



TASMANIA

TRUSTEE BANKS AMENDMENT ACT 1993

No. 42 of 1993

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**TRUSTEE BANKS AMENDMENT ACT 1993**

No. 42 of 1993

AN ACT to amend the *Trustee Banks Act 1985***[Royal Assent 10 September 1993]**

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title

1—This Act may be cited as the *Trustee Banks Amendment Act 1993*.

Commencement

2—This Act commences on the day on which it receives the Royal Assent.

Principal Act

3—In this Act, the *Trustee Banks Act 1985** is referred to as the Principal Act.

Section 3 amended (Interpretation)

4—(1) Section 3 (1) of the Principal Act is amended by omitting the definition of “Register of Trustee Banks” and substituting the following definition:—

“**Register of Trustee Banks**” means the Register of Trustee Banks in existence immediately before the commencement of section 21 (c) of the *Trust Bank (Arrangements) Act 1991*;

(2) The amendments to section 3 of the Principal Act effected by subsection (1) are taken to have commenced on the day on which section 21 (c) of the *Trust Bank (Arrangements) Act 1991* commenced.

Section 12 amended (Directors)

5—Section 12 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:—

(2) A director elected at an annual general meeting holds office until the conclusion of the annual general meeting held in the third year after that election and may be re-elected for 2 or more terms.

(2A) A director may resign office as a director by written notice delivered to the secretary.

Section 15 amended (Rules)

6—Section 15 (1) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:—

(ab) provide for the retirement of its directors by rotation;

* No. 18 of 1985. Amended by No. 54 of 1987 and Nos. 2 and 43 of 1991.

Section 16 repealed and Part VA inserted

7—Section 16 of the Principal Act is repealed and the following Part is inserted:—

PART VA

DUTIES AND LIABILITIES OF OFFICERS OF TRUSTEE BANK

Interpretation: Part VA

16—(1) In this Part, unless the contrary intention appears—

“**officer**”, in relation to a trustee bank, means a director, a member of the general council, the general manager, a principal officer or the secretary.

(2) Each of the following is an entity:—

- (a) a body corporate;
- (b) a partnership;
- (c) an unincorporated body;
- (d) an individual;
- (e) a trustee of a trust that has only one trustee.

(3) If a trust has 2 or more trustees, those trustees together constitute an entity.

(4) Each of the following is a related party of a trustee bank:—

- (a) an officer of the trustee bank;
- (b) a spouse or de facto spouse of an officer of the trustee bank;
- (c) a parent, son or daughter of such an officer, spouse or de facto spouse;
- (d) an entity (other than a subsidiary of the trustee bank) over which—
 - (i) a person of a kind referred to in paragraph (a), (b) or (c) has control; or
 - (ii) 2 or more such persons together have control.

Officers to disclose certain interests

16A—(1) Subject to this section, an officer who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the trustee bank must, as soon as practicable after the relevant facts have come to the officer's knowledge, by notice in writing to the secretary declare the nature of the interest.

(2) For the purposes of subsection (1), an officer has an interest in a contract or a proposed contract with the trustee bank if—

- (a) a spouse or de facto spouse of the officer has an interest in the contract or proposed contract; or
- (b) a parent, son or daughter of the officer or of the spouse or de facto spouse of the officer has an interest in the contract or proposed contract; or
- (c) an entity over which—
 - (i) a person of a kind referred to in paragraph (a) or (b) has control; or
 - (ii) 2 or more such persons together have control—has an interest in the contract or proposed contract.

(3) On receipt of a notice under subsection (1), the secretary must notify the nature of the interest to the members of the board before the commencement of the next meeting of the board and to the members of the general council before the commencement of the next meeting of the general council.

(4) An officer of a trustee bank is not taken to be, or to have been at any time, interested in a contract or proposed contract merely because—

- (a) where the contract or proposed contract relates to a loan by the trustee bank—the officer has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan; or
- (b) where the contract or proposed contract has been or will be made with or for the benefit of or on behalf of a body corporate that is related to the trustee bank—the officer is a director of that body corporate.

(5) For the purposes of subsection (1), a general notice given to the secretary by an officer to the effect that the officer is an officer or member of a specified body corporate or a member of a specified firm and is to be regarded as interested in any contract that may, after the date of the notice, be made with that body corporate or firm is deemed to be a sufficient declaration of interest in relation to any contract so made or proposed to be made if—

- (a) the notice states the nature and extent of the officer's interest in the body corporate or firm; and
- (b) when the question of confirming or entering into the contract is first taken into consideration, the extent of the officer's interest in the body corporate or firm is not greater than is stated in the notice; and
- (c) the notice is given to the secretary in sufficient time for it to be tabled at the next meeting of the board and the general council after it is given.

