of the trusts which devolve upon that trustee when the administration of the estate of that deceased person is completed.

(4.) A delegation given under the authority of this section—

- (a) shall, if it does not expressly refer to some particular trust or trusts, be construed as relating to all trusts the execution of which the trustee has power to delegate;
- (b) may be limited to any particular trust or trusts or to any particular part of any trust or trusts; and
- (c) shall operate within the scope of the authority conferred by this Ordinance notwithstanding that it is not expressly limited to the period or periods referred to in sub-section (1.) of this section.

(5.) Two or more trustees may delegate concurrently.

(6.) In any proceedings brought against a trustee who has given a delegation under the authority of this section, in respect of any act or default of the delegate, it shall be a defence for the trustee to prove that the delegate was appointed by him in good faith and without negligence.

(7.) All jurisdiction and powers of any court shall apply to the delegate under any delegation given under the authority of this section, in the same manner, so far as respects the execution of the trust to which the delegation relates, as if the delegate were acting in relation to the trust in the same capacity as the trustee who gave the delegation.

4.—(1.) A deed of delegation given under the authority of this Ordinance, and any deed revoking any such deed, may be registered by depositing a certified true copy thereof with the Registrar of Probates, and shall not have any effect until so registered. Registration.

(2.) The Registrar of Probates shall keep an index of deeds registered under this section, and any person may, upon payment of a fee of Two shillings, inspect the index and any deed so registered.

(3.) There shall be payable upon the registration of any deed under this section a fee of Five shillings.

5. The power of delegation conferred by this Ordinance shall be in addition to, and not in derogation from, any other power of delegation, however conferred. Other powers of delegate.

6. Any person dealing in good faith with the delegate under any deed of delegation given under the authority of this Ordinance shall not, by reason only that, by the delegation or any evidence or document in connexion therewith, it appears that the delegate is acting in the execution of any trust, be affected for any purpose with notice of the trust. Persons dealing with delegate.

Evidence of  
war service.

7. A statutory declaration by the delegate under a delegation given under the authority of this Ordinance, that the trustee giving the delegation is engaged on war service within the meaning of this Ordinance, shall be accepted as sufficient evidence of the fact by any person dealing with the delegate.

Persons  
reported  
missing.

8. A trustee who has given a delegation under the authority of this Ordinance shall, for the purposes of this Ordinance, be presumed to remain alive until definite news of his death has been received or such death has been presumed by a court of competent jurisdiction, and the fact that he is reported "missing" or "missing and believed to be killed" or any similar report shall not be construed as giving to persons having knowledge of the report actual notice of his death, although in fact it has occurred.

Attestation of  
deed of  
delegation.

9. Every delegation or revocation of a delegation under this Ordinance by a person who, at the time of the execution of the deed of delegation or revocation, was engaged on war service, executed by that person and purporting to be attested by an officer as defined in the *Defence Act 1903-1941*, shall be deemed to have been duly executed.

Dated this thirty-first day of May, 1944.

GOWRIE

Governor-General.

By His Excellency's Command,

H. V. EVATT

for and on behalf of the Minister of  
State for the Interior.

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By Authority: L. F. JOHNSTON, Commonwealth Government Printer, Canberra.