

Trustee Corporations [name of State or Territory] Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make provision for:

- (a) the functions of trustee corporations, and
- (b) the licensing and supervision, including prudential supervision, of trustee corporations, and
- (c) the recognition of trustee corporations licensed in other States or Territories, so as to enable a trustee corporation licensed in another State or Territory to operate in [*name of State or Territory*].

<p>Drafting Note 1. This draft does not take account of the consequences of the proposed Corporations Law arrangements.</p>
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Trustee Corporations [name of State or Territory] Bill 2001

No , 2000

A Bill for

An Act to regulate trustee corporations; and for other purposes.

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Trustee Corporations [name of State or Territory] Bill 2001

Enacting formula:	1
Part 1 Preliminary	2
1 Name of Act	3
This Act is the <i>Trustee Corporations [name of State or Territory] Act 2001</i> .	4 5
2 Commencement	6
This Act commences on a day or days to be appointed by proclamation.	7 8
3 Definitions	9
In this Act:	10
APRA means the Australian Prudential Regulation Authority established by the <i>Australian Prudential Regulation Authority Act 1998</i> of the Commonwealth.	11 12 13
board of a trustee corporation means the board of directors of the trustee corporation.	14 15
certificate of transfer has the meaning given by section 84.	16
client of a trustee corporation includes the following:	17
(a) any trustee, cestui que trust, executor, legatee, administrator, spouse, next of kin, creditor or minor entitled to or interested in any estate that is for the time being under the management or control of the trustee corporation,	18 19 20 21
(b) a person for whose benefit trust property is held by the trustee corporation,	22 23
(c) a person who creates a trust of which the trustee corporation is the trustee (a settlor),	24 25
(d) a beneficiary of an estate administered by the trustee corporation, including a member of a class of beneficiaries of a discretionary trust,	26 27 28
(e) a person who has named the trustee corporation as executor under his or her will (a testator),	29 30

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- (f) any person otherwise contingently interested in any property held by the trustee corporation or in an estate administered by the trustee corporation, 1
2
3
- (g) if a person referred to in paragraphs (a)–(f) lacks capacity, any parent, guardian or legal representative of the person or any person authorised to act on the person's behalf. 4
5
6
- corresponding law** means a law of another participating State or Territory that is prescribed by the regulations to be a corresponding law to this Act. 7
8
9
- Court** means the Supreme Court. 10
- director** has the meaning given by section 9 of the *Corporations Law*. 11
- exercise** a function includes perform a duty. 12
- fail** includes refuse. 13
- function** includes a power, authority and duty. 14
- inspector** means a person appointed under section 130. 15
- interest**, in relation to land or other property, means: 16
- (a) a legal or equitable estate in the land or other property, or 17
- (b) a right, power or privilege over, or in relation to, the land or other property. 18
19
- in the capacity of trustee** includes the following (whether alone or jointly with any other person): 20
21
- (a) as executor of the will of a deceased person, 22
- (b) as administrator of the estate of a deceased person, 23
- (c) as trustee or custodian trustee of any trust deed, declaration of trust, settlement, covenant, agreement or will, whether originally appointed or not and whether appointed under hand, under seal, by order of a court or otherwise, 24
25
26
27
- (d) as judicial trustee appointed by order of any court, 28
- (e) as manager or administrator of the estate of a person who lacks capacity to manage his or her affairs, 29
30
- (f) as agent, attorney or nominee, 31
- (g) as financial manager of the estate of a minor. 32
- legal practitioner** means a person who has a right to carry on legal practice as a solicitor or barrister in [name of State or Territory]. 33
34

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<i>liability</i> means any liability or obligation (whether liquidated or unliquidated, certain or contingent, or accrued or accruing).	1 2
<i>licence</i> means a licence granted under Part 7 (Licensing of trustee corporations).	3 4
<i>officer</i> has the meaning given by section 9 of the <i>Corporations Law</i> .	5
<i>participating State or Territory</i> means a State or Territory that is a party to the trustee corporations agreement.	6 7
<i>proceeding</i> means a legal or other action or proceeding.	8
<i>record</i> includes information stored or recorded by means of a computer.	9 10
<i>related body corporate</i> has the meaning given by section 50 of the <i>Corporations Law</i> .	11 12
<i>share</i> means a share in the share capital of a corporation.	13
<i>standard</i> means a standard in force under Part 6. [See note to Part 6]	14
<i>trustee corporation</i> means a corporation:	15
(a) that is licensed as a trustee corporation under Part 7 (Licensing of trustee corporations), or	16 17
(b) that is licensed as a trustee corporation under a corresponding law, and that is authorised under this Act to operate as a trustee corporation.	18 19 20
<i>trustee corporations agreement</i> means the trustee corporations agreement entered into between the participating States and Territories on [<i>specify date</i>] (a copy of which is set out in Schedule 1 to this Act) or, if that agreement is amended or affected by another agreement, that agreement as so amended or affected.	21 22 23 24 25
<i>will</i> includes a codicil and any other testamentary writing.	26
4 Operation of Corporations Law	27
(1) Except as provided by this Act, this Act operates in addition to, and does not limit, the operation of the <i>Corporations Law</i> in respect of any trustee corporation or any person.	28 29 30
(2) If any provision of this Act is inconsistent with the <i>Corporations Law</i> , this Act prevails over the <i>Corporations Law</i> to the extent of the inconsistency.	31 32 33

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5 Crown not to be bound

1

This Act does not bind the Crown in right of [*name of State or Territory*] except as, and to the extent, provided by the regulations.

2

3

6 Jurisdiction of Court not affected

4

The inherent power or jurisdiction of the Court in respect of the supervision of trusts or trustees is not affected by anything in this Act.

5

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Trustee Corporations [name of State or Territory] Bill 2001

Part 2 Functions of trustee corporations	1
	2
Drafting Note 2. This Part includes the detailed provisions presently in the <i>Trustee Companies Act 1964</i> of New South Wales.	3 4
Note. The following legislation applies to trustee corporations:	5
(a) trustee corporations are registered under the <i>Corporations Law</i> , and are regulated (in respect of such matters as their constitution and external administration) under that Law,	6 7 8
(b) trustee corporations carry out certain traditional operations (including acting as executor of a will of a deceased person, or as administrator of the estate of a deceased person and acting as personal representative or as trustee of any trust deed, declaration of trust, settlement, covenant, agreement or will), for which they derive power under this Act, and which are regulated under this Act, and	9 10 11 12 13 14
(c) some trustee corporations also carry out other operations (including acting as trustees for unit trusts, for debenture holders or for managed investment schemes and as trustees of public offer superannuation funds), for which they derive power under the <i>Corporations Law</i> or the <i>Superannuation Industry (Supervision) Act 1993</i> of the Commonwealth, and which are regulated under that Law or that Act.	15 16 17 18 19 20
Division 1 General	21
7 Application of this Part	22
This Part applies to a trustee corporation:	23
(a) that is licensed as a trustee corporation under Part 7 (Licensing of trustee corporations), or	24 25
(b) that is licensed as a trustee corporation under a corresponding law, and that is authorised under this Act to operate as a trustee corporation.	26 27 28
8 Functions conferred by this Act are in addition to other functions	29
The functions conferred or imposed on trustee corporations by this Act are in addition to and not in derogation of any functions conferred or imposed on trustee corporations or on executors, administrators or trustees by or under any other Act or law.	30 31 32 33

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Trustee Corporations [name of State or Territory] Bill 2001

Division 2	Functions relating to management of estates	1
9	Trustee corporation may act as executor and obtain probate	2
	If a trustee corporation is named (either alone or jointly with any other person) as executor in the will of any testator the trustee corporation may:	3
		4
		5
	(a) act as executor, and	6
	(b) apply for and obtain probate of that will.	7
10	Person named as executor may authorise trustee corporation to take out administration with will annexed	8
		9
	(1) This section applies if a person:	10
	(a) is named (expressly or by implication) as executor in the will of any testator, and	11
		12
	(b) would be entitled to apply for and obtain probate of the will without leave being reserved to any other person to apply for probate.	13
		14
		15
	(2) In such a case, that person may, instead of applying for probate, authorise a trustee corporation to apply for administration of the estate with the will annexed.	16
		17
		18
	(3) A grant of administration of an estate with the will annexed may be made to the trustee corporation if it is authorised under this section, unless the testator by the will directed:	19
		20
		21
	(a) that the office of executor should not be delegated, or	22
	(b) that a trustee corporation should not act in the trusts of the will.	23
11	Person entitled to administration with will annexed may authorise trustee corporation to obtain administration with will annexed	24
		25
	A person who may apply for and obtain a grant of administration of the estate of a deceased person (whether with or without the will annexed) may:	26
		27
		28
	(a) join with a trustee corporation in an application for a grant of administration of the estate to the person and the trustee corporation jointly, or	29
		30
		31
	(b) instead of applying personally, authorise a trustee corporation to apply for and obtain a grant of administration of the estate.	32
		33

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12	Power to appoint trustee corporation to discharge functions of executor or administrator	1 2
	The Court may, on the application of any executor or administrator acting under any probate or letters of administration granted, appoint a trustee corporation (either alone or jointly with any other corporation or person) to be administrator in place of the executor or administrator.	3 4 5 6
13	Trustee corporation may act as executor or administrator despite its incorporation	7 8
	If a trustee corporation is appointed executor or is granted administration of any estate (whether with or without the will annexed), either alone or jointly with any other person, the trustee corporation may do and perform all acts and functions that belong to the office of executor or administrator as fully or effectively as any other executor or administrator.	9 10 11 12 13 14
14	Court's power to control or remove trustee corporation	15
	A trustee corporation that has been appointed executor or administrator is 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.	16 17 18 19
Division 3	Administration of small estates	20
		21
	Drafting Note 3. The following provisions may be more appropriately located in the legislation of each jurisdiction that deals with the administration of wills.	22 23
15	Definition	24
	In this Division:	25
	<i>prescribed amount</i> means \$100,000 or any other amount prescribed by the regulations.	26 27
16	Election by trustee corporation to administer small testate estate	28
	(1) A trustee corporation may, instead of obtaining probate of the will of a deceased person (or administration with the will annexed of a deceased person's estate), file in the Court an election to administer the	29 30 31

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property forming the estate according to the provisions of the person's will, if:	1
	2
(a) the person has died testate, in or outside [<i>name of State or Territory</i>], leaving property in [<i>name of State or Territory</i>] the gross value of which, as estimated by the trustee corporation, does not at the time of the filing of the election exceed the prescribed amount, and	3
	4
	5
	6
	7
(b) no person has obtained probate or obtained letters of administration with the will annexed, and	8
	9
(c) the trustee corporation is entitled to apply for and obtain probate or obtain letters of administration with the will annexed, and	10
	11
	12
(d) the election sets out:	13
(i) the name, residence and occupation (as far as then known to the trustee corporation) of the deceased person at the date of the person's death, and	14
	15
	16
(ii) particulars of the property forming the deceased person's estate, and	17
	18
(iii) the date of the deceased person's death as then known to the trustee corporation, and	19
	20
(e) the election states that, after due inquiries, the trustee corporation believes that the document annexed to the election is the deceased person's last will and that will has been validly executed according to the law governing the execution of wills.	21
	22
	23
	24
(2) When an election is filed under this section, the trustee corporation is taken to be the executor or administrator (as the case may be) in all respects as if probate or administration had been duly granted to the trustee corporation.	25
	26
	27
	28
17 Election by trustee corporation to administer small intestate estate	29
(1) A trustee corporation may, instead of obtaining letters of administration of the estate of a deceased person, file in the Court an election to administer the estate, if:	30
	31
	32
(a) the person has died intestate, in or outside [<i>name of State or Territory</i>], leaving property in [<i>name of State or Territory</i>] the gross value of which, as estimated by the trustee corporation, does not at the time of the filing of the election exceed the prescribed amount, and	33
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- (b) no person has obtained letters of administration, and 1
 - (c) the trustee corporation is entitled to apply for and obtain 2
administration of the estate, and 3
 - (d) the election sets out: 4
 - (i) the name, residence and occupation (as far as then 5
known to the trustee corporation) of the deceased 6
person at the date of the person's death, and 7
 - (ii) particulars of the property forming the deceased person's 8
estate, and 9
 - (iii) the date of the deceased person's death as then known 10
to the trustee corporation. 11
 - (2) When an election is filed under this section, the trustee corporation is 12
taken to be the administrator in all respects as if probate or 13
administration had been duly granted to the trustee corporation. 14
- 18 Election by trustee corporation to administer small partially 15
administered estate 16**
- (1) A trustee corporation may, instead of obtaining letters of 17
administration de bonis non of the estate of a deceased person, file in 18
the Court an election to administer the unadministered property 19
forming part of the estate (the *original estate*), if: 20
 - (a) a grant (the *original grant*) of probate or administration has 21
been made in respect of the original estate, and 22
 - (b) the person to whom the original grant or any subsequent or 23
substituted grant of probate was made has died leaving part of 24
the original estate unadministered, and 25
 - (c) the gross value, as estimated by the trustee corporation, of so 26
much of the part of the original estate so left unadministered as 27
is within [name of State or Territory] does not at the time of the 28
election exceed the prescribed amount, and 29
 - (d) no person has, since the death of the last executor or 30
administrator, taken out administration de bonis non in respect 31
of the original estate, and 32
 - (e) the trustee corporation is entitled to take out administration de 33
bonis non, and 34
 - (f) the election sets out: 35
 - (i) the fact of the original grant, and 36

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- (ii) the fact of the death of the last executor or administrator, and 1
 - (iii) particulars of the property left unadministered. 2
- (2) When an election is filed under this section, the trustee corporation is taken to be the administrator of so much of the part of the original estate left unadministered as is within [name of State or Territory] in all respects as if administration de bonis non of the original estate had been duly granted to the trustee corporation. 3
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5
6
7
8
- 19 Advertisement of election** 9
- (1) A trustee corporation must publish a notice that the trustee corporation has filed an election under this Division. 10
11
- (2) The notice is conclusive evidence that the trustee corporation is rightfully entitled to administer under this Division. 12
13
- (3) The notice is to be published in: 14
 - (a) a newspaper circulating in the district where the deceased person resided, if the deceased person resided in [name of State or Territory] at the date of the person's death, or 15
16
17
 - (b) a daily newspaper circulating throughout [name of State or Territory], in any other case. 18
19
- 20 Estate afterwards found to be of higher value** 20
- If, after filing an election under this Division, the gross value of the property to be administered exceeds the prescribed amount, the trustee corporation must, as soon as practicable: 21
22
23
 - (a) file in the Court a memorandum stating that fact, and 24
 - (b) proceed in the ordinary manner to obtain probate or administration of the estate. 25
26
- 21 Will found afterwards** 27
- If, after an election is filed under this Division, a later will or wills (as the case may be) is or are found: 28
29
 - (a) the trustee corporation must, as soon as practicable, file in the Court a memorandum stating that fact, and 30
31
 - (b) the trustee corporation automatically ceases to be executor or administrator when the memorandum is filed, and 32
33

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- (c) if the trustee corporation is entitled to apply for and obtain probate or obtain letters of administration, the trustee corporation may file a further election under this Division (if entitled to do so) or proceed in the ordinary manner to obtain probate or administration, and 1
2
3
4
5
- (d) if the trustee corporation is not entitled to apply for and obtain probate or obtain letters of administration [*cite provision of enacting State's or Territory's legislation equivalent to section 40D of the Wills, Probate and Administration Act 1898 of New South Wales*] applies in all respects as if a grant of probate or administration to the trustee corporation had been revoked. 6
7
8
9
10
11

Division 4 Powers relating to appointment as trustee, receiver, attorney, manager or guardian 12
13

22 Trustee corporation may be appointed trustee, receiver, manager or guardian 14
15

- (1) If any court, judge or other person has power to appoint any person as: 16
 - (a) trustee, or 17
 - (b) receiver, or 18
 - (c) manager or administrator of the estate of a person who lacks capacity to manage his or her affairs, or 19
20
 - (d) financial manager of the estate of a minor, 21
a trustee corporation may be so appointed. 22
- (2) A trustee corporation may be appointed or may continue to act as sole trustee in all cases even though it is provided by the terms of the instrument (if any) creating the trust or by the terms of any power or otherwise that there is to be more than one trustee to perform the trust. 23
24
25
26
- (3) If a trustee corporation and one or more natural persons are co-trustees, any one or more of the natural persons may retire, and the trustee corporation is, for the purposes of any Act in force relating to the retirement of trustees and the vesting of trust property, taken to be equivalent to 2 trustees. 27
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- (4) A trustee corporation must not be appointed in any case in which the instrument creating the trust or power expressly forbids the appointment of a trustee corporation. 32
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- (5) Despite subsection (2), a trustee corporation must not be appointed, and is not entitled to act, as sole trustee in any case in which the instrument creating the trust or power expressly provides that there is to be another trustee in addition to a trustee corporation or that a trustee corporation must not be appointed or act as sole trustee. 1
2
3
4
5
- 23 Trustee corporation may act under power of attorney by managing director** 6
7
- (1) This section applies if a trustee corporation is appointed attorney by any person or by any corporation. 8
9
- (2) A trustee corporation may act (either alone or jointly with any other person) under any such power of attorney. 10
11
- (3) All the powers conferred on a trustee corporation by the power of attorney may be exercised by an individual acting with the trustee corporation's express or implied authority and on behalf of the trustee corporation. 12
13
14
15
- (4) Nothing in this section authorises any person or corporation to confer any power on the trustee corporation that cannot by law be delegated or performed by an attorney. 16
17
18
- 24 Power to delegate trusts to trustee corporation** 19
- (1) An executor, administrator or trustee may delegate by deed to a trustee corporation (either alone or jointly with any other corporation or person) as the executor's, administrator's or trustee's attorney, all trusts and powers as may by law be delegated. 20
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23
- (2) All acts done by the trustee corporation within the scope of any such delegation are, in favour of any persons dealing with the trustee corporation without notice of the death of, or revocation of authority by, the executor, administrator or trustee, taken to be valid and effectual despite the death or revocation. 24
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- 25 Court's power to control or remove trustee corporation** 29
- A trustee corporation that has been appointed executor, administrator, trustee, receiver, manager, guardian or attorney is 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, administrator, trustee, receiver, manager, guardian or attorney. 30
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Division 5	General powers	1
26	General powers of trustee corporations	2
(1)	This section applies if a trustee corporation is appointed trustee, executor or administrator or is otherwise authorised to act under this Part.	3 4 5
(2)	The trustee corporation may exercise the following powers in relation to trust property, unless expressly prohibited by this Act or a corresponding law or by or under an instrument creating the relevant trust or power:	6 7 8 9
(a)	sell property by public auction or private contract, altogether or in parts, and subject to any conditions that it thinks fit,	10 11
(b)	postpone the sale, calling in and conversion of any property that it has a duty to sell, other than property that is of a wasting, speculative or reversionary nature,	12 13 14
(c)	exchange property or join in a partition of property,	15
(d)	lease property for a term not exceeding 10 years and give to a lessee an option of renewal if the aggregate duration of the lease and any such renewal does not exceed 10 years,	16 17 18
(e)	enter into any share-farming agreement for a period not exceeding 3 years,	19 20
(f)	for the purpose of preserving trust property, borrow money on the security of the property, and secure the payment and interest by mortgage or charge of the property, with or without a power of sale, and enter into any covenants, provisions and agreements that may be agreed on by the trustee corporation and the mortgagee, and, without affecting the generality of that power, exercise the power to give any such security in respect of any debt or liability incurred prior to the trustee corporation's appointment, and pay interest secured by any such mortgage or charge out of the income or, if the income is insufficient, out of capital,	21 22 23 24 25 26 27 28 29 30 31
(g)	repair property and charge the cost of those repairs either to capital or to income or apportion the cost between capital and income as the trustee corporation may consider equitable,	32 33 34
(h)	make arrangements for providing indemnity insurance,	35

