



New South Wales

# Public Trustee Corporation Bill 1997

## Explanatory note

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

### Overview of Bill

The objects of this Bill are:

- (a) to constitute the Public Trustee Corporation (the *Corporation*), and
- (b) to establish the Corporation as a statutory State owned corporation under the *State Owned Corporations Act 1989*, and
- (c) to confer on the Corporation certain powers, authorities, duties and functions (including functions as trustee, executor and administrator), and
- (d) to dissolve the Public Trust Office and to abolish the office of Public Trustee, and
- (e) to repeal the *Public Trustee Act 1913* and to amend other Acts.

A number of clauses contain bracketed notes in the headings, drawing attention ("cf") to equivalent or comparable (though not necessarily identical) provisions in the *Public Trustee Act 1913* ("PT Act"), the *Trustee Companies Act 1964* ("TC Act") and the *Trustee Companies Regulation 1994* ("TC Reg").

---

## Outline of provisions

### **Part 1 Preliminary**

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

**Clause 2** provides for the proposed Act to commence on a day or days to be appointed by proclamation. However, certain provisions commence on the date of assent, including transitional provisions for the identification of surpluses in funds that will be payable to the Consolidated Fund.

**Clause 3** defines certain words and expressions used in the proposed Act.

**Clause 4** provides that notes in the text of the Act do not form part of the Act.

### **Part 2 Constitution of Public Trustee Corporation**

**Clause 5** constitutes the Public Trustee Corporation.

**Clause 6** amends the *State Owned Corporations Act 1989* by inserting the name of the Corporation into Schedule 5. This has the result of making the Corporation a statutory State owned corporation. The clause also provides for the appointment of the staff director of the Corporation by the portfolio Minister on the recommendation of the Public Service Association.

### **Part 3 Objectives and functions of Public Trustee Corporation**

#### **Division 1 Objectives**

**Clause 7** sets out the objectives of the Corporation. These are a combination of the objectives set out in the *State Owned Corporations Act 1989* and objectives specially relevant to the Corporation.

#### **Division 2 Functions**

**Clause 8** is a general provision conferring functions on the Corporation.



**Clause 9** sets out in more detail important functions of the Corporation, including its being appointed to act in various capacities, including those of trustee, executor, administrator, agent and guardian. These capacities are described as *trust capacities*. The Corporation is also given express power to prepare wills, and to carry out professional services in connection with probate and administration.

**Clause 10** enables the Corporation to carry out legal services if authorised by the portfolio Minister to do so or if it can legally do so in any event. Legal services so authorised and carried out for fee, gain or reward will have to be provided by or under appropriate supervision.

**Clause 11** makes it clear that the Corporation can decline to accept any trust matter. However, it must not decline a trust matter on the ground only of the value of the trust property or estate concerned.

**Clause 12** contains a number of provisions that deal with the corporate nature of the Corporation.

**Clause 13** makes provision for the liability of the Corporation and its officers in various capacities. Broadly, this liability in the context of new trust matters is the same as that for trustee companies. In the context of old trust matters, the relevant provisions of the *Public Trustee Act 1913* in this regard are continued. Otherwise, officers acting in good faith are protected personally.

**Clause 14** recognises that the Corporation is subject to ministerial directions under the *State Owned Corporations Act 1989*. However, it is made clear that the power of direction does not apply in relation to a particular trust matter. A Minister is not to be treated as a director through giving such directions or for other reasons. Directors and other officers are protected from liability when complying with a ministerial direction.

### **Division 3      Functions as trustee**

**Clause 15** provides specific authorisation for the Corporation to be appointed as a trustee. This supplements the general law, under which corporations are capable of being appointed trustees. The section also enables the Corporation to be appointed as sole trustee, even if originally there were two or more trustees.

**Clause 16** provides that if a person's consent is necessary for the appointment of a trustee, the Corporation can be appointed as trustee by order of the Supreme Court if the consent is not given.

#### **Division 4      Functions as executor or administrator**

**Clause 17** provides specific authorisation for the Corporation to be granted probate or administration of an estate.

**Clause 18** entitles the Corporation "as of right" to a grant of administration of the estate of a deceased person in certain circumstances.

**Clause 19** enables the Supreme Court, on application by an executor or administrator of an estate, to transfer administration of the estate to the Corporation.

**Clause 20** enables the Corporation to file an election to administer a small estate instead of obtaining probate or taking out administration. This applies to an estate whose value does not exceed that prescribed by clause 1 of Schedule 1 (currently \$50,000).

**Clause 21** provides an alternative method of dealing with small estates, under which the affairs of the estate can be finalised as if probate or administration had been granted. This applies to an estate whose value does not exceed that prescribed by clause 2 of Schedule 1 (currently \$10,000).

**Clause 22** empowers the Supreme Court to order administration of an estate by the Corporation in cases where there is reasonable ground to suppose that a person has died intestate leaving property in New South Wales.

**Clause 23** enables the Corporation to pay out money without requiring administration to be taken out. This applies to an amount not exceeding that prescribed by clause 3 of Schedule 1 (currently \$10,000).

#### **Division 5      General provisions**

**Clause 24** sets out general powers that the Corporation has when appointed or acting in a trust capacity.

**Clause 25** empowers the Corporation to pay money for a person under a legal disability (eg a person under the age of 18 years) to be applied for the past or future maintenance, education, advancement or benefit of the person.

**Clause 26** makes it clear that the Corporation can be appointed jointly in a trust capacity.

**Clause 27** provides that, if the Corporation and another person hold property jointly, they do so as joint tenants and not as tenants in common. One of the characteristics of joint tenancy is that on the death of a joint tenant, the interest of the deceased joint tenant will vest in the survivor or survivors.

**Clause 28** provides that the Corporation is not required to file accounts in relation to an estate, unless ordered to do so by the Supreme Court.



**Clause 29** provides that a bond or security is not required from the Corporation when acting in a trust capacity.

**Clause 30** provides a mechanism for the Corporation to make a payment or deliver goods to residents or nationals of a foreign country by making the payment or delivery to a consular officer of the country.

**Clause 31** allows the Corporation to appoint agents.

## **Part 4 Investment**

### **Division 1 Classification of funds**

**Clause 32** classifies funds of the Corporation as either operational funds or trust funds.

### **Division 2 Investment of funds**

**Clause 33** provides for operational funds to be invested in accordance with the *Public Authorities (Financial Arrangements) Act 1987*.

**Clause 34** provides that trust funds are to be invested in a manner authorised by the trust instrument, or in a manner in which trustees can lawfully invest trust funds, or in a common fund established under the proposed Act (see clause 35).

### **Division 3 Common funds**

**Clause 35** empowers the Corporation to establish one or more common funds. Money may be paid into a common fund from one or more estates or clients.

**Clause 36** provides that a common fund may include only money received in one or more trust capacities and money derived from the application or investment of the common fund. Money cannot be paid into a common fund if the relevant trust instrument expressly forbids this.

**Clause 37** enables the Corporation to make rules relating to the nature, management and operation of each common fund. The rules are to be available for public inspection.

**Clause 38** provides that investments of money in a common fund are not to be made in the name of a particular matter or person, but that a separate account is to be kept for each such matter or person.

**Clause 39** contains provisions for the operation of a common fund.



**Clause 40** regulates the withdrawal of money from a common fund.

**Clause 41** enables the investment of money in a common fund at the direction of the Supreme Court.

#### **Division 4      Original common fund**

**Clause 42** relates to the common fund set up under the *Public Trustee Act 1913*, and provides that Schedule 3 to the proposed Act applies to that fund, which is referred to in the proposed Act as the *original common fund*. The result is that the original common fund continues in operation for old matters, and potentially for new matters for a limited time. The provisions of Schedule 3 are essentially the same as those that regulated the original common fund under the *Public Trustee Act 1913*.

**Clause 43** makes it clear that, conversely, the provisions of Division 3 described above do not apply to the original common fund.

#### **Part 5      Commission, fees and costs**

**Clause 44** authorises the Corporation to charge commission and fees as permitted by Schedule 2 to the proposed Act. These are comparable to those chargeable by trustee companies.

**Clause 45** provides for the review of commission charged by the Corporation in terms comparable to those applying to trustee companies.

**Clause 46** provides for the review of fees charged by the Corporation in terms comparable to those applying to trustee companies.

**Clause 47** makes it clear that commission authorised by a trust or other instrument can be charged instead of the commission provided for by the proposed Act.

**Clause 48** authorises payment of the Corporation's costs in applying for probate or administration.

#### **Part 6      Transitional arrangements**

##### **Division 1      Dissolution of bodies and transfer of assets, rights and liabilities**

**Clause 49** contains definitions used in the proposed Division.

**Clause 50** abolishes the office of Public Trustee, the corporation sole constituted by the Public Trustee, and the Public Trust Office.

**Clause 51** transfers the general assets, rights and liabilities of the Public Trustee to the Corporation. The provisions of Schedule 4 are applied.

**Clause 52** authorises the making of a ministerial order, on or before the dissolution of the former corporation sole, for the purpose of transferring particular assets, rights and liabilities of the Public Trustee to the Ministerial Holding Corporation constituted under the *State Owned Corporations Act 1989* or to another person on behalf of the State. The provisions of Schedule 4 are applied.

**Clause 53** authorises the making of a ministerial order, during the period of 12 months after the dissolution of the former corporation sole, for the purpose of transferring particular assets, rights and liabilities of the Corporation to the Ministerial Holding Corporation or to another person on behalf of the State. The provisions of Schedule 4 are applied.

**Clause 54** gives effect to Schedule 5, which contains provisions relating to the transfer of staff of the Public Trust Office to the employment of the Corporation.

## **Division 2      Interest Suspense Account and Estates Guarantee and Reserve Account**

**Clause 55** contains definitions used in the proposed Division.

**Clause 56** provides that any amount determined by the Treasurer after consultation with the Minister and the Public Trustee to be surplus to the requirements of the Interest Suspense Account or the Estates Guarantee and Reserve Account as referred to in the *Public Trustee Act 1913* is to be paid to the Consolidated Fund. The clause ensures that any deficiencies in those accounts arising from such a payment are to be met from the Consolidated Fund.

## **Division 3      Repeal, amendment and other provisions**

**Clause 57** effects the repeal of the *Public Trustee Act 1913* and all regulations under that Act.

**Clause 58** gives effect to amendments set out in Schedule 6. Schedule 6 contains amendments to a number of Acts.

**Clause 59** gives effect to Schedule 7, which contains savings, transitional and other provisions.



## **Part 7      Miscellaneous**

**Clause 60** sets out a method of serving documents on the Corporation.

**Clause 61** enables evidence to be given by certificate in certain matters.

**Clause 62** requires persons who are subject to certain court orders to serve a copy of the order on the Corporation and to provide the Corporation with a statement of relevant information.

**Clause 63** re-enacts a provision contained in the *Public Trustee Act 1913* relating to real property vested in the Corporation that has escheated to the Crown. The proceeds of the sale of the property are payable to the Consolidated Fund, and the Corporation can convey the deceased's interest to the purchaser. Property of a person "escheats" to the Crown if the person dies without a will and without next of kin.

**Clause 64** obliges a person in possession of a deceased person's property that vests in the Corporation to inform the Corporation of the nature, extent and situation of the property.

**Clause 65** establishes a scheme of reciprocity with another jurisdiction in the case of a person (living in another jurisdiction) whose estate is being administered by the Corporation.

**Clause 66** establishes a scheme of reciprocity with another jurisdiction in the case of a person (living in New South Wales) whose estate is being administered by the Corporation.

**Clause 67** provides that if a will or other instrument directs that a particular solicitor or other professional is to act in the business of an estate being administered by the Corporation, the Corporation is exonerated from liability for anything done by the solicitor or other professional.

**Clause 68** prevents closure of an office of the Corporation without the prior approval of the voting shareholders and of the portfolio Minister.

**Clause 69** provides for offences under the proposed Act to be dealt with summarily before a Local Court.

**Clause 70** enables regulations to be made for the purposes of the proposed Act.

**Clause 71** requires the proposed Act to be reviewed within five years after it is assented to.



## Schedules

**Schedule 1** sets out the prescribed amounts by reference to which the Corporation can act in certain matters. These are currently the same as those applicable to the Public Trustee.

**Schedule 2** sets out the commission and fees that are chargeable by the Corporation. They are comparable to those chargeable by trustee companies.

**Schedule 3** sets out provisions applying to the *original common fund*, which is the common fund set up under the *Public Trustee Act 1913*. These provisions continue existing arrangements under that Act.

**Schedule 4** contains provisions consequential on the transfer of assets, rights and liabilities from the Public Trustee.

**Schedule 5** contains provisions dealing with staff of the Public Trust Office. Staff are transferred to the employment of the Corporation. Conditions of employment are preserved until duly changed under any Act or law. Schedule 4 of the *State Owned Corporations Act 1989* is invoked. That Schedule continues superannuation arrangements for existing staff, protects leave, and (for three years) allows existing staff who were public servants to apply for and be appointed to positions in the Public Service, with protection against GREAT appeals.

**Schedule 6** amends a number of Acts. Many of the amendments simply replace references to the Public Trustee with references to the Corporation or the Chief Executive Officer of the Corporation, as appropriate. The *Ombudsman Act 1974* is amended to exclude the Corporation from that Act. The *Trustee Companies Act 1964* is amended to set out in detail the power of a trustee company to elect to administer an estate in terms that are similar to those that apply to the Corporation, and allows the trustee company (as may the Corporation) to charge a fixed fee for administering an estate under election.

**Schedule 7** contains savings, transitional and other provisions, and empowers regulations to be made for this purpose. The Schedule generally preserves the effect of acts, matters and things done or being done under the *Public Trustee Act 1913* before its repeal by the proposed Act, and requires references to the Public Trustee in other instruments to be read as or as including references to the Corporation. The Schedule continues the "guarantee" under section 37 of the *Public Trustee Act 1913* in relation to existing matters. The Schedule provides that the holder of the abolished office of Public Trustee is entitled to compensation as agreed with the Attorney General or as determined by the Statutory and Other Offices Remuneration Tribunal.



