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Public Trust Act 2001

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Commencement see section 2

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

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1 Title

This Act is the Public Trust Act 2001.

2 Commencement

- (1) This Act, except for section 167, comes into force on a day to be fixed by the Governor-General by Order in Council.
- (2) The Order in Council, or a separate Order in Council, may fix a different date for the commencement of section 71.
- (3) Section 167 comes into force on the day on which this Act receives the Royal assent.

Section 2(1): Public Trust Act 2001 (except sections 71 and 167) brought into force, on 1 March 2002, by clause 2 of the Public Trust Act Commencement Order 2002 (SR 2002/11).

Section 2(2): section 71 brought into force, on 1 July 2002, by clause 2 of the Public Trust Commencement Order (No 2) 2002 (SR 2002/197).

Part 1

Preliminary provisions

3 Purpose

The purpose of this Act is—

- (a) to establish Public Trust as a statutory corporation that is a Crown entity; and
- (b) to repeal and replace the Public Trust Office Act 1957, and provide for Public Trust to take over the role and undertakings of the Public Trustee and the Public Trust Office.

4 Interpretation

In this Act, unless the context otherwise requires,—

administration means probate of the will of a deceased person; and includes—

- (a) letters of administration of the estate of a deceased person, granted with or without the will annexed, for general, special, or limited purposes; and
- (b) in the case of Public Trust, an order to administer and an election to administer

administrator means any person to whom administration is granted; and includes—

- (a) an executor before and after the probate has been granted; and
- (b) Public Trust, in any case where it is deemed to be an executor or administrator by reason of having filed an election to administer

board means the board of Public Trust established by section 14

chief executive means the chief executive of Public Trust

common fund means the common fund constituted under section 48

court, in relation to any matter, means a court having jurisdiction in that matter; and includes a Judge of that court

Crown entity subsidiary has the same meaning as in the second column of section 7(1)(c) of the Crown Entities Act 2004

estate means any property administered or held, managed, or controlled by Public Trust, whether as administrator or other trustee or as guardian, committee, manager, liquidator, receiver, agent, or attorney, or in any other capacity

estate money means money forming part of an estate

fiduciary means an administrator, trustee, guardian, committee, manager, liquidator, receiver, agent, or attorney, or a fiduciary in any other capacity

group investment fund means a group investment fund established under section 63 of this Act or section 42A of the Public Trust Office Act 1957

instrument includes any enactment

land includes all estates and interests, whether freehold or chattel, and whether legal or equitable, in real property

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

office solicitor means the solicitor who is employed by Public Trust as its office solicitor or chief legal adviser; and includes any other solicitor employed by Public Trust who is under the control and direction of that person

owner, in relation to any property, includes any person having an estate or interest in the property

portfolio investment entity means a portfolio investment entity within the meaning of the Income Tax Act 2004

property includes real and personal property, any estate or interest in real or personal property, any debt, any thing in action, and any other right or interest

Public Trust means Public Trust established by section 7; and includes a Crown entity subsidiary of Public Trust

related company has the meaning set out in section 2(3) of the Companies Act 1993; and, for that purpose, Public Trust is to be treated as if it were a company registered under that Act

subsidiary has the meaning set out in sections 5, 7, and 8 of the Companies Act 1993; and, for that purpose, Public Trust is to be treated as if it were a company registered under that Act

trust—

- (a) includes—
 - (i) implied and constructive trusts; and
 - (ii) cases where the trustee has a beneficial interest in the trust property; and
 - (iii) the duties incidental to the office of a personal representative; but
- (b) does not include the duties incidental to an estate conveyed by way of mortgage;—

and **trustee** has a corresponding meaning.

Compare: 1957 No 36 s 2

Section 4 **Crown entity subsidiary**: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 4 **Crown entity subsidiary**: amended, on 18 July 2013, by section 42 of the Crown Entities Amendment Act 2013 (2013 No 51).

Section 4 **good employer**: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 4 **portfolio investment entity**: inserted, on 1 October 2007, by section 229 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 4 **Public Trust**: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

5 Application of Act where Public Trust acts jointly

- (1) Except as provided in subsection (3) or otherwise specifically provided in this Act, the provisions of this Act, so far as they are capable of doing so and with any necessary modifications, extend and apply to any case in which Public Trust is acting jointly with another person, or is appointed or proposes to act jointly with another person.
- (2) Accordingly, in any such case,—
 - (a) references in this Act to Public Trust include references to Public Trust and the person or persons with whom Public Trust is acting, or is appointed to act or proposes to act:
 - (b) references in this Act to an estate administered by Public Trust extend to and include any estate in respect of which Public Trust is acting jointly with another person in any of the offices or positions mentioned in section 75(1).
- (3) However, subsection (1) does not extend or apply to—
 - (a) sections 82 and 83 (powers exercisable by Public Trust pending grant of probate or administration, and notice of exercise of those powers):
 - (b) section 84 (Public Trust may oppose application for administration):
 - (c) section 85 (payment of legacies of infants to Public Trust):
 - (d) Part 7 (unclaimed property):
 - (e) section 130 (deposit of wills).
- (4) Nor do the provisions of the Crown Entities Act 2004 or the following provisions of this Act confer any powers, authorities, functions, or prerogatives on a person acting jointly with Public Trust:
 - (a) Parts 2 to 4, except sections 36(2) (operation of estate bank accounts) and 60 (special investments):
 - (b) section 91 (Public Trust entitled to costs out of estate, etc):
 - (c) section 118(e) and (i) (special powers that may be exercised by Public Trust):
 - (d) sections 122 to 125 (remuneration, etc):

- (e) section 129 (declaration of non-revocation not necessary where Public Trust executes as attorney):
- (f) section 137 (protection of Public Trust acting under power of attorney).
- (5) Nothing in this section restricts the jurisdiction of any court in relation to the granting of administration or the making of any other order.

Compare: 1957 No 36 s 43A

Section 5(4): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

6 Relationship between this Act and other Acts and instruments

- (1) The provisions of the Trustee Act 1956 and the Administration Act 1969 are to be read and applied—
 - (a) so as not to affect any of the express provisions of this Act; and
 - (b) as subordinate to the provisions of this Act.
- (2) All powers and authorities conferred by this Act on Public Trust—
 - (a) are additional to any other powers and authorities Public Trust has under any enactment, instrument, or law; and
 - (b) do not limit or restrict those other powers and authorities.
- (3) Except as otherwise expressly provided by this Act, the provisions of this Act are not restricted by any other enactment or law, and—
 - (a) all rights, powers, and remedies conferred by any other enactment or law upon Public Trust or upon any court, Judge, or other person remain unrestricted; and
 - (b) the rights, powers, and remedies conferred by this Act are in addition to and not in derogation of those other rights, powers, and remedies; and
 - (c) the rights, powers, and remedies conferred by this Act, and those other rights, powers, and remedies, are capable of being exercised either independently or in aid of one another.
- (4) Section 100 of the Crown Entities Act 2004 does not apply to the exercise of any authority or power Public Trust has under any enactment, instrument, or law to—
 - (a) invest any estate money, or invest the common fund, or invest any group investment fund; or
 - (b) settle, or be or appoint a trustee of, a trust.
- (5) Subsection (4) does not limit subsection (3).

Compare: 1957 No 36 s 139

Section 6(4): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 6(5): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Part 2

Establishment of Public Trust

7 Establishment of Public Trust

(1) This section establishes Public Trust.

(2) *[Repealed]*

Section 7(2): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

7A Application of Crown Entities Act 2004

(1) Public Trust is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.

(2) The Crown Entities Act 2004 applies to Public Trust except to the extent that this Act expressly provides otherwise.

(3) Sections 28(1), 29, 37, 96, 100, and 104 and Part 4 of the Crown Entities Act 2004 apply as if the reference in each of those provisions or Parts to the “responsible Minister” were replaced by a reference to “the responsible Minister acting with the agreement of the Minister of Finance”.

Section 7A: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

8 Functions of Public Trust

(1) The principal functions of Public Trust are to—

- (a) develop, promote, conduct, or otherwise participate in the business of providing comprehensive estate management and administration services, including associated legal, financial, and other services; and
- (b) carry out, perform, or otherwise fulfill functions conferred on Public Trust by this Act or any other Act; and
- (c) carry out, perform, or otherwise fulfill other functions requested by the Minister, acting in agreement with the Minister of Finance, and agreed to by Public Trust; and
- (d) develop, promote, conduct, or otherwise participate in such other business as Public Trust determines with the approval of the Minister, acting in agreement with the Minister of Finance.

(1A) For the avoidance of doubt, a request under section 8(1)(c) is not a direction by the Minister for the purposes of section 112 of the Crown Entities Act 2004.

(2) Any request by the Minister and agreement by Public Trust under subsection (1)(c), and any determination of Public Trust and approval of the Minister under subsection (1)(d), must be in writing.

(3) As soon as practicable after any such request or determination is made and is agreed or approved, the Minister must—

- (a) publish a copy of the request or determination in the *Gazette*; and
- (b) present a copy of it to the House of Representatives.

Section 8(1A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

9 Objectives of Public Trust

In fulfilling its functions, Public Trust is to have the principal objective of operating as an effective business, and, to this end,—

- (a) being as efficient as comparable businesses that are not owned by the Crown; and
- (b) prudently managing its assets and liabilities; and
- (c) maintaining financial viability in the long-term; and
- (d) being a good employer; and
- (e) being an organisation that exhibits a sense of social responsibility by having regard to the interests of the communities in which it operates.

10 Independence of Public Trust in its fiduciary functions

Despite anything in this Act or the Crown Entities Act 2004, in managing and administering estates, and in fulfilling any other fiduciary obligations, Public Trust is to act in an independent manner free from any direction or other instruction from the Crown.

Section 10: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

11 Powers

- (1) *[Repealed]*
- (2) Public Trust may exercise its capacity or any of its rights, powers, and privileges for the purpose of—
 - (a) *[Repealed]*
 - (b) entering into any financial transaction or financial obligation intended to—
 - (i) avoid or lessen any present or possible future risk to Public Trust's current or future income or assets; or
 - (ii) lessen any liability of Public Trust; or
 - (iii) avoid or lessen any possible future liability of Public Trust; or
 - (iv) maximise Public Trust's current or future income (whether net or gross).
- (3) Subsection (2) does not limit sections 16 and 17 of the Crown Entities Act 2004.

Section 11(1): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 11(2): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 11(2)(a): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 11(3): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

12 Method of contracting

(1) A contract or other enforceable obligation may be entered into by Public Trust as provided in section 127 of the Crown Entities Act 2004.

(2) *[Repealed]*

(3) *[Repealed]*

(4) *[Repealed]*

(5) *[Repealed]*

Section 12(1): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 12(2): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 12(3): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 12(4): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 12(5): repealed, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

13 Application of Public Finance Act 1989

(1) *[Repealed]*

(2) For the purposes of the Public Finance Act 1989 and the Crown Entities Act 2004, every reference to the Responsible Minister is to be read as a reference to the Minister acting with the agreement of the Minister of Finance.

(3) *[Repealed]*

Section 13 heading: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 13(1): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 13(2): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 13(3): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Board of Public Trust

14 Board of Public Trust

The board of the Public Trust must have no less than 5, and no more than 9, members.

Section 14: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

15 Board's management duty

[Repealed]

Section 15: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

16 Board's powers

[Repealed]

Section 16: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

17 Board may appoint committees

[Repealed]

Section 17: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Delegations by board

18 Delegations generally

Sections 73(3) and 97(g) of the Crown Entities Act 2004 (which limit a Crown entity's ability to delegate statutorily independent functions to a Crown entity subsidiary) do not apply to Public Trust.

Section 18: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

19 Delegation of powers to make affidavits, etc

The powers of delegation conferred by section 73 of the Crown Entities Act 2004 include power to authorise any delegate to—

- (a) make an affidavit, oath, or declaration required to be made by Public Trust under any rules of court or otherwise:
- (b) sign any document to be filed in any court, including any election to administer or any memorandum under Part 6:
- (c) verify any account:
- (d) personally attend in any court.

Compare: 1957 No 36 s 11(8)

Section 19: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

20 Certain powers not to be delegated

Despite section 73 of the Crown Entities Act 2004, the board must not delegate any of the following powers:

- (a) *[Repealed]*
- (b) the power to acquire or dispose of real property (otherwise than in relation to an estate):
- (c) the power to form and register a subsidiary (otherwise than in relation to an estate):
- (d) the power to borrow money (otherwise than in relation to an estate):
- (e) the power to appoint a chief executive.

Section 20: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 20(a): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

21 Effect of delegation

[Repealed]

Section 21: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

22 Presumption of acting in accordance with delegation

[Repealed]

Section 22: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

23 Other matters relating to delegation

[Repealed]

Section 23: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

24 Execution of documents

[Repealed]

Section 24: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

25 Presumption of authority to execute document

[Repealed]

Section 25: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

*Chief executive of Public Trust***26 Chief executive**

- (1) The board must appoint a chief executive.

(2) The chief executive must not be a member of the board.

(3) *[Repealed]*

Section 26(3): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

27 Terms and conditions of employment of chief executive

[Repealed]

Section 27: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

28 Delegations by chief executive

[Repealed]

Section 28: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Employees of Public Trust

[Repealed]

Heading: repealed, on 25 January 2005, pursuant to section 200 of the Crown Entities Act 2004 (2004 No 115).

29 Personnel policy

[Repealed]

Section 29: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

30 Equal employment opportunities programme

[Repealed]

Section 30: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

31 Appointment of employees of Public Trust

[Repealed]

Section 31: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

32 Establishment of superannuation schemes

[Repealed]

Section 32: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

33 Employees not in service of the Crown

[Repealed]

Section 33: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

*Declaration of fidelity and secrecy***34 Declaration of fidelity and secrecy**

Every member of the board of Public Trust, every member of a committee, and every employee of Public Trust must—

- (a) maintain and aid in maintaining the secrecy of all matters coming to his or her knowledge about the affairs of any estate under administration in Public Trust, or the affairs of any person concerned in such an estate, except—
 - (i) as may be authorised by law; or
 - (ii) for the purpose of assisting to carry out the powers and functions of Public Trust, and the member's or employee's own proper duties:
- (b) make and subscribe the prescribed declaration of fidelity and secrecy.

Compare: 1957 No 36 s 17

Section 34: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Part 3 Financial provisions

*General provisions***35 Funds of Public Trust**

The funds of Public Trust consist of—

- (a) all money appropriated by Parliament and paid to Public Trust; and
- (b) all other money lawfully received by Public Trust for its purposes (not being money received or held by Public Trust in its fiduciary capacity); and
- (c) all accumulations of income derived from the money referred to in paragraphs (a) and (b).

36 Public Trust bank accounts

- (1) Section 158 of the Crown Entities Act 2004 applies to the Public Trust only in respect of its funds under section 35.
- (2) In addition to any bank account opened under section 158 of the Crown Entities Act 2004, the Public Trust may establish, maintain, and operate in connection with any estate a separate bank account (including an overseas bank account) in the name of—
 - (a) Public Trust; or
 - (b) the estate; or

- (c) any beneficiary or beneficiaries of the estate.
- (2A) For the avoidance of doubt, section 158 of the Crown Entities Act 2004 does not apply to an account opened, maintained, or operated under subsection (2).
- (3) All money received by Public Trust, or for Public Trust by any member or by any employee of Public Trust, must be paid, as Public Trust determines, into a bank account opened, maintained and operated under section 158(1) of the Crown Entities Act 2004 or subsection (2).
- (3A) Subsection (3) applies despite section 158 of the Crown Entities Act 2004.
- (4) Public Trust must authorise the manner in which money is withdrawn or paid from any bank account opened, maintained, or operated under subsection (2).
Section 36(1): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).
Section 36(2): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).
Section 36(2A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).
Section 36(3): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).
Section 36(3A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).
Section 36(4): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

37 Investment of funds

Any funds of Public Trust not immediately required must be invested in 1 or more of the forms of investment provided for in section 47 as if they were funds belonging to an estate.

