



# Corporations Amendment Regulations 2009 (No. )<sup>1</sup>

**Select Legislative Instrument 2009 No.**

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I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Corporations Act 2001*.

Dated 2009

Governor-General  
By Her Excellency's Command

**[DRAFT ONLY – NOT FOR SIGNATURE]**  
Minister for Financial Services, Superannuation and Corporate  
Law

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**CONSULTATION DRAFT ONLY**

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**1 Name of Regulations**

These Regulations are the *Corporations Amendment Regulations 2009* (No. ).

**2 Commencement**

These Regulations commence on the day after they are registered.

**3 Amendment of *Corporations Regulations 2001***

Schedule 1 amends the *Corporations Regulations 2001*.

**Schedule 1 Amendments**

(regulation 3)

**[1] After Chapter 5C**

*insert*

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# Chapter 5D Licensed trustee companies

## Part 5D.1 Preliminary

### 5D.1.01 Meaning of *trustee company*

- (1) For paragraph 601RAB (1) (b) of the Act, a company is prescribed as a trustee company for the purpose of the Act if the company is listed in Schedule 8AA.
- (2) However, if the company is one that performs the function of the Public Trustee of any State or Territory, it must only be listed in Schedule 8AA if:
  - (a) the State or Territory requests the Minister to prescribe the company as a trustee company; and
  - (b) the Minister agrees to the request.

### 5D.1.02 Interaction between trustee company provisions and State and Territory laws

For paragraph 601RAE (4) (b) of the Act, the trustee company provisions are intended not to apply to the exclusion of the State and Territory laws, or the provisions of State or Territory laws, prescribed in Schedule 8AB.

## Part 5D.2 Powers etc. of licensed trustee companies

### 5D.2.01 Obligation on licensed trustee company to provide an annual information return if requested

- (1) This regulation prescribes, for section 601SAB of the Act, the obligation of a licensed trustee company to provide an annual information return.

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- (2) The licensed trustee company must provide an annual information return to a person who is entitled to request it under subregulation (3), if that person makes a request.
- (3) A person is entitled to request an annual information return if the person is one of the following:
- (a) in the case of the estate of a deceased person:
    - (i) if the person died testate—a beneficiary under the deceased person’s will; or
    - (ii) if the person died intestate—a person who, under a law of a State or Territory, has, or is entitled to, an interest in the deceased person’s estate;
  - (b) in relation to a charitable trust:
    - (i) the settlor, or one of the settlors, of the trust; or
    - (ii) a person who, under the terms of the trust, has power to appoint or remove a trustee of the trust or to vary (or cause to be varied) any of the terms of the trust; or
    - (iii) a person who is named in the instrument establishing the trust as a person who may receive payments on behalf of the trust; or
    - (iv) a person who is named in the instrument establishing the trust as a person who must, or may, be consulted by the trustee or trustees before distributing or applying money or other property for the purposes of the trust;
  - (c) in the case of any other trust:
    - (i) the settlor, or one of the settlors, of the trust; or
    - (ii) a person who, under the terms of the trust, has power to appoint or remove a trustee of the trust or to vary (or cause to be varied) any of the terms of the trust; or
    - (iii) if, in relation to a testamentary trust, the person mentioned in subparagraph (i) or (ii) has died and has not nominated who is to receive the annual information return on his or her death — a beneficiary of the testamentary trust.

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- (4) The person must make the request for an annual information return in writing to the licensed trustee company.
  - (5) In the case of a person who is not a beneficiary mentioned in subparagraph (3) (a) (i) and (ii) and (c) (iii), the person must indicate in the request which one of the following forms of return is required:
    - (a) by writing to the person's postal address;
    - (b) by email to a nominated email address;
    - (c) by publication on a website maintained by or on behalf of the licensed trustee company.
  - (6) The annual information return must be provided within 30 days of the request from the person being received by the licensed trustee company, and then annually.
  - (7) The annual information return must be provided as follows:
    - (a) for a person mentioned in subregulation (5) — in the form requested;
    - (b) for a person not mentioned in subregulation (5) — by publication on a website maintained by or on behalf of the licensed trustee company.
  - (8) If the licensed trustee company knows the identity of a beneficiary mentioned in subparagraph (3) (a) (i) and (ii) and (c) (iii), it must, by written notice to the beneficiary, tell the beneficiary that the return is available on the internet on a specified website maintained by or on behalf of the licensed trustee company.

