



Western Australia

## **Public Trustee Act 1941**

Compare between:

[31 Mar 2008, 05-e0-01] and [01 Jul 2008, 05-f0-05]



Western Australia

## **Public Trustee Act 1941**

**An Act relating to the appointment of a public trustee, and the powers and duties thereof, and for other purposes.**

## **Part I — Preliminary**

[Heading inserted by No. 9 of 2008 s. 4.]

### **1. Short title**

- (1) This Act may be cited as the *Public Trustee Act 1941*<sup>1</sup>.
- (2) This Act shall come into operation on a day (hereinafter referred to as the **“appointed day”**) to be fixed by proclamation<sup>1</sup>.

[Section 1 amended by No. 34 of 1962 s. 3; No. 64 of 1968 s. 2; No. 67 of 1979 s. 56; No. 24 of 1990 s. 123.]

### **1A. Object**

The object of this Act is to provide community services in respect of trusts, estates and related matters.

[Section 1A inserted by No. 9 of 2008 s. 5.]

### **2. Terms used in this Act**

In this Act, unless inconsistent with the context or subject matter —

**“administration”**, **“a grant of administration”** and **“a grant of letters of administration”** include **“an order to administer”**.

**“certificated practitioner** has the meaning given to that term in section 3 of the *Legal Practice Act 2003*.

**client** means —

- (a) a beneficiary of the estate of a deceased person which is administered by the Public Trustee;
- (b) the donor of a power of attorney, including an enduring power of attorney, under which the Public Trustee is the donee or substitute donee;
- (c) a person who appoints the Public Trustee to be the executor of the person’s will;
- (d) a person on whose behalf moneys are invested in a Fund;

(e) a beneficiary of a trust administered by the Public Trustee;

(f) a person who has appointed the Public Trustee to act as the person's agent; or

(g) a member of a class of persons prescribed by the regulations.

**Common Account** means the account established and continued under section 39A(1).

**Court**<sup>2</sup> means the Supreme Court of Western Australia or a Judge thereof and includes a Registrar when exercising the powers of the Court pursuant to the *Administration Act 1903*, or Probate and Administration Rules.

**Curator**<sup>2</sup> means the Curator of Intestate Estates constituted under the *Curator of Intestate Estates Act 1918*<sup>2</sup>.

**current agreement** means the agreement entered into under section 6B(1) that is currently in force.

**estate**<sup>2</sup> or **estates**<sup>2</sup> means any real or personal property under administration or held, managed, or controlled by the Public Trustee in any capacity whatsoever.

**Fund** means the Common Account or a strategic common account.

**income**<sup>2</sup> includes rents and profits.

**Official Trustee**<sup>2</sup> means the Official Trustee appointed under the *Official Trustee Act 1921*<sup>2</sup>.

**Public Trustee**<sup>2</sup> means the Public Trustee under this Act.

**Registrar of the Supreme Court**<sup>2</sup> means a person for the time being holding or acting in an office designated under the *Supreme Court Act 1935* by that name, and a reference to a registrar may include a reference to the Principal Registrar or a deputy registrar duly appointed under that Act.

**regulations**<sup>2</sup> means regulations made under the authority of this Act.

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**“represented person”** means a person in respect of whom there is in force under the *Guardianship and Administration Act 1990* an administration order whereby the Public Trustee is the administrator or a joint administrator of the estate of that person.

**“reserve fund”** means a fund established under section 44A.

**“rules”** means rules of court made under this Act or the *Supreme Court Act 1935*.

**“strategic common account”** means an account established under section 39B(1).

**Treasurer’s guidelines** means guidelines issued by the Treasurer under section 47B(2).

**“will”** includes codicil.

[Section 2 amended by No. 12 of 1947 s. 2; No. 34 of 1962 s. 4; No. 64 of 1968 s. 2; No. 67 of 1979 s. 57; No. 10 of 1989 s. 3; No. 24 of 1990 s. 123; No. 9 of 2008 s. 6.]

**3. Public Trustee to be successor in law of Curator of Intestate Estates and the Official Trustee**

- (1) Subject to and for the purposes of this Act, as and from the appointed day —
  - (a) The offices of Curator of Intestate Estates and Official Trustee shall be abolished and the Curator of Intestate Estates and the Official Trustee in office immediately before the appointed day shall go out of office as such.
  - (b) The Public Trustee shall be deemed to be the successor in law —
    - (i) of the Curator of Intestate Estates;
    - (ii) of the Official Trustee.
  - (c) All property immediately before the appointed day vested in or held by the Curator or the Official Trustee shall, by virtue of this Act, be transferred to and vested in or held by the Public Trustee.

- (d) Without affecting the generality of the foregoing provisions of this section —
- (i) all estates and property of deceased persons left unadministered by the Curator immediately before the appointed day shall be administered by the Public Trustee, who shall become entitled to the possession thereof and of all books, accounts, letters, papers, and documents of every description used by or in the possession of or under the control of the Curator immediately before the appointed day; and
  - (ii) the Public Trustee shall become entitled to the possession of all estates and property vested in or held by the Official Trustee or which he is empowered to take care of, collect, protect, administer or manage, and moneys which the Official Trustee is empowered to invest, and of all books, accounts, letters, papers, and documents of every description used by or in the possession or under the control of the Official Trustee immediately before the appointed day.
- (e) Any reference in any Act, regulation, rule of court, order or document to either the Curator or the Official Trustee shall, unless inconsistent with the context or subject matter, be deemed and be taken to refer to and mean the Public Trustee.
- (f) Any proceeding, application, or cause of action before the appointed day commenced, initiated, pending, or existing by or against the Curator or the Official Trustee shall not abate, be discontinued, or be in any way prejudicially affected by reason of anything in this Act but may be continued, prosecuted, and enforced by or against the Public Trustee as it might have been by or against the Curator or the Official Trustee if this Act had not been passed, but not further or otherwise.

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- (g) Subject to the foregoing provisions of this section, any order to administer granted to or on an application initiated by the Curator shall have effect for all purposes as if this Act had not been passed; and
- (h) All acts, matters, and things of a continuing nature lawfully made, done, or commenced before the appointed day by or on behalf of the Curator or the Official Trustee shall be deemed to have been made, done, or commenced by or on behalf of the Public Trustee.

~~(2) Without affecting the generality of the foregoing provisions of this section, the Acts set out in the First Schedule, to the extent to which the same are in and by the said Schedule expressed to be repealed or amended, are hereby repealed or amended accordingly.~~

~~*[(2) repealed]*~~

~~*[Section 3 amended by No. 9 of 2008 s. 7.]*~~



## Part **IIA** — The Public Trustee

*[Heading inserted by No. 9 of 2008 s. 8.]*

### 4. Public Trust Office and Public Trustee

- (1) There shall be an office called the “Public Trust Office”, administered by an officer called the Public Trustee who shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994*, and shall have and exercise such powers and execute and discharge such duties as may be vested in or imposed on him pursuant to the provisions herein set forth.
- (2) The Public Trustee and his successors in office shall be and continue to be a body corporate, under the name of the “Public Trustee”, and shall by that name have perpetual succession and a common seal, and be capable in law of suing and being sued and of holding and disposing of real and personal property.

- (3) The Public Trustee is an agent of the Crown in right of the State and enjoys the status, immunities and privileges of the Crown.

*[Section 4 amended by No. 10 of 1989 s. 4; No. 32 of 1994 s. 3(2); No. 9 of 2008 s. 9.]*

### 5. Delegation

- (1) The Public Trustee may, by instrument in writing signed by the Public Trustee, delegate to a person ~~referred to in section 6~~ any of the powers or duties of the Public Trustee under this Act or any other written law, other than this power of delegation.
- (2) A delegation under this section may be made generally or as otherwise provided by the instrument of delegation.

*[Section 5 inserted by No. 10 of 1989 s. 5; amended by No. 9 of 2008 s. 10.]*

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**5A. Judicial notice**

All courts shall take judicial notice of the appointment of the Public Trustee, delegations by the Public Trustee under section 5, the signatures of the Public Trustee and delegates of the Public Trustee, and the seal of office of the Public Trustee.

*[Section 5A inserted by No. 64 of 1968 s. 5; amended by No. 10 of 1989 s. 6.]*

**6. Appointment of staff**

There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* such officers, clerks and other persons as are necessary to assist the Public Trustee to perform his functions.

*[Section 6 inserted by No. 10 of 1989 s. 7; amended by No. 32 of 1994 s. 3(2).]*

**6A. Use of other government staff, etc.**

(1) The Public Trustee may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee —

(a) in the Public Service;

(b) in a State agency or instrumentality; or

(c) otherwise in the service of the Crown in right of the State.

(2) The Public Trustee may by arrangement with —

(a) a department of the Public Service; or

(b) a State agency or instrumentality,

make use of any facilities of the department, agency or instrumentality.

(3) An arrangement under subsection (1) or (2) shall be made on such terms as are agreed to by the parties.

[Section 6A inserted by No. 9 of 2008 s. 11.]

**6B. Management and performance**

- (1) The Minister and the Public Trustee are to enter into a written agreement for each 12 month period in relation to matters prescribed by the regulations.
- (2) A current agreement may provide for any or all of the following —
  - (a) the determination of a scale of fees under section 38A(1);
  - (b) the proportion of fees received by the Public Trustee to be credited to the Consolidated Account;
  - (c) the circumstances in which moneys may be transferred to or from a reserve fund;
  - (d) the uses to which moneys in a reserve fund may be put.
- (3) The annual report of the Public Trustee submitted under the *Financial Management Act 2006* shall include —
  - (a) a summary of the current agreement; and
  - (b) a report on the Public Trustee's performance in relation to matters required by the current agreement to be reported on in the annual report.
- (4) The first current agreement shall be effective on and from the day on which section 11 of the *Public Trustee and Trustee Companies Legislation Amendment Act 2008* comes into operation.
- (5) If a current agreement (other than the first agreement) has not been made in respect of a 12 month period then on the commencement of that period the provisions of the current agreement for the previous 12 month period apply, to the extent that the provisions are relevant, until a current agreement is made for the first mentioned period.
- (6) A current agreement is not legally enforceable.

