

Hon. Mr McLay

NEW ZEALAND TRUSTEE COMPANY

[PRIVATE]

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A BILL INTITULED

An Act to provide—

- 5 **(a) For the transfer to The New Zealand Trustee
Company Limited of the whole of the undertak-
ing of The South British Guardian Trust
Company Limited; and**

No. 113—1

Price 75c

- (b) For the transfer to The New Zealand Trustee Company Limited of the whole of the undertaking of the Trust Department of The New Zealand Insurance Company Limited; and
- (c) For the recognition and empowering of The New Zealand Trustee Company Limited as a trustee company under and within the meaning of the Trustee Companies Act 1967; and
- (d) For other purposes incidental thereto and consequent thereon

WHEREAS The New Zealand Insurance Company Limited and The South British Guardian Trust Company Limited are each authorised by their respective memoranda of association and by their respective enabling Acts, namely, the New Zealand Insurance Company Trust Act 1916 and the Guardian Trust and Executors Company Act 1883, to act as executor and trustee and in various other fiduciary capacities, and have each from the date of their respective enabling Acts carried on and now carry on a trust and agency business: And whereas each of the said companies is a trustee company under and within the meaning of the Trustee Companies Act 1967 and each carries on the business of a trustee company: And whereas The South British Guardian Trust Company Limited is a subsidiary of The South British Insurance Company Limited, which company has merged with The New Zealand Insurance Company Limited pursuant to a scheme of arrangement under section 205 of the Companies Act 1955 approved by order of the High Court dated the 20th day of March 1981 with effect from the 1st day of April 1981, such merged companies now being wholly owned subsidiaries of The New Zealand South British Group Limited: And whereas as a consequence of the said merger it is desirable to amalgamate the trustee company, trust, and agency businesses of The New Zealand Insurance Company Limited and The South British Guardian Trust Company Limited and for this purpose a private company has been incorporated under the Companies Act 1955 named The New Zealand Trustee Company Limited, all the shares in which have been subscribed for and issued to, or to a nominee of, The New Zealand South British Group Limited: And whereas The New Zealand Insurance Company Limited, The South British Guardian Trust Company Limited, and The New Zealand Trustee Company Limited have agreed to the transfer to The New Zealand Trustee Company Limited of

the said trustee company, trust, and agency businesses of The New Zealand Insurance Company Limited and The South British Guardian Trust Company Limited subject to the passing of this Act and in accordance with the terms thereof:

5 And whereas it is expedient to authorise and facilitate the said amalgamation: And whereas legislation is the only means by which—

- 10 (a) The vesting in The New Zealand Trustee Company Limited of all appointments of The New Zealand Insurance Company Limited or The South British Guardian Trust Company Limited and their respective rights and duties as executor, trustee, or fiduciary in any other capacity; and
- 15 (b) The empowering of The New Zealand Trustee Company Limited to act as executor of the will and as administrator of the estate of any deceased person; and
- 20 (c) The inclusion of The New Zealand Trustee Company Limited as a trustee company under The Trustee Companies Act 1967; and
- 25 (d) The amalgamation of the said trustee company, trust, and agency businesses (including trust assets and liabilities thereof) of The New Zealand Insurance Company Limited and The South British Guardian Trust Company Limited by the transfer thereof to, and vesting thereof in, The New Zealand Trustee Company Limited; and
- 30 (e) The transfer of the undertakings of The South British Guardian Trust Company Limited and of the Trust Department of The New Zealand Insurance Company Limited—

can be effected or effected efficiently and economically and without interference with the conduct and continuity of the said trustee company, trust, and agency businesses in the
35 interests of the said companies, the trusts under administration, their clients, and other persons having business with them: And whereas the objects of this Act cannot be attained without the authority of Parliament:

40 **BE IT THEREFORE ENACTED** by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the New Zealand Trustee Company Act 1982.

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the day on which it receives the Governor-General's assent.

