



New South Wales

James Hardie Former Subsidiaries (Winding up and Administration) Amendment (Trust Funds) Bill 2006

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

On 1 December 2005, the State of New South Wales (*the State*), James Hardie Industries NV and LGTDD Pty Limited (a controlled entity of James Hardie Industries NV) entered into an agreement (the *Final Funding Agreement*) to secure funding for asbestos-related personal injury claims against certain former subsidiary companies (the *liable entities*) of the James Hardie corporate group.

The *James Hardie Former Subsidiaries (Winding up and Administration) Act 2005* (along with the *James Hardie (Civil Liability) Act 2005* and the *James Hardie (Civil Penalty Compensation Release) Act 2005*) were enacted in order to give effect to certain matters contemplated by the Final Funding Agreement.

The *James Hardie Former Subsidiaries (Winding up and Administration) Act 2005* enabled James Hardie Industries NV to set up a special purpose trust fund (the *SPF*) to provide funding to the liable entities under the Final Funding Agreement. The Act provides that the trust fund is a charitable trust for the purposes of the law of New South Wales. Since the Final Funding Agreement was entered into, the trustee of the SPF (the *SPF trustee*) has also become a party to the Agreement by accession.

The Final Funding Agreement sets out a number of conditions precedent that must be satisfied before the funding obligations under the Agreement come into force. One of these conditions precedent is that certain tax treatment for the funds paid into the SPF be obtained.

The Australian Tax Office (the *ATO*) has provided a ruling to James Hardie Industries NV that payments that it makes into the SPF will be income tax deductible. However, the ATO has also ruled that the SPF is not a charitable trust and, therefore, the SPF trustee will be liable to pay income tax on its income if the SPF continues to be structured as provided for by the Final Funding Agreement.

The ATO has now issued a binding private ruling to the SPF trustee for the purposes of Division 359 of Schedule 1 to the *Taxation Administration Act 1953* of the Commonwealth to the effect that the SPF trustee will not be liable to pay income tax on its income if the income is subject to a discretionary trust of which the SPF trustee is also the trustee.

The parties to the Final Funding Agreement have agreed to amend the Final Funding Agreement and the deed that established the SPF (the *SPF trust deed*) to enable such a discretionary trust to be established.

The object of this Bill is to amend the *James Hardie Former Subsidiaries (Winding up and Administration) Act 2005*:

- (a) to confirm that the SPF trust deed may be amended so as to establish a discretionary trust over income derived from funds in the SPF (the *discretionary fund*), and
- (b) to confirm that the SPF does not cease to be a validly established charitable trust only because it is not the only trust fund that is being used to provide funding for the payment of certain liabilities of the liable entities that are payable under the Act (the *payable liabilities* of the liable entities), and
- (c) to make various consequential amendments to the Act to give recognition to the fact that the payment of the payable liabilities of the liable entities may be funded from either or both the SPF and the discretionary fund, and
- (d) to confirm that nothing in the Act or the *James Hardie Former Subsidiaries (Special Provisions) Act 2005* affects any rights or liabilities arising under or in relation to a certain agreement that provides interim funding to a liable entity, and
- (e) to provide for the winding up and termination of the Medical Research and Compensation Foundation trust fund, and
- (f) to make other amendments in the nature of statute law revision.

The Bill also makes an amendment to the *James Hardie (Civil Liability) Act 2005* in the nature of statute law revision.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation, except for the following provisions which will commence on the date of assent to the proposed Act:

- (a) proposed sections 1, 2, 4 and 5,
- (b) Schedule 1 [1]–[10] and [23]–[27] (and proposed section 3 in its application to those items).

Clause 3 is a formal provision that gives effect to the amendments to the *James Hardie Former Subsidiaries (Winding up and Administration) Act 2005* set out in Schedule 1.

Clause 4 corrects a typographical error in the definition of *asbestos claim* in section 21 (1) of the *James Hardie (Civil Liability) Act 2005*. The definition currently refers to a “personal legal representative” instead of the correct term of “legal personal representative”.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced, the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of James Hardie Former Subsidiaries (Winding up and Administration) Act 2005

Creation of discretionary fund

Schedule 1 [2] amends section 4 of the *James Hardie Former Subsidiaries (Winding up and Administration) Act 2005* (the *Principal Act*) to insert, among other things, a definition of *discretionary fund*. The term is defined to mean any discretionary trust fund:

- (a) established in accordance with the SPF trust deed and the Final Funding Agreement with respect to any income derived from assets that form part of the SPF, and
- (b) in respect of which the SPF trustee is also the trustee.

