

FIRST PRINT

PERPETUITIES (AMENDMENT) BILL 1991

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Perpetuities Act 1984 to extend exemption from the rule against perpetuities to pooled superannuation trusts.

The rule against perpetuities is a rule of law which invalidates dispositions of property that attempt to postpone, for an indefinite period, the time when the property will vest in someone absolutely. The rule applies to interests in land as well as to personal property.

Currently under the Act individual superannuation funds are exempt from the rule. Pooled superannuation trusts are trusts that for investment purposes pool the individual superannuation funds that are currently exempt.

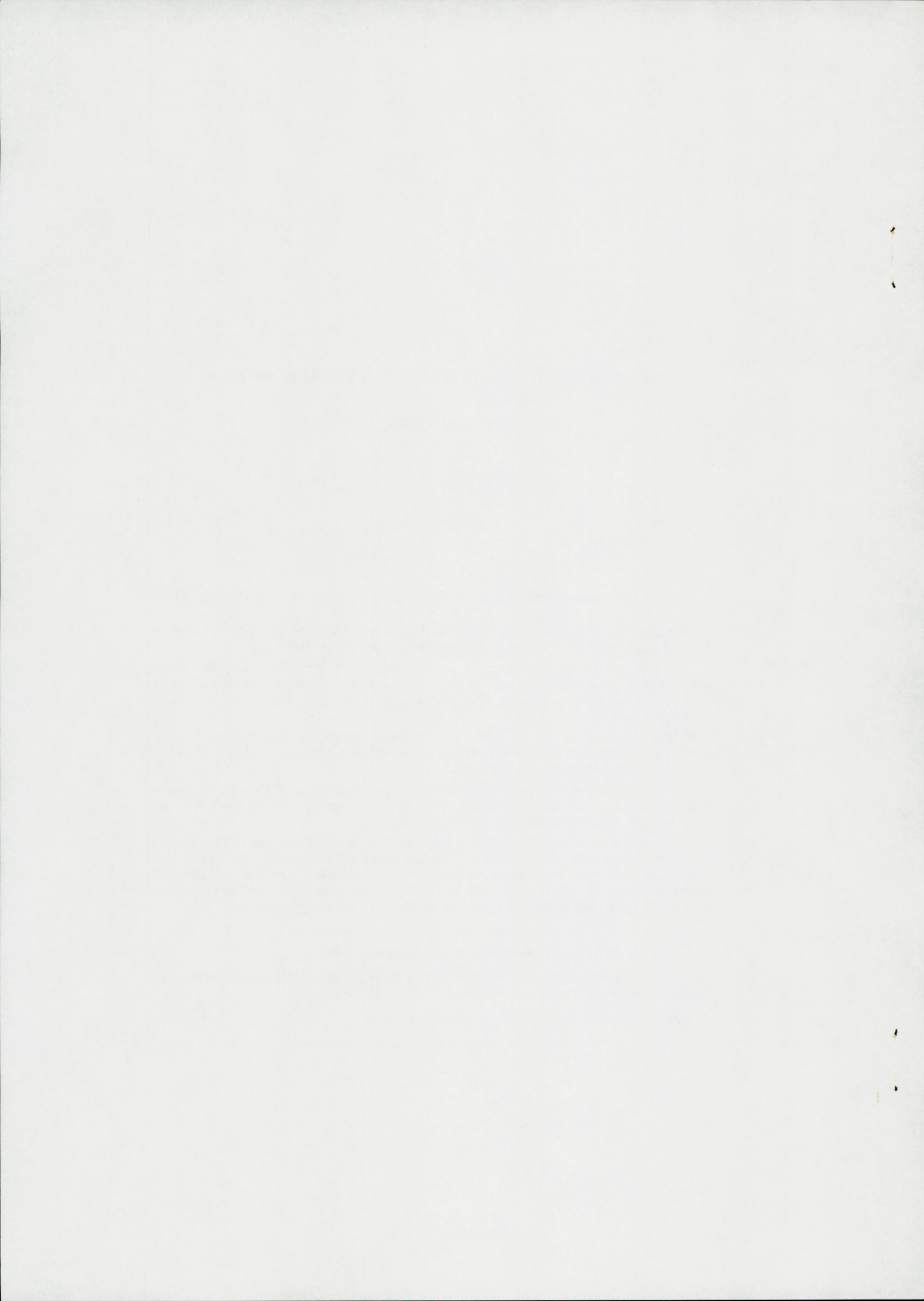
The amendment will remove any doubt as to the application of the rule to pooled superannuation trusts, that doubt being based on the possibility that an interest in the trust may be created beyond the perpetuity period.

