

State Trustees (State Owned Company) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 4 May 1994

(Brought in by Mr Stockdale and Mr McNamara)

A BILL

relating to the conversion of the State Trust Corporation of Victoria to a State Owned Company, to repeal the **State Trust Corporation of Victoria Act 1987**, to amend the **Guardianship and Administration Board Act 1986**, the **Administration and Probate Act 1958** and certain other Acts and for other purposes.

State Trustees (State Owned Company) Act 1994

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose*

5 The purpose of this Act is to facilitate, and make provision relating to, the conversion of the State Trust Corporation of Victoria to a State owned company which—

(a) is a company under the Corporations Law of Victoria; and

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)

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- (b) is a trustee company under the **Trustee Companies Act 1984**; and
- (c) is able to provide services to members of the public under Part 4 of this Act.

2. Commencement

5

- (1) Part 1 and section 27 come into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed. 10
- (3) If a provision referred to in sub-section (2) has not come into operation within the period of 12 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period. 15

3. Definitions

In this Act—

“**Board**” means the Guardianship and Administration Board established under the **Guardianship and Administration Board Act 1986**; 20

“**Court**” means the Supreme Court of Victoria;

“**estate**” means real and personal estate;

“**property**” includes a thing in action and any interest in real or personal property; 25

“**protected person**” has the meaning given in section 85 of the **Guardianship and Administration Board Act 1986**;

“**registrar**” means the registrar of probates of the Court; 30

“**represented person**” means a represented person within the meaning of the **Guardianship and Administration Board Act 1986** in respect of whose estate State Trustees is administrator;

5 “**State Trust**” means the State Trust Corporation of Victoria within the meaning of the **State Trust Corporation of Victoria Act 1987** as in force immediately before the commencement of section 24;

 “**State Trustees**” means the company incorporated under the Corporations Law of Victoria under the name “State Trustees Limited” A.C.N.[].

PART 2—STATE TRUSTEES

10 4. *State Trustees as executor*

 (1) Except as provided in sub-section (2), any person named expressly or by implication as an executor who would be entitled to obtain a grant of probate of a will jointly with any other person may authorise State Trustees to apply for the grant of probate of the will either alone with leave reserved to any other person to come in and prove or jointly with any other person entitled to apply.

 (2) Sub-section (1) does not apply if the testator has specified in his or her will that—

- 20 (a) the office of executor is not to be delegated; or
 (b) State Trustees is not to act.

25 5. *Application by State Trustees*

 State Trustees may apply for administration of the estate of any person who has died at any time either within Victoria or elsewhere possessed of or entitled to property within Victoria if the Court or the registrar is satisfied that no other person is entitled and is capable of taking and ready to take a grant of letters of administration.

30 6. *State Trustees to be preferred to creditor as administrator*

 Unless a creditor applying in that capacity proves to the satisfaction of the Court or the registrar that it

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would be more beneficial to the estate that it be administered by the creditor, State Trustees is entitled to a grant of administration of the estate of a deceased person in preference to the creditor.

7. Application for administration of estate unadministered by creditor 5

(1) If a grant of administration of the property or estate of a deceased person has been granted to a creditor, State Trustees may apply to the Court for the removal of the administrator and the appointment of State Trustees instead. 10

(2) An application under sub-section (1) must be supported by an affidavit stating why it would be beneficial to any person interested in the estate that the administrator be removed and State Trustees be appointed. 15

(3) If a grant of administration of the property or estate of a deceased person has been granted to a creditor and the creditor has any property in his or her hands for at least 12 months after payment of creditors or for at least 3 years after the grant of administration (whether creditors have been paid or not), State Trustees may apply to the Court for the removal of the administrator and the appointment of State Trustees instead. 20 25

8. State Trustees may act as sole trustee or co-trustee

Despite anything in any Act or the terms of any trust as to the number of trustees, State Trustees may be appointed or become sole trustee or a co-executor or co-trustee unless expressly prohibited by the terms of the trust. 30

9. State Trustees may act with advisory trustees

(1) State Trustees may act with an advisory trustee or advisory trustees in administering any trust estate as trustee as provided in this section. 35

- (2) An advisory trustee may be appointed by—
- (a) the trust instrument; or
 - (b) any person having power to appoint new trustees; or
 - 5 (c) an agreement between State Trustees and any executor, administrator or trustee in which the executor, administrator or trustee agrees to give State Trustees a power of attorney; or
 - 10 (d) order of the Court on the application of a beneficiary or of any person on whose application the Court would have power to appoint a new trustee.
- (3) The following apply if State Trustees acts with any advisory trustee—
- 15 (a) the trust property vests in State Trustees which has the sole management and administration of the estate and its trusts;
 - (b) an advisory trustee is not liable for any act or thing done by State Trustees whether with or
 - 20 (c) State Trustees may consult an advisory trustee on any matter relating to the estate or the trusts;
 - (d) an advisory trustee may advise State Trustees on any matter relating to the estate or the trusts;
 - 25 (e) any matter in dispute between State Trustees and an advisory trustee may be submitted in a summary manner to the Court;
 - (f) a person dealing with State Trustees is not to be concerned to inquire as to or be affected by
 - 30 notice of the concurrence or otherwise of any advisory trustee;
 - (g) the power of appointing a new advisory trustee when exercisable by any continuing advisory trustee is to be exercised by him or her alone;
 - 35 (h) State Trustees has the same power to apply to the Court for the appointment of a new advisory trustee as any other person.

