

## PUBLIC TRUST OFFICE AMENDMENT BILL

### EXPLANATORY NOTE

THIS Bill amends the Public Trust Office Act 1957. The provisions (other than *clause 3*) are for the purpose of enabling the Public Trustee to act jointly with any other person in the fiduciary capacities in which he normally acts.

*Clause 1* relates to the Short Title to the Bill.

*Clause 2* amends section 30 of the principal Act by declaring that nothing in that Act shall confer on any person acting jointly with the Public Trustee any right, power, or authority over or in respect of the management, administration, control, or investment of the Common Fund.

*Clause 3* amends section 32 of the principal Act (which relates to the investment of the Common Fund) by repealing paragraph (i), and substituting provisions authorising the investment of the Common Fund—

- (a) In any other manner for the time being authorised for the investment of trust funds by the Trustee Act 1956 or by any other Act:
- (b) In any other manner in which the Governor-General, by Order in Council, may for the time being authorise the Common Fund to be invested.

*Clause 4*: This clause, taken in conjunction with *clause 6* of the Bill, makes it clear that the Public Trustee's power to make advances to estates administered in the Public Trust Office extends to cases where the Public Trustee is administering the estate jointly with some other person.

*Clause 5* amends section 43 of the principal Act so as to provide that appointments under that section may be made of the Public Trustee either alone or jointly with another person if the Public Trustee consents thereto. In the case of joint appointments the Public Trustee is to be entitled to the custody and possession of all money, securities for money, other movable property, and documents of title.

*Clause 6* inserts a new section 43A in the principal Act. The new section provides that, except as specifically provided in the principal Act, the provisions of that Act shall, so far as they are applicable and with all necessary modifications, extend and apply to any case in which the Public Trustee acts jointly with another person. Existing provisions to which the new section shall not apply are specified, and it is declared that other specified provisions shall not confer any powers, authorities, functions, or prerogatives on any person or persons acting jointly with the Public Trustee.

*Clause 7* extends the provisions of section 44 of the principal Act so as to cover cases where executors, administrators, and trustees wish to appoint the Public Trustee to act jointly with some other person.

*Clause 8* extends the existing provisions of the principal Act regarding elections to administer so as to cover cases where the Public Trustee acts jointly with some other person.

*Clause 9* extends the provisions under which the Public Trustee may issue a certificate of administration so as to authorise him to issue such a certificate where he is acting jointly with some other person.

*Clause 10* declares that the remedy against the Public Trustee in his corporate capacity and the indemnity afforded by section 136 of the principal Act shall not extend to any injury or loss occasioned by or arising out of any act or thing done or omitted by any person acting jointly with the Public Trustee in any of the offices or positions mentioned in *section 43 (1)* of the principal Act except to the extent that the Public Trustee or an officer of the Public Trust Office has contributed, or could by the exercise of reasonable diligence have averted, that injury or loss.

*Clause 11* makes consequential repeals.



*Hon. Mr Rae*

## PUBLIC TRUST OFFICE AMENDMENT

### ANALYSIS

Title	7. Appointment of Public Trustee by
1. Short Title	executors, administrators, and
2. Control of Common Fund	trustees
3. Investment of the Common Fund	8. Elections to administer jointly with
4. Advances to estates	another person
5. Duties for which the Public Trustee	9. Certificate of administration
may be appointed	10. Limitation of liability of Public
6. Application of Act where Public	Trustee where he acts jointly
Trustee acts jointly	11. Repeals

### A BILL INTITULED

#### An Act to amend the Public Trust Office Act 1957

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

1. **Short Title**—This Act may be cited as the Public Trust Office Amendment Act 1968, and shall be read together with and deemed part of the Public Trust Office Act 1957\* (hereinafter referred to as the principal Act).

10 2. **Control of Common Fund**—Section 30 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

15 “(1A) Nothing in this Act shall confer on any person acting jointly with the Public Trustee any right, power, or authority over or in respect of the management, administration, control, or investment of the Common Fund or the appropriation or allocation of any investments of the Common Fund.”

\*1957 Reprint, Vol. 12, p. 387  
Amendment: 1967, No. 25

**3. Investment of the Common Fund**—(1) Section 32 of the principal Act is hereby amended by repealing paragraph (i) of subsection (1).

