

# WEST AUSTRALIAN TRUSTEES LIMITED (MERGER) ACT

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No. 38 of 1989

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AN ACT to provide for the transfer to Perpetual Trustees WA Limited of the undertaking of West Australian Trustees Limited, to amend the *Trustee Companies Act 1987*, and for connected purposes.

## Reasons for enactment

BECAUSE West Australian Trustees Limited became on or about 28 March 1989 a wholly owned subsidiary of Perpetual Trustees Australia Limited pursuant to action under the *Companies (Acquisition of Shares) (Western Australia) Code*:

AND BECAUSE it is expedient in the interest of business efficiency that the business conducted by and undertaking of West Australian Trustees Limited should be transferred to Perpetual Trustees WA Limited, another wholly owned subsidiary of Perpetual Trustees Australia Limited, and that all property held by West Australian Trustees Limited as trustee should be vested in Perpetual Trustees WA Limited:

AND BECAUSE it is expedient that the transfer and vesting be effected by Act of the Parliament:

[Assented to 22 December 1989]

The Parliament of Western Australia enacts as follows:

## Short title

1. This Act may be cited as the *West Australian Trustees Limited (Merger) Act 1989*.

## Commencement

2. (1) Subject to subsection (2), this Act shall come into operation on such day as is fixed by proclamation.

(2) Section 16 (2) shall come into operation on the day on which this Act receives the Royal Assent.

## Interpretation

3. In this Act, unless the contrary intention appears—

“appointment” means the appointment of WA Trustees 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 WA Trustees as one of 2 or more executors, managers, trustees, agents or attorneys;

“the appointed day” means the day of coming into operation of section 5;

“corporation” includes any body, corporate or unincorporate;

“excluded assets” means—

- (a) documents required by law to be kept by WA Trustees; and
- (b) land referred to in Schedule 1 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;

“Perpetual Trustees” means Perpetual Trustees W.A. Ltd;

“prescribed securities” means securities within the meaning of the *Securities Industry (Western Australia) Code*;

“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 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;

“subsidiary” has the same meaning as in the *Companies (Western Australia) Code*;

“transferred employee” means an employee of WA Trustees who becomes an employee of Perpetual Trustees by virtue of this Act;

“undertaking” in relation to WA Trustees means—

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

“WA Trustees” means West Australian Trustees Limited.

## Act Binds Crown

4. This Act binds the Crown.

## Undertaking vested in Perpetual Trustees

5. (1) On the appointed day the undertaking of WA Trustees is vested in Perpetual Trustees.

(2) On and after the appointed day—

- (a) a reference to WA Trustees in any instrument caveat, transmission or survivorship application or any other document made, passed or executed before that day shall (except to the extent, if any, that it relates to an excluded asset, and unless the context otherwise requires) be read and construed as a reference to Perpetual Trustees;

and

- (b) a reference to the holder for the time being of a particular office (other than the office of a director, secretary or auditor) within WA Trustees in any instrument made or executed before that day shall (unless the context otherwise requires) be read and construed as a reference to the person for the time being holding office as General Manager of Perpetual Trustees or such other officer of Perpetual Trustees as is designated from time to time by the General Manager or by any other officer acting under delegation from the General Manager.

(3) On and after the appointed day any place of business of WA Trustees, wherever located, is also a place of business of Perpetual Trustees.

(4) Without prejudice to the generality of subsection (1) but notwithstanding anything to the contrary in any written or other law—

- (a) where any registered estate or interest in land (being land under the *Transfer of Land Act 1893*) is by virtue of this section vested in Perpetual Trustees, whether as beneficial owner, executor, manager, trustee, agent or otherwise, Perpetual Trustees shall be deemed to be the registered proprietor of any such estate or interest of which WA Trustees is the registered proprietor (other than the excluded assets) and the estate or interest may be dealt with accordingly;

- (b) the Registrar of Titles shall subject to the payment of the appropriate fee under the *Transfer of Land Act 1893*, upon the application of Perpetual Trustees register the applicant 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 by virtue of this section; and
- (c) an instrument relating to land (being land under the *Transfer of Land Act 1893*) that has vested in Perpetual Trustees by virtue of this section shall, if the instrument is executed by Perpetual 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 Perpetual Trustees has not been registered as the proprietor of the land under paragraph (b).

