

Securities Trustees and Statutory Supervisors Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation

The Commerce Committee has examined the Securities Trustees and Statutory Supervisors Bill and recommends that it be passed with the amendments shown.

Introduction

The bill seeks to address a number of weaknesses in the current supervision regime for trustees and statutory supervisors. It would establish a licensing regime for trustees and statutory supervisors who supervise certain issuers of securities, and for statutory supervisors of retirement villages. The bill would amend several pieces of legislation, including the Retirement Villages Act 2003, the Securities Act 1978, and the Unit Trusts Act 1960.

The new regime would be administered by the Securities Commission. We note that it is intended that the commission's role under the bill would be taken over by the Financial Markets Authority once it was established.

Our commentary covers the major amendments we recommend to the bill. Minor, technical, and clarifying amendments are not discussed. Some of us would have preferred that this bill await the passage of the legislation establishing the Financial Markets Authority and the completion of the Securities Act review. Flaws in the trustee companies regime were identified during the collapse of several finance companies from 2006 onwards and while this legislation will improve the regulatory framework, some of us believe that it does not go far enough.

Definitions

We recommend that the bill, and particularly clause 4(1), be amended to include definitions appropriate to retirement villages, and to clarify and simplify some terms. For example, we recommend that the term “licensee” be used in the bill as a generic replacement for “trustee, statutory supervisor, or unit trustee”, and that “governing document” be used as a generic reference to the various deeds. We also recommend that the term “appointee” (in clauses 23(7) and 34(4)) be used in place of “trustee”, so as to include statutory supervisors of retirement villages, for whom the term “trustee” is inappropriate.

Duration of licences

Clause 11 prescribes a maximum licence period of five years. We consider that this relatively short fixed period could create uncertainty for issuers, operators of retirement villages, and licence holders, and recommend that it be extended to eight years.

We considered whether it was necessary to prescribe a timeframe at all, as the regulator would have the power to revoke licences. We do, however, believe it is important that licence holders be kept on notice that their licence is subject to audit, and could be revoked. We believe an eight-year licence period would strike a reasonable balance.

Decisions on issuing or varying licences

Clause 15 sets out the circumstances in which the Securities Commission could issue or vary a licence, and the factors it would be required to assess before making a decision. Clause 59(1)(aa) and (b) provides for regulations to be made which further stipulate the man-

ner in which the commission must make its assessments, and what it should or should not take into account in doing so. To allow alignment with the non-bank deposit takers regime administered by the Reserve Bank of New Zealand, we recommend that clause 59(1) be amended to allow regulations to be made to provide for the matters that the commission must take into account in making a good character assessment for the purposes of clause 15(2)(b).

For purposes of clarification, we recommend that clause 15(7) be amended to extend the definition of directors and senior managers to include any person delegated authority in relation to a trustee being able to carry out its functions.

Expiry of licences

We recommend some amendments to the timeframes set out in clause 20, in order to reduce the likelihood of bottlenecks in the commission's processing of applications for new licences around the time old licences expire.

To help ensure a seamless changeover when licences expire, we also recommend that the word "expires" be changed to "due to expire" in clause 22(1)(a), and that new clause 22(1A) be inserted to clarify when a licence would be due to expire.

Appointment of temporary trustee

Clause 21 would enable the commission to appoint its own trustee temporarily if an application for a licence were rejected.

We recommend that clauses 21(2)(b) and 21(7) be amended so the commission trustee would be appointed for six months, rather than three, to give the issuer enough time to comply with the trust deed in appointing a replacement for the commission trustee. We also recommend the insertion of new clause 21(2A) requiring the commission to consult the relevant issuer or operator, if practicable, before making an appointment.

The commission's appointee would be bound by the terms of the governing document, but the commission could consent to a change in the terms provided the interests of the security holders or retirement village residents would not be adversely affected. Under the bill as introduced, any adverse effect, however minor, would preclude the granting of consent. We therefore recommend the inclusion of a "ma-

teriality” qualification in clause 21(6)(b), so the commission must be satisfied that the change in the governing document would have “no significant adverse effect” on the interests of the security holders or the retirement village residents.

We also recommend the insertion of new clause 21(8) to allow the commission more flexibility in the type of trustee it could appoint on a temporary basis. This would recognise that there might be a limited pool of licence holders whom it could call on, and the commission should be able to use its discretion in appointing a suitably qualified person such as, for example, an experienced insolvency practitioner.

Breaches of licensee obligations

Clause 25 sets out the circumstances in which a licence holder must report to the commission on a breach of its licensee obligations. We recommend that clause 25(1)(a) be amended by removing the requirement that a licensee report to the commission where it believes it is “likely to breach” an obligation. We consider that such a requirement would be unduly onerous, and would produce only minimal benefit. We do, however, recommend amendments to clause 26(1) so that the commission would be empowered to investigate a breach or likely breach, or a material change of circumstances or likely material change of circumstances, on the part of a licensee, and to have them submit an action plan to remedy or avoid the breach. Corresponding changes are recommended in clause 27(3).

Removal of licensees

Clauses 33 to 41 of the bill cover the procedures that would be followed if a licensee failed to meet its obligations, and provide for the commission to vary or cancel a licence or remove and replace the existing licensee.

We recommend that clause 33(6) be amended to require the commission to give the licensee five working days’ notice, rather than two, about the steps it proposes to take. We believe this strikes a more appropriate balance between the need for the commission to act quickly in such situations and the right of the licensee to be heard.

We further recommend that clause 38 be amended in a similar way to clause 21, to include a materiality qualification in clause 38(5)(b), and to allow the commission flexibility in the type of trustee it could

appoint on a temporary basis in clause 38(7). We also recommend the insertion of new clause 38(1A) requiring the commission to consult the relevant issuer or operator, if practicable, before making an appointment.

Pecuniary penalty and compensation orders

Clauses 42 and 43 of the bill provide for the High Court to order a licensee to pay a pecuniary penalty to the Crown, or compensation to a security holder or retirement village resident (an aggrieved person), for breaches of its obligations. We consider that existing legislation provides a better model for these provisions, with more clarity regarding the standard of proof required. These provisions would also allow an aggrieved person to initiate proceedings for a compensation order, whereas the bill as introduced would give this ability only to the commission.

To avoid a potential escape route for former licensees, we also recommend (clause 43A(5)) that for the purposes of this section a licensee should include a former licensee.

We note that the bill as introduced allows the possibility of “double jeopardy”, where penalties could be imposed by both the Securities Commission and the Reserve Bank. We have therefore amended the bill to prevent double jeopardy.

Commission’s power to direct

The bill would give the Securities Commission power to issue mandatory directions to licence holders in order to protect the interests of investors and residents, in clauses 29, 37 and 49. We considered whether such powers would undermine the objective of strengthening the trustee supervisory role, and concluded that they would not, as the circumstances for such interventions are tightly defined; they would, however, provide a valuable safety net for investors. We also do not consider that there would be any contradiction in the potential situation of the commission not directing a trustee, and then taking legal proceedings against the trustee. This is because it is the issuer, rather than the commission, that has the legal obligation to act. For the avoidance of doubt, however, we recommend that clause 49 be amended to clarify that a failure to direct a trustee under that clause would not prevent the commission

seeking a pecuniary penalty or compensation order against the trustee under clauses 42 or 43, or an order under clause 50(5).

Retirement village statutory supervisors

The bill would amend the Retirement Villages Act 2003 to bring retirement village statutory supervisors under the same licensing regime it establishes for trustees and statutory supervisors of securities. We recommend that the bill be amended to clarify how particular clauses apply in respect of retirement village statutory supervisors, by replacing clause 66 (which would substitute a new section 37 of the Retirement Villages Act, to apply the relevant provisions of this bill) with corresponding amendments to the relevant clauses of the bill. If the retirement village provisions are included in the bill, section 37 could be repealed without the need for replacement.

We considered carefully whether it was appropriate to bring retirement village statutory supervisors within the bill's ambit, as we are aware of a view that the Retirement Villages Act 2003 already provides protection for retirement village residents. There were a number of submissions on this point. On balance, we support the inclusion of retirement village statutory supervisors in the licensing regime, as to exclude them would mean that residents of retirement villages would receive less protection in certain respects than people with a financial interest in a security. We consider that this would be anomalous and undesirable. Moreover, the Retirement Villages Act is inadequate on its own, as it lacks sanctions against poorly performing statutory supervisors.

The monitoring and sanction regime proposed by the bill would address the type of deficiencies identified in a 2009 report by the Retirement Commissioner.

A number of submitters raised concerns around the additional compliance costs which would be associated with this bill. It is out of the scope of this bill to address that issue. The committee recommends that a review of all the statutory fees that impact on retirement village residents occur.

Appendix

Committee process

The Securities Trustees and Statutory Supervisors Bill was referred to us on 23 March 2010. The closing date for submissions was 6 May 2010. We received and considered 18 submissions from interested groups and individuals. We heard eight submissions.

We received advice from the Ministry of Economic Development.

Committee membership

Hon Lianne Dalziel (Chairperson)

John Boscawen (until 8 September 2010)

Charles Chauvel (until 21 July 2010)

David Clendon

Clare Curran

Hon Sir Roger Douglas (from 8 September 2010)

Te Ururoa Flavell

Melissa Lee

Peseta Sam Lotu-Iiga

Hon Nanaia Mahuta (from 21 July 2010)

Katrina Shanks

Jonathan Young

Securities Trustees and Statutory
Supervisors Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Simon Power

Securities Trustees and Statutory Supervisors Bill

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The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Securities Trustees and Statutory Supervisors Act **2009**.

2 Commencement
This Act comes into force at the end of the period of 9 months beginning with the day on which it receives the Royal assent unless it is earlier brought into force on a date appointed by Order in Council. 5

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3 Purpose
The purpose of this Act is to protect the interests of security holders, and of residents of retirement villages, and to enhance investor confidence in financial markets and retirement vil- lages, by— 15

- (a) requiring persons who wish to be appointed as trustees; or statutory supervisors; ~~or unit trustees~~ to be capable of effectively performing the functions of trustees; or statutory supervisors; ~~or unit trustees~~; and
- (b) requiring trustees; and statutory supervisors; ~~and unit trustees~~ to perform their functions effectively; and 20
- (c) enabling trustees; and statutory supervisors; ~~and unit trustees~~ to be held accountable for any failure to perform their functions effectively.

4 Interpretation 25
(1) In this Act, unless the context otherwise requires,—

Commission has the meaning given in section 2(1) means the Securities Commission established under section 9 of the Securities Act 1978

deed of participation means a deed of participation relating to a participatory security that is required under section 33(3) of the Securities Act 1978 and includes every instrument that amends the deed of participation

deed of supervision has the meaning given in section 5 of the Retirement Villages Act 2003 and includes every instrument that amends the deed of supervision

deposit taker has the meaning given in section 157C of the Reserve Bank of New Zealand Act 1989

governing document means, as the context requires,—

(a) a trust deed;

(b) a deed of participation;

(c) a deed of supervision

issuer has the meaning given in section 2(1) of the Securities Act 1978

issuer obligation means an obligation imposed on the issuer of a security by or under any or all of the following:

(a) the trust deed or deed of participation governing document that relates to the security:

(b) the terms of any offer of the security:

(c) a court order relating to the security:

(d) this Act:

(e) Part 5D of the Reserve Bank of New Zealand Act 1989:

(f) the Securities Act 1978:

(g) the Unit Trusts Act 1960

licence means a licence issued under **section 15**, and includes a temporary licence

licensee—

(a) means a trustee or statutory supervisor that holds a licence; and

(b) includes a Commission appointee, whether or not that appointee holds a licence

licensee obligation means an obligation imposed on a licensee by or under any or all of the following:

(a) every governing document:

- (b) this Act:
- (c) a court order relating to a supervised interest:
- (d) Part 5D of the Reserve Bank of New Zealand Act 1989:
- (e) the Securities Act 1978:
- (f) the Unit Trusts Act 1960: 5
- (g) the Retirement Villages Act 2003
- material change of circumstances**, in relation to a ~~licence~~ licensee holder licensee, means—
- (a) a change that adversely affects the ~~licence holder's~~ licensee's capacity effectively to perform the functions of a trustee, ~~or statutory supervisor, or unit trustee~~ in respect of a security, ~~or of a statutory supervisor in respect of a retirement village,~~ covered by the licence; or 10
- (b) a change that means that the ~~licence holder~~ licensee no longer meets the requirements referred to in **section 15(2)** 15
- Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 20
- operator** has the meaning given in section 5 of the Retirement Villages Act 2003
- operator obligation** means an obligation imposed on the operator of a retirement village by or under any or all of the following: 25
- (a) every deed of supervision that relates to the retirement village:
- (b) this Act:
- (c) a court order relating to the retirement village:
- (d) the Retirement Villages Act 2003 30
- prescribed** means prescribed in regulations made under this Act
- resident** has the meaning given in section 5 of the Retirement Villages Act 2003
- retirement village** has the meaning given in section 6 of the Retirement Villages Act 2003 35
- security** means—
- (a) a debt security:

(b) a participatory security:

(c) a unit in a unit trust

statutory supervisor has the meaning given in section 2(1) of the Securities Act 1978

statutory supervisor means,—

5

(a) in relation to a participatory security, a statutory supervisor as defined in section 2(1) of the Securities Act 1978:

(b) in relation to a retirement village, a statutory supervisor as defined in section 5 of the Retirement Villages Act 2003

10

supervised interest means,—

(a) in relation to a trustee or statutory supervisor of a security (T), a security in respect of which T is the trustee or statutory supervisor:

15

(b) in relation to a statutory supervisor of a retirement village (S), a retirement village in respect of which S is the statutory supervisor

supervised issuer, in relation to a trustee, or statutory supervisor of a security, or unit trustee, means the issuer of a supervised security interest that is a security

20

supervised security, in relation to a trustee, statutory supervisor, or unit trustee (T), means a security in respect of which T is the trustee, statutory supervisor, or unit trustee

temporary licence has the meaning given in **section 60**

25

trust deed,—

(a) in relation to a trustee of a debt security, has the meaning given in section 2(1) of the Securities Act 1978 and includes every instrument that amends the trust deed:

(b) in relation to a unit trustee of a unit trust, has the meaning given in section 2(1) of the Unit Trusts Act 1960

30

trustee has the meaning given in section 2(1) of the Securities Act 1978

trustee means—

(a) a trustee, as defined in section 2(1) of the Securities Act 1978; and

35

(b) a unit trustee

trustee obligation means an obligation imposed on a trustee, statutory supervisor, or unit trustee by or under—

- (a) every trust deed or deed of participation relating to a supervised security;
- (b) this Act: 5
- (c) a court order relating to a supervised security;
- (d) Part 5D of the Reserve Bank of New Zealand Act 1989;
- (e) the Securities Act 1978;
- (f) the Unit Trusts Act 1960

unit trustee has the same meaning as the meaning of **trustee** in section 2(1) of the Unit Trusts Act 1960 10

vary, in relation to a licence, includes—

- (a) imposing a condition on the licence; and
- (b) varying or removing a condition previously imposed on the licence. 15

- (2) Unless the context otherwise requires, a term or expression that is defined in the Securities Act 1978 (in relation to securities) or the Retirement Villages Act 2003 (in relation to retirement villages) and used, but not defined, in this Act ~~has the same meaning as in that Act~~ has the same meaning as in those Acts. 20

5 Act binds the Crown

This Act binds the Crown.

Part 2

Regulation of trustees, and statutory supervisors, and unit trustees 25

Subpart 1—Licensing of trustees, and statutory supervisors, and unit trustees

Requirement to be licensed, etc

6 Trustee, etc, or statutory supervisor must be licensed 30

- (1) A trustee, or statutory supervisor, or unit trustee in respect of a security must hold a licence that covers the security.
- (2) A statutory supervisor in respect of a retirement village must hold a licence that covers the retirement village.

- 7** ~~Licence holder~~Licensee must comply with conditions imposed on licence
A ~~licence holder~~ licensee must comply with every condition imposed on the licence.
- 8** **Requirement to be licensed: offences** 5
- (1) A person commits an offence if—
- (a) the person is a trustee, or statutory supervisor, ~~or unit trustee~~ in respect of a security; and
 - (b) the person does not hold a licence that covers the security. 10
- (1A) A person commits an offence if—
- (a) the person is a statutory supervisor in respect of a retirement village; and
 - (b) the person does not hold a licence that covers the retirement village. 15
- (2) A person commits an offence if—
- (a) the person represents that the person is licensed to be a trustee, or statutory supervisor, ~~or unit trustee~~ in respect of a security; and
 - (b) the person does not hold a licence that covers the security. 20
- (2A) A person commits an offence if—
- (a) the person represents that the person is licensed to be a statutory supervisor in respect of a retirement village; and
 - (b) the person does not hold a licence that covers the retirement village. 25
- (3) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding \$300,000.
- 8A** **Requirement to be licensed: exception for certain Commission appointees** 30
Sections 6, 7, 8(1), and 8(1A) do not apply to a person appointed as a Commission appointee under section 21 or 38.

*Licences: general***9 Commission may license trustee, etc**

- (1) The Commission may license a person to be 1 or more of the following:
- (a) a trustee in respect of debt securities: 5
 - (b) a statutory supervisor in respect of participatory securities:
 - (c) a ~~unit~~ trustee in respect of units in unit trusts:
 - (d) a statutory supervisor in respect of retirement villages.
- (2) A licence may cover ~~all securities or either or both~~ all securities, all retirement villages, or any 1 or more of the following: 10
- (a) securities of 1 or more classes:
 - (b) 1 or more particular issues of securities:
 - (c) retirement villages of 1 or more classes:
 - (d) 1 or more particular retirement villages. 15
- ~~(3) A class may be defined (to include or exclude a security) in any way, including by reference to a particular issuer or class of issuer.~~
- (3) A class may be defined (to include or exclude a security or retirement village) in any way, including, without limitation, by reference to— 20
- (a) a particular issuer or operator; or
 - (b) a particular class of issuer or operator.

10 Commission may impose conditions on licence

- (1) The Commission may, on granting or varying a licence, impose conditions on ~~a~~ the licence. 25
- (2) The Commission may impose conditions that—
- (a) limit a licence ~~(for example, by limiting the number of appointments as trustee, statutory supervisor, or unit trustee that may be held by the licensee holder or by setting a maximum value for supervised securities):~~ 30
 - ~~(b) apply only if the licensee holder is appointed as trustee, statutory supervisor, or unit trustee in respect of a particular security or class of security.~~
 - (b) apply only if the licensee is appointed as— 35
 - (i) trustee or statutory supervisor in respect of a particular security or class of security; or

- (ii) statutory supervisor in respect of a particular retirement village or class of retirement village.
- (3) **Subsection (2)** does not limit **subsection (1)**.
- (4) Examples of the conditions that the Commission may impose on a licence under **subsection (2)(a)** include, without limitation, conditions— 5
- (a) limiting the number of appointments as trustee or statutory supervisor that may be held by the licensee:
- (b) setting a maximum value for supervised interests that are securities: 10
- (c) limiting the number of retirement villages in respect of which the statutory supervisor may hold a licence:
- (d) relating to the matters listed in **section 15(3)**.
- 11 Duration of licence**
- (1) A licence must be issued for a fixed period of no more than ~~5~~ 8 years. 15
- (2) A licence takes effect on the date stated in the licence.
- (3) Subject to **section 18(2)**, a licence expires on the earlier of—
- (a) the date on which the licence is cancelled under **section 16 or 33(2)(d)**; and 20
- (b) the date on which the fixed period ends.
- 12 Information to be stated in licence**
- A licence must state the following information:
- (a) the name of the ~~licence holder~~ licensee:
- (b) in the case of securities, the security or securities covered by the licence: 25
- (ba) in the case of retirement villages, the retirement village or villages covered by the licence:
- (c) the conditions (if any) imposed on the licence:
- (d) the date on which the licence takes effect: 30
- (e) the date on which the fixed period for which the licence is issued ends:
- (f) the date by which the first report under **section 24** must be delivered.

13 Commission must send licence and details to licence holder licensee and others and details to Registrar of Financial Service Providers

- (1) If the Commission issues a licence, the Commission must send the licence to the licence holder licensee and details of the licence to the Registrar of Financial Service Providers. 5
- (2) If the Commission varies a licence, the Commission must send a replacement licence to the licence holder licensee and details of the replacement licence to the Registrar of Financial Service Providers. 10
- (3) If the Commission cancels a licence, the Commission must notify the former licence holder licensee and the Registrar of Financial Service Providers.
- (4) In addition to the requirements of subsections (1) to (3), the Commission must send details of the licence or the replacement licence or notification of the cancellation (as the case may be) to— 15
- (a) the Registrar of Financial Service Providers, if the licence relates to a security; and
- (b) the Reserve Bank of New Zealand, if the licensee is, or was, the trustee of a deposit taker; and 20
- (c) the Registrar of Retirement Villages, if the licensee is, or was, the statutory supervisor of a retirement village.

Applications for, to vary, or to cancel licences

- 14 Application for, or to vary, licence** 25
- (1) A person may apply to the Commission—
- (a) for a licence; or
- (b) to vary a licence.
- (2) An application must be—
- (a) made in the form required by the Commission; and 30
- (b) accompanied by the prescribed fee.
- (3) For the purpose of making a decision on an application, the Commission may require the applicant to supply information in addition to that contained in the application and may, at any time, require the applicant to verify that the information provided remains accurate at that time. 35

15 Decision on application for, or to vary, licence

- (+) ~~The Commission may issue or vary a licence only if the Commission is satisfied that, having regard to any conditions imposed on the licence, the applicant is capable of effectively performing the functions of a trustee, statutory supervisor, or unit trustee in respect of securities covered by the licence.~~ 5
- (1) The Commission may issue or vary a licence only if the Commission is satisfied that, having regard to any conditions imposed on the licence, the applicant is capable of effectively performing (or will, after the variation, be capable of effectively performing)— 10
- (a) the functions of a trustee or statutory supervisor in respect of securities covered by the licence;
- (b) the functions of a statutory supervisor in respect of retirement villages covered by the licence. 15
- (2) Despite **subsection (1)**, the Commission may not issue a licence unless the Commission is satisfied that the applicant meets the following requirements:
- (a) the applicant is—
- (i) a body corporate that is incorporated in New Zealand; or
- (ii) an overseas company (as defined in the Companies Act 1993) registered under that Act: 20
- (b) every director and senior manager of the applicant is of good character: 25
- (c) in the case of an applicant for a licence that covers a security, the applicant—
- (i) is registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008; or 30
- (ii) complies with section 13(a) and (b) of that Act:
- (d) in the case of an applicant for a licence that covers a retirement village, the applicant complies with section 13(a) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008. 35
- (3) Before making a decision under **subsection (1)**, the Commission must assess the following matters:

- (a) the experience, skills, and qualifications of the applicant (including, in particular, of the applicant's directors and senior managers):
- (b) the financial resources available to the applicant:
- (c) the other resources available to the applicant: 5
- (d) ~~the applicant's procedures for ensuring that—~~
- (i) ~~the applicant complies with the trustee obligations; and~~
- (ii) ~~issuers of securities covered by the licence comply with the issuer obligations:~~ 10
- (d) the applicant's procedures for ensuring that the applicant complies with the licensee obligations:
- (da) the applicant's procedures for ensuring that,—
- (i) in the case of a licence relating to securities, issuers of those securities comply with the issuer obligations; and 15
- (ii) in the case of a licence relating to retirement villages, operators of those retirement villages comply with the operator obligations:
- (e) ~~the applicant's independence from issuers of securities, or from operators,~~ covered by the licence: 20
- (f) the applicant's governance structure:
- (g) the applicant's professional indemnity insurance:
- (h) other prescribed matters relating to the applicant, securities, or retirement villages covered by the licence, and ~~issuers of securities or operators~~ covered by the licence: 25
- (i) any other matter that the Commission considers is material.
- (4) ~~Regulations may provide for the manner in which the Commission must assess the matters referred to in **subsection (3)**, including providing for methods of assessment and things to be taken into, or left out of, account in making an assessment.~~ 30
- (5) Before making a decision on a licence that covers a debt security issued by a deposit taker (as defined in section 157C of the Reserve Bank of New Zealand Act 1989), the Commission 35 must consult the Reserve Bank of New Zealand and take the Bank's views into account.

