



Trust Accounts Act 1973

Current as at 23 September 2013

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Queensland

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Trust Accounts Act 1973

An Act to make provision with respect to the keeping of certain books of account and records by trustees, the establishment and management of trust accounts by trustees, the examination and audit thereof, and for matters connected therewith

1 Short title

This Act may be cited as the *Trust Accounts Act 1973*.

4 Definitions

In this Act—

agent, of a trustee, includes—

- (a) the manager of the trustee's financial institution; and
- (b) the trustee's accountant or auditor, whether or not an employee of the trustee; and
- (c) anyone who has been, or acted as, the manager of the trustee's financial institution or as accountant, auditor or other agent of the trustee.

approved form see section 37.

financial period, for a trustee, means—

- (a) for the first period after the trustee becomes a trustee—the period (not more than a year) starting on the day the trustee becomes a trustee and ending on 31 March; or
- (b) for any other period—a year ending on 31 March.

moneys includes an instrument for the payment of money in any case where the instrument may be paid into a financial institution.

moneys received for or on behalf of any person includes moneys held for or on behalf of any person whether originally received for or on the person's behalf or not.

public accountant means a person who as a principal either alone or with others carries on the business of—

- (a) general accountancy; or
- (b) the auditing of accounts; or
- (c) general accountancy and the auditing of accounts;

and who places the person's services in such regard at the disposal of the public generally for remuneration and whose services are not either entirely or mainly at the disposal of any individual, firm, trust or association (corporate or unincorporate).

supervising entity see section 4E.

trust account means a trust account kept under this Act, whether established before or after 1 July 1973.

trustee means any public accountant engaged in the practice of his or her profession, or the carrying on of his or her business, as such either solely on his or her own account or in partnership with any other person or persons and who, or the firm of which he or she is a partner, in the course of such practice or carrying on of business receives any money upon trust or upon terms requiring the public accountant to account to any person therefor, and includes a person declared under a regulation to be a trustee.

trust moneys in relation to any trustee means moneys received for or on behalf of any other person by the trustee in the course of or in connection with the practice of the person's profession or the carrying on of the person's business.

4A References to moneys received by a trustee

In this Act any reference to moneys received by a trustee shall be deemed to include a reference to moneys received in the course of or in connection with the practice, or carrying on of business, by any partner of that trustee or by any of his or her

or the firm's clerks or employees or by any trustee with whom he or she or the firm shares the remuneration of any practice or business.

4B Reference to books, accounts etc. of trustee in partnership

In this Act, any reference to books, accounts, records, securities, trust accounts or practice or business of or in relation to a trustee who carries on practice or business in partnership shall be read and construed as a reference to books, accounts, records, securities, trust accounts or practice or business (as the case requires) of or in relation to the partnership.

4C Act continues to apply to particular persons after they stop being trustees

A person—

- (a) who ceases to practise or carry on business; or
- (b) who ceases to be qualified or entitled to practise or carry on business; or
- (c) who becomes disqualified from practising or carrying on business; or
- (d) who becomes disentitled to practise or carry on business;

as a public accountant shall nevertheless continue to be a trustee for the purposes of this Act in respect of all trust moneys received by the person before the person—

- (e) ceased to so practise or carry on business; or
- (f) ceased to be so qualified or entitled; or
- (g) became so disqualified or disentitled.

4E Meaning of *supervising entity*

- (1) A *supervising entity* is an entity that under subsection (2) or (4) is the supervising entity for a trustee.

- (2) An entity is the *supervising entity* for a trustee if a regulation declares the entity to be the supervising entity for the trustee.
- (3) However, a regulation may declare an entity to be a supervising entity only if the chief executive is satisfied—
 - (a) the entity has the qualifications, experience or standing necessary to perform the functions of a supervising entity under this Act; and
 - (b) anyone the entity employs to perform the functions has the qualifications, experience or standing necessary to perform the functions.
- (4) If a regulation does not declare an entity other than the chief executive to be the supervising entity for a trustee, the chief executive is the supervising entity for the trustee.
- (5) A reference to a supervising entity made in relation to a trustee is a reference to the trustee's supervising entity.
- (6) A reference to a supervising entity made in relation to an auditor performing duties as an auditor under this Act is a reference to the supervising entity of the trustee in relation to whom the duties are performed.

5 Trustee to give notice to supervising entity

- (1) Every person who becomes a trustee shall, within 14 days after the person becomes a trustee, lodge with the supervising entity notice in writing of that fact in the approved form.
Maximum penalty—5 penalty units.
- (1A) The notice shall state the full name and full address of the place of practice or business of the trustee and, where the trustee carries on practice or business in partnership, the full names of the persons with whom the trustee carries on such partnership and the name under which the partnership is conducted and shall contain such other particulars as may be prescribed.
- (2) Where there is any material change in any of the particulars required to be notified under subsection (1) or (1A) or, in the case of a person who is a trustee at the commencement of this

Act, in any particulars that the person would have been required to notify under the subsections if the person had become a trustee after the commencement of this Act, the trustee shall, within 14 days after the change, lodge with the supervising entity notice in writing of the change in the approved form.

Maximum penalty—5 penalty units.

- (3) Upon ceasing to be a trustee, the person who has ceased to be such, shall forthwith lodge with the supervising entity notice in writing of that fact in the approved form.

Maximum penalty—5 penalty units.

- (4) A trustee shall, before establishing any account under section 7, notify the supervising entity in writing of the trustee's intention so to do, specifying the financial institution and the office or branch thereof in which the trustee proposes to open the account and the designation of the account, and shall satisfy the manager or other officer in charge of the office or branch of the financial institution concerned that the trustee has complied with the requirements of this subsection.

Maximum penalty—5 penalty units.

- (5) A trustee must immediately give to the supervising entity written notice of the establishment of a trust account and the name and the office or branch of the financial institution at which the account is established.

Maximum penalty—100 penalty units.

- (6) If any of the following happen, the trustee must immediately give to the supervising entity written notice of that fact—
- (a) a change in the name of a trust account;
 - (b) the transfer of a trust account to another office or branch of the financial institution at which the account is established;
 - (c) the transfer of a trust account to another financial institution;
 - (d) the closing of a trust account.

Maximum penalty—100 penalty units.

6 Accounts to be kept by trustees

- (1) A trustee shall keep or cause to be kept in written or printed form in the English language such accounting and other records of all trust moneys and of any disbursement or disposal thereof or dealing therewith as will sufficiently explain the transactions and true position in regard thereto and enable true and fair accounts to be prepared from time to time and shall keep or cause to be kept those records in such manner as to enable them to be conveniently and properly audited.

Maximum penalty—10 penalty units.

- (2) Where trust moneys are disbursed by a trustee by way of investment which the trustee has been lawfully directed to subsequently realise with a view to the disposal of the proceeds in accordance with the directions of the person entitled thereto then, where the investments are in the name of the trustee or under the trustee's control or the trustee has authority for disposal thereof, the duty of the trustee under this Act with respect to the keeping of accounts and other records of trust moneys and accounting therefor extends at all times in relation to the investments in all respects as if the investments were trust moneys within the meaning of this Act.
- (3) Unless—
- (a) the supervising entity otherwise approves in writing; or
 - (b) an auditor has actual possession of a trustee's accounting and other records relating to trust moneys for the time reasonably necessary to audit them under this or any other Act;

a trustee must keep all accounting and other records relating to trust moneys at the trustee's sole or principal place of business or at another place of the trustee's business the supervising entity approves in writing.

Maximum penalty—10 penalty units.

- (4) Subject to the *Evidence Act 1977*, section 111 a trustee shall retain for a period of not less than 7 years, the records referred to in subsection (1).

Maximum penalty—10 penalty units.