38 Public Trust not to borrow without consent of Minister of Finance

- (1) Public Trust may not borrow or contract to borrow any money, or renew any loan made to Public Trust, without the prior written consent of the Minister of Finance.
- (2) Nothing in this section applies to—
 - (a) a transaction of the kind referred to in subsection (1) undertaken or to be undertaken by Public Trust in relation to an estate; or
 - (b) the investment of money in the common fund under Part 4.
- (3) This section applies despite section 17 of the Crown Entities Act 2004.
Section 38(1): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).
Section 38(3): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

39 Audit Office to be auditor of Public Trust

[Repealed]

Section 39: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

40 Annual report

[Repealed]

Section 40: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Public Trust and the Crown

41 Ownership interest of the Crown

- (1) For the avoidance of doubt, it is declared that Public Trust is owned by the Crown.
- (2) If at any time Public Trust is liquidated, the Crown is entitled to receive the net assets available in the liquidation.

42 Deficiency payable out of Crown Bank Account

- (1) If at any time the funds of Public Trust are insufficient to meet its liabilities and commitments, the Minister of Finance may, without further appropriation than this section, advance out of a Crown Bank Account such sums as are necessary to meet those liabilities and commitments.
- (2) Advances under subsection (1) must be repaid as soon as the funds of Public Trust are sufficient for the repayment.

Section 42(1): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

43 Distributions to the Crown

- (1) In any financial year in which Public Trust makes a profit, it may, and if so directed by the Minister of Finance must, distribute to the Crown an amount equal to the whole or any part of that profit.
- (2) If the Minister of Finance is satisfied after consulting the board that any part of the funds of Public Trust is surplus to its present or reasonably foreseeable needs, the Minister may—
 - (a) direct that an amount equal to that part of those funds be distributed to the Crown; and
 - (b) the board must comply with that direction.
- (3) The Minister of Finance must obtain the agreement of the Minister before giving a direction under subsection (1) or subsection (2).

44 Payment by the Crown for non-commercial activities

- (1) If, in respect of any financial year the Minister requests Public Trust to provide goods or services to any person, the Minister must enter into an agreement with Public Trust specifying the terms and conditions, including any payment to Public Trust by the Crown, on which those goods and services are to be provided.
- (2) The Minister may not enter into an agreement under subsection (1) without the agreement of the Minister of Finance.
- (3) Payments by the Crown to Public Trust pursuant to an agreement under subsection (1) must be made out of money appropriated by Parliament for the purpose.
- (4) Public Trust may include an agreement under subsection (1) in a statement of performance expectations prepared for the purpose of section 149C of the Crown Entities Act 2004.

Section 44(4): replaced, on 1 July 2014, by section 72 of the Crown Entities Amendment Act 2013 (2013 No 51).

45 Power to request information

[Repealed]

Section 45: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

46 Refusal of request to supply information

- (1) A request for information must be refused if the information is held by Public Trust in a fiduciary capacity.
- (2) Subsection (1) does not limit section 134 of the Crown Entities Act 2004.
- (3) Subsection (1) applies despite any other enactment or law.

Section 46: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**Part 4
Investments**

47 Investments generally

Public Trust is to invest all capital money and estate money held by it in 1 or more of the following forms of investment in accordance with this Part:

- (a) the common fund of Public Trust, as provided in section 48:
- (b) separate investments on account of the estate, as provided in section 59:
- (c) special investments on account of the estate, as provided in section 60:
- (d) a group investment fund established by Public Trust, as provided in section 61.

*Common fund of Public Trust***48 Common fund**

- (1) All amounts of capital money held by Public Trust, whether directed to be invested or not, are to constitute one common fund, except to the extent that—
 - (a) their investment in the common fund is expressly forbidden; or
 - (b) Public Trust, in its discretion, determines to invest an amount—
 - (i) on separate account of an estate in accordance with section 59; or
 - (ii) in a group investment fund in accordance with section 61; or
 - (c) Public Trust places or retains an amount in a separate bank account operated in connection with an estate in accordance with section 36(2).
- (2) The common fund is to be invested in the manner provided by section 49.
- (3) Investments made from the common fund are not made on account of, and do not belong to, any particular estate.
- (4) For the purposes of subsection (1)(a), a power or direction to invest money in 1 or some only of any specified investments or classes of investments is not to be treated as an express prohibition against investment in the common fund, unless there is an express direction to the contrary.
- (5) Nothing in this section prevents Public Trust from applying money belonging to an estate constituting part of the common fund for any purpose involved in the exercise of any power or authority conferred on Public Trust by or under—
 - (a) this or any other enactment; or
 - (b) any will, deed, court order, or other instrument.

Compare: 1957 No 36 ss 20, 30(1), (2), (3)

49 Investment of common fund

Money in the common fund must be invested in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds, except as otherwise provided by this Act.

Compare: 1957 No 36 s 32(1), (4)

50 Interest payable to estates in common fund

- (1) The interest payable to estates whose money constitutes the common fund is to be paid at a rate and at intervals determined by Public Trust and notified in the *Gazette*.
- (2) Public Trust may fix and notify different rates and intervals with respect to different classes of deposit, whether according to the type of estate making the deposit or the amount or period of the deposit.
- (3) In any particular case or class of case, Public Trust may nevertheless pay the interest at such intervals different from those specified in the notice as may be

necessary or appropriate in the interests of administrative convenience or for other good reason.

- (4) Public Trust may also determine and notify in the *Gazette*—
 - (a) types of deposit that do not carry interest;
 - (b) the dates or times, or criteria for determining the dates or times, when interest starts or stops.
- (5) The notification of any interest rate or other matter in the *Gazette* under this section must be made not later than 7 working days after the date on which the determination takes effect.

Compare: 1957 No 36 ss 30(4), (5), 37(2), (3)

51 Public Trust acting under section 75 as agent to invest in common fund

- (1) The power given to Public Trust by section 75 to act as agent is to be treated as including the power to act as agent for the investment of money in the common fund.
- (2) Any such investment is to be for such period and on such terms and conditions as are agreed on between Public Trust and the principal.
- (3) Despite anything in section 50, Public Trust and the principal may agree on a rate of interest, and the intervals at which interest is payable, different from any rate or interval fixed or notified under that section; and the agreed rate and intervals then apply.

Compare: 1957 No 36 s 37(1)

52 Deficiency in common fund to be made good out of public money

- (1) If the common fund is insufficient to meet the lawful claims on it, the Minister of Finance must, without further appropriation than this section, pay out of a Crown Bank Account such amounts as may be necessary to meet the deficiency.
- (2) All money paid by the Minister of Finance under the authority of this section constitutes a debt due by Public Trust to the Crown, and is recoverable accordingly.

Compare: 1957 No 36 s 36

Section 52(1): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

53 Power to deal with land investments

All land that constitutes an investment of the common fund, together with its buildings and improvements, may be managed, leased, let, mortgaged, exchanged, sold, or otherwise dealt with or disposed of by Public Trust as it thinks fit.

Compare: 1957 No 36 s 32(4)

54 Public Trust may apply common fund money for purpose of buying in securities

- (1) If any power of sale conferred upon Public Trust as mortgagee or lender in respect of any mortgage or other security securing common fund money is exercised or becomes exercisable, Public Trust may—
 - (a) buy in, purchase, or otherwise acquire the land or other property affected by the mortgage or security, whether on a sale through the Registrar of the High Court or otherwise; and
 - (b) expend or apply money of the common fund for that purpose.
- (2) Any land or property so acquired—
 - (a) may be managed, stocked, cultivated, leased, exchanged, sold, or otherwise disposed of by Public Trust as it thinks fit; and
 - (b) until sold, realised, or otherwise disposed of, constitutes an investment of the common fund for the purpose of securing repayment of the common fund money expended or applied for its acquisition.

Compare: 1957 No 36 s 34

55 Extensions or renewals of common fund investments

- (1) Where Public Trust is the mortgagee or lender in the case of a mortgage or other security that secures common fund money, Public Trust may at any time arrange with the mortgagor or borrower for an extension or renewal of the mortgage or security.
- (2) The extension or renewal may be for such term and subject to such conditions and at such rate of interest (whether higher or lower than that previously payable) as Public Trust thinks fit, even though—
 - (a) a higher rate of interest might be obtainable for a new loan; or
 - (b) by reason of any decrease in the value of the property concerned, or for any other reason, the extension or renewal is not an investment that Public Trust could properly make in respect of common fund money.

Compare: 1957 No 36 s 42

56 Advances to estates from common fund

- (1) Public Trust may advance to an estate administered by it such sums out of the common fund as may be necessary to meet payment of the following amounts, if there is insufficient money available in the estate for the purpose:
 - (a) expenses properly incurred by Public Trust in the administration of the estate:
 - (b) money required or desired to be paid out of or on account of the estate, whether to persons entitled to the estate or any share or interest in it, or to creditors or otherwise:

- (c) money required or needed to carry into full effect any power or discretion vested in Public Trust, by this Act or otherwise, that Public Trust is required or has decided to exercise.
- (2) The total of all such advances to an estate may not exceed the value of the real and personal property in the estate, as estimated by Public Trust.
- (3) The sums advanced bear interest at a rate fixed from time to time by Public Trust.
- (4) The sums advanced, and any interest payable on those sums, constitutes a charge on the real and personal property comprised in the estate. The charge ranks next in priority to any mortgage or charge registered against or secured on the property that Public Trust has notice of at the time of making the advance.
- (5) Public Trust may also under subsection (1) make advances from the common fund to an estate managed or controlled by it as agent or attorney, and this section applies accordingly, except that the charge under subsection (4) is upon the following property without need to execute any mortgage, charge, or assignment:
 - (a) if the power of attorney or other instruction of the person creating the agency is restricted to apply only to certain real and personal property of the person, upon all the property of the person to which the power of attorney or other instruction can relate, and the proceeds of the property:
 - (b) if the power of attorney or other instruction is not so restricted, upon the whole of the persons real and personal property, and the proceeds of the property.

Compare: 1957 No 36 s 39

57 Advances to beneficiaries from common fund

- (1) Public Trust may make advances out of the common fund to a person entitled to a share in an estate administered by Public Trust if—
 - (a) the person so requests; and
 - (b) the share is indefeasibly vested in interest and is not subject to any contingency.
- (2) The advances may not exceed two-thirds of the value of the share as estimated by Public Trust.
- (3) The sums advanced bear interest at a rate fixed from time to time by Public Trust.
- (4) Where an advance is made to a person under this section,—
 - (a) the money advanced and any interest payable on that money is, by force of this Act and without any instrument of assignment, to be treated as a first charge on the share against which the advance is made; and

- (b) the money advanced, together with all interest, costs, charges, and expenses due in relation to the advance, is, in the absence of express agreement, repayable on demand, and may be recovered from the person in any court of competent jurisdiction; and
 - (c) Public Trust may at any time, without notice, sell, mortgage, charge, or otherwise deal with the share against which the advances are made, for the purpose of obtaining repayment of the money advanced and all associated interest, costs, charges, and expenses that have accrued.
- (5) If a person is beneficially entitled to a share in more than 1 estate administered by Public Trust, Public Trust may exercise the powers conferred by subsection (4)(b) in respect of the person's share or interest in all or any of the estates.
- (6) A certificate by Public Trust as to the following matters is sufficient evidence of the facts stated until the contrary is proved:
- (a) the person to whom the advances were made under this section:
 - (b) the amount owing for advances and interest on any specified date:
 - (c) the share against which the advances were made.

Compare: 1957 No 36 s 40

58 Person acting jointly with Public Trust

Nothing in this Act confers on any person acting jointly with Public Trust any right, power, or authority over or in respect of the management, administration, control, or investment of the common fund.

Compare: 1957 No 36 s 30(1A)

Investments otherwise than in common fund

59 Separate investments of estate money

- (1) Public Trust may, at its discretion, separately invest any estate money on account of the estate in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds, rather than including it in the common fund.
- (2) Subsection (1) does not authorise an investment if the making of that investment, or an investment of that class, is expressly forbidden by—
- (a) the instrument creating the trust; or
 - (b) the authority of Public Trust to administer, hold, or control the estate.
- (3) If Public Trust is acting as a co-trustee, the exercise of its discretion under subsection (1) is subject to the consent of every other co-trustee of the estate who, at the time the investment is made,—
- (a) is acting in the trusts of that estate; and
 - (b) is neither subject to a property order made under section 30 or 31 of the Protection of Personal and Property Rights Act 1988 nor a person for

whom a trustee corporation is acting as manager under section 32 or 33 of that Act.

- (4) Amounts invested under this section are not part of the common fund, but nothing in this section prevents them from being reinvested in the common fund at a later time.

Compare: 1957 No 36 s 30A(1), (2), (4)

Section 59(3)(b): substituted, on 10 September 2008, by section 14(2) of the Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 (2008 No 64).

60 Special investments

- (1) This section applies to money that is available for investment but, by virtue of an express prohibition, may not form part of the common fund.
- (2) Public Trust must invest such money—
- (a) in accordance with any powers or directions as to its investment contained in the instrument (if any) governing the trust; or
 - (b) to the extent that they are applicable, in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds.
- (3) Immediately upon receipt of such money, Public Trust must make all reasonable efforts to invest it in accordance with subsection (2).
- (4) If the whole of the money cannot be so invested within 1 calendar month of its receipt, then, despite subsection (2) and the express prohibition, Public Trust may temporarily place the money in the common fund pending its investment elsewhere.

Compare: 1957 No 36 s 31(1), (3), (4)

61 Investments in group investment funds

- (1) Public Trust may, in its discretion, invest money of the following kinds in a group investment fund established by it under this Part (or under Part 2A of the Public Trust Office Act 1957):
- (a) where authorised by the power of attorney or other written authority by which it is appointed as agent by any person, money held by Public Trust for that person:
 - (b) money of any other estate in Public Trust's possession that is available for investment (whether or not the estate is administered by Public Trust), if—
 - (i) the money is not directed to be invested in some other specified manner; and
 - (ii) investment in a group investment fund is not inconsistent with the terms of the trust instrument or other authority governing the money.

- (2) If money of the kinds referred to in subsection (1) is lawfully invested in an investment in which a group investment fund may be invested, Public Trust may—
- (a) transfer the investment to the group investment fund; and
 - (b) give credit in the group investment fund to the estate for the fair market value of the investment at the time of the transfer.
- On any investment being so transferred, it ceases to belong to the estate that formerly owned it.
- (3) Public Trust may in its discretion withdraw any amount for the time being to the credit of an estate in a group investment fund—
- (a) for the purpose of investing the amount on the separate account of the estate, or in another group investment fund, or in the common fund; or
 - (b) for any other purpose relating to the exercise and discharge of its duties, powers, authorities, and functions.
- (4) If Public Trust is acting as a co-trustee in any case, the exercise of its discretion under subsection (1) or subsection (3) is subject to the consent of every other co-trustee of the estate who, at the time the investment is made,—
- (a) is acting in the trusts of that estate; and
 - (b) is neither subject to a property order made under section 30 or 31 of the Protection of Personal and Property Rights Act 1988 nor a person for whom a trustee corporation is acting as manager under section 32 or 33 of that Act.

Compare: 1957 No 36 s 42A(3), (4), (5), (6), (8)

Section 61(4)(b): substituted, on 10 September 2008, by section 14(3) of the Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 (2008 No 64).

62 Investments outside common fund not guaranteed

- (1) Investments made under any of sections 59 to 61 are not entitled to the protection afforded by section 52 to investments of the common fund (except to the extent they are temporarily placed in the common fund under section 60(4)).
- (2) Any loss or deficiency in relation to those investments is to be borne by the estate to which the investments, or money received from or arising from a realisation of the investments, belong or would belong if received or realised.

Group investment funds

63 Public Trust may establish group investment funds

- (1) Public Trust may establish and keep 1 or more group investment funds.
- (2) Group investment funds are to be kept separately from the common fund.

