



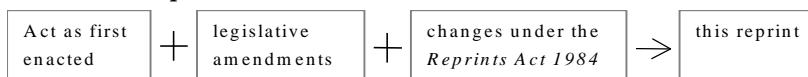
Western Australia

Trustee Companies Act 1987

Reprint 4: The Act as at 2 March 2012

Guide for using this reprint

What the reprint includes



Endnotes, Compilation table, and Table of provisions that have not come into operation

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, modifying or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

Notes amongst text (italicised and within square brackets)

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
 - removed (because it was repealed or deleted from the law); or
 - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

Reprint numbering and date

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3rd reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

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Defined Terms



Western Australia

**Reprinted under the
Reprints Act 1984 as
at 2 March 2012**

Trustee Companies Act 1987

An Act to provide for the powers, duties, privileges and restrictions of trustee companies, to repeal the Acts² relating to certain trustee companies and for connected purposes.

Part I — Preliminary

1. Short title

This Act may be cited as the *Trustee Companies Act 1987*¹.

2. Commencement

This Act shall come into operation on such day as is fixed by proclamation¹.

3. Terms used

(1) In this Act unless the contrary intention appears —

board of directors, in relation to a trustee company, includes committee of management, council or other governing body of the trustee company;

Commissioner means the Commissioner for Corporate Affairs;

Corporations Act means the *Corporations Act 2001* of the Commonwealth;

Court means the Supreme Court of Western Australia;

estate includes all real or personal property of any kind committed to the management or administration of a trustee company;

Treasurer means the Treasurer of the State;

trustee company means a licensed trustee company as defined in the Corporations Act section 601RAA;

will includes a codicil and any other testamentary instrument or disposition.

[(2)-(8) *deleted*]

[Section 3 amended by No. 42 of 1994 s. 4; No. 10 of 2001 s. 198; No. 27 of 2007 s. 25; No. 39 of 2011 s. 4.]

[4. Deleted by No. 39 of 2011 s. 5.]

Part II — Powers and duties of trustee companies

5. Trustee company may act as executor and obtain probate

- (1) Where a trustee company is named, either alone or jointly with any other person, as executor in the last will of a testator, that trustee company may —
 - (a) act as executor and may apply to the Court for and obtain probate of the will of the testator; and
 - (b) may perform and discharge all the acts and duties of an executor as fully and effectually as any other executor.
- (2) The Court may grant probate to a trustee company on an application under subsection (1).
- (3) This section applies to wills made before or after the commencement of this Act.

6. Person entitled to probate may authorise trustee company to obtain administration with will annexed

- (1) Where a person may apply for and obtain probate of the will of a testator without reserving leave to any other person to apply for probate, the first-mentioned person may instead of applying for probate —
 - (a) join with a trustee company in an application for a grant of letters of administration with the will annexed to himself and the trustee company jointly; or
 - (b) authorise a trustee company to apply to the Court for a grant of letters of administration with the will annexed.
- (2) Where a trustee company applies to the Court as authorised under subsection (1), the Court may grant letters of administration with the will annexed to the trustee company, either alone or jointly as the case may require, unless the testator by his will expressed his desire that the office of executor should not be delegated or should not be delegated to a trustee company.

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- (3) This section applies to wills made before or after the commencement of this Act.

7. Person entitled to administration with will annexed may authorise trustee company to obtain administration with will annexed

- (1) Where a person may apply for and obtain letters of administration with the will annexed of the estate of a testator, the person may —
- (a) join with a trustee company in an application for a grant of letters of administration with the will annexed to himself and the trustee company jointly; or
 - (b) instead of applying to the Court for a grant, authorise a trustee company to apply to the Court for a grant of letters of administration with the will annexed.
- (2) Where a trustee company applies to the Court as authorised under subsection (1), the Court may grant letters of administration with the will annexed to the trustee company, either alone or jointly as the case may require, unless the testator by his will expressed his desire that the office of administrator should not be held by a trustee company or by that trustee company.
- (3) This section applies to wills made before or after the commencement of this Act.

