

## TRUSTEE AMENDMENT BILL

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### EXPLANATORY NOTE

THIS Bill amends the Trustee Act 1956 so as to give effect to recommendations of the Property Law and Equity Reform Committee.

*Clause 1* relates to the Short Title to the Bill.

*Clause 2* redrafts section 14 (2) (a) of the principal Act, which relates to the power of a trustee to purchase land adjoining other land that he has power to retain. The restriction as to the amount that may be expended for the purpose is removed, and the power is confined to cases where the land is being purchased for better development or use of the said other land, or to facilitate or improve the lawful carrying on of a business on the said other land. The clause also redrafts section 14 (6) of the principal Act so as to remove the limit as to value on a trustee's statutory power to sell or exchange land or lease land with an optional or compulsory purchasing clause. It is being provided that a trustee shall not be guilty of a breach of trust by reason only of any alleged inadequacy of the sale price or other consideration if he has ascertained the value of the land involved in accordance with section 28 of the principal Act and the sale price for the land is not less than the value thereof as so ascertained, or (in the case of an exchange) it is prudent for the trustee to make the exchange having regard to the respective values of the pieces of land being exchanged, the interests of the beneficiaries, and all the circumstances of the case.

*Clause 3* repeals the proviso to section 15 (1) of the principal Act, which proviso imposed a limit on the amount that may be expended in the improvement or development of trust property.

*Clause 4* increases the limits on the amounts that may be expended from the vested or contingent share of a beneficiary for the maintenance, etc., of the beneficiary. Provision is also made for the amounts specified in relation to the limits to be varied by Order in Council, and for the Court to grant a dispensation for the trustee to go beyond the limits.

*Hon. Mr Thomson*

## TRUSTEE AMENDMENT

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### ANALYSIS

Title	}	3. Power to expend money for improvement or development
1. Short Title		4. Power to apply capital for maintenance, etc.
2. Powers to purchase and sell		

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### A BILL INTITULED

#### An Act to amend the Trustee Act 1956

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

1. **Short Title**—This Act may be cited as the Trustee Amendment Act 1977, and shall be read together with and deemed part of the Trustee Act 1956\* (hereinafter referred to as the principal Act).
- 10 2. **Powers to purchase and sell**—(1) Section 14 (2) of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:
- 15 “(a) If the land being purchased adjoins other land that the trustee has power to retain and that is held by the trustee on the same trusts as the money expended in respect of the purchase of the land, and the land is being purchased for either or both of the following purposes—

\*Reprinted 1968, Vol. 4, p. 3279  
Amendments 1969, No. 110; 1974, No. 15

“(i) For better development or use of the said other land; or

“(ii) To facilitate or improve the carrying on of a business on the said other land, being a business that the trustee is empowered to carry on:” 5

(2) Section 14 of the principal Act is hereby further amended by repealing subsection (6), and substituting the following subsection:

“(6) A trustee who, in accordance with any power conferred on him by or under this Act or otherwise, sells any land, or exchanges any land for any other land, or grants a lease of any land with an optional or compulsory purchasing clause, shall not be guilty of a breach of trust by reason only of any alleged inadequacy of the amount or value of the sale price or other consideration (exclusive of rent) that he received in respect of the transaction, if, before making the sale or exchange or granting the lease, he has ascertained the value of the land involved in accordance with section 28 of this Act, and— 10 15

“(a) In the case of a sale of the land or a lease thereof with an optional or compulsory purchasing clause, the sale price for the land is not less than the value thereof as so ascertained: 20

“(b) In the case of an exchange, it is prudent for the trustee to make the exchange, having regard to the respective values (as so ascertained) of the pieces of land being exchanged, the interests of the beneficiaries to whom he is responsible, and all the circumstances of the case.” 25

**3. Power to expend money for improvement or development—**Section 15 (1) of the principal Act is hereby amended by repealing the proviso to paragraph (b). 30

**4. Power to apply capital for maintenance, etc.—**Section 41 of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph: 35

“(a) Except with the consent of the Court, the money or asset so paid or applied for the maintenance, education, advancement, or benefit of any person shall not exceed altogether in amount or value—

5 “(i) Half of the presumptive or vested share or  
interest of that person in the trust property where  
the value of that share or interest exceeds \$15,000  
or such other amount as the Governor-General, by  
Order in Council, may for the time being prescribe  
in place of that amount; or

10 “(ii) In any other case \$7,500, or such other  
amount as the Governor-General, by Order in  
Council, may for the time being prescribe in place  
of that amount; and”