(5) Where for any reason a liability to WA Trustees immediately before the appointed day remains a liability to WA Trustees on or after that day WA Trustees shall have and may enforce the same rights in respect of that liability (including rights under any security relating thereto) as if this Act had not been enacted.

### **Supplementary provisions as to vesting of undertaking**

6. Without prejudice to the generality of any other provision of this Act, the following provisions shall have effect on and after the appointed day—

- (a) an instruction, appointment, order, direction, power of attorney, mandate or authority given to WA Trustees (other than in relation to an excluded asset) and subsisting immediately before the appointed day shall be deemed to have been given to Perpetual Trustees;
- (b) an instrument given or addressed to WA Trustees (other than in relation to an excluded asset) on or after the appointed day shall be deemed to have been given or addressed to Perpetual Trustees;
- (c) a security held by WA Trustees as security for a debt or other liability owed to WA Trustees incurred before the appointed day shall be available to Perpetual Trustees as security for the discharge of that debt or liability and, where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts owed to or liabilities to Perpetual Trustees and incurred on or after the appointed day; and in relation to a security Perpetual Trustees shall be entitled to all the rights and priorities (howsoever

arising) and shall be subject to all liabilities to which WA Trustees would have been entitled or subject if this Act had not been enacted;

- (d) all the rights and liabilities of WA Trustees as bailee of documents or chattels shall be transferred to and assumed by Perpetual Trustees;
- (e) a negotiable instrument or order for payment of money which, whether before, on or after the appointed day, is drawn on or given to or accepted or endorsed by WA Trustees, or payable at a place of business of WA Trustees, shall have the same effect on and after the appointed day as if it had been drawn on or given to or accepted or endorsed by Perpetual Trustees instead of WA Trustees, or was payable at the place of business of Perpetual Trustees (which the first-mentioned place of business becomes by virtue of section 5 (3));
- (f) the relationship between WA Trustees and a client, beneficiary or depositor shall become the same relationship between Perpetual Trustees and the client, beneficiary or depositor, and the same rights and liabilities including rights of set-off shall exist between Perpetual Trustees and the client, beneficiary or depositor as existed immediately before the appointed day between WA Trustees and the client, beneficiary or depositor;
- (g) 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 WA Trustees (whether alone or with any other person) before the appointed day and in effect immediately before the appointed day (except to the extent that they relate to an excluded asset) shall, to the extent that they were previously binding on and enforceable by, against or in favour of WA Trustees, be binding on and enforceable by, against or in favour of Perpetual Trustees as fully and effectually in every respect as if, instead of WA Trustees, Perpetual 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;
- (h) no legal proceedings commenced before the appointed day by, against or in favour of WA Trustees shall abate or be otherwise prejudiced by reason of this Act;
- (j) nothing effected by this Act—
  - (i) shall be regarded as placing WA Trustees or Perpetual Trustees in breach of trust, contract or confidence, or as otherwise rendering either of them liable for a civil wrong;

- (ii) shall 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
  - (iii) shall release any surety wholly or in part from all or any of his obligations; and
- (k) nothing done or suffered by WA Trustees or Perpetual Trustees under this Act—
- (i) shall be regarded as a breach of trust, contract or confidence or otherwise as a civil wrong;
  - (ii) shall 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
  - (iii) shall release any surety wholly or in part from all or any of his obligations,

if it would not have had that effect had it been done or suffered by WA Trustees if this Act had not been enacted.

