

State Trust Corporation of Victoria Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 sets out the purpose of the Act.

Clause 2 provides for the Act to come into operation on a day or days to be proclaimed.

Clause 3 contains the definitions relevant to the Act.

PART 2—THE STATE TRUST

Clause 4 creates the State Trust Corporation of Victoria, which may be known as the State Trust, to replace the Public Trustee.

Clause 5 outlines the objectives of the State Trust.

Clause 6 provides that the State Trust is to be subject to the direction and control of the Minister and must make public the directions it receives.

Clause 7 determines the constitution of the State Trust. Seven directors are to be appointed by the Governor in Council. The Managing Director is to be a full-time appointment, the remaining six directors are to hold part-time appointments. Of the six part-time directors, three are to have professional expertise in the field, two are to represent public and community interest organisations and the sixth is to be elected from the staff of the State Trust. The Minister is to appoint the public and community interest directors after consultation with appropriate organisations. Schedule 1 contains details relating to the directors' positions.

Clause 8 provides for the State Trust to give policy and general directions to the Managing Director who is responsible for the day to day management of the operations of the State Trust.

Clause 9 states the staff of the State Trust are to be subject to the Public Service Act and to the direction and control of the State Trust. The Public Service Board may delegate its functions to the Managing Director.

Clause 10 permits the State Trust to delegate to a director or the staff any power or function of the State Trust.

Clause 11 refers to Schedule 2 which contains the procedures applicable to meetings of the State Trust.

Clause 12 makes it an offence for a director or staff member to make improper use of information to financially benefit or cause loss to the State Trust.

Clause 13 is a secrecy provision, ensuring confidentiality for State Trust clients.

Clause 14 offers protection against the personal liability of directors and staff provided they act in good faith.

PART 3—FUNCTIONS, POWERS AND DUTIES OF THE STATE TRUST

Clause 15 authorises the appointment of the State Trust as a trustee or representative. The State Trust can decline to act as nominated but cannot do so if appointed by law or because of the small value of the property involved.

Clause 16 allows the State Trust to be substituted for a person who does not wish to act as appointed.

Clause 17 allows the State Trust to be appointed as an executor or administrator of an estate or to assume those responsibilities if the person so appointed prefers the State Trust to act unless a testator has excluded it from acting.

Clause 18 permits a person to apply to the Supreme Court to have the State Trust assume his or her responsibilities as a trustee, etc.

Clause 19 permits the State Trust to apply to be the administrator of an estate.

Clause 20 states that the State Trust is to be preferred to a creditor who seeks administration of an estate unless it would be more beneficial to have the creditor act as the administrator.

Clause 21 allows the State Trust to apply to the Supreme Court to have the State Trust replace a creditor as the administrator if it would benefit the estate.

Clause 22 provides that the State Trust may proceed to administer an estate by filing an election to do so with the Registrar of Probates subject to special conditions designed to protect estate interests.

Clause 23 authorises the State Trust to administer small estates without the approval of the Registrar or the Court.

Clause 24 enables the State Trust to transfer estate assets out of Victoria to its interstate and overseas equivalents.

Clause 25 preserves the right of a person to apply to the Supreme Court to have the grant of probate or administration to the State Trust transferred to another person.

Clause 26 authorises the State Trust to act as a sole trustee.

Clause 27 authorises the State Trust to act with an advisory trustee.

Clause 28 authorises the State Trust to act as a custodian trustee.

Clause 29 places the responsibility for the care of uncared for property in Victoria in the hands of the State Trust.

Clause 30 allows the State Trust to distribute property after proper notice of a refusal to recognise a claim on that property if proceedings are not commenced to enforce the claim.

Clause 31 allows the State Trust to distribute property if no claim is made on the estate within 3 years.

PART 4—PUBLICLY REPRESENTED PERSONS

Clause 32 outlines the responsibilities of the State Trust if it is appointed as administrator of the affairs of a person by the Guardianship and Administration Board.

Clause 33 empowers the State Trust to give consent on behalf of a publicly represented person.

Clause 34 provides for special investment powers of the State Trust in dealing with the property of a publicly represented person for the benefit of that person.

Clause 35 requires the State Trust to distribute a publicly represented person's property upon death or discharge of the order.

Clause 36 gives publicly represented persons or their representatives a right to information regarding property.

Clause 37 allows the State Trust to sell the unclaimed property of an ex-publicly represented person after 2 years.

Clause 38 gives the State Trust the power to open the will of a publicly represented person.

Clause 39 enables the State Trust to deal with its interstate and overseas equivalents in handling the property of a publicly represented person.

PART 5—FINANCIAL

Clause 40 permits the State Trust to operate trust and general bank accounts and to receive the funds held by the Public Trustee.

Clause 41 allows the State Trust to individually invest estate money or invest it in a Common Fund.

Clause 42 provides for the establishment of Common Funds with Common Fund No. 1 holding the funds of specified clients.

Clause 43 authorises the State Trust, with the approval of the Minister to borrow from Common Fund No. 1 and to pay interest upon borrowings. Past advances, under Section 56A of the Public Trustee Act, are deemed to be borrowings and will attract interest.

Clause 44 provides a government guarantee to Common Fund No. 1.

Clause 45 provides the State Trust with the authority to deposit and withdraw funds from a Common Fund.

Clause 46 provides for pro-rata capital and income distribution in a Common Fund.

Clause 47 enables the State Trust to charge fees and commissions at a rate determined by the Minister.

Clause 48 permits the Treasurer to direct a dividend be paid out of the State Trust's general account.

Clause 49 requires the State Trust to keep proper accounts and records.

Clause 50 imposes audit requirements on the State Trust.

PART 6—GENERAL

Clause 51 allows the State Trust or an interested person to seek the advice of the Supreme Court.

Clause 52 permits the State Trust to apply for a court order to protect property.

Clause 53 states the preference for the use of private solicitors where appropriate.

Clause 54 contains protection for persons dealing with the State Trust.

Clause 55 allows the transfer of property of tiny value to a person aged 16 or 17.

Clause 56 states the State Trust's certificate is primary evidence of its contents.

Clause 57 is the regulation making clause.

Clause 58 is the repeal, consequential amendment and savings clause (see Schedules 3, 4 and 5).