#### **5D.2.02 Information to be included in the annual information return**

- (1) The licensed trustee company may provide the annual information return in relation to either the person's trust, or the common fund on account of the person's estate, that is being administered or managed by the licensed trustee company.
- (2) The annual information return must include the following:
  - (a) if the trust's assets are included in a common fund operated by the licensed trustee company —

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- (i) details of income earned on the trust's assets in the fund; and
    - (ii) details of expenses in operating the trust's assets in the fund; and
    - (iii) the net value of the trust's assets in the fund;
  - (b) if the trust's assets are not included in a common fund —
    - (i) details of income earned by the trust; and
    - (ii) details of expenses in operating the trust; and
    - (iii) the net value of the trust;
  - (c) if required under the terms of the trust — a copy of the trust's audit report and financial statements for the year.

### **5D.2.03 Power of licensed trustee company to seek transfer of an estate**

- (1) This regulation prescribes, for section 601SAB of the Act, the power of a licensed trustee company to seek a transfer of an estate.
- (2) The licensed trustee company (the *transferring trustee*) may apply to the Court for an order to transfer an estate that the transferring trustee administers or manages to another licensed trustee company within the same consolidated entity (the *receiving trustee*).
- (3) On receiving an application under subregulation (2), the Court may, if it is satisfied of the matters set out in subregulation (4), make an order transferring the estate assets and liabilities from the transferring trustee to the receiving trustee.
- (4) The Court must be satisfied that:
  - (a) the transfer is in the interests of clients of the transferring trustee (when viewed as a group); and
  - (b) the transfer is in the interests of clients of the receiving trustee (when viewed as a group); and
  - (c) the board of the receiving trustee has consented to the transfer.

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- (5) Except as provided in regulation 5D.2.04, in making an order under subregulation (3), the Court may determine the extent to which the transferring trustee retains liability for any of the estate assets and liabilities after the making of the order.
  - (6) The transfer takes effect from the day stated in the order by the Court and on that day the receiving trustee is taken to be the administrator or manager, as appropriate, of the estate.
  - (7) In this regulation, *estate assets and liabilities* means assets (including assets in common funds) and liabilities:
    - (a) of an estate, or incurred in relation to an estate, in relation to which the trustee company was, before transfer, performing estate management functions; and
    - (b) that, immediately before the transfer:
      - (i) were vested in the trustee company because it was performing those functions; or
      - (ii) were otherwise assets and liabilities of the trustee company because of its performance of those functions.

#### **5D.2.04 Liabilities for breach of trust and other matters not affected by transfer of an estate**

- (1) Nothing in regulation 5D.2.03 applies to or affects liabilities of the transferring trustee, or of an officer or employee of the transferring trustee, for:
  - (a) any breach of trust; or
  - (b) any other misfeasance or nonfeasance; or
  - (c) any exercise of, or failure to exercise, any discretion.
- (2) Nothing in regulation 5D.2.03 affects any rights of the transferring trustee, or of an officer or employee of the transferring trustee, to indemnity in respect of such liabilities.

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**[2] Before regulation 7.1.29**

*insert in Division 3*

**7.1.28A Circumstances in which a person is taken to be provided a traditional trustee company service**

For subsection 766A (1B) of the Act, a person who is one of the following:

- (a) a person entitled to request an annual information return under regulation 5D.2.01 who is not a beneficiary mentioned in subparagraph 5D.2.01 (3) (a) (i) and (ii) and (c) (iii);
- (b) a person who requests the preparation of a will, a trust instrument, a power of attorney or an agency arrangement; is, in relation to a traditional trustee company service, prescribed as the person to whom the service is taken to be provided.

**[3] After subregulation 7.6.02 (5)**

*insert*

- (6) For paragraph 926B (1) (a) of the Act, a financial services licensee who provides a financial service in the capacity as guardian of the estate of an individual does not have to comply with paragraph 912A (1) (g) of the Act in relation to the provision of the service if complaints about the service provided by the licensee may be made under a State or Territory law listed in Schedule 8AB.

**[4] After regulation 7.6.02AH**

*insert*

**7.6.02AI Modification of subsection 912A (1) of the Act: extension of dispute resolution to beneficiaries**

- (1) For paragraph 926B (1) (c) of the Act, Part 7.6 of the Act applies as if subsection 912A (1) were modified by inserting after paragraph (1) (g) the following:

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- ‘(ga) if the financial services licensee is a licensed trustee company providing those financial services to a beneficiary — have a dispute resolution system complying with subsection (2) that provides for complaints of a kind mentioned in subsection (2A).’
- (2) For paragraph 926B (1) (c) of the Act, Part 7.6 of the Act applies as if section 912A were modified by inserting after subsection (2) the following:
- ‘(2A) A complaint may be made against the licensee by a beneficiary, as if the beneficiary were a retail client, if the complaint relates to a possible breach of a financial services law.
- (2B) For paragraph (1) (ga) and subsection (2A), *beneficiary* means:
- (a) in the case of the estate of a deceased person:
- (i) if the person died testate—a beneficiary under the deceased person’s will; and
- (ii) if the person died intestate—a person who, under a law of a State or Territory, has, or is entitled to, an interest in the deceased person’s estate; and
- (b) a beneficiary of a testamentary trust.

