

Version No. 054
Trustee Companies Act 1984
No. 10168 of 1984

Version incorporating amendments as at
5 December 2012

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Trustee Companies Act 1984
No. 10168 of 1984

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5 December 2012

An Act to re-enact with amendments the law relating to trustee companies, to repeal the **Trustee Companies Act 1958** and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

PART I—PRELIMINARY

1 Short title

This Act may be cited as the **Trustee Companies Act 1984**.

2 Commencement

The several provisions of this Act shall come into operation on a day or the respective days to be fixed by proclamation or successive proclamations of the Governor in Council published in the Government Gazette.

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S. 3
repealed by
No. 45/1994
s. 42(Sch.
item 13.1).

4 Definitions

(1) In this Act unless inconsistent with the context or subject-matter—

S. 4(1) def. of <i>bank</i> substituted as <i>authorised deposit-taking institution</i> by No. 11/2001 s. 3(Sch. item 82.1(a)), repealed by No. 17/2010 s. 3(1)(a).	*	*	*	*	*
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S. 4(1) def. of <i>Commissioner</i> repealed by No. 17/2010 s. 3(1)(a).	*	*	*	*	*
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S. 4(1) def. of <i>corporation</i> amended by No. 44/2001 s. 3(Sch. item 118.1(a)), repealed by No. 17/2010 s. 3(1)(a).	*	*	*	*	*
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S. 4(1) def. of *domestic partner* inserted by No. 27/2001 s. 8(Sch. 6 item 8.1), substituted by No. 12/2008 s. 73(1)(Sch. 1 item 62.1).

domestic partner of a person means—

- (a) a person who is in a registered relationship with the person; or
- (b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides

domestic support and personal care to the person—

- (i) for fee or reward; or
- (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

estate includes all real and personal property of whatever nature or kind committed to the administration or management of a trustee company;

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S. 4(1) def. of *financial institution* amended by Nos 46/1998 s. 7(Sch. 1), 11/2001 s. 3(Sch. item 82.1(b)), repealed by No. 17/2010 s. 3(1)(a).

gross value means—

- (a) in relation to an estate (other than an estate or any part of an estate in relation to which there is a perpetual trust) the aggregate of—
 - (i) the actual amount paid out of an estate in the due course of administration or management from capital for debts, duties, liabilities and administration expenses and to or on behalf of beneficiaries; and

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s. 4

- (ii) the amount of the value at the time of distribution or appropriation of any assets distributed or appropriated in specie to any beneficiary without deduction of any liabilities; or
- (b) in relation to the whole or part of an estate in relation to which there is a perpetual trust—the value at the time the whole or part of the estate is committed to the trustee company without deduction of any liabilities;

S. 4(1) def. of *insurance company* repealed by No. 17/2010 s. 3(1)(a).

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manager includes acting manager;

managing director includes acting managing director;

S. 4(1) def. of *nominee corporation* amended by No. 44/2001 s. 3(Sch. item 118.1(a)), substituted by No. 9/2002 s. 3(Sch. item 15.1), repealed by No. 17/2010 s. 3(1)(a).

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prescribed means prescribed by this Act or the regulations;

S. 4(1) def. of *reserve fund* amended by No. 76/1988 s. 4, repealed by No. 17/2010 s. 3(1)(a).

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S. 4(1) def. of *related corporation* substituted by No. 44/2001 s. 3(Sch. item 118.1(b)), repealed by No. 17/2010 s. 3(1)(a).

spouse of a person means a person to whom the person is married;

S. 4(1) def. of *spouse* inserted by No. 27/2001 s. 8(Sch. 6 item 8.1).

State Trustees has the same meaning as in the **State Trustees (State Owned Company) Act 1994**;

S. 4(1) def. of *State Trustees* inserted by No. 17/2010 s. 3(1)(b).

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S. 4(1) def. of *subordinated loan* repealed by No. 17/2010 s. 3(1)(a).

trustee company means—

(a) a licensed trustee company within the meaning of section 601RAA of the Corporations Act; or

(b) State Trustees;

S. 4(1) def. of *trustee company* substituted by No. 17/2010 s. 3(1)(c).

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S. 4(1) def. of *voting shares* amended by No. 44/2001 s. 3(Sch. item 118.1(a)), repealed by No. 17/2010 s. 3(1)(a).

will includes codicil and any other testamentary disposition.

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S. 4(2)
repealed by
No. 17/2010
s. 3(2).

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S. 4(3)
substituted by
No. 44/2001
s. 3(Sch.
item 118.2),
repealed by
No. 17/2010
s. 3(2).

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S. 4(4)
amended by
No. 46/1998
s. 7(Sch. 1),
repealed by
No. 17/2010
s. 3(2).