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[\[Section 6B inserted by No. 9 of 2008 s. 11.\]](#)

## Part II — Powers and duties of Public Trustee

### Division ~~(1)~~ — General

*[Heading inserted by No. 9 of 2008 s. 12.]*

#### 7. **Appointment of Public Trustee in various capacities**

- (1) Where the Crown, the Governor in Council, a public officer, a court, a judge, a board, a public or private corporate body, or any person within or outside Western Australia, now or hereafter can appoint a trustee, executor, administrator, guardian, next friend, committee, manager, receiver, agent or attorney, any of such appointments may be made of the Public Trustee.
- (2) Subject to this Act the powers, duties, immunities, and rights of the Public Trustee under any such appointment shall be the same as if the appointment had been of a private person.

*[Section 7 amended by No. 24 of 1990 s. 123.]*

### Division ~~(2)~~ — Public Trustee as executor or administrator

*[Heading inserted by No. 9 of 2008 s. 13.]*

#### 8. **Appointment of Public Trustee as executor**

Whenever the Public Trustee has been or shall be named as executor in the last will and testament or in any codicil thereto of any testator, it shall be lawful for the Public Trustee to act as executor, and to apply for and obtain probate, and to perform and to discharge all the acts and duties of an executor as fully and effectually as any other executor.

#### 9. **Pending probate or administration estate of deceased to vest in Public Trustee**

Upon the death of any person, and until probate or administration is granted in respect of his estate, the real and personal estate of such deceased person shall be deemed to vest

in the Public Trustee, but without any charge being leviable therefor. Any estate or property at the commencement of this Act vested in the Chief Justice under the provisions of section 22<sup>3</sup> of the *Administration Act 1903*, or any corresponding previous enactment, shall, by virtue of this Act, vest in the Public Trustee.

**10. Public Trustee may apply for order for administration of estate of deceased person**

- (1) Where any person has heretofore died or hereafter dies, or is reasonably supposed to have died testate or intestate in or out of Western Australia, leaving property in Western Australia, the Court may, on the application of the Public Trustee, grant to the Public Trustee an order to administer the estate of such deceased person in any of the following cases —
- (a) where such person dies testate, but leaves no executor willing and capable of acting in execution of his will resident within the jurisdiction;
  - (ab) where such person dies intestate, and the person first entitled to the administration of his estate is unwilling to act or incapable of acting in such administration or is not resident within the jurisdiction: Provided that if some other person in the State who, if it were not for this paragraph, would be entitled to such administration applies for such administration, then the Court may grant administration to such person;
  - (b) where the executor renounces probate of the will of the deceased and all the persons first entitled to administration by writing filed in the office of the Court decline to apply for administration;
  - (c) where probate or administration is not applied for within 3 months after the death of such person;
  - (d) where, after the expiration of 30 days from such death, there appears to the Court to be no reasonable possibility

of application being made within such period as aforesaid;

- (e) where the estate or any portion thereof is unprotected or liable to waste and the executor or a person who was married to, or living as the de facto partner of, the deceased immediately before the death of the deceased or next of kin is absent from the locality of the estate or of such portion thereof or is not known or has not been found;
  - (f) where the estate or any substantial portion thereof is of a perishable nature or is in danger of being lost or destroyed;
  - (g) in any other case where the Court considers it expedient or proper.
- (2) The Court may in any case require the Public Trustee to give such notices or cite such persons or produce such evidence as it may think fit before granting the order applied for, and may make the order subject to restrictions or conditions, or, in cases coming within the provisions of subsection (1)(e) or (f), make a temporary order only, or one limited to a portion of the estate.
- (3) A grant under this section shall, subject to this Act and to any restrictions which the Court may impose, give to the Public Trustee the same powers, rights and obligations in respect of the estate concerned as he would have under letters of administration. Subject to the provisions of this Act, all laws now or hereafter in force in reference to the administration of estates of deceased persons shall apply to the administration of estates by the Public Trustee and the estate of the deceased shall vest in the Public Trustee.
- (4) Where a grant of probate or administration (in this subsection referred to as the original grant) has been made in respect of the estate of any deceased person (in this subsection referred to as the original estate) and the persons to whom the original grant, or any subsequent or substituted grant of probate or

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administration was made, have died, or hereafter die, leaving part of the original estate unadministered, and the gross value of the part of the original estate so left unadministered at the time of the election hereinafter mentioned does not exceed the sum of \$10 000, as estimated by the Public Trustee, and no person has since the death of the last executor or administrator taken out letters of administration *de bonis non* in respect of the original estate, the Public Trustee may, in all cases where he is entitled to apply for an order to administer, in lieu of obtaining such order, file in the office of the Court an election in writing setting forth the fact of the original grant, the death of the executors or administrators, and the particulars of the property so left unadministered, and electing to administer the property so left unadministered.

- (5) On such election being filed, the Public Trustee shall be deemed to be administrator of the original estate left unadministered in all respects as if letters of administration *de bonis non* had been regularly granted to him.
- (6) He shall publish in the *Gazette* a notice that he has made such election, and such notice shall be conclusive evidence that he is rightfully entitled to administer *de bonis non*.

*[Section 10 amended by No. 12 of 1947 s. 3; No. 64 of 1968 s. 6; No. 25 of 1978 s. 3; No. 67 of 1979 s. 58; No. 3 of 2002 s. 98.]*

**11. Public Trustee to be preferred to creditor as administrator, in certain cases**

The Public Trustee shall be entitled to a grant of administration of the estate of a deceased person in preference to any creditor applying in that capacity for administration thereof, unless the creditor proves to the satisfaction of the Court that it will be more beneficial to the estate that it should be administered by such creditor.

*[Section 11 amended by No. 67 of 1979 s. 59.]*



**12. Public Trustee may be appointed to act by executors and administrators**

- (1) Any person or the majority of the persons entitled to obtain administration (with the will of any testator annexed) of the estate of such testator, may authorise the Public Trustee to apply to the Court for and obtain an order to administer the estate.
- (2) Any person or a majority of the persons named expressly or by implication as executor in any will may, unless expressly prohibited by the will, authorise the Public Trustee to apply to the Court for an order to administer the estate.
- (3) Any person or a majority of the persons entitled to obtain administration of the estate of any intestate may authorise the Public Trustee to apply to the Court for an order to administer the estate.
- (4) Any executor who has obtained probate, or any administrator who has obtained letters of administration, notwithstanding that he has acted in the administration of the deceased's estate may, with the consent of the Public Trustee, and after an account of all receipts and disbursements made by such executor or administrator in relation to the estate of the deceased up to the date of such application has been filed and passed by a Registrar of the Supreme Court, apply to the Court for an order transferring such estate to the Public Trustee for administration.
- (5) An order to administer under any of the preceding subsections may be granted, upon application to the Court by the Public Trustee.
- (6) Where there are more executors or administrators than one, all, or the majority of such executors or administrators, may apply to the Court or a Judge thereof to have the Public Trustee appointed sole executor or administrator on the grounds that the interests of the estate would be benefited by such appointment.
- (7) All applications to the Court, or a Judge thereof, under this section may be brought in such manner as may be prescribed by

rules made under this Act, and the Court or Judge may, and is hereby given jurisdiction to make such order as it or he thinks fit.

- (8) Where to the appointment of any executor or administrator the consent of any person is required, and any such person refuses to consent to the Public Trustee being appointed, or where the person to consent is an infant, idiot, or lunatic, or of unsound mind or absent from Western Australia, or has any other disability, then the appointment of the Public Trustee may be made without such consent, if a Judge of the Supreme Court so orders.

*[Section 12 amended by No. 12 of 1947 s. 4; No. 67 of 1979 s. 60.]*

**12A. Public Trustee's powers on appointment as agent of executor, administrator, etc.**

In addition to the Public Trustee's powers under section 12, if—

- (a) a person who is an executor or administrator appoints the Public Trustee as the person's agent to act as executor or administrator in the place of the person;
- (b) a person who may be entitled to apply for a grant of probate appoints the Public Trustee as the person's agent to apply for a grant of probate;
- (c) a person who may be entitled to obtain administration (with the will of a testator annexed) of the testator's estate appoints the Public Trustee as the person's agent to apply for an order to administer the estate; or
- (d) a person who is referred to in section 25 of the *Administration Act 1903* as a person who may be granted administration of an estate of a person dying intestate appoints the Public Trustee as the person's agent to apply for an order to administer the estate,

the Public Trustee, if so appointed by power of attorney or other instrument of appointment, may act within the scope of the authority conferred on the Public Trustee as effectually as the person could have acted and may exercise all discretionary and other powers delegated by the principal as fully as the principal could have exercised them.

[Section 12A inserted by No. 9 of 2008 s. 14.]

**13. Application for removal of executor or administrator of an estate and for administration by the Public Trustee**

- (1) In any case in which probate or administration of the estate of any deceased person has been granted to any person, the Public Trustee, or any person interested, may apply to the Court for an order for the removal of such executor or administrator, and for an order to administer by the Public Trustee the land or goods or estate left unadministered.

Applications under this section shall be grounded upon affidavit stating any circumstances from which it appears that it would be beneficial to any person who is or may be interested in such estate, or that the due and proper administration of the estate requires that the executor or administrator should be removed, and that such estate should be administered by the Public Trustee.