(2) Section 32 of the principal Act is hereby further amended by adding the following paragraphs: 5

“(o) In any other manner for the time being authorised for the investment of trust funds by the Trustee Act 1956 or by any other Act:

“(p) In any other manner in which the Governor-General, by Order in Council, may for the time being authorise the Common Fund to be invested.” 10

**4. Advances to estates**—Section 39 of the principal Act is hereby amended by inserting in subsection (1), after the words “any estate”, the word “administered”.

**5. Duties for which the Public Trustee may be appointed**— 15  
(1) Section 43 of the principal Act is hereby amended by omitting from subsection (1) the words “if he”, and substituting the words “either alone or jointly with another person if the Public Trustee”.

(2) Section 43 of the principal Act is hereby further amended by repealing subsection (2), and substituting the following subsections: 20

“(2) Subject to the provisions of this Act, where the Public Trustee is acting jointly with any other person in any such office or position: 25

“(a) All money coming under the control of the Public Trustee and such other person jointly shall be dealt with by them in the same manner as money coming under the control of the Public Trustee alone:

“(b) The receipt in writing of the Public Trustee alone 30  
for any money, securities for money, or other movable property, or for any document, payable, transferable, or deliverable to the Public Trustee and the other person jointly shall be a sufficient discharge therefor, and shall effectually exonerate 35  
the person paying, transferring, or delivering the money, securities, property, or document from seeing to the application or being answerable for any loss or misappropriation thereof:

“(c) The Public Trustee shall be entitled to the sole custody and possession of all money, securities for money, other movable property, and documents to the custody and possession of which he would be entitled if he were acting alone in the office or position.

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“(3) Nothing in this Part of this Act shall restrict the operation of subsection (4) of section 46 of the Trustee Act 1956, or of section 42A of the Administration Act 1952 (as inserted by section 4 of the Administration Amendment Act 1960).”

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**6. Application of Act where Public Trustee acts jointly—**

The principal Act is hereby amended by inserting, after section 43, the following section:

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“43A. (1) Except as specifically provided in this Act, the provisions of this Act shall, so far as they are capable of doing so and with all necessary modifications, extend and apply to any case in which the Public Trustee is acting, or is appointed to act, or proposes to act, jointly with another person; and references in this Act to the Public Trustee shall, so far as they are capable of doing so, be deemed to include references to the Public Trustee and the person or persons with whom the Public Trustee is acting, or is appointed to act, or proposes to act:

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“Provided that nothing in this section shall restrict the jurisdiction of any Court in relation to the granting of administration or the making of any other order.

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“(2) Every reference in this Act to an estate administered in the Public Trust Office shall be deemed to extend to and include any estate in respect of which the Public Trustee is acting jointly with another person in any of the offices or positions mentioned in subsection (1) of section 43 of this Act.

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“(3) The following provisions of this Act shall not confer any powers, authorities, functions, or prerogatives on any person or persons acting jointly with the Public Trustee:

“(a) Part I of this Act:

“(b) Part II of this Act, except sections 20 and 31:

“(c) Section 58:

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“(d) Paragraphs (e) and (i) of section 96, subsection (1) of section 112, subsection (2) of section 120, and sections 98, 99, 100, 102, 115, 116, 117, 134, 135, and 140.

“(4) Subsection (1) of this section shall not extend or apply to sections 61, 62, 63, and 65, Part V, and sections 113, 118, and 119 of this Act.”

**7. Appointment of Public Trustee by executors, administrators, and trustees**—The principal Act is hereby amended by repealing section 44, and substituting the following section: 5

“44. (1) With the consent of the Supreme Court, and subject to the approval of the appointee or appointees being obtained thereto: 10

“(a) Executors, whether appointed before or after the commencement of this Act, may, unless expressly prohibited, before or after taking out probate, appoint the Public Trustee as sole executor or appoint as co-executors the Public Trustee and any other person or persons, whether or not the other person or persons include all or any of the executors making the appointment: 15