(3) Sections 4 to 13 and section 20 of this Act and the Schedule to this Act shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Order in Council. 5

(4) The Governor-General shall not appoint a date under subsection (3) of this section for the purposes of bringing sections 4 to 13 and section 20 of this Act and the Schedule to 10 this Act into force unless the Minister of Finance has advised him that the Commissioner of Inland Revenue has confirmed that The New Zealand Trustee Company Limited has paid, or has given an undertaking (in terms acceptable to the Commissioner) to pay, to the Commissioner such sum of 15 money as the Commissioner considers is the amount of stamp duties that would have been payable to the Crown in respect of all assets vested by virtue of this Act if those assets had been vested other than by virtue of this Act.

2. Interpretation—In this Act, unless the context 20 otherwise requires,—

“Appointed day” means the day appointed for the commencement of sections 4 to 13 and section 20 of this Act and the Schedule to this Act:

“Existing trust companies” means N.Z.I. and Guardian: 25

“Fiduciary rights and obligations” includes all rights, capacities, authorities, discretions, duties, liabilities, and obligations as executor, administrator, trustee, receiver, committee, guardian, attorney, or agent, or as a fiduciary in any capacity: 30

“Guardian” means The South British Guardian Trust Company Limited:

“Instrument” includes—

(a) Any instrument (other than this Act) of any form or kind that creates, evidences, modifies, or 35 extinguishes rights, interests, or liabilities or would do so if it or a copy thereof were lodged, filed, or registered under any enactment; and

(b) Any judgment, order, or process of a Court: 40
“Liabilities” means liabilities, debts, charges, duties, and obligations of every description (whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere):

“New company” means The New Zealand Trustee Company Limited:

“N.Z.I.” means The New Zealand Insurance Company Limited:

5 “Parent company” means The New Zealand South British Group Limited:

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

(a) Choses in action:

(b) Goodwill:

10 (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:

15 “Rights” means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective:

20 “Subsidiary” and “related company” have the same meanings respectively as in the Companies Act 1955:

25 “Transferred employee” means an employee of the trust department business of N.Z.I. or an employee of Guardian who becomes an employee of the new company in pursuance of this Act:

30 “Trust department business”, in relation to N.Z.I., means the trustee company, trust, and agency business of N.Z.I. conducted and administered by the trust department thereof:

“Trust department undertaking”, in relation to N.Z.I., means—

35 (a) The trust department business of N.Z.I.; and
(b) All the property relating to the trust department business of N.Z.I. as disclosed by the accounting records and balance sheet of the said trust department as at the appointed day; and

40 (c) All rights and liabilities relating to the trust department business of N.Z.I. including those disclosed by the accounting records and balance sheet of the said trust department as at the appointed day; and

45 (d) All the fiduciary rights and obligations of N.Z.I. relating to and in respect of its trust department business; and

- (e) All trust property held by N.Z.I. relating to and in respect of its trust department business:
- “Trust property” means all property held as executor, trustee, administrator, receiver, committee, guardian, attorney, or agent, or as a fiduciary in any capacity: 5
- “Undertaking”, in relation to Guardian, means—
- (a) The business of Guardian; and
 - (b) All property of Guardian; and
 - (c) All rights and liabilities of Guardian; and 10
 - (d) All the fiduciary rights and obligations of Guardian; and
 - (e) All the trust property of Guardian:
- “Will” includes any codicil to a will.

3. Act to bind Crown and other persons—This Act shall 15 bind the Crown and every person (including any body politic or corporate) whose rights are affected by any provision of this Act.

PART I

AMALGAMATION OF THE EXISTING TRUST COMPANIES 20

4. Vesting of trust department undertaking of N.Z.I. and undertaking of Guardian—(1) On the appointed day—

- (a) The trust department undertaking of N.Z.I. shall, by virtue of this Act, vest in the new company; and 25
 - (b) The undertaking of Guardian shall, by virtue of this Act, vest in the new company.
- (2) In respect of trust property vested in the new company as aforesaid, the new company shall hold and stand possessed of the same, whether alone or jointly with another or others, 30 in the same manner and subject to the same trusts, directions, and duties, and in the same capacity, as the same was held by N.Z.I. or Guardian, as the case may be, and as if the new company were named in the will or other instrument governing the trust property in lieu of N.Z.I. or Guardian or 35 any other trustee or fiduciary named therein whom N.Z.I. or Guardian may have succeeded in office.
- (3) In respect of fiduciary rights and obligations vested in the new company as aforesaid, the same shall be exercisable by and binding upon the new company whether alone or 40 jointly with another or others in the same manner and to the same extent as they were exercisable by and binding upon N.Z.I. or Guardian, as the case may be.