New South Wales

# Public Trustee Corporation Bill 1997

## Contents

	Page
<b>Part 1 Preliminary</b>	
1 Name of Act	2
2 Commencement	2
3 Definitions	2
4 Notes	3
<b>Part 2 Constitution of Public Trustee Corporation</b>	
5 Constitution of Public Trustee Corporation	4
6 Establishment of Corporation as statutory SOC and selection of staff director	4

---

	Page
<b>Part 3 Objectives and functions of Public Trustee Corporation</b>	
<b>Division 1 Objectives</b>	
7 Objectives of Corporation	5
<b>Division 2 Functions</b>	
8 Functions of Corporation generally	6
9 Principal and other functions of Corporation	6
10 Functions involving provision of legal services	7
11 Power to decline	7
12 Provisions relating to corporate status of Corporation	8
13 Liability of Corporation and officers	8
14 Ministerial directions	9
<b>Division 3 Functions as trustee</b>	
15 Appointment as trustee	9
16 Refusal of consent to appoint Corporation	9
<b>Division 4 Functions as executor or administrator</b>	
17 Grant of probate or administration	10
18 Grant of administration as of right	10
19 Transfer of administration to Corporation	11
20 Election by Corporation to administer small estates	12
21 Limited administration of small estates by Corporation	15
22 Administration of estates in case of supposed deaths	16
23 Payment of money by Corporation without grant of administration	17
<b>Division 5 General provisions</b>	
24 General powers of Corporation when acting in a trust capacity	18
25 Maintenance of beneficiary under disability	20
26 Joint appointments	21
27 Property vested jointly	21
28 Corporation not required to file accounts	21
29 No bond by Corporation	22
30 Payments to foreigners	22
31 Agents	22

---



---

	Page
<b>Part 4 Investment</b>	
<b>Division 1 Classification of funds</b>	
32 Classification of funds	23
<b>Division 2 Investment of funds</b>	
33 Investment of operational funds	23
34 Investment of trust funds	23
<b>Division 3 Common funds</b>	
35 Power to establish common funds	24
36 Limitation on money in common fund	24
37 Rules for each common fund	24
38 Separate accounts	25
39 Operation of common funds	25
40 Power to make advances from common fund	26
41 Investment in common fund by Supreme Court	27
<b>Division 4 Original common fund</b>	
42 Original common fund	27
43 Division 3 not applicable to original common fund	27

---

<b>Part 5 Commission, fees and costs</b>	
44 Commission and fees	28
45 Review of commission	28
46 Review of fees	28
47 Payment of commission by direction	28
48 Costs in applications	29

---

<b>Part 6 Transitional arrangements</b>	
<b>Division 1 Dissolution of bodies and transfer of assets, rights and liabilities</b>	
49 Definitions	30

---

Public Trustee Corporation Bill 1997

Contents

---

	Page
50 Abolition of office of Public Trustee and dissolution of corporation sole and Public Trust Office	30
51 Transfer of general assets, rights and liabilities of Public Trustee	31
52 Transfer of specified assets, rights and liabilities to Ministerial Holding Corporation or other person	31
53 Transfer of assets, rights and liabilities of Corporation	31
54 Transfer of staff	32
 <b>Division 2 Interest Suspense Account and Estates Guarantee and Reserve Account</b>	
55 Definitions	32
56 Surpluses	32
 <b>Division 3 Repeal, amendment and other provisions</b>	
57 Repeal of Public Trustee Act 1913 No 19 and regulations	32
58 Amendment of Acts	33
59 Savings, transitional and other provisions	33

---

<b>Part 7 Miscellaneous</b>	
60 Service of documents on Corporation	34
61 Certificate evidence	34
62 Service of orders on Corporation	35
63 Escheat	35
64 Disclosure of property to Corporation	36
65 Reciprocity with other jurisdictions: deceased domiciled elsewhere	36
66 Reciprocity with other jurisdictions: deceased domiciled in NSW	37
67 Solicitors and other professionals	37
68 Closure of offices	38
69 Proceedings for offences	38
70 Regulations	38
71 Review of Act	38

Public Trustee Corporation Bill 1997

Contents

---

	Page
<b>Schedules</b>	
1 Prescribed amounts	40
2 Commission and fees	41
3 Original common fund	49
4 Transfer of assets, rights and liabilities	56
5 Transfer of staff	59
6 Amendment of Acts	61
7 Savings, transitional and other provisions	79





New South Wales

## Public Trustee Corporation Bill 1997

No , 1997

---

### A Bill for

An Act to establish the Public Trustee Corporation as a statutory State owned corporation; to confer on the Corporation certain powers, authorities, duties and functions; to dissolve the Public Trust Office and abolish the office of Public Trustee; to repeal the *Public Trustee Act 1913*; to amend the *Wills, Probate and Administration Act 1898*, the *Trustee Companies Act 1964* and certain other Acts; and for other purposes.

---

The Legislature of New South Wales enacts:

## Part 1        Preliminary

### 1    Name of Act

This Act is the *Public Trustee Corporation Act 1997*.

### 2    Commencement

5

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Part 1 and Division 2 of Part 6 commence on the date of assent to this Act.

### 3    Definitions

10

- (1) In this Act:

**board** means the board of directors of the Corporation.

**commencing date** means the date on which a provision of Part 3 first commences.

**Corporation** means the Public Trustee Corporation constituted by this Act. 15

**cut-off date** means a date appointed by proclamation as the cut-off date for the purposes of this Act, being a date that is the commencing date or a later date.

**disability** includes a disability by being a minor or a mentally incapacitated person. 20

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**legal services** includes general legal work or probate work within the meaning of section 48E of the *Legal Profession Act 1987*. 25

**management** of a trust matter includes administration of an estate.

**mortgage** includes a charge.

**officer** of the Corporation includes the Chief Executive Officer or a director, member of staff or agent of the Corporation. 30

---

***original common fund*** means the common fund in existence under section 36A of the *Public Trustee Act 1913* immediately before the commencing date.

***Public Trustee*** means the Public Trustee under the *Public Trustee Act 1913*.

5

***trust capacity*** means any of the capacities specified in section 9 (1) (a).

***trust instrument*** means the will, settlement or other instrument (if any) establishing or regulating the trust or other arrangement giving rise to a trust capacity or to an appointment to a trust capacity.

10

***trust matter*** means any trust, estate, fund, asset, agency or affairs.

- (2) Except in so far as the context or subject-matter otherwise indicates or requires, words and expressions used in this Act have the same meanings as in the following Acts:

15

- (a) *Wills, Probate and Administration Act 1898*,
- (b) *State Owned Corporations Act 1989*.

#### 4 Notes

Notes in the text of this Act do not form part of this Act.

20



## **Part 2            Constitution of Public Trustee Corporation**

### **5    Constitution of Public Trustee Corporation**

There is constituted by this Act a corporation with the corporate name of Public Trustee Corporation. 5

### **6    Establishment of Corporation as statutory SOC and selection of staff director**

- (1)    The *State Owned Corporations Act 1989* is amended by inserting in Schedule 5, in alphabetical order, the words "Public Trustee Corporation". 10

**Note.** The *State Owned Corporations Act 1989* contains many provisions that apply to the Public Trustee Corporation as a statutory State owned corporation. In particular, Part 3 contains provisions relating to its status, the application of the *Corporations Law*, the issue of shares to the Treasurer and another Minister, the board of directors, the chief executive officer, the employment of staff, the giving of directions by the portfolio Minister (including directions for the performance of non-commercial activities or the carrying out of public sector policies), the memorandum and articles of association, dividends and tax-equivalent payments, the sale or disposal of assets and legal capacity. Part 4 deals with the accountability of State owned corporations (including statements of corporate intent, annual reports and accounts). Part 5 deals with miscellaneous matters (including the duties and liabilities of directors and the application of public sector legislation). 15 20

- (2)    The staff director of the Corporation is to be selected by the portfolio Minister from members of the staff of the Corporation who are nominated for selection by the Public Service Association of New South Wales. 25

- (3)    The procedures for nominating members of the staff and for determining other matters relating to the selection process are to be determined by the regulations or (subject to any such regulations) by the voting shareholders. 30

**Note.** Section 20J (4) of the *State Owned Corporations Act 1989* provides for the method of selection of the staff director of a statutory SOC to be as specified in the Corporation's foundation charter (ie the Act by which the name of the SOC is inserted in Schedule 5 to the *State Owned Corporations Act 1989*). 35

---

## Part 3      Objectives and functions of Public Trustee Corporation

### Division 1   Objectives

#### 7   Objectives of Corporation

- (1)   The principal objectives of the Corporation are: 5
- (a)   to successfully develop, promote, conduct and otherwise participate in the business of providing a comprehensive service of estate and asset management, and
  - (b)   to be a successful business and, to this end:
    - (i)   to operate at least as efficiently as any comparable businesses, and 10
    - (ii)   to maximise the net worth of the State's investment in the Corporation, and
    - (iii)   without limiting this paragraph or paragraph (a), to be a successful participant (whether directly or indirectly) in any other business or activity that the Corporation determines is or may be of sound commercial benefit to the Corporation, and 15
  - (c)   to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and 20
  - (d)   where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*, and 25
  - (e)   to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.
- (2)   Each of the principal objectives of the Corporation is of equal importance. 30

- (3) Section 20E of the *State Owned Corporations Act 1989* does not apply with respect to the Corporation.

**Note.** That section deals with the principal objectives of statutory State owned corporations, which this section replaces.

## **Division 2   Functions**

5

### **8   Functions of Corporation generally**

The Corporation has the functions conferred or imposed on it by or under this or any other Act or law.

### **9   Principal and other functions of Corporation**

- (1) The principal functions of the Corporation are: 10
- (a) to manage trust matters, and accordingly to be appointed and act in any of the following capacities:
- (i) trustee,
- (ii) executor or administrator,
- (iii) agent or attorney, 15
- (iv) manager of the estate of any person,
- (v) guardian or receiver of the estate of a minor,
- (vi) receiver of any property, and
- (b) to prepare wills, and to carry out professional services in connection with: 20
- (i) wills, probate and administration, and
- (ii) without limiting the above, the administration of estates.
- (2) The Corporation may:
- (a) provide facilities or services (including the giving of advice) that are necessary, ancillary or incidental to its principal functions, and 25



- (b) conduct any business or activity (whether or not related to its principal functions) that it considers will further its objectives.
- (3) This section does not limit the functions of the Corporation apart from this section, but is subject to the provisions of this Act, the *State Owned Corporations Act 1989*, and any other Act or law. 5

#### 10 Functions involving provision of legal services

- (1) The Corporation may provide legal services, if:
  - (a) the Corporation is for the time being authorised to do so by the portfolio Minister under subsection (2), or 10
  - (b) the provision of those services by the Corporation would not constitute a breach of the *Legal Profession Act 1987*.
- (2) The portfolio Minister may, from time to time, authorise the Corporation to carry out any specified class or classes of legal services. Any such authorisation may be given generally or for limited circumstances. 15
- (3) Nothing in the *Legal Profession Act 1987* prevents the Corporation from providing legal services for the time being authorised under subsection (2), for fee, gain or reward or otherwise, so long as the services are provided by or under the supervision of a solicitor or other suitably qualified person. 20
- (4) Nothing in the *Legal Profession Act 1987* prevents the Corporation from advertising any legal services referred to in subsection (1) or otherwise holding itself out as qualified to carry out any such services. 25

#### 11 Power to decline (cf PT Act s 12 (3))

- (1) The Corporation may decline, either absolutely or except on conditions, to accept, or accept management of, any trust matter or to act in any trust capacity.
- (2) However, the Corporation must not decline to accept any trust matter, or to act in any trust capacity, on the ground only of the value of the trust property or estate concerned. 30

## **12 Provisions relating to corporate status of Corporation**

- (1) The Corporation may exercise any of its functions despite its incorporation or its corporate nature.
- (2) The Corporation has all the functions and liabilities of, and is entitled to the same rights and immunities as, and is subject to the control and orders of any court in the same way as, a private person acting in the same capacity. 5
- (3) If the Corporation is appointed or acts in a trust capacity, an officer of the Corporation specified or described by the board for the purpose may make any personal attendances required in any court or elsewhere and may discharge any personal duties on behalf of the Corporation. 10

## **13 Liability of Corporation and officers**

- (1) The Corporation and its officers have, from time to time, the same liability in relation to trust matters committed to the management of the Corporation on or after the commencing date as trustee companies and their officers have, from time to time, in relation to comparable matters. 15
- (2) Sections 45, 46 and 48 of the *Public Trustee Act 1913* continue to apply in relation to any trust matter committed to the management of the Public Trustee before the commencing date, as if references to the Public Trustee included references to the Corporation. 20
- (3) In any other case, anything done or omitted to be done by the Corporation or an officer of the Corporation does not, if it was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject an officer personally to any action, liability, claim or demand. 25
- (4) The protections conferred by this section are additional to any other protections that an officer has under any other Act or law. 30

---

**14 Ministerial directions**

- (1) The Corporation is subject to ministerial directions under the *State Owned Corporations Act 1989*.
- (2) However, the Corporation is not subject to ministerial direction by a Minister or Ministers, or by voting shareholders, in relation to any particular trust matter. 5
- (3) Neither the provisions of this section or of the *State Owned Corporations Act 1989* nor the exercise of ministerial powers in relation to the Corporation constitutes a Minister as a director of the Corporation or as a person who participates in the management of the Corporation. 10
- (4) An officer of the Corporation is not personally liable in any civil or criminal proceedings for anything done or omitted for the purpose of complying with a ministerial direction.

**Division 3 Functions as trustee**

15

**15 Appointment as trustee** (cf PT Act s 13)

- (1) Without affecting the *Trustee Act 1925* or any other Act or law, the Corporation may be appointed to be a trustee as an original, new or additional trustee.
- (2) The Corporation may be appointed as sole trustee, even though the trustees originally appointed were two or more, and despite the provisions of the trust instrument as to the number of trustees. 20
- (3) However, the Corporation must not be appointed as a trustee if the trust instrument contains a direction to the contrary.

**16 Refusal of consent to appoint Corporation** (cf PT Act s 17)

25

If, by the terms of a trust instrument, the consent of any person is necessary to the appointment of a trustee, and:

- (a) the person refuses to consent to the appointment of the Corporation as trustee, or



- (b) the person is under a disability or is absent from New South Wales,

the appointment of the Corporation may be made without that consent, if the Supreme Court so orders.

#### **Division 4   Functions as executor or administrator**

5

##### **17   Grant of probate or administration** (cf PT Act s 18 (1))

- (1) The Supreme Court may grant:
  - (a) probate of any will to the Corporation, or
  - (b) administration of any estate (whether for general, limited or special purposes) to the Corporation. 10
- (2) This section does not limit the generality of the powers or other functions of either the Supreme Court or the Corporation.

##### **18   Grant of administration as of right** (cf PT Act s 18 (1A))

- (1) The Corporation is entitled as of right to a grant of administration of the estate of a deceased person, if: 15
  - (a) the Corporation applies for administration of the estate of the deceased person, and
  - (b) the deceased person was domiciled in New South Wales or elsewhere and died intestate, leaving property in New South Wales, and 20
  - (c) administration of the deceased person's estate:
    - (i) has not been granted to any person, or
    - (ii) has been granted to some person (other than the Corporation) and the grant has been revoked or the person to whom the grant was made has died 25 without completing the administration of the estate.
- (2) However, if the Corporation and some other person severally apply for the administration of the deceased person's estate, the Supreme Court may grant administration of the estate to the Corporation or that other person, as the Court thinks fit. 30

- 
- (3) If the Corporation applies for administration of any such deceased person's estate:
- (a) it is not necessary for the Corporation to cite any person or to obtain or file the consent of any person to administration being granted to the Corporation, and 5
  - (b) the Supreme Court must not require the Corporation to cite any person or obtain or file any such consent.
- (4) Nothing in this section requires the citation or consent of the Corporation to the grant of administration to any other person.

