

Queensland



ANNO TRICESIMO SECUNDO

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An Act to supplement by legislation of the State of Queensland the ANZ Executors & Trustee Company Act 1983 of the State of Victoria which provides, inter alia, for the transfer to ANZ Executors & Trustee Company Limited of the trust business of The Trustees Executors and Agency Company Limited; to amend the Trustee Companies Act 1968–1980 in a certain particular; and for related purposes

[ASSENTED TO 22ND DECEMBER, 1983]

Preamble. Whereas—

- (a) ANZ Executors & Trustee Company Limited (in this preamble referred to as “the new trustee”) is a company within the meaning of the Companies (Victoria) Code:
- (b) The Trustees Executors and Agency Company Limited (now bearing the name TEA (1983) Limited pursuant to Part III of the ANZ Executors & Trustee Company Act 1983 of the State of Victoria and in this preamble referred to as “the old trustee”) is a company within the meaning of the Companies (Victoria) Code:
- (c) by order of the Supreme Court of Victoria made on 29 July 1983 joint liquidators were appointed to the old trustee, joint provisional liquidators having been appointed on 31 May 1983:
- (d) the old trustee is a trustee company within the meaning of the *Trustee Companies Act 1968–1980*:
- (e) the provisional liquidators of the old trustee entered into an agreement with Australia and New Zealand Banking Group Limited, a company within the meaning of the Companies (Victoria) Code, providing, for an agreed price, for the transfer by the old trustee of all of its business of acting as a trustee to the new trustee and for the appointment of the new trustee in place of the old trustee in all of its trust business, the new trustee being a wholly owned subsidiary of Australia and New Zealand Banking Group Limited and prior to the commencement of Part II of the said ANZ Executors & Trustee Company Act 1983 bearing the name Gariwang Pty. Ltd.:
- (f) by Part V of the said ANZ Executors & Trustee Company Act 1983 provision is made for the trust business of the old trustee as at the commencement of that Part to be transferred to and vest in the new trustee upon such commencement:
- (g) it is expedient in the interests of the effective and efficient administration of the trusts of which the old trustee is the trustee and in the interests of public confidence that the business of acting as trustee and all the appointments of the old trustee be transferred to the new trustee economically, quickly and without interference with the administration of those trusts:
- (h) to transfer the business of acting as trustee and all the appointments of the old trustee to the new trustee in so far as the trust business of the old trustee in Queensland is concerned it is expedient to enact the provisions contained in this Act:

BE IT THEREFORE ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. **Short title.** This Act may be cited as the *ANZ Executors & Trustee Company Act 1983*.

2. Commencement. (1) This section and section 1 shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), this Act shall commence on a day appointed by Proclamation.

3. Arrangement of Act. This Act is arranged as follows:—

PART I—PRELIMINARY (ss. 1–4);

PART II—TRANSFER OF THE TRUST BUSINESS AND APPOINTMENTS IN QUEENSLAND OF THE OLD TRUSTEE TO THE NEW TRUSTEE (ss. 5–7);

PART III—AMENDMENT OF THE TRUSTEE COMPANIES ACT 1968–1980 (ss. 8–9).

4. Interpretation. In this Act, unless the contrary intention appears—
“excluded items” means

- (a) all assets held by or for the old trustee of which the old trustee is the beneficial owner (other than the assets included in the definition of the trust business of the old trustee);
- (b) all rights of the old trustee to any security deposits or similar sums or assets lodged with any court, public office or authority (including inscribed stock or other securities or investments invested in by the old trustee pursuant to section 56 of the *Trustee Companies Act 1968–1980*);
- (c) all liabilities of the old trustee, present or future, certain or contingent, ascertained or sounding only in damages and all claims by persons against the old trustee and any officer of the old trustee in respect of breach of trust, misfeasance, nonfeasance or the exercise of or failure to exercise discretion in acting in the capacity of trustee, including claims in respect of any deficiency in trust assets whether or not the claims have been notified or ascertained;
- (d) the right of the old trustee to indemnity under any insurance policy held by it other than in the capacity of trustee;
- (e) the right to contribution by members and ex-members of the old trustee pursuant to the provisions of the Second Part of the Second Schedule to the *Trustee Companies Act 1968–1980* occurring under the heading “THE TRUSTEES EXECUTORS AND AGENCY COMPANY LIMITED” (for which the heading “TEA (1983) LIMITED” is being substituted pursuant to section 9 of this Act); and
- (f) all the assets, undertakings and liabilities of the old trustee in its businesses of property developer, packager of projects, entrepreneur, property owner, renovator and dealer, short-term money market dealer, mortgage lender of its own money, dealer in securities and any other businesses it conducted on its own behalf;

“in the capacity of trustee” means (whether alone or jointly with any other person)—

- (a) as trustee or custodian trustee of any trust deed, settlement, covenant, agreement or will, whether originally so appointed

or not and whether appointed under hand or seal or by order of a court or otherwise;