Commencement of the amendment is back-dated to the commencement of the section of the Act that confers exemption on individual superannuation funds. The amendment will apply to pooled superannuation trusts established before (as well as after) its commencement. The effect of this will be to validate any existing or past invalidity that may have been caused by the operation of the rule against perpetuities.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is taken to have commenced on the date the Perpetuities Act 1984 commenced (31 October 1984).

Clause 3 makes the amendment described above.



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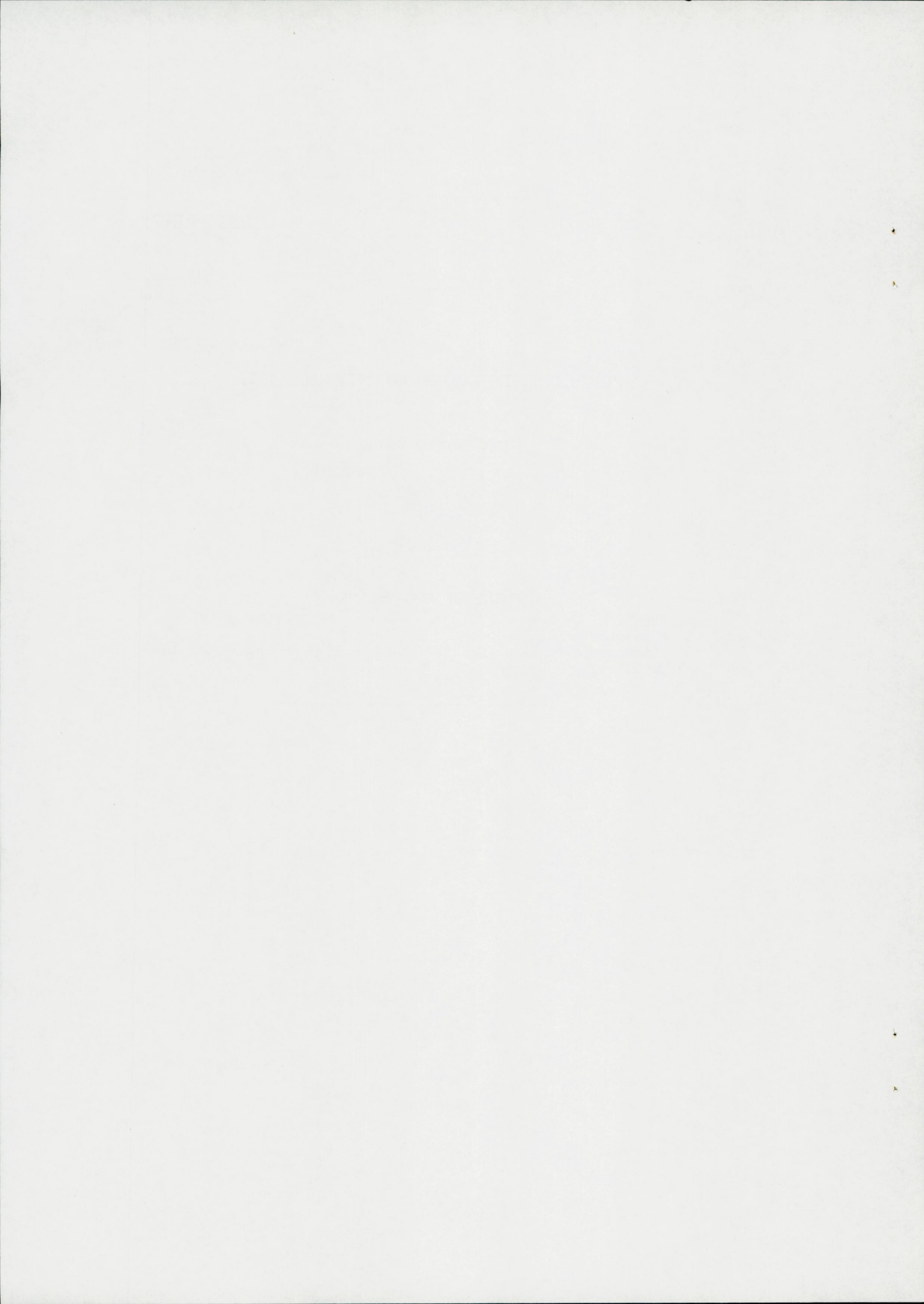
PERPETUITIES (AMENDMENT) BILL 1991