**19 Transfer of administration to Corporation** (cf PT Act s 18 (2)) 10

- (1) The Supreme Court may make an order transferring an estate to the Corporation for administration, on application by an executor who has obtained probate or an administrator who has obtained administration. This subsection applies despite the existence of any other executor or administrator. 15
- (2) The Supreme Court may, in any such order, determine the extent to which the existing executor or executors or the existing administrator or administrators remain liable for any matters arising after the making of the order.
- (3) On the making of any such order: 20
- (a) the estate of the deceased person left unadministered, and all rights and obligations relating to the estate left unadministered, are transferred to the Corporation as executor or administrator, as the case may be, by force of this Act, and 25
  - (b) the Corporation is taken to have been appointed as executor or administrator accordingly, and
  - (c) the previous executor or executors or the previous administrator or administrators:
    - (i) remain liable for any acts or defaults before the making of the order, but 30
    - (ii) are not liable in respect of any act or default relating to the estate after the date of the order, except as determined by the Supreme Court, and

- (d) the Corporation is not liable for any acts or defaults of the previous executor or executors or the previous administrator or administrators.

**20 Election by Corporation to administer small estates**

(cf PT Act s 18A)

5

**(1) Testate estates**

The Corporation may, instead of obtaining probate (or administration with the will annexed), file in the prescribed registry an election to administer the property forming a deceased person's estate according to the provisions of the person's will, if:

10

- (a) the person has died testate, in or outside New South Wales, leaving property in New South Wales the gross value of which, as estimated by the Corporation, does not at the time of the election exceed such amount as may be prescribed by Schedule 1, and

15

- (b) no person has obtained probate or taken out administration with the will annexed, and

- (c) the Corporation is entitled to obtain probate or take out administration with the will annexed, and

- (d) the election sets out:

20

- (i) the name, residence and occupation (as far as then known to the Corporation) of the testator at the date of the testator's death, and

- (ii) particulars of the property forming the testator's estate, and

25

- (iii) the date of the testator's death as then known to the Corporation, and

- (e) the election states that, after due inquiries, the Corporation believes that the document annexed to the election is the testator's last will and that the will has been validly executed according to the law governing the execution of wills, and

30

- (f) the election is sealed with the Corporation's seal.



**(2) Intestate estates**

The Corporation may, instead of taking out administration (other than administration with the will annexed), file in the prescribed registry an election to administer the estate of a deceased person, if:

5

(a) the person has died intestate, in or outside New South Wales, leaving property in New South Wales the gross value of which, as estimated by the Corporation, does not at the time of the election exceed such amount as may be prescribed by Schedule 1, and

10

(b) no person has taken out administration, and

(c) the Corporation is entitled to take out administration (other than administration with the will annexed), and

(d) the election sets out:

(i) the name, residence and occupation (as far as then known to the Corporation) of the intestate at the date of the intestate's death, and

15

(ii) particulars of the property forming the intestate's estate, and

(iii) the date of the intestate's death as then known to the Corporation, and

20

(e) the election is sealed with the Corporation's seal.

**(3) Partially administered estate**

The Corporation may, instead of taking out administration *de bonis non*, file in the prescribed registry an election to administer the unadministered property forming part of the estate (the *original estate*) of a deceased person, if:

25

(a) a grant (the *original grant*) of probate or administration has been made in respect of the original estate, and

(b) the person to whom the original grant or any subsequent or substituted grant of probate was made has died leaving part of the original estate unadministered, and

30

(c) the gross value, as estimated by the Corporation, of so much of the part of the original estate so left unadministered as is within New South Wales does not at the time of the election exceed such amount as may be prescribed by Schedule 1, and

35

- (d) no person has, since the death of the last executor or administrator, taken out administration de bonis non in respect of the original estate, and
  - (e) the Corporation is entitled to take out administration de bonis non, and 5
  - (f) the election sets out:
    - (i) the fact of the original grant, and
    - (ii) the fact of the death of the executor or administrator, and
    - (iii) particulars of the property left unadministered, and 10
  - (g) the election is sealed with the Corporation's seal.
- (4) **Consequence of filing election**  
When an election is filed under:
- (a) subsection (1) or (2), the Corporation is taken to be the executor or administrator (as the case may be) in all respects as if probate or administration had been duly granted to the Corporation, or 15
  - (b) subsection (3), the Corporation is taken to be the administrator of so much of the original estate left unadministered as is within New South Wales in all respects as if administration de bonis non of the original estate had been duly granted to the Corporation. 20
- (5) **Newspaper advertisement**  
The Corporation is required to publish a notice that the Corporation has filed an election under this section. The notice is conclusive evidence that the Corporation is rightfully entitled to administer under this section. The notice is to be published in: 25
- (a) a newspaper circulating in the district where the deceased person resided, if the deceased person resided in New South Wales at the date of death, or 30
  - (b) a Sydney daily newspaper, in any other case.
- (6) **Estate afterwards found to be of higher value**  
If, after filing an election under this section, the gross value of the property to be administered exceeds such amount as may be prescribed by Schedule 1, the Corporation is required, as soon as practicable: 35

- 
- (a) to file in the prescribed registry a memorandum stating that fact and sealed with the Corporation's seal, and
- (b) to proceed in the ordinary manner to obtain probate or administration.
- (7) **Will found afterwards** 5  
The following provisions apply where, after an election is filed under this section, a later will or a will (as the case may be) is found:
- (a) The Corporation is required, as soon as practicable, to file in the prescribed registry a memorandum stating that fact and sealed with the Corporation's seal. 10
- (b) The Corporation automatically ceases to be executor or administrator when the memorandum is filed.
- (c) If the Corporation is entitled to obtain probate or administration, the Corporation may file a further election under this section (if entitled to do so) or proceed in the ordinary manner to obtain probate or administration. 15
- (d) If the Corporation is not entitled to obtain probate or administration, section 40D of the *Wills, Probate and Administration Act 1898* applies in all respects as if a grant of probate or administration to the Corporation had been revoked. 20
- (8) **Definition**  
In this section:
- prescribed registry*** means such registry of the Supreme Court as may be prescribed by rules of court of the Supreme Court for the purposes of this section. 25
- 21 Limited administration of small estates by Corporation**  
(cf PT Act s 34A)
- (1) This section applies where: 30
- (a) the net value as estimated by the Corporation of the estate of any deceased person does not exceed such amount as may be prescribed by Schedule 1, and
- (b) the Corporation has no knowledge of any application having been lodged for probate of the will or for the administration of the estate of the deceased person, and 35
-



- (c) the Corporation has given such notice by advertisement or otherwise as the Corporation considers appropriate that the Corporation proposes to act under this section.
  - (2) The Corporation may:
    - (a) sell, call in and convert into money the property of the estate of the deceased person, and 5
    - (b) pay the debts and liabilities of the deceased person of which the Corporation has notice, and
    - (c) deal with the residue,  
in all respects as if probate of the will or administration of the estate of the deceased person had been duly granted to the Corporation. 10
  - (3) If the Corporation is in possession of any will of the deceased person, the will is required to be deposited in the prescribed registry and is to be dealt with in accordance with section 30 of the *Wills, Probate and Administration Act 1898*. 15
  - (4) The Corporation is entitled to the same commission as the Corporation would have been entitled to if probate of the will or administration of the estate of the deceased person had been granted to the Corporation. The commission is a first charge on the estate. 20
  - (5) Neither the Consolidated Fund nor the Corporation nor any of the Corporation's officers is liable for any act or omission in good faith under the powers conferred on the Corporation under this section. 25
  - (6) In this section:  
*prescribed registry* means such registry of the Supreme Court as may be prescribed by rules of court of the Supreme Court for the purposes of this section.
- 22 Administration of estates in case of supposed deaths** 30  
(cf PT Act s 23)
- (1) If it is made to appear to the Supreme Court that there is reasonable ground to suppose that a person died in or outside New South Wales intestate, leaving property within New South Wales, the Court may order and empower the Corporation to administer the estate of the person, both real and personal. 35

- 
- (2) Every such order remains valid until revoked, and empowers the Corporation:
- (a) to collect, manage and administer the personal estate of the supposed deceased person, and
  - (b) to enter and receive the rents and profits from and otherwise manage the real estate of the person, and 5
  - (c) to pay and discharge the debts and liabilities of the person, in like manner as if the person were certainly dead and the Corporation had obtained a grant of probate or administration.
- (3) The Corporation must not proceed to any distribution of the assets of the supposed deceased person without an order of the Supreme Court specially authorising the Corporation to do so. 10
- (4) Nothing in this section affects the application of sections 40A–40C of the *Wills, Probate and Administration Act 1898* to or in respect of the Corporation. 15

**23 Payment of money by Corporation without grant of administration** (cf PT Act s 34C)

- (1) On the death of a person to whom a sum of money, not exceeding such amount as may be prescribed by Schedule 1, is payable by the Corporation, the Corporation may pay that sum or any part of it to a person who the Corporation considers is entitled to that sum or part, without requiring administration to be taken out in the estate of the deceased person. 20
- (2) A payment made in good faith under subsection (1) is valid against all persons. The Corporation is absolutely discharged from all liability in respect of all money so paid by the Corporation. 25
- (3) A person to whom money is paid under subsection (1) is liable to apply the money in the due course of administration. The Corporation may, if it thinks fit, without being liable to see to the application of the money, require that person to give sufficient security, by bond or otherwise, that the money will be so applied. 30
- (4) Nothing in this section affects any right of a person to claim or recover money paid under subsection (1) from a person other than the Corporation. 35

## **Division 5    General provisions**

### **24    General powers of Corporation when acting in a trust capacity** (cf PT Act s 35; TC Act s 15C)

- (1)    If the Corporation is appointed or acting in a trust capacity then, unless expressly prohibited by this or any other Act or by or under an instrument, it may at its discretion exercise the following powers (so far as relevant):
  - (a)    sell property by public auction or private contract, altogether or in parts, and subject to such conditions as the Corporation thinks fit, 5
  - (b)    postpone the sale, calling in and conversion of any property that the Corporation has a duty to sell, other than property that is of a wasting, speculative or reversionary nature, 10
  - (c)    exchange property or join in a partition of property, 15
  - (d)    lease property for a term not exceeding 10 years and give to a lessee an option of renewal if the aggregate duration of the lease and any such renewal does not exceed 10 years,
  - (e)    enter into any share-farming agreement for a period not exceeding 3 years, 20
  - (f)    for the purpose of preserving trust property:
    - (i)    borrow money on the security of property, and
    - (ii)    secure repayment of principal and interest by mortgage of property, with or without a power of sale, and 25
    - (iii)    enter into such covenants, provisions and agreements as may be agreed on by the Corporation and the mortgagee, and
    - (iv)    without affecting the generality of the foregoing, exercise the power to give any such security in respect of any debt or liability incurred before the Corporation's appointment, and 30
    - (v)    pay interest secured by any such mortgage or security out of the income or, if the income is insufficient, out of capital, 35



- 
- (g) repair property and charge the cost of those repairs either to capital or income or apportion the cost between capital and income as the Corporation may consider equitable,
  - (h) insure property against fire or accident,
  - (i) pay rates, taxes, assessments, insurance premiums, and other outgoings, 5
  - (j) bring or defend any action or other proceeding, and suffer judgment to go by default, or consent to any order or judgment in any such action or other proceeding, on such terms as the Corporation thinks fit, 10
  - (k) take proceedings to cause a person to be adjudicated a bankrupt or a company to be placed in liquidation, and vote or act by proxy at meetings of creditors or shareholders, whether the company is in liquidation or not,
  - (l) initiate criminal proceedings concerning property, 15
  - (m) pay, settle or compromise debts, obligations, costs and expenses,
  - (n) carry out contracts entered into before the Corporation's appointment in any relevant capacity,
  - (o) consult with and employ such persons as the Corporation thinks expedient for the purpose of advising or assisting the Corporation in the due administration of any trust vested in the Corporation and remunerate any such person in such manner as the Corporation thinks fit, 20
  - (p) do or omit all acts and things, and execute all instruments, necessary to carry into effect the functions of the Corporation. 25
- (2) The power under subsection (1) to pay costs and expenses authorises (in any case in which the Corporation is appointed trustee, executor or administrator of the estate of any deceased person either alone or jointly with any other person) the payment of: 30
- (a) the reasonable costs of the erection of a memorial or a tombstone over the grave of the deceased person, or
-

- (b) where the deceased person is cremated, the reasonable costs of a memorial or any arrangements made for the preservation of the ashes of the deceased person.
- (3) The powers conferred by this section are additional to and do not restrict any other powers of the Corporation. 5

## **25 Maintenance of beneficiary under disability**

- (1) If a beneficiary under a disability is entitled to money in the custody of the Corporation, the Corporation may, despite any law to the contrary, from time to time:
  - (a) pay any such money to such person as the Corporation thinks fit to be applied by the person for the past or future maintenance, education, advancement or benefit of the beneficiary (including for the reimbursement of expenses already paid in that connection), or 10
  - (b) so apply any such money. 15
- (2) The Corporation is not bound to see to the application of the money so paid to such a person.
- (3) The Corporation may, at any time and from time to time, apply to the Supreme Court:
  - (a) for directions as to the administration of any such money, or 20
  - (b) to vary directions already given, or
  - (c) to determine any matter relating to the administration of any such money.
- (4) Any such direction or determination, if given effect to by the Corporation, exonerates the Corporation from any claim or demand from any person at all. 25
- (5) Nothing in this section affects the *Protected Estates Act 1983*.
- (6) In this section:
  - beneficiary under a disability**, in relation to any money, means a person under a disability who, in the opinion of the Corporation, is unable to give a good discharge for the money, and includes a minor who is entitled to the money contingently on attaining an age specified or described in the instrument creating the entitlement. 30  
35

**26 Joint appointments**

- (1) Without affecting its capacity to be appointed and act alone in any trust capacity, the Corporation may be appointed and act jointly with any other person.
- (2) If the Corporation is appointed and acts jointly with any other person in any trust capacity, the following provisions have effect:
  - (a) The Corporation and the other person jointly have and may exercise all or any of the functions that the Corporation, if acting alone, would have had or might have exercised.
  - (b) All money under the control of the Corporation and the other person must be dealt with in the same manner as money under the control of the Corporation alone. 10
  - (c) The receipt in writing of the Corporation alone for any money, security or other personal property payable, transferable or deliverable to the Corporation and the other person jointly is a sufficient discharge for the money, security or property or its payment, transfer or delivery. 15  
The receipt effectually exonerates the person paying, transferring or delivering the money, security or property from seeing to its application or being answerable for any loss or misapplication of it. 20

**27 Property vested jointly (cf TC Act s 12)**

If any property is vested in the Corporation and any other person to the intent that they should hold the property jointly in any fiduciary capacity or as mortgagees, they are taken to be joint tenants of the property and not tenants in common unless otherwise expressly provided. 25

**28 Corporation not required to file accounts (cf PT Act s 35A)**

- (1) **Corporation acting alone**  
If the Corporation is acting alone in relation to any estate, the Corporation is not required to file or pass accounts relating to the estate, unless the Supreme Court (on application by or on behalf of some person interested in the estate) so orders. 30



If the Corporation is acting jointly with any other person in relation to any estate, the Corporation and the other person are not required to file or pass accounts relating to the estate, unless:

---

## Part 4 Investment

### Division 1 Classification of funds

#### 32 Classification of funds

- (1) For the purposes of this Act, the funds of or under the control of the Corporation are divided into: 5
  - (a) operational funds, and
  - (b) trust funds.
- (2) Operational funds are funds that are not trust funds.
- (3) Trust funds are funds that the Corporation holds in any trust capacity. 10
- (4) The Corporation may classify and reclassify funds as operational funds or trust funds. Any error in classification does not affect the validity of any investment.

