

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1910.

A BILL

To provide for the registration of successory trusts; for dealing with trusts so registered; to amend the Real Property Act, 1900; and for purposes consequent thereon or incidental thereto.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Registration of Successory Short title.
Trusts Act, 1910."

This Act shall commence and take effect on and from the day of , one thousand nine hundred and ten.

2. In this Act—

"Document of title" includes any document evidencing title to any property where any assignment, transfer, or indorsement of, or the signature of the owner to or upon any matter or thing, is necessary to pass such property; but does not include any document of title the mere delivery whereof passes the property comprised therein. Definitions.
54 Vic. No. 1150
(Vic.), s. 93.

- “Registered trust” and “registered trustee” mean respectively a trust and a trustee registered under this Act.
“Registrar-General” includes a Deputy Registrar-General.
“Schedule” means Schedule to this Act.

The register of successive trusts.

3. The Registrar-General shall keep a book to be called the register of successive trusts, the folios of which shall be numbered consecutively. The Register. 54 Vic., No. 1150 (Vic.), s. 100.

Each such folio shall be in the form of Schedule One.

Registration of trusts.

4. The following trusts may be registered under this Act:— What trusts may be registered. Ibid. s. 94.
Trusts for religious, educational, or charitable purposes, and any trusts which the Attorney-General certifies are proper to be so registered.

5. An application to register any such trust must be made by the same authority that is necessary for the appointment of a new trustee of the trust and the vesting of the trust property in such new trustee, either solely or together, with any other trustee. Application to register trust. Ibid. s. 95.

The application shall be accompanied, in the case of a trust for any purpose connected with a religious denomination, by the consent in writing of the person who, in the opinion of the Registrar-General, is the head or representative of such denomination in New South Wales, and in any other case by the consent in writing of the Attorney-General.

Provided that the Registrar-General may in his discretion dispense with the authority or consent of any person to any such application, on such terms (if any) as he thinks just, where such person cannot be found or is absent from New South Wales, or refuses or neglects for twenty-eight days after demand in writing to give such authority or consent.

Notice of intention to dispense with the authority or consent of any person shall be given to any such person who is resident in New South Wales, and opportunity shall be given him to oppose any such dispensation.

6. Any such application to register a trust shall be in the form of Schedule Two, and shall be accompanied by the documentary evidence necessary to support the statements made therein. The nature of such evidence may be prescribed by regulations under this Act. Form of application. Ibid. s. 98.

Documents relating to trust.

7. Upon registering any such trust the Registrar-General shall, upon each document showing the nature of such trust or the manner of changing the trustees, write and sign a memorandum setting forth the description by which and the folium of the register of successive trusts in which such trust is registered, and the date of the signing of the memorandum. Memorandum on documents on registering trust. Ibid. s. 102.

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8. If, after such registration, any person concerned in the trust or the Attorney-General produces to the Registrar-General any document or documentary evidence of any facts which, in the opinion of the Registrar-General, alter or affect such trust or the manner of changing the trustees, the Registrar-General may in his discretion write and sign a memorandum on such document, as in the last preceding section, and may make any alteration in or addition to the register he may consider necessary.

Alteration in trusts.
54 Vic. No. 1150
(Vic.), s. 103.

9. The Registrar-General shall retain in his custody all documents upon which he has made memoranda under the two last preceding sections: Provided that he may give up any such document to any person entitled to the custody of the same upon deposit of a true copy thereof certified as prescribed.

Documents retained
by Registrar-
General.
Ibid. s. 104.

10. Where a trust is registered under this Act and any one of the registered trustees produces to the Registrar-General any document of title of such registered trustees or their predecessors in office, and proves to the satisfaction of the Registrar-General that the property to which such document relates, or some part thereof, is held upon such trust, the Registrar-General shall make and sign on such document of title a memorandum that the said property or the said part thereof is held by the trustees for the time being of such trust, describing such trust so as to identify it with the description thereof in the register of successive trusts and by the number of the folium of such register, and stating the date of the signing of the memorandum.

Memorandum on
documents relating
to registered trust.
Ibid. s. 105.

Upon any such memorandum being so made and signed, all the estate, right, title, and interest of any predecessors in title of the registered trustees in any property comprised in such document of title or in any part thereof referred to in such memorandum as held upon such trust shall vest in such registered trustees; and the registered trustees for the time being may do and suffer all acts, matters, and things in respect of such document of title or such property as if their names were written in such document in place of the names of any of their predecessors in office named therein.