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S. 4(5)
inserted by
No. 27/2001
s. 8(Sch. 6
item 8.2),
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 62.2).

- (5) For the purposes of the definition of *domestic partner* in subsection (1)—
- (a) *registered relationship* has the same meaning as in the **Relationships Act 2008**; and
 - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and
 - (c) a person is not a domestic partner of another person only because they are co-tenants.

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s. 5

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S. 5
amended by
Nos 46/1998
s. 7(Sch. 1),
44/2001
s. 3(Sch.
items 118.3,
118.4),
repealed by
No. 17/2010
s. 4.

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**Pt 2 (Heading
and ss 6–8)**
amended by
Nos 76/1988
ss 5, 6,
46/1998
s. 7(Sch. 1),
repealed by
No. 17/2010
s. 5.

PART III—POWERS OF TRUSTEE COMPANIES

No. 6402 s. 4.
S. 9
amended by
No. 74/2000
s. 3(Sch. 1
item 133).

9 Trustee company may act as executor or administrator

Where a trustee company is named either alone or jointly as executor in the will of a testator (whether the will was made before or after the commencement of this section) the trustee company may act as executor, and may apply for and obtain probate of the will of the testator and may perform and discharge all the acts and duties of an executor as fully and effectually as an executor who is a private individual.

No. 6402
ss 6, 7.

10 Authority for trustee company to obtain probate

- (1) Where a person is named expressly or by implication as executor and is entitled to obtain probate of the will of a testator, that person may—
 - (a) instead of applying personally, authorize a trustee company to apply for and obtain probate of the will; or
 - (b) join with a trustee company in an application for a grant of probate of the will to the person and the trustee company jointly.
- (2) An application under subsection (1) may be granted unless the testator has by will expressed the desire that the office of executor is not to be delegated or that the trustee company so applying is not to act in the trusts of the will.

No. 6402
ss 5, 8.

11 Authority for trustee company to obtain letters of administration

- (1) In any case in which a person may apply for and obtain a grant of letters of administration of the estate of a deceased person (whether with or without the will annexed), that person may—

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- (a) join with a trustee company in an application for a grant of letters of administration to the person and the trustee company jointly; or
 - (b) instead of applying personally, authorize a trustee company to apply for and obtain a grant of letters of administration to the estate.
- (2) Where—
- (a) a person joins with a trustee company in an application under subsection (1); or
 - (b) a trustee company makes an application that it has, pursuant to subsection (1)(b), been authorized to make—

S. 11(2)(b)
amended by
No. 45/1994
s. 42(Sch.
item 13.2).

the Supreme Court may grant letters of administration of the estate in accordance with the application.

- (3) Where administration of any estate with or without the will annexed is granted to a trustee company either alone or jointly with any other person, that trustee company may do and perform all acts and duties which belong to the office of administrator or administrator with the will annexed, as the case may be, as fully and effectually as an administrator who is a private individual.

11A Election by trustee company to administer estate

S. 11A
inserted by
No. 84/1991
s. 16.

- (1) A trustee company may file an election in the prescribed form to administer an estate in the office of the Registrar if—
- (a) no grant of administration has been made to any person; and
 - (b) the trustee company would be entitled to a grant of administration.

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- (2) A trustee company may file an election in the prescribed form in accordance with the regulations to administer the estate of a testator in the office of the Registrar if—
 - (a) no grant of probate of the will or administration with the will annexed has been made to any person; and
 - (b) the trustee company would be entitled to a grant of probate of the will or of administration with the will annexed.
 - (3) The filing of an election is to be taken to be the grant of administration or probate to the trustee company.
 - (4) This section applies to an estate the gross value of which is estimated by the trustee company at the time of the election not to exceed \$50 000.
 - (5) An election cannot be filed—
 - (a) if there is in force a caveat against any application for probate or administration lodged with the Registrar; and
 - (b) until the expiry of 14 days after the publication in a daily newspaper circulating generally throughout Victoria of a notice of intention to file the election; and
 - (c) unless there is attached an inventory of the estate.
 - (6) Within one month of the filing of an election the trustee company must publish notice of the election in a daily newspaper circulating generally throughout Victoria.
 - (7) A notice of election is conclusive evidence that the trustee company is entitled to administer the estate to which the election relates.
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- (8) Even though an election has been filed any person may apply to the Court for a grant of probate or administration.
 - (9) The Court may grant an application on any terms and conditions the Court thinks fit and may revoke the election.
 - (10) If after filing an election the gross value of the property to be administered is found to exceed the sum of \$60 000 the trustee company must as soon as practicable file with the Registrar a memorandum stating the fact and apply in the same manner as any other person for a grant of probate or administration (as the case requires).
 - (11) A trustee company must file a revocation of an election in the office of the Registrar if the trustee company finds that—
 - (a) the deceased who was believed to have died intestate has died leaving a will; or
 - (b) the document annexed to the election as the testator's last will has been revoked by a later will; or
 - (c) the document annexed to the election has no testamentary validity because the deceased died intestate.
 - (12) In this section, *Registrar* means the Registrar of Probates and Administration of the Court.

