



NORTHERN TERRITORY OF AUSTRALIA

No. 59 of 1988

AN ACT to amend the Trustee Act

[Assented to 15 December 1988]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the Trustee Amendment Act 1988.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the Gazette.

3. PRINCIPAL ACT

The Trustee Act is in this Act referred to as the Principal Act.

4. AUTHORIZED INVESTMENT

Section 4 of the Principal Act is amended -

(a) by omitting from subsection (1) all words after paragraph (c) and substituting the following:

"(d) on interest-bearing deposit in a bank;

(e) subject to subsections (1A) and (1B), by way of loan secured by a first registered mortgage of -

(i) the fee simple of land in Australia; or

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- (ii) land held under the Crown Lands Act or the Special Purposes Leases Act;
- (f) by way of deposit with a corporation declared to be an authorized dealer in the short-term money market under section 97(7)(b) of the Companies (Northern Territory) Code, upon the security of securities of the Commonwealth or the Territory;
- (g) subject to subsections (1D), (1E) and (1H), in the purchase of preference or ordinary stock or shares -
 - (i) issued in Australia in a company incorporated in a State or Territory of the Commonwealth; and
 - (ii) registered in a State or Territory of the Commonwealth;
- (h) subject to subsections (1D), (1E) and (1H), in debentures (including debenture stock and bonds and whether the debentures constitute a charge on assets or not) -
 - (i) issued by a company in which at the time of investment it would have been proper for a trustee to invest in the purchase of ordinary stock or shares; and
 - (ii) which have a maturity date not later than 5 years after the date of the investment;
- (j) subject to subsections (1D), (1E) and (1H), on deposit or in notes, whether secured or unsecured, at interest either for a fixed term not exceeding 6 months or at call, with any company in which at the time of investment it would have been proper for a trustee to invest in the purchase of ordinary stock or shares;
- (k) on deposit in, or in the shares of, a building society registered under the Building Societies Act and approved under section 4B by the Minister, but subject to the terms (if any) of such approval;
- (m) if the trustee is an approved lender, by way of loan on an approved security in such amount as the trustee thinks fit, but not exceeding the amount that is the subject of a contract of insurance in respect of the loan entered into by the Corporation under the Housing Loans Insurance Act 1965 of the Commonwealth;

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- (n) in such common funds of such trustee companies as the Minister determines by notice in the Gazette;
 - (p) on deposit with a corporation declared by the Minister by notice in the Gazette to be authorized to accept deposits of trust funds;
 - (q) in debentures or debenture stock issued by a company that is a wholly owned Australian subsidiary of a bank and which at the time of acquisition have a maturity date not later than 5 years after the date of issue;
 - (r) in irrevocable letters of credit issued or confirmed by a bank;
 - (s) in a bill of exchange that -
 - (i) has been endorsed or accepted without qualification by a bank; and
 - (ii) is payable not later than 200 days after the date of acquisition;
 - (t) in certificates of deposit issued by a bank, whether negotiable, convertible or otherwise; or
 - (u) subject to subsection (1E), in the units, or other interests subject to the unit trust, of a unit trust scheme which invests only in the investments specified in this section and in respect of which there existed at the time of investment an approved deed under -
 - (i) Division 6 of Part IV of the Companies (Northern Territory) Code;
 - (ii) any other law of the Territory relating to companies; or
 - (iii) the equivalent or similar provisions in the law of a State or another Territory of the Commonwealth,
- and
- (iv) the scheme, undertaking or enterprise to which the approved deed relates has unitholder's equity of not less than \$5,000,000 or such other amount as is prescribed;
 - (v) the holders of prescribed interests in the scheme, undertaking or enterprise to which the approved deed relates have received a return in the nature of income in each of

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the 5 years immediately preceding the calendar year in which the investment is made; and

- (vi) either the prescribed interests in the scheme, undertaking or enterprise to which the approved deed relates are listed for quotation on a stock exchange in the Commonwealth or the approved deed contains a covenant that confers on holders of prescribed interests the right to require the management company to purchase, or cause to be purchased, their prescribed interests in the manner and within the time provided for in the approved deed."; and

- (b) by omitting subsections (1A) to (1H) inclusive and substituting the following:

"(1A) The investment of trust funds under subsection (1)(e) shall not be more than 70% of the value of the property as certified by a valuer, within the meaning of the Valuation of Land Act, who the trustee reasonably believes is -

- (a) experienced in valuing property of that kind or property in the locality where the property concerned is situated; and
- (b) acting independently of an owner or mortgagor of the land or of any other person who might be seen to have an interest in overestimating the value of the land.

"(1B) A trustee shall not invest funds under subsection (1)(e) unless it is a term of the mortgage that the mortgagor insure all buildings and other improvements on the land, and keep them insured, to their full insurable value against -

- (a) fire, storms, cyclones, flooding (other than from natural waterways), lightning, explosions, earthquakes and damage from riots, civil commotions, strikes and labour disturbances;
- (b) damage by bursting, leaking or over-flowing of boilers, water pipes, water tanks or similar apparatus;
- (c) damage by a vehicle or an aircraft;
- (d) malicious damage; and
- (e) liability to third persons and members of the public.

