



## Trustee Act 1898

An Act to consolidate enactments and amend the law relating to trustees

[Royal Assent 29 October 1898]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

### PART I - Preliminary

#### 1. Short title

This Act may be cited as the *Trustee Act 1898*.

#### 2. Commencement

This Act shall come into operation on 1st November 1898.

#### 3.

#### 4. Interpretation

In this Act, unless the contrary intention appears –

*company* includes any banking or mercantile or trading corporation, however created, and any company registered, incorporated, or constituted under or pursuant to any Act;

*contingent right*, as applied to land, includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest, or possibility, is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent;

*convey* and *conveyance*, applied to any person, include the execution by that person of every necessary or suitable assurance for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of any property whereof he is seised or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law for the validity of the conveyance;

*the Court* means the Supreme Court or a judge;

*devisee* includes the heir of a devisee and the devisee of an heir, and any person who may claim right by devolution of title of a similar description;

*financial institution* means any authorised deposit-taking institution, or the manager of any authorised deposit-taking institution, authorised under this Act to receive fixed deposits from trustees;

*instrument* includes Act;

**land** includes incorporeal as well as corporeal hereditaments, and any interest therein, and also an undivided share of land;

**mortgage** and **mortgagee** include and relate to every estate and interest regarded by law or in equity as merely a security for money, and every person deriving title under the original mortgagee;

**pay** and **payment**, as applied in relation to stocks and securities, and in connection with the expression "into Court", include the deposit or transfer of the same in or into Court;

**possessed** applies to receipt of income of, and to any vested estate less than, a life estate, legal or equitable, in possession or in expectancy, in any land;

**property** includes real and personal property, and any estate and interest in any property, real or personal, and any debt and any thing in action, and any other right or interest, whether in possession or not, excluding only stock and choses in action in the construction and interpretation of [section 33](#);

**representative** includes –

- (a) the devisee or devisees, or the executor or executors, administrator or administrators, or the curator of the intestate estate of any person;
- (b) the heir of any person who died intestate before 1874;

**rights** includes estate and interests;

**securities** means –

- (a) debentures, stocks, shares, bonds, or notes issued or proposed to be issued;
- (b) any right or option in respect of any such debentures, stocks, shares, bonds, or notes; or
- (c) interests in a registered scheme within the meaning of the Corporations Act –

and in particular, without limiting the generality of the foregoing, includes –

- (d) bills of exchange;
- (e) promissory notes;
- (f) certificates of deposit issued by an authorised deposit-taking institution; and
- (g) any money or securities for money paid into or deposited in Court to the credit of any cause, matter, or account;

**shares** means shares in the capital of a body corporate;

**spouse**, in relation to a person, includes the person who is in a significant relationship, within the meaning of the [Relationships Act 2003](#), with that person;

**stock** includes fully paid-up shares, and, so far as relates to vesting orders made by the Court under this Act, includes debentures, shares in companies, and any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer, either alone or accompanied by other formalities, and any share or interest therein;

**transfer**, in relation to stock, includes the performance and execution of every deed, power of attorney, act, and thing on the part of the transferrer to effect and complete the title in the transferee;

**trust** does not include the duties incident to an estate conveyed by way of mortgage, but, with this exception, **trust** includes implied and constructive trusts, and cases where the trustee has a beneficial interest in the trust property and the duties incident to the office of representative of a deceased person;

**trustee** includes –

(a) any person seised or possessed of or entitled to any property subject to any trust as aforesaid;

(b) any person who has also a beneficial interest in the trust property;

(c) . . . . .

(d) any company, corporation, firm, or association authorized by law to act as trustee, executor, or administrator of the estate of any deceased person;

(e) any representative in any way possessed of or entitled to any property subject to any trust express or implied;

(f) any trustee whose trust arises by construction or implication of law, but does not include a mortgagee; and

(g) joint trustees, executors, or administrators, where more than one person is acting in any of the said capacities;

**trustee company** means a trustee company within the meaning of the [Trustee Companies Act 1953](#);

**valuer** means a person who is qualified to practise as a land valuer under [section 4 of the Land Valuers Act 2001](#).

## **PART II - Investments**

### **5. Application of Part**

This Part applies to trusts created before or after the commencement of this Part.

### **6. Power of trustee to invest**

A trustee, unless expressly forbidden by the instrument creating the trust, may –

(a) invest trust funds in any form of investment; and

(b) at any time, vary an investment or realise an investment of trust funds and reinvest money resulting from the realisation in any form of investment.

## **7. Duty of trustee**

(1) Subject to any provision to the contrary in an instrument creating a trust, a trustee, in exercising a power of investment –

(a) if the trustee's profession, business or employment is or includes acting as a trustee or investing money on behalf of other persons, must exercise the care, diligence and skill that a prudent person engaged in that profession, business or employment would exercise in managing the affairs of another person; or

(b) if the trustee is not engaged in such a profession, business or employment, must exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of another person.

(2) A trustee, in exercising a power of investment, must comply with any provision of the instrument creating the trust that is binding on the trustee and requires the obtaining of a consent or an approval or a compliance with any direction with respect to trust investments.

(3) Subject to the instrument creating the trust, a trustee must, at least once in each year, review the performance, individually and as a whole, of the trust investments.

## **8. Matters to which trustee may have regard**

(1) Without limiting the matters that a trustee may take into account when exercising a power of investment, a trustee, so far as is appropriate to the provisions of the trust, may have regard to any one or more of the following:

(a) the purposes of the trust and the needs and circumstances of the beneficiaries;

(b) the desirability of diversifying trust investments;

(c) the nature of existing trust investments and other trust property;

(d) the need to maintain the real value of the capital or income of the trust;

(e) the risk of capital loss or depreciation;

(f) the potential for capital appreciation;

(g) the likely income and the timing of the income return;

(h) the length of the term of the proposed investment;

(i) the probable duration of the trust;

(j) the liquidity and marketability of the proposed investment during, and on the determination of, the term of the proposed investment;

(k) the aggregate value of the trust estate;

- (l) the effect of the proposed investment in relation to the tax liability of the trust;
- (m) the likelihood of inflation affecting the value of the proposed investment or other trust property;
- (n) the costs, including any commission, fee, charge or duty payable, of making the proposed investment;
- (o) the results of a review of any existing trust investments.

(2) A trustee may –

- (a) obtain and consider independent and impartial advice reasonably required for the investment of trust funds or the management of the investment, from a person whom the trustee reasonably believes to be competent to give that advice; and
- (b) pay out of trust funds the reasonable costs of obtaining the advice.