- (2) Upon the making of any order under the preceding subsection the Court may order that any administration bond entered into by the administrator shall be assigned to the Public Trustee; and the Public Trustee shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him, and shall be entitled to recover thereon as trustee for all persons interested in the full amount recoverable in respect of any breach of the condition of the said bond.
- (3) Where the Public Trustee is appointed executor or is granted an order to administer under this or the last preceding section the property, rights, powers, authorities, functions, and discretions

vested in, and the liabilities properly incurred in, the due administration of the estate by the original executor or administrator, as the case may be, shall upon such appointment and without any conveyance, transfer, or assignment become and be vested in and transferred to the Public Trustee, who shall have the same privileges, rights, powers, duties, discretions, and liabilities as if probate or administration had been granted to him originally.

*[Section 13 amended by No. 12 of 1947 s. 5.]*

**14. Election to administer estate not exceeding ~~\$10 000~~ the prescribed amount, without order to administer**

- (1) Where any person has heretofore died or hereafter dies testate or intestate, in or out of Western Australia, leaving property in Western Australia the gross value of which as estimated by the Public Trustee does not at the time of the election hereinafter mentioned exceed ~~\$10 000~~ the prescribed amount and no person has taken out probate or administration in Western Australia, the Public Trustee may, in all cases where he is entitled to apply for an order to administer, in lieu of obtaining such order, file in the office of the Court an election in writing setting forth the name, residence, and occupation (so far as then known to him) of the deceased, and the value of the property of the deceased as then known, and electing to administer.
- (2) On such election being filed the Public Trustee shall be deemed to be administrator of the whole property of the deceased person in all respects as if a grant of probate or letters of administration, as the case may be, had been regularly granted to him.
- (3) He shall publish in the *Gazette* a notice that he has made such election, and such notice shall be conclusive evidence that he is rightfully entitled to administer.
- (4) If after filing such election the gross value of the property to be administered is found to exceed the ~~sum of \$10 000~~ prescribed

[amount](#), or the property to which the election relates is found to include property outside the State, the Public Trustee shall, as soon as practicable thereafter, file in the office of the Court a memorandum under his hand stating the fact, and proceed in the ordinary manner to obtain an order to administer the estate.

- (5) If after filing such election the Public Trustee finds that the deceased person who was supposed to have died intestate has died testate, the Public Trustee shall, as soon as practicable, file in the office of the Court a memorandum under his hand stating the facts and revoking such election; whereupon such election shall be deemed to have been revoked accordingly, and the Public Trustee shall file in the office of the Court his accounts of all transactions in the matter of the estate of such deceased person.

- (6) In this section —

*prescribed amount* means the amount prescribed for the purposes of section 10 of the *Trustee Companies Act 1987* for the relevant time.

*[Section 14 amended by No. 12 of 1947 s. 6; No. 64 of 1968 s. 7; No. 25 of 1978 s. 4; No. 67 of 1979 s. ~~58~~58; No. 9 of 2008 s. 15.]*

**15. Public Trustee deemed successor of deceased for licensing purposes**

Where the Public Trustee obtains a grant of probate or administration under this Act, he shall be deemed to be the successor of the deceased for the purpose of the *Licensing Act 1911*<sup>4</sup>, and may in a proper case, with the consent of the Licensing Court<sup>5</sup>, enter by himself or his agent on and become the licensee of any licensed premises of which the deceased was licensee or the Public Trustee is owner within the meaning of that Act.

**16. Public Trustee may pay over balance to proper officer, etc.**

- (1)(a) When the Public Trustee has been granted probate of the will or administration of the estate in Western Australia of any person who was at the time of his death domiciled in a State or Territory of the Commonwealth of Australia other than Western Australia, or in the Dominion of New Zealand, and whose estate in such State, Territory, or Dominion is being administered by executor or executors or administrator or administrators, or the proper officer of such State, Territory, or Dominion, the Public Trustee may pay or cause to be paid to such executor or executors or administrator or administrators, or proper officer, the balance of the estate, after payment of creditors and the fees and charges provided for in this Act, without seeing to the application of such balance and without incurring any liability in regard to such payment to such executor or executors or administrator or administrators, or proper officer.
- (b) Where any moneys or personal chattels are payable or deliverable by the Public Trustee to the subject of any country out of the Crown's jurisdiction, the Minister may authorise the Public Trustee to pay or deliver the same to the proper officer of that country or to the chief consular officer for that country in Western Australia on behalf of the person entitled, and the receipt of such proper officer or consular officer shall be a sufficient discharge therefor to the Public Trustee who shall not be further concerned to see to the application thereof.
- (2)(a) When the proper officer of any State or Territory of the Commonwealth of Australia, other than Western Australia, or of the Dominion of New Zealand, is in such State, Territory, or Dominion administering the estate of any deceased person, and the Public Trustee has been granted probate of the will or administration of the estate in Western Australia of such deceased person, if the deceased at the time of his death was domiciled in Western Australia, the Public Trustee may receive from such proper officer the balance of the estate of the deceased in such State, Territory or Dominion.

(b) Such balance shall, when so received, form part of the estate of the deceased and shall be dealt with according to the law of Western Australia.

(3) In this section —

**“proper officer”** includes Public Trustee or Public Curator or other officer discharging duties corresponding to those discharged in Western Australia by the Public Trustee.

**“Territory”** includes mandated territory administered by the Commonwealth of Australia.

**17. If property has escheated to the Crown**

If it appears that any property vested in the Public Trustee has escheated to the Crown, the Public Trustee shall report the facts to the State Solicitor, who may then make all necessary applications provided for in the *Escheat (Procedure) Act 1940*.

*[Section 17 amended by No. 65 of 2003 s. 95.]*

**18. Payment to parent, etc., of distributive shares of infant children where net amount is under \$~~1~~5,000**

Where the net amount payable to any infant out of any testate or intestate estate of which probate or administration has been granted to the Public Trustee is under \$~~1~~5 000, ~~he~~[the Public Trustee](#) may pay or cause to be paid the distributive share, to which such infant is entitled, to a parent of the infant, or to any person having the care or custody of such infant, without seeing to the application thereof, and without incurring any liability in respect of such payment.

*[Section 18 amended by No. 12 of 1947 s. 7; No. 113 of 1965 s. 8; No. 46 of 1984 s. 3; No. 3 of 2002 s. ~~99~~99; [No. 9 of 2008 s. 16.](#)]*

*[19. Repealed by No. 57 of 1997 s. 100.]*

**Division ~~(3)~~ — Public Trustee as trustee**

*[Heading inserted by No. 9 of 2008 s. 17.]*

**20. Public Trustee may be appointed trustee**

Notwithstanding anything in any Act, or the terms of any trust, as to the number of trustees, the Public Trustee may, unless expressly prohibited by the terms of the trust, be appointed or become trustee.

**21. Advisory trustees**

- (1) In the administration of any trust estate as trustee thereof the Public Trustee may act with an advisory trustee or advisory trustees to the extent herein provided.
- (2) An advisory trustee or advisory trustees may be appointed —
  - (a) by order of the Court made on the application of any beneficiary or of any person on whose application the Court would have power to appoint a new trustee;
  - (b) by the trust instrument; or
  - (c) by any person having power to appoint new trustees.
- (3) No such advisory trustee shall be liable as such for any act or thing done by the Public Trustee, whether with or without the advice of any such advisory trustee.
- (4) Where the Public Trustee acts with advisory trustees the trust property shall be vested in the Public Trustee, and he shall have the sole management and administration of the estate and its trusts as fully and effectually as if he were the sole trustee:

Provided that —

- (a) the Public Trustee may consult the advisory trustees on any matter relating to the trusts or the estate; and
- (b) the advisory trustees may advise the Public Trustee on any matter relating to the trusts or the estate.



- (5) In cases of difference between the Public Trustee and the advisory trustees, either the Public Trustee or the advisory trustees may submit the matter in dispute in a summary manner to a Judge of the Court in chambers, whose decision thereon shall be final, and shall bind both the Public Trustee and the advisory trustees.
- (6) No person dealing with the Public Trustee shall be concerned to inquire as to the concurrence or otherwise of the advisory trustees, or be affected by notice of the fact that the advisory trustees have not concurred.
- (7) The power of appointing a new advisory trustee, when exercisable by the continuing advisory trustees, shall be exercised by them alone, but the Public Trustee shall have the same power of applying to the Court for the appointment of a new advisory trustee as is possessed by any other person.
- (8) The regulations may provide for the remuneration, subject to the provisions of the trust instrument (if any), of advisory trustees out of the estate.