(4) On and after the appointed day—

- 5 (a) Every appointment of Guardian (whether alone or jointly with another or others) as executor, trustee, administrator (with or without will annexed), agent, or attorney, or as a fiduciary in any capacity, whether by will or other instrument of any kind or by any order whenever made and whether or not Guardian has assumed office thereunder shall vest in and shall be deemed to be an appointment of the new company, and the new company shall and shall be entitled to exercise and discharge all rights, powers, capacities, authorities, duties, liabilities, and obligations of Guardian in respect of and arising from every such appointment:
- 10
- 15 (b) Every appointment of N.Z.I. (whether alone or jointly with another or others) as executor, trustee, administrator (with or without will annexed), agent, or attorney, or as a fiduciary in any capacity, whether by will or instrument of any kind or by any order whenever made and whether or not N.Z.I. has assumed office thereunder and which has been undertaken by N.Z.I. as part of its trust department business, or, but for this Act, would have been so undertaken, shall vest in and shall be deemed to be an appointment of the new company, and the new company shall and shall be entitled to exercise and discharge all rights, powers, capacities, authorities, duties, liabilities, and obligations of N.Z.I. in respect of and arising from every such appointment:
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- 25
- 30 (c) A reference (express or implied) to the holder for the time being of a particular office (other than the office of a director, secretary, or auditor) within Guardian or the trust department of N.Z.I. in any instrument made, given, passed, or executed before that day shall be read as a reference to the person for the time being holding office as General Manager or any Assistant General Manager or such other officer of the new company as is designated from time to time by the General Manager of the new company or by any other officer acting under delegation from him.
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- 40

5. Appointments of the existing trust companies as executor or administrator to be transferred to the new company—(1) Where any person has died or dies before or after the commencement of this section having by his will

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appointed either of the existing trust companies as an executor or trustee (whether alone or jointly with another or others) of his will and probate of such will has not been granted, the new company shall have the same right to a grant of probate of such will or to have the trust estate transferred to or vested in it as such one of the existing trust companies would have had if this Act had not been passed. 5

(2) Where any person named as executor who would be entitled to obtain probate of the will of any testator who has died before the commencement of this section, or where any person entitled to obtain administration of the estate of an intestate who has died before the commencement of this section, authorises or has authorised either of the existing trust companies to apply to the High Court for administration with or without the will annexed under the provisions of the Trustee Companies Act 1967, the new company shall have the same right to apply for and obtain a grant of administration with or without the will annexed as such one of the existing trustee companies would have had if this Act had not been passed. 10 15 20

6. Continuity of legal proceedings—(1) Any action, suit, arbitration, or proceeding, and any cause of action, arbitration, or proceeding, which immediately before the appointed day is pending or existing by, against, or in favour of, either of the existing trust companies (in the case of N.Z.I., in connection with or arising from its trust department business), and any cause of action, arbitration, or proceeding by, against, or in favour of, either of the existing trust companies (in the case of N.Z.I., in connection with or arising from its trust department business) arising on or after the appointed day but arising in respect of anything done or omitted to be done before the appointed day, shall not abate or be discontinued or be in any way prejudicially affected by reason of the provisions of this Act, but the same may be prosecuted and, without amendment of any writ, pleading, or other document, continued and enforced by, against, or in favour of the new company in its own name as and when it might have been prosecuted, continued, and enforced by, against, or in favour of that one or other of the existing trust companies concerned if this Act had not been passed. 25 30 35 40

(2) The Court or other person making or entering any judgment, order, or award for the payment of any sum of money, whether ascertained or to be ascertained, against the new company in any action, arbitration, or proceeding to

which this section applies shall, at the request of any party in whose favour such judgment, order, or award is being made or entered, make or enter the same against both N.Z.I. and the new company or Guardian and the new company, as the
5 case may be, and the same may, when so made or entered, be enforced against both N.Z.I. and the new company or Guardian and the new company, as the case may be.