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"(1C) The stock, shares and debentures mentioned in subsection (1)(g) and (h) do not include -

- (a) stock, shares or debentures the price of which is not quoted on the main board of a subsidiary of the Australian Stock Exchange Ltd.; or
- (b) shares or debenture stock not fully paid up, except if they are required by the terms of issue to be fully paid up within 9 months after the date of issue.

"(1D) An investment under subsection (1)(g), (h) or (j) shall not be made in a company -

- (a) that has a paid up share capital of less than \$5,000,000; or
- (b) that has not, in each of the 5 years immediately preceding the calendar year in which the investment is made, paid a dividend on all the ordinary stock or shares issued by it,

but for the purposes of paragraph (b) -

- (c) a company formed to take over and which does take over the business of another company or other companies is deemed to have paid the requisite dividend in any year in which such a dividend was paid by the other company or companies, as the case may be;
- (d) where a share is issued in a company after a dividend is declared, that dividend shall be deemed to have been paid on that share; and
- (e) where, by the terms of issue of a share, the share does not rank for dividends for a period of not more than 2 years after issue, all dividends paid on other shares during that period shall be deemed to have been paid on that share.

"(1E) A trustee who proposes to make an investment under subsection (1)(g), (h), (j) or (u) shall obtain and consider proper advice in writing -

- (a) as to whether the investment will result in as wide a degree of diversity of investment of the trust as is prudent in the circumstances, having regard to the suitability to the trust of the investments proposed and to the value of the trust; and

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- (b) specifying the intervals at which further advice on each investment should be obtained,

and the trustee shall seek such further advice at the intervals recommended.

"(1F) Proper advice for the purposes of subsection (1E) shall be given by a person (who may be a co-trustee) who the trustee reasonably believes -

- (a) is not an officer or employee of a company in which the trustee intends to invest; and
- (b) is qualified by his ability in, and practical experience of, financial matters,

and if the trustee is a company the advice may be given by a person who gives it in the course of his employment with the company.

"(1G) A trustee is not relieved, by the obtaining and consideration of proper advice, of his continuing duty to consider and evaluate the investments in the trust.

"(1H) A trustee is not liable for breach of trust by reason only of his continuing to hold an investment after it has ceased to be an investment authorized by -

- (a) the trust instrument; or
- (b) this or any other law.

"(1J) Nothing in this Part limits or affects the general equitable duties of a person authorized to make investments, including his duty to exercise ordinary business prudence and to act impartially in relation to the investment of trust funds, and the retention of those investments.".

6. APPLICATION OF TRUST FUNDS FOR PURCHASE OF DWELLING HOUSE

Section 4C of the Principal Act is amended -

- (a) by omitting "dwelling-house" (wherever occurring) and substituting "dwelling";
- (b) by inserting after subsection (4) the following:

"(4A) A trustee purchasing a dwelling under this section shall insure it to its full insurable value against -

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- (a) fire, storms, cyclones, flooding (including flooding by storm surge, and from natural waterways, where such insurance is reasonably available) lightning, explosions, earthquakes, damage from riots, civil commotion, strikes and labour disturbances;
- (b) damage by bursting, leaking or over-flowing of boilers, water pipes, water tanks or similar apparatus;
- (c) damage by a vehicle or an aircraft;
- (d) malicious damage; and
- (e) liability to third persons and members of the public.";
- (c) by omitting subsection (7) and substituting the following:

"(7) A trustee purchasing a dwelling in accordance with this section may -

- (a) expend, out of the capital or income of the trust or of the estate of a deceased person, not more than -
 - (i) \$10,000 or such other amount as is prescribed; or
 - (ii) an amount equal to half the capital of the trust or estate,

whichever is the lesser amount in repairing the dwelling, subject to the terms of the trust but without obtaining the authority of the Court under section 18(2); and

- (b) purchase such furnishings and fittings for the dwelling as he thinks fit."; and
- (d) by omitting from subsection (8) the definition of "dwelling-house" and substituting the following:

"'dwelling' includes -

- (a) a unit under the Unit Titles Act; and
- (b) a part of a building that is designed for occupation as a permanent residence.".

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7. POWER TO INSURE BUILDING

Section 18 of the Principal Act is amended by omitting from subsection (1) "A trustee" and substituting "Subject to sections 4(1B) and 4C(4A), a trustee".

8. NEW SECTION

The Principal Act is amended by inserting after section 50 the following:

"50A. POWER OF COURT TO AUTHORIZE DEALINGS WITH TRUST PROPERTY

"(1) The Court may by order, on application by the trustee or a beneficiary, authorize a trustee either generally or in a particular case -

- (a) to execute a sale, lease, mortgage, surrender, release or other disposition;
- (b) to make a purchase, acquisition, or investment;
or
- (c) to undertake expenditure,

as the Court thinks fit and for which the trustee has no power under the trust instrument or a law in force in the Territory.

"(2) The Court may make an order referred to in subsection (1) subject to such terms or conditions as it thinks fit and may direct whether and how any expenditure or costs are to be paid out of capital or income of the trust.".