### Division 2 Investment of funds

#### 33 Investment of operational funds 15

The Corporation may invest operational funds in accordance with the *Public Authorities (Financial Arrangements) Act 1987*.

#### 34 Investment of trust funds

- (1) Subject to this or any other Act and the terms of any relevant trust instrument or order of a court, the Corporation may invest trust funds: 20
  - (a) in a manner authorised by the trust instrument, or
  - (b) in a manner in which a trustee may lawfully invest trust money, or
  - (c) in a common fund. 25

- (2) The *Public Authorities (Financial Arrangements) Act 1987* is not applicable to the investment of trust funds.

### **Division 3    Common funds**

#### **35    Power to establish common funds** (cf TC Act s 16 (1))

- (1) The Corporation may establish and keep in its books one or more funds to be known as common funds. 5
- (2) If there is more than one common fund, each common fund must be allocated an appropriate distinguishing number.
- (3) The Corporation may from time to time, without liability for breach of trust, pay into or withdraw money from a common fund in accordance with this Act and the rules for the fund. 10
- (4) Without limitation, money may be so paid into a common fund in respect of one or more trust matters and in respect of one or more clients.
- (5) A common fund may be established on the basis of a unitised system or on any other appropriate basis. 15

#### **36    Limitation on money in common fund**

- (1) A common fund may include only the following money:
- (a) money received by the Corporation in one or more trust capacities, 20
- (b) money derived from the application or investment of money in the common fund.
- (2) Nothing in this Division authorises the inclusion in a common fund of any money the investment of which is expressly forbidden by the trust instrument (if any) or by the conditions subject to which the money is held by the Corporation. 25

#### **37    Rules for each common fund**

- (1) The Corporation may make rules, not inconsistent with this Act, relating to the nature, management and operation of a common fund, and in particular for or with respect to all or any of the following: 30
- (a) the class or classes of money that may be included in the fund,



- 
- (b) the class or classes of investment in which money to the credit of the fund may be invested,
  - (c) the manner in which interest is to be credited and apportioned,
  - (d) the manner in which profit or loss of a capital nature is to be determined and apportioned, 5
  - (e) the manner of entry to and exit from the fund,
  - (f) the determination, and the frequency of determination, of the value of investments in the fund,
  - (g) the determination of the method of valuation by reference to which investments in and withdrawals from the fund are to be made, 10
  - (h) the intervals at which, and the method by which, payment or allocation of the income arising from the fund is to be made. 15
- (2) The Corporation must not establish a common fund unless rules are in force for it.
  - (3) The Corporation may amend or replace the rules from time to time.
  - (4) Rules for an operating common fund must be available for public inspection at the offices of the Corporation during ordinary office hours. 20
- 38 Separate accounts** (cf TC Act s 16 (4))
- (1) Investments made from money forming part of a common fund must not be made in the name or on account of, and must not belong to, any trust matter or person. 25
  - (2) The Corporation must keep an account in its books showing at all times the current amount for the time being at credit in the common fund on account of each trust matter or person.
- 39 Operation of common funds** (cf TC Act s 16 (5)–(9)) 30
- (1) Any profits or losses on realisation of any investment in a common fund must be credited or debited (as the case may require) to the common fund and be received or borne proportionately by the several amounts constituting the common fund at the time of the realisation. 35
-

- (2) The Corporation may sell investments belonging to a common fund and may withdraw any of the money belonging to a common fund for any purpose of or relating to the exercise of its functions in a trust capacity.
- (3) The Corporation may, in its discretion, at any time withdraw from a common fund any amount at credit in the common fund on account of any trust matter, and invest the amount on the separate account of the matter. 5
- (4) Amounts so withdrawn from a common fund, as from the date of the withdrawal, cease to have any claim for interest or otherwise from the common fund. 10
- (5) If for the purpose of providing for any withdrawal any investment is realised, then, for the purposes of this section, that part of the money arising from the realisation that is equal to the amount of interest accrued on the investment is taken to be income of the common fund and the balance is taken to be capital. 15
- (6) The value of the investments in each common fund is to be determined by the Corporation as at a day to be determined in accordance with the rules for the fund, but at least once during each period of 6 months. 20
- (7) Investments in and withdrawals from a common fund are to be made in accordance with the rules for the common fund, but are to be effected on the basis of the value of the investments in the fund on the date of the last valuation made as referred to in subsection (6). 25
- (8) The Corporation must pay or allocate the income arising from a common fund proportionately to or among the trust matters or persons entitled to the income arising from the capital sums invested in the common fund according to the several sums so invested and the periods for which they remain so invested. This must occur at intervals determined in accordance with the rules for the fund, but at least once in each period of 6 months. 30

**40 Power to make advances from common fund** (cf TC Act s 17A)

- (1) The Corporation may make advances from a common fund for any purpose of or relating to any trust matter or persons in the course of managing it, having regard to the effect of the withdrawal on the fund as a whole. 35

- 
- (2) Any such sum advanced by the Corporation is to bear interest at a rate to be fixed by the Corporation.
- (3) Any such sum advanced and such interest on that sum are to be a charge on the assets of the trust matter or person or on the specific asset in respect of which the advance was made. 5
- (4) If any sum advanced by the Corporation under this section is applied in or 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.
- (5) Any sum advanced from a common fund under this section is, for the purposes of the rules for the fund, taken to be invested in a class of investments in which money to the credit of the fund may be invested. 10
- Note.** Section 37 (1) (b) envisages rules relating to the class or classes of investment in which money to the credit of a common fund may be invested. 15

**41 Investment in common fund by Supreme Court** (cf PT Act s 36G)

- (1) The Corporation must, within one day after the date of receipt by the Corporation, pay into a common fund such money as is forwarded to the Corporation for that purpose by a registrar of the Supreme Court. 20
- (2) The Corporation must repay to a registrar of the Supreme Court, on demand by the registrar, money paid into a common fund under subsection (1) together with interest on that money calculated in accordance with this Division.

**Division 4 Original common fund** 25

**42 Original common fund**

Schedule 3 has effect with respect to the original common fund.

**43 Division 3 not applicable to original common fund**

Nothing in Division 3 applies to the original common fund.



## **Part 5      Commission, fees and costs**

### **44    Commission and fees**

- (1)    The Corporation may impose commission and fees as permitted by Schedule 2.
- (2)    This section extends to allow the imposition of commission and fees with respect to functions conferred or imposed on the Corporation by or under any other Act or law.      5

### **45    Review of commission (cf TC Act s 18 (3))**

- (1)    If the Supreme Court is of opinion that the commission (or any part or the rate of the commission) charged by the Corporation in respect of any estate is excessive, the Court may of its own motion or on the application of any person interested in the estate, review the commission (or any part or the rate of the commission).      10
- (2)    On such a review, the Supreme Court may reduce the commission (or any part or the rate of the commission).      15

### **46    Review of fees (cf TC Act s 19D (3), (3A))**

- (1)    If the Supreme Court is of opinion that any fee charged by the Corporation in respect of any estate is excessive, the Court may of its own motion or on the application of any person interested in the estate, review the fee.      20
- (2)    On such a review, the Supreme Court may reduce the fee.
- (3)    If a fee is reduced under this section by more than 10 per cent, the Corporation is required to pay the costs of the review, unless the Supreme Court otherwise orders in special circumstances.      25
- (4)    This section does not apply to fees payable to an officer of the Corporation acting as a director of a corporation.

### **47    Payment of commission by direction (cf TC Act s 18 (5))**

Nothing in this Act prevents the payment to the Corporation of any commission that is by a will or other trust instrument directed to be paid either in addition to or instead of commission provided for by this Act.      30

---

**48 Costs in applications** (cf PT Act ss 43A, 43B)

- (1) The Corporation is entitled to payment of its costs (out of the estate concerned) in respect of any application by the Corporation for probate of any will or for administration of any estate of a deceased person.
- (2) The Corporation is entitled to those costs whether or not the application is successful.
- (3) The Corporation is not liable for the costs of any other person in relation to the application.

5

## Part 6      Transitional arrangements

### Division 1    Dissolution of bodies and transfer of assets, rights and liabilities

#### 49    Definitions

In this Division and in Schedule 4: 5

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**former corporation** means the Public Trustee as a corporation sole constituted under section 7 of the *Public Trustee Act 1913*. 10

**instrument** means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court. 15

**liabilities** means any liabilities, debts and obligations (whether present or future and whether vested or contingent).

**Ministerial Holding Corporation** means the Ministerial Holding Corporation constituted under section 37B of the *State Owned Corporations Act 1989*. 20

**rights** means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).

#### 50    Abolition of office of Public Trustee and dissolution of corporation sole and Public Trust Office

- (1)    The office of Public Trustee is abolished and the corporation sole constituted by section 7 of the *Public Trustee Act 1913* is dissolved. 25
- (2)    The Public Trust Office constituted by section 5 of the *Public Trustee Act 1913* is dissolved.



**51 Transfer of general assets, rights and liabilities of Public Trustee**

- (1) The general assets, rights and liabilities of the former corporation are transferred to the Public Trustee Corporation.
- (2) The general assets, rights and liabilities of the former corporation are:
  - (a) the assets, rights and liabilities of the former corporation immediately before its dissolution by this Act, and
  - (b) without limitation, any assets, rights and liabilities of the State and forming part of or relating to the undertaking of the Public Trust Office immediately before that dissolution,
    - except any assets, rights and liabilities transferred, on or before that dissolution, by an order under section 52.
- (3) Schedule 4 has effect with respect to the transfer under this section.

**52 Transfer of specified assets, rights and liabilities to Ministerial Holding Corporation or other person**

- (1) The Minister may, on or before the dissolution of the former corporation, by order in writing, transfer such assets, rights and liabilities of the former corporation as are specified or referred to in the order to the Ministerial Holding Corporation or to any other person on behalf of the State.
- (2) Schedule 4 has effect with respect to a transfer under this section.

**53 Transfer of assets, rights and liabilities of Corporation**

- (1) The Minister may, by order in writing, transfer such assets, rights and liabilities of the Corporation as:
  - (a) were transferred to the Corporation from the former corporation by operation of section 51, and
  - (b) are specified or referred to in the order,
 to the Ministerial Holding Corporation or to any other person on behalf of the State, but only during the period of 12 months after the dissolution of the former corporation.

- (2) Schedule 4 has effect with respect to a transfer under this section.

**54 Transfer of staff**

Schedule 5 has effect.

**Division 2 Interest Suspense Account and Estates  
Guarantee and Reserve Account**

5

**55 Definitions**

In this Division:

*Estates Guarantee and Reserve Account* means the Estates Guarantee and Reserve Account referred to in section 36B of the *Public Trustee Act 1913*.

10

*Interest Suspense Account* means the Interest Suspense Account referred to in section 36A (2) of the *Public Trustee Act 1913*.

**56 Surpluses**

- (1) Any amount determined by the Treasurer from time to time after consultation with the Minister and the Public Trustee before the commencing date to be surplus to the requirements of the Interest Suspense Account or the Estates Guarantee and Reserve Account is to be paid to the Consolidated Fund. 15
- (2) Any amounts paid to the Consolidated Fund under subsection (1) are freed and discharged from any trusts or other obligations. 20
- (3) However, any deficiencies in the Interest Suspense Account or the Estates Guarantee and Reserve Account that are attributable to the payment of any surplus under subsection (1) are to be met from the Consolidated Fund out of money provided by Parliament. 25

**Division 3 Repeal, amendment and other provisions**

**57 Repeal of Public Trustee Act 1913 No 19 and regulations**

- (1) The *Public Trustee Act 1913* is repealed.
- (2) All regulations in force under the *Public Trustee Act 1913* are repealed. 30

**58 Amendment of Acts**

Each Act specified in Schedule 6 is amended as set out in that Schedule.

**59 Savings, transitional and other provisions**

Schedule 7 has effect.

5



## Part 7      Miscellaneous

### 60    Service of documents on Corporation

- (1)    A document may be served on the Corporation by leaving it at, or by sending it by post to, the principal office of the Corporation.
- (2)    Nothing in this section affects the operation of any other Act or law, or any rules of court, that authorise a document to be served on the Corporation in any other manner.      5

### 61    Certificate evidence (cf PT Act s 50; TC Act s 32A)

- (1)    When the Corporation is executor or administrator, or is by law authorised to administer the estate of any deceased person, a certificate issued by the Corporation, certifying:      10
  - (a)    that the Corporation has taken out probate or administration, or is authorised to administer the estate, and
  - (b)    the date when the probate or administration was granted, or when and how the Corporation became authorised to administer the estate, and      15
  - (c)    the name, residence and occupation of the deceased person,is, despite any Act or other law to the contrary, to be accepted for all purposes as prima facie evidence (without production of any other proof):      20
  - (d)    of the death of the deceased person, and
  - (e)    of the appointment of the Corporation as executor or administrator, or of the right of the Corporation to administer the estate.      25
- (2)    If the Corporation is appointed and acts jointly with any other person (the *co-administrator*) as executor or administrator, a certificate issued by the Corporation, certifying:      30
  - (a)    that the Corporation and the co-administrator have taken out probate or administration, and
  - (b)    the date when the probate or administration was granted, and
  - (c)    the name, residence and occupation of the deceased person,      35

is, despite any Act or other law to the contrary, to be accepted for all purposes as prima facie evidence (without production of any other proof):

- (d) of the death of the deceased person, and
- (e) of the appointment of the Corporation and the co-administrator as executors or administrators. 5

**62 Service of orders on Corporation** (cf PT Act s 51)

- (1) This section applies when any court, except on application of the Corporation, makes any order:
    - (a) directing any payment to be made to the Corporation, or 10
    - (b) vesting property in the Corporation, or
    - (c) appointing the Corporation to be trustee, executor or administrator.
  - (2) It is the duty of the person who obtains the order, forthwith after obtaining it: 15
    - (a) to serve on the Corporation a copy of the order, and
    - (b) to deliver to the Corporation a statement of:
      - (i) the property affected by the order, and
      - (ii) the location of the property and by whom it is held, as far as is known to the person, and 20
      - (iii) such other information as the Corporation may reasonably require.
  - (3) A person failing to comply with the duty referred to in subsection (2) is guilty of an offence.
- Maximum penalty: 10 penalty units. 25
- (4) It is a defence if the person establishes that the failure was due to accident or was unavoidable.