12 Court may act on affidavit of manager etc.

No. 6402 s. 9.

In all cases in which a trustee company is empowered by this Act or any other Act to apply for probate of a will or for letters of administration in respect of the estate of a deceased person, the Supreme Court may receive and act upon an affidavit made by the managing director, manager, district manager, assistant manager, secretary or such other officer of the trustee company as may

s. 13

from time to time be appointed by the board of directors of the trustee company for that purpose in place of any affidavit required by any Act or rule of the Supreme Court to be made by persons making application for probate or for letters of administration.

No. 6402 s. 10.

13 Appointment as trustee etc.

S. 13(1)
amended by
No. 17/2010
s. 6(1).

- (1) Where probate or letters of administration are granted to a trustee company, the capital, and all other assets of the trustee company shall be liable for the proper administration of the estate committed to the trustee company.

S. 13(2)
repealed by
No. 17/2010
s. 6(2).

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No. 6402 s. 11.

14 Trustee company may be appointed trustee, receiver or guardian of estate

S. 14(1)
substituted by
No. 59/1986
s. 143(2).

- (1) Where a court, judge or other person has power to appoint a person as—
 - (a) trustee;
 - (b) guardian of a minor; or
 - (c) sole guarantor or surety for a person appointed as trustee or guardian—

a trustee company may be so appointed and may continue to act until removed from office.

S. 14(2)
amended by
Nos 59/1986
s. 143(2),
52/1998
s. 311(Sch. 1
item 99.1).

- (2) Where a trustee company is appointed to an office referred to in subsection (1) or as an administrator under the **Guardianship and Administration Act 1986**, the capital of the trustee company and all other assets of the trustee company shall be liable for the proper discharge of the duties committed to the trustee company and that liability shall be deemed sufficient security for the discharge of those duties in place of the bond

required from private persons when appointed as trustee, guardian, administrator, guarantor or surety.

15 Trustee company may act under power of attorney

No. 6402 s. 12.

- (1) It shall be lawful for a trustee company to act under any power of attorney by which the trustee company is appointed attorney by any person, and all the powers conferred upon the trustee company by any such power of attorney may be exercised and carried into execution by such officers of the trustee company as it determines.
- (2) The capital and all other assets of a trustee company shall be liable for the due execution of the powers conferred by subsection (1) upon the trustee company.
- (3) This section does not authorize any person to confer any power upon a trustee company which cannot be legally conferred upon a private individual.

S. 15(1)
amended by
No. 76/1988
s. 7.

16 Trustee company may be appointed to act as temporary executor, administrator or trustee

No. 6402 s. 13.

An executor, administrator or trustee may appoint a trustee company to act as executor, administrator or trustee, and a trustee company, if so appointed by power of attorney, may act within the scope of the authority conferred upon it as effectually as the executor, administrator or trustee could have acted and may exercise all discretionary and other powers delegated by the principal as fully as the principal could have exercised them.

s. 17

No. 6402 s. 14.

17 Executor or administrator may appoint trustee company

S. 17(1)
amended by
No. 59/1986
s. 143(2).

(1) It shall be lawful—

- (a) for an executor or administrator acting under any probate or letters of administration, whether granted before or after the commencement of this section;
- (b) for a trustee;
- (c) with the consent of the Victorian Civil and Administrative Tribunal, for an administrator appointed under the **Guardianship and Administration Act 1986**; or
- (d) with the consent of the Supreme Court, for the guardian of a minor—

S. 17(1)(c)
substituted by
Nos 59/1986
s. 143(2),
52/1998
s. 311(Sch. 1
item 99.2).

S. 17(1)(d)
substituted by
No. 59/1986
s. 143(2).

to appoint a trustee company to perform and discharge all the acts and duties of the executor, administrator, trustee or guardian and the trustee company shall have power to perform and discharge those acts and duties.

(2) Where a trustee company is appointed under subsection (1)—

- (a) the capital and all other assets of the trustee company shall be liable for the proper discharge of the duties referred to in subsection (1);
- (b) the executor, administrator, trustee or guardian that appointed the trustee company shall be released from liability in respect of all acts done, or omitted to be done, by the trustee company acting under that appointment.

S. 17(2)(b)
amended by
No. 59/1986
s. 143(2).

18 Application for consent

No. 6402 s. 15.