- (5) Without affecting the generality of subsection (1), a trustee—
- (a) shall keep or cause to be kept such books, accounts and records as may be prescribed; and
 - (b) shall keep or cause to be kept the trustee's books, accounts and records in such form and manner as may be prescribed.

Maximum penalty—10 penalty units.

- (6) For the purposes of this section any account or record required to be kept by a trustee may be kept either by making entries in a bound book or by recording the matters in question in any other way.
- (7) Where any account or record required by this section to be kept by a trustee is not kept by making entries in a bound book the trustee shall take reasonable precautions for guarding against falsification and for facilitating discovery of any falsification.

Maximum penalty—10 penalty units.

- (8) Every entry in any book, account or record kept by or belonging to a trustee or found at the trustee's place of practice or business shall be deemed, until the contrary is shown to have been made by or at the direction of the trustee.
- (9) The power to make regulations under section 41 includes power to prohibit—
- (a) the keeping of specified books, accounts or records by a trustee; and
 - (b) the keeping of books, accounts or records by a trustee in a specified form or manner; and
 - (c) the adoption by a trustee of specified accounting procedures in respect of the trustee's books, accounts and records.

7 Moneys received by trustees to be paid into a trust account

(1) A trustee shall establish and keep in a financial institution in the State 1 or more trust accounts designated or evidenced as such into which the trustee shall pay all trust moneys.

(1A) However, a trustee is not required to pay trust moneys into a trust account if—

- (a) the trust moneys consist of a cheque drawn in favour of someone else; and
- (b) the trustee is satisfied the person is lawfully entitled to the moneys; and
- (c) the trustee immediately gives the person the cheque, personally, by post or at the person's direction.

(2) A trustee shall not pay—

- (a) to the trustee's general trust account any moneys other than trust moneys received by the trustee; and
- (b) to a separate trust account any moneys other than trust moneys received by the trustee for or on behalf of the person on whose behalf or at whose direction the account was established;

but nothing in this subsection prohibits payment into the trustees' general trust account of moneys received by the trustee where part of such moneys are attributable to professional costs, statutory duties or charges and other proper outlays already incurred or disbursed.

(3) Moneys required by this section to be paid into a trust account shall be so paid daily save where it is not reasonably practicable so to do in which case they shall be so paid as soon as reasonably practicable.

(4) A person must not contravene this section.

Maximum penalty—

- (a) 50 penalty units; or
- (b) if the offence is committed with intent to defraud—100 penalty units or 1 year's imprisonment.

8 Purposes for which money may be withdrawn from trust account

- (1) A trustee shall not withdraw any moneys from a trust account except for the purpose of—
- (a) making a payment to the person entitled thereto or in accordance with the directions of that person; or
 - (b) making a payment to himself or herself for professional costs, statutory duties and charges and other proper outlays which payment shall be supported by authorisation in writing by the person for or on whose behalf the moneys were received or are held; or
 - (c) making a payment that is otherwise authorised by law.

Maximum penalty—100 penalty units or 1 year's imprisonment.

- (2) No withdrawal of moneys from a trust account for the purpose of the investment howsoever of such moneys (including but without limiting the generality hereof, a deposit in the nature of an investment) or the loan thereof to any person whomsoever shall be made unless the trustee has first obtained the authorisation in writing of the person entitled to those moneys but this subsection shall not apply to the withdrawal of moneys from a trust account for the purposes of paying for any land, chattels or livestock for the purchase in the name of the client of which the moneys in question were paid into the trust account.

Maximum penalty—100 penalty units or 1 year's imprisonment.

10 Moneys in trust account not available for payments of debts etc.

Save as otherwise provided in this Act, moneys held in a trust account shall not be available for the payment of the debts of the trustee by whom the account is kept to any other creditor of the trustee or be liable to be attached or taken in execution under the order or process of any court at the instance of any such creditor.

11 Claims and liens not affected

Subject to section 33(5) and (5A), nothing in this Act shall be construed as taking away or affecting any lawful claim or lien which any person has against or upon any moneys held in a trust account or against or upon trust moneys before such moneys are paid into a trust account.

12 Disbursements from trust account

- (1) A trustee shall not draw against or cause any payment to be made from a trust account kept by the trustee under this Act unless the drawing or payment is made by the trustee's cheque or by a cheque drawn on or that permits or enables payment to be made by a financial institution, crossed and marked on its face 'not negotiable' and payable to order.

Maximum penalty—10 penalty units.

- (2) Cheques drawn on a trustee's trust account shall be drawn on cheque forms having pre-printed on the face thereof a direction to pay to order, a crossing 'not negotiable' and the words 'Trust Account'.
- (3) Within 14 days of demand in writing made by the person for whom or on whose behalf trust moneys have been received or are held by a trustee and to which the person is then entitled the trustee shall pay to the person entitled thereto the balance of the moneys to which that person is entitled or as that person may direct in writing unless the trustee has already disposed of the moneys in accordance with a requirement made under section 33 in which case the trustee shall notify the person entitled to the moneys of that fact giving full particulars thereof.

Maximum penalty—10 penalty units.

- (4) Where, before the making of a payment pursuant to subsection (3), a trustee has received notice in writing from any person who was a party to the business, proceeding or transaction in respect of which the moneys were received that the ownership of the moneys is in dispute, the trustee shall not without the written consent of the parties make payment of any such moneys until such time as—

-
- (a) all parties to the business, proceeding or transaction notify the trustee in writing that the dispute has been resolved and inform the trustee as to the person to whom the moneys are to be paid, whereupon the trustee shall forthwith pay the moneys to that person or as that person may direct in writing; or
 - (b) the trustee is advised that legal proceedings have been commenced to determine the ownership of the moneys whereupon the trustee shall forthwith pay the moneys into the court in which the proceedings have been taken to abide the decision of the court; or
 - (c) where no notice or advice is received by the trustee pursuant to paragraph (a) or (b) within a period of 60 days after the receipt of the notice firstmentioned in this subsection, the said period expires.

Maximum penalty—10 penalty units.

- (5) This section does not prevent a financial institution causing a payment to be made from a trustee's trust account kept at a financial institution by electronic funds transfer.
- (6) However, the financial institution must ensure it keeps accurate records of each transfer and the purpose of the transfer.
- (7) Subsection (5) applies only if the trustee has the written approval of the supervising entity to make electronic funds transfers from the trust account.

13 Account of moneys received and their application

A trustee within 14 days of demand in writing made by the person for whom or on whose behalf trust moneys have been received or are held by the trustee and to which the person is entitled, shall render to the person entitled to the moneys a correct and detailed account in writing of all such moneys and of the application thereof unless the trustee has already disposed of the moneys in accordance with a requirement made under section 33 in which case the trustee shall notify the person entitled to the moneys of that fact giving full particulars thereof.

Maximum penalty—50 penalty units.

14 Trustee to appoint auditor

- (1) A trustee shall appoint a person or a firm as auditor to audit the accounting and other records kept by the trustee in pursuance of section 6 and the trust accounts established and kept by the trustee in pursuance of section 7 and where for any reason the auditor ceases to hold that office the trustee shall within 14 days thereafter appoint another such auditor.

Maximum penalty—50 penalty units.

- (2) Within 1 month after a person becomes a trustee, the trustee must give to the supervising entity, in writing, the full name and business address of the auditor appointed under subsection (1).

Maximum penalty—50 penalty units.

- (3) If, for any reason, the appointment of an auditor ends, the trustee must—
- (a) immediately give to the supervising entity written notice that the appointment has ended; and
 - (b) within 1 month after the appointment ends—give to the supervising entity, in writing, the full name and business address of the auditor appointed to replace the auditor whose appointment has ended.

Maximum penalty—50 penalty units.

- (4) A notification of appointment of an auditor pursuant to this section shall be endorsed by the auditor, or where a firm is appointed as such by a member of the firm, with a statement that the auditor or it has accepted the appointment.
- (5) Such fees and expenses of an auditor appointed under this section shall be payable by the trustee as are prescribed or, where not so prescribed, as are reasonable.

