

TRUSTEE (AUTHORIZED INVESTMENTS) BILL

NOTES ON CLAUSES.

Clause 1. Sub-clause (1) is a provision in the usual form as to the short title.

Sub-clause (2) provides for the citation of the *Trustee Act 1958* as the Principal Act.

Clause 2 proposes the amendment of the Principal Act as follows :—

Paragraph (a) inserts in section 3 (1) general interpretation provisions which define “ Authorized dealer in the short term money market ”, “ Bank ” and “ securities ” for the purposes of the new provisions in the Bill.

Paragraph (b) proposes the substitution for section 4 (1) and (2) of the Principal Act of new sections 4 (1), 4 (2), 4 (2A), 4 (2B) and 4 (2C).

Proposed Section 4

Sub-section (1). This provides that trustees may invest trust funds in the manner specified in paragraphs (a) to (l). The details of these paragraphs are as follows :—

Paragraph (a) re-states the substance of the existing sections 4 (1) (a) and 4 (1) (b) and authorizes investment in any securities of the Commonwealth or of any State or of New Zealand.

Paragraph (b) re-states the substance of the debenture and inscribed stock investment provisions of the existing sections 4 (1) (e), (f), (h), (j), (k) and (l). It authorizes investment in any securities of a public statutory body constituted by the Commonwealth or any State where repayment of the interest is guaranteed by the Commonwealth or State.

Paragraph (c) authorizes investment in a loan guaranteed by the Treasurer or by or on behalf of the Victorian Government. This re-enacts the existing section 4 (1) (o).

Paragraph (d) authorizes investment in debentures or inscribed stock issued by any municipality in Victoria or upon any mortgage issued by any municipality secured by a charge over its general rates. It re-enacts the substance of the existing section 4 (1) (d).

Paragraph (e) authorizes investment in debentures, inscribed stock or other securities issued by the Geelong Water Works and Sewerage Trust and other bodies. The paragraph re-enacts paragraphs (g), (i) and (m) of the existing section 4 (1) and incorporates the provisions of section 12 (1) of *The Western Metropolitan Market Act 1938* that is repealed by the Bill.

Paragraph (f) authorizes investment in any debenture or mortgage issued by certain water, sewerage and irrigation authorities specified in provisions referred to in the Schedule to the Bill.

Paragraph (g) re-enacts the existing sections 4 (1) (p) and (q) in relation to deposits with the Home Finance Trust or the Victorian Development Corporation.

Paragraphs (h) and (i) are new provisions. They propose specified deposits as new forms of authorized trustee investments. These are deposits or term deposits with a bank, deposits in the common fund of the Public Trustee and, subject to proposed section 4 (2), deposits with an authorized dealer in the short term money market.

Paragraph (j) is new. It proposes bills of exchange as a new form of authorized investment, subject to certain specified conditions.

Paragraph (k) is new. It proposes bank certificates of deposit (whether negotiable, convertible or otherwise) as an authorized trustee investment.

Paragraph (l) re-enacts the substance of existing section 4 (1) (c) in relation to real securities.

Sub-section (2) is new. It prohibits investment in the short term money market unless the deposit is secured by a mortgage of government securities of specified value.

Sub-sections (2A) and (2B) re-enact the substance of existing section 4 (2). *Sub-section (2A)* provides that in relation to Commonwealth and State Government securities the proposed section shall prevail over the instrument creating the trust. *Sub-section (2B)* provides that, subject to *sub-section (2A)*, the provisions of proposed section 4 (1) shall apply unless expressly prohibited by the instrument creating the trust.

Sub-section (2C) is new. It enables trustees to invest on the security of a contributory mortgage, if

- (a) the mortgage would have been an authorized investment if entered into by the trustee alone ; and
- (b) under the mortgage the trustee may exercise powers on default of the mortgagor without the consent of the other contributing mortgagees.

Paragraph (c) inserts a new section 4A in the Principal Act. It provides as follows :

Sub-section (1) enables a trustee to invest not more than one-third of the trust funds in the purchase of land in Victoria.

Sub-section (2) provides that a trustee purchasing land under the section will not be chargeable with breach of trust by reason only of the relationship between the purchase price and the value of the land if it appears to the Court that—

- (a) the trustee was acting upon a report as to the value of the land made by a registered valuer instructed and employed independently of any owner of the land ;
- (b) the purchase price did not exceed the value as stated in the report ;
- (c) the valuer has stated in his report—
 - (i) the net annual rent the land produces or is capable of producing at the time of valuation ; and
 - (ii) that the land has been substantially improved by the erection of buildings ;
- (d) the purchase was made under the advice of the valuer who expressed in the report his opinion that the investment was a sound commercial investment ;

Sub-section (3) provides that land so purchased shall be held upon trust for sale.

Paragraph (d) inserts a new sub-section (4) in section 8 of the Principal Act. That section contains provisions, somewhat along the lines of *proposed section 4A*, relating to loans on the security of property. The new sub-section extends its provisions to transfers of existing securities.

Paragraph (e) is a consequential amendment of section 12 (1) of the Principal Act, and substitutes for the words "fixed deposit" the words "interest bearing term deposit".

Clause 3 provides for the repeal or amendment of enactments mentioned in the Schedule to the Bill. The repeals and amendments are consequential upon the new provisions inserted by clause 2 of the Bill.

The reasons for repeal or amendment are—

1. The investment provided for by the *Melbourne and Geelong Debentures and Inscribed Stock Act 1932* is included in proposed section 4 (1) (d).
2. The appropriate investments provided for by the *Royal Melbourne Hospital Act 1938*, the *Gas and Fuel Corporation Act 1958*, the *Housing Act 1958*, the *Melbourne and Metropolitan Board of Works Act 1958*, the *Melbourne Harbour Trust Act 1958*, the *State Electricity Commission Act 1958*, and the *Portland Harbour Trust Act* are authorized by proposed section 4 (1) (b).
3. The investments provided for by the *Mildura Irrigation and Water Trusts Act 1958*, the *Sewerage Districts Act 1958* and the *Water Act 1958* are included in proposed section 4 (1) (f).
4. The investment provided for by the *Victorian Development Corporation Act 1958* is included in proposed section 4 (1) (g) (ii).

5. The investment provided for by the *Western Metropolitan Market Act* 1938 is included in proposed section 4 (1) (e) (ii).
6. The investment provided for by existing section 27 (4) (b) of the *Trustee Companies Act* 1958 is included in proposed section 4 (h) (i).
7. The investments provided for by the existing section 6 (1) of the *Superannuation Act* 1958 are covered by proposed section 4 in combination with the amendment of the *Superannuation Act* set out in the Schedule to the Bill.