Schedule 1 [27] inserts a new Part in Schedule 1 to the Principal Act that contains, among other things, a provision that confirms that the discretionary fund may be established by amendment of the SPF trust deed in accordance with its amendment provisions without the need to do anything else (including terminate the SPF and re-settle the assets that are the subject of the SPF into 2 new trusts). **Schedule 1 [1]** amends section 2 of the Principal Act to ensure that the new Part commences on the date of assent to the proposed Act.

Charitable status of SPF not affected

Schedule 1 [5] amends section 8 of the Principal Act to make it clear that the SPF does not cease to be a validly established charitable trust for the purposes of the law of New South Wales only because some of the funding for the payment of the payable liabilities of the liable entities is being provided from the discretionary fund.

Consequential amendment of Principal Act

Schedule 1 [2] amends section 4 of the Principal Act to insert, among other things, a definition of *compensation funds*. The term is defined to mean the following:

- (a) the SPF,
- (b) the discretionary fund.

Schedule 1 [11]–[22] make various amendments to the Principal Act to recognise that payments may be made from any of the compensation funds. **Schedule 1 [4]** also amends section 4 of the Principal Act to make it clear that a reference in that Act to the payment or discharge (whether in whole or in part) by the SPF trustee of a payable liability of a liable entity on the entity's behalf or for its benefit is a reference to the payment or discharge of such a liability by the SPF trustee in its capacity as the trustee of the SPF or the discretionary fund or in both capacities (as the case may be).

Schedule 1 [24] amends section 63 of the Principal Act to ensure that the establishment of the discretionary fund will not attract State tax.

Interim funding agreement not affected

On 16 November 2006, James Hardie 117 Pty Limited entered into a loan agreement with one of the liable entities (namely, Amaca Pty Limited) and the Medical Research and Compensation Foundation under which it agreed to provide interim funding to the liable entity pending the commencement of funding under the Final Funding Agreement.

Schedule 1 [27] inserts a new Part in Schedule 1 to the Principal Act that contains, among other things, a provision that confirms that nothing in the Act or the *James Hardie Former Subsidiaries (Special Provisions) Act 2005* affects any rights or liabilities arising under or in relation to the interim funding agreement.

Winding up and termination of Medical Research and Compensation Foundation trust fund

In February 2001, James Hardie Industries Limited established a charitable private trust fund (the *MRCF trust fund*) for the purposes of medical research into asbestos-related diseases.

A company called the Medical Research and Compensation Foundation was appointed as the trustee of the MRCF trust. That company, which continues to be the trustee of the MRCF trust fund, currently holds (either directly or indirectly) all of the shares in the liable entities for the purposes of the trust.

Section 16 of the Principal Act (when commenced) will enable the Minister to order the trustee to transfer shares that it holds in a liable entity to a person or persons specified in the order.

Schedule 1 [27] inserts a new Part in Schedule 1 to the Principal Act that contains, among other things, provisions that:

- (a) require the trustee to wind up the MRCF trust fund as soon as is reasonably practicable after it ceases to hold any shares in the liable entities by, first, paying off the trust's creditors and then transferring the balance of the trust's assets to one or more asbestos medical research providers prescribed by the regulations in such proportions as may be prescribed by the regulations, and
- (b) enable the Minister to terminate the trust once this has happened.

Amendments in the nature of statute law revision

The proposed Act also makes a number of amendments in the nature of statute law revision to clarify the operation of certain provisions of the Principal Act. All of these amendments will commence on the date of assent to the proposed Act.

Schedule 1 [3] corrects a typographical error in the definition of *personal asbestos claim* in section 4 (1) of the Principal Act. The definition currently refers to a "personal legal representative" instead of the correct term of "legal personal representative".

Schedule 1 [6], [7], [8] and [9] amend sections 12, 13, 15 and 16 of the Principal Act respectively to make it clear that the provisions in those sections that are deemed to be included in the constitutions of certain companies have effect despite any other provisions of the constitutions of those companies. These amendments ensure that the provisions of those sections are consistent with other similar provisions of the Principal Act, such as section 42.

