



ANNO DECIMO

# GEORGII V REGIS.

A.D. 1919.

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## *Private Act.*

An Act to confer certain powers upon "Farmers' Co-operative Executors and Trustees, Limited."

[Assented to, November 27th, 1919.]

**W**HEREAS it is often difficult to secure the services of suitable Preamble.  
persons for the offices of trustee, executor, administrator, and other similar offices: And whereas, in order to secure the more certain discharge of the duties of such offices, a Company styled "Farmers' Co-operative Executors and Trustees, Limited," has been formed and incorporated under "The Companies Act, 1892," and Acts amending the same, with the purpose, among others, of affording persons the opportunity of obtaining the services of a permanent corporation for the performance of the duties of such offices, and thus to remove much of the uncertainty and insecurity which attend the appointment of persons: And whereas it is expedient to enable the said Company to act as executor, administrator with or without a will annexed, receiver, trustee, committee of estates of persons of unsound mind, guardian of the estates or the persons of infants, agent under power of attorney or otherwise, liquidator, trustee in insolvency or of any assignment under the law relating to insolvency, and to perform and discharge all the duties of such offices, and to receive remuneration for its services, and to confer upon the said Company the powers and privileges hereinafter set forth in order to enable the said Company the more effectually and usefully to carry out the objects sought in its incorporation—

Be it therefore Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This

*Farmers' Co-operative Executors Act.—1919.*

Short title and commencement of Act.

1. This Act may, for all purposes, be cited as the "Farmers' Co-operative Executors Act, 1919."

Interpretation of words.

2. In this Act, unless the contrary intention appears—

"The Company" means "Farmers' Co-operative Executors and Trustees, Limited":

"The Court" means the Supreme Court of the State of South Australia, or any Judge thereof:

"The Manager" means the manager, acting manager, secretary, or acting secretary for the time being of the Company:

"Will" includes codicil:

"Letters of Administration" means letters of administration with or without a will annexed:

"Administrator" means administrator with or without a will annexed:

"Trustee in Insolvency" includes trustee of any assignment under the law relating to insolvency.

Company may act as executor and obtain probate.

3. Whenever the Company has been or shall be expressly, or according to the tenor, appointed as executor under the will of any testator, it shall be lawful for the Company to act as executor, or as executor according to the tenor, as the case may be, and to apply for and obtain probate accordingly.

Company may obtain letters of administration and act as administrator.

4. Whenever a natural person may apply for and obtain letters of administration of the estate of a deceased person it shall be lawful for the Company in like circumstances to apply for and obtain letters of administration and act as administrator.

Company may be appointed trustee, receiver, or committee of estate of lunatic, or guardian of estates of infants.

5. It shall be lawful for any Court, Judge, Company, Corporation, or person now or hereafter having power to appoint any trustee, receiver, committee of the estate of a person of unsound mind, guardian of an infant's estate or person, liquidator, trustee in insolvency, attorney, or agent, in any case to appoint the Company to be a trustee, receiver, committee, guardian, liquidator, trustee in insolvency, attorney, or agent, as the case may be.

Persons entitled to probate or letters of administration may authorise Company to obtain administration.

6. Any person who shall be entitled, either solely or with any other person, to apply for and obtain probate of any will, or letters of administration, whether general, special, or limited with a will annexed, and any person entitled to apply for and obtain letters of administration without a will annexed, and whether general, special, or limited, may, with the approval (previous or subsequent) of the Court, by writing under his hand, authorise the Company to prove the said will, or to apply for and obtain such letters of administration as the person aforesaid shall be entitled to obtain as aforesaid; and thereupon the Company shall be entitled to prove such will (if any) and to apply for and obtain, and the

Court

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Court may, in pursuance of such approval, grant probate of any will or any letters of administration as aforesaid to the Company in accordance with such authority: Provided that, notwithstanding any grant to the Company under the provisions hereof, any other person entitled to any probate in the same matter may apply for and obtain a double probate in the same manner as if the Company had been originally named in the will as executor in the place of the person giving such authority: And provided also that the power conferred by this section shall not be exercised in regard to any will in which the testator shall have expressly provided that the Company shall not act in the execution of the provisions of such will, nor shall any such power be exercised by any person in the event of there being within the said State any competent person of the age of twenty-one years who shall be entitled to and desirous of obtaining probate or appropriate letters of administration (as the case may be).

