

**Reprint
as at 1 March 2002**



**AMP Perpetual Trustee Company
Act 1988**

Private Act 1988 No 1
Date of assent 31 March 1988
Commencement 1 April 1988

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

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An Act—

- (a) to provide for a change of name by the Perpetual Trustees, Estate, and Agency Company of New Zealand (Limited); and**
- (b) to authorise the Company to transact business with the Australian Mutual Provident Society and with other subsidiaries of that society; and**
- (c) to consolidate the provisions of the Perpetual Trustees, Estate, and Agency Company Act 1884 and its amendments**

Preamble

Whereas, from the uncertainty of human life, and from other causes, great difficulty has from time to time arisen in securing the services of suitable persons for the office of executor, trustee, liquidator, guardian, and other similar offices: And whereas, in order to secure the more certain discharge of the duties of those offices a company by the name of the Perpetual Trustees, Estate, and Agency Company of New Zealand (Limited) (hereinafter called the Company) was, on 16 April 1884, formed and incorporated under the Companies Act 1882 with the object, among other purposes, of affording persons the opportunity of obtaining the services of a permanent corporation for the performance of the duties of those offices: And whereas, by the Perpetual Trustees, Estate, and Agency Company Act 1884, the Company has the power to act as executor, trustee, liquidator, guardian, or in any other similar capacity, to perform and discharge all

the duties of those offices, and to receive remuneration for those duties: And whereas, the Company is a trustee company within the meaning of the Trustee Companies Act 1967: And whereas the Company is now a wholly owned subsidiary of the Australian Mutual Provident Society (hereinafter called the AMP Society): And whereas the Company desires to change its name to AMP Perpetual Trustee Company N.Z. Limited: And whereas the Company also desires the power to transact with the AMP Society or any subsidiary of that society, should it think fit to do so, any business in connection with any estate or trust property that the Company may from time to time administer: And whereas legislation is the only expedient means by which the change of name of the Company and the empowering of the Company to transact any business with the AMP Society and with other subsidiaries of that society can be effected or permitted efficiently and economically and without interference with the conduct and continuity of the Company, the trusts under its administration, the Company's clients, and other persons having business with the Company: And whereas some of the objects of this Act cannot be attained otherwise than by legislation.

1 Short Title and commencement

- (1) This Act may be cited as the AMP Perpetual Trustee Company Act 1988.
- (2) This Act shall come into force on 1 April 1988.

2 Interpretation

In this Act, unless the context otherwise requires,—

AMP Society means the Australian Mutual Provident Society established in Sydney in the State of New South Wales, Australia, and carrying on business in New Zealand

the Company means the Perpetual Trustees, Estate, and Agency Company of New Zealand (Limited) incorporated in New Zealand under the Companies Act 1882, which, on and after 1 April 1988, will be called AMP Perpetual Trustee Company N.Z. Limited

fiduciary obligations, and liabilities includes all rights, capacities, authorities, discretions, duties, obligations, and liabilities as executor, trustee, administrator, receiver, liquidator, committee, guardian, attorney, or agent, or as a fiduciary in any capacity

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

property means property of every kind whether tangible or intangible, real or personal, or corporeal or incorporeal; and, without limiting the generality of the foregoing, includes—

- (a) choses in action; and
- (b) goodwill; and
- (c) rights, interests, and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise, and whether liquidated or unliquidated, actual, contingent, or prospective

rights means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective

subsidiary and related company have the same meanings as in the Companies Act 1955

trust property means all property held as executor, trustee, administrator, receiver, liquidator, committee, guardian, attorney, or agent, or as a fiduciary in any capacity.

3 Act to bind the Crown and other persons

This Act shall bind the Crown and every person whose rights, obligations, or liabilities are affected by any provision of this Act.

Part 1 Effect of Act

4 Change of Company's name

- (1) On and after 1 April 1988, the name of the Company shall be AMP Perpetual Trustee Company N.Z. Limited.

