

Exemptions and Concessions to Avoid Transfer Duty when Changing the Trustee of Discretionary Trusts.

Summary of Duty Legislation for change of trustee of Discretionary Trusts

A National Summary.

Changing the trustee of a discretionary trust can trigger transfer duty in the state or territory in which dutiable property is situated. For example, if a discretionary trust owns land or business assets in a state or territory, it is likely that transfer duty could technically be imposed on a change of trustee of the discretionary trust.

However, in all of the states and territories in Australia there are exemptions or concessions for a change of trustee.

The below table summarises the various exemptions and concessions that apply across Australia in relation to a change of a trustee of a discretionary trust as at January 2021.

Please note that the below table deals only with exemptions or concessions related to transfer duty and does not consider other duties, such as corporate trustee duty or additional foreign acquirer duty.

The below table also does not consider whether various types of property held on trust will be dutiable property for the purposes of each of the states and territories. In this regard, we recommend that trustees consider the types of property held by the trust and whether they would actually be dutiable property of the trust. If the property is not dutiable property, a change of trustee may not enliven transfer duty and the analysis of whether an exemption or concession is available does not need to be undertaken.

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State	Legislation	Exemption or concession	Provisions	Documentation that may be required
Queensland	Section 117 <i>Duties Act 2001</i> (Qld)	Exemption	<p>No transfer duty is imposed on a change of trustee if the following conditions are met:</p> <p>(a) the sole purpose of the transaction is to give effect to a change of trustee;</p> <p>(b) the transaction is not part of an arrangement as a result of which the rights and interests of the beneficiaries of the trust do not change;</p> <p>(c) the transaction is not part of an arrangement terminating the trust; and</p> <p>(d) transfer duty has been paid on all trust acquisitions or trust surrenders that applied to the trust before the change of trustee.</p>	<p>(a) Dutiable transaction statement Form D2.2.</p> <p>(b) A statutory declaration for change of trustee.</p> <p>(c) A copy of the trust deed.</p> <p>(d) A copy of the deed of retirement or resignation/ (and appointment) of the trustee.</p> <p>(e) Possibly identity details annexures if the trust holds real property.</p>