15 Qualifications, resignation, termination of appointment of auditor

- (1) Subject to this section a person shall not—
- (a) accept appointment as auditor for the purposes of section 14; or
 - (b) act as auditor for a trustee under this Act; or
 - (c) prepare a report required by this Act to be prepared by an auditor;
- if the person—
- (d) is not—
 - (i) a person registered as an auditor under the Corporations Act; or
 - (ii) a member of the Australian Society of Certified Practising Accountants or the Institute of Chartered Accountants in Australia; or
 - (iii) a person who holds a public practising certificate issued by the Institute of Public Accountants and has completed a tertiary course of study in accounting with an auditing component from an institute prescribed under the Corporations Act, section 1280(2); or
 - (iv) a person approved by the chief executive who has completed a tertiary course of study in accounting with an auditing component from an institute prescribed under the Corporations Act, section 1280(2); or
 - (e) is indebted in an amount exceeding \$1000 to the trustee or a firm of which the trustee is a partner except for fees and expenses for professional service rendered by the trustee or such firm; or
 - (f) is—
 - (i) a partner or an employee of the trustee; or
 - (ii) a partner, employer or employee of an employee in any capacity howsoever of the trustee.

Maximum penalty—100 penalty units.

- (2) A firm shall not—
- (a) accept appointment as auditor for the purposes of section 14; or
 - (b) act as auditor for a trustee under this Act; or
 - (c) prepare a report required by this Act to be prepared by an auditor;

unless—

- (d) each member of the firm is—
 - (i) a person registered as an auditor under the Corporations Act; or
 - (ii) a person who holds a current practice certificate of the Institute of Chartered Accountants in Australia or the Australian Society of Certified Practising Accountants; or
 - (iii) a person approved by the Minister;
- (e) if the business name under which the firm is carrying on business is not registered on the register established and maintained under the *Business Names Registration Act 2011* (Cwlth), section 22—a return in the approved form showing the full names and addresses of all the members of the firm has been lodged with the supervising entity;

Note—

See also the *Business Names Registration Act 2011* (Cwlth), section 18 (Offence—carrying on a business under an unregistered business name).

- (f) no member of the firm is indebted in an amount exceeding \$1000 to the trustee or a firm of which the trustee is a partner except for fees and expenses for professional service rendered by the trustee or such firm;
- (g) no member of a firm is—
 - (i) a partner or employee of the trustee; or

- (ii) a partner, employer or employee of an employee of the trustee.

Maximum penalty—100 penalty units.

- (3) For the purposes of subsections (1) and (2) a person shall be deemed to be an employee of the trustee—
 - (a) if the person is an employee of a firm of which the trustee is a member or of any other member of such a firm;
 - (b) except where the chief executive, if the chief executive thinks fit in the circumstances of the case, directs otherwise, if the person has, at any time within the immediately preceding period of 12 months been an employee of the trustee, a firm of which the trustee is a member or any other member of such a firm.
- (4) The appointment under this Act of a firm as auditor by a trustee shall be taken to be an appointment of all persons who are members of the firm, whether resident in a State or Territory or not, at the date of the appointment.
- (5) Where a firm has been appointed under this Act as auditor by a trustee and the members constituting the firm change by reason of the death, retirement or withdrawal of a member or by reason of the admission of a new member, the firm as newly constituted shall, if it is not disqualified from acting as auditor by virtue of subsection (2) be deemed to be appointed under section 14 as auditor by the trustee and that appointment shall be taken to be an appointment of all persons who are members of the firm as newly constituted.
- (6) A report required to be signed on behalf of a firm appointed under this Act as auditor by a trustee shall be signed in the firm name and in the trustee's own name by a member of the firm.
- (7) If, in contravention of this section, a firm consents to be appointed or acts as auditor for a trustee or prepares a report required by this Act to be prepared by an auditor or by an auditor appointed by a trustee, each member of the firm shall be guilty of an offence against this Act.

- (8) An auditor appointed under this Act by a trustee may, by notice in writing given to the trustee, resign as auditor and the resignation takes effect on the date (if any) specified for the purpose in the notice.
- (9) If an auditor resigns, the auditor must immediately give to the supervising entity written notice of the resignation.
Maximum penalty—50 penalty units.
- (10) Whenever the appointment of an auditor for the purposes of section 14(1) is terminated by the trustee and the auditor is of opinion that the termination of appointment arose directly or indirectly out of any action or proposed action by the auditor in the discharge of the auditor's duties or responsibilities for the purposes of this Act the auditor shall furnish a report in writing to the supervising entity on the auditor's actions or proposed actions, setting out the grounds and circumstances upon which the opinion is based.
- (11) If the supervising entity considers it appropriate, the supervising entity may give to the Minister a copy of the report.
- (12) Where it is, in the opinion of the supervising entity, impracticable for a trustee to obtain the services of a person who is qualified for, and is not disqualified from, accepting appointment or acting as auditor of the accounts of the trustee under section 14 in view of the locality where the trustee carries on the trustee's practice or business or other special circumstances, a person who is, in the opinion of the supervising entity, suitably qualified or experienced and is approved by the supervising entity for the purposes of this Act in relation to the audit of the accounts of the trustee, may be appointed as auditor of the trustee's accounts subject to such terms and conditions as are specified in the approval.
- (13) A person appointed in accordance with subsection (12) shall in relation to the trustee's accounts be deemed to be the auditor appointed by the trustee under section 14 for the purposes of this Act in relation to those accounts and the provisions of this Act with all necessary modifications, apply to and in relation to the person accordingly.

16 Audit of trust accounts

- (1) A trustee must, for each financial period for the trustee and within 2 months after the end of the financial period—
 - (a) ensure the trustee's auditor audits the accounting and other records and the trust accounts kept by the trustee under this Act; and
 - (b) give to the supervising entity an auditor's report containing the information prescribed under a regulation.

Maximum penalty—200 penalty units.

- (2) However, if the supervising entity is satisfied, on the trustee's written application, there are special reasons for extending the time for compliance with subsection (1)(b), the supervising entity may approve an extension, of not more than 3 months, of the time for compliance with the subsection.
- (3) The supervising entity may approve the extension on conditions stated in the approval.
- (4) When in respect of a financial period the accounting and other records and the trust accounts of a trustee, referred to in subsection (1) (the *accounts*) are produced to the auditor to enable an audit thereof to be made for the purposes of this section, such accounts shall be accompanied by a statement signed by the trustee and, where the trustee carries on practice or business in partnership, every other member of the firm stating—
 - (a) whether the accounts are true and correct; and
 - (b) whether all moneys received by the trustee or the firm, as the case may be, during the financial period in question and which constitute trust moneys have been lodged to the credit of a trust account kept under this Act at a financial institution (designating the financial institution and the office or branch thereof) and disclosed to the auditor for the purposes of the audit; and
 - (c) whether the moneys referred to in paragraph (b) have been applied for the purposes for which they were so

received and in accordance with the Act or are still retained in a trust account referred to in that paragraph.

Maximum penalty—200 penalty units.

- (5) Where the matters set out in a statement made for the purposes of subsection (4) are not within the trustee's own knowledge, the trustee shall, before signing the statement, take all reasonable steps to ascertain whether the facts and matters set out in the statement are true and correct.
- (6) Every trustee who in a statement made for the purposes of subsection (4) makes a statement false in a material particular knowing it to be false is guilty of an offence.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (7) Every auditor shall have a right of access at all times to the accounting and other records of the trustee kept by the trustee in pursuance of section 6 including all files containing information supporting or relevant to entries in the accounts the subject of the audit and to any books, accounts, cheques or other records relating to an account designated or evidenced as a trust account of the trustee established and kept at any bank and shall be entitled to require from the trustee and where the trustee carries on practice or business in partnership, any of the members of the partnership and any of the trustee's employees or agents and, where the trustee carries on practice or business in partnership, any of the firm's employees or agents such explanation and information as the trustee desires for the audit or unannounced examination.
- (8) Where an auditor is of opinion that, to enable the auditor to properly carry out the audit of the accounting and other records and the trust accounts referred to in subsection (1) or an unannounced examination under section 18, it is necessary or desirable that the auditor should be permitted to examine any other books, accounts or records relating to the practice or business of the trustee or where the trustee carries on practice or business in partnership, of the firm, the auditor may require the trustee, and where the trustee carries on practice or business in partnership, the other members of the partnership,

to produce for the auditor's examination such other books, accounts or records.

- (9) The auditor shall forthwith furnish to the supervising entity a report in writing with respect to—
- (a) any refusal or failure by the trustee to comply with the auditor's requirements under subsection (7) or (8) or the regulations; or
 - (b) any refusal or failure by any person without lawful justification to allow the auditor access to any accounting or other records of the trustee to which the auditor has right of access or to give any information possessed by the person as and when required by the auditor pursuant to subsection (7) or the regulations or where the auditor is otherwise hindered, obstructed or delayed in the performance of the auditor's duties or the exercise of the auditor's powers.
- (10) Every auditor shall in the conduct of the auditor's audit or examination for the purposes of this Act have due regard to such auditing procedures and standards (if any) as may be prescribed in relation to the audit or, as the case may be, unannounced examination of accounting and other records and trust accounts under this Act.
- (11) If an auditor departs from the prescribed auditing procedures or standards in the conduct of the audit or, as the case may be, unannounced examination the auditor shall state the extent of such departure in the auditor's report or statement for the purposes of this Act on the audit or, as the case may be, examination and the auditor's reasons for so doing.

Maximum penalty—50 penalty units.

17 Duties of auditor

Where in performance of the auditor's duties as auditor for a trustee an auditor becomes aware of any matter which in the auditor's opinion—

- (a) may adversely affect the financial position of the trustee to a material extent; or

- (b) constitutes a breach of section 6, 7 or 8; or
- (c) is otherwise an irregularity in relation to the accounting and other records or trust accounts of the trustee that ought to be brought to notice;

the auditor must, within 7 days after becoming aware of the matter, give to the supervising entity and the trustee a written report on the matter.

Maximum penalty—200 penalty units.

18 Auditor to make unannounced examinations

- (1) An auditor appointed under section 14 shall once at least during every financial period (not being a period of less than 6 months' duration) make an unannounced examination of the accounting and other records kept by the trustee in pursuance of section 6 and the trust accounts of the trustee kept by the trustee in pursuance of section 7.
- (2) If the auditor is of opinion that the results of the examination are such that the auditor should take action in compliance with section 17 the auditor shall take such action accordingly but in any other case the auditor shall include in the auditor's report for the relevant financial period given to the supervising entity a statement that an unannounced examination has been made on a stated date.
- (3) If an auditor or trustee is of the opinion that it is impracticable or unduly onerous to make an unannounced examination in any financial period in accordance with subsection (1), the auditor or trustee shall furnish to the supervising entity a statement in writing setting out the reasons as soon as practicable after the commencement of that financial period.

Maximum penalty—50 penalty units.

- (4) The supervising entity may, if it considers it appropriate after consideration of the statement from the auditors or trustee furnished in pursuance of subsection (3), exempt the auditor from making such unannounced examination.

19 Auditing of accounts on ceasing to be trustee

- (1) Where a trustee ceases to carry on practice or business or to act as such the trustee shall within 2 months thereafter—
 - (a) cause the accounting and other records kept by the trustee in pursuance of section 6 and the trust accounts kept by the trustee in pursuance of section 7 for the whole of the period from the date up to which those accounts were last audited pursuant to section 16 to the date of the trustee's so ceasing or, where no such audit has been performed, for the whole of the period from the date on which the trustee commenced to carry on practice or business or to act as a trustee to the date of the trustee's so ceasing, to be audited by the trustee's auditor;
 - (b) cause a report of the audit performed in pursuance of paragraph (a) to be prepared which report shall contain the prescribed information;
 - (c) give to the supervising entity the auditor's report mentioned in paragraph (b).

Maximum penalty—50 penalty units.

- (2) Where a trustee ceases to carry on practice or business or to act as such the trustee, or where the trustee is dead the trustee's personal representative, shall forthwith take all steps and do all things as are legally permissible and as are requisite for the distribution as soon as practicable and in accordance with law of trust moneys held by the trustee when the trustee ceased to carry on practice or business or to so act.

20 Report of auditor to be laid before Minister in certain cases

- (1) If after considering an auditor's report given under section 16(1), 16(9) or 17 in relation to a trustee, the supervising entity is satisfied that the financial position of the trustee does not allow the trustee to meet all the trustee's commitments as a trustee, the supervising entity must give to the Minister a copy of the report with any further report on it the supervising entity considers appropriate to make.

- (1A) Subsection (1) does not limit the circumstances in which the supervising entity may give to the Minister a copy of an auditor's report.
- (2) It is a lawful excuse for the publication of any defamatory statement made in a report by an auditor under section 15(10), 16(1) or (9), 17, 19 or 23 or in any report or further report by an inspector under section 26A, or by the supervising entity made under subsection (1) or in any explanation by a trustee as a result of an inquiry by the supervising entity in relation to a report by an auditor under section 15(10) if the publication is made in good faith and is made for the purposes of this Act or purports to be so made.
- (3) For the purposes of subsection (2)—
 - (a) a publication is said to be made in good faith if—
 - (i) the matter published is relevant to an examination and audit or a report or further report under, or in pursuance of, this Act; and
 - (ii) the manner and extent of the publication does not exceed what is reasonably sufficient for the occasion; and
 - (iii) the person by whom it is made is not actuated by ill will to the person defamed or by any other improper motive, and does not believe the defamatory matter to be untrue; and
 - (b) when any question arises whether a publication was or was not made in good faith, the burden of proof of the absence of good faith lies upon the party alleging such absence.
- (4) Where the supervising entity has received a report referred to in subsection (1), the supervising entity may, with the consent of the Minister, take possession of the accounting and other records relating to trust moneys of the trustee and where the trustee carries on practice or business in partnership, of the firm.
- (5) Upon request by the supervising entity, or a person authorised by the supervising entity in writing in that behalf, the trustee and, where the trustee carries on practice or business in

partnership, the other members of the partnership and the trustee's employees and agents and, where the trustee carries on practice or business in partnership, any of the firm's employees and agents shall produce the accounting and other records relating to trust moneys held by the trustee relating to the trustee's practice or business or, where the trustee carries on practice or business in partnership, held by the firm relating to its practice or business.

Maximum penalty—100 penalty units or 1 year's imprisonment.

- (6) The supervising entity may retain possession of the accounting and other records of which the supervising entity has taken possession under subsection (4) for such period as the supervising entity considers reasonably necessary for the purposes of the investigation of matters contained in or arising out of a report referred to in subsection (1) and during that period the supervising entity shall permit a person who would be entitled to inspect the records if they were not in the possession of the supervising entity to inspect at all reasonable times such of the records as that person would be so entitled to inspect.

21 Power of Minister to appoint independent auditor

- (1) If the Minister has received an auditor's report sent to the Minister under section 15(10) or for another reason the Minister considers appropriate, the Minister may, if the Minister is satisfied that it is in the interests of the trustee concerned, the trustee's clients or the public generally to do so, appoint in writing an independent auditor (who save in special circumstances shall be the auditor-general, an officer of the auditor-general or a person or firm qualified, in accordance with section 15, to act as auditor for a trustee under this Act) to examine, audit and report either generally or in relation to any particular matter upon the books, accounts and records of and trust moneys and securities held by the trustee.
- (2) Where the Minister is of opinion that the whole or any part of the costs and expenses of an auditor appointed by the Minister

under this section or section 22 should be borne by the trustee concerned, the Minister may, by order in writing, direct the trustee to pay to the Crown a specified amount, being the whole or part of those costs and expenses, within the time and in the manner specified.

- (3) Where a trustee has failed to comply with an order of the Minister under subsection (2), the amount specified in the order may be recovered in a court of competent jurisdiction as a debt due to the Crown.

22 Power of Minister to appoint independent auditor upon application of client

- (1) Upon receipt of an application in writing from a person who alleges that a trustee has failed to account to the person in respect of any moneys or securities held or received by that trustee for the person or on the person's behalf, the Minister may appoint in writing an independent auditor (who save in special circumstances shall be the auditor-general, an officer of the auditor-general or a person or firm qualified, in accordance with section 15, to act as auditor for a trustee under this Act) to examine, audit and report either generally or in relation to any particular matter upon the books, accounts and records of and trust moneys and securities held by that trustee.
- (2) Every application under subsection (1) shall state—
 - (a) particulars of the circumstances under which the trustee received the moneys or securities in respect of which the trustee is alleged to have failed to account; and
 - (b) particulars of those moneys or securities and of the transactions of the applicant and the trustee relating thereto; and
 - (c) such other particulars as are prescribed.
- (3) Every statement in any such application shall be verified by a statutory declaration made by the applicant and shall, if made in good faith, be privileged.

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- (3A) Section 20(3) shall, with all necessary modifications, be applicable for the purposes of subsection (3).
- (4) The Minister shall not appoint an independent auditor under subsection (1) unless the Minister is satisfied—
- (a) that the applicant has good reason for making the application; and
 - (b) that it is expedient in the interests of the trustee or the applicant or the public generally that the books, accounts and records of and trust moneys and securities held by the trustee should be examined, audited and reported upon.
- (5) The Minister may, if the Minister thinks fit, before appointing an independent auditor under subsection (1) give the trustee concerned a reasonable opportunity of being heard upon the matters alleged in the application.

23 Auditor to report to Minister

- (1) An auditor appointed by the Minister under section 21 or 22 shall, upon the conclusion of the examination and audit in respect of which the auditor was appointed make a report thereon to the Minister.
- (2) The Minister may direct that the report or a copy thereof or of part thereof be made available to the supervising entity and such other persons or bodies as the Minister deems proper.

24 Powers of auditors

- (1) An auditor appointed by the Minister to examine and audit the books, accounts and records of and trust moneys and securities held by a trustee may for the purpose of carrying out the examination and audit—
- (a) examine on oath the trustee concerned and, where the trustee carries on practice or business in partnership, any of the members of the partnership and any of the trustee's employees and agents and, where the trustee carries on practice or business in partnership, any of the

firm's employees and agents and any other auditor appointed under this Act in relation to those books, accounts, records, moneys and securities; and

- (b) employ such persons as the auditor considers necessary; and
 - (c) by instrument in writing under the auditor's hand authorise any person employed by the auditor to do, in relation to the examination and audit, any act or thing that the auditor could himself or herself do in the auditor's capacity as auditor, except to examine any person on oath or to exercise the powers conferred by this paragraph.
- (2) Where an agent of the trustee is an employee of a financial institution, then for the purposes of this section and section 26, the term agent includes the manager and accountant of the office or branch of the financial institution at which the trustee has deposited any trust moneys in any account and any other officer of the financial institution at that office or branch who in the opinion of the auditor appointed by the Minister under section 21 or 22 is able to give information concerning the affairs of the trustee.

25 As to right of auditors and employees to communicate certain matters

Except for the purpose of carrying into effect the provisions of this Act or so far as may be required for the purpose of any proceedings, civil or criminal, an auditor appointed by the Minister under section 21 or 22 and an employee of any such auditor shall not communicate any matter which may come to his or her knowledge in the performance of duties as such an auditor or employee to any person other than the Minister, the supervising entity, the commissioner of the police service or some other police officer of or above the rank of inspector, any other person specified by the Minister and, in the case of an employee, the auditor by whom the employee is employed and, in the case of an auditor, any employee of the auditor.

26 Books, accounts and records to be produced upon demand

- (1) Upon request by an auditor appointed by the Minister under section 21 or 22 or by a person who produces a written authority in that behalf given under section 24(1)(c)—
 - (a) a trustee and, where the trustee carries on practice or business in partnership, the other members of the partnership and the trustee's employees and agents and, where the trustee carries on practice or business in partnership, any of the firm's employees and agents shall produce any books, accounts and records of and trust moneys and securities held by the trustee relating to his or her practice or business and where the trustee carries on practice or business in partnership, held by the firm relating to its practice or business; and
 - (b) an auditor appointed by a trustee shall produce any books, accounts and records held by the trustee relating to the practice or business of the trustee and where the trustee carries on practice or business in partnership, to the firm's practice or business.
- (2) A trustee and, where the trustee carries on practice or business in partnership, the other members of the partnership and the trustee's employees and agents and, where the trustee carries on practice or business in partnership, any of the firm's employees and agents and any auditor appointed by the trustee shall answer all questions relevant to the examination and audit which are put to him or her by an auditor appointed by the Minister under section 21 or 22 or by a person who produces a written authority in that behalf given under section 24(1)(c).
- (3) Where the Minister has appointed an auditor under section 21 or 22, and the Minister is satisfied that the auditor has reasonable grounds for suspecting or believing that trust moneys have been paid by the trustee in question to any person, on demand in writing in that behalf by the Minister, any such person and, where the person is a corporation, the officers of the corporation shall produce to the auditor or a person who produces a written authority in that behalf given under section 24(1)(c), any books, accounts or other records

of that person relevant to trust moneys paid to the person by the trustee and any person on whom a demand in writing is made under this subsection including the officers of a corporation shall be deemed to be an agent of the trustee for the purposes of section 24(1) and subsection (2) of this section.

- (4) Where books, accounts or records are produced under this section, the auditor or person to whom they are produced may take possession thereof for such period as the auditor or the person to whom they are produced considers necessary for the purposes of the examination and audit and during that period the auditor or person in possession under this subsection shall permit a person who would be entitled to inspect those books, accounts or records if they were not in possession of the auditor or the person who produced the written authority referred to in subsection (1) to inspect at all reasonable times such of those books, accounts or records as that person would be so entitled to inspect.
- (5) A person must not—
 - (a) contravene subsection (1), (2) or (3); or
 - (b) give to an auditor appointed under section 21 or 22 or a person who produces a written authority given under section 24(1)(c) a false or misleading answer to a question asked under subsection (2); or
 - (c) impede, delay or otherwise obstruct, or attempt to impede, delay or otherwise obstruct a person mentioned in paragraph (b) who is exercising powers or performing duties under this Act.

Maximum penalty—20 penalty units or 1 year's imprisonment.

26A Appointment and powers of inspector

- (1) Inspectors are to be employed under the *Public Service Act 2008*.
- (3) An inspector may at any time and from time to time require a trustee—

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- (a) to produce to the inspector for inspection, or examination, or audit, or inspection and examination and audit—
- (i) all accounting and other records whatever kept by the trustee in pursuance of section 6; and
 - (ii) all trust accounts whatever required to be established by the trustee and kept in pursuance of section 7; and
 - (iii) all contracts, agreements and other documents whatever in the possession, custody, or power of the trustee that relate to any transaction whatever by or with the trustee, or any such contract, agreement, or other document that the inspector may specify; and
- (b) to answer any question or supply any information that relates to any record, account, contract, agreement or document referred to in this subsection, or that relates to any entry therein.
- (4) An inspector at any time and from time to time—
- (a) may require any person who has possession, custody, or power of any record, account, contract, agreement or document whatever relating to any transaction by or with any trustee, to produce to that inspector for inspection, or examination, or audit, or inspection and examination and audit, that record, account, contract, agreement or document and in addition, to the satisfaction of the inspector, supply any information with respect thereto or with respect to any entry therein;
 - (b) may, in relation to any record, account, contract, agreement or document referred to in subsection (3) or this subsection, take notes or copies or extracts from any such record, account, contract, agreement, or document, or of any entries therein.
- (5) Where an inspector considers it necessary to do so for the purpose of obtaining evidence for production in any proceeding for an offence suspected, on reasonable grounds, of having been committed against this Act, the inspector may

impound and retain any record, account, contract, agreement, or document produced to the inspector in pursuance of this section.

