

# Index – Part I

## Key Documents

1. Deed of Trust
2. Constitution of Lines Company
3. Electricity Act 1992: sections 158A – 158F (Annual Meeting of Beneficiaries)
4. Guidelines for access to information
5. Insurance Policies
6. Legislation:
  - a. Trustee Act 1956
  - b. Electricity Act 1992
  - c. Energy Companies Act 1992
  - d. Electricity Industry Reform Act 1998
  - e. Commerce Act 1986
7. Other

# Index – Part II

## Key Topics

8. General Duties of Trustees
9. Corporate Governance:
  - a. Trustees as shareholders
  - b. Trustee directors
10. Information Disclosure:
  - a. General Law
  - b. Guidelines
11. Remuneration
12. Regulation:
  - a. Commerce Act 1986
  - b. Electricity Commission
13. Electricity Industry Reform Act 1998

# Deed of Trust

- Primary duty of trustees: know and adhere to the Deed of Trust
- Lines Trust Deed should
  - Identify beneficiaries
  - Set out trustees' obligations to beneficiaries
  - Contain administrative provisions such as – appointment of trustees and conduct of trust business

# Constitution of Lines Company

- Trustees have rights and obligations as shareholders in Lines Companies
- Constitution will include provisions dealing with:
  - Appointment and remuneration of directors
  - Conduct of Annual Meeting and Special Meetings of Shareholders

# Electricity Act 1992: sections 158A – 158F (Annual Meeting of Beneficiaries)

- Requirement for annual meeting of beneficiaries introduced in 2001
- Only formal business at annual meetings – appointment of auditor and fixing of remuneration of auditor
- Real purpose: give accountability similar to that of a company at annual meeting of shareholders
- An opportunity for beneficiaries to raise issues relating to performance of trustees additional to election/appointment process

# Access to Information for Beneficiaries

## A. Guidelines

- In 2001 Government introduces potential to regulate for a code of practice for disclosure of information.
- Minister prefers for industry to self-regulate: outcome is “Guidelines”
- Approach based on “official information” legislation but not exclusively.
- Guidelines do not supercede trustees’ legal obligations – however, review procedure means beneficiaries may not have to go to cost of High Court proceedings

# Access to Information for Beneficiaries

## B. General Law

- *Schmidt* – disclosure of information is a matter of discretion, subject to review by the Court
- However – presumption that certain fundamental documents should be disclosed e.g. Trust Deed, Financial Statements
- Courts have also developed principles around other types of documents e.g. legal advice, documents provided to trustees to help them in decision making process
- Approach taken by Court will depend on a variety of factors: is bad faith alleged? Are there issues of confidentiality?

# Insurance Policies

- Liability insurance protects trust fund in case of trustee negligence resulting in claims being paid out of trust assets

# Legislation

- **Trustee Act 1956**
  - Duties and powers of trustees set out
  - Can be modified by Trust Deed
  - Supplemented by common law
  - Provides for supervision of Trustees by High Court

# Legislation

- Electricity Act
  - Annual Meeting of beneficiaries
  - Industry Governance – Electricity Commission
- Energy Companies Act 1992
  - The Act under which old power boards were “corporatised”
  - Statements of Corporate Intent

# Legislation

- Electricity Industry Reform Act 1998
  - Separation of lines and retail businesses
  - Foundation of current structure of lines companies
- Commerce Act 1986
  - New regulatory regime for lines companies introduced in 2003
  - Significant amendments made in 2008

# Other

- For any other documents particular to individual trusts
- Eg AECT has: DREOR (agreement with Vector) and Protocols in relation to appointment of Vector directors and Trustee directors specifically

# General Duties of Trustees

- Know and adhere to Trust Deed
- Act personally – can't delegate key powers/discretions
- Act unanimously – not feasible in Lines Trust context. Trust Deeds can provide for majority rule
- Undivided loyalty:
  - No conflicts of interest
  - No unauthorised profits from the trust
- Duty of care
  - Act as a prudent person of business
  - Trustees not guarantors of value. Liable if negligent. Creates need to take appropriate advice on issues/transactions of significance
- Act in best interest of beneficiaries

# Corporate Governance

## a. Trustees as Shareholders

- Appoint directors
- Remain sufficiently informed in order to
  - Review performance of company
  - Make prudent decisions when shareholder approval is required

## b. Trustee Directors

- Shareholders have power to appoint directors
- Like any other shareholder trustees can appoint people from their own ranks to the Board
- Duty as directors to act in the best interests of the company

# Remuneration

- Position of trustee is gratuitous unless Trust Deed provides otherwise
- Where remuneration is payable must be reasonable
- Trustees should seek advice on appropriate level of remuneration