7. Continuity of Group Investment Funds—All Group Investment Funds established by Guardian and N.Z.I. under
10 and pursuant to Part II of the Trustee Companies Act 1967 shall, from and after the appointed day, be and become vested in, and shall thereafter be administered in accordance with the said Act by, the new company as if the same were duly
15 established by the new company and the new company had determined the class or classes of investments for which the same were established.

8. Savings—(1) All contracts, agreements, conveyances, deeds, leases, licences, and other instruments, undertakings, notices, instructions, orders, directions, mandates, indemnities, or authorities entered into or made with or addressed
20 to either of the existing trust companies (in the case of N.Z.I., in connection with or arising from its trust department business), whether alone or with any other person, before, and in force on, the appointed day shall, on and after that
25 day, to the extent that they were previously binding upon and enforceable by, against, or in favour of, either of the existing trust companies, be binding and in full force and effect in every respect against, or in favour of, the new company as
30 fully and effectually as if, instead of one of the existing trust companies, the new company 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, as the case may be.

(2) A reference (express or implied) to Guardian or N.Z.I. (in the latter case, in connection with or arising from its trust
35 department business) in any notice or other communication served, given, or sent on or after the appointed day in relation to any instrument or other document whatever subsisting immediately before the appointed day shall, unless the context otherwise requires, be read as a reference to the new
40 company.

(3) No Registrar of Deeds or District Land Registrar, share registrar, bank, savings bank, or any other person charged with the keeping of any books, registers, or accounts, shall be obliged solely by reason of the provisions of sections 4, 6, and

7 or subsection (1) of this section to change the name of any one of the existing trust companies to that of the new company in his books, registers, or accounts, or in any document in his charge, but the presentation to any such Registrar, bank, or other person of any instrument— 5

- (a) Executed or purporting to be executed by the new company; and
- (b) Relating to any property held immediately before the appointed day by or in the name of either of the existing trust companies; and 10
- (c) Containing a recital that that property has become vested in the new company or the new company is entitled to hold the same in its name by virtue of the provisions of this Act—

shall, in the absence of proof to the contrary, be sufficient 15 evidence that the property is vested in the new company or the new company is entitled to hold the same in its name.

(4) Except as provided in subsections (1) and (3) of this section, nothing in this Act derogates from the provisions of the Land Transfer Act 1952. 20

9. Officers and employees—Notwithstanding any other provision of this Act—

- (a) On the appointed day each employee of Guardian and the trust department business of N.Z.I. shall cease to be an employee thereof and shall become an 25 employee of the new company but, for the purposes of every enactment, rule of law, award, determination, contract, and agreement relating to the employment of each such employee, his contract of employment shall be deemed to have been unbroken 30 and the period of his service with Guardian or N.Z.I., as the case may be, shall be deemed to have been a period of service with the new company; and
- (b) The terms and conditions of the employment of each transferred employee with the new company shall 35 on the appointed day (and thereafter until varied) be identical with the terms and conditions of his employment with Guardian or N.Z.I. immediately before the appointed day and be capable of variation in the same manner; and 40
- (c) A transferred employee shall not be entitled to receive any payment or other benefit by reason only of his ceasing by virtue of this Act to be an employee of N.Z.I. or Guardian; and

- (d) Nothing in this Act, other than paragraph (c) of this section, shall affect any rights or liabilities under any provident, benefit, superannuation, or retirement fund or scheme relating to employees of N.Z.I. or Guardian; and
- 5 (e) A director, secretary, or auditor of the trust department business of N.Z.I. or of Guardian shall not by virtue of this Act become a director, secretary, or auditor of the new company.

