



New South Wales

# Technical Education Trust Funds Amendment Bill 1999

## Explanatory note

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

## Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Technical Education Trust Funds Act 1967*:
  - (i) to provide for the Governor to appoint a statutory corporation as a Statutory Trustee of a Fund administered under the Act, and
  - (ii) to exempt a Statutory Trustee, and any agent of the Statutory Trustee, from personal liability for decisions made in good faith for the purpose of executing the Act, and
  - (iii) to clarify and simplify the scheme governing the administration of Funds under the Act, and

Explanatory note

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- (b) to amend the *Annual Reports (Departments) Act 1985* and the *Annual Reports (Statutory Bodies) Act 1984* to simplify the obligation of a Statutory Trustee to report annually on a Fund administered by the Trustee under that Act, and
- (c) to make consequential amendments to the *Public Finance and Audit Act 1983*.

## Outline of provisions

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

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

**Clause 3** is a formal provision giving effect to the amendments to the *Technical Education Trust Funds Act 1967* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Annual Reports (Departments) Act 1985* set out in Schedule 2.

**Clause 5** is a formal provision giving effect to the amendments to the *Annual Reports (Statutory Bodies) Act 1984* set out in Schedule 3.

**Clause 6** is a formal provision giving effect to the amendments to the *Public Finance and Audit Act 1983* set out in Schedule 4.

## Amendments

### Appointment of statutory corporation as Statutory Trustee

Currently, the *Technical Education Trust Funds Act 1967* provides that the Governor may provide, by way of an order, that the individuals holding the offices specified in the order are the Statutory Trustees of a Fund administered under the Act. **Schedule 1 [5]** substitutes sections 3–6 of the *Technical Education Trust Funds Act 1967* with proposed sections 3–6E to allow the Governor to appoint either a statutory corporation to be the Statutory Trustee of such a Fund, or two or more individuals to be the Statutory Trustees of the Fund. Proposed sections 3–6E also clarify and simplify the scheme by which a trust fund may be brought within the provisions of the Act to vest in the Statutory Trustee or Trustees appointed in relation to that fund.

### **Personal liability of Statutory Trustees**

**Schedule 1 [7]** inserts proposed section 11 into the *Technical Education Trust Funds Act 1967* to protect a Statutory Trustee, or any agent of the Statutory Trustee, from personal liability for decisions made in good faith for the purpose of executing the Act.

