TRUSTEES' STATUTORY POWERS OF INVESTMENT.

REPORT OF THE PROPERTY LAW AND EQUITY REFORM COMMITTEE.

NEW ZEALAND

Presented to the Honourable the Minister of Justice
in March 1970

REPORT OF THE PROPERTY LAW AND EQUITY REFORM COMMITTEE ON THE LAW RELATING TO TRUSTEES' STATUTORY POWERS OF INVESTMENT

To: The Honourable the Minister of Justice

INTRODUCTION

Terms of reference:

1. Before the question of trustees' statutory powers of investment was formally referred to us, we had already begun considering it in a preliminary way. In that initial survey, we looked at the law in New Zealand and also examined three approaches adopted elsewhere, including "The Prudent Man Rule" which has been adopted by all but a few of the States of the United States of America, the Trustee Investment Act 1961 (U.K.) and Part III of Trustee Act 1962 of Western Australia. These approaches are considered in more detail in paragraph 7 post. We concluded that the Western Australian approach was the most suitable for New Zealand, and submitted our conclusion to the Law Revision Commission. On 9 August 1967, the then Minister of Justice, the late Mr J.R. Hanan, wrote to the then Chairman of the Committee accepting the majority view of the Commission and inviting us to prepare a report on the lines of the Western Australian legislation.

Draft Bill:

2. We have found it possible to express our conclusions in the form of a draft bill which is set out in Appendix I to this report.

Working Papers:

3. Following the formal reference of the matter to us, we considered the question of trustee investments in greater depth and, at the beginning of May 1969, produced a Working Paper (with a draft bill) which was circulated to various corporations, societies and other persons. The Working Paper produced a number of helpful suggestions and, after further consideration, we circulated a second Working Paper (with amended draft bill) in October 1969.

This too received a helpful response and the further suggestions were carefully considered, and in some cases adopted, by the Committee. The corporations, societies and other persons to whom the Working Papers were circulated are listed in Appendix II.

4. The names of those who made submissions on Working Papers Nos. 1 and 2 are set out in Parts A and B respectively of Appendix III. We do not set out the reasons for adopting or rejecting all of the suggestions received but we desire to record our appreciation of all those who took the trouble to write to us. We should also mention that where a suggestion has been rejected, it has always been carefully considered, even though not specifically mentioned in the report.

THE EXISTING LAW IN NEW ZEALAND

5. Trustees are only permitted to invest trust funds in securities authorised by the trust instrument, by statute, by the Court or by all the beneficiaries where they are of full age and capacity. Apart from the cases of express authority or prohibition, the Trustee Act 1956 provides that a trustee may invest trust funds in investments permitted by the instrument or in (inter alia) -

(a) New Zealand Government Securities or securities of the Government of the Commonwealth of Australia, or of any Australian State, or of Fiji.

(b) Real securities in New Zealand. Real security is defined as -

(i) A first mortgage of an estate in fee simple;

(ii) A first sub-mortgage of such a first mortgage;

(iii) A first mortgage of certain other restricted interests in land where certain conditions are satisfied.

Section 10 of the Trustee Act 1956 sets out special statutory provisions to be adhered to if trustees are to avoid responsibility should the real security prove insufficient.

(c) Certain defined Local Body debentures or other securities issued under statutory authority.

(d) Debentures or other securities issued under statutory authority by certain Boards.

(e) On deposit with banks or certain Building Societies.

DEFECTS IN EXISTING LAW

6. In our view, the existing statutory power of trustees in relation to investment is a legacy from the nineteenth century approach to investment in England. This approach, which had as its main object the preservation of capital, was based on the premise that the purchasing power of money remained constant. Clearly, however, this principle has become untenable in modern times when capital is being continually eroded by inflation and by the corresponding depreciation in the value of money. As a result, the present statutory powers of investment are far too narrow and the practice has grown up in recent years of conferring wide powers of investment on trustees to enable them to invest trust funds at their discretion in any form of investment they think proper. Where the trustees have not been entrusted with such wide powers under the instrument creating the trust, a wider selection of investments than those permitted by the trust instrument and by the statute is often made with the consent or indemnity of the beneficiaries. And where this latter course is not available to the trustees, the Court, on application, has on numerous occasions extended the trustees' power of investment generally, as distinct from permitting a specific investment (see for example Re Murray [1967] N.Z.L.R. 341). Furthermore, Parliament itself has in Private Acts of Parliament conferred wide powers of investment upon trustees for charitable purposes. (See for example s.4 of Presbyterian Church Property Act 1963; s.7 of the Mackelvie Trust Act 1958, and s.18(1) of the Deckston Hebrew Trust Act 1949).