10 **10. Power to register new company as holder of shares, etc.**—Where any shares in, debentures of, or interests in or made available by, any corporation are by virtue of this Act vested in the new company, a certificate signed by the
15 General Manager or any Assistant General Manager of the new company or by an officer acting under delegation from him certifying as to such vesting shall, notwithstanding any other enactment or rule of law or the provisions of any instrument, be registered by that corporation in the same manner in all respects as if it were a proper instrument of
20 transfer duly stamped of those shares, debentures, or interests.

11. Books and documents to remain evidence—(1) Any document, matter, or thing, which if this Act had not been passed would have been admissible in evidence in respect of
25 any matter for or against N.Z.I. or Guardian shall, on and after the appointed day, be admissible in evidence in respect of the same matter for or against the new company.

(2) In this section, “document” has the same meaning as in section 2 (1) of the Evidence Amendment Act (No. 2) 1980.

30 **12. Service of documents**—Service of a document (as defined in section 2 (1) of the Companies Act 1955)—

- (a) On the new company, in respect of any matter relating to the trust department business of N.Z.I., shall be deemed to be service on N.Z.I.; or
- 35 (b) On the new company, in respect of any matter relating to Guardian, shall be deemed to be service on Guardian; or
- (c) On Guardian shall be deemed to be service on the new company; or
- 40 (d) On N.Z.I., in respect of any matter relating to the trust department business of N.Z.I., shall be deemed to be service on the new company.

13. Repeals—The enactments specified in the Schedule to this Act are hereby repealed.

PART II

EMPOWERING PROVISIONS AFFECTING THE NEW COMPANY

14. New company may act as executor and obtain probate—In addition to the powers conferred on the new company by section 5 of this Act, whenever the new company is named as executor (whether alone or jointly with any other person) in the will of any testator, it shall be lawful for the new company to be and act as executor (alone or jointly as aforesaid); and the new company shall be entitled to apply for and obtain probate of the will and to perform and discharge all other the acts and duties of an executor as fully and effectually as a private individual may do when appointed executor.

15. New company's liability to be the same as private individual—In all cases in which the new company is executor, administrator, trustee, receiver, committee, guardian, or attorney under power, the new 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 private individuals who may be appointed executors, administrators, trustees, receivers, committees, guardians, or attorneys.

16. Court or Judge may order account—If any trustee, executor or legatee, administrator or next-of-kin, or creditor, entitled to or interested in any estate which has come or hereafter comes into the possession or under the control of the new company is unable, upon application to the new company, to obtain a sufficient account of the property and assets of which such estate shall consist and of the disposal and expenditure thereof or thereout, the trustee, executor or legatee, administrator or next-of-kin, or creditor shall be entitled to apply to the High Court or to any Judge thereof upon motion, after notice to the new company, but without suit or petition, for an account; and if the Court or Judge is of opinion that no sufficient account has been rendered by the new company, the Court or Judge shall order such account to be rendered by the new company as to the Court or Judge seems just; or if the Court or Judge shall think that no sufficient case has been established to require the new

company to furnish an account, it shall be lawful for the Court or Judge to dismiss the application; and the Court or Judge shall have power in all cases to make such order as to costs either against the new company or against the
5 applicant, or as to payment of costs out of the estate, as to the Court or Judge seems just.

17. High Court or Judge may order audit—It shall be lawful for the High Court or for any Judge thereof, on application under section 16 of this Act, to order, in addition
10 to or in substitution for any account to be rendered by the new company, that a person to be named in the order shall examine the books and accounts of the new company in reference to the estate as to which the order is made; and in that case the new company shall deliver to the person named
15 in such order a list of all books kept by the new company, and shall produce to such person at all reasonable times when required the said books and all accounts, vouchers, papers, and other documents of the new company, and shall afford to him all necessary information and all other necessary facilities
20 for enabling him to make the said examination; and the Court or any Judge thereof shall have the same power as to the costs of such examination as is given by section 16 of this Act in reference to costs of or occasioned by the application under that section.