- (5A) Before making a decision on a licence that covers a retirement village, the Commission must consult the Registrar of Retirement Villages and take the Registrar’s views into account.
- (6) After making a decision on an application, the Commission must notify the applicant, and any person supervised by the applicant, in writing of— 5
- (a) the decision; and
 - (b) if the Commission does not issue a licence or does not issue or vary a licence as proposed in the application, the Commission’s reasons for the decision; and 10
 - (c) if the Commission issues or varies a licence (whether as proposed in the application or not), any matters that the Commission wishes the ~~licence holder~~ licensee to consider for the purposes of **section 25(2)**.
- (7) In this section,— 15
- director** has the meaning given in section 126 of the Companies Act 1993, but also includes, in the case of a body corporate that is not a company, a person (including a delegate) who occupies a position comparable to that of a director
- senior manager**, in relation to an applicant, means a person (including a delegate) who is not a director but occupies a position that allows the person to exercise significant influence over the management or administration of the applicant (for example, a chief executive or a chief financial officer). 20
- 16 Application to cancel licence** 25
- (1) The Commission may cancel a licence on the written application of the ~~licence holder~~ licensee.
- (2) Before cancelling a licence under **subsection (1)**, the Commission must be satisfied that the ~~licence holder~~ licensee does not hold an appointment as a trustee, or statutory supervisor, ~~or unit trustee~~. 30
- 17 Review of Commission’s decision on application**
- (1) A person (the **applicant**) who is dissatisfied with a decision under **section 15(1)** may, within no later than 20 working days after receiving written notice of the decision, request the Commission to review the decision. 35

- (2) The request must be in writing, must set out the grounds on which the applicant believes the decision should be reviewed, and must state whether or not a hearing is requested.
- (3) For the purpose of the review, the Commission may, ~~within~~ no later than 10 working days after receiving the request, require the applicant to supply information in addition to that contained in the request. 5
- (4) If a hearing is requested, the Commission must hold a hearing and give the applicant the opportunity to be heard—
- (a) ~~within~~ no later than 10 working days (or any longer period agreed by the applicant) after receiving the request; or 10
- (b) if the Commission requires the applicant to supply additional information under **subsection (3)**, ~~within~~ no later than 10 working days (or any longer period agreed by the applicant) after the additional information is supplied. 15
- (5) On a review, the Commission may confirm, vary, or cancel ~~the~~ a decision made under **section 15(1)**.
- (6) The Commission must notify the applicant in writing of— 20
- (a) the Commission’s decision on the review; and
- (b) the Commission’s reasons for the decision; and
- (c) the date on which any variation or cancellation of the decision in respect of which the review is requested takes effect. 25
- (7) Notification under **subsection (6)** must be given,—
- (a) if a hearing is requested, ~~within~~ no later than 20 working days after the hearing; or
- (b) if the Commission requires the applicant to supply additional information under **subsection (3)** and no hearing is requested, ~~within~~ no later than 20 working days after the additional information is supplied; or 30
- (c) in any other case, ~~within~~ no later than 20 working days after the request is received.
- (8) A decision in respect of which a review is requested remains valid pending the outcome of the review. 35

18 Appeal to High Court against Commission’s decision on application

- (1) A person who is dissatisfied with a decision under **section 17(5)** may appeal to the High Court ~~within no later than~~ 20 working days, or such further period as the court may allow, 5
after receiving written notice of the decision.
- (2) If a trustee, ~~or~~ statutory supervisor, ~~or unit trustee~~ in respect of a security ~~or retirement village~~ lodges an appeal against a decision not to issue a new licence that covers the security ~~or retirement village~~, the court may extend the validity of the 10
trustee’s or supervisor’s current licence, to the extent that it covers the security ~~or retirement village~~, until the appeal has been determined or withdrawn.
- (3) A decision against which an appeal is lodged remains valid 15
pending the determination of the appeal unless the court orders otherwise.
- (4) On appeal, the court may—
 - (a) confirm, cancel, or vary the decision; or
 - (b) refer the decision back to the Commission with a direc- 20
tion to reconsider the whole or a specified part of the decision.

Expiry of licences

19 Effect of expiry of licence

- (1) The expiry of the licence of a person who holds an appoint- 25
ment as a trustee, ~~or~~ statutory supervisor, ~~or unit trustee~~ does not, of itself, terminate the appointment (but, if the person continues to hold the appointment and does not obtain a new licence, the person breaches **section 6**).
- (2) This section is for the avoidance of doubt.

20 ~~Trustee, etc,~~ Licensee must apply for new licence or notify issuer or operator before licence expires 30

- (1) A licensee appointed as a trustee, or statutory supervisor, or unit trustee in respect of a security ~~or retirement village~~ who holds a licence issued under **section 15** must, at least 35
6 months between 9 and 12 months before the expiry date of the licence, either—

- (a) make an application under **section 15** for a new licence that covers ~~the~~ that security or retirement village; or
- (b) notify the issuer of ~~the~~ that security or the operator of that retirement village (as the case may be) and the Commission, in writing, that the ~~trustee or supervisor li-~~ licensee does not intend to make the application referred to in **paragraph (a)**. 5
- (2) If the ~~trustee, statutory supervisor, or unit trustee licensee~~ makes an application referred to in **subsection (1)(a)**, the Commission must make a decision on the application ~~within~~ no later than 3 months after receiving the application or, if the application is received more than 9 months before the expiry date, at least 6 months before the expiry date. 10
- (3) A licensee, being a trustee, or statutory supervisor, or unit trustee in respect of a security or retirement village who holds a temporary licence must, within no later than 1 month after the commencement of this Act, either— 15
- (a) make an application under **section 15** for a new licence that covers ~~the~~ that security or that retirement village; or
- (b) notify the issuer of ~~the~~ that security or the operator of that retirement village (as the case may be) and the Commission in writing that the ~~trustee or supervisor li-~~ licensee does not intend to make the application referred to in **paragraph (a)**. 20
- (4) In this section, **expiry date** means the date on which the fixed period for which a licence is issued under **section 15** ends. 25

21 Rejection of application for new licence: Commission may replace existing trustee appointee

- (1) This section applies if— 30
- (a) the Commission rejects an application by a trustee, ~~or statutory supervisor, or unit trustee~~ in respect of a security, or a statutory supervisor in respect of a retirement village, (the existing trustee appointee) for a new licence that covers the security or retirement village; and
- (b) the existing trustee appointee no longer holds a licence that covers the security or retirement village; and 35
- (c) the existing trustee appointee has not been replaced.
- (2) The Commission may—

- (a) remove the existing ~~trustee appointee~~ as trustee, ~~or~~ statutory supervisor, ~~or~~ ~~unit trustee~~ in respect of the security, ~~or as statutory supervisor in respect of the retirement village~~, by written notice to the existing ~~trustee appointee~~; and 5
- (b) appoint a person (the **Commission trustee appointee**) to that position for a period of ~~3~~6 months.
- (2A) Before making an appointment under **subsection (2)(b)**, the Commission must, if the Commission considers it practicable to do so, consult the relevant issuer or operator. 10
- (3) The Commission must, as soon as practicable after making the appointment, notify the issuer of the security, ~~or the operator of the retirement village~~, of the appointment.
- (4) The issuer ~~or operator~~ must reimburse the Commission for the Commission ~~trustee's appointee's~~ charges during the period of the Commission ~~trustee's appointee's~~ appointment; and the amount due is recoverable as a debt due to the Commission. 15
- (5) Subject to **subsection (6)**, the Commission ~~trustee appointee~~ is bound by the terms of the ~~trust deed or deed of participation governing document~~ under which the existing ~~trustee appointee~~ was appointed. 20
- (6) The Commission may approve a change to those terms (including a change that increases the charges payable to the Commission ~~trustee appointee~~) during the period of the Commission ~~trustee's appointee's~~ appointment if— 25
- (a) the issuer ~~or operator~~ (as the case may be) and the Commission ~~trustee appointee~~ agree that the change should be made; and
- (b) the Commission is satisfied that the change ~~does not adversely affect the~~ will have no significant adverse effect on the interests of holders of the security or on the interests of residents of the retirement village. 30
- (6A) The power in **subsection (6)** may be exercised to approve a change to the terms of the governing document despite anything to the contrary in the document. 35
- (7) Before the end of the ~~3~~6-month appointment, the issuer ~~or the operator~~ must either—

- (a) appoint a licensee as a replacement for the Commission trustee appointee; or
- (b) appoint the Commission trustee appointee as the trustee, or statutory supervisor, or unit trustee on a continuing basis (provided that the Commission appointee is a licensee). 5
- (8) Despite **sections 6 and 15(2)**, the Commission may appoint, as a Commission appointee, any person (including a natural person) that the Commission considers appropriate in the circumstances, whether or not that person holds a licence. 10
- 22 Expiry of licence: issuer or operator may replace existing trustee appointee or Commission trustee appointee**
- (1) This section applies if—
- (a) the licence of a trustee, or statutory supervisor, or unit trustee in respect of a security or of a statutory supervisor of a retirement village (the **existing trustee appointee**) expires is due to expire; and 15
- (b) the existing trustee no longer holds appointee will, on the expiry of the licence, no longer hold a licence that covers the security or the retirement village. 20
- (1A) For the purposes of **subsection (1)(a)**, a licence is due to expire if—
- (a) the licensee has given notice in accordance with **section 20(1)(b)** (notice that the licensee does not intend to apply for a new licence that covers the security or retirement village); or 25
- (b) the Commission has given notice in accordance with **section 15(6)(b)** (notice that the Commission will not be issuing a new licence as proposed in the application).
- (2) This section also applies if a Commission trustee appointee has been appointed by the Commission under **section 21(2)(b)**. 30
- (3) If the issuer of the security or the operator of the retirement village appoints a person (the **issuer trustee new appointee**) as the trustee, or statutory supervisor, or unit trustee in place of the existing trustee appointee or Commission trustee appointee, and the issuer trustee new appointee accepts the appointment, the issuer or operator may remove the existing trustee appointee or Commission trustee appointee by written 35

notice to the existing trustee appointee or Commission trustee appointee.

- (3A) An appointment under **subsection (3)** must be made in accordance with the relevant governing document.
- (4) The issuer or operator must, as soon as practicable after giving the written notice, give a copy of the notice to the Commission. 5
- (5) The removal of the existing trustee appointee takes effect on the date stated in, or calculated in accordance with, the notice.
- (6) But if the notice is given to the Commission trustee appointee, the removal of the Commission trustee appointee cannot take effect until at least 15 working days have passed since the date on which the notice was given to the Commission trustee appointee. 10
- (7) **Subsection (6)** does not apply if the Commission trustee appointee agrees in writing that the subsection does not apply. 15
- (8) The power in **subsection (3)** may be exercised to remove the existing trustee appointee or Commission trustee appointee despite anything to the contrary in the trust deed or deed of participation governing document.
- (9) Nothing in this section limits the issuer's or operator's power to remove the existing trustee appointee apart from under this section. 20

23 Expiry of licence: trustee, etc, existing appointee must provide documents

- (1) The Commission trustee appointee may, by giving notice in writing to the existing trustee appointee, require the existing trustee appointee to provide the Commission trustee appointee, at the existing trustee's appointee's expense, with all documents held by, or in the control of, the existing trustee appointee that relate to the functions of the position to which the Commission trustee appointee has been appointed. 25 30
- (2) The issuer trustee new appointee may, by giving notice in writing to the existing trustee appointee or Commission trustee appointee (**trustee person A**), require trustee person A to provide the issuer trustee new appointee, at trustee person A's expense, with all documents held by, or in the control of, trustee 35

- person A that relate to the functions of the position to which the ~~issuer trustee~~ new appointee has been appointed.
- (3) A notice under this section—
- (a) must be given ~~within~~ no later than 6 months after the date of the appointment of the person who gives the notice: 5
- (b) ceases to be effective if the person who gives the notice ceases to hold the position referred to in **subsection (1) or (2)**:
- (c) must specify ~~the time by~~ a reasonable time within which the documents must be provided. 10
- (4) A person who, without reasonable excuse, fails to comply with a notice under this section commits an offence and is liable on summary conviction to a fine not exceeding \$100,000.
- (5) A document provided pursuant to a notice under this section may be used only for the purpose of performing the functions of the position referred to in **subsection (1) or (2)**. 15
- (6) A person who, without reasonable excuse, uses a document provided pursuant to a notice under this section other than for the purpose of performing the functions of the position to which the Commission ~~trustee appointee~~ or ~~issuer trustee~~ new appointee has been appointed commits an offence and is liable on summary conviction to a fine not exceeding \$100,000. 20
- (7) In this section,—
- Commission ~~trustee~~ appointee** has the meaning given in **section 21(2)(b)** 25
- existing ~~trustee~~ appointee** has the meaning given in **section 21(1)(a)** or **22(1)(a)**
- issuer ~~trustee~~ new appointee** has the meaning given in **section 22(3)**. 30

