

Hon. Mr. Herdman.

PUBLIC TRUST OFFICE AMENDMENT.

ANALYSIS.

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| <p>Title.</p> <p>1. Short Title.</p> <p>2. Interpretation.</p> <p style="text-align: center;"><i>The Public Trust Office Board.</i></p> <p>3. Office Board.</p> <p style="text-align: center;"><i>Advisory Trustees.</i></p> <p>4. Public Trustee may act with advisory trustee. Powers of Public Trustee so acting.</p> <p style="text-align: center;"><i>Custodian Trustee.</i></p> <p>5. Public Trustee may be appointed custodian trustee.</p> <p>6. Functions and powers of the Public Trustee so acting.</p> <p>7. Power of Court to terminate custodian trusteeship.</p> <p>8. Construction of subsection (7) of section 4.</p> <p>9. Remuneration of Public Trustee.</p> <p style="text-align: center;"><i>General as to Advisory Trustees and Custodian Trustees.</i></p> <p>10. Interpretation. Number of trustees.</p> <p style="text-align: center;"><i>Investigation and Audit of Trust Accounts.</i></p> <p>11. Private trust estates may be investigated and the accounts thereof audited on application by any beneficiary.</p> <p>12. Solicitor or accountant acting for beneficiary in estate administered by Public Trustee to have right to examine books and accounts. Beneficiary aggrieved by action of Public Trustee may apply to Court.</p> <p style="text-align: center;"><i>Protection of Persons under Disability and Others in certain Cases.</i></p> <p>13. Compensation-moneys payable under Workers' Compensation Act to be paid to and disbursed by Public Trustee.</p> <p>14. Moneys or damages received or awarded in any cause or matter in any Court on behalf of infant or person of unsound mind to be paid to and disbursed by Public Trustee.</p> <p style="text-align: center;"><i>Additional Security for certain Loans by the Public Trustee.</i></p> <p>15. Provisions for protection of mortgages held by Public Trustee over certain leasehold securities.</p> <p>16. Validity of special or general rates given as security for loans by the Public Trustee to local authorities not to be questioned.</p> | <p style="text-align: center;"><i>Additional Powers and Functions of the Public Trustee.</i></p> <p>17. Public Trustee may act as agent for investment of money in common fund.</p> <p>18. Section 13 of principal Act modified and extended. Public Trustee may receive from private executors legacies of minors.</p> <p>19. Public Trustee may, in lieu of obtaining probate, file an election to administer testate estate not exceeding £400 in value. Section 15 of principal Act amended.</p> <p>20. Additional general powers of Public Trustee.</p> <p>21. Trustees may delegate powers to Public Trustee.</p> <p>22. Powers of Public Trustee acting as Commissioner of local body's sinking fund on default by local body in payment of instalments.</p> <p>23. Public Trustee may take opinion of Court upon any question arising in course of his duties.</p> <p>24. Public Trustee may apply to Judge for directions as to distribution of estate.</p> <p>25. Public Trustee may act on written statements or declarations as to matters of pedigree or relationship.</p> <p>26. Public Trustee may take professional advice and act on credible information as to matters of fact.</p> <p>27. Moneys payable to subject of foreign country may be paid to specified official of that country. Moneys payable to any person in any part of British Dominions may be paid to specified official in that part.</p> <p>28. Debentures and documents of title may be accepted by Public Trustee for safe custody.</p> <p>29. Public Trustee may act as arbitrator or umpire under Arbitration Act, 1908.</p> <p>30. Public Trustee may be appointed Receiver.</p> <p>31. Public Trustee to exercise power conferred by section 5 of Administration Act, 1908.</p> <p style="text-align: center;"><i>Investments and Accounts.</i></p> <p>32. Proviso to section 34 of principal Act.</p> <p>33. Application of profits of Public Trust Office.</p> <p style="text-align: center;"><i>Unclaimed Lands and Property.</i></p> <p>34. Section 66 of principal Act amended.</p> <p>35. Section 87 of principal Act amended.</p> <p style="text-align: center;"><i>General.</i></p> <p>36. Section 51 of principal Act amended.</p> <p>37. Branches and agencies of Public Trust Office may be established in or out of New Zealand.</p> <p>38. Custody of documents of title.</p> <p>39. Hospital and maintenance expenses to be deemed medical charges.</p> <p>40. Officers to make declaration of secrecy.</p> |
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41. Liability of Office Solicitor in conveyancing transactions to be borne by Public Trust Office.	44. Public Trustee may authorize any officer to make oath or declaration or to execute documents on his behalf.
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A BILL INTITULED

Title.	AN ACT to amend the Public Trust Office Act, 1908.	
	BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—	
Short Title.	1. This Act may be cited as the Public Trust Office Amendment Act, 1913, and shall be read with and as part of the Public Trust Office Act, 1908 (hereinafter called the principal Act).	5
Interpretation.	2. In this Act, if not inconsistent with the context,— “ Court ” means the Supreme Court : “ Judge ” means a Judge of the Court : “ Office Board ” means the Public Trust Office Board established under the principal Act.	10
Office Board.	3. (1.) The Office Board shall consist of seven members, to wit— The Minister of Finance : The Public Trustee : The Government Insurance Commissioner : The Valuer-General : The Superintendent of the State-guaranteed Advances Office : Two persons (not holding any office in the Public Service) to be appointed by the Governor in Council.	15
	(2.) With respect to the two non-Service members the following provisions shall apply :— (a.) They shall be appointed for two years, but shall be eligible for reappointment. 25 (b.) They may be removed at any time by the Governor in Council. (c.) Whilst holding office as members of the Office Board each of them shall be paid such salary (not exceeding the rate of two hundred and fifty pounds per year) as is fixed by the Governor in Council. 30 (d.) One of them shall be a person experienced in matters relating to farming and live-stock. (e.) They shall not, by virtue of their appointment, be deemed to be officers of the Public Service. 35	
	(3.) At all meetings of the Office Board the quorum shall be four.	
	(4.) The Office Board may appoint sub-committees of its members, but the Public Trustee and at least one non-Service member shall be on every sub-committee. 40	

(5.) Section nine of the principal Act is hereby modified so as to accord with this section.