11. Any transfer, lease, mortgage, charge, or discharge of a mortgage or charge under the Real Property Act, 1900, made after the commencement of this Act, may be executed to the registered trustees for the time being of any registered trust, describing them as such trustees as aforesaid, and stating that the trust is registered under this Act, and describing such trust so as to identify it with its description in the register of successive trusts.

Transfer and
certificates of title
to registered
trustees.
Ibid. s. 111.

A certificate of title may be issued to such trustees by the same description; but no such description shall be deemed to affect any person with notice of the trusts, or entitle, require, or concern any person to inquire into or ascertain such trusts.

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The persons for the time being registered as trustees of such trust in the register of successive trusts shall be deemed to be registered proprietors of the property comprised in such transfer, lease, mortgage, or charge, or discharge of a mortgage or charge or certificate of title.

12. Where, upon any document of title relating to or affecting any lands in New South Wales, a memorandum has been made by the Registrar-General under this Act or an acknowledgment has been made by a registered trustee that such land is held upon a trust registered under this Act, a like memorandum or a copy of such acknowledgment shall be made upon any copy of such document registered under the Registration of Deeds Act, 1897.

Memorandum on registered copy of document.

54 Vic. No. 1150 (Vic.), s. 106.

Death or change of trustees.

13. Where it is proved to the satisfaction of the Registrar-General that any registered trustee of a registered trust is dead or has in any other manner ceased to be a trustee of the trust, he shall write on the folium of the register of successive trusts relating to such trust on the same line with the name of the trustee—

Registration of death or cessation from office of trustee.
Ibid. ss. 107, 108, 109.

- (a) the word "dead" or the word "retired" in the column headed "cause of cessation from office" according as the trustee has died or has in any other manner ceased to be a trustee;
- (b) the date of death in the column headed for that purpose in any case where he is satisfied as to the date of the death;
- (c) the date of the entry in the column headed for that purpose;
- (d) his name in the last column to authenticate the entry.

14. Where it is proved to the satisfaction of the Registrar-General that any person has been duly appointed a trustee of any registered trust, and has accepted such trust, he shall register such trustee by entering his name, address, and description, and the date of making the entry in the next vacant line on the folium of the register of successive trusts relating to such trust, and shall sign his name to authenticate the same.

Registration of new trustees.
Ibid. s. 110.

15. (1) Upon the registration under this Act of the death or other cessation from office of a registered trustee of any registered trust, the property hereinafter mentioned vested in such trustee upon such trust at the time of his death or other cessation from office shall vest in the remaining registered trustees or trustee, or, in case there is no registered trustee, in the next trustee who may be registered.

Vesting of trust property on death or cessation from office of trustee.
Ibid. s. 112.

Upon the registration of a new trustee the property hereinafter mentioned vested in the other registered trustees shall vest in them jointly with such new trustee.

(2) This section applies to property—

- (a) that will pass by delivery merely of such property or of any document of title relating thereto; or
- (b) that is comprised in any document of title made expressly upon such trust; or
- (c)

Application of section.

- (c) that is comprised in any document of title upon which an acknowledgment in writing that the same is held upon such trust has been signed by the trustees named therein ; or
- (d) that is comprised in any document of title upon which is a memorandum made by the Registrar-General under this Act, stating that the property comprised therein is held by the trustees for the time being of such trust ; or
- (e) that is described on a memorandum made as aforesaid stating that such property, being part of that comprised in the document of title, is held by the trustees for the time being of such trust.

(3) For the purposes of this section it shall be sufficient if any trust is described in any document of title, memorandum, or acknowledgment so as to identify it with the registration thereof in the register of successive trusts. Identification of trust.

(4) The registered trustees for the time being may do and suffer all acts, matters, and things with respect to any such property that any of their predecessors in office as such trustees might have been done and suffered. Powers of registered trustees.

16. All legal proceedings concerning any property held upon any registered trust may be had by or against the registered trustees for the time being in their proper names as such trustees, describing the trust so as to identify it with the registration thereof in the register of successive trusts. Legal proceedings in relation to trust property. 54 Vic., No. 1150 (Vic.), s. 114.

No such proceedings shall be discontinued or abated by reason of any change in such trustees by death or otherwise, but shall continue by or against the remaining or succeeding trustees.

Trust deemed duly registered.

17. Every trust registered under this Act shall be deemed to be a trust which might properly be so registered. Trust deemed to have been duly registered.

Every entry in the register of successive trusts shall be conclusive evidence for the purpose of determining who are, or at any time were, the trustees of a trust registered as aforesaid, and may be proved by any copy thereof purporting to be certified under the hand of the Registrar-General. Ibid. s. 115.

Fees.