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- (i) do anything else that it is authorised to do by or under this or any other Act. 1
2
- (3) These powers are in addition to, and do not limit, any other powers of a trustee corporation. 3
4
- (4) In this section, *borrow* means to obtain financial accommodation. 5
- 27 Property vested in trustee corporation and another as trustees to be held jointly** 6
7
 - If any property is vested in a trustee corporation and a natural person or in a trustee corporation and another corporation to the intent that they should hold the property jointly in any fiduciary capacity or as mortgagees they are taken to be joint tenants and not tenants in common unless otherwise expressly provided. 8
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- 28 Trustee corporation acting jointly** 13
 - (1) This section applies if a trustee corporation is appointed and acts jointly with any other person as executor or administrator or as holder of any of the following offices: 14
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16
 - (a) trustee, 17
 - (b) receiver, 18
 - (c) manager or administrator of the estate of a person who lacks capacity to manage his or her affairs, or 19
20
 - (d) financial manager of the estate of a minor. 21
 - (2) If this section applies, the following provisions have effect: 22
 - (a) the trustee corporation may, with the consent in writing of the other person, exercise in relation to any of the property jointly held or controlled, all or any of the functions conferred or imposed by this Part that the trustee corporation, if acting alone would have had or might have exercised or discharged, 23
24
25
26
27
 - (b) all money under the control of the trustee corporation and the other person jointly may, with the consent in writing of the other person, be dealt with by the trustee corporation alone in the same manner as money under the control of the trustee corporation alone, 28
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(c)	the person acting jointly with the trustee corporation is exonerated from any liability which, but for this paragraph, might have arisen in consequence of the exercise of the functions conferred by this section.	1 2 3 4
29	Bonds prohibited	5
	No bond, recognizance or other security for the proper exercise of the functions of a trustee corporation is to be required to be given by or on behalf of the trustee corporation.	6 7 8
30	Acceptance of deposits by trustee corporation	9
(1)	Despite anything in the <i>Corporations Law</i> , a trustee corporation must not:	10 11
(a)	accept a deposit of money with, or a loan of money to, the trustee corporation or a related body corporate from any estate under its administration or management, or	12 13 14
(b)	except as provided by this Act, accept a deposit of money with, or a loan of money to, the trustee corporation on its own behalf from any other person or from any common fund constituted under this Act.	15 16 17 18
	Maximum penalty: 50 penalty units.	19
(2)	Nothing in this section affects or limits the investment of money of any estate by a trustee corporation in a common trust fund constituted under this Act.	20 21 22
31	Unclaimed money	23
(1)	A trustee corporation must deal with unclaimed money (within the meaning of this section) in accordance with the [<i>insert name of legislation of jurisdiction dealing with unclaimed money</i>] as if it were unclaimed money within the meaning of the [<i>insert name of legislation of jurisdiction dealing with unclaimed money</i>] Act.	24 25 26 27 28
(2)	In this section, unclaimed money means:	29
(a)	all money that forms part of any estate of which a trustee corporation is executor, administrator or trustee and that remains unclaimed by the person entitled to the money for a period of 5 years after the time when the money became payable to that person, and	30 31 32 33 34
(b)	all interest accrued on that money.	35

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- (3) The period of 5 years referred to in subsection (2) (a) includes a period before or after or partly before and partly after the commencement of this section. 1
2
3

Division 6 Accounts 4

32 Application of this Division 5

This Division applies to a trustee corporation: 6

- (a) that is licensed as a trustee corporation under Part 7 (Licensing of trustee corporations), or 7
8
(b) that is licensed as a trustee corporation under a corresponding law, and that is authorised under this Act to operate as a trustee corporation. 9
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33 Trustee corporation not required to file accounts 12

- (1) A trustee corporation, when acting alone in relation to any estate of a deceased person, is not required to file, or file and pass, accounts relating to the estate unless the Court, of its own motion or on application by or on behalf of any person interested in the estate, so orders. 13
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(2) If a trustee corporation is appointed and acts jointly with any other person in relation to any estate, the trustee corporation and that other person are not required to file, or file and pass, accounts relating to the estate unless that other person desires to claim commission under Division 8 or unless the Court, of its own motion or on application by or on behalf of any person interested in the estate, so orders. 18
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(3) This section applies to estates committed to the administration or management of a trustee corporation before the commencement of this section and to estates so committed after that commencement. 24
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26

34 Trustee corporation may be required to provide account in relation to estate 27 28

- (1) A trustee corporation administering or managing an estate must, on application by any person with a proper interest in the matter, provide that person with an account of: 29
30
31
(a) the assets and liabilities of the estate, and 32
(b) the trustee corporation's administration of the estate, and 33

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- (c) any investment made from the estate, and 1
- (d) any distribution made from the estate, and 2
- (e) any other expenditure (including fees and commissions) from 3
the estate. 4
- (2) Where: 5
 - (a) a trustee corporation has provided an account to a person under 6
this section, and 7
 - (b) that person applies for a further account within 3 months from 8
the date on which that person was provided with the previous 9
account, 10

the trustee corporation need not provide a further account in response 11
to that application until the expiration of that period of 3 months. 12
- (3) A trustee corporation may charge a reasonable fee for providing an 13
account under this section. 14
- (4) If a trustee corporation fails to provide a proper account under this 15
section, the Court may, on application by the person who sought the 16
account or any other person who has a proper interest in the matter, 17
exercise one or both of the following powers: 18
 - (a) it may order the preparation and delivery of proper accounts, 19
 - (b) it may order an investigation of the administration of the estate 20
by an officer of the Court or other person nominated in the 21
order, 22

and it may make any incidental or ancillary orders. 23
- 35 Court may order audit 24**
 - (1) The Court may, on any application under section 34, in addition to or 25
in substitution for any account to be furnished by the trustee 26
corporation under section 34, order that a person named in the order 27
must examine the accounts of the trustee corporation relating to the 28
estate in respect of which the order is made. 29
 - (2) On the making of any such order, the trustee corporation: 30
 - (a) must give to the person named in the order a list of all the 31
accounts kept by it and must produce to the person at the office 32
of the trustee corporation at all reasonable times when required 33
all profit and loss accounts and balance sheets, all statements, 34
reports and notes (other than auditors reports or directors 35

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reports) attached to or intended to be read with any of those	1
accounts or balance sheets and all vouchers, papers and other	2
documents of the trustee corporation relating to the estate, and	3
(b) must provide the person with all necessary information and all	4
other necessary facilities for enabling the person to make the	5
examination.	6
(3) The Court may make any order as to costs, either against the trustee	7
corporation or against the applicant, or as to payment of costs out of	8
the estate, that the Court thinks fit.	9
Division 7 Common trust funds	10
36 Power to establish common trust funds	11
A trustee corporation may establish one or more funds to be known as	12
common trust funds.	13
37 Limitation on money comprising common trust fund	14
(1) A common trust fund maintained by a trustee corporation may include	15
only the following money:	16
(a) money administered by the trustee corporation as executor,	17
trustee or administrator of the estate of one or more deceased	18
persons or persons lacking capacity or as attorney under one or	19
more powers of attorney,	20
(b) money derived from the application or investment of such	21
money.	22
(2) However, money administered in relation to more than one client	23
cannot be mixed in a common fund if the deed for the establishment	24
of common trust funds does not allow mixing of such funds.	25
38 Power to make advances from common trust fund	26
A trustee corporation may make advances from a common trust fund	27
for any purpose relating to any estate or trust in the course of	28
administration by it, having regard to the effect of the withdrawal of	29
funds on the fund as a whole.	30

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39	Operation of common trust funds	1
(1)	If a trustee corporation establishes more than one common trust fund, each must be allocated an appropriate distinguishing number.	2 3
(2)	The trustee corporation must keep accounts showing at all times the current amount for the time being at credit in the common trust fund on account of each estate, trust, property or person.	4 5 6
40	Standards apply	7
	A common trust fund must be established and operated in accordance with any applicable standards.	8 9
Division 8	Power to charge commission and fees	10
41	Amounts chargeable by trustee corporation	11
(1)	This section applies to every estate that is committed to the administration or management of a trustee corporation:	12 13
(a)	as executor, administrator, trustee or receiver, or	14
(b)	as manager or administrator of the estate of a person who lacks capacity to manage his or her affairs, or	15 16
(c)	as financial manager of the estate of a minor.	17
(2)	A trustee corporation is entitled to receive out of the money belonging to the estate only the following:	18 19
(a)	a commission with respect to income or capital at a rate prescribed by the regulations,	20 21
(b)	a management fee in respect of any management service that is prescribed by the regulations and that is provided by the trustee corporation in its administration or management of that estate, being a fee:	22 23 24 25
(i)	fixed by the directors of the trustee corporation from time to time, and	26 27
(ii)	disclosed to the relevant clients of the trustee corporation in accordance with section 44, and	28 29
(iii)	that is reasonable having regard to the work involved in providing that service, and	30 31
(iv)	that does not exceed the maximum management fee prescribed by the regulations,	32 33

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- (c) if a trustee corporation, when acting as a trustee, is under a duty to take advice, the actual reasonable costs of obtaining the advice, 1
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3
- (d) any other commission the relevant testator has in his or her will directed to be paid either in addition to, or instead of, the commission provided for by this section. 4
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- (3) The commission is payable out of the assets of the trustee corporation comprising the estate on which the commission is chargeable. 7
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- (4) The commission is to be accepted by the trustee corporation in full satisfaction of any claim to remuneration for acting as the executor, administrator, trustee, receiver, manager, guardian or in any other capacity. No other charges beyond the commission are to be made or allowed, unless otherwise provided by this Act. 9
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13
- (5) In addition to any commission, management fees and remuneration that a trustee corporation is entitled to receive in accordance with this Act, a trustee corporation is entitled to charge and receive from or out of any income received by a common trust fund a fee for the establishment, keeping (including the keeping of accounts) and conduct of the common trust fund. 14
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- (6) That fee is to be calculated, according to the value of the work done and the services rendered, at a rate not exceeding 1% per annum on the capital sums invested in the common trust fund during the period in respect of which the income is received or allocated. 20
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23
- (7) The commission that a trustee corporation is entitled to receive under this section is not 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 or fund. 24
25
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- (8) Despite any other provision of this section, the payment of fees or commission charges in respect of an estate is subject to any order made by a court or tribunal at the time of committing the trust under the [*insert name of Act of the jurisdiction dealing with protected estates*]. 28
29
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31
- (9) This section is subject to any other statutory scheme that applies to the estate. 32
33
- 42 Power of Court with respect to excessive commissions or fees** 34
- (1) If the Court is of the opinion that the commission or fee charged by a trustee corporation in respect of any estate is excessive, the Court may of its own motion or on the application of any person interested in the 35
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- estate, review the commission or fee and may, on the review, reduce the commission or fee. 1
2
- (2) A person may not apply for the review of a commission or fee under this section unless the person has utilised any fee review or complaint procedure available under any applicable code of conduct implemented by the trustee corporation under Part 5. 3
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6
- (3) If a commission or fee is reduced by more than 10%, the trustee corporation to which the commission or fee is payable must, unless the Court in special circumstances otherwise orders, pay the costs of the review. 7
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- 43 Directors' fees** 11
- If an estate committed to the administration or management of a trustee corporation has an interest in a corporation and an officer of the trustee corporation, in his or her capacity as such an officer, acts as a director of the corporation for purposes connected with the administration or management of the estate: 12
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- (a) the trustee corporation is entitled to receive from the corporation and to retain any director's fees that would be payable to the officer had he or she so acted otherwise than in his or her capacity as such an officer, and 17
18
19
20
- (b) neither the officer nor the estate is entitled to receive the fees that the trustee corporation is entitled to receive under paragraph (a). 21
22
23
- 44 Disclosure in relation to commissions or fees** 24
- (1) A trustee corporation must disclose to a client, in writing, any fees that the trustee corporation is entitled to receive from or in relation to the estate. 25
26
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- (2) That disclosure must occur: 28
- (a) before or at the time of execution of instruments (if any) creating the trust or power under which the trustee corporation acts, and 29
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31
- (b) within 14 days after the instruments (if any) creating the trust or power under which the trustee corporation acts come into effect, and 32
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34
- (c) on earlier or later written request by the client. 35

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- (3) Disclosure must be in accordance with a code of conduct set out under Part 5. 1
2
- (4) If, at the time that an obligation under this section arises, the class of clients of a trustee corporation is not closed, the obligation to disclose fees to those clients is satisfied by publication of the fees in a newspaper circulating generally throughout [*name of State or Territory*]. 3
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Part 3 Liability of trustee corporations and their directors	1 2
45 Application of this Division	3
This Division applies to a trustee corporation:	4
(a) that is licensed as a trustee corporation under Part 7 (Licensing of trustee corporations), or	5 6
(b) that is licensed as a trustee corporation under a corresponding law, and that is authorised under this Act to operate as a trustee corporation.	7 8 9
46 Meaning of “assets of corporation”	10
For the purposes of this Part, a reference to the assets of a trustee corporation does not include any trust estate.	11 12
47 Assets of trustee corporation liable for proper administration of estates	13
All the capital and all other assets of any trustee corporation are liable:	14
(a) for the proper administration of all estates of which the trustee corporation acts as executor or administrator, including when appointed as executor or administrator under section 25, and	15 16 17
(b) for the due execution of the powers conferred on the trustee corporation under section 23.	18 19
48 Liability of directors with respect to management of estates and other functions	20 21
(1) This section applies when a trustee corporation:	22
(a) obtains a grant of probate or letters of administration, or	23
(b) is appointed or acts in any of the following offices:	24
(i) as trustee,	25
(ii) as receiver,	26
(iii) as manager or administrator of the estate of a person who lacks capacity to manage his or her affairs,	27 28
(iv) as financial manager of the estate of a minor,	29
(v) as attorney under a power of attorney.	30

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- (2) Each director of a trustee corporation is jointly and severally liable: 1
- (a) for the due administration of any estate entrusted to the trustee corporation during his or her term of office, and 2
3
 - (b) for the proper exercise during his or her term of office of his or her functions of any office in which the trustee corporation was appointed or acted. 4
5
6
- (3) Each officer of the trustee corporation is liable by process of attachment, commitment for contempt or by other process to all courts having jurisdiction in that behalf in the event of disobedience to the rules, orders and decrees of such courts made against the trustee corporation in the same manner and to the same extent: 7
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11
- (a) as if the officer had personally obtained the grant of probate or letters of administration and had acted as executor, administrator, trustee, receiver, manager or guardian, and 12
13
14
 - (b) as if the rule, order or decree had been made against them personally instead of against the trustee corporation. 15
16
- 49 Liability of estate not affected by liability of any director** 17
- Despite the personal liability of any director by virtue of section 8, the capital and all other assets of the trustee corporation remain liable for any pecuniary loss that may be occasioned by or that may happen through any breach of trust committed or function exercised, or any neglect in the performance of any trust or exercise of any function by the trustee corporation or any of its officers, whether the trust or function is implied by the law or expressly conferred or imposed by the instrument (if any) under which the trustee corporation acts. 18
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- 50 Court may restrain sale of shares or voluntary winding up** 26
- (1) Despite the *Corporations Law*, a person must not, without the consent of the Court, proceed to wind up a trustee corporation voluntarily if any estate in respect of which the trustee corporation is executor, administrator, trustee, receiver, manager or guardian, remains in whole or in part unadministered. 27
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| (2) Any person interested in such an estate or who has any claim in respect of any such estate may apply to the Court to do either or both of the following: | 1 |
| | 2 |
| | 3 |
| (a) to restrain any director or shareholder from disposing of any shares the director or shareholder may hold in the trustee corporation, | 4 |
| | 5 |
| | 6 |
| (b) to restrain the voluntary winding up of the trustee corporation. | 7 |
| (3) This section applies only to a trustee corporation that is licensed as a trustee corporation under Part 7 (Licensing of trustee corporations). | 8 |
| | 9 |