Advisory Trustees.

4. (1.) In the administration of any trust estate as trustee thereof the Public Trustee may act with an advisory trustee to the extent hereinafter provided. Public Trustee may act with advisory trustee.

(2.) An advisory trustee may be appointed—

(a.) By the testator, settlor, or other creator of the trust in the instrument creating the trust :

10 (b.) By order of the Court made on the application of any beneficiary or of any person on whose application the Court would have power to appoint a new trustee :

(c.) By any person having power to appoint a new trustee.

15 (3.) Where the Public Trustee acts with an advisory trustee the trust property shall be vested in the Public Trustee, and he shall have the sole management and administration of the estate and its trusts as fully and effectually as if he were the sole trustee : Powers of Public Trustee so acting.

Provided as follows :—

20 (a.) He may consult the advisory trustee on any matter relating to the trusts or the estate.

(b.) The advisory trustee may advise the Public Trustee on any matter relating to the trusts or the estate.

25 (4.) The Public Trustee shall not be liable for acting on the written advice or direction of the advisory trustee, but in case of difference between them either of them may submit the matter in dispute in a summary manner to a Judge in Chambers, whose decision thereon shall be final, and shall bind both the Public Trustee and the advisory trustee ; and the Judge may make such order as to costs as he considers proper.

30 (5.) If the number of advisory trustees exceeds one, then the advice or direction referred to in the *last preceding* subsection hereof means the advice or direction of a majority of them.

35 (6.) No person dealing with the Public Trustee shall be concerned to inquire as to the concurrence or otherwise of the advisory trustees, or be affected by notice of the fact that the advisory trustees have not concurred.

40 (7.) The power of appointing new advisory trustees when exercisable by the continuing advisory trustees shall be exercised by them alone, but the Public Trustee shall have the same power of applying to the Court for the appointment of a new advisory trustee as is possessed by any other person.

(8.) Subject to the provisions of the trust instrument (if any) the Governor in Council may from time to time make regulations providing for the remuneration of advisory trustees out of the estate.

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Custodian Trustee.

5. In connection with any trust estate in which there is a managing trustee (meaning the trustee who would be entitled to act if there were no custodian trustee) the Public Trustee may, with the consent of the Office Board, be appointed custodian trustee in the same manner, *mutatis mutandis*, as is provided by section four hereof in the case of advisory trustees. Public Trustee may be appointed custodian trustee. Public Trustee Act, 1906 (Imperial), sec. 4.

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Functions and powers of the Public Trustee so acting.

6. Where the Public Trustee is appointed custodian trustee the following provisions shall apply :—

- (a.) The trust property shall be vested in him as if he were sole trustee, and for that purpose vesting-orders may, where necessary, be made under the Trustee Act, 1908. 5
- (b.) The management of the trust property and the exercise of all powers and discretions exercisable by the managing trustee shall remain vested in the managing trustee as fully and effectually as if there were no custodian trustee.
- (c.) The sole function of the Public Trustee shall be to get in and hold the trust property, and invest its funds, and dispose of the assets as the managing trustee in writing directs, for which purpose the Public Trustee shall execute all such documents and perform all such acts as the managing trustee in writing directs. 10
- (d.) If the number of managing trustees exceeds one, the direction referred to in the *last preceding* subsection hereof means the direction of the majority of them. 15
- (e.) The Public Trustee shall not be liable for acting on any such direction: 20

Provided that if he is of opinion that any such direction conflicts with the trusts or the law, or exposes him to any liability, or is otherwise objectionable, he may submit the matter in a summary manner to a Judge in Chambers, whose decision thereon shall be final, and shall bind both the Public Trustee and the managing trustee; and the Judge may make such order as to costs as he thinks proper. 25

- (f.) The Public Trustee acting as custodian trustee shall not be liable for any act or default on the part of any of the managing trustees. 30
- (g.) All actions and proceedings touching or concerning the trust property shall be brought or defended in the name of the Public Trustee at the written direction of the managing trustees, and the Public Trustee shall not be liable for the costs thereof apart from the estate. 35
- (h.) No person dealing with the Public Trustee shall be concerned to inquire as to the concurrence or otherwise of the managing trustees or the consent of the Office Board, or be affected by notice of the fact that the managing trustees have not concurred or the Office Board has not consented. 40

Power of Court to terminate custodian-trusteeship.

7. On the application of the custodian trustee or of any of the managing trustees, or of any beneficiary, and on satisfactory proof that it is the general wish of the beneficiaries, or that on other grounds it is expedient to terminate the custodian-trusteeship, the Court may make an order for that purpose, and may also make such vesting-orders and give such directions as under the circumstances seem to the Court to be necessary or expedient. 45

Construction of subsection (7) of section 4.