OTHER SYSTEMS

7. As mentioned in the introduction to this report, we looked at three main approaches with a view to overcoming the evils of inflation and depreciation. These approaches were -

(a) "The Prudent Man Rule" which has been adopted in all but a few of the States of the United States of America;

(b) The Trustee Investment Act 1961 (U.K.); and

(c) Part III of the Trustee Act 1962 of Western Australia.

The "Prudent Man Rule"

8. The basis of the "Prudent Man Rule" is that a trustee must exercise the judgment and carewhich, under the circumstances prevailing at the time, men of prudence, discretion and intelligence would exercise in the management of their own affairs having regard not to speculative gains but to the permanent disposition of funds on the basis of the probable income as well as the probable safety of the capital.

The Trustee Investment Act 1961 (U.K.)

9. The Trustee Investment Act 1961 (U.K.) gives a trustee the option of dividing the trust fund into two equal parts, one for investment in narrower range investments and the other for investment in specified wider range investments. The narrow range of investments is itself subdivided into two classes - those in which a trustee may invest without seeking prior advice (such as Defence Bonds, National Savings Certificates, deposits in the Post Office Savings Bank and ordinary deposits in Trustee Savings Banks) and those where prior advice has to be sought (such as certain local authority loans, mortgages of freehold or leasehold property with at least sixty years to run, and special deposits in Trustee Savings Banks.) Advice must always be taken before a trustee may invest in wider range investments

(which include securities issued by United Kingdom companies fulfilling certain requirements as to share capital and dividend record, shares in certain building societies etc.) The Act sets out various matters with which a trustee must comply, including detailed requirements concerning the obtaining of advice.

Part III of the Trustee Act 1962 of Western Australia

10. Part III of the Western Australian Trustee Act 1962 lists the full range of investments in which trustees may invest funds. It also lists the type of shares which are not included and the advice to be taken before making certain investments. The trustee has a discretion as to the type of investment and as to what proportion of the trust fund is to be invested in a particular type of investment.

11. In our preliminary investigation, we rejected the "Prudent Man" approach on the ground that it offered too little guidance to trustees who were not experienced in investing money. On the other hand, we felt that the approach of the Trustee Investment Act 1961 (U.K.) was too restrictive in that the fund had to be divided into two equal halves; it also appeared unnecessarily complicated. We considered the Western Australian approach to be the most suitable for New Zealand in that it provided flexibility while at the same time laying down guide lines, which if followed, would exempt a trustee from liability for any loss.

PROPOSED REMEDIES

General principles

12. A small minority of the submissions on the two Working Papers favoured leaving the law as it was on the ground that the approach adopted in Western Australia did not provide sufficient guidelines or safeguards for the inexperienced trustee. After careful consideration, however, we have concluded that there is no reason to alter

the conclusion we reached in our preliminary study. Our concern is to offset the erosive effects of inflation and depreciation and this inevitably involves widening trustees' statutory powers of investment. This is also the aim of the Trustee Investment Act 1961 (U.K.) and the "Prudent Man Rule" and, while we have rejected the specific approaches of these two alternatives, we agree with what they are ultimately trying to achieve.

13. In effect, we simply recommend putting into statutory form what has for a long time been a common practice. As already mentioned, the modern tendency is for the draftsman to give trustees a wide power of investment. This in itself is not a sufficient answer to the problem as it can only affect new trusts. The result is often to substitute for the authorised forms of investment a very wide power with insufficient safeguards against its abuse. Indeed, in many cases, the trust instrument includes a provision which exonerates the trustee from any loss occasioned by the use of the investment powers conferred upon him. Further, whether the trustee is given wide powers in the trust instrument or by statute does not affect his overall duties; in either case, he is still bound to keep an even balance between the tenant for life and the remainderman and to act in all matters of investment with care and diligence. If he fails to do this, he can still be made liable for his neglect and any trustee, who under our proposed scheme, elected to invest in speculative investments would still have to take such precautions as a careful and diligent man would take in all the circumstances.

Investment in company stock, shares, debentures, etc.