### **Savings and transitional and consequential amendments**

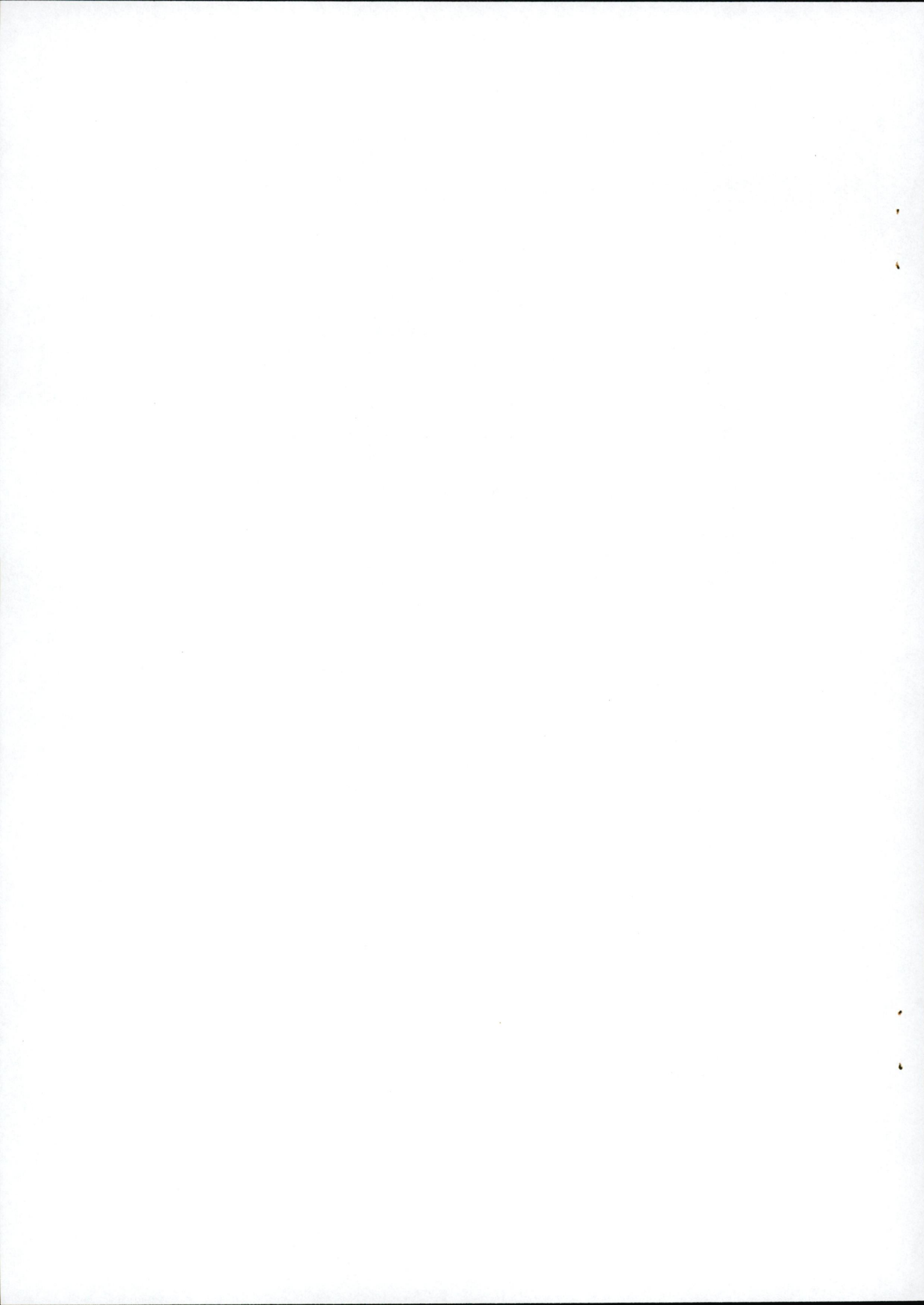
**Schedule 1 [8]** and **[10]** insert proposed section 15 and Schedule 2 into the *Technical Education Trust Funds Act 1967*, to give effect to savings and transitional provisions relating to existing Statutory Trustees and Funds currently being administered under the Act. Proposed Schedule 2 also provides for a savings and transitional regulation-making power.

**Schedule 1 [1], [2], [3], [4], [6]** and **[9]** make consequential amendments to the *Technical Education Trust Funds Act 1967*.

**Schedule 4 [1]** and **[2]** make consequential amendments to the *Public Finance and Audit Act 1983*.

### **Simplifying annual reports**

**Schedule 2** and **Schedule 3** amend the *Annual Reports (Departments) Act 1985* and the *Annual Reports (Statutory Bodies) Act 1984*, respectively, to provide that a Statutory Trustee that is a statutory corporation already under an obligation to prepare an annual report in relation to its own functions (under one of those Acts) may include in that report the annual report relating to its function as a Statutory Trustee (required under the *Annual Reports (Statutory Bodies) Act 1984*).





New South Wales

# Technical Education Trust Funds Amendment Bill 1999

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Technical Education Trust Funds Act 1967 No 95	2
4 Amendment of Annual Reports (Departments) Act 1985 No 156	2
5 Amendment of Annual Reports (Statutory Bodies) Act 1984 No 87	2
6 Consequential amendment of Public Finance and Audit Act 1983 No 152	2
<b>Schedules</b>	
1 Amendment of Technical Education Trust Funds Act 1967	3
2 Amendment of Annual Reports (Departments) Act 1985	10
3 Amendment of Annual Reports (Statutory Bodies) Act 1984	11
4 Consequential amendment of Public Finance and Audit Act 1983	12