8. Person entitled to administration on intestacy may authorise trustee company to obtain administration

- (1) A person who is entitled to obtain administration of the estate of a person who died intestate may —
- (a) join with a trustee company in an application for a grant of letters of administration of the estate to himself and the trustee company jointly; or

(b) instead of applying to the Court for a grant, authorise a trustee company to apply to the Court for a grant of letters of administration of the estate.

(2) Where —

(a) a person joins with a trustee company in an application under subsection (1)(a); or

(b) a trustee company makes an application as authorised under subsection (1)(b),

the Court may grant letters of administration of the estate in accordance with the application.

9. Trustee company may act as administrator

Where the administration of an estate, with or without the will annexed, is granted to a trustee company, the trustee company may perform and discharge all the acts and duties that belong to the office of administrator or administrator with the will annexed, as the case may require.

10. Trustee company may elect to administer small estates without grant of probate or administration

(1) Where a person, before or after the commencement of this Act, dies testate or intestate, in or out of Western Australia, leaving property in Western Australia the gross value of which as estimated by a trustee company does not at the time of election exceed the amount prescribed by regulation for the purposes of this section and no person has taken out probate or administration in Western Australia, the trustee company may, in all cases where it is entitled to apply for a grant of administration or a grant of probate, instead of obtaining such a grant, file in the office of the Court an election in writing setting out the name, residence, and occupation (so far as then known to it) of the deceased person, and the estimated value of the property of the deceased person in Western Australia, as then known, and electing to administer.

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- (2) On such an election being filed, the trustee company shall be deemed to be the executor of the will or the administrator of the whole of the estate of the deceased person in all respects as if a grant of probate or letters of administration, as the case may be, had been granted to it.
- (3) Where after the filing of an election under this section the gross value of the property to be administered is found to exceed the amount prescribed for the purposes of this section, or the property to which the election relates is found to include property outside the State, the trustee company shall, as soon as practicable, file in the Court an affidavit made pursuant to section 16 as to the facts, and when that is done such election shall cease to have effect and the trustee company shall proceed in the manner provided by the *Administration Act 1903* to seek an order to administer the estate.
- (4) Where after the filing of an election under this section the trustee company finds that the person named in the notice who had been believed to have died intestate had died testate, the trustee company shall, as soon as practicable, file in the Court an affidavit made under section 16 as to the facts, and when that is done such election shall cease to have effect accordingly, and the Company shall file with the Master of the Court its accounts of all transactions in the matter of the estate of the deceased person.

11. Rights of interested persons not prejudiced by grant to trustee company

Nothing in this Part and no grant of probate or letters of administration with or without the will annexed to a trustee company or election to administer filed under section 10 by a trustee company shall prejudice or affect the right of any person interested in the estate of a deceased person, other than a person who authorised the trustee company to apply to the Court for a grant of probate or letters of administration or to file an election to administer, to apply for and obtain from the Court a grant of

probate or letters of administration with or without the will annexed.

12. Trustee company may be appointed trustee, receiver etc.

- (1) Where any court, judge or other person has power to appoint a person as —
- (a) trustee; or
 - (b) receiver or receiver and manager; or
 - (c) guardian of the estate of a minor; or
 - (d) surety or guarantor,

a trustee company may be so appointed.

- (2) Subject to this section, a trustee company may be appointed or may act or continue to act as sole trustee in all cases notwithstanding that it is provided by the terms of any instrument creating the trust or of any power or otherwise that there shall be more than one trustee to perform the trust.
- (3) A trustee company shall not be appointed in any case in which the instrument creating the trust or power forbids the appointment of a trustee company.
- (4) A trustee company shall not be appointed or be entitled to act as sole trustee in any case in which the instrument creating the trust or power expressly provides that there shall be another trustee in addition to a trustee company or that a trustee company shall not be appointed or act as sole trustee.
- (5) No bond, recognizance or other security for the proper discharge of any of the duties referred to in subsection (1) shall be required to be given by or on behalf of a trustee company.

13. Trustee company may act under power of attorney

- (1) A trustee company may act, either alone or jointly with any other person, under a power of attorney by which the trustee

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company is appointed attorney by any person or by any company or other corporation.

- (2) Nothing in this section authorises any person, company or other corporation to confer any power upon a trustee company that cannot by law be delegated to or performed by an attorney.