18. Company not to wind up without sanction of Court—So long as any estate in respect of which the new company is executor, administrator, or trustee remains in whole or in part unadministered, it shall not be lawful to proceed to wind up the new company voluntarily or for the
30 parent company to dispose of any shares it holds in the new company which are not fully paid up, unless with the sanction of the High Court or of a Judge thereof; and it shall be lawful for any person interested in such estate or who may have any claim in respect thereof to apply to that Court or to a Judge
35 thereof in a summary way to restrain the winding-up voluntarily of the new company or to restrain the parent company from disposing of such shares; and the Court or Judge shall in any and every such case have power to make such order in the matter as the circumstances of each case
40 shall appear to the Court or Judge to require.

19. Unclaimed money to be paid to the Consolidated Fund—(1) Every sum of money held by the new company as a trustee, executor, guardian, or otherwise under this Act which remains unclaimed, and of which no lawful owner is known, for a period of 6 years after its receipt by the new company, shall at the end of each financial year be paid over by the new company to the Consolidated Fund, and every such payment shall, to the extent of the money paid, discharge the new company of the trust in respect of such money.

(2) Nothing in this section shall operate as a bar to any lawful claim to any such money for a period of 10 years after their receipt by the new company, and the Minister of Finance shall, within such period, issue and pay any such lawful claims out of the Consolidated Fund without further appropriation than this Act.

(3) If default is made in compliance with the provisions of this section, the new company shall be liable to a penalty not exceeding \$10.00 for every day while such default continues, and every director and manager of the new company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

20. New company to be a trustee company—(1) Section 2 of the Trustee Companies Act 1967 is hereby amended—

- (a) By omitting from the definition of the term “trustee company” the words “the South British Guardian Trust Company Limited” (as substituted by section 2 (1) (a) of the Trustee Companies Amendment Act 1975):
- (b) By omitting from that definition the words “the New Zealand Insurance Company Limited”:
- (c) By omitting from that definition the words “, and East Coast Permanent Trustees Limited”, and substituting the words “East Coast Permanent Trustees Limited, and The New Zealand Trustee Company Limited”.

(2) Section 2 of the Trustee Companies Act 1967 is hereby further amended by omitting from the definition of the term “trustee company Act” (as added by section 2 (2) of the Trustee Companies Amendment Act 1972) the words “, and the East Coast Permanent Trustees Limited Act 1962”, and substituting the words “the East Coast Permanent Trustees Limited Act 1962, and The New Zealand Trustee Company Limited Act 1982”.

(3) The First Schedule to the Trustee Companies Act 1967 is hereby amended by omitting the item relating to the South British Guardian Trust Company Limited (as amended by section 2 (1) (b) of the Trustee Companies Amendment Act 5 1975).

(4) The Trustee Companies Amendment Act 1975 is hereby consequentially repealed.

21. Company authorised to transact insurance business with parent company or subsidiaries—The new
10 company, notwithstanding its fiduciary position and duties whether pursuant to this Act or otherwise, shall be entitled to transact with the parent company or any subsidiary of the parent company, insurance business in connection with any estate or trust property which it may administer from time to
15 time; and, notwithstanding any enactment or rule of law to the contrary, the parent company or such subsidiary shall be entitled to receive all premiums properly chargeable in respect of such insurances in the same manner as it would have been entitled to do if the new company had not been a
20 trustee of such estate or the new company were not, in respect of the parent company, a subsidiary thereof, or, in respect of such other subsidiary, a related company.

22. Incorporation and powers of new company to remain—Nothing in this Act shall affect the constitution or
25 incorporation of the new company, but the new company shall continue under its original incorporation with the powers and privileges by this Act conferred, and subject to the additional duties and liabilities by this Act imposed.

23. Jurisdiction and powers of High Court not to be
30 **affected**—Nothing in this Act shall operate to annul or abridge any powers or jurisdiction now possessed by the High Court in respect of trustees, and all such powers and jurisdiction shall apply to the new company in respect of all trusts undertaken by it.

35 **24. Private Act**—This Act is hereby declared to be a private Act.

SCHEDULE

ENACTMENTS REPEALED

- 1883, No. 2 (Private)—The Guardian, Trust, and Executors Company Act 1883.
- 1911, No. 17 (Private)—The Guardian, Trust, and Executors Company Amendment Act 1911.
- 1916, No. 1 (Private)—The New Zealand Insurance Company Trust Act 1916.