- (1) An application may be made to the Supreme Court for consent under section 17.
- (2) Notice of an intended application shall be advertised seven days before the making of the application in a daily newspaper circulating generally in Victoria.
- (3) The Supreme Court may require any person resident in Victoria and entitled to the immediate receipt of any of the income or corpus of the estate in respect of which the application is made to be served with notice of the intended application.
- (4) The costs of the application shall be in the discretion of the Supreme Court and may be ordered to be paid out of the estate.
- (5) The consent of the Supreme Court shall not be given in the case of a will in which the testator has expressed the wish that the trusts should not be delegated or that a trustee company should not act.

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S. 19
amended by
No. 59/1986
s. 143(2),
repealed by
No. 17/2010
s. 7.

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S. 20
repealed by
No. 17/2010
s. 7.

s. 20A

S. 20A
inserted by
No. 84/1991
s. 17,
amended by
Nos 35/1996
s. 453(Sch. 1
item 86.1(a)
(b)), 102/1997
s. 49(Sch.
item 7),
substituted by
No. 18/2005
s. 18(Sch. 1
item 110.1).

20A Preparation of wills

Despite anything to the contrary in the **Legal Profession Act 2004**, a trustee company may prepare wills and charge a fee and recover disbursements for will preparation and other related services, if the wills are prepared under the direction and control of an Australian legal practitioner within the meaning of that Act.

Pt 4 (Heading
and ss 21–24)
amended by
Nos 59/1986
s. 143(2),
110/1986
s. 140(2),
76/1988
ss 8, 9,
45/1994
s. 42(Sch.
item 13.3),
104/1995 s. 7,
52/1998
s. 311(Sch. 1
item 99.3),
24/2000
s. 20(1)(2),
repealed by
No. 17/2010
s. 8.

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PART V—ADMINISTRATION OF ESTATES

Division 1—General

Pt 5 Div. 1
(Heading)
inserted by
No. 76/2012
s. 25(a).

25 Trustee company to be subject to same duties as individual

No. 6402 s. 20.

- (1) Except as otherwise provided in this Act, where a trustee company has been or is appointed or has acted or acts in any office referred to in section 14, 16 or 17, the trustee company, in addition to the liabilities and restrictions imposed by this Act is subject to the same respective rights, duties and obligations to which any individual acting in any such capacity would be subject.
- (2) Where an individual acting in any capacity referred to in subsection (1) would be liable to attachment, commitment, or to any process, the managers and directors of the trustee company shall, where the trustee company is acting in any such capacity, each be liable for any individual acts and not further or otherwise in person to attachment, commitment or other process.

S. 25(1)
substituted by
No. 59/1986
s. 143(2).

26 Trustee company may be removed from office by Supreme Court

No. 6402 s. 21.

- (1) In every case in which a trustee company has been or is appointed to any office referred to in section 14, 16 or 17 or under any power of attorney the trustee company, in addition to the liabilities and restrictions imposed by this Act, is subject in all respects to the same control and liable to removal in the same manner as a private individual who may be appointed executor, administrator, trustee, guardian or attorney would be.

S. 26(1)
substituted by
No. 59/1986
s. 143(2).

s. 26AA

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- (2) It shall be lawful for all persons who may claim relief against a trustee company for any act done or assumed to be done or in respect of any act omitted to be done by the trustee company, its directors or officers under any of the powers conferred by this Act to apply to the Supreme Court or in any other court of competent jurisdiction for an order against the trustee company or against any of its directors or officers and the court may make and enforce such order in the matter as to the court seems just.

Pt 5 Div. 2
(Heading)
inserted by
No. 76/2012
s. 25(b).

Division 2—Transfer of estate assets and liabilities

S. 26AA
inserted by
No. 76/2012
s. 26.

26AA Definitions

- (1) Terms used in this Division and in Part 5D.6 of the Corporations Act have the same meanings in this Division as they have in that Part.
- (2) For the of avoidance of doubt—
- (a) a reference in Part 5D.6 of the Corporations Act to the Public Trustee of a State or Territory is taken to be, in relation to Victoria, a reference to State Trustees; and
 - (b) a reference in this Division to a receiving company includes a reference to State Trustees.

26A Transfer determinations under the Corporations Act

S. 26A
(Heading)
substituted by
No. 76/2012
s. 27(1).
S. 26A
inserted by
No. 17/2010
s. 9.

(1) This section applies if—

- (a) the Australian Securities and Investments Commission (*ASIC*) makes a determination under section 601WBA(1) of the Corporations Act that there is to be a transfer of estate assets and liabilities from a transferring company to a receiving company; and
- (b) ASIC issues a certificate of transfer under section 601WBG of the Corporations Act for the transfer; and
- (c) either or both of the transferring company and the receiving company are registered in Victoria.