10. Advances

- (1) State Trustees may make an advance from its general account to a beneficiary or a represented person if—
 - (a) money is required by the beneficiary or represented person who is in necessitous circumstances; and 5
 - (b) there are insufficient estate or personal funds available at the time.
- (2) State Trustees may charge interest on an advance at a rate of interest not exceeding the rate fixed from time to time under section 2 of the **Penalty Interest Rates Act 1983**, less 2½ per centum. 10

11. State Trustees may administer children’s funds

- (1) If in any civil proceedings before a Court it is adjudged or ordered that money be paid to a child (whether or not that child is a party to a cause or matter) the money— 15
 - (a) is to be paid into court; and
 - (b) unless the Court otherwise orders is to be paid out to State Trustees for payment into such common fund as the Court specifies. 20
- (2) If any money—
 - (a) is paid into court before or after the commencement of this section; and
 - (b) the money is being held in court on behalf of a child— 25

the Court may by order direct that the money be paid out to State Trustees for payment into such common fund as the Court specifies.
- (3) Where the Court adjudges or orders that property (whether real or personal) be delivered up or transferred to a child (whether or not that child is a party to a cause or matter), the Court— 30
 - (a) may order that the property be delivered up or transferred to State Trustees; and 35

(b) may give any directions for the service of the order on State Trustees as it thinks fit.

5 (4) If an order under sub-section (3) is served on State Trustees, State Trustees must accept delivery or transfer of the property to which the order relates and the acceptance of the property is a sufficient discharge to the person delivering or transferring the property.

10 (5) A copy of any order made under this section must be given by State Trustees to the Board and the Public Advocate.

15 (6) An order of the Court under this section that money be paid out to State Trustees has effect as if it were an administration order under the **Guardianship and Administration Board Act 1986** and, subject to the order of the Court, State Trustees has all the powers and duties of an administrator referred to in Divisions 3 and 3A of Part 5 of that Act.

20 (7) In this section, “**Court**” includes the Supreme Court, the County Court and the Magistrates’ Court.

12. *Reciprocal arrangements relating to represented persons*

(1) In this section—

“**place outside Victoria**” means—

25 (a) another State or a Territory; or

(b) New Zealand or the United Kingdom; or

(c) any other country with which State Trustees has a reciprocity agreement;

30 “**proper officer**” means an officer in a place outside Victoria who under the law of that place has the management of the property and estate of persons who however described under that law are incapable of managing their estates by reason of intellectual impairment, mental illness, brain damage, physical disability or
35 senility.

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- (2) If State Trustees believes that a represented person has an interest in property in a place outside Victoria, State Trustees may by instrument in writing directed to the proper officer—
 - (a) certify that State Trustees has the general care, protection and management of the property and estate of the person named in the instrument; and 5
 - (b) authorise the proper officer to collect, manage, sell or otherwise dispose of or administer any property in the place in which the represented person has an interest. 10
- (3) State Trustees may give a discharge to the proper officer on the payment or delivery to State Trustees of the balance of money or other property of the represented person which remains after the deduction of— 15
 - (a) all costs, charges and expenses incurred by the proper officer in the exercise of the authority; and 20
 - (b) any amount which is payable in the place outside Victoria in satisfaction of the debts or other liabilities of the represented person.
- (4) State Trustees may revoke or vary any authority by instrument in writing. 25
- (5) If a proper officer by instrument in writing directed to State Trustees—
 - (a) certifies that he or she has the general care, protection and management of the property and estate of the person named in the instrument; and 30
 - (b) authorises State Trustees to collect, manage, sell or otherwise dispose of or administer any property in Victoria in which the person named in the instrument has an interest— 35

the Guardianship and Administration Board Act 1986 applies with respect to the property and the

powers and duties of State Trustees in relation to the property as if—

(c) the person were resident in Victoria and a represented person; and

(d) the administration order gave State Trustees all the powers and duties referred to in Divisions 3 and 3A of Part 5 of that Act.

(6) State Trustees may pay or deliver to the proper officer the balance of money or other property of the person named in the instrument which remains after the deduction of—

(a) all costs, charges and expenses incurred by State Trustees in the exercise of the authority; and

(b) any amount which is payable to any person resident in Victoria in satisfaction of any debts or other liabilities, of which State Trustees has notice, of the person named in the instrument.

(7) State Trustees must account to the proper officer for any payment made by State Trustees out of the property of a person named in the instrument, but is not bound to see to the application of the payment.

(8) If a decision is made, action taken, consent given or thing done by State Trustees under an authority conferred on State Trustees, the decision, action, consent or thing has effect as if it had been made, taken, given or done by the person named in the instrument and that person had the legal capacity to do so.

(9) State Trustees may exercise the powers under an authority until State Trustees receives notice from the proper officer of—

(a) the revocation of that authority; or

(b) the death of the person in respect of whom the authority was given.

