



## ANALYSIS

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1988, No. 1—*Private*

**An Act—**

- (a) To provide for a change of name by The Perpetual Trustees, Estate, and Agency Company of New Zealand (Limited); and
- (b) To authorise the Company to transact business with the Australian Mutual Provident Society and with other subsidiaries of that society; and
- (c) To consolidate the provisions of the Perpetual Trustees, Estate, and Agency Company Act, 1884 and its amendments

[31 March 1988]

WHEREAS, from the uncertainty of human life, and from other causes, great difficulty has from time to time arisen in securing the services of suitable persons for the office of executor, trustee, liquidator, guardian, and other similar offices: And whereas, in order to secure the more certain discharge of the duties of those offices a company by the name of The Perpetual

Trustees, Estate, and Agency Company of New Zealand (Limited) (hereinafter called the Company) was, on the 16th day of April 1884, formed and incorporated under the Companies Act, 1882 with the object, among other purposes, of affording persons the opportunity of obtaining the services of a permanent corporation for the performance of the duties of those offices: And whereas, by the Perpetual Trustees, Estate, and Agency Company Act, 1884, the Company has the power to act as executor, trustee, liquidator, guardian, or in any other similar capacity, to perform and discharge all the duties of those offices, and to receive remuneration for those duties: And whereas, the Company is a trustee company within the meaning of the Trustee Companies Act 1967: And whereas the Company is now a wholly owned subsidiary of the Australian Mutual Provident Society (hereinafter called the AMP Society): And whereas the Company desires to change its name to AMP Perpetual Trustee Company N.Z. Limited: And whereas the Company also desires the power to transact with the AMP Society or any subsidiary of that society, should it think fit to do so, any business in connection with any estate or trust property that the Company may from time to time administer: And whereas legislation is the only expedient means by which the change of name of the Company and the empowering of the Company to transact any business with the AMP Society and with other subsidiaries of that society can be effected or permitted efficiently and economically and without interference with the conduct and continuity of the Company, the trusts under its administration, the Company's clients, and other persons having business with the Company: And whereas some of the objects of this Act cannot be attained otherwise than by legislation:

BE IT THEREFORE ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the AMP Perpetual Trustee Company Act 1988.

(2) This Act shall come into force on the 1st day of April 1988.

**2. Interpretation**—In this Act, unless the context otherwise requires,—

“AMP Society” means the Australian Mutual Provident Society established in Sydney in the State of New South Wales, Australia, and carrying on business in New Zealand:

“The Company” means The Perpetual Trustees, Estate, and Agency Company of New Zealand (Limited) incorporated in New Zealand under the Companies Act, 1882, which, on and after the 1st day of April 1988, will be called AMP Perpetual Trustee Company N.Z. Limited:

“Fiduciary obligations, and liabilities” includes all rights, capacities, authorities, discretions, duties, obligations, and liabilities as executor, trustee, administrator, receiver, liquidator, committee, guardian, attorney, or agent, or as a fiduciary in any capacity:

“Liabilities” means liabilities, debts, charges, and duties of every description (whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere):

“Property” means property of every kind whether tangible or intangible, real or personal, or corporeal or incorporeal; and, without limiting the generality of the foregoing, includes—

- (a) Choses in action; and
- (b) Goodwill; and

(c) Rights, interests, and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise, and whether liquidated or unliquidated, actual, contingent, or prospective:

“Rights” means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective:

“Subsidiary” and “related company” have the same meanings as in the Companies Act 1955:

“Trust property” means all property held as executor, trustee, administrator, receiver, liquidator, committee, guardian, attorney, or agent, or as a fiduciary in any capacity.

**3. Act to bind the Crown and other persons**—This Act shall bind the Crown and every person whose rights, obligations, or liabilities are affected by any provision of this Act.

## PART I EFFECT OF ACT

**4. Change of Company’s name**—(1) On and after the 1st day of April 1988, the name of the Company shall be AMP Perpetual Trustee Company N.Z. Limited.

(2) Forthwith after the 1st day of April 1988, the Registrar of Companies shall enter the new name of the Company on the register in place of the former name and shall issue a certificate of incorporation altered to meet the circumstances of the case.

(3) Nothing in this Act shall prevent the name of the Company being changed at any time in accordance with the Companies Act 1955.

**5. Company to continue under this Act**—On and after the 1st day of April 1988, the Company shall be and continue to be the same body corporate as the body corporate existing before that date and called The Perpetual Trustees, Estate, and Agency Company of New Zealand (Limited). In particular, and without limiting the generality of the foregoing,—

(a) Except as expressly provided in this Act, the rights, obligations, and liabilities (including fiduciary rights, obligations, and liabilities) of the Company shall not be in any way affected by the enactment of this Act; and

(b) All property, and all trust property, belonging to or vested in the Company immediately before that date shall, on and after that date, continue to belong to or be vested in the Company; and

(c) All actions, arbitrations, and other proceedings that are pending at that date by or against the Company may be continued in the same manner notwithstanding the enactment of this Act; and

(d) Every reference in any Act, will, trust deed, document, sign, poster, notice, or other place to "The Perpetual Trustees, Estate, and Agency Company of New Zealand (Limited)" or to "The Perpetual Trustees, Estate, and Agency Company of New Zealand Limited", or to "The Perpetual Trustees Company Limited", whether before or after that date, shall be deemed to be a reference to "AMP Perpetual Trustee Company N.Z. Limited".

## PART II

### EMPOWERING PROVISIONS

**6. Company may act as executor and obtain probate**—Whenever the Company is appointed as executor (whether alone or jointly with any other person) in, or in respect of, the will of any testator, it shall be lawful for the Company to be and act as executor (alone or jointly as appropriate); and the Company shall be entitled to apply for and obtain probate of

the will and to perform and discharge all the other acts and duties of an executor as fully and effectually as a private individual may do when appointed executor.

**7. Company's liability to be same as private individual**—In all cases in which the Company is acting as executor, trustee, administrator, receiver, liquidator, committee, guardian, attorney, or agent, or in any other similar capacity, under power, the Company shall, in addition to the liabilities and restrictions imposed by this Act, be subject in all respects to the same control and liability to removal as any private individual appointed to act in any such capacity.

**8. Court or Judge may order account**—(1) If any trustee, executor, legatee, administrator, beneficiary, next-of-kin, creditor, or other person entitled to or interested in any estate that has come or hereafter comes into the possession or under the control of the Company is unable, upon application to the Company, to obtain a sufficient account of the property and assets of the estate or of the disposal and expenditure of or out of the estate the trustee, executor, administrator, legatee, beneficiary, next-of-kin, creditor, or other person shall be entitled to apply to the High Court or to any Judge of that Court, after notice to the Company for an account.

(2) If the Court or Judge is of opinion that no sufficient account has been rendered by the Company, the Court or Judge shall order such account to be rendered by the Company as the Court or Judge considers just; or if the Court or Judge shall think that no sufficient case has been established to require the Company to furnish an account, it shall be lawful for the Court or Judge to dismiss the application.

(3) The Court or Judge shall have power in all cases to make such order as to costs either against the Company or against the applicant, or as to payment of costs out of the estate, as the Court or Judge considers just.

**9. Court or Judge may order examination of records**—  
(1) The High Court or any Judge of that Court may, on application under section 8 of this Act, order, in addition to or in substitution for any account to be rendered by the Company, that a person to be named in the order shall examine the books and accounts of the Company in relation to the estate as to which the order is made; and in that case the Company shall—

(a) Deliver to the person named in the order a list of all books kept by the Company; and

- (b) Produce to that person at all reasonable times when required those books and all accounts, vouchers, papers, and other documents of the Company; and
  - (c) Provide the person with all necessary information and all necessary facilities to enable the person to make the examination.
- (2) The Court or Judge shall have power in all such cases to make such order as to costs either against the company or against the applicant, or as to payment of costs out of the estate, as that Court or Judge considers just.

**10. Company not to wind up without approval of Court**—(1) So long as any estate in respect of which the Company is executor, administrator, or trustee remains in whole or in part unadministered, it shall not be lawful—

- (a) To proceed to wind up the Company voluntarily; or
  - (b) For the AMP Society to dispose of any shares it holds in the Company that are not fully paid up,—
- without the approval of the High Court or of a Judge of that Court.

(2) Any person interested in any such estate or who may have any claim in respect of any such estate may apply to that Court or to a Judge of that Court for an order to restrain the winding-up voluntarily of the Company or to restrain the AMP Society from disposing of any such shares; and the Court or Judge may make such order in the matter as the Court or Judge considers just.

**11. Unclaimed money**—Every sum of money held by the Company as executor, trustee, administrator, receiver, liquidator, committee, guardian, attorney, or agent, or otherwise under this Act that remains unclaimed, and of which no lawful owner is known, for a period of 6 years after its receipt by the Company, shall at the end of the next financial year be paid over by the Company to the Commissioner of Inland Revenue under and in accordance with the Unclaimed Money Act 1971, and every such payment shall, to the extent of the money paid, discharge the Company of the trust in respect of such money.

**12. Company authorised to transact any business with AMP Society or subsidiaries**—(1) Notwithstanding the fiduciary rights, obligations, and liabilities, of the Company whether pursuant to this Act or otherwise, the Company is hereby authorised to transact with the AMP Society or any

subsidiary of the AMP Society, any business including but not limited to insurance business, in connection with any estate or trust property that it may administer from time to time where, after considering all the circumstances of the case (including appropriate business arrangements offered by other companies), the Company is satisfied on reasonable grounds that it is in the best interests of the estate or trust property to do so; and, notwithstanding any enactment or rule of law to the contrary, the AMP Society or any subsidiary of the AMP Society (including the Company) shall be entitled to receive and retain all fees, premiums, commissions, and other payments properly chargeable or payable in respect of such business in the same manner as it would have been entitled to do if the Company had not been a trustee of such estate or the Company were not, in respect of the AMP Society, a subsidiary, or, in respect of any other subsidiary of the AMP Society, a related company.

(2) Any payment to which subsection (1) of this section applies shall be clearly identified in the account rendered in respect of the estate or trust property.

**13. Jurisdiction and powers of High Court not to be affected**—(1) Nothing in this Act shall affect any powers or jurisdiction now possessed by the High Court in respect of trustees, and all such powers and jurisdiction shall apply to the Company in respect of all trusts undertaken by it.

(2) Without limiting subsection (1) of this section, nothing in this Act shall affect the power of the High Court to remove the Company from any office notwithstanding that it has come to that office by virtue of any provision of this Act.

**14. Return of securities held for purposes of Trustee Companies Act 1967**—(1) The First Schedule to the Trustee Companies Act 1967 is hereby amended by omitting the item relating to the Perpetual Trustees, Estate, and Agency Company of New Zealand (Limited).

(2) On request by the Company, the Public Trustee shall surrender to the Company all securities deposited with the Public Trustee by the Company under and for the purposes of section 6 (2) of the Trustee Companies Act 1967.

(3) The receipt of the Secretary of the Company shall be a full and sufficient discharge to the Public Trustee for all such securities so surrendered, and the Public Trustee shall not be concerned to see to the application of the securities surrendered.

**15. Consequential amendments**—(1) Section 2 of the Trustee Companies Act 1967 is hereby amended by omitting from the definition of the term “trustee company” the words “the Perpetual Trustees, Estate, and Agency Company of New Zealand (Limited)”, and substituting the words “AMP Perpetual Trustee Company N.Z. Limited”.

(2) Section 2 of the Trustee Companies Act 1967 is hereby further amended by omitting from the definition of the term “trustee company Act” (as added by section 2 (2) of the Trustee Companies Amendment Act 1972) the words “Perpetual Trustees, Estate, and Agency Company Act 1884”, and substituting the words “AMP Perpetual Trustee Company Act 1988”.

**16. Repeals**—The following enactments are hereby repealed:

- (a) The Perpetual Trustees, Estate, and Agency Company Act, 1884;
- (b) The Perpetual Trustees, Estate, and Agency Company Amendment Act, 1913;
- (c) The Perpetual Trustees, Estate, and Agency Company Amendment Act 1971.

**17. Private Act**—This Act is hereby declared to be a private Act.

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