14. Executor etc. may appoint trustee company to act instead

Any executor, administrator or trustee may appoint a trustee company to act as executor, administrator or trustee in his stead, and a trustee company if so appointed by power of attorney may act within the scope of the authority conferred upon it as effectually as the executor, administrator or trustee could have acted and may exercise all discretionary and other powers delegated by the principal as fully as the principal could have exercised them.

15. Executor etc. may appoint trustee company to discharge duties

- (1) Subject to this section, an executor or administrator acting under a probate or letters of administration, a trustee, receiver, receiver and manager, guardian of the estate of a minor, or committee or manager of the estate of a person of unsound mind or an incapable person may, with the consent of the Court, appoint a trustee company to perform and discharge all the acts and duties of the executor, administrator, trustee, receiver, receiver and manager, guardian, committee or manager, as the case may be, and upon such an appointment the trustee company shall have power to perform and discharge all those acts and duties.
- (2) Subsection (1) applies in relation to a probate or letters of administration granted before or after the commencement of this Act and in relation to a trustee, receiver, receiver and manager, guardian, committee or manager appointed before or after the commencement of this Act.
- (3) No appointment may be made under this section if the testator in his will or the settlor of the trust, as the case may be,

expressed the desire in the will or trust instrument that a trustee company should not be appointed to perform and discharge acts and duties instead of the executor, administrator or trustee.

- (4) Where a trustee company is appointed under this section to perform and discharge the acts and duties of an office, the executor, administrator, trustee, receiver, receiver and manager, guardian, committee or manager so appointing the trustee company shall be released from liability in respect of all acts done or omitted to be done by the trustee company acting under the appointment.

16. Who may represent trustee company in court etc.

- (1) Where a trustee company applies for a grant of probate or letters of administration or acts as executor, administrator, trustee, receiver, receiver and manager, guardian, committee, manager, surety, guarantor or in any other fiduciary capacity, the trustee company may be represented in any court or elsewhere by a director, secretary or other officer of the trustee company authorised for that purpose by the board of directors.
- (2) Where in any of the circumstances referred to in subsection (1) a declaration, affidavit or statement is required to be made by a trustee company, whether on oath or otherwise, the declaration, affidavit or statement may be made on behalf of the trustee company by a director, secretary or other officer of the trustee company authorised for that purpose by the board of directors.
- (3) In each of the circumstances referred to in subsection (1), the members of the board of directors shall be jointly and severally responsible to the Court and liable to be proceeded against by process in any court having jurisdiction for the proper discharge of the duties of the trustee company as if such members of the board had jointly and severally applied for appointment or been appointed as executor, administrator, trustee, receiver, receiver and manager, guardian, committee, manager, surety or guarantor instead of the trustee company.

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- (4) Notwithstanding the personal liability of any director or other officer of a trustee company, the trustee company remains liable for any pecuniary loss occasioned through any breach or neglect of trust or duty committed by the trustee company or any of its officers, whether such trust or duty is implied by the law or expressly conferred or imposed by the instrument under which the trustee company acts.

17. Trustee company may be removed from office etc. as executor etc.

A trustee company that has been appointed executor or administrator, with or without a will annexed and whether by appointment, assignment, power of attorney, election or otherwise, shall be subject in all respects to the same control and to removal or restraint from acting and generally to the jurisdiction of the courts in the same manner as any other executor or administrator.

[18-23. Deleted by No. 39 of 2011 s. 6.]

[24-26. Deleted by No. 39 of 2011 s. 8.]

27. Unclaimed estate property, how trustee company to deal with

- (1) This section applies only to moneys and property that form part of an estate of which a trustee company is —
- (a) executor; or
 - (b) administrator, with or without a will annexed and whether by appointment, assignment, power of attorney, election or otherwise.
- (2) All moneys that remain unclaimed by the person entitled to them for 2 years after the time when those moneys became payable to that person shall, except where payment is restrained by injunction of a court of competent jurisdiction, be paid by the trustee company to the Treasurer.

