

PUBLIC TRUST OFFICE AMENDMENT BILL

EXPLANATORY NOTE

1. This Bill provides for several amendments to the Public Trust Office legislation.

2. *Clause 2* consolidates with minor amendments the existing provisions relating to the constitution and powers of the Public Trust Office Investment Board. Section 15 (2) of the Public Trust Office Amendment Act 1917 provides that the Investment Board shall control the investment of moneys from time to time in the Common Fund of the Public Trust Office *or otherwise in the hands of the Public Trustee* and available for investment, *and shall have no other functions*. In practice the Board has not controlled the investment of moneys which are directed by a will or trust instrument to be invested outside the Common Fund. The new provision makes it clear that the clause does not impose on the Investment Board any statutory functions in respect of moneys which do not form part of the Common Fund, but does not preclude the Board from exercising functions otherwise conferred upon it. The Board is being authorized to sit at such places as it thinks fit instead of being restricted to sitting in Wellington. The Secretary to the Treasury is to take the place of the Financial Adviser to the Government as the Treasury representative on the Board. At present the same officer holds both positions. In other respects the clause repeats the existing legislation relating to the Investment Board with only verbal alterations.

3. *Clause 3* provides for the passing of resolutions of the Investment Board by entries in its minute book signed by at least three members of the Board or their deputies. An analogous provision relating to company resolutions appears in section 300 of the Companies Act 1933.

4. *Clause 4* authorizes the Investment Board to delegate its powers of making and controlling investments to the Public Trustee or, on his recommendation, to any District Public Trustee.

5. *Clause 5* authorizes the Public Trustee to invest capital moneys comprising the Common Fund of the Public Trust Office in the purchase in fee simple, free from encumbrances, of lands in New Zealand, or in the erection or alteration of buildings on lands which are for the time being investments of the Common Fund, or in the improvement of any such buildings or lands. The Public Trustee is not to invest further capital moneys in any such manner if the investment would cause the total amount invested under the provision to exceed ten per cent of the amount of the Common Fund at the time of the making of that investment. The clause provides that all such lands, buildings, and improvements may be managed, leased, let, exchanged, dealt with, sold, or otherwise disposed of as the Public Trustee thinks fit. The clause also transfers

to the Public Trust Office Act the provisions at present contained in sections 60 (4) and 61 of the Hospitals Act 1926 authorizing the investment of Common Fund moneys on the security of Hospital Board debentures, and protecting the Public Trustee, in case of default by the Hospital Board, out of the Government subsidy payable to the Hospital Board.

6. *Clause 6* amends the present statutory provisions which confer on the Public Trustee the right to file an election to administer in testate and intestate estates instead of applying to the Court for a grant of probate or administration. The present provisions apply only in cases where the gross value of the property situated in New Zealand does not exceed £400. *Clause 6* extends the application of the provisions to all cases where the gross value of the property does not exceed £1,000. Under the existing statutory provisions, if, after the filing of the election, the value of the property is found to exceed £600, the Public Trustee must proceed to obtain probate or administration in the ordinary way. The clause provides for this to be done where the value of the property is found to exceed £1,500.

7. *Clause 7* provides for the whole of the profits of the Public Trust Office for the financial year which ended on 31 March 1951, and for each subsequent financial year, to be transferred to the Assurance and Reserve Fund or the Investment Fluctuation Account of the Public Trust Office or apportioned between them as the Public Trustee thinks fit. Previously only half of the profit was dealt with in this manner and the balance was paid to the Consolidated Fund. Losses are to be met out of the Assurance and Reserve Fund as previously.

8. *Clause 8* makes it clear that section 64, and the proviso to section 29 (1), of the principal Act do not prevent the Public Trustee from exercising the general statutory power of sale in intestate estates in cases where the property being sold is land valued at more than £2,000.

Hon. Mr. Marshall

PUBLIC TRUST OFFICE AMENDMENT

ANALYSIS

Title.	
1. Short Title.	
<i>Public Trust Office Investment Board</i>	
2. Constitution and powers of Investment Board. Repeals.	<i>Investments</i>
3. Passing of resolutions of Investment Board by entries in minute book.	5. Investment of the Common Fund. Repeal.
4. Investment Board may delegate powers of making and controlling investments. Repeal.	<i>Elections to Administer</i>
	6. Extending class of estates where election to administer may be filed. Repeal.
	<i>Profits and Losses of Public Trust Office</i>
	7. Profits and losses. Repeals.
	<i>Power of Sale on Intestacy</i>
	8. Public Trustee's power to sell on intestacy.

A BILL INTITULED

AN ACT to amend the Public Trust Office Act 1908. Title.
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 Public Trust Office Amendment Act 1951, and shall be read together with and deemed part of the Public Trust Office Act 1908 (hereinafter referred to as the principal Act). Short Title.
See Reprint of Statutes, Vol. VIII, p. 922

10 *Public Trust Office Investment Board*

2. (1) There shall be a Board called the Public Trust Office Investment Board which shall control the investment of moneys which are from time to time in the Common Fund of the Public Trust Office and available for investment. Constitution and powers of Investment Board.