Part 4 Minister's powers	1
51 Operation of this Part	2
This Part does not limit the functions of the Minister under any other law.	3 4
52 Application of this Part	5
This Part applies to a trustee corporation:	6
(a) that is licensed as a trustee corporation under Part 7 (Licensing of trustee corporations), or	7 8
(b) that is licensed as a trustee corporation under a corresponding law, and that is authorised under this Act to operate as a trustee corporation.	9 10 11
53 Functions of Minister to regulate trustee corporations	12
(1) The functions of the Minister are:	13
(a) to license trustee corporations under this Act, and	14
(b) to supervise and regulate trustee corporations, and	15
(c) to supervise and enforce compliance by trustee corporations with this Act and with any applicable standards, and	16 17
(d) to protect the interests of clients of trustee corporations, and	18
(e) to otherwise undertake the administration and enforcement of this Act, and	19 20
(f) to enter into agreements, or make arrangements, with Ministers of other participating States or Territories concerning:	21 22
(i) the supervision and regulation by the Minister of trustee corporations licensed under the corresponding law in those States or Territories, and	23 24 25
(ii) the supervision and regulation by those Ministers of trustee corporations licensed under this Act, and	26 27
(g) to carry out any other functions conferred on the Minister by or under this Act.	28 29
(2) The Minister has power to do all things necessary or convenient to be done for, or in connection with, the performance of the Minister's functions.	30 31 32

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54	Minister to have regard to powers of other enforcement bodies	1
(1)	In exercising his or her enforcement powers under this Act in relation to trustee corporations licensed under Part 7 (Licensing of trustee corporations) or under a corresponding law, the Minister is to have regard to the enforcement powers exercisable by the Australian Securities and Investments Commission and APRA, and the prudential scheme under the <i>Australian Prudential Regulation Authority Act 1998</i> of the Commonwealth, in relation to the trustee corporation.	2 3 4 5 6 7 8
(2)	In exercising his or her enforcement powers under this Act in respect of trustee corporations licensed under a corresponding law, the Minister is to also have regard to the enforcement powers exercisable by the relevant corresponding Minister of the participating State or Territory in which the trustee corporation is licensed as a trustee corporation.	9 10 11 12 13 14
55	Delegation of functions to APRA or another person	15
(1)	The Minister may delegate to APRA or any other person any or all of the functions of the Minister under this Act (other than this power of conferral).	16 17 18
(2)	For this purpose, the Minister is authorised to enter into an agreement with the Commonwealth/Commonwealth Treasurer, on behalf of [name of State or Territory] to delegate functions to APRA.	19 20 21
(3)	A matter or thing done or omitted to be done by a person to whom powers are delegated by or under this section does not, if the matter was done or omitted to be done in good faith in execution of this Act, subject APRA, the person to any action, liability, claim or demand. Any such action, liability, claim or demand lies instead against the Minister.	22 23 24 25 26 27
56	Minister may direct making of application for winding up under Corporations Law	28 29
(1)	Without limiting the other persons who have standing under the <i>Corporations Law</i> , the Minister may apply for an order to wind up a trustee corporation under Part 5.4A of the <i>Corporations Law</i> .	30 31 32
(2)	This section applies only to a trustee corporation that is licensed as a trustee corporation under Part 7 (Licensing of trustee corporations).	33 34

Part 5 Code of Conduct

57 Code of conduct

- (1) It is a condition of every licence granted under this Part that a trustee corporation must be a party to a code of conduct.
- (2) A trustee corporation may comply with that condition either by:
 - (a) establishing its own code of conduct, or
 - (b) being a member of an industry organisation that has an established code of conduct.
- (3) Any such code of conduct must be approved by the Minister.

58 Matters that must be included in a code of conduct

- (1) Without limiting the matters that may be included in a code of conduct, a code of conduct must include a procedure for the resolution of complaints made against the trustee corporation in relation to fees or commissions by a client of a trustee corporation or any other person with a proper interest in the administration of the trust.
- (2) The code of conduct must include specific procedures for the resolution of complaints about:
 - (a) whether the trustee corporation is complying with the obligations imposed by this Act in relation to the disclosure of fees and commissions, and
 - (b) the amount of any fee or commission payable to the trustee corporation, and
 - (c) the services provided by the trustee corporation in relation to the administration of trusts.

59 Trustee corporation must implement and utilise code of conduct for every complaint

To avoid doubt, a trustee corporation licensed under this Part must implement and utilise the relevant code of conduct in respect of every complaint made against the trustee corporation:

- (a) by a client of the trustee corporation, or other person, to whom the Code applies, whether in [name of State or Territory] or in another State or Territory, or

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- (b) participating in relation to any activity or other matter arising in 1
[*name of State or Territory*] or in another State or Territory. 2

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Part 6 Standards

<p>Drafting Note 4. This Part will be enacted only in the lead jurisdiction. In the other jurisdictions the definition of “standard” will refer to a standard in force under this Part (as in force from time to time).</p>
--

60 Minister may make, amend or repeal standards

- (1) The Minister of [name of lead State or Territory] may make standards, including prudential standards, for the purpose of this Act and may amend or repeal any existing standard.
- (2) The Minister must not make, amend or repeal a standard without the approval of the Ministerial Council.
- (3) In this clause, *Ministerial Council* means the Ministerial Council established under the trustee corporations agreement

61 Contents of standards

- (1) A standard may be made with respect to the following matters:
 - (a) the affairs or activities of trustee corporations,
 - (b) the criteria for issuing a licence to a trustee corporation,
 - (c) the governance of trustee corporations, including:
 - (i) the independence of directors, and
 - (ii) the involvement of directors in related party transactions, and
 - (iii) internal systems for risk management, solvency, capital adequacy and accounting standards,
 - (d) provisions with respect to codes of conduct under Part 5,
 - (e) the matters to be dealt with in deeds for the establishment of common trust funds, including matters such as:
 - (i) the nature and, if applicable, the minimum rating of investments, and
 - (ii) the frequency of distribution of income, and
 - (iii) the fees charged by a trustee corporation in respect of common trust funds, and
 - (iv) any other matters that are appropriate, having regard to the nature of the fund,

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(f)	the supervision of trustee corporations by Ministers of participating States or Territories, including the practices and procedures to be adopted in carrying out that supervision,	1 2 3
(g)	the administration and enforcement of this Act by Ministers of participating States or Territories,	4 5
(h)	any other matters in relation to which this Act authorises or requires (whether expressly or by implication) standards to be made.	6 7 8
(2)	In this section, <i>affairs</i> the meaning given by section 53 of the <i>Corporations Law</i> .	9 10
62	Gazettal of standards	11
(1)	A standard, or an amendment to or repeal of a standard, comes into force on the day that the standard, amendment or repeal is published in the Gazette or on a later day specified in the standard.	12 13 14
(2)	The Minister must arrange for a standard, an amendment to or repeal of a standard to be published in the Gazette of each other participating jurisdiction at the same time as, or as soon as practicable after, its publication in the Gazette.	15 16 17 18
63	Procedures before making, amendment or repeal of standards	19
(1)	A standard must not be made, amended or repealed under section 60 unless this section or section 64 (Urgent standards) is complied with in relation to the making, amendment or repeal of the standard.	20 21 22
(2)	The Minister must, not later than 60 days before the Minister makes, amends or repeals a standard, publish a notice in the Gazette, in the Gazette of each other participating State, in a newspaper circulating generally in [name of State or Territory] and in each other participating State or Territory, explaining succinctly the purpose, and intended operation, of the standard, amendment or repeal.	23 24 25 26 27 28
(3)	A notice under subsection (2) must:	29
(a)	describe any recommendation that gave rise to the standard, amendment or repeal, and	30 31
(b)	invite written suggestions on the proposed standard, amendment or repeal to be given to the Minister within 30 days after publication of the Gazette notice.	32 33 34

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- (4) The Minister must make copies of any recommendation and of each suggestion and comment given to the Minister available for inspection and purchase at the principal office of the Department administered by the Minister. 1
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- (5) The Minister must comply with subsection (4) in relation to a suggestion or comment as soon as practicable after the suggestion or comment is made. 5
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- (6) The Minister must consider all suggestions and comments given to him or her under this section before making, amending or repealing any standard. 8
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- (7) The Minister must not make, amend or repeal a standard unless the Minister is satisfied that sufficient consultation has occurred under this section in [name of State or Territory] and any other participating State or Territory. 11
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- (8) Contravention of this section in relation to a resolution to make, amend or repeal a standard does not affect the validity of the standard. 15
16
- 64 Urgent standards** 17
- (1) If the Minister determines that it is necessary, because of urgent circumstances, for a standard to be made, amended or repealed without complying with section 63, the Minister may make, amend or repeal the standard. 18
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20
21
- (2) If the Minister makes, amends or repeals a standard in accordance with a determination under subsection (1), the Minister must immediately publish a copy of the determination in the Gazette, together with a succinct statement of its reasons for making the determination. 22
23
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- (3) A standard, amendment or repeal made by virtue of a determination under subsection (1) has effect for only 6 months or, if a lesser period is specified in the resolution, that period. 26
27
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- 65 Application of variation under standards** 29
- (1) A standard may provide that its operation in relation to a particular trustee corporation may be varied by the Minister by temporarily changing a requirement of the standard as allowed under the standard. 30
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32
- (2) If a standard provides that the operation of the standard in relation to a particular trustee corporation may be varied by the Minister by temporarily changing a requirement of the standard, the Minister may temporarily change the requirement as allowed under the standard. 33
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(3) The Minister may make a variation only in relation to a trustee corporation that is licensed under Part 7 (Licensing of trustee corporations).	1 2 3
(4) This section does not limit section 53 (Functions of Minister to regulate trustee corporations) or section 61 (Content of standards).	4 5
66 Transitional arrangements	6
(1) A standard, including a standard that imposes requirements, or increases the requirements already imposed by a standard, may make transitional provision for the purpose of allowing additional time to comply with the requirements.	7 8 9 10
(2) This section does not limit by implication section 61.	11
67 Matters for which standards may make provision	12
(1) A standard may make provision with respect to a matter by applying, adopting or incorporating (with or without modification) provisions of:	13 14
(a) any law of the Commonwealth, a State or Territory or a foreign country, or	15 16
(b) any document.	17
(2) If a standard makes provision with respect to a matter by applying, adopting or incorporating provisions of a law or document, the provisions as in force at that time are to be attached to the resolution by which the standard is made, and are taken to be incorporated in the standard.	18 19 20 21 22
(3) A standard may:	23
(a) apply generally to all persons, matters and things or be limited in its application to particular persons, matters and things, and	24 25
(b) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.	26 27
(4) A standard may:	28
(a) apply differently according to different specified factors, or	29
(b) otherwise make different provision in relation to different persons, matters or things.	30 31
(5) A standard may authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.	32 33

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- (6) A standard may make provision with respect to a particular aspect of a matter despite the fact that provision is made by or under this Act or a corresponding law in relation to another aspect of the matter or in relation to another matter. However, a standard that is inconsistent with this Act or the regulations is invalid to the extent of the inconsistency. 1
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- (7) In this section: 6
country includes: 7
(a) a federation, or 8
(b) a state, province or other part of a federation. 9
- 68 No discrimination on ground of connection with particular States** 10
A standard must not discriminate between trustee corporations on the 11
ground of their connection with particular States. 12

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Part 7 Licensing of trustee corporations 1

Drafting Note 5. A corporation that acts as a trustee corporation cannot exercise the powers set out in Part 2 of this Bill unless it is licensed under the Act. 2
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4

Division 1 Prohibition 5

69 Holding out as trustee corporation 6

A person must not represent that a corporation: 7

- (a) is a trustee corporation, or 8
- (b) is available to do work that a corporation can only do if it is a trustee corporation, 9
10

unless the corporation is a trustee corporation. 11

Maximum penalty: 50 penalty units. 12

Division 2 Licences 13

70 Applications for licences 14

(1) A corporation may apply to the Minister for a licence. 15

(2) An application must be: 16

- (a) in a form, and made in the manner, set out in the standards, and 17
- (b) accompanied by an application fee of an amount prescribed by the regulations, and 18
19

(c) accompanied by any information and evidence that the Minister may request for the purposes of determining the application, including such evidence as the Minister requires: 20
21
22

- (i) that the corporation is qualified to obtain a licence (including that it meets the standards for licensing), and 23
24
- (ii) that the corporation, if licensed, will be able to comply with this Act and all applicable standards. 25
26

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- (3) The Minister may require further information and evidence to be given in connection with an application, including information about any related body corporate of the applicant corporation . 1
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3
- (4) The Minister may require the application, and any such information or evidence, to be verified by statutory declaration. 4
5
- (5) An application is not duly made until any requirement under this section is complied with. 6
7
- 71 Determination of applications** 8
- (1) After considering an application, the Minister may grant a licence to the applicant, or refuse the application. 9
10
- (2) The Minister must not grant a licence to a corporation unless he or she has considered: 11
12
- (a) whether or not the directors and management of the corporation have sufficient expertise in the conduct of personal trustee and estate management work, and 13
14
15
- (b) whether or not the directors and management of the corporation have a long-term commitment to deliver personal trustee and estate management services, and 16
17
18
- (c) any criteria for licensing a trustee corporation set out in the standards, and 19
20
- (d) whether or not the trustee corporation is able to comply with the standards, and 21
22
- (e) any other matter that the Minister considers appropriate. 23
- (3) The Minister may refuse an application on any of the grounds on which the Minister may cancel a licence, that is, on any of the grounds listed in section 76 (1). 24
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- (4) The Minister must cause notice of his or her decision (including reasons for the decision, if the decision is to refuse the application) to be given to the applicant within 14 days after the decision is made. 27
28
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- (5) A person may, on payment of the fee prescribed by the regulations, obtain from the Minister a certified copy of the licence of a trustee corporation. 30
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Trustee Corporations [name of State or Territory] Bill 2001

72	Special requirements regarding qualifications of directors	1
	The Minister must not licence a trustee corporation unless:	2
	(a) the trustee corporation has at least 3 directors,	3
	(b) if the trustee corporation has more than 3 directors—at least 3 directors (including any managing director) are natural persons who ordinarily reside within Australia, and	4 5 6
	(c) if the trustee corporation has 3 directors—at least 2 directors (including any managing director) are natural persons who ordinarily reside within Australia, and	7 8 9
	(d) if a trustee corporation has a managing director—the managing director is a natural person who ordinarily resides within Australia.	10 11 12
73	Minister to be notified of certain changes	13
	(1) Within one month of any:	14
	(a) change in directors of a trustee corporation, or	15
	(b) change in the address of a director of a trustee corporation, or	16
	(c) change in the address of the registered office of a trustee corporation,	17 18
	the trustee corporation must lodge with the Minister or a person to whom the Minister has delegated functions under section 55 particulars of the change accompanied by any documents prescribed by the regulations.	19 20 21 22
	(2) This section applies only to a trustee corporation licensed under this Part.	23 24
74	Duration of licences	25
	(1) A licence takes effect on the date on which it is granted.	26
	(2) A licence continues in effect until it is cancelled.	27
75	Review of licences	28
	(1) The Minister may review a licence for any reason that the Minister considers appropriate.	29 30
	(2) The Minister must notify each relevant corresponding Minister of a participating State or Territory in which the trustee corporation carries on business of any review of the licence of that trustee corporation.	31 32 33

76 Cancellation of licences	1
(1) The Minister may cancel a licence on any of the following grounds:	2
(a) that the trustee corporation has requested the cancellation of the licence,	3 4
(b) that the trustee corporation cannot demonstrate a capacity or willingness to undertake probate and trustee work,	5 6
(c) that the trustee corporation has failed to comply with an applicable standard or licence condition,	7 8
(d) that the trustee corporation has failed to comply with a common law duty as trustee,	9 10
(e) that the trustee corporation has failed to comply with the requirements regarding directors set out in section 71,	11 12
(f) that the trustee corporation has failed to comply with its obligation to disclose fees under section 44,	13 14
(g) that there is no approved policy of indemnity insurance in force with respect to the trustee corporation for an amount that is not less than the amount determined by the standards in respect of the trustee corporation concerned,	15 16 17 18
(h) that the trustee corporation has failed to comply with a requirement under this Act to furnish any record, document or information or if any record, document or information so furnished fails to give a satisfactory explanation of the trustee corporation's conduct,	19 20 21 22 23
(i) that the trustee corporation, or any of its officers, has been convicted of an offence against this Act or the regulations or against a corresponding law or the regulations made under that law.	24 25 26 27
(2) For the purposes of subsection (1) the Minister may take into account any conduct of the trustee corporation that occurred outside of [<i>name of State or Territory</i>].	28 29 30
(3) The Minister must cause notice of his or her decision to cancel a licence to be given to the trustee corporation. The notice must include the reasons for the decision (except when the cancellation is at the request of the trustee corporation).	31 32 33 34
(4) A cancellation of a licence takes effect when notice of the cancellation is served on the trustee corporation or on any later date specified in the notice.	35 36 37

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(5) The Minister must consult the Minister of every State or Territory in which the trustee corporation carries on business in relation to the proposed cancellation.	1 2 3
77 Directions to trustee corporation	4
(1) After conducting a review of the licence of a trustee corporation, the Minister may give the trustee corporation a direction in writing not to take on new business in the capacity of trustee.	5 6 7
(2) A trustee corporation must not contravene such a direction. Maximum penalty: 100 penalty units.	8 9
Division 3 Transfer of personal trust business after cancellation of licence	10 11
78 Objects of this Division	12
The principal objects of this Division are:	13
(a) to provide for the transfer of certain property held in the capacity of trustee by a trustee corporation in respect of which a decision has been made to cancel its licence, immediately before the decision takes effect, to another trustee corporation, as an interim measure, and	14 15 16 17 18
(b) to provide that certain appointments or nominations (whenever made) of such a trustee corporation in the capacity of trustee are taken to be appointments or nominations of the replacement trustee, and	19 20 21 22
(c) to require the sale of the relevant property as soon as possible.	23
79 Definitions	24
In this Division:	25
<i>compulsory transfer determination</i> means a determination under section 80.	26 27
<i>trustee corporation business</i> , in relation to a trustee corporation, means property vested in the existing trustee corporation in its capacity as trustee but not interests in managed assets that are interest in managed investment schemes within the meaning of the <i>Corporations Law</i> and includes the assets and liabilities of the trustee corporation that are so vested.	28 29 30 31 32 33