New South Wales

## Technical Education Trust Funds Amendment Bill 1999

No. , 1999

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### A Bill for

An Act to amend the *Technical Education Trust Funds Act 1967* to make provision in relation to the trustees of trust money administered under that Act, to amend the *Annual Reports (Departments) Act 1985* and the *Annual Reports (Statutory Bodies) Act 1984* to simplify the reporting requirements of those trustees, to make consequential amendments to the *Public Finance and Audit Act 1983*; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Technical Education Trust Funds Amendment Act 1999</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5
<b>3 Amendment of Technical Education Trust Funds Act 1967 No 95</b>	6
The <i>Technical Education Trust Funds Act 1967</i> is amended as set out in Schedule 1.	7 8
<b>4 Amendment of Annual Reports (Departments) Act 1985 No 156</b>	9
The <i>Annual Reports (Departments) Act 1985</i> is amended as set out in Schedule 2.	10 11
<b>5 Amendment of Annual Reports (Statutory Bodies) Act 1984 No 87</b>	12
The <i>Annual Reports (Statutory Bodies) Act 1984</i> is amended as set out in Schedule 3.	13 14
<b>6 Consequential amendment of Public Finance and Audit Act 1983 No 152</b>	15
The <i>Public Finance and Audit Act 1983</i> is amended as set out in Schedule 4.	16 17 18



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**Schedule 1    Amendment of Technical Education Trust  
                         Funds Act 1967**

	(Section 3)	1 2 3 4
<b>[1]    Section 2 Definitions</b>		5
Omit the definitions of <i>appointed day</i> , <i>notified office</i> and <i>Schedule</i> .		6 7
<b>[2]    Section 2, definition of "Fund"</b>		8
Omit the definition. Insert instead:		9 10
<i>Fund</i> means a trust fund named in the First Column of Schedule 1, being a fund that was, immediately before becoming a Fund for the purposes of this Act, held on the trusts created by the trust instrument described in that Column in relation to that Fund.		11 12 13 14
<b>[3]    Section 2, definitions of "substituted trusts" and "trust instrument"</b>		15
Omit "the Schedule" wherever occurring. Insert instead "Schedule 1".		16 17
<b>[4]    Section 2 (2)</b>		18
Insert at the end of section 2:		19 20
(2) In sections 7, 8, 13 and 14, a reference to <i>Statutory Trustees</i> includes a reference to a statutory corporation that is a Statutory Trustee of a Fund.		21 22 23
<b>[5]    Sections 3–6E</b>		24
Omit sections 3–6. Insert instead:		25 26
<b>3    Trustees may apply for trust fund to be brought under this Act</b>		27
The trustee or trustees of any fund held on trust for the advancement of education at an educational establishment may apply to the Minister for the fund to be brought under the provisions of this Act.		28 29 30 31

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- 4 Order specifying trust fund to be a Fund** 1
- If an application is made under section 3, the Governor may, by order published in the Gazette: 2
- (a) declare the trust fund that is the subject of the application to be a Fund for the purposes of this Act and specify the substituted trusts of the Fund, and 3
- (b) appoint: 4
- (i) the holders for the time being of two or more offices specified in the order to be the Statutory Trustees of the Fund, or 5
- (ii) a statutory corporation specified in the order to be the Statutory Trustee of the Fund, and 6
- (c) amend Schedule 1 to the extent necessary to give effect to the order. 7
- 5 Divesting of Fund from previous trustees to Statutory Trustees** 8
- (1) On the day on which an order specifying a trust fund to be a Fund for the purposes of this Act takes effect: 9
- (a) the trusts on which the Fund was held immediately before that day cease to have any effect, except to the extent that their operation is continued by or under this Act, and 10
- (b) a person who held office as trustee of the Fund immediately before that day vacates that office, and 11
- (c) any provision of a trust instrument relating to the appointment of new trustees or the retirement of trustees of the trust fund that comprises the Fund ceases to have effect, and 12
- (d) the substituted trusts relating to the Fund become the trusts to which the Fund is subject, and 13
- (e) the capital of the Fund is to be held on trust to be invested in accordance with the *Trustee Act 1925*. 14