## 9. Law and equity preserved

(1) Any rule or principle of law or equity that imposes a duty on a trustee exercising a power of investment including, without limiting the generality of those duties, rules and principles that impose –

- (a) a duty to exercise the powers of a trustee in the best interests of all present and future beneficiaries of the trust; or
- (b) a duty to act impartially towards beneficiaries and between different classes of beneficiaries; or
- (c) a duty to take advice; or
- (d) a duty to invest trust funds in investments that are not speculative or hazardous –

continues to apply except so far as it is inconsistent with this or any other Act, or the instrument creating the trust.

(2) Any rule or principle of law or equity that relates to a provision in an instrument creating a trust that purports to exempt, limit the liability of, or indemnify a trustee in respect of a breach of trust, continues to apply.

(3) If a trustee has a duty to take advice relating to the administration of a trust, the reasonable costs of obtaining the advice are payable out of trust funds.

## 10. Powers of trustee in relation to securities

(1) If securities of a body corporate are subject to a trust, the trustee may concur in any scheme or arrangement –

- (a) for, or arising out of, the reconstruction, reduction of capital or liquidation of, or the issue of shares by, the body corporate; or
- (b) for the sale of all or any part of the property and undertaking of the body corporate to another body corporate; or
- (c) for the acquisition of securities of the body corporate, or of control of the body corporate, by another body corporate; or

(d) for the amalgamation of the body corporate with another body corporate; or

(e) for the release, modification or variation of rights, privileges or liabilities attached to the securities, or any of them –

in the same manner as if the trustee were beneficially entitled to the securities.

(2) The trustee may accept instead of, or in exchange for, the securities subject to the trust securities of any denomination or description of another body corporate party to the scheme or arrangement.

(3) If a conditional or preferential right to subscribe for securities in a body corporate is offered to a trustee in respect of a holding in that body corporate or any other body corporate, the trustee may, as to all or any of the securities –

(a) exercise the right and apply capital money subject to the trust in payment of the consideration; or

(b) assign to any person, including a beneficiary under the trust, the benefit of the right, or the title to the right, for the best consideration that can be reasonably obtained; or

(c) renounce the right.

(4) A trustee accepting or subscribing for securities under this section is, for the purposes of any provision of this Part, exercising a power of investment.

(5) A trustee may retain securities accepted or subscribed for under this section for any period for which the trustee could properly have retained the original securities.

(6) The consideration for an assignment made under [subsection \(3\)\(b\)](#) must be held as capital money of the trust.

(7) This section applies in relation to securities acquired before or after the commencement of this section but subject to the provisions of the instrument creating the trust.

## **11. Calls on shares**

Subject to the provisions of any instrument creating a trust –

(a) a trustee may apply capital money subject to the trust in payment of calls on shares subject to the same trust; and

(b) if the trustee is a trustee company, it may exercise the powers conferred by this section whether or not the shares on which the calls are made are shares in the trustee company.

## **12. Purchase of house for beneficiary**

(1) Subject to the provisions of any instrument creating a trust, a trustee may –

(a) purchase a dwelling house for use by a beneficiary as a residence; or

(b) enter into any other agreement or arrangement to secure for a beneficiary a right to use a dwelling house as a residence.

(2) Despite the terms of the instrument creating the trust, a trustee may, if to do so would not unfairly prejudice the interests of other beneficiaries, retain as part of the trust property, a dwelling house for a beneficiary to use as a residence.

(3) A dwelling house purchased, retained or otherwise secured for use by the beneficiary as a residence may be made available to the beneficiary for that purpose on such terms and conditions consistent with the trust and the extent of the beneficiary's interest as the trustee thinks fit.

(4) The trustee may retain a dwelling house or any interest or rights in respect of a dwelling house acquired under this section after the use of the dwelling house by the beneficiary has ceased.

(5) In this section,

*dwelling house* includes –

(a) any building or part of a building designed, or converted or capable of being converted, for use as a residence; and

(b) any amenities or facilities for use in association with the use of a dwelling house.

#### **12A. Power of trustee to retain investments**

A trustee is not liable for breach of trust by reason only of continuing to hold an investment that has ceased to be –

(a) an investment authorised by the instrument creating the trust; or

(b) an investment properly made by the trustee exercising a power of investment; or

(c) an investment made under this Part as previously in force from time to time; or

(d) an investment authorised by any other Act or law.

#### **12B. Loans and investments by trustees**

(1) If a trustee lends money on the security of property, the trustee is not in breach of trust by reason only of the amount of the loan in comparison to the value of the property at the time when the loan was made, if –

(a) it appears to the court –

(i) that, in making the loan, the trustee was acting on a report as to the value of the property made by a person whom the trustee reasonably believed to be competent to give such a report and whom the trustee instructed and employed independently of any owner of the property; and

(ii) that the amount of the loan did not exceed two-thirds of the value of the property as stated in the report; and

(iii) that the loan was made in reliance on the report; or

(b) the trustee is properly insured by an insurer carrying on the business of insurance against all loss that may arise by reason of the default of the borrower.

(2) If a trustee lends money on the security of leasehold property, the trustee is not in breach of trust by reason only that the trustee dispensed, either in whole or in part, with the production or investigation of the lessee's title when making the loan.

(3) This section applies to transfers of existing securities as well as to new securities and to investments made before or after the commencement of this section.

### **12C. Liability of trustee for loss on improper investments**

(1) If a trustee improperly lends trust money on a security that would have been a proper investment if the amount lent had been smaller than the actual amount lent, the security is to be taken to be a proper investment in respect of the smaller amount, and the trustee is liable only to make good the difference between the amount advanced and the smaller amount, with interest.

(2) This section applies to investments made before or after the commencement of this section.

### **12D. Court may take into account investment strategy**

If a trustee has been charged with a breach of trust in respect of a duty under this Part relating to the trustee's power of investment, the court, when considering the question of the trustee's liability, may take into account –

(a) the nature and purpose of the trust; and

(b) whether the trustee had regard to the matters set out in [section 8](#) so far as is appropriate to the circumstances of the trust; and

(c) whether the trust investments have been made under an investment strategy formulated in accordance with the duty of a trustee under this Part; and

(d) the extent to which the trustee acted on the independent and impartial advice of a person competent, or apparently competent, to give the advice.

### **12E. Set-off for gains and losses**

(1) The court, when considering an action for breach of trust arising out of, or in respect of, an investment by a trustee where a loss has been or is expected to be sustained by the trust, may set off all or part of the loss resulting from that investment against all or part of the gain resulting from any other investment, whether in breach of trust or not.

(2) The power of set-off under [subsection \(1\)](#) is in addition to any other power or entitlement to set off all or part of any loss against any property.

