

TASMANIA

TRUSTEE COMPANIES AMENDMENT BILL 2010

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement

PART 2 – TRUSTEE COMPANIES ACT 1953 AMENDED

3. Principal Act
4. Section 3 amended (Interpretation)
5. Sections 4 and 4A repealed
6. Section 7 amended (Power of courts, &c., to appoint trustee company as trustee, receiver, &c.)
7. Section 11 amended (Power of Court to act on affidavit of authorised person of trustee company)
8. Section 12 repealed
9. Section 13 amended (Power of trustee company to act under power of attorney)
10. Section 15A amended (Power of trustee company to undertake other services)
11. Section 17 amended (Power of authorised person to attend on behalf of trustee company)
12. Section 17A repealed
13. Section 18 substituted
 18. Commission chargeable by trustee company

14. Section 18A amended (Management charge in respect of charitable trusts, &c.)
15. Section 18C substituted
18C. Investment in common fund, &c.
16. Section 18E repealed
17. Sections 18G and 18H repealed
18. Sections 20 and 21 repealed
19. Part III, Division 1 repealed
20. Section 34A repealed
21. Section 36 amended (Power of Court to make order for account on application of Public Trustee)
22. Sections 38, 39 and 39AA repealed
23. Sections 40 and 40AA repealed
24. Section 40A amended (Regulations)
25. Schedules 2, 2A, 3 and 5 repealed

PART 3 – ADMINISTRATION AND PROBATE ACT 1935 AMENDED

26. Principal Act
27. Section 25 amended (Administration bonds)

PART 4 – REPEAL OF ACT

28. Repeal of Act

TRUSTEE COMPANIES AMENDMENT BILL 2010

*(Brought in by the Minister for Justice, the Honourable
Larissa Tahireh Giddings)*

A BILL FOR

***An Act to amend the *Trustee Companies Act 1953* and the
*Administration and Probate Act 1935****

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 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Trustee Companies
Amendment Act 2010*.

2. Commencement

The provisions of this Act commence on a day
or days to be proclaimed.

Trustee Companies Amendment Act 2010
Act No. of

s. 3

Part 2 – Trustee Companies Act 1953 Amended

PART 2 – TRUSTEE COMPANIES ACT 1953
AMENDED

3. Principal Act

In this Part, the *Trustee Companies Act 1953** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “administrator”:

“authorised person”, in relation to the performance or exercise of a power, function or duty by or for a trustee company under this Act, means such person or office-holder as the trustee company, either specifically or generally and whether personally or by office or function, authorises for that purpose;

- (b) by omitting the definition of “financial institution”;
- (c) by omitting the definition of “insurance company”;

*No. 72 of 1953

Trustee Companies Amendment Act 2010
Act No. of

Part 2 – Trustee Companies Act 1953 Amended

s. 5

(d) by omitting the definition of “subordinated loan”;

(e) by omitting the definition of “trustee company” and substituting the following definition:

“trustee company” means a licensed trustee company within the meaning of Chapter 5D of the Corporations Act;

(f) by omitting the definition of “trustee holding company”.

5. Sections 4 and 4A repealed

Sections 4 and 4A of the Principal Act are repealed.

6. Section 7 amended (Power of courts, &c., to appoint trustee company as trustee, receiver, &c.)

Section 7 of the Principal Act is amended by omitting subsection (3).

7. Section 11 amended (Power of Court to act on affidavit of authorised person of trustee company)

Section 11 of the Principal Act is amended by omitting “the secretary” and substituting “an authorised person”.

Trustee Companies Amendment Act 2010
Act No. of

s. 8

Part 2 – Trustee Companies Act 1953 Amended

8. Section 12 repealed

Section 12 of the Principal Act is repealed.

9. Section 13 amended (Power of trustee company to act under power of attorney)

Section 13(1) of the Principal Act is amended by omitting “the secretary” and substituting “an authorised person”.

10. Section 15A amended (Power of trustee company to undertake other services)

Section 15A of the Principal Act is amended by omitting subsections (2), (3) and (4).

11. Section 17 amended (Power of authorised person to attend on behalf of trustee company)

Section 17 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “the secretary” twice occurring and substituting “an authorised person”;
- (b) by omitting from subsection (2) “secretary” twice occurring and substituting “authorised person”.

Trustee Companies Amendment Act 2010
Act No. of

Part 2 – Trustee Companies Act 1953 Amended

s. 12

12. Section 17A repealed

Section 17A of the Principal Act is repealed.