S. 26A(1)(a)
substituted by
No. 76/2012
s. 27(2).

(2) When the certificate of transfer comes into force, the receiving company is taken to be the successor in law in relation to estate assets and liabilities of the transferring company, to the extent of the transfer.

Note

Section 601WBG(2)(d) of the Corporations Act requires the certificate of transfer to state when it is to come into force.

(3) Without limiting subsection (2)—

- (a) if the transfer is a total transfer—
 - (i) all of the assets of the transferring company become assets of the receiving company; and

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- (ii) all of the liabilities of the transferring company become liabilities of the receiving company—
without the need for any further transfer, conveyance, assignment or assurance; and
- (b) if the transfer is a partial transfer—
- (i) assets of the transferring company listed in the certificate of transfer in accordance with section 601WBG(2)(c) of the Corporations Act become assets of the receiving company; and
- (ii) liabilities of the transferring company listed in the certificate of transfer in accordance with section 601WBG(2)(c) of the Corporations Act become liabilities of the receiving company—
without the need for any further transfer, conveyance, assignment or assurance; and
- (c) to the extent of the transfer, the duties, obligations, immunities, rights and privileges applying to the transferring company apply to the receiving company.
- (4) If the certificate of transfer includes provisions of the kind referred to in section 601WBG(3) of the Corporations Act specifying—
- (a) 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;
- (b) 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
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determined in accordance with that mechanism.

26B Exemption from State tax

S. 26B
inserted by
No. 17/2010
s. 9.

(1) In this section—

exempt matter means the transfer of the estate assets and liabilities of a transferring company to a receiving company under Division 2 of Part 5D.6 of the Corporations Act;

State tax means application or registration fees, duty under the **Duties Act 2000** or any other tax, duty, fee or charge imposed by any Act or law of the State.

(2) State tax is not payable in relation to—

(a) an exempt matter; or

(b) anything done because of, or for a purpose connected with or arising out of, an exempt matter.

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S. 27
amended by
Nos 110/1986
s. 140(2),
46/1998
s. 7(Sch. 1),
27/2001
s. 8(Sch. 6
item 8.3),
repealed by
No. 17/2010
s. 10.

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S. 28
amended by
No. 110/1986
s. 140(2),
repealed by
No. 17/2010
s. 10.

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 Part V—Administration of Estates

s. 29

<p>S. 29 amended by Nos 59/1986 s. 143(2), 110/1986 s. 140(2), repealed by No. 17/2010 s. 10.</p>	*	*	*	*	*
<p>S. 30 amended by Nos 55/1987 s. 57(3)(Sch. 5 item 80), 45/1994 s. 42(Sch. item 13.4), 46/1998 s. 7(Sch. 1), 12/1999 s. 4(Sch. 2 item 20.1), repealed by No. 17/2010 s. 10.</p>	*	*	*	*	*
<p>S. 31 amended by Nos 76/1988 s. 10, 44/2001 s. 3(Sch. item 118.5), repealed by No. 17/2010 s. 10.</p>	*	*	*	*	*
<p>S. 32 amended by Nos 76/1988 s. 11, 11/2001 s. 3(Sch. item 82.2), repealed by No. 17/2010 s. 10.</p>	*	*	*	*	*
<p>S. 33 repealed by No. 17/2010 s. 10.</p>	*	*	*	*	*

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Part V—Administration of Estates

s. 34

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S. 34
amended by
No. 11/2001
s. 3(Sch.
item 82.2),
repealed by
No. 17/2010
s. 10.

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S. 35
amended by
Nos 46/1998
s. 7(Sch. 1),
44/2001
s. 3(Sch.
item 118.6),
repealed by
No. 17/2010
s. 10.

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s. 36

Pt 6 (Heading
and ss 36–39)
amended by
Nos 76/1988
ss 12, 14(1),
104/1995
ss 8, 9,
11/2001
s. 3(Sch.
item 82.2),
44/2001
s. 3(Sch.
item 118.7),
repealed by
No. 17/2010
s. 11.

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Pt 7 (Heading
and ss 40–42)
amended by
Nos 76/1988
ss 13, 14(2)(3),
104/1995
ss 10–12,
24/2000
s. 20(3),
11/2001
s. 3(Sch.
item 82.2),
44/2001
s. 3(Sch.
item 118.8),
9/2002
s. 3(Sch.
item 15.2),
repealed by
No. 17/2010
s. 12.

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PART VIII—CLAIMS AND DISTRIBUTION

43 Refusal of claim

No. 6402 s. 31.