### **12F. Transitional provision**

Any provision in an Act or any other instrument, whether or not creating a trust, that empowers or requires a person to invest money in the investments authorised by the *Trustee Act 1898*, is to be read as if it empowered or required that person to invest that money according to the provisions of this Part as to the investment of trust funds.

## **PART III - Various Powers and Duties of Trustees**

### **13. Power of appointing new trustees**

(1) Where a trustee, either original or substituted, and whether appointed by the Court or otherwise, is dead, or remains out of Tasmania for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein –

(a) the persons nominated for the purpose of appointing new trustees in such event by the instrument, if any, creating the trust; or

(b) if there is no such person or no such person able and willing to act, the surviving or continuing trustees or trustee, or the personal representatives of the last surviving or continuing trustee –

may, by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of Tasmania, desiring to be discharged, refusing, or being unfit, or being incapable, as aforesaid.

(2) On the appointment of a new trustee for the whole or any part of trust property –

(a) the number of trustees may be increased;

(b) a separate set of trustees may be appointed for any part of the trust property, whether held on trusts distinct from those relating to any other part of the trust property or not, and notwithstanding that no new trustees are to be appointed for other parts of the trust property; and any existing trustee may be appointed or remain one of such separate set of trustees, or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part;

(c) it shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust; and

(d) any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done.

(3) Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(4) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(5) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and has effect subject to the terms of that instrument and to any provisions therein contained.

(6) Nothing in this section shall give power to appoint an executor or administrator.

#### **14. Retirement of trustee**

(1) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and has effect subject to the terms of that instrument and to any provisions therein contained.

#### **15. Vesting of trust property in new or continuing trustees**

(1) Where a deed or instrument by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed or instrument become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest, or right.

(2) Where a deed or instrument by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3) This section does not extend to land conveyed by way of mortgage for securing money subject to the trust, or to any such share, stock, annuity, or property as is only transferable in books kept by a company or other body or in manner directed by or under any Act.

(4) For purposes of registration of the deed or instrument in any registry, the person making the declaration shall be deemed the conveying party, and the conveyance shall be deemed to be made by him under a power conferred by this Act.

#### **16. Power of trustee for sale to sell by auction**

(1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or any other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss.

(2) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

#### **17. Power to sell subject to depreciatory conditions**

(1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(3) No purchaser, upon a sale made by a trustee, shall be at liberty to make any objection against the title upon the ground aforesaid.

#### **18. Power to sell under section 37 of the *Conveyancing and Law of Property Act 1884***

A trustee who is either a vendor or a purchaser may sell or buy without excluding the application of [\*section 37 of the Conveyancing and Law of Property Act 1884\*](#).

19.

#### **20. Power to authorize receipt of money by banker or Australian legal practitioner**

(1) A trustee may appoint a financial institution or Australian legal practitioner to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust, by permitting the financial institution or Australian legal practitioner to have

the custody of, and to produce a deed or instrument, having in the body thereof, or endorsed thereon, a receipt for such money, valuable consideration, or property, such deed or instrument being executed, or such endorsed receipt being signed by the trustee; and a trustee is not chargeable with breach of trust by reason only of his having made, or concurred in making, any such appointment; and the producing of any such deed or instrument by the financial institution or Australian legal practitioner has the same validity and effect as if the person appointing the financial institution or Australian legal practitioner had not been a trustee.

(2) A trustee may appoint a financial institution or Australian legal practitioner to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of assurance, by permitting the financial institution or Australian legal practitioner to have the custody of, and to produce, the policy of assurance, with a receipt signed by the trustee; and a trustee is not chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment.

(3) Nothing in this section shall exempt a trustee from any liability which he would have incurred if this Act had not been passed in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the financial institution or Australian legal practitioner for a period longer than is reasonably necessary to enable the financial institution or Australian legal practitioner, as the case may be, to pay or transfer the same to the trustee.

(4) Nothing in this section shall authorize a trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

## **21. Power to insure building or other property**

(1) A trustee may insure against loss or damage by fire any building or other insurable property to any amount, including the amount of any insurance already on foot, not exceeding 3 equal fourth parts of the full value of such building or property, and may pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who may be entitled wholly or partly to such income.

(2) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

(3) Nothing in this section shall authorize a trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

## **22. Power of trustees of renewable leaseholds to renew and to raise money for the purpose**

(1) A trustee of any leaseholds for lives or years which are renewable from time to time, either under any covenant or contract, or by custom or usual practice, may, if he thinks fit, and shall if thereto required by any person having any beneficial interest, present or future or contingent, in the leaseholds, use his best endeavours to obtain a renewed lease of the same lands on the accustomed and reasonable terms, and for that purpose may make or concur in making a surrender of the lease for the time being subsisting, and do all such other acts as are requisite: Provided that, when by the terms of the settlement or will the person in possession for his life or other limited interest is entitled to enjoy the trust property without any obligation to renew or to contribute to the expense of renewal, the consent in writing of that person must be obtained to the renewal on the part of the trustee.

(2) If money is required to pay for the renewal, the trustee effecting the renewal may pay the same out of any money then in his hands in trust for the persons beneficially interested in the lands to be comprised in the renewed lease, and if he has not in his hands sufficient money for the purpose, he may raise the money required by mortgage of the lands to be comprised in the renewed lease, or of any other lands for the time being subject to the uses or trusts to which those lands are

subject; and any person advancing money upon a mortgage purporting to be given under this power is not bound to see that the money is wanted, or that no more is raised than is wanted for the purpose.

(3) Nothing in this section shall authorize a trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

**23. Power of trustee to give receipts**

The receipt in writing of a trustee or of any person thereto authorized by him in writing, or, where there are several trustees, of any person or of any one or more of such trustees thereto respectively authorized by the trustees in writing for any money, securities, or other personal property or effects payable, transferable, or deliverable to him or them, as the case may be, under any trust or power, is a sufficient discharge for the same, and effectually exonerates the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

**24. Power of executors and trustees to compound, &c.**

(1) An executor, trustee, or administrator may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2) An executor or administrator or two or more trustees acting together, or a sole acting trustee when by the instrument, if any, creating the trust a sole trustee is authorized to execute the trusts and powers thereof, may –

(a) if and as he or they may think fit, accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed;

(b) allow any time for payment for any debt; and

(c) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's or intestate's estate or to the trust –

and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and has effect subject to the terms of that instrument, and to the provisions therein contained.

**25. Powers of two or more trustees exercisable by survivor**

(1) Where a power or trust is given to or vested in two or more trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

(2) . . . . .

(3) . . . . .

(4) . . . . .