**7.6.02AJ Modification of subsection 912B (1) of the Act:  
extension of compensation to beneficiaries**

- (1) For paragraph 926B (1) (c) of the Act, Part 7.6 of the Act applies as if section 912B were modified by inserting after subsection (1), the following subsection:
- ‘(1A) A financial services licensee that is a licensed trustee company must have arrangements that meet the requirements of subsection (2) for compensating a beneficiary (within the meaning of subsection 912A (2B)) for loss or damage suffered because of a breach of a financial services law, as if the beneficiary were a retail client.’

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**[5] Subregulation 7.7.04 (3), except the heading**

*substitute*

- (3) The following information is required if the remuneration, commission or other benefits are able to be ascertained at the time the Financial Services Guide is given to the client:
- (a) in a case where the remuneration, commission or other benefits are to be received by a person who is a licensed trustee company — either:
- (i) the remuneration, commission or other benefits; or
  - (ii) the remuneration, commission or other benefits stated as a percentage of the income from the estate or as a percentage of the capital value of the estate;
- (b) in any other case — the remuneration, commission or other benefits.

**[6] Subregulation 7.7.04 (4)**

*omit*

the following information:

*insert*

the following information is required:

**[7] Subregulation 7.7.04 (5)**

*omit*

the following information:

*insert*

the following information is required:

**[8] Subregulation 7.7.07 (3), except the heading**

*substitute*

- (3) The following information is required if the remuneration, commission or other benefits are able to be ascertained at the time the Financial Services Guide is given to the client:

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- (a) in a case where the remuneration, commission or other benefits are to be received by a person who is a licensed trustee company — either:
- (i) the remuneration, commission or other benefits; or
  - (ii) the remuneration, commission or other benefits stated as a percentage of the income from the estate or as a percentage of the capital value of the estate;
- (b) in any other case — the remuneration, commission or other benefits.

**[9] Subregulation 7.7.07 (4)**

*omit*

the following information:

*insert*

the following information is required:

**[10] Subregulation 7.7.07 (5)**

*omit*

the following information:

*insert*

the following information is required:

**[11] After Schedule 8A**

*insert*

## **Schedule 8AA Trustee companies**

(regulation 5D.1.01)

<b>Item</b>	<b>Trustee companies</b>
1	ANZ Trustees Limited
2	ANZ Trustees (Canberra) Limited
3	Australian Executor Trustees Limited

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<b>Item</b>	<b>Trustee companies</b>
4	Australian Executor Trustees (Canberra) Limited
5	Australian Executor Trustees (NSW) Limited
6	Australian Executor Trustees (SA) Limited
7	Bagot's Executor and Trustee Company Limited
8	Elders Trustees Limited
9	Equity Trustees Limited
10	Executor Trustee Australia Limited
11	National Australia Trustees Limited
12	Permanent Trustee Company (Canberra) Limited
13	Perpetual Limited
14	Perpetual Trustee Company Limited
15	Perpetual Trustee Company (Canberra) Limited
16	Perpetual Trustees Consolidated Limited
17	Perpetual Trustees Queensland Limited
18	Perpetual Trustees S.A. Limited
19	Perpetual Trustees Victoria Limited
20	Perpetual Trustees W.A. Ltd
21	Plan B Trustees Limited
22	Sandhurst Trustees Limited
23	Tasmanian Perpetual Trustees Limited
24	Trust Company Limited
25	Trust Company Fiduciary Services Limited
26	Union Trustee Company (Canberra) Limited

## **Schedule 8AB Prescribed State and Territory laws and provisions**

(regulation 5D.1.02)

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<b>Item</b>	<b>State or Territory law and provisions</b>
1	<i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW)
2	<i>Guardianship Act 1987</i> (NSW)
3	<b>Victorian Civil and Administrative Tribunal Act 1998</b> (Vic), Part 9 of Schedule 1
4	<b>Guardianship and Administration Act 1986</b> (Vic)
5	<i>Guardianship and Administration Act 2000</i> (Qld)
6	<i>Guardianship and Administration Act 1990</i> (WA)
7	<i>Guardianship and Administration Act 1993</i> (SA)
8	<i>Guardianship of Infants Act 1940</i> (SA)
9	<i>Guardianship and Administration Act 1995</i> (Tas)
10	<i>Guardianship and Custody of Infants Act 1934</i> (Tas)
11	<i>Guardianship and Management of Property Act 1991</i> (ACT)
12	<i>Testamentary Guardianship Act 1984</i> (ACT)
13	<i>Adult Guardianship Act</i> (NT)
14	<i>Guardianship of Infants Act</i> (NT)

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### Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.