- (1) Whenever a trustee company refuses to recognize in whole or in part the claim of a person who claims to be a creditor against the estate of any deceased person, the trustee company may give notice in writing of such refusal to the person so claiming.
- (2) If the person does not, within three months after the receipt of a notice under subsection (1), institute proceedings to enforce the claim, it shall be lawful for the trustee company to distribute the assets of the deceased person without regard to the claim or to so much of the claim as the trustee company has by the notice refused to recognize, and thereupon the right of the person to recover the amount of the claim or the part of the claim which the trustee company has by the notice refused to recognize shall be absolutely barred.
- (3) For the purposes of this section, a notice may be served on a person by posting it in a registered letter addressed to the person at the address given in the claim, and such a notice shall be deemed to have been received by the person in the ordinary course of post unless the trustee company has notice to the contrary before the distribution of the assets.

44 Power to make distribution if claimants fail to claim

No. 6402
ss 32, 33.

- (1) This section applies if—
 - (a) a trustee company has been granted probate of a will or administration of an estate; and
 - (b) the trustee company has been informed of the existence at any time of a person who, if he or she had survived the testator or intestate, would have been entitled to a

S. 44
amended by
No. 110/1986
s. 140(2),
substituted by
No. 84/1991
s. 18.

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- legacy under the will or to the whole or a distributive share of the estate; and
- (c) a claim has not been made within 3 years after the grant of probate or administration by the person or any person claiming through that person or as one of his or her issue.
- (2) The trustee company may—
- (a) submit a report to the Court specifying the material facts; and
- (b) obtain a direction from the Court as to the manner, form and type of advertisements to be made before a distribution can be made.
- (3) The trustee company may distribute an estate as if the person had predeceased the testator or intestate without issue if—
- (a) the trustee company has obtained a direction from the Court under subsection (2); and
- (b) the trustee company has complied with the direction; and
- (c) the claim of any claimant has been finally dealt with.
- (4) Nothing in this section shall prejudice the right of any person to follow the assets or any part of the assets into the hands of the person or persons who have received them.
- (5) This section shall not be construed as in derogation from the provisions of section 33 of the **Trustee Act 1958**.
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Trustee Companies Act 1984
No. 10168 of 1984

s. 45

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Pt 9 (Heading and ss 45–49) amended by Nos 55/1987 s. 57(3)(Sch. 5 item 81), 45/1994 s. 42(Sch. items 13.5, 13.6), 46/1998 s. 7(Sch. 1), 44/2001 s. 3(Sch. items 118.9–118.12), 68/2009 s. 97(Sch. item 127), repealed by No. 17/2010 s. 13.

Trustee Companies Act 1984
No. 10168 of 1984
Part X—General

s. 50

PART X—GENERAL

S. 50 amended by No. 44/2001 s. 3(Sch. items 118.13, 118.14), repealed by No. 17/2010 s. 14.	*	*	*	*	*
S. 51 amended by No. 44/2001 s. 3(Sch. items 118.15, 118.16), repealed by No. 17/2010 s. 14.	*	*	*	*	*
S. 52 amended by Nos 46/1998 s. 7(Sch. 1), 2/2009 s. 31(1), repealed by No. 17/2010 s. 14.	*	*	*	*	*
S. 53 repealed by No. 17/2010 s. 14.	*	*	*	*	*

54 Testators may appoint their own lawyers

No. 6402 s. 36.

S. 54
(Heading)
inserted by
No. 18/2005
s. 18(Sch. 1
item 110.2).

S. 54
amended by
Nos 110/1986
s. 140(2),
35/1996
s. 453(Sch. 1
item 86.2
(a)–(d)).

- (1) Where by any will a testator directs that an Australian legal practitioner shall conduct the legal business of the estate of the testator, an Australian legal practitioner shall be entitled to act accordingly, but in such a case the trustee company concerned shall not be liable for the negligence, misfeasance, nonfeasance or misconduct of the practitioner, and the practitioner may be removed by order of the Supreme Court upon the application of the trustee company or of any person interested in the estate upon cause shown, and then and in such case the Supreme Court may appoint the legal practitioner of the trustee company.

S. 54(1)
amended by
No. 18/2005
s. 18(Sch. 1
item 110.3).

- (2) In this section, *Australian legal practitioner* has the same meaning as in the **Legal Profession Act 2004**.

S. 54(2)
inserted by
No. 35/1996
s. 453(Sch. 1
item 86.3),
substituted by
No. 18/2005
s. 18(Sch. 1
item 110.4).

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S. 54A
inserted by
No. 76/1988
s. 14(4),
repealed by
No. 17/2010
s. 14.

55 Regulations

The Governor in Council may make regulations for or with respect to prescribing any matter or thing authorized or required to be prescribed for the purposes of this Act.