(5) . . . . .

**25AA. Power to delegate trusts**

(1) Subject to this section, where there are more trustees than one, any of those trustees who

resides, or is about to reside, permanently out of this State and who is not expressly forbidden to do so by the instrument creating the trust may, notwithstanding any rule of law or equity to the contrary, delegate to any person resident in this State the execution or exercise of all or any of the trusts, powers, authorities, and discretions vested in him as trustee.

(2) Subject to this section, a trustee who is temporarily out of, or is about to depart temporarily from, this State and who is not expressly forbidden to do so by the instrument creating the trust may, notwithstanding any rule of law or equity to the contrary, delegate to any person resident in this State the execution or exercise of all or any of the trusts, powers, authorities, and discretions vested in him as trustee, whether alone or jointly with any other person or persons.

(3) A delegation under this section shall be by power of attorney executed as a deed.

(4) The power to delegate conferred by [subsection \(2\)](#) shall not be exercised in favour of a person who is the only other co-trustee unless that person is The Public Trustee or a trustee company.

(5) Notwithstanding the power to delegate conferred by this section, a trustee may not exercise that power unless his co-trustee or co-trustees (if any) and such other person as is empowered to appoint trustees by the instrument (if any) creating the trust, consent by the same or another deed to the delegation.

(6) Where a delegation by a trustee under this section has been duly made to, and accepted by, a person and is for the time being in operation, that person has, within the scope of the delegation, the same trusts, powers, authorities, discretions, liabilities, and responsibilities (except the power of delegation conferred by this section) as he would have if he were then the trustee.

(7) The donor of a power of attorney under this section is liable for the acts and defaults of the donee as if they were his own acts and defaults, and the donee is subject to the jurisdiction and powers of any court so far as respects the execution of the trust delegated to him in the same manner as if he were the trustee.

(8) Subject to the [Powers of Attorney Act 2000](#), a power of attorney given under this section –

(a) if the donor is out of this State when he executes it, comes into operation forthwith after its receipt in this State; or

(b) if the donor is in this State when he executes it, comes into operation when he leaves this State.

(9) A power of attorney under this section that authorizes the donee to act for the donor while he is temporarily out of this State ceases to operate on the donor's return to this State.

(10) Notwithstanding that a power of attorney under this section –

(a) has never come into operation;

(b) has ceased to operate; or

(c) has been revoked by the act of the donor of the power or his death or by operation of law –

any act done or instrument executed by the donee of the power is as valid and effectual in favour of a person dealing with the donee as if the power had come into operation and remained in operation or been unrevoked at the time when the act was done or the instrument was executed, unless that person had, at that time, actual notice that the power had never come into operation, had ceased to operate, or had been revoked.

(11) Notwithstanding that the donor of a power of attorney under this section has not obtained the consent or consents required by [subsection \(5\)](#), any act done, or instrument executed, by the donee of the power is as valid and effectual in favour of a person dealing with the donee as if that consent or those consents had been properly obtained, unless that person had, at the time when the act was done or the instrument was executed, actual notice that the consent or consents had not been obtained.

(12) A statutory declaration by the donee of a power of attorney under this section relating to any trust or estate that –

(a) the power has come into operation; or

(b) in any transaction the donee is acting in the execution of the trust, or the administration of the estate, to which the power relates –

is, in favour of a person dealing with the donee of the power, conclusive evidence of that fact.

(13) The fact that it appears from a power of attorney under this section, or from any evidence required for the purposes of such a power of attorney or otherwise, that in any transaction the donee of the power is acting in the execution of a trust does not affect with notice of the trust a person dealing in good faith with the donee.

(14) Where it is intended that the donee of a power of attorney under this section shall be entitled to transfer, or otherwise deal with, land to which the [Land Titles Act 1980](#) applies, the power shall be in the form, and executed and attested in the manner, prescribed by that Act.

(15) Nothing in this section limits or affects –

(a) the power of appointment of a new trustee in the place of a trustee who is absent from this State; or

(b) the power of the court to make any order by reason of that absence.

(16) In this section, *trustee* includes a tenant for life.

## **25A. Distribution of property or estate after notice by trustee or executor or administrator**

(1) Where a trustee or an executor or administrator who has taken out representation of an estate has given notice in accordance with this section –

(a) that he intends to distribute the property subject to the trust or the estate to which the notice relates or any part thereof among the persons entitled thereto; and

(b) requiring any person interested in that property or estate to send to the trustee, executor, or administrator, on or before the date specified in the notice, particulars of his claim in respect of that property or estate –

the trustee, executor, or administrator may, at any time after that date, distribute the property or estate or any part thereof, having regard only to the claims of persons of which he then has notice and without being liable for the property or estate or any part thereof so distributed to any person of whose claim he had no notice at the time of the distribution.

(2) Subject to [subsection \(3\)](#), the notice required to be given by a trustee or an executor or administrator of a deceased person for the purposes of [subsection \(1\)](#) is to be published –

(a) in the *Gazette*; and

(b) in at least one newspaper published or circulating in the locality in which the

deceased person resided or carried on business immediately before his or her death.

(3) Where a trustee or an executor or administrator has reason to believe that any person who has a claim against the property or estate that he wishes to distribute pursuant to [subsection \(1\)](#) resides in a place outside this State, the trustee, executor, or administrator shall, after applying by summons to a judge in chambers for directions with respect to the notice that he is required to give for the purposes of that subsection, give the notice by causing it to be advertised in such newspaper as the judge orders.

(4) For the purposes of [subsection \(1\)](#), the date specified in a notice under that subsection as the date on or before which claims in respect of the relevant property or estate are to be sent to the trustee, executor, or administrator who gave the notice –

(a) shall be the same in every advertisement relating to the property or estate; and

(b) shall, if those advertisements are published –

(i) only in this State, be not less than one nor more than two;

(ii) in another State or a Territory of the Commonwealth or in New Zealand, be not less than two nor more than 4; and

(iii) in any other place, be not less than 4 nor more than 8 –

months after the last of those publications.

(5) Where a trustee or an executor or administrator disputes a claim particulars of which he has received after giving notice in accordance with this section, the trustee, executor, or administrator may give to the person making the claim a notice in writing that the claim is disputed and requiring the claimant to withdraw the claim or to institute proceedings to enforce it within 6 months of the service of the last-mentioned notice.

(6) If a claim to which [subsection \(5\)](#) relates is not withdrawn or prosecuted as provided in that subsection, the trustee, executor, or administrator may apply by summons to a judge in chambers, on affidavit setting out the facts, for an order that, as against the trustee, executor, or administrator, the claim shall be absolutely barred, and the judge may make such order as he deems just, and the order binds every person whom it purports to affect.