Schedule 1 [10] amends section 18 of the Principal Act to provide that Part 3 (Limitations on corporate restructuring) of the Act expires on 1 October 2007 instead of 1 October 2006. Section 18 has not been commenced and, accordingly, Part 3 has not yet expired.

Schedule 1 [23] amends section 54 (Enforcement of provisions of this Part) of the Principal Act to make it clear that the Supreme Court may make an order under that section setting aside a transaction, or requiring the repayment of money or the return of any other asset, (or both), if satisfied that the transaction or the disposition of the money or other asset (as the case may be) was in contravention of a provision of Part 4.

Schedule 1 [25] amends section 64 (Tabling of copies of Final Funding Agreement and Related Agreements) of the Principal Act to make it clear that the copies of the Agreements that are required to be tabled in Parliament under that section may be tabled even when Parliament is not sitting.

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Explanatory note

Savings and transitional regulations

Schedule 1 [26] amends clause 1 of Schedule 1 to the Principal Act to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.



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No. , 2006

A Bill for

An Act to amend the *James Hardie Former Subsidiaries (Winding up and Administration) Act 2005* to give recognition to a discretionary trust fund to be administered by the SPF trustee that is to be a source of funding in addition to the SPF; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>James Hardie Former Subsidiaries (Winding up and Administration) Amendment (Trust Funds) Act 2006</i> .	3 4
2 Commencement	5
(1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.	6 7
(2) The following provisions of this Act commence on the date of assent to this Act:	8 9
(a) sections 1, 4 and 5 and this section,	10
(b) Schedule 1 [1]–[10] and [23]–[27] (and section 3 in its application to those items).	11 12
3 Amendment of James Hardie Former Subsidiaries (Winding up and Administration) Act 2005 No 105	13 14
The <i>James Hardie Former Subsidiaries (Winding up and Administration) Act 2005</i> is amended as set out in Schedule 1.	15 16
4 Amendment of James Hardie (Civil Liability) Act 2005 No 106	17
The <i>James Hardie (Civil Liability) Act 2005</i> is amended by omitting “personal legal representative” from paragraph (b) of the definition of <i>asbestos claim</i> in section 21 (1) and by inserting instead “legal personal representative”.	18 19 20 21
5 Repeal of Act	22
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	23 24
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	25 26

Schedule 1	Amendment of James Hardie Former Subsidiaries (Winding up and Administration) Act 2005	1
		2
		3
	(Section 3)	4
[1] Section 2 Commencement		5
	Insert after section 2 (3) (and the note to that subsection):	6
	(4) The provisions of Part 3 of Schedule 1 commence on the date of assent to the <i>James Hardie Former Subsidiaries (Winding up and Administration) Amendment (Trust Funds) Act 2006</i> .	7
		8
		9
[2] Section 4 Definitions		10
	Insert in alphabetical order in section 4 (1):	11
	assets means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.	12
		13
		14
		15
		16
	compensation funds means the following:	17
	(a) the SPF,	18
	(b) the discretionary fund.	19
	discretionary fund means any discretionary trust fund:	20
	(a) established in accordance with the SPF trust deed and the Final Funding Agreement with respect to any income derived from assets that form part of the SPF, and	21
		22
		23
	(b) in respect of which the SPF trustee is also the trustee.	24
	SPF trust deed means the deed that established the SPF, as in force from time to time.	25
		26
[3] Section 4 (1), definition of “personal asbestos claim”		27
	Omit “personal legal representative” from paragraph (b) of the definition.	28
	Insert instead “legal personal representative”.	29
[4] Section 4 (4A)		30
	Insert after section 4 (4):	31
	(4A) Unless the context or subject-matter indicates or requires otherwise, a reference in this Act to the payment or discharge (whether in whole or in part) by the SPF trustee of a payable liability of a liable entity on the entity’s behalf or for its benefit is	32
		33
		34
		35

a reference to the payment or discharge of such a liability by the 1
SPF trustee in its capacity as the trustee of the SPF or the 2
discretionary fund or in both capacities (as the case may be). 3