PART 3—GENERAL

13. Fees and commissions

- (1) In addition to the commissions, fees and remuneration it is entitled to charge and receive and the disbursements it is entitled to recover under the **Trustee Companies Act 1984** and despite anything in section 21 (2) of that Act, State Trustees is entitled to charge and receive fair and reasonable commissions, fees and remuneration and recover fair and reasonable disbursements for estate related services provided by State Trustees including, without limitation:
 - (a) genealogical services; 5
 - (b) financial planning; 10
 - (c) informal administrations; 15
 - (d) administrations and the examination of administrators' accounts under the **Guardianship and Administration Board Act 1986**; 20
 - (e) subject to section 14, legal services. 20
- (2) State Trustees must lodge with the Minister a copy of its scale of charges in relation to the services referred to in sub-section (1).

14. Restriction on charging of fees for legal services

- (1) Except as provided in this section and section 20A of the **Trustee Companies Act 1984**, State Trustees must not directly or indirectly charge or receive a fee or recover disbursements for a service provided by a solicitor employed by State Trustees or who shares his or her remuneration with State Trustees unless the beneficiary of any estate which is to be charged has first approved the provision of the service, the charging of a fee and the recovery of disbursements. 25 30

(2) Where—

- (a) the beneficiary of an estate cannot reasonably be located; or
- (b) there is no beneficiary; or
- 5 (c) a beneficiary or person—
- (i) is under a disability within the meaning of the **Guardianship and Administration Board Act 1986**; or
- (ii) is a protected person; or
- 10 (iii) is otherwise under a legal disability; or
- (d) an estate has more than one beneficiary—

State Trustees may charge and receive a fee and recover disbursements for a service provided to the estate or person by a solicitor employed by State Trustees or who shares his or her remuneration with State Trustees if the service is reasonably required and the fee and disbursements are fair and reasonable.

15. Government guarantee

- 20 (1) Subject to sub-section (2), the due satisfaction of all sums required to discharge any liability of State Trustees incurred in respect of its management of estates arising from negligence, wilful default or fraud on the part of State Trustees or any of its officers, employees, servants or agents including, without limitation, the payment of expenses of enforcing or obtaining or endeavouring to enforce or obtain such satisfaction, is guaranteed by the Government of Victoria.
- 25
- 30 (2) Sub-section (1) only applies—
- (a) to the extent that—
- (i) the proceeds under any contract of insurance entered into by or on behalf of State Trustees; and

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- (ii) the assets of State Trustees other than those held by State Trustees as trustee of any estate—
are not sufficient to satisfy the liability; and
- (b) to a liability incurred at a time when State Trustees is a company of a kind in respect of which a declaration could be made under section 66 of the **State Owned Enterprises Act 1992**. 5
- (3) Any sums required to fulfil any liability arising under the guarantee provided in sub-section (1) must be paid out of the Consolidated Fund (which is hereby to the necessary extent appropriated accordingly). 10
- (4) The guarantee provided in sub-section (1) may be enforced under Part II of the **Crown Proceedings Act 1958**. 15
- (5) The Treasurer may, after consultation with the board of directors of State Trustees, require State Trustees to pay a reasonable fee for the guarantee provided in sub-section (1).
- (6) Any sums received or recovered from State Trustees or otherwise in respect of any sums paid under the guarantee, and any fees received from State Trustees under sub-section (5) must be paid into the Consolidated Fund. 20
- 16. Preservation of existing rights** 25
- (1) Despite anything in section 15, section 14 of the **State Trust Corporation of Victoria Act 1987** as in force immediately before the commencement of section 24 continues to apply to any liability of State Trustees or State Trust which arose prior to the commencement of this section as if that Act had not been repealed and the Consolidated Fund is hereby to the necessary extent to discharge that liability appropriated accordingly. 30
- (2) State Trustees must maintain Common Fund No.1 in accordance with Part 5 of the **State Trust Corporation of Victoria Act 1987** as in force 35

immediately before the commencement of section 24 as if that Act had not been repealed until all moneys in the fund at the commencement of this section have been properly applied.

- 5 (3) If at any time Common Fund No. 1 is insufficient to meet any proper claim on it the amount of that claim to the extent that it cannot be met from the fund must be paid out of the Consolidated Fund (which is hereby to the necessary extent appropriated accordingly).
- 10 (4) In this section “**Common Fund No. 1**” has the meaning given in Part 5 of the **State Trust Corporation of Victoria Act 1987** as in force immediately before the commencement of section 24.

15 **17. Secrecy provision:**

- (1) This section applies only in relation to State Trustees’ administration of the estate of a represented person or a protected person.
- 20 (2) Unless sub-section (3) applies, a person who is or has been a director, member, officer or employee of State Trustees, must not, except to the extent necessary to perform any official duties, or to perform or exercise any function or power, in relation to its administration of the estate of a represented person or a protected person, either directly or indirectly, make a record of, or divulge or communicate to any person, any information that is or was acquired by the person by reason of being or having been so appointed, or make use of information, for any purpose other than the performance of official duties or the performance or exercise of that function or power.

Penalty: 10 penalty units.

