



ANNO TRICESIMO SECUNDO
ELIZABETHAE SECUNDAE REGINAE
VICTORIA

ANZ Executors & Trustee Company Act 1983

No. 9898

An Act to amend the *Trustee Companies Act 1958*, to provide for the transfer to a wholly owned subsidiary of Australia and New Zealand Banking Group Limited of the trust business of The Trustees Executors & Agency Company Limited and for other purposes.

[Assented to 7 June 1983]

WHEREAS Australia and New Zealand Banking Group Limited (in this preamble referred to as "the Bank") is a company within the meaning of the Companies (Victoria) Code: Preamble.

And whereas Gariwang Pty. Ltd. (in this preamble referred to as "the New Trustee") is a company within the meaning of the Companies (Victoria) Code:

And whereas The Trustees Executors & Agency Company Limited (in this preamble referred to as "the Old Trustee") is a company within the meaning of the Companies (Victoria) Code:

And whereas by order of the Supreme Court of Victoria made on 31 May 1983 joint provisional liquidators were appointed to the Old Trustee:

And whereas the Old Trustee is a trustee company within the meaning of the *Trustee Companies Act 1958*:

And whereas the provisional liquidators of the Old Trustee have entered into an agreement with the Bank whereby for an agreed price

the Old Trustee will transfer all of its business of acting as a trustee to the New Trustee and the New Trustee will be appointed in place of the Old Trustee in all of its trust business:

And whereas it is expedient in the interests of the effective and efficient administration of the trusts of which the Old Trustee is the trustee and in the interests of public confidence that the business of acting as trustee and all the appointments of the Old Trustee be transferred to the New Trustee economically, quickly and without interference with the administration of those trusts:

And whereas to transfer the business of acting as trustee and all the appointments of the Old Trustee to the New Trustee it is expedient to enact the provisions contained in this Act:

Be it therefore 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

Short title.

1. (1) This Act may be cited as the *ANZ Executors & Trustee Company Act 1983*.

Commencement.

- (2) This Act shall come into operation as follows:
- (a) Parts I. and II. shall come into operation on the day on which this Act receives the Royal Assent; and
 - (b) Parts III., IV. and V. shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*.

Division into Parts.

- (3) This Act is divided into Parts as follows:
- Part I.—Preliminary ss. 1–2.
 - Part II.—Alterations to the Structure Capital and Name of Gariwang Pty. Ltd. s. 3.
 - Part III.—Alteration of the Name of The Trustees Executors & Agency Company Limited s. 4.
 - Part IV.—Amendments to the *Trustee Companies Act 1958* s. 5.
 - Part V.—Transfer of the Trust Business and Appointments of the Old Trustee to the New Trustee ss. 6–8.

Interpretation.

2. In this Act unless inconsistent with the context or subject-matter—

"Bank."

"Bank" means Australia and New Zealand Banking Group Limited.

"Excluded items."

"Excluded items" means—

- (a) all assets held by or for the Old Trustee of which the Old Trustee is the beneficial owner (other than the assets included in the definition of the trust business of the Old Trustee);
- (b) all rights of the Old Trustee to any security deposits or similar sums or assets lodged with any court, public office or authority (including debentures or inscribed stock invested in by the Old Trustee pursuant to section 10 of the *Trustee Companies Act 1958*);
- (c) 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;
- (d) the right of the Old Trustee to indemnity under any insurance policy held by it other than in the capacity of trustee;
- (e) the right to contribution by members and ex-members of the Old Trustee pursuant to clause 1 of the Second Schedule to the *Trustee Companies Act 1958*; and
- (f) all the assets undertakings and liabilities of the Old Trustee in its businesses 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.

“In the capacity of trustee” means (whether alone or jointly with any other person)—

“In the capacity of trustee.”

- (a) as trustee or custodian trustee of any trust deed, settlement, covenant, agreement or will, whether originally so appointed or not and whether appointed under hand or seal or by order of a court or otherwise;
- (b) as executor of a will of a deceased person;
- (c) as administrator of the estate of a deceased person;
- (d) as judicial trustee appointed by order of any court;
- (e) as agent, attorney or nominee; or

- (f) as receiver, committee or guardian of estates under the *Mental Health Act 1959* or the *Public Trustee Act 1958* or as guarantor or surety or guardian of a minor or lunatic.

"Land."

"Land" includes any estate, interest or right in over or under land.

"Old Trustee."

"Old Trustee" means The Trustees Executors & Agency Company Limited.

"The trust business of the Old Trustee."

"The trust business of the Old Trustee" means the business of the Old Trustee of acting in the capacity of 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 and obligations under contracts of employment with employees of the Old Trustee who are employed primarily in the trust business of the Old Trustee including obligations with respect to holiday pay, long service leave, sick leave and other benefits applicable to those employees other than the liability to make any payments to any superannuation scheme that should have been but have not been made before the commencement of Part V.;
- (f) 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;
- (g) 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;
- (h) all the issued shares of The Trustees Executors and Agency Company (Canberra) Limited;

- (i) all the issued shares of T.E.A. Nominees Limited;
- (j) all the shares in the Executor Trustee and Agency Company of South Australia Limited owned by the Old Trustee;
- (k) the corporate and accounting records of the Old Trustee to the extent to which they relate to the trust business of the Old Trustee;
- (l) the liability to perform further administration of any trust or other administration undertaken by the Old Trustee;
- (m) all assets of trusts and other appointments of the Old Trustee in its business of acting in the capacity of trustee; and
- (n) 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 the excluded items.

“Will” includes a codicil and any other testamentary writing.

“Will.”

PART II.—ALTERATIONS TO THE STRUCTURE CAPITAL AND NAME OF GARIWANG PTY. LTD.

