

# **Trustee (Public Trust) Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The purpose of this Bill is to clarify the process for appointing a replacement securities trustee for products regulated by the Securities Act 1978. The Bill does this by providing that the court may only appoint Public Trust as a replacement trustee for products regulated by the Securities Act 1978 if it is satisfied that the resigning trustee—

- has made reasonable endeavours to appoint a replacement trustee but it is impracticable or difficult to make the appointment without the assistance of the court; and
- will indemnify Public Trust for its reasonable fees and expenses in undertaking the appointment and provide security to the satisfaction of the court for that indemnity.

The Bill will ensure that Public Trust does not bear the financial burden of acting as a trustee for products regulated by the Securities Act 1978 if an existing trustee seeks to retire and applies to the court to have Public Trust appointed in its place.

### Regulatory impact statement

The Ministry of Justice produced a regulatory impact statement on 6 May 2013 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.justice.govt.nz/policy/regulatory-impact-statements>
- <http://www.treasury.govt.nz/publications/information-releases/ris>

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* provides that the Act comes into force on the day after the date on which it receives the Royal assent.

*Clause 3* provides that the Bill amends the Trustee Act 1956 (the **principal Act**).

*Clause 4* amends section 46 of the principal Act. That section provides for the appointment of Public Trust as a trustee of last resort where, typically, a single trustee wishes to resign but has been unable to find a replacement. As the section is currently worded, Public Trust cannot refuse an appointment by the court as trustee of last resort. The amendment to section 46 requires a retiring trustee, in the case of a trustee in relation to certain securities, to have taken certain steps before Public Trust can be required to accept the appointment. Those steps relate primarily to ensuring that Public Trust is not out of pocket through being forced to act as trustee in this very narrow category of cases. The securities in question are a debt security, a participatory security, a unit in a unit trust, and an interest in a Kiwi-Saver scheme.

*Clause 5* is a transitional provision that preserves the existing law for the purposes of a proceeding commenced before the amendment comes into force.

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*Hon Judith Collins*

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### **Contents**

	Page
1 Title	1
2 Commencement	1
3 Principal Act	1
4 Section 46 amended (Discharge of trustee with assistance of court or Registrar)	2
5 Transitional provision	2

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### **The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Trustee (Public Trust) Amendment Act **2013**.
- 2 Commencement**  
This Act comes into force on the day after the date on which it receives the Royal assent. 5
- 3 Principal Act**  
This Act amends the Trustee Act 1956 (the **principal Act**).

**4 Section 46 amended (Discharge of trustee with assistance of court or Registrar)**

Replace section 46(4) with:

- “(4) If the court, on an application under subsection (2) by a trustee other than a securities trustee, appoints Public Trust as the replacement trustee, Public Trust must accept the appointment. 5
- “(5) On an application under subsection (2) by a securities trustee for the appointment of Public Trust as the replacement trustee, the court may appoint Public Trust, and Public Trust must accept the appointment, only if— 10
- “(a) the retiring trustee has failed to obtain a replacement trustee after making reasonable endeavours to do so; and
- “(b) it is impracticable or difficult to obtain a replacement trustee without an order under this section; and 15
- “(c) the retiring trustee indemnifies Public Trust for its reasonable fees and expenses incurred in undertaking the appointment; and
- “(d) the retiring trustee has provided security to the satisfaction of the court for its indemnity under **paragraph (c)**. 20
- “(6) For the purposes of **subsection (5)(a)**, and without limiting the meaning of reasonable endeavours, a retiring trustee has not made reasonable endeavours to obtain a replacement trustee if it has not both— 25
- “(a) undertaken to indemnify the proposed replacement trustee for its reasonable fees and expenses in undertaking the appointment; and
- “(b) offered adequate security for its indemnity.
- “(7) In **subsections (4) and (5)**, **securities trustee** means a person appointed as a trustee in respect of a security (and, for this purpose, **security** and **trustee** have the same meanings as in section 4(1) of the Securities Trustees and Statutory Supervisors Act 2011).” 30

**5 Transitional provision**

Nothing in the amendment made under **section 4** affects any proceeding commenced before **section 4** comes into force, 35

and any such proceeding must be decided as if the amendment had not been made.

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