8. The provisions of subsection *seven* of section *four* hereof (with respect to the appointment of new advisory trustees) shall, *mutatis mutandis*, apply to the appointment of new managing trustees. 50

9. The Public Trustee, acting as custodian trustee, shall be entitled to such remuneration as is prescribed or as, in the absence of any prescription, is agreed on with the Public Trustee.

Remuneration of Public Trustee.

General as to Advisory Trustees and Custodian Trustees.

5 10. (1.) In sections four to nine hereof, unless inconsistent with the context, "trustee" includes "executor" and "administrator," also "committee" under the Lunatics Act, 1908, or the Mental Defectives Act, 1911, also "manager" under the Aged and Infirm Persons Protection Act, 1912.

Interpretation.

10 (2.) In computing the number of managing trustees who may lawfully act or be appointed, neither advisory trustees nor custodian trustee shall be included.

Number of Trustees.

(3.) The foregoing provisions relating to advisory trustees and custodian trustee apply to trusts in existence at the passing of this Act, as well as to trusts hereafter created.

Investigation and Audit of Trust Accounts.

11. (1.) Subject to regulations under this Act, and unless the Court otherwise orders, the condition and accounts of any private trust estate (meaning an estate which is not being administered by the Public Trustee) shall, on an application being made and notice thereof given in the prescribed manner by or on behalf of any beneficiary, be investigated and audited by such solicitor or public registered accountant as may be agreed on by the applicant and the Public Trustee, or, in default of agreement, as may be appointed by the Public Trustee, and such solicitor or accountant shall be instructed by the Public Trustee:

Private trust estates may be investigated and the accounts thereof audited on application by any beneficiary.

Public Trustee Act, 1906 (Imperial), sec. 13.

Provided that (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 that a beneficiary shall not be appointed under this section to make an investigation or audit:

Provided further that the Public Trustee may require the applicant to deposit the estimated costs of the investigation and audit, or to secure the same to the Public Trustee's satisfaction before proceeding with the application.

(2.) The person making the investigation or audit (hereinafter 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 explanation 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 the Public Trustee a copy of the accounts, together with a report thereon, and a certificate signed by him to the effect that the accounts exhibit a true view of the state of the affairs of the estate and that he has had the securities of the trust fund investments (if 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 such certificate.

(4.) Every beneficiary shall, subject to regulations under this Act, be entitled at all 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 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. 5

(6.) The remuneration of the auditor and the other expenses of the investigation and audit (including the Public Trustee's charges) shall be such as may be prescribed by regulations under this Act, and shall, unless the Public Trustee otherwise directs, be borne by the estate; and, in the event of the Public Trustee so directing, he may order that such expenses 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 Public Trustee thinks just: 10 15

Provided that any person aggrieved with the Public Trustee's direction may apply in a summary way to the Court, and the Court may by order vary or confirm the same, and give such direction as it thinks proper with respect to the costs of the application. 20

(7.) If any person having the custody of any 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 to the Court, and thereupon the Court shall make such order as it thinks just. 25

(8.) Subject to rules of Court, applications under or for the purposes of this section to the Court shall be made in a summary way to a Judge in Chambers, and the Court may make rules regulating such applications. 30

(9.) If any person in any statement of accounts, report, or certificate required for the purposes of this section wilfully makes a statement false in any material particular, he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, and on summary conviction to imprisonment for a term not exceeding six months, with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment. 35

(10.) In this section the term "private trust estate" includes every estate being administered by an executor, administrator, or any person acting in a fiduciary capacity. 40

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

(12.) All expenses and costs for which the estate is liable under this section shall, when paid, be a charge on the assets of the estate, and such charge may be enforced in such manner as the Court on application directs. 45

12. In the case of any trust estate administered by the Public Trustee,—

(a.) A solicitor or accountant authorized 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 Public Trustee's books and vouchers (but not the file) relating to that estate: 50

Solicitor or
accountant acting
for beneficiary in
estate administered
by Public Trustee
to have right to
examine books and
accounts.

Rules under Public
Trustee Act, 1906
(Imperial).

(b.) Any beneficiary aggrieved by any act, omission, or decision of the Public Trustee relating to that estate may apply in a summary way to a Judge in Chambers, who may make such order in the premises as he thinks just.

Beneficiary aggrieved by action of Public Trustee may apply to Court. Public Trustee Act, 1906 (Imperial), sec. 10.

5 *Protection of Persons under Disability and Others in certain Cases.*

13. (1.) Where the amount of the compensation-money due in respect of the death of a worker under the provisions of the Workers' Compensation Act, 1908, has been arrived at by agreement or by the judgment of the Court of Arbitration or other competent judicial authority, the employer or other person liable to pay the same shall pay the same to the Public Trustee; and the receipt of the Public Trustee, or any one authorized by him in that behalf, shall be a complete discharge to such employer or other person.

Compensation moneys payable under Workers' Compensation Act to be paid to and disbursed by Public Trustee.

(2.) The Public Trustee shall thereupon hold the said money pending an order of the said Court or judicial authority disposing of or apportioning the same, and shall obey that order.

(3.) If within one month after the receipt of the said money the Public Trustee receives no notice from any dependant interested therein that application is being made for such order, it shall thereupon become the duty of the Public Trustee to apply for such order.

(4.) The said money shall form part of the common fund of the Public Trust Office and bear interest in accordance with the regulations.

(5.) A certificate under the hand and seal of the Public Trustee, showing the receipt of the said money shall, in any Court or proceedings whatsoever, be sufficient evidence of the facts therein stated without any further proof.