(6) Subject to this section, an officer of a trustee bank who holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as an officer must, in accordance with subsection (7), by notice in writing to the secretary declare the fact and the nature, character and extent of the conflict.

(7) A declaration required by subsection (6) in relation to the holding of an office or the possession of any property is to be made by a person—

- (a) where the person holds the office or possesses the property as mentioned in subsection (6) when the person becomes an officer of the trustee bank—
 - (i) as soon as practicable after the person becomes an officer; or
 - (ii) as soon as practicable after the relevant facts as to the holding of the office or the possession of the property come to the person's knowledge—

whichever is later; or

(b) where the person begins to hold the office or comes into possession of the property as mentioned in subsection (6) after the person becomes an officer of the trustee bank—as soon as practicable after the relevant facts as to the holding of the office or the possession of the property come to the person's knowledge.

(8) Where the secretary is the officer who is required to comply with subsection (1) or (6), the secretary must give notice of the matter arising under those subsections to the senior principal officer.

(9) On receipt of a notice under subsection (8), the senior principal officer must perform the duties of the secretary which are relevant to the notice.

Register of disclosures of interests

16B—(1) The secretary must—

- (a) keep a register containing all disclosures of interests made under section 16A by an officer of the trustee bank; and
- (b) ensure that the register is available for inspection by the directors, members of the general council and the auditors of the trustee bank and the Commissioner or a person nominated by the Commissioner.

(2) The secretary must, within 7 days after receiving notice of a disclosure of an interest from an officer of the trustee bank, enter that disclosure on the register referred to in subsection (1).

Officers to act honestly, exercise care and diligence, &c.

16C—(1) An officer of a trustee bank must at all times act honestly in the exercise of his or her powers and the discharge of the duties of his or her office.

(2) The penalty applicable to a contravention of subsection (1) is—

- (a) if the contravention was committed with intent to deceive or defraud the trustee bank, members or creditors of the trustee bank or creditors of any other person or for any other fraudulent purpose, a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 5 years or both; or
- (b) if otherwise, a fine not exceeding 50 penalty units.

(3) In the exercise of his or her powers and the discharge of his or her duties, an officer of a trustee bank must exercise the degree of care and diligence that a reasonable person in a like position in a corporation would exercise in the corporation's circumstances.

(4) An officer or employee of a trustee bank, or a former officer or employee of a trustee bank, must not make improper use of information acquired by virtue of his or her position as such an officer or employee to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the trustee bank.

(5) An officer or employee of a trustee bank must not, in relevant circumstances, make improper use of his or her position as such an officer or employee to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the trustee bank.

Voting by interested director or member of general council

16D—(1) A director or member of the general council who has a material personal interest in a matter that is being considered at a meeting of the board or the general council—

- (a) must not vote on the matter; and
- (b) must not be present while the matter is being considered at the meeting.

(2) Subsection (1) does not apply to an interest that a director or member of the general council has in the matter where the result of the consideration of the matter affects all persons dealing with the bank in the same manner and in the same circumstances.

(3) Subsection (1) does not apply to a matter proposed to be considered by the board if the general council has at any time passed a resolution that—

- (a) specifies the director, the interest and the matter; and

(b) states that the members of the general council voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter.

(4) A quorum is not present during the consideration of a matter at a meeting of the board or the general council unless a majority of the directors or a majority of the members of the general council are present who are entitled to vote on any motion that may be moved at the meeting in relation to that matter.

(5) A meeting of the general council may deal with a matter in so far as the board cannot deal with it because of subsection (4).

(6) If—

(a) a director proposes a resolution of the board referring a matter arising under this section to a meeting of the general council; and

(b) subsection (4) would prevent the proposed resolution from being considered—

subsections (1) and (4) do not apply in relation to a motion that relates to the proposed resolution.

Loans to, financial transactions with, and customer services provided to, related party of trustee bank

16E—(1) In this section—

“customer services” means financial, travel, insurance and other services commonly provided by banks to their customers in the ordinary course of banking business;

“financial transaction” means a lease, hire-purchase agreement or other financing agreement or arrangement (by whatever name described).

(2) A trustee bank or subsidiary of a trustee bank may provide a loan or other financial accommodation to, or make, or enter into, a financial transaction with, a related party of the trustee bank if it does so on terms and conditions no more favourable to the related party than those on which it is reasonable to expect that the trustee bank or subsidiary would give the loan or other financial accommodation or enter into the financial transaction if dealing with the related party at arm's length in the same circumstances.