- (3) All property, other than moneys, that remains unclaimed by the person entitled to it for 2 years after the time when that property became available to that person shall, except where action by the trustee company under this subsection is restrained by injunction of a court of competent jurisdiction or the approval of the Treasurer is obtained, be sold without delay by the trustee company and the net proceeds paid to the Treasurer after deducting and retaining the reasonable costs of and incidental to the sale.
- (4) On paying moneys to the Treasurer in accordance with this section a trustee company shall be relieved from all further liability in respect of the moneys so paid.
- (5) The Treasurer shall deal with moneys received under this section in the same manner as prescribed retained money is dealt with under the *Unclaimed Money Act 1990* and that Act shall apply accordingly.
- (6) A trustee company shall, not later than 2 months after the end of each financial year of the company, deliver to the Treasurer a statement of all unclaimed moneys to which subsection (1) applies that during that financial year have been held by it and setting out particulars of the estates for which the money has been received, the dates and amounts of payments to the Treasurer under this section and, if any moneys have not been paid to the Treasurer as required by subsection (2) or (3), the reason for the delay.
- (7) A trustee company that, without reasonable excuse, refuses or fails to comply with subsection (2), (3) or (6) commits an offence and is liable to a fine not exceeding \$500 and \$50 for each day during which the offence continues.

[Section 27 amended by No. 42 of 1994 s. 8.]

Part III — Transfer of estate assets and liabilities

[Heading inserted by No. 39 of 2011 s. 11.]

Division 1 — Preliminary

[Heading inserted by No. 39 of 2011 s. 11.]

28. Terms used in Corporations Act have the same meaning in this Part

If a term is given a meaning in the Corporations Act, it has the same meaning in this Part unless the contrary intention appears in this Part.

[Section 28 inserted by No. 39 of 2011 s. 11.]

Division 2 — Compulsory transfers

[Heading inserted by No. 39 of 2011 s. 11.]

29. Compulsory transfer if trustee company's licence cancelled

- (1) The purpose of this section is to facilitate compulsory transfers of estate assets and liabilities under the Corporations Act Part 5D.6.
- (2) This section applies if —
 - (a) ASIC cancels the licence of a trustee company (the ***transferring company***) and makes a determination under the Corporations Act section 601WBA that there is to be a transfer of estate assets and liabilities from the transferring company to another licensed trustee company (the ***receiving company***); and
 - (b) ASIC issues a certificate of transfer under the Corporations Act section 601WBG for the transfer; and
 - (c) either or both of the transferring company or the receiving company are registered in Western Australia.

- (3) When the certificate of transfer comes into force, the receiving company is taken to be the successor in law of the transferring company, to the extent of the transfer.
- (4) In particular —
 - (a) if the transfer is a total transfer — all the assets and liabilities of the transferring company become respectively the assets and liabilities of the receiving company without any transfer, conveyance or assignment; and
 - (b) if the transfer is a partial transfer — all the assets and liabilities of the transferring company that are included in the list (referred to in the Corporations Act section 601WBG(2)(c)) included in, or attached to, the certificate of transfer become respectively assets and liabilities of the receiving company without any transfer, conveyance or assignment; and
 - (c) to the extent of the transfer — the duties, obligations, immunities, rights and privileges applying to the transferring company apply to the receiving company.
- (5) If the certificate of transfer includes provisions of a kind referred to in the Corporations Act section 601WBG(3) —
 - (a) specifying that particular things are to happen or are taken to be the case, those things are taken to happen, or to be the case, in accordance with those provisions; or
 - (b) specifying a mechanism for determining things that are to happen or are taken to be the case, things determined in accordance with that mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism.

[Section 29 inserted by No. 39 of 2011 s. 11.]

30. Certificates evidencing operation of this Division

- (1) An authorised ASIC officer may, by a certificate in writing signed by the officer, certify that a specific asset or liability has become an asset or liability of the receiving company under this Division.
- (2) For all purposes and in all proceedings, a certificate purporting to be issued under subsection (1) is evidence of the matters certified.
- (3) ASIC is empowered to authorise, in writing, a person who is a member of ASIC, or of its staff, to issue certificates under this section.

[Section 30 inserted by No. 39 of 2011 s. 11.]