“(b) Other administrators under a grant of administration with or without a will annexed, whether appointed before or after the commencement of this Act, may, unless expressly prohibited, appoint the Public Trustee as sole administrator, or appoint as co-administrators the Public Trustee and any other person or persons, whether or not the other person or persons include all or any of the administrators making the appointment. 20 25

“(2) Where, pursuant to subsection (1) of this section, any executor or administrator with a will annexed appoints the Public Trustee as executor or administrator, or appoints the Public Trustee and any other person or persons as co-executors or co-administrators, the appointee or appointees shall, by virtue of the appointment, be also the sole trustee or co-trustees (as the case may be) in all cases where the executor or administrator was trustee, or where there was no trustee appointed by the trust instrument or in existence at the date of the appointment under this section. The provisions of this subsection shall apply to all appointments made under this Act before or after the commencement of this section, or made before the commencement of this Act under any Act repealed by this Act. 30 35 40

“(3) Where there are more executors or administrators or trustees or persons having power to appoint a trustee than one, any one executor (whether before or after proving a will), any one administrator, or any one trustee, or any one  
5 of those persons having power to appoint a trustee, may, with the consent of the proposed appointee or appointees, apply to the Supreme Court to have the Public Trustee appointed as sole executor, administrator, or trustee, or to  
10 have appointed as co-executors, co-administrators, or co-trustees the Public Trustee and any other person or persons, whether or not the other person or persons include all or any of the executors or administrators or trustees or persons having power to appoint a trustee.

“(4) On any application to the Supreme Court under this  
15 section, the Court shall have power to make such order as it thinks fit.”

**8. Elections to administer jointly with another person—**

The principal Act is hereby amended by inserting, after section 76, the following section:

20 “76A. (1) In any case where the Public Trustee and any other person or persons are entitled to elect to administer the estate of a deceased person, the provisions of sections 75 and 76 of this Act shall be read and construed so as to permit a District Public Trustee who is authorised by the Public Trustee  
25 so to do or his deputy to join in the execution of an election to administer or of any memorandum required to be filed pursuant to subsection (6) of section 72 or subsection (3) of section 73 or subsection (1) of section 76 of this Act. The execution of the election to administer or memorandum by such  
30 other person or persons shall not require to be attested in any way.

“(2) A statement in an election to administer to the effect that any executor or co-executor has died or is unable or unwilling to act or has not made application for probate in  
35 New Zealand shall in the absence of evidence to the contrary be accepted by all Courts, officers, and persons, whether acting under any Act or not, as sufficient evidence thereof without any other proof whatsoever.”

**9. Certificate of administration**—The principal Act is hereby amended by inserting, after section 78, the following section:

“78A. In any case where the Public Trustee is acting jointly with another person in any of the capacities mentioned in section 78 of this Act, a certificate issued in accordance with the provisions of section 78 of this Act or in accordance with the provisions of section 50 of this Act, executed by the Public Trustee or an Assistant Public Trustee or a District Public Trustee or a deputy of any of them, shall, notwithstanding any enactment or law to the contrary, be accepted by all Courts, officers, and persons, whether acting under any Act or not, as sufficient evidence of the facts set out and authorised to be set out therein, and of the appointment of the Public Trustee and that other person, and of their right to administer or act, without any other proof whatsoever. It shall not be necessary for the certificate to be executed by any person with whom the Public Trustee is acting.”

**10. Limitation of liability of Public Trustee where he acts jointly**—The principal Act is hereby amended by inserting, after section 136, the following section:

“136A. (1) The remedy against the Public Trustee in his corporate capacity and the indemnity afforded by section 136 of this Act shall not extend to any injury or loss occasioned by or arising out of any act or thing done or omitted by a person acting jointly with the Public Trustee in any of the offices or positions mentioned in subsection (1) of section 43 of this Act except to the extent that the Public Trustee or any officer of the Public Trust Office has contributed to, or could by the exercise of reasonable diligence have averted, that injury or loss.

“(2) For the purposes of this section, the expression ‘officer of the Public Trust Office’ means an officer, employee, agent, or representative of the Public Trust Office duly appointed under section 6 or section 8 of this Act.”

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

- (a) Sections 49 (6) and 50 (5) of the Trustee Act 1956:
- (b) Section 48 of the principal Act.