**63 Escheat** (cf PT Act s 52)

- (1) If any real estate vested in the Corporation has escheated to the Crown, the net proceeds of sale of the real estate are to be paid to the Treasurer to be carried to the Consolidated Fund. 30

- (2) A conveyance by the Corporation of the real estate to the purchaser operates to pass the right, title and interest of the deceased intestate person to the purchaser.

**64 Disclosure of property to Corporation** (cf PT Act s 54)

- (1) If: 5
- (a) any corporation, association or person is in possession of any property of a deceased person, or
  - (b) there is any money or property to the credit of a deceased person in the books or accounts (or otherwise) of any corporation, association or person, or 10
  - (c) under any partnership or association a deceased person is entitled to a share in the assets of the partnership or association, or
  - (d) a deceased person is the registered proprietor of any shares in a corporation or association, or 15
  - (e) any person is indebted to a deceased person,
- then, if the property, money, shares or debts are vested in the Corporation, it is obligatory for the corporation, association or person to give notice forthwith to the Corporation of the nature, extent and situation of the property, money, shares or debts. 20
- (2) A corporation, association or person who wilfully fails to comply with the provisions of subsection (1) is liable to a penalty of 10 penalty units, recoverable as a debt due to the Corporation by civil action at the suit of the Corporation.

**65 Reciprocity with other jurisdictions: deceased domiciled elsewhere** (cf PT Act s 55) 25

- (1) If the Supreme Court has ordered the Corporation to collect the estate of any person:
- (a) who, at the time of the person's death, was domiciled in another jurisdiction, and 30
  - (b) whose estate in the other jurisdiction is being administered by a public authority of the other jurisdiction,



---

the Corporation may pay over to the public authority the balance of the proceeds of the person's estate in New South Wales, after payment of creditors and the commission, fees and other charges provided for under this Act.

- (2) The Corporation may make such a payment without any obligation to see to the application of the balance, and without incurring any liability in regard to its payment. 5

- (3) In this section:

*another jurisdiction* means another State or Territory or New Zealand. 10

*public authority* includes a person or body prescribed by the regulations.

**66 Reciprocity with other jurisdictions: deceased domiciled in NSW** (cf PT Act s 56)

- (1) If: 15

(a) the estate of any deceased person, who was domiciled in New South Wales at the time of the person's death, is being administered by the Corporation under an order of the Supreme Court, and

(b) a public authority of another jurisdiction has there obtained administration of the estate in the other jurisdiction, 20

the Corporation may receive from the public authority the balance of the proceeds of the estate in the other jurisdiction.

- (2) The balance, when so received, forms part of the estate of the deceased person, and is to be dealt with according to the law of New South Wales. 25

- (3) In this section:

*another jurisdiction* means another State or Territory or New Zealand.

*public authority* means a person or body prescribed by the regulations. 30

**67 Solicitors and other professionals** (cf PT Act s 57; TC Act s 33)

- (1) If by any will or settlement a testator or settlor directs that any particular professional is to conduct the legal or other business of his or her estate, and the Corporation is involved in the 35

administration of the estate the professional is entitled to act accordingly, but in any such case the Corporation is not liable for the negligence, malfeasance, misfeasance, nonfeasance or misconduct of the professional.

- (2) However, the professional may be removed by the Supreme Court on the application of the Corporation or any person interested in the estate on cause shown, and the Court may appoint any other person nominated by the Corporation to conduct the business. 5

- (3) In this section: 10  
*professional* includes any practising solicitor, accountant, broker or banker.

#### **68 Closure of offices**

- (1) The Corporation may request the voting shareholders and the portfolio Minister to approve closure of an office of the Corporation. 15
- (2) The Corporation may close an office, but only with the approval of the voting shareholders and the portfolio Minister.
- (3) If the portfolio Minister withholds approval to the closure of an office under subsection (2), the portfolio Minister is, subject to obtaining the approval of the Treasurer, required to give a direction or notification under Part 3 of the *State Owned Corporations Act 1989* that has the effect of requiring the office to be kept in operation. 20

#### **69 Proceedings for offences** (cf PT Act s 51 partly) 25

Proceedings for an offence against this Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

#### **70 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 30
- (2) The regulations may amend or replace Schedule 1 or 2, and may make provisions of a savings or transitional nature consequent on any such amendment or replacement. 35

**71 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act. 5
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.



## **Schedule 1 Prescribed amounts**

(Sections 20, 21, 23, 70)

### **1 Election by Corporation to administer small estates**

- (1) For the purposes of section 20 (1), (2) and (3), \$50,000 is the prescribed amount at or below which the Corporation may administer an estate by election. 5
- (2) For the purposes of section 20 (6), \$60,000 is the prescribed amount above which the Corporation must file a memorandum and obtain probate or administration as referred to in that subsection. 10

### **2 Limited administration of small estates by Corporation**

For the purposes of section 21 (1), \$10,000 is the prescribed amount at or below which the Corporation may deal with an estate without a grant of probate or administration.

### **3 Payment of money by Corporation without grant of administration** 15

For the purposes of section 23 (1), \$10,000 is the prescribed amount at or below which the Corporation may deal with money owed by the Corporation in the manner referred to in that subsection. 20

## Schedule 2 Commission and fees

(Sections 44, 70)

### 1 Application of Schedule

- (1) This Schedule applies to trust matters committed to the management of the Corporation on or after the commencing date or the Public Trustee before the commencing date. Accordingly, references in this Schedule to the Corporation include, where appropriate, references to the Public Trustee. 5
- (2) However, in the case of a trust matter committed to the management of the Public Trustee before the commencing date: 10
  - (a) the Corporation is, having regard to the rate or amount of commission or fee that would have been payable in the circumstances under the *Public Trustee Act 1913*, to consider reducing the rate or amount of commission or fee chargeable under this Schedule, or 15
  - (b) the Corporation may, instead of charging a commission or fee under this Schedule, charge a commission or fee that would have been payable in the circumstances under the *Public Trustee Act 1913*.

**Note.** The amounts or rates of commission and fees provided for by this Schedule are maximum amounts or rates, and may be reduced or waived in any particular case. 20

### 2 Commission (cf TC Act s 18)

- (1) The Corporation is entitled to receive, in respect of every trust matter committed to the management of the Corporation, a commission to be fixed from time to time by the board, but not in any case exceeding: 25
  - (a) where the matter is committed to the management of the Corporation as attorney acting under a power of attorney \$10 for every \$200 of all money, whether capital or income, received by the Corporation as attorney, or 30
  - (b) where the matter is committed to the management of the Corporation in any capacity other than that referred to in paragraph (a):

Schedule 2 Commission and fees

- 
- (i) \$4.25 for every \$100 of the corpus or capital value of the matter, and
    - (ii) \$5.25 for every \$100 of the income received by the Corporation on account of the matter.
  - (2) The commission is payable out of the money in the possession of the Corporation representing the trust matter in respect of which the commission is chargeable, and is to be accepted by the Corporation in full satisfaction of any claim to remuneration for acting in any trust capacity. 5
  - (3) Except as otherwise provided by this or any other Act, no other charges beyond the commission are to be made or allowed. 10
  - (4) The commission charged by the Corporation in respect of a trust matter must not exceed the amount of the published scale of commission at the time when the management of the estate was committed to the Corporation. 15
  - (5) The commission that the Corporation is entitled to receive under this clause is not affected or diminished by the fact that any other person may, or may not, be entitled to, or be allowed, commission in respect of the same estate or fund.
  - (6) In this clause: 20
 

***corpus or capital value*** of a trust matter means the gross amount realised for the assets (whether real or personal) of the matter without deduction of debts or liabilities (secured or unsecured).
  - (7) For the purposes of subclause (6):
    - (a) where an asset comprises money (other than the proceeds of the realisation of any asset): 25
      - (i) the asset is taken to have been realised when it was collected on behalf of the matter, and
      - (ii) the amount realised for the asset is taken to have been the amount of the money so collected, and 30
    - (b) where an asset is distributed, transferred, appropriated or released, without realisation, to the beneficiaries (whether by or as a result of agreement between beneficiaries or otherwise):



- 
- (i) the asset is taken to have been realised when it was so distributed, transferred, appropriated or released, and
  - (ii) the amount realised for the asset is taken to have been the amount of the value of the asset as at the date of the distribution, transfer, appropriation or release. 5

### 3 Payment of commission (cf TC Act s 18A)

If the Corporation:

- (a) is entitled by clause 2 to receive commission in respect of the corpus or capital value of a trust matter, or 10
- (b) would be so entitled to receive that commission but for the fact that any or all of the assets of the trust matter have not been realised, as referred to in that clause,

the following provisions have effect: 15

- (c) that commission may, subject to paragraph (d), be paid in relation to the trust matter at any time after the matter was committed to the management of the Corporation, and
- (d) while any or all of the assets remain to be so realised, the commission that may be so paid is not to exceed the commission that would be payable if those assets were so realised for an amount equal to the amount of their value at the time the trust matter was so committed (the amount of commission paid out being adjusted when those assets respectively are so realised). 20 25

### 4 Management fees (cf TC Act s 19; TC Reg Sch 1)

- (1) The Corporation is entitled to receive out of, in relation to any trust matter committed to its management in respect of any prescribed service provided by the Corporation in its management of that matter, such management fee as is reasonable having regard to the work involved in providing that service. 30
- (2) The Corporation is entitled to receive, in respect of any trust matter committed to its management, for any service of an unusual nature provided by the Corporation in its management 35

- 
- of the matter, such management fee as is reasonable having regard to the work involved in providing that service, if a majority of the persons interested in the matter have agreed to:
- (a) that service being provided, and
  - (b) the amount of the fee. 5
- (3) For the purposes of subclause (1), the prescribed services for which management fees may be charged are as follows:
- (a) Administration or management of assets located interstate or overseas.
  - (b) Inspection of and report on real or personal property. 10
  - (c) Arranging for and supervising repairs to real estate.
  - (d) Valuation of assets.
  - (e) Preparation and lodgment of returns for:
    - (i) income tax, or
    - (ii) land tax, or 15
    - (iii) death and estate duties (other than those required for the original grant of probate or administration).
  - (f) Furnishing information for the purpose of any proposed dealing with a beneficial interest or for registering a notice of charge or other dealing. 20
  - (g) Re-arrangements of transactions necessary as a result of requests or deeds entered into by beneficiaries.
  - (h) Engagement in litigation (other than litigation arising from any default or neglect by the Corporation).
  - (i) Keeping books of account (including the preparation of balance sheets and profit and loss accounts) of any business, except where the Corporation also carried on the business. 25
  - (j) Applying, in good faith, for a grant of probate or administration, if the application is not granted due to circumstances beyond the control of the Corporation. 30
  - (k) Forming companies or restructuring existing companies for the benefit of existing beneficiaries.
-

- 
- (l) Duties involved in joint tenancies.
  - (m) Attendances outside the offices of the Corporation (other than those in connection with making inquiries for the purpose of applying for a grant of probate or administration). 5
  - (n) Inquiries for missing or unnamed beneficiaries.
  - (o) Passing of accounts with the Registrar in Probate where the Corporation is acting as co-executor or co-administrator.
  - (p) Collecting rent on behalf of an estate (not being an estate in respect of which the Corporation charges a commission under clause 2 on the rent received on account of the estate). 10
  - (q) Carrying on of a business which belongs wholly to an estate or in which an estate has an interest as partner. 15
  - (r) Preparing wills.
  - (s) Carrying out professional services (including giving of advice) in connection with wills, probate and administration and the management of trust matters.
- 5 Trust fees** (cf TC Act s 19B) 20
- (1) In this clause:
 

*corpus or capital value* of an estate means the gross amount of the value of the assets (whether real or personal) of the estate without deduction of debts or liabilities (secured or unsecured).

*prescribed time*, in relation to an estate committed to the administration or management of the Corporation, means: 25

    - (a) the end of the period of 3 years commencing with the date of committal, and
    - (b) the conclusion of each subsequent period of 12 months, and 30
    - (c) the date on which the Corporation's administration or management of the estate is completed.
-



Public Trustee Corporation Bill 1997

Schedule 2      Commission and fees

---

- (2) Subject to subclause (3), the Corporation is, in respect of any estate committed to its administration or management for at least 2 years, entitled to receive, at the prescribed time, out of the estate a trust fee not exceeding:
- (a) an amount equal to one-quarter of 1 per cent of the corpus or capital value of the estate at that time, or 5
- (b) \$590,
- whichever is the lesser amount.
- (3) The trust fee that is, but for this subclause, payable under subclause (2) at the time when the Corporation's administration or management of an estate is completed is to be reduced by a sum. The sum is equal to one-twelfth of that trust fee for each whole month (and each part of any month) between: 10
- (a) the time that the Corporation's administration or management of the estate is completed, and 15
- (b) the time that a trust fee would have been next payable under subclause (2), if the estate had continued to be administered or managed by the Corporation.

**6 Fee for administering estate under election**

- (1) The Corporation is entitled to receive out of any estate in respect of which an election to administer the estate has been filed under section 20 a fee calculated at the rate of 4 per cent of the amount prescribed (as at the time the election is filed) for the purposes of section 20 (1), (2) or (3), as the case requires. 20
- (2) If a fee is received under this clause in respect of an estate, commission is not also payable under clause 2. 25
- (3) However, a fee received under this clause may be reccredited as commission if it is appropriate to do so in the cases referred to in section 20 (6) or (7).
- Note.** Section 20 (6) deals with the case where an estate is afterwards found to be of a higher value. Section 20 (7) deals with the case where a will is found afterwards. 30

- 
- (4) A reference in this clause to the administration of an estate includes a reference to the administration of the property forming, or forming part, of the estate of a deceased person.