31. Registration or record of transfer

The Registrar of Titles, the Registrar of Deeds and Transfers and any other person or authority required or authorised under a law of the State to register or record transactions affecting assets or liabilities, or documents relating to such transactions, must, on application under this section accompanied by a certificate issued under section 30, register or record in an appropriate manner the transfer or transfers to which the certificate relates.

[Section 31 inserted by No. 39 of 2011 s. 11.]

32. Exemption from State tax

- (1) In this section —
State tax includes duty chargeable under the *Duties Act 2008* and any other tax, duty, fee, levy or charge under a law of the State.
- (2) State tax is not payable in respect of a compulsory transfer of estate assets or liabilities facilitated under this Division.

[Section 32 inserted by No. 39 of 2011 s. 11.]

Division 3 — Voluntary transfers

[Heading inserted by No. 39 of 2011 s. 11.]

33. Voluntary transfers, regulations about

- (1) The Governor may make regulations to facilitate the voluntary transfer of estate assets and liabilities from one trustee company (the *transferring company*) to another trustee company (the *receiving company*) if ASIC has made a determination under the Corporations Act allowing the transfer.
- (2) Without limiting the generality of subsection (1), the regulations may —
 - (a) give effect to the transfer of estate assets and liabilities from the transferring company to the receiving company; and
 - (b) provide that the receiving company is to be taken to be the successor in law in relation to estate assets and liabilities of the transferring company, to the extent of the transfer; and
 - (c) provide for the liquidation or dissolution of the transferring company; and
 - (d) provide for the identification of estate assets or liabilities of the transferring company; and
 - (e) provide for the transfer of estate assets and liabilities of the transferring company; and
 - (f) provide for the registration or recording of the transfer (with or without formal application) by the Registrar of Titles or any other person or authority; and
 - (g) provide for evidence of matters relating to the transfer; and
 - (h) provide for relief from the consequences of anything done or allowed under regulations made under this section; and

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Part III Transfer of estate assets and liabilities

Division 4 Relationship of Part with other laws

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- (i) provide for payment, or exemption from payment, of a State tax, as defined in section 32(1), in respect of the transfer; and
 - (j) provide for any other matter of a savings or transitional nature consequent on the transfer; and
 - (k) provide for and give effect to the transfer of duties, obligations, immunities, rights and privileges of the transferring company from the transferring company to the receiving company.
- (3) Regulations made under this section have effect despite anything in a contract, deed, undertaking, agreement or other instrument.

[Section 33 inserted by No. 39 of 2011 s. 11.]

Division 4 — Relationship of Part with other laws

[Heading inserted by No. 39 of 2011 s. 11.]

34. Relationship of Part with other laws

- (1) This Part has effect despite anything in a contract, deed, undertaking, agreement or other instrument.
 - (2) Nothing done by or under this Part —
 - (a) places a receiving company, a transferring company or another person in breach of contract or confidence or otherwise makes any of them guilty of a civil wrong; or
 - (b) places a receiving company, a transferring company or another person in breach of —
 - (i) a law of the State; or
 - (ii) a contractual provision prohibiting, restricting or regulating the assignment or transfer of an asset or liability or the disclosure of information;
- or

- (c) releases a surety, wholly or partly, from all or any of the surety's obligations.
- (3) Without limiting subsection (1), if, apart from this section, the advice or consent of a person would be necessary in a particular respect, the advice is taken to have been obtained or the consent is taken to have been given.

[Section 34 inserted by No. 39 of 2011 s. 11.]

[Part IV deleted by No. 39 of 2011 s. 6.]

[Part V heading deleted by No. 39 of 2011 s. 7.]

[Part VI (s. 35-37) deleted by No. 39 of 2011 s. 10.]

Part VII — Miscellaneous

38. Trust funds held by trustee company may be pooled for investment

- (1) Where a trustee company holds moneys belonging to more than one estate upon trusts which require or permit the investment of those moneys, the trustee company may invest such moneys as one fund and distribute the income arising rateably among the estates to which the moneys so invested belong; and any loss arising from any such investment shall likewise be borne rateably by those estates.
- (2) Any such investment shall be made either in investments for the time being authorised by the *Trustees Act 1962* for the investment of trust funds or in investments authorised by each of the trust instruments.