- 30 (3) Sub-section (2) does not preclude a person from—
- 35 (a) producing a document to a court in the course of any proceedings; or
- (b) divulging or communicating to a court in the course of any proceedings any matter or thing

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coming under the notice of the person in the performance of official duties or in the performance of a function or the exercise of a power referred to in that sub-section; or

- (c) producing a document or divulging or communicating information that is required or permitted by any Act to be produced, divulged or communicated, as the case may be if, where the document or information relates to the personal affairs of another person, that other person has given consent in writing. 5
10

18. Protection of persons dealing with State Trustees

A person is not to be concerned to see or inquire whether—

- (a) any acts, dealings or transactions by or with State Trustees or any officer or agent of State Trustees are or are not within the powers of State Trustees; or 15
(b) State Trustees has assumed the management or control of an estate or property in accordance with this or any other Act. 20

19. Certificate issued by State Trustees

A certificate issued by State Trustees which—

- (a) certifies that—
(i) an order under the **Guardianship and Administration Board Act 1986** appointing State Trustees administrator of the estate of any person is in force; or 25
(ii) State Trustees is responsible for the management of the estate of a person who is a protected person; or 30
(iii) State Trustees is, whether by original appointment or subsequent authorisation, entitled to act as the personal representative, and administer the estate, of any deceased person; and 35

- (b) specifies the date—
- (i) of the relevant order of the Board; or
 - (ii) upon which its authority in relation to a protected person commenced; or
 - (iii) of the grant of probate or letters of administration authorising State Trustees to act as executor and trustee or administrator—

is, until the contrary is proved, for all purposes sufficient evidence of the facts so certified and stated.

20. *Part IX of Trustee Companies Act 1984 not to apply*

Part IX of the **Trustee Companies Act 1984** does not apply to State Trustees for so long as it remains a company of a kind in respect of which a declaration could be made under section 66 of the **State Owned Enterprises Act 1992**.

PART 4—COMMUNITY SERVICE OBLIGATIONS

21. *Minister responsible for access to services*

- (1) The Minister is responsible for ensuring that members of the public, including children, have access to services relating to the management and administration of their estates and property including, without limitation—
 - (a) trustee, administration and will-making services; and
 - (b) services in relation to the administration of funds payable to children; and
 - (c) services referred to in section 13.
- (2) This Part only applies to members of the public, including children, who in the opinion of the Minister do not have the resources to obtain the services referred to in sub-section (1) for themselves.

22. Provision of services

The Minister is to provide the services referred to in section 21, out of money available, under an agreement entered into with State Trustees or, if the Minister so determines, with another trustee company, person or body. 5

23. Agreements with State Trustees and other trustee companies

Despite anything in the **Trustee Companies Act 1984** or in Part 3, State Trustees or another trustee company may charge and receive fees, commissions and remuneration and recover disbursements under an agreement entered into with the Minister under section 22 and under an agreement with any person or body entered into as a consequence of that agreement. 10
15

PART 5—REPEAL OF STATE TRUST CORPORATION OF VICTORIA ACT 1987**24. Repeal**

The **State Trust Corporation of Victoria Act 1987** is repealed. 20

25. Transitional

- (1) On the commencement of this section—
- (a) all property, rights and assets of State Trust are by virtue of this Act vested in State Trustees; 25
 - (b) all liabilities of State Trust are by virtue of this Act liabilities of State Trustees;
 - (c) State Trustees is the successor in law of State Trust.
- (2) Without limiting the generality of sub-section (1) (c), where, immediately before the commencement of this section— 30

- 5
- (a) State Trust was acting in any capacity State Trustees may, from the commencement of this section, act in that capacity;
 - (b) proceedings to which State Trust was a party were pending or existing in any court or tribunal, from the commencement of this section State Trustees is substituted for State Trust as a party to the proceedings and has the same rights in the proceedings as State Trust had.

10 **26. *Construction of references***

15 Any reference to the State Trust, State Trust Corporation of Victoria, Public Trustee, Public Trustee for Victoria or Public Trust Office in any Act (except this Act), subordinate instrument, order, will, codicil, instrument, trust deed, contract or other document whatsoever is to be construed as a reference to State Trustees.

20 **27. *Statement of value of assets and liabilities***

- 25
- (1) Within 2 months after the date on which this Act receives the Royal Assent, or such longer period as the Treasurer approves, State Trustees must give the Treasurer a statement specifying the assets and liabilities of State Trust and their values as at 30 June 1994 and the assets and liabilities of State Trustees and their values as at 1 July 1994, but not including assets held by State Trust or State Trustees as trustee or administrator of any estate or property and liabilities relating to that estate or property.
 - (2) A statement under this section—
 - 30 (a) must be in a form approved by the Treasurer; and
 - (b) must be signed by the chief executive officer (by whatever name called) of State Trustees.
 - (3) If a statement under this section is approved by the Treasurer, the Treasurer must sign the statement.
- 35

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- (4) The Treasurer may at any time before approving a statement given under this section direct State Trustees to amend the statement as specified in the direction.
- (5) A statement under this section may be amended by writing signed by the Treasurer. 5
- (6) In this section “**statement**” includes a statement amended in accordance with this section.