- (3) Each group investment fund must be given an appropriate distinguishing name or number.

Compare: 1957 No 36 s 42A(1)

64 Investment of group investment funds

- (1) The funds of a group investment fund must be invested, as determined by Public Trust at the time the fund is established,—
- (a) in any class or classes of investments authorised by the instrument (if any) creating the trust under which the money is held (whether or not those investments meet the requirements of the Trustee Act 1956 as to the investment of trust funds); or
- (b) in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds.
- (2) Any profit or loss upon the realisation of any investment in a group investment fund is to be credited or debited to the group investment fund.
- (3) Investments from a group investment fund are not to be made on account of or belong to any particular estate, but Public Trust must keep an account showing at all times the entitlement of each estate in the fund.

Compare: 1957 No 36 s 42A(2), (7), (10)

65 Income and capital of group investment fund

Public Trust must, in respect of every group investment fund,—

- (a) pay or allocate the income from that fund proportionately to or among the estates entitled to the amounts invested in the fund according to the amounts of their several interests in the fund and the period for which they remain invested in the fund:
- (b) hold the capital of the fund proportionately for the estates entitled to the amounts invested in the fund according to the amounts of their several interests in the fund.

Compare: 1957 No 36 s 42B

66 Periodic capital valuation of investments of fund

- (1) At least once in every month Public Trust must determine the capital value of the investments and funds comprising each group investment fund.
- (2) For the purposes of any such determination, Public Trust may accept as conclusive evidence of the value of any security listed on a stock exchange—
- (a) a quotation published in respect of similar securities by a stock exchange—
- (i) on the day the determination is made; or
- (ii) if there is no such quotation on that day, at any time in the preceding 7 days; or

- (b) the market value of the security at the day of the determination as determined by a person authorised to undertake trading activities on the stock exchange.
- (3) In the case of securities valued under subsection (2)(a) that have a fixed or optional maturity date and a fixed annual interest or dividend payment, Public Trust must determine the capital value of the security by making such adjustment as it thinks proper in respect of accrued interest.
- (4) Subsection (1) is subject to section 67, in a case where a group investment fund's investments consist principally of investments in real property.
- (5) In this section, **stock exchange** has the same meaning as in section 2(1) of the Companies Act 1993.

Compare: 1957 No 36 s 42C(1), (2), (5)

Section 66(2)(b): amended, on 1 December 2002, by section 30 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 66(5): inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

67 Capital valuation of fund comprising investments in real estate

- (1) Where the investments comprising a group investment fund consist principally of investments in real property, Public Trust must determine at intervals not exceeding 6 months the capital value of the investments and funds of that fund.
- (2) Where reasonable grounds exist for believing that the capital value of any investment in the fund has or may have altered significantly, Public Trust must forthwith determine the capital value of that investment and redetermine the capital value of the fund accordingly.

Compare: 1957 No 36 s 42CA(1), (2)

68 Timing of investments and withdrawals

- (1) An investment in or withdrawal from a group investment fund may be made only—
 - (a) on a date at which the capital value of the investments and funds of the fund is determined under section 66 or section 67, or within 2 working days after such a determination date; and
 - (b) on the basis of the valuation made as at that determination date.
- (2) On a withdrawal from a group investment fund, income is to be allowed in accordance with section 65(a) to the determination date by reference to which the withdrawal is made.

Compare: 1957 No 36 ss 42C(3), (4), 42CA(3), (4)

69 Withdrawal of amounts from fund

If an amount is withdrawn from a group investment fund,—

- (a) that amount may, in the discretion of Public Trust, be paid or provided in cash or rateably in investments, or partly in cash and partly rateably in investments; and
- (b) as from the date of its withdrawal, no person has any claim on the fund in respect of the amount, whether for interest or otherwise.

Compare: 1957 No 36 s 42A(9)

70 Reimbursement of expenses

- (1) Public Trust may reimburse itself out of a group investment fund for all reasonable expenses incurred by it in the management or administration of the fund.
- (2) Public Trust must make such initial disclosure and ongoing disclosure of any reimbursement of expenses as is prescribed by regulations made under this Act.

Compare: 1957 No 36 s 42D(a)

71 Management fees

- (1) Subject to subsection (2), Public Trust may charge, demand, receive, or retain a reasonable fee or other remuneration for services rendered by it in the management or administration of a group investment fund (a **management fee**).
- (2) Public Trust may charge, demand, receive, or retain a management fee in respect of any estate money invested in a group investment fund only if—
 - (a) it makes initial disclosure to persons with a present interest in that money in accordance with regulations made under this Act; or
 - (b) regulations made under this Act dispense with the requirement for initial disclosure; or
 - (ba) a product disclosure statement in relation to the investment of that money in the fund has been lodged in accordance with the requirements of Part 3 of the Financial Markets Conduct Act 2013 and regulations made under that Act; or
 - (c) an investment statement in relation to the investment of that money in the fund has been issued in accordance with the requirements of sections 33 and 37A of the Securities Act 1978 and regulations made under that Act.
- (3) Public Trust must make ongoing disclosure of any management fee charged or retained in accordance with regulations made under this Act.
- (4) The ongoing disclosure must be made at the time of the issue by Public Trust of the financial statements of the estate in question, or at such other time as may be prescribed by regulations.

Compare: 1957 No 36 s 42D

Section 71(2)(ba): inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

72 Powers of Public Trust in respect of group investment funds

Except as otherwise provided in section 61 and sections 63 to 70, Public Trust may exercise, in respect of the investments and funds comprising a group investment fund,—

- (a) all the powers that it could exercise if the investments and funds were not part of a group investment fund; and
- (b) any further powers that may be conferred on Public Trust by a court, being powers that could be conferred on Public Trust by a court if the investments and funds were not part of a group investment fund.

Compare: 1957 No 36 s 42E

72B Powers to adjust interest in trust property of fund that is portfolio investment entity

Where any investments and funds comprising a group investment fund are employed in an activity that Public Trust is empowered or authorised to carry on as a portfolio investment entity, Public Trust may adjust the interests of the beneficiaries in the investments and funds in the way required by section HL 7 of the Income Tax Act 2004 despite any other provision in this Act.

Section 72B: inserted, on 1 October 2007, by section 230 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

72C Public Trust may not make regulated offer of managed investment products in certain group investment funds

- (1) Public Trust may not make a regulated offer of managed investment products in a group investment fund established by it under this Part if the fund was established after the date on which this section comes into force.
- (2) Nothing in subsection (1) affects the rights, powers, and duties of Public Trust under sections 61 to 72B.
- (3) In this section, **regulated offer** and **managed investment products** have the same meanings as in section 6(1) of the Financial Markets Conduct Act 2013.

Section 72C: inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

73 Examination of group investment funds

Section 83A of the Trustee Act 1956 applies in respect of the examination of a group investment fund as if it were an estate, except that—

- (a) an examination made under that section is to be restricted to an examination of—
 - (i) the investments and funds comprising the group investment fund; and
 - (ii) the income of the fund; and
 - (iii) the expenses and management fees payable out of the fund; and

- (iv) the proportion to which the person who required the examination, or the estate in which the person is a beneficiary, is entitled; and
- (b) access to Public Trust's accounts, books, and vouchers is restricted accordingly.

Compare: 1957 No 36 s 42F

74 Duties, etc, of Public Trust not affected by sections 63 to 73

Except as otherwise expressly provided in sections 63 to 73, nothing in those sections affects the rights, powers, and duties of Public Trust.

Compare: 1957 No 36 s 42G

Part 5

Acquisition of right to administer estates

75 Duties for which Public Trust may be appointed

- (1) A person or entity may appoint Public Trust for the purpose in any situation where the person or entity can—
 - (a) appoint an executor, administrator, trustee, guardian, committee, manager, agent, attorney, or liquidator, or make any other appointment of a fiduciary nature; or
 - (b) create a trust and appoint a trustee for the purposes of the trust.
- (2) Without limiting the generality of subsection (1), Public Trust may, if it consents, be appointed—
 - (a) to be a guardian of an infant under any law relating to the guardianship and custody of infants, whether by deed or will or by an order of a court made on the application of Public Trust or another person:
 - (b) as next friend or as guardian *ad litem* of an infant, by order of a court:
 - (c) to act as agent for the purpose of resealing in New Zealand any probate or letters of administration (within the meaning of Part 2 of the Administration Act 1969) granted outside New Zealand:
 - (d) as a receiver, whether under the Receiverships Act 1993 or any other Act or instrument providing for the appointment of a receiver, or in the exercise of a general jurisdiction of a court:
 - (e) as arbitrator for any dispute to which the Arbitration Act 1996 applies:
 - (f) to represent any party in any proceedings, or any person or class of persons interested in the proceedings, on the appointment or direction of a court.
- (3) An appointment of a kind referred to in this section may be made of Public Trust either—
 - (a) alone; or

- (b) jointly with another person, if Public Trust consents.
- (4) If Public Trust is acting jointly, sections 5 and 90 apply.
- (5) For the purposes of subsection (1), **person or entity** includes the Crown, the Governor-General in Council, the Governor-General, and any court, Judge, public officer, public or private corporation or association, or person, whether in or out of New Zealand.

Compare: 1957 No 36 ss 43(1), 54, 55, 56(1), 57(1)

76 Appointment of Public Trust by executors, administrators, and trustees

- (1) An executor may, with the consent of the High Court, and if not expressly prohibited,—
 - (a) appoint Public Trust as sole executor; or
 - (b) appoint as co-executors Public Trust and any other person or persons (whether or not including the executor making the appointment).

Such an appointment may be made either before or after taking out probate.

- (2) Any other administrator under a grant of administration with or without a will annexed may, with the consent of the High Court, and if not expressly prohibited,—
 - (a) appoint Public Trust as sole administrator; or
 - (b) appoint as co-administrators Public Trust and any other person or persons (whether or not including the person making the appointment).
- (3) An appointment under subsection (1) or subsection (2) is subject to the approval of the appointee or appointees.
- (4) Where an appointment is made under subsection (1) or subsection (2) by an executor or by an administrator with a will annexed, Public Trust and any other person appointed are also, by virtue of the appointment, the sole trustee or co-trustees (as appropriate) in all cases where—
 - (a) the executor or administrator was trustee; or
 - (b) there was no trustee appointed by the trust instrument; or
 - (c) there was no trustee in existence at the date of the appointment under this section.
- (5) In any case where there is more than 1 executor, administrator, trustee, or person having power to appoint a trustee, any one of those persons may, with the consent of the proposed appointee or appointees, apply to the High Court—
 - (a) to have Public Trust appointed as sole executor, administrator, or trustee; or
 - (b) to have appointed as co-executors, co-administrators, or co-trustees both Public Trust and any other person or persons (whether or not including all or any of the executors, administrators, trustees, or persons having power to appoint a trustee).

- (6) The High Court may make any order it thinks fit on an application under subsection (5).

Compare: 1957 No 36 s 44

77 Public Trust entitled on application to administration of intestate estates

- (1) Public Trust may, if it thinks fit, apply to obtain a grant of administration of the estate of a person who, wherever domiciled,—
- (a) dies intestate, whether in New Zealand or elsewhere; and
 - (b) leaves property situated in New Zealand.
- (2) Public Trust is then entitled as of right to the grant of administration, unless—
- (a) the grant of administration is applied for by some other person in New Zealand who would be entitled to the grant of administration were it not for this section; and
 - (b) the court grants administration to that person.
- (3) Public Trust need not give notice of an application under subsection (1) to a person who would otherwise be entitled to the grant of administration, and the court may not require Public Trust to do so.

Compare: 1957 No 36 s 45

78 Public Trust may be appointed sole trustee where appointment of 2 or more trustees provided for

- (1) Unless expressly prohibited, Public Trust may be appointed, and may accordingly act, as sole trustee under any will, codicil, deed, or other instrument, even where the will, codicil, deed, or other instrument provides for or directs the appointment of 2 or more trustees.
- (2) Such an appointment of Public Trust may be made by the trustees appointed under the will, codicil, deed, or other instrument, or by any other person having power to appoint new trustees, without obtaining the consent of the High Court.
- (3) In this section, **trustees** does not include personal representatives as such.

Compare: 1957 No 36 s 46

79 Judge may consent to Public Trust's appointment if person whose consent required refuses or unable to consent

If the consent of any person is required for the appointment of an administrator or other trustee, Public Trust may nevertheless be appointed without that consent, but instead with the consent of a Judge of the High Court, in any case where the person whose consent is required—

- (a) refuses to consent; or
- (b) is absent from New Zealand; or

- (c) is not of full age or is incapable of consenting to the appointment of an administrator or other trustee.

Compare: 1957 No 36 s 47

80 Power of Public Trust to administer if no application for probate or administration

- (1) Public Trust may apply for an order to administer with the will annexed in any case where—
 - (a) a person dies testate; and
 - (b) application for probate or letters of administration with the will annexed is not made in New Zealand within 3 months after the date of the person's death.
- (2) The court must make the grant applied for, unless the person entitled to probate or letters of administration with the will annexed either—
 - (a) applies for probate or letters of administration with the will annexed; or
 - (b) satisfies the court that the delay in making the application has been and still is unavoidable or accidental.
- (3) The court may nevertheless, on application of the person or his or her attorney, grant probate or letters of administration to—
 - (a) a person entitled to probate or letters of administration with the will annexed who—
 - (i) was out of New Zealand when the grant to Public Trust was made; and
 - (ii) has not renounced or refused probate or letters of administration; or
 - (b) the attorney of such a person.

The grant may be in such manner and subject to such limitations or conditions as the court thinks proper.

- (4) An application under subsection (3) may be made only if at least 14 days' notice in writing of the intention to apply has been left at the office of Public Trust at Wellington.
- (5) Immediately on the grant to a person of any probate or letters of administration under subsection (3),—
 - (a) all the functions, powers, authorities, discretions, rights, and duties of Public Trust in relation to the testator's estate (except the rights reserved by this subsection) pass to the person; and
 - (b) all liability of Public Trust under any contract entered into by it, or otherwise, affecting or relating to the estate, passes to the person, and no claim then lies against Public Trust in respect of that liability; and

- (c) so much of the estate as is then unadministered by Public Trust vests in the person, once Public Trust has been allowed or paid—
 - (i) all money due for commission or other remuneration, necessary outlay, disbursements, costs, charges, and expenses affecting the estate; and
 - (ii) Public Trust's costs of and incidental to the application for probate or letters of administration.
- (6) No costs may be awarded against Public Trust on an application under subsection (1).

Compare: 1957 No 36 s 51

81 Trustees may delegate powers to Public Trust

- (1) Trustees of a trust estate who are empowered to delegate all or any of their functions, powers, authorities, discretions, and rights to any person may delegate them to Public Trust, if Public Trust consents.
- (2) Public Trust may then exercise all the functions, powers, authorities, discretions, and rights that were delegated.

Compare: 1957 No 36 s 60(1)

82 Powers and authorities exercisable by Public Trust pending grant of probate or administration

- (1) Where a person has died, Public Trust may if it thinks fit, until administration is granted, exercise with respect to the estate of the deceased person all the powers and authorities, and do all the acts and things, that it could exercise or do if—
 - (a) the person had died intestate; and
 - (b) Public Trust had obtained administration.

Before Public Trust so acts, however, it must give notice in accordance with section 83.

- (2) Subsection (1) applies—
 - (a) whether the person died testate or intestate; and
 - (b) even if some person other than Public Trust is appointed executor or is entitled to letters of administration.
- (3) Subsection (1) does not authorise Public Trust to sell, lease, exchange, mortgage, or partition any portion of the property (other than property to which subsection (4) applies) unless, on application of Public Trust, a Judge of the High Court makes an order under this section authorising the relevant action.
- (4) Public Trust may nevertheless sell, without obtaining such an order, any portion of the personal estate that is—
 - (a) of a perishable nature; or

- (b) liable to deteriorate; or
- (c) for any other reason liable to decrease unduly in value if retained.