(Clause 3 of the draft bill)

14. We recommend widening a trustee's power of investment by allowing him to invest in preference or ordinary stocks

and shares issued by any company, whether incorporated in New Zealand or not. We also recommend that he should be permitted to invest in debentures, secured by a trust deed, including debenture stock and bonds. Originally, we favoured confining investment to those companies which were incorporated in New Zealand and had a paid-up capital of two million dollars. However, after considering the views of the New Zealand Trustee Companies Association and others, we have concluded that this is too narrow as there are only fifty-eight companies which would qualify.

15. Suggestions were made that convertible notes issued by a company which qualified for share investment should be authorised. Originally we excluded these but, on further deliberation, feel that there is no reason for so doing because on a winding up they rank in priority to shares, until they are converted into shares. They are now included in our draft bill, as are options and other rights which trustees may be entitled to exercise by virtue of their existing investments.

16. In addition to the paid-up capital requirement, we do not consider that a trustee should be authorised by statute to invest in stocks, shares, debentures and convertible notes which are not officially listed on Stock Exchanges affiliated to the Stock Exchange of New Zealand. Nor, in our view, should investment be authorised in stocks, shares, debentures and convertible notes which are not fully paid up or which, by the terms of issue, are not required to be fully paid up within twelve months of the date of issue. Further, we consider that trustees should not be permitted by statute to invest in a company which has not paid a dividend of at least five per cent in each of the five years immediately preceding the calendar year in which the investment is made on all the ordinary stock or shares issued by the company. The Stock Exchange Association of New Zealand considered that this criterion based on dividend payout was not entirely satisfactory as it might encourage a company to pay a dividend when

prudent management would be better served by the retention and utilization of profits. The Association suggested that a company should qualify if it had earned sufficient profits to permit it to pay a dividend of not less than five per cent on all the ordinary stocks and shares. However, while we appreciate the point made, in the majority of trusts there is either a life tenant entitled to the income, or minors for whom income may be required through the exercise of the statutory powers under section 40 of the Trustee Act 1956 or powers given by the trust instrument. We also consider that the Association's suggestion would unnecessarily complicate the provision which at this juncture should be expressed as simply as possible.

17. Suggestions were made that there should be a defined minimum ratio between net tangible assets and share capital. We consider, however, that this is a matter for the financial adviser to consider when giving advice (see paragraph 21 post) and that an arbitrary ratio should not be imposed by legislation.

18. The question was raised whether the rule in Bouch v. Sproule (1887) L.R. 12 App. Cas. 385 and Hill (R.A.) v. Permanent Trustee Co. of N.S.W. Ltd. [1930] A.C. 720 should be abrogated in respect of bonus payments on investments made by a trustee under the powers contained in the Act as distinct from powers conferred upon a trustee by the instrument. This rule states that a payment by a company which is not an authorised reduction of capital whereby the company parts with moneys to shareholders can only be by way of dividing profits. It belongs prima facie to the life tenant. Where money does not leave the possession of the company, but is used to issue new shares to shareholders, the assets of the company are undiminished and the new shares are regarded as capital in the hands of trustees. The rule was applied to a case where the shares were originally settled and not after acquired. Where shares are after acquired, trust capital may be used to purchase shares in a company which possesses undivided profits. If these profits are subsequently paid as a dividend to which the life tenant is

entitled, this is unfair to the remainderman whose capital has been used to purchase them. We considered this point, but rather than give an overall discretion to the trustee to apportion such payments between the life tenant and remainderman, we considered the existing rule should remain unaltered. It would be too difficult to draft effective legislation to cover particular cases.

19. We recommend that trustees should be able to invest in any Group Investment Fund within the meaning of Part II of the Trustee Companies Act 1967 provided that all the investments in which such Fund may be invested are authorised investments. We also recommend that investment in the Common Fund of the Public Trust Office should be authorised.

20. We considered the question of unit trusts as trustee investments. It would not, however, be practicable to impose a restriction on a unit trust fund similar to that imposed on a Group Investment Fund since a unit trust fund in its very nature does not necessarily limit itself to investment in authorised securities, as contemplated by our draft bill.