<p>New South Wales</p>	<p>Section 54(3) <i>Duties Act 1997</i> (NSW)</p>	<p>Concession, with \$50 charged</p>	<p>Only \$50 of duty is charged for a retirement or appointment of a new trustee if:</p> <ul style="list-style-type: none"> (a) none of the existing trustees (after the change of trustee has occurred) are, or can become, a beneficiary of the trust; and (e) the transfer is not part of a scheme for conferring an interest in trust property on any person to the detriment of any other person's beneficial interest. <p>This concessional duty liability does not apply to a trustee that is a licensed trustee company, a special trustee (licensed trustee company in its capacity as trustee or administrator of a deceased estate or a trustee of a complying superannuation fund), a trustee of a self managed superannuation fund or a trustee of a special disability trust. However, similar concessions apply in sections 54(2) and (2A) of the Legislation in relation to these types of entities.</p>	<ul style="list-style-type: none"> (a) A Purchaser / Transferee Declaration. (f) A copy of the trust deed, including a copy of any amendments or variations to the trust deed. (g) Evidence that the dutiable property is/ (are) asset/(s) of the trust, including original executed Transfer. (h) A copy of the stamped contract when the property was purchased. (i) A copy of the deed of retirement or resignation/ (and appointment) of the trustee. (j) An irrevocable clause amending the Trust Deed that provides that, following the change of trustee, none of the trustees is or can become a beneficiary of the trust.
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Victoria	Section 33(3) <i>Duties Act 2000</i> (Vic)	Exemption	<p>No duty is chargeable on transfers if the Commissioner is satisfied that dutiable property is transferred solely to:</p> <ul style="list-style-type: none"> (a) retire or appoint a trustee; and (k) in order to vest the trust property in the trustees so that they may hold it in accordance with their duties as trustee. 	<ul style="list-style-type: none"> (a) A digital duties form. (b) A copy of the stamped trust deed, including a copy of any amendments or variations to the trust deed. (c) A copy of the deed of retirement or resignation/ (and appointment) of the trustee. (l) A copy of the financial statements of the trust that identify when the assets of the trust were first held on trust and financial statements that show the asset is still held by the trust. (m) Statutory declaration by any retiring trustee and a statutory declaration by any new trustee. (n) Additional requirements apply if the trust holds land and if the retiring trustee was a corporate trustee. (o) There is a requirement to lodge these forms with the Victorian State Revenue Office 30 days before settlement of the change of trustee.
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Western Australia	Section 119(3)(a) <i>Duties Act 2008</i> (WA)	Concession, with \$20 charged.	Duty of \$20 is chargeable on transfers of dutiable property to a trustee as a consequence of the retirement of a trustee or the appointment of a new trustee if the transfer is not part of a scheme to change the beneficial interests in the trust.	<ul style="list-style-type: none"> (a) Transaction record (land transfer form or transfer duty statement). (p) Foreign transfer duty declaration form. (q) A copy of the stamped trust deed, including a copy of any amendments or variations to the trust deed. (r) A copy of the duty endorsed declaration of trust, or the agreement for transfer of the original acquisition of the trust property that must indicate that the trustee was acquiring the property in their capacity as trustee. If this cannot be provided, there are other items that can be provided instead.
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<p>South Australia</p>	<p>Section 71(5)(d) <i>Stamp Duties Act 1923 (SA)</i></p>	<p>Exemption</p>	<p>No duty is chargeable on a conveyance that causes the appointment or retirement of a trustee, provided that the Commissioner of State Taxation is satisfied that the transfer is not part of a scheme to change the beneficial interests in the trust.</p> <p>If the change of trustee results in all trust property being transferred, then the application of the exemption can be self-determined on the RevenueSA Online website. However, if only some trust property is being transferred, it is necessary to apply to the Commissioner to utilise the exemption.</p>	<p>(a) A copy of the transfer forms, which may change depending on the type of property held on trust (i.e. land transfer forms may be required).</p> <p>(s) A copy of the deed of retirement or resignation/ (and appointment) of the trustee.</p> <p>(t) A copy of the trust deed, including a copy of any amendments or variations to the trust deed.</p> <p>(u) Evidence that a stamp duty determination has been made (i.e. this may be the print out from RevenueSA Online if it is possible to self-determine the applicability of the exemption).</p>
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Tasmania	Section 37 and section 49 <i>Duties Act 2001</i> (Tas)	Concession, with \$50 charged.	<p>Only \$50 is charged on transfers resulting from a change of trustee if the Commissioner is satisfied that dutiable property is transferred solely to:</p> <ul style="list-style-type: none"> (a) retire or appoint a trustee; (b) to vest the trust property in the trustees so that they may hold it in accordance with their duties as trustee; and (c) there has been no change in the beneficial ownership of the property (section 49 requirement). <p>This concessional duty liability does not apply for: The Public Trustee, trustee companies as defined by the <i>Trustee Companies Act 1953</i> (Tas), equivalent Public Trustee's in other jurisdictions, trustees of complying superannuation funds. However, similar concessions apply for these entities in section 37.</p>	<ul style="list-style-type: none"> (a) Duty lodgement cover sheet, on which it should be stated that a concession is being sought under section 37 and 49 is being sought. (v) A copy of the trust deed, including a copy of any amendments or variations to the trust deed. (w) A copy of the deed of retirement or resignation/ (and appointment) of the trustee. (x) Additional documents may be required if the trust property includes land.
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<p>Australian Capital Territory</p>	<p>Section 54 <i>Duties Act 1999</i> (ACT)</p>	<p>Exemption</p>	<p>No duty is charged on transfers resulting from a retirement or appointment of a trustee if the Commissioner for ACT Revenue is satisfied that:</p> <ul style="list-style-type: none"> (a) after the change of trustee, none of the trustees (continuing or appointed) is or can become a beneficiary under the trust; and (b) the change of trustee was not undertaken in connection with a tax avoidance scheme. 	<ul style="list-style-type: none"> (a) A copy of the trust deed, including a copy of any amendments or variations to the trust deed. (y) A copy of the deed of retirement or resignation/ (and appointment) of the trustee. (z) Evidence that all duty was paid on the acquisition of the trust property by the trust. (aa) Additional documents may be required if the trust property includes land, such as a buyer verification declaration and transfer forms. (ab) Concession code number 054 may need to be quoted on the buyer verification declaration.
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Northern Territory	Schedule 2, item 6 <i>Stamp Duty Act 1978</i> (NT)	Exemption	<p>An exemption to duty is applied for a conveyance made solely for the purpose of effecting the appointment of a new trustee if:</p> <p>(a) There is no change to the potential beneficial interests of beneficiaries as a result of the change; and</p> <p>(b) The original acquisition by the trustees of the trust property that is transferred as a result of the change of trustee was stamped, or exempt or not liable to duty.</p>	<p>(a) Stamp duty lodgement form F-SD-001</p> <p>(ac) A copy of the deed of retirement or resignation/ (and appointment) of the trustee.</p> <p>(ad) The resolution of the meeting at which the new trustee was appointed.</p> <p>(ae) A stamped copy of the trust deed, including a copy of any amendments or variations to the trust deed.</p> <p>(af) A declaration that:</p> <p>(ag) the beneficial interest in the property is not changing; and</p> <p>(ah) that no consideration has been or is payable.</p> <p>(ai) Evidence that the trust property being transferred is property of the trust.</p>
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If you would like further assistance or advice in relation to changing the trustee of a discretionary trust, contact Taryn on (07) 3014 6513, or at thartley@mcw.com.au.

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