

Hon. Mr. Mason

TRUSTEE AMENDMENT

ANALYSIS

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A BILL INTITULED

AN Act to amend the Trustee Act, 1908.

Title.

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

1. This Act may be cited as the Trustee Amendment Act, 1946, and shall be read together with and deemed part of the Trustee Act, 1908 (hereinafter referred to as the principal Act).
2. For the purposes of this Act and of the principal Act, unless the context otherwise requires,—
- “ Authorized investments ”, in relation to any trust, means investments authorized by the instrument (if any) creating the trust for the investment of money subject to the trust, or by law:

Short Title.
See Reprint of Statutes, Vol. VIII, p. 373

Interpretation.
Cf. Trustee Act, 1925 (15 Geo. V, c. 19), s. 68 (Imp.); see Halsbury's Statutes of England, Vol. XX, p. 156

“ Instrument ” includes an Act of Parliament:
 “ Personal representative ” means the executor,
 original or by representation, or administrator
 for the time being of a deceased person.

Application of
 Act.

Cf. Trustee
 Act, 1925,
 s. 69 (2)
 (Imp.)

3. The powers conferred by this Act on any trustee 5
 are in addition to the powers conferred by the instru-
 ment (if any) creating the trust; but those powers,
 unless otherwise stated, apply only if and so far as a
 contrary intention is not expressed in the instrument
 (if any) creating the trust, and have effect subject to 10
 the terms of that instrument.

Power to apply
 income for
 maintenance
 and to accumu-
 late surplus
 income during
 a minority.

Cf. *ibid.*,
 s. 31 (Imp.)

4. (1) Where any property is held by a trustee in
 trust for any person for any interest whatsoever,
 whether vested or contingent, then, subject to any prior
 interests or charges affecting that property,— 15

(a) During the infancy of any such person, if his
 interest so long continues, the trustee may, at
 his sole discretion, pay to his parent or
 guardian, if any, or otherwise apply for or
 towards his maintenance, education, or benefit, 20
 the whole or such part, if any, of the income
 of that property as may, in all the cir-
 cumstances, be reasonable, whether or not
 there is—

(i) Any other fund applicable to the same 25
 purpose; or

(ii) Any person bound by law to provide
 for his maintenance or education; and

(b) If such person on attaining the age of twenty- 30
 one years has not a vested interest in that
 income, the trustee shall thenceforth pay the
 income of that property and of any accretion
 thereto under subsection *two* of this section
 to him, until he either attains a vested interest
 therein or dies, or until failure of his interest: 35

Provided that, in deciding whether the whole or any
 part of the income of the property is during a minority
 to be paid or applied for the purposes aforesaid, the
 trustee shall have regard to the age of the infant and
 his requirements and generally to the circumstances of 40
 the case, and in particular to what other income, if
 any, is applicable for the same purposes; and where
 the trustee has notice that the income of more than

one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the Court otherwise directs, a proportionate part only of the income of each
5 fund shall be so paid or applied.

(2) During the infancy of any such person, if his interest so long continues, the trustee shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income
10 thereof from time to time in authorized investments, and shall hold those accumulations as follows:—

(a) If any such person—

(i) Attains the age of twenty-one years, or marries under that age, and his interest in the income during his infancy or until his
15 marriage is a vested interest; or

(ii) On attaining the age of twenty-one years or on marriage under that age becomes entitled to the property from which the
20 income arose in fee-simple, absolute or determinable, or absolutely, or for an entailed interest,—

the trustee shall hold the accumulations in trust for that person absolutely, but without
25 prejudice to any provision with respect thereto contained in any settlement by him made under any statutory powers during his infancy, and so that the receipt of that person after marriage, and though still an infant,
30 shall be a good discharge; and

(b) In any other case the trustee shall, notwithstanding that that person had a vested
35 interest in the income, hold the accumulations as an accretion to the capital of the property from which the accumulations arose, and as one fund with that capital for all purposes, and so that, if the property is settled land, the accumulations shall be held upon the
40 same trusts as if the same were capital money arising therefrom,—

but the trustee may, at any time during the infancy of that person if his interest so long continues, apply those accumulations, or any part thereof, as if they were income arising in the then current year.

(3) This section applies in the case of a contingent interest only if the limitation or trust carries the intermediate income of the property, but it applies to a future or contingent legacy by the parent of, or a person standing *in loco parentis* to, the legatee, if and for such period as, under the general law, the legacy carries interest for the maintenance of the legatee, and in any such case as last aforesaid the rate of interest shall (if the income available is sufficient and subject to any rules of Court to the contrary) be five pounds per centum per annum. 5 10

(4) This section applies to a vested annuity in like manner as if the annuity were the income of property held by a trustee in trust to pay the income thereof to the annuitant for the same period for which the annuity is payable, save that in any case accumulations made during the infancy of the annuitant shall be held in trust for the annuitant or his personal representatives absolutely. 15

Repeals.

See Reprint of Statutes, Vol. VIII, pp. 916, 936 1938, No. 20

Power of advancement. Cf. Trustee Act, 1925, s. 32 (Imp.)

(5) This section is in substitution for section one hundred and thirteen of the principal Act, and section twenty-six of the Public Trust Office Act, 1908, and those sections and section fifty-eight of the Statutes Amendment Act, 1938, are hereby accordingly repealed. 20 25

5. (1) A trustee may at any time or times pay or apply any capital money subject to a trust, for the advancement or benefit, in such manner as he may, in his absolute discretion, think fit, of any person entitled to the capital of the trust property or of any share thereof, whether absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his death under any specified age or on the occurrence of any other event, and whether in possession or in remainder or reversion, and any such payment or application may be made notwithstanding that the interest of that person is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs: 30 35

Provided that—

(a) The money so paid or applied for the advancement or benefit of any person shall not exceed altogether in amount one-half of the presumptive or vested share or interest of 40

- that person in the trust property where that share or interest exceeds one thousand pounds, and in any other case shall not exceed altogether five hundred pounds; and
- 5 (b) If that person is or becomes absolutely and indefeasibly entitled to a share in the trust property the money so paid or applied shall be brought into account as part of that share; and
- 10 (c) No such payment or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied unless that person is in existence and of full
- 15 age and consents in writing to the payment or application or unless a Judge, on an application made to him in Chambers in a summary way by the trustees, has made an order approving the payment or application.
- 20 (2) This section applies only where the trust property consists of moneys or securities, or of property held upon trust for, or with a power of, sale, calling in, and conversion, and the moneys or securities or the proceeds of the sale, calling in, and conversion are not
- 25 by statute or in equity considered as land, or applicable as capital money for the purposes of the Settled Land Act, 1908.

See Reprint of Statutes, Vol. VIII, p. 200

- (3) This section is in substitution for section ninety-three of the principal Act, and section twenty-five
- 30 of the Public Trust Office Act, 1908, and those sections and section nineteen of the Public Trust Office Amendment Act, 1921-22, are hereby accordingly repealed.

Repeals. Ibid., pp. 906, 936, 1000

- 35 6. Section eighty-one of the Statutes Amendment Act, 1936, is hereby amended by repealing subsection four.

Power of Court to authorize dealings with property subject to Settled Land Act, 1908. 1936, No. 58