The decision of Public Trust as to whether any portion of the personal estate is of such a nature is conclusive and binding on all persons.

- (5) All costs, charges, and expenses incurred by Public Trust under this section are a first charge on the property of the deceased person.
- (6) A person who afterwards applies for administration of the estate of the deceased person must first pay any costs, charges, commissions, and expenses incurred by or payable to Public Trust before administration can be granted.
- (7) In acting under this section, Public Trust is not to be treated, and is not liable, as an executor *de son tort*.

Compare: 1957 No 36 s 61

83 Notice of exercise of powers and authorities under section 82 to person entitled to probate or administration

- (1) Before acting under section 82, Public Trust must give notice in writing of its intention to act under that section, unless the person immediately proceeds to apply for administration, to any person of full age who is capable of obtaining administration and who is known by Public Trust to be entitled to obtain administration.
- (2) Public Trust may then proceed to exercise all or any of its powers and authorities under section 82 only if—
 - (a) the person does not, within 21 days after the notice was posted or otherwise sent, give notice in writing to Public Trust at its Wellington office that the person intends to apply for administration; or
 - (b) the person gives such notice, but then either—
 - (i) fails to apply for administration within the 14 days following the giving of the notice; or
 - (ii) makes the application within 14 days, but the application fails.
- (3) If more than 1 person is entitled to take out administration, it is sufficient for Public Trust to give notice to 1 of those persons only.
- (4) Nothing in this section prevents Public Trust from exercising its powers and authorities under section 82, without having given notice under subsection (1) of this section, if—
 - (a) it is not actually known to Public Trust that there is in New Zealand any person entitled to obtain administration; or
 - (b) Public Trust considers in its discretion that there is any emergency situation that requires it to act without giving notice.

Compare: 1957 No 36 s 62

84 Public Trust may oppose application for administration

- (1) Public Trust may lodge a caveat under section 60 of the Administration Act 1969 against an application for administration, and apply *ex parte* to a Judge in Chambers for directions, if—
 - (a) a person other than Public Trust has made application for administration of the estate of a deceased person who has left real or personal property situated in New Zealand; and
 - (b) Public Trust believes that—
 - (i) there are substantial and reasonable grounds for opposing the grant; but
 - (ii) there is no person in New Zealand beneficially interested in opposing the grant who is of full age and capable of acting as administrator.
- (2) On receiving the application for directions, the Judge may, if he or she thinks fit, direct Public Trust to represent the persons who may be prejudicially affected by the grant and oppose the grant on their behalf.
- (3) All costs, charges, and expenses incurred by Public Trust in acting under such a direction are to be paid out of the estate.

Compare: 1957 No 36 s 63

85 Payment of legacies of infants to Public Trust

- (1) With the consent of Public Trust, any trustee may—
 - (a) pay to Public Trust any money being the whole amount or the whole remaining amount of any legacy or share in an estate to which an infant is entitled, whether indefeasibly or contingently, under a will, instrument, trust, or intestacy; and
 - (b) in writing in a form approved by Public Trust, direct Public Trust to account for the money according to the provisions of the will, instrument, trust, or intestacy.
- (2) The written direction must declare the following matters:
 - (a) that the amount stated is the whole amount, or, if appropriate, the whole remaining amount, to which the infant is entitled:
 - (b) how much of the amount is capital and how much is income:
 - (c) how much, if any, of the capital and income has been expended, whether for the maintenance, education, advancement, or benefit of the infant or otherwise:
 - (d) in the case of money to which the infant is contingently entitled,—
 - (i) the person or persons who will become entitled to the money, or so much of it as remains, in the event of the infant failing to become indefeasibly entitled; and

- (ii) the shares and interests of those persons:
 - (e) such other matters as Public Trust may require.
- (3) The trustee giving the written direction to Public Trust must—
 - (a) certify it as correct; and
 - (b) where applicable, furnish along with it a true copy of the will or trust instrument affecting the legacy or share.
- (4) Public Trust must act in accordance with the trusts in the will or instrument (if any) referred to in subsection (3)(b), but—
 - (a) is not under any obligation to inquire into the accuracy of the trustee's certificate; and
 - (b) does not incur any liability through acting upon any declaration contained in the certified written direction.
- (5) A certified written direction made in accordance with this section vests in Public Trust all the powers of the trustee in respect of the legacy or share, whether conferred by will, trust instrument, or statute, or in any other manner.
- (6) In addition to the powers vested in it by subsection (5), Public Trust may exercise in respect of the legacy or share any power conferred on Public Trust by this Act.

Compare: 1957 No 36 s 65

86 Administration of benefit funds by Public Trust

- (1) A fund that is raised by public or private subscriptions for the benefit or relief of any person or class of persons may be placed with Public Trust to be administered by Public Trust and invested in the common fund.
- (2) The following provisions apply to such a fund:
 - (a) Public Trust may recognise as a committee any persons whom it believes—
 - (i) to have organised the appeal for the subscriptions; or
 - (ii) to have been appointed, authorised, or recognised as a committee by a substantial number of the subscribers:
 - (b) after conferring with the committee (if any), Public Trust may apply to the High Court for directions as to the administration of the fund, and for that purpose must submit a scheme of administration:
 - (c) the court may approve the scheme with or without modification as it thinks fit:
 - (d) Public Trust must administer the fund in accordance with the scheme as approved:

- (e) on the application of the Attorney-General, Public Trust, a member of the committee, or person claiming an interest in the fund, the court may at any time—
 - (i) vary the scheme so far as it relates to the powers of Public Trust in respect of the fund and the mode of administering the fund:
 - (ii) give directions on any point or question relating to the scheme or the fund:
 - (f) Public Trust must obey all such directions:
 - (g) if the fund was raised for the benefit of 2 or more persons, a scheme under this section may provide that the income and capital of the fund, or of any specified part of the fund, may be applied by Public Trust in its discretion for or towards the maintenance or education (including past maintenance or education) or advancement or benefit of—
 - (i) all those persons; or
 - (ii) any 1 or more of them to the exclusion of the others,—in such shares and proportions and generally in such manner as Public Trust thinks fit. Public Trust may apply money in accordance with such provisions notwithstanding that only 1 of the persons remains alive.
- (3) If the fund does not exceed \$40,000, or such higher amount as is prescribed by regulations,—
- (a) instead of applying to the High Court for directions as to the administration of the fund, Public Trust may, with the consent of the committee (if any) or the majority of its members, settle a scheme of administration; and
 - (b) the scheme may be incorporated in a declaration of trust by Public Trust, which is to be treated as the settlor of the trust for the purposes of the trust instrument; and
 - (c) any statements or recitals in the trust instrument are sufficient evidence of their truth, and, subject to paragraph (d), the provisions of the declaration of trust are final and binding on all persons, whether or not beneficially interested under the trust; and
 - (d) Public Trust may if it thinks fit, with the consent of all or a majority of the surviving members of the committee (if any) in New Zealand, modify the scheme so far as it relates to Public Trust's powers in respect of the fund and the mode of its administration, and the declaration of trust must be amended accordingly.

Compare: 1957 No 36 s 67

*General matters***87 Public Trust on appointment to have same rights, etc, as private person**

- (1) When appointed or acting under this Act or any other Act in any of the capacities mentioned in sections 75 to 78, Public Trust has the same rights, powers, duties, and immunities as a private person acting in any of those capacities would have.
- (2) This section is subject to the express provisions of this Act or any other Act.

Compare: 1957 No 36 s 49

88 Property, rights, etc, to vest in Public Trust on appointment

- (1) If Public Trust is duly appointed executor, administrator, or trustee, all property, functions, powers, authorities, discretions, and rights vested in, or conferred by the trust instrument on, the executor, administrator, or trustee become vested in and exercisable by Public Trust on its appointment as fully and effectually as if it had been named as executor, administrator, or trustee under the instrument, without need for conveyance or assignment or execution of any other instrument.
- (2) A certificate by Public Trust that any property forms part of an estate in respect of which Public Trust is appointed as executor, administrator, or trustee is to be accepted by all courts and persons as sufficient evidence of that fact without further proof.

Compare: 1957 No 36 s 50

89 Provisions relating to applications for grants of administrations

- (1) An application by or on behalf of Public Trust for probate of a will, or for an order to administer with a will annexed, or for any other grant of administration, may be made in any registry of the High Court at the discretion of Public Trust.
- (2) On such an application, in the absence of evidence to the contrary, no further proof of the death or testacy or intestacy of any person is required than an affidavit that, after due inquiries, Public Trust is satisfied that the person has died either testate or intestate, as appropriate.
- (3) Subsection (2) applies whether the person was domiciled in New Zealand or elsewhere, and whether the person died in New Zealand or elsewhere.

Compare: 1957 No 36 s 52

90 Public Trust acting jointly with another person

Where Public Trust is acting jointly with another person in any office or position referred to in section 75,—

- (a) all money coming under their control jointly is to be dealt with by them in the same manner as money coming under the control of Public Trust alone; and

- (b) the written receipt of Public Trust alone for any money, securities, movable property, or document that is deliverable to Public Trust and the other person jointly—
 - (i) constitutes a sufficient discharge for receipt of the thing concerned; and
 - (ii) effectually exonerates the person delivering the thing concerned from seeing to its application or being answerable for its loss or misappropriation; and
- (c) Public Trust is entitled to the sole custody and possession of all money, securities, movable property, and documents to whose custody and possession it would be entitled if acting alone in the office or position.

Compare: 1957 No 36 s 43(2)

91 Costs

- (1) Where Public Trust applies for probate of a will, or for administration with a will annexed,—
 - (a) it is entitled to its costs out of the estate; and
 - (b) it is not liable for the costs of any other person.
- (2) Where Public Trust applies for administration at the request of any 1 or more beneficiaries who are entitled under an intestacy but who cannot agree as to the person to be appointed administrator,—
 - (a) Public Trust is entitled to its costs out of the estate, whether or not it is appointed administrator; and
 - (b) Public Trust is not liable for the costs of any other person.
- (3) Where Public Trust is appointed or directed by any court to represent any party or person or class of persons in any proceedings, the costs and expenses of the representation as between solicitor and client, together with a reasonable fee for Public Trust's services, are to be paid to Public Trust—
 - (a) out of the estate or funds or property the subject of the proceedings; or
 - (b) in such other manner as the court directs.
- (4) Subject to this section, Public Trust may charge, demand, and receive remuneration, fees, or other amounts for its services in accordance with sections 122 to 125.

Compare: 1957 No 36 ss 56(2), 57(2), 58, 60(2)

92 Part does not restrict operation of certain provisions

Nothing in this Part restricts the operation of—

- (a) section 46(4) of the Trustee Act 1956 (which imposes a duty on Public Trust to act as trustee in certain cases); or

- (b) section 63 of the Administration Act 1969 (which prevents the granting of administration to companies other than trustee companies).

Compare: 1957 No 36 s 43(3)

Part 6

Elections to administer

93 Public Trust may elect to administer small estates without grant of administration

- (1) This section applies in a case where—
- (a) a person has died leaving property situated in New Zealand to be administered (whether the person died testate or intestate, and whether in or out of New Zealand); and
 - (b) the gross value of the property, as estimated by Public Trust at the time of the election under this section, does not exceed \$120,000, or such higher amount as is prescribed by regulations; and
 - (c) no person has obtained a grant of administration in New Zealand; and
 - (d) Public Trust would under Part 5 be entitled to obtain a grant of administration.
- (2) In such a case Public Trust may, instead of obtaining a grant of administration, file in the High Court an election in writing to administer the estate of the deceased person.
- (3) The election must specify—
- (a) the name, residence, and occupation of the deceased, so far as known to Public Trust;
 - (b) the date of death of the deceased;
 - (c) the property of the deceased situated in New Zealand, as then known.
- (4) The election must also contain—
- (a) if the deceased died intestate, a statement to that effect;
 - (b) if the deceased died testate, a statement that, after due inquiries, Public Trust believes that—
 - (i) the document annexed to the election is the testator's last will (or an exemplification of it, if administration has been granted out of New Zealand); and
 - (ii) the will has been validly executed according to the law governing the execution of wills.
- (5) The election may be filed in the registry of the High Court at Wellington, or in such other registry of the High Court as Public Trust determines either generally or in respect of particular estates.

- (6) On the election being filed, Public Trust is to be treated in all respects as the executor of the will or the administrator of the estate, as appropriate, as if administration had been granted to Public Trust.
- (7) If, after filing the election, the gross value of property situated in New Zealand to be administered is found to exceed \$150,000 or such higher amount as is prescribed by regulations, Public Trust must—
 - (a) as soon as practicable file a memorandum stating that fact, in the registry of the High Court in which the election was filed; and
 - (b) then proceed in the ordinary manner to obtain a grant of administration in New Zealand (for which purpose Public Trust may uplift from the court any will or exemplification filed with the election).
- (8) An election may be filed under this section relating to a written informal will to which subpart 3 of Part 2 of the Wills Act 2007 or the Wills Amendment Act 1955 applies. This section does not apply to any other informal will.

Compare: 1957 No 36 s 72

Section 93(8): substituted, on 1 November 2007, by section 41 of the Wills Act 2007 (2007 No 36).

94 Elections in respect of unadministered balance of estate

- (1) This section applies in a case where—
 - (a) a grant of administration has been made in New Zealand in respect of the estate of a deceased person; and
 - (b) the persons to whom the original grant or any substituted grant of administration was made have died leaving part of the estate unadministered; and
 - (c) the gross value of the property situated in New Zealand left unadministered, as estimated by Public Trust at the time of the election under this section, does not exceed \$120,000, or such higher amount as is prescribed by regulations; and
 - (d) no person has, since the death of the last administrator, taken out letters of administration *de bonis non* in New Zealand in respect of the estate.
- (2) In such a case Public Trust may, instead of applying for an order to administer *de bonis non* in New Zealand, file in the High Court an election in writing to administer the part of the estate left unadministered.
- (3) The election must—
 - (a) set out the fact of the original grant, and the death of the executors or other administrators; and
 - (b) give particulars of the property situated in New Zealand that is left unadministered; and
 - (c) be filed in the registry of the High Court out of which the original grant was issued.

- (4) On the election being filed, Public Trust is to be treated in all respects as administrator of the estate left unadministered, as if an order to administer *de bonis non* had been granted to Public Trust.
- (5) If, after filing the election, the gross value of the property situated in New Zealand to be administered by Public Trust is found to exceed \$150,000 or such higher amount as is prescribed by regulations, Public Trust must—
 - (a) as soon as practicable file in the same registry of the High Court a memorandum stating that fact; and
 - (b) then proceed in the ordinary manner to obtain in New Zealand an order to administer *de bonis non* in respect of the estate (for which purpose Public Trust may uplift from the court any will or exemption filed with the election).

Compare: 1957 No 36 s 73

95 Operation of election under section 93 or section 94 as regards property overseas

For the purposes of elections under sections 93 and 94,—

- (a) in determining the value of property situated in New Zealand, no account is to be taken of property that is situated out of New Zealand at the time of the filing of the election (whether or not the property is later transferred to New Zealand to Public Trust or any other person in due course of administration, or for any other purpose); but
- (b) in all other respects, the elections extend and apply to and include property situated out of New Zealand in the same manner and to the same extent in all respects as a grant of administration obtained by Public Trust would, in the circumstances of each particular case, extend or apply to or include that property.

Compare: 1957 No 36 s 74

96 Revocation of elections filed in error

- (1) This section applies in a case where—
 - (a) Public Trust has filed an election to administer an estate under section 93 or section 94; and
 - (b) it subsequently discovers that the election is invalid or ineffective because of—
 - (i) the discovery of a will or a later will; or
 - (ii) the revocation or invalidity of a will; or
 - (iii) any other reason.
- (2) In such a case, Public Trust may file in the registry of the High Court in which the election was filed a memorandum that—
 - (a) sets out the facts; and

- (b) certifies that the election already filed is invalid or ineffective.
- (3) On the memorandum being filed,—
 - (a) the election ceases to be of any effect; and
 - (b) an application for administration may be made or a fresh election may be filed as if the election previously filed had not been filed.