(7) Where a trustee distributes property subject to a trust or an executor or administrator distributes an estate as provided by this section, nothing in this section prejudices the right of any person to follow the property or estate or any part thereof into the hands of any other person other than a purchaser who has received it, or frees the trustee, executor, or administrator from any obligation to make searches similar to those which an intending purchaser would be advised to make.

(8) This section applies to a trust or estate notwithstanding anything to the contrary in the will or other instrument (if any) creating the trust or relating to the estate.

(9) In this section, *representation* means the probate of a will or letters of administration.

## **26. Exoneration of trustees in respect of certain powers of attorney**

(1) A trustee, executor, or administrator acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the payment or act the person who gave the power of attorney was dead or had done some act to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying.

(2) Nothing in this section shall affect the right of any person entitled to the money as against the person to whom the payment is made; and the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

## **27. Implied indemnity of trustees**

(1) A trustee shall, without prejudice to the provisions of the instrument, if any, creating the trust, be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for any banker, broker, or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default.

(2) A trustee may reimburse himself, or pay or discharge out of the trust estate, all expenses incurred in or about the execution of his trusts or powers.

## **28. Right of beneficiary to apply to trustee for accounts**

(1) If any person beneficially interested in any property subject to any trust shall apply in writing to any trustee administering such trust for true and accurate accounts as to the state of the trust property, and of all receipts and payments on account thereof, such trustee shall, at the expense of the person requiring the same, render such accounts in accordance with the application within 28 days after the receipt thereof, provided that no such true and accurate accounts have been rendered during the 12 months preceding the receipt of such application.

(2) If any trustee neglects or refuses to render such accounts as aforesaid, he shall be personally liable to pay all costs and expenses incident to obtaining the same, upon an application to the Court under the provisions of the [\*Supreme Court Civil Procedure Act 1932\*](#).

## **29. Power of trustees to make advances to beneficiaries**

(1) Trustees may at any time pay or apply any capital money subject to a trust, for the advancement or benefit, in such manner as they may, in their absolute discretion think fit, of any person entitled to the capital of the trust property or of any share thereof, whether absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his death under any specified age or on the occurrence of any other event, and whether in possession or in remainder or reversion, and such payment or application may be made notwithstanding that the interest of such person is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs: Provided that –

(a) the money so paid or applied for the advancement or benefit of any person shall not exceed altogether in amount one-half of the presumptive or vested share or interest of that person in the trust property;

(b) if that person is or becomes absolutely and indefeasibly entitled to a share in the trust property the money so paid or applied shall be brought into account as part of such share;

(c) no such payment or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied unless such person is in existence and of full age and consents in writing to such payment or application.

(2) This section applies only where the trust property consists of money or securities or of property held upon trust for sale, calling in, and conversion, and such money or securities, or the

proceeds of such sale, calling in, and conversion are not by statute or in equity considered as land, or applicable as capital for the purposes of the Settled Land Act 1884.

(3) This section does not apply to trusts constituted or created before the commencement of this Act.

### **30. Protective trusts**

(1) Where any income, including an annuity or other periodical income payment, is directed to be held on protective trusts for the benefit of any person (in this section called "the principal beneficiary") for the period of his life or for any less period, then, during that period (in this section called the "trust period") the said income shall, without prejudice to any prior interest, be held on the following trusts, namely:

(a) Upon trust for the principal beneficiary during the trust period or until he, whether before or after the termination of any prior interest, does or attempts to do or suffers any act or thing, or until any event happens other than an advance under any statutory or express power, whereby, if the said income were payable during the trust period to the principal beneficiary absolutely during that period, he would be deprived of the right to receive the same or any part thereof, in any of which cases, as well as on the termination of the trust period, whichever first happens, this trust of the said income shall fail or determine;

(b) If the trust aforesaid fails or determines during the subsistence of the trust period, then, during the residue of that period, the said income shall be held upon trust for the application thereof for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the other or others of the following persons, that is to say:

(i) The principal beneficiary and his or her spouse, if any, and his or her children or more remote issue, if any; or

(ii) If there is no spouse or issue of the principal beneficiary in existence, the principal beneficiary and the persons who would, if he were actually dead, be entitled to the trust property or the income thereof or to the annuity fund, if any, or arrears of the annuity, as the case may be –

as the trustees in their absolute discretion, without being liable to account for the exercise of such discretion, think fit.

(2) This section does not apply to trusts coming into operation before the commencement of this Act, and has effect subject to any variation of the implied trusts aforesaid contained in the instrument creating the trust.

(3) Nothing in this section operates to validate any trust which would, if contained in the instrument creating the trust, be liable to be set aside.

## **PART IV - Trustee Companies**

### **31. Power of trustee companies to act for two or more trustees**

A company authorized by law to act as a trustee shall, where appointed trustee, be deemed to constitute for all purposes a trusteeship of more than one trustee, and may be appointed to act, or to continue to act as trustee, where two or more trustees are, by Act or other instrument, required to execute the trust, unless the instrument creating the trust expressly prohibits such appointment or action; and, notwithstanding anything to the contrary hereinbefore contained, in any such case any retiring trustee may be discharged although there will not be two or more trustees left to perform the

trust.

## **PART V - Powers of the Court**

### **32. Power of Court to appoint new trustees**

**(1)** The Court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult, or impracticable so to do without the assistance of the Court, make an order for the appointment of a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee. In particular and without prejudice to the generality of the foregoing provision, the Court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of a crime of such a nature that the Court considers he should be removed; or who is bankrupt, or is incapable, by reason of mental disorder, of exercising his functions as trustee.

**(2)** An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

**(3)** Nothing in this section shall give power to appoint an executor or administrator.

### **33. Vesting orders as to property**

**(1)** In any case where –

**(a)** the Court appoints or has appointed a new trustee;

**(b)** a trustee entitled to or possessed of any property, or entitled to a contingent right therein, either solely or jointly with any other person –

**(i)** is an infant;

**(ii)** is incapable, by reason of mental disorder, of exercising his functions as trustee;

**(iii)** is out of the jurisdiction of the Court; or

**(iv)** cannot be found;

**(c)** it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any property;

**(d)** as to the last trustee or trustees known to have been entitled to or possessed of any property, it is uncertain whether he or they or any of them be living or dead;

**(e)** there is no representative of a trustee who was entitled to or possessed of property, and has died intestate as to that property, or where it is uncertain who is the representative of a trustee who was entitled to or possessed of property and is dead; or

**(f)** a trustee jointly or solely entitled to or possessed of any property, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the property or a release of the right to convey the property or to release the right, and has wilfully refused or neglected to convey the property or release the right for 28 days after the date of the requirement –

the Court may make an order, in this Act called a vesting order, vesting the property in such person

in any such manner, and for any such estate as the Court may direct, or releasing or disposing of the contingent right to such person as the Court may direct.