Subpart 2—Monitoring and enforcement

Reports and investigations

- 24 **~~Licence holder~~ Licensee must deliver regular reports to Commission**
- (1) A ~~licence holder~~ licensee must deliver a report to the Commission— 35

- (a) by a date determined by the Commission when a licence is issued, which must be between 6 and 12 months after the date on which the licence is issued; and
 - (b) at least once every 6 months after that date.
- (2) The report must contain— 5
- (a) prescribed information about the following:
 - (i) the requirements referred to in **section 15(2)**;
 - (ii) the matters referred to in **section 15(3)**;
 - (iii) the ~~licence holder's~~ licensee's compliance with any conditions imposed on the licence: 10
 - (iv) a description of the supervised securities interest;
 - (v) the ~~licence holder's~~ licensee's compliance with the terms of every ~~trust deed or deed of participation governing document~~ that relates to a supervised security interest: 15
 - (vi) other prescribed matters; and
 - (b) any information required by a condition imposed on the licence.
- 25** ~~License holder~~ Licensee must report breach of ~~trustee~~ licensee obligation, etc 20
- (1) This section applies if a ~~licence holder~~ licensee believes that—
- (a) the ~~licence holder licensee~~ has, or may have, breached, may have breached, or is likely to breach a trustee licensee obligation; or
 - (b) a material change of circumstances has occurred, may have occurred, or is likely to occur in relation to the ~~licence holder~~ licensee; or 25
 - (c) the information on which the Commission based the decision to issue or vary the licence was, or may have been, wrong, misleading, or incomplete. 30
- (2) For the purposes of **subsection (1)(b) and (c)**, the ~~licence holder~~ licensee must consider any matters notified by the Commission under **sections 15(6)(c) and 30(5)(d)**.
- (3) The ~~licence holder~~ licensee must, as soon as practicable after the ~~licence holder~~ licensee forms the belief referred to in **subsection (1)**, deliver a report to the Commission containing details of the belief and the ~~licence holder's~~ licensee's grounds for the belief. 35

26 Commission may investigate breach of trustee licensee obligation, etc

- (1) The Commission may investigate—
- (a) whether a person who is or was a ~~trustee, statutory supervisor, or unit trustee~~ has, or may have, breached licensee has breached, or is likely to breach, a trustee licensee obligation: 5
 - (b) whether a material change of circumstances has ~~or may have, occurred,~~ or is likely to occur, in relation to a ~~person who holds a licence~~ licensee: 10
 - (c) whether the information on which the Commission based the decision to issue or vary a person's licence was ~~or may have been,~~ wrong, misleading, or incomplete.
- (2) An investigation may be initiated by the Commission or based on a third party's complaint. 15
- (3) For the purposes of an investigation, the Commission may, by notice in writing to the person referred to in **subsection (1)**, require the person ~~or licensee~~ to supply the Commission with any information relating to the matters referred to in **subsection (1)** that are specified in the notice. 20
- (4) The notice may specify the periods for which, the form in which, and the time by which the information must be supplied.
- (5) A person who fails, without reasonable excuse, to comply with the notice commits an offence and is liable on summary conviction to a fine not exceeding \$200,000. 25

*Action plans***27 Commission may require licensee holder licensee to submit action plan** 30

- (1) This section applies if the Commission is satisfied that—
- (a) a ~~licence holder~~ licensee has breached, or is likely to breach, a ~~trustee licensee~~ obligation; or
 - (b) a material change of circumstances has occurred, or is likely to occur, in relation to a ~~licence holder~~ licensee; 35
or

- (c) the information on which the decision to issue or vary a ~~licence holder's~~ licensee's licence was based was wrong, misleading, or incomplete in a material respect.
- (2) The Commission may, by written notice to the ~~licence holder~~ licensee, require the ~~licence holder~~ licensee to submit an action plan to the Commission. 5
- (3) The notice must—
 - (a) give details of the breach or likely breach, material change of circumstances or likely material change of circumstances, or wrong, misleading, or incomplete information; and 10
 - (b) specify the date by which the action plan must be submitted to the Commission.
- ~~(4) The action plan must specify—~~
 - ~~(a) the step or steps that will be taken to remedy or avoid the breach or in light of the material change of circumstances or wrong, misleading, or incomplete information; and 15~~
 - ~~(b) the date by which each step will be taken.~~
- (4) The action plan must specify— 20
 - (a) the step or steps that will be taken to—
 - (i) remedy or avoid the breach or likely breach; or
 - (ii) mitigate or avoid any adverse effects or changes arising, or likely to arise, from the material change of circumstances; or 25
 - (iii) correct the wrong, misleading, or incomplete information; and
 - (b) the date by which each step will be taken.

28 Approval or rejection of action plan

- (1) If a ~~licence holder~~ licensee submits an action plan, the Commission may— 30
 - (a) approve the action plan; or
 - (b) require the ~~licence holder~~ licensee to amend the action plan and resubmit it to the Commission by a specified date for approval or rejection; or 35
 - (c) reject the action plan.

- (2) If the Commission approves the action plan or amended action plan, the ~~licence holder~~ licensee must comply with the plan.
- (3) An action plan that has been approved by the Commission may be varied at any time by the ~~licence holder~~ licensee with the consent of the Commission. 5

29 Commission's powers if action plan rejected

- (1) If the Commission rejects a ~~licence holder's~~ licensee's action plan or amended action plan, the Commission may do either or both of the following:
- (a) give a written direction to the ~~licence holder~~ licensee: 10
- (b) vary the ~~licence holder's~~ licensee's licence in accordance with **section 30**.
- (2) ~~A direction under **subsection (1)(a)** must specify—~~
- (a) ~~the step or steps that the licence holder must take to avoid or remedy any breach of a trustee obligation or in light of any material change of circumstances or wrong, misleading, or incomplete information; and~~ 15
- (b) ~~the date by which each step must be taken.~~
- (2) A direction under **subsection (1)(a)** must specify— 20
- (a) the step or steps that the licensee must take to—
- (i) remedy or avoid any breach or likely breach of a licensee obligation; or
- (ii) mitigate or avoid any adverse effects or changes arising, or likely to arise, from the material change of circumstances; or 25
- (iii) correct the wrong, misleading, or incomplete information; and
- (b) the date by which each step must be taken.
- (3) The ~~licence holder~~ licensee must comply with the direction.

Variation of licences 30

30 Commission may vary licence because of material change of circumstances, etc

- (1) The Commission may, by written notice to a ~~licence holder~~ licensee, vary the licence—
- (a) if the Commission is satisfied that— 35

- (i) a material change of circumstances has occurred in relation to the ~~licence holder~~ licensee; or
- (ii) the information on which the Commission based the decision to issue or vary the licence was wrong, misleading, or incomplete in a material respect; or 5
- (b) if the Commission rejects the ~~licence holder's~~ licensee's action plan or amended action plan; or
- (c) if the ~~licence holder~~ licensee—
- (i) fails to submit or amend an action plan by the date specified by the Commission; or 10
- (ii) fails to comply with an action plan by the date specified in the plan; or
- (iii) fails to comply with a direction of the Commission under **section 29, 37, or 49** by the date specified in the direction; or 15
- (iv) is in administration, receivership, or liquidation, or is subject to statutory management, or enters any other process (whether in New Zealand or another country) under which the assets and affairs of the ~~licence holder~~ licensee are administered, or the assets of the ~~licence holder~~ licensee are realised, for the benefit of creditors of the ~~licence holder~~ licensee. 20
- (2) Before varying a licence, the Commission must assess all of the matters referred to in **section 15(3)**. 25
- (3) Subject to **subsection (4)**, the Commission must exercise the power to vary a licence so that (after the licence is varied) the Commission is satisfied that, having regard to any conditions imposed on the licence, the ~~licence holder~~ licensee is capable of effectively performing the functions of a trustee, or statutory supervisor, or ~~unit trustee~~ in respect of securities, or of a statutory supervisor in respect of retirement villages, covered by the licence. 30
- (4) The Commission may not vary a licence so that the licence ceases to cover a supervised security interest. 35
- (5) The notice under **subsection (1)** must state,—

- (a) if **subsection (1)(a)** applies, the material change of circumstances or information that the Commission considers was wrong, misleading, or incomplete; and
- (b) the Commission's reasons for varying the licence; and
- (c) the date on which the variation takes effect; and 5
- (d) any matters that the Commission wishes the ~~licence holder~~ licensee to consider for the purposes of **section 25(2)**.

31 Review of Commission's decision to vary licence

- (1) A person (the **applicant**) who is dissatisfied with a decision under **section 30(1)** may, ~~within~~ no later than 20 working days after receiving written notice of the decision, request the Commission to review the decision. 10
- (2) The request must be in writing, must set out the grounds on which the applicant believes the decision should be reviewed, and must state whether or not a hearing is requested. 15
- (3) For the purpose of the review, the Commission may, ~~within~~ no later than 10 working days after receiving the request, require the applicant to supply information in addition to that contained in the request. 20
- (4) If a hearing is requested, the Commission must hold a hearing and give the applicant the opportunity to be heard—
 - (a) ~~within~~ no later than 10 working days (or any longer period agreed by the applicant) after receiving the request; or 25
 - (b) if the Commission requires the applicant to supply additional information under **subsection (3)**, ~~within~~ no later than 10 working days (or any longer period agreed by the applicant) after the additional information is supplied. 30
- (5) On a review, the Commission may confirm, vary, or cancel ~~the~~ a decision made under **section 30(1)**.
- (6) The Commission must notify the applicant in writing of—
 - (a) the Commission's decision on the review; and
 - (b) the Commission's reasons for the decision; and 35

- (c) the date on which any variation or cancellation of the decision in respect of which the review is requested takes effect.
- (7) Notification under **subsection (6)** must be given,—
- (a) if a hearing is requested, ~~within~~ no later than 20 working days after the hearing; or 5
- (b) if the Commission requires the applicant to supply additional information under **subsection (3)** and no hearing is requested, ~~within~~ no later than 20 working days after the additional information is supplied; or 10
- (c) in any other case, ~~within~~ no later than 20 working days after the request is received.
- (8) A decision in respect of which a review is requested remains valid pending the outcome of the review.
- 32 Appeal to High Court against Commission’s decision to vary licence** 15
- (1) A ~~licence holder~~ licensee who is dissatisfied with the Commission’s decision under **section 31(5)** may appeal to the High Court ~~within~~ no later than 20 working days, or such further period as the court may allow, after receiving written notice of the decision. 20
- (2) A decision against which an appeal is lodged remains valid pending the determination of the appeal unless the court orders otherwise.
- (3) On appeal, the court may— 25
- (a) confirm, cancel, or vary the decision; or
- (b) refer the decision back to the Commission with a direction to reconsider the whole or a specified part of the decision.
- Removal of ~~trustees, etc,~~ licensee and variation and cancellation of licences* 30
- 33 Commission’s powers if action plan not submitted, etc**
- (1) This section applies if a ~~licence holder~~ licensee—
- (a) fails to submit or amend an action plan by the date specified by the Commission; or 35

- (b) fails to comply with an action plan by the date specified in the plan; or
- (c) fails to comply with a direction of the Commission under **section 29, 37, or 49** by the date specified in the direction; or 5
- (d) is in administration, receivership, or liquidation, or is subject to statutory management, or enters any other process (whether in New Zealand or another country) under which the assets and affairs of the licence holder licensee are administered, or the assets of the licence holder licensee are realised, for the benefit of creditors of the licence holder licensee. 10
- (2) The Commission may take 1 or more of the following steps:
- (a) vary the licence holder's licensee's licence in accordance with **section 30**: 15
- (b) give a written notice (a **removal notice**) to the licence holder licensee that applies to 1 or more supervised securities interests:
- (c) by written notice (a **variation notice**) to the licence holder licensee, vary the licence holder's licensee's licence so that the licence ceases to cover 1 or more supervised securities interests: 20
- (d) by written notice (a **cancellation notice**) to the licence holder licensee, cancel the licence holder's licensee's licence. 25
- (3) To avoid doubt, a removal notice may apply to any supervised security interest, whether or not the action plan or direction referred to in **subsection (1)** relates to that security interest.
- (4) If the Commission varies a licence under **subsection (2)(c)** so that the licence ceases to cover a supervised security interest, the Commission must give a removal notice under **subsection (2)(b)** that applies to the security interest. 30
- (5) If the Commission cancels a licence, the Commission must give a removal notice under **subsection (2)(b)** that applies to every supervised security interest. 35
- (6) Before taking any of the steps referred to in **subsection (2)(b) to (d)**, the Commission must—
- (a) give the licence holder licensee at least 2 5 working days' notice in writing of the step or steps that the Com-