Compare: 1957 No 36 s 76

97 Elections to administer jointly with another person

- (1) In any case where Public Trust and another person or persons are entitled to elect to administer the estate of a deceased person, the execution of the election to administer, or of any memorandum under section 93(7) or section 94(5) or section 96(2), by the other person or persons does not need to be attested in any way.
- (2) A statement in an election to administer to the effect that an executor or co-executor—
 - (a) has died; or
 - (b) is unable or unwilling to act; or
 - (c) has not made application for probate in New Zealand,—

is to be accepted by all courts and persons as sufficient evidence of that fact without further proof.

Compare: 1957 No 36 s 76A

98 Copy of election

A copy of an election under this Part that is certified as a correct copy under the seal of the High Court or a Registrar of the court is for all purposes equivalent to an exemplification of that election.

Compare: 1957 No 36 s 77(2)

Part 7 Unclaimed property

99 Appointment of Public Trust as manager of unclaimed property

- (1) Public Trust may be appointed or become manager in accordance with this Part of any real or personal property in New Zealand in the following cases:
 - (a) when, after due inquiry, it is not known—
 - (i) who the owner of the property is; or
 - (ii) where the owner of the property is; or
 - (iii) whether the owner of the property is alive or dead:
 - (b) when the owner of the property is absent from New Zealand or dead and, after due inquiry, it is not known—

- (i) whether the owner has any agent or administrator in New Zealand with authority to take possession of and administer the property; or
 - (ii) where the agent or administrator is; or
 - (iii) whether the agent or administrator is alive or dead:
- (c) when the property would vest in the Crown if it were not subject to a trust for another person, whether under section 324 of the Companies Act 1993 or otherwise, and after due inquiry it is not known whether it is subject to such a trust.
- (2) Public Trust may not be appointed or become manager under this Part of—
- (a) customary land within the meaning of Te Ture Whenua Maori Act 1993; or
 - (b) land of the Crown that has not been alienated, or is not subject to a contract for its alienation.

Compare: 1957 No 36 s 79

100 Mode of appointment

- (1) The court may appoint Public Trust as manager of any property under this Part, on application made *ex parte* by Public Trust, if satisfied that the appointment is advisable—
- (a) in the interests of the owner of the property; or
 - (b) in the interests of any other person; or
 - (c) to secure the development or better utilisation of land.
- (2) If the court considers that due inquiry has not been made for the owner of the property or the owner's agent or administrator, or as to whether the property is subject to any trust, it may, before making an order,—
- (a) require further inquiry to be made or advertisements published or notice given; and
 - (b) adjourn the application to enable this to be done.
- (3) Notice of an appointment under this section must be published in the *Gazette*.
- (4) No property vests in Public Trust by reason only of the fact that it is appointed manager of the property under this section.

Compare: 1957 No 36 s 80(1), (3), (4)

101 Public Trust may elect to manage property of low value

- (1) If the gross value of the property (as estimated by Public Trust) of which Public Trust proposes to become manager does not exceed \$40,000 or such higher amount as is prescribed by regulations, Public Trust may, by notice in the *Gazette*, elect to be the manager of the property under this Part, if satisfied that it is advisable—

- (a) in the interests of the owner of the property; or
 - (b) in the interests of any other person; or
 - (c) to secure the development or better utilisation of land.
- (2) Before making the election, Public Trust must advertise its intention to do so in a newspaper circulating in the locality where the property is situated (if appropriate) or in 1 or more newspapers circulating in the main metropolitan areas.
- (3) On notification of the election in the *Gazette*, Public Trust becomes the manager of the property without need for an order of the court under section 100.
- (4) No property vests in Public Trust by reason only of the fact that it becomes manager of the property under this section.

Compare: 1957 No 36 s 80(2), (4)

102 Order vesting property in Public Trust or other person

On application by Public Trust, the court may make an order vesting in Public Trust or in any other person any property of which Public Trust is for the time being manager under this Part.

Compare: 1957 No 36 s 80(4)

103 Powers of Public Trust as manager

- (1) As manager of any property under this Part, Public Trust may do all or any of the following things:
- (a) take or recover possession of the property, and recover all money, damages, and mesne profits payable to the owner or the owner's agent or administrator in respect of the property (whether payment became due before or after Public Trust became manager):
 - (b) apply the property, money, damages, or mesne profits, or any income from them, in such manner as it thinks fit, for the maintenance or education (including past maintenance or education) or the advancement or benefit of—
 - (i) the spouse or partner (including civil union partner) or children of the owner of the property; or
 - (ii) any other person who is or was dependent on the owner:
 - (c) complete, carry out, or enforce in any manner it thinks fit any contract affecting the property or entered into by the owner, and exercise any powers conferred by the contract:
 - (d) pay any mortgages, charges, or other obligations on or attaching to the property, and any debts or other liabilities of the owner of the property, from money received, advanced, or borrowed by Public Trust in exercise of any powers conferred by this Part:
 - (e) perform or discharge any duty or obligation imposed by any enactment, or otherwise, upon the owner of the property:

- (f) do any act or thing needed to obtain or perfect the title to the property:
 - (g) in the case of land, cut and gather crops growing or situated on the land, or erect or contribute to the erection of any dividing or boundary fences:
 - (h) exercise any power of sale or other powers or rights conferred upon the owner by any mortgage, lease, enactment, or instrument:
 - (i) in the name of the owner, or in Public Trust's own name, bring any action or other proceeding relating to the property, and defend, confess, compromise, or submit to judgment in any action, claim, demand, or proceeding touching the property:
 - (j) exercise as if it were the trustee of the property all powers that, as trustee, it could exercise without court consent under the Trustee Act 1956 or any other enactment or law:
 - (k) exercise in respect of the property all other powers that may be conferred on it by the court (whether or not powers that could be conferred on a trustee under the Trustee Act 1956 or any other enactment or law):
 - (l) pay or retain expenditure incurred by it as manager of the property and fees, remuneration, and charges in accordance with sections 122 to 125.
- (2) Any money that Public Trust wishes to raise for the purpose of exercising its powers under this section may be advanced from the common fund or borrowed from any other source.

Compare: 1957 No 36 s 81(1), (2)

Section 103(1)(b)(i): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

104 Power of Public Trust to pay for improvements

- (1) Public Trust may, to the extent it thinks just and reasonable, make any payment or allowance for—
- (a) the value of improvements made to or in respect of any property it manages under this Part; and
 - (b) money expended on or in respect of the property.
- (2) Public Trust may make a payment or allowance under this section even though the value of the improvements or the money expended may have ceased to be recoverable at law or may never have been recoverable.

Compare: 1957 No 36 s 82

105 Sale or transfer to occupier or other person entitled to land

- (1) Where Public Trust, as manager of any land under this Part, sells the land to its occupier,—
- (a) in fixing the price of the land, Public Trust may make an allowance under section 104 for any improvements made by—
 - (i) the occupier; or

- (ii) any person by or through or under whom the occupier claims possession of the land:
 - (b) Public Trust is not under any liability for failing to recover any money or damages payable in respect of the occupation of the land.
- (2) Nothing in subsection (1)—
 - (a) limits or affects the generality of sections 104 and 110; or
 - (b) affects the liability of the occupier to the owner of the land.
- (3) Public Trust may transfer land it manages under this Part to the person equitably entitled to it, if it is satisfied that the registered owner of the land has—
 - (a) sold the land; and
 - (b) received payment of all amounts to which he or she is entitled on sale.
- (4) In the case of a transfer under subsection (3),—
 - (a) Public Trust may, before the transfer, require the payment of an appropriate fee, plus charges and expenses incurred or payable by Public Trust:
 - (b) the transfer may be made without requiring any payment on behalf of the registered owner:
 - (c) the transfer does not affect the rights that any other person may have in respect of the land.

Compare: 1957 No 36 s 83

Section 105(3): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 105(4)(b): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

106 Property to be held for owner

Where Public Trust—

- (a) takes possession of any property as manager under this Part; or
- (b) receives or recovers any money, damages, or mesne profits in respect of the property,—

the property, money, damages, or profits are, after payment out of all money authorised to be applied, expended, or charged by Public Trust, held by Public Trust for the owner of the property.

Compare: 1957 No 36 s 88

107 Termination of management

- (1) Public Trust ceases to be the manager of any property under this Part on the happening of any of the following events:
 - (a) if the court so orders, on application served on Public Trust that is made by—

- (i) the owner of the property; or
 - (ii) the owner's administrator or duly authorised agent; or
 - (iii) a person having an interest in the property or any part of it:
 - (b) if Public Trust publishes notice in the *Gazette* that it has ceased to be the manager of the property under this Part:
 - (c) if Public Trust transfers or delivers the property to the owner, or to the owner's administrator or duly authorised agent.
- (2) The termination of Public Trust's management of any property under this Part does not affect—
- (a) any charge acquired by Public Trust under this Part; or
 - (b) the validity of any act or thing done by Public Trust while it was manager of the property.
- (3) Unless Public Trust consents, the court may not make an order under subsection (1)(a) until Public Trust has been paid—
- (a) all amounts to which it is entitled under this Part in respect of all expenditure, fees, costs, commission, charges, interest, and expenses incurred by or payable to Public Trust as manager of the property; and
 - (b) all costs incurred by Public Trust of and incidental to the application for the order.
- (4) Upon Public Trust ceasing to be manager of any property that remains in its name or possession, Public Trust may transfer or deliver the property to the person entitled to it.

Compare: 1957 No 36 s 89

108 Transfer of unclaimed property to Crown

- (1) If, after 20 years from the date of the publication in the *Gazette* of the order or election or other act by which Public Trust was appointed or became manager of any land under this Part, no person has established a claim to the land, and Public Trust has not become aware of the existence and whereabouts of any person who has a claim to the land,—
- (a) the land vests in the Crown as Crown land within the meaning of the Land Act 1948, if it has not been sold by Public Trust in the exercise of its powers under this Part; and
 - (b) all money held by Public Trust and derived from the land must be paid to a Crown Bank Account in accordance with section 74 of the Public Finance Act 1989.
- (2) If, after 7 years from the date of the publication in the *Gazette* of the order or election or other Act by which Public Trust was appointed or became manager of any property under this Part other than land, no person has established a

claim to the property, and Public Trust has not become aware of the existence and whereabouts of any person who has a claim to the property,—

- (a) the property vests in the Crown, if it has not been sold by Public Trust in the exercise of its powers under this Part; and
- (b) all money held by Public Trust and derived from the property must be paid to a Crown Bank Account in accordance with section 74 of the Public Finance Act 1989.

Compare: 1957 No 36 s 91(1), (2)

Section 108(1)(b): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

Section 108(2)(b): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

109 Land, etc, becoming property of Crown may be vested in local authority

- (1) The Governor-General may, by Order in Council, transfer any land or money derived from land that becomes the property of the Crown under section 108 to—
 - (a) a local authority within whose district or region the land to which the order relates is situated; or
 - (b) a body controlled by such a local authority.
- (2) The order may specify—
 - (a) the purposes for which the transfer is made:
 - (b) the powers that may be exercised in relation to the land or money transferred.
- (3) In this section, **local authority** means a local authority as defined in section 5(1) of the Local Government Act 2002.

Compare: 1957 No 36 s 92

Section 109(1)(a): amended, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 109(3): substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Miscellaneous provisions

110 Public Trust to have discretion as to exercise of powers

- (1) Public Trust is not obliged to take any steps or proceedings to cause itself to be appointed or to become manager of any property under this Part.
- (2) Where Public Trust is manager of any property under this Part—
 - (a) it has complete discretion, subject to any direction of the court, as to whether or not it exercises any of the powers conferred on it by this Part; and

- (b) it is not liable for anything done or omitted to be done by it in good faith in exercise of its discretion or powers under this Part.

Compare: 1957 No 36 s 84

111 Public Trust may apply to court for directions

- (1) Public Trust may apply *ex parte* to the court for directions concerning—
- (a) any property it manages under this Part; or
 - (b) the management or administration of the property; or
 - (c) the exercise of any power or discretion vested in it as manager.
- (2) The court may order the application to be served on any persons it thinks appropriate.

Compare: 1957 No 36 s 85

112 Deficiency in recovery of remuneration and expenses of Public Trust

- (1) All expenditure incurred by Public Trust as manager of any property under this Part, and all fees, costs, commission, charges, interest, and expenses incurred by or payable to it as manager of the property, are a charge on the property.
- (2) The charge ranks next in priority to any mortgage or charge to which the property is subject when Public Trust becomes its manager.
- (3) The amount charged on the property bears interest at a rate fixed by Public Trust.
- (4) If Public Trust is unable to recover from any person or property the amount of—
- (a) all expenditure incurred by it as manager of any property under this Part; and
 - (b) all fees, costs, commission, charges, interest, and expenses incurred by or payable to it as manager of the property,—

the amount of the deficiency is to be met out of a Crown Bank Account without further appropriation than this section.

Compare: 1957 No 36 s 87

Section 112(4): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

113 Documents executed by Public Trust

- (1) All deeds and other documents executed by Public Trust in its own name as manager of any property under this Part have effect and may be registered as if they were executed by the owner of the property.
- (2) If any document executed by Public Trust purports to be made in exercise of the powers conferred by this Part, no court or officer or person is concerned to see or inquire whether those powers had or had not become exercisable.

Compare: 1957 No 36 s 81(3)

114 Order or notice not affected by mistake of fact

An order or notice made or published under this Part, or anything done in pursuance of this Part or of the order or notice, is not invalid or inoperative merely because—

- (a) it has been made or done under a mistake of fact; or
- (b) the owner of the property was dead at the time the order was made or the notice published, or has died since that time; or
- (c) of any disposition of the property made by its owner while Public Trust was the manager of the property under this Part.

Compare: 1957 No 36 s 94

115 Evidence in respect of unclaimed property

In any case where the court or Public Trust is acting under this Part,—

- (a) they may accept and act upon and be satisfied with any evidence, whether or not it is strictly legal evidence; and
- (b) the court may make an order declaring, or Public Trust may acknowledge, a claimant to be the owner or entitled to the possession of any property, despite the claimant being unable to adduce evidence that would entitle him or her to judgment in an action of ejectment or a decree in an action for specific performance; and
- (c) they may have regard to the circumstances of each case in determining the character and sufficiency of the evidence of title adduced.

Compare: 1957 No 36 s 90

116 Crown not affected

Nothing in this Part affects the Crown in respect of its property or rights.

117 Limitation Act 2010 not affected

Nothing in this Part affects the Limitation Act 2010 or any other enactment by which a period of limitation is prescribed.

Compare: 1957 No 36 s 95

Section 117 heading: amended, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

Section 117: amended, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

Part 8

Miscellaneous provisions

118 Special powers that may be exercised by Public Trust

Where Public Trust is executor, administrator, or trustee, or is guardian, or is otherwise authorised to act in the administration of an estate, then, unless a contrary intention is expressed in this Act or in any relevant instrument, Public

Trust may at its discretion, but without restricting any other powers, exercise the following powers:

- (a) if acting as trustee of any public, charitable, or perpetual trust, exercise all the powers of leasing conferred on a leasing authority under the Public Bodies Leases Act 1969 (and Public Trust is to be treated as a leasing authority within the meaning of that Act):
- (b) where it has power to raise money by mortgage, raise the money by borrowing without giving security:
- (c) pay or discharge all debts, liabilities, obligations, costs, and expenses:
- (d) carry out or vary contracts entered into before its appointment:
- (e) set-off against the claim of any person in respect of any estate (whether as beneficiary, creditor, or otherwise), and of any person claiming by, through, or under that person, all money owing by the first-mentioned person, whether—
 - (i) the money is owing to the same estate or to any other estate under administration by Public Trust; and
 - (ii) the claim of the person in respect of an estate, or the person's liability to pay money to an estate arose before or after Public Trust became entitled to administer the estate or before or after the death of the deceased:
- (f) grant powers of attorney to any person, in or out of New Zealand, to do any act or thing that Public Trust could do:
- (g) bring or defend any action, suit, or other proceeding, and suffer judgment to go by default, or consent to any judgment, decree, or order in the action, suit, or proceeding upon such terms and conditions as Public Trust thinks fit:
- (h) take proceedings to cause any person to be adjudicated a bankrupt, or any company to be placed in liquidation, and vote and act either personally or by proxy at meetings of creditors or shareholders, and (in the case of a company) whether it is in liquidation or not:
- (i) take criminal proceedings touching or concerning property, and for the purposes of the proceedings the property is to be treated as the property of Public Trust and in the possession of Public Trust:
- (j) at the expense of the estate, employ such persons as it thinks fit (whether or not they are employees of Public Trust) for the purpose of advising and assisting it in the administration or management of any estate or part of an estate, and remunerate such persons in such manner as it thinks fit.