80	Compulsory transfer determinations	1
(1)	The Minister may, in writing, make a determination (the <i>compulsory transfer determination</i>) that there is to be a transfer of trustee corporation business from one trustee corporation licensed under Part 7, or person appointed as receiver or controller of such a trustee corporation (the <i>transferring corporation</i>) to another trustee corporation licensed under this Act or a corresponding law (the <i>receiving corporation</i>).	2 3 4 5 6 7 8
(2)	The Minister may make a determination only if:	9
(a)	the Minister has cancelled the licence of the transferring corporation, and	10 11
(b)	the Minister is satisfied that the transfer is in the interests of clients of the transferring corporation when viewed as a group, and	12 13 14
(c)	the Minister is satisfied that the transfer is in the interests of clients of the receiving corporation, and	15 16
(d)	the Minister is satisfied that the board of the receiving corporation has consented to the transfer, and	17 18
(e)	the Minister is satisfied that the transfer is in the public interest.	19
(3)	The determination must include particulars of the transfer, including:	20
(a)	the names of the transferring corporation and the receiving corporation, and	21 22
(b)	whether it will be a total transfer or a partial transfer of the transferring corporation's trustee corporation business, and	23 24
(c)	if it will be a partial transfer, an indication of the part of the transferring corporation's business that is to be transferred.	25 26
(4)	The determination must include a statement of the reasons why the determination has been made.	27 28
81	Consent of receiving corporation	29
(1)	The consent referred to in section 80 (2) (d) remains in force until it is withdrawn by the receiving corporation's board with the agreement of the Minister.	30 31 32
(2)	The Minister may agree to the consent being withdrawn if the Minister considers it appropriate to allow the consent to be withdrawn having regard to:	33 34 35

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(a)	circumstances that have arisen since the consent was given, or	1
(b)	circumstances that were in existence at or before the time when the consent was given but that were not known to the receiving corporation's board when it gave its consent, or	2 3 4
(c)	any other relevant matter.	5
82	Determinations may impose conditions	6
(1)	The compulsory transfer determination may impose conditions of either or both of the following kinds:	7 8
(a)	conditions to be complied with by the transferring corporation or the receiving corporation before a certificate of transfer is issued in relation to the transfer of business,	9 10 11
(b)	considerations to be complied with by the transferring corporation or the receiving corporation after a certificate of transfer has been issued or has come into force in relation to the transfer of business.	12 13 14 15
(2)	The Minister may, by notice in writing given to the transferring corporation, vary or revoke any condition of a determination if the Minister is satisfied that the variation or revocation is appropriate.	16 17 18
(3)	The transferring corporation or the receiving corporation may apply in writing to the Minister to have a condition of a kind referred in subsection (1) (b) that applies to it varied or revoked.	19 20 21
(4)	The Minister may, by notice in writing given to the corporation that made the application, approve the variation or revocation if the Minister is satisfied that the variation or revocation is appropriate. A variation or revocation that is approved by the Minister has effect accordingly.	22 23 24 25 26
(5)	The transferring corporation or the receiving corporation is guilty of an offence if:	27 28
(a)	a condition of a kind referred to in subsection (1) (a) or (b) applies to that corporation, and	29 30
(b)	that corporation fails to comply with the condition.	31
	Maximum penalty (subsection (4)): 50 penalty units.	32
(6)	A transferring corporation is not guilty of an offence under this Act merely because the corporation is complying with a condition of a kind referred to in subsection (1) (a) or (b).	33 34 35

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83	Notice of determination	1
	The Minister must give a copy of the compulsory transfer determination to the transferring corporation and the receiving corporation.	2 3 4
84	Certificate of transfer	5
(1)	If:	6
(a)	the Minister has made a compulsory transfer determination, and	7
(b)	the Minister considers that the transfer should go ahead, and	8
(c)	the consent referred to in section 80 (2) (d) has not been withdrawn under section 81,	9 10
	the Minister must, in writing, issue a certificate (a <i>certificate of transfer</i>) stating that the transfer is to take effect.	11 12
(2)	The certificate must:	13
(a)	include the names of the transferring corporation and the receiving corporation, and	14 15
(b)	state whether the transfer is a total transfer or a partial transfer, and	16 17
(c)	if it is a partial transfer, include, or have attached to it:	18
(i)	a list of the estates the assets and liabilities of which are being transferred to the receiving corporation, and	19 20
(ii)	any approved statement under section 80, and	21
(d)	state when the certificate is to come into force (either by specifying a date as the date it comes into force, or by specifying that the date it comes into force is a date worked out in accordance with provisions of the certificate), and	22 23 24 25
(e)	be signed by the Minister.	26
(3)	The certificate may include provisions specifying, or specifying a mechanism for determining, other things that are to happen, or that are taken to be the case, in relation to assets and liabilities that are to be transferred, or in relation to the transfer of business that is to be effected, whether the transfer is total or partial.	27 28 29 30 31
(4)	The certificate comes into force in accordance with the statement included in the certificate as required by subsection (2) (d).	32 33

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85	Notice of certificate	1
	The Minister must:	2
	(a) give a copy of the certificate of transfer to the transferring corporation and the receiving corporation, and	3 4
	(b) give notice of the issue of the certificate in a newspaper circulating generally throughout [<i>name of State or Territory</i>].	5 6
86	Time and effect of compulsory transfer	7
(1)	When a certificate of transfer under this Act or a corresponding provision of a corresponding law comes into force, the receiving corporation becomes the successor in law of the transferring corporation, to the extent of the transfer. In particular:	8 9 10 11
	(a) if the transfer is a total transfer, all the assets (including common trust funds) and liabilities of the transferring corporation held in its capacity as trustee, wherever those assets and liabilities are located, become (respectively) assets and liabilities of the receiving corporation in its capacity as trustee without any transfer, conveyance or assignment, and	12 13 14 15 16 17
	(b) if the transfer is a partial transfer, all the assets (including common trust funds) and liabilities of the estates in the list referred to in section 84 (2) (c), wherever those assets and liabilities are located, become (respectively) assets and liabilities of the receiving corporation in its capacity as trustee without any transfer, conveyance or assignment, and	18 19 20 21 22 23
	(c) to the extent of the transfer, the duties, obligations, immunities, rights and privileges applying to the transferring corporation apply to the receiving corporation.	24 25 26
(2)	If the certificate includes provisions of a kind referred to in section 84 (3):	27 28
	(a) if the provisions specify that particular things are to happen or are taken to be the case, those things are, by force of this section, taken to happen, or to be the case, in accordance with those provisions, and	29 30 31 32
	(b) if the provisions specify a mechanism for determining things that are to happen or are taken to be the case, things determined in accordance with the mechanism are, by force of this section, taken to happen, or to be the case, as determined in accordance with that mechanism.	33 34 35 36 37

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87	Substitution of trustee corporation	1
(1)	Any appointment or nomination of the transferring corporation as trustee, executor or otherwise in the capacity of trustee is taken to be an appointment or nomination of the receiving corporation.	2 3 4
(2)	This section applies to an appointment or nomination:	5
(a)	whether made (or purporting to be made) before, on or after the commencement of this Division, and	6 7
(b)	whether the appointment or nomination:	8
(i)	is in effect on that date, or	9
(ii)	takes effect after that date, or	10
(iii)	has taken effect previously but some further act or thing is necessary to perfect the appointment to or undertaking of the office.	11 12 13
88	Liabilities for breach of trust and other matters not affected by this Act	14
(1)	Nothing in this Division affects any liabilities of the transferring corporation for breach of trust, misfeasance, non-feasance or the exercise of or failure to exercise any discretion in the capacity of trustee occurring before the transfer of the corporation's business under this Division.	15 16 17 18 19
(2)	Nothing in this Act affects any rights of the transferring corporation to indemnity in respect of those liabilities.	20 21
89	Evidence of transfer of business	22
(1)	The certificate of transfer given under section 81 is, in any legal proceedings, conclusive evidence of the vesting of any trustee corporation business pursuant to this Division.	23 24 25
(2)	A certificate under the seal of the receiving corporation to the effect that trustee corporation business specified in the certificate has been vested in it pursuant to this Act is conclusive evidence of the matters certified for the following purposes:	26 27 28 29
(a)	any application by the receiving corporation to be registered under [<i>the relevant legislation of the jurisdiction</i>] relating to the registration of interests in real property,	30 31 32
(b)	any application by the receiving corporation or a successor in title of the receiving corporation to bring land under [<i>the relevant legislation of the jurisdiction</i>] relating to the registration of interests in real property,	33 34 35 36

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(c)	any transfer, conveyance, reconveyance, mortgage or other instrument or dealing whatever in respect of any interest in any land,	1 2 3
(d)	any creation of an easement or other interest in respect of any land.	4 5
90	Exemption from [stamp] duty	6
(1)	An instrument executed only for:	7
(a)	the purpose of giving effect to this Division, or	8
(b)	a purpose ancillary to, or consequential on, the operation of this Division,	9 10
	is exempt from duties under the [<i>insert name of Act</i>].	11
(2)	On the application of the receiving corporation, the vesting of business in the receiving corporation pursuant to this Division is to be given effect to without payment of any fee.	12 13 14
91	Construction of references to transferring corporation	15
	On and from the date on which a certificate of transfer takes effect, in any instrument of any kind, a reference to the transferring corporation is taken to be a reference to the receiving corporation in respect of any business transferred in accordance with this Division.	16 17 18 19
92	Income or other distribution received by transferring corporation	20
	The transferring corporation is to promptly account to the receiving corporation for any income or other distribution received by the transferring corporation after the transfer of the transferring corporation's business if the income or distribution arises from any of the transferring corporation's business transferred pursuant to this Division.	21 22 23 24 25 26
93	Access to records	27
	The transferring corporation is, at the request of the receiving corporation, to give the receiving corporation access to all corporate, accounting and other records, documents or information in its possession that relate to property in respect of which the receiving corporation is to act in the capacity of trustee pursuant to this Division.	28 29 30 31 32

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Trustee Corporations [name of State or Territory] Bill 2001

94	Trust property unable to be transferred	1
	The transferring corporation and the receiving corporation are to do	2
	everything necessary to vest in the receiving corporation any property	3
	held by the transferring corporation in the capacity of trustee if that	4
	property cannot be vested in the receiving corporation under this Act	5
	(for example, because the vesting of the property is not governed by	6
	the laws of [<i>name of State or Territory</i>]).	7
95	Transferring corporation required to contact certain persons	8
(1)	When the licence of a trustee corporation is cancelled, the trustee	9
	corporation must take all reasonable steps to contact:	10
(a)	all persons who have executed and lodged instruments, such as	11
	wills, that have not yet come into effect, but will potentially	12
	lead to property being held by the trustee corporation in the	13
	capacity of trustee, and	14
(b)	all persons who have appointed the trustee corporation as	15
	trustee.	16
(2)	The trustee corporation must also advertise the cancellation, in	17
	accordance with any requirements imposed by the Minister at the time	18
	of cancellation.	19
(3)	The trustee corporation must advise them of:	20
(a)	the cancellation of its licence, and	21
(b)	the transfer of the trustee corporation's business to the receiving	22
	corporation.	23
Division 4	Application of Act to trustee corporations licensed	24
	in other States or Territories	25
96	Trustee corporations licensed in other States or Territories required to	26
	notify Minister	27
(1)	A trustee corporation licensed under a corresponding law that proposes	28
	to carry on business as a trustee corporation in [<i>name of State or</i>	29
	<i>Territory</i>] must notify the Minister (or the person to whom the	30
	Minister has delegated powers under section 55) in writing.	31

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Trustee Corporations [name of State or Territory] Bill 2001

- (2) A trustee corporation that has notified the Minister in accordance with subsection (1) is authorised to act as a trustee corporation in [*name of State or Territory*]. 1
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- 97 Application of Act to trustee corporations licensed in another State or Territory** 4
5
- Except as specifically provided by a particular provision of this Act, 6
the provisions of this Act apply, with all necessary modifications and 7
any prescribed modifications, to a trustee corporation authorised to act 8
as a trustee corporation under section 96 as if the trustee corporation 9
were licensed under Part 7. 10
- 98 Minister to be notified of certain changes regarding trustee corporations licensed in other States or Territories** 11
12
- Within one month of any: 13
- (a) change in the directors of a trustee corporation authorised to act 14
as a trustee corporation in [*name of State or Territory*] under 15
section 96, or 16
- (b) change in the address of the registered office of such a trustee 17
corporation, or 18
- (c) change in the name under which a trustee corporation 19
authorised to act as a trustee corporation in [*name of State or* 20
Territory] under section 96 carries on business in the 21
participating State or Territory in which it is licensed, 22
- the trustee corporation must lodge with the Minister (or the person to 23
whom the Minister has delegated powers under section 55) particulars 24
of the alteration or change accompanied by any documents prescribed 25
by the regulations. 26
- 99 Cessation of business to be notified** 27
- (1) A trustee corporation authorised under section 96 (2) to act as a trustee 28
corporation in [*name of State or Territory*] must, within 7 days of 29
ceasing to carry on business as a trustee corporation in [*name of State* 30
or Territory], notify the Minister (or the person to whom the Minister 31
has delegated powers under section 55) in writing of that fact. 32
- Maximum penalty: 50 penalty units. 33

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- (2) On notifying the Minister that it has ceased to carry on business as a trustee corporation in [*name of State or Territory*], a trustee corporation is no longer authorised to act as a trustee corporation in [*name of State or Territory*] and is no longer obliged to comply with this Division. 1
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- (3) For the purpose this section, a corporation ceases to carry on business as a trustee corporation if [*instructions required*]. 6
7

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Trustee Corporations [name of State or Territory] Bill 2001

Part 8 Shareholding restrictions	1
Division 1 Preliminary	2
100 Definitions	3
Schedule 2 sets out definitions of expressions used in this Part.	4
101 Application of this Part	5
This Part applies only to a trustee corporation that is licensed as a trustee corporation under Part 7 (Licensing of trustee corporations).	6 7
Division 2 15% shareholding limit	8
102 Meaning of "unacceptable shareholding situation"	9
For the purposes of this Part, an <i>unacceptable shareholding situation</i> exists in relation to a particular trustee corporation and in relation to a particular person if the person holds a stake in the trustee corporation of more than:	10 11 12 13
(a) 15%, or	14
(b) if an approval of a higher percentage is in force under Division 3 in relation to the trustee corporation and in relation to the person—that higher percentage.	15 16 17
Note. A person's stake includes the interests of the person's associates—see Schedule 2.	18 19
103 Acquisitions of shares	20
If:	21
(a) a person, or 2 or more persons under an arrangement, acquires shares in a company, and	22 23
(b) the acquisition has the result, in relation to a trustee corporation, that:	24 25
(i) an unacceptable shareholding situation comes into existence in relation to the trustee corporation and in relation to a person, or	26 27 28

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- (ii) if an unacceptable shareholding situation already exists in relation to the trustee corporation and in relation to a person—there is an increase in the stake held by the person in the trustee corporation, and 1
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3
4
 - (c) the person or persons mentioned in paragraph (a) knew that the acquisition would have that result or were reckless as to whether the acquisition would have that result, 5
6
7
- the person or persons mentioned in paragraph (a) are guilty of an offence. 8
9
- Maximum penalty: 30 penalty units. 10
- 104 Remedial orders** 11
- (1) If an unacceptable shareholding situation exists in relation to a trustee corporation, the Court may, on application by the Minister or the trustee corporation, make any orders that the Court considers appropriate for the purpose of ensuring that situation ceases to exist. 12
13
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15
- (2) If an unacceptable shareholding situation has existed in relation to a trustee corporation, the Court may, on application by the Minister or the trustee corporation, make any orders that the Court considers appropriate. 16
17
18
19
- (3) Without limiting subsections (1) or (2), the orders that the Court may make under this section include: 20
21
 - (a) an order directing the disposal of shares, or 22
 - (b) an order restraining the exercise of any rights attached to shares, or 23
24
 - (c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person, or 25
26
 - (d) an order that any exercise of rights attached to shares be disregarded. 27
28
- (4) In addition to the Court's powers under subsections (1) and (2), the Court: 29
30
 - (a) has power, for the purpose of securing compliance with another order made under this section, to make an order directing any person to do or refrain from doing a specified act, and 31
32
33
 - (b) has power to make an order containing any ancillary or consequential provisions that the Court thinks just. 34
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- (5) The Court may, before making an order under this section, direct that notice of the application be given to any persons that it thinks fit or be published in the manner that it thinks fit, or both. 1
2
3
- (6) The Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order. 4
5

Division 3 Approval to exceed 15% shareholding limit 6

105 Application for approval to exceed 15% shareholding limit 7

- (1) A person may apply to the Minister for approval to hold a stake in a particular trustee corporation of more than 15%. 8
9
- (2) The application must: 10
- (a) specify the percentage of the stake (if any) the person currently holds in the trustee corporation, and 11
12
 - (b) specify the percentage of the stake the person is seeking approval to hold in the trustee corporation, and 13
14
 - (c) set out the person's reasons for making the application, and 15
 - (d) be accompanied by the prescribed fee. 16
- (3) The Minister may require a person who has made an application to provide further information to the Minister before the Minister determined an application. 17
18
19