7. Any executor, administrator, or trustee, whether appointed before or after the passing of this Act may, at any time and from time to time, by any writing deposited in the General Registry Office of the said State, appoint the Company to perform, carry out, and exercise, during any absence from the said State of the appointor, all or any of his duties, discretions, and powers in as full, ample, and complete a manner and as effectually as the appointor could have performed and exercised the same if personally present. After such deposit as aforesaid, and until notice in writing of the death of the appointor, or of the revocation of the authority conferred shall have been given to and registered by the Registrar-General or his deputy, every act of the Company within the scope of the authority conferred shall, in favor of any person who shall deal with the Company *bona fide* and without notice of such death or revocation as last aforesaid, be valid and effectual notwithstanding such death or revocation: Provided that the power conferred by this section shall not authorise any executor, administrator, or trustee to appoint the Company as aforesaid in any case where such executor, administrator, or trustee could not have so appointed a natural person.

Company may be appointed to act temporarily for executor, administrator, or trustee.

8. Any executor or administrator, whether appointed before or after the passing of this Act, may, with the approval of the Court, appoint the Company to perform and discharge all acts, duties, powers, and discretions of such executor or administrator, and the Company shall have power to exercise, perform, and discharge all such acts, duties, powers, and discretions accordingly, and, upon such approval being given, such executor or administrator may convey and assign to the Company the trust property vested in him, whereupon he shall be released and discharged from all liability in respect of all acts and omissions by the Company after such appointment.

Executors and administrators may appoint Company to discharge duties for them.

9. Every application for the approval of the Court may be by motion, petition, or originating summons. The Court may give such

Procedure to obtain approval of Court.

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such approval either *ex parte* or after such notice has been given to persons interested in the estate, personally, or by advertisement, or in such other manner as the Court may direct. And any approval given by the Court in the absence of any interested party, whether notice shall have been directed to be given or not, shall bind such party in the same manner as if he had been present or represented on the application. Such approval shall not be given in the case of a will in which the testator has expressly provided that the execution of the provisions thereof shall not be delegated, or that the Company shall not act therein. The costs of such application shall be in the discretion of the Court, and may be ordered to be paid out of the estate.

Company may act jointly.

**10.** The Company may in any case act alone or jointly with any person in any fiduciary capacity, and in particular as trustee, executor, administrator, committee, receiver, guardian, liquidator, trustee in insolvency, attorney, or agent, and may acquire and hold real and personal property in joint tenancy in the same manner as if it were a natural person; and the Company shall have the same benefit and right of survivorship upon the death of any joint tenant or joint owner as if it were a natural person, and upon its dissolution every joint tenant or joint owner shall have the same benefit and right of survivorship as if the Company were a natural person and had died at the time of such dissolution; and when any property shall be vested in the Company and any person to the intent that the Company and such person shall act jointly in any fiduciary capacity, the Company and such person shall be deemed to be joint tenants or joint owners thereof, and not tenants or owners in common, unless otherwise expressly provided.

Company may be appointed to act solely in the place of retiring trustees.

**11.** The Company, with the approval of the persons (if any) for the time being within the State and of the age of twenty-one years having an absolutely vested estate or interest in any property the subject of the office, may in any case be appointed to act solely as trustee, executor, administrator, committee, receiver, liquidator, attorney, or agent, although the instrument or order creating the office may have provided for the appointment of more than one person to the office; and it shall not be necessary to fill up the original or contemplated number unless the terms of such instrument or order shall expressly provide that a fixed number of persons shall always be maintained in the office, and upon the Company being so appointed to act solely the person retiring shall, from the time of such appointment, be released from all responsibility for the performance of the office.

Appointments of Company already made to be valid.

**12.** Any appointment of the Company as executor, administrator, receiver, trustee, guardian, committee, liquidator, attorney, or agent, made prior to the coming into operation of this Act shall be deemed and taken to be a valid appointment of the Company to such office or position; and whenever in any will any director or the manager of the Company shall have been or shall be hereafter appointed in  
his

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his character as such director or manager as executor or trustee thereof, such will shall be read as if the Company had been appointed executor or trustee in lieu of such director or manager.

**13.** Wherever the Company is appointed to any office or position pursuant to any of the provisions hereof, it shall be lawful for the Company to do and perform all acts and duties and exercise all powers and discretions which appertain to such office or position as fully as if the Company were a natural person, and all the powers conferred upon the Company by any power of attorney may be exercised and carried into execution by the manager, or by any two of the directors of the Company.