Compare: 1957 No 36 s 96

119 Public Trust may act on written statement, etc

- (1) Unless expressly prohibited by an enactment or by the terms of any particular trust, Public Trust may, in the administration of a trust or estate, or the performance of a power or duty under this or any other enactment, act on credible information (though less than legal evidence) as to matters of fact.
- (2) It may allow any claim that is made upon or before it upon the affidavit, declaration, or statement of the claimant alone, or, if it thinks fit to call for other evidence, upon such evidence as it requires.
- (3) It may at any time require a statutory declaration or other sufficient evidence that a person is alive and is the person to whom money or property is payable or transferable, and may refuse payment or transfer until the declaration or evidence is produced.
- (4) If acting in good faith, Public Trust is not liable for accepting as correct and acting upon the faith of any written statement or statutory declaration by any person, in or out of New Zealand, whom it believes to be trustworthy as to—
 - (a) any birth, death, marriage, civil union, or other matters of pedigree or relationship; or
 - (b) any other matter of fact upon which the title to any estate or any part of an estate may depend.

Compare: 1957 No 36 s 97

Section 119(4)(a): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

120 Public Trust may sue itself in different capacity

- (1) Despite any rule of law or practice to the contrary, Public Trust acting in one capacity may commence proceedings against itself acting in another capacity.
- (2) If it does so, however, Public Trust must obtain the directions of the court as to the manner in which the opposing interests are to be represented.

Compare: 1957 No 36 s 101

121 Public Trust may transact business with subsidiary companies

- (1) Despite the fiduciary rights and liabilities of Public Trust, whether under this Act or otherwise, Public Trust may transact with a subsidiary company any business connected with an estate that Public Trust administers, holds, manages, or controls if, after considering all the circumstances of the case (including appropriate business arrangements offered by other persons), Public Trust is satisfied on reasonable grounds that it is in the best interests of the estate to transact with the subsidiary company.
- (2) Despite any enactment or rule of law to the contrary, Public Trust and the subsidiary company are entitled to receive fees, premiums, commissions, and other payments properly chargeable or payable in respect of the business as if—
 - (a) Public Trust had not been a fiduciary in respect of the estate; and

- (b) Public Trust were not, in respect of the other party, a related company.
- (3) A payment to which subsection (2) applies must be clearly identified in the account rendered in respect of the estate.

122 Remuneration

- (1) Public Trust may charge, demand, and receive for services provided by it in managing or administering an estate such remuneration by way of commission or otherwise as may from time to time be fixed by Public Trust.
- (2) Remuneration charged, demanded, or received by Public Trust under subsection (1) must not exceed the greater of the following amounts:
 - (a) an amount equal to 5% of the total of the value of the assets of the estate and the income received by Public Trust in respect of the estate:
 - (b) \$100, or such greater amount as is from time to time prescribed by the Governor-General by Order in Council.

Compare: 1967 No 35 s 18

123 Special services

- (1) In addition to the remuneration authorised by section 122, Public Trust may charge, demand, and receive a reasonable fee or other remuneration for any of the following services provided by it in managing or administering an estate:
 - (a) preparing and lodging returns for the purpose of, or in connection with, the assessment of any duties or taxes:
 - (b) managing property, including arranging tenancies and leases and renewals and assignments of tenancies and leases, and arranging and supervising repairs, maintenance, renovations, or extensions of or to the property:
 - (c) tracing missing beneficiaries:
 - (d) attempted realisation of assets ultimately transferred or delivered in kind to the beneficiaries:
 - (e) carrying on a business pending realisation:
 - (f) any other matter of an unusual or special nature.
- (2) Any fee or other remuneration charged under subsection (1) must be clearly identified in the account rendered in respect of the estate.

Compare: 1967 No 35 s 18

124 Review of charges

- (1) Despite anything in this Act or any other enactment, if the court is of the opinion that any commission, fee, or remuneration charged by Public Trust is excessive, the court may reduce the amount of the commission, fee, or remuneration.

- (2) Application for the reduction of any commission, fee, or remuneration of Public Trust may be made by or on behalf of any person who would receive a greater benefit from the capital or income of the estate out of which the commission, fee, or remuneration is payable in the event of the commission, fee, or remuneration being reduced.
- (3) No application to the court under this section may be made by or on behalf of any person after the expiration of 6 months from the date of delivery to that person of accounts in which are shown the commission, fee, or remuneration to which the application relates.

Compare: 1967 No 35 s 19

125 Additional remuneration

- (1) When Public Trust, at or after the commencement of this Act, in connection with any estate under its administration or management,—
 - (a) lawfully carries on or manages (whether alone or in partnership or through an agent) any business or undertaking; or
 - (b) takes an active part (through a representative or otherwise) in the management or direction of any company; or
 - (c) considers that other circumstances have arisen which justify additional remuneration,—

it may apply to the court to fix, in addition to any commission, fee, or remuneration to which it is otherwise entitled, either an additional fee or an additional commission by way of percentage.

- (2) The court may on an application under subsection (1) allow to Public Trust such additional fee or additional commission by way of percentage as it thinks fit, having regard to—
 - (a) the work, care, skill, and responsibility involved in administering the estate or carrying on or managing or directing the business, undertaking, or company; and
 - (b) the extent of the interest of the estate in the business, undertaking, or company; and
 - (c) the amount of the estate's share in the profits or income from the business, undertaking, or company.

Compare: 1967 No 35 s 19

126 Power of Public Trust to make small payments without order

If, under this Act or any other enactment, Public Trust is directed to make a payment to a person entitled to it upon the obtaining of an order of a court or a Judge,—

- (a) Public Trust may make the payment without need for an order if the amount of the payment does not exceed \$10,000 or such higher amount as is prescribed by regulations; and
- (b) that payment is as valid as if it were authorised by an order of a court or a Judge.

Compare: 1957 No 36 s 110

127 Public Trust may bar claims for small amounts

- (1) This section applies to claims, including potential claims, to recover from Public Trust any money, chattels, or things valued (as estimated by Public Trust) at less than \$10,000 or such higher amount as is prescribed by regulations, whether as creditor, next of kin, beneficiary, or otherwise.
- (2) If Public Trust rejects or desires to reject any claim or potential claim to which this section applies, Public Trust may serve upon the person by whom or on whose behalf the claim is or may be made a notice calling on the person—
 - (a) to take legal proceedings within a period of 3 months to establish or enforce the claim; and
 - (b) to prosecute the proceedings with all due diligence.
- (3) If the proceedings are not commenced by the person within the 3-month period,—
 - (a) the claim is barred on the expiry of that period, and the money, chattels, or things become irrecoverable; and
 - (b) Public Trust may proceed to administer and distribute the estate disregarding the claim.
- (4) The powers given by this section are in addition to the powers conferred by section 75 of the Trustee Act 1956.

Compare: 1957 No 36 s 105

128 Conditions on which tenant for life may be allowed into possession

- (1) A person who is a legal or equitable tenant for life of land comprised in an estate being administered by Public Trust is not entitled to the use, occupation, or enjoyment of the land, or to receipt of the income, rents, issues, and profits from it, until the person has given the undertakings (and, where Public Trust requires, security for the undertakings) that Public Trust requires to comply with terms and conditions as to—
 - (a) keeping the estate property in repair; and
 - (b) punctual payment of rates, taxes, insurance premiums, assessments, rents, impositions, and other outgoings; and
 - (c) such other appropriate matters as Public Trust thinks fit.
- (2) Public Trust may direct the person to give up possession of the land if—

- (a) the person fails to observe any of the duties or obligations attaching to the person as tenant for life, or imposed by Public Trust or the court; or
 - (b) for any other reason Public Trust determines it to be necessary or expedient to enter into possession of the land.
- (3) The direction must—
- (a) be given by notice in writing personally delivered to the person, or forwarded by registered letter to the person at their last known address; and
 - (b) specify a date by which the person must give up possession, being a date at least 1 month after the date of the direction.
- (4) If the person fails to give up possession of the land on the expiry of the date specified in the notice,—
- (a) the person is then to be treated as a trespasser; and
 - (b) Public Trust may take the necessary legal proceedings to have the person ejected; and
 - (c) it is no defence in such proceedings that the person sought to be ejected is a legal or equitable life tenant of the land.
- (5) The application of this section in any particular case is subject to any order of the court.
- (6) Subsection (1) does not authorise Public Trust to impose terms and conditions other than those that the court could impose on an appropriate application.

Compare: 1957 No 36 s 108

129 Declaration of non-revocation unnecessary where Public Trust executes document as attorney

- (1) Where Public Trust executes a document as attorney,—
- (a) it is not necessary for Public Trust to furnish evidence by way of statutory declaration that no notice or information of the revocation of the power of attorney by death or otherwise has been received by it; and
 - (b) no person may require Public Trust to furnish such evidence.
- (2) The execution by Public Trust of a document as attorney is to be accepted by all persons as conclusive proof of the non-revocation of the power of attorney at the time when the document was executed.

Compare: 1957 No 36 s 116

130 Deposit of wills

- (1) Any testator may deposit his or her will with Public Trust, whether or not Public Trust is appointed executor.
- (2) If Public Trust is not appointed executor of the will, then after the death of the testator it must deliver the will to—
- (a) the person nominated by the testator in writing; or

- (b) the person Public Trust thinks is entitled to the will, in the absence of a nomination by the testator or if the person nominated is dead or cannot be found.
- (3) If Public Trust is appointed executor, then, after the testator's death,—
 - (a) notice of the acceptance or rejection of its appointment must be given in the manner Public Trust thinks proper; and
 - (b) if Public Trust rejects the appointment, it must deliver the will to—
 - (i) the person nominated by the testator in writing; or
 - (ii) the person it thinks is entitled to the will, in the absence of a nomination by the testator or if the person nominated is dead or cannot be found.

Compare: 1957 No 36 s 118

131 Existence of property belonging to estate being administered by Public Trust to be disclosed

- (1) This section applies to a person or body who, in relation to a deceased person,—
 - (a) is in possession of property of the deceased person; or
 - (b) has in their books, accounts, or other records any property or money to the credit of the deceased person; or
 - (c) is an association or partnership in respect of which—
 - (i) the deceased person is entitled to a share in its assets; or
 - (ii) the personal representatives of the deceased person are entitled to a payment as the deceased person's share in its assets; or
 - (d) is a corporation or association, and the deceased person is the registered proprietor of any of its shares; or
 - (e) is indebted to the deceased person.
- (2) If the relevant property, money, shares, or debts referred to in subsection (1) are to become vested in or belong to Public Trust, the person or body to whom that subsection applies must, on becoming aware of the death and of Public Trust's interest in the property, immediately notify Public Trust of the extent, nature, and situation of the property, money, shares, or debts.

Compare: 1957 No 36 s 114

132 Protection of purchasers and others

- (1) No purchaser, vendor, mortgagee, lessee, tenant, or other affected person is obliged to inquire as to the authority or power of Public Trust to make any sale, exchange, purchase, mortgage, lease, or tenancy.
- (2) In particular, no such person is obliged to inquire—

- (a) whether the proposed transaction is consistent with the trusts on which the land or other interests to be dealt with are held; or
- (b) whether any required authority of Public Trust or another person has been given; or
- (c) whether Public Trust has complied with any direction of the trust instrument or any enactment requiring the calling of tenders, submissions to auction, or other matters preliminary to the proposed transaction; or
- (d) otherwise as to the propriety or regularity of the transaction; or
- (e) as to the application of any money received by Public Trust on the sale, exchange, mortgage, or lease.

Compare: 1957 No 36 ss 123, 124

133 No notice of trust to arise merely from dealing with Public Trust

The fact that Public Trust is the person, or one of the persons, dealt with in any dealing with property does not of itself constitute notice of a trust.

Compare: 1957 No 36 s 125

134 Registration of shares

- (1) The entry of Public Trust by that name in the register of shareholders of a company does not constitute notice of a trust.
- (2) A company is not entitled to object to enter the name of Public Trust in its register of shareholders by reason only that Public Trust is a trustee or is a corporation.
- (3) Despite any enactment or other law affecting the registration of persons holding shares as trustee or in any other representative capacity, Public Trust is entitled to be registered as the proprietor of shares as trustee or as other representative where—
 - (a) the shares are comprised in an estate administered by Public Trust; or
 - (b) the shares are vested in Public Trust under the terms of a trust instrument; or
 - (c) the shares are purchased by Public Trust in the exercise of a trust, direction, or authority imposed or conferred upon it.
- (4) Upon registration, Public Trust is for all purposes other than the liability referred to in subsection (5) to be treated as the registered proprietor of the shares, and no person is concerned to see or inquire whether any sales, dealings, or transactions by or with Public Trust as to the shares are or are not within its powers.
- (5) Where Public Trust is registered as the proprietor of shares as trustee or other representative,—
 - (a) its liability in respect of the shares in no case exceeds the value of any other assets that, at the time when demand is made for the satisfaction of

- the liability, are held by Public Trust upon the same trusts as are applicable to the shares; and
- (b) if the other assets are insufficient to meet the liability, then, in respect of the unpaid balance of the liability, the body or association concerned has the same rights against the person beneficially entitled to the shares as if that person were the shares' registered proprietor.
- (6) Despite any enactment, charter, deed of settlement, or other instrument, the number of shares in the capital of any bank that may be held by Public Trust in its corporate capacity is not subject to any limit.
- (7) In this section, **shares**—
- (a) means shares in any body, whether corporate or not, or in any association; and
 - (b) includes stock, bonds, debentures, and other securities for money.

Compare: 1957 No 36 s 126

135 Public Trust may evidence and register dealings in land when acting in different capacities

- (1) Where Public Trust is registered as the proprietor of any estate or share or interest in land, whether as administrator, trustee, or otherwise (including itself in its own corporate capacity), it may, as fully and effectually as if it were a separate person in each capacity,—
- (a) transfer, assign, convey, mortgage, or lease the estate, share, or interest, or any part of it, to itself in another capacity:
 - (b) grant easements in respect of the estate, share, or interest to itself in another capacity:
 - (c) enter into covenants and agreements in respect of any such transaction with itself in the one capacity so as to bind itself in the other capacity.
- (2) The covenants and agreements referred to in subsection (1)(c) are binding upon or (as the case may be) operative in favour of an assignee from Public Trust taking from it in the relevant capacity.
- (3) Upon any transfer, assignment, conveyance, mortgage, lease, or grant of easement referred to in subsection (1) being presented in proper order for registration under the Land Transfer Act 2017, the Registrar-General of Land must register it in accordance with that Act, even though the transfer, assignment, conveyance, mortgage, lease, or grant may—
- (a) contain notice of or evidence a trust in respect of the estate, share, or interest affected; or
 - (b) contain notice of or evidence the fact that Public Trust takes the transfer, assignment, conveyance, mortgage, lease, or grant in the capacity of a trustee.