[5] Section 8 SPF may be treated as charitable trust 4

Insert after section 8 (2): 5

(3) If the discretionary fund is for the time being authorised or 6
required under the Final Funding Agreement or the SPF trust 7
deed to receive and provide funding for the payment of, and to 8
pay, any of the payable liabilities of any liable entity instead of or 9
in addition to the SPF, any trust fund that was originally 10
established for the purposes referred to in subsection (1) (a): 11

(a) continues to be a valid charitable trust, and 12

(b) is taken to be administered by the SPF trustee for the 13
purposes for which the trust fund was originally 14
established, 15

even though the fund is not the only trust fund being used during 16
that time for the purpose referred to in subsection (1) (a) (i). 17

[6] Section 12 Registered offices to be within the State 18

Insert at the end of section 12 (2) (b): 19

, and 20

(c) the provisions of paragraphs (a) and (b) have effect despite 21
any other provisions of the constitution of the company. 22

[7] Section 13 Member Register to be within the State 23

Insert at the end of section 13 (2) (b): 24

, and 25

(c) the provisions of paragraphs (a) and (b) have effect despite 26
any other provisions of the constitution of the company. 27

[8] Section 15 Certain transfers of shares in liable entities prohibited 28

Omit section 15 (3). Insert instead: 29

(3) It is taken to be a provision of the constitution of each liable entity 30
that: 31

(a) shares in the entity cannot be transferred without the 32
written approval of the Minister, and 33

(b) the provisions of paragraph (a) have effect despite any 34
other provisions of the constitution of the entity. 35

[9] Section 16 Orders requiring transfer of shares in liable entities	1
Insert at the end of section 16 (6) (b):	2
, and	3
(c) the provisions of paragraphs (a) and (b) have effect despite any other provisions of the constitution of the company.	4 5
[10] Section 18 When Part expires	6
Omit “1 October 2006” from section 18 (b).	7
Insert instead “1 October 2007”.	8
[11] Section 24 Directions from SPF trustee	9
Omit “provided from the SPF” from section 24 (3).	10
Insert instead “provided from any of the compensation funds”.	11
[12] Section 32 Kinds of claims that are payable	12
Omit “(whether by the entity itself or by the SPF trustee for the entity)” from section 32 (1), (2) and (3) wherever occurring.	13 14
Insert instead “(whether by the entity itself or by the SPF trustee on the entity’s behalf or for its benefit)”.	15 16
[13] Section 33 Determination of whether sufficient funds	17
Omit “the SPF” from section 33 (1).	18
Insert instead “any of the compensation funds”.	19
[14] Section 33 (3)	20
Omit “the SPF by the SPF trustee”.	21
Insert instead “any of the compensation funds by the SPF trustee”.	22
[15] Section 34 Payments during period of sufficient funds	23
Omit “(or the SPF trustee on its behalf)”.	24
Insert instead “(or the SPF trustee on its behalf or for its benefit)”.	25
[16] Section 35 SPF trustee may apply to Supreme Court if insufficient funds	26
Omit “SPF” from the heading to section 35 (9).	27
Insert instead “SPF trustee”.	28

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Administration) Act 2005

[17] Section 36 Payments made by SPF trustee directly to claimants	1
Omit “from the SPF” from section 36 (1).	2
Insert instead “from any of the compensation funds”.	3
[18] Section 36 (1)	4
Insert “that is made on the entity’s behalf or for its benefit” after “the claimant”.	5 6
[19] Section 36 (2) (b)	7
Insert “except where the SPF trustee makes the payment from the discretionary fund—” before “to confer”.	8 9
[20] Section 36 (2) (c)	10
Insert “except where the SPF trustee makes the payment from the discretionary fund—” before “to confer”.	11 12
[21] Section 36 (3A)	13
Insert after section 36 (3):	14
(3A) Without limiting subsection (3), the SPF trustee may determine whether to make a requirement under that subsection after the end of the financial year (within the meaning of the Final Funding Agreement) in which the right to indemnity arose or at such other times as the SPF trustee may determine.	15 16 17 18 19
[22] Section 37 Winding up accounts	20
Insert “(within the meaning of the Final Funding Agreement)” after “financial year” in section 37 (1).	21 22
[23] Section 54 Enforcement of provisions of this Part	23
Omit section 54 (4). Insert instead:	24
(4) Without limiting subsection (3), on any such application the Supreme Court may:	25 26
(a) make an order setting aside a rationing direction made under section 35 if it is satisfied that the direction should not have been given or is no longer required, or	27 28 29
(b) make an order setting aside a transaction, or requiring the repayment of money or the return of any other asset, (or both), if satisfied that the transaction or the disposition of the money or other asset (as the case may be) was in contravention of a provision of this Part.	30 31 32 33 34