28. Value of assets and liabilities

For the purpose of the financial statements of State Trust for the financial year ending 30 June 1994 and the financial statements of State Trustees for the financial year commencing 1 July 1994 the value of assets and liabilities is the value shown in the statement under section 27. 10
15

29. Financial statements to be noted

- (1) The financial statements of State Trust and State Trustees for the relevant years must include a note explaining that the relevant valuations have been set by a statement under section 27. 20
- (2) Despite anything in Part 3.6 of the Corporations Law of Victoria, the financial statements must not be qualified by reason only of the application of the provisions of this Part.

30. State Trustees to prepare 1993–94 annual report and financial statements 25

Subject to the provisions of this Part, State Trustees must prepare and submit the annual report and financial statements of State Trust for the financial year ending 30 June 1994 in accordance with the **Annual Reporting Act 1983** as if that Act had not been amended by item 2 of the Schedule. 30

**PART 6—AMENDMENT OF THE GUARDIANSHIP AND
ADMINISTRATION BOARD ACT 1986**

31. *Principal Act*

No. 58/1986.
Reprinted to
No. 57/1989.

5 In this Part, the **Guardianship and Administration
Board Act 1986** is called the Principal Act.

32. *Definitions*

(1) In section 3 (1) of the Principal Act—

(a) after the definition of “**Guardianship Order**”
insert—

10 “**income**” includes rents and profits;’; and

(b) the definition of “**State Trust**” is **repealed**.

(2) After section 3 (2) of the Principal Act insert—

15 “(3) In this Act a reference to the State Trust is to be
construed as a reference to State Trustees
Limited A.C.N. [].”.

33. *Amendment of sections 46, 47 and 60*

(1) In sections 46 (1) (b) and 60 (1) (b) of the Principal
Act, for “section 39 of the **State Trust Corporation
of Victoria Act 1987**” substitute “section 12 of the
20 **State Trustees (State Owned Company) Act 1994**”.

(2) In section 47 (4) (b) of the Principal Act, for
“conferred on the State Trust by the **State Trust
Corporation of Victoria Act 1987**” substitute
“referred to in Division 3A”.

25 **34. *Amendment of section 48***

For section 48 (1) of the Principal Act substitute—

30 “(1) An administrator has the powers and duties
conferred by this Division and such of the
powers and duties referred to in Division 3A as
the Board may specify in the order.”.

35. New Division 3A of Part 5 inserted

After Division 3 of Part 5 of the Principal Act insert—

“Division 3A—Additional Powers and Duties of Administrators

5

58B. Powers and duties in relation to represented persons

- (1) Subject to and in accordance with this Act and the administration order appointing an administrator in each case— 10
 - (a) the administrator has the general care and management of the estate of the represented person; and
 - (b) it is the duty of the administrator to take possession and care of, recover, collect, preserve and administer the property and estate of the represented person and generally to manage the affairs of the represented person and to exercise all rights statutory or otherwise which the represented person might exercise if the represented person had legal capacity; and 15
 - (c) the administrator in the name and on behalf of the represented person may generally do all acts and exercise all powers with respect to the estate as effectually and in the same manner as the represented person could have done if the represented person were not under a legal disability. 20 25 30
- (2) Without limiting sub-section (1), an administrator may in the name and on behalf of a represented person— 35
 - (a) collect, receive and recover income of and money due or which becomes

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- due to and any compensation or damages for injury to the estate or person of the represented person; and
 - (b) invest any money in any security in which trustees may by law invest; and
 - (c) demise land at a rent and on conditions as the administrator thinks fit for any term not exceeding 5 years or, with the consent of the Board, for any longer term; and
 - (d) exercise to the extent and in the manner the administrator thinks proper any power of leasing vested in the represented person; and
 - (e) surrender any lease, accept any lease, accept the surrender of any lease or renew any lease; and
 - (f) bring land under the **Transfer of Land Act 1958**; and
 - (g) sell, exchange, partition or convert into money any property; and
 - (h) mortgage or charge any property; and
 - (i) pay any debts and settle, adjust or compromise any demand made by or against the estate and discharge any encumbrance on the estate; and
 - (j) carry on so far as appears desirable any trade, profession or business which the represented person carried on; and
 - (k) agree to any alteration of the conditions of any partnership into which any represented person has entered or to a dissolution and distribution of the assets of the partnership; and

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- (l) bring and defend actions and other legal proceedings in the name of the represented person; and
 - (m) execute and sign deeds, instruments and other documents; and 5
 - (n) complete any contract for the performance of which the represented person was liable, or enter into any agreement terminating liability; and 10
 - (o) pay any sum for the maintenance of the represented person (and, in the event of his or her death, for funeral expenses) and for the maintenance of his or her spouse or de facto spouse or any child, parent or other person dependent upon him or her and for the maintenance and education of his or her children as to the administrator seems expedient and reasonable; and 15
20
 - (p) do all matters necessary or incidental to the performance of any of the above-mentioned matters and apply any money from the estate which it is necessary to apply for the purposes of this Act. 25
- (3) An administrator may if it seems to be expedient and reasonable—
- (a) pay or cause to be paid to the represented person for the personal use of that person any amount of money standing to the credit of that person with the administrator; and 30
 - (b) give or cause to be given to the represented person for the personal use of that person any personal property which belongs to that 35

person and is under the control of the administrator.