**22. Custodian trustee**

- (1) The Public Trustee may, whether or not the number of trustees has been reduced below the original number, be appointed to be custodian trustee of any trust —
  - (a) by order of the Court made on the application of any beneficiary or of any person on whose application the Court may order the appointment of a new trustee;
  - (b) by the trust instrument; or
  - (c) by any person having the power to appoint new trustees.
- (2) Upon such appointment —
  - (a) the trust property shall be transferred to the custodian trustee as if he were sole trustee, and for that purpose vesting orders may, where necessary, be made by the Court;

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- (b) the management of the trust property and the exercise of any power or discretion exercisable by the trustees under the trust shall remain vested in the trustees other than the custodian trustee (which trustees are hereinafter referred to as the managing trustees);
- (c) as between the custodian trustee and the managing trustees, and subject and without prejudice to the rights of any other persons, the custodian trustee shall have the custody of all securities and documents of title relating to the trust property, but the managing trustees shall have free access thereto and be entitled to take copies thereof or extracts therefrom;
- (d) the custodian trustee shall concur in and perform all acts necessary to enable the managing trustees to exercise their powers of management, or any other power or discretion vested in them (including the power to pay money or securities into Court), unless the matter in which he is requested to concur is a breach of trust or involves a personal liability upon him in respect of calls or otherwise, but, unless he so concurs, the custodian trustee shall not be liable for any act or default on the part of the managing trustees or any of them;
- (e) all sums payable to or out of the income or capital of the trust property shall be paid to or by the custodian trustee: Provided that the custodian trustee may allow the dividends and other income derived from the trust property to be paid to the managing trustees, or to such person as they direct, or into such bank to the credit of such person as they direct, and in such case shall be exonerated from seeing to the application thereof and shall not be answerable for any loss or misapplication thereof;
- (f) the power of appointing new trustees, when exercisable by the trustees, shall be exercisable by the managing trustees alone, but the custodian trustee shall have the

- same power of applying to the Court for the appointment of a new trustee as any other trustee;
- (g) the custodian trustee, if he acts in good faith, shall not be liable for accepting as correct and acting upon the faith of any written statement by the managing trustees as to any birth, death, marriage or other matter of pedigree or relationship or other matter of fact upon which the title to the trust property or any part thereof may depend, nor for acting upon any legal advice obtained by the managing trustees independently of the custodian trustee;
  - (h) the Court, on the application of either the custodian trustee or of any of the managing trustees, or of any beneficiary, to terminate the custodian trusteeship, and on proof to its satisfaction that it is the general wish of the beneficiaries or that on other grounds it is expedient that the custodian trusteeship should be terminated, may make an order for that purpose, and the Court may thereupon make such vesting orders and give such directions as under the circumstances seem to the Court to be necessary or expedient;
  - (i) in cases of difference between the custodian trustee and the managing trustees, either the custodian trustee or the managing trustees may submit the matter in dispute in a summary manner to a Judge of the Court in chambers, whose decision thereon shall be final and shall bind both the custodian trustee and the managing trustees.

**22A. Public Trustee's powers on appointment as trustee's agent**

If a person who is a trustee appoints the Public Trustee as the person's agent to act as trustee in the place of the person, the Public Trustee, if so appointed by power of attorney or other instrument of appointment, may act within the scope of the authority conferred on the Public Trustee as effectually as the person could have acted and may exercise all discretionary and

[other powers delegated by the principal as fully as the principal could have exercised them.](#)

[\[Section 22A inserted by No. 9 of 2008 s. 18.\]](#)

**23. Public Trustee may exercise powers under other Acts**

- (1) In addition to any other powers conferred by this Act, the Public Trustee shall have and may exercise all rights, powers, and authorities conferred upon, and may avail himself of all defences open to, trustees under the provisions of the *Trustees Act 1962* or of any other Act.
- (2) In particular, but without limiting the generality of subsection (1), where the Public Trustee holds moneys belonging to more than one estate, as trustee for the investment of those moneys, the Public Trustee —
  - (a) may invest those moneys as one fund in one or more investments authorised by law as in force immediately before the coming into operation of the *Trustees Amendment Act 1997*<sup>1</sup> or by the investment creating the trust; and
  - (b) may distribute the income arising therefrom rateably among the several estates to which the moneys so invested belong,

and any loss arising from any such investment shall be borne rateably by the several estates.

*[Section 23 amended by No. 64 of 1968 s. 8; No. 1 of 1997 s. 18; No. 37 of 2006 s. 7.]*

**Division ~~(4)~~ — ~~Provisions relating to estates~~ — Estates of represented persons**

*[Heading inserted by No. ~~24~~ 9 of ~~1990~~ 2008 s. ~~123~~ 19.]*

**24. Public Trustee may apply for administration order**

The Public Trustee may apply under section 40 of the *Guardianship and Administration Act 1990* for an administration order whereby he is appointed to be an administrator under that Act.

*[Section 24 inserted by No. 24 of 1990 s. 123; amended by No. 7 of 1996 s. 39.]*

*[25, 26. Repealed by No. 24 of 1990 s. 123.]*

**27. Summary proceedings for the protection of property of represented persons**

- (1) Where any real or personal property of a represented person is wrongly held, detained, converted or injured, or where any sum of money is due and owing to a represented person, the Public Trustee may claim and recover possession of that property or damages for its conversion or injury, or payment of that sum due and owing, by summary proceedings, as prescribed by the rules, on complaint before a Judge who, on proof to his satisfaction of the cause of complaint, may make an order requiring the person against whom the complaint is made to give up possession of the property, or to pay reasonable damages, to be fixed by the order, for the conversion or injury of the property, or to pay the sum found to be due and owing, and, in default of compliance by the person so ordered, to order in and by the same or any subsequent order that the person so ordered be committed to prison for any period not exceeding 6 months.
- (2) A Judge may, on the complaint under this section, make such order as to costs as he thinks fit, and every order made under this section has the same effect, and may be enforced in like manner, as any judgment, decree or order of the Court in its ordinary jurisdiction.

*[Section 27 inserted by No. 34 of 1962 s. 5; amended by No. 24 of 1990 s. 123.]*

**28. Protection of persons dealing with Public Trustee**

*[(1), (2) repealed]*

- (3) Persons dealing with the Public Trustee, in respect of the estate of a represented person, are as fully protected as if the owner of the estate were, although he is not, in fact, then, a represented person; and a purchaser or mortgagee, from the Public Trustee, of any real or personal property of a represented person is not bound to inquire as to the powers of the Public Trustee or as to the application of the purchase or mortgage moneys.

*[Section 28 inserted by No. 34 of 1962 s. 5; amended by No. 24 of 1990 s. 123.]*

**29. Payments by Public Trustee to represented persons or their personal representatives**

- (1) When the Public Trustee ceases to be the administrator of the estate of a represented person he may pay over all moneys standing to the credit of the represented person and hand over all other property and documents forming part of or relating to the estate if the cessation occurs —
- (a) by an order referred to in section 78(1)(a) of the *Guardianship and Administration Act 1990*, to the represented person; or
  - (b) by reason of the death of the represented person, to his personal representative.
- (2) The receipt of the represented person, notwithstanding any informality in his discharge, or the receipt of his personal representative is a discharge for the moneys, property and documents paid or handed over by the Public Trustee under this section.

*[(3) repealed]*

- (4) Where ~~at the gross value of the estate of a represented person does not, at his death, exceed \$6 000 and of a represented person~~ money is ~~then~~ standing to his credit, the Public Trustee may, at his discretion, pay that money or pay from that money any amount for or towards the funeral expenses ~~and~~, the debts of the represented person; and expenses and fees incurred in performing functions vested in the Public Trustee under an administration order as defined in section 3(1) of the Guardianship and may, notwithstanding that Administration Act 1990 relating to the represented person.
- (5) Subject to subsection (4), where in relation to the estate of a represented person, letters of administration have not been granted or ~~that~~ probate has not issued and ~~that~~ legal proof is not given of the right or title of the person claiming, ~~pay and hand over that~~ the Public Trustee may, at his discretion, pay the money standing to credit of a represented person, or the balance of that money, and ~~the~~ hand over property forming the whole or part of the estate, to any person claiming as entitled in the distribution of the estate or as a beneficiary under the will of the represented person; so long as the money paid or the value of the property handed over does not exceed the prescribed amount as defined in section 14(6).

*[Section 29 inserted by No. 34 of 1962 s. 5; amended by No. 64 of 1968 s. 10; No. 46 of 1984 s. 5; No. 24 of 1990 s. 123; No. 9 of 2008 s. 20.]*

*[30. Repealed by No. 24 of 1990 s. 123.]*

**31. Power of Public Trustee to act on certificates issued by proper officers in other jurisdictions**

- (1) Where the officer charged by or under the laws of any State (other than this State), or a territory of the Commonwealth or the laws of New Zealand with the management of the affairs, property or estate of a person in that State or territory or that country who is, however described under the laws of that State or territory or that country, incapable of managing his property,

estate or affairs by reason of senility, disease, illness or physical or mental infirmity, by instrument in writing under his hand and seal —

- (a) certifies to the Public Trustee that he has the care and management of the property, estate and affairs of that person; and
- (b) authorises the Public Trustee to collect, manage, sell or otherwise dispose of or administer any property in this State which the person named in the instrument is possessed of or is entitled to or which he appears to be entitled to or in which he has or appears to have an interest,

the Public Trustee shall have with respect to that property plenary functions within the meaning in section 71 of the *Guardianship and Administration Act 1990* as though such functions had been vested in him under section 69 of that Act.

- (2) The Public Trustee may, without seeing to the application thereof and without liability therefor, pay over, or deliver, to the officer mentioned in subsection (1) the balance of any moneys or property received by him pursuant to that subsection after the payment of all costs, charges and expenses incurred in or about the exercise of his powers and after satisfying, or providing for, the debts of the person named in the instrument referred to in subsection (1) and claims against him of any person residing in this State of which he has had notice.

*[Section 31 inserted by No. 25 of 1978 s. 5; amended by No. 24 of 1990 s. 123.]*

**32. Public Trustee may open and deliver up wills**

- (1) The Public Trustee may, on being satisfied of the death of a represented person, open and read any document deposited with him and purporting, or alleged, to contain a testamentary disposition made by that person; and the Public Trustee shall deliver the document to the executor, or one of the executors,



therein named or to some other person to be dealt with according to law.

- (2) In subsection (1) —

**“document”** has the meaning given to that term by section 32(1) of the *Wills Act 1970*.

*[Section 32 inserted by No. 34 of 1962 s. 5; amended by No. 24 of 1990 s. 123; No. 27 of 2007 s. 25.]*

**33. Personal effects of represented persons may be sold**

Any personal effects belonging to a represented person that come to the hands of the Public Trustee may, if not claimed within 2 years of the discharge or death of the represented person, be sold by the Public Trustee; and the proceeds of any sale authorised by this section shall be paid to the Treasurer, as unclaimed moneys, to be dealt with in accordance with the provisions of the *Unclaimed Moneys Act 1912*<sup>6</sup>.