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Amendment of Perpetuities Act 1984 No. 43, sec. 13 (Superannuation and other funds)
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PERPETUITIES (AMENDMENT) BILL 1991

NEW SOUTH WALES



No. — , 1991

A BILL FOR

An Act to amend the Perpetuities Act 1984 to make further provision in relation to the exemption of superannuation and like funds from the rule against perpetuities.

Perpetuities (Amendment) 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Perpetuities (Amendment) Act 1991.

Commencement

2. This Act is taken to have commenced on the commencement of the Perpetuities Act 1984.

Amendment of Perpetuities Act 1984 No. 43, sec. 13 (Superannuation and other funds)

3. The Perpetuities Act 1984 is amended by inserting after section 13 (2) the following subsection:

(2A) The rule against perpetuities does not invalidate a trust established by a settlement and used for investing the assets of a fund referred to in subsection (2) (whether or not it is also used for investing other assets). This subsection does not affect the generality of subsection (2).

PERPETUITIES (AMENDMENT) BILL 1991

LEGISLATIVE COUNCIL

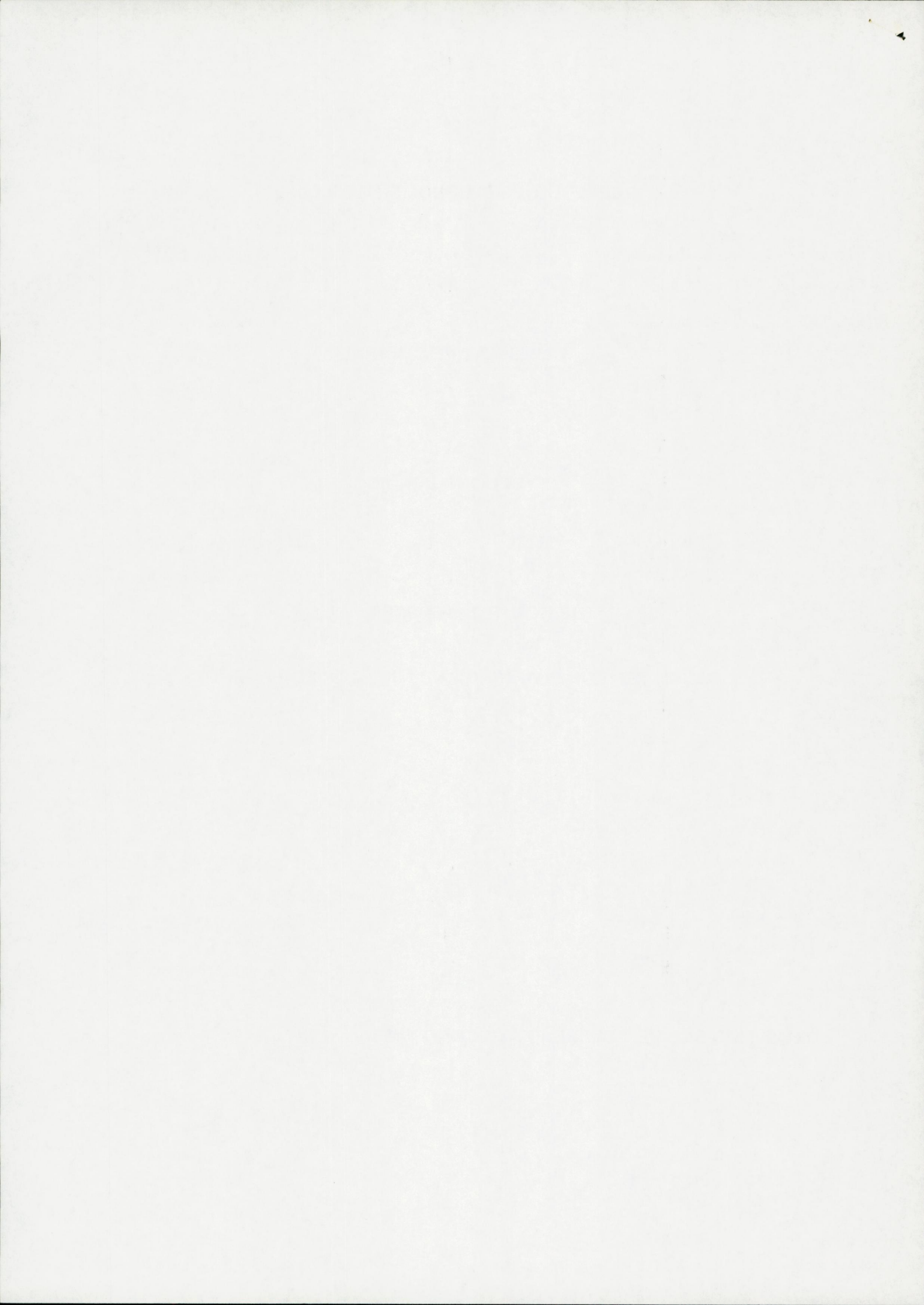
SECOND READING

THE HON. R.J. WEBSTER, M.L.C.

MINISTER FOR PLANNING AND MINISTER FOR ENERGY

I MOVE:

THAT THIS BILL BE NOW READ A SECOND TIME.



