

South Australia



**STATUTES AMENDMENT (TRUSTS) ACT 1999**

**No. 56 of 1999**

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**SCHEDULE**  
*Further Amendments to Trustee Companies Act 1988*



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**ELIZABETHAE II REGINAE**

A.D. 1999

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**No. 56 of 1999**

**An Act to amend the Trustee Act 1936 and the Trustee Companies Act 1988.**

*[Assented to 12 August 1999]*

The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Statutes Amendment (Trusts) Act 1999*.

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Interpretation**

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

**PART 2  
AMENDMENT OF TRUSTEE ACT 1936**

**Amendment of s. 4—Interpretation**

4. Section 4 of the principal Act is amended by inserting the following subsections after subsection (2):

(3) Where an unincorporated body is named in an instrument establishing a trust, the persons for the time being comprising the body will be taken to have been individually named in the instrument.

(4) Subsection (3) applies for the purposes of this Act but not for the purposes of interpreting the trust instrument.

**Insertion of s. 9A**

5. The following section is inserted after section 9 of the principal Act:

**Charitable trustees to consider certain advice etc.**

9A. (1) The trustees of a trust established wholly or partly for charitable purposes must, in the administration of the trust estate, have regard to information, representations or advice that is relevant and is given or made to the trustees in writing by a person referred to in subsection (2).

(2) The following persons may give the information or advice, or make representations, to the trustee:

- (a) a person who is named in the instrument establishing the trust as a person who is entitled to, or may, receive money or other property for the purposes of the trust; or
- (b) a person who is named in the instrument establishing the trust as a person who must, or may, be consulted by the trustees before distributing or applying money or other property for the purposes of the trust; or
- (c) a person who in the past has received money or other property from the trustees for the purposes of the trust; or
- (d) a person of a class that the trust is intended to benefit.

**Amendment of s. 36—Power of the Court to appoint new trustee**

6. Section 36 of the principal Act is amended by striking out subsection (1) and substituting the following subsections:

(1) The Supreme Court may, on the application of a person referred to in subsection (1c), make—

- (a) an order removing one or more of the trustees of a trust; or
- (b) an order replacing one or more of the trustees of a trust; or
- (c) an order appointing a trustee or trustees, or an additional trustee or trustees, of a trust; or
- (d) any other order that in its opinion is necessary or desirable.

(1a) The Court may make the order if it is satisfied that the order is desirable—

- (a) in the interests of the persons (whether identified or not) who are to benefit from the trust; or
- (b) to advance the purposes of the trust.

(1b) There is no need for the Court to find any fault or inadequacy on the part of the existing trustees before making an order under this section.

- (1c) The following persons may apply for an order under this section:
- (a) the Attorney-General; or
  - (b) a trustee of the trust; or
  - (c) a beneficiary of the trust; or
  - (d) in the case of a trust established wholly or partly for charitable purposes the following persons may apply for an order in addition to those referred to in the other paragraphs of this subsection:
    - (i) a person who is named in the instrument establishing the trust as a person who is entitled to, or may, receive money or other property for the purposes of the trust; or
    - (ii) a person who is named in the instrument establishing the trust as a person who must, or may, be consulted by the trustees before distributing or applying money or other property for the purposes of the trust; or
    - (iii) a person who in the past has received money or other property from the trustees for the purposes of the trust; or
    - (iv) a person of a class that the trust is intended to benefit; or
  - (e) any other person who satisfies the Court that he or she has a proper interest in the trust.

**Amendment of s. 60—Petitions to the Supreme Court**

**7. Section 60 of the principal Act is amended—**

- (a) by striking out paragraphs (a), (b) and (c) and substituting "a person referred to in subsection (2)";
- (b) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsection:
  - (2) A petition may be presented by any of the following persons:
    - (a) the Attorney-General; or
    - (b) a trustee of the trust; or
    - (c) a person who is named in the instrument establishing the trust as a person who is entitled to, or may, receive money or other property for the purposes of the trust; or
    - (d) a person who is named in the instrument establishing the trust as a person who must, or may, be consulted by the trustees before distributing or applying money or other property for the purposes of the trust; or

- (e) a person who has in the past received money or other property from the trustees for the purposes of the trust; or
- (f) a person of a class that the trust is intended to benefit; or
- (g) any other person who satisfies the Court that he or she has a proper interest in the trust.

**PART 3**  
**AMENDMENT OF TRUSTEE COMPANIES ACT 1988**

**Amendment of s. 3—Interpretation**

**8.** Section 3 of the principal Act is amended—

(a) by inserting the following definition after the definition of "officer":

"person who has a proper interest" or "person with a proper interest", includes, in relation to a trust established for charitable purposes, the following persons:

- (a) the Attorney-General;
  - (b) a person who is named in the instrument establishing the trust as a person who is entitled to, or may, receive money or other property for the purposes of the trust;
  - (c) a person who is named in the instrument establishing the trust as a person who must, or may, be consulted by the trustees before distributing or applying money or other property for the purposes of the trust;
  - (d) a person who in the past has received money or other property from the trustees for the purposes of the trust;
  - (e) a person of a class that the trust is intended to benefit;;
- (b) by inserting after its present contents as amended by paragraph (a) (now to be designated as subsection (1)) the following subsections:

(2) Where an unincorporated body is named in an instrument establishing a trust, the persons for the time being comprising the body will be taken to have been individually named in the instrument.

(3) Subsection (2) applies for the purposes of this Act but not for the purposes of interpreting the trust instrument.