(2) The Investment Board shall sit at such times and places as it thinks fit.

(3) The Investment Board shall, as from the commencement of this Act, consist of the following persons, namely:—

5

(a) The Minister of Finance:

(b) The Public Trustee and the two Assistant Public Trustees:

(c) The Secretary to the Treasury:

(d) The Government Insurance Commissioner: 10

(e) The Valuer-General.

(4) At every meeting of the Investment Board the quorum shall be three members entitled to vote at the meeting.

(5) At every meeting of the Investment Board the 15 Minister of Finance, if present, shall be the Chairman, and in his absence such member of the Board as the majority of the members present and entitled to vote may choose shall preside as Chairman.

(6) The Chairman shall have a deliberative vote 20 and, in all cases of equality of votes, shall also have a casting vote.

(7) At any meeting of the Investment Board the Public Trustee and the two Assistant Public Trustees may be present, but only one of them shall be entitled 25 to vote.

(8) In every case where the Secretary to the Treasury or the Valuer-General or the Government Insurance Commissioner is absent from a meeting of the Investment Board, a deputy appointed by him may attend and act 30 at the meeting in his stead, and while so acting shall be deemed to be a member of the Investment Board.

(9) The fact that any such deputy so attends and acts at any such meeting shall be conclusive proof of his authority to do so, and no person shall be concerned to 35 inquire whether the occasion has arisen which authorizes or requires him to do so.

(10) The Investment Board may appoint subcommittees of its members, and may delegate to any such subcommittee such of its powers as it from time to time 40 thinks fit, but every subcommittee shall include the Public Trustee or one Assistant Public Trustee as one of its members;

Provided that, if the Public Trustee and one or both Assistant Public Trustees, or if both Assistant Public Trustees, are members of any subcommittee, only one of them shall be entitled at any meeting of the subcommittee to vote upon any matter before the subcommittee.

(11) Judicial notice shall be taken, without further proof, of the appointment and signature of each member of the Investment Board.

(12) All minutes or resolutions of the Investment Board, or any copy thereof, if purporting to be signed by the Chairman of the meeting at which the minutes are confirmed or the resolution is passed, shall, in the absence of proof to the contrary, be sufficient evidence of the minutes or resolutions, and that they were duly and properly confirmed or passed, and that the person signing them was the Chairman of that meeting.

(13) The Governor-General may from time to time, by Order in Council, make regulations regulating the general conduct of business and proceedings of the Investment Board.

(14) Section twenty-nine of the Finance Act 1929 is hereby consequentially amended by omitting the words "the Public Trust Office Investment Board".

See Reprint of Statutes, Vol. VII, p. 508

(15) The following enactments are hereby consequentially repealed:—

Repeals.

(a) Section nine of the principal Act:

(b) Section three of the Public Trust Office Amendment Act 1913:

Ibid., Vol. VIII, p. 973

(c) Section fifteen of the Public Trust Office Amendment Act 1917:

Ibid., p. 995

(d) So much of the Schedule to the Public Trust Office Amendment Act 1948 as relates to section three of the Public Trust Office Amendment Act 1913.

1948, No. 57

3. (1) Anything that may be done by resolution passed at a meeting of the Investment Board may be done by the Investment Board without a meeting by means of an entry in its minute book signed by at least three of its members entitled to vote at a meeting of the Investment Board.

Passing of resolutions of Investment Board by entries in minute book.

(2) Any such entry may be signed on behalf of a member by his deputy if at the time of the signing thereof the deputy would have been entitled to attend and act at a meeting of the Investment Board in the absence of the member if a meeting had then been held, and the fact that a deputy signs an entry shall, in the absence of proof to the contrary, be sufficient evidence that he was so entitled. 5

(3) For the purposes of this section a memorandum pasted or otherwise permanently affixed in the minute book and purporting to have been signed for the purpose of becoming an entry therein shall be deemed to be an entry in the minute book, and any such entry may consist of several documents in like form each signed by one or more members or their deputies. 10 15

(4) The Public Trustee shall report to and lay before the Investment Board at each meeting all entries made in the minute book in accordance with this section since the previous meeting of the Investment Board.

Investment Board may delegate powers of making and controlling investments.

4. (1) The Investment Board may from time to time delegate to the Public Trustee or, on the recommendation of the Public Trustee, to any District Public Trustee the following powers, namely:— 20

(a) The power to invest moneys which are from time to time in the Common Fund of the Public Trust Office and available for investment in all or any of the investments authorized by the principal Act or by any other Act for the investment of moneys comprising or forming part of the Common Fund, including the power to make advances to estates and to beneficiaries therein: 25 30

(b) The power to approve any valuation required by the principal Act or any other Act or otherwise to be approved by the Investment Board: 35

(c) Such of its other powers of control in respect of the investment of moneys from time to time in the Common Fund and available for investment as it thinks fit.

(2) Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Investment Board. 40

(3) Any such delegation may be made subject to such restrictions and conditions as the Investment Board thinks fit, and may be made either generally or in relation to any particular case.