THE OBJECT OF THIS BILL IS TO RECTIFY AN ANOMALY IN THE APPLICATION OF THE RULE AGAINST PERPETUITIES AS BETWEEN SUPERANNUATION FUNDS AND POOLED SUPERANNUATION TRUSTS.

THE RULE AGAINST PERPETUITIES WAS DEVELOPED BY THE COURTS TO PREVENT INTERESTS IN PROPERTY FROM BEING "TIED UP" FOR TOO LONG BY THEIR OWNERS. PRIOR TO THE INTRODUCTION OF THE RULE, PROPERTY OWNERS WERE ABLE TO CONTROL THE FUTURE USE OF THEIR ESTATES BY VESTING THEIR PROPERTY IN ONGOING TRUSTS.

THE RULE WAS THEREFORE DESIGNED TO PREVENT INTERESTS THAT WERE TO ARISE IN THE FUTURE FROM ARISING AT TOO REMOTE A TIME.

ITS ORIGINAL PURPOSE WAS TO ENSURE THAT PROPERTY HOLDINGS COULD BE FREELY DEALT WITH AND TO THAT EXTENT IT REPRESENTED A VICTORY BY THE COURTS OVER OWNERS OF LARGE ESTATES SEEKING TO PREVENT DISPOSAL OF THESE PROPERTIES.

OVER THE YEARS, HOWEVER, THE RULE FREQUENTLY OPERATED TO BRING ABOUT RESULTS WHICH COULD NOT BE JUSTIFIED, AND FROM TIME TO TIME THEREFORE ITS APPLICATION HAS HAD TO BE MODIFIED.

FOLLOWING A MAJOR REVIEW BY THE NEW SOUTH WALES LAW REFORM COMMISSION IN 1983 THE GOVERNMENT OF THE DAY RESOLVED TO EFFECT A GENERAL REFORM OF THIS AREA OF THE LAW. THE VEHICLE FOR CHANGE WAS THE PERPETUITIES ACT 1984 ONE OF THE PROVISIONS OF WHICH, SECTION 13, EXEMPTED SUPERANNUATION FUNDS FROM COMPLIANCE WITH THE RULE.

THE MAIN REASONS FOR THE EXEMPTION WERE TO ALLOW SUPERANNUATION FUNDS TO BE INDEFINITELY CONTINUING AND SO TO MAXIMISE THE BENEFITS BUILT UP BY THE FUND, AND TO ALLOW NEW MEMBERS TO BE ADMITTED FROM TIME TO TIME.