13. Section 18 substituted

Section 18 of the Principal Act is repealed and the following section is substituted:

18. Commission chargeable by trustee company

- (1) A trustee company may, in addition to any money properly expended by it and chargeable against an estate placed under its administration or control, charge and receive commission at such rate as the board of directors or other governing body of the trustee company determines.
- (2) However, the commission must not in any case exceed the limits set or permitted by or under Part 5D.3 of Chapter 5D of the Corporations Act.

14. Section 18A amended (Management charge in respect of charitable trusts, &c.)

Section 18A of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “, for each complete period of 5 years for which it so administers the trust and in

Trustee Companies Amendment Act 2010
Act No. of

s. 15

Part 2 – Trustee Companies Act 1953 Amended

addition to any GST payable in respect of its services,”;

- (b) by omitting from subsection (1) “may determine, not exceeding 0.25 per cent of the value of the property the subject of the trust as determined at the end of that period of 5 years.” and substituting “determines, not exceeding in any case the limits set or permitted by or under Part 5D.3 of Chapter 5D of the Corporations Act.”;
- (c) by omitting subsection (3).

15. Section 18C substituted

Section 18C of the Principal Act is repealed and the following section is substituted:

18C. Investment in common fund, &c.

- (1) In this section –

“common fund” means a common fund within the meaning of Division 3 of Part 5D.2 of Chapter 5D of the Corporations Act.

- (2) A trustee company may invest any money in its hands –
- (a) on the separate account of the trust estate to which the money belongs; or

Trustee Companies Amendment Act 2010
Act No. of

Part 2 – Trustee Companies Act 1953 Amended

s. 15

-
- (b) in a common fund if –
- (i) the trust deed, will or other instrument governing the money does not direct that it be invested in a specific manner; and
 - (ii) investment in a common fund is not inconsistent with that trust deed, will or instrument; and
 - (iii) the investment is restricted to classes of investments in which the money might lawfully be invested on its separate account.
- (3) A trustee company is to invest the money comprised in a common fund in investments authorised by the *Trustee Act 1898*.
- (4) To the extent that Division 3 of Part 5D.2 of Chapter 5D of the Corporations Act or regulations in force under the Corporations Act provide for the establishment of common funds, the provisions of that Act or those regulations prevail over this section.

Trustee Companies Amendment Act 2010
Act No. of

s. 16

Part 2 – Trustee Companies Act 1953 Amended

16. Section 18E repealed

Section 18E of the Principal Act is repealed.

17. Sections 18G and 18H repealed

Sections 18G and 18H of the Principal Act are repealed.

18. Sections 20 and 21 repealed

Sections 20 and 21 of the Principal Act are repealed.

19. Part III, Division 1 repealed

Division 1 of Part III of the Principal Act is repealed.

20. Section 34A repealed

Section 34A of the Principal Act is repealed.

21. Section 36 amended (Power of Court to make order for account on application of Public Trustee)

Section 36(1) of the Principal Act is amended by omitting “the secretary of”.

Trustee Companies Amendment Act 2010
Act No. of

Part 2 – Trustee Companies Act 1953 Amended

s. 22

22. Sections 38, 39 and 39AA repealed

Sections 38, 39 and 39AA of the Principal Act are repealed.

23. Sections 40 and 40AA repealed

Sections 40 and 40AA of the Principal Act are repealed.

24. Section 40A amended (Regulations)

Section 40A of the Principal Act is amended by omitting subsection (2).

25. Schedules 2, 2A, 3 and 5 repealed

Schedules 2, 2A, 3 and 5 to the Principal Act are repealed.

Trustee Companies Amendment Act 2010
Act No. of

s. 26

Part 3 – Administration and Probate Act 1935 Amended

**PART 3 – ADMINISTRATION AND PROBATE ACT
1935 AMENDED**

26. Principal Act

In this Part, the *Administration and Probate Act 1935** is referred to as the Principal Act.

27. Section 25 amended (Administration bonds)

Section 25 of the Principal Act is amended as follows:

- (a) by inserting in subsection (6) “, a trustee company” after “Trustee”;
- (b) by inserting the following subsection after subsection (7):

(8) In this section –

“trustee company” means
trustee company within
the meaning of the
Trustee Companies Act
1953.

*No. 38 of 1935

Trustee Companies Amendment Act 2010
Act No. of

Part 4 – Repeal of Act

s. 28

PART 4 – REPEAL OF ACT

28. Repeal of Act

This Act is repealed on the ninetieth day from the day on which all of the provisions of this Act commence.