- (6) In any case referred to in subsection (5), the trustee or other person having the possession, custody or power of that record, account, contract, agreement, or document at the time it was impounded and retained shall be entitled, upon request made to that inspector, to receive from the inspector, within a reasonable time after that request is made, a copy of any such document certified by that inspector to be a true copy thereof and any such certified copy shall be received in any proceeding in any court as evidence of and shall be of the same force and effect as that original record, account, contract, agreement or document.
- (7) A record, account, contract, agreement or document that is impounded and retained by an inspector under this section may be kept by the inspector—
 - (a) for such period as the inspector reasonably considers necessary for the purposes of this Act; or
 - (b) where any proceeding is commenced or to be commenced for an offence against this Act and to which that record, account, contract, agreement or document relates in any manner whatever, until the final determination, including any appeal, in respect of that proceeding.
- (8) For the purpose of performing any duties or, as the case may be, exercising any powers that are imposed or conferred upon the inspector by this section, an inspector may enter upon and remain on any premises where a trustee is engaged in the practice of the trustee's profession or the carrying on of the trustee's business.
- (9) A trustee or other person shall not—
 - (a) obstruct, threaten, or intimidate or attempt so to do an inspector in the exercise of any powers or authorities or functions under this section or in the discharge of any duties thereunder; or

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- (b) fail to produce for inspection, or examination, or audit, or inspection and examination and audit any record, account, contract, agreement, or document whatever when required so to do under this section; or
 - (c) when required under this section to answer any question or supply any information, refuse to give that answer or supply that information, or give an answer or supply information that in either case is false or misleading; or
 - (d) retake possession of or attempt to retake possession of any record, account, contract, agreement or document impounded and retained under the authority of this section.

Maximum penalty—100 penalty units or 1 year's imprisonment.

- (11) Any requirement whatever under this section directed to a trustee or other person by an inspector may be made verbally or by notice in writing served by post.
- (12) Notwithstanding any provision of this section to the contrary, a person shall not be required to answer any question or supply any information that tends to incriminate the person.
- (13) In every case where, under this section, an inspector has performed any duties or, as the case may be, exercised any powers, the inspector shall as soon as practicable thereafter furnish a report thereon in writing to the chief executive.

27 Duties of financial institution relating to trustee's accounts

- (1) Where the Minister has appointed an auditor under section 21 or 22 it shall be the duty of the manager or other principal officer of a financial institution with which a trustee has deposited any trust moneys whether in the trustee's own account or in any general trust account or separate trust account to disclose each and every such account to the auditor upon demand in writing delivered to the trustee personally by the auditor and to permit the auditor to inspect and make and take away with the auditor a copy of or extract from each and

every such account and of or from any book, account, document, or writing relating to any such account.

- (2) It shall be the duty of the manager or other principal officer at the office or branch of the financial institution at which a trustee keeps a trust account designated or evidenced as such to inform the supervising entity immediately whenever the trust account is overdrawn or whenever a cheque drawn on the trust account is dishonoured by reason of insufficiency of funds in the trust account to meet the cheque.
- (3) For the purposes of this Act the financial institution shall be deemed to be the agent of the trustee and such books, accounts, cheques or other records of the financial institution referred to in subsection (1) shall be deemed to be the books, accounts, cheques or other records of the trustee.
- (4) No financial institution shall incur any liability whether in respect of any breach of trust or otherwise by reason only of any disclosure made pursuant to this section or section 16, 24 or 26.

28 Penalty for destroying, concealing or altering records or sending records or other property out of the State

- (1) A person who, with intent to defeat the purposes of this Act or with intent to prevent, delay or obstruct the carrying out of any examination or audit under this Act—
 - (a) destroys, conceals or alters any book, account, record or document relating to the practice or business of a trustee; or
 - (b) sends or attempts to send or conspires with any other person to send out of the State any such book, account, record or document or any property of any description belonging to or in the disposition of or under the control of a trustee;

shall be guilty of an offence against this Act.

Maximum penalty—100 penalty units or 1 year's imprisonment.

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- (2) If in a prosecution for an offence under subsection (1) it is proved that the person charged—
- (a) destroyed, concealed or altered any book, account, record or document aforesaid; or
 - (b) sent or attempted to send or conspired to send out of the State any such book, account, record or document or any property aforesaid;

the onus of proving that in so doing the person did not act with intent to defeat the purposes of this Act or with intent to prevent, delay or obstruct the carrying out of an examination or audit under this Act shall lie on the person.

28A Supervising entity to report annually to Minister

- (1) A supervising entity must, as and when required by the Minister, give to the Minister an annual report on its functions under this Act.
- (2) The report may be about all or any of the trustees for which the entity is the supervising entity.
- (3) Without limiting subsection (1), the report must include an analysis of the extent to which the trustees reported on complied with section 16(1).
- (4) This section does not apply to a supervising entity who is the chief executive.

28B Duty of supervising entity to report suspected offences

- (1) This section applies if a supervising entity suspects on reasonable grounds, after performing functions under this Act or otherwise, that a person has committed an offence against this Act.
- (2) The supervising entity must—
 - (a) report the suspected offence to the commissioner of the police service or other appropriate prosecuting authority; and

- (b) make available to the commissioner or authority the documents and information relevant to the suspected offence in its possession or under its control.
- (3) The obligation under subsection (2)(b) to make available the documents and information continues while the supervising entity holds the relevant suspicion.

30 Inspection of auditor's reports

- (1) If—
 - (a) an auditor's report is given under this Act to a supervising entity; and
 - (b) the supervising entity is satisfied a person has enough interest in moneys in relation to which the report is given;the supervising entity must, so far as the report relates to the moneys, make the report available for inspection by the person.
- (2) A supervising entity must make each auditor's report for a financial period available for inspection by—
 - (a) the auditor appointed to audit the accounts of the trustee for the next financial period; or
 - (b) anyone else the supervising entity considers has a genuine reason for wanting to inspect the report.
- (3) A person mentioned in subsection (2) may, with the supervising entity's approval, make a copy of, or take an extract from, the report.

31 Security to be lodged by trustee

- (1) Within 14 days after the expiration of each financial period, every trustee shall lodge with the chief executive a statement in writing signed and certified as correct by the trustee in the presence of a justice of the peace setting out the largest amount of trust moneys in the trustee's possession solely or jointly with any other person or persons during the financial period in question.

Maximum penalty—10 penalty units.

- (2) Every trustee shall within the period specified in subsection (1) lodge with the chief executive a security for the proper application by the trustee of trust moneys in or coming into the trustee's possession solely or jointly with any other person or persons during the financial period next succeeding the last financial period in respect whereof the trustee is required to lodge with the chief executive a statement in compliance with subsection (1).

Maximum penalty—10 penalty units.

- (3) The security required by subsection (2) shall be in an amount equal to one-third of the amount required to be set out in the statement referred to in subsection (1) or the amount of \$10000 whichever is the less.
- (4) The security required by this section shall be by such method as is prescribed.
- (5) The power to make regulations under this Act includes power to make regulations with respect to the custody and investment of, and payment of interest on, any security by way of cash deposit lodged under this section.
- (6) A security lodged under this section shall be applied by the chief executive subject to and in accordance with the regulations.
- (7) The regulations may provide that, subject to terms and conditions prescribed, this section shall not apply to prescribed trustees.