HOWEVER, SUPERANNUATION FUNDS DO NOT CARRY OUT ALL THEIR INVESTMENT ACTIVITIES DIRECTLY. MANY ARE NOW POOLING MUCH OF THEIR FUNDS INTO ENTITIES KNOWN AS "POOLED SUPERANNUATION TRUSTS" WHICH THEN INVEST THE POOLED FUNDS AND OBTAIN THE HIGHER RATE OF RETURN AVAILABLE TO INVESTMENTS OF LARGE AMOUNTS.

POOLED SUPERANNUATION TRUSTS ARE USUALLY ESTABLISHED AS A UNIT TRUST WITH UNITS BEING ALLOCATED TO THE UNITHOLDERS IN PROPORTION TO THE AMOUNTS CONTRIBUTED BY THEM. IN ADDITION TO SUPERANNUATION FUNDS, OTHER UNIT HOLDERS INCLUDE APPROVED DEPOSIT FUNDS AND OTHER POOLED SUPERANNUATION TRUSTS.

AT THE TIME OF ENACTMENT OF THE PERPETUITIES ACT IN 1984 LEGAL OPINION WAS TO THE EFFECT THAT POOLED SUPERANNUATION TRUSTS DID NOT FALL FOUL OF THE RULE AGAINST PERPETUITIES AND HENCE THEY WERE NOT EXPRESSLY MENTIONED IN THE LEGISLATION.

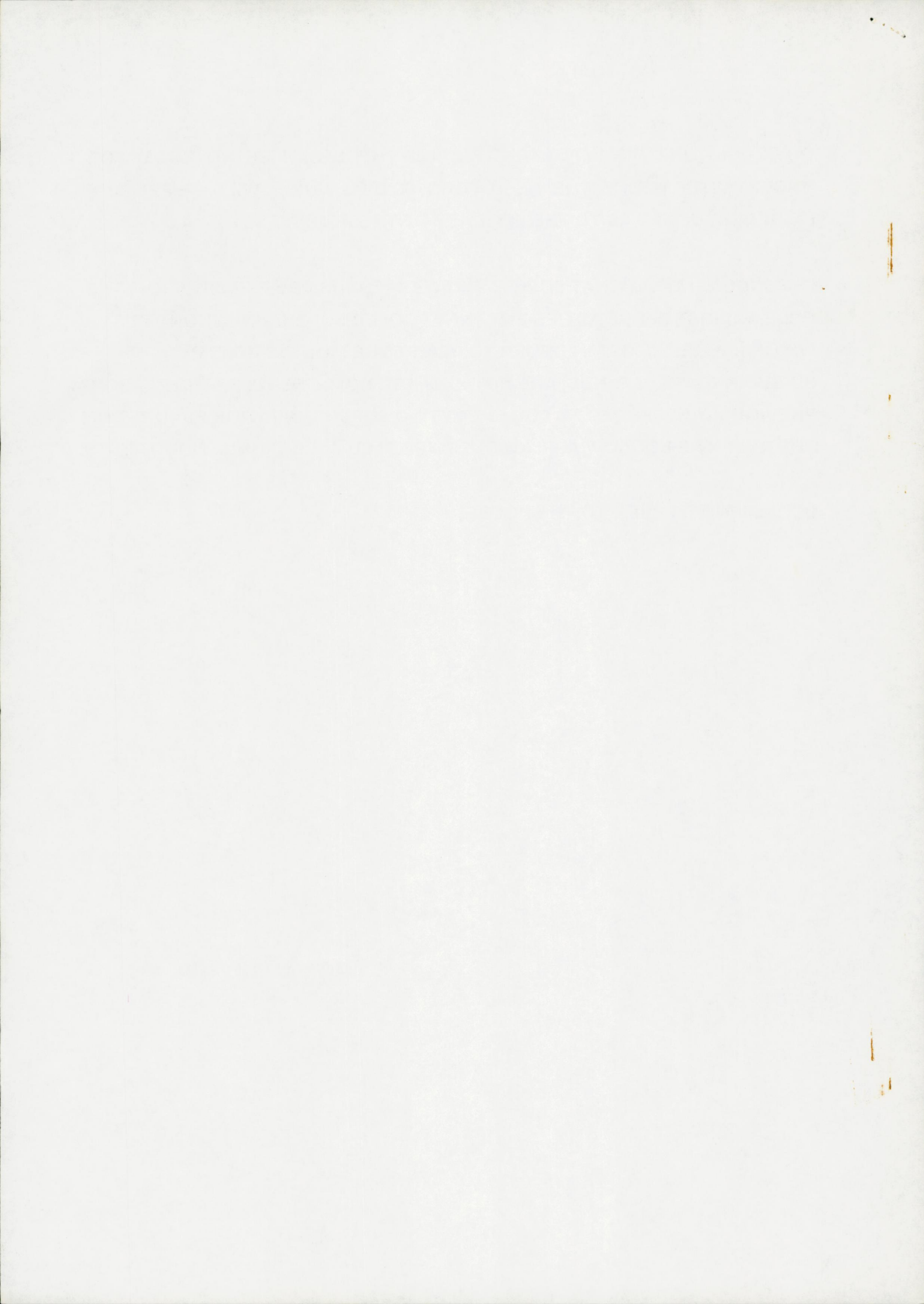
DOUBTS SUBSEQUENTLY AROSE, HOWEVER, AS TO WHETHER THAT OPINION WAS CORRECT AND FURTHER ADVICE WAS SOUGHT, THIS TIME FROM EMINENT QUEENS COUNSEL (INCLUDING THE SOLICITOR GENERAL).

