



# NORTHERN TERRITORY OF AUSTRALIA

No. 57 of 1981

## AN ACT

To amend the Trustee Act

[Assented to 14 July 1981]

**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 Trustee Amendment Act 1981.

### 2. COMMENCEMENT

(1) Section 5(a) shall be deemed to have come into operation on 1 January 1981.

(2) Subject to sub-section (1), 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. TRANSITIONAL

The Principal Act as amended by this Act applies to and in relation to trusts in operation at, as well as trusts taking effect after, the commencement of this Act.

### 5. AUTHORIZED INVESTMENT

Section 4(1) of the Principal Act is amended -

(a) by omitting paragraph (f)(ii) and substituting the following:

"(ii) land held under the Crown Lands Act or the Special Purposes Leases Act";

(b) by omitting from the end of paragraph (k) "or"; and

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(c) by adding the following:

- "(n) in such common funds of such trustee companies as the Minister by notice in the Gazette determines; or
- "(p) on deposit with a corporation that is declared by the Minister by notice in the Gazette to be authorized to accept deposits of trust funds."

### 6. NEW SECTIONS

The Principal Act is amended by inserting after section 4B the following:

#### "4C. APPLICATION OF TRUST FUNDS FOR PURCHASE OF DWELLING-HOUSE

"(1) Where a trustee is of the opinion that -

- (a) it is desirable to purchase a dwelling-house for the use of a beneficiary under the trust; and
- (b) the purchase of a dwelling-house for that purpose would not unfairly prejudice the interests of any other beneficiary under the trust,

the trustee may -

- (c) invest any trust funds in his hands in the purchase of a dwelling-house; and
- (d) permit the beneficiary to reside in the dwelling-house on such terms and conditions as the trustee thinks fit.

"(2) A trustee shall not purchase a dwelling-house in pursuance of sub-section (1) if the purchase would be contrary to the terms of the trust.

"(3) The price paid for a dwelling-house purchased in pursuance of this section must not exceed the value of the dwelling-house as certified by a valuer who is reasonably believed by the trustee to be competent to make the valuation and to be acting independently of the vendor of the dwelling-house.

"(4) A dwelling-house purchased under this section shall be held upon trust for sale.

"(5) A trustee may retain as an asset of the trust a dwelling-house purchased under this section, notwithstanding that no beneficiary is residing in the dwelling-house.

"(6) Where, in the opinion of a trustee -

- (a) it is desirable that a dwelling-house that forms part of the trust property be retained for the use of a beneficiary under the trust; and

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- (b) the retention of the dwelling-house for that purpose would not unfairly prejudice the interests of any other beneficiary under the trust,

the trustee may, notwithstanding the terms of the trust, retain the dwelling-house as part of the trust property and permit the beneficiary to reside therein on such terms and conditions as the trustee thinks fit.

"(7) A trustee purchasing a dwelling-house in accordance with the provisions of this section may also purchase such furnishings and fittings for the dwelling-house as he thinks fit.

"(8) In this section -

'beneficiary' includes a person having a personal licence to reside, whether for life or for any lesser period, on land comprised in the trust property; and

'dwelling-house' includes a part of a building that is designed for occupation as a permanent residence."

#### 7. NEW SECTION

The Principal Act is amended by inserting after section 24 the following:

#### "24A. POWER TO APPLY CAPITAL TOWARDS ADVANCEMENT AND BENEFIT

"(1) Where, under a trust, a person is entitled to the capital of the trust property or any share thereof, the trustee may, from time to time out of that capital, pay or apply for the maintenance, education, advancement or benefit of that person in such manner as the trustee shall in his absolute discretion think fit an amount not exceeding in all \$2,000 or half the capital, whichever is the greater, or, with the consent of the Court, an amount greater than that amount.

"(2) This section applies only where, and in so far as, a contrary intent is not expressed in the instrument, if any, under which the interest of the person entitled to the capital or any share of the trust property arises, and shall have effect subject to the terms of that instrument.

"(3) This section applies only where the trust property consists of money or securities or property held upon trust for sale, calling in and conversion, and the money or securities or the proceeds of the sale, calling in and conversion are not by statute or in equity considered as land.

"(4) The power conferred by this section may be exercised whether a person is entitled absolutely or contingently on his attaining any specified age or on the happening of any event, or whether his

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interest is subject to a gift over on his death under any specified age or on the happening of any other event, and notwithstanding that the interest of the person so entitled is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs or whether the person is entitled in possession or in remainder or reversion.

"(5) If a person is or becomes absolutely and indefeasibly entitled to a share in the trust property, money paid or applied under sub-section (1) shall be brought into account as part of that share.

"(6) No action shall be taken under sub-section (1) so as to prejudice a person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied, unless such person is in existence, is under no disability and consents in writing to the action."

### 8. NEW SECTION

The Principal Act is amended by inserting after section 49 the following:

#### "49A. RELIEF FROM LIABILITY FOR BREACH OF TRUST

"If it appears to the Supreme Court -

- (a) that a trustee is, or may be, personally liable for a breach of trust, whether the transaction alleged to be a breach of trust occurs before or after the commencement of this Act; and
- (b) that the trustee has acted honestly and reasonably and ought fairly to be excused for the breach of trust, and for omitting to obtain the directions of the Court in the matter in which he has committed the breach,

the Court may relieve the trustee, either wholly or partly, from personal liability for the breach of trust."

### 9. DEFINITIONS

Section 82 of the Principal Act is amended by adding the following definition:

"'valuer' has the same meaning as in the Valuation of Land Act."