Company may perform all acts and exercise all discretions appertaining to any office or position held.

**14.** Whenever the Company is empowered to apply for probate or letters of administration, an affidavit made by the manager shall be received and acted upon by the Court in which or the officer before whom such application shall be made in place of any affidavit required by any law, Act of Parliament, or Rule of Court to be made by persons making application for probate or letters of administration.

Court to act upon affidavit of manager in application for probate or administration.

**15.** In all cases in which the personal attendance of an executor, administrator, trustee, receiver, guardian, committee, liquidator, or trustee in insolvency is required in a court of justice or elsewhere, the Company shall be entitled to make such attendance in the person of the manager, and the personal duties of executor, administrator, trustee, receiver, guardian, committee, liquidator, trustee in insolvency, may be discharged on behalf of the Company by the manager; and all affidavits, declarations, accounts, and other documents which, in carrying out the duties relating to the offices aforesaid, it shall be necessary to make, file, exhibit, or give, may be made, filed, exhibited, or given by the manager; and in every case where the Company shall obtain probate or letters of administration or be appointed to act as trustee, receiver, guardian, committee, or liquidator, the manager and directors shall be individually and collectively in their own proper persons, responsible to the Court, and be liable, by process of attachment, to commitment for contempt, or by other process, to all Courts having jurisdiction in that behalf, for the proper discharge of their duties and for obedience to the rules, orders, and decrees of such Courts in the same manner and to the same extent as if the manager and directors had personally obtained probate or letters of administration, or had acted as executor, administrator, trustee, receiver, guardian, committee, or liquidator.

Directors and manager responsible to Court.

**16.** All the assets (including uncalled capital) of the Company for the time being shall be liable for the proper discharge of all duties undertaken by the Company.

Assets of the Company liable for proper discharge of duties.

**17.** The Company may deposit with the Public Trustee of the said State in trust for the Company out of its paid-up capital the sum of Five Thousand Pounds, or at its option securities representing such sum being Government securities of the Commonwealth

Cash or securities to be deposited with Public Trustee.

or

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or of the said State, or bonds of any municipal corporation in the said State, or mortgage of freehold properties therein, or partly some or one of such securities and partly cash.

Cash or securities deposited to be transferable or exchangeable.

18. Any cash or securities deposited as provided by the last preceding section shall be transferable or exchangeable by the Company, with the consent of the Public Trustee, or upon the order of the Court. The income therefrom shall from time to time be receivable by the Company.

When deposit made bond not required.

19. So soon as the deposit shall be made as provided in section 17 hereof, the Company shall not be required to enter into any bond in any case where a bond would be required if the duties undertaken by the Company had been undertaken by a natural person.

Remuneration of Company.

20. The Company shall be entitled to receive, in addition to all moneys properly expended by it and chargeable against the estates or property placed under the administration or management of the Company, a commission to be fixed from time to time by the directors of the Company, but not to exceed in any case Five Pounds for every One Hundred Pounds of the capital value of any estate or property committed to the management of the Company as executor, administrator, trustee, receiver, guardian, committee, liquidator, or trustee in insolvency, and Five Pounds for every One Hundred Pounds of income received by the Company as executor, administrator, trustee, receiver, guardian, committee, liquidator, or trustee in insolvency, or of capital or income received by the Company as an attorney under power of attorney, or as an agent, and such commission shall be payable and retainable out of the moneys or property committed to the management of the Company, and shall be received and accepted by the Company as full recompense and remuneration to the Company for acting as such executor, administrator, trustee, receiver, guardian, committee, liquidator, trustee in insolvency, attorney, or agent, and no other charges beyond the said commission and the moneys so expended by the Company shall be made by the Company; but if in any case the Court shall be of opinion that such commission is excessive the Court may reduce the amount of such commission as to the Court shall seem just: Provided that in no case shall a commission be charged by the Company higher than that set forth in the scale of charges determined as aforesaid by the directors of the Company and published at the time at which the estate or property in respect of which the commission is chargeable was taken under the control or management of the Company: Provided also that the commission receivable in respect of any one estate shall in no case be less than Twenty Pounds; and if such estate remain under the control or management of the Company for more than twelve months, then such commission shall in no case be less than Twenty Pounds per annum. This section shall not prevent the payment of any remuneration directed by a testator in his will or agreed to be paid by any principal either in addition to or in lieu of the commission hereinbefore authorised.

