

[CONFIDENTIAL.]
(Rough Draft for Consideration Only.)

No. , 1929.

A BILL

To amend the law relating to perpetuities and accumulations as respects certain superannuation and other trust funds; to validate certain matters; to provide for the registration of certain funds; and for purposes connected therewith.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Superannuation Short title. and Other Trust Funds (Validation) Act, 1929."

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2. In this Act, unless the context otherwise indicates or requires,—

Interpretation.
17 and 18
Geo. V, c. 41,
s. 8.

“Actuary” and “Auditor” mean a person having such qualifications as may be prescribed respectively by regulations made under this Act;

“Registrar” means the Registrar of Friendly Societies under the Friendly Societies Act, 1912;

“Rules” means in relation to any fund the instrument creating and regulating the trusts of the fund and includes every such instrument;

“Trust” for the purpose of any application made or intended to be made for the regulation under this Act of any fund or any proposed fund includes any trust which before such registration may be void by reason of the rule of law relating to perpetuities, and for that purpose the expression “trustee” shall be construed accordingly.

3. The rule of law relating to perpetuities shall not apply and shall be deemed never to have applied to the trusts of any fund registered under this Act (in this Act referred to as a “registered fund”).

Rule against perpetuities not to apply to registered funds.
Ibid. s. 8.

4. Subject to the provisions of this Act, any fund established under trusts subject to the laws of the State of New South Wales in connection with an undertaking or combination of undertakings carried on wholly or partly in the State of New South Wales being a fund of which the main purpose is either—

Qualifications for registration of funds.
Ibid. s. 2.

(a) the provision of superannuation allowances on retirement to persons employed in the undertaking or combination of undertakings in connection with which the fund is established; or

(b) the provision of pensions during widowhood to the widows of persons who are or have been so employed and of periodical allowances to or in respect of children of such persons; or

(c)

(c) the assurance of capital sums on the death or retirement of persons who have been so employed,
 shall be qualified for registration under this Act if the rules of the fund comply with the requirements set out in the Schedule to this Act.

5. (1) Application for the registration under this Act of any fund may be made in writing addressed to the registrar, signed by the trustees of the fund, and every such application shall specify the address at which communications concerning the fund will be received by the secretary (hereinafter referred to as "the address of the fund") and shall be accompanied by two copies of the rules of the fund and a list of the names and addresses of the trustees of the fund.

Registration.
 17 and 18
 Geo. V, c. 41,
 s. 3.

(2) Upon application being made in accordance with the provisions of this Act for the registration of any fund, the registrar shall, if he is satisfied that the fund is qualified for registration, register the fund and the rules thereof, and shall enter in the register the address of the fund and the names and addresses of the trustees.

(3) In the event of any amendment of the rules of a registered fund or of any change in the address of such a fund or in the names or addresses of the trustees thereof, the trustees shall, within twenty-one days after the making of the amendment or change, apply for the registration of the amendment or for the correction of the register in respect of the change, as the case may be, by sending an application in writing addressed to the registrar, signed by the secretary of the fund, and accompanied, in the case of an amendment, by two copies thereof signed by one of the trustees of the fund, and in the case of any such change as aforesaid, by the necessary particulars for the correction of the register.

No amendment in the rules of a registered fund shall be valid until it has been registered, but, upon application for the registration of any such amendment being made as aforesaid, the registrar shall register the amendment if he is satisfied that the rules as thereby amended would not have disqualified the fund for registration under this Act.

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(4) Upon the registration under this Act of any fund or of an amendment of the rules of any registered fund, the registrar shall issue a certificate of registration, and any document purporting to be a certificate issued under this subsection and to be signed or sealed by the registrar shall be received in evidence and be deemed to be so issued, signed, or sealed without further proof unless the contrary is shown, and shall be conclusive evidence of the fact certified.

(5) The registration of a registered fund shall not be cancelled unless and until the fund has been wound up, but within fourteen days after the completion of the winding-up of any such fund the trustees shall send notice thereof in writing to the registrar, and upon receiving notice that any registered fund has been wound up, the registrar shall, if he is satisfied that the fund has been wound up and the assets thereof applied in accordance with the provisions of the rules of the fund, cancel the registration of the fund.

6. (1) If upon an application for the registration under this Act of any fund whereof the rules were made before the commencement of this Act, the registrar is satisfied that the rules of the fund contain provisions which were inserted only for the purpose of avoiding the application to the trusts of the fund of the rule of law relating to perpetuities, he may, at the request of the trustees making the application, amend the rules by deleting those provisions therefrom and may, upon the like request, make any further amendments that are, in his opinion, proper in consequence of their deletion.

Power on registration of funds to delete provisions for avoiding the rule against perpetuities. 17 and 18 Geo. V, c. 41, s. 4.

(2) Where the rules of any fund are amended by the registrar under this section, the rules shall, when registered, have effect subject to the amendments so made.

7. (1) The trustees of every registered fund shall, once in every year, cause to be prepared a statement of accounts and balance-sheet of the fund, which shall be audited by an auditor, and shall at least once in every five years cause an investigation and report to be made by an actuary as to the financial condition of the fund.