- (2) Forthwith after 1 April 1988, the Registrar of Companies shall enter the new name of the Company on the register in place of the former name and shall issue a certificate of incorporation altered to meet the circumstances of the case.
- (3) Nothing in this Act shall prevent the name of the Company being changed at any time in accordance with the Companies Act 1955.

5 Company to continue under this Act

On and after 1 April 1988, the Company shall be and continue to be the same body corporate as the body corporate existing before that date and called the Perpetual Trustees, Estate, and Agency Company of New Zealand (Limited). In particular, and without limiting the generality of the foregoing,—

- (a) except as expressly provided in this Act, the rights, obligations, and liabilities (including fiduciary rights, obligations, and liabilities) of the Company shall not be in any way affected by the enactment of this Act; and
- (b) all property, and all trust property, belonging to or vested in the Company immediately before that date shall, on and after that date, continue to belong to or be vested in the Company; and
- (c) all actions, arbitrations, and other proceedings that are pending at that date by or against the Company may be continued in the same manner notwithstanding the enactment of this Act; and
- (d) every reference in any Act, will, trust deed, document, sign, poster, notice, or other place to “The Perpetual Trustees, Estate, and Agency Company of New Zealand (Limited)” or to “The Perpetual Trustees, Estate, and Agency Company of New Zealand Limited”, or to “The Perpetual Trustees Company Limited”, whether before or after that date, shall be deemed to be a reference to “AMP Perpetual Trustee Company N.Z. Limited”.

Part 2

Empowering provisions

- 6 Company may act as executor and obtain probate**
Whenever the Company is appointed as executor (whether alone or jointly with any other person) in, or in respect of, the will of any testator, it shall be lawful for the Company to be and act as executor (alone or jointly as appropriate); and the Company shall be entitled to apply for and obtain probate of the will and to perform and discharge all the other acts and duties of an executor as fully and effectually as a private individual may do when appointed executor.
- 7 Company's liability to be same as private individual**
In all cases in which the Company is acting as executor, trustee, administrator, receiver, liquidator, committee, guardian, attorney, or agent, or in any other similar capacity, under power, the Company shall, in addition to the liabilities and restrictions imposed by this Act, be subject in all respects to the same control and liability to removal as any private individual appointed to act in any such capacity.
- 8 Court or Judge may order account**
- (1) If any trustee, executor, legatee, administrator, beneficiary, next-of-kin, creditor, or other person entitled to or interested in any estate that has come or hereafter comes into the possession or under the control of the Company is unable, upon application to the Company, to obtain a sufficient account of the property and assets of the estate or of the disposal and expenditure of or out of the estate the trustee, executor, administrator, legatee, beneficiary, next-of-kin, creditor, or other person shall be entitled to apply to the High Court or to any Judge of that court, after notice to the Company for an account.
 - (2) If the court or Judge is of opinion that no sufficient account has been rendered by the Company, the court or Judge shall order such account to be rendered by the Company as the court or Judge considers just; or if the court or Judge shall think that no sufficient case has been established to require the Company to

furnish an account, it shall be lawful for the court or Judge to dismiss the application.

- (3) The court or Judge shall have power in all cases to make such order as to costs either against the Company or against the applicant, or as to payment of costs out of the estate, as the court or Judge considers just.

9 Court or Judge may order examination of records

- (1) The High Court or any Judge of that court may, on application under section 8, order, in addition to or in substitution for any account to be rendered by the Company, that a person to be named in the order shall examine the books and accounts of the Company in relation to the estate as to which the order is made; and in that case the Company shall—
- (a) deliver to the person named in the order a list of all books kept by the Company; and
 - (b) produce to that person at all reasonable times when required those books and all accounts, vouchers, papers, and other documents of the Company; and
 - (c) provide the person with all necessary information and all necessary facilities to enable the person to make the examination.
- (2) The court or Judge shall have power in all such cases to make such order as to costs either against the company or against the applicant, or as to payment of costs out of the estate, as that court or Judge considers just.