*[Section 33 inserted by No. 34 of 1962 s. 5; amended by No. 24 of 1990 s. 123.]*

*[34-36D. Repealed by No. 24 of 1990 s. 123.]*

**Division ~~(5)~~ — Powers and duties of Public Trustee ~~with respectas to persons under disability,moneys subject to court and others,in certain cases other orders~~**

*[Heading inserted by No. 9 of 2008 s. 21.]*

**37. Investment of moneys under control or subject to order of the Supreme Court**

- (1) The investments of moneys under the control or subject to any order of the Supreme Court shall be made by the Public Trustee.
- (2) All moneys or damages so received or awarded by or to the Public Trustee shall, subject to any specific or general directions

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of the appropriate court, be held and applied by him in such manner as he thinks fit for the maintenance and education or otherwise for the benefit of the persons entitled thereto.

- (3)(a) All moneys ordered to be invested under the provisions of the *Workers' Compensation and Injury Management Act 1981*, shall be paid to the Public Trustee, and the receipt of the Public Trustee, or of any one authorised by him in that behalf, shall be a complete discharge to all persons concerned.
- (b) The Public Trustee shall thereupon hold the said moneys for the person or persons entitled thereto.
- (c) Any such sum shall be disbursed by the Public Trustee in accordance with the order pursuant to which it is held, but the Public Trustee has sole discretion as to its investment.
- (4) A certificate under the hand and seal of the Public Trustee, showing the receipt of the said money, shall in any court or proceedings whatsoever be sufficient evidence of the facts therein stated without any further proof.
- (5) Nothing in this section shall prejudice the lien of a solicitor for any costs which have been allowed by a taxing officer of the Supreme Court or the Magistrates Court as solicitor and client costs. No costs other than those allowed in such taxation shall be payable to any solicitor.

*[Section 37 amended by No. 7 of 1950 s. 3; No. 67 of 1979 s. 61; No. 34 of 1999 s. 61; No. 42 of 2004 s. 175; No. 59 of 2004 s. 141.]*

**Division ~~(6)~~ — Powers and duties of Public Trustee ~~with respectas~~ to uncared- for property**

*[Heading inserted by No. ~~64~~ 9 of ~~1968~~ 2008 s. ~~1722~~.]*

**37A. Power of Court to authorise Public Trustee to exercise certain powers in respect of uncared-for property**

- (1) Where —

- (a) the owner of any real or personal property in the State is absent from the State and has no agent or attorney in the State to take possession of and administer the property;
- (b) it is not known who is the owner of any real or personal property in the State;
- (c) it is not known where the owner of any real or personal property in the State is;
- (d) it is not known whether the owner of any real or personal property in the State is dead or alive; or
- (e) the owner of any real or personal property in the State is dead and has left executors or administrators whose whereabouts are unknown,

the Court or a Judge in chambers may, on the application *ex parte* of the Public Trustee and on being satisfied that the exercise of the powers hereinafter referred to in this subsection is advisable in the interests of the owner of the property or in the interests of any other person, make an order, on such terms and conditions as the Court or Judge thinks fit, authorising the Public Trustee to exercise in relation to the property all or any of the powers referred to in section 49.

- (2) Where an order is made under subsection (1), the Public Trustee shall cause to be published in the *Government Gazette*, and in a newspaper circulating generally in the district in which the property in respect of which the order was made is situated, a notification of the making of the order and of his intention to exercise the powers conferred on him by the order.
- (3) Where the Public Trustee sells, leases or otherwise disposes of any real or personal property pursuant to a power conferred on him by or under this section, the Public Trustee has the same powers with respect thereto as the owner of the property has, and all deeds and other instruments and documents executed by him in the exercise of any of those powers shall be registered and have effect in all respects as if they were executed by the owner of the property.

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- (4) The owner of property in respect of which an order has been made under subsection (1) or a person having an interest in the property or in any part thereof may, at any time after the making of the order and after giving 14 days notice to the Public Trustee, make application to the Court or a Judge in chambers to rescind the order in whole or in part.
- (5) The Court or Judge may, on an application under subsection (4), rescind the order to which the application relates, in whole or in part on such terms as it or he thinks fit.
- (6) The rescission of an order, whether wholly or in part, does not affect any charge acquired by the Public Trustee under section 44 or the validity of any act, matter or thing done by the Public Trustee while the order is current and in pursuance of the order.
- (7) An order made under this section, and an act, matter or thing done in pursuance of the order, is not invalid or inoperative by reason only that the order was made or the act, matter or thing was done under a mistake of fact or that the owner of the property to which the order relates was dead at the time when the order was made or has died since the making of the order or because of any disposition made by the owner of the property while the order is current.

*[Section 37A inserted by No. 64 of 1968 s. 17.]*

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*[Heading inserted by No. 9 of 2008 s. 23.]*

**37B. Term used in this Division**

In this Division —

*investment management services* includes any of the following —

- (a) assisting clients to ascertain their investment objectives, financial situations, risk profiles and particular investment needs;
- (b) setting investment policies and objectives for clients;
- (c) holding money for investment on behalf of clients;
- (d) engaging and retaining suitably qualified financial planners or investment managers for clients;
- (e) subscribing to, buying or selling securities and other investments, or accepting new issue entitlements, on behalf of clients;
- (f) collecting interest, dividends and other income on behalf of clients;
- (g) reviewing a client's investment portfolio from time to time;
- (h) providing accounting information to clients on a regular basis in relation to their investments.

*[Section 37B inserted by No. 9 of 2008 s. 23.]*

**37C. Provision of services**

- (1) The Public Trustee may do any of the following —
- (a) assist an executor or administrator of a deceased's estate in exercising or performing any power or duty of the executor or administrator in relation to the administration of the estate;
  - (b) provide estate planning services to a client or a person who is contemplating appointing the Public Trustee to be the executor of the person's will;
  - (c) provide investment management services in relation to investments, whether or not in a Fund,
- and do such things as are necessary for the provision of that assistance or service.

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(2) The Public Trustee is entitled to charge and receive fees and remuneration and recover disbursements for the provision of the assistance or services referred to in subsection (1).

(3) The Public Trustee may continue to provide the assistance or services referred to in subsection (1) to a person who was a client even though the person is no longer a client.

(4) Nothing in this Division shall be read as limiting any power that the Public Trustee otherwise has, whether under this Act or any other written law, a court order or an authorisation in an instrument, to invest property other than by way of investment in a Fund.

*[Section 37C inserted by No. 9 of 2008 s. 23.]*

## Part III — Financial

### ~~38. Fees and expenses to be prescribed~~

- ~~(1) Subject to subsections (2a) and (2b), there shall be charged, in respect of the duties and services of the Public Trustee, such fees, whether by way of percentage or otherwise, as shall be prescribed and such fees shall be collected and accounted for by such persons and in such manner as may be prescribed, and shall be credited to the Consolidated Account. In time of war reduced fees may be prescribed with respect to the trusts and estates of members of the Forces.~~

### ~~(2) Such fees shall~~ 38. Term used in this Part

In this Part —

fees includes commissions and other charges.

[Section 38 inserted by No. 9 of 2008 s. 24.]

### 38A. Scale of fees

- (1) The Public Trustee shall from time to time, in accordance with the current agreement, determine a scale of fees for a function performed, or a service provided, by the Public Trustee under this Act or any other written law.
- (2) A scale of fees has no effect unless it is published in the Gazette.
- (3) The Public Trustee shall ensure that the first scale of fees is effective on and from the day on which section 24 of the *Public Trustee and Trustee Companies Legislation Amendment Act 2008* comes into operation.
- (4) The Public Trustee may fix and set out in the scale of fees different rates of fees that may be charged as remuneration in respect of different classes of estate and the time and manner of charging such fees.

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(5) The Interpretation Act 1984 section 42 applies to and in relation to a scale of fees as if the scale of fees were regulations made under this Act.

[Section 38A inserted by No. 9 of 2008 s. 24.]

**38B. Public Trustee's entitlement to fees and expenses**

(1) The Public Trustee is entitled to charge as remuneration for the functions and services referred to in section 38A(1) fees not exceed (exceeding those fixed from time to time by the Public Trustee and set out in the latest published scale of fees before the Public Trustee commences to perform the function or provide the service.

(2) Nothing in this section prevents —

(a) the payment of any fees that a testator in his will has directed to be paid; or

(b) the payment of any fees that have been agreed on between the Public Trustee and a person for whom the Public Trustee performs a function or provides a service under this Act or any other written law,

either in addition to or instead of the fees provided for by this section.

(3) Nothing in this section prevents the Public Trustee from being reimbursed for all money expenses properly expended incurred by the Public Trustee in the administration or management of an estate.

(4) Any fees charged by the Public Trustee in accordance with this section are payable out of the capital or income of the estate.

(5) Any fees which the Public Trustee is entitled to receive in respect of an estate may be paid or deducted out of the estate, in accordance with the time and manner provided for in the latest scale of fees of the Public Trustee published before the commencement of the administration or management of the



estate, at any time after the commencement of the administration or management of the estate.

(6) In addition to the fees chargeable under this section, the Public Trustee may, in respect of ~~the estate~~ — any estate, charge and receive a reasonable fee or remuneration for work involved in the preparation and lodging of returns for the purpose of or in connection with assessments of any duties or taxes (other than probate, death, succession or estate duties).