**7 Director's fees** (cf TC Act s 19C)

- (1) This clause applies where: 5
- (a) an estate or other trust matter committed to the management of the Corporation has an interest in a corporation, and
- (b) an officer of the Corporation, in his or her capacity as such an officer, acts as a director of the corporation for purposes connected with the management of the estate or other matter. 10
- (2) The Corporation is entitled to receive from the corporation and to retain any director's fees that would be payable to the officer had the officer so acted otherwise than in that capacity. 15
- (3) Neither the officer nor the estate is entitled to receive the fees that the Corporation is entitled to receive under subclause (2).

**8 Fee for common fund** (cf TC Act s 16 (14))

- (1) The Corporation is entitled to receive from or out of the income received by a common fund a fee (according to the value of the work done and the services rendered) calculated at a rate not exceeding 1 per cent per annum on the capital sums invested in the common fund during the period in respect of which the income is received or allocated, for the establishment, keeping (including the keeping of books of account) and conduct of the common fund. 20 25
- (2) This clause extends to the original common fund.

**9 General provisions in respect of commission and fees**

- (1) This clause applies to each trust matter committed to the management of the Corporation. 30

Public Trustee Corporation Bill 1997

Schedule 2      Commission and fees

---

- (2) The Corporation is entitled to be reimbursed for all money properly expended by the Corporation and chargeable against or in respect of the trust matter, in addition to any commission or fees (or both) payable under other clauses.
- (3) The commission and fees (other than common fund fees) payable under this Schedule in relation to a trust matter are payable out of money belonging to or relating to the trust matter. 5
- (4) The Corporation may waive or reduce any commission or fees payable in relation to a trust matter.
- (5) This clause does not apply to director's fees. 10



---

**Schedule 3 Original common fund**

(Section 42)

**1 Application of Schedule**

This Schedule applies to the original common fund.

**2 Definitions**

5

- (1) In this Schedule:

*Estates Guarantee and Reserve Account* means the Estates Guarantee and Reserve Account referred to in clause 6.

*Interest Suspense Account* means the Interest Suspense Account referred to in clause 4.

10

- (2) A reference in this Schedule to a trust matter, or an estate or trust is a reference to a trust matter, or an estate or trust, to which the original common fund relates.

**3 Continuation of original common fund**

- (1) The common fund under section 36A of the *Public Trustee Act 1913* is continued by this Act. That common fund is referred to in this Act as the *original common fund*.

15

- (2) The original common fund is to be kept by the Corporation.

- (3) Subject to this Act, the original common fund consists of any money held or received by the Corporation on or after the commencing date in connection with trust matters committed to the management of the Public Trustee before the cut-off date. It does not include money in the Interest Suspense Account or the Estates Guarantee and Reserve Account.

20

- (4) Subclause (3) does not apply to or in respect of any trust matter:

25

- (a) where investment in the original common fund is expressly forbidden by the relevant instrument, or
- (b) where assets are held by the Corporation jointly with any other person and the other person has objected in writing to its application.

30

- 
- (5) Any capital profit or loss made on realisation of investments from the original common fund may, at the discretion of the Corporation, be carried to the Interest Suspense Account or the Estates Guarantee and Reserve Account.
  - (6) Money in the original common fund is available for investment as provided in this Act. 5

#### 4 Continuation of Interest Suspense Account

- (1) The Interest Suspense Account under section 36A of the *Public Trustee Act 1913* is continued by this Act.
- (2) The Interest Suspense Account is to be kept by the Corporation. 10
- (3) Subject to this Act, the Interest Suspense Account consists of the balance in the Account immediately before the commencing date, together with amounts required to be paid into it on or after that date.

#### 5 Interest 15

- (1) Interest received from investments from the original common fund is to be credited to the Interest Suspense Account, and is to be allocated from the Account as provided in this clause.
- (2) Interest is to be allowed on:
  - (a) all capital balances on current account forming part of the original common fund, and 20
  - (b) income balances on current account forming part of the original common fund where, in the opinion of the Corporation, the income should be interest earning.
- (3) Interest allowed in respect of income balances is to be computed as from such date as the Corporation may determine. 25
- (4) Interest allowed on any balance in the original common fund under this clause is to be credited:
  - (a) at such time as the Corporation may determine in respect of that balance, and 30

- (b) at such rate as the Corporation may determine in respect of that balance according to the period during which it has formed part of the original common fund, its source and nature, and any other factor that the Corporation considers relevant.

5

## 6 Estates Guarantee and Reserve Account

- (1) The Estates Guarantee and Reserve Account under section 36B of the *Public Trustee Act 1913* is continued by this Act.
- (2) The Estates Guarantee and Reserve Account is to be kept by the Corporation. 10
- (3) Subject to this Act, the Estates Guarantee and Reserve Account consists of the balance in the Account immediately before the commencing date, together with amounts required to be paid into it on or after that date.
- (4) Out of the total amount of interest earned in each year by all investments of the original common fund, the Corporation may set aside such sum as the Corporation may consider necessary. That sum is to be carried to the Estates Guarantee and Reserve Account. 15
- (5) The Estates Guarantee and Reserve Account may be applied for all or any of the following purposes: 20
  - (a) payment to the original common fund of an amount equivalent to the loss on realisation of any investment made from the original common fund,
  - (b) payment of any costs incurred in protecting investments made from the original common fund, 25
  - (c) payment of such other expenses or charges incurred in respect of the original common fund or investments made from the original common fund as in the opinion of the Corporation are properly chargeable against the Estates Guarantee and Reserve Account, 30
  - (d) payment of any legal costs, charges and expenses not ordered by the Supreme Court to be charged against a particular estate or trust or otherwise not properly chargeable against a particular estate or trust, 35



- (e) payment of any legal costs, charges and expenses not ordered by the Supreme Court to be charged against a particular estate or trust but otherwise properly chargeable against a particular estate or trust where there are insufficient funds in the particular estate or trust to meet those costs, charges and expenses, 5
- (f) costs and expenses incurred by the Corporation in obtaining legal advice or in legal proceedings to which the Corporation is or is made a party where the costs and expenses are such that, because of the general interest and importance of the subject-matter of the advice or proceedings, they should not, in the opinion of the Corporation, be charged against a particular estate or trust. 10

**7 Surplus income from original common fund** (cf PT Act s 36C)

If, after allowing interest under clause 5 and after setting aside the sum referred to in clause 6 (4), a surplus remains out of the income of investments made from the original common fund, the surplus (or so much of it as the Corporation may determine) is to remain in the Interest Suspense Account. 15

**8 Surpluses** 20

- (1) Any amount determined by the Treasurer from time to time after consultation with the portfolio Minister and the Corporation to be surplus to the requirements of the Interest Suspense Account or the Estates Guarantee and Reserve Account is to be paid to the Consolidated Fund. 25
- (2) In making the determination, the Treasurer may seek independent advice on the adequacy of the reserves in the Interest Suspense Account or the Estates Guarantee and Reserve Account to meet foreseeable claims after payment of any surplus from the account under subclause (1). 30
- (3) Any amounts paid to the Consolidated Fund under subclause (1) are freed and discharged from any trusts or other obligations.

- (4) However, any deficiencies in the Interest Suspense Account or the Estates Guarantee and Reserve Account that are attributable to the payment of any surplus under subclause (1) are to be met from the Consolidated Fund out of money provided by Parliament.

5

**9 Withdrawal from original common fund** (cf PT Act s 36E)

- (1) The Corporation may sell investments belonging to the original common fund and may withdraw any part of the money belonging to the original common fund for any purpose of or relating to the exercise by the Corporation of its functions in any trust capacity or for any purpose authorised by or under this or any other Act.
- (2) The Corporation may withdraw from the original common fund any amount belonging to any particular estate or trust included in the original common fund and may separately invest that amount for the benefit of the particular estate or trust.
- (3) Amounts withdrawn from the original common fund under this clause cease, as from the date of the withdrawal, to have any claim for interest or otherwise from the original common fund.

10

15

**10 Advances from original common fund in respect of estates or trusts** (cf PT Act s 36F (1))

20

- (1) The Corporation may make advances from the original common fund for any purpose of or relating to any estate or trust in the course of administration by the Corporation.
- (2) The sum so advanced is to bear interest at a rate to be fixed by the Corporation.
- (3) The sum so advanced and the interest on it are to be a charge on the assets of the estate or trust or on the specific asset in respect of which the advance was made.
- (4) If the sum so advanced is applied in or towards the discharge of any debt or liability, the charge under subclause (3) ranks in the same order of priority as the debt or liability.

25

30

- (5) Any interest received under this clause is to be paid into the Interest Suspense Account.

**11 Advances from original common fund in respect of beneficial interests** (cf PT Act s 36F (2))

- (1) If: 5
- (a) an estate or trust is under administration by the Corporation, and
- (b) any person beneficially entitled in the estate or trust applies in writing to the Corporation for an advance against the person's beneficial interest, 10
- the Corporation may, if it thinks fit, make an advance from the original common fund to the person of an amount not exceeding one-half of the value as estimated by the Corporation of the beneficial interest.
- (2) The sum so advanced is to bear interest at a rate to be fixed by the Corporation. 15
- (3) The sum so advanced and the interest on it are to be a first charge against the beneficial interest of the person to whom the advance was made, subject only to any prior charges on the beneficial interest of which the Corporation had received notice in writing before the advance under this clause was made. 20
- (4) Any interest received under this clause is to be paid into the Interest Suspense Account.

**12 Investment in original common fund by Supreme Court**  
(cf PT Act s 36G) 25

The Corporation must repay to a registrar of the Supreme Court, on demand by the registrar, money paid into the original common fund under section 36G of the *Public Trustee Act 1913*, together with interest on that money calculated in accordance with clause 5 (2)–(4). 30



---

**13 Closure of original common fund and accounts**

- (1) The regulations may include provisions for or with respect to:
  - (a) the transfer of accounts in the original common fund to one or more common funds under Part 4, and
  - (b) the consequent closure of the original common fund, the Estates Guarantee and Reserve Account and the Interest Suspense Account, and 5
  - (c) any associated or consequential matters.
- (2) Provisions referred to in subclause (1) are not to be included in the regulations, unless the portfolio Minister certifies to the Governor that agreement as to the contents of the provisions has been reached between the Corporation, the voting shareholders and the portfolio Minister, having regard: 10
  - (a) primarily to the overall interests of the persons for whom the accounts are held, and 15
  - (b) secondarily to the commercial interests of the Corporation.

---

## Schedule 4      Transfer of assets, rights and liabilities

(Sections 49, 51, 52, 53)

### 1 Application and interpretation

- (1) This Schedule applies to the following: 5
- (a) the transfer of the general assets, rights and liabilities from the former corporation to the Public Trustee Corporation by the operation of section 51,
  - (b) the transfer of assets, rights and liabilities of the former corporation to the Ministerial Holding Corporation or to any person on behalf of the State by the operation of an order under section 52, 10
  - (c) the transfer of assets, rights and liabilities of the Public Trustee Corporation to the Ministerial Holding Corporation or to any person on behalf of the State by the operation of an order under section 53. 15
- (2) In this Schedule, the person or body from whom assets, rights or liabilities are so transferred is called the *transferor* and the person or body to whom they are being so transferred is called the *transferee*. 20

### 2 Vesting of undertaking in transferee

When assets, rights or liabilities are transferred under section 51, 52 or 53, the following provisions have effect:

- (a) those assets of the transferor vest in the transferee by virtue of this Schedule and without the need for any conveyance, transfer, assignment or assurance, 25
- (b) those rights or liabilities of the transferor become by virtue of this Schedule the rights or liabilities of the transferee,
- (c) all proceedings relating to those assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee, 30

- 
- (d) any act, matter or thing done or omitted to be done in relation to those assets, rights or liabilities before the transfer by, to or in respect of the transferor is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee, 5
  - (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets, rights or liabilities but subject to the regulations or other provisions under Schedule 7), to be read as, or as including, a reference to the transferee. 10

### 3 Operation of Schedule

- (1) The operation of this Schedule is not to be regarded:
  - (a) as a breach of contract or confidence or otherwise as a civil wrong, or 15
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability. 20
- (2) The operation of this Schedule is not to be regarded as an event of default under any contract or other instrument. 25
- (3) No attornment to the transferee by a lessee from the transferor is required.
- (4) A transfer under section 52 or 53 is subject to the terms and conditions of the order by which it is effected.
- (5) No compensation is payable to any person in connection with a transfer to which this Schedule applies except, in the case of a transfer under section 52 or 53, to the extent (if any) to which the order giving rise to the transfer so provides. 30



Schedule 4      Transfer of assets, rights and liabilities

---

- (6) In this clause, a reference to the operation of this Schedule includes a reference to the making of an order under section 52 or 53.

**4 Date of vesting**

- (1) An order under section 52 takes effect on the date specified in the order, being a date on or before the dissolution of the former corporation. 5
- (2) An order under section 53 takes effect on the date specified in the order, being a date that is after the dissolution of the former corporation but earlier than 12 months after that dissolution. 10

**5 Consideration for vesting**

The Minister may, by order in writing, specify the consideration on which a transfer to which this Schedule applies is made and the value or value at which the assets, rights and liabilities are transferred. 15

**6 Stamp duty**

Stamp duty is not chargeable in respect of:

- (a) a transfer of assets, rights and liabilities to which this Schedule applies, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land). 20

**7 Confirmation of vesting**

- (1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities by operation of this Schedule. 25
- (2) Such a notice is conclusive evidence of that transfer.

## Schedule 5    Transfer of staff

(Section 54)

### 1 Definition

In this Schedule:

*former Public Trust Office staff* means the members of staff of the Public Trust Office immediately before the dissolution of that Office (including any holder of an executive position under Part 2A of the *Public Sector Management Act 1988*, but not including the person holding office as Public Trustee). 5

### 2 Transfer of former Public Trust Office staff to Public Trustee Corporation 10

- (1) The former Public Trust Office staff are transferred to the Public Trustee Corporation and are to be regarded for all purposes as having become employees of the Corporation on the day on which the Public Trust Office is dissolved. 15
- (2) The Corporation is taken to be an authority to which Schedule 4 (Provisions relating to certain staff) of the *State Owned Corporations Act 1989* applies.

### 3 General saving of conditions of employment

- (1) A person who is transferred under this Schedule is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person if the person had not been transferred but had instead remained on the staff of the Public Trust Office (and the Public Trust Office had continued in existence). 20  
25
- (2) However, nothing in this clause affects the application of section 36 (1) of the *State Owned Corporations Act 1989* to the Corporation. Accordingly, the *Government and Related Employees Appeal Tribunal Act 1980* does not apply to the Corporation or any subsidiary of the Corporation. 30

- (3) Without affecting the generality of subclause (1), a reference in that subclause to relevant statutory provisions includes a reference to sections 42R, 42S and 42T of the *Public Sector Management Act 1988*.

