

Western Australia

## **Trustees of Western Australia Limited (Transfer of Business) Act 2003**

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As at 17 Apr 2003

No. 18 of 2003

Extract from [www.slp.wa.gov.au](http://www.slp.wa.gov.au), see that website for further information



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## **Trustees of Western Australia Limited (Transfer of Business) Act 2003**

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### **CONTENTS**

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1.	Short title	2
2.	Commencement	2
3.	Interpretation	2
4.	Act binds Crown	4
5.	Undertaking vested in Plan B Trustees	4
6.	Supplementary provisions as to vesting of undertaking	6
7.	Rights in respect of land that is an excluded asset	8
8.	Proceedings	9
9.	Evidence	9
10.	Transfer of employees	9
11.	Prescribed securities	10
12.	Officers to register documents	11
13.	Protection of persons dealing with Plan B Trustees or TrustWest	11
14.	Vesting of TrustWest common trust funds in Plan B Trustees	12
15.	Amendment of <i>Trustee Companies Act 1987</i>	13



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## **Trustees of Western Australia Limited (Transfer of Business) Act 2003**

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**No. 18 of 2003**

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**An Act to provide for the transfer of the business conducted by and the undertaking of Trustees of Western Australia Limited to Plan B Trustees Limited, to amend the *Trustee Companies Act 1987*, and for related purposes.**

[Assented to 17 April 2003]

### **Reasons for enactment**

1. It is proposed to transfer the business and undertaking of Trustees of Western Australia Limited to Plan B Trustees Limited, both corporations being subsidiaries of Plan B Financial Services Limited.
2. In the interest of business efficiency it is expedient that the business conducted by and undertaking of Trustees of Western Australia Limited should be transferred to Plan B Trustees Limited, and that all property held by Trustees of Western Australia Limited as trustee should be vested in Plan B Trustees Limited.

**s. 1**

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3. It is expedient to enact legislation to effect the transfer and vesting and to make provision for other matters related to the transfer and vesting.

The Parliament of Western Australia enacts as follows:

**1. Short title**

This Act may be cited as the *Trustees of Western Australia Limited (Transfer of Business) Act 2003*.

**2. Commencement**

This Act comes into operation on a day fixed by proclamation.

**3. Interpretation**

In this Act, unless the contrary intention appears —

**“appointment”** means the appointment of TrustWest as executor, manager, trustee, agent or attorney made —

- (a) by will, codicil, deed, agreement, declaration, nomination or other instrument;
- (b) by the Supreme Court; or
- (c) under any written law,

and includes the appointment of TrustWest as one of 2 or more executors, managers, trustees, agents or attorneys;

**“appointed day”** means the day on which section 5 comes into operation;

**“corporation”** means a body whether corporate or unincorporate;

**“excluded assets”** means —

- (a) documents required by law to be kept by TrustWest; and
- (b) land held by or vested in TrustWest as beneficial owner and not as executor, trustee, nominee or in any other capacity on behalf of another person, and buildings or structures on that land;

**“instrument”** means an instrument (other than this Act) that creates, evidences, modifies or extinguishes rights or liabilities, or would do so if it or a copy of it were lodged, filed or registered under any written or other law, and includes any judgment, order or process of a court and any will, codicil, declaration of trust, deed of trust or power of attorney;

**“land”** includes any estate or interest in land, or an interest in respect of land;

**“legal proceedings”** includes an arbitration;

**“liabilities”** means all liabilities, duties and obligations, whether actual, contingent or prospective;

**“Plan B Trustees”** means Plan B Trustees Limited;

**“prescribed securities”** means securities within the meaning of the *Corporations Act 2001* of the Commonwealth;

**“property”** means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal and, without limiting the generality of that meaning, includes choses in action, goodwill, rights, interests and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

**“rights”** means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

**“security”** means a mortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, indemnity, lien, pledge or other security for the

**s. 4**

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payment of money or for the discharge of any other liability, and includes an agreement or undertaking to give or execute any of those things whether upon demand or otherwise;

**“transferred employee”** means an employee of TrustWest who becomes an employee of Plan B Trustees under this Act;

**“TrustWest”** means Trustees of Western Australia Limited;

**“undertaking”,** in relation to TrustWest, means —

- (a) all property of TrustWest (apart from excluded assets);
- (b) all rights and liabilities of TrustWest (apart from rights and liabilities relating to excluded assets); and
- (c) all appointments.

