

# Policy: Trustee Investment in Continuing Matters

## Purpose

To ensure continuing matters adopt an investment strategy that is consistent with the Prudent Person Principle provisions of the [Trustee Act 1925](#). Subsequent to meeting the cashflow needs of the Trust, investment risks are recognised, assessed and managed with diversification in order to maintain or increase the value of the investment portfolio.

## Policy statement

### Types of Trusts

The types of Trusts that are determined as continuing matters and subject to investment review are –

Trusts	Estates	Powers of Attorney
Damages Trusts	Continuing Fund	Active
Work Cover Trusts	Discretionary Trusts	
Original Trusts	Life Interests	
Transferred Trusts	Transferred Trusts	
Superannuation and Settlement Trusts		
Incapable		

NSW Trustee & Guardian must consider any direction contained in the trust instrument or will with the need to balance the interests of an income beneficiary against the remainder beneficiary or a specifically named preferred beneficiary.

### Next of Kin Unknown Matters

Where there is real estate or equities over \$100,000 and entitlement is not established, or persons entitled cannot be located, the matter is reviewed by the financial planning manager for assessment and to provide recommendations to either retain or for the sale of assets. An annual review is conducted until entitlement is established.

### Excluded Matters

Continuing matters that are not subject to review are Right of Residence and Life Interest matters where a property is the only asset and the Resident or Life Tenant resides in the property.

### Direct Investments

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Where matters have direct investments such as: real estate, listed or unlisted equities, works of art etc. the specific circumstances are considered to determine whether these investments are sold or retained even though the value of the direct investments may exceed a prudent asset allocation.

Direct investments on termination of a trust are usually transferrable in specie. When the final beneficiary has expressed a desire to take a transfer on the termination of the trust, or if the investment is performing it may be appropriate to retain the direct investments.

Wherever possible, the views of the beneficiary or remainder beneficiaries (in discretionary trust and life interest matters) should be sought.

### Financial Planning – Prudent Person Principle Review

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For continuing matters, the investment of funds requires a financial plan (Statement of Advice) where investments are reviewed in accordance with the NSW Trustee & Guardian cashflow strategy and the prudent person principle. The Statement of Advice provides a diversified investment portfolio based upon the circumstances, term and purpose of the matter.

The [Trustee Act 1925](#) requires an annual review to ensure the investments remain appropriate and continue to meet the needs of the matter and satisfy the prudent person principle.

### Life Tenancies

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Where an estate property is occupied by a Life Tenant, the property is included in the annual investment review. The estate property will form part growth asset allocation for the total investment portfolio under review.

The independent valuation obtained during the initial administration is used for the purposes of the initial investment review with subsequent reviews requiring valuations every 3 years.

### Life Interests

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The major challenge for life interest matters is the need to balance the interests of the income beneficiary against the remainder beneficiary.

The expectation of the life interest is that income distributions are generally sustained although minor fluctuations may occur and over time, distributions may increase. In these matters, consideration to the terms of the life interest is required and in particular as to whether or not the trustee is able to distribute capital to the life interest.

The remainder beneficiaries will have an expectation that the capital is preserved and increases with inflation.

The financial planning manager reviews life interest matters to assess the investment strategy with the competing interests. Consideration to the current global monetary policies adopted by central banks and the impact and effect on income and capital distributions is required by the manager.

## Scope

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Financial Planning Branch  
Financial Planners  
Trustee Services

## Legislative context

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[Trustee Act 1925](#)

[NSW Trustee and Guardian Act 2009](#)

## Document information

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<b>Title:</b>	Trustee Investment in Continuing Matters Policy
<b>Owner:</b>	Senior Manager, Financial Planning
<b>Approver:</b>	Director Legal & Professional Services
<b>Date of Effect:</b>	3 September 2020