



ANALYSIS

<p>Title 1. Short Title</p>	<p>2. Protection of persons not of full mental capacity who are entitled to money or damages</p>
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1972, No. 95

An Act to amend the Public Trust Office Act 1957

[20 October 1972]

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

1. Short Title—This Act may be cited as the Public Trust Office Amendment Act 1972, and shall be read together with and deemed part of the Public Trust Office Act 1957 (hereinafter referred to as the principal Act).

2. Protection of persons not of full mental capacity who are entitled to money or damages—(1) The principal Act is hereby amended by repealing section 66 and the heading above that section, and substituting the following heading and section:

“Protection of Persons under Disability

“66. (1) Where any money or damages are claimed by or on behalf of a person who is not of full mental capacity and is unable to manage his own affairs (in this section referred to as such person) (whether alone or in conjunction with any other person) then—

“(a) If the claim is not the subject of proceedings before any Court in New Zealand, any agreement for the compromise or settlement of the claim entered into by such person, or on his behalf by a person who in the opinion of a Court of competent jurisdiction is a fit and proper person to do so, shall be binding on such person if it or a release of the claim is in writing and is approved by a Court of competent jurisdiction; and

“(b) If the claim has not been compromised or settled in accordance with paragraph (a) of this subsection and has become the subject of proceedings before any Court in New Zealand, no settlement, compromise or payment and no acceptance of money paid into Court, whenever entered into or made, shall so far as it relates to such person’s claim be valid without the approval of the Court.

“(2) An application for the approval of the Court under subsection (1) of this section may be made by or on behalf of such person or any other party to the agreement or proceedings.

“(3) The Court, in its discretion, may refuse any application for its approval under subsection (1) of this section or may grant its approval either unconditionally or upon or subject to such conditions and directions as it thinks fit, whether as to the terms of the agreement or of the compromise or settlement, or as to the amount, payment, securing, application, or protection of the money paid, or to be paid or otherwise.

“(4) Without limiting subsection (3) of this section, where the Court directs that the whole or any part of any money or damages awarded to such person in any cause or matter or of any money to which such person is entitled under an agreement, compromise, or settlement approved under subsection (1) of this section shall be held on trust for such person under this subsection by the Public Trustee or any other person then, except so far as the Court directs any immediate payment therefrom or otherwise orders, and subject to any directions or conditions given or imposed by the Court—

“(a) The amount shall be invested and held by the trustee upon trust—

“(i) To make such payment (if any) to such person out of the income and capital of the amount as the Court may specify; and

“(ii) To apply the income and capital of the amount or so much thereof as the trustee from time to time thinks fit for or towards the maintenance or education (including past maintenance or education) or the advancement or benefit of such person:

“(b) Such person shall have no power, either by himself or in conjunction with any other person or persons, to terminate the trusts upon which the amount is held or to modify or extinguish those trusts:

“(c) The interest of such person in the income and capital of the amount shall not, while it remains in the hands of the trustee, be alienated, or pass by bankruptcy, or be liable to be seized, sold, attached, or taken in execution by process of law.

“(5) Without limiting subsection (3) of this section, where there is a manager of the estate of such person pursuant to the Mental Health Act 1969 or the Aged and Infirm Persons Protection Act 1912, the Court may direct that the whole or any part of any money or damages awarded to such person in any cause or matter or of any money to which such person is entitled under an agreement, compromise, or settlement approved under subsection (1) of this section shall be held by the manager as if it were part of the estate of such person with and subject to the powers and discretions conferred upon a manager by the Mental Health Act 1969 or the Aged and Infirm Persons Protection Act 1912, as the case may require.

“(6) Upon any such person becoming of full mental capacity and able to manage his own affairs while any amount is held on trust for his benefit under subsection (4) of this section, the balance of that amount and of the income therefrom remaining in the hands of the trustee shall be paid to such person except so far as the Court may have ordered before the payment is made that the whole or any part of that amount shall continue to be held on trust under that subsection:

“Provided that where the trustee has made an application or received notice that an application has been made to the Court for such an order he shall not make any payment under this subsection until the application has been disposed of.

“(7) Where the trustee appointed by an order under this section is the Public Trustee, all money so paid to the Public Trustee shall be invested by him in the Common Fund or

(notwithstanding section 30 of this Act) in such other investments as are authorised by law for the investment of trust funds, or partly in the Common Fund and partly in such other investments as aforesaid as the Public Trustee thinks fit having regard to the circumstances of the persons for whose benefit the money is so held.

“(8) For the purposes of this section the expression ‘Court of competent jurisdiction’ means a Court in which proceedings could be taken to enforce the claim or, in the case of a claim that could not be the subject of proceedings in New Zealand, a Court in which proceedings could be taken to enforce a similar claim in New Zealand.

“(9) Nothing in this section shall limit or affect—

“(a) The Deaths by Accidents Compensation Act 1952; or

“(b) The Workers’ Compensation Act 1956.”

(2) The Minors’ Contracts Act 1969 is hereby consequentially amended—

(a) By omitting from subsection (6) of section 12 the words “subsection (3)”, and substituting the words “subsection (7)”:

(b) By repealing so much of the First Schedule as relates to the Public Trust Office Act 1957.

This Act is administered in the Public Trust Office.