THE SOLICITOR GENERAL ADVISED THAT IT WAS CLEARLY APPROPRIATE TO AMEND SECTION 13 OF THE PERPETUITIES ACT 1984 TO EXEMPT POOLED SUPERANNUATION TRUSTS FROM THE RULE AGAINST PERPETUITIES.

OBVIOUSLY, IN THIS IMPORTANT MATTER THERE CAN BE NO ROOM FOR UNCERTAINTY HENCE THE NEED FOR THIS BILL WHICH WILL DISPEL ANY LINGERING DOUBT AS TO THE EFFICACY OF THESE TRUSTS.

IT IS INCONSISTENT THAT SUPERANNUATION FUNDS ARE EXEMPT FROM THE RULE AGAINST PERPETUITIES BUT THAT POOLED SUPERANNUATION TRUSTS, WHICH LARGELY EXIST IN ORDER TO INVEST THE MONEYS HELD BY SUPERANNUATION FUNDS, ARE NOT EXEMPT FROM THE RULE. THE REASONS PREVIOUSLY REFERRED TO FOR EXEMPTING SUPERANNUATION FUNDS FROM THE RULE ARE EQUALLY APPLICABLE TO POOLED SUPERANNUATION TRUSTS.

I COMMEND THE BILL TO THE HOUSE.



PERPETUITIES (AMENDMENT) ACT 1991 No. 57

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Amendment of Perpetuities Act 1984 No. 43, sec. 13 (Superannuation and other funds)
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PERPETUITIES (AMENDMENT) ACT 1991 No. 57

NEW SOUTH WALES



Act No. 57, 1991

An Act to amend the Perpetuities Act 1984 to make further provision in relation to the exemption of superannuation and like funds from the rule against perpetuities. [Assented to 11 December 1991]

Perpetuities (Amendment) 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Perpetuities (Amendment) Act 1991.

Commencement

2. This Act is taken to have commenced on the commencement of the Perpetuities Act 1984.

Amendment of Perpetuities Act 1984 No. 43, sec. 13 (Superannuation and other funds)

3. The Perpetuities Act 1984 is amended by inserting after section 13 (2) the following subsection:

(2A) The rule against perpetuities does not invalidate a trust established by a settlement and used for investing the assets of a fund referred to in subsection (2) (whether or not it is also used for investing other assets). This subsection does not affect the generality of subsection (2).

[*Minister's second reading speech made in—
Legislative Assembly on 16 October 1991
Legislative Council on 4 December 1991*]