[24]	Section 63 Exemption from State tax	1
	Insert after paragraph (c) of the definition of <i>exempt matter</i> in section 63 (1):	2
	(c1) the establishment of the discretionary fund,	3
[25]	Section 64 Tabling of copies of Final Funding Agreement and Related Agreements	4
	Insert after section 64 (2):	5
	(2A) If a House of Parliament is not sitting when the Minister seeks to	6
	table the copies of the disclosed Agreements, the Minister may	7
	present the copies to the Clerk of the House concerned.	8
		9
[26]	Schedule 1 Savings, transitional and other provisions	10
	Insert at the end of clause 1 (1):	11
	<i>James Hardie Former Subsidiaries (Winding up and</i>	12
	<i>Administration) Amendment (Trust Funds) Act 2006</i>	13
[27]	Schedule 1, Part 3	14
	Insert after Part 2:	15
	Part 3 Provisions consequent on enactment of	16
	James Hardie Former Subsidiaries	17
	(Winding up and Administration)	18
	Amendment (Trust Funds) Act 2006	19
	Division 1 Interim funding arrangements	20
	9 Rights and liabilities relating to Interim Funding Deed not affected	21
	(1) For the avoidance of doubt, it is declared that nothing in the NSW	22
	administration legislation operates to abrogate, limit or otherwise	23
	affect any right or liability of any person arising under or in	24
	relation to the Interim Funding Deed.	25
	(2) Accordingly, any provision of the NSW administration	26
	legislation that would (but for subclause (1)) have abrogated,	27
	limited or otherwise affected any such right or liability is to be	28
	read as if it did not have that effect.	29
	(3) The provisions of this clause are taken to have had effect on and	30
	from the day on which the Interim Funding Deed was entered into	31
	by the parties to the Deed.	32

- (4) In this clause: 1
- Interim Funding Deed*** means the deed entitled “Interim Funding
Deed” that was entered into by the following parties on 2
16 November 2006: 3
4
- (a) James Hardie 117 Pty Limited (ACN 116 110 948), 5
- (b) Amaca, 6
- (c) the Compensation Foundation, 7
as in force from time to time. 8
- NSW administration legislation*** means any of the following: 9
- (a) the *James Hardie Former Subsidiaries (Special
Provisions) Act 2005*, 10
11
- (b) this Act, 12
- (c) any instrument made under an Act referred to in paragraph 13
(a) or (b). 14

Division 2 Winding up and termination of MRCF trust fund 15 16

10 Definitions 17

In this Division: 18

asbestos medical research provider means a person or body that 19
conducts, or that provides funding for the conduct of, medical 20
research into asbestos-related diseases. 21

hold a share includes hold a share on trust or for the benefit of 22
another person. 23

modification includes addition, exception, omission or 24
substitution. 25

MRCF trust deed means the deed executed by James Hardie 26
Industries Limited (ACN 000 009 263) in February 2001 that: 27

(a) constituted a charitable private trust fund for the purposes 28
of medical research into asbestos-related diseases, and 29