58c. Exercise of certain powers

(1) If—

5 (a) a power is vested in a represented person for that person's own benefit or the consent of a represented person is necessary to the exercise of a power; and

10 (b) the power or consent is in the nature of a beneficial interest in the represented person; and

15 (c) it appears to the administrator to be for the benefit of the represented person that the power should be exercised or the consent given—

the administrator may on behalf and in the name of the represented person exercise the power or give the consent in any manner the administrator thinks fit.

(2) If—

25 (a) a power is vested in a represented person in the character of a trustee or guardian, or the consent of a represented person to the exercise of a power is necessary in the character of a trustee or guardian or as a check upon the undue exercise of the power; and

30 (b) it appears to the administrator that the power should be exercised or the consent given—

35 the administrator may on behalf and in the name of the represented person exercise the power or give the consent in any manner the administrator thinks fit.

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- (3) The exercise by an administrator under this section or the State Trust under section 33 of the **State Trust Corporation of Victoria Act 1987** as in force immediately before the commencement of section 24 of the **State Trustees (State Owned Company) Act 1994** or the Public Trustee under section 52 of the **Public Trustee Act 1958** as in force immediately before the commencement of section 33 of the **State Trust Corporation of Victoria Act 1987** of a power vested in a represented person to appoint a new trustee is to be taken to be the appointment of a new trustee within the meaning of section 45 of the **Trustee Act 1958**.
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58d. *Action upon a person ceasing to be a represented person*

- (1) If an administrator has received notice from the Board that a represented person has ceased to be a represented person or has died, the administrator must—
 - (a) pay or cause to be paid to that person or to that person’s personal representative (as the case requires) all money standing to his or her credit with the administrator; and
 - 20
 - 25
 - (b) deliver to that person or to that person’s personal representative (as the case requires) all property forming part of his or her estate and any documents relating to the estate.
 - 30
- (2) Any payment made under sub-section (1) is subject to the satisfaction of any amount due to the administrator and all
 - 35

costs, expenses and liabilities incurred by the administrator in respect of the administration of that person's estate.

- 5 (3) The receipt of a person who has ceased to be a represented person or of that person's personal representative is an absolute discharge to an administrator despite any informality in the discharge or certification.

10 **58E. Represented person entitled to inspection of accounts**

15 Any person who has ceased to be a represented person or the personal representative of any represented person is entitled, before or after obtaining the restoration of all or any part of the estate from an administrator—

- 20 (a) to examine and inspect or cause to be examined and inspected by a solicitor or other authorised agent all books, accounts, notices and other documents in the custody of the administrator relating to the estate and to make or cause to be made copies or extracts; and
- 25 (b) to have supplied to him or her or his or her solicitor or other authorised agent copies of or extracts from any book, account, notice or document; and
- 30 (c) to have given to him or her or his or her solicitor or other authorised agent information respecting the estate as is reasonably requested and can be given by the administrator.
- 35

58F. Sale of personal effects if unclaimed within 2 years from date of discharge

- (1) All personal effects of any represented person in the possession of an administrator which are not claimed within 2 years after the date of ceasing to be a represented person may after public notice be sold by order of the administrator. 5
- (2) The proceeds are to be paid into the Consolidated Fund. 10

58G. Power to open will

An administrator may, either before or after the death of a represented person, open and read without order any paper or writing deposited with the administrator and purporting or alleged to be the will of the represented person.”. 15

36. Statute Law Revision

- (1) In section 51 (1) of the Principal Act, for “Expect” substitute “Except”. 20
- (2) Part 9 of the Principal Act is **repealed**.

PART 7—AMENDMENT OF THE ADMINISTRATION AND PROBATE ACT 1958**37. Principal Act** 25

In this Part, the **Administration and Probate Act 1958** is called the Principal Act.

38. Definitions

In section 3 of the Principal Act, after the definition of “registrar” insert— 30

“**small estate**” means an estate not exceeding the values specified in section 71 (1);

“**State Trustees**” means the company incorporated under the Corporations Law of Victoria under the name “State Trustees Limited” A.C.N. [];’.

39. *Uncared for property*

After section 24 of the Principal Act **insert—**

“24A. *Uncared for property*

(1) This section applies if—

(a) the owner of any property in Victoria is absent from Victoria and has no agent or attorney in Victoria with authority to take possession of and administer the property; or

(b) it is not known who the owner of any property in Victoria is; or

(c) it is not known where the owner of any property in Victoria is; or

(d) it is not known whether the owner of any property in Victoria is alive or dead; or

(e) the owner of any property in Victoria is dead and has left executors or administrators and it is not known where they are.

(2) If State Trustees applies for an order and the Court is satisfied that it is in the interests of the owner of the property or of any other person, the Court may make an order on any terms and conditions it thinks fit authorising State Trustees to do any act, matter or thing in relation to the property or affairs of the owner of the property as is specified in the order.”.