(6.) The *two preceding* subsections shall apply to moneys or damages paid to the Public Trustee under section *fourteen* of this Act.

14. (1.) In any cause or matter in any Court in which money or damages is or are claimed by or on behalf of an infant or a person of unsound mind no moneys or damages received or awarded in any such cause or matter, whether by compromise, payment into Court, or otherwise, before or after the trial, shall be paid to the next friend of the plaintiff or to the plaintiff's solicitor.

Moneys or damages received or awarded in any cause or matter in any Court on behalf of infant or person of unsound mind to be paid to and disbursed by Public Trustee.

(2.) All moneys or damages so received or awarded shall, unless the appropriate Court otherwise orders, be paid to the Public Trustee, and shall, subject to any special or general directions of the appropriate Court, be held and applied by him in such manner as he thinks fit for the maintenance and education or otherwise for the benefit of the persons entitled thereto.

English Rules of Supreme Court, Order 22, Rule 15.

(3.) The provisions of this section shall also apply to all actions in which damages are claimed, or awarded, or received by or on behalf of an infant or person of unsound mind under the Deaths by Accidents Compensation Act, 1908.

(4.) Nothing in this section shall prejudice the lien of a solicitor for his costs.

(5.) The plaintiff's costs in any such cause or matter or incident to the claim therein or consequent thereon shall be taxed as between party and party and as between solicitor and client, and the taxing officer shall certify the respective amounts thereof and the difference (if any); no costs other than those so certified shall be payable to the plaintiff's solicitor.

(6.) The Public Trustee shall receive notice of such taxation, and shall be entitled to appear and be heard thereon.

Additional Security for certain Loans by the Public Trustee.

Provisions for
protection of
mortgages held by
Public Trustee over
certain leasehold
securities.
New Zealand State-
guaranteed
Advances Act, 1909,
sec. 50

15. In every case where the security of a loan from the Public Trustee consists of any of the classes of security mentioned in section nine of the Public Trust Office Amendment Act, 1912 (not being leases of Native land granted by the Native owners), the following provisions shall apply, anything to the contrary in this or any other Act notwithstanding:—

- (a.) Except with the consent of the Public Trustee and on such terms as in his interests as mortgagee he thinks fit, it shall not be lawful for the Land Board to forfeit or cancel the mortgagor's title for breach of the conditions, or to accept any surrender thereof, or to cancel the mortgagor's right to compensation for or valuation of improvements, without giving the Public Trustee at least three months' previous notice in writing of its intention so to do.
- (b.) Notwithstanding any such forfeiture, cancellation, or surrender, every such mortgage shall by virtue of this Act be deemed to be a first charge on the improvements then existing on the lands for all moneys payable in respect thereof by any incoming tenant or occupier of the land (nevertheless to the extent only to which the mortgagor would have had interests therein if his title to the land had been lawfully determined otherwise than by forfeiture, cancellation, or surrender), and such moneys shall be paid to the Public Trustee accordingly:

Provided that the Public Trustee may accept from such tenant or occupier a mortgage of his estate and interest in the land in lieu of cash, and in such case neither paragraph (a) of section eighty-four nor section eighty-seven of the Land Act, 1908, nor any similar or other Act, shall be deemed to apply.

- (c.) In the event of the Public Trustee granting a lease or any tenancy of the land or of any part thereof as mortgagee in possession (which he is hereby empowered to do without the consent of the Land Board), then for the purpose of preventing forfeiture or cancellation of the mortgagor's title for breach of conditions, but for no other purpose, fulfilment of conditions by the person in actual possession under such tenancy or lease shall be considered as fulfilment by the mortgagor:

Provided that such tenancy or lease shall in the case of Crown land be subject to the approval of the Minister of Lands.

- (d.) In the case of the Public Trustee's selling the security in exercise of power of sale, then in so far as concerns the transfer to the purchaser or any mortgagee of his estate and interest in the land to the Public Trustee to secure the whole or any part of the purchase-money neither

paragraph (a), (e), nor (f) of section eighty-four nor section eighty-seven of the Land Act, 1908, nor any similar provision in that Act or in any Act, shall be deemed to apply.

- 5 (e.) Any such sale may be by public auction or private contract as the Public Trustee in his discretion thinks fit, and in the case of sale by private contract advertising shall not be necessary:

10 Provided that in the case of Crown lands the sale shall be subject to the approval of the Minister of Lands.

- (f.) The power of sale shall be deemed to arise and accrue, and may, without the consent of the Land Board, be exercised by the Public Trustee at any time after the expiration of the period limited in that behalf by the mortgage, anything in paragraph (c) of section eighty-four of the Land Act, 1908, or in any other Act, to the contrary notwithstanding.

- 15 (g.) Any moneys expended by the Public Trustee in exercise of the powers in that behalf conferred by the mortgage shall be payable to him by the mortgagor on demand, and until repayment shall, together with interest at the maximum rate provided by the mortgage computed from the date or dates of such moneys being expended, be deemed to be charged on the land and be covered by the security accordingly.

- 20 (h.) The provisions of this section shall apply to mortgages now outstanding as well as to those hereafter granted.

- 25 (i.) For the purpose of this section "Land Board" means in the case of Crown land the Land Board of the district in which the land is situate, and in the case of Native land vested in a Maori Land Board or leased by that Board means that Board.