18. The fees set forth in Schedule Three shall be paid to the Registrar-General in respect of the matters therein mentioned. Fees. Ibid. s. 128.

Powers of Registrar-General.

19. The Registrar-General may, by summons under his hand, require any person to appear, at a time and place to be appointed in such summons, and to give any explanation concerning any application under Powers of Registrar-General. Ibid. s. 130.

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under this Act, and to produce any documents in his possession or within his control affecting such application, and may administer an oath to any person and examine him in relation to any such application.

If any person refuses or neglects, when duly required, to appear as aforesaid, or to produce any documents or to take an oath or give evidence in relation to any such application, he shall be liable to a penalty not exceeding *one hundred pounds*.

20. The Registrar-General may, when any question arises with regard to the performance of any duty or the exercise of any function conferred or imposed on him by this Act, state a case for the opinion of the Supreme Court, and thereupon the said court may give its judgment thereon, and such judgment shall be binding on the Registrar-General.

Case may be stated for Supreme Court, 54 Vic. No. 1150 (Vic.) s. 131.

21. If any person is dissatisfied with the decision of the Registrar-General on any application under this Act he may appeal therefrom to the Supreme Court in its equity jurisdiction by giving to the Registrar-General eighteen days' notice of his intention.

Appeal against decision of Registrar-General. *Ibid.* 132.

Within fourteen days after the delivery of such notices the Registrar-General shall forward to the Master in Equity all documents and notes of evidence in relation to the application and a statement of the reasons for his decision, and, also, if he thinks fit, any affidavits as to matters which he may desire to bring under the notice of the court.

Upon hearing such appeal the said court may affirm, vary, or reverse the decision of the Registrar-General, and may make such orders and give such directions and make such orders as to the costs of the application and of the appeal as it deems just.

22. The Registrar-General may correct any error in any entry made in the register of successive trusts or in any memorandum made in pursuance of this Act, and may supply entries and memoranda omitted to be made under this Act.

Correction of errors. *Ibid.* s. 133.

But in any such correction he shall not erase or render illegible the original words or figures, and shall affix the date on which such correction was made or such entry or memorandum was supplied, and initial the same.

Every entry or memorandum so corrected or supplied shall have the like validity and effect as if such error had not been made, or such entry or memorandum omitted, except as regards any transactions prior to the actual time of correcting the error or supplying the omitted entry or memorandum.

Penalties.

23. Whosoever—
(a) wilfully makes any false statement or declaration in or upon any application under this Act; or

Penalties. *Ibid.* s. 134.

(b)

- (b) in or in relation to any application under this Act suppresses, or withholds or conceals from the Registrar-General, or assists or joins in, or is privy to suppressing or so withholding or concealing any material document, fact, or matter; or
- (c) in the course of his examination before the Registrar-General under this Act wilfully and corruptly gives false evidence not on oath; or
- (d) fraudulently procures or is privy to the fraudulent procuring of any entry in the register of successive trusts, or of any erasure, alteration, or addition in or to any entry in such register; or
- (e) knowingly misleads or deceives the Registrar-General as to any explanation or information required by him in pursuance of this Act,

shall be guilty of a misdemeanour, and shall be liable to imprisonment for a term not exceeding three years, or to a penalty not exceeding *five hundred* pounds.

Regulations.

24. The Governor may make regulations for carrying out the Regulations. provisions of this Act, and may in such regulations impose any penalty not exceeding *fifty* pounds for any breach of the same.

SCHEDULES.

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Registration of Successory Trusts.

SCHEDULES.

SCHEDULE ONE.

Name of trust.

NUMBER of trustees

Date of registration of trustee.	Name of trustee.	Address and description of trustee.	Authentication of registration of trustee.	Cause of cessation from office.	Date of death.	Date of entry of cessation from office.	Authentication of entry of cessation from office.

SCHEDULE TWO.

To the Registrar-General—

I _____, of _____, hereby apply to have a trust for _____ purposes [if the trust is connected with a religious denomination add "connected with" naming the denomination] registered under the Registration of Successory Trusts Act, 1910.

1. The nature of the trust appears from the following documents [set out a list of the documents].
2. The names of the present trustees are [state names, addresses, and description of trustees].
3. Their due appointment appears from the following documents [set out a list of the documents].
4. The manner in which the trustees may be changed appears from the following documents [set out a list of the documents].
5. The trust property consists of the following particulars [set out a descriptive list of the property].
6. The authority by which the application is made is as follows [state the authority].
7. This application is made with the consent of [set out the name, address and description of the person giving the consent].

SCHEDULE THREE.

[Scale of fees.]