Accounts and reports of registered funds. Ibid. s. 5.

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(2) A copy of every statement of accounts, balance-sheet, and report prepared under this section signed by the auditor or actuary, as the case may be, and by the secretary of the fund, shall be sent to the registrar within twelve months after the close of the period to which it relates.

8. (1) The registrar may require any person being a trustee or officer of any fund for the registration of which under this Act application has been made, or of any registered fund, to furnish, either by statutory declaration or otherwise, any information or explanation which may be necessary for the proper exercise and performance of the powers and duties of the registrar under this Act. Supplement-ary provisions as to powers of registrar. 17 and 18 Geo. V, c. 41, s. 6.

(2) In the event of any breach of trust being committed by the trustees of a registered fund by reason of their making any unauthorised investment or by reason of their committing a breach of any rule of the fund being a rule required by this Act as a qualification for registration of the fund thereunder, the registrar shall have the like remedies in all respects for the breach of trust as if he were a person beneficially interested in the fund.

9. (1) If, in respect of any registered fund, default is made in complying with any of the requirements of this Act relating to accounts and reports, in making application in accordance with the requirements of this Act for the registration of any amendment of the rules or for correction of the register in respect of any change in the address of the fund or in the names and addresses of the trustees, or in sending to the registrar notice of the winding-up of the fund, every trustee and the secretary of the fund shall be guilty of an offence under this Act: Penalties for defaults. Ibid. s 7.

Provided that it shall be a good defence to any proceedings against any person in respect of an offence under this subsection to prove that the default occurred without his consent or connivance and was not facilitated by any neglect on his part.

(2)

(2) If any person lawfully required under this Act by the registrar to furnish any information or explanation which could with reasonable diligence be furnished by him makes default in complying with any such requirement within fourteen days after written notice thereof has been delivered to him he shall be guilty of an offence under this Act.

(3) Any person guilty of an offence under this Act shall be liable on summary conviction to a penalty not exceeding *ten* pounds, and in the case of an offence consisting of a continuing default to a penalty not exceeding *five* pounds for every week in which the default has been continued.

10. The registrar shall in every year make a general report of his proceedings under this Act, and his report shall be laid before Parliament, so, however, that no such report shall contain information as to the accounts or reports of particular registered funds. Report to Parliament. 17 and 18 Geo. V, c. 41, s. 10.

11. Any penalty incurred by this Act or the regulations made thereunder may be recovered in a summary manner before two or more justices or a stipendiary or police magistrate. Recovery of penalties.

12. (1) The Governor may make regulations prescribing all forms under this Act, the fees to be payable in respect of the registration of funds, amendment of rules, and changes of name or address, or in respect of the issue of certificates, and generally any matter necessary or convenient to be prescribed for carrying out the provisions of this Act, and may in such regulations impose any penalty not exceeding *ten* pounds for any breach of the same. Regulations.

(2) The regulation shall—

- (a) be published in the Gazette;
- (b) take effect from the date of such publication or from a later date to be specified in the regulations;
- (c) be laid before both Houses of Parliament within fourteen sitting days after such publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If

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If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof such regulation or part shall thereupon cease to have effect.

SCHEDULE

REQUIREMENTS AS TO RULES OF REGISTERED FUNDS.

Sec. 4.

THE rules of a fund qualified for registration under this Act must make provision for the following matters, that is to say :—

1. The whole of the objects for which the fund is established.
2. The appointment and removal of trustees and of a secretary.
3. The vesting in the trustees of all property belonging to the fund.
4. The investment in the names of the trustees of all capital moneys belonging to the fund and for authorising the investments, if any, in addition to those authorised by law, in which the trustees may invest such moneys ; so, however, that the rules of a fund may provide for the deposit of such moneys with a bank, and may also provide for their deposit with the employers of persons employed in the undertaking or combination of undertakings in connection with which the fund is established in the following cases, that is to say :—
 - (a) where the rules so provided before the commencement of this Act ;
 - (b) where the deposit of such moneys is authorised subject to the conditions that every employer with whom such moneys are deposited must be a body corporate having during each of the ten years last past before the date of any deposit paid a dividend or interest at a rate of not less than three per cent. on its ordinary shares, and that every such deposit must be secured by a charge on the whole or part of the assets of the undertaking carried on by such employer.
5. The making of contributions to the fund by the employers of persons employed in the undertaking or combination of undertakings in connection with which the fund is established.
6. The contributions payable to the fund, and the rates of benefit payable thereout or the method of calculating the benefits so payable.
7. The conditions on which persons may become, and may cease to be respectively, contributors to and entitled to benefits from the fund.

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8. The circumstances in which the fund may be wound up and the manner in which the assets thereof are in that event to be applied.

9. The method by which the rules may be amended.

10. The preparation of all statements of accounts, balance-sheets, and reports required by this Act to be prepared.

11. The supply on demand to every person having any rights in the fund, being a person who is or has been employed in the undertaking or combination of undertakings in connection with which the fund is established, of a copy of the rules of the fund and of all amendments thereof, and of the latest statement of accounts, balance-sheet, and report prepared in accordance with the requirements of this Act.