- (b) as executor of a will of a deceased person;
 - (c) as administrator of the estate of a deceased person;
 - (d) as judicial trustee appointed by order of any court;
 - (e) as agent, attorney or nominee; or
 - (f) as committee of an estate pursuant to the Fifth Schedule to the *Mental Health Act 1974–1978* or as guardian of a minor;
- “land” includes any estate, interest or right in, over or under land;
- “new trustee” means ANZ Executors & Trustee Company Limited;
- “old trustee” means The Trustees Executors and Agency Company Limited (now bearing the name TEA (1983) Limited pursuant to Part III of the ANZ Executors & Trustee Company Act 1983 of the State of Victoria);
- “the trust business of the old trustee” means the business of the old trustee of acting in the capacity of trustee in Queensland or pursuant to any trust governed by the law of Queensland and includes, to the extent that they are applicable to that business in Queensland—
- (a) the assets held on trust by the old trustee including all records, securities and other documents and information whether recorded on paper, microfilm, magnetic tape or disc or otherwise held or maintained by the old trustee in its capacity of trustee;
 - (b) the liabilities and obligations properly incurred by the old trustee acting in the capacity of trustee including undertakings to courts and public officers and authorities;
 - (c) the rights of indemnity of the old trustee against trust assets in respect of liabilities incurred by the old trustee acting as trustee;
 - (d) the rights of the old trustee to commission, remuneration, fees and reimbursement for disbursements whether billed or unbilled in respect of its acting in the capacity of trustee;
 - (e) the benefit and obligations under contracts of employment with employees of the old trustee who are employed primarily in the trust business of the old trustee including obligations with respect to holiday pay, long service leave, sick leave and other benefits applicable to those employees other than the liability to make any payments to any superannuation scheme that should have been but have not been made before 1 July, 1983;
 - (f) the benefit of and obligations under rental or leasing contracts in respect of the computers used by the old trustee in the trust business of the old trustee;

- (g) all rights of the old trustee in respect of the use of the computer programmes used by the old trustee in the trust business of the old trustee;
- (h) the corporate and accounting records of the old trustee to the extent to which they relate to the trust business of the old trustee;
- (i) the liability to perform further administration of any trust or other administration undertaken by the old trustee;
- (j) all assets of trusts and other appointments of the old trustee in its business of acting in the capacity of trustee; and
- (k) all other assets and undertakings of the old trustee being part of or incidental to or used in its business of acting in the capacity of trustee—

but does not include the excluded items;

“ will ” includes a codicil and any other testamentary writing.

PART II—TRANSFER OF THE TRUST BUSINESS AND APPOINTMENTS IN QUEENSLAND OF THE OLD TRUSTEE TO THE NEW TRUSTEE

5. Transfer of trust business and appointments. (1) Upon the commencement of this Act pursuant to section 2 (2), the trust business of the old trustee as at that commencement shall be transferred to and vest in the new trustee.

(2) In each case where the old trustee acts in the capacity of trustee, the new trustee is hereby appointed in its stead to act in the capacity of trustee and the new trustee—

- (a) shall be entitled and obliged to exercise and discharge all rights, powers, capacities, authorities, duties and obligations of the old trustee in respect of and arising from every such appointment; and
- (b) to the extent provided in this Act shall discharge the liabilities and obligations of the old trustee in respect of and arising from every such appointment.

(3) The old trustee shall account to the new trustee for all assets and liabilities and obligations held or to which it is subject in its business of acting in the capacity of trustee.

(4) Any appointment or nomination of the old trustee as trustee, executor or otherwise in the capacity of trustee in any will or instrument, whether such appointment or nomination is in effect on the commencement of this Act pursuant to section 2 (2) or takes effect after that commencement or has taken effect previously but where some further act or thing is necessary to perfect the appointment or undertaking of the office, shall be deemed to be an appointment or nomination of the new trustee.

(5) The production of a copy of this Part printed by the Government Printer shall on and after the commencement of this Act pursuant to section 2 (2) be conclusive evidence in all courts and proceedings of the

transfer of the trust business of the old trustee and all property held by the old trustee on trust in the capacity of trustee to the new trustee and of their vesting in the new trustee and, without prejudice to the generality of the foregoing, any such copy of this Part shall in relation to all land and all marketable securities operate as a duly executed transfer by the old trustee to the new trustee of such land or such securities.

(6) If any portion of the undertaking or property held by the old trustee in the capacity of trustee cannot be or is not vested in the new trustee by virtue of this Act notwithstanding that such portion relates to the trust business of the old trustee in Queensland, then the old trustee shall do all such things necessary after the commencement of this Act pursuant to section 2 (2) for the purpose of securing that such portion is effectively and promptly transferred to the new trustee.

(7) Where on the application of the new trustee it appears to any court to be necessary or proper having regard to the provisions of this Act, the new trustee may be joined as a party to any legal proceedings in addition to or in lieu of the old trustee.

6. Application in respect of vesting. Where an application is made by the new trustee in respect of the vesting of any land in the new trustee and the application is accompanied by—

(a) a certificate under section 7 that the land has vested in the new trustee; and

(b) the appropriate certificate or other instrument of title,

the Registrar of Titles, Registrar of Dealings or other person required by any Act or law to make or enter any note or memorial on any certificate or other instrument of title to land on receiving notice thereof shall, without requiring payment of any fee, give effect in the register book to such vesting by registering the new trustee as proprietor of the land, and for that purpose may make every entry, cancellation and correction in any register, record or book in his custody or under his control and do and execute such other acts, matters and things as shall to him appear necessary and proper.

7. Evidence. A certificate under the seals of the new trustee and the old trustee to the effect that the estate or interest of persons therein specified in land therein specified is an estate or interest vested in the new trustee by this Act shall for the purposes of any application or dealing with respect to the land pursuant to this Act or any other Act or law be conclusive evidence of the matters certified.

PART III—AMENDMENT OF THE TRUSTEE COMPANIES ACT 1968–1980

8. Citation. The *Trustee Companies Act 1968–1980* as amended as indicated in the Schedule to the *Companies (Application of Laws) Act 1981* and as amended by this Part may be cited as the *Trustee Companies Act 1968–1983*.

9. Amendment of Second Schedule. The Second Schedule to the *Trustee Companies Act 1968-1980* is amended by omitting the words "The Trustees Executors and Agency Company Limited" where they occur in the First Part of such Schedule and the words "THE TRUSTEES EXECUTORS AND AGENCY COMPANY LIMITED" where they occur as a heading in the Second Part of such Schedule and substituting in each case the words "TEA (1983) LIMITED".