3. (1) The company known as Gariwang Pty. Ltd. is hereby converted from a proprietary company to a public company limited by shares.

Alterations to the structure, capital and name of Gariwang Pty. Ltd.

(2) The Memorandum of Association of Gariwang Pty. Ltd. is hereby amended by—

- (a) altering the name of the company in clause 1 to ANZ Executors & Trustee Company Limited;
- (b) altering the capital of the company to \$2 500 000 divided into 2 500 000 shares of \$1.00 each; and
- (c) deleting the restrictions contained in clause V.

(3) On or before 15 June 1983—

- (a) the Bank shall subscribe for 2 499 998 shares in ANZ Executors & Trustee Company Limited; and
- (b) the two shares of \$1.00 each issued by the company before the commencement of this section shall be transferred to the Bank.

(4) The shares referred to in sub-section (3) (a) shall be issued and allotted on the basis that an amount of 40 cents per share capital shall be paid in respect of each share and the balance of 60 cents per share shall not be called up except in the event of and for the purpose of winding up of the company.

**PART III.—ALTERATION OF THE NAME OF THE TRUSTEES EXECUTORS
& AGENCY COMPANY LIMITED**

Alteration of the
name of The
Trustees
Executors &
Agency Company
Limited

4. (1) The name of The Trustees Executors & Agency Company Limited is hereby changed to TEA (1983) Limited.

(2) The change of name of the company pursuant to sub-section (1) does not operate—

- (a) to create a new legal entity;
- (b) to prejudice or affect the identity of the body corporate constituted by the company or its continuity as a body corporate;
- (c) to affect the property or the rights or obligations of the company; or
- (d) to render defective any legal proceedings by or against the company—

and any legal proceedings that could have been continued or commenced by or against the company by its former name may be continued or commenced by or against it in its new name.

PART IV.—AMENDMENTS TO THE TRUSTEE COMPANIES ACT 1958

Amendments to
the Trustee
Companies Act
1958.

5. The Second Schedule to the *Trustee Companies Act 1958* is amended as follows:

- (a) For the heading to paragraph 1 there shall be substituted the heading "TEA (1983) Limited"; and
- (b) After paragraph 10 there shall be inserted the following paragraph:

"11. ANZ Executors & Trustee Company Limited

No member other than Australia and New Zealand Banking Group Limited shall hold more than one thousand shares in his own right.

The reserve liability of the company (being that portion of the company's share capital which is not capable of being called up except in the event and for the purposes of the company being wound up) shall not be reduced below \$1 400 000.

In the event of the company being wound up every person who has been a director of the company at any time during the period of two years preceding the commencement of the winding up shall be liable for the total amount remaining unpaid on every share which he has held and transferred during such two years in addition to his liability upon any shares held by him at the commencement of the winding up."

PART V.—TRANSFER OF THE TRUST BUSINESS AND APPOINTMENTS OF THE OLD TRUSTEE TO THE NEW TRUSTEE

6. In this Part—

“New Trustee” means ANZ Executors & Trustee Company Limited.

Interpretation.

7. (1) Upon the commencement of this Part, the trust business of the Old Trustee as at that commencement shall be transferred to and vest in the New Trustee.

Transfer of the trust business and appointments of the Old Trustee to the New Trustee.

(2) In each case where the Old Trustee acts in the capacity of trustee the New Trustee is hereby appointed in its stead to act in the capacity of trustee and the New Trustee—

(a) shall be entitled and obliged to exercise and discharge all rights powers capacities authorities duties and obligations of the Old Trustee in respect of and arising from every such appointment; and

(b) to the extent provided in this Act shall discharge the liabilities and obligations of the Old Trustee in respect of and arising from every such appointment.

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

(4) Any appointment or nomination of the Old Trustee as trustee executor or otherwise in the capacity of trustee in any will or instrument whether such appointment or nomination is in effect on the commencement of this Part or takes effect after that commencement or has taken effect previously but where some 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.

(5) The production of a copy of this Part printed by the Government Printer shall on and after the commencement of this Part be conclusive evidence in all courts and proceedings of the transfer of the trust business of the Old Trustee and 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 prejudice to the generality of the foregoing any such copy of this Act 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 such land or such securities.

(6) If any 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 that portion are governed otherwise than by the law of the State of Victoria or otherwise notwithstanding that such portion relates to the trust business

of the Old Trustee in Victoria then the Old Trustee shall do all such things necessary after the commencement of this Part for the purpose of securing that such portion is effectively and promptly transferred to the New Trustee.

(7) Where, on the application of the New Trustee, it appears to any court to be necessary or proper having regard to the provisions of this Act, the New Trustee may be joined as a party to any legal proceedings in addition to or in lieu of the Old Trustee.

Evidence.

8. (1) Where an application is made by the New Trustee to vest any property in the New Trustee and the application is accompanied by a certificate under sub-section (2) that the property has vested in the New Trustee and the appropriate certificate of title or other instrument the Registrar of Titles shall without fee give effect in the Register Book to such vesting by registering the New Trustee as proprietor of the property.

(2) A certificate under the seals of the New Trustee and the Old Trustee to the effect that the estate or interest of persons therein specified in land so specified is an estate or interest vested in the New Trustee by this Act shall for the purposes of—

- (a) any application by the New Trustee to be registered under the *Transfer of Land Act 1958* as the proprietor of that estate or interest pursuant to the vesting;
- (b) any application by the New Trustee or a successor in title of the New Trustee to bring land under the *Transfer of Land Act 1958*;
- (c) any transfer conveyance reconveyance mortgage or other instrument or dealing whatsoever in respect of any interest in any such land (whether or not under the *Transfer of Land Act 1958*); and
- (d) any creation of easement or other interest in respect of any such land (whether or not under the *Transfer of Land Act 1958*)—

be conclusive evidence of the matters certified.