(3) The matters to consider for the purposes of subsection (2) include—

- (a) in the case of a loan or other financial accommodation—
 - (i) the amount of the loan or the extent of the accommodation; and
 - (ii) what interest or charges are payable; and
 - (iii) the credit risk; and
 - (iv) what security is given; and
 - (v) the timetable of repayments and for payments of interest or charges; and
- (b) in the case of a financial transaction, what discount, commission, credit or other consideration is given or received in respect of the transaction.

(4) A trustee bank or a subsidiary of a trustee bank may provide customer services to a related party of the trustee bank if the customer services are provided on terms and conditions no more favourable to the related party than those on which it is reasonable to expect would ordinarily be available to customers of the bank or other persons dealing with the bank in similar circumstances.

(5) Subsections (2) and (4) do not apply to the provision of—

- (a) any benefit provided generally to employees of the trustee bank in respect of which the managing director, general manager, principal officers and secretary may participate if the scheme providing the benefit to the employees is approved by the general council; or

- (b) any benefit not generally available to persons dealing with the bank if the benefit is part of the remuneration package of the managing director, general manager, principal officers or secretary and if the board is satisfied, acting on independent advice, that the remuneration package which includes the benefit, is reasonable in all the circumstances.

Related party of trustee bank may lend money to, make deposits with, &c., trustee bank

16F—A related party of a trustee bank may lend money to, or deposit money with, the trustee bank or purchase from the trustee bank financial assets of the bank or enter into other transactions with the trustee bank commonly entered into between banks and their customers (other than transactions referred to in section 16E) if the loan, deposit or purchase or other transaction entered into is on terms and conditions no more favourable to the related party than those which it is reasonable to expect would ordinarily be available to customers of the bank or other persons dealing with the bank in similar circumstances.

Supply of goods or services, &c., by related party to trustee bank

16G—A related party of a trustee bank may supply goods or services to, or carry out work for, the trustee bank if—

- (a) it does so on terms and conditions which are no more favourable to the related party than those which it is reasonable to expect the trustee bank could obtain from any other person in similar circumstances; and
- (b) in the case of the supply of goods or services or the carrying out of work by a director or member of the general council, the director or member of the general council has made a disclosure under section 16A of his or her interest in the contract for the supply of the goods or services or the carrying out of the work.

Compensation for, and recovery of, loss, &c., by trustee bank

16H—(1) Where—

- (a) a person is convicted of an offence for a contravention of section 16C (1); and
- (b) the court is satisfied that the trustee bank has suffered loss or damage as a result of the act or omission that constituted the offence—

the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay compensation to the trustee bank of such amount as that court specifies, and any such order may be enforced as if it were a judgment of that court.

(2) Where a person contravenes a provision of section 16A, 16C or 16D in relation to a trustee bank, the trustee bank may, whether or not the person has been convicted of an offence in respect of that contravention, recover from the person in a court of competent jurisdiction—

- (a) if that person or any other person made a profit as a result of the contravention—an amount equal to that profit; and
- (b) if the trustee bank has suffered loss or damage as a result of the contravention—an amount equal to that loss or damage.

(3) Subsection (2) does not apply if an order has been made under subsection (1).

(4) Where an officer of a trustee bank takes a benefit from the bank or causes any third party to receive a benefit from the bank otherwise than is permitted by sections 16E, 16F or 16G, the trustee bank is entitled to recover from the officer in a court of competent jurisdiction any loss or damage suffered as a result of the taking or receiving of the benefit.

(5) Where the third party referred to in subsection (4) is knowingly concerned in the receiving of the benefit, the trustee bank is entitled to recover from the third party and the officer of the trustee bank jointly and severally in a court of competent jurisdiction any loss or damage suffered as a result of the receiving of the benefit.

(6) This section and sections 16A, 16C, 16D, 16E, 16F and 16G have effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person by reason of the person's office or employment in relation to a trustee bank and do not prevent the institution of any civil proceedings in respect of a breach of such a duty or in respect of such a liability.

Section 28A inserted

8—After section 28 of the Principal Act, the following section is inserted:—

Accounts to comply with certain standards

28A—(1) The accounts prepared under section 28 must comply with applicable accounting standards.

(2) In this section, “**applicable accounting standard**” means the standard that would apply to a trustee bank if the trustee bank were a corporation under the Corporations Law of Tasmania.

*[Second reading presentation speech made in:—
House of Assembly on 16 June 1993
Legislative Council on 17 August 1993]*