**(2)** Where an order made under this section –

**(a)** is consequential on the appointment by the Court of a new trustee, the property shall be vested for such estate as the Court may direct in the persons who, on the appointment, are the trustees; and

**(b)** relates to a trustee entitled jointly with another person, the property or right shall be vested in such other person, either alone or with some other person, and shall not operate as a severance of any joint estate or interest unless the contrary be expressly declared in such order.

### **34. Vesting orders as to stock and choses in action**

**(1)** In any case where –

**(a)** the Court appoints or has appointed a new trustee;

**(b)** a trustee entitled alone or jointly with another person to stock or to a chose in action

–

**(i)** is an infant;

**(ii)** is incapable, by reason of mental disorder, of exercising his functions as trustee;

**(iii)** is out of the jurisdiction of the Court;

**(iv)** cannot be found;

**(v)** neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action, according to the direction of the person absolutely entitled thereto for 28 days next after a request in writing has been made to him by the person so entitled; or

**(vi)** neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action for 28 days next after an order of the Court for that purpose has been served on him;

**(c)** it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any stock or chose in action; or

**(d)** it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a chose in action is alive or dead –

the Court may make an order vesting the right to transfer or call for a transfer of the stock, or to receive the dividends or income thereof, or to sue for or recover the chose in action, in any such person as the Court may appoint.

**(2)** Where in any such case –

**(a)** the order is consequential on the appointment by the Court of a new trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and

(b) the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with some other person whom the Court may appoint.

(3) In all cases where a vesting order can be made under this section, the Court may, if it is more convenient, appoint some proper person to make or join in making the transfer.

(4) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court under this Act, may transfer the stock to himself or any other person, according to the order, and all companies shall obey every order under this section according to its tenor.

(5) Where an order is made under this section vesting the right to sue for or recover a chose in action or any interest in respect thereof in any person, such right shall vest accordingly, and such person may thereupon commence and carry on in his own name any action or other proceeding for the recovery of such chose in action in the same manner as the person in whom it was previously vested.

(6) After notice in writing of an order under this section it shall not be lawful for any company to transfer any stock to which the order relates, or to pay any dividends thereon except in accordance with the order.

(7) The Court may make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under the provisions of this Act is to be exercised.

(8) The provisions of this Act as to vesting orders apply to shares in ships registered under the Acts relating to merchant shipping as if they were stock.

### **35. Orders as to contingent rights of unborn persons**

Where any property is subject to a contingent right in an unborn person or class of unborn persons who on coming into existence would, in respect thereof, become entitled to or possessed of the property on any trust, the Court may make an order releasing the property from the contingent right, or may make an order vesting in any person the estate to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the property.

### **36. Vesting order in place of conveyance by certain persons under disability**

Where any person entitled to or possessed of any property, or entitled to a contingent right in any property by way of security for money, is an infant, or an involuntary patient within the meaning of the [\*Mental Health Act 1996\*](#), the Court may make an order vesting or releasing or disposing of the property or right in like manner as in the case of an infant trustee.

### **37. Vesting order in place of conveyance by representative of mortgagee**

Where a mortgagee of property has died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of the mortgage has been paid to a person entitled to receive the same, or the last-mentioned person consents to any order for the reconveyance of the property, then the Court may make an order vesting the property in such persons in such manner and for such estate as the Court may direct in any case where –

(a) the representative of the mortgagee is out of the jurisdiction of the Court or cannot be found;

(b) the representative of the mortgagee, on demand made by or on behalf of a person entitled to require a conveyance of the property, has stated in writing that he will not convey the same, or does not convey the same for the space of 28 days next after a proper deed or document for conveying the property has been tendered to him by or on behalf of the person so entitled;

(c) it is uncertain as to the survivor of several devisees of the mortgagee, or as to the representative of the mortgagee, whether he is living or dead; or

(d) there is no representative of a mortgagee who has died intestate as to the land, or where the mortgagee has died and it is uncertain who is his representative.

### **38. Vesting order consequential on judgment for sale or mortgage**

Where the Court gives a judgment or makes an order directing the sale or mortgage of any property, every person who is entitled to or possessed of the property, or entitled to a contingent right therein, and is a party to the action or proceeding in which the judgment or order is given or made, or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee within the meaning of this Act; and the Court may, if it thinks expedient, make an order vesting the property or any part thereof for such estate as the Court thinks fit in the purchaser or mortgagee or in any other person.

### **39. Vesting order consequential on judgment for specific performance**

Where a judgment is given for the specific performance of a contract concerning any land, or for the partition, or sale in lieu of partition or exchange, of any land, and generally when a judgment is given for the conveyance of any land either in cases arising out of the doctrine of election or otherwise, the Court may declare that any of the parties to the action are trustees of the land or any part thereof within the meaning of this Act, or may declare that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transactions concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Act, and thereupon the Court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

### **40. Effect of vesting order**

A vesting order made under any of the foregoing provisions shall, in the case of a vesting order consequential on the appointment of a new trustee, have the same effect as if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the property for such estate as the Court directs, or if there is no such person, or no such person of full capacity, then as if such person had existed and been of full capacity and had duly executed all proper conveyances of the property for such estate as the Court directs, and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

### **41. Power to appoint person to convey**

In all cases where a vesting order can be made under any of the foregoing provisions the Court may, if it is more convenient, appoint a person to convey or transfer the property or release the contingent right; and a conveyance, transfer, or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision.

### **42. Persons entitled to apply for orders**

(1) An order under this Act for the appointment of a new trustee or concerning any property subject to a trust, may be made on the application of any person beneficially interested in the property, whether under disability or not, or on the application of any person duly appointed trustee thereof.

(2) An order under this Act concerning any property subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

### **43. Powers of new trustee appointed by Court**

Every trustee appointed by the Court shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

### **44. Power to charge costs on trust estate**

The Court may order the costs and expenses of and incident to any application for an order appointing a new trustee, or for a vesting order, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be paid or raised out of the land or personal estate in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the Court may seem just.

### **45. Trustees of charities**

The powers conferred by this Act as to vesting orders may be exercised for vesting any property in any trustee of a charity or society over which the Court would have jurisdiction upon proceedings duly instituted, whether the appointment of the trustee was made by instrument under a power or by the Court under its general or statutory jurisdiction.