- (4) Once any such transfer, assignment, conveyance, mortgage, lease, or grant has been registered under the Land Transfer Act 2017 or the Deeds Registration Act 1908, no person subsequently dealing with the relevant estate, share, or interest—
- (a) is affected by any notice of trust contained in or evidenced by the transfer, assignment, conveyance, mortgage, lease, or grant; or
 - (b) is concerned to see or inquire whether Public Trust had authority to enter into the transaction.

Compare: 1957 No 36 s 127

Section 135(3): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 135(4): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

136 Same remedies against Public Trust as against other persons

- (1) A person is entitled to the same remedy against Public Trust as it would be entitled to against a private person, if the person sustains any injury or suffers any loss by any act or thing done or omitted by Public Trust, or by any employee, agent, representative, or other person, acting in good faith or purporting to act under this Act or any other Act.
- (2) Any such person entitled to a remedy is entitled to be indemnified out of the funds of Public Trust and, if that is insufficient, then out of money appropriated for the purpose by Parliament.

Compare: 1957 No 36 s 136

137 Protection of Public Trust acting under power of attorney

Public Trust is not liable for acting or paying money in good faith under or in pursuance of a power of attorney by reason of the fact that, at the time of the payment or act, the person who gave the power of attorney was dead or had done some act to avoid the power, if this fact was not known to Public Trust at the time of it so acting or paying.

Compare: 1957 No 36 s 117

138 Protection of Public Trust acting under order of court

- (1) Where Public Trust acts under or in pursuance of any judgment or order of a court or Judge, Public Trust is to be treated as having discharged its duty in connection with the subject matter of the judgment or order, even if the judgment or order is later invalidated, overruled, set aside, or otherwise rendered of no effect.
- (2) This section does not indemnify Public Trust in respect of any act if it has been guilty of any fraud or wilful concealment or misrepresentation—
 - (a) in obtaining the judgment or order; or

- (b) in acquiescing in the court or Judge giving or making the judgment or order.

Compare: 1957 No 36 s 131

139 Validity of acts by Public Trust under administration granted in error

- (1) This section applies where—
 - (a) under the belief in good faith that a person has died testate or intestate, Public Trust—
 - (i) has obtained a grant of administration; or
 - (ii) is administering an estate under statutory powers; or
 - (iii) is appointed or acting as trustee under a will; and
 - (b) it is afterwards found that—
 - (i) the person is living; or
 - (ii) the person did not die intestate; or
 - (iii) a will exists that revokes or alters the will that Public Trust has proved, or under which it becomes administrator or is administering or acting as a trustee; or
 - (iv) the authority of Public Trust to administer is for any other reason revoked or rendered of no effect.
- (2) In a case to which this section applies, all acts and things done or omitted by Public Trust are as valid and effectual as if it had been lawfully appointed or entitled to act as executor, administrator, or trustee.
- (3) Nothing in this section affects or prejudices any other protection that may be available at law to Public Trust.
- (4) Nor does anything in this section affect or prejudice the right of a person against another person to whom Public Trust has transferred property or paid money.
- (5) The onus of proving that Public Trust has not acted in good faith in respect of any of the matters referred to in this section is upon the person who alleges it.

Compare: 1957 No 36 s 64

140 Board members and employees not personally liable except for fraud or crime

[Repealed]

Section 140: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

141 Limitation of liability

The immunity in section 121 of the Crown Entities Act 2004 does 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 Public Trust in any of the offices or pos-

itions referred to in section 75(1), except to the extent that the Public Trust, or any board member, committee member, office holder, or employee of Public Trust has contributed to the injury or loss, or could by the exercise of reasonable diligence have averted it.

Section 141: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

142 Liability of office solicitor in conveyancing transactions

If the office solicitor acts for both parties in a conveyancing transaction between Public Trust and any person, or if he or she acts in any matter incidental to his or her duties, the liability that the office solicitor would incur if acting on his or her own account is to be borne by Public Trust.

Compare: 1957 No 36 s 137

143 Costs of legal proceedings

- (1) In all proceedings before any court, Judge, board, commission, tribunal, or other body or person in which Public Trust is a party or is in any way interested and is represented by its office solicitor, Public Trust is entitled to the same costs and allowances as if it had been represented by counsel or a solicitor not employed by it.
- (2) All costs, fees, allowances, and charges earned by the office solicitor must be applied and disposed of as a profit of Public Trust.

Compare: 1957 No 36 s 130

144 Certificate by Public Trust as to its legal status in any matter

- (1) Despite any enactment or law to the contrary, a certificate by Public Trust in relation to a deceased person that—
 - (a) states the name, residence, and occupation of the deceased person at the time of his or her death, and the date of death; and
 - (b) certifies that Public Trust has obtained a grant of probate or an order to administer, or is otherwise authorised to administer the estate; and
 - (c) states the date when the probate or order to administer was granted, or the manner in which and time at which Public Trust became authorised to administer,—

is to be accepted by all courts and persons as sufficient evidence, without further proof, of the death of the person, the appointment of Public Trust as executor or other administrator, or Public Trust's right to administer.

- (2) Despite any enactment or law to the contrary, a certificate by Public Trust in any particular case that—
 - (a) certifies that Public Trust is authorised to act as trustee, guardian, manager, agent, attorney, liquidator, committee, receiver, or in any other capacity in the particular case; and

- (b) states the manner in which and time at which it became so authorised to act—
- is to be accepted by all courts and persons as sufficient evidence, without further proof, of Public Trust’s right to act.
- (3) A certificate under this section is sufficient for the purpose of registering Public Trust as proprietor of—
- (a) an estate or interest in land under the Land Transfer Act 2017; or
- (b) a mining privilege under the Mining Act 1971; or
- (c) any shares, stock, or property in any bank, company, body, or association.
- (4) No bank, company, body, association, or person to which a certificate under this section is produced is concerned to inquire concerning the trusts on which Public Trust holds the land, mining privilege, shares, stocks, or property, or as to Public Trust’s authority to transfer or deal with it.
- (5) In the case of land under the Deeds Registration Act 1908,—
- (a) the certificate is equivalent for registration purposes to the probate, order to administer, election to administer, trust instrument, order, power of attorney, or other document or authority under which Public Trust is acting; and
- (b) it is not necessary to register that relevant document or authority.
- (6) A statement of the purport of any trust instrument, order, power of attorney, or other document or authority in any certificate under this section is sufficient evidence of that purport, and no-one is concerned to inquire beyond that statement.

Compare: 1957 No 36 s 78

Section 144(3)(a): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

145 Certificate where Public Trust acting jointly

- (1) In any case where Public Trust is acting jointly with another person in any of the capacities mentioned in section 144, a certificate by Public Trust issued in accordance with that section or section 88 is to be accepted by all courts and persons as sufficient evidence, without further proof, of—
- (a) the facts set out in the certificate that are authorised to be set out in it by section 144 or section 88; and
- (b) the appointment of Public Trust and the other person; and
- (c) the right of Public Trust and the other person to administer or act.
- (2) It is not necessary for the certificate to be executed by the person with whom Public Trust is acting.

- (3) This section applies despite any enactment or law to the contrary.

Compare: 1957 No 36 s 78A

146 Service of notices by Public Trust

- (1) Where under this Act notice is required to be given by Public Trust, or notice is given by Public Trust or any employee or person acting under this Act or in good faith purporting to act under this Act, it is sufficient if the notice is sent by registered letter addressed to the person to whom the notice is to be given at the person's then known or last known place of residence or business.

- (2) If a notice is sent by post in the manner described in subsection (1), it will be treated in the absence of proof to the contrary as having been given at the time when the letter would have been delivered in the ordinary course of post.

Compare: 1957 No 36 s 138

147 Regulations

- (1) The Governor-General may by Order in Council make regulations prescribing—

(a) amounts for the purposes of sections 86(3), 93(1)(b) and (7), 94(1)(c) and (5), 101(1), 126, and 127(1):

(b) the form of the declaration of fidelity and secrecy for the purposes of section 34:

(c) for the purposes of any initial disclosure or ongoing disclosure of expenses and management fees in relation to a group investment fund required by sections 70 and 71,—

(i) the persons to whom the disclosures must be made; and

(ii) when they must be made; and

(iii) the information to be disclosed:

(d) the fee payable to the Registrar of the High Court for—

(i) the filing of an election under Part 6:

(ii) certifying as a correct copy under the seal of the court a copy of an election under Part 6:

(e) such other matters as may be contemplated by or necessary or desirable for the purposes of this Act.

- (2) Regulations made under subsection (1)(c) may—

(a) prescribe different disclosure requirements for different classes of investment or fund or investor:

(b) dispense with disclosure requirements in appropriate cases, whether because of the temporary nature of an investment or for other good reason, and specify conditions to which any dispensation from disclosure requirements may be subject:

- (c) specify the consequences of any failure to disclose or late disclosure (which may include a prohibition on the charging or reimbursing of any fees or expenses until disclosure is made):
- (d) prescribe acceptable manners of notification (which need not be in accordance with section 146), and prescribe when notification will be treated as having been received:
- (e) make special provision in relation to existing funds within the meaning of section 171.

Part 9

Transfer of Public Trust undertaking

148 Interpretation

In this Part, unless the context otherwise requires,—

appointed day means the day on which this Part comes into force under section 2(1)

existing undertaking—

- (a) means—
 - (i) all property and estates administered, held, managed, or controlled by the Public Trustee or the Public Trust Office immediately before the appointed day; and
 - (ii) all rights and liabilities of the Public Trustee and the Public Trust Office; and
- (b) includes any reserves of the Public Trust Office in existence immediately before the appointed day, including the following funds formerly constituted under the Public Trust Office Act 1957:
 - (i) the Investment Fluctuation Reserve Fund; and
 - (ii) the Assurance and Reserve Fund; and
 - (iii) the General Legal Expenses Reserve Fund; but
- (c) does not include any amount to which section 167 applies

fiduciary rights and liabilities includes all rights, capacities, authorities, discretions, duties, and liabilities of the Public Trustee as a fiduciary

liabilities means liabilities, debts, charges, duties, and obligations (whether present or future, actual or contingent, or payable or to be observed or performed in New Zealand or elsewhere)

Public Trust means Public Trust established by section 7

Public Trust Office means the Public Trust Office referred to in the Public Trust Office Act 1957 as that Act was in force immediately before the appointed day

Public Trustee means the Public Trustee constituted under the Public Trust Office Act 1957, as that Act was in force immediately before the appointed day
transferred employee means a person employed in the Public Trust Office immediately before the appointed day who becomes an employee of Public Trust on the appointed day.

149 Vesting of existing undertaking

On the appointed day the existing undertaking vests in Public Trust.

150 Transfer of fiduciary rights and liabilities

Except as expressly provided by this Act, on and from the appointed day the fiduciary rights and liabilities vest in Public Trust.

151 Dissolution of Public Trustee, Public Trust Office, and Investment Board

- (1) On and from the appointed day, the Public Trustee, the Public Trust Office, and the Investment Board are dissolved.
- (2) For the purpose of this section, **Investment Board** means the Public Trust Office Investment Board constituted under section 14 of the Public Trust Office Act 1957.

152 References in instruments

- (1) A reference (express or implied) to the Public Trustee or the Public Trust Office in any enactment, or in any instrument, register, record, notice, security, document, or communication made, given, passed, or executed before or on the appointed day, must be read as a reference to Public Trust.
- (2) A reference (express or implied) to an officer of the Public Trust Office in any enactment, or in any instrument, register, record, notice, security, document, or communication made, given, passed, or executed before or on the appointed day must be read as a reference to—
 - (a) the corresponding employee of Public Trust; or
 - (b) if there is no corresponding employee, such other employee of Public Trust as it thinks fit.
- (3) This section is subject to section 170.

153 Status of contracts and other instruments

- (1) Contracts, agreements, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices (whether in writing or not), entered into by, made with, given to or by, or addressed to the Public Trustee or the Public Trust Office (whether alone or with another person) before the appointed day and having effect immediately before the appointed day (**contracts and other instruments**) are subject to subsection (2).

- (2) The contracts and other instruments are binding on, and enforceable by, against, or in favour of, Public Trust as if Public Trust and not the Public Trustee or the Public Trust Office had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed.

154 Status of existing securities

- (1) A security held by the Public Trustee or the Public Trust Office as security for a debt or other liability to the Public Trustee or the Public Trust Office incurred before the appointed day—
- (a) is available to Public Trust as security for the discharge of that debt or liability; and
 - (b) if the security extends to future or prospective debts or liabilities, is available as security for the discharge of debts or liabilities to Public Trust incurred on or after the appointed day.
- (2) Public Trust is entitled to the same rights and priorities, and is subject to the same liabilities, in relation to the security as the Public Trustee or the Public Trust Office would be if this Act had not been passed.

155 Continuation of proceedings

- (1) An action, arbitration, proceeding, or cause of action that was pending or existing by, against, or in favour of the Public Trustee or the Public Trust Office, or to which the Public Trustee or the Public Trust Office was a party, before the appointed day may be continued and enforced by, against, or in favour of Public Trust.
- (2) It is not necessary to amend a pleading, writ, or other document to continue the action, arbitration, proceeding, or other cause of action.

156 Effect of Act

Nothing effected or authorised by this Act—

- (a) places the Public Trustee, the Public Trust Office, Public Trust, or any other person in breach of contract or confidence, or makes any of them liable for a civil wrong; or
- (b) entitles a person to terminate or cancel a contract or arrangement, or to accelerate the performance of an obligation, or to impose a penalty or increased charge; or
- (c) places the Public Trustee, the Public Trust Office, Public Trust, or any other person in breach of an enactment, a rule of law, or a provision of a contract that prohibits, restricts, or regulates the assignment or transfer of property or the disclosure of information; or
- (d) releases a surety from an obligation; or
- (e) invalidates or discharges a contract or surety.

157 Books and documents to remain evidence

- (1) A document, matter, or thing that would have been admissible in evidence for or against the Public Trustee or the Public Trust Office is, on and after the appointed day, admissible in evidence for or against Public Trust.
- (2) For the purpose of this section, **document** has the meaning given to it by section 2(1) of the Evidence Amendment Act (No 2) 1980.

158 Registers

- (1) A Registrar of Deeds, Registrar General of Land, or any other person charged with keeping books or registers is not required to change the name of the Public Trustee or the Public Trust Office to Public Trust in the books or registers, or in a document, solely because of the provisions of this Act.
- (2) If Public Trust presents an instrument referred to in subsection (3) to a Registrar or other person, the presentation of that instrument by Public Trust is, in the absence of proof to the contrary, sufficient evidence that the property is vested in Public Trust.
- (3) For the purposes of this section, the instrument need not be an instrument of transfer, but must—
 - (a) be executed or purport to be executed by Public Trust; and
 - (b) relate to a property held by the Public Trustee or the Public Trust Office immediately before the appointed day; and
 - (c) be accompanied by a certificate by Public Trust that the property became vested in Public Trust by virtue of the provisions of this Act.

159 Liability of employees and agents

- (1) A person who, at any time before the appointed day, held office as the Public Trustee, or who was an officer, employee, agent, or representative of the Public Trust Office, is not personally liable in respect of an act or thing done or omitted to be done by him or her before the appointed day in the exercise or bona fide purported exercise of an authority conferred by or under the Public Trust Office Act 1957 or any other enactment.
- (2) This section applies only—
 - (a) in the absence of actual fraud; and
 - (b) if the act or omission does not amount to an offence.

Transfer of employees

160 Transfer of existing employees

On the appointed day, each employee of the Public Trust Office (excluding the Public Trustee) becomes an employee of Public Trust.

161 Terms and conditions of employment of transferred employees

- (1) The employment of a transferred employee must be on terms and conditions no less favourable to the transferred employee than those applying to the employee immediately before the appointed day.
- (2) Subsection (1)—
 - (a) continues to apply to the terms and conditions of employment of a transferred employee until those terms and conditions are varied by agreement between the transferred employee and Public Trust; and
 - (b) does not apply to a transferred employee who receives any subsequent appointment with Public Trust.