[39, 40. Deleted by No. 39 of 2011 s. 12.]

41. Costs of applications made under this Act

The Court may order the costs and expenses of and incidental to any application under this Act to the Court to be paid or raised out of the estate in respect of which the application is made, or out of the income of the estate, or to be borne and paid in such a manner and by such person as the Court considers just.

[42. Deleted by No. 39 of 2011 s. 13.]

43. False or misleading statements in documents

- (1) A person who, in a document required by or for the purposes of this Act or lodged with the Commissioner, makes or authorises the making of a statement that to his knowledge is false or misleading in a material particular, or omits or authorises the omission of any matter or thing without which the document is to his knowledge misleading in a material respect, is guilty of an offence.

Penalty: \$10 000 or imprisonment for 2 years, or both.

- (2) A person who makes or authorises the making of a statement that is based on information that to his knowledge —
- (a) is false or misleading in a material particular; or
 - (b) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect,

shall, for the purposes of subsection (1), be deemed to have made or authorised the making of a statement that to his knowledge was false or misleading in a material particular.

- (3) A person who, in a document required by or for the purposes of this Act or lodged with the Commissioner —
- (a) makes or authorises the making of a statement that is false or misleading in a material particular; or
 - (b) omits or authorises the omission of any matter or thing without which the document is misleading in a material respect,

without having taken reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit any matter or thing without which the document would be misleading, as the case may be, is guilty of an offence.

Penalty: \$5 000 or imprisonment for 1 year, or both.

- (4) A person who makes or authorises the making of a statement without having taken reasonable steps to ensure that the information on which the statement was based —
- (a) was not false or misleading in a material particular; and
 - (b) did not have omitted from it a matter or thing the omission of which would render the information misleading in a material respect,

shall, for the purposes of subsection (3), be deemed to have made or authorised the making of a statement without having

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taken reasonable steps to ensure that the statement was not false or misleading.

- (5) For the purposes of subsections (1) and (3), where —
- (a) at a meeting, a person votes in favour of a resolution approving, or otherwise approves, a document required by or for the purposes of this Act or required to be lodged with the Commissioner; and
 - (b) the document contains a statement that, to the person's knowledge, is false or misleading in a material particular, or omits any matter or thing without which the document is, to the person's knowledge, misleading in a material respect,

the person shall be deemed to have authorised the making of the statement or the omission of the matter or thing.

44. Criminal liability of trustee company officers

- (1) Where a trustee company is guilty of an offence against this Act —
- (a) every officer of the trustee company (including a person who has subsequently ceased to be an officer of the trustee company) who was in any way, by act or omission, directly or indirectly knowingly concerned in or party to the commission of the offence is guilty of an offence; and
 - (b) the penalty applicable to an offence committed by an officer under paragraph (a), is the penalty applicable to the offence of which the trustee company is guilty.
- (2) For the purposes of this section, *officer* in relation to a trustee company includes a member of the board of directors, a principal executive officer and a secretary.

45. Regulations

The Governor may make regulations prescribing all matters and things that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for giving effect to this Act and in particular for and with respect to —

- (a) the form and content of statements and documents required to be lodged with the Commissioner;
- (b) fees to be paid for the lodgment of statements or documents with the Commissioner.

Part VIII — Transitional provisions for the *Trustee Companies (Commonwealth Regulation) Amendment Act 2011*

[Heading inserted by No. 39 of 2011 s. 15.]

46. Term used: amending Act

In this Part —

amending Act means the *Trustee Companies (Commonwealth Regulation) Amendment Act 2011*.

[Section 46 inserted by No. 39 of 2011 s. 15.]