~~(a) as to the gross capital of an estate which —~~

~~(i) does not exceed \$300, the sum of \$33;~~

~~(ii) exceeds \$300 but does not exceed \$2 000, 11%;~~

~~(iii) exceeds \$2 000, the sum \$220 or 4.4%,  
whichever is the greater;~~

~~(b) as to the income of any estate other than interest payable to the estate under section 40(4) in respect of moneys standing to the credit of the Common Account —~~

~~(i) in relation to income derived from rent, such amount expressed as a percentage or otherwise as applies under the scale adopted by the body known as the Real Estate Institute of Western Australia;~~

~~(ii) in relation to income derived from sources other than rent, 6.6%;~~

~~but this paragraph does not apply where the Public Trustee is acting merely as agent or attorney.~~

~~(2a) (7) The published scale of fees of the Public Trustee must include a statement to the effect that the Public Trustee may in addition to fees chargeable under this section charge a fee for work involved in the preparation and lodging of returns for the purpose of or in connection with assessments of any duties or taxes (other than probate, death, succession or estate duties).~~

(8) There shall not be any fee payable to the Public Trustee in respect of income earned by an estate by way of interest payable

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to the estate under section ~~40(4) in respect of moneys standing to the credit of the Common Account.~~[39A\(7\).](#)

~~(2b)~~ Where in a particular case the Public Trustee is satisfied that there is proper cause, ~~he may, with the approval of the Minister,~~[the Public Trustee may](#) waive, either wholly or in part, any fees ~~fixed or authorised by~~[determined under](#) this Act.

~~(3)~~[10](#) The incidence of fees ~~and expenses~~ under this section, as between corpus and income, shall be determined by the Public Trustee.

~~[Section 38 amended by No. 12 of 1947 s. 9; No. 19 of 1953 s. 2; No. 113 of 1965 s. 8; No. 28 of 1972 s. 3; No. 25 of 1978 s. 6; No. 46 of 1984 s. 7; No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 67 of 2000 s. 4; No. 77 of 2006 s. 4 and 17.]~~

[\(11\)](#) If immediately before the day on which section 24 of the *Public Trustee and Trustee Companies Legislation Amendment Act 2008* comes into operation the Public Trustee is responsible for performing a function or providing a service of a type referred to in section 38A(1), on or after that day the Public Trustee is entitled to charge as remuneration for performing the function or providing the service fees set out in the first scale of fees referred to in section 38A(3).

[\[Section 38B inserted by No. 9 of 2008 s. 24.\]](#)

**39. Payment of expenses incurred by Public Trustee**

- (1) In addition to any charges otherwise prescribed, all expenses incurred by or on behalf of the Public Trustee in respect to the maintenance of a represented person or the control, management, or administration of any trust estate or property, shall be charged against and payable out of that trust estate or property.
- (2) All expenses incurred by or on behalf of the Public Trustee in carrying into execution any of the provisions of this or any other Act and not chargeable to or recoverable from any estate or

property shall be defrayed and paid out of such moneys as Parliament appropriates for that purpose.

[Section 39 amended by No. 24 of 1990 s. 123.]

~~40.~~ **39A. The Common Account and its investments**

~~(1) Subject to this Act, all capital moneys, however arising, vested in the Public Trustee, shall, unless directed to be otherwise invested, become one common fund (herein called the “Common Account”) established as an agency special purpose account under section 16 of the *Financial Management Act 2006*, to be invested by the Public Trustee.~~

~~Investments made from the~~ (1) The Common Account is established and —

(a) is a continuation of the Common Account ~~shall not be made on account referred to in section 40(1) of or belong to any particular trust or estate.~~

~~Subject to this Act, interest or income earned by such investments shall be credited to the Common Account.~~

~~(2) The Public Trustee may invest in investments authorised by law as in force~~ this Act immediately before the ~~coming day on which section 25 of the *Public Trustee and Trustee Companies Legislation Amendment Act 2008* comes into operation~~ of the *Trustees Amendment Act 1997* for the investment of trust funds.; and

~~(2a)~~ (b) is, on and from that day to be treated as a Fund as defined in section 2.

(2) The Common Account is an agency special purpose account under the *Financial Management Act 2006* section 16.

(3) In addition to any other investments that the Public Trustee is authorised to make from the Common Account, ~~he~~ the Public Trustee may, with the prior approval of the Minister, invest a portion of the moneys standing to the credit of the Common

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Account in acquiring vacant land and erecting ~~thereon~~ a building on the land or in acquiring land for the purpose of —

- (a) providing office accommodation for the Public Trustee and persons appointed under this Act; and
- (b) leasing to other persons approved by the Minister portions of the building,

on such terms and conditions and for such periods as the Minister approves.

~~(3) He may invest or retain invested money belonging to any trust or estate and coming to his hands in any investment authorised by the trust instrument or (save as otherwise provided by that instrument) authorised by law, and may (save as so provided) retain any investment existing at the date of the commencement of the trust, or (where the trust arises on an intestacy) at the date of the death of the intestate.~~

~~(3a)~~ (4) The Public Trustee may deduct, by way of fees in respect of the management of the Common Account, up to 6.6% of the total interest or income earned by investment of moneys forming part of the Common Account.

(4)(a5) The Public Trustee shall, in accordance with the ~~approval of the Minister shall~~ current agreement, fix from time to time and publish in the *Gazette* the rate or rates of interest payable to the respective estates the moneys of which form part of the Common Account, ~~and~~.

(6) The Public Trustee may fix different rates of interest according to —

- (a) the source and nature of the different amounts invested from the Common Account; ;
- (b) the period for which those amounts are so invested; ; and
- (c) such other matters as the Public Trustee considers relevant having regard to the circumstances.

~~(b7)~~ The interest payable to the respective estates the moneys of which form part of the Common Account, at the appropriate rate ~~determined pursuant to the provisions of paragraph (a) fixed under subsection (5)~~, shall be credited to those estates half-yearly on the first day of the months of April and October in each year.

~~(e8)~~ Any balance of the interest received from investments of moneys forming part of the Common Account ~~that remains in the hands of the Public Trustee~~ may be credited to a reserve fund after deduction of—

~~(a)~~ fees in accordance with subsection ~~(3a)4~~; and ~~payment for any half-yearly period, pursuant to the provisions of paragraph (b), of all the interest payable to the respective estates the moneys of which form part of the Common Account, may be credited to the Consolidated Account.~~

~~(5)~~ Provided that moneys (b) payments under subsection (7).

~~(9)~~ Moneys expressly directed to be invested otherwise than in the Common Account shall not form part of the Common Account; and the Public Trustee may invest ~~such~~those moneys in accordance with such direction. ~~But any~~

~~(10)~~ Any loss or deficiency in respect of any ~~such investments, investment made under subsection (9), or of the money received therefrom or realized thereby~~from or realised by such an investment, shall be borne by the trust or estate to which such moneys belong, or, if received or ~~realized~~realised, would belong.

*[Section 40 amended 39A inserted by No. 12 9 of 1947 2008 s. 10; No. 1925(1).]*

### **39B. Establishment of 1953 strategic common accounts**

~~(1)~~ The Public Trustee may establish and keep separately one or more accounts to be called a “strategic common account”.

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(2) Each strategic common account is to have a distinguishing name or number.

(3) Each strategic common account is an agency special purpose account under the *Financial Management Act 2006* section 16.

[Section 39B inserted by No. 9 of 2008 s. ~~3~~;25(1).]

**39C. Power to invest moneys**

(1) The Public Trustee may invest moneys held by the Public Trustee in the course of administering, holding, managing or controlling an estate in any capacity and properly available for investment —

(a) in a Fund; or

(b) as trust funds may be invested under Part III of the *Trustees Act 1962*.

(2) Nothing in subsection (1) authorises the investment of moneys if investment of the moneys is contrary to the terms or conditions of the instrument of appointment, the instrument creating the trust or any other instrument or order affecting the holding of the moneys by the Public Trustee.

[Section 39C inserted by No. ~~48~~ 9 of ~~1964~~2008 s. ~~2~~;25(1).]

**39D. Power to invest, and restrictions on investment of, Fund moneys**

The Public Trustee may invest the moneys standing to the credit of a Fund but only —

(a) as trust funds may be invested under Part III of the *Trustees Act 1962*; and

(b) in accordance with the Treasurer's guidelines.

[Section 39D inserted by No. ~~64~~ 9 of ~~1968~~2008 s. ~~18~~;25(1).]

**39E. How Fund moneys are to be invested, distributed etc.**

- (1) Investments made from moneys standing to the credit of a Fund shall not be made in the name or on account of, and shall not belong to, any particular estate but are to be held by the Public Trustee proportionately having regard to the proportion which the amount invested in relation to each estate bears to the total amount invested in the Fund in relation to all participating estates.
- (2) At least once every 3 months, the Public Trustee shall distribute to the separate account of each estate participating in a strategic common account, in accordance with its proportional interests determined under subsection (1), the amount of any increase or decrease in the value of the investments held by the fund as determined either by independent valuation or estimated by the Public Trustee.
- (3) The Public Trustee shall deal with income earned by the Public Trustee in respect of the investment of a strategic common account in the same manner as an investment in a Fund is dealt with and the Public Trustee shall ensure that appropriate records are made in the register of investments and the separate account maintained under section 39F(1) for each participating estate.
- (4) The entitlement of each participating estate to income earned by the Public Trustee in respect of the investment of a Fund shall be calculated on a daily basis from the date of participation to the date of withdrawal.
- (5) The Public Trustee may at any time withdraw from a Fund any amount standing to the credit of an estate in that Fund and shall debit the separate account maintained by the Public Trustee under section 39F accordingly.
- (6) The amount standing to the credit of an estate in a Fund shall be determined for the purposes of withdrawal having regard to distributions made under subsection (2) and to that estate's entitlement to income calculated on a daily basis.

