

The prudent person rule

The administrator has a duty to invest only in authorised investments. These duties are described in the *Trusts Act 1973* and referred to as the prudent person rule. These duties are detailed in the excerpt below. Note: All references to trustee in this excerpt should be taken as applying to administrators

Important note: *If you have concerns that a proposed investment might breach the prudent person rule, you can make an application to QCAT to have the investment approved.*

 Excerpt from the *Trusts Act 1973*, Part 3

22. Duties of trustee in relation to power of investment

- (1) A trustee must, in exercising a power of investment –
 - (a) If the trustee’s profession, business or employment is, or includes, acting as a trustee or investing money for other persons – exercise the care, diligence and skill a prudent person engaged in that profession, business or employment would exercise in managing the affairs of other persons; or
 - (b) If the trustee’s profession, business or employment is not, or does not include, acting as a trustee or investing money for other persons – exercise the care, diligence and skill a prudent person of business would exercise in managing the affairs of other persons.
- (2) A trustee must, in exercising a power of investment, comply with a provision of the instrument creating the trust that is binding on the trustee and requires the obtaining of a consent or approval or compliance with a direction for trust investments.
- (3) A trustee must, at least once in each year, review the performance, individually and as a whole, of trust investments.

23. Law and equity preserved

- (1) A rule or principle of law or equity imposing a duty on a trustee exercising a power of investment continues to apply except so far as it is inconsistent with this or another Act or the instrument creating the trust.
- (2) Without limiting the rules or principles mentioned in subsection (1), they include a rule or principle imposing –
 - (a) a duty to exercise the powers of a trustee in the best interests of all present and future beneficiaries of the trust; and
 - (b) a duty to invest trust funds in investments that are not speculative or hazardous; and
 - (c) a duty to act impartially towards beneficiaries and between different classes of beneficiaries; and
 - (d) a duty to obtain advice.

- (3) A rule or principle of law or equity relating to a provision in an instrument creating a trust that purports to exempt, limit the liability of, or indemnify a trustee in relation to a breach of trust, continues to apply.
- (4) If a trustee is under a duty to obtain advice, the reasonable cost of obtaining the advice is payable out of trust funds.

23. Matters to which trustee must have regard in exercising power of investment

- (1) Without limiting the matters a trustee may take into account when exercising a power of investment, a trustee must, so far as they are appropriate to the circumstances of the trust, have regard to the following matters-
 - (a) the purposes of the trust and the needs and circumstances of the beneficiaries;
 - (b) the desirability of diversifying trust instruments;
 - (c) the nature of and risk associated with existing trust investments and other trust property;
 - (d) the need to maintain the real value of the capital or income of the trust;
 - (e) the risk of capital or income loss or depreciation;
 - (f) the potential for capital appreciation;
 - (g) the likely income return and the timing of income return;
 - (h) the length of the term of the proposed investment;
 - (i) the probable duration of the trust;
 - (j) the liquidity and marketability of the proposed investment during, and at the end of, the term of the proposed investment;
 - (k) the total value of the trust estate;
 - (l) the effect of the proposed investment for the tax liability of the trust;
 - (m) the likelihood of inflation affecting the value of the proposed investment or other trust property;
 - (n) the cost (including commissions, fees, charges and duties payable) of making the proposed investment;
 - (o) the results of a review of existing trust investments.
- (2) A trustee –
 - (a) may obtain, and if obtained must consider, independent and impartial advice reasonably required for the investment of trust funds or the management of the investment from a person whom the trustee reasonably believes to be competent to give the advice; and
 - (b) may pay out of trust funds the reasonable costs of obtaining the advice.