

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 14 August 1957

Words struck out by the Statutes Revision Committee are shown in italics within bold round brackets; words inserted are shown in black within bold square brackets or in roman with rule down side.

Hon. Mr Marshall

TRUSTEE AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Trustee Act 1956

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. Short Title—This Act may be cited as the Trustee Amendment Act 1957, and shall be read together with and deemed part of the Trustee Act 1956 (hereinafter referred to as the principal Act).

10 **2. Authorised investments**—(1) Paragraph (c) of subsection one of section four of the principal Act is hereby amended by inserting, after the words “Hospital Board”, the words “or Fire Board”.

15 (2) Subsection three of section four of the principal Act is hereby amended by omitting the word “over” in the second place where that word appears in that subsection.

3. Purchase of redeemable stock at a premium or discount— Subsection one of section five of the principal Act is hereby amended—

- (a) By omitting the words “may under the powers of this Act”, and substituting the words “having authority to”:
- (b) By inserting, before the word “notwithstanding”, the words “may invest in any such securities”.

4. Power to purchase land and erect dwellinghouse— Section fourteen of the principal Act is hereby amended by inserting, after subsection two, the following subsection:

“(2A) Any trustee may erect a dwellinghouse on land that is subject to the same trusts as the money being expended in respect of the erection, or may purchase land in New Zealand and erect a dwellinghouse thereon, if the dwellinghouse and land are required exclusively or principally as a home for the person entitled to the income of the money being expended in respect of the erection or the purchase and erection, as the case may be, and if the whole of the money is derived from the sale of another dwellinghouse and the land appurtenant thereto which the trustee had power to retain.”

5. Trustee’s power to postpone— Section fourteen of the principal Act is hereby amended by adding the following subsection:

“(7) Where there is a power (statutory or otherwise) to postpone the sale of any land or authorised investment that a trustee has a duty to sell by reason only of a trust or direction for sale, then (subject to any express direction to the contrary in the instrument, if any, creating the trust) the trustee shall not be liable in any way merely for postponing the sale, in the exercise of his discretion, for an indefinite and unlimited period, whether or not that period exceeds the period during which the trust or direction for sale remains valid; nor shall a purchaser of the land or authorised investment be concerned in any case with any directions respecting the postponement of a sale:

“Provided that this subsection shall not apply to any property of a wasting or speculative nature.”

6. Power to sell property on terms— Section seventeen of the principal Act is hereby amended by omitting the word “land” in each place where it occurs, and substituting in each case the word “property”.

7. Protection of trustee in handing over chattels to life tenant—(1) The principal Act is hereby amended by inserting, after section thirty-nine, the following section:

5 “39A. (1) Where any chattels are, under the provisions of any will, bequeathed to any person for life or for any limited interest, the trustee may cause an inventory to be made of the chattels, which inventory shall be signed by that person and retained by the trustee, and a copy of the inventory shall be delivered to that person.

10 “(2) The trustee may thereupon deliver the chattels to that person on such terms and conditions as the trustee thinks fit, and shall not thereafter be bound to see to the repair or insurance of the chattels, and shall not be subject to any liability whatsoever by reason of the loss or destruction of the
15 chattels or the neglect of that person to effect any such repairs or insurance.

“ (3) A copy of any such inventory, signed by that person and by the trustee, shall be deemed to be an instrument within the meaning of the Chattels Transfer Act 1924, and may be
20 registered accordingly.”

(2) Section seventy-six of the Public Trust Office Amendment Act 1921–22 is hereby consequentially repealed.

8. Appointment of new trustees without intervention of Court—Section forty-three of the principal Act is hereby
25 amended by adding the following subsection:

“(9) In this section the term ‘trustee’ does not include a personal representative as such.”