### **Rights in respect of land that is an excluded asset**

7. (1) Where, under a lease, licence or other contract or agreement, WA Trustees 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 WA Trustees, be exercised by Perpetual Trustees.

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

### **Proceedings**

8. (1) Legal proceedings to which WA Trustees was a party immediately before the appointed day may be continued by or against Perpetual Trustees.

(2) A judgment, order or award obtained by or against WA Trustees in legal proceedings commenced before the appointed day may be enforced by or against Perpetual Trustees.

## Evidence

9. Documentary or other evidence that would have been admissible for or against the interests of WA Trustees if this Act had not been enacted shall be admissible for or against the interests of Perpetual Trustees.

## Transfer of employees

10. Notwithstanding any other provision of this Act—

- (a) on the appointed day each employee of WA Trustees shall cease to be an employee of WA Trustees and shall become an employee of Perpetual 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 shall be deemed to be unbroken and the period of the employee's service with WA Trustees shall be deemed to have been a period of service with Perpetual Trustees;
- (b) the terms and conditions of the employment of each transferred employee with Perpetual Trustees shall—
  - (i) on the appointed day (and after that day until varied) be identical with the terms and conditions of the employee's employment with WA Trustees immediately before the appointed day, and be 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 be capable of variation in the same manner as the general terms and conditions of employment of other persons employed by Perpetual Trustees are capable of variation;
- (c) a transferred employee shall not be entitled to receive any payment or other benefit by reason only of ceasing by virtue of this Act to be an employee of WA Trustees;
- (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 WA Trustees; and
- (e) a director, secretary or auditor of WA Trustees does not by virtue of this Act become a director, secretary or auditor of Perpetual Trustees.

### Appointment of new trustee

11. (1) Except in the case of a trust that has been constituted by a deed approved under the *Companies (Western Australia) Code*, Perpetual Trustees may at any time within 6 months after the appointed day by instrument executed under its seal declare that a corporation, that is a subsidiary of Perpetual Trustees and is named in the instrument as the new trustee of such trusts as are specified in the instrument, is appointed in the place of another corporation that is a subsidiary of Perpetual Trustees and is named in the instrument as the retiring trustee of those trusts.

(2) Upon any such instrument being so executed and notice thereof being published in the *Government Gazette*—

- (a) the retiring trustee shall be wholly discharged as trustee of all the property vested by virtue of paragraph (c) in the new trustee;
- (b) the new trustee shall be trustee of each trust specified in the instrument in the place of the retiring trustee and shall have the same powers in relation to each trust as the retiring trustee had immediately before being discharged; and
- (c) all property in, or subject to the laws of, the State, held pursuant to the trusts specified in the instrument and vested in the retiring trustee shall be vested in the new trustee.

(3) Any discharge or appointment of a trustee and any vesting of property by virtue of this section shall have effect notwithstanding anything to the contrary in any instrument or in any written or other law.

(4) In this section, a reference to a corporation holding as trustee includes a reference to a corporation acting as trustee as defined in the *Trustees Act 1962*, and as a custodian trustee, a nominee and a person charged with the management or administration of property.

(5) Without prejudice to the generality of subsections (1) to (4) and notwithstanding anything to the contrary in any written or other law, where any registered estate or interest in land (being land under the *Transfer of Land Act 1893*) is by virtue of this section vested in a corporation, that corporation shall be deemed to be the registered proprietor of that estate or interest and the estate or interest may be dealt with accordingly and upon the appropriate application under section 242 of the *Transfer of Land Act 1893* being made the Registrar of Titles shall record and register the change in the appropriate manner.

### **Prescribed securities**

**12.** (1) Where prescribed securities are by virtue of this Act vested in Perpetual Trustees or a subsidiary of Perpetual Trustees, a certificate signed by the General Manager of Perpetual Trustees, or by an officer acting under delegation from the General Manager, stating that the prescribed securities have so vested shall, notwithstanding any written or other law or any instrument, be deemed to be a sufficient duly stamped instrument of transfer of those prescribed securities.