35 16. (1.) With respect to all special or general rates given as security for loans by the Public Trustee under paragraph (b) of section thirty-four of the principal Act, no objection shall be allowed in any Court to any such rate, and no defence shall be heard by any Court on any claim for any such rate if such objection or defence alleges any irregularity in the proceedings for pledging, making, or levying such rate, or raising such loan, or questions the purpose or object of such loan, nor shall any action or other proceedings be allowed by any Court for questioning the validity of such rate or for restraining the recovery thereof on any such ground as aforesaid.

Validity of special or general rates given as security for loans by the Public Trustee to local authorities not to be questioned. Sec. 10, Local Bodies' Loans Amendment Act, 1910 (as applying to State-guaranteed Advances Office).

40 (2.) A certificate under the hand and seal of the Public Trustee stating that the moneys mentioned therein were advanced by him on the security of any such rate shall, on being produced to any Court, be sufficient evidence of the matters therein recited, and shall operate to bar any such action or proceeding as aforesaid.

(3.) This section shall be deemed to have been in operation as from the date of the passing of the principal Act.

50 *Additional Powers and Functions of the Public Trustee.*

17. The power given to the Public Trustee in the principal Act to act as agent shall, as from the passing of that Act, be deemed to

Public Trustee may act as agent for investment of money in common fund.

have included power to act as agent for the investment of money in the common fund for such period and on such terms and conditions as, consistently with the regulations for the time being in force, are agreed on between the Public Trustee and the principal and are approved by the Office Board.

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Section 13
of principal Act
modified and
extended.

18. (1.) The consent required by subsection one of section thirteen of the principal Act shall hereafter be the consent of the Public Trustee alone.

(2.) Whenever under the provisions of section thirteen of the principal Act any executor or administrator with will annexed appoints the Public Trustee executor or such administrator the Public Trustee shall, by force of such appointment, be also sole trustee if such executor or administrator were trustee, or if there were no trustee appointed by the trust instrument or in existence.

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(3.) This provision applies to all past appointments under the principal Act or the Acts repealed thereby.

Public Trustee
may receive from
private executors
legacies of minors.

(4.) Any executor may pay the legacy or share due to any infant into the Public Trust Office and by writing direct the Public Trustee to account to such infant according to the provisions of the trust instrument; and such writing shall vest in the Public Trustee all the powers of such executor or the trustee of such instrument (subject to the special provisions of the principal Act) in regard to such legacy or share.

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(5.) The foregoing provision extends to existing instruments and to past transactions.

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(6.) Such executor or administrator shall furnish the Public Trustee with a copy of the trust instrument, and the Public Trustee shall act thereon.

(7.) "Executor" herein includes administrator with or without the will annexed for general, special, or limited purposes; also any trustee.

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Public Trustee may,
in lieu of obtaining
probate, file an
election to
administer testate
estate not exceeding
£400 in value.

19. (1.) The provisions of section fifteen of the principal Act are hereby extended as follows:—

(a.) Where any person has heretofore died or hereafter dies testate, in or out of New Zealand, leaving property the gross value of which, as estimated by the Public Trustee, does not at the time of the election hereinafter mentioned exceed four hundred pounds, and no person has obtained probate, the Public Trustee may, in all cases where he is entitled to obtain probate, in lieu of obtaining probate, file in the office of the Supreme Court at Wellington an election under his hand and seal setting forth the name, residence, and occupation, as far as then known to the Public Trustee, of the testator, and of the property of the testator as then known, the date of his death, and stating that after due inquiries he believes that the document annexed to such election is the testator's last will, and that such will has been validly executed according to the law governing the execution of wills, and electing to administer the property according to the provisions thereof.

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- (b.) On such election being filed, the Public Trustee shall be deemed to be executor of the whole property of the testator in like manner in all respects as if probate had been duly granted to the Public Trustee.
- 5 (c.) The Public Trustee shall publish in the *Gazette* a notice that he has made such election, and such notice shall be conclusive evidence that the Public Trustee is rightfully entitled to administer under this section.
- 10 (d.) If after filing such election the gross value of the property to be administered is found to exceed the sum of six hundred pounds, the Public Trustee shall, as soon as practicable thereafter, file in the said office of the Supreme Court a memorandum under his hand stating the fact, and proceed in the ordinary manner to obtain probate.
- 15 (e.) The only fee payable under the Supreme Court rules for obtaining administration under this section shall be the same as for obtaining administration of an intestate estate under the aforesaid section fifteen—to wit, a filing-fee of three shillings.
- 20 (f.) With respect to elections under the said section fifteen or this section, a copy thereof, certified as a correct copy under the seal of the Supreme Court, together with a copy of the will endorsed thereon (in the case of elections under this section), shall be equivalent to an exemption for all purposes; and no fee under the Supreme Court rules shall be payable in respect thereof except a sealing-fee of five shillings.
- 25 (g.) In this section “probate” includes “order to administer with will annexed,” “executor” includes “administrator,” and “will” includes all codicils thereto.
- 30 (2.) The aforesaid section fifteen is hereby amended by substituting the words “four hundred” for the words “two hundred and fifty,” and the words “six hundred” for the words “four hundred.”
- 35 20. In addition to the powers contained in section twenty-nine of the principal Act, the Public Trustee shall have the following further powers as from the passing of that Act:—
- 40 “(q.) He may from time to time expend portion of the capital of any estate under his administration on the improvement or development thereof, and for the like purpose advance money out of Office funds on the security of such estate: Provided that where the sum to be expended exceeds five hundred pounds the consent of the Court or a Judge thereof shall be necessary.
- 45 “(r.) He may from time to time postpone the conversion of any real or leasehold estate for such time as he thinks fit.
- “ (s.) On the sale of any real or leasehold estate he may subdivide the same into allotments, and for that purpose construct and dedicate all such roads, footpaths, and streets, and do all such other things as he thinks necessary, or as are required by any law or by-law relating to subdivisions; and in exercising any power of sale as mortgagee either through the Registrar of the Supreme Court or otherwise this power may be exercised by the
- 50
- 55 Public Trustee.

Section 15 of principal Act amended.

Additional general powers of Public Trustee.

- “ (t.) Where in connection with any estate he is lawfully holding any shares in a company or other institution, and on a reconstruction thereof or otherwise the shareholders thereof are offered an option to take up additional shares, he may on behalf of the estate take up such additional shares or any of them. For such purpose the Public Trustee may apply funds belonging to the estate, or may, out of Office funds, advance on the security of the estate such sums as may be necessary. 5
- “ (u.) In exercising any power of sale conferred by the principal Act or by any instrument, he may give a lease of the property with an optional or compulsory purchasing clause. 10
- “ (v.) He may surrender or concur in surrendering any lease, and accept a new lease.”

Trustees may delegate powers to Public Trustee.

21. (1.) Where the trustees of a trust estate are empowered to delegate all or any of their powers and functions to any person they may delegate the same to the Public Trustee with his consent, and in such case the Public Trustee may exercise all the powers and functions so delegated. 15

(2.) The charges of the Public Trustee shall be such as are prescribed, or, in the absence of any prescription, are agreed on by the delegating trustees and the Public Trustee. 20

(3.) The term “trustees” includes executors, administrators, or other persons acting in a fiduciary capacity.

Powers of Public Trustee acting as Commissioner of local body's sinking fund on default by local body in payment of instalments.

22. (1.) In every case where the Public Trustee is Commissioner of a local body's sinking fund and the local body makes default for twenty-eight days in the full and punctual payment of any instalment of sinking fund he may recover the same with full costs of suit by action in his own name, or for the purpose of recovering the same may exercise all the powers of a Receiver as fully and effectually as if he had been duly appointed a Receiver by a Judge of the Supreme Court under the provisions of the Local Bodies' Loans Act, 1908, or any other authority. 25 30

(2.) Where the Public Trustee is appointed Commissioner of Sinking Funds by resolution of the local body such resolution shall operate as a duly constituted contract between the local body and the Public Trustee. This provision shall apply to all existing resolutions. 35

Public Trustee may take opinion of Court upon any question arising in course of his duties.

23. (1.) The Public Trustee may, in manner hereinafter provided, and without judicial proceedings, take the opinion of the Court upon any question arising in the course of his duties. 40

Rules under Public Trustee Act, 1906 (Imperial).

(2.) Any such question shall be submitted to a Judge in such manner and at such time as he may direct, and shall be accompanied by such statement of facts, documents, and other information as he may require, and the Public Trustee or any one authorized by him shall, if the Judge so desires, attend upon him at such time and place as the Judge may appoint. 45

(3.) The Judge may, before giving his opinion, require the attendance of, or communication with, any person interested in the estate as trustee or beneficiary, but no such person shall have a right to be heard by the Judge, unless he otherwise directs. 55

(4.) The Judge shall give his opinion to the Public Trustee, and the Public Trustee shall act in accordance with such opinion and shall, upon the request in writing of any such interested person, communicate to him the effect of such opinion.

5 (5.) The duty of advising upon any such question shall be assigned by the Chief Justice to a particular Judge of the Supreme Court:

10 Provided that in the absence or upon the request of such Judge any other Judge may act for such Judge for the purposes of this section.

(6.) The Public Trustee in acting on such opinion shall be fully indemnified.

15 24. (1.) Where the Public Trustee is administering any estate, and such estate or any part thereof cannot be distributed by reason of the fact that it is not known to the Public Trustee whether any person entitled thereto is alive or dead or where that person is, the Public Trustee may apply to a Judge of the Supreme Court by petition for directions in accordance with this section.

Public Trustee may apply to Judge for directions as to distribution of estate.

20 (2.) On consideration of such petition the Judge shall order what advertisements are to be issued, calling upon such person to send in his claim within a time to be specified in such order.

25 (3.) Upon proof by affidavit by or on behalf of the Public Trustee that such order has been complied with, and that such person has not sent in any claim, such Judge, or any other Judge, shall by further order authorize the Public Trustee to distribute such estate or part thereof disregarding the claims of such person, and all persons claiming by, through, or under him, by derivative title, or otherwise howsoever.

30 (4.) Such further order shall exonerate the Public Trustee from any further liability in respect to such estate or part thereof so dealt with.

(5.) But nothing herein shall prejudice or affect the right of such person or persons to follow the estate or any part thereof into the hands of the persons who have received the same pursuant to such distribution.

35 (6.) The rule of evidence presuming death after seven years' absence shall not apply to proceedings under this section.

40 (7.) The Judge may in such further order direct that the order shall not be acted on for such period, not exceeding a year from the date of the making thereof, as he thinks fit, and may direct that the order shall during that period be advertised in such manner and form as he thinks fit.

(8.) The Judge shall give directions as to how the costs of and incidental to such orders and advertising shall be borne.

45 (9.) Provided, however, that nothing herein shall prejudice the right of the Public Trustee (if he so desires) to distribute under any other law or statutory provision, or prejudice the protection thereby afforded when he makes distribution pursuant to such law or provision.