### **46. Orders made upon certain allegations to be conclusive evidence**

Where a vesting order as to any property is made under this Act, or under any Act relating to insanity founded on an allegation of the personal incapacity of a trustee, or on an allegation that a trustee or the representative of a mortgagee is out of the jurisdiction of the Court or cannot be found, or that it is uncertain which of several trustees, or which of several devisees of a mortgagee was the survivor, or whether the last trustee or the representative of a mortgagee is living or dead, or on an allegation that there is no representative of a trustee or mortgagee, or on an allegation that any trustee or mortgagee has died intestate without a representative, or has died and it is not known who is his representative, or has died and it is uncertain whether he died intestate or who is his representative, the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order; but this section shall not prevent the Court from directing a reconveyance or the payment of costs occasioned by any such order if it was improperly obtained.

### **47. Power of Court to make orders in certain cases not provided for by trust instruments, &c.**

(1) Where in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure, or other transaction is, in the opinion of the Court, expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the Court may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, upon such terms, and subject to such provisions and conditions, if any, as the Court may think fit, and may direct in what manner any money authorized to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

(2) The Court may rescind or vary any order made under this section, or may make any new or further order.

(3) An application to the Court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.

(4) This section does not apply to trustees of a settlement for the purposes of the [\*Settled Land Act 1884\*](#).

(5) The powers conferred on the Court by this section shall extend to all property vested in trustees for charitable, religious, or public trusts or purposes, whether by or under any Act or

otherwise, and notwithstanding any provision to the contrary in the Act or the trust instrument.

#### **48. Payment into Court by trustees**

(1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into Court, and the same shall, subject to Rules of Court, be dealt with according to the orders of the Court.

(2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into Court.

(3) Where any moneys or securities are vested in any persons as trustees and the majority are desirous of paying the same into Court, but the concurrence of the others cannot be obtained, the Court may order the payment into Court to be made by the majority without the concurrence of the others; and where any such moneys or securities are deposited with any banker, broker, or other depositary, the Court may order payment or delivery of the moneys or securities to the majority of the trustees for the purpose of payment into Court, and every transfer, payment, and delivery made in pursuance of any such order shall be valid, and take effect as if the same had been made on the authority or by the act of all the persons entitled to the moneys and securities so transferred, paid, or delivered.

#### **49. Payment into Court of money of certain persons under disability**

Where any infant or any involuntary patient within the meaning of the [Mental Health Act 1996](#) shall be entitled, or when any unborn person or class of unborn persons would upon coming into existence become entitled, to any money payable in discharge of any property which has been made the subject of an order under this Act, the person by whom such money is payable may pay the same into Court in trust in any cause then depending concerning such money, or, if there shall be no such cause, to the credit of such infant or other persons as aforesaid; and the Court may, upon petition or summons, make such order as to the investment of such money or the payment out or distribution thereof, or as to the payment of the dividends or interest thereof, as to the Court may seem reasonable.

#### **50. Jurisdiction of Court in cases of breach of trust**

If it appears to the Court that a trustee is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the passing of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the Court may relieve the trustee, either wholly or partly, from personal liability for the same.

#### **51. Power to give judgment in absence of trustee**

When in any cause or matter the Court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant or party to the cause or matter, to serve him with process of the Court or with any proceedings in the cause or matter, and that he cannot be found, the Court may hear and determine the cause or matter, and give judgment therein against that person in his character of a trustee as if he had been duly served or had entered an appearance in the cause or matter, and had also appeared by his counsel and Australian legal practitioner at the hearing, but without prejudice to any interest he may have in the matters in question in the cause or matter in any other character.

#### **52. Power to sanction sale of land or minerals separately**

(1) When a trustee or other person is for the time being authorized to dispose of land by way of sale, exchange, or partition, the Court may sanction his so disposing of the land with an exception or reservation of any minerals, and with or without rights and powers of or incidental to the working, getting, or carrying away of the minerals, or so disposing of the minerals, with or without the said rights or powers, separately from the residue of the land.

(2) Any such trustee or other person, having obtained such sanction, may, unless forbidden by the instrument creating the trust or direction, without any further application to the Court, so dispose of any such land or minerals.

(3) This section does not derogate from any power which a trustee may have under the Settled Land Act 1884, or otherwise.

### **53. Power to make beneficiary indemnify for breach of trust**

Where a trustee shall have committed a breach of trust at the instigation or request, or with the consent in writing of a beneficiary, the Court may, if it shall think fit, and notwithstanding that the beneficiary may be a married woman entitled for her separate use, whether with or without a restraint upon anticipation, make such order as to the Court shall seem just for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him.

## **PART VI - Miscellaneous and Supplemental**

### **54. Provisions as to appointments of trustees apply to trustees under the Settled Land Act 1884**

(1) All the powers and provisions contained in this Act with reference to the appointment of new trustees, and the discharge and retirement of trustees, apply to and include trustees for the purposes of the Settled Land Act 1884, whether appointed by the Court or by the settlement, or under provisions contained in the settlement.

(2) This section applies and has effect with respect to an appointment or a discharge and retirement of trustees taking place before as well as after the commencement of this Act.

### **55. Power of trustees, with sanction of Court, to raise by mortgage moneys for preservation of estate or like purposes**

(1) A trustee may, with the sanction of the Court, and notwithstanding any directions given by the instrument under which the trust arises, raise, by way of mortgage of the trust property or any part thereof, any sums of money which, in the opinion of the Court, it may be necessary to raise for the purpose of –

(a) the preservation or improvement of the trust property, or its insurance against damage by fire; or

(b) the discharge of any debts or liabilities charged upon the trust property or for the payment of which the trust property may be made available.

(2) Any sum so raised may be raised at such rate of interest and shall be repayable at such period as the Court may sanction.

**56.**

**56A.**

### **57. Decrees, &c., to bind land under the Real Property Act 1862 Land Titles Act 1980**

Where any decree, order, declaration, or document is made or executed under the provisions of this Act, by the Court or by any person, relating to lands held under the Land Titles Act 1980, the Recorder of Titles shall, on application to him by any party interested, cause to be recorded in the Register kept under that Act every such decree, order, declaration, and document, and thereupon the same shall, as to the land affected thereby, take effect according to the tenor thereof.

### **58. Remuneration of trustee**

In any case in which there is not in the instrument creating the trust, or otherwise, any provision for remunerating a trustee, it shall be lawful for a judge in a summary way to allow such trustee such

remuneration as shall be just and reasonable for his pains and trouble in the execution of the trust, and to determine the fund out of which, or the persons by whom, the same shall be paid.