- mission is proposing to take and the reasons for taking the step or steps; and
- (b) give the ~~licence holder~~ licensee the opportunity to make representations to the Commission; and
 - (c) consider any representations made. 5

34 Removal notice

- (1) A removal notice must—
 - (a) state the Commission’s reasons for giving the notice; and
 - (b) specify ~~a date~~ the latest date by which the existing appointee will be removed (the final removal date), which must not be more than 40 working days after the date on which the removal notice is given to the existing ~~trustee~~ appointee; and 10
 - (c) specify the supervised ~~security or securities interest or interests~~ to which the removal notice applies. 15
- (1A) Despite subsection (1)(b), if the removal notice is given in relation to the cancellation of a licence, the final removal date must be no later than the date on which the cancellation takes effect. 20
- (2) The Commission must give a copy of the removal notice to ~~every affected issuer~~ every affected person at the same time as the notice is given to the licensee.
- (3) The removal of the existing ~~trustee appointee as trustee, or statutory supervisor, or unit trustee~~ in respect of an affected security, or as statutory supervisor of an affected retirement village, takes effect on the final removal date unless the existing ~~trustee appointee~~ is removed from that appointment before that date (whether under section 39(1) or otherwise). 25
- (4) ~~In this section and in~~ For the purposes of this section and sections 37 to 41,— 30
 - ~~affected issuer~~ means the issuer of an affected security
 - ~~affected person~~ means—
 - (a) the issuer of an affected security;
 - (b) the operator of an affected retirement village 35
 - ~~affected retirement village~~ means a retirement village to which a removal notice applies

affected security means a security to which a removal notice applies

Commission trustee appointee has the meaning given in **section 38(1)**

existing trustee appointee means the ~~licence holder~~ licensee 5
to whom a removal notice is given

final removal date has the meaning given in **subsection (1)(b)**

new appointee has the meaning given in **section 39(1)**

replacement notice has the meaning given in **section 39(1)**. 10

issuer trustee has the meaning given in **section 39(1)**.

35 Variation notice

A variation notice must—

- (a) state the Commission's reasons for varying the licence; 15
and
- (b) specify the date on which the variation takes effect.

36 Cancellation notice

A cancellation notice must—

- (a) state the Commission's reasons for cancelling the li- 20
cense; and
- (b) specify the date on which the cancellation takes effect.

37 Removal notice: Commission may give direction to existing trustee appointee

- (1) During the period beginning when a removal notice is given 25
and ending when the existing trustee appointee is removed
from every appointment as trustee, ~~or~~ statutory supervisor,
~~or unit trustee~~ in respect of an affected security, ~~or as statu-~~
tory supervisor in respect of an affected retirement village,
the Commission may give a written direction to the existing
trustee appointee. 30
- (2) The direction must specify—
 - (a) the step or steps that the existing trustee appointee must
take; and
 - (b) the date by which each step must be taken.
- (3) The existing trustee appointee must comply with the direction. 35

(3A) To avoid doubt, a direction must not be inconsistent with the relevant governing document, but may require the appointee to seek specified amendments to the document.

(4) A person who, without reasonable excuse, fails to comply with a direction under **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding \$200,000. 5

(5) Nothing in this section makes the Commission liable to pay any of the existing ~~trustee's~~ appointee's charges.

38 Removal notice: Commission may replace existing trustee appointee 10

(1) If ~~an affected issuer~~ an affected person does not remove the existing ~~trustee appointee~~ by written notice under **section 39(1)** or otherwise appoint a person as the trustee, ~~or statutory supervisor, or unit trustee~~ in place of the existing ~~trustee appointee~~ before the final removal date, the Commission may appoint a person (the **Commission trustee appointee**) to that position for a period of 6 months beginning on the final removal date. 15

(1A) Before making an appointment under **subsection (1)**, the Commission must, if the Commission considers it practicable to do so, consult the relevant issuer or operator. 20

(2) The Commission must notify the ~~affected issuer~~ affected person of the appointment at the same time as the removal notice is given to the licensee in accordance with **section 33(2)(b)**.

(3) ~~The affected issuer~~ The affected person must reimburse the Commission for the Commission ~~trustee's~~ appointee's charges during the period of the Commission ~~trustee's~~ appointee's appointment; and the amount due is recoverable as a debt due to the Commission. 25

~~(4) Subject to **subsection (5)**, the Commission trustee is bound by the terms of the trust deed or deed of participation under which the existing trustee was appointed.~~ 30

(4) Subject to **subsection (5)**, the Commission appointee—

(a) is bound by the terms of the governing document under which the existing appointee was appointed; and 35

(b) assumes the rights of the existing appointee as they were before the existing appointee was removed.

- (5) The Commission may approve a change to those terms (including a change that increases the charges payable to the Commission ~~trustee appointee~~) during the period of the Commission ~~trustee's appointee's~~ appointment if—
- (a) ~~the affected issuer~~ the affected person and the Commission ~~trustee appointee~~ agree that the change should be made; and 5
- (b) the Commission is satisfied that the change ~~does not adversely affect~~ will have no significant adverse effect on the interests of holders of the security or of residents of the retirement village. 10
- (5A) The power in **subsection (5)** may be exercised to approve a change to the terms of the governing document despite anything to the contrary in the document.
- (6) Before the end of the 6-month appointment, ~~the affected issuer~~ the affected person must either— 15
- (a) appoint a licensee as a replacement for the Commission trustee appointee; or
- (b) appoint the Commission ~~trustee appointee~~ as the trustee, or statutory supervisor, or unit trustee on a continuing basis (provided that the Commission appointee is a licensee). 20
- (7) Despite **sections 6 and 15(2)**, the Commission may appoint, as a Commission appointee, any person (including any natural person) that the Commission considers appropriate in the circumstances, whether or not that person holds a licence. 25

39 Removal Replacement notice: affected issuer affected person may replace existing trustee appointee or Commission trustee appointee

- (1) ~~If an affected issuer~~ If an affected person appoints a person 30
(the ~~issuer trustee~~ new appointee) as the trustee, or statutory supervisor, or unit trustee in place of the existing ~~trustee appointee~~ trustee appointee or Commission ~~trustee appointee~~ and the ~~issuer trustee~~ new appointee accepts the appointment, ~~the affected issuer~~ the affected person may remove the existing ~~trustee appointee~~ trustee appointee or 35
Commission ~~trustee appointee~~ by written notice (the ~~issuer replacement notice~~ placement notice) to the existing ~~trustee appointee~~ trustee appointee or Commission ~~trustee appointee~~.

- (1A) An appointment under **subsection (1)** must be made in accordance with the relevant governing document.
- (2) ~~But if the affected issuer~~ Despite **subsections (1) and (1A)**, if the affected person proposes to reappoint the existing trustee appointee in place of the Commission trustee appointee before the end of the 6-month period of the Commission trustee's appointee's appointment, the removal of the Commission trustee appointee takes effect only if the Commission consents in writing. 5
- (3) ~~The affected issuer~~ The affected person must give a copy of the issuer replacement notice to the Commission. 10
- (4) The removal of the existing trustee appointee or Commission trustee appointee takes effect on the date stated in, or calculated in accordance with, the issuer replacement notice.
- (5) ~~But if the issuer replacement notice is given to the Commission trustee appointee,~~ the removal of the Commission trustee appointee cannot take effect until at least 15 working days have passed since the date on which the notice was given to the Commission trustee appointee. 15
- (6) **Subsection (5)** does not apply if the Commission trustee appointee agrees in writing that the subsection does not apply. 20
- (7) The power in **subsection (1)** may be exercised to remove the existing trustee appointee or Commission trustee appointee despite anything to the contrary in the trust deed or deed of participation governing document. 25
- (8) Nothing in this section limits the affected issuer's the affected person's power to remove the existing trustee appointee apart from under this section.
- 40** ~~Removal notice~~ **Notice requiring documents: trustee existing appointee, etc, must provide documents** 30
- (1) The Commission trustee appointee may, by giving notice in writing to the existing trustee appointee, require the existing trustee appointee to provide the Commission trustee appointee, at the existing trustee's appointee's expense, with all documents held by, or in the control of, the existing trustee appointee that relate to the functions of the position to which the Commission trustee appointee has been appointed. 35

- (2) The ~~issuer trustee~~ new appointee may, by giving notice in writing to the existing ~~trustee appointee~~ or Commission ~~trustee appointee~~ (**trustee person A**), require ~~trustee person A~~ to provide the ~~issuer trustee new appointee~~, at ~~trustee person A~~'s expense, with all documents held by, or in the control of, ~~trustee person A~~ that relate to the functions of the position to which the ~~issuer trustee new appointee~~ has been appointed. 5
- (3) If the existing ~~trustee appointee~~ is reinstated under **section 41(4)(c)**, the existing ~~trustee appointee~~ may, by giving notice in writing to the Commission ~~trustee appointee~~ or ~~issuer trustee new appointee~~ (**trustee person B**), require ~~trustee person B~~ to provide the existing ~~trustee appointee~~, at ~~trustee person B~~'s expense, with all documents held by, or in the control of, ~~trustee person B~~ that relate to the functions of the position. 10
- (4) A notice under this section— 15
- (a) must be given within no later than 6 months after the date of the appointment of the person who gives the notice or, in the case of a notice under **subsection (3)**, within 6 months after the existing ~~trustee's appointee's~~ reinstatement: 20
- (b) ceases to be effective if the person who gives the notice ceases to be the trustee, or statutory supervisor, or unit trustee in respect of the affected security or the statutory supervisor in respect of the affected retirement village:
- (c) must specify the time by which the documents must be provided. 25
- (5) A person who, without reasonable excuse, fails to comply with a notice under this section commits an offence and is liable on summary conviction to a fine not exceeding \$100,000.
- ~~(6) A document provided pursuant to a notice under this section may be used only for the purpose of performing the functions of the trustee, statutory supervisor, or unit trustee in respect of the affected security.~~ 30
- (6) A document provided pursuant to a notice under this section may be used only for the purpose of— 35
- (a) performing the functions of the trustee or statutory supervisor in respect of the affected security; or
- (b) performing the functions of the statutory supervisor in respect of the affected retirement village.

- (7) A person who, without reasonable excuse, uses a document provided pursuant to a notice under this section other than for a purpose referred to in **subsection (6)** commits an offence and is liable on summary conviction to a fine not exceeding \$100,000. 5

41 Appeal to High Court against removal notice, etc

- (1) A ~~licence holder~~ licensee may appeal to the High Court against a decision to give a removal notice, variation notice, or cancellation notice under **section 33(2)(b) to (d)**.
- (2) The ~~licence holder~~ licensee must lodge an appeal ~~within no~~ later than 20 working days, or such further period as the court may allow, after receiving the removal notice, variation notice, or cancellation notice. 10
- (3) A decision against which an appeal is lodged remains valid pending the determination of the appeal unless the court orders otherwise. 15
- (4) On appeal, the court may—
- (a) confirm, cancel, or vary the decision; or
 - (b) refer the matter back to the Commission with a direction to reconsider the whole or a specified part of the decision; or 20
 - (c) if the ~~licence holder~~ licensee has been removed from an appointment, order that the ~~licence holder~~ licensee be reinstated on terms determined by the court.