**4 Saving of leave**

5

A member of the staff of the Corporation who was a member of the former Public Trust Office staff retains any rights to annual leave, extended service leave, sick leave, and other forms of leave, accrued or accruing in his or her employment with the Public Trust Office.

10

**5 No payment out on transfer or dual benefits**

- (1) This clause applies to a person who becomes, because of this Schedule, a member of the staff of the Corporation.
- (2) A person to whom this clause applies is not entitled to receive any payment or other benefit merely because the person ceases to be a member of the former Public Trust Office staff.
- (3) A person to whom this clause applies is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.

15



---

## **Schedule 6    Amendment of Acts**

(Section 58)

### **6.1    Anzac Memorial (Building) Act 1923 No 27**

#### **Section 3 Trustees**

Omit "Public Trustee" from section 3 (1).  
Insert instead "Chief Executive Officer of the Public Trustee Corporation".

5

### **6.2    Commercial Agents and Private Inquiry Agents Act 1963 No 4**

#### **Section 5 Act not applicable to certain persons**

10

Omit "Public Trustee" from section 5 (1) (h).  
Insert instead "Public Trustee Corporation".

### **6.3    Community Welfare Act 1987 No 52**

#### **Section 42 Investment of Community Disaster Relief Fund**

Omit "Public Trustee" from section 42 (2).  
Insert instead "Public Trustee Corporation".

15

### **6.4    Compensation to Relatives Act 1897 No 31**

#### **Section 7 Construction of Act**

Omit "public trustee" from section 7 (2).  
Insert instead "Public Trustee Corporation".

20

**6.5      Confiscation of Proceeds of Crime Act 1989 No 90**

- [1]      Sections 43, 45, 46, 47, 48, 51 (1), 53, 57 (except where thirdly occurring), 83 (4) (a) and 84**

Omit "Public Trustee" wherever occurring.  
Insert instead "Public Trustee Corporation".

5

- [2]      Sections 47 (4) (a), 51 (1) and 57 (except where firstly occurring)**

Omit "Public Trustee's" wherever occurring.  
Insert instead "Public Trustee Corporation's".

- [3]      Sections 45, 52 (3) (b) and 53**

Omit "his or her" wherever occurring.  
Insert instead "its".

10

- [4]      Section 51 Hindering or obstructing Public Trustee Corporation**

Omit the definition of *Public Trustee* from section 51 (2).  
Insert instead:

*Public Trustee Corporation* includes the Chief  
Executive Officer, staff and agents of the Public Trustee  
Corporation.

15

- [5]      Section 52 Protection of Public Trustee Corporation and officials from liability in certain cases**

Omit section 52 (1). Insert instead:

20

- (1)      An officer of the Public Trustee Corporation is not personally liable to any person for any act done bona fide in the exercise of functions under this Act, unless it is shown that the act was done by the officer, not only illegally but wilfully or with gross negligence.

25

---

**[6] Section 52 (2) and (3)**

Omit "Public Trustee" wherever occurring.  
Insert instead "Public Trustee Corporation".

**[7] Section 52 (2) and (3)**

Omit "personally" wherever occurring.

5

**[8] Section 52 (4)**

Omit the subsection. Insert instead:

(4) For the purposes of this section:

(a) *officer of the Public Trustee Corporation*, when used in subsection (1), means the Chief Executive Officer, a member of the staff or an agent of the Public Trustee Corporation, and 10

(b) *Public Trustee Corporation*, when used in subsection (2) or (3), includes the Chief Executive Officer, staff and agents of the Public Trustee Corporation. 15

**[9] Section 57 Certificate of Public Trustee Corporation**

Omit "under the hand of" from section 57 (1).  
Insert instead "issued by".

**[10] Section 57 (1)**

20

Omit "or an officer referred to in section 50 of the *Public Trustee Act 1913* and sealed with the Public Trustee's seal".



**6.6      Conveyancing Act 1919 No 6**

**[1]      Sections 7 and 99A**

Omit "public trustee" and "Public Trustee" wherever occurring.  
Insert instead "Public Trustee Corporation".

**[2]      Section 155 Partial repeal of Administration (Validating) Act 1900 and application of sections 153 and 154**      5

Omit "Public Trustee notwithstanding anything contained in the *Public Trustee Act 1913*" from section 155 (2).

Insert instead "Public Trustee Corporation notwithstanding anything contained in the *Public Trustee Corporation Act 1997*".      10

**6.7      Damages (Infants and Persons of Unsound Mind) Act 1929 No 25**

**[1]      Sections 4 and 5 (1) and (2)**

Omit "Public Trustee" wherever occurring.  
Insert instead "Public Trustee Corporation".      15

**[2]      Section 5 (3)**

Omit section 5 (3). Insert instead:

- (3)      Commission and fees may be prescribed under the *Public Trustee Corporation Act 1997* in respect of moneys paid to the Public Trustee Corporation under this section.      20

---

**6.8 Dormant Funds Act 1942 No 25**

**[1] Section 4 Commissioner of Dormant Funds**

Omit "Public Trustee" from section 4 (2).

Insert instead "Chief Executive Officer of the Public Trustee Corporation".

5

**[2] Section 11 Proposals for application of dormant fund**

Omit "Public Trustee" from section 11 (2).

Insert instead "Public Trustee Corporation".

**6.9 Drainage Act 1939 No 29**

**Section 55 Sale of land for rates**

10

Omit "Public Trustee" from section 55 (1).

Insert instead "Public Trustee Corporation".

**6.10 Drug Trafficking (Civil Proceedings) Act 1990 No 23**

**[1] Sections 10 (4), 12, 13, 14 (1), 17, 18 (1), (3) and (4), 19, 21 (except where thirdly occurring), 23, 30 and 31 (4)**

15

Omit "Public Trustee" wherever occurring.

Insert instead "Public Trustee Corporation".

**[2] Sections 18 (1), 21 (except where firstly occurring) and 30 (4)**

Omit "Public Trustee's" wherever occurring.

Insert instead "Public Trustee Corporation's".

20

**[3]      Section 18 Protection of Public Trustee Corporation**

Omit section 18 (2). Insert instead:

- (2)      An officer of the Public Trustee Corporation is not personally liable to any person for any act done bona fide in the exercise of functions under this Act, unless it is shown that the act was done by the officer, not only illegally but wilfully or with gross negligence.      5

**[4]      Section 18 (4) (b)**

Omit "his or her". Insert instead "its".

**[5]      Section 18 (5)      10**

Omit the subsection. Insert instead:

- (5)      For the purposes of this section:
- (a)      *officer of the Public Trustee Corporation*, when used in subsection (2), means the Chief Executive Officer, a member of the staff or an agent of the Public Trustee Corporation, and      15
- (b)      *Public Trustee Corporation*, when used in subsection (3) or (4), includes the Chief Executive Officer, staff and agents of the Public Trustee Corporation.      20

**[6]      Section 21 Certificate by Public Trustee Corporation**

Omit "under the hand of". Insert instead "issued by".

**[7]      Section 21**

Omit "or an officer referred to in section 50 of the *Public Trustee Act 1913* and sealed with the Public Trustee's seal".      25



**6.11 Family Provision Act 1982 No 160****[1] Section 6 Definitions**

Omit “an order under section 18 (2) or 23 (1) of the *Public Trustee Act 1913* in respect of the estate of the deceased person and an election by the Public Trustee under section 18A of that Act” from the definition of **administration** in section 6 (1). 5

Insert instead “an order under section 19 or 22 of the *Public Trustee Corporation Act 1997* in respect of the estate of the deceased person and an election by the Public Trustee Corporation under section 20 of that Act”. 10

**[2] Section 6 (1)**

Omit paragraphs (a) and (b) of the definition of **administrator**.  
Insert instead:

(a) a person to whom administration (not being an order under section 19 or 22, or an election under section 20, of the *Public Trustee Corporation Act 1997*) has been granted in respect of that estate or any part of that estate, 15

(b) where an order under section 19 or 22, or an election under section 20, of the *Public Trustee Corporation Act 1997* has been made or filed in respect of that estate or any part of that estate, the Public Trustee Corporation, 20

**6.12 Freedom of Information Act 1989 No 5****Schedule 2 Exempt bodies and offices** 25

Omit “The office of Public Trustee—functions exercised in the Public Trustee’s capacity as executor, administrator or trustee”.

Insert instead “The Public Trustee Corporation—functions exercised in the Corporation’s capacity as trustee, executor, administrator, agent, attorney, manager, guardian or receiver, as referred to in the *Public Trustee Corporation Act 1997*”. 30

**6.13 Imperial Acts Application Act 1969 No 30**

**Section 12 Definitions**

Omit "Public Trustee" from the definition of *Administration*.  
Insert instead "Public Trustee Corporation".

**6.14 Land Tax Management Act 1956 No 26**

5

**Section 3 Definitions**

Omit "Public Trustee" from the definition of *Trustee company* in section 3 (1).  
Insert instead "Public Trustee Corporation".

**6.15 Landlord and Tenant (Amendment) Act 1948 No 25**

10

**Section 83B Public Trustee Corporation's title not a defence to recovery of possession of prescribed premises after death of lessee in certain cases**

Omit "Public Trustee".  
Insert instead "Public Trustee Corporation".

15

**6.16 Limitation Act 1969 No 31**

**Section 11 Definitions**

Omit "Public Trustee acting under section 23 of the *Public Trustee Act 1913*" from the definition of *Personal representative* in section 11 (1).  
Insert instead "Public Trustee Corporation acting under section 22 of the *Public Trustee Corporation Act 1997*".

20

---

**6.17 Minors (Property and Contracts) Act 1970 No 60**

**Sections 28 (2) (b) (ii) and 29 (2) (b) (ii)**

Omit "the Public Trustee" wherever occurring.

Insert instead "an officer of the Public Trustee Corporation".

**6.18 Ombudsman Act 1974 No 68**

5

**Schedule 1 Excluded conduct of public authorities**

Insert after item 27:

- 28 Conduct of the Public Trustee Corporation, or a member of the staff of or an agent of the Corporation, in relation to any functions of the Corporation.

10

**6.19 Property, Stock and Business Agents Act 1941 No 28**

**Section 4 Act not to apply to certain persons or bodies**

Omit "Public Trustee" from section 4 (2) (a) (i).

Insert instead "Public Trustee Corporation".

**6.20 Public Finance and Audit Act 1983 No 152**

15

**Schedule 2 Statutory bodies**

Omit "Public Trustee."

**6.21 Public Sector Management Act 1988 No 33**

**[1] Schedule 1 Departments**

Omit the matter relating to the Public Trust Office.

20



**[2]      Schedule 3A Chief executive positions**

Omit "Public Trustee" from Part 1.

**[3]      Schedule 3B Senior executive positions**

Omit the matter relating to the Public Trust Office from Part 1.

**6.22    Real Property Act 1900 No 25**

5

**Section 61 Application for foreclosure order**

Omit "Public Trustee" wherever occurring in section 61 (2A).  
Insert instead "Public Trustee Corporation".

**6.23    Sporting Injuries Insurance Act 1978 No 141**

**Section 28 Administration of amounts payable to minors**

10

Omit "Public Trustee" wherever occurring.  
Insert instead "Public Trustee Corporation".

**6.24    Stamp Duties Act 1920 No 47**

**[1]      Section 38B Instruments executed by Public Trustee**

Omit the section.

15

**[2]      Sections 73 (2AA) and 98 (1) and paragraph (f) of the  
Exemptions under the heading "Transfer of shares" in the  
Second Schedule**

Omit "Public Trustee" wherever occurring.  
Insert instead "Public Trustee Corporation".

20

---

**6.25 Statutory and Other Offices Remuneration Act 1975  
(1976 No 4)**

**Schedule 2 Public offices**

Omit "Public Trustee." from Part 1.

**6.26 Trustee Act 1925 No 14**

5

**[1] Sections 5, 6 (6), 7, 8 (2), 10 (2), 14C (4) (a), 45A (1), 47, 51, 54,  
64, 65 (1), 82A (1A) and 101 and the italicised heading before  
section 47**

Omit "public trustee" and "Public Trustee" wherever occurring.  
Insert instead "Public Trustee Corporation".

10

**[2] Section 14A Authorised investments**

Omit "the common fund established under section 36A of the *Public Trustee Act 1913*" from section 14A (2) (n).  
Insert instead "a common fund continued or established under the  
*Public Trustee Corporation Act 1997*".

15

**[3] Section 14E Advisory Committee**

Omit "Public Trustee" from section 14E (2) (a).  
Insert instead "Chief Executive Officer of the Public Trustee  
Corporation or an officer of the Corporation nominated by the Chief  
Executive Officer".

20

**[4] Section 47 Payment to the Public Trustee Corporation or a  
trustee company**

Omit "public trustee's" from section 47 (3).  
Insert instead "Public Trustee Corporation's".

**6.27 Trustee Companies Act 1964 No 6****[1] Section 15A**

Omit the section. Insert instead:

- 15A Election by trustee company to administer small estates** 5  
(cf PT Act s 18A)
- (1) **Testate estates**
- A trustee company may, instead of obtaining probate (or administration with the will annexed), file in the prescribed registry an election to administer the property forming a deceased person's estate according to the provisions of the person's will, if: 10
- (a) the person has died testate, in or outside New South Wales, leaving property in New South Wales the gross value of which, as estimated by the trustee company, does not at the time of the election exceed the relevant amount, and 15
  - (b) no person has obtained probate or taken out administration with the will annexed, and
  - (c) the trustee company is entitled to obtain probate or take out administration with the will annexed, and 20
  - (d) the election sets out:
    - (i) the name, residence and occupation (as far as then known to the trustee company) of the testator at the date of the testator's death, and 25
    - (ii) particulars of the property forming the testator's estate, and
    - (iii) the date of the testator's death as then known to the trustee company, and
  - (e) the election states that, after due inquiries, the trustee company believes that the document annexed to the election is the testator's last will and that the will has been validly executed according to the law governing the execution of wills, and 30
  - (f) the election is sealed with the trustee company's seal. 35



(2) **Intestate estates**

A trustee company may, instead of taking out administration (other than administration with the will annexed), file in the prescribed registry an election to administer the estate of a deceased person, if:

5

(a) the person has died intestate, in or outside New South Wales, leaving property in New South Wales the gross value of which, as estimated by the trustee company, does not at the time of the election exceed the relevant amount, and

10

(b) no person has taken out administration, and

(c) the trustee company is entitled to take out administration (other than administration with the will annexed), and

(d) the election sets out:

15

(i) the name, residence and occupation (as far as then known to the trustee company) of the intestate at the date of the intestate's death, and

(ii) particulars of the property forming the intestate's estate, and

20

(iii) the date of the intestate's death as then known to the trustee company, and

(e) the election is sealed with the trustee company's seal.

