

Trustees' Powers of Investment

Terms of Reference

The Commission was asked to consider and report on the law relating to trustees' powers of investment as authorised by the *Trustees Act 1962–1978* (WA) ("the Act"). This reference was part of a general reference to review the law of trusts and the administration of estates given to the Committee, and was adopted by the Commission upon its inception.¹

Background of Reference

The reference arose as a result of submissions made by individuals to the Attorney-General which expressed concern that the investments that were authorised by Part III of the Act were inadequate. The shortcomings related to the ability to preserve the capital of the trust fund in prevailing inflationary circumstances, a situation which could be alleviated if trustees were enabled to take advantage of new forms of investment.

Nature and Extent of Consultation

The Commission issued a working paper in December 1981 which was widely distributed amongst persons and organisations with expertise or interest in issues related to trust investments. The paper attracted a large number of submissions, including responses from the Commercial Law Committee of the Law Society of Western Australia, the Stock Exchange, the Public Trustee, the Australian Finance Conference, the Council of Authorised Money Market Dealers, the Western Australian Permanent Building Societies Association, the Institute of Finance Brokers of Western Australia, and independent trustee companies.

After consideration of the issues and submissions, the Commission delivered its final report on the subject in January 1984.²

Recommendations

The Commission made a large number of recommendations regarding reform of the Act. The recommendations focused on widening trustees' powers of investment in relation to mortgages, land, deposits in financial institutions, company securities, and bank indorsed bills. It was also recommended that a specialist trustee investments review committee be appointed by the Attorney-General to periodically review the list of authorised trustee investments.

Legislative or Other Action Undertaken

The *Public Trustee Amendment Act 1984* (WA) extended the Public Trustee's power to invest in land. The amendments were in terms that reflected the Commission's recommendations.

Parliament also established a specialist Trustee Investments Review Committee constituted by members with expertise in the relevant areas of investment and law. The Review Committee substantially adopted the Commission's recommendations,³ resulting in the *Trustees Amendment Act 1987* (WA).

¹ The Law Reform Committee of Western Australia was formally reconstituted as a Commission on 19 January 1973.

² Law Reform Commission of Western Australia, *Trustees' Powers of Investment*, Project No 34(V) (1984).

³ Western Australia, *Parliamentary Debates (Hansard)*, Legislative Assembly, 24 November 1987, 6417 (Peter Dowding, Minister for Works and Services).