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*[Section 39E inserted by No. ~~28~~ 9 of ~~1972~~2008 s. ~~4~~:25(1).]*

**39F. Records as to Funds**

- (1) The Public Trustee shall keep a separate account for each estate participating in a Fund, containing a record of the amount and date of each investment made in the Fund in relation to the estate and the current value of the interest of the estate calculated in accordance with section 39E(2).
- (2) The Public Trustee shall maintain a register of investments in respect of each Fund and record in that register —
  - (a) a description sufficient to identify every investment made by the Fund and details of moneys held to the credit of the Fund; and
  - (b) the value, determined either by independent valuation or estimated by the Public Trustee at least once in every 3 months, of every investment held by the Fund.

*[Section 39F inserted by No. ~~46~~ 9 of ~~1984~~2008 s. ~~8~~:25(1).]*

**40. Power to enter into portfolio management contracts as to Fund investments**

- (1) The Public Trustee may enter into any contract or arrangement with any person approved by the Treasurer for the management by that person of a class or classes of investment forming part of a Fund.
- (2) The terms and duration of a proposed contract or arrangement under subsection (1) shall be approved by the Treasurer before the contract or arrangement is entered into.
- (3) Subject to any relevant Treasurer's guidelines, the Public Trustee may delegate to a person referred to in subsection (1) all or any of the Public Trustee's functions under section 39D with respect to all or part of a Fund.



*[Section 40 inserted by No. 69 of 19932008 s. 13; No. 49 of 1996 s. 64; No. 1 of 1997 s. 18; No. 67 of 2000 s. 5; No. 77 of 2006 s. 4 and 17.] 25(1).]*

**40A. Power to lease purchased land**

(1) In this section —

**“purchased land”** means the land described in the Sixth Schedule purchased by the Public Trustee pursuant to section 40(2a); as in force immediately before the commencement of section 25 of the *Public Trustee and Trustee Companies Legislation Amendment Act 2008*;

**“unused portion”** means so much of the purchased land as is; ~~on the day that the *Public Trustee Amendment Act 1982* comes into operation<sup>+</sup>~~; not used for the purposes referred to in section ~~40(2a)~~39A(3).

(2) In addition to the powers conferred on the Public Trustee by section ~~40(2a)~~39A(3) with respect to the unused portion the Public Trustee may lease the unused portion to any person approved of by the Minister on such terms and conditions as the Minister approves.

*[Section 40A inserted by No. 19 of 1982 s. 22; amended by No. 9 of 2008 s. 26.]*

**41. Temporary advances to Public Trustee**

(1) In order to admit of the moneys standing to the credit of the Common Account being kept closely invested, or to provide moneys wherewith to make advances in connection with estates, the Public Trustee may, with the approval of the Minister in each case, obtain advances from the Treasurer by hypothecating securities held by him in respect of investments of the Common Account.

(2) Every such advance shall be for such period, not exceeding 4 months, and at such rates of interest as are approved by the Treasurer.

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Provided that, on the expiration of the said period, the advance may be renewed for the same or any shorter period, and so on from time to time.

*[Section 41 amended by No. 49 of 1996 s. 64; No. 77 of 2006 s. 17.]*

**42.        Deficiency in Common Account**

If the moneys standing to the credit of the Common Account are insufficient to meet the lawful claims thereon, the Treasurer shall, without further appropriation than this Act, charge such sums to the Consolidated Account as are necessary to meet the deficiency.

*[Section 42 amended by No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 77 of 2006 s. 4 and 17.]*

**43.        Public Trust Office funds to be Crown property**

Moneys standing to the credit of or to be credited to the Public Trustee's Account by the Public Trustee or any officer, servant, or person acting or presuming to act under the authority of this Act shall be deemed to be property of the Crown for the purposes of this Act, and shall be recoverable in like manner as money due to the Crown is recoverable.

*[Section 43 amended by No. 49 of 1996 s. 64.]*

**44.        Advances for administration purposes or against shares**

- (1) The Public Trustee may make advances out of moneys standing to the credit of the Common Account for the purposes of any trust or estate in course of administration or about to be administered by him.
- (2) Where an estate is under administration by him, and there is no money or not sufficient money available to make payments required to be made on account of such estate, whether to the persons entitled thereto or to a share or interest therein or otherwise, he may advance and pay for or on account of such

estate any sum of money (not exceeding in the whole one-half the total value of the property) which he is authorised or required to pay.

- (3) Where an estate is under administration by him, and any person entitled to a share of that estate desires an advance against his share, he may make advances to that person not exceeding in the whole one-half of the value of the share as estimated by the Public Trustee.
- (4) All sums so advanced, with all interest thereon, shall be a first charge upon all the property of the estate, or the share advanced against, as the case may be, and shall bear interest at the rate fixed by the Public Trustee, but not exceeding 5% per annum, except with the approval of the Minister.

(4a) The interest payable under subsection (4) may be debited against an account of the estate in a Fund on the first day of the months of April and October in each year.

- (5) All interest received under this provision shall be credited to the Common Account.
- (6) A certificate under the hand and seal of the Public Trustee, stating the amount owing for advances and interest on any specified date, by the estate or person to whom the advances were made, and the share, if any, against which they were made, shall be sufficient evidence of the facts until the contrary is proved.

*[Section 44 amended by No. 113 of 1965 s. 8; No. 49 of 1996 s. 64; No. 77 of 2006 s. ~~17~~17; No. 9 of 2008 s. 27.]*

#### **44A. Reserve funds**

- (1) The Public Trustee may establish one or more reserve funds to which may be credited amounts under this Act or moneys approved by the Minister in the current agreement.
- (2) Each reserve fund is to have a distinguishing name.

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(3) The Public Trustee may from time to time apply any of the moneys in a reserve fund in accordance with the current agreement.

(4) The Public Trustee shall invest moneys in a reserve fund in the Common Account.

[Section 44A inserted No. 9 of 2008 s. 28.]

**45. Unclaimed moneys to be paid into consolidated account**

- (1) The Public Trustee shall, on or before 31 March in each year, cause all sums of money which on the first day of that month have been in the hands of the Public Trustee to the credit of any trust or estate under administration by him for a term of 6 years next preceding and in respect whereof the Public Trustee has no information or knowledge of the existence of any person entitled in distribution, or claiming so to be, to be credited to the Consolidated Account for the public service. Provided that the Public Trustee may, with the approval of the Minister, retain to the credit of any estate such amount as he may consider likely to be required to answer payment to be made out of such estate.
- (2) Notwithstanding subsection (1), a sum of money to the credit of a trust or estate under administration by the Public Trustee that is equal to or exceeds the prescribed amount shall not be paid to the Treasury under subsection (1) unless the Public Trustee has caused an advertisement in respect of the sum to be published at least twice at intervals of 14 days in a newspaper circulating in Perth.

*[Section 45 amended by No. 23 of 1986 s. 3; No. 49 of 1996 s. 64; No. 77 of 2006 s. 4.]*

**46. Minister to have access to books of Public Trustee**

- (1) The Minister, and any officer of his department authorised by him, shall have at all times access to all the books, accounts, documents, and papers in the Public Trustee's Office, and the

Public Trustee shall at all times furnish to the Minister all such information as the Minister requires.

*[(2) repealed]*

*[Section 46 amended by No. 98 of 1985 s. 3.]*

**47. Records and accounts to be kept**

- (1) The Public Trustee shall keep, or cause to be kept, an index listing all estates in course of administration by him, and shall keep, or cause to be kept, an account of all his receipts, payments, and dealings in every such estate.
- (2) Upon an application in writing by or with the authority of any person interested in any such estate, the Public Trustee shall —
  - (a) permit the applicant or his solicitor or other authorised agent to inspect and take copies of any entry in any register relating to the estate, and (so far as the interest of the applicant is or may be affected thereby) of any account, notice, or other document in the custody of the Public Trustee; and
  - (b) at the expense of the applicant, supply him or his solicitor or other authorised agent with a copy of any such entry, account, or document as aforesaid, or of any extract therefrom; and
  - (c) give to such applicant or his solicitor or other authorised agent such information respecting the estate and the trust property as is reasonably requested in the application and is within the power of the Public Trustee.
- (3) Subject as aforesaid, the Public Trustee, his officers and agents, shall observe strict secrecy in respect of every trust or estate in course of administration by him.

*[Section 47 amended by No. 1 of 1975 s. 3.]*

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**47A. Fees for preparation of wills and enduring powers of attorney and providing legal services**

(1) Despite anything to the contrary in the *Legal Practice Act 2003*, the Public Trustee may charge a fee and recover disbursements for —

(a) the preparation of a will or an enduring power of attorney;

(b) the provision of a legal service to a client; or

(c) the provision of a legal service in relation to estates and trusts administered by the Public Trustee.

(2) Subsection (1)(a) applies only if the will or enduring power of attorney is prepared under the direction and control of a certificated practitioner.

(3) Subsection (1)(b) and (c) apply only if the legal service is provided under the direction and control of a certificated practitioner.

[Section 47A inserted No. 9 of 2008 s. 29.]

**47B. Treasurer's approvals and guidelines**

(1) An approval given by the Treasurer under section 40(1) or (2) shall be in writing but may otherwise be given when and how the Treasurer determines.

(2) The Treasurer may issue written guidelines to be followed by the Public Trustee for the purposes of section 39D(b) or 40(3) and may, in writing, amend or revoke those guidelines.

(3) Treasurer's guidelines are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

(4) If the Treasurer issues, amends or revokes a Treasurer's guideline, the text of the guideline, amendment or revocation shall be included in the annual report submitted by the accountable authority of the Public Trustee under the *Financial Management Act 2006* section 61.