Pecuniary penalty and compensation orders 25

42 Pecuniary penalty order

- (1) The Commission may apply to the High Court for an order that a trustee, statutory supervisor, or unit trustee pay a pecuniary penalty to the Crown (a **pecuniary penalty order**).
- (2) The court may make a pecuniary penalty order if the court is satisfied that the trustee, statutory supervisor, or unit trustee has breached a trustee obligation. 30
- (3) The maximum amount of a pecuniary penalty in respect of a breach or, where the conduct constitutes a breach of more than 1 trustee obligation, in respect of the same conduct is, — 35

- (a) if the breach or conduct materially prejudiced security holders' interests, \$200,000; and
- (b) in any other case, \$100,000.
- (4) The amount of the pecuniary penalty must be an amount that the court considers appropriate, taking into account the following: 5
- (a) the nature, extent, and circumstances of the breach:
- (b) the nature and extent of any loss suffered by security holders because of the breach:
- (c) the likelihood, nature, and extent of any damage to the integrity or reputation of New Zealand's securities markets because of the breach: 10
- (d) whether the trustee, statutory supervisor, or unit trustee has previously breached a trustee obligation:
- (e) the public benefit in encouraging prompt and honest self-reporting of breaches or possible breaches of trustee obligations: 15
- (f) any other circumstances that the court considers relevant.
- (5) A pecuniary penalty order may not be made if proceedings are commenced more than 2 years after the later of— 20
- (a) the date on which the breach occurred; and
- (b) the date on which the Commission knew, or ought reasonably to have known, of the facts giving rise to the breach. 25
- (6) Proceedings for a pecuniary penalty order are civil proceedings to which the usual rules of court, rules of evidence, and procedure for civil proceedings apply (including the standard of proof):
- 43 Compensation order** 30
- (1) The Commission may apply to the High Court for an order that a trustee, statutory supervisor, or unit trustee pay compensation to a security holder: 30
- (2) The court may order the trustee, statutory supervisor, or unit trustee to pay compensation to a security holder in respect of any loss or damage suffered by the security holder if the court is satisfied that— 35

- (a) the trustee or supervisor breached a trustee obligation;
and
- (b) the breach caused the loss or damage.
- (3) But the court may not order compensation to be paid if proceedings are commenced after the later of—
 - (a) the date that is 6 years after the date on which the breach occurred; and
 - (b) the date that is 3 years after the date on which the Commission knew, or ought reasonably to have known, of the facts giving rise to the breach.
- (4) To avoid doubt, the court may order a trustee, statutory supervisor, or unit trustee to pay both a pecuniary penalty and compensation in respect of the same conduct.

42 Pecuniary penalty orders

- (1) The High Court may, on application by the Commission, order a licensee to pay a pecuniary penalty to the Crown if the court is satisfied that the licensee has contravened a licensee obligation. 15
- (2) In determining whether or not to make a pecuniary penalty order and (if an order is to be made) the amount of the penalty to be imposed, the court must have regard to all relevant matters, including— 20
 - (a) the nature and extent of the contravention;
 - (b) (in the case of a contravention relating to a security) the likelihood, nature, and extent of any damage to the integrity or reputation of New Zealand’s securities markets as a result of the contravention; 25
 - (c) the nature and extent of any loss or damage suffered by security holders or residents because of the contravention; 30
 - (d) the circumstances in which the contravention occurred;
 - (e) whether or not the licensee has previously contravened a licensee obligation;
 - (f) the public benefit in encouraging prompt and honest self-reporting of breaches or possible breaches of licensee obligations; 35
 - (g) any other circumstances that the court considers relevant.

- (3) The maximum amount of a pecuniary penalty for a contravention of a licensee obligation is—
 (a) \$200,000, if the contravention or conduct materially prejudiced security holders' or residents' interests; and
 (b) \$100,000, in all other cases. 5
- (4) If conduct by a licensee constitutes a contravention of 2 or more licensee obligations, proceedings may be brought against that licensee for the contravention of any 1 or more of the obligations, but a licensee is not liable to more than 1 pecuniary penalty order for the same conduct. 10
- 43 Compensation orders**
- (1) The High Court may, on application by the Commission, a security holder, or a resident, order a licensee to pay compensation to any security holder or resident (the **aggrieved person**) if the court is satisfied that— 15
 (a) the licensee has contravened a licensee obligation; and
 (b) the contravention has caused loss or damage to the aggrieved person.
- (2) The court may make a compensation order whether or not any aggrieved person is a party to the proceeding. 20
- (3) The court may make any order it thinks just to compensate an aggrieved person in whole or in part for the loss or damage.
- 43A Further provisions relating to pecuniary penalty orders and compensation orders**
- (1) A licensee may be liable for both a pecuniary penalty order and a compensation order in respect of the same contravention of a licensee obligation. 25
- (2) Once criminal proceedings against a licensee for an offence relating to the contravention of a licensee obligation are determined, the court may not make a pecuniary penalty order against the licensee in respect of that contravention. 30
- (3) Once civil proceedings against a licensee for a pecuniary penalty order in respect of the contravention of a licensee obligation are determined, the licensee may not be convicted of an offence in respect of that contravention. 35

(4) Proceedings under **sections 42 and 43** are civil proceedings and the usual rules of the court and rules of evidence and procedure for civil proceedings apply (including the standard of proof).

(5) In this section and in **sections 42 and 43**,— 5
compensation order means an order made under **section 43 licensee** includes a former licensee
pecuniary penalty order means an order made under **section 42**.

Part 3 10
**Commission’s functions in relation to
issuers and operators**

*Duties of trustees, etc, and statutory supervisors
to Commission in relation to issuers and
operators* 15

43B **Application of Part 3 to statutory supervisors of
retirement villages**
To avoid doubt, Part 3 (other than **sections 47 and 48**) does
not apply to statutory supervisors of retirement villages.

44 **Commission may require trustee, etc, or statutory
supervisors to attest as to issuer’s compliance with issuer
obligations** 20

(1) The Commission may require a trustee, or statutory supervisor, or unit trustee to attest to the Commission, at a time and in a manner specified by the Commission, as to whether the trustee or supervisor is satisfied that a supervised issuer has not breached an issuer obligation in a material respect. 25

(2) If the Commission requires a trustee, or statutory supervisor, or unit trustee to attest to the Commission under this section, the trustee or supervisor must— 30

- (a) provide that attestation; or
- (b) if unable to attest to the Commission as required, report the reason, including the details of any breach or suspected breach.

Compare: 1989 No 157 s 157ZE 35

45 ~~Trustee, etc, or statutory supervisor~~ must report breach or possible breach of issuer obligation

If a trustee, ~~or~~ statutory supervisor, ~~or unit trustee~~ has reasonable grounds to believe that a supervised issuer has breached, may have breached, or is likely to breach an issuer obligation in a material respect, the trustee or supervisor must, as soon as practicable,—

- (a) report the breach or possible breach to the Commission; and
- (b) advise the Commission of the steps (if any) that the trustee or supervisor intends to take in light of the breach or possible breach and the date by which the steps are to be taken.

Compare: 1989 No 157 s 157ZF

46 ~~Trustee, etc, or statutory supervisor~~ must disclose information to Commission in certain circumstances

(1) This section applies if a trustee, ~~or~~ statutory supervisor, ~~or unit trustee~~ becomes aware, in the course of or in connection with the performance of functions as trustee, ~~or~~ statutory supervisor, ~~or unit trustee~~, of information on the basis of which the trustee or supervisor could reasonably form the opinion that—

- (a) a supervised issuer is unable to pay the issuer's debts as they become due in the normal course of business; or
- (b) the value of a supervised issuer's assets is less than the value of the issuer's liabilities, including contingent liabilities; or
- (c) it is likely that—
 - (i) a supervised issuer will be unable to pay the issuer's debts as they become due in the normal course of business; or
 - (ii) the value of a supervised issuer's assets will be less than the value of the issuer's liabilities, including contingent liabilities.

(1A) This section also applies if a unit trustee becomes aware, in the course of or in connection with the performance of functions as unit trustee, of information on the basis of which the unit trustee could reasonably form the opinion that—

- (a) the unit trustee is unable to pay the debts in respect of the unit trust as they become due in the normal course of business; or
- (b) the value of the assets in the unit trust is less than the value of the liabilities in respect of the unit trust, including contingent liabilities; or 5
- (c) it is likely that—
- (i) the unit trustee will be unable to pay the debts in respect of the unit trust as they become due in the normal course of business; or 10
- (ii) the value of the assets in the unit trust will be less than the value of the liabilities in respect of the unit trust, including contingent liabilities.
- (2) The trustee, or statutory supervisor, ~~or unit trustee~~ must, as soon as practicable,— 15
- (a) disclose to the Commission all information relevant to the matter referred to in **subsection (1) or (1A)** that is in the possession or control of the trustee or supervisor and was obtained in the course of, or in connection with, the performance of functions as trustee, or statutory supervisor, ~~or unit trustee~~; and 20
- (b) advise the Commission of the steps (if any) that the trustee or supervisor intends to take in light of the matter referred to in **subsection (1) or (1A)** and the date by which the steps are to be taken. 25

Compare: 1989 No 157 s 157ZG(1) and (3)

47 Commission may require trustee, ~~etc,~~ or statutory supervisor to disclose information about issuer or operator

If the Commission, by notice in writing to a trustee, statutory supervisor, ~~or unit trustee~~, requires the trustee or supervisor to provide the Commission with information relating to the business, operation, or management of a supervised issuer, the trustee or supervisor must, as soon as practicable, disclose to the Commission all information relevant to the matters referred to in the notice that was obtained in the course of, or in connection with, the performance of functions as trustee, statutory supervisor, ~~or unit trustee~~. 30 35

(1) This section applies if the Commission, by notice in writing to a trustee or statutory supervisor, requires the trustee or statutory supervisor to provide the Commission with information relating to the business, operation, or management of a supervised issuer, or of an operator of a supervised interest that is a retirement village. 5

(2) The trustee or statutory supervisor must, as soon as practicable, disclose to the Commission all information relevant to the matters referred to in the notice that was obtained in the course of, or in connection with, the performance of functions as trustee or statutory supervisor. 10

Compare: 1989 No 157 s 157ZG(2) and (3)

48 Protection for trustee, ~~etc,~~ or statutory supervisor in respect of disclosure

(1) No civil, criminal, or disciplinary proceedings may be brought against a trustee, ~~or~~ statutory supervisor, ~~or unit trustee~~ in respect of a protected disclosure. 15

(2) No person may terminate the appointment of a trustee, ~~or~~ statutory supervisor, ~~or unit trustee~~ by reason of a protected disclosure. 20

(3) No tribunal, body, or authority that has jurisdiction in respect of the professional conduct of a trustee, ~~or~~ statutory supervisor, ~~or unit trustee~~ may make an order against, or do any act in relation to, the trustee or supervisor in respect of a protected disclosure. 25

~~(4) In this section, **protected disclosure**, in relation to a trustee, statutory supervisor, or unit trustee, means a disclosure of information to the Commission in good faith by the trustee or supervisor under any of **sections 44 to 47**.~~

(4) In this section, **protected disclosure** means,— 30

(a) in relation to a trustee or statutory supervisor appointed in respect of a security, a disclosure of information to the Commission in good faith by the trustee or statutory supervisor under any of **sections 44 to 47**; and

(b) in relation to a statutory supervisor appointed in respect of a retirement village, a disclosure of information to the 35

Commission in good faith by the statutory supervisor
under **section 47.**

Compare: 1989 No 157 s 157ZH

Commission's powers in relation to issuers

- 49 Commission may give direction to trustee, etc, to avoid material prejudice** 5
- (1) This section applies if the Commission is satisfied that—
- (a) there is a significant risk that the interests of holders of a supervised ~~security~~ interest that is a security will be materially prejudiced; and 10
 - (b) either—
 - (i) the trustee; ~~or~~ statutory supervisor; ~~or unit trustee~~ is aware of the risk and has had a reasonable opportunity to take action to eliminate or reduce the risk but has failed to do so; or 15
 - (ii) action is urgently required to eliminate or reduce the risk and it is not reasonably practicable to wait for the trustee; ~~or~~ statutory supervisor; ~~or unit trustee~~ to take such action.
- (2) The Commission may give a written direction to the trustee; ~~or~~ statutory supervisor; ~~or unit trustee.~~ 20
- (3) The direction must specify—
- (a) the step or steps that the trustee; ~~or~~ statutory supervisor; ~~or unit trustee~~ must take in relation to the issue or the issuer (or both); and 25
 - (b) the date by which each step must be taken.
- (4) The trustee; ~~or~~ statutory supervisor; ~~or unit trustee~~ must comply with the direction.
- (5) A person who fails, without reasonable excuse, to comply with a direction commits an offence and is liable on summary conviction to a fine not exceeding \$200,000. 30
- (6) To avoid doubt, the fact that the Commission has not given a direction under this section does not affect the Commission's ability to apply for orders under **sections 42, 43, and 50.**

50 Commission may apply to High Court for orders relating to securities

- (1) This section applies if the Commission is satisfied that—
- (a) there is a significant risk that the interests of holders of a supervised security interest that is a security will be materially prejudiced; and 5
 - (b) either—
 - (i) the trustee, ~~or~~ statutory supervisor, ~~or~~ ~~unit trustee~~ is aware of the risk and has had a reasonable opportunity to make an application under section 49 of the Securities Act 1978 or **section 19A** of the Unit Trusts Act 1960 but has failed to do so; or 10
 - (ii) it is necessary as a matter of urgency for the Commission to make an application under this section and it is not reasonably practicable to wait for the trustee, ~~or~~ statutory supervisor, ~~or~~ ~~unit trustee~~ to make an application under section 49 of the Securities Act 1978 or **section 19A** of the Unit Trusts Act 1960. 15 20
- (2) This section also applies if the Commission is satisfied that—
- (a) the provisions of a ~~trust deed or deed of participation governing document~~ are no longer adequate to give proper protection to security holders; and
 - (b) either— 25
 - (i) the trustee, ~~or~~ statutory supervisor, ~~or~~ ~~unit trustee~~ has had a reasonable opportunity to make an application under section 49 of the Securities Act 1978 or **section 19A** of the Unit Trusts Act 1960 but has failed to do so; or 30
 - (ii) it is necessary as a matter of urgency for the Commission to make an application under this section and it is not reasonably practicable to wait for the trustee, ~~or~~ statutory supervisor, ~~or~~ ~~unit trustee~~ to make an application under section 49 of the Securities Act 1978 or **section 19A** of the Unit Trusts Act 1960. 35
- (3) The Commission may apply to the High Court for an order under this section.