50 25. (1.) The Public Trustee, acting in good faith, shall not *in the case of estates the net value of which does not exceed five hundred pounds* be liable for accepting as correct and acting upon the faith of any written statement or statutory declaration by any person,

Public Trustee may act on written statements or declarations as to matters of pedigree or relationship. Public Trustee Act, 1906 (Imperial), sec. 4.

in or out of New Zealand, whom he believes to be trustworthy, as to any birth, death, marriage, or other matter of pedigree or relationship, or other matter of fact, upon which the title to any estate or any part thereof may depend.

Struck out.

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(2.) This section shall be deemed to have been in operation as from the passing of the principal Act.

Public Trustee may take professional advice and act on credible information as to matters of fact. Rules under Public Trustee Act, 1906 (Imperial).

26. Subject to the provisions of the principal Act and to the terms of any particular trust, the Public Trustee may in his administration of any estate or the performance of any duty take and use professional advice and assistance in regard to any matter, and may act on credible information (though less than legal evidence) as to matters of fact.

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Moneys payable to subject of foreign country may be paid to specified official of that country.

27. In addition to the power given to the Public Trustee by section fifty-two of the principal Act, the following special provisions shall apply in every case where he is administering an estate:—

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(a.) Where any moneys or personal chattels are payable or deliverable by the Public Trustee to the subject of any country out of His Majesty's jurisdiction the Governor may authorize the Public Trustee to pay or deliver the same to any specified official of that country on behalf of the person entitled, and the receipt of such official shall be a sufficient discharge therefor to the Public Trustee, who shall not be further concerned to see to the application thereof.

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25

Moneys payable to any person in any part of British Dominions may be paid to specified official in that part

(b.) As regards money or personal chattels so payable or deliverable to any person in any colony, Dominion, State, island, or place of His Majesty's in foreign parts, the Public Trustee, if so authorized by the Governor, may pay or deliver the same to any specified official of such colony, Dominion, State, island, or place on behalf of the person entitled; and the receipt of such official shall be a sufficient discharge to the Public Trustee, who shall not be further concerned to see to the application thereof.

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Debentures and documents of title may be accepted by Public Trustee for safe custody.

28. (1.) The Public Trustee may accept for safe custody in the Head Office debentures or other interest-bearing securities for money, and also documents of title to property.

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(2.) All such securities and documents shall be kept under three keys in like manner as public securities.

(3.) The Public Trustee's liability for all such securities and documents shall, where a charge is made, be that of a bailee for reward, and, where no charge is made, be that of a gratuitous bailee.

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Public Trustee may act as arbitrator or umpire under Arbitration Act, 1908.

29. (1.) The Public Trustee, or with his consent any Local Deputy or District Manager, may be appointed arbitrator or umpire under any submission to which the Arbitration Act, 1908, applies.

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(2.) The remuneration for so acting shall be such as is prescribed or as, in the absence of any prescription, is agreed on.

Public Trustee may be appointed Receiver.

30. The Public Trustee, with his consent, and for such remuneration as is prescribed, or as, in the absence of any prescription, is agreed on, may be appointed Receiver under any Act or instrument providing for the appointment of a Receiver, or in the exercise of the general jurisdiction of the Court.

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31. The power conferred by section five of the Administration Act, 1908, upon an administrator to sell, lease, or mortgage real estate for the payment of debts and other liabilities mentioned in that section shall be deemed to have at all times been possessed by the Public Trustee, and the provisions of section eight of that Act shall be deemed to have at all times applied to the Public Trustee.

Public Trustee to exercise power conferred by section 5 of Administration Act, 1908.

Investments and Accounts.

32. The following proviso is added to section thirty-four of the principal Act as from the passing thereof:—

Proviso to section 34 of principal Act.

“ Provided, however, that a power or direction to invest money in some only of the foregoing classes of security, with or without a power or direction to invest in securities not included in any of the foregoing classes, shall not be deemed to be an express prohibition within the meaning of the foregoing provisions, and such money shall form part of the common fund of the Public Trust Office unless expressly directed to the contrary.”

33. (1.) As respects so much of the profits of the Public Trust Office as have been or may hereafter be expended in the acquisition and furnishing of office premises, no portion thereof shall be payable into the Consolidated Fund without the authority of a special Act.

Application of profits of Public Trust Office.

(2.) For the space of ten years from the passing of this Act the whole of the net profits of the Public Trust Office (accrued and to accrue) shall be added to the Assurance and Reserve Fund:

Provided, however, as follows:—

(a.) The Public Trustee may, out of these profits, set aside each year such sum as he thinks proper as an Investment Fluctuation Account.

(b.) With the approval of the Minister the Public Trustee may from time to time, out of these profits, expend money in the acquisition and furnishing of office premises.

(3.) Section forty of the principal Act shall be construed subject to this section.

Unclaimed Lands and Property.

34. Subsection one of section sixty-six of the principal Act is hereby amended as from the passing of that Act by inserting, after the words “ who the owner of land is,” the words “ or where such owner is.”

Section 66 of principal Act amended.

35. Section eighty-seven of the principal Act shall be deemed to have included, as from the passing thereof, the following power:—

Section 87 of principal Act amended.

“(k.) To complete and carry out in such manner as he may think fit any valid subsisting contract affecting such property, or discharge any obligation attaching thereto at the time such property comes under his jurisdiction.”

General.

36. Section fifty-one of the principal Act is amended as from the passing of that Act by the addition of the following sub-clauses:—

Section 51 of principal Act amended.

“(3.) As regards land under the Deeds Registration Act, 1908, such certificate shall be equivalent for registration purposes to the probate or order to administer with will annexed, and it shall not be necessary to register the probate, order, or will.