162 Continuity of employment

For the purposes of every enactment, law, determination, contract, and agreement relating to a transferred employee (including the deed dated 31 March 1993 establishing the Public Trust Office Superannuation Fund),—

- (a) the contract of employment of that employee that applied immediately before the transfer in respect of that person's employment in the Public Trust Office is deemed to have been unbroken; and
- (b) the employee's period of service with the Public Trust Office, and every other period of service that is recognised by the Public Trust Office as continuous service, is deemed to have been a period of service with Public Trust.

163 No compensation for technical redundancy

A transferred employee is not entitled to receive any payment or any other benefit solely on the ground that—

- (a) the position held by the employee in the Public Trust Office has ceased to exist; or
- (b) the employee has ceased, as a result of the transfer to Public Trust, to be an employee of the Public Trust Office.

164 Contributors to Government Superannuation Fund

- (1) A transferred employee who, immediately before the appointed day, was a contributor to the Government Superannuation Fund under Part 2 or Part 2A of the Government Superannuation Act 1956 is, for the purposes of that Act, to be treated as if he or she were employed in the Government service so long as that person continues to be an employee of Public Trust.
- (2) The Government Superannuation Fund Act 1956 applies to the transferred employee in all respects as if that employee's service as an employee with Public Trust were Government service.

- (3) A transferred employee who ceases to be a contributor to the Government Superannuation Fund is not subsequently entitled to again become a contributor.
- (4) For the purposes of applying the Government Superannuation Fund Act 1956 in accordance with subsection (2), **controlling authority**, in relation to that employee, means Public Trust.
- (5) In this section, **employee** includes the Public Trustee.

Application of Income Tax Act 1994

165 Application of Income Tax Act 1994

- (1) For the purposes of the Income Tax Act 1994,—
 - (a) Public Trust is to be regarded as the same person as the Public Trustee—
 - (i) when determining the adjusted tax value of depreciable assets, and in calculating disposal gains and losses in respect of depreciable assets; and
 - (ii) in relation to the treatment of accrual expenditure in respect of which there is an unexpired portion within the meaning of section EF 1 of the Income Tax Act 1994; and
 - (b) the vesting of financial arrangements under section 149 of this Act is to be treated as a sale of those arrangements.
- (2) Nothing in subsection (1) applies in respect of the depreciable assets, accrual expenditure, or financial arrangements of any estate.

Application of Securities Act 1978

[Repealed]

Heading: repealed, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

166 Application of Securities Act 1978

[Repealed]

Section 166: repealed, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Amount of reserves to be paid to the Crown

167 Amount of reserves to be paid to the Crown before appointed day

- (1) The Minister of Finance may, with the agreement of the Minister, determine the amount of any reserves of the Public Trust Office that the Public Trustee must pay into a Crown Bank Account, and must notify that determination in the *Gazette* as soon as practicable.
- (2) The Public Trustee must pay that amount into a Crown Bank Account on the working day immediately preceding the appointed day.

- (3) A payment made under this section is the absolute property of the Crown.
- (4) This section prevails over section 23 of the Public Trust Office Act 1957.

Section 167(1): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

Section 167(2): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

Part 10

Repeals, amendments, and transitional provisions

168 Repeals

- (1) The Public Trust Office Act 1957 (1957 No 36) is repealed.
- (2) The Enemy Property Act 1951 (1951 No 48) is also repealed.

169 Revocations

- (1) The following regulations and order are revoked:
 - (a) Enemy Property Regulations 1954 (SR 1954/32):
 - (b) Public Trust Office Regulations 1958 (SR 1958/66):
 - (c) Public Trust Office (Investments) Order 1969 (SR 1969/122).
- (2) Despite subsection (1)(b), regulations 4 and 8 and Schedule 1 of the Public Trust Office Regulations 1958 continue to have effect, until revoked by regulations made under this Act, as if—
 - (a) references in those provisions to the Public Trustee, the Public Trust Office, and the Public Trust Investment Board were references to Public Trust; and
 - (b) references to provisions of the Public Trust Act 1957 were references to the equivalent provisions of this Act.

170 Amendments to other enactments

- (1) The Acts specified in Schedule 2 are amended in the manner indicated in that schedule.
- (2) The local Acts specified in Schedule 3 are amended in the manner indicated in that schedule.
- (3) The private Acts specified in Schedule 4 are amended in the manner indicated in that schedule.
- (4) The regulations specified in Schedule 5 are amended in the manner indicated in that schedule.

171 Transitional provision in relation to existing investments in group investment funds

- (1) This section applies in respect of funds (**existing funds**) invested in a group investment fund before the date on which regulations prescribing initial disclosure requirements for funds invested in a group investment fund (the **disclosure regulations**) come into force.
- (2) Nothing in section 70 prevents any reimbursement of expenses in respect of existing funds before initial disclosure has been made, except to the extent otherwise provided in the disclosure regulations.
- (3) Public Trust may not, however, charge, demand, receive, or retain any management fees under section 71 in respect of any existing funds until it has made initial disclosure of the fees in accordance with the disclosure regulations, except in circumstances where—
 - (a) section 71(2)(b) applies (investment statement under the Securities Act 1978); or
 - (b) the disclosure regulations dispense with the requirement for initial disclosure of management fees.
- (4) The making of initial disclosure in respect of any existing funds does not authorise the charging of a management fee in relation to services rendered in respect of those existing funds during any period prior to the date of the initial disclosure, except as otherwise provided in the disclosure regulations.

172 Financial statement and report on operations for period commencing 1 July 2001

- (1) As soon as possible after the day on which this Act comes into force under section 2(1), Public Trust must prepare a balance sheet, profit and loss account, and profit and loss appropriation account relating to the operations of the Public Trust Office for the period commencing on 1 July 2001 and ending with the close of the day preceding that on which this Act comes into force (the **broken period**), as if—
 - (a) section 22 of the Public Trust Office Act 1957 were still in force; and
 - (b) Public Trust were the Public Trustee; and
 - (c) the broken period were a financial year.
- (2) The balance sheet and accounts referred to in subsection (1) must be provided by Public Trust to the Controller and Auditor-General who, after auditing them, must transmit them and any report on them to the Minister.
- (3) As soon as possible after the day on which this Act comes into force under section 2(1), the Minister must cause to be prepared a report on the operations of the Public Trust Office during the broken period.
- (4) The Minister must, within 12 sitting days after receiving them, present to the House of Representatives copies of—

- (a) the audited balance sheet and accounts referred to in subsection (1), and any report on them by the Controller and Auditor-General; and
- (b) the report on the operations of the Public Trust Office referred to in subsection (3).

Schedule 1
Provisions relating to board
[Repealed]

s 14(2)

Schedule 1: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 2

Amendments to other Acts

s 170(1)

Accident Insurance Act 1998 (1998 No 114)*Amendment(s) incorporated in the Act(s).***Administration Act 1969 (1969 No 52)***Amendment(s) incorporated in the Act(s).***Archives Act 1957 (1957 No 13)***Amendment(s) incorporated in the Act(s).***Charitable Trusts Act 1957 (1957 No 18)***Amendment(s) incorporated in the Act(s).***Child Support Act 1991 (1991 No 142)***Amendment(s) incorporated in the Act(s).***Companies Act 1993 (1993 No 105)***Amendment(s) incorporated in the Act(s).***Copyright Act 1994 (1994 No 143)***Amendment(s) incorporated in the Act(s).***Crown Minerals Act 1991 (1991 No 70)***Amendment(s) incorporated in the Act(s).***Crown Proceedings Act 1950 (1950 No 54)***Amendment(s) incorporated in the Act(s).***Deaths by Accidents Compensation Act 1952 (1952 No 35)***Amendment(s) incorporated in the Act(s).***Defence Act 1990 (1990 No 28)***Amendment(s) incorporated in the Act(s).***Education Act 1989 (1989 No 80)***Amendment(s) incorporated in the Act(s).***Evidence Amendment Act 1952 (1952 No 50)***Amendment(s) incorporated in the Act(s).*

Family Proceedings Act 1980 (1980 No 94)

Amendment(s) incorporated in the Act(s).

Finance Act 1961 (1961 No 120)

Amendment(s) incorporated in the Act(s).

Finance Act 1962 (1962 No 131)

Amendment(s) incorporated in the Act(s).

Finance Act 1968 (1968 No 54)

Amendment(s) incorporated in the Act(s).

Finance Act (No 2) 1940 (1940 No 19)

Amendment(s) incorporated in the Act(s).

Fire Service Act 1975 (1975 No 42)

Amendment(s) incorporated in the Act(s).

Friendly Societies and Credit Unions Act 1982 (1982 No 118)

Amendment(s) incorporated in the Act(s).

Goods and Services Tax Act 1985 (1985 No 141)

Amendment(s) incorporated in the Act(s).

Government Superannuation Fund Act 1956 (1956 No 47)

Amendment(s) incorporated in the Act(s).

Health and Disability Commissioner Act 1994 (1994 No 88)

Amendment(s) incorporated in the Act(s).

Health Reforms (Transitional Provisions) Act 1993 (1993 No 23)

Amendment(s) incorporated in the Act(s).

Howard Estate Act 1978 (1978 No 74)

Amendment(s) incorporated in the Act(s).

Human Rights Act 1993 (1993 No 82)

Amendment(s) incorporated in the Act(s).

Income Tax Act 1994 (1994 No 164)

Amendment(s) incorporated in the Act(s).

Insolvency Act 1967 (1967 No 54)

Amendment(s) incorporated in the Act(s).

Insurance Companies' Deposits Act 1953 (1953 No 50)

Amendment(s) incorporated in the Act(s).

Kitchener Memorial Scholarship Trust Act 1941 (1941 No 20)

Amendment(s) incorporated in the Act(s).

Land Act 1948 (1948 No 64)

Amendment(s) incorporated in the Act(s).

Land Drainage Act 1908 (1908 No 96)

Amendment(s) incorporated in the Act(s).

Land Transfer Act 1952 (1952 No 52)

Amendment(s) incorporated in the Act(s).

Law Reform Act 1936 (1936 No 31)

Amendment(s) incorporated in the Act(s).

Layout Designs Act 1994 (1994 No 116)

Amendment(s) incorporated in the Act(s).

Life Insurance Act 1908 (1908 No 105)

Amendment(s) incorporated in the Act(s).

Local Government Act 1974 (1974 No 66)

Amendment(s) incorporated in the Act(s).

Maori Affairs Restructuring Act 1989 (1989 No 68)

Amendment(s) incorporated in the Act(s).

Maori Housing Act 1935 (1935 No 34)

Amendment(s) incorporated in the Act(s).

Maori Trustee Act 1953 (1953 No 95)

Amendment(s) incorporated in the Act(s).

Minors' Contracts Act 1969 (1969 No 41)

Amendment(s) incorporated in the Act(s).

Mutual Insurance Act 1955 (1955 No 23)

Amendment(s) incorporated in the Act(s).

Niue Act 1966 (1966 No 38)

Amendment(s) incorporated in the Act(s).

Oaths and Declarations Act 1957 (1957 No 88)

Amendment(s) incorporated in the Act(s).

Official Information Act 1982 (1982 No 156)

Amendment(s) incorporated in the Act(s).

Ombudsmen Act 1975 (1975 No 9)

Amendment(s) incorporated in the Act(s).

Pacific Islands Polynesian Education Foundation Act 1972 (1972 No 138)

Amendment(s) incorporated in the Act(s).

Privacy Act 1993 (1993 No 28)

Amendment(s) incorporated in the Act(s).

Property Law Act 1952 (1952 No 51)

Amendment(s) incorporated in the Act(s).

Protection of Personal and Property Rights Act 1988 (1988 No 4)

Amendment(s) incorporated in the Act(s).

Public Finance Act 1989 (1989 No 44)

Amendment(s) incorporated in the Act(s).

Public Works Act 1981 (1981 No 35)

Amendment(s) incorporated in the Act(s).

Rating Powers Act 1988 (1988 No 97)

Amendment(s) incorporated in the Act(s).

Reserves and Other Lands Disposal Act 1940 (1940 No 13)

Amendment(s) incorporated in the Act(s).

River Boards Act 1908 (1908 No 165)

Amendment(s) incorporated in the Act(s).

Seamen's Union Funds Act 1971 (1971 No 71)

Amendment(s) incorporated in the Act(s).

Secondhand Dealers Act 1963 (1963 No 10)

Amendment(s) incorporated in the Act(s).

Securities Act 1978 (1978 No 103)

Amendment(s) incorporated in the Act(s).

Securities Amendment Act 1988 (1988 No 234)

Amendment(s) incorporated in the Act(s).

Stamp and Cheque Duties Act 1971 (1971 No 51)

Amendment(s) incorporated in the Act(s).

State Sector Act 1988 (1988 No 20)

Amendment(s) incorporated in the Act(s).

Te Ture Whenua Maori Act 1993 (1993 No 4)

Amendment(s) incorporated in the Act(s).

Trustee Act 1956 (1956 No 61)

Amendment(s) incorporated in the Act(s).

Trustee Companies Management Act 1975 (1975 No 25)

Amendment(s) incorporated in the Act(s).

Unit Trusts Act 1960 (1960 No 99)

Amendment(s) incorporated in the Act(s).

Wills Amendment Act 1969 (1969 No 40)

Amendment(s) incorporated in the Act(s).

Schedule 3
Local Acts amended

s 170(2)

Auckland Education Reserves Act 1912 (1912 No 5 (L))

Amendment(s) incorporated in the Act(s).

Auckland Metropolitan Drainage Act 1960 (1960 No 15 (L))

Amendment(s) incorporated in the Act(s).

Christchurch District Drainage Act 1951 (1951 No 21 (L))

Amendment(s) incorporated in the Act(s).

Hutt Valley Drainage Act 1967 (1967 No 3 (L))

Amendment(s) incorporated in the Act(s).

Masterton Borough Council Staff Retiring Fund Act 1962 (1962 No 9 (L))

Amendment(s) incorporated in the Act(s).

North Shore Drainage Act 1963 (1963 No 15 (L))

Amendment(s) incorporated in the Act(s).

Schedule 4
Private Acts amended

s 170(3)

Carter Trust Act 1961 (1961 No 4 (P))

Amendment(s) incorporated in the Act(s).

John Fuller Trust Act 1951 (1951 No 6 (P))

Amendment(s) incorporated in the Act(s).

Kirkpatrick Masonic Trust Empowering Act 1998 (1998 No 1 (P))

Amendment(s) incorporated in the Act(s).

Thomas George Macarthy Trust Act 1936 (1936 No 4 (P))

Amendment(s) incorporated in the Act(s).

Schedule 5

Regulations amended

s 170(4)

**Accident Rehabilitation and Compensation Insurance (Experience Rating)
Regulations 1993 (SR 1993/310)**

Amendment(s) incorporated in the regulations.

Mutual Insurance Regulations 1956 (SR 1956/69)

Amendment(s) incorporated in the regulations.

Protection of Personal and Property Rights Regulations 1988 (SR 1988/229)

Amendment(s) incorporated in the regulations.

Trust Estates Audit Regulations 1958 (SR 1958/71)

Amendment(s) incorporated in the regulations.

Reprints notes

1 *General*

This is a reprint of the Public Trust Act 2001 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Land Transfer Act 2017 (2017 No 30): section 250

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

Crown Entities Amendment Act 2013 (2013 No 51): sections 42, 72

Limitation Act 2010 (2010 No 110): section 58

Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 (2008 No 64): section 14

Property Law Act 2007 (2007 No 91): section 364(1)

Wills Act 2007 (2007 No 36): section 41

Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81): sections 229, 230

Relationships (Statutory References) Act 2005 (2005 No 3): section 7

Crown Entities Act 2004 (2004 No 115): section 200

Local Government Act 2002 (2002 No 84): section 262

Securities Markets Amendment Act 2002 (2002 No 44): section 30

Public Trust Commencement Order (No 2) 2002 (SR 2002/197)

Public Trust Act Commencement Order 2002 (SR 2002/11)

Public Finance Act 1989 (1989 No 44): section 65R(3)