

PUBLIC TRUSTEE (FURTHER AMENDMENT) BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Protected Estates (Amendment) Bill 1989 is cognate with this Bill.

The object of this Bill is to amend the Public Trustee Act 1913 so as:

- (a) to make further provision concerning the capital profits and losses from investment of the common fund of the Public Trustee; and
- (b) to facilitate the administration of the Public Trust Office; and
- (c) to make amendments by way of statute law revision.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the Schedule of amendments.

Clause 4 preserves the continuity of certain regulations under the Principal Act prescribing the fees which may be charged by the Public Trustee.

SCHEDULE 1 - AMENDMENTS

Schedule 1 (2) (a) amends section 9 to remove the requirement that fees charged by the Public Trustee are to be collected and accounted for in accordance with regulations made under the Principal Act.

Schedule 1 (2) (b) amends section 9 to make it discretionary, rather than mandatory, for the Public Trustee to recover fees and expenses from the trust property in respect of which those fees and expenses are charged.

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Schedule 1 (4) (a) and (c), (5) (a) and (6) (a) amend various amounts specified in relation to estates in section 18_A (Election by Public Trustee to administer), section 34_A (Small estates) and section 34_c (Payment of money without grant of administration) which determine the powers of the Public Trustee as to the administration of those estates by enabling those amounts to be specified by regulations to be made under the Principal Act.

Schedule 1 (4) (b) and (14) amend section 18_A (Election by Public Trustee to administer) and section 50 (Certificate of Public Trustee evidence) to enable the persons who may sign documents for the purposes of those sections to be prescribed by regulations to be made under the Principal Act.

Schedule 1 (7) amends section 36_A (Common fund) to provide that any capital profit or loss made on realisation of investments from the common fund may, at the discretion of the Public Trustee, be carried to the Interest Suspense Account or the Estates Guarantee and Reserve Account.

Schedule 1 (8) makes an amendment to section 36_B (Estates Guarantee and Reserve Account) as a consequence of the amendment made by Schedule 1 (7).

Schedule 1 (15) (a) amends section 51 (Service of orders on Public Trustee) to increase the penalty for an offence against that section.

Schedule 1 (17) amends section 54 (Disclosure of property to Public Trustee) to provide that the liability of a person who fails to make a disclosure as required by that section is to be 10 penalty units.

Schedule 1 (1), (3), (5) (b), (6) (b), (9) - (13), (15) (b), (16) and (18) make amendments by way of statute law revision. Schedule 1 (1) makes a minor amendment to the title of the Public Trust Office. Schedule 1 (3) and (15) (b) make amendments to update references to the jurisdiction of Local Courts and Magistrates. Schedule 1 (5) (b), (11) and (16) update references to the Consolidated Fund. Schedule 1 (6) (b) removes a requirement rendered inoperative with the abolition of death duty. Schedule 1 (9) makes an amendment consequential on the repeal of section 9 (3) by the Public Trustee (Amendment) Act 1989. Schedule 1 (10) repeals section 36_D which has been rendered redundant by virtue of the powers of investment now conferred under section 14_A of the Trustee Act 1925. Schedule 1 (12) repeals section 40 which has been rendered redundant by the provisions of the Public Finance and Audit Act 1983. Schedule 1 (13) repeals section 41 which has been rendered redundant partly by the provisions of the Public Finance and Audit Act 1983 and partly by the fact that the Public Trust Office has now been removed from the budget sector. Schedule 1 (18) makes a minor amendment to the title of the Public Trustee.