(2) Subsection (1) applies only to and in respect of prescribed securities—

- (a) which when vested in Perpetual Trustees, will be held by way of security; or
- (b) which are vested in a subsidiary of Perpetual Trustees by the operation of section 11.

### **Officers to register documents**

**13.** The Registrar of Titles, the Registrar of Deeds and Transfers, the Commissioner for Corporate Affairs, a mining registrar and any other person authorized 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, shall take cognizance 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.

### **Protection of persons dealing with Perpetual Trustees or WA Trustees**

**14.** (1) No person dealing with Perpetual Trustees or WA Trustees (in any capacity whatsoever), 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, shall, in respect of any dealing or transaction entered into or purporting to be entered into by Perpetual Trustees, or WA Trustees, 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 be 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 Perpetual Trustees with any person, in relation to or in connection with an excluded asset, it shall be deemed in favour of that person and any person claiming through

or under that person that Perpetual Trustees has full power and authority to enter into that dealing or transaction as if the excluded asset had vested in Perpetual Trustees under this Act.

(3) If any dealing or transaction is entered into by WA Trustees with any person, in relation to or in connection with any property which has vested in Perpetual Trustees under this Act, it shall be deemed in favour of that person and any person claiming through or under that person that WA Trustees 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 Perpetual Trustees, or WA Trustees, or either of them, in respect of anything done or purporting to have been done, by Perpetual Trustees, or WA Trustees, as the case may be, in relation to or in connection with an excluded asset or any other property.

### **Transfer of WA Trustees Common Fund to common trust funds of Perpetual Trustees**

15. 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 WA Trustees in its capacity as trustee of the Common Trust Fund established by it under section 21A of the *West Australian Trustees Limited Act 1893* shall be vested in Perpetual Trustees as trustee of the investment common trust fund or estate common trust fund (as the case may be) established by Perpetual Trustees under the *Trustee Companies Act 1987* and shall be held by Perpetual Trustees upon the same terms, covenants and conditions as those upon which they were held by WA Trustees immediately before the appointed day.

### **Amendment of Trustee Companies Act 1987**

16. (1) The *Trustee Companies Act 1987*\* is amended in Schedule 1 by deleting "West Australian Trustees Limited."

(2) The *Trustee Companies Act 1987*\* is amended in Schedule 3 by deleting clause 4 and substituting the following clause—

“ 4. (1) Part IV shall apply to the existing companies on the day on which section 5 of the *West Australian Trustees Limited (Merger) Act 1989* comes into operation, and the provisions of the repealed Acts relating to Common Trust Funds shall, notwithstanding the repeal of those Acts by section 46, continue to apply and have effect until that day.

(2) On and after the day on which Part IV applies to Perpetual Trustees W.A. Ltd. all contracts, choses in action, engagements, mortgages and assets and liabilities of Perpetual Trustees W.A. Ltd. in its capacity as trustee of the Common Trust Fund established by it under section 21A of the *Perpetual Trustees W.A. Ltd., Act 1922* shall be held by Perpetual Trustees W.A. Ltd. under Part IV upon the same terms, covenants and conditions as those upon which they were held by Perpetual Trustees W.A. Ltd. immediately before that day. ”.

[\*Act No. 111 of 1987 as amended in the Government Gazette on 14 October 1988 p. 4156.]

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SCHEDULE 1

(section 3)

Portion of Perth Town Lot G10 being Lot 101 on Diagram 58700 being the whole of the land in Certificate of Title Volume 1827 Folio 510.

Leschanault Location 26 and being Lot 341 on Plan 12361 and being the whole of the land in Certificate of Title Volume 1497 Folio 685.

Leschanault Location 26 and being Lot 30 on Diagram 52788 and being the whole of the land in Certificate of Title Volume 1488 Folio 75.

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