- (4) The court may direct that an application be served on any person that the court thinks fit.
- (5) On an application, the court may, after giving the issuer, trustee, or statutory supervisor, ~~or unit trustee~~ and any other persons that the court thinks fit the opportunity to be heard, 5
by order—
- (a) amend the provisions of the ~~trust deed or deed of participation~~ governing document;
 - (b) impose restrictions on the activities of the issuer, including restrictions on advertising, that the court thinks are 10
necessary for the protection of the interests of security holders:
 - (c) direct the issuer, trustee, or statutory supervisor, ~~or unit trustee~~ to convene a meeting of security holders for the 15
purpose of—
 - (i) having placed before them by the trustee or supervisor any information relating to their interests, and any proposals for the protection of their interests, that the court or the trustee or supervisor considers necessary or appropriate; and 20
 - (ii) obtaining their opinions or directions in relation to the information and proposals referred to in **subparagraph (i)**:
 - (d) give directions in relation to the conduct of any meeting convened in accordance with **paragraph (c)**: 25
 - (e) stay all civil proceedings before any court by or against the issuer or any guarantor of the security:
 - (f) restrain the payment of money by the issuer or any guarantor of the security to security holders or a class of security holders: 30
 - (g) appoint a receiver or manager of any of the property that constitutes the security (if any) for the security:
 - (h) give any other directions that the court considers necessary to protect the interests of security holders, other holders of securities of the issuer, any guarantor of the 35
security, or the public.
- (6) The court may vary or cancel an order made under this section.

- (7) In exercising its powers under this section, the court must have regard to the interests of all creditors of the issuer.

Compare: 1978 No 103 s 49

Part 4

Miscellaneous and amendments to other Acts 5

Subpart 1—Miscellaneous

Commission's powers under Securities Act 1978

51 Commission may exercise powers under Securities Act 1978 10

- (1) The Commission may exercise any of its powers under the Securities Act 1978 in performing its functions under this Act, and Part 3 of that Act applies to the Commission's decisions and proceedings under this Act.

- (2) This section is for the avoidance of doubt. 15

Compare: 1988 No 234 s 44

Information

52 Commission may use information provided by Reserve Bank

- (1) The Commission may use any information communicated to it under section 157ZO(2)(e) of the Reserve Bank of New Zealand Act 1989 in the exercise of its functions under this Act. 20

- (2) This section does not limit the Commission's power to use any other information in the exercise of its functions under this Act. 25

Compare: 1978 No 103 s 17A(2)

53 Commission may use information obtained under this Act in exercise of other functions

The Commission may use information obtained for the purposes of this Act in the exercise of its functions under any other enactment. 30

54 Confidentiality of information

- (1) This section applies to the following information:
- (a) information obtained by the Commission for the purposes of this Act;
 - (b) information derived from information referred to in **paragraph (a)**; 5
 - (c) information relating to the exercise, or possible exercise, of functions under this Act.
- (2) The Commission must not publish or disclose information to which this section applies unless— 10
- (a) the information is available to the public under any enactment or is otherwise publicly available; or
 - (b) the information is in a statistical or summary form; or
 - (c) the publication or disclosure of the information is for the purposes of, or in connection with, the exercise of functions under this Act or any other enactment; or 15
 - (d) the publication or disclosure of the information is to a person who the Commission is satisfied has a proper interest in receiving the information; or
 - (e) the publication or disclosure of the information is with the consent of the person to whom the information relates or of the person to whom the information is confidential. 20
- (3) Information must not be published or disclosed under **subsection (2)(d)** unless the Commission is satisfied that appropriate provision exists to protect the confidentiality of the information. 25
- (4) ~~A person who publishes or discloses information to which this section applies in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding \$200,000.~~ 30

55 Limits on further disclosure of information

- (1) A person to whom information is published or disclosed under **section 54(2)(c)** must not publish, disclose, or use the information unless the publication, disclosure, or use is— 35
- (a) for the purposes of, or in connection with, the exercise of functions conferred by this Act or any other enactment; and

- (b) in accordance with any conditions that may be imposed by the Commission.
- (2) A person to whom information is published or disclosed under **section 54(2)(d)** must not publish, disclose, or use the information unless the publication, disclosure, or use is— 5
- (a) authorised by the Commission and in accordance with any conditions that the Commission may have imposed; and
- (b) necessary or desirable for the exercise of any function conferred by an enactment. 10
- (3) A person to whom information is published or disclosed under **section 54(2)(e)** must not publish, disclose, or use the information unless the publication, disclosure, or use is in accordance with the terms of the consent referred to in that paragraph.
- (4) A person who publishes, discloses, or uses information in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding \$200,000. 15

Directions

56 Commission may vary or cancel direction

- (1) The Commission may vary or cancel a direction given under **section 29, 37, or 49** if the Commission is satisfied that— 20
- (a) circumstances have changed since the direction was given; and
- (b) the change is such that the direction should be varied or cancelled. 25
- (2) The Commission may vary or cancel the direction by giving written notice to the person to whom the direction is addressed.

57 Protection for trustee, etc, who complies with Commission's direction

- (1) No civil, criminal, or disciplinary proceedings may be brought against a trustee, or statutory supervisor, ~~or unit trustee~~ in respect of a protected act. 30
- (2) No person may terminate the appointment of a trustee, or statutory supervisor, ~~or unit trustee~~ by reason of a protected act.
- (3) No tribunal, body, or authority that has jurisdiction in respect of the professional conduct of a trustee, or statutory supervisor, 35

~~or unit trustee~~ may make an order against, or do any act in relation to, the trustee or supervisor in respect of a protected act.

- (4) In this section, **protected act**, in relation to a trustee, ~~or~~ statutory supervisor, ~~or unit trustee~~, means an act of, or omission to act on the part of, the trustee, ~~or~~ statutory supervisor, ~~or unit trustee~~ in compliance in good faith with a direction under **section 29, 37, or 49**.

Compare: 1989 No 157 s 157ZH

Levy

10

58 ~~Licence holders~~ Licensees must pay levy

- (1) A ~~licence holder~~ licensee must pay the prescribed levy to the Commission.
- (2) The purpose of the levy is to meet, in whole or in part, the estimated costs of the performance of the Commission's functions under this Act (including the costs of collecting the levy). 15
- (3) Regulations under **section 59** may—
- (a) specify an amount payable as the levy:
 - (b) specify a method for calculating the levy:
 - (c) specify the period for which the levy is payable and the time by which the levy must be paid: 20
 - (d) exempt any class of ~~licence holder~~ licensee from liability to pay the levy, in whole or in part:
 - (e) make different provision for different classes of licence or ~~licence holder~~ licensee. 25
- (4) The levy is recoverable as a debt due to the Commission.

Regulations

59 **Regulations**

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister, make regulations for the following purposes: 30
- (aa) prescribing the matters that the Commission must consider in satisfying itself that every director and senior manager of the applicant is of good character for the purposes of **section 15(2)(b)**, including the methods 35

- of assessment and things to be taken into, or left out of, account in making an assessment:
- (a) prescribing matters that the Commission must assess under **section 15(3)(h)**:
- (b) prescribing the manner in which the Commission must ~~make an assessment under **section 15(4)**~~ assess the matters referred in **section 15(3)**, including the methods of assessment and things to be taken into, or left out of, account in making an assessment: 5
- (c) prescribing matters and information about matters to be contained in reports under **section 24**: 10
- (d) prescribing forms for the purposes of this Act:
- (e) prescribing fees payable in respect of any matter under this Act or the manner in which fees may be calculated:
- (f) providing for the levy under **section 58**: 15
- (g) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) Before making a recommendation under **subsection (1)**, the Minister must consult the Commission. 20
- ~~(3) Regulations under this section may make different provision for different purposes.~~
- (4) Regulations under this section may authorise the Commission to refund or waive, in whole or in part and on any conditions as may be prescribed, payment of any fee payable in relation to any person or class of persons. 25
- (5) A fee payable to the Commission is recoverable as a debt due to the Commission.

Transitional provision

- 60 Temporary licence for trustee, etc, appointed before commencement** 30
- (1) This section applies to a person who, immediately before the commencement of this Act,—
- (a) is a trustee, or statutory supervisor; ~~or unit trustee in respect of a security or statutory supervisor in respect of a retirement village;~~ and 35
- (b) either—

- (i) is approved to be appointed to that position under section 48 of the Securities Act 1978 ~~or~~ section 5 of the Unit Trusts Act 1960, or section 38 of the Retirement Villages Act 2003, whether unconditionally or subject to conditions; or 5
 - (ii) does not need to be approved.
- (2) A person to whom this section applies is deemed to hold a licence (a **temporary licence**) under this Act that covers the security or retirement village referred to in **subsection (1)(a)** and is subject to any conditions referred to in **subsection (1)(b)(i)**. 10
- (3) Subject to **section 18(2)**, a temporary licence expires on the earliest of the following dates:
 - (a) the date on which the temporary licence is cancelled under **section 16 or 33(2)(d)**: 15
 - (b) the date on which a licence issued under **section 15** takes effect:
 - (c) the date that is 9 months after the commencement of this Act.
- (4) This Act applies to a temporary licence in the same way as it applies to a licence issued under **section 15**. 20
- (5) But a person who holds a temporary licence does not, during the currency of the temporary licence, have to pay the levy under **section 58**.

Subpart 2—Amendments to other Acts 25

Amendments to Corporations (Investigation and Management) Act 1989

- 61 Amendments to Corporations (Investigation and Management) Act 1989**
Sections 62 and 63 amend the Corporations (Investigation and Management) Act 1989. 30
- 62 New section 11 substituted**
Section 11 is repealed and the following section substituted:

“11 Disclosure of information to Registrar by trustees or statutory supervisors

- “(1) This section applies if a trustee or statutory supervisor (~~under the Securities Act 1978~~) in respect of securities issued by a corporation or a statutory supervisor (~~under the Retirement Villages Act 2003~~) of a retirement village operated by a corporation becomes aware, in the course of or in connection with the performance of the trustee’s or statutory supervisor’s functions, of information on the basis of which the trustee or statutory supervisor could reasonably form the opinion that—
- “(a) the corporation is unable to pay the corporation’s debts as they become due in the normal course of business; or
- “(b) the value of the corporation’s assets is less than the value of the corporation’s liabilities, including contingent liabilities; or
- “(c) it is likely that—
- “(i) the corporation will be unable to pay the corporation’s debts as they become due in the normal course of business; or
- “(ii) the value of the corporation’s assets will be less than the value of the corporation’s liabilities, including contingent liabilities; or
- “(d) the corporation has breached, or is likely to breach, in a material respect—
- “(i) the terms of the trust deed or deed of participation relating to the securities; or
- “(ii) the terms of any offer of the securities; or
- “(iii) the terms of the deed of supervision relating to the retirement village.
- “(2) The trustee or statutory supervisor must, as soon as practicable, disclose to the Registrar all information relevant to the matter referred to in **subsection (1)** that is in the possession or control of the trustee or statutory supervisor and was obtained in the course of, or in connection with, the performance of functions as trustee or statutory supervisor.
- “(3) In this section, trustee or statutory supervisor means—
- “(a) a trustee or statutory supervisor (under the Securities Act 1978) in respect of securities issued by a corporation:

“(b) a statutory supervisor (under the Retirement Villages Act 2003) of a retirement village operated by a corporation.

“Compare: 1989 No 157 s 157ZG(1) and (3)”.

- 63 Section 12 repealed** 5
Section 12 is repealed.