21. In

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21. In all cases where the Company shall be appointed to and shall undertake the duties of any office or position pursuant to any of the provisions of this Act, the Company shall, in addition to the liabilities and restrictions imposed by this Act, be subject in all respects to the same control and liability to removal as natural persons; and it shall be lawful for all persons who may claim relief against the Company for any act done, or assumed to be done, or in respect of any act omitted to be done by the Company, its directors or officers under any of the powers conferred by this Act, to proceed in any Court of competent jurisdiction, either by action, suit, or other proceeding, or in a summary way by motion against the Company, or any of its directors or officers, and such Court may make and enforce such order in the matter as to such Court shall seem just.

Company may be removed from office by Court, and provisions for relief against Company or directors.

22. If any executor, administrator, trustee, *cestui que* trust, legatee, next-of-kin, or creditor entitled to or interested in any estate in the possession or under the control of the Company shall claim that he is unable, upon application to the manager, to obtain a sufficient account of the property and assets of which such estate shall consist, and of the disposal and expenditure thereof or thereout, such executor, administrator, trustee, *cestui que* trust, legatee, next-of-kin, or creditor shall be entitled to apply to the Court by motion, petition, or originating summons, after notice to the Company, but without suit, for an account, and the Court may—

Order for account on application of trustee.

- (a) If of opinion that no sufficient account has been rendered by the Company, order that such account be rendered by the Company as to the Court shall seem just;
- (b) In addition to or in substitution for such account, order that a person to be named in the order may examine the books and accounts of the Company in reference to the estate to which the order relates, and in that case the Company shall deliver to such person a list of all books relating to such estate kept by the Company, and shall produce to such person at all reasonable times when required the said books and all accounts, vouchers, papers, and other documents of the Company so relating as aforesaid, and shall afford all necessary information and facilities for enabling him to make the examination under that section;
- (c) Dismiss the application;
- (d) Make such order as to costs (including the costs of the examination mentioned in subsection (b) of this section), either against the Company or against the applicant or out of the estate, as the Court shall deem fit.

23. So long as any estate in respect of which the Company is executor, administrator, or trustee, shall remain in whole or in part unadministered, it shall not be lawful to proceed to wind up the Company voluntarily, unless with the sanction of the Court, and any

Voluntary winding up of Company or disposal of shares may be restrained by Court.

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any person interested in such estate, or who may have any claim in respect thereof, may apply to the Court in a summary way to restrain any shareholder from disposing of any share which he may hold in the Company, or to restrain the directors of the Company from registering the transfer of any such share, or to restrain the voluntary winding up of the Company, and the Court may, in any such case, make such order as it shall deem fit.

Testators may appoint their own solicitor.

24. Where by any will or settlement a testator or settlor shall direct that any practising solicitor shall conduct the legal business of the trust estate, such solicitor shall be entitled to act therein accordingly; but in such case the Company shall not be liable for the negligence, misfeasance, nonfeasance, or misconduct of such solicitor, and such solicitor may be removed by order of the Court upon the application of the Company, or of any person interested in such estate, upon cause shown, and then and in such case the Court may appoint the solicitor to the Company, or some other solicitor to act in place of the solicitor so removed.

Trust moneys belonging to several estates may be invested as one fund.

25. In all cases where the Company shall hold money belonging to more than one estate as trustee for investment, it shall be lawful for the Company to invest such money as one fund in one or several securities, and to distribute the income arising from such securities, after deducting all proper charges ratably among the several estates whence the moneys so invested were derived; and any loss arising from any such investment shall likewise be borne ratably by the same several estates: Provided that no money belonging to any estate shall be invested upon any security not authorised by the instrument creating the trust or by Act of Parliament.

Declaration by manager.

26. The manager or other authorised officer of the Company shall, on the first Monday in February and the first Monday in August in the year one thousand nine hundred and twenty, and in every subsequent year during which it carries on business, make before a Justice of the Peace a declaration in the form contained in the First Schedule hereto, or as near thereto as circumstances will admit, and a copy of such declaration shall be put in a conspicuous place in the registered office of the Company, and shall be given to any trustee, *cestui que* trust, legatee, or beneficiary of the estate under administration, or to any member or creditor of the Company who applies for the same upon payment of a sum not exceeding One Shilling, and a copy thereof shall be forwarded to the Registrar of Companies, and shall be filed by him.

Report and declaration by auditors.