**4. Act binds Crown**

This Act binds the Crown.

**5. Undertaking vested in Plan B Trustees**

- (1) On the appointed day the undertaking of TrustWest is vested in Plan B Trustees.
- (2) On and after the appointed day a reference to TrustWest in —
  - (a) any instrument, caveat, transmission or survivorship application; or
  - (b) any other document,

made, passed or executed before that day is (except to the extent, if any, that it relates to an excluded asset, and unless the context otherwise requires) to be read and construed as a reference to Plan B Trustees.

- (3) On and after the appointed day a reference to the holder for the time being of a particular office (other than the office of a director, secretary or auditor) within TrustWest in any instrument made or executed before that day is (unless the

context otherwise requires) to be read and construed as a reference to —

- (a) the person for the time being holding office as Chief Executive Officer of Plan B Trustees; or
  - (b) such other officer of Plan B Trustees as is designated from time to time by the Chief Executive Officer or by any other officer acting under delegation from the Chief Executive Officer.
- (4) Without prejudice to the generality of subsection (1) but despite anything to the contrary in any written or other law, if any registered estate or interest in land (being land under the *Transfer of Land Act 1893*) is under this section vested in Plan B Trustees, whether as beneficial owner, executor, manager, trustee, agent or otherwise, Plan B Trustees is to be taken to be the registered proprietor of any such estate or interest of which TrustWest is the registered proprietor (other than the excluded assets) and the estate or interest may be dealt with accordingly.
- (5) The Registrar of Titles must, upon the application of Plan B Trustees and the payment of the appropriate fee under the *Transfer of Land Act 1893*, register Plan B Trustees as the proprietor of the estate or interest in land in the State (being land under the *Transfer of Land Act 1893*) that has vested in the applicant under this section.
- (6) An instrument relating to land (being land under the *Transfer of Land Act 1893*) that has vested in Plan B Trustees under this section must, if the instrument is executed by Plan B Trustees and is otherwise in registrable form, be registered by the Registrar of Titles upon the payment of the appropriate fee under the *Transfer of Land Act 1893*, notwithstanding that Plan B Trustees has not been registered as the proprietor of the land under subsection (5).
- (7) If for any reason a liability to TrustWest immediately before the appointed day remains a liability to TrustWest on or after that

**s. 6**

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day, TrustWest has and may enforce the same rights in respect of that liability (including rights under any security relating to the liability) as if this Act had not been enacted.

**6. Supplementary provisions as to vesting of undertaking**

- (1) Without prejudice to the generality of any other provision of this Act, subsections (2) to (12) have effect on and after the appointed day.
- (2) An instruction, appointment, order, direction, power of attorney, mandate or authority given to TrustWest (other than in relation to an excluded asset) and in force immediately before the appointed day is to be taken to have been given to Plan B Trustees.
- (3) An instrument given or addressed to TrustWest (other than in relation to an excluded asset or an asset acquired or liability incurred on or after the appointed day), on or after the appointed day is to be taken to have been given or addressed to Plan B Trustees.
- (4) A security held by TrustWest as security for a debt or other liability owed to TrustWest incurred before the appointed day is available to Plan B Trustees as security for the discharge of that debt or liability and, if the security extends to future or prospective debts or liabilities, is available as security for the discharge of debts owed to or liabilities to Plan B Trustees and incurred on or after the appointed day.
- (5) In relation to a security to which TrustWest is entitled or subject immediately before the appointed day, Plan B Trustees is entitled to all the rights and priorities (however arising) and is subject to all liabilities to which TrustWest would have been entitled or subject if this Act had not been enacted.
- (6) All the rights and liabilities of TrustWest as bailee of documents or chattels to which TrustWest is entitled or subject immediately

before the appointed day are transferred to and assumed by Plan B Trustees.

- (7) A negotiable instrument or order for payment of money which, immediately before the appointed day, is drawn on or given to or accepted or endorsed by TrustWest, or payable at a place of business of TrustWest, is to be taken as having the same effect on or after the appointed day as if it had been drawn on or given to or accepted or endorsed by Plan B Trustees instead of TrustWest, or was payable at the place of business of Plan B Trustees.
- (8) The relationship between TrustWest and a client, beneficiary or depositor of TrustWest immediately before the appointed day becomes a relationship of the same nature between Plan B Trustees and the client, beneficiary or depositor, and the same rights and liabilities, including rights of set-off, exist between Plan B Trustees and the client, beneficiary or depositor as existed immediately before the appointed day between TrustWest and the client, beneficiary or depositor.
- (9) All contracts, declarations of trusts, deeds of trust, appointments, agreements, powers of attorney, conveyances, deeds, leases, licences, instruments, undertakings and notices (whether or not in writing) entered into by, made with, given to or by, or addressed to TrustWest (whether alone or with any other person) before the appointed day and in effect immediately before the appointed day are, to the extent that they were previously binding on and enforceable by, against or in favour of TrustWest, binding on and enforceable by, against or in favour of Plan B Trustees as fully and effectually in every respect (except to the extent that they relate to an excluded asset) as if, instead of TrustWest, Plan B Trustees had been the person by whom they were entered into, with whom they were made, to or by whom they were given or to whom they were addressed, as the case may be.

**s. 7**

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- (10) No legal proceedings commenced before the appointed day by, against or in favour of TrustWest are ended or otherwise prejudiced by reason of this Act.
- (11) Nothing effected by this Act —
  - (a) is to be regarded as placing TrustWest or Plan B Trustees in breach of trust, contract or confidence, or as otherwise rendering either of them liable for a civil wrong;
  - (b) is to be regarded as placing either of them in breach of any written or other law, or of any contractual provision, prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information; or
  - (c) releases any surety wholly or in part from all or any of the surety's obligations.
- (12) Nothing done or suffered by TrustWest or Plan B Trustees under this Act —
  - (a) is to be regarded as a breach of trust, contract or confidence or any other civil wrong;
  - (b) is to be regarded as a breach of any written or other law, or of any contractual provision, prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information; or
  - (c) releases any surety wholly or in part from all or any of the surety's obligations,

if it would not have been so regarded or had that effect had it been done or suffered by TrustWest and this Act had not been enacted.

**7. Rights in respect of land that is an excluded asset**

- (1) If immediately before the appointed day, under a lease, licence or other contract or agreement, TrustWest has rights in respect of the occupation or use of land, being an excluded asset, those

rights may, notwithstanding that there has been no assignment, transfer, underletting or other disposition by TrustWest, be exercised on or after the appointed day by Plan B Trustees.

- (2) For the purposes of a lease, licence or other contract or agreement relating to the occupation or use of land, TrustWest does not part with possession of land by permitting Plan B Trustees to exercise rights under subsection (1) in respect of the land.

**8. Proceedings**

- (1) Legal proceedings to which TrustWest was a party immediately before the appointed day may be continued by or against Plan B Trustees.
- (2) A judgment, order or award obtained by or against TrustWest in legal proceedings commenced before the appointed day may be enforced by or against Plan B Trustees.

**9. Evidence**

Documentary or other evidence that would have been admissible for or against the interests of TrustWest if this Act had not been enacted is admissible for or against the interests of Plan B Trustees.

**10. Transfer of employees**

Despite any other provision of this Act —

- (a) on the appointed day each employee of TrustWest ceases to be an employee of TrustWest and becomes an employee of Plan B Trustees but, for the purposes of every written and other law, award, determination, contract and agreement relating to the employment of each such employee, the employee's contract of employment is to be taken to be unbroken and the period of the employee's service with TrustWest is to be taken to have been a period of service with Plan B Trustees;