#### **59. Trust estates not affected by trustee becoming a convict**

Property vested in any person on any trust, or by way of mortgage, shall not, in case of that person being sentenced to a term of imprisonment exceeding 2 years, vest in any such administrator as may be appointed under that Act, but shall remain in the trustee or mortgagee or survive to his co-trustee or descend to his representative, as if he had not been so sentenced: Provided that this enactment shall not affect the title to the property, so far as relates to any beneficial interest therein of any such trustee or mortgagee.

**60.**

#### **61. Decree for sale**

Upon a decree of the Court directing a sale of any property of a deceased person for the payment of his debts, every person seised or possessed of such property, or entitled to any contingent right therein as a representative of such deceased debtor, shall be deemed to be so seised or possessed or entitled, as the case may be, upon a trust within the meaning of this Act, and the Court may make an order wholly discharging the contingent right of any unborn person in such property.

#### **62. Power of judges to make rules under this Act**

The judges, or a majority of them, may make general rules for regulating the practice and fees, and generally for giving effect to the purposes of this Act.

#### **63. Costs in discretion of Court**

In all proceedings and matters which may come before the Court or a judge under this Act, the Court or judge may make such order as to the payment of costs and expenses as it or he deems just.

#### **64. Application of Act**

(1) The provisions of this Act, except when otherwise expressly provided, apply as well to trusts, executorships, and administratorships created by instruments executed before as to trusts, executorships, and administratorships created by instruments executed after the passing of this Act.

(2) Save as in this Act expressly provided, nothing therein contained authorizes any trustee, executor, or administrator to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust, executorship, or administratorship.

#### **65. Act to operate as indemnity**

This Act, and every order purporting to be made under this Act, shall be a complete indemnity to all persons for any acts done pursuant thereto; and it shall not be necessary for any person to inquire concerning the propriety of the order, or whether the Court had jurisdiction to make the same.

### **SCHEDULE I**

[Section 3](#)

<b>Regnal Year and Number.</b>	<b>Short Title.</b>	<b>Extent of Repeal.</b>
16 Vict. No. 18	<i>Trustee Act 1852</i>	The whole Act
22 Vict. No. 9	<i>Trustee Act</i>	The whole Act

	1858	
23 Vict. No. 3	<i>Trustee Relief Act</i>	The whole Act
47 Vict. No. 19	<i>Conveyancing and Law of Property Act 1884</i>	Sections 33 to 41
53 Vict. No. 14	<i>Trustee Act 1889</i>	The whole Act
59 Vict. No. 24	<i>Trustee Act 1895</i>	The whole Act

## SCHEDULE II

### Table Of Amendments

Act	Number and year	Date of commencement
Trustee Act 1898	No. 34 of 1898	1.11.1898
Trustee Act 1907	No. 5 of 1907	1.11.1907
Trustee Act 1916	No. 3 of 1916	3.11.1916
Companies Act 1920	No. 66 of 1920	1.2.1921
Supreme Court Civil Procedure Act 1932	No. 58 of 1932	1.1.1934
Statute Law Revision Act 1934 {\plain\fs20 and proclamations thereunder}	No. 78 of 1934	13.12.1934
Trustee Act 1941	No. 17 of 1941	17.6.1941
Trustee Act 1964	No. 6 of 1964	5.8.1964
Mental Health Act 1963	No. 63 of 1963	1.12.1964
Trustee Act 1965	No. 7 of 1965	22.6.1965
Decimal Currency Act 1965	No. 55 of 1965	14.2.1966
Trustee Act 1970	No. 66 of 1970	23.12.1970
Trustee Act 1973	No. 65 of	28.11.1973

	1973	
Limitation Act 1974	No. 98 of 1974	1.1.1975
Trustee Act 1976	No. 55 of 1976	11.11.1976
Statute Law Revision Order (No. 4) 1977	S.R. 1977, No. 255	5.10.1977
Trustee Amendment Act 1979	No. 49 of 1979	28.11.1979
Land Titles Act 1980	No. 19 of 1980	1.10.1981
Trustee Amendment Act 1981	No. 47 of 1981	21.10.1981
Trustee Amendment Act 1985	No. 52 of 1985	23.5.1985
Trustee Amendment Act (No. 2) 1985	No. 65 of 1985	2.9.1985
Administrative Arrangements (Miscellaneous Amendments) Act 1990	No. 5 of 1990	1.7.1990
Statute Law Revision Act 1991	No. 46 of 1991	18.12.1991
Financial Institutions (Application of Laws) Act 1992	No. 10 of 1992	1.9.1992
Perpetuities and Accumulations Act 1992	No. 23 of 1992	1.12.1992
Trustee Amendment Act 1992	No. 35 of 1992	10.12.1992
Statute Law Revision Act 1993	No. 100 of 1993	23.12.1993
Statute Law Revision Act 1994	No. 68 of 1994	25.11.1994
Government Business Enterprises (Consequential Amendments) Act 1995	No. 20 of 1995	1.7.1995
Financial Institutions Legislation (Miscellaneous Amendments) Act 1995	No. 63 of 1995	14.11.1995
Hydro-Electric Corporation (Consequential and Miscellaneous Provisions) Act 1996	No. 61 of 1996	17.12.1996
Financial Institutions (Miscellaneous Amendments) Act 1996	No. 62 of 1996	1.1.1997
Electricity Companies Act 1997	No. 69 of	22.12.1997 (ss. 1, 24, 25, 26(3) and 27, this s. and

	1997	Scheds. 2 and 3)
Trustee Amendment (Investment Powers) Act 1997	No. 64 of 1997	1.4.1998
Mental Health (Consequential Amendments) Act 1996	No. 32 of 1996	1.11.1999
Financial Sector Reform (Tasmania) (Miscellaneous Amendments) Act 1999	No. 74 of 1999	1.1.2000
Corporations (Consequential Amendments) Act 2001	No. 42 of 2001	15.7.2001
Land Valuers Act 2001	No. 101 of 2001	28.6.2002 (remaining provisions)
Statute Law Revision Act 2003	No. 9 of 2003	16.4.2003
Relationships (Consequential Amendments) Act 2003	No. 45 of 2003	1.1.2004 NEEDS MANUAL OVERRIDE: id="GS2/AN/EN"CommencementThis Act commences on the day on which the Relationships Act 2003 commences.
Trustee Legislation (Miscellaneous Amendments) Act 2006	No. 9 of 2006	1.10.2006
Justice and Related Legislation (Miscellaneous Amendments) Act 2008	No. 18 of 2008	26.6.2008
Legal Profession (Miscellaneous and Consequential Amendments) Act 2007	No. 66 of 2007	31.12.2008

CURRENT VIEW: 31 Dec 2008 -