5 (4) Any power delegated under this section by the Investment Board to the Public Trustee may be exercised by an Assistant Public Trustee, and any power so delegated to a District Public Trustee may be exercised by the deputy of the District Public Trustee.

10 (5) The exercise of any power or the approval of any valuation by the Public Trustee or an Assistant Public Trustee or by a District Public Trustee or his deputy under a delegation made under this section shall be as full and effectual for all purposes as if the exercise or
15 approval had been by the Investment Board.

(6) Section nine of the Public Trust Office Amendment Act 1921-22 is hereby repealed.

Repeal.

See Reprint
of Statutes,
Vol. VIII,
p. 999

Investments

20 5. (1) Section thirty-four of the principal Act is hereby amended by inserting, after paragraph (e), the following paragraphs:—

Investment of
the Common
Fund.

25 “ (f) In the purchase in fee simple, free from encumbrances, of lands in New Zealand (whether residential, urban, or of any other description whatsoever, and whether improved or unimproved) or in the erection or alteration of buildings on lands which are for the time being investments of the Common Fund or in the improvement of any such lands or
30 buildings:

“ Provided that the Public Trustee shall not invest any further moneys in the manner authorized by this paragraph if,—

35 “ (i) The investment would cause the total amount invested in that manner to exceed ten per cent of the amount of the Common Fund at the time of the making of that investment; or

40 “ (ii) As a result of fluctuations of the amount of the Common Fund, more than ten per cent of the Common Fund is for the time being invested in that manner:

See Reprint
of Statutes,
Vol. III, p. 748

“(g) In debentures issued by a Hospital Board under the authority of section *sixty* of the *Hospitals Act 1926*, whether the debentures are issued with or without a State guarantee.”

(2) Section thirty-four of the principal Act is hereby further amended by adding the following subsections as subsections two and three:— 5

“(2) All lands which for the time being constitute investments of the Common Fund, together with the buildings and improvements thereon, may be managed, leased, let, exchanged, dealt with, sold, or otherwise disposed of by the Public Trustee in such manner and at such time or times and upon such terms and conditions in all respects as the Public Trustee from time to time thinks fit. 10 15

“(3) Where Hospital Board debentures for the time being constitute investments of the Common Fund and are without a State guarantee, the Minister of Finance shall, in the event of default being made in the payment of interest or the repayment of principal, pay to the Public Trustee so much of the moneys then or thereafter becoming payable to the Hospital Board by way of subsidy as is sufficient to satisfy the amount for the time being outstanding in respect of arrears of principal and interest.” 20 25

Repeal.
Ibid., Vol. III,
p. 749

(3) *Subsection four of section sixty and section sixty-one of the Hospitals Act 1926 are hereby repealed.*

Elections to Administer

Extending class
of estates
where election
to administer
may be filed.
Ibid., Vol. VIII,
pp. 930, 983,
and 1009

6. (1) Subsection one of section fifteen of the principal Act (as amended by section nineteen of the Public Trust Office Amendment Act 1913), subsection one of section eighteen of the Public Trust Office Amendment Act 1913, and subsection one of section forty-five of the Public Trust Office Amendment Act 1921-22 are each hereby amended by omitting the words “four hundred pounds”, and substituting the words “one thousand pounds”. 30 35

(2) Subsection four of section fifteen of the principal Act (as amended by section nineteen of the Public Trust Office Amendment Act 1913) and subsection four of section eighteen of the Public Trust Office Amendment Act 1913 are each hereby amended by omitting the words “six hundred pounds”, and substituting the words “one thousand five hundred pounds”. 40

(3) Subsection one of section nineteen of the Public Trust Office Amendment Act 1913 is hereby repealed.

Repeal.
See Reprint
of Statutes,
Vol. VIII,
p. 984

Profits and Losses of Public Trust Office

7. (1) If the Profit and Loss Appropriation Account of the Public Trust Office for the financial year ended on the thirty-first day of March, nineteen hundred and fifty-one, or for any year thereafter, discloses a surplus, the amount thereof shall be transferred, as the Public Trustee shall determine, to the Assurance and Reserve Fund or to the Investment Fluctuation Account or shall be apportioned between that fund and that account in such proportions as the Public Trustee may think fit.

Profits and
losses.

(2) If the said Profit and Loss Appropriation Account for any such year discloses a deficiency, the amount thereof shall be met out of the Assurance and Reserve Fund.

(3) The following enactments are hereby consequentially repealed:—

Repeals.

(a) Subsections one and two of section twenty-four of the Finance Act 1929:

Ibid., p. 1029

(b) Section six of the Finance Act (No. 2) 1949.

1949, No. 52

Power of Sale on Intestacy

8. Nothing in the principal Act shall restrict, or be deemed at any time to have restricted, the Public Trustee in the exercise of the powers conferred by section four of the Administration Amendment Act 1944 in any case where the Public Trustee is an administrator or is deemed to be an administrator.

Public
Trustee's
power to sell
on intestacy.
1944, No. 19