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(2) On the day on which an order specifying a trust fund to be a Fund for the purposes of this Act takes effect, the Fund vests, without any conveyance or other assurance, in the persons or statutory corporation appointed under that order as the Statutory Trustees or Statutory Trustee of the Fund.	1 2 3 4 5
(3) A Fund for which two or more Statutory Trustees are appointed vests in those Statutory Trustees as joint tenants.	6 7
<b>6 Change of Statutory Trustees</b>	8
(1) The Governor may, by order published in the Gazette, change the Statutory Trustee or Statutory Trustees of a Fund.	9 10
(2) On the day on which the order takes effect:	11
(a) a person who, or a statutory corporation that, immediately before that day, was a Statutory Trustee of the Fund, ceases to be a Statutory Trustee of that Fund, and	12 13 14
(b) the Fund vests, without any conveyance or other assurance, in the persons or statutory corporation appointed under that order as the Statutory Trustees or Statutory Trustee of the Fund.	15 16 17 18
(3) A Fund in relation to which two or more Statutory Trustees are appointed vests in those Statutory Trustees as joint tenants.	19 20
<b>6A Holder of specified office changes</b>	21
(1) On the day on which a person ceases to hold an office specified in an order made under section 4 or 6, the person ceases to be a Statutory Trustee of the Fund to which the order relates.	22 23 24
(2) On the day on which a person assumes an office specified in an order made under section 4 or 6, the person is taken to have been duly appointed as a Statutory Trustee of the Fund to which the order relates.	25 26 27 28
(3) That Fund vests, without any conveyance or other assurance, in that person and the other Statutory Trustees of that Fund as joint tenants.	29 30 31

<b>6B</b>	<b>Statutory corporation ceasing to exist</b>	1
(1)	On the day on which a statutory corporation, that is a Statutory Trustee of a Fund, is dissolved or otherwise ceases to exist:	2
		3
(a)	the statutory corporation ceases to be a Statutory Trustee of the Fund, and	4
		5
(b)	the Fund vests, without any conveyance or other assurance, in the person who holds the office of the Director-General of the Department of Education and Training.	6
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(2)	The person who holds the office of the Director-General of the Department of Education and Training is taken to be a Statutory Trustee of any Fund that vests in that person by virtue of subsection (1), but ceases to be such a Statutory Trustee if an order is made under section 6 in relation to that Fund.	10
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<b>6C</b>	<b>Fund vests in remaining Statutory Trustees or Director-General</b>	15
(1)	If a person ceases to be a Statutory Trustee by virtue of section 6A (1), and no other person holds the relevant office specified in relation to a Fund, the Fund vests, without any conveyance or other assurance:	16
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(a)	in the remaining Statutory Trustee (if there is only one), or	20
		21
(b)	in the remaining Statutory Trustees of the Fund as joint tenants.	22
		23
(2)	If all of the persons appointed as Statutory Trustees of a Fund cease to be Statutory Trustees of the Fund by virtue of section 6A (1), and all of the relevant offices specified in relation to that Fund are vacant, the Fund vests, without any conveyance or other assurance, in the person who holds the office of the Director-General of the Department of Education and Training.	24
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(3)	The person who holds the office of the Director-General of the Department of Education and Training is taken to be a Statutory Trustee of any Fund that vests in that person by virtue of subsection (2), but ceases to be such a Statutory Trustee if:	30
		31
		32
		33
(a)	an order is made under section 6 in relation to that Fund, or	34
		35
(b)	a person assumes an office specified in relation to that Fund.	36
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<b>6D</b>	<b>Provisions of Trustee Act 1925 not applicable</b>	1
	The provisions of the <i>Trustee Act 1925</i> relating to the appointment of new trustees and the retirement of trustees do not apply to or in respect of a Statutory Trustee.	2 3 4
<b>6E</b>	<b>Proof that person is Statutory Trustee</b>	5
	A certificate, purporting to have been signed by the Director-General of the Department of Education and Training, to the effect that a person specified in the certificate is a Statutory Trustee for the time being of a Fund so specified is evidence of the matters certified.	6 7 8 9 10
<b>[6]</b>	<b>Section 9 Saving of existing scholarships</b>	11
	Omit "immediately before the appointed day, held a scholarship awarded pursuant to the trusts created by a trust instrument".	12 13 14
	Insert instead "immediately before a trust fund becomes a Fund to which this Act applies, held a scholarship awarded pursuant to trusts created by a trust instrument relating to that trust fund".	15 16 17
<b>[7]</b>	<b>Section 11</b>	18
	Insert after section 10:	19 20
	<b>11 Statutory Trustees not personally liable for acts in good faith</b>	21
	A matter or thing done or omitted to be done by a Statutory Trustee who is an individual, or by a person acting under the direction of a Statutory Trustee (whether or not the Trustee is an individual) does not, if the matter or thing was done or omitted in good faith for the purpose of executing this Act or any by-law made under this Act, subject the individual or person so acting personally to any action, liability, claim or demand.	22 23 24 25 26 27 28
<b>[8]</b>	<b>Section 15</b>	29
	Insert after section 14:	30 31
	<b>15 Savings and transitional provisions</b>	32
	Schedule 2 has effect.	33