106 Approval of application 20

- (1) If the applicant satisfies the Minister that it is in the interests of the trustee corporation and the clients of trustee corporations to approve the applicant holding a stake in the trustee corporation of more than 15%, the Minister may grant the application. 21
22
23
24
- (2) If the Minister grants the application, the Minister must: 25
- (a) give written notice of the approval to the applicant, and 26
 - (b) specify the percentage of the stake the Minister approves the applicant holding in the trustee corporation (which may not be the percentage the applicant applied for), and 27
28
29
 - (c) either: 30
 - (i) specify the period during which the approval remains in force, or 31
32
 - (ii) specify that the approval remains in force indefinitely. 33

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- (3) If the Minister refuses the application, the Minister must give written notice of the refusal to the applicant. 1
2
- (4) The Minister must arrange for a copy of a notice of approval under this section to be: 3
4
- (a) published in the Gazette, and 5
- (b) given to the trustee corporation concerned. 6
- 107 Duration of approval** 7
- (1) An approval under section 106 remains in force: 8
- (a) if the notice of approval specifies a period during which the approval remains in force—until the end of that period, or if the Minister extends that period, until the end of that extended period, or 9
10
11
12
- (b) otherwise—indefinitely. 13
- (2) A person who holds an approval under section 106 that is in force for a specified period may apply to the Minister to extend that period. 14
15
- (3) The application must: 16
- (a) set out the person’s reasons for making the application, and 17
- (b) be accompanied by the prescribed fee. 18
- (4) If the applicant satisfies the Minister that it is in the interests of the trustee corporation and the clients of trustee corporations to grant the extension, the Minister may grant the application. 19
20
21
- (5) If the Minister grants the application, the Minister must: 22
- (a) give written notice of the extension to the applicant, and 23
- (b) specify the extended period during which the approval remains in force (which may not be the period the applicant applied for). 24
25
- (6) If the Minister refuses the application, the Minister must give written notice of the refusal to the applicant. 26
27
- (7) The Minister must arrange for a copy of a notice of extension under this section to be: 28
29
- (a) published in the Gazette, and 30
- (b) given to the trustee corporation concerned. 31

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108	Conditions of approval	1
(1)	An approval under section 106 is subject to any conditions specified in the notice of approval.	2 3
(2)	The Minister may, by written notice given to a person who holds an approval under section 106:	4 5
(a)	impose one or more conditions or further conditions to which the approval is subject, or	6 7
(b)	revoke or vary any condition:	8
(i)	imposed under paragraph (a), or	9
(ii)	specified in the notice of approval.	10
(3)	The Minister's power under subsection (2) may be exercised:	11
(a)	on the Minister's own initiative, or	12
(b)	on application made to the Minister by the person who holds the approval.	13 14
(4)	An application made by a person under subsection (3) (b) must:	15
(a)	set out the person's reasons for making the application, and	16
(b)	be accompanied by the prescribed fee.	17
(5)	If the Minister refuses an application under subsection (3) (b), the Minister must give written notice of the refusal to the applicant.	18 19
(6)	The Minister must arrange for a copy of a notice under subsection (2) to be given to the trustee corporation concerned.	20 21
109	Varying percentage stake approved	22
(1)	A person who holds an approval under section 106 may apply to the Minister to vary the percentage specified in the approval.	23 24
(2)	The application must:	25
(a)	specify the percentage of the stake the person currently holds in the trustee corporation concerned, and	26 27
(b)	specify the percentage of the stake the person is seeking approval to hold in the trustee corporation, and	28 29
(c)	set out the person's reasons for making the application, and	30
(d)	be accompanied by the prescribed fee.	31

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- (3) If the applicant satisfies the Minister that it is in the interests of the trustee corporation and the clients of trustee corporations to vary the percentage, the Minister may grant the application. 1
2
3
- (4) If the Minister grants the application, the Minister must: 4
- (a) give written notice of the variation to the applicant, and 5
- (b) specify the variation granted (which may not be the variation the applicant applied for). 6
7
- (5) If the Minister refuses an application, the Minister must give written notice of the refusal to the applicant. 8
9
- (6) If the Minister varies a percentage upwards, the variation takes effect on the day the notice of variation is given. 10
11
- (7) If the Minister varies a percentage downwards, the variation takes effect on the day specified in the notice of variation. The specified day must be a day at least 90 days after the day on which the notice is given. 12
13
14
15
- (8) The Minister must arrange for a copy of a notice of variation under this section to be given to the trustee corporation concerned. 16
17
- 110 Revoking an approval** 18
- (1) The Minister may, by written notice given to a person who holds an approval under section 106 in relation to a trustee corporation, revoke the approval. 19
20
21
- (2) The Minister may revoke an approval only if the Minister has had regard to whether or not: 22
23
- (a) it is in the interests of the trustee corporation and the clients of trustee corporations to do so, or 24
25
- (b) an unacceptable shareholding situation (which arose after the approval was given) exists in relation to the trustee corporation and in relation to the person, or 26
27
28
- (c) there has been a contravention of a condition to which the approval is subject. 29
30
- (3) The revocation takes effect on the day specified in the notice of revocation. The specified day must be a day at least 90 days after the day on which the notice is given. 31
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- (4) If a person who holds an approval under section 106 requests the Minister to revoke the approval, the Minister must, by written notice given to the person, revoke the approval. The revocation takes effect on the day specified in the notice of revocation. 1
2
3
4
- (5) The Minister must arrange for a copy of a notice of revocation under this section to be given to the trustee corporation concerned. 5
6
- 111 Flow-on approvals** 7
- (1) If: 8
- (a) at a particular time, a person holds an approval under section 106 to hold a stake in a trustee corporation of more than 15%, and 9
10
11
- (b) the trustee corporation is a holding company of one or more trustee corporations, 12
13
- there are taken to be in force at that time approvals of the Minister, under section 106, for the person to hold the same percentage stake in each trustee corporation that is a 100% subsidiary of the holding company. 14
15
16
17
- (2) If, on a particular day, a trustee corporation that is a 100% subsidiary of the holding company ceases to be a 100% subsidiary of the holding company, the approval that is taken to be in force, because of subsection (1), in relation to that trustee corporation continues in force until: 18
19
20
21
22
- (a) the end of 90 days after that day, or 23
- (b) if, during that period of 90 days, the person becomes the holder of another approval under section 106 in relation to the trustee corporation—that other approval comes into force. 24
25
26
- (3) If, at a particular time, a company (the approval company) holds an approval under section 106 to hold a stake in a trustee corporation of more than 15%, there is taken to be in force at that time an approval of the Minister, under section 106, for each officer of the approval company to hold the same percentage stake in the trustee corporation. 27
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112	Further information about applications	1
(1)	This section applies to an application under this Division.	2
(2)	The Minister may, by written notice given to the applicant, require the applicant to give the Minister, within a specified period, further information about the application.	3 4 5
(3)	The Minister may refuse to consider the application until the applicant gives the Minister the information.	6 7
Division 4	Practical control where 15% shareholding limit not exceeded	8 9
113	Meaning of control	10
	In this Division, <i>control</i> includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.	11 12 13 14
114	Minister may declare person to have practical control of a trustee corporation	15 16
(1)	If:	17
(a)	the Minister has had regard to whether or not:	18
(i)	the directors of a trustee corporation are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person (either alone or together with associates), or	19 20 21 22
(ii)	a person (either alone or together with associates) is in a position to exercise control over a trustee corporation, and	23 24 25
(b)	the Minister has had regard to whether or not:	26
(i)	the person does not have any stake in the company, or	27
(ii)	if the person has a stake in the company—that stake is not more than 15%, and	28 29
(c)	the Minister has had regard to whether or not it is in the interests of the trustee corporation and the clients of trustee corporations to declare that the person has practical control of the company for the purposes of this Part,	30 31 32 33

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the Minister may declare that the person has practical control of the company for the purposes of this Part.	1 2
(2) A declaration under this section has effect accordingly.	3
(3) The Minister must revoke a declaration under this section if the Minister reconsiders the matters referred to in subsection (1) (a), (b) and (c).	4 5 6
(4) If a declaration under this section is made or revoked, the Minister must arrange for a copy of the declaration or revocation to be given to the trustee corporation and the person concerned.	7 8 9
115 Requirement to relinquish practical control or reduce stake	10
(1) If a person has practical control of a trustee corporation, the person must take any steps that are necessary to ensure that:	11 12
(a) the directors of the trustee corporation are not accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (either alone or together with associates), and	13 14 15 16
(b) the person (either alone or together with associates) is not in a position to exercise control over the trustee corporation, and	17 18
(c) either:	19
(i) the person does not have any stake in the trustee corporation, or	20 21
(ii) if the person has a stake in the trustee corporation—that stake is not more than 15%.	22 23
(2) The person must take those steps:	24
(a) within 90 days after receiving the copy of the most recent declaration under section 114 relating to the practical control of the trustee corporation, or	25 26 27
(b) if the Minister, by written notice given to the person, allows a longer period for compliance—before the end of that longer period.	28 29 30
(3) A person is guilty of an offence if:	31
(a) the person is subject to a requirement under this section, and	32
(b) the person recklessly contravenes the requirement.	33
Maximum penalty: 30 penalty units.	34

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116 Remedial orders	1
(1) If:	2
(a) a declaration under section 114 is in force in relation to a person and in relation to a trustee corporation, and	3 4
(b) the Court is satisfied that:	5
(i) the directors of the trustee corporation are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (either alone or together with associates), or	6 7 8 9 10
(ii) the person (either alone or together with associates) is in a position to exercise control over the trustee corporation, and	11 12 13
(c) the Court is satisfied that:	14
(i) the person does not have any stake in the trustee corporation, or	15 16
(ii) if the person has a stake in the trustee corporation—that stake is not more than 15%,	17 18
the Court may, on application by the Minister, make any orders that the Court considers appropriate to ensure that:	19 20
(d) the directors of the trustee corporation are not accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (either alone or together with associates), and	21 22 23 24
(e) the person (either alone or together with associates) is not in a position to exercise control over the trustee corporation, and	25 26
(f) either:	27
(i) the person does not have any stake in the trustee corporation, or	28 29
(ii) if the person has a stake in the trustee corporation—that stake is not more than 15%.	30 31
(2) The Court's orders include:	32
(a) an order directing the disposal of shares, or	33
(b) an order restraining the exercise of any rights attached to shares, or	34 35
(c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person, or	36 37

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(d)	an order that any exercise of rights attached to shares be disregarded.	1 2
(3)	Subsection (2) does not, by implication, limit subsection (1).	3
(4)	In addition to the Court's powers under subsections (1) and (2), the Court:	4 5
(a)	has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act, and	6 7 8
(b)	has power to make an order containing any ancillary or consequential provisions that the Court thinks just.	9 10
(5)	The Court may, before making an order under this section, direct that notice of the Minister's application be given to any persons that it thinks fit or be published in that manner that it thinks fit, or both.	11 12 13
(6)	The Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.	14 15
Division 5	Validity of acts	16
117	Validity of acts done in contravention of this Part	17
	An act is not invalidated by the fact that it constitutes an offence against this Part.	18 19
Division 6	Anti-avoidance	20
118	Anti-avoidance	21
(1)	If:	22
(a)	one or more persons enter into, begin to carry out or carry out a scheme, and	23 24
(b)	it would be concluded that the person, or any of the persons, who entered into, began to carry out or carried out the scheme or any part of the scheme did so for the sole or dominant purpose of avoiding the application of any provision of this Part in relation to any person or persons (whether or not mentioned in paragraph (a)), and	25 26 27 28 29 30

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(c)	as a result of the scheme or a part of the scheme, a person (the stakeholder) increases the stakeholder's stake in a trustee corporation,	1 2 3
	the Minister may give the stakeholder a written direction to cease holding that stake within a specified time.	4 5
(2)	A person is guilty of an offence if:	6
(a)	the person is subject to a direction under subsection (1), and	7
(b)	the person intentionally contravenes the direction.	8
	Maximum penalty: 50 penalty units.	9
(3)	In this section:	10
	<i>increase</i> , in relation to a stake in a trustee corporation, includes an increase from a starting point of nil.	11 12
Division 7	Injunctions	13
119	Injunctions	14
(1)	If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of section 103, the Court may, on the application of the Minister, grant an injunction:	15 16 17
(a)	restraining the person from engaging in the conduct, and	18
(b)	if, in the Court's opinion, it is desirable to do so—requiring the person to do something.	19 20
(2)	If:	21
(a)	a person has engaged, is engaging or is proposing to engage in any conduct in contravention of section 103, and	22 23
(b)	the contravention relates to the existence of an unacceptable shareholding situation in relation to a trustee corporation,	24 25
	the Court may, on the application of the trustee corporation, grant an injunction:	26 27
(c)	restraining the person from engaging in the conduct, and	28
(d)	if, in the Court's opinion, it is desirable to do so—requiring the person to do something.	29 30

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(3) If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of a condition to which an approval under section 106 is subject, the Court may, on the application of the Minister, grant an injunction:	1 2 3 4
(a) restraining the person from engaging in the conduct, and	5
(b) if, in the Court's opinion, it is desirable to do so—requiring the person to do something.	6 7
(4) If:	8
(a) a person has failed, or is failing, or is proposing to fail, to do an act or thing, and	9 10
(b) the failure was, is or would be a contravention of a condition to which an approval under section 106 is subject,	11 12
the Court may, on the application of the Minister, grant an injunction requiring the person to do that act or thing.	13 14
120 Interim injunctions	15
(1) If an application is made to the Court for an injunction under section 119, the Court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that section.	16 17 18 19
(2) The Court is not to require an applicant for an injunction under section 119, as a condition of granting an interim injunction, to give any undertakings as to damages.	20 21 22
121 Discharge or variation of injunctions	23
The Court may discharge or vary an injunction granted under this Division.	24 25
122 Certain limits on granting injunctions not to apply	26
(1) The power of the Court under this Part to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:	27 28 29
(a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind, or	30 31 32 33

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(b)	if it appears to the Court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.	1 2 3 4 5 6
(2)	The power of the Court under this Part to grant an injunction requiring a person to do an act or thing may be exercised:	7 8
(a)	if the Court is satisfied that the person has failed to do that act or thing—whether or not it appears to the Court that the person intends to fail again, or to continue to fail, to do that act or thing, or	9 10 11 12
(b)	if it appears to the Court that, if an injunction is not granted, it is likely that the person will fail to do that act or thing—whether or not the person has previously failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person fails to do that act or thing.	13 14 15 16 17 18
123	Other powers of the Court unaffected	19
	The powers conferred on the Court under this Part are in addition to, and not instead of, any other powers of the Court, whether conferred by this Part or otherwise.	20 21 22
Division 8	Civil liability	23
124	Civil liability of corporations	24
(1)	If, in a civil proceeding under this Part in respect of conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that:	25 26 27
(a)	a director, employee or agent of the corporation engaged in that conduct, and	28 29
(b)	the director, employee or agent was, in engaging in that conduct, acting within the scope of his or her actual or apparent authority, and	30 31 32
(c)	the director, employee or agent had that state of mind.	33

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(2) If:	1
(a) conduct is engaged in on behalf of a corporation by a director, employee or agent of the corporation, and	2 3
(b) the conduct is within the scope of his or her actual or apparent authority,	4 5
the conduct is taken, for the purposes of a civil proceeding under this Part, to have been engaged in by the corporation unless the corporation establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.	6 7 8 9
(3) A reference in subsection (1) to the <i>state of mind</i> of a person includes a reference to:	10 11
(a) the knowledge, intention, opinion, belief or purpose of the person, and	12 13
(b) the person's reasons for the intention, opinion, belief or purpose.	14 15
(4) A reference in this section to a director of a corporation includes a reference to a constituent member of a body incorporated for a public purpose by a law of the Commonwealth, a State or a Territory.	16 17 18
(5) A reference in this section to engaging in conduct includes a reference to failing to engage in conduct.	19 20
125 Civil liability of persons other than corporations	21
(1) If, in a civil proceeding under this Part in respect of conduct engaged in by a person other than a corporation, it is necessary to establish the state of mind of the person, it is sufficient to show that:	22 23 24
(a) the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority, and	25 26 27
(b) the employee or agent had that state of mind.	28
(2) If:	29
(a) conduct is engaged in on behalf of a person other than a corporation by an employee or agent of the person, and	30 31
(b) the conduct is within the employee's or agent's actual or apparent authority,	32 33

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the conduct is taken, for the purposes of a civil proceeding under this Part, to have been engaged in by the person unless the person establishes that he or she took reasonable precaution and exercised due diligence to avoid the conduct.	1 2 3 4
(3) A reference in this section to the state of mind of a person includes a reference to:	5 6
(a) the knowledge, intention, opinion, belief or purpose of the person, and	7 8
(b) the person's reasons for the intention, opinion, belief or purpose.	9 10
(4) A reference in this section to engaging in conduct includes a reference to failing to engage in conduct.	11 12
Division 9 Miscellaneous	13
126 Transitional—pre-commencement stakes in trustee corporations	14
(1) This section applies if, immediately before the commencement of this section a person held a stake in a particular trustee corporation of more than 15%.	15 16 17
(2) This Part has effect as if the Minister had, immediately after the commencement of this section, by written notice under section 106, approved the person holding the same percentage stake in the trustee corporation.	18 19 20 21
Note. This approval can be varied or revoked in accordance with the provisions of Division 3.	22 23
(3) For the purposes of this section, Division 1 and Schedule 2 are taken to have been in force immediately before the commencement of this section.	24 25 26
(4) This section does not affect the operation of clause 5 of Schedule 3.	27