**Amendment of s. 10—Fee for administering perpetual trust**

**9.** Section 10 of the principal Act is amended—

- (a) by striking out "A trustee company" from subsection (1) and substituting "Subject to subsection (4), a trustee company";
- (b) by striking out paragraph (b) of subsection (2) and substituting the following paragraph:
  - (b) may be charged only against—

- (i) income received by the company on account of the trust;
- (ii) subject to the terms of the instrument under which the company administers the trust—that component of the capital assets of the trust representing the capital growth of those assets during the period in respect of which the administration fee is charged.

(c) by inserting the following subsection after subsection (2):

(2a) Where a trustee company charges an administration fee in respect of a particular period against both income and capital assets under subsection (2)(b), it must, at the request of a person with a proper interest, inform the person of the proportion of the fee charged against each and the method used to determine that proportion.

(d) by inserting the following subsections after subsection (3):

(4) Subject to subsection (5), where—

(a) a trustee company invests money comprising the whole or part of a perpetual trust in a common fund; and

(b) the company charges a management fee under section 15 in respect of that investment,

the company must not charge a fee under this section in respect of the trust or that part of it.

(5) Subject to the terms of the instrument under which the company administers the trust, the company may charge a fee under this section for reasonable administrative action by the company in administering the trust, or the part of it referred to in subsection (4), if the administrative action is not related to the investment or management of the trust, or that part of it, in the common fund.

(6) A trustee company must, at the request of a person with a proper interest, provide that person with a detailed statement of the administration fees charged by the company under this section in the circumstances referred to in subsection (5) and the administrative action for which each of those fees was charged.

#### **Amendment of s. 15—Common funds**

**10.** Section 15 of the principal Act is amended—

(a) by striking out subsection (2) and substituting the following subsection:

(2) A trustee company must determine the classes of investments in which a common fund may be invested and may vary the classes from time to time.;

(b) by inserting the following subsection after subsection (3):

(3a) A trustee company must limit the amount of money comprising the whole or part of an estate that it invests in a common fund established or managed by it to an amount that a prudent trustee of that estate would invest in the fund.

#### **Insertion of ss. 15A and 15B**

11. The following sections are inserted after section 15 of the principal Act:

##### **Notice to be given on initial change in investment of common fund**

**15A.** (1) Before varying the class or classes of investments of a common fund for the first time after the commencement of the *Statutes Amendment (Trusts) Act 1999*, a trustee company must serve notice on all persons who have invested money in the common fund informing them that it intends to vary the class or classes of investment in which the common fund is invested.

(2) The notice must inform the investor of his or her right under subsection (3) to withdraw the money invested.

(3) An investor may, before the expiration of six months after service of the notice on him or her and despite any agreement with the trustee company to the contrary, withdraw money that was invested in the common fund before service of the notice.

(4) The investor must not be subjected to any penalty in respect of a withdrawal referred to in subsection (3).

(5) Service of a notice under this section may be made personally or by post addressed to the investor at his or her last address known to the trustee company.

##### **Provision of reasons for certain investments**

**15B.** (1) Where a trustee company holds money in trust and invests the money in a common fund, the company must, on request in writing by a person who has a proper interest in the matter, furnish to that person—

- (a) the company's reasons for so investing the money; and
- (b) such other information in relation to the investment as is required by regulation.

(2) The company must furnish its reasons and the other information in writing as soon as practicable and without charge.

(3) A trustee company need not provide reasons or information under this section to the same person in respect of the same investment more often than once in any 12 month period.

**Amendment of s. 19—Accounts, audits and information for investor etc. in common funds**

**12. Section 19 of the principal Act is amended—**

(a) by inserting the following subsection after subsection (2):

(2a) Where the whole or part of an estate is invested in a common fund established by a trustee company, the company must, on request in writing by a person with a proper interest in the matter, provide to that person as soon as practicable and without charge—

- (a) for the purpose of inspection, copying or retention by that person—copies of accounts, auditor's report and other documents laid before the company at its last annual general meeting pursuant to the Corporations Law;
- (b) a written statement of—
  - (i) the classes of investments in which the common fund is for the time being invested and the proportion of the fund invested in each of those classes; and
  - (ii) the trustee company's investment strategy for the fund.

Maximum penalty: \$1 250.;

(b) by inserting after "subsection (2)" in subsection (3) "or (2a)".

**Amendment of Schedule 1—Trustee Companies**

**13. Schedule 1 of the principal Act is amended—**

(a) by striking out "Austrust Limited";

(b) by inserting "Tower Trust Limited" after "Perpetual Trustees S.A. Limited".

**Further amendments to principal Act**

**14. The principal Act is further amended as set out in the Schedule.**



**SCHEDULE**  
*Further Amendments to Trustee Companies Act 1988*

| Provision Amended | How Amended                                                                                            |
|-------------------|--------------------------------------------------------------------------------------------------------|
| Section 17(1)     | Strike out the penalty provision and substitute:<br>Maximum penalty: \$1 250.                          |
| Section 18(2)     | Strike out the penalty provision and substitute:<br>Maximum penalty: \$1 250.                          |
| Section 18(4)     | Strike out the penalty provision and substitute:<br>Maximum penalty: \$1 250.                          |
| Section 19(1)     | Strike out the penalty provision and substitute:<br>Maximum penalty: \$1 250.                          |
| Section 19(2)     | Strike out the penalty provision and substitute:<br>Maximum penalty: \$1 250.                          |
| Section 20(1)     | Strike out the penalty provision and substitute:<br>Maximum penalty: \$20 000.                         |
| Section 21(1)     | Strike out the penalty provision and substitute:<br>Maximum penalty: \$20 000.                         |
| Section 26        | Strike out the penalty provision and substitute:<br>Maximum penalty: \$20 000.                         |
| Section 31(2)     | Strike out "penalty, not exceeding a division 8 fine" and substitute<br>"fine, not exceeding \$1 250". |

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor