

New Zealand



ANALYSIS

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1946, No. 14

AN ACT to amend the Trustee Act, 1908.

[26th September, 1946

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

1. This Act may be cited as the Trustee Amendment Act, 1946, and shall be read together with and deemed part of the Trustee Act, 1908 (hereinafter referred to as the principal Act).

2. (1) For the purposes of this Act and of the principal Act, unless the context otherwise requires,—
 “Authorized investments”, in relation to any trust, means investments authorized by the instrument (if any) creating the trust for the investment of money subject to the trust, or by law:

Title.

Short Title.
 See Reprint of Statutes, Vol. VIII, p. 873

Interpretation.

Cf. Trustee Act, 1925 (15 Geo. V, c. 19), s. 68 (Imp.); see Halsbury's Statutes of England, Vol. XX, p. 156

“Instrument” includes an Act of Parliament:

“Personal representative” means the executor, original or by representation, or administrator for the time being of a deceased person:

“Property” includes real and personal property, and any estate, share, and interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest, whether in possession or not.

(2) For the purposes of this Act and of the principal Act, unless the context otherwise requires, the expressions “trust” and “trustee” extend to cases where there are two or more trustees and to cases where the Public Trustee is the trustee.

Application of Act.

Cf. Trustee Act, 1925, s. 69 (2) (Imp.)

3. (1) This Act applies to trusts, including executorships and administratorships, constituted or created either before or after the passing of this Act.

(2) The powers conferred by this Act on any trustee are in addition to the powers conferred by the instrument (if any) creating the trust; but those powers, unless otherwise stated, apply only if and so far as a contrary intention is not expressed in the instrument (if any) creating the trust, and have effect subject to the terms of that instrument.

Power to apply income for maintenance, &c., and to accumulate surplus income during a minority.

Cf. *ibid.*, s. 31 (Imp.)

4. (1) Where any property is held by a trustee in trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting that property,—

(a) During the infancy of any such person, if his interest so long continues, the trustee may, at his sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance or education (including past maintenance or education), or his advancement or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable, whether or not there is—

(i) Any other fund applicable to the same purpose; or

(ii) Any person bound by law to provide for his maintenance or education; and

(b) If such person on attaining the age of twenty-one years has not a vested interest in that income, the trustee shall thenceforth pay the income of that property and of any accretion thereto under subsection two of this section to him, until he either attains a vested interest therein or dies, or until failure of his interest:

Provided that, in deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes aforesaid, the trustee shall have regard to the age of the infant and his requirements and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes; and where the trustee has notice that the income of more than one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the Court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

(2) During the infancy of any such person, if his interest so long continues, the trustee shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income thereof from time to time in authorized investments, and shall hold those accumulations as follows:—

(a) If any such person—

(i) Attains the age of twenty-one years, or marries under that age, and his interest in the income during his infancy or until his marriage is a vested interest; or

(ii) On attaining the age of twenty-one years or on marriage under that age becomes entitled to the property from which the income arose in fee-simple, absolute or determinable, or absolutely, or for an entailed interest,—

the trustee shall hold the accumulations in trust for that person absolutely, but without prejudice to any provision with respect thereto contained in any settlement by him made under any statutory powers during his

infancy, and so that the receipt of that person after marriage, and though still an infant, shall be a good discharge; and

- (b) In any other case the trustee shall, notwithstanding that that person had a vested interest in the income, hold the accumulations as an accretion to the capital of the property from which the accumulations arose, and as one fund with that capital for all purposes, and so that, if the property is settled land, the accumulations shall be held upon the same trusts as if the same were capital money arising therefrom,—

but the trustee may, at any time during the infancy of that person if his interest so long continues, apply those accumulations, or any part thereof, as if they were income arising in the then current year.

(3) This section applies in the case of a contingent interest only if the limitation or trust carries the intermediate income of the property, but it applies to a future or contingent legacy by the parent of, or a person standing *in loco parentis* to, the legatee, if and for such period as, under the general law, the legacy carries interest for the maintenance of the legatee, and in any such case as last aforesaid the rate of interest shall (if the income available is sufficient and subject to any rules of Court to the contrary) be four per centum per annum.

(4) This section applies to a vested annuity in like manner as if the annuity were the income of property held by a trustee in trust to pay the income thereof to the annuitant for the same period for which the annuity is payable, save that in any case accumulations made during the infancy of the annuitant shall be held in trust for the annuitant or his personal representatives absolutely.

5. (1) A trustee may at any time or times pay or apply any capital money subject to a trust, for the maintenance or education (including past maintenance or education), or the advancement or benefit, in such manner as he may, in his absolute discretion, think fit, of any person entitled to the capital of the trust property or of any share thereof, whether absolutely or

Power of advancement, &c., out of capital.

Cf. Trustee Act, 1925, s. 32 (Imp.)

contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his death under any specified age or on the occurrence of any other event, and whether in possession or in remainder or reversion, and any such payment or application may be made notwithstanding that the interest of that person is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs:

Provided that—

- (a) The money so paid or applied for the maintenance, education, advancement or benefit of any person shall not exceed altogether in amount one-half of the presumptive or vested share or interest of that person in the trust property where that share or interest exceeds one thousand pounds, and in any other case shall not exceed altogether five hundred pounds; and
- (b) If that person is or becomes absolutely and indefeasibly entitled to a share in the trust property the money so paid or applied shall be brought into account as part of that share; and
- (c) No such payment or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied unless that person is in existence and of full age and consents in writing to the payment or application or unless a Judge, on an application made to him in Chambers in a summary way by the trustee, has made an order approving the payment or application.

(2) This section applies only where the trust property consists of moneys or securities, or of property held upon trust for, or with a power of, sale, calling in, and conversion, and the moneys or securities or the proceeds of the sale, calling in, and conversion are not by statute or in equity considered as land, or applicable as capital money for the purposes of the Settled Land Act, 1908.

Consequential repeals.

6. The foregoing provisions of this Act are in substitution for the enactments specified in the Schedule hereto, and those enactments are hereby accordingly repealed.

Power of Court to authorize dealings with property subject to Settled Land Act, 1908.
1936, No. 58

7. Section eighty-one of the Statutes Amendment Act, 1936, is hereby amended by repealing subsection four.

Schedule.

SCHEDULE

ENACTMENTS REPEALED

Title of Act.	Sections repealed.
1908, No. 159— The Public Trust Office Act, 1908 (Reprint of Statutes, Vol. VIII, p. 922)	Sections 21, 22, 23, 24, 25, 26, 27, 28, and 29 (1) (m).
1908, No. 200— The Trustee Act, 1908 (Reprint of Statutes, Vol. VIII, p. 873)	Sections 93, 108, and 113.
1912, No. 17— The Public Trust Office Amendment Act, 1912 (Reprint of Statutes, Vol. VIII, p. 970)	Section 5.
1921-22, No. 48— The Public Trust Office Amendment Act, 1921-22 (Reprint of Statutes, Vol. VIII, p. 997)	Sections 15, 16, 17, 18, 19, 24, and 107.
1924, No. 33— The Trustee Amendment Act, 1924 (Reprint of Statutes, Vol. VIII, p. 919)	Section 6.
1938, No. 20— The Statutes Amendment Act, 1938	Section 58.