<b>[9] Schedule, heading</b>	1
Omit the heading. Insert instead:	2 3
<b>Schedule 1                      Trust Funds</b>	4
<b>[10] Schedule 2</b>	5
Insert at the end of the Act:	6 7
<b>Schedule 2                      Savings and transitional provisions</b>	8 9 10
	(Section 15) 11
<b>Part 1 Preliminary</b>	12
<b>1 Regulations</b>	13
(1) The Governor may make regulations that contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	14 15 16
<i>Technical Education Trust Funds Amendment Act 1999</i>	17
(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	18 19
(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	20 21 22
(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	23 24 25
(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	26 27 28

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<b>Part 2 Provisions consequent on enactment of Technical Education Trust Funds Amendment Act 1999</b>	1 2 3 4
<b>2 Definitions</b>	5
In this Part:	6
<i>amending Act</i> means the <i>Technical Education Trust Funds Amendment Act 1999</i> .	7 8
<b>3 Funds</b>	9
The substitution of section 4 by the amending Act does not affect the operation of that section in relation to a Fund before its substitution, and any operation that the section had in relation to a Fund immediately before its substitution continues as if the section had not been substituted.	10 11 12 13 14
<b>4 Statutory Trustees</b>	15
A person who was a Statutory Trustee of a Fund immediately before the commencement of the amending Act continues to be a Statutory Trustee of the Fund, subject to this Act, and is taken to have been appointed as a Statutory Trustee by order under section 4, as substituted by the amending Act.	16 17 18 19 20

<b>Schedule 2</b>	<b>Amendment of Annual Reports (Departments) Act 1985</b>	1
		2
		3
	(Section 4)	4
<b>Section 7</b>		5
Insert after section 6:		6
		7
<b>7</b>	<b>Inclusion of report of Statutory Trustee of Trust Funds in annual report</b>	8
		9
(1)	A Department that is required to prepare an annual report under the <i>Annual Reports (Statutory Bodies) Act 1984</i> , relating to its function as the Statutory Trustee of a Fund within the meaning of the <i>Technical Education Trust Funds Act 1967</i> , may include the report in the annual report relating to the Department itself.	10 11 12 13 14
(2)	A reference in subsection (1) to a Department includes a reference to any body or office that is taken to be included in the Department for the purposes of the <i>Public Finance and Audit Act 1983</i> .	15 16 17 18



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**Schedule 3    Amendment of Annual Reports (Statutory  
Bodies) Act 1984**

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(Section 5)

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**Section 5B**

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Insert after section 5A:

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**5B    Inclusion of report of Statutory Trustee of Trust Funds in  
annual report**

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- (1) A statutory body that is required to prepare an annual report relating to its function as the Statutory Trustee of a Fund within the meaning of the *Technical Education Trust Funds Act 1967* may include the report in the annual report relating to the statutory body itself.
- (2) An annual report that is required to be prepared by a University relating to its function as the Statutory Trustee of a Fund within the meaning of the *Technical Education Trust Funds Act 1967* may be included in the annual report of the governing authority of the University.

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<b>Schedule 4</b>	<b>Consequential amendment of Public Finance and Audit Act 1983</b>	1
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		3
	(Section 6)	4
<b>[1] Schedule 2 Statutory bodies</b>		5
	Omit "Trustees of a Fund or Funds specified in an order published in the Gazette for the purposes of section 3 or 6 of the <i>Technical Education Trust Funds Act 1967</i> ."	6
		7
		8
		9
<b>[2] Schedule 2</b>		10
	Insert in alphabetical order "Statutory Trustees or a Statutory Trustee of a Fund within the meaning of the <i>Technical Education Trust Funds Act 1967</i> ."	11
		12
		13