PART XI—TRANSITIONAL PROVISIONS

Pt 11
(Heading and
ss 56–61)
inserted by
No. 17/2010
s. 15.

56 Regulations of a savings or transitional nature

S. 56
inserted by
No. 17/2010
s. 15.

- (1) Without limiting section 55, the Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of the **Trustee Companies Legislation Amendment Act 2010**, including the repeals and amendments made by that Act.
- (2) Regulations made under this section may—
 - (a) have a retrospective effect to a day on or from the date that the **Trustee Companies Legislation Amendment Act 2010** receives the Royal Assent; and
 - (b) be of limited or general application; and
 - (c) leave any matter or thing to be decided by a specified person or class of persons; and
 - (d) provide for the exemption of persons or matters or a class of persons or matters from any of the regulations made under this section.
- (3) To the extent to which a provision of the regulations made under this section takes effect from a time that is earlier than the beginning of the day on which the regulations containing the provision are made, the provision does not operate so as—
 - (a) to affect in a manner prejudicial to any person (other than the Crown or an authority of the Crown), the rights of that person

s. 57

existing before the date of making of those regulations; or

(b) to impose liabilities on any person (other than the Crown or an authority of the Crown) in respect of anything done or omitted to be done before the date of making of those regulations.

(4) Regulations under this section have effect despite anything to the contrary in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**) or in any subordinate instrument.

S. 57
inserted by
No. 17/2010
s. 15.

57 Court may review rate of commission

Despite the repeal of section 21(3) by section 8 of the **Trustee Companies Legislation Amendment Act 2010**, any application made to the Supreme Court for a review of the commission or rate of commission charged in respect of an estate that was made but not determined before that repeal is taken to continue in force and may be dealt with as if section 21(3) had not been repealed.

S. 58
inserted by
No. 17/2010
s. 15.

58 Order for account and audit of estate

Despite the repeal of sections 27 and 28 by section 10 of the **Trustee Companies Legislation Amendment Act 2010**, any application made to the Supreme Court for an order for account that was made but not determined before that repeal is taken to continue in force and may be dealt with as if sections 27 and 28 had not been repealed.

S. 59
inserted by
No. 17/2010
s. 15.

59 Order to restrain disposal of shares

Despite the repeal of section 29 by section 10 of the **Trustee Companies Legislation Amendment Act 2010**, any application made to the Supreme Court for an order to restrain—

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- (a) a director or any shareholder from disposing of any share that the director or shareholder holds in the trustee company; or
 - (b) the voluntary winding up of a trustee company—

that was made but not determined before that repeal is taken to continue in force and may be dealt with as if section 29 had not been repealed.

60 Order for winding up of trustee company

S. 60
inserted by
No. 17/2010
s. 15.

Despite the repeal of section 30 by section 10 of the **Trustee Companies Legislation Amendment Act 2010**, any application made to the Supreme Court for an order for the winding up of a trustee company that was made but not determined before that repeal is taken to continue in force and may be dealt with as if section 30 had not been repealed.

61 General transitional provision

S. 61
inserted by
No. 17/2010
s. 15.

- (1) The amendments and repeals made by the **Trustee Companies Legislation Amendment Act 2010** are not taken to affect any duties, obligations, rights, liabilities, immunities and privileges that apply to a trustee company pursuant to this Act that are not otherwise dealt with by Chapter 5D of the Corporations Act.
- (2) Despite the commencement of the **Trustee Companies Legislation Amendment Act 2010**, any entitlement of a trustee company to fees or commissions that existed under this Act immediately before that commencement continue to exist and may be dealt with as if this Act, as in force before that commencement, continued to apply.
- (3) Despite the commencement of the **Trustee Companies Legislation Amendment Act 2010**, any action taken or duties performed by a trustee

company under this Act before that commencement are not taken to be affected by that commencement.

- (4) Despite the commencement of the **Trustee Companies Legislation Amendment Act 2010**, if a trustee company was a party to any proceedings brought under this Act that were pending immediately before that commencement, the trustee company continues to be a party and this Act, as in force before that commencement, continues to apply to those proceedings.
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Sch. 1

SCHEDULES

*	*	*	*	*	Sch. 1 repealed by No. 45/1994 s. 42(Sch. item 13.1).
*	*	*	*	*	Sch. 2 amended by No. 45/1994 s. 42(Sch. item 13.7), substituted by No. 104/1995 s. 13, amended by Nos 103/2004 s. 83, 2/2009 s. 31(2), repealed by No. 17/2010 s. 16.
*	*	*	*	*	Sch. 3 repealed by No. 84/1991 s. 19.

ENDNOTES

1. General Information

The **Trustee Companies Act 1984** was assented to on 20 November 1984 and came into operation on 5 December 1984: Government Gazette 5 December 1984 page 4329.