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Part 9	Supervision and investigations	1
Division 1	Application	2
127	Application	3
	This Part applies to a trustee corporation:	4
	(a) that is licensed as a trustee corporation under Part 7 (Licensing of trustee corporations), or	5
		6
	(b) that is licensed as a trustee corporation under a corresponding law, and that is authorised under this Act to operate as a trustee corporation.	7
		8
		9
Division 2	Supervision and inspection	10
128	Definitions	11
	In this Part:	12
	<i>premises</i> includes any structure, building, aircraft, vehicle, vessel and place (whether built upon or not) and any part of such a structure, building, aircraft, vehicle, vessel or place.	13
		14
		15
	<i>relevant documents</i> means records or other documents that relate to the promotion, formation, membership, control, transactions, dealings, business or property of a trustee corporation.	16
		17
		18
129	“Trustee corporation” includes related bodies corporate	19
	A reference in this Part to a trustee corporation includes a reference to a related body corporate of a trustee corporation.	20
		21
130	Appointment of inspectors	22
	The Minister may appoint persons to be inspectors for the purposes of this Act.	23
		24
131	Minister and investigators have functions of inspectors	25
	The Minister, and any investigator exercising functions under Division 3, have and may exercise all the functions of an inspector and for that purpose are to be considered to be inspectors.	26
		27
		28

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132	Inspector's certificate of authority	1
	Each inspector is to be provided by the Minister with a certificate of authority and on applying for admission to any premises must, if requested to do so, produce the certificate.	2 3 4
133	Inspectors may require certain persons to appear, answer questions and produce documents	5 6
	(1) An inspector may by notice in writing in the prescribed form:	7
	(a) require a trustee corporation to produce to the inspector at a time and place specified in the notice specified relevant documents relating to the trustee corporation, and	8 9 10
	(b) require any person or corporation who is concerned in the activities of a trustee corporation to produce to the inspector at a time and place specified in the notice specified relevant documents relating to the trustee corporation, and	11 12 13 14
	(c) require any person or corporation who is concerned in the activities of a trustee corporation to attend before the inspector at a time and place specified in the notice and to answer any questions put to the person by the inspector relating to the promotion, formation, membership, control, transactions, dealings, business or property of the trustee corporation.	15 16 17 18 19 20
	(2) A person is to be considered to be involved in the activities of a trustee corporation if the person:	21 22
	(a) is or has been an officer or employee of, or an agent, banker, legal practitioner, auditor or other person acting in any capacity for or on behalf of, the trustee corporation, or	23 24 25
	(b) is a person who has any relevant documents relating to the trustee corporation in his or her possession, or	26 27
	(c) is a person who was a party to the creation of any relevant documents relating to the trustee corporation.	28 29
	(3) A person is not subject to any liability by reason of complying with a requirement made or purportedly made under this section.	30 31
134	Inspectors' powers of entry	32
	(1) An inspector has power to enter any of the following premises:	33
	(a) any premises on which the affairs or activities of a trustee corporation are managed or conducted,	34 35

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(b)	any premises on which the inspector suspects on reasonable grounds there is evidence of the commission of an offence under this Act or the regulations,	1 2 3
(c)	any premises on which the inspector suspects on reasonable grounds there are relevant documents.	4 5
(2)	Despite subsection (1), the consent of the occupier or the authority of a search warrant is required to enter:	6 7
(a)	any part of premises not used for the management or conduct of the affairs or activities of a trustee corporation, and	8 9
(b)	any part of premises used for residential purposes (whether or not the part is also used for the management or conduct of the affairs or activities of a trustee corporation).	10 11 12
(3)	In this section, <i>affairs</i> the meaning given by section 53 of the <i>Corporations Law</i> .	13 14
135	Powers of inspectors on premises entered	15
	An inspector has the following powers on premises that the inspector is authorised to enter:	16 17
(a)	power to search for evidence of any contravention of this Act or the regulations,	18 19
(b)	power to search for relevant documents and to require any person on the premises to produce to the inspector any relevant documents in the person's custody or under the person's control,	20 21 22
(c)	power to require any person on the premises who is apparently involved in the management or conduct of the affairs or activities of a trustee corporation to answer questions or provide information,	23 24 25 26
(d)	power to exercise the functions of an inspector under section 133 in relation to any relevant documents found on the premises or produced to the inspector.	27 28 29
(1)	In this section, <i>affairs</i> the meaning given by section 53 of the <i>Corporations Law</i> .	30 31

136	Functions of inspectors in relation to relevant documents	1
(1)	An inspector has the following powers in relation to relevant documents found by an inspector on premises entered by the inspector or produced to the inspector pursuant to a requirement made under this Division:	2
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(a)	power to take possession of the documents or secure them against interference,	6
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(b)	power to make copies, or take extracts from, the documents,	8
(c)	power to require any person who was party to the creation of the documents to make a statement providing any explanation that the person is able to provide as to any matter relating to the creation of the documents or as to any matter to which the documents relate,	9
		10
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		13
(d)	power to retain possession of the documents for that period that is necessary to enable the documents to be inspected, and copies of, or extracts from, the documents to be made or taken.	14
		15
		16
(2)	While an inspector retains possession of a document, the inspector must permit a person who would be entitled to inspect the document were it not in the possession of the inspector to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.	17
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(3)	If an inspector takes possession of or secures against interference any relevant document and a person has a lien on the document, the inspector's actions do not prejudice the lien.	22
		23
		24
137	Offence of failing to comply with requirements of inspector	25
(1)	A person who fails to comply with any requirement made of the person by an inspector under the authority of this Part is guilty of an offence unless the person establishes that he or she had a reasonable excuse for failing to comply.	26
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	Maximum penalty: 50 penalty units.	30
(2)	A person who in purported compliance with a requirement under this Division furnishes information or makes a statement that is false or misleading in a material particular is guilty of an offence unless the person establishes that he or she believed on reasonable grounds that it was true and not misleading.	31
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	Maximum penalty: 50 penalty units.	36

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- (3) A person must not without reasonable excuse obstruct or hinder an inspector exercising functions under this Act. 1
2
Maximum penalty: 50 penalty units. 3
- (4) The occupier or person in charge of any premises must provide a person who enters the premises under the authority of this Part or pursuant to a search warrant referred to in section 139 with all reasonable facilities and assistance for the effective exercise of the person's powers under this Part or under the warrant. 4
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Penalty: 50 penalty units. 9
- 138 Protection from incrimination** 10
- (1) A person is not excused from making a statement pursuant to a requirement under this Division on the ground that the statement might tend to incriminate him or her. 11
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- (2) However, if the person claims before making a statement that the statement might tend to incriminate him or her, the statement is not admissible in evidence against him or her in criminal proceedings other than: 14
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- (a) proceedings under this Division, 18
- (b) proceedings under section 148 for giving a false or misleading answer to the question, or 19
20
- (c) proceedings on a charge of perjury in respect of the answer. 21
- (3) Except as provided by subsection (1), a statement made by a person in compliance with a requirement under this Division may be used in evidence in any criminal or civil proceedings against the person. 22
23
24
- 139 Search warrants** 25
- (1) An inspector may apply to an authorised justice for the issue of a search warrant in respect of premises if the inspector believes on reasonable grounds: 26
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28
- (a) that the affairs or activities of a trustee corporation are being managed or conducted on the premises, or 29
30
- (b) that there is evidence on the premises of the commission of an offence under this Act or the regulations, or 31
32
- (c) that there are relevant documents on the premises. 33

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- (2) The authorised justice to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant to enter the premises and exercise all or specified functions of an inspector on the premises. 1
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- (3) Part 3 of the *Search Warrants Act 1985* [or equivalent provisions of local Act] applies to a search warrant issued under this section. 6
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- (4) Without limiting the generality of section 18 of the *Search Warrants Act 1985* [or equivalent provisions of local Act], a police officer may accompany an inspector executing a search warrant issued under this section and may take all reasonable steps to assist in the exercise of the functions of the inspector under this Act. 8
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- (5) In this section: 13
authorised justice has the same meaning as in the *Search Warrants Act 1985*. 14
15
affairs has the meaning given by section 53 of the *Corporations Law*. 16
- 140 Copies or extracts of records to be admitted in evidence** 17
- (1) Subject to this section, in any legal proceedings (whether proceedings under this Act or otherwise), a copy of or extract from a record relating to affairs of a trustee corporation is admissible in evidence as if it were the original record or the relevant part of the original record. 18
19
20
21
- (2) A copy of or extract from a record is not admissible in evidence under subsection (1) unless it is proved that the copy or extract is a true copy of the record or of the relevant part of the record. 22
23
24
- (3) For the purposes of subsection (2), evidence that a copy of or extract from a record is a true copy of the record or of a part of the record may be given either orally or by an affidavit or statutory declaration by a person who has compared the copy or extract with the record or the relevant part of the record. 25
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- 141 Privilege** 30
- (1) A legal practitioner is entitled to refuse to comply with a requirement under section 133, 135 or 136 relating to a relevant document if: 31
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- (a) the document contains a privileged communication made by or on behalf of or to the legal practitioner in his or her capacity as a legal practitioner, or 33
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(b)	the legal practitioner is not able to comply with the requirement without disclosing a privileged communication made by or on behalf of or to the legal practitioner in his or her capacity as a legal practitioner.	1 2 3 4
(2)	The legal practitioner is not entitled to refuse to comply with the requirement to the extent that he or she is able to comply with it without disclosing the privileged communication.	5 6 7
(3)	The legal practitioner is also not entitled to refuse to comply with the requirement if the person by or on behalf of whom the communication was made or (if the person is under administration under Chapter 5 of the <i>Corporations Law</i> or in the course of being wound up) the administrator or the liquidator agrees to the legal practitioner complying with the requirement.	8 9 10 11 12 13
(4)	If the legal practitioner refuses to comply with such a requirement, he or she must forthwith furnish in writing to the Minister:	14 15
(a)	the name and address of the person to whom or by or on behalf of whom the communication was made (if known to the legal practitioner), and	16 17 18
(b)	sufficient particulars to identify the document containing the communication (if the communication was made in writing).	19 20
	Maximum penalty: 60 penalty units.	21
142	Police aid for inspectors	22
(1)	An inspector may call to his or her aid a police officer if he or she is obstructed, or believes on reasonable grounds that he or she will be obstructed, in the exercise of his or her functions as an inspector.	23 24 25
(2)	A police officer has, while acting in aid of an inspector, all the functions of an inspector.	26 27
Division 3	Inquiries	28
143	Definitions	29
	In this Division:	30
	<i>costs</i> , in relation to an inquiry under this Division, includes:	31
(a)	the expenses of, and incidental to, the inquiry, and	32

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- (b) the expenses payable by the Minister in any proceedings instituted by the Minister under this Division in the name of the trustee corporation the subject of the inquiry (other than any costs that the court orders the Minister to pay), and 1
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- (c) so much of the remuneration of a public servant as is determined by the Treasurer to be attributable to matters connected with the inquiry. 5
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- investigator* means a person appointed under section 144. 8
- involved person*, in relation to an inquiry into the affairs of a trustee corporation, means: 9
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- (a) an officer of the trustee corporation, or 11
- (b) a person who acts, or has at any time acted, as banker, legal practitioner, auditor or actuary, or in any other capacity, for the trustee corporation, or 12
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- (c) a person who has, or at any time had, in his or her possession any property of the trustee corporation, or 15
16
- (d) a person who is indebted to the trustee corporation, or 17
- (e) a person who is capable of giving information relating to the affairs of the trustee corporation, or 18
19
- (f) a person whom an investigator believes on reasonable grounds to be a person referred to in paragraph (e). 20
21
- 144 Appointment of investigators** 22
- (1) The Minister may appoint a person or persons to hold an inquiry into the affairs of a trustee corporation if the Minister considers that it is desirable to do so for the protection of the public or of the members or creditors of the trustee corporation. 23
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26
- (2) The Minister may vary the terms and conditions of appointment of an investigator if the Minister and the investigator agree to the variation. 27
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- (3) In the course of an inquiry into the affairs of a trustee corporation, an investigator may inquire into the affairs of a subsidiary of the trustee corporation that, if the subsidiary were the trustee corporation, would be affairs of the trustee corporation. 29
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- (4) An inquiry into the affairs of a subsidiary of a trustee corporation may be conducted as if the subsidiary were the trustee corporation. 33
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(5) In this section, <i>affairs</i> the meaning given by section 53 of the <i>Corporations Law</i> .	1 2
145 Powers of investigators	3
(1) An investigator inquiring into the affairs of a trustee corporation may, by giving an involved person a notice in the form prescribed by the regulations, require the person:	4 5 6
(a) to produce any document of which the person has custody or control and which relates to those affairs, or	7 8
(b) to give the investigator all reasonable assistance in connection with the inquiry, or	9 10
(c) to appear before the investigator for examination on oath.	11
(2) An investigator may administer an oath to an involved person given a notice under subsection (1).	12 13
(3) An investigator may take possession of a document produced by an involved person under subsection (1) and may retain it for the period that the investigator decides is necessary for the inquiry.	14 15 16
(4) While an investigator retains possession of a document, the investigator must permit a person who would be entitled to inspect the document were it not in the possession of the investigator to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.	17 18 19 20 21
146 Examination of involved person	22
(1) A legal practitioner acting for an involved person:	23
(a) may attend an examination of the involved person by an investigator, and	24 25
(b) may, to the extent that the investigator permits, address the investigator and examine the involved person.	26 27
(2) An involved person is not excused from answering a question asked by the investigator even if seeking to be excused on the ground of possible self-incrimination.	28 29 30
(3) If an involved person answers a question of an investigator after having claimed possible self-incrimination by doing so, neither the question nor the answer is admissible in evidence in any criminal proceedings other than:	31 32 33 34

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(a)	proceedings under section 148 for giving a false or misleading answer to the question, or	1 2
(b)	proceedings on a charge of perjury in respect of the answer.	3
(4)	An involved person who attends for examination by an investigator is entitled to be paid the allowance and expenses prescribed by the regulations.	4 5 6
147	Privilege	7
(1)	An involved person who is a legal practitioner is entitled to refuse to produce a document to an investigator if the document contains a privileged communication made by or on behalf of or to the legal practitioner in his or her capacity as a legal practitioner.	8 9 10 11
(2)	The legal practitioner is not entitled to refuse to produce the document if the person by or on behalf of whom the communication was made or (if the person is under administration under Chapter 5 of the <i>Corporations Law</i> or in the course of being wound up) the administrator or the liquidator agrees to the legal practitioner producing the document.	12 13 14 15 16 17
(3)	If the legal practitioner refuses to comply with such a requirement, he or she must forthwith furnish in writing to the investigator:	18 19
(a)	the name and address of the person to whom or by or on behalf of whom the communication was made (if known to the legal practitioner), and	20 21 22
(b)	sufficient particulars to identify the document.	23
	Maximum penalty: 60 penalty units.	24
148	Offences by involved person	25
(1)	An involved person who:	26
(a)	fails to comply with a lawful requirement of an investigator without showing reasonable cause for the failure, or	27 28

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(b)	gives an investigator information knowing the information to be false or misleading in a material particular, or	1 2
(c)	when appearing before an investigator, refuses to take an oath or makes a statement knowing the statement to be false or misleading in a material particular,	3 4 5
	is guilty of an offence.	6
	Maximum penalty: 240 penalty units.	7
(2)	If an investigator considers that a failure by a person to comply with a requirement of the investigator is an offence under subsection (1) (a), the investigator may certify the refusal or failure to the Court and the Court may then:	8 9 10 11
(a)	order the involved person to comply with the requirement of the investigator within a stated period, or	12 13
(b)	instead of, or in addition to, making such an order, punish the involved person as for a contempt of the Court if satisfied that there was no lawful excuse for the refusal or failure to comply with the requirement of the investigator.	14 15 16 17
149	Offences relating to documents	18
	If an inquiry into the affairs of a trustee corporation is being held under this Division, a person who:	19 20
(a)	conceals, destroys, mutilates or alters a document relating to the trustee corporation, or	21 22
(b)	sends, or causes to be sent, out of the State any document or other property that belongs to, or is under the control of, the trustee corporation,	23 24 25
	is guilty of an offence unless it is established that the person charged did not intend to defeat, delay or obstruct the inquiry.	26 27
	Maximum penalty: 50 penalty units.	28
150	Record of examination	29
(1)	Except as provided by section 147 (which relates to self-incrimination), a record of an examination may be used in proceedings against the person examined, but this does not preclude the admission of other written or oral evidence.	30 31 32 33

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- (2) A person examined is, on written application made to the investigator, entitled to a free copy of the record of examination. 1
2
- (3) The Minister may provide a legal practitioner with a copy of a record of examination made by an investigator if the Minister is satisfied that the legal practitioner is conducting, or is in good faith contemplating, legal proceedings in respect of affairs of the trustee corporation to which the record relates. 3
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- (4) A legal practitioner who: 8
- (a) uses a copy of a record of examination otherwise than in connection with the preparation for, institution of, or conduct of, legal proceedings, or 9
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- (b) publishes or communicates the record or any part of it for any other purpose, 12
13
- is guilty of an offence. 14
- Maximum penalty (subsection (4)): 60 penalty units. 15
- 151 Report of investigator** 16
- (1) An investigator may, and if directed by the Minister to do so must, make interim reports to the Minister on any inquiry being held by the investigator. 17
18
19
- (2) As soon as practicable after the end of an inquiry, the investigator must report to the Minister: 20
21
- (a) the opinion of the investigator in relation to the affairs of the trustee corporation the subject of the inquiry, and 22
23
- (b) the findings on which the opinion is based. 24
- (3) An investigator's report may include a recommendation as to whether: 25
- (a) an order should be made under section 154 (3) (under which the Minister may order a trustee corporation to pay the costs of the inquiry), or 26
27
28
- (b) an application should be made under section 154 (4) or (5) (under which a court may order a person to pay the costs of the inquiry), or 29
30
31
- (c) such an order and such an application should both be made. 32
- (4) A report by an investigator may be accompanied by any document of which the investigator has taken possession after being produced under this Division, in which case the Minister: 33
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- (a) may retain the document for the period that the Minister considers necessary in order to decide whether legal proceedings should be instituted as a result of the inquiry, and 1
2
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- (b) may retain the document for any further period that the Minister considers to be necessary to enable legal proceedings to be instituted and prosecuted, and 4
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6
- (c) may permit the use of the document for any legal proceedings instituted as a result of the inquiry, and 7
8
- (d) must permit inspection of the document by a person who would be entitled to inspect it if it were returned to its former custody, and 9
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- (e) may permit inspection of the document by another person while it is in the possession of the Minister but only if the Minister considers that the person has an interest in the inquiry and, because of that interest, refusal of the inspection would be unjust. 12
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152 Proceedings following inquiry 17

