



ANNO TRICESIMO QUINTO

**ELIZABETHAE II REGINAE**

**A.D. 1986**

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**No. 70 of 1986**

**An Act to amend the Administration and Probate Act, 1919.**

*[Assented to 27 November 1986]*

The Parliament of South Australia enacts as follows:

Short title.

1. (1) This Act may be cited as the "Administration and Probate Act Amendment Act, 1986".

(2) The Administration and Probate Act, 1919, is in this Act referred to as "the principal Act".

Commencement.

2. This Act shall come into operation on a day to be fixed by proclamation.

Amendment of  
s. 4—  
Interpretation.

3. Section 4 of the principal Act is amended by striking out the definitions of "the common fund" and "the Common Fund Interest Account" and substituting the following definition:

"common fund" means a common fund established by the Public Trustee under section 102..

Repeal of ss. 102  
and 102a and  
substitution of  
new sections.

4. Sections 102 and 102a of the principal Act are repealed and the following sections are substituted:

Investment of  
trust funds.

102. (1) Subject to this Act, where the Public Trustee receives any money (whether under this Act or otherwise) on behalf of any estate, trust or person, the Public Trustee shall initially pay that money into a bank account approved by the Minister for the purposes of this section.

(2) Subject to this Act and any other Act and the terms of any relevant instrument of trust or order of court, the Public Trustee shall invest such funds as are held in trust—

(a) in a manner authorized by the instrument of trust;

(b) in a trustee investment;

(c) in a common fund established by the Public Trustee under this section;

or

(d) on deposit with the South Australian Government Financing Authority.

(3) For the purposes of making investments in accordance with subsection (2), the Public Trustee may, with the approval of the Minister, establish one or more common funds.

(4) The Public Trustee shall for each common fund determine the classes of investment (being trustee investments) in which the common fund may be invested (and those classes may be varied from time to time by the Public Trustee).

(5) No money shall be invested in a common fund unless the classes of investment in which that money could be invested on separate account are the same as, or include, the classes of investment in which the common fund may be invested.

(6) The Public Trustee shall keep an account showing at all times the current amount for the time being at credit in the common fund on account of each estate, trust or person.

(7) The Public Trustee has a discretion to realize investments in which money from a common fund has been invested and to reinvest the money in investments of an appropriate class.

(8) The Public Trustee may withdraw from a common fund any amount at credit in the common fund on account of any estate, trust or person—

(a) for the purpose of reinvestment;

(b) for the purpose of defraying liabilities that are lawfully chargeable against that estate, trust or person;

(c) for the purpose of making a payment to a person who is beneficially entitled to that payment;

or

(d) for the purpose of making any other payment in accordance with this Act.

(9) The Public Trustee shall determine the value of the investments in which each common fund has been invested as at the first day of each month.

(10) Income arising from the investment of a common fund shall be applied as follows:

(a) firstly, in the payment or crediting of income on amounts invested in the common fund;

(b) secondly, in making such contribution (if any) to the Common Fund Reserve Account as the Public Trustee determines to be appropriate;

and

(c) thirdly, towards meeting to such extent as the Public Trustee in consultation with the Treasurer determines to be appropriate any excess of operating expenditure over income as disclosed by the accounts of the office of the Public Trustee.

(11) The income payable on money invested in a common fund shall be at rates determined from time to time by the Public Trustee and those rates may vary according to—

- (a) the amount invested;
- (b) the period of the investment;
- (c) any other factor determined by the Public Trustee.

(12) The burden of contribution to operating expenditure of the Public Trustee under subsection (10) (c) should be spread across all common funds on an equitable basis.

(13) The Common Fund Reserve Account shall continue to be kept at the Treasury as a trustee account and shall be applied by the Treasurer, at the request of the Public Trustee made with the written approval of the Auditor-General, towards making good any losses incurred in connection with the investment of a common fund or the administration of an estate by the Public Trustee.

(14) The common fund in existence immediately before the commencement of the Administration and Probate Act Amendment Act, 1986, shall, while there are amounts standing to the credit of that fund, continue in existence as a common fund under this section but—

- (a) the Public Trustee is not required to determine classes of investment for that common fund;

and

- (b) the Public Trustee is not required to determine as at the first day of each month the value of the investments in which the common fund has been invested.

(15) In this section—

“trustee investment” means an investment in which a trustee is authorized by statute to invest trust funds.

102a. (1) The Public Trustee may, with the approval of the Minister—

- (a) borrow money on overdraft from a bank;

and

- (b) deposit with a bank as security for the overdraft any securities representing money invested in a common fund.

(2) An approval under subsection (1) may be given subject to such conditions as the Minister thinks fit.

(3) The total amount of capital on loan to the Public Trustee under this section at any one time shall not exceed \$1 000 000.

5. Section 112 of the principal Act is amended—

- (a) by striking out from subsection (4) “in the common fund”;

and

- (b) by striking out paragraph (a) of subsection (4a) and substituting the following paragraph:

Power to borrow  
on overdraft on  
security of  
common funds.

Amendment of  
s. 112—  
Charges of Public  
Trustee.

(a) firstly, towards repaying to the common funds any amounts paid out of those funds to defray operating expenses of the office of the Public Trustee (the repayments being equal to or proportionate to the amounts of the payments);

6. Section 118a of the principal Act is amended—

(a) by striking out from subsection (3) “the common fund” and substituting “a common fund”;

(b) by striking out from subsection (4) “the common fund” and substituting “a common fund”;

and

(c) by striking out from subsection (6) “common fund”, twice occurring, and substituting, in each case, “particular common fund”.

Amendment of  
s. 118a—  
Expenditure of  
moneys on land.

7. Section 118g of the principal Act is amended by striking out “the common fund” and substituting “a common fund”.

Amendment of  
s. 118g—  
Money to form  
part of common  
fund.

8. Section 118m of the principal Act is amended by inserting after paragraph (r) of subsection (2) the following paragraph:

(ra) invest money in any investment in which a trustee is authorized to invest trust funds;

Amendment of  
s. 118m—  
Powers of  
administrator.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor