

THE WEST AUSTRALIAN TRUSTEE EXECUTOR AND AGENCY COMPANY LIMITED.

No. 85 of 1974.

AN ACT to repeal and re-enact section 16, and to amend sections 21A and 21B, of The West Australian Trustee Executor and Agency Company Limited Act, 1893-1969.

[Assented to 10th December, 1974.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as *The West Australian Trustee Executor and Agency Company Limited Act Amendment Act, 1974.*

Short title
and citation.

(2) In this Act The West Australian Trustee Executor and Agency Company Limited Act, 1893-1969 is referred to as the principal Act.

As approved
for reprint
13th Janu-
ary, 1970.

(3) The principal Act as amended by this Act may be cited as the West Australian Trustee Executor and Agency Company Limited Act, 1893-1974.

Section 16
repealed and
re-enacted.
(Company to
be paid a
commission
on moneys
received by
it.)

2. Section 16 of the principal Act is repealed and re-enacted as follows—

16. (1) In addition to all moneys properly expended by the Company and chargeable against any estate, trust, or fund heretofore or hereafter committed to the administration or management of the Company as executor, administrator, trustee, receiver, committee, trustee in bankruptcy or guardian, or as such guarantor or surety as aforesaid, or as attorney, the Company shall be entitled to charge, retain or receive against, from or out of such estate, trust, or fund—

- (a) a commission, to be fixed from time to time by the directors of the Company, not being less than one hundred dollars and not exceeding six dollars for every one hundred dollars of the gross value of such estate and a commission of six dollars for every one hundred dollars of income from such estate;
- (b) a fee (according to the value of the services rendered) for the preparation of income and land taxation returns, the inspection and report upon real and leasehold estate, the arrangement of insurances, and the keeping of books of account (including the preparation of balance sheets and profit and loss accounts) in respect of any business;
- (c) in respect of any business wholly belonging to, or in which an interest as partner is held by, the estate an additional fee at the rate per annum of one-half of one per centum of the whole, or, as the case may be, such

proportional part as the interest of the estate bears to the whole, of the book values of the assets employed in such business;

- (d) in respect of a perpetual trust, at the end of each five year period computed from the date of committal and occurring after the coming into operation of this paragraph, an additional fee at the rate of one-quarter of one per centum of the then gross value of the trust, such fee being payable out of the corpus or of the income of the trust as the Company may determine;
- (e) all fees which any officer of the Company may receive or be entitled to receive, for acting as a director of any other company connected with the administration, or management, of the estate, trust, or fund and so that neither the officer, nor the estate, trust, or fund, shall be entitled to such fees or any part thereof; and
- (f) in respect of any property which may be notionally added to the value of the estate of any deceased person for the purpose of assessment of duty (either State or Commonwealth) a fee (according to the value of the services rendered) for the purpose of satisfying the requirements of the laws of the State and the Commonwealth relating to death and estate duties and, when required, in apportioning and recovering, for the benefit of the estate of any such deceased person, the proportion of duties assessed on such notional estate, or in acting in any other manner howsoever in connection with such property whether at the request of any surviving joint tenant of or joint

tenants of or any donee or donees of or other person or persons with an interest in such property or otherwise and so that the Company may, on behalf of the estate of any such deceased person, charge and recover from the surviving joint tenant or joint tenants or any donee or donees or other person or persons such proportion of such fee as the Company may consider, in the circumstances, fair and reasonable.

(2) The Company shall be entitled to charge, retain or receive against, from or out of any income of a Common Trust Fund or other common fund established and kept pursuant to this Act a fee (according to the value of the services rendered) calculated at a rate not exceeding one-half of one per centum per annum upon the capital sums invested in the Common Trust Fund or other common fund on account of the estates, trusts, properties, agencies, or persons concerned during the period in respect of which the income is received or allocated, for the establishment, keeping (including the keeping of books of account) and conduct of the Common Trust Fund or other common fund.

(3) The commission, which the Company is entitled to receive under this section, shall not in any way be affected or diminished by the fact that any other person may, or may not, be entitled to, or be allowed, commission in respect of the same estate.

(4) Such commission and fees shall be received and accepted by the Company as a full recompense and remuneration for acting as aforesaid, and no other charges beyond the said commission and fees shall be made by the Company, but if in any case the Court shall be of opinion that any commission or fee charged is excessive, it shall be competent for the Court

to review and reduce the same, provided that commission chargeable under paragraph (a) of subsection (1) of this section shall not exceed the amount of the scale of commission published by the Company from time to time, but nothing in this section shall prevent—

- (a) the payment of any commission which a testator in his will or a settlor has directed to be paid;
- (b) the payment of any commission or fee which has been agreed upon between the trustee company and the parties interested therein,

either in addition to or in lieu of the commission provided for by this section.

(5) In this section, the expression “gross value” means the gross amount realised for the assets for the time being (both real and personal) of the estate without deduction in respect of debts or liabilities secured or unsecured and for this purpose where an asset of an estate is distributed, transferred, appropriated, or released, without realisation, to beneficiaries, whether by or as a result of agreement between beneficiaries or otherwise, that asset shall be deemed to have been realised at the value thereof when it is so distributed, transferred, appropriated or released. .

3. Section 21A of the principal Act is amended—

Section 21A
amended.
(Common
trust fund.)

(a) as to subsection (3)—

- (i) by adding after the word “property”, in line four, the passage “, agency”;
- and
- (ii) by adding after the word “property”, in the last line, the passage “, agency”;

(b) as to subsection (5), by adding after the word "property", in the last line, the passage ", agency,";

(c) as to subsection (6), by adding after the word "property", in line two, the passage ", agency,";

(d) as to subsection (9)—

(i) by adding before the word "income", in line two, the word "net"; and

(ii) by adding after the word "properties", in line four the passage ", agencies,"; and

(e) by adding subsections as follows—

(10) Where the Company is a co-trustee of any trust moneys, those trust moneys may be invested as aforesaid in a Common Trust Fund with the consent of every other co-trustee of such trust moneys.

(11) The Company may create more than one Common Trust Fund or similar fund but each fund shall be separately maintained, identified, and recorded in the books of the Company and in all other respects the provisions of subsections (2) to (10) inclusive of this section shall apply to each fund. .

Section 21B
amended.
(Contributory invest-
ments.)

4. Section 21B of the principal Act is amended—

(a) by adding after the section number "21B." the subsection designation "(1)";

(b) by adding after the word "estate", in line three, the words "or agency";

(c) by adding after the word “estates”—

(i) in line nine; and

(ii) in the last line,

the words “or agencies” in each case; and

(d) by adding a subsection as follows—

(2) Where the Company is the co-trustee of an estate or trust, any moneys belonging to that estate or trust may be invested as aforesaid with the consent of every other co-trustee of such estate or trust. .