**s. 11**

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- (b) the terms and conditions of the employment of each transferred employee with Plan B Trustees are —
  - (i) on and after the appointed day (until varied) identical with the terms and conditions of the employee's employment with TrustWest immediately before the appointed day, and are capable of variation in the same manner as they were immediately before that day; and
  - (ii) subject to any written or other law, award or determination relating to those terms and conditions, also capable of variation in the same manner as the general terms and conditions of employment of other persons employed by Plan B Trustees are capable of variation;
- (c) a transferred employee is not entitled to receive any payment or other benefit by reason only of ceasing to be an employee of TrustWest because of this Act;
- (d) nothing in this Act, other than paragraph (c), affects rights or liabilities under any provident, benefit, superannuation or retirement fund or scheme relating to employees of TrustWest; and
- (e) a director, secretary or auditor of TrustWest immediately before the appointed day does not become a director, secretary or auditor of Plan B Trustees because of this Act.

**11. Prescribed securities**

- (1) If prescribed securities are vested in Plan B Trustees because of this Act, a certificate signed by the Chief Executive Officer of Plan B Trustees, or by an officer acting under delegation from the Chief Executive Officer, stating that the prescribed securities have so vested is, despite any written or other law or any instrument, a sufficient duly stamped instrument of transfer of those prescribed securities.

- (2) Subsection (1) applies only to and in respect of prescribed securities which when vested in Plan B Trustees will be held by way of security.

**12. Officers to register documents**

The Registrar of Titles, the Registrar of Deeds and Transfers, a mining registrar and any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or other property, must take cognisance of this Act and are empowered to record and register in the appropriate manner such of those documents as are necessary to give effect to this Act in relation to any land or property to which the documents properly relate.

**13. Protection of persons dealing with Plan B Trustees or TrustWest**

- (1) No person dealing with Plan B Trustees or TrustWest (in any capacity), nor the Registrar of Titles, nor any other person registering or certifying title to land or having the power or duty to examine or receive evidence as to title to land, is, in respect of any dealing or transaction entered into or purporting to be entered into by Plan B Trustees, or TrustWest —
- (a) to be concerned to see or enquire into whether any property the subject of the dealing or transaction (whether or not that property is or includes an estate or interest in land) is or is not an excluded asset; or
  - (b) affected by any notice, express, implied, or constructive, that any such property is or is not an excluded asset.
- (2) If any dealing or transaction is entered into by Plan B Trustees with any person, in relation to or in connection with an excluded asset, it is to be taken, in favour of that person and any person claiming through or under that person, that Plan B Trustees has full power and authority to enter into that dealing or transaction

**s. 14**

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as if the excluded asset had vested in Plan B Trustees under this Act.

- (3) If any dealing or transaction is entered into by TrustWest with any person, in relation to or in connection with any property which has vested in Plan B Trustees under this Act, it is to be taken, in favour of that person and any person claiming through or under that person, that TrustWest has full power and authority to enter into that dealing or transaction as if the asset were an excluded asset.
- (4) Nothing in this section affects the liability of Plan B Trustees, or TrustWest, or either of them, in respect of anything done or purporting to have been done, by Plan B Trustees or TrustWest, as the case may be, in relation to or in connection with an excluded asset or any other property.

**14. Vesting of TrustWest common trust funds in Plan B Trustees**

Without prejudice to any other provision of this Act, on and after the appointed day all contracts, choses in action, engagements, mortgages, and assets and liabilities of TrustWest in its capacity as trustee of —

- (a) an Estate Common Trust Fund established by it under section 19 of the *Trustee Companies Act 1987*; or
- (b) an Investment Common Trust Fund established by it under section 20 of the *Trustee Companies Act 1987*,

is vested in Plan B Trustees as trustee of the Estate Common Trust Fund or Investment Common Trust Fund (as the case may be) and is to be held by Plan B Trustees upon the same terms, covenants and conditions as those upon which they were held by TrustWest immediately before the appointed day.

**15. Amendment of *Trustee Companies Act 1987***

Schedule 1 to the *Trustee Companies Act 1987*\* is amended as follows:

- (a) by deleting “LAMP Management Limited.” and “Trustees of Western Australia Limited.”;
- (b) by inserting, in the appropriate alphabetical position — “ Plan B Trustees Limited. ”.

[\* *Reprinted as at 1 November 1999.*

*For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 464-5, and Act No. 10 of 2001.]*

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