- (1) If legal proceedings are to be, or have been, instituted by the Minister as a result of an inquiry under this Division, the Minister may, by order in writing, require a person who, in relation to the inquiry, was an involved person to give any assistance in connection with the proceedings that the person is reasonably able to give. 18
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- (2) The Court may, on the application of the Minister, order a person to comply with an order under subsection (1) if the person has failed to do so. 23
24
25
- (3) If the Minister considers that, as a result of an inquiry under this Division, legal proceedings should, in the public interest, be instituted by a trustee corporation for the recovery of: 26
27
28
 - (a) damages in respect of fraud or other misconduct in connection with the affairs of the trustee corporation, or 29
30
 - (b) property of the trustee corporation, 31the proceedings may be instituted and prosecuted in the name of the trustee corporation. 32
33

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153	Admission of investigator's report as evidence	1
(1)	A document certified by the Minister as being a copy of a report of an inquiry under this Division is admissible as evidence of any findings made by the investigator.	2 3 4
(2)	Subsection (1) does not authorise the admission of evidence that is inadmissible under section 146.	5 6
154	Costs of inquiry	7
(1)	The costs of an inquiry under this Division are to be paid out of money appropriated by Parliament.	8 9
(2)	At the direction of the Treasurer, the Minister must act under one or more of subsection (1), (4) and (5).	10 11
(3)	The Minister may, by order served on a trustee corporation, direct the trustee corporation to pay to the Crown all or part of the costs of an inquiry under this Division into the affairs of the trustee corporation.	12 13 14
(4)	If proceedings are instituted by the Minister under section 152 in the name of a trustee corporation, the court may, in the course of the proceedings and on the application of the Minister, order that all or part of the costs of the inquiry that led to the proceedings be paid to the Crown by a specified party to the proceedings.	15 16 17 18 19
(5)	If a person is convicted of an offence in proceedings certified by the Minister to be the result of an inquiry into the affairs of a trustee corporation, the convicting court may, on the application of the Minister made at the time of the conviction or not more than 14 days later, order the convicted person to pay to the Crown all or part of the costs of the inquiry.	20 21 22 23 24 25
(6)	An order under this section must state:	26
(a)	the amount to be paid, and	27
(b)	the time or times for payment, and	28
(c)	the manner of payment.	29
(7)	An amount that has not been paid by a person in accordance with an order under this section is recoverable from the person by the Minister as a debt due to the Crown.	30 31 32

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Part 10 Miscellaneous	1
Division 1 Evidence	2
155 Licences	3
(1) In any proceedings, a document that appears to be a licence issued by the Minister under this Act, or a copy of any such document appearing to be certified as such by the Minister, is evidence of the matters stated in the licence or copy.	4 5 6 7
(2) A copy of, or extract from, a document lodged with, created by or otherwise held by the Minister, and certified to be a true copy or extract under the Minister's hand:	8 9 10
(a) is as admissible in a proceeding as the original document, and	11
(b) has the same validity in evidence as the original document or the extracted part of the original document.	12 13
(3) In any proceedings, a certificate of the Minister stating that a requirement of this Act specified in the certificate:	14 15
(a) had, or had not, been complied with at a date or within a period specified in the certificate, or	16 17
(b) had been complied with at a date specified in the certificate but not before that date,	18 19
is evidence of the matters specified in the certificate.	20
Division 2 Offences	21
156 Defaults by trustee corporations	22
(1) A trustee corporation must comply with a lawful requirement under this Act to give information to the Minister or another person.	23 24
(2) If a trustee corporation contravenes this section, the trustee corporation and any officer of the trustee corporation who is in default each commit an offence.	25 26 27
Maximum penalty (subsection (2)): 100 penalty units.	28

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157	Restrictions on powers	1
(1)	A trustee corporation must not contravene a restriction imposed on its functions, or in relation to its exercise of its functions, under this Act.	2
	Maximum penalty: 100 penalty units.	3
(2)	If a trustee corporation contravenes this section, any officer of the trustee corporation who is in default is guilty of an offence.	4
	Maximum penalty: 100 penalty units.	5
158	Officers and other persons in default	6
	If this Act provides that an officer of a trustee corporation or other body who is in default is guilty of an offence, the reference to the officer who is in default is, in relation to a contravention of, or an offence against, this Act, a reference to an officer of the trustee corporation or other body (including a person who subsequently ceased to be such an officer) who is in any way by act or omission, directly or indirectly, knowingly concerned in or party to the contravention or offence.	7
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Division 3	Proceedings	17
159	Proceedings for offences against this Act or regulations	18
	Proceedings for offences against this Act or the Regulations are to be dealt with by <i>[instructions required]</i> .	19
160	Proceedings for offences	20
(1)	Proceedings for an offence against this Act may be brought by:	21
(a)	the Minister, or	22
(b)	a person authorised in writing by the Minister.	23
(2)	Proceedings may be started 2 years after the alleged offence is committed or, with the consent of the Minister, at any later time.	24
161	Offences punishable summarily	25
	An offence against this Act is punishable summarily.	26
		27
		28

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162	Aiding, abetting and attempts	1
(1)	A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly concerned in or a party to, the commission of an offence against this Act is taken to have committed that offence and is liable to the penalty for the offence.	2 3 4 5
(2)	A person who attempts to commit an offence against this Act is guilty of an offence and is punishable as if the attempted offence had been committed.	6 7 8
163	Continuing offences	9
(1)	If:	10
(a)	under this Act anything is required or directed to be done within a particular period or before a particular time, and	11 12
(b)	failure to do the thing within the period or before the time constitutes an offence, and	13 14
(c)	the thing is not done within the period or before the time,	15
	then:	16
(d)	the obligation to do the thing continues, despite the fact that the period has expired or the time has passed, until the thing is done, and	17 18 19
(e)	if a person is convicted of an offence that is constituted by failure to do the thing within that period or before the time the person commits a separate and further offence in relation to each day after the day of the conviction during which the failure to do the thing continues, and	20 21 22 23 24
(f)	the penalty applicable to each such separate and further offence is 0.5 penalty units.	25 26
(2)	If:	27
(a)	under this Act anything is required or directed to be done but no period within which or time by which the thing is to be done is specified, and	28 29 30
(b)	failure to do the thing constitutes an offence, and	31
(c)	a person is convicted of an offence in relation to a failure to do the thing,	32 33

the person commits a separate and further offence in relation to each 1
day after the day of the conviction during which the failure to do the 2
thing continues and the penalty applicable to each such separate and 3
further offence is 0.5 penalty units. 4

164 Injunctions 5

- (1) If a person has engaged, is engaging or is proposing to engage in 6
conduct that constituted, constitutes or would constitute: 7
- (a) a contravention of this Act, or 8
 - (b) attempting to contravene this Act, or 9
 - (c) aiding, abetting, counselling or procuring a person to 10
contravene this Act, or 11
 - (d) inducing or attempting to induce (whether by threats, promises 12
or otherwise) a person to contravene this Act, or 13
 - (e) being in any way, directly or indirectly, knowingly concerned 14
in, or party to, the contravention by a person of this Act, or 15
 - (f) conspiring with others to contravene this Act, 16
- the Court may, on the application of the Minister or a person whose 17
interests have been, are or would be affected by the conduct, grant an 18
injunction restraining the person from engaging in the conduct and, if 19
in the Court's opinion it is desirable to do so, requiring that person to 20
do anything. 21
- (2) If a person has failed, is failing, or is proposing to fail, to do anything 22
that the person is required to do under this Act, the Court may, on the 23
application of: 24
- (a) the Minister, or 25
 - (b) a person whose interests have been, are or would be affected by 26
the failure to do the thing, 27
- grant an injunction requiring the person to do the thing. 28
- (3) If an application is made for an injunction under subsection (1) or (2), 29
the Court may grant an injunction by consent of all the parties to the 30
proceeding, whether or not the Court is satisfied that the subsection 31
applies. 32
- (4) The Court may grant an interim injunction pending determination of 33
an application under subsection (1). 34

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(5) The Court may discharge or vary an injunction granted under this section, and may grant an injunction on conditions.	1 2
(6) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:	3 4
(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in the conduct, and	5 6
(b) whether or not the person has previously engaged in conduct of that kind, and	7 8
(c) whether or not there is an imminent danger of substantial damage to another person if the person engages, or continues to engage, in the conduct.	9 10 11
(7) The power of the Court to grant an injunction requiring a person to do a thing may be exercised:	12 13
(a) whether or not it appears to the Court that the person intends to fail again, or to continue to fail, to do the thing, and	14 15
(b) whether or not the person has previously failed to do the thing, and	16 17
(c) whether or not there is an imminent danger of substantial damage to another person if the person fails, or continues to fail, to do the thing.	18 19 20
(8) If the Minister applies to the Court for the grant of an injunction under this section, the Court must not require the applicant or another person, as a condition of granting an interim injunction, to give an undertaking as to damages.	21 22 23 24
(9) If the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct or requiring a person to do a particular thing, the Court may, either in addition to or in substitution for the grant of the injunction, order the person to pay damages to another person.	25 26 27 28 29
(10) The Court's powers under this section are in addition to its other powers.	30 31
165 Penalty notices	32
(1) If the Minister or a person authorised by the Minister has reason to believe that a person (including a trustee corporation) has committed a prescribed offence, the Minister or authorised person may serve on the person a notice in accordance with the regulations:	33 34 35 36

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- (a) alleging that the person has committed the prescribed offence and giving the prescribed particulars in relation to the prescribed offence, and 1
2
3
- (b) setting out the prescribed penalty in relation to the prescribed offence, and 4
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- (c) stating, in the case of a prescribed offence constituted by a failure to do a particular thing: 6
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 - (i) that the obligation to do the thing continues despite the service of the notice or the payment of the prescribed penalty, and 8
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 - (ii) that if, within the period specified in the notice (not less than 21 days), the person pays the prescribed penalty to the authority specified in the notice and does the thing, no further action will be taken against the person in relation to the prescribed offence, and 11
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 - (iii) that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice or has not done the thing, a proceeding may be instituted against the person, or 16
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- (d) stating, in the case of a prescribed offence that is not constituted by a failure to do a particular thing: 21
22
 - (i) that if, within the period specified in the notice (not less than 21 days), the person pays the prescribed penalty to the authority specified in the notice, no further action will be taken against the person in relation to the prescribed offence, and 23
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 - (ii) that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice, a proceeding may be instituted against the person. 28
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- (2) Subsection (1) does not authorise the Minister or an authorised person: 32
 - (a) to serve on a person more than one notice under that subsection in relation to an alleged commission by the person of a particular prescribed offence, or 33
34
35
 - (b) to serve on a person a notice under that subsection in relation to a prescribed offence unless proceedings could be instituted against the person for the offence under this Part. 36
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- (3) If a notice under subsection (1) is served on a person in relation to a prescribed offence constituted by a failure to do a particular thing and:
- (a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice and does the thing, no proceedings may be instituted against the person in relation to the prescribed offence, or
 - (b) if, at the end of the period specified in the notice, the person has paid the prescribed penalty to the authority specified in the notice, but has not done the thing, no proceedings may be instituted against the person in relation to the prescribed offence, but the obligation to do the thing continues, or
 - (c) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice, but has done the thing, a proceeding may be instituted against the person in relation to the prescribed offence, or
 - (d) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice and has not done the thing, the obligation to do the thing continues, and a proceeding may be instituted against the person in relation to the prescribed offence.
- (4) If a notice under subsection (1) is served on a person in relation to a prescribed offence, that is not constituted by a failure to do a particular thing and:
- (a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice, no proceedings may be instituted against the person in relation to the prescribed offence, or
 - (b) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice, a proceeding may be instituted against the person in relation to the prescribed offence.
- (5) The payment of an amount by a person under a notice served on the person under this section in relation to a prescribed offence is not to be taken for any purpose to be an admission by that person of any liability in connection with the alleged commission of the prescribed offence.

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Drafting Note 6. The drafting of the above clause will depend on each jurisdiction's general provisions regarding penalty notices.	1 2
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166 Power to grant relief

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|---|--|
| (1) This section applies to a person who is: | 4 |
| (a) an officer of a trustee corporation, or | 5 |
| (b) an auditor of a trustee corporation, whether or not the auditor is an officer of the trustee corporation, or | 6
7 |
| (c) an expert in relation to a matter in relation to which the civil proceeding has been taken or the claim will or might arise, or | 8
9 |
| (d) a receiver, receiver and manager, liquidator or other person appointed or directed by the Court to carry out any function in relation to a trustee corporation. | 10
11
12 |
| (2) If, in a civil proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty in a capacity by virtue of which the person is such a person, it appears to the court before which the proceeding is taken that the person is or may be liable in relation to the negligence, default or breach but has acted honestly and, having regard to all the circumstances of the case, including those connected with the person's appointment, ought fairly to be excused for the negligence, default or breach, the court may relieve the person either wholly or partly from the liability on such terms as the court considers appropriate. | 13
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| (3) If a person to whom this section applies has reason to apprehend that any claim will or might be made against the person in relation to any negligence, default, breach of trust or breach of duty in a capacity by virtue of which the person is such a person, the person may apply to the Court for relief, and the Court has the same power to grant relief as it would have had under subsection (2) if it had been a court before which a proceeding against the person for negligence, default, breach of trust or breach of duty had been brought. | 23
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30 |
| (4) In this section: | 31 |
| <i>expert</i> , in relation to a matter, means an independent person whose profession, qualifications or reputation give or gives authority to a statement made by the person in relation to the matter. | 32
33
34 |

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167	Secrecy	1
(1)	In this section:	2
	<i>court</i> includes any tribunal, authority or person having power to require the production of documents or the answering of questions.	3 4
	<i>person to whom this section applies</i> means:	5
(a)	the Minister, and	6
(b)	any person who is or has been an officer or employee of the Department, and	7 8
(c)	any person who was been authorised by the Minister to perform any function under this Act.	9 10
	<i>produce</i> includes permit access to.	11
	<i>protected document</i> means a document that:	12
(a)	contains information that concerns a person, and	13
(b)	is obtained or made by a person to whom this section applies in the course of, or because of, the person's duty under or in relation to this Act.	14 15 16
	<i>protected information</i> means information that:	17
(a)	concerns a person, and	18
(b)	is disclosed to, or obtained by, a person to whom this section applies in the course of, or because of, the person's functions under or in relation to this Act.	19 20 21
(2)	A person to whom this section applies must not:	22
(a)	make a record of protected information, or	23
(b)	whether directly or indirectly, divulge or communicate to a person protected information concerning another person,	24 25
	unless the record is made, or the information divulged or communicated:	26 27
(c)	under or for the purposes of this Act, or	28
(d)	in the exercise of functions, as a person to whom this section applies, under or in relation to this Act.	29 30
	Maximum penalty: 50 penalty units.	31

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- (3) Subsection (2) does not prevent a person from divulging or communicating information to: 1
2
- (a) a Minister of this or any other participating State or Territory, 3
or 4
- (b) a person (including any person representing a corresponding 5
Minister) authorised by a Minister of this or any other 6
participating State or Territory to perform any function under 7
this Act, 8
- for the purpose of the administration of this Act. 9
- (4) A person to whom this section applies is not required: 10
- (a) to divulge or communicate protected information to a court, or 11
- (b) to produce a protected document in court, 12
- unless it is necessary to do so for the purpose of carrying into effect 13
this Act. 14

Division 4 Other matters 15

168 Power of Minister to reject documents 16

- (1) If the Minister is of the opinion that a document submitted to the 17
Minister under this Act: 18
- (a) contains matter contrary to law, or 19
- (b) contains matter that, in a material particular, is false or 20
misleading in the form or context in which it is included, or 21
- (c) because of an omission or misdescription, has not been duly 22
completed, or 23
- (d) does not comply with the requirements of this Act, or 24
- (e) contains an error, alteration or erasure, 25
- the Minister may reject the document and may request: 26
- (f) that the document be appropriately amended or completed and 27
resubmitted, or 28
- (g) that a fresh document be submitted in its place, or 29
- (h) if the document has not been duly completed, that a 30
supplementary document be submitted. 31

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(2) The Minister may require a person who submits a document to the Minister under this Act to also produce another document, or to give any information, that the Minister considers necessary in order to form an opinion whether it should reject the document.	1 2 3 4
169 Extension or abridgment of time	5
(1) The Minister may, on receipt of written application by a trustee corporation or on the Minister's own initiative, extend or abridge the time within which anything is required to be done under this Act.	6 7 8
(2) An application under subsection (1) may be made to the Minister even though the time sought to be extended or abridged has ended.	9 10
170 Settlers or testators may appoint own legal practitioners	11
(1) If by any settlement or will a testator directs that any legal practitioner is to conduct the legal business of the settlor's or the testator's estate, the legal practitioner is entitled to act accordingly, but in such case a trustee corporation is not liable for the negligence, misfeasance, nonfeasance or misconduct of such a legal practitioner.	12 13 14 15 16
(2) Such a legal practitioner may be removed by the Court on the application of the trustee corporation or of any person interested in the estate on cause shown, and the Court may appoint a legal practitioner nominated by the trustee corporation, or by an interested person, in his or her place.	17 18 19 20 21
171 Applications to Court	22
(1) The Court may order the costs and expenses of and those 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 that estate, or to be borne and paid in such manner and by such persons as to the Court seems just.	23 24 25 26 27
(2) This section does not affect the operation of any other provision of this Act that makes specific provision for the payment of costs.	28 29
172 Trustee corporation not to refuse to register shares	30
A trustee corporation must not refuse to register a transfer to any person of shares in the trustee corporation made on or after the commencement of this section, unless this Act authorises that refusal.	31 32 33
Maximum penalty: 50 penalty units.	34