Advice (Clause 3 of the draft bill)

21. Following the Western Australian and English approaches, we consider that the pre-requisite of a trustee investing in the investments considered under the previous heading should be that he obtains advice. In our view, the advice should be in writing and should specify, bearing in mind the terms of the trust, first the suitability of the class of investments proposed and, secondly, the suitability of the investment proposed as an investment of that class. The advice should be the advice of a person who is reasonably believed by the trustee to be qualified by his ability and practical experience of financial matters.

22. Under the Trustee Investment Act 1961 (U.K.), a trustee must have regard also to the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust and, when he is required to take advice, such advice must also have regard to this. In the first instance we also adopted this approach but, on further consideration, we concluded that it ought not to be made mandatory because in some cases diversification might be unwarranted and even unsuitable. A trustee is, in any event, under a general duty to act prudently and we regard this as being sufficient. For the same reason, we have not adopted the Public Trustee's suggestion that trustees and their advisers should be bound to consider the stability of investments in addition to suitability.

23. Although we recommend that a trustee should be bound to take advice, we do not consider that he should be bound to act on it. Clearly, however, if a trustee were sued for acting negligently in the performance of his duties, he would have to show that he had acted in good faith and this would be difficult, though not impossible, if he had declined to act on the advice of the person he had consulted.

Mortgages of leaseholds. (Clause 4 of the draft bill)

24. We were asked to consider the question whether trustees should be permitted to invest in mortgages of leasehold properties. In particular, there was a small group who desired to see the power to invest in mortgages extended to second mortgages.

25. We were faced with the problem that under the provisions of subsection (3) of section 4 of the Trustee Act 1956, a first mortgage over the interest of a lessee or licensee of any Crown land or other land administered by the Land Settlement Board or certain Maori land is an authorised trustee investment, provided that the lease complies with the provisions contained in that subsection. If this had not been the position, we would have entertained grave doubts concerning the wisdom of allowing mortgages of

leasehold interests to be authorised investments for the following reasons :-

(a) If the lease is for a fixed term, as the years go by the value of the security decreases as the lease approaches the date of determination by effluxion of time. Accordingly, any mortgage would have to provide for repayment of the principal sum by instalments so that the balance remaining owing was always properly secured.

(b) If the lessee is in breach of his covenants in the lease, the mortgagee may be prejudiced in the following ways :-

(i) He may have to expend moneys to obtain relief against forfeiture.

(ii) He may lose his security by an irremediable forfeiture, common examples being :-

(1) If the lessee being an individual goes bankrupt; or

(2) If the lessee being a company goes into liquidation; or

(3) Where the lease contains a declaration that an assignment by a sheriff in execution is a breach of the covenant not to assign and such a breach occurs; or

(4) Where there is a breach of covenant not to cut timber.

(iii) There may be a conflict between the covenant in the lease and the covenants in the mortgage. For example, the covenant to insure in respect of the lease is normally to insure in the joint names of the lessor and lessee, whilst the covenant in the mortgage is normally to insure in the sole name of the mortgagee.

(iv) The mortgagee of a leasehold is in the same position as the mortgagee of the fee simple as regards liability to pay rates if the occupier fails under s.70 of the Rating Act 1925.

On these grounds, we consider that the first mortgagee of a leasehold interest is in much the same position as a second mortgagee of the freehold. In effect and in order to preserve his security, he guarantees the performance by the lessee of his covenants under the lease in the same way as a second mortgagee does.

26. We do not agree with the proposal to authorise second mortgages of freehold interests. We recommend extending investments of first mortgages of leasehold interests, but restricting these to such leases as contain a perpetual right of renewal under the Public Bodies Leases Act 1969, with safeguards against forfeiture being irremediable in certain cases. We also recommend that leases of land (other than farm land for which compensation is separately provided in s.14) should contain a provision for payment of compensation for improvements as envisaged by s.10 of the Act.

27. The point was raised that, under the Municipal Corporations Act 1954 Part XIII, a town or a borough has power to grant leases with a perpetual right of renewal, which is similar to the power under the Public Bodies Leases Act, and that in many cases the power under the Municipal Corporations Act is used rather than the Public Bodies Leases Act. We consider, however, that the extension of the power of investment in mortgages of leaseholds should be limited to those set out in our draft bill, until such time as the leasing powers of local bodies under Acts other than the Public Bodies Leases Act have been fully investigated with the object of considering whether they could possibly be unified.

28. The New Zealand Government Railways Department desired that a trustee should be able to invest in a first mortgage secured upon railway leases. Under the provisions of s.50 of the Government Railways Act 1949, the Minister has all the powers of a leasing authority under the Public Bodies Leases Act 1908. Under s.49, which contains special leasing powers, the term may not exceed 21 years and may be with or without a right of renewal, perpetual or otherwise. We can see no reason for making any exception in favour of the Department, and, for the reasons indicated in paragraph 25 sub-paragraph (a), we would not willingly countenance a first mortgage of a leasehold interest where there is no perpetual right of renewal.

Existing mortgages (Clause 5 of the draft bill)

29. In accordance with the general tenor of our report, we recommend extending the powers of a trustee to enable him to purchase an existing mortgage as an authorised investment.

Partial release of mortgaged property (Clause 7 of the draft bill)

30. We consider that a trustee should be permitted to release part of the mortgaged property from the mortgage, provided there still remains sufficient value in the remainder of the property, at the time of the release, for it to be a proper investment. Section 8 of the Trustee Amendment Act 1968 went some of the way towards achieving this result.

Existing Powers

31. The existing powers under the Trustee Act would not be affected and, in particular, the rights of the beneficiary under s.68 of the Act would not be affected, by misuse of any of the powers recommended in this report.

The traditional powers and safeguards would remain so that, for example, the Court would continue to be able to confer wider powers of investment than those permitted by statute. (See clause 8 of the draft bill).

For the Committee

.....
Chairman

Dated this 18th day of March 1970.

MEMBERS

Mr C.P. Hutchinson, M.B.E., Q.C., (Chairman)
Professor G.P. Barton
Mr G. Cain
Mr J.G. Hamilton
Professor G.W. Hinde
Mr L.M. McClelland
Mr K.U. McKay
Professor P.B.A. Sim
Mr E.J. Somers
Mr C.E. Foister (Secretary)

APPENDIX I

DRAFT OF PROPOSED TRUSTEE AMENDMENT BILL

An Act to amend the Trustee Act 1956

1. Short Title - This Act may be cited as the Trustee Amendment Act 1970, and shall be read together with and deemed part of the Trustee Act 1956 (hereinafter referred to as the principal Act).

2. Investment in short term money market - Section 4 of the principal Act is hereby amended by inserting in subsection (1), after paragraph (i), the following paragraph:

"(ii) With any dealer in the short term money market authorised by the Reserve Bank of New Zealand to receive money on deposit as a short-term money market dealer, and only so long as there are hypothecated to the trustee by that dealer New Zealand Government securities that have, at the time of making of the deposit, a redemption value not less than the amount so deposited:"

3. Investment in company stock, shares, debentures, etc. - Section 4 of the principal Act is hereby further amended by inserting, after subsection (1), the following subsections:

"(1A) In addition to the powers conferred by subsection (1) of this section, a trustee may, subject to the restrictions specified in subsections (1B) to (1D) of this section, invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following, that is to say:

"(a) In the acquisition of the preference or ordinary stock or shares, or any convertible notes, issued by any company, whether

incorporated in New Zealand or elsewhere; and in the exercise of any options and other rights which the trustee, as the holder of any such ordinary or preference stock or shares or convertible notes, may be entitled to exercise:

"(b) In debentures, including debenture stock and bonds and whether constituting a charge on assets or not, secured by a trust deed and issued by any company in which at the time of investment it would have been permissible to invest in the purchase of ordinary stock or shares:

"(c) In any Group Investment Fund within the meaning of Part II of the Trustee Companies Act 1967 if all the investments in which the Fund may be invested are authorised investments:

"(d) In the Common Fund of the Public Trust Office.

"(1B) The stock, shares, convertible notes, and debentures mentioned in paragraphs (a) and (b) of subsection (1A) of this section do not include:

(a) Any stock or shares, or any such debentures, not officially listed on Stock Exchanges affiliated to the Stock Exchange Association of New Zealand; or

(b) Any stock, shares, or convertible notes, or any such debentures, not fully paid up, except such as are, by the terms of issue, required to be fully paid up within 12 months of the date of issue; or

(c) Any convertible notes, or any such debentures, under or in respect of which any liability to make further advances or payments will remain after the expiration of twelve months from the date of acquisition.

"(1C) An investment under any of the provisions of paragraphs (a) and (b) of subsection (1A) of this section shall not be made in any company -

"(a) Unless the company has a paid-up share capital of one million dollars or more; and

"(b) If the company has not paid a dividend of at least 5 percent, in each complete financial year of the company the last day of which occurred within 5 years before the date of the investment, on all ordinary stock and shares issued by the company, excluding (in respect of the financial year of issue) any stock or shares issued in that financial year after the dividend was declared and any stock or shares on which (in terms of their issue) no dividend or dividends of less than 5 percent are payable in that financial year; and for the purposes of this paragraph a company formed to take over the whole of the business of another company or other companies shall be deemed to have paid the requisite dividend in any financial year, if such a dividend was paid by each such other company in each financial year of that company any part of which fell within the relevant financial year of the company taking over the business.
Cf. W.A. s.16(1), (2), (3), (4)

"(1D) A trustee who proposes to exercise any of the powers conferred by subsection (1A) of this section shall first obtain and consider proper

advice in writing as to the suitability, in view of the terms of the trust, of the class of investments proposed and of the investment proposed as an investment of that class; and for the purposes of this subsection proper advice is the advice of a person who is reasonably believed by the trustee to be qualified by his ability and practical experience of financial matters, and such advice may be given by a person notwithstanding that he is employed as an officer or servant of the trustee or any other person:

"Provided that the advice need not be in writing where it is given by a trustee who is so qualified to his co-trustees, or where it is given to a trustee corporation by an officer or servant of the corporation who is so qualified."

4. Investment on mortgage of certain leasehold interests - (1) Section 4 of the principal Act is hereby further amended by inserting in paragraph (b) of subsection (1), after the expression "subsection (3)", the expression "or subsection (3A)".

(2) Section 4 of the principal Act is hereby further amended by inserting, after subsection (3), the following subsections:

"(3A) In this section the term "real security" also means a first mortgage of the interest of any lessee of any land where all the following terms and conditions are satisfied, that is to say:

"(a) That no advance shall be made except in respect of a lease which -

"(i) Is granted under any of the provisions of paragraphs (e), (f), and (g) of section 7, or paragraph (b) of section 11, of the Public Bodies Leases Act 1969; and

"(ii) Is registered under the Land Transfer Act 1952; and

"(iii) Confers upon the outgoing lessee the right to payment, under section 10 of the Public Bodies Leases Act 1969, in respect of the value of all buildings, fixtures, and other improvements (if any) on the land which are the property of the lessee; and

"(iv) Contains no right of forfeiture in the event of the lessee becoming bankrupt or (in the case of a corporation) being wound up; and

"(v) Does not require periodic reviews of rental at intervals of less than 7 years:

"(b) That in making any advance under this subsection -

"(i) The trustee shall act upon a report as to the value of the lessee's interest made by a person whom he reasonably believes to be competent to value the property, being a person instructed and employed independently of any lessee of the property, whether that valuer resides or carries on business in the locality where the property is situated or elsewhere:

"(ii) The amount of the advance shall not exceed one half of the value of the lessee's interest as stated in that report:

"(iii) The trustee shall have obtained and considered advice in writing as to the provisions of the lease which may affect the security of the proposed mortgage given by a person who is reasonably believed by the trustee to be qualified to give the advice:

"Provided that the advice need not be in writing where it is given by a trustee who is so qualified to his co-trustees, or where it is given to a trustee corporation by an officer or servant of the corporation who is so qualified:

"(c) Any mortgage of the interest of the lessee of any land to which paragraph (a) of this subsection applies shall contain a provision that the mortgagee shall be deemed to have been irrevocably appointed as attorney of the lessee with full authority so long as any money remains owing under the mortgage to exercise on behalf of the lessee all the lessee's rights, powers and options.

"(3B) Subsections (1) and (3) of section 10 of this Act shall not apply in any case where a trustee, pursuant to section 3(A) of this section, lends money on the security of any property on which he can properly lend under that subsection.

5. Investments, loans, and advances - The principal Act is hereby amended by inserting, after section 4, the following section:

"4A. Any reference in this Act to the investment, loan, or advance of trust funds or trust money by a trustee on the security of property shall be construed to include a reference to the investment, loan, or advance thereof on the acquisition of an existing security as well as on a new security."

