



ANZ EXECUTORS & TRUSTEE COMPANY (SOUTH AUSTRALIA) LIMITED ACT, 1985

No. 56 of 1985

SUMMARY OF PROVISIONS

Section

1. Short title
2. Commencement
3. Amendment of Trustee Act, 1936
4. Interpretation
5. Company may act as executor of the will or administrator of the estate of a deceased person
6. Company may act as trustee
7. Company may act as guardian of child or person who is not mentally competent
8. Commission chargeable by the Company
9. When commission payable
10. Additional fee for carrying on business
11. Power of the Company to charge for preparation of income tax returns
12. Investment of trust funds
13. Common funds
14. Evidentiary provision
15. Powers conferred by this Act are in addition to powers conferred under other laws

SCHEDULE.



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ELIZABETHAE II REGINAE

A.D. 1985

No. 56 of 1985

An Act to enable ANZ Executors & Trustee Company (South Australia) Limited to act as an executor and administrator; to amend the Trustee Act, 1936; and for other purposes.

[Assented to 30 May 1985]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

- Short title.** 1. This Act may be cited as the "ANZ Executors & Trustee Company (South Australia) Limited Act, 1985".
- Commencement.** 2. This Act shall come into operation on a day to be fixed by proclamation.
- Amendment of Trustee Act, 1936.** 3. The Trustee Act, 1936, is amended in the manner indicated in the second column of the schedule to this Act.
- Interpretation.** 4. In this Act, unless the contrary intention appears—
- "the Company" means ANZ Executors & Trustee Company (South Australia) Limited;
- "the Court" means the Supreme Court of South Australia;
- "officer", of the Company, means a director or manager of the Company or some other officer or employee of the Company designated by the board of directors as an officer for the purposes of this Act;
- "the Registrar" means the Registrar of Probates and includes an acting or deputy Registrar of Probates;
- "trustee investment" means an investment in which a trustee is authorized by statute to invest trust funds;
- "will" includes codicil.
- Company may act as executor of the will or administrator of the estate of a deceased person.** 5. (1) The Company has the same powers as a natural person to act as the executor of the will, or the administrator of the estate, of a deceased person.

(2) The Company may apply for and obtain—

(a) probate of the will of a deceased person;

or

(b) letters of administration (with or without the will annexed) of the estate of a deceased person,

in the same circumstances as a natural person.

(3) The Company may, with the approval of the Court, act on behalf, or in the place, of an executor of the will, or an administrator of the estate, of a deceased person, either on a permanent or a temporary basis.

(4) In relation to an application for probate or letters of administration or for an approval under subsection (3), the Court or the Registrar may receive and act upon an affidavit made by an officer of the Company as if it were an affidavit made by the applicant.

6. The Company has the same powers as a natural person to act as the trustee of any trust estate or other property. Company may act as trustee.

7. The Company may act as the guardian of a child or the committee or guardian of a person who is not mentally competent to manage his own affairs, or as the manager or administrator of the estate of such a person. Company may act as guardian of child or person who is not mentally competent.

8. (1) In respect of every estate committed to the administration or management of the Company, whether as executor, administrator, or in any other capacity, the Company shall be entitled to receive, in addition to all moneys properly expended by the Company and chargeable against the estate, a commission at a rate fixed from time to time by the board of directors of the Company but not in any case exceeding—

(a) \$6 for every \$100 of the capital value of the estate;

and

(b) \$7.50 for every \$100 of the income received by the Company on account of the estate.

(2) Subject to this Act, the commission shall be accepted by the Company in full satisfaction of any claim to remuneration for acting as executor, administrator, or in any other capacity and no other charges beyond the commission and the moneys expended by the Company shall be made.

(3) Where the Court is of opinion that the rate or amount of commission charged in respect of any estate is excessive, the Court may, on the application of any person interested in the estate, review the rate or amount of commission and may, on the review, reduce the rate or amount of commission.

(4) The rate of the commission charged by the Company against any estate shall not exceed that set out in the published scale of charges of the Company at the time when the commission became payable.

(5) In the case of income received in respect of any perpetual trust committed to the Company, the scale of charges published from time to time by the Company as being applicable to income of trust estates is applicable to the income received in respect of the trust while that published scale of charges is current.

(6) Nothing in this section prevents—

(a) the payment, with the approval of the Court, of any commission that a testator or a settlor has directed to be paid;

or

(b) the payment, with the approval of the Court, of any commission or fee that has been agreed upon between the Company and the interested parties,

either in addition to, or in lieu of, the commission allowed by this section.

(7) In determining the capital value of an estate for the purposes of this section—

(a) the capital value of assets that are to be distributed shall be taken to be their capital value as at the date of distribution;

and

(b) no deduction shall be made for debts or liabilities.