27. No appointment of auditors by the Company shall be valid until approved by the Treasurer of the said State, and the auditors of the Company shall, after every annual audit, attach to the Company's balance-sheet a report in the form contained in the Second Schedule hereto, or as near thereto as circumstances may permit.

28. Immediately



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**28.** Immediately after the winding up of any estate and filing the accounts thereof, the Company shall insert in the *Government Gazette* and in one or more of the daily newspapers published in Adelaide, a notice that such particular estate has been closed, and a copy of such accounts shall remain open for the inspection of any beneficiary for a period of twenty-eight days, at the office of the Company, at all reasonable times, and such beneficiary shall be entitled to take copies of or extracts therefrom free of charge, or, if so requested by the persons so entitled, the Company shall, on receiving payment at a rate not exceeding Six Pence per common law folio, furnish such copies or extracts as so requested.

Notice of winding up estate.

**29.** For the purposes of this Act the production of a certificate under the seal of the Company and hands of two of the directors thereof, certifying that the person named therein is the manager of the Company, shall be sufficient evidence of the due appointment of such person as the manager.

Evidence of appointment of manager.

**30.** Except so far as is otherwise herein expressly provided, the Company shall remain and be subject to and have the same restrictions, liabilities, penalties, privileges, and powers as it is subject to or has under its incorporation.

Incorporation and powers of Company, except so far as specially altered, to remain.

**31.** Nothing in this Act shall be deemed to derogate from or lessen in any manner whatsoever the powers or jurisdiction of the Court in relation to the care, control, and supervision of the persons or estates of infants.

Act not to derogate from jurisdiction of Court over infants and their estates.

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

H. L. GALWAY, Governor.

SCHEDULES ABOVE REFERRED TO.

FIRST SCHEDULE.

FINANCIAL STATEMENT.

I, \_\_\_\_\_, manager [or as the case may be] of Farmers' Co-operative Executors and Trustees, Limited, do solemnly and sincerely declare—

- i. That the liability of the members is limited.
- ii. That the capital of the Company is \_\_\_\_\_ Pounds, divided into \_\_\_\_\_ shares of \_\_\_\_\_ each.
- iii. That the number of shares issued is \_\_\_\_\_.
- iv. That calls to the amount of \_\_\_\_\_ Pounds per share have been made, under which the sum of \_\_\_\_\_ Pounds has been received.
- v. That the amount of all moneys received during the half-year ended on the first day of January (or July) last on account of estates is £ \_\_\_\_\_.
- vi. That the amount of all moneys paid during the half-year ended on the first day of January (or July) last on account of all estates is £ \_\_\_\_\_.
- vii. That the amount of all moneys invested on account of all estates under the control of the Company is £ \_\_\_\_\_.
- viii. That the amount of the balance held on the first day of January (or July) last to the credit of all estates under the control of the Company is £ \_\_\_\_\_.
- ix. That the liabilities of the Company on the first day of January (or July) last were—

Debts payable to sundry persons by the Company—

A. On judgment .....	£	:	:
B. On specialty .....		:	:
C. On notes or bills .....		:	:
D. On simple contracts .....		:	:
E. On estimated liabilities .....		:	:
Total liabilities .....		£	: :

x. That the assets of the Company on the first day of January (or July) last were—

A. Government securities .....	£	:	:
B. Loans on mortgage .....		:	:
C. Bills of exchange and promissory notes .....		:	:
D. Cash at bankers .....		:	:
E. Other property .....		:	:
Total assets .....		£	: :

xi. That the present directors of the Company are—

Surname.	Christian Name.	Address.	Occupation.

xii. That the present manager of the Company is \_\_\_\_\_.

xiii. That the office of the Company is situated at \_\_\_\_\_.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of "The Statutory Declarations Act, 1915."

Declared before me at Adelaide, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

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SECOND SCHEDULE.

Sec. 27.

AUDITORS' REPORT.

We have examined the (annexed *or* above) balance-sheet made up to the day of \_\_\_\_\_, 19\_\_\_\_, and report that we find the several items therein stated to conform to the balances in the general ledger, cash, and other account books.

We have counted the cash balance and examined the securities held by the Company, and hereby certify that we have found them correct.

We have also audited the accounts, and examined the securities relating to all estates that now are or have during the past year been under the control of the Company, and hereby certify that we have found the same correct.

} Auditors.

the \_\_\_\_\_ Adelaide,  
day of \_\_\_\_\_, 19\_\_\_\_.