9. Special rules as to apportionment on purchase, sale, or transfer in certain cases—The principal Act is hereby
30 amended by repealing section eighty-three, and substituting the following section:

“83. (1) For the purposes of this section—

35 “(a) The term ‘fixed-income asset’ means an asset coming within any of the following classes:

“(i) The securities mentioned in paragraphs (a), (c), (d), (e), (f), (g), and (i) of subsection one of section four of this Act:

40 “(ii) Debentures, bonds, and stock (other than shares) in which the trustee is authorised to invest trust money:

“(iii) Any other asset bearing interest or carrying the right to a dividend if the interest or dividend is payable at a fixed rate and if the interest or dividend has been paid regularly in respect of the asset for at least five years before the material date and if the trustee has no reason to believe that the interest or dividend in respect of the period to which the apportionment relates will not be paid reasonably promptly after the same falls due: 5

“(b) The term ‘shares’ means shares or stock of any company, whether incorporated in or outside New Zealand, except any such shares or stock which constitutes a fixed-income asset in accordance with subparagraph (iii) of paragraph (a) of this subsection: 10 15

“(c) An appropriation of shares (whether pursuant to the power conferred by paragraph (j) of subsection one of section fifteen of this Act or otherwise) shall be deemed to be a transfer of those shares to which subsection four of this section applies. 20

“(2) Where any payment received by a trustee in respect of a sale of any fixed-income asset is or includes payment for the right to receive income accrued from that asset at the time of sale, though the income may not then be due, the amount of the accrued income shall, for the purposes of the trust, be deemed to have been received as income in respect of the period during which it so accrued. 25

“(3) Where any payment made by a trustee in respect of a purchase of any fixed-income asset is or includes payment for the right to receive any income accrued from that asset at the time of the purchase, though the income may not then be due, the amount of the accrued income when received shall, for the purposes of the trust, be deemed to have been received as purchase money repaid. 30 35

“(4) Where a trustee transfers any shares (not being a fixed-income asset) to the person entitled thereto under the trust, then, unless the trustee in his absolute discretion having regard to all the circumstances of the case thinks that it is equitable, practicable, and convenient to make an apportionment, there shall be no apportionment of any dividends which have accrued at the date of transfer but have not then been declared, and no person who would have been beneficially interested in any such dividends if they had been declared and paid to the trustee shall have any claim in respect thereof against the trustee or against the transferee of the shares. 40 45

“(5) Where a trustee sells any shares that are not a fixed-income asset, no part of the proceeds of the sale shall, for the purposes of the trust, be deemed to have been paid for the right to receive dividends which have accrued in respect of the shares at the time of the sale, but have not then been declared, and there shall accordingly be no apportionment of the proceeds as between capital and income.

“(6) Where a trustee purchases any shares that are not a fixed-income asset, no part of the purchase price shall, for the purposes of the trust, be deemed to be paid for the right to receive any dividends which have accrued in respect of the shares at the time of the purchase but have not then been declared, and there shall accordingly be no apportionment of the purchase price as between capital and income, nor shall any part of the dividends received by the trustee be deemed to have been received as purchase money repaid.

“(7) Except as herein expressly provided, nothing in this section shall affect the rights and obligations of the trustee or of any other person in respect of apportionment of income on the sale or purchase of any asset or the transfer thereof to any person beneficially entitled thereto.

“(8) Anything done by a trustee before the commencement of this section which would have been authorised by this section if then in force shall be deemed to have been authorised by this section.

“(9) The provisions of this section shall apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument.”

30 **10. (Audit of trust estates) [New sections inserted]—**

(1) The principal Act is hereby amended by inserting, after section eighty-three, the following *(section)* [sections]:

New

35 **“83A. Examination of accounts of trust estates administered by trustee corporations—**In the case of any trust estate administered by a trustee corporation, a solicitor or accountant authorised in writing by a beneficiary shall be entitled as of right to examine at any reasonable time the accounts of that estate, and for that purpose shall have access to the trustee corporation’s books and vouchers (but not the file) relating to that estate, and to the securities and documents of title held by the trustee corporation on account of that estate.

(83A.) “[83B. Audit of other trust estates]—(1) Subject to the provisions of any regulations made under this Act, and unless the Court otherwise orders, the condition and accounts of any trust estate (being an estate which is not being administered by *the Public Trustee* **[a trustee corporation]**) shall, on an application being made and notice thereof being given in the prescribed manner by or on behalf of any trustee or beneficiary in that estate, be investigated and audited by such solicitor or such member of the New Zealand Society of Accountants as may be agreed on between the applicant trustee and his co-trustees and the Public Trustee, or between the applicant beneficiary and the trustees and the Public Trustee, as the case may be, or, in default of any such agreement, by a solicitor or a member of the New Zealand Society of Accountants appointed by the Public Trustee:

“Provided that—

“(a) Except with the leave of the Court, such an investigation or audit shall not be required within twelve months after any such previous investigation or audit; and

“(b) A beneficiary shall not be appointed under this section to make an investigation or audit; and

“(c) The Public Trustee may require the applicant to deposit a sum of money covering the costs of the investigation and audit, as estimated by the Public Trustee, or to secure the same to the Public Trustee’s satisfaction before proceeding with the application.

“(2) The person making the investigation or audit (in this section called “the auditor”) shall have a right of access to the books, accounts, and vouchers of the trustees, and to any securities and documents of title held by them on account of the estate, and may require from them such information and explanations as may be necessary for the performance of his duties.

“(3) Upon the completion of the investigation and audit, the auditor shall forward to the applicant, and to every trustee, and to the Public Trustee, a copy of the accounts

of the estate, together with a report thereon, and a certificate signed by him to the effect that the accounts correctly show the state of the affairs of the estate, and that he has had the securities of the trust fund investments (if
5 any) produced to and verified by him, or (as the case may be) that such accounts are deficient in such respects as may be specified in that certificate.

“(4) Every beneficiary shall, subject to the provisions of any regulations made under this section, be entitled at all
10 reasonable times to inspect and take copies of the accounts, report, and certificate, and, at his own expense, to be furnished with copies thereof or extracts therefrom.

“(5) The auditor may be removed by order of the Court; and if any auditor is removed, or resigns, or dies, or
15 becomes bankrupt or incapable of acting before the investigation and audit are completed, a new auditor may be appointed in his place in like manner as the original auditor was appointed.

“(6) The remuneration of the auditor and the other ex-
20 penses of the investigation and audit (including the Public Trustee’s charges) shall be such as may be prescribed by regulations under this section or (in the absence of any such prescription) as may be determined by the Court, and shall, unless the Court otherwise orders, be borne by the estate;
25 and, in the event of the Court so ordering, such expenses shall be borne by the trustees personally or any of them, or by the applicant, or be apportioned between them or any of them, or between them and any of them and the estate, in such proportions as the Court thinks just.

30 “(7) If any person having the custody of any books, accounts, vouchers, securities, or documents to which the auditor has a right of access under this section fails or refuses to allow him to have access thereto, or in anywise obstructs the investigation or audit, the auditor may apply
35 to the Court, and thereupon the Court shall make such order as it thinks just.

“(8) Subject to any rules of Court, applications under or for the purposes of this section to the Court shall be made to a Judge in Chambers.

“(9) If any person in any statement of accounts, report, or certificate required for the purposes of this section wilfully makes a statement that is false in any material particular, he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months, and in either case to a fine not exceeding one hundred pounds instead of or in addition to that imprisonment. 5

“(10) The Public Trustee shall not be liable for any expenses or costs under this section. 10

“(11) All expenses and costs for which the estate is liable under this section shall be a charge on the assets of the estate, and that charge may be enforced in such manner as the Court directs.

“(12) The Governor-General may from time to time, by Order in Council, make all such regulations as may in his opinion be necessary or expedient for specifying the procedure and regulating the remuneration, expenses, charges, and other matters in regard to the investigation and audit of trust estates. All regulations that have been made under the Public Trust Office Act 1908 for the purposes of section eleven of the Public Trust Office Amendment Act 1913 and are in force at the commencement of this section shall continue and have effect as if they had been made under this subsection and as if this subsection had been in force when they were made. 15 20 25

“(13) All regulations made under this section shall be laid before Parliament within twenty-eight days after the date of the making thereof if Parliament is then in session and, if not, shall be laid before Parliament within twenty-eight days after the date of the commencement of the next ensuing session.” 30

(2) Section eleven of the Public Trust Office Amendment Act 1913 is hereby consequentially repealed.

Cf. 1913, No. 19, s. 11