“(4.) A recital of the purport of such will contained in any assurance or instrument under the hand and seal of the Public Trustee shall be sufficient evidence thereof, and no one shall be concerned to inquire beyond such recital.”

Branches and agencies of Public Trust Office may be established in or out of New Zealand.

37. (1.) With the approval of the Minister the Public Trustee may from time to time establish branches and agencies of the Public Trust Office within or beyond New Zealand. 5

(2.) All branches and agencies now existing in New Zealand shall be deemed to have been duly established.

Custody of documents of title.

38. (1.) In order to facilitate the transaction of business in the Public Trust Office it is hereby declared that the provisions of section ninety-six of the Public Revenues Act, 1910 (relating to the safe custody of the therein-mentioned securities) shall not apply to documents of title (not being debentures, bonds, or mortgages) held by the Public Trustee. 10 15

(2.) All such documents of title shall be kept in safe custody in such manner as the Public Trustee directs, and may be produced or parted with by his authority as and when he thinks proper in the conduct of the business of the Public Trust Office.

Hospital and maintenance expenses to be deemed medical charges.

39. The words “medical charges” in paragraph (c) of subsection one of section forty-nine of the principal Act shall, as from the passing thereof, be deemed to have included reasonable hospital and maintenance expenses in any public hospital, institution, or asylum supported in whole or in part from local rates or public funds: 20 25

Provided that nothing herein contained shall create any liability on the Public Trustee in respect of any transaction prior to the passing of this Act.

Officers to make declaration of secrecy.

40. Every member of the staff of the Public Trust Office, *every agent of the Public Trustee*, and every member of the Office Board shall be bound to secrecy by declaration in the prescribed form. 30

Liability of Office Solicitor in conveyancing transactions to be borne by Public Trust Office.

41. Where in any conveyancing transaction between the Public Trustee and any person the Office Solicitor acts for both parties or where he acts in any matter incidental to his duties the liability which the Office Solicitor would incur if he were practising on his own account shall be borne by the Public Trust Office, and this provision shall apply to past transactions. 35

Liability of Public Trustee for costs allowed against him.

42. The costs of any action allowed against the Public Trustee suing or being sued as executor, administrator, trustee, or in any other fiduciary capacity shall be payable out of the assets of the estate under his administration, but not further or otherwise. 40

Money-loss occasioned by negligence or misfeasance of any officer to be charged to profit and loss.

43. Where by reason of the negligence or misfeasance of any member of the staff of the Public Trust Office any money loss is incurred or any extra payment has to be made the amount involved may, with the approval of the Minister, be charged to profit and loss without further appropriation than this Act. 45

Public Trustee may authorize any officer to make oath or declaration or to execute documents on his behalf.

44. (1.) Any officer of the Public Trust Office who is authorized by the Public Trustee in writing in that behalf may make any oath or declaration required to be made by the Public Trustee, under the rules of any Court or otherwise, or verify any account and give personal attendance in any Court in lieu of the Public Trustee so acting. 50

Rules under Public Trustee Act, 1906 (Imperial).

(2.) The Public Trustee may authorize in writing any officer of the Public Trust Office to execute transfers and assurances of any real or personal property, sign any documents to be filed in any Court requiring the Public Trustee's signature, or give consents or sign any other documents or instruments requiring the signature of the Public Trustee.

Rules under Public Trustee Act, 1906 (Imperial).

(3.) Such officer shall sign his personal name, adding the words "acting under the authority of the Public Trustee pursuant to section forty-four of the Public Trust Office Amendment Act, 1913," and affix the Public Trustee's seal of office in cases requiring the use of such seal.

(4.) Such authority may either be general or apply to a particular case.

(5.) Any such transfer, assurance, consent, document, or instrument executed as aforesaid by an officer so authorized shall have the same effect as if the same were duly executed by the Public Trustee.

(6.) No person shall be concerned to inquire whether such officer is duly authorized, and such officer's signature shall be judicially taken notice of without further proof.

45. The Public Trustee may at any time require a statutory declaration or other sufficient evidence that a person is alive and is the person to whom any money or property is payable or transferable, and may refuse payment or transfer until such declaration or evidence is produced.

Public Trustee may require evidence of identity. Ibid.

46. (1.) The Governor in Council may from time to time make regulations for any of the following purposes:—

Regulations.

(a.) Specifying the matters or services for which charges may be made by the Public Trustee or in respect of which remuneration shall be payable to him, and fixing, by scale or otherwise, the amounts thereof, or empowering the Public Trustee so to do:

(b.) Fixing, by scale or otherwise, the professional fees and charges payable in respect of professional services rendered to the Public Trustee or under his instructions by the Office Solicitor acting as barrister or solicitor or by outside barristers or solicitors, or empowering the Public Trustee so to do:

(c.) Prescribing the forms of mortgages, leases, certificates, and other official instruments and documents to be used in the conduct of the business of the Public Trust Office:

(d.) For any other matter which by this Act is expressed to be prescribed or which he thinks necessary for the purpose of giving full effect to this Act.

(2.) All such regulations shall be gazetted and shall come into force on the date named therein, being not earlier than the date of the *Gazette*.

New.

47. The Public Trustee shall within three months after the close of each year ending on the thirty-first day of March, prepare a report of the operations of the office for the year. Such report shall be transmitted to the Minister, who shall lay it upon the table of the House of Representatives within fourteen days after the opening of the next ensuing session of Parliament.

Annual report of Public Trustee to be laid before Parliament.