32 Power of Minister to exempt

- (1) The Minister may by order published in the gazette, exempt any trustee or class of trustee from the operation of all or any of the provisions of this Act either absolutely or subject to such conditions as the Minister specifies in the order.
- (2) The Minister may, by order published in the gazette, revoke or vary any previous order made under subsection (1) or under this subsection.

- (3) Upon publication of any order under this section, that order shall take and have effect according to its tenor.
- (4) The Minister may in relation to a particular trust or particular trusts by writing under the Minister's hand exempt a trustee either from compliance with all or any of the provisions of this Act and until it is revoked an exemption under this subsection shall take and have effect according to its tenor.
- (5) An exemption under subsection (4) may be subject to conditions and may be revoked or varied by the Minister.
- (6) A trustee shall not contravene or fail to comply with any condition to which an exemption granted under this section is subject.

33 Return of property in trustees' hands to which beneficiaries are absolutely entitled

- (1) Any trustee who on 1 April in any year has in the trustee's possession or under this control any property to which a person (the *beneficiary*) to whom subsection (2) relates—
 - (a) is on that day; and
 - (b) was during the whole of the year ended on that day;absolutely entitled shall, not later than the following 1 June, lodge with the public trustee a return in writing signed by the trustee setting out full particulars of that property.
Maximum penalty—50 penalty units.
- (2) The return shall be lodged under subsection (1) in relation to the following beneficiaries, that is to say—
 - (a) a beneficiary who is not known; or
 - (b) a beneficiary whose whereabouts are unknown; or
 - (c) a beneficiary of whom it is not known whether the beneficiary is alive or dead; or
 - (d) a beneficiary who has died, the executors or administrators of whom are dead or whose whereabouts are unknown.

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- (3) The return lodged under subsection (1) shall be accompanied by a statement of all costs, charges, and expenses (if any) claimed by the trustee to be chargeable in the trustee's favour against or payable to the trustee out of the property referred to in the return, and of any claim or lien by the trustee and of the full and true reasons why the property has not been transferred, assigned, delivered, or paid over to the beneficiary.

Maximum penalty—50 penalty units.

- (5) On receipt of a return under subsection (1), the public trustee may, by signed notice, require the trustee to transfer, assign, deliver, or pay over to the public trustee all property mentioned in the return within the time stated in the notice.
- (5A) On the giving of a notice under subsection (5), any lien claimed against the property by the trustee stops having effect.
- (6) If a trustee fails to comply with a requirement made under subsection (5) according to its tenor the public trustee may apply by motion to the Supreme Court for an order that the trustee shall transfer, assign, deliver, or pay over the property the subject of the requirement forthwith.
- (6A) An order may be made in the absence of the trustee concerned if the notice of motion has been duly served upon the trustee or the court or judge is satisfied that reasonable efforts have been made to serve the same.
- (7) In any proceeding, a certificate signed by the public trustee and stating that the public trustee has made under subsection (5) a requirement stated in the certificate is evidence of the making of the requirement.
- (8) Upon the property being transferred, assigned, delivered, or paid over to the public trustee in accordance with a requirement or order under this section, the public trustee shall deal with and apply the same as the trustee thereof pursuant to the provisions of the *Public Trustee Act 1978* and shall without delay use every endeavour to ascertain the beneficiary or beneficiaries and to hand over or distribute the property to the beneficiary or amongst them.

- (9) Any costs, charges, or expenses which are claimed by the trustee to be chargeable in the trustee's favour against or payable to the trustee out of the property in question shall be properly vouched by the trustee and investigated by the public trustee; and if the public trustee is satisfied that the same are correct, then the sum allowed by the public trustee, or, if the trustee requires that the trustee's claim should be taxed, then the sum allowed by the taxing officer of the Supreme Court after taxation, shall be paid to the trustee as and when moneys in respect of such property become available, or in the discretion of the public trustee may be paid forthwith to the trustee, in which case the sum so paid shall be part of the costs, charges and expenses of the public trustee against the property.
- (10) In this section—
- trustee* means a trustee within the meaning of section 4 and every person who is a trustee under any other Act or law or rule of law.

34 When public trustee may control operations on trust accounts

- (1) Where the public trustee is of opinion that any trustee—
- (a) is an undischarged bankrupt; or
 - (b) has stolen or fraudulently misapplied any trust moneys; or
 - (c) has a general deficiency in the trustee's trust account;
- the public trustee may under, subject to, and in accordance with the provisions of this section, control operations on any or all trust accounts of which that trustee is, whether solely or jointly with any other person or persons a trustee.
- (2) Where the public trustee proposes to take action under subsection (1), the public trustee shall serve notice in writing on—
- (a) the trustee concerned; and

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- (b) any other person authorised to operate on any trust account in respect of which the notice is served; and
 - (c) the manager or other principal officer of the office or branch of the financial institution (as the case may be) with which any trust account in respect of which the notice is served is kept.
- (3) A notice served under subsection (2) shall be signed by the public trustee and dated and, shall state that the public trustee requires the trust account or trust accounts specified therein to be operated on under the public trustee's control.
- (4) After a notice served under subsection (2) has been served on the manager or other principal officer of the office or branch of a financial institution (as the case may be) and until such notice ceases to be effective, whether or not a copy of such notice has been served on the trustee concerned, or on any other person, no payment shall be made by the financial institution on any cheque or other instrument drawn on any trust account specified in the notice unless it bears (as well as the signature of the trustee or other person authorised to operate on that trust account) the signature of the public trustee or of a person thereunto authorised by the public trustee (it being hereby declared that the public trustee may in writing so authorise any of the public trustee's officers or agents).
- (5) If that trustee or other person authorised to operate on a trust account specified in the notice served under subsection (2) is unwilling to operate thereon in conjunction with the public trustee or person thereunto authorised by the public trustee, the public trustee or, with the public trustee's consent in writing, that authorised person may thereupon operate on any such trust account alone.
- (6) A statutory declaration made by the public trustee or person authorised by the public trustee under subsection (4) and subscribed under the *Oaths Act 1867* to the effect that the trustee or other person authorised to operate on any trust account is unwilling to operate thereon in conjunction with the public trustee or the person authorised by the public

trustee shall be sufficient evidence to the trustee's financial institution of that fact.

- (7) After a notice served under subsection (2) has been served on the trustee concerned, and until such notice ceases to be effective, that trustee shall not sign any cheque or other instrument drawn on any trust account specified in the notice unless the cheque or other instrument has first been signed by the public trustee or a person thereunto authorised by the public trustee.
- (8) After a notice served under subsection (2) has been served on any person (other than the trustee concerned) who is authorised to operate on any trust account specified in the notice and until the notice ceases to be effective, that person shall not sign any cheque or other instrument drawn on any trust account specified in the notice unless the cheque or other instrument has first been signed by the public trustee or a person thereunto authorised by the public trustee.
- (9) A trustee, manager, or principal or other officer of a financial institution, or any person authorised to operate on the trust account of a trustee (including a trustee who is authorised to operate on the trust account of another trustee) must not knowingly contravene this section.

Maximum penalty—50 penalty units.

- (10) Any trustee in respect of whose trust account a notice is served under subsection (2) may appeal to a judge who may make such order in the matter as the judge thinks fit.
- (11) A notice served under subsection (2) shall cease to be effective—
 - (a) if the public trustee rescinds the notice—on the date when it is so rescinded (and it is hereby declared that any such notice may be rescinded by the public trustee); or
 - (b) if a judge on appeal orders that the notice cease to be effective—on the date specified by the judge as the date on which the notice shall cease to be effective, or, if no date is specified, on the date of the order.

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- (12) In every case in which any notice has ceased to be effective, the public trustee shall, as soon as practicable, serve on all persons who have been served therewith a further written notice that such notice has ceased to be effective.
- (13) Any notice or further notice required by this section to be served upon any person, may be served—
- (a) by delivering it to such person; or
 - (b) by sending it by prepaid registered post to such person at the person's usual place of abode or business or at the person's place of abode or business last known to the public trustee.
- (14) No financial institution, and no manager or principal officer or other officer of a financial institution shall incur any civil liability to any person for dishonouring or refusing or failing to make payment on a cheque or other instrument which is drawn on a trust account in respect of which the public trustee has served a notice under subsection (2) and is not signed by the public trustee or a person thereunto authorised by the public trustee, if such dishonour or refusal or failure to make payment occurs before the manager or other principal officer who was served with the notice is served by the public trustee with a further written notice that such notice has ceased to be effective.

35 Powers of the public trustee with respect to trust accounts of deceased trustees etc.

- (1) Where the public trustee is of opinion that any trustee—
- (a) has died; or
 - (b) is because of mental or physical illness incapable of operating on a trust account; or
 - (c) can not be found;

and that trustee is (or if the trustee has died was) either solely or jointly with any other person or persons, a trustee of any trust account, the public trustee may, under, subject to and in accordance with the provisions of this section, act as a trustee of that trust account.

- (2) At least 14 days before commencing to act, pursuant to this section, as a trustee, written notice that any person desiring to object thereto may forward the person's objection in writing to the public trustee shall be forwarded by the public trustee by prepaid registered post to each of the following persons, at the person's usual place of abode or business or at the person's place of abode or business last known to the public trustee, namely—
 - (a) the person who is the trustee of the trust account in question, if the person is alive;
 - (b) a person who is a partner of the trustee or was at the date of the trustee's death a partner of the trustee who has died;
 - (c) if the trustee is dead—any person who has notified the public trustee that the person is the executor or administrator of the trustee;
 - (d) the manager or other principal officer of the office or branch of the financial institution (as the case may be) with which the trust account in question is kept.
- (3) The public trustee shall consider any objections to the public trustee's acting under this section as trustee in respect of the trust account in question, but the fact that such objections have been made shall not prevent the public trustee from so acting.
- (4) If, at the expiration of the period of 14 days after the forwarding by post of the notices specified in subsection (2) notwithstanding objections (if any) forwarded in answer to those notices, the public trustee determines to act as a trustee of the trust account in question the public trustee shall forward by prepaid registered post a further notice to each of the persons to whom a notice was, in respect of the trust account in question, required by subsection (2) to be forwarded at the person's usual place of abode or business or at the person's place of abode or business last known to the public trustee.
- (5) The further notice forwarded under subsection (4) shall be signed by the public trustee and dated and shall state that the

public trustee will act as a trustee of the trust account specified therein.

- (6) After any such further notice has been served as required by subsection (4) and until it ceases to be effective, the public trustee shall be for all purposes a trustee of any trust account specified in the further notice in place of the trustee referred to in subsection (1).
- (7) Any of the following persons may appeal against the public trustee acting as a trustee under this section to a judge (who may make such order in the matter as the judge thinks fit), namely—
 - (a) the trustee in whose place the public trustee is so acting;
 - (b) a person who is a partner of the trustee in whose place the public trustee is so acting or who was at the date of the trustee's death a partner of such trustee who has died;
 - (c) any other person who is a trustee of the trust account in respect of which the public trustee is so acting;
 - (d) any person entitled as beneficiary to any part of such trust account;
 - (e) any executor or administrator of a trustee who has died and in whose place the public trustee is so acting;
 - (f) any other person aggrieved by the public trustee so acting.
- (8) A further notice forwarded under subsection (4) shall cease to be effective—
 - (a) if the public trustee rescinds it, on the date when it is so rescinded (and it is hereby declared that any such further notice may be rescinded by the public trustee); or
 - (b) if a judge on appeal orders that the public trustee shall cease to act as trustee in respect of the trust account in question, on the date specified by the judge as the date on which the public trustee shall so cease or, if no such date is specified, on the date of the order.

- (9) In every case in which any further notice has ceased to be effective under subsection (8), the public trustee shall as soon as practicable notify by prepaid registered post each of the persons to whom a copy of the further notice was forwarded at the person's usual place of abode or business or at the person's place of abode or business last known to the public trustee that such further notice has ceased to be effective.
- (10) When the manager or other principal officer of the office or branch of any bank (as the case may be) has received from the public trustee a further notice under this section in respect of any trust account kept with that office or branch, and such manager or other principal officer has not been notified that such further notice has ceased to be effective, such manager or other principal officer shall not be bound to inquire whether the requirements of this section have been complied with, and a bank which makes any payment in good faith in the belief that any such further notice is in force shall not incur any liability that it would not have incurred if such further notice were in force.

36 Act to apply in respect of certain moneys and financial institution accounts

Where any person declared under a regulation to be a trustee (*declared trustee*) is authorised howsoever to withdraw moneys from or otherwise operate on any account opened or kept at any financial institution in the name of a client of the declared trustee in the course of the practice of his or her profession or the carrying on of business as such for the purpose of the use or application by the declared trustee of any moneys in such account in connection with or in relation to any business, proceeding, transaction or matter in which or with respect to which he or she acts in the course of or in connection with his or her practice or business as such for the client in question than in relation to the declared trustee—

- (a) the moneys for the time being in such an account are taken to be moneys received for or on behalf of the client by the person so deemed to be a trustee in the course of or in connection with the practice of his or her

profession or the carrying on of his or her business as such; and

- (b) the account is taken to be an account established and kept under section 7; and
- (c) in relation to such moneys the person so deemed to be a trustee is taken to be a trustee within the meaning of this Act;

and accordingly this Act shall apply and extend subject to such modifications (if any) as may be prescribed by the regulations.

37 Approval of forms

The chief executive may approve forms for use under this Act.

38 Proceedings for offences are summary proceedings

A proceeding for an offence against this Act is a summary proceeding under the *Justices Act 1886*.

40 References to Trust Accounts Act 1923

In an Act or document, a reference to the *Trust Accounts Act 1923* may, if the context permits, be taken to be a reference to this Act.

41 Regulations

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made for or about—
 - (a) providing for the production to an auditor appointed under section 14 by the trustee, the trustee's employees and agents (including any employee of a financial institution of the trustee), of books, papers and accounts;
 - (b) prescribing the persons to whom the reports of auditors shall be sent for inspection, information or record;

- (c) trustees books, accounts and records, the form and manner of keeping the same and accountancy procedures to be followed in relation thereto;
- (d) the nature and scope of, and procedures and standards to be followed or given due regard to in, audits and unannounced examinations for the purposes of this Act and the form and content of reports on such audits and examinations;
- (e) returns and statements to be furnished by trustees and the persons to whom the returns shall be sent or made available for inspection, information or record;
- (g) the preparation by trustees of accounts and financial statements and the form and content thereof;
- (h) cheques and receipts of trustees relating to trust moneys;
- (j) requiring persons appointed as auditors under section 14 to have professional indemnity insurance in the prescribed amount indemnifying persons having lawful claims against such auditors in relation to their functions and duties under this Act;
- (k) prescribing a maximum penalty of 10 penalty units for an offence against a regulation.

43 Chief executive to give information to supervising entity

- (1) This section applies if the chief executive stops being the supervising entity for a trustee and someone other than the chief executive becomes the supervising entity for the trustee.
- (2) Within 3 months after the chief executive stops being the supervising entity, the chief executive must give to the supervising entity the information the chief executive considers necessary to enable the supervising entity to perform its functions under this Act.
- (3) The chief executive or anyone else acting under the chief executive's direction is not civilly liable for the giving of information to a supervising entity under this section.

- (4) If subsection (3) prevents liability attaching to a person, the liability attaches instead to the State.