25

(3) **Partially administered estate**

A trustee company may, instead of taking out administration de bonis non, file in the prescribed registry an election to administer the unadministered property forming part of the estate (the *original estate*) of a deceased person, if:

30

(a) a grant (the *original grant*) of probate or administration has been made in respect of the original estate, and

(b) the person to whom the original grant or any subsequent or substituted grant of probate was made has died leaving part of the original estate unadministered, and

35

- 
- (c) the gross value, as estimated by the trustee company, of so much of the part of the original estate so left unadministered as is within New South Wales does not at the time of the election exceed the relevant amount, and 5
    - (d) no person has, since the death of the last executor or administrator, taken out administration de bonis non in respect of the original estate, and
    - (e) the trustee company is entitled to take out administration de bonis non, and 10
    - (f) the election sets out:
      - (i) the fact of the original grant, and
      - (ii) the fact of the death of the executor or administrator, and
      - (iii) particulars of the property left unadministered, and 15
    - (g) the election is sealed with the trustee company's seal.
  - (4) **Consequence of filing election**
    - When an election is filed under: 20
      - (a) subsection (1) or (2), the trustee company is taken to be the executor or administrator (as the case may be) in all respects as if probate or administration had been duly granted to the trustee company, or 25
      - (b) subsection (3), the trustee company is taken to be the administrator of so much of the original estate left unadministered as is within New South Wales in all respects as if administration de bonis non of the original estate had been duly granted to the trustee company. 30
  - (5) **Newspaper advertisement**
    - A trustee company is required to publish a notice that the trustee company has filed an election under this section. The notice is conclusive evidence that the trustee 35
-

---

company is rightfully entitled to administer under this section. The notice is to be published in:

- (a) a newspaper circulating generally in the district where the deceased person resided, if the deceased person resided in New South Wales at the date of death, or 5
- (b) a Sydney daily newspaper, in any other case.

(6) **Estate afterwards found to be of higher value**

If, after a trustee company files an election under this section, the gross value of the property to be administered exceeds the relevant amount, the trustee company is required, as soon as practicable: 10

- (a) to file in the prescribed registry a memorandum stating that fact and sealed with the trustee company's seal, and 15
- (b) to proceed in the ordinary manner to obtain probate or administration.

(7) **Will found afterwards**

The following provisions apply where, after an election is filed under this section, a later will or a will (as the case may be) is found: 20

- (a) The trustee company concerned is required, as soon as practicable, to file in the prescribed registry a memorandum stating that fact and sealed with the trustee company's seal. 25
- (b) The trustee company automatically ceases to be executor or administrator when the memorandum is filed.
- (c) If the trustee company is entitled to obtain probate or administration, the trustee company may file a further election under this section (if entitled to do so) or proceed in the ordinary manner to obtain probate or administration. 30
- (d) If the trustee company is not entitled to obtain probate or administration, section 40D of the *Wills, Probate and Administration Act 1898* 35



applies in all respects as if a grant of probate or administration to the trustee company had been revoked.

(8) **Definitions**

In this section:

5

**prescribed registry** means such registry of the Supreme Court as may be prescribed by rules of court of the Supreme Court for the purposes of this Act or the *Public Trustee Corporation Act 1997*.

**relevant amount**, as used in subsection (1), (2), (3) or (6), means the amount prescribed for the purposes of the corresponding provision of section 20 of the *Public Trustee Corporation Act 1997*.

10

**will** has the same meaning as in *Wills, Probate and Administration Act 1898*.

15

[2] **Section 19A**

Insert after section 19:

**19A Fee for administering estate under election**

- (1) A trustee company is entitled to receive out of any estate in respect of which an election to administer the estate has been filed under section 15A a fee calculated at the rate of 4 per cent of the relevant amount (as at the time the election is filed) for the purposes of section 15A (1), (2) or (3), as the case requires. 20
- (2) If a fee is received under this section in respect of an estate, commission is not also payable under section 18. 25
- (3) However, a fee received under this section may be recredited as commission if it is appropriate to do so in the cases referred to in section 15A (6) or (7).
- (4) A trustee company may waive or reduce any fee payable under this section. 30
- (5) A reference in this section to the administration of an estate includes a reference to the administration of the property forming, or forming part of, the estate of a deceased person. 35

---

**6.28 Voluntary Workers (Soldiers' Holdings) Act 1917 No 25**

**Sections 3, 4, 5, 6, 7, 7A and 10 (1)**

Omit "Public Trustee" wherever occurring.  
Insert instead "Public Trustee Corporation".

**6.29 Warehousemen's Liens Act 1935 No 19**

5

**[1] Section 8 Disposition of proceeds of sale**

Omit "Public Trustee" wherever occurring.  
Insert instead "Public Trustee Corporation".

**[2] Section 8 (4)**

Omit "him". Insert instead "the Corporation".

10

**6.30 Wills, Probate and Administration Act 1898 No 13**

**[1] Sections 3, 44 (2), 61, 64, 75 (1) (ii), 75A, 76, 77, 89, 104 and 110**

Omit "Public Trustee" wherever occurring.  
Insert instead "Public Trustee Corporation".

**[2] Section 40D Effect of revoking grant**

15

Insert "or under the *Trustee Companies Act 1964* or the *Public Trustee Corporation Act 1997*" after "this Act" in section 40D (2).

**[3] Section 85 Executor, administrator or trustee to pass accounts**

Omit "section 35A of the *Public Trustee Act 1913*" from section 85 (1A).  
Insert instead "section 28 of the *Public Trustee Corporation Act 1997*".

20

**[4]      Section 93 Claims barred against executor or administrator in certain cases**

Insert "or the Public Trustee Corporation" after "a trustee company" wherever occurring in section 93 (3), (4) and (6).

**[5]      Section 93 (3) and (4)**

5

Insert "or the Corporation" after "the trustee company" wherever occurring.

**[6]      Section 93 (5)**

Insert "or the Public Trustee Corporation" after "A trustee company".

10

**6.31      Workers Compensation Act 1987 No 70**

**[1]      Sections 29, 30, 31 (1) (b), 83 (7), 85, 86 (except where secondly and fifthly occurring) and 87 (1)**

Omit "Public Trustee" wherever occurring.  
Insert instead "Public Trustee Corporation".

15

**[2]      Section 86 Public Trustee Corporation's powers of investment**

Omit "are to form part of the common fund under section 36A of the *Public Trustee Act 1913* and" from section 86 (1).

**[3]      Section 86 (1)**

Omit "that Act".  
Insert instead "the *Public Trustee Corporation Act 1997*".

20

**[4]      Section 86 (2)**

Omit "*Public Trustee Act 1913*".  
Insert instead "*Public Trustee Corporation Act 1997*".



---

## **Schedule 7    Savings, transitional and other provisions**

(Section 59)

### **Part 1        Regulations**

- |  |          |
|--|----------|
| <b>1    Regulations</b>  | <b>5</b> |
| (1)    The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:   |          |
| this Act   |          |
| (2)    Such a provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.  | 10       |
| (3)    To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:                             |          |
| (a)    to affect, in a manner prejudicial to any person (other than the State, the Corporation or any authority of the State), the rights of that person existing before the date of its publication, or | 15       |
| (b)    to impose liabilities on any person (other than the State, the Corporation or any authority of the State) in respect of anything done or omitted to be done before the date of its publication.   | 20       |

### **Part 2        Provisions consequent on enactment of this Act**

- |  |           |
|--|-----------|
| <b>2    General provisions</b>   | <b>25</b> |
| (1)    Except in so far as the context or subject-matter otherwise indicates or requires and subject to the express provisions of this Act and the regulations:  |           |
| (a)    any act, matter or thing done or omitted by, to or in relation to the Public Trustee in an official capacity before the commencing date is taken to have been done or omitted by, to or in relation to the Corporation, and | 30        |

- (b) without limiting paragraph (a), anything commenced to be done by, to or in relation to the Public Trustee in an official capacity before the commencing date is taken to have been commenced to have been done by, to or in relation to the Corporation. 5
- (2) Except in so far as the context or subject-matter otherwise indicates or requires and subject to the express provisions of this Act and the regulations:
  - (a) this Act extends to and in relation to acts, matters and things occurring before the commencing date, and 10
  - (b) without limiting paragraph (a), this Act extends to and in relation to:
    - (i) wills, trusts, instruments and other documents made or executed before as well as on or after the commencing date, and 15
    - (ii) persons who died before as well as to persons who die on or after the commencing date.
- (3) Except in so far as the context or subject-matter otherwise indicates or requires and subject to the express provisions of this Act and the regulations, a reference in this Act to a provision of this Act includes a reference to the corresponding provision or provisions of the *Public Trustee Act 1913*, whether or not in identical or similar terms. 20

### **3 References to Public Trustee and associated matters**

- (1) This clause applies to references to the "Public Trustee" or the "Public Trust Office" in:
  - (a) any Act or instrument under any Act enacted or made before the commencing date, and
  - (b) any document (other than an Act or instrument under any Act) coming into existence before, on or after the commencing date. 30
- (2) Except to the extent that the context or subject-matter otherwise indicates or requires and subject to the regulations, such a reference to the Public Trustee or the Public Trust Office is to be read as or as including a reference to the Corporation. 35

- 
- (3) Except to the extent that the context or subject-matter otherwise indicates or requires and subject to the regulations, a reference in any Act or instrument to any act, matter or thing being done under the seal or hand of the Public Trustee is taken to be a reference to its being done under the seal of the Corporation. 5
- (4) The regulations may contain provisions that deal, among other things, with the interpretation of references (however expressed) to:
- (a) the Public Trustee, or
  - (b) the Public Trust Office, or 10
  - (c) any officer of the Public Trust Office, or
  - (d) an Act repealed or amended by this Act, or
  - (e) a provision of an Act repealed or amended by this Act.
- (5) Such a provision of the regulations is taken to be a provision of a savings or transitional nature, as referred to in clause 1. 15

#### 4 Costs in applications

Without limiting any other provision of this Schedule, section 48 applies in relation to costs incurred by the Public Trustee and other persons before the commencing date in the same way as it applies in relation to costs incurred by the Corporation and other persons after that date. 20

#### 5 Certificate evidence

- (1) This clause applies to a certificate issued before the commencing date under:
- (a) section 50 of the *Public Trustee Act 1913*, or 25
  - (b) section 57 of the *Confiscation of Proceeds of Crime Act 1989*, or
  - (c) section 21 of the *Drug Trafficking (Civil Proceedings) Act 1990*.



- (2) Neither the enactment of this Act nor its operation affects the existence, validity, admissibility or evidentiary value of such a certificate on or after the commencing date.

## 6 Original common fund

- (1) A reference in any Act or instrument to the common fund referred to in section 36A of the *Public Trustee Act 1913* is to be read as a reference to: 5
- (a) the original common fund, as regards matters committed to the Public Trustee before the cut-off date, or
  - (b) a new common fund, as regards matters committed to the Public Trustee Corporation on or after the cut-off date. 10
- (2) Amounts held by the Public Trustee and forming part of the original common fund under the *Workers Compensation Act 1987* (as referred to in section 86 of that Act) immediately before the commencing date continue to form part of that fund. 15
- (3) In this clause:
- new common fund* means a common fund established under section 35.

## 7 Determination of time when trust matter committed to Corporation

- (1) For the purposes of this Act, a trust matter is taken to be committed to the management of: 20
- (a) the Public Trustee before the commencing date, if the Public Trustee had accepted unconditionally the functions and liabilities relating to the matter and that acceptance occurred before the commencing date, or 25
  - (b) the Corporation on or after the commencing date, if the Corporation accepts unconditionally the functions and liabilities relating to the matter and that acceptance occurs on or after the commencing date, or 30
  - (c) the Corporation on or after the commencing date but before the cut-off date, if the Corporation accepts unconditionally the functions and liabilities relating to the matter and that acceptance occurs on or after the commencing date but before the cut-off date. 35

- 
- (2) A certificate issued by the Corporation, certifying when or the period during which the Public Trustee or the Corporation accepted unconditionally the functions and liabilities relating to a trust matter is to be accepted for all purposes as prima facie evidence (without production of any other proof) of the matters certified. 5

**8 Timetable for first statement of corporate intent**

A period within which any matter is required to be done under section 21 of the *State Owned Corporations Act 1989* in connection with the first statement of corporate intent of the Corporation may be extended by the voting shareholders of the Corporation. 10

**9 Corporation to be same entity as former corporation**

The Corporation is taken, for all purposes, including the rules of private international law, to be a continuation of and the same legal entity as the former corporation. 15

**10 Liability of Consolidated Fund (cf PT Act s 37)**

- (1) Despite the repeal of section 37 of the *Public Trustee Act 1913* by this Act, that section continues to apply to any estate or client of the Public Trustee to whom it applied before the commencing date in respect of any liability arising before, on or after the commencing date as if that section had not been repealed. 20
- (2) Section 37 of that Act so applies in relation to a liability of the Corporation that arises on or after the commencing date only to the extent that the liability arises in a relationship that existed with the Public Trustee before the commencing date. 25
- (3) The Consolidated Fund is otherwise not liable for any such liability that arises on or after the commencing date.

**11 Former Public Trustee**

- (1) In this clause: 30
- former Public Trustee* means the person holding office as Public Trustee immediately before the abolition of the office of Public Trustee by this Act.

Public Trustee Corporation Bill 1997

Schedule 7 Savings, transitional and other provisions

---

- (2) The former Public Trustee ceases to hold office as Public Trustee on the abolition of the office of Public Trustee by this Act.
- (3) The former Public Trustee is entitled to such compensation for loss of office as is agreed on (whether before or after the commencement of this clause) by the former Public Trustee and the Attorney General. 5
- (4) In the absence of such an agreement, the former Public Trustee is entitled to such compensation for loss of office as the Statutory and Other Offices Remuneration Tribunal determines. 10
- (5) The former Public Trustee is entitled to compensation under this clause whether or not appointed to be or to act as Chief Executive Officer of the Corporation.
- (6) However, if the former Public Trustee is recommended for appointment as Chief Executive Officer of the Corporation (otherwise than on an acting basis) after an agreement or determination is made as referred to in this clause, the appointment is conditional on arrangements, satisfactory to the Attorney General, being made for repayment of the whole or such part of the compensation paid as is specified in or calculated in accordance with provisions of the agreement or determination that deal with repayment in those circumstances. 15  
20
- (7) The former Public Trustee is not entitled to any remuneration, or compensation, for loss of office as Public Trustee, except as provided by this clause. 25