47. Transitional provisions

- (1) Immediately before the commencement of section 4 of the amending Act a trustee company was a body corporate listed in Schedule 1 (a ***Schedule 1 trustee company***).
- (2) After the commencement of section 4 of the amending Act, a trustee company means a licensed trustee company as defined in the Corporations Act section 601RAA.
- (3) Each of the Schedule 1 trustee companies is, and was before the repeal of Schedule 1 by section 16 of the amending Act, a licensed trustee company as defined in the Corporations Act section 601RAA.
- (4) Accordingly —
 - (a) the repeal of Schedule 1 does not affect the appointment of a Schedule 1 trustee company made before the repeal as —
 - (i) the executor of a will, or the administrator of an estate of a deceased person; or
 - (ii) a trustee, agent, attorney, manager or receiver; or
 - (iii) the guardian of the estate of a minor; or
 - (iv) a surety or guarantor; or

- (v) the administrator, committee, guardian or manager of the estate of a person who is unable to manage his or her own affairs;
- and
- (b) this Act, as amended by the amending Act, continues to apply to a Schedule 1 trustee company; and
 - (c) except to the extent of any inconsistency with the Corporations Act —
 - (i) any duties, obligations, immunities, rights and privileges of a Schedule 1 trustee company arising before the repeal of that Schedule are not affected by the repeal; and
 - (ii) the assets and liabilities of a Schedule 1 trustee company are not affected by the repeal; and
 - (iii) any action taken or notice given by a Schedule 1 trustee company before the repeal of that Schedule or the amendment of this Act by the amending Act is not affected by the repeal or amendment;
- and
- (d) proceedings relating to a Schedule 1 trustee company that have been commenced but not determined before the repeal of that Schedule are not affected by the repeal.

[Section 47 inserted by No. 39 of 2011 s. 15.]

48. Regulations for transitional matters

- (1) In this section —
commencement day means —
 - (a) in the case of transitional regulations made under subsection (2)(a) — the day on which the amending provision commences; or
 - (b) in the case of transitional regulations made under subsection (2)(b) — the day on which the Commonwealth provision commences;

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gazettal day means the day on which transitional regulations are published in the *Gazette*;

transitional matter means a matter of a transitional, savings or application nature;

transitional regulations means regulations made under subsection (2).

- (2) Regulations made under this Act may prescribe anything else required, necessary or convenient to be prescribed in relation to a transitional matter in connection with —
- (a) the amendment of this Act by a provision of the amending Act (the ***amending provision***); or
 - (b) the interaction between this Act and a provision of an Act of the Commonwealth (the ***Commonwealth provision***).
- (3) If transitional regulations provide that a state of affairs is to be taken to have existed, or not to have existed, on and from a day (the ***operative day***) that is earlier than Gazettal day, the regulations have effect according to their terms as long as the operative day is not earlier than the commencement day.
- (4) If regulations contain a provision referred to in subsection (3), the provision does not operate so as to —
- (a) affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before Gazettal day; or
 - (b) impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before Gazettal day.

[Section 48 inserted by No. 39 of 2011 s. 15.]

[Schedules 1-3 deleted by No. 39 of 2011 s. 16.]



Notes

- ¹ This reprint is a compilation as at 2 March 2012 of the *Trustee Companies Act 1987* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Trustee Companies Act 1987</i>	111 of 1987	19 Dec 1987	s. 1 and 2: 19 Dec 1987; Act other than s. 1 and 2: 1 Sep 1988 (see s. 2 and <i>Gazette</i> 26 Aug 1988 p. 3271)
<i>Trustee Companies (Designation of Trustee Companies — No. 1) Regulations 1988</i> published in <i>Gazette</i> 14 Oct 1988 p. 4156			14 Oct 1988
<i>Trustee Companies (Designation of Trustee Companies) Regulations 1989</i> published in <i>Gazette</i> 15 Dec 1989 p. 4521			15 Dec 1989
<i>West Australian Trustees Limited (Merger) Act 1989</i> s. 16	38 of 1989	22 Dec 1989	s. 16(2): 22 Dec 1989 (see s. 2(2)); s. 16(1): 31 Jan 1990 (see s. 2(1) and <i>Gazette</i> 19 Jan 1990 p. 203)
<i>Trustee Companies (Designation of Trustee Companies) Regulations 1990</i> published in <i>Gazette</i> 9 Nov 1990 p. 5525			9 Nov 1990
<i>Trustee Companies (Designation of Trustee Companies) Regulations (No. 2) 1990</i> published in <i>Gazette</i> 8 Feb 1991 p. 581			8 Feb 1991
<i>Trustee Companies (Designation of Trustee Companies) Regulations 1993</i> published in <i>Gazette</i> 24 Sep 1993 p. 5251-2			24 Sep 1993
<i>Trustee Companies (Designation of Trustee Companies) Regulations 1994</i> published in <i>Gazette</i> 20 May 1994 p. 2115			20 May 1994
<i>Trustee Companies Amendment Act 1994</i>	42 of 1994	31 Aug 1994	31 Aug 1994 (see s. 2)
<i>Trustees Amendment Act 1997</i> Pt. 3	1 of 1997	6 May 1997	16 Jun 1997 (see s. 2 and <i>Gazette</i> 10 Jun 1997 p. 2661)
Reprint of the <i>Trustee Companies Act 1987</i> as at 1 Nov 1999 (includes amendments listed above) (correction in <i>Gazette</i> 21 Jan 2000 p. 343)			