40. Powers of State Trustees as administrator

After section 30 of the Principal Act insert—

‘30A. State Trustees’ power to make distribution after notice of refusal

- (1) If State Trustees refuses to recognise in whole or in part the claim of any person against the estate of any deceased person, State Trustees must serve a notice of the refusal specifying that proceedings to enforce the claim must be instituted within 3 months of the notice being served on the person by registered post to the person’s last known address. 5
10
- (2) If the person does not institute proceedings to enforce the claim within 3 months of being served with the notice of refusal State Trustees may distribute the assets of the deceased person without regard to the claim specified in the notice of refusal. 15
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- (3) After the distribution is made the right of the person to recover the claim specified in the notice of refusal is absolutely barred.

30B. State Trustees’ power to make distribution if claimants fail to claim 25

- (1) This section applies if—
 - (a) State Trustees has been granted probate of a will or administration of an estate; and 30
 - (b) State Trustees has been informed of the existence at any time of a person who if he or she had survived the testator or intestate would have been entitled to a legacy under the will or 35

to the whole or a distributive share of the estate; and

- (c) a claim has not been made within 3 years after the grant of probate or administration by the person or any person claiming through that person or as one of his or her issue.

(2) State Trustees may—

- (a) submit a report to the Court specifying the material facts; and
- (b) obtain a direction from the Court as to the manner, form and type of advertisements to be made before a distribution can be made.

(3) State Trustees may distribute an estate as if the person had predeceased the testator or intestate without issue if—

- (a) State Trustees has obtained a direction from the Court under subsection (2); and
- (b) State Trustees has complied with the direction; and
- (c) the claim of any claimant has been finally dealt with.

(4) This section does not affect the right of any person to follow the assets or any part of the assets into the hands of any person who has received them.

(5) This section is not in derogation of section 33 of the **Trustee Act 1958**.

30c. *State Trustees' power to pay balance if deceased had property in and outside Victoria*

(1) In this section—

“place outside Victoria” means—

- (a) another State or a Territory; or

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- (b) New Zealand; or
- (c) any other country with which State Trustees has a reciprocity agreement;

“proper officer” means any officer in a place outside Victoria discharging duties corresponding to those discharged by State Trustees in Victoria.

(2) If State Trustees has been granted probate of the will or administration of the estate in Victoria of any person— 10

(a) who was at the time of his or her death domiciled in a place outside Victoria; and 11

(b) whose estate in the place outside Victoria is being administered by a proper officer—

State Trustees may pay or cause to be paid to the proper officer the balance of the estate after the payment of creditors and the fees and charges which State Trustees is entitled or required to deduct without seeing to the application of the balance and without incurring any liability in regard to the payment to the proper officer. 20 21

(3) If State Trustees has been granted probate of the will or administration of the estate in Victoria of any person— 30

(a) who was at the time of his or her death domiciled in Victoria; and

(b) whose estate in a place outside Victoria is being administered by a proper officer— 31

State Trustees may receive from the proper officer the balance of the estate in the place outside Victoria after the

payment of creditors and the fees and charges provided for under the law of that place.

- 5 (4) Any balance received under sub-section (3) forms part of the estate of the deceased to be dealt with according to the law of Victoria.

30d. *Supreme Court—limitation of jurisdiction*

0 It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the Supreme Court entertaining claims in the circumstances described in section 30A (3) of this Act.’

5 **41. Administration of small estates**

After section 78 of the Principal Act insert—

“79. *Administration of small estates*

- 0 (1) This section applies if—
 (a) an estate is a small estate; and
 (b) State Trustees could apply under section 5 of the **State Trustees (State Owned Company) Act 1994** or section 9, 10, 10A or 11 of the **Trustee Companies Act 1984** for a grant of probate or administration of the estate or elect under section 11A of the **Trustee Companies Act 1984** to administer the estate.
- 5 (2) State Trustees must give a notice of intention to administer the estate under this section in a daily newspaper circulating generally throughout Victoria.
- 0 (3) State Trustees is to be taken to have been granted probate of the will or

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administration of the estate at the expiry of 14 days after the publication of the notice.

- (4) This section does not affect the right of any person to recover the whole or any part of any payment made or property delivered under this section from any person who received it from State Trustees.”.

PART 8—AMENDMENT OF OTHER ACTS

1

42. *Consequential amendments*

An Act specified in the heading to an item in the Schedule is amended, on commencement of that item or a provision of that item, as set out in that item or provision.

1

SCHEDULE

Section 42

CONSEQUENTIAL AMENDMENTS

1. *Alcoholics and Drug-dependent Persons Act 1968*

Section 29 is **repealed**.

2. *Annual Reporting Act 1983*

In Schedule 2, **omit** “State Trust Corporation of Victoria” from column 1 and, in the corresponding line of Column 2, **omit** “Business Undertaking”.

