



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.

First print



New South Wales

Protected Estates Amendment (Investment) Bill 2000

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New South Wales

Protected Estates Amendment (Investment) Bill 2000

No. , 2000

A Bill for

An Act to amend the *Protected Estates Act 1983* in relation to the Protective Commissioner's powers of investment; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Protected Estates Amendment (Investment) Act 2000</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Protected Estates Act 1983 No 179	7
The <i>Protected Estates Act 1983</i> is amended as set out in Schedule 1.	8

Schedule 1 Amendments

	1
(Section 3)	2
[1] Section 4 Definitions	3
Insert in alphabetical order:	4
<i>costs</i> includes fees, charges, disbursements, expenses and remuneration.	5 6
<i>Director-General</i> means the Director-General of the Attorney General's Department.	7 8
<i>investment fund</i> means an investment fund established under section 54.	9 10
<i>reserve fund</i> means a reserve fund established under section 54.	11 12
[2] Section 5 Protective Commissioner and other officers	13
Omit " <i>Public Service Act 1979</i> " from section 5 (1) and (2).	14
Insert instead " <i>Public Sector Management Act 1988</i> ".	15
[3] Section 5A Delegation	16
Insert at the end of the section:	17
(2) Without limiting subsection (1), the Protective Commissioner may delegate to any suitably qualified person the Protective Commissioner's functions in relation to investment funds.	18 19 20
[4] Section 5B Protective Commissioner to be corporation sole for certain purposes	21 22
Omit "section 58" from section 5B (1) (a). Insert instead "this Act".	23
[5] Section 10 Witness may be cross-examined	24
Omit "and expenses" from section 10 (2).	25

[6] Section 27 Payments into trust fund	1
Omit “Except as provided by section 8 (5), the” from section 27 (1).	2
Insert instead “The”.	3
[7] Section 28 Disposition of money in hands of Protective Commissioner	4
Omit “, charges and expenses” from section 28 (1) (d).	5
[8] Section 28 (1) (g)	6
Omit the paragraph. Insert instead:	7
(g) the investment of money, being money not required for	8
the time being for a purpose referred to in paragraphs	9
(a)–(f) above:	10
(i) in any form of investment, or	11
(ii) if the Protective Commissioner is aware that the	12
protected person prefers a particular form of	13
investment, in the form of investment preferred	14
by that person.	15
[9] Section 28 (1A)	16
Insert after section 28 (1):	17
(1A) The power to invest money under subsection (1) (g) (i) is to be	18
exercised in accordance with the <i>Trustee Act 1925</i> .	19
[10] Section 28 (2)	20
Omit “The Protective Commissioner shall not invest any money comprising	21
part of the estate of a protected person in the purchase of real estate as	22
referred to in subsection (1), unless such a purchase”.	23
Insert instead “Despite section 14DA of the <i>Trustee Act 1925</i> , the	24
Protective Commissioner may purchase real estate under subsection (1) (g)	25
(i) if it”.	26

[11] Section 28 (3)	1
Insert after section 28 (2):	2
(3) For the purpose of ascertaining whether or not a protected person prefers a particular form of investment, the Protective Commissioner may have regard to the following matters:	3
(a) any investments made by the protected person before his or her estate became subject to management under this Act, being investments of which the Protective Commissioner is aware,	4
(b) any views expressed to the Protective Commissioner by the protected person regarding his or her preferred forms of investment,	5
(c) any statements made to the Protective Commissioner by relatives of the protected person, and verified by statutory declaration, as to the views expressed to them by the protected person, either before or after his or her estate became subject to management under this Act, regarding his or her preferred forms of investment.	6
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[12] Section 42 Death of protected person	19
Insert at the end of the section:	20
(2) If a protected person dies, the Protective Commissioner may take such steps as are necessary to complete any transaction:	21
(a) that relates to the protected person's estate, and	22
(b) that was commenced before the death of the protected person, and	23
(c) to which the protected person was a party immediately before the protected person's death.	24
(3) Subsection (2) does not empower the Protective Commissioner to do anything in contravention of:	25
(a) the directions of any executor, administrator or trustee of the protected person's estate, or	26
(b) any court order.	27
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[13] Part 4	1
Omit the Part. Insert instead:	2
Part 4 Investment of trust fund	3
52 Trust fund to form common fund	4
(1) Balances to the credit of all current accounts in the trust fund are, for the purposes of investment, one common fund.	5 6
(2) The balance of a current account does not form part of the common fund if:	7 8
(a) the current account is held by the Protective Commissioner jointly with another person, and	9 10
(b) the other person has objected in writing to it forming part of the common fund.	11 12
53 Investment of trust fund	13
Money in the trust fund may be invested:	14
(a) in accordance with the <i>Trustee Act 1925</i> , in any investment, or	15 16
(b) to the extent of not more than \$1,000,000 at any one time, on deposit with the Treasurer for a period or periods not exceeding 12 months.	17 18 19
54 Establishment of investment funds and reserve fund	20
(1) For the purpose of investing money in accordance with section 53 (a), the Protective Commissioner is to establish:	21 22
(a) one or more investment funds, and	23
(b) a reserve fund.	24
(2) The Protective Commissioner may from time to time transfer money from the trust fund to an investment fund or from an investment fund to the trust fund.	25 26 27

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| (3) The Protective Commissioner may determine the classes of investments in which money in an investment fund may be invested and may vary the classes from time to time. | 1
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| (4) The Protective Commissioner is to keep an account for each investment fund showing the amounts that are from time to time to the credit of each current account from which the fund is derived. | 4
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| 55 Application of money in investment fund | 8 |
| (1) Money in an investment fund may be applied for the following purposes: | 9
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| (a) the making of investments authorised by this Part, | 11 |
| (b) payment to the reserve fund of such amount as the Protective Commissioner may from time to time determine, | 12
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| (c) payment of such amount as the Protective Commissioner may from time to time determine in relation to the costs incurred by the Protective Commissioner: | 15
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| (i) in the exercise of the Protective Commissioner's functions under this Act, and | 19
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| (ii) in the exercise of the Protective Commissioner's functions as Public Guardian under the <i>Guardianship Act 1987</i> , | 21
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| (d) the making of periodic payments to the current accounts from which the fund is derived. | 24
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| (2) The amount referred to in subsection (1) (c) must not exceed such amount as is approved by the Director-General having regard to the Protective Commissioner's current budget. | 26
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| (3) For the purpose of making payments referred to in subsection (1) (d): | 29
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| (a) any income arising from an investment fund must be periodically divided between each current account in the trust fund in proportion to the amounts invested from those accounts and the period of each investment, and | 31
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| (b) any profit or loss of a capital nature arising from that fund must be periodically divided between the current accounts in proportion to the amounts invested. | 35
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56	Valuation of investment funds	1
(1)	The Protective Commissioner is to value each investment fund (including the investments in which the fund is invested) as at the first business day of each named month and, if the Protective Commissioner thinks fit, as at such other times as may be appropriate according to the nature of the particular fund.	2 3 4 5 6 7
(2)	Investments in and withdrawals from an investment fund are to be effected on the basis of the most recent valuation under this section.	8 9 10
57	Application of money in reserve fund	11
	Money in the reserve fund may be applied for the following purposes:	12 13
(a)	payment to an investment fund of such amount as the Protective Commissioner may from time to time determine as the loss upon realisation of any investment made from that fund,	14 15 16 17
(b)	payment of such amount as the Protective Commissioner may from time to time determine as the costs incurred in protecting investments made from an investment fund.	18 19 20 21
58	Submission of budgets	22
(1)	Whenever directed to do so by the Director-General, the Protective Commissioner is to submit a budget to the Director-General in relation to the Protective Commissioner's costs, including projected costs, in connection with:	23 24 25 26
(a)	the exercise of the Protective Commissioner's functions under this Act, and	27 28
(b)	the exercise of the Protective Commissioner's functions as Public Guardian under the <i>Guardianship Act 1987</i> .	29 30

(2) The budget is to relate to such period, and include such information, as the Director-General directs.	1 2
59 Advances from trust fund	3
(1) The Protective Commissioner may make advances from the trust fund for the purposes of any estate being managed by the Protective Commissioner.	4 5 6
(2) Any advance bears interest at the rate fixed by the Protective Commissioner.	7 8
(3) The advance, and any interest on the advance, are a charge on the assets of the estate for whose purposes the advance is made.	9 10
(4) If the advance is applied towards the discharge of any debt or liability, the charge under subsection (3) ranks in the same order of priority as the debt or liability.	11 12 13
(5) Any interest received by the trust fund under this section is to be divided between each current account in proportion to the amounts of the advances.	14 15 16
[14] Section 66 Powers of Protective Commissioner as to property in New South Wales of incapable persons in reciprocating states	17 18
Omit “, charges and expenses” from section 66 (2) (a).	19
[15] Section 75 Sale by protected person may be set aside	20
Omit “(within the meaning of the <i>Mental Health Act 1958</i>)” from section 75 (1).	21 22
[16] Section 77 Costs may be paid out of estate	23
Omit “and expenses” from section 77 (1) and (3).	24

(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	1 2 3
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	4 5 6
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	7 8 9
Part 2	Provisions consequent on enactment of Protected Estates Amendment (Investment) Act 2000	10 11 12
2	Definition	13
	In this Part:	14
	<i>amending Act</i> means the <i>Protected Estates Amendment (Investment) Act 2000</i> .	15 16
3	Interest Account	17
	Any money to the credit of the Interest Account referred to in section 54 (as in force immediately before its repeal by the amending Act) is to be paid into the current accounts in the trust fund in proportion to the amounts invested from those accounts and the period of each investment.	18 19 20 21 22
4	Estates Guarantee and Reserve Account	23
	All money to the credit of the Estates Guarantee and Reserve Account referred to in section 55 (as in force immediately before its repeal by the amending Act) is to be paid into the reserve fund.	24 25 26 27
5	Investment of funds	28
	Pending the establishment of the first investment fund under Part 4 (as replaced by the amending Act), the trust fund is taken to be an investment fund.	29 30 31

6 Advances

Part 4 (as replaced by the amending Act) applies to and in respect of any advance made before the commencement of that Part in the same way as it applies to and in respect of any advance made after that commencement.

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