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Division 5	Supervision Fund	1
173	Minister may recover costs from trustee corporation	2
(1)	The Minister may recover from a trustee corporation the reasonable costs of the administration of this Act including, but not limited to, the costs of any person or body on whom prudential supervision functions have been conferred.	3 4 5 6
(2)	An amount for which the trustee corporation is liable under this section may be recovered as a debt due to the Minister in a Local Court [<i>or a court having jurisdiction for the recovery of debts up to the amount concerned</i>].	7 8 9 10
174	Supervision Fund	11
(1)	There is established a fund called the Supervision Fund.	12
(2)	The Minister must pay into the Supervision Fund:	13
(a)	all amounts received from trustee corporations under this Part, and	14 15
(b)	any income from the investment of any money credited to the Supervision Fund and the proceeds of the sale of any investment.	16 17 18
(3)	The Minister must pay out of the Supervision Fund:	19
(a)	any payment for or towards the expenses of performing the Minister's functions under this Act, and	20 21
(b)	any amount for the administration or execution of this Act (including any costs incurred by the [<i>Attorney-General's Department</i>]), and	22 23 24
(c)	any amount that the Minister has agreed to pay to APRA or another person, for or in relation to APRA's or the person's exercise of functions under this Act, and	25 26 27
(d)	any expense incurred in administering the Supervision Fund.	28
(4)	The Minister may invest any money in the Supervision Fund in any way the Minister considers appropriate.	29 30
(5)	The Supervision Fund may be combined with any Supervision Fund established under a corresponding law.	31 32

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Division 6	Regulations	1
175	Regulations	2
	(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	3 4 5 6
	(2) A regulation under this Act may create an offence punishable by a penalty not exceeding [<i>instructions required</i>]	7 8
Division 7	Repeal and amendments	9
176	Repeal of [specify name of Act of jurisdiction regulating trustee companies/corporations]	10 11
	The [<i>specify name of Act of jurisdiction regulating trustee companies/corporations</i>] is repealed.	12 13
177	Amendment of other Acts	14
	[This provision will give effect to amendments that are consequential on the repeal of the [specify name of Act of jurisdiction regulating trustee companies/corporations] and the enactment of the proposed Act.]	15 16 17 18
178	Savings and transitional provisions	19
	Schedule 3 has effect.	20

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Schedule 1 Trustee corporations agreement

1

(Section 3)

2

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Trustee Corporations [name of State or Territory] Bill 2001

Schedule 2	Ownership definitions	1
	(Section 100)	2
1	Object	3
	The object of this Schedule is to define terms used in Part 8 (which deals with restrictions on shareholdings).	4 5
2	Definitions	6
	In Part 8 and this Schedule, unless the contrary intention appears:	7
	<i>100% subsidiary</i> has the meaning given by the <i>Income Tax Assessment Act 1997</i> of the Commonwealth.	8 9
	<i>acquisition</i> includes an agreement to acquire, but does not include:	10
	(a) an acquisition by will or by devolution by operation of law, or	11
	(b) an acquisition by way of enforcement of a loan security.	12
	<i>agreement</i> means any agreement, whether formal or informal and whether express or implied.	13 14
	<i>arrangement</i> has a meaning affected by clause 4.	15
	<i>associate</i> has the meaning given by clause 5.	16
	<i>direct control interest</i> has the meaning given by clause 12.	17
	<i>director</i> includes any person occupying the position of director of a company, by whatever name called.	18 19
	<i>discretionary trust</i> means a trust where:	20
	(a) a person (who may include the trustee) is empowered (either unconditionally or on the fulfilment of a condition) to exercise any power of appointment or other discretion, and	21 22 23
	(b) the exercise of the power or discretion, or the failure to exercise the power or discretion, has the effect of determining, to any extent, either or both of the following:	24 25 26
	(i) the identities of those who may benefit under the trust,	27
	(ii) how beneficiaries are to benefit, as between themselves, under the trust.	28 29
	<i>holding company</i> has the meaning given by clause 3.	30
	<i>increase</i> , in relation to a stake in a company, includes an increase from a starting point of nil.	31 32

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<i>interest</i> in a share has the meaning given by clause 8.	1
<i>lender</i> , in relation to a loan security, means the person who is entitled to enforce the security.	2 3
<i>lending money</i> includes providing non-equity finance where the provision of the finance may reasonably be regarded as equivalent to lending money.	4 5 6
<i>loan security</i> means a security held solely for the purposes of a money lending agreement.	7 8
<i>management employee</i> , in relation to a company, means an employee of the company who is concerned in, or takes part in, the management of the company.	9 10 11
<i>moneylending agreement</i> means an agreement entered into in good faith in the ordinary course of carrying on a business of lending money, but does not include an agreement dealing with any matter unrelated to the carrying on of that business.	12 13 14 15
<i>officer</i> , in relation to a company, means:	16
(a) a director, secretary or management employee of the company, or	17 18
(b) a receiver and manager of any part of the undertaking of the company appointed under a power contained in any instrument, or	19 20 21
(c) a liquidator of the company appointed in a voluntary winding-up.	22 23
<i>ownership provisions</i> means Part 8 and this Schedule.	24
<i>power to appoint a director</i> of a company has a meaning affected by clause 6.	25 26
<i>practical control</i> , in relation to a trustee corporation, has the meaning given by section 114.	27 28
<i>relative</i> , in relation to a person, means:	29
(a) the person's spouse, or	30
(b) another person who, although not legally married to the person, lives with the person on a bona fide domestic basis as the husband or wife of the person, or	31 32 33
(c) a parent or remoter lineal ancestor of the person, or	34
(d) a son, daughter or remoter issue of the person, or	35

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(e) a brother or sister of the person.	1
<i>scheme</i> means:	2
(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings, and	3 4 5 6
(b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.	7 8
<i>share</i> , in relation to a company, means a share in the share capital of the company, and includes:	9 10
(a) stock into which any or all of the share capital of the company has been converted, or	11 12
(b) an interest in such a share or in such stock.	13
<i>stake</i> , in relation to a company, has the meaning given by clause 11.	14
<i>unacceptable shareholding situation</i> has the meaning given by section 102.	15 16
<i>voting power</i> has the meaning given by clause 10.	17
3 Meaning of "holding company"	18
For the purposes of the ownership provisions, a company (the first company) is the holding company of another company if the other company is a 100% subsidiary of the first company.	19 20 21
4 Entering into an agreement or arrangement	22
(1) For the purposes of the ownership provisions, a person is taken to have proposed to enter into an agreement or arrangement if the person takes part in, or proposes to take part in, negotiations with a view to entering into the agreement or arrangement.	23 24 25 26
(2) A reference in the ownership provisions to <i>entering into an agreement or arrangement</i> includes a reference to altering or varying an agreement or arrangement.	27 28 29
(3) A reference in the ownership provisions to <i>entering into an arrangement</i> is a reference to entering into any formal or informal scheme, arrangement or understanding, whether expressly or by implication and, without limiting the generality of the foregoing, includes a reference to:	30 31 32 33 34
(a) entering into an agreement, or	35

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- (b) creating a trust, whether express or implied, or 1
- (c) entering into a transaction, 2
- and a reference in the ownership provisions to an arrangement is to be 3
construed accordingly. 4
- (4) A reference in the ownership provisions to an arrangement does not 5
include a reference to a moneylending agreement. 6
- 5 Associates** 7
- (1) For the purposes of the ownership provisions, the following persons 8
are associates of a person: 9
 - (a) a relative of the person, 10
 - (b) a partner of the person, 11
 - (c) a company of which the person is an officer, 12
 - (d) if the person is a company—an officer of the company, 13
 - (e) an officer of a company of which the person is an officer, 14
 - (f) an employee of a natural person of whom the person is an 15
employee, 16
 - (g) the trustee of a discretionary trust where the person or another 17
person who is an associate of the person by virtue of another 18
paragraph of this subclause benefits, or is capable (whether by 19
the exercise of a power of appointment or otherwise) of 20
benefiting, under the trust, either directly or through any 21
interposed companies, partnerships or trusts, 22
 - (h) a company whose directors are accustomed or under an 23
obligation, whether formal or informal, to act in accordance 24
with the directions, instructions or wishes of the person, 25
 - (i) a company where the person is accustomed or under an 26
obligation, whether formal or informal, to act in accordance 27
with the directions, instructions or wishes of the company, 28
 - (j) a company in which the person has, apart from this paragraph, 29
a stake of not less than 15%, 30
 - (k) if the person is a company—a person who holds, apart from 31
this paragraph, a stake in the company of not less than 15%, 32

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- (1) a person who is, because of this subclause, an associate of any other person who is an associate of the person (including a person who is an associate of the person by any other application or applications of this paragraph). 1
2
3
4
- (2) If a person (the first person) enters, or proposes to enter, into an arrangement with another person (the second person) that relates to any of the following matters: 5
6
7
- (a) the first person and the second person being in a position, by acting together, to control any of the voting power in a company, 8
9
10
- (b) the power of the first person and the second person, by acting together, to appoint or remove a director of a company, 11
12
- (c) the situation where one or more of the directors of a company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the first person and the second person acting together, 13
14
15
16
17
- then, the second person is taken to be an *associate* of the first person for the purposes of the application of a provision of the ownership provisions in relation to the matter concerned. 18
19
20
- 6 Power to appoint director** 21
- (1) A reference in the ownership provisions to a *power to appoint a director* includes a reference to such a power whether exercisable with or without the consent or concurrence of any other person. 22
23
24
- (2) For the purposes of the ownership provisions, a person is taken to have the power to appoint a director if: 25
26
- (a) the person has the power (whether exercisable with or without the consent or concurrence of any other person) to veto such an appointment, or 27
28
29
- (b) a person's appointment as a director of the company follows necessarily from that person being a director or other officer of the first-mentioned person. 30
31
32

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7	Meaning of “entitled to acquire”	1
	For the purposes of the ownership provisions, a person is entitled to acquire anything if the person is absolutely or contingently entitled to acquire it, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.	2 3 4 5
8	Meaning of “interest” in a share	6
(1)	Subject to this clause, a person holds an interest in a share if the person has any legal or equitable interest in the share.	7 8
(2)	A person is taken to hold an interest in a share if:	9
(a)	the person has entered into a contract to purchase the share, or	10
(b)	the person has a right (otherwise than because of having an interest under a trust) to have the share transferred to the person or to the person’s order (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition), or	11 12 13 14 15
(c)	the person has a right to acquire the share, or an interest in the share, under an option (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition), or	16 17 18 19
(d)	the person is otherwise entitled to acquire the share or an interest in the share, or	20 21
(e)	the person is entitled (otherwise than because of having been appointed as a proxy or representative to vote at a meeting of members of the company or of a class of its members) to exercise or control the exercise of a right attached to the share.	22 23 24 25
(3)	Subclause (2) does not, by implication, limit subclause (1).	26
(4)	A person is taken to hold an interest in a share even if the person holds the interest in the share jointly with another person.	27 28
(5)	For the purpose of determining whether a person holds an interest in a share, it is immaterial that the interest cannot be related to a particular share.	29 30 31
(6)	An interest in a share is not to be disregarded only because of:	32
(a)	its remoteness, or	33
(b)	the manner in which it arose, or	34

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(c)	the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.	1 2
9	Certain interests in shares to be disregarded	3
(1)	For the purposes of the ownership provisions, the following interests must be disregarded:	4 5
(a)	an interest in a share held by a person whose ordinary business includes the lending of money if the person holds the interest as a loan security,	6 7 8
(b)	an interest in a share held by a person, being an interest held by the person because the person holds a prescribed office,	9 10
(c)	an interest of a prescribed kind in a share, being an interest held by such persons as are prescribed.	11 12
(2)	For the purposes of the ownership provisions, if:	13
(a)	a person holds an interest in a share as a loan security, and	14
(b)	the ordinary business of the person includes the lending of money, and	15 16
(c)	the loan security is enforced, and	17
(d)	as a result of the enforcement of the loan security, the person becomes the holder of the share, and	18 19
(e)	the person holds the share for a continuous period (the holding period) beginning at the time when the security was enforced,	20 21
	the person's interest in the share must be disregarded at all times during so much of the holding period as occurs during whichever of the following periods is applicable:	22 23 24
(f)	the period of 90 days beginning when the security was enforced,	25 26
(g)	if the Minister, by written notice given to the person, allows a longer period—the end of that longer period.	27 28
10	Voting power	29
(1)	A reference in the ownership provisions to the voting power in a company is a reference to the total rights of shareholders to vote, or participate in any decision-making, concerning any of the following:	30 31 32
(a)	the making of distributions of capital or profits of the company to its shareholders,	33 34

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- (b) the constituent document of the company, 1
- (c) any variation of the share capital of the company, 2
- (d) any appointment of a director of the company. 3
- (2) A reference in the ownership provisions to control of the voting power 4
in a company is a reference to control that is direct or indirect, 5
including control that is exercisable as a result of or by means of 6
arrangements or practices: 7
 - (a) whether or not having legal or equitable force, and 8
 - (b) whether or not based on legal or equitable rights. 9
- (3) If the percentage of total rights to vote or participate in 10
decision-making differs as between different types of voting or 11
decision-making, the highest of those percentages applies for the 12
purposes of this clause. 13
- (4) If a company: 14
 - (a) is limited both by shares and by guarantee, or 15
 - (b) does not have a share capital, 16

this clause has effect as if the members or policy holders of the 17
company were shareholders in the company. 18
- 11 Stake in a company** 19
 - (1) For the purposes of the ownership provisions, the stake that a person 20
holds in a company at a particular time is the aggregate of: 21
 - (a) the direct control interests in the company that the person holds 22
at that time, and 23
 - (b) the direct control interests in the company held at that time by 24
associates of the person. 25
 - (2) In calculating the stake that a person holds in a company, a direct 26
control interest held because of clause 12 (2) is not to be counted 27
under subclause (1) (a) to the extent to which it is calculated by 28
reference to a direct control interest in the company that is taken into 29
account under subclause (1) (b). 30
- 12 Direct control interests in a company** 31
 - (1) A person holds a direct control interest in a company at a particular 32
time equal to the percentage of the voting power in the company that 33
the person is in a position to control at that time. 34

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Trustee Corporations [name of State or Territory] Bill 2001

- (2) If: 1
- (a) a person holds a direct control interest (including a direct 2
control interest that is taken to be held because of one or more 3
previous applications of this subclause) in a company (the first 4
level company), and 5
- (b) the first level company holds a direct control interest in another 6
company (the second level company), 7
- the person is taken to hold a direct control interest in the second level 8
company equal to the percentage worked out using the formula: 9
- 10
- $\text{First level percentage} \times \text{Second level percentage}$ 11
- where: 12
- first level percentage*** means the percentage of the direct control 13
interest held by the person in the first level company. 14
- second level percentage*** means the percentage of the direct control 15
interest held by the first level company in the second level company. 16

Schedule 3	Savings and transitional provisions	1
	(Section 178)	2
1	Savings and transitional regulation-making power	3
(1)	The regulations under this Act may contain provisions of a savings or transitional nature consequent on the commencement of this Act or a provision of this Act.	4 5 6
(2)	If such a savings and transitional regulation so provides, it has effect despite any provision of this Act.	7 8
(3)	Any such regulation may, if the regulations so provide, take effect on the date of assent to this Act or a later date.	9 10
(4)	To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	11 12 13
(a)	to affect, in a manner prejudicial to any person (other than [name of State or Territory] or an authority of [name of State or Territory]), the rights of that person existing before the date of its publication, or	14 15 16 17
(b)	to impose liabilities on any person (other than [name of State or Territory] or an authority of [name of State or Territory]) in respect of anything done or omitted to be done before the date of its publication.	18 19 20 21
2	Continuing trustee corporations taken to be licensed	22
(1)	A trustee corporation that was a trustee company within the meaning of the repealed Act and that is registered in [name of State or Territory] is taken to be licensed under Part 7 as a trustee corporation.	23 24 25
(2)	The licence is taken to have been issued on the date of commencement of section 69 without any conditions and to have effect for 12 months.	26 27
(3)	In this clause:	28

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<i>repealed Act</i> means the [specify name of Act of jurisdiction regulating trustee companies/corporations].	1 2
(4) A trustee corporation that was a trustee company within the meaning of a repealed Act and that is registered in a participating State or Territory is taken to have notified the Minister under section 93 on the date of commencement of section 69.	3 4 5 6
(5) In this clause: <i>a repealed Act</i> means one of the following Acts: [specify names of Acts of other jurisdictions regulating trustee companies/corporations].	7 8 9
3 Continuing trustee corporation may apply for licence	10
A trustee corporation referred to in clause 2 (1) may apply for a licence under Part 7 (Licensing of trustee corporations) at any time.	11 12
4 Minister's power to grant exemptions from applicable standards or provisions	13 14
(1) The Minister may exempt any trustee corporation that was a trustee corporation within the meaning of the repealed Act from the need to comply with:	15 16 17
(a) any specified provision of this Act, or	18
(b) any specified standard.	19
(2) The Minister must not grant an exemption unless it has had regard to the interest of clients, beneficiaries and the public.	20 21
(3) Such an exemption applies for a period of 12 months, and may be renewed for any further such period, in accordance with this section.	22 23
5 Application of this provisions relating to management of estates	24
Division 2 of Part 2 of this Act applies whether the relevant will was made before or after the commencement of the Division.	25 26