3. *Crimes (Confiscation of Profits) Act 1986*

3.1 In section 3 (1), in the definition of “**trustee**”, paragraph (a) is **repealed**;

3.2 Section 24 (6A) is **repealed**.

4. *Estate Agents Act 1980*

4.1 In section 5 (2) (d), **omit** “the State Trust or”;

4.2 In section 5 (3), **omit** “the State Trust or”;

4.3 In section 58, **omit** “the State Trust or”;

4.4 In section 80 (6), **omit** “the State Trust or”.

5. *Financial Institutions Duty Act 1982*

5.1 In section 3 (1), in the definition of “**Financial institution**”, paragraph (g) is **repealed**;

5.2 In section 18 (3) (k), **omit** “or the State Trust”, wherever occurring.

6. *Land Tax Act 1958*

In section 3 (1), in the definition of “**trustee**” **omit** “, the State Trust,”.

7. *Property Law Act 1958*

In section 14 (12), **omit** “and includes the State Trust”.

SCHEDULE—*continued*

8. Settled Land Act 1958

- 8.1 In section 3 (1), in the definition of “trustee”, **omit** “the State Trust or”, wherever occurring;
- 8.2 In section 26 (1), delete the words “(including the State Trust)”;
- 8.3 In section 30 (3)—
 - (a) for “and”, where it occurs the second time, **substitute** “an”;
 - (b) **omit** “the State Trust or”;
- 8.4 In section 94 (1), **omit** “the State Trust or”;
- 8.5 In section 95, **omit** “the State Trust or”;
- 8.6 In section 101 (1), **omit** “the State Trust or”.

9. Supreme Court Act 1986

In section 113 (4) (b), for “a Common Fund established under the **State Trust Corporation of Victoria Act 1987**” **substitute** “such common fund as the Court specifies”.

10. Transfer of Land Act 1958

In section 9 (1) (e), for “, the guardian or administrator of any represented person or the State Trust on behalf of any publicly represented person, if the application contains a direction that the minor, represented person or publicly represented person”, **substitute** “or administrator of any represented person if the application contains a direction that the minor or represented person”.

11. Transport Accident Act 1986

- 11.1 In section 59 (4), for “Public Trustee” **substitute** “State Trustees”, wherever occurring;
- 11.2 In section 59 (5), for “Public Trustee” **substitute** “State Trustees”, wherever occurring.

12. Trustee Act 1958

- 12.1 In section 2 (3), for “section 26 of the **State Trust Corporation of Victoria Act 1987**” **substitute** “section 8 of the **State Trustee (State Owned Company) Act 1994**”;
- 12.2 In section 3B, **omit** “or the State Trust”, wherever occurring;
- 12.3 In section 4 (1) (h), sub-paragraph (ii) is **repealed**;

SCHEDULE—*continued*

- 12.4 In section 18 (2), **omit** “the State Trust or”;
- 12.5 In section 19 (1), **omit** “the State Trust or”;
- 12.6 In section 22 (3), **omit** “the State Trust or”;
- 12.7 In section 27 (4), **omit** “the State Trust or”;
- 12.8 In section 30 (1), **omit** “the State Trust or”;
- 12.9 In section 41 (6), **omit** “the State Trust or”;
- 12.10 In section 42 (1) (c), **omit** “the State Trust or”;
- 12.11 In section 42 (2), **omit** “the State Trust or”;
- 12.12 In section 44 (1), **omit** “the State Trust or”;
- 12.13 In section 47 (1)—
- (a) **omit** “the State Trust or”, wherever occurring;
 - (b) **omit** “(as the case may be)”, where occurring the second time;
- 12.14 In section 47 (2)—
- (a) **omit** “the State Trust or””, where first occurring;
 - (b) **omit** “State Trust or”, where occurring for the second, third and fourth times;
 - (c) **omit** “(as the case may be)”, wherever occurring;
 - (d) **omit** “section 16 of the **State Trust Corporation of Victoria Act 1987** or”, wherever occurring;
- 12.15 In section 47 (3)—
- (a) **omit** “section 27 of the **State Trust Corporation of Victoria Act 1987** or”, wherever occurring;
 - (b) for “the State Trust or”, where first occurring, **substitute** “a”;
 - (c) **omit** “State Trust or”, where occurring for the second, third and fourth times;
 - (d) **omit** “(as the case may be)”, wherever occurring;
- 12.16 In section 47 (4), **omit** “State Trust or”;
- 12.17 After section 71 (3), **insert**—
- “(3A) State Trustees may consent to be appointed custodian trustee whether or not the number of trustees has been reduced below the original number.”.

SCHEDULE—*continued*

13. *Trustee Companies Act 1984*

- 13.1 Section 3 and Schedule 1 are **repealed**;
- 13.2 In section 11 (2) (b), for “applicaton” **substitute** “application”;
- 13.3 In section 21 (2), after “Act” **insert** “and to the **State Trustees (State Owned Company) Act 1994**”;
- 13.4 In section 30 (2), **omit** “or the State Trust”;
- 13.5 In section 46 (a), for “Aquisition” **substitute** “Acquisition”;
- 13.6 In section 48 (1), **omit** “or the State Trust”;
- 13.7 In Schedule 2, after “Sandhurst and Northern District Trustees Executors and Agency Company Limited” **insert**—
“State Trustees Limited A.C.N.[]”.

14. *Unclaimed Monies Act 1962*

In section 13A (5), in the definition of “**Trustee**” **omit** “the State Trust and”.