New South Wales

Protected Estates Amendment (Investment) Bill 2000

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Protected Estates Act 1983* as follows:

(a) to enable the Protective Commissioner to establish one or more investment funds for the purpose of collectively investing money of protected persons,

(b) to enable income from an investment fund to be applied to the costs associated with the Protective Commissioner's functions,

(c) to require the Protective Commissioner to submit a budget to the Director-General of the Attorney General's Department regarding the costs related to the exercise of the Protective Commissioner's functions,

(d) to enable the Protective Commissioner to delegate the management of an investment fund to a suitably qualified person,

(e) to enable the Protective Commissioner to invest money forming part of a protected person's estate in any real estate in addition to being able to invest such money in accordance with the *Trustee Act 1925*,

(f) to enable the Protective Commissioner to otherwise invest money forming part of a protected person's estate in a form of investment preferred by the protected person,

(g) to enable the Protective Commissioner, after the death of a protected person, to complete certain transactions to which a protected person was a party,

(h) to absolve the Protective Commissioner, and any person acting under the direction of the Protective Commissioner, from personal liability for anything done or omitted in good faith for the purpose of executing the Principal Act or any other Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Protected Estates Act 1983* set out in Schedule 1.

Schedule 1 Amendments

Investment funds

Schedule 1 [13] substitutes Part 4 of the Principal Act. The proposed Part (proposed sections 52–59) provides for the matters referred to in paragraphs (a)–(c) of the overview above.

Proposed section 52 retains the provisions of the current section 53 of the Act, namely that balances to the credit of all current accounts in the trust fund form one common fund, unless a current account is jointly held by the Protective Commissioner and another person and that other person objects to the balance in that account forming part of the common fund.

Proposed section 53 enables money in the trust fund to be invested:

(a) in accordance with the *Trustee Act 1925*, in any investment, or

(b) for an amount not exceeding $1,000,000, on deposit with the Treasurer for up to 12 months.

Proposed section 54 requires the Protective Commissioner to establish a reserve fund and one or more investment funds for the purpose of investing money as referred to in proposed section 53 (a) and enables the Protective Commissioner to transfer money between the trust fund and an investment fund. The proposed section also enables the Protective Commissioner to determine the classes of investments in which money in an investment fund may be invested and to vary those classes from time to time. The Protective Commissioner is to keep an account with respect to each investment fund.

Proposed section 55 provides for the application of money in an investment fund for the following purposes:

(a) the making of investments authorised by the proposed Part,
(b) payments to the reserve fund,
(c) payment of the Protective Commissioner's costs incurred in the exercise of the Protective Commissioner's functions under the Principal Act and as Public Guardian under the *Guardianship Act 1987*,
(d) the making of periodic payments to the current accounts from which the fund is derived.

The amount for the payment of the Protective Commissioner's costs is not to exceed an amount approved by the Director-General of the Attorney General's Department having regard to the Protective Commissioner's current budget. Any income, profit or loss in an investment account after such payments are made is to be divided between each current account. Profits and losses are to be divided in proportion to the amounts invested while income is to be divided in proportion to the amounts invested and the period of investment.

Proposed section 56 requires the Protective Commissioner to value each investment fund on the first business day of each month and at such other times as the Protective Commissioner considers necessary given the nature of the particular fund.

Proposed section 57 provides that money in the reserve fund is to be applied for the payment to an investment fund of an amount equivalent to any loss on realisation of any investment made from that fund as well as the payment of any associated costs.

Proposed section 58 requires the Protective Commissioner, when directed to do so by the Director-General of the Attorney General's Department to submit a budget to the Director-General in respect of costs (including projected costs) incurred by the Protective Commissioner in the exercise of the Protective Commissioner's functions under the Principal Act and as Public Guardian under the *Guardianship Act 1987*.

Proposed section 59 retains the power currently set out in section 60 of the Principal Act enabling the Protective Commissioner to make advances from the trust fund for any purpose of or relating to any estate being managed by the Protective Commissioner.

Schedule 1 [1], **[5]**, **[7]**, **[14]** and **[16]** make consequential amendments.

Schedule 1 [3] amends section 5A of the Principal Act to enable the Protective Commissioner to delegate the Protective Commissioner's functions in relation to investment funds to a suitably qualified person.

Investment of funds in individual estates

Schedule 1 [8], **[9]**, **[10]** and **[11]** amend section 28 of the Principal Act to enable the Protective Commissioner to invest money forming part of a protected person's estate in any real estate in addition to being able to invest such money in accordance with the *Trustee Act 1925*, and to otherwise invest money forming part of a protected person's estate in a form of investment preferred by the protected person.

Transitional provisions

Schedule 1 [18] and **[19]** enable the making of regulations of a savings or transitional nature and contain savings and transitional provisions consequent on the commencement of Schedule 1 [13] to the proposed Act.

Other amendments

Schedule 1 [12] amends section 42 of the Principal Act to enable the Protective Commissioner, after the death of a protected person, to complete certain transactions to which a protected person was a party.

Schedule 1 [17] inserts proposed section 83 in the Principal Act absolving the Protective Commissioner, and any person acting under the direction of the Protective Commissioner, from personal liability for anything done or omitted in good faith for the purpose of executing the Principal Act or any other Act.

Schedule 1 [2], **[4]**, **[6]** and **[15]** make amendments by way of statute law revision.