(8) The commission that the Company is entitled to receive under this section shall not be affected or diminished by the fact that any other person may, or may not, be entitled to commission or other remuneration in respect of the same estate or any part of the same estate.

When
commission
payable.

9. Any commission that the Company is entitled to receive in respect of the capital value of an estate may be paid out of, or deducted from, the estate at any time after the administration or management of the estate is committed to the Company.

Additional fee for
carrying on
business.

10. Where, in the administration or management of any estate, the Company is authorized to carry on any business or undertaking, either alone or in partnership, the Company may be paid (in lieu of a commission on income) such remuneration as the Court (on the application of the Company) thinks fit for carrying on, or joining in carrying on, that business or undertaking.

Power of the
Company to
charge for
preparation of
income tax
returns.

11. The Company is entitled to charge and receive reasonable fees in respect of the preparation of income tax returns.

Investment of
trust funds.

12. (1) Subject to the terms of any relevant instrument of trust, the Company may invest any moneys held in trust by the Company—

(a) in a manner authorized by the instrument of trust;

(b) in a trustee investment;

or

(c) in a common fund established by the Company under this Act.

(2) Where the Company acts jointly with any other person as executor, administrator or in any other capacity—

(a) all moneys under the control of the Company and that other person jointly may, with the consent in writing of that other person, be dealt with by the Company alone in the same manner as moneys under the control of the Company alone;

and

- (b) the person acting jointly with the Company shall be exonerated from any liability which, but for this paragraph, might have arisen in consequence of the exercise of the powers conferred by this subsection.

13. (1) The Company may establish and keep in its books one or more common funds. Common funds.

(2) A common fund must be invested in such classes of investment as have been determined by the Company in relation to the common fund prior to its establishment.

(3) No money shall be invested in a common fund unless the classes of investment in which that money could be invested on separate account are the same as, or include, the classes of investment in which the common fund may be invested.

(4) The Company shall keep an account showing at all times the current amount for the time being at credit in the common fund on account of each estate, trust or person.

(5) The Company may sell investments belonging to a common fund and may withdraw any of the moneys belonging to a common fund in the course, or for the purpose, of the exercise and discharge of its powers, authorities, duties and functions.

(6) The Company may at any time withdraw from a common fund any amount at credit in the common fund on account of any estate, trust or person and invest that amount separately.

(7) Any profits or losses upon realization of any investment in a common fund shall be credited or debited (as the case may require) to the common fund and be received or borne proportionately by the several amounts invested in the common fund at the time of the realization.

(8) The Company shall determine the value of the investments in which each common fund has been invested as at the first day of each month.

(9) Investments in and withdrawals from a common fund shall, during any month, be effected on the basis of the valuation made pursuant to subsection (8) as on the first day of that month.

(10) The Company shall pay or allocate the income arising from a common fund proportionately to or among the estates, trusts, properties or persons entitled to the income arising from the capital sums invested in the common fund according to the sums so invested and the periods for which they remain so invested.

14. (1) A certificate under the seal of the Company certifying that a person named in the certificate is an officer of the Company shall be accepted in any legal proceedings, in the absence of proof to the contrary, as proof that that person is an officer of the Company. Evidentiary provision.

(2) A certificate under the seal of the Company—

(a) certifying that the Company is authorized to act as executor of the will, or administrator of the estate of a deceased person;

and

(b) including a photographic copy of the probate or letters of administration with or without the will annexed, and any other order or document of appointment,

is, notwithstanding any other law, sufficient evidence that the Company is authorized to act as executor of the will, or administrator of the estate, of the deceased person.

(3) A certificate under the seal of the Company—

(a) certifying that the Company is authorized to act as trustee, receiver, committee, manager, guardian, or in any other capacity, and stating the manner in which and the time at which it became so authorized to act;

and

(b) including a photographic copy of the trust instrument or other order or document of appointment,

is, notwithstanding any other law, sufficient evidence of the Company's authority to act in that capacity.

(4) A certificate under subsection (2) or (3) is equivalent, for registration purposes, to the probate, letters of administration, trust instrument or other order or document of appointment.

Powers conferred
by this Act are in
addition to
powers conferred
under other laws.

15. The powers conferred by this Act are in addition to, and do not derogate from, the powers of the Company under any other Act or law.

SCHEDULE

Provision Amended	How Amended
Section 5 (1) (g)	Strike out "or" between subparagraphs (iii) and (iv) and insert the following word and subparagraph after subparagraph (iv): or (v) ANZ Executors & Trustee Company (South Australia) Limited.

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

D. B. DUNSTAN, Governor