2. Table of Amendments

This Version incorporates amendments made to the **Trustee Companies Act 1984** by Acts and subordinate instruments.

Mental Health Act 1986, No. 59/1986

Assent Date: 3.6.86
Commencement Date: Ss 1–3, 21, 23, Sch. 1 on 19.6.87: Government Gazette 17.6.87 p. 1538; rest of Act on 1.10.87: Government Gazette 30.9.87 p. 2585
Current State: All of Act in operation

Supreme Court Act 1986, No. 110/1986

Assent Date: 16.12.86
Commencement Date: 1.1.87: s. 2
Current State: All of Act in operation

State Trust Corporation of Victoria Act 1987, No. 55/1987

Assent Date: 20.10.87
Commencement Date: 2.11.87: Government Gazette 28.10.87 p. 2925
Current State: All of Act in operation

Trustee Companies (Amendment) Act 1988, No. 76/1988

Assent Date: 15.12.88
Commencement Date: 25.1.89: Government Gazette 25.1.89 p. 146
Current State: All of Act in operation

State Trust Corporation of Victoria (Amendment) Act 1991, No. 84/1991

Assent Date: 10.12.91
Commencement Date: 1.1.92: Government Gazette 18.12.91 p. 3488
Current State: All of Act in operation

State Trustees (State Owned Company) Act 1994, No. 45/1994

Assent Date: 7.6.94
Commencement Date: Pt 1 (ss 1–3), s. 27 on 7.6.94: s. 2(1); rest of Act on 1.7.94: Special Gazette (No. 36) 23.6.94 p. 1
Current State: All of Act in operation

Trustee and Trustee Companies (Amendment) Act 1995, No. 104/1995

Assent Date: 5.12.95
Commencement Date: 1.1.96: s. 2
Current State: All of Act in operation

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 86.1–86.3) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Trustee Companies Act 1984**

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Legal Practice (Amendment) Act 1997, No. 102/1997

Assent Date: 16.12.97
Commencement Date: S. 49(Sch. item 7) on 16.12.97: s. 2(1)
Current State: This information relates only to the provision/s amending the **Trustee Companies Act 1984**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Trustee Companies Act 1984**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 items 99.1–99.3) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Trustee Companies Act 1984**

Public Sector Reform (Further Amendments) Act 1999, No. 12/1999

Assent Date: 11.5.99
Commencement Date: S. 4(Sch. 2 item 20) on 11.5.99: s. 2(1)
Current State: This information relates only to the provision/s amending the **Trustee Companies Act 1984**

National Taxation Reform (Further Consequential Provisions) Act 2000, No. 24/2000

Assent Date: 16.5.00
Commencement Date: S. 20 on 1.7.00: s. 2(2)
Current State: This information relates only to the provision/s amending the **Trustee Companies Act 1984**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 133) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Trustee Companies Act 1984**

Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001

Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 82) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Trustee Companies Act 1984**

Statute Law Amendment (Relationships) Act 2001, No. 27/2001

Assent Date: 12.6.01
Commencement Date: S. 8(Sch. 6 item 8) on 28.6.01: Government Gazette 28.6.01 p. 1428
Current State: This information relates only to the provision/s amending the **Trustee Companies Act 1984**

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Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 118) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Trustee Companies Act 1984**

Corporations (Financial Services Reform Amendments) Act 2002, No. 9/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. item 15) on 23.4.02: s. 2
Current State: This information relates only to the provision/s amending the **Trustee Companies Act 1984**

Fair Trading (Enhanced Compliance) Act 2004, No. 103/2004

Assent Date: 21.12.04
Commencement Date: S. 83 on 22.12.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Trustee Companies Act 1984**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 110) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Trustee Companies Act 1984**

Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 62) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Trustee Companies Act 1984**

Fundraising Appeals and Consumer Acts Amendment Act 2009, No. 2/2009

Assent Date: 10.2.09
Commencement Date: S. 31 on 11.2.09: s. 2(1)
Current State: This information relates only to the provision/s amending the **Trustee Companies Act 1984**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 127) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Trustee Companies Act 1984**

Trustee Companies Legislation Amendment Act 2010, No. 17/2010

Assent Date: 11.5.10
Commencement Date: Ss 3–16 on 11.5.10: Special Gazette (No. 171) 11.5.10 p. 1
Current State: This information relates only to the provision/s amending the **Trustee Companies Act 1984**

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State Taxation and Other Acts Amendment Act 2012, No. 76/2012

Assent Date: 4.12.12

Commencement Date: Ss 25–27 on 5.12.12: s. 2(1)

Current State: This information relates only to the provision/s amending the **Trustee Companies Act 1984**

3. Explanatory Details

No entries at date of publication.