*Amendment to Financial Service Providers
(Registration and Dispute Resolution) Act 2008*

- 64 Amendment to Financial Service Providers (Registration and Dispute Resolution) Act 2008** 10

(1) This section amends the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

(1A) Section 5(ia) is amended by inserting the following subparagraph after paragraph (ia)(i):

“(ia) as a statutory supervisor:” 15

(2) Schedule 2 is amended by adding the following item:

Securities Commission	Licensed trustees in respect of debt securities, licensed statutory supervisors in respect of participatory securities, licensed unit trustees, and licensed statutory supervisors of retirement villages	Securities Trustees and Statutory Supervisors Act 2009 (as applied, in the case of statutory supervisors of retirement villages, by section 37 of the Retirement Villages Act 2003)
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Amendments to Retirement Villages Act 2003

- 65 Amendments to Retirement Villages Act 2003**
Sections 66 to 68 amend the Retirement Villages Act 2003.

- 66 New section 37 substituted** 20
Section 37 is repealed and the following section substituted:

- “37 Application of Securities Trustees and Statutory Supervisors Act 2009 to statutory supervisors**
- “(1) Parts 1 and 2, sections 47 and 48, and Part 4** of the Securities Trustees and Statutory Supervisors Act **2009** apply, with all necessary modifications, in relation to statutory supervisors as if—
- “(a)** references to a statutory supervisor (as defined in that Act) were references to a statutory supervisor (as defined in this Act); and
 - “(b)** references to a deed of participation were references to a deed of supervision; and
 - “(c)** references to an issuer were references to an operator; and
 - “(d)** references to an issuer obligation included references to an obligation imposed on an operator by or under this Act; and
 - “(e)** references to a security and a participatory security were references to a retirement village; and
 - “(f)** references to a security holder were references to a resident; and
 - “(g)** references to a trustee obligation included references to an obligation imposed on a statutory supervisor by or under this Act.
- “(2)** The effect of **subsection (1)** is that statutory supervisors must be licensed under the Securities Trustees and Statutory Supervisors Act **2009** and are subject to the obligations (including the obligation to pay the levy under **section 58** of that Act), and have the rights and powers, set out in **Parts 1 and 2, sections 47 and 48, and Part 4** of that Act.
- “(3)** A licence under the Securities Trustees and Statutory Supervisors Act **2009** may cover both retirement villages and securities (as defined in that Act).”

66 Section 37 repealed
Section 37 is repealed.

- 67 Operator must appoint statutory supervisor**
- (1) Section 38(1) is amended by omitting “for the village” and substituting “who holds a licence under the Securities Trustees

- and Statutory Supervisors Act **2009** (as applied by **section 37(1)** of this Act) that covers the village”.
- (2) Section 38(4) is repealed.
- 68 Registrar’s consent required for termination or non-renewal of appointment** 5
- Section 39 is amended by adding the following subsection:
- “(3) This section does not apply to the termination of the appointment of a statutory supervisor by the operator under **Part 2** of the Securities Trustees and Statutory Supervisors Act **2009** (as applied by **section 37(1)** of this Act).” 10
- Amendments to Securities Act 1978*
- 69 Amendments to Securities Act 1978**
- Sections 70 to 79** amend the Securities Act 1978.
- 70 Restrictions on offer of securities to the public**
- (1) Section 33(2)(a) is amended by inserting “who holds a licence under the Securities Trustees and Statutory Supervisors Act **2009** that covers the security” after “a person”. 15
- (2) Section 33(3)(a) is amended by inserting “who holds a licence under the Securities Trustees and Statutory Supervisors Act **2009** that covers the security” after “a person”. 20
- 71 Contents of deeds**
- Section 45 is amended by adding the following subsection:
- “(4) A clause prescribed for the purposes of subsection (2) or (3) may, without limitation, do any of the following:
- “(a) specify the duties and powers of the trustee or statutory supervisor: 25
- “(b) specify the duties of the issuer:
- “(c) provide for the trustee or statutory supervisor to have the power, exercisable with the consent of the issuer (but without the consent of security holders having to be obtained), to make amendments to the trust deed or deed of participation that do not adversely affect the interests of security holders.” 30

72 New section 48 substituted

Section 48 is repealed and the following section substituted:

“48 Removal of trustees and statutory supervisors

“(1) A trustee or statutory supervisor (**T**) in respect of a security
may not resign, be discharged, or be removed as trustee or
statutory supervisor unless— 5

“(a) all functions and duties of the position have been per-
formed; or

“(b) the issuer has appointed another person who holds a
licence under the Securities Trustees and Statutory
Supervisors Act **2009** that covers the security to the
position in place of **T** and the other person has accepted
the appointment; or 10

“(c) the court consents.

“(2) This section does not apply to the removal of a trustee or statu-
tory supervisor by the Commission under **Part 2** of the Secur-
ities Trustees and Statutory Supervisors Act **2009**.” 15

**73 Trustees and statutory supervisors may apply to court for
orders relating to securities**

Section 49(1) is amended by repealing paragraph (a) and sub-
stituting the following paragraph: 20

“(a) there is a significant risk that the interests of the security
holders will be materially prejudiced; or”.

74 New section 50B inserted

The following section is inserted after section 50A: 25

“50B Protection for auditors

“(1) No civil, criminal, or disciplinary proceedings may be brought
against an auditor in respect of a protected disclosure.

“(2) No person may terminate the appointment of an auditor by
reason of a protected disclosure. 30

“(3) No tribunal, body, or authority that has jurisdiction in respect
of the professional conduct of an auditor may make an order
against, or do any act in relation to, an auditor in respect of a
protected disclosure.

- “(4) In this section, **protected disclosure**, in relation to an auditor, means a disclosure of information in good faith by the auditor under any of the following provisions:
- “(a) section 50(2):
 - “(b) section 50(3): 5
 - “(c) section 50A(2):
 - “(d) section 50A(3).
- “Compare: 1989 No 157 s 157ZH”.
- 75 When court may make management banning orders**
Section 60A(1)(b)(i) is amended by inserting “the Securities Trustees and Statutory Supervisors Act **2009**,” after “the Securities Markets Act 1988,”. 10
- 76 Appeals to High Court on questions of law only**
Section 69P(3) is amended by adding “or the Securities Trustees and Statutory Supervisors Act **2009**”. 15
- 77 Restrictions on use of self-incriminating statements obtained by summons**
Section 69U(1)(a)(ii) is amended by inserting “the Securities Trustees and Statutory Supervisors Act **2009**,” after “the Securities Markets Act 1988,”. 20
- 78 Regulations and Orders in Council**
Section 70(1)(g) is amended by omitting “; and, without limiting the generality of the foregoing, clauses specifying the duties and powers of trustees or statutory supervisors, as the case may be, and the obligations of issuers may be prescribed as clauses that are deemed to be contained in such deeds”. 25
- 79 Schedule 1 amended**
Schedule 1 is amended by inserting the following item in its appropriate alphabetical order: “Securities Trustees and Statutory Supervisors Act **2009**”. 30

*Amendment to Securities Markets Act 1988***80 Amendment to Securities Markets Act 1988**

- (1) This section amends the Securities Markets Act 1988.
- (2) Section 43F(1)(b)(i) is amended by inserting “the Securities Trustees and Statutory Supervisors Act **2009**,” after “the Securities Act 1978,”. 5

*Amendment to Takeovers Act 1993***81 Amendment to Takeovers Act 1993**

- (1) This section amends the Takeovers Act 1993.
- (2) Section 44F(b)(i) is amended by inserting “the Securities Trustees and Statutory Supervisors Act **2009**,” after “the Securities Act 1978,”. 10

*Amendments to Trustee Companies Act 1967***82 Amendments to Trustee Companies Act 1967**

- (1) This section amends the Trustee Companies Act 1967. 15
- (2) Section 7(2) is amended by repealing paragraph (m) and substituting the following paragraph:
 “(m) statutory supervisor (as defined in the Retirement Villages Act 2003) in respect of a retirement village covered by the trustee company’s licence under the Securities Trustees and Statutory Supervisors Act **2009**.”. 20
- (3) Section 7(2) is amended by repealing paragraph (p) and substituting the following paragraph:
 “(p) trustee, statutory supervisor, or unit trustee (as defined in the Securities Trustees and Statutory Supervisors Act **2009**) in respect of a security covered by the trustee company’s licence under that Act.”. 25

*Amendments to Unit Trusts Act 1960***83 Amendments to Unit Trusts Act 1960**

Sections 84 to 90 amend the Unit Trusts Act 1960. 30

84 Section 5 repealed

Section 5 is repealed.

- 85 Appointment of trustee**
Section 8(b) is amended by omitting “eligible in accordance with section 5 of this Act” and substituting “who holds a licence under the Securities Trustees and Statutory Supervisors Act **2009** that covers the unit trust”.
- 5
- 86 New section 10 substituted**
Section 10 is repealed and the following section substituted:
- “10 Removal of trustees**
- “(1) A trustee may not resign as trustee of a unit trust unless—
- “(a) all functions and duties of the position have been performed; or
- “(b) the manager has appointed another person who holds a licence under the Securities Trustees and Statutory Supervisors Act **2009** that covers the unit trust to the position, and the new trustee has accepted the appointment; or
- “(c) the High Court consents.
- “(2) Despite anything to the contrary in the trust deed, a manager may not discharge or remove a trustee except with the approval of the High Court.
- “(3) **Subsection (2)** does not apply to the removal of a trustee by the manager under **Part 2** of the Securities Trustees and Statutory Supervisors Act **2009**.”
- 10
15
20
- 87 Implied provisions in trust deed**
Section 12 is amended by inserting the following subsection after subsection (1):
- “(1A) If regulations made under section 28 prescribe provisions that are deemed to be contained in trust deeds relating to unit trusts, those provisions are implied into those trust deeds in accordance with the regulations.”
- 25
30
- 88 Meeting of unit holders**
- (1) Section 18(2) is amended by adding “and any directions given by the Securities Commission under the Securities Trustees and Statutory Supervisors Act **2009**”.

- (2) Section 18(4) is amended by omitting “the trusts or any rule of law” and inserting “the trusts, a direction of the Securities Commission, any rule of law,”.

89 New section 19A inserted

The following section is inserted after section 19: 5

“19A Trustee may apply to High Court for orders relating to unit trust

- “(1) This section applies if a trustee is satisfied that—
- “(a) there is a significant risk that the interests of unit holders will be materially prejudiced; or 10
 - “(b) the provisions of the trust deed are no longer adequate to give proper protection to unit holders.
- “(2) The trustee may apply to the High Court for an order under this section.
- “(3) The court may direct that an application be served on any person that the court thinks fit. 15
- “(4) On an application, the court may, after giving the manager and any other persons that the court thinks fit the opportunity to be heard, by order—
- “(a) amend the provisions of the trust deed: 20
 - “(b) impose restrictions on the activities of the manager, including restrictions on advertising, that the court thinks are necessary for the protection of the interests of unit holders:
 - “(c) direct the manager or trustee to convene a meeting of unit holders for the purpose of— 25
 - “(i) having placed before them by the trustee any information relating to their interests, and any proposals for the protection of their interests, that the court or the trustee considers necessary or appropriate; and 30
 - “(ii) obtaining their opinions or directions in relation to the information and proposals referred to in **subparagraph (i)**:
 - “(d) give directions in relation to the conduct of any meeting convened in accordance with **paragraph (c)**: 35
 - “(e) stay all civil proceedings before any court by or against the manager:

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- “(f) restrain the payment of money by the manager to unit holders or a class of unit holders:
- “(g) give any other directions that the court considers necessary to protect the interests of unit holders, or the public.
- “(5) The court may vary or cancel an order made under this section. 5
- “(6) In exercising its powers under this section, the court must have regard to the interests of all creditors of the manager.
“Compare: 1978 No 103 s 49”₂
- 90 Regulations**
- (1) Section 28(2) is amended by adding the following paragraphs: 10
- “(d) prescribing information and other matters that must be included in a trust deed:
- “(e) prescribing provisions that are deemed to be contained in a trust deed.”
- (2) Section 28 is amended by adding the following subsections: 15
- “(3) A provision prescribed for the purposes of **subsection (2)(e)** may, without limitation, do any of the following:
- “(a) specify the duties and powers of the trustee:
- “(b) specify the duties of the manager:
- “(c) provide for the trustee to have the power, exercisable 20
with the consent of the manager (but without requiring the consent of unit holders), to make amendments to the trust deed that do not adversely affect the interests of unit holders.
- “(4) Regulations under this section may make different provision 25
for different purposes.”

Legislative history

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Introduction (Bill 114–1)
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