10 Company not to wind up without approval of court

- (1) So long as any estate in respect of which the Company is executor, administrator, or trustee remains in whole or in part unadministered, it shall not be lawful—
- (a) to proceed to wind up the Company voluntarily; or
 - (b) for the AMP Society to dispose of any shares it holds in the Company that are not fully paid up,—
- without the approval of the High Court or of a Judge of that court.
- (2) Any person interested in any such estate or who may have any claim in respect of any such estate may apply to that court or to a Judge of that court for an order to restrain the winding-up

voluntarily of the Company or to restrain the AMP Society from disposing of any such shares; and the court or Judge may make such order in the matter as the court or Judge considers just.

11 Unclaimed money

Every sum of money held by the Company as executor, trustee, administrator, receiver, liquidator, committee, guardian, attorney, or agent, or otherwise under this Act that remains unclaimed, and of which no lawful owner is known, for a period of 6 years after its receipt by the Company, shall at the end of the next financial year be paid over by the Company to the Commissioner of Inland Revenue under and in accordance with the Unclaimed Money Act 1971, and every such payment shall, to the extent of the money paid, discharge the Company of the trust in respect of such money.

12 Company authorised to transact any business with AMP Society or subsidiaries

- (1) Notwithstanding the fiduciary rights, obligations, and liabilities, of the Company whether pursuant to this Act or otherwise, the Company is hereby authorised to transact with the AMP Society or any subsidiary of the AMP Society, any business including but not limited to insurance business, in connection with any estate or trust property that it may administer from time to time where, after considering all the circumstances of the case (including appropriate business arrangements offered by other companies), the Company is satisfied on reasonable grounds that it is in the best interests of the estate or trust property to do so; and, notwithstanding any enactment or rule of law to the contrary, the AMP Society or any subsidiary of the AMP Society (including the Company) shall be entitled to receive and retain all fees, premiums, commissions, and other payments properly chargeable or payable in respect of such business in the same manner as it would have been entitled to do if the Company had not been a trustee of such estate or the Company were not, in respect of the AMP Society, a subsidiary, or, in respect of any other subsidiary of the AMP Society, a related company.

- (2) Any payment to which subsection (1) applies shall be clearly identified in the account rendered in respect of the estate or trust property.

13 Jurisdiction and powers of High Court not to be affected

- (1) Nothing in this Act shall affect any powers or jurisdiction now possessed by the High Court in respect of trustees, and all such powers and jurisdiction shall apply to the Company in respect of all trusts undertaken by it.
- (2) Without limiting subsection (1), nothing in this Act shall affect the power of the High Court to remove the Company from any office notwithstanding that it has come to that office by virtue of any provision of this Act.

14 Return of securities held for purposes of Trustee Companies Act 1967

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) On request by the Company, Public Trust shall surrender to the Company all securities deposited with Public Trust by the Company under and for the purposes of section 6(2) of the Trustee Companies Act 1967.
- (3) The receipt of the Secretary of the Company shall be a full and sufficient discharge to Public Trust for all such securities so surrendered, and Public Trust shall not be concerned to see to the application of the securities surrendered.

Section 14(2): amended, on 1 March 2002, pursuant to section 152(1) of the Public Trust Act 2001 (2001 No 100).

Section 14(3): amended, on 1 March 2002, pursuant to section 152(1) of the Public Trust Act 2001 (2001 No 100).

15 Consequential amendments

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

16 Repeals

The following enactments are hereby repealed:

- (a) the Perpetual Trustees, Estate, and Agency Company Act 1884:
- (b) the Perpetual Trustees, Estate, and Agency Company Amendment Act 1913:

- (c) the Perpetual Trustees, Estate, and Agency Company Amendment Act 1971.

17 Private Act

This Act is hereby declared to be a private Act.

Contents

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Notes

1 *General*

This is a reprint of the AMP Perpetual Trustee Company Act 1988. The reprint incorporates all the amendments to the Act as at 1 March 2002, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 *Changes made under section 17C of the Acts and Regulations Publication Act 1989*

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

Public Trust Act 2001 (2001 No 100): section 152(1)