(b) appointed the Compensation Foundation as the trustee of 30
the fund, 31

as in force from time to time. 32

MRCF trust fund means the trust fund established by the MRCF 33
trust deed. 34

MRCF trustee means the trustee of the MRCF trust fund from 35
time to time. 36

<i>trust assets</i> means any assets held by the MRCF trustee for the purposes of the MRCF trust fund.	1 2
11 MRCF trustee to apply trust assets for certain purposes	3
The MRCF trustee must, as soon as is reasonably practicable after the day on which it ceases to hold any shares in the liable entities, take such steps as are necessary to apply any trust assets as follows:	4 5 6 7
(a) first, in payment of any amounts that are payable to any creditor of the MRCF trust fund,	8 9
(b) second, transfer (for no consideration) the balance of any trust assets to one or more asbestos medical research providers prescribed by the regulations in such proportions as may be prescribed by the regulations.	10 11 12 13
Note. Section 16 enables the Minister to order the trustee (namely, the Compensation Foundation) to transfer shares that it holds in a liable entity to a person or persons specified in the order.	14 15 16
12 Termination of MRCF trust fund	17
(1) The MRCF trustee must, within the period of 7 days after taking all of the steps referred to in clause 11, give the Minister a written notice (a <i>compliance notice</i>) stating that the trustee has complied with the provisions of clause 11.	18 19 20 21
(2) The Minister may, by order published in the Gazette, terminate the MRCF trust fund if the Minister has been given a compliance notice.	22 23 24
(3) The MRCF trust fund is terminated on the day specified in the order (being a day that is not earlier than the day on which the order is published in the Gazette) and, accordingly, the MRCF trustee ceases to be the trustee of the MRCF trust fund on that day.	25 26 27 28 29
13 Application to Minister for advice or direction	30
(1) The MRCF trustee may apply for advice or direction from the Minister on any matter relating to the scope or exercise of the trustee's functions under this Division.	31 32 33
(2) In determining any such application, the Minister may decide to:	34
(a) approve or disapprove of any act proposed to be done by the MRCF trustee, or	35 36
(b) give such advice or direction as the Minister considers appropriate.	37 38

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(3)	An advice or direction given by the Minister under this clause is to be given by order in writing.	1 2
(4)	Subject to clause 14, no proceedings lie, or civil or other liability arises, against the MRCF trustee or the Minister for or on account of any act, matter or thing done or omitted to be done by the trustee in accordance with any approval, advice or direction given under this clause.	3 4 5 6 7
14	Applications to Supreme Court for compliance orders	8
(1)	The Minister may apply to the Supreme Court for an order requiring the MRCF trustee to comply with the provisions of this Division.	9 10 11
(2)	On any such application, the Supreme Court may, if satisfied that the MRCF trustee has refused or failed to comply with a provision of this Division, make such order or orders as it thinks fit to require the trustee to comply with the provision.	12 13 14 15
15	Effect of Division	16
(1)	Any dealing by the MRCF trustee with the trust assets as required by or under this Division is not to be regarded as a breach of trust or otherwise as a civil wrong (whether for the purposes of any legislation of the State or the general law).	17 18 19 20
(2)	For the avoidance of doubt, any amounts drawn from the trust assets that are paid, or any trust assets that are transferred, as referred to in clause 11 are paid or transferred free of any equitable estates, interests, rights or obligations that attach to the assets by reason of the MRCF trust fund.	21 22 23 24 25
(3)	The provisions of this Division have effect despite anything to the contrary contained in the MRCF trust deed (in particular, clause 8 of that deed).	26 27 28
16	Protection for exercise of functions under this Division	29
(1)	The provisions of section 59 (other than subsection (5) (a)) are taken to apply to and for the purposes of this Division as if:	30 31
(a)	a reference in that section to a protected person were a reference to the MRCF trustee or the Minister, and	32 33
(b)	a reference in that section to a protected function were a reference to a function conferred or imposed by or under this clause, and	34 35 36
(c)	a reference in that section to this Part (that is, Part 4 of this Act) were a reference to this Division, and	37 38

(d)	the section provided that nothing in that section prevents the MRCF trustee or the Minister (as the case may be) from:	1
		2
		3
(i)	making an application under clause 13 or 14, or	4
(ii)	being given advice or direction under clause 13 or granted relief by the Supreme Court under clause 14, and	5
		6
		7
(e)	any provision or provisions of that section specified by the regulations had effect subject to such modifications as may be prescribed by the regulations.	8
		9
		10
(2)	Nothing in this clause limits the operation of section 59 in its application to matters arising under or in relation to Part 4 of this Act.	11
		12
		13
Division 3	Discretionary fund	14
17	Establishment of discretionary fund by amendment of SPF trust deed	15
		16
	For the avoidance of doubt, it is declared that for the purposes of the law of trusts of the State the discretionary fund may be established by amendment of the SPF trust deed in accordance with the provisions of that deed dealing with its amendment without the need to do anything else (including terminate the SPF and re-settle the assets that are the subject of the SPF into 2 new trusts).	17
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		23