Trustee Companies Act 1987

Short title	Number and year	Assent	Commencement
<i>Trustee Companies (Designation of Trustee Companies) Regulations 2000</i> published in <i>Gazette</i> 7 Nov 2000 p. 6146			7 Nov 2000
<i>Trustee Legislation (GST Consequential Amendments) Act 2000</i> Pt. 3	67 of 2000	4 Dec 2000	4 Dec 2000 (see s. 2)
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 53	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Trustee Companies (Designation of Trustee Companies) Regulations 2002</i> published in <i>Gazette</i> 20 Dec 2002 p. 6025-6			20 Dec 2002
<i>Trustees of Western Australia Limited (Transfer of Business) Act 2003</i> s. 15	18 of 2003	17 Apr 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 17 Jun 2003 p. 2201)
Reprint 2: The Trustee Companies Act 1987 as at 6 Feb 2004 (includes amendments listed above)			
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Trustee Companies (Designation of Trustee Companies) Regulations 2006</i> published in <i>Gazette</i> 21 Mar 2006 p. 1082-3			21 Mar 2006
<i>Wills Amendment Act 2007</i> s. 25	27 of 2007	26 Oct 2007	9 Feb 2008 (see s. 2 and <i>Gazette</i> 8 Feb 2008 p. 313)
<i>Public Trustee and Trustee Companies Legislation Amendment Act 2008</i> Pt. 3	9 of 2008	31 Mar 2008	1 Jul 2008 (see s. 2(2) and <i>Gazette</i> 24 Jun 2008 p. 2885)
Reprint 3: The Trustee Companies Act 1987 as at 10 Oct 2008 (includes amendments listed above)			
<i>Trustee Companies (Designation of Trustee Companies) Regulations 2010</i> published in <i>Gazette</i> 12 Feb 2010 p. 591			r. 1 and 2: 12 Feb 2010 (see r. 2(a)); Regulations other than r. 1 and 2: 13 Feb 2010 (see r. 2(b))

Short title	Number and year	Assent	Commencement
<i>Standardisation of Formatting Act 2010</i> s. 4 and 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Trustee Companies (Commonwealth Regulation) Amendment Act 2011</i> Pt. 2	39 of 2011	4 Oct 2011	26 Nov 2011 (see s. 2(b) and <i>Gazette</i> 25 Nov 2011 p. 4867)

Reprint 4: The Trustee Companies Act 1987 as at 2 Mar 2012 (includes amendments listed above)

² The section in this Act (s. 46) repealing the *West Australian Trustees Limited Act 1893* and the *Perpetual Trustees W.A. Ltd., Act 1922*, was deleted by the *Trustee Companies (Commonwealth Regulation) Amendment Act 2011* s. 15.

Defined Terms

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
amending Act	46
amending provision	48(2)(a)
board of directors	3(1)
commencement day	48(1)
Commissioner	3(1)
Commonwealth provision	48(2)(b)
Corporations Act	3(1)
Court	3(1)
estate	3(1)
gazettal day	48(1)
officer	44(2)
operative day	48(3)
receiving company	29(2)(a), 33(1)
Schedule 1 trustee company	47(1)
State tax	32(1)
transferring company	29(2)(a), 33(1)
transitional matter	48(1)
transitional regulations	48(1)
Treasurer	3(1)
trustee company	3(1)
will	3(1)