



## NORTHERN TERRITORY OF AUSTRALIA

No. 5 of 1984

### AN ACT

To amend the *Companies (Trustees and Personal Representatives) Act*

[Assented to 3 April 1984]

**B**E 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 *Companies (Trustees and Personal Representatives) Amendment Act 1984*.

#### 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 *Companies (Trustees and Personal Representatives) Act* is in this Act referred to as the Principal Act.

#### 4. DECLARATION BY TRUSTEE COMPANIES

Section 13(1)(a) of the Principal Act is amended by omitting "Master of the Court" and substituting "Registrar" within the meaning of the *Companies Act*.

#### 5. NEW PART

The Principal Act is amended by inserting after Part II the following:

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"PART IIA - TRANSFER OF CERTAIN TRUST BUSINESS

"39A. DEFINITIONS

"In this Part -

'commencing date' means the date on which this Part comes into operation;

'new trustee' means the ANZ Executors & Trustee Company Ltd., a company incorporated in Victoria and registered under the *Companies Act* as a foreign company within the meaning of that Act;

'old trustee' means TEA (1983) Limited, formerly The Trustees Executors and Agency Company Limited, a company incorporated in Victoria and registered under the *Companies Act* as a foreign company within the meaning of that Act;

'the trust business of the old trustee' means the business of the old trustee acting as trustee and includes -

- (a) the assets held on trust by the old trustee, including all records, securities and other documents and information, whether recorded on paper, microfilm, magnetic tape or disc or otherwise held or maintained by the old trustee in its capacity of trustee;
- (b) the liabilities and obligations properly incurred by the old trustee acting in the capacity of trustee, including undertakings to courts and public officers and authorities;
- (c) the rights of indemnity of the old trustee against trust assets in respect of liabilities incurred by the old trustee acting as trustee;
- (d) the rights of the old trustee to commission, remuneration, fees and reimbursement for disbursements, whether billed or unbilled, in respect of its acting in the capacity of trustee;
- (e) the benefit of and obligations under rental or leasing contracts in respect of the computers used by the old trustee in the trust business of the old trustee;

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

but does not include -

- (m) all assets held by or for the old trustee of which the old trustee is the beneficial owner (other than the assets included in any of paragraphs (a) to (k) inclusive);
- (n) all rights of the old trustee to any security deposits or similar sums or assets lodged with any court, public officer or authority;
- (p) all liabilities of the old trustee, present or future, certain or contingent, ascertained or sounding only in damages, and all claims by persons against the old trustee and any officer of the old trustee in respect of breach of trust, misfeasance, non-feasance or the exercise of or failure to exercise discretion in acting in the capacity of trustee, including claims in respect of any deficiency in trust assets, whether or not the claims have been notified or ascertained;
- (q) the right of the old trustee to indemnity under any insurance policy held by it other than in the capacity of trustee; or

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(r) all the assets, undertakings and liabilities of the old trustee in its business of property developer, packager of projects, entrepreneur, property owner, renovator and dealer, short-term money market dealer, mortgage lender of its own money, dealer in securities and any other businesses it conducted on its own behalf.

"39B. TRANSFER OF TRUST BUSINESS AND APPOINTMENT OF OLD TRUSTEE TO NEW TRUSTEE

"(1) On the commencing date, the trust business of the old trustee is, by virtue of this sub-section, transferred to and vested in the new trustee.

"(2) Where, immediately before the commencing date, the old trustee was acting in the capacity of trustee, the new trustee is, by virtue of this sub-section, appointed in its stead to act in that capacity and the new trustee -

(a) is entitled and obliged to exercise and discharge all the rights, powers, capacities, authorities, duties and obligations; and

(b) shall, to the extent provided in this Act, discharge the liabilities and obligations,

of the old trustee in respect of and arising from the appointment.

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

"(4) An appointment or nomination of the old trustee as trustee executor, or otherwise in the capacity of trustee, in a will or instrument, whether the appointment or nomination -

(a) is in effect on;

(b) takes effect after; or

(c) has taken effect before,

the commencing date, in respect of which a further act or thing is necessary to perfect the appointment or undertaking of the office, shall be deemed to be an appointment or nomination of the new trustee.

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"(5) On and after the commencing date, the production of a copy of this Part printed by the Government Printer shall be conclusive evidence in all courts and proceedings of the transfer of -

- (a) the trust business of the old trustee; and
- (b) all property held by the old trustee on trust in the capacity of trustee,

to the new trustee and of their vesting in the new trustee and, without limiting the generality of the foregoing, such a copy shall, in relation to all land and all marketable securities, operate as a duly executed transfer by the old trustee to the new trustee of the land or securities.

"(6) Where a portion of the undertaking or property held by the old trustee in the capacity of trustee cannot be, or is not, vested in the new trustee by virtue of this Act, whether because transfers of the portion are governed otherwise than by the law of the Territory or otherwise, notwithstanding that that portion relates to the trust business of the old trustee in the Territory, then the old trustee shall do all such things necessary after the commencing date for the purpose of securing that that portion is effectively and promptly transferred to the new trustee.

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

"39C. EVIDENCE

"(1) Where an application is made by the new trustee to have property vested in it by this Part registered under the *Real Property Act* in its name and the application is accompanied by -

- (a) a certificate under sub-section (2) that the property has vested in the new trustee; and
- (b) the relevant certificate of title or other instrument,

the Registrar-General within the meaning of that Act shall, without fee, make such notations in the Register as are necessary to record such vesting.

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"(2) A certificate under the seals of the new trustee and the old trustee to the effect that the estate or interest of persons specified in the certificate in land specified in the certificate is an estate or interest vested in the new trustee by this Part shall, for the purposes of -

- (a) an application by the new trustee to be registered under the *Real Property Act* as the proprietor of that estate or interest pursuant to the vesting;
- (b) a transfer, conveyance, reconveyance, mortgage or other instrument or dealing whatsoever in respect of an interest in the land, whether or not under the *Real Property Act*; and
- (c) a creation of easement or other interest in respect of the land, whether or not under the *Real Property Act*,

be conclusive evidence of the matters certified.".

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