Cf. W.A. s.6(2)

6. Purchase of redeemable stocks at a premium or discount - (1) Section 5 of the principal Act is hereby amended -

(a) By inserting in subsection (1), after the expression "subsection (1)", the expression "or paragraph (b) of subsection (1A)":

(b) By repealing the proviso to subsection (1):

(c) By repealing the proviso to subsection (3).

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

"(4) Where the amount to be recouped to or deducted from capital in any year in accordance with paragraph (a) or paragraph (b) of subsection (3) of this section is less than $50, it shall not be necessary for the trustee to comply with the provisions of that subsection."

Cf. W.A. s.18

7. Release of part of security - (1) The principal Act is hereby amended by inserting, after section 11, the following section:

"11A. (1) Where any trust funds are invested on mortgage of any property, the trustee may release any part of the property from the mortgage, whether part of the debt is repaid or not, if the unreleased part of the property would at the time be a proper investment in all respects for the amount remaining unpaid.

"(2) A subsequent purchaser of the released part of the property, or the District Land Registrar, shall not be concerned to inquire whether the requirements of subsection (1) of this section were fulfilled."

Cf. W.A. s.24

(2) The following enactments are hereby consequentially repealed:

(a) Paragraph (dd) of section 20 of the principal Act:

(b) Section 8 of the Trustee Amendment Act 1968.

8. Savings for power of Court - The enlargement of the investment powers of trustees by this Act shall not lessen any power of a Court to confer wider powers of investment on trustees, or affect the extent to which any such power is to be exercised.

Cf. U.K. s.15

APPENDIX II

WORKING PAPERS

Working Papers were sent to the following :-

The Minister of Justice
The Secretary for Justice
Members of the Law Revision Commission
Deans of the New Zealand University Law Schools
The Secretary of the Law Commission (England and Wales)
The Secretary of the Scottish Law Commission
The Secretary of the Western Australian Law Reform Committee
The Secretary of the New South Wales Reform Commission
The Secretary of the Queensland Law Reform Commission
The Chairman of the Ontario Law Reform Commission
The New Zealand Law Society and the District Law Societies
A.M.P. Discount Corporation (N.Z.) Limited
Associated Chambers of Commerce of New Zealand
Mr E.A. Donovan (Simpson, Coates and Clapshaw, Auckland)
East Coast Permanent Trustees Limited
Guardian Trust and Executors Company Limited
Mr D.L. Hazard (Auckland)
New Zealand Institute of Valuers
New Zealand Insurance Company Limited
New Zealand Licensing Trusts Association
New Zealand Government Railways Department
New Zealand Trustee Companies Association
Perpetual Trustees Estate and Agency Co. of N.Z. Limited
Public Trustee
Pyne Gould and Guinness Limited
Real Estate Institute of New Zealand
Stock Exchange Association of New Zealand and the Stock Exchanges at Auckland, Christchurch, Dunedin and Wellington
Mr Geoffrey Thompson (Hollings, Thompson & Fairburn, Paraparaumu)
Trustees Executors and Agency Co. of New Zealand Limited
Mr B.P. Weyburne (Weyburne & Co., Wellington)

APPENDIX III
SUBMISSIONS.

PART A

Submissions on Working Paper No. 1 were received from the following :-

A.M.P. Discount Corporation (N.Z.) Limited
Auckland District Law Society
Dunedin Stock Exchange
Mr E.A. Donovan (Simpson, Coates & Clapshaw, Auckland)
Gisborne District Law Society (Costs and Conveyancing Committee)
Manawatu District Law Society
New Zealand Government Railways Department
New Zealand Trustee Companies Association
Otago District Law Society
Public Trustee
Stock Exchange Association of New Zealand
Mr Geoffrey Thompson (Hollings, Thompson & Fairburn, Paraparaumu)
Wanganui District Law Society
Wellington District Law Society
Mr B.P. Weyburne (Weyburne & Co., Wellington)

PART B

Submissions on Working Paper No. 2 were received from the following :-

Mr A.C. Brassington (Brassington & Co., Christchurch)
Canterbury District Law Society (Conveyancing Committee)
Messrs. Cooper, Rapley, Bennett & Thomson, Palmerston North.
Mr R.M. Daniell (Daniell, King & Co., Masterton)
Mr J.B. Hindin (Hamilton, Hindin, Greene & Co., Christchurch)
Municipal Association of New Zealand
New Zealand Institute of Valuers
New Zealand Licensing Trusts Association
New Zealand Government Railways Department
Public Trustee