[\[Section 47B inserted No. 9 of 2008 s. 29.\]](#)

**48. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Public Trustee and his operations.

*[Section 48 inserted by No. 98 of 1985 s. 3; amended by No. 77 of 2006 s. 17.]*

## **Part IV — General**

### **49. General powers of Public Trustee**

- (1) The Public Trustee, for any of the purposes of this Act, unless expressly prohibited by or under an instrument or order of the Court may, at his discretion and in addition to and not in restriction of any other powers under this or any other Act, exercise the following powers —
- (a) collect, receive, and recover any moneys, rents, incomes and profits due or which become due to or any compensation or damages for injury to any estate or person;
  - (b) lease land or premises for a term not exceeding 3 years, at such rent and on such conditions as he may think fit;
  - (c) surrender any lease, accept any lease, accept the surrender of any lease, or renew any lease;
  - (d) exercise to such extent and in such manner as the Public Trustee thinks proper any power of leasing vested in any person;
  - (e) sell, exchange, realize, mortgage or charge any property. The Public Trustee, when acting under this paragraph as executor or administrator, shall be subject to the *Administration Act 1903*;
  - (ea) ~~subject to subsections (2a) and (2b),~~ purchase land in fee simple in the State, either alone or with any other person in the course of the administration of any trust or estate;
  - (f) bring land under the *Transfer of Land Act 1893*;
  - (g) pay any debts, and settle, adjust, or compromise any demand made by or against any estate or person, and discharge any encumbrance on the estate;
  - (h) carry on, so far as appears desirable, any trade, profession, or business carried on prior to his appointment;



- (i) agree to any alteration of the conditions of any partnership or to a dissolution and distribution of the assets thereof;
- (j) bring and defend actions, suits, and other legal proceedings, and suffer judgment to go by default, or consent to any judgment or order in such action or proceeding, upon such terms as he thinks fit;
- (k) execute and sign all deeds, instruments, and other documents;
- (l) complete any contract entered into prior to his appointment, or enter into any agreement terminating such contract, or any liability thereunder;
- (m) take proceedings to cause a person to be adjudicated a bankrupt or a company to be placed in liquidation, and vote and act, either personally or by proxy, at meetings of creditors or shareholders, whether the company be in liquidation or not;
- (n) pay such sum or sums for the maintenance of any person (and, in the event of death, for funeral expenses), and for the maintenance of the person's spouse, de facto partner or any child, parent or other person dependent on the person, and for the education of the person's children, as to the Public Trustee seems expedient and reasonable;
- (na) pay such sum or sums for the education of the beneficiary of a trust of which the Public Trustee is trustee as to the Public Trustee seems expedient and reasonable;
- (o) exercise powers of appointment and give consents as fully and effectually as the person he represents could have exercised or given;
- (p) insure against fire, accident, loss or damage any property; (Where he holds any life policy, and there are not sufficient funds to keep the same on foot, he may

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surrender such policy and accept in lieu thereof a fully paid-up policy.);

- (q) expend money for the repair, maintenance, upkeep or renovation of any property;
- (r) generally do all acts and exercise all powers with respect to the estate or person as effectually and in the same manner as the person whom he represents himself might have done;
- (s) do all matters necessary or incidental to the performance of any of the abovementioned matters, and apply any moneys which it is necessary to apply.

(2) Provided that, unless under the express authority of this Act or of any instrument or an order of the Court, or except when acting as executor or administrator for the purpose of administration or performing a function or exercising an authority referred to in Schedule 5 clause 1(1) or (2) or 2(1) or (2) of the Guardianship and Administration Act 1990, the Public Trustee shall not under paragraph (e) aforesaid —

- (a) sell real property of a greater value than \$50 000;
- (b) exchange real property of a greater value than \$25 000, or join in a partition in which the interest of any person entitled thereunder exceeds \$25 000;
- (c) borrow money to an amount exceeding \$20 000.

~~(2a) The Public Trustee may only exercise the power to purchase land conferred by subsection (1)(ea) —~~

~~(a) after obtaining and considering a report in terms of subsection (2b) as to the value of the land; and~~

~~(b) where the purchase price does not exceed by more than 5% the value of the land as stated in the report referred to in paragraph (a).~~

~~(2b) A report referred to in subsection (2a)(a) shall —~~

~~(a) be in writing;~~

- ~~(b) be made by a person who is licensed under the *Land Valuers Licensing Act 1978* and who is reasonably believed by the Public Trustee to be experienced in valuation of that kind of land in the area of the State in which it is situate; and~~
- ~~(c) contain a statement as to~~
- ~~(i) the value of the land;~~
  - ~~(ii) the actual or potential income from the land; and~~
  - ~~(iii) the prospective outgoings on the land.~~
- ~~(2e) Where the Public Trustee purchases land in exercise of the power conferred by subsection (1)(ea) he shall not be chargeable with breach of trust by reason only of the relation borne by the purchase price to the value of the land if he has complied with subsection (2a).~~

~~[(2a)-(2c) repealed]~~

- (3) In the event of the execution or signature by the Public Trustee of any deeds, instruments (including instruments under the *Transfer of Land Act 1893*), transfers of shares, receipts, releases, and other documents, they shall be as effectual as if executed or signed by the person whom he represents and shall be acted upon by the Registrar of Titles and all other persons without any obligation to inquire as to the authority or powers of the Public Trustee.
- (4) This section does not apply where the Public Trustee is the administrator of the estate of a represented person.

*[Section 49 amended by No. 113 of 1965 s. 8; No. 46 of 1984 s. 9; No. 24 of 1990 s. 123; No. 3 of 2002 s. 100; [No. 9 of 2008 s. 30.](#)]*

## 50. Appointment and duties of agent

- (1) The Public Trustee may appoint any person to act as his agent. At the request of the Public Trustee any registrar of the

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Magistrates Court, and any other officer of the State, shall act as such agent within his district, and with, under and subject to such powers, conditions, and limitations as are contained in such appointment.

- (2) Every such agent, not being a registrar of the Magistrates Court, or other officer of the State shall, if required by the Public Trustee, give such security for the due performance of his duties as the Public Trustee thinks proper and sufficient.

*[Section 50 amended by No. 59 of 2004 s. 141.]*

**51. No bond required from Public Trustee**

No bond or other security shall be required from the Public Trustee in relation to his appointment to, or acting in any office or capacity pursuant to, this Act or the *Guardianship and Administration Act 1990*.

Notwithstanding any Act, rule, or practice to the contrary it shall not be necessary for the Public Trustee to file any accounts in the Registry of the Court or with the Guardianship and Administration Board under the *Guardianship and Administration Act 1990*.

*[Section 51 amended by No. 24 of 1990 s. 123.]*

**52. Public Trustee may sue himself in different capacities**

Notwithstanding any rule of law or practice to the contrary, the Public Trustee, acting in one capacity, may commence proceedings in his corporate name against himself acting in another capacity: Provided that in every such case the Public Trustee shall obtain the directions of the Court as to how the opposing interests are to be represented.

**[53. Employment of solicitors by Public Trustee**

- ~~(1) The Public Trustee may, as hereinafter provided, employ such solicitors, counsel, bankers, accountants, and brokers or other persons as he considers necessary.~~

~~In determining the persons to be so employed in relation to any trust, he shall have regard to the interests of the trust, but subject to this shall, whenever practicable, take into consideration the wishes of the creator of the trust and of the other trustees (if any), and of the beneficiaries, either expressed or as implied by the practice of the creator of the trust, or in the previous management of the trust.~~

~~(2) The Public Trustee shall be guided by the following principles in regard to the employment of solicitors to conduct legal business arising in connection with the performance of his duties, including applications for probate or administration—~~

~~(a) if there is a named solicitor, the Public Trustee shall employ such solicitor;~~

~~(b) if a solicitor's name is indorsed on the document from which the Public Trustee derives his authority to act, the Public Trustee shall, subject to the provision of the next succeeding paragraph, employ such solicitor;~~

~~(c) if the Public Trustee is satisfied that the testator, settlor, or other person signing the will, deed of settlement, or other document from which the Public Trustee derives his authority to act had a usual solicitor, the Public Trustee shall employ such solicitor, and if such will, deed or other document is indorsed with the name of another solicitor, the Public Trustee may employ such usual solicitor in preference to the solicitor whose name is so indorsed;~~

~~(d) when the Public Trustee is the administrator of the estate of a represented person the Public Trustee shall, as far as practicable, employ the usual solicitor, if any, of that represented person.~~

~~In this subsection—~~

~~**“named solicitor”** means a solicitor as to whom the testator, settlor, or other person signing a will, deed of settlement, or other document from which the Public Trustee derives his~~

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~~authority to act has in such document expressed a desire that such solicitor should be employed to conduct any legal business arising in connection with the estate or subject matter of such document.~~

~~“usual solicitor” means a solicitor as to whom the Public Trustee is satisfied that the testator, settlor, or other person signing a will, deed of settlement, or other document from which the Public Trustee derives his authority to act habitually employed such solicitor to conduct legal business for him.~~

~~(3) Notwithstanding anything hereinbefore contained—~~

~~(a) a solicitor entitled to be employed by the Public Trustee may, upon cause shown, be removed by order of the Court, upon the application of the Public Trustee or of any person interested in the estate or property; and~~

~~(b) with regard to any particular piece of legal business the Public Trustee, if he considers that it would be unreasonable to employ a solicitor to conduct such piece of business, need not employ a solicitor to conduct such piece of business.~~

~~[Section 53 amended *Repealed* by No. 249 of 1990/2008 s. 123; No. 73 of 1994 s. 431.]~~

**54.        Deposit of wills and other documents**

- (1) Any testator may deposit his will in the Office of the Public Trustee for safe custody or for acceptance or rejection after death.
- (2) Any person who has in his custody or control any testamentary paper of any insane patient, insane person, or represented person, may deposit the same in the Office of the Public Trustee upon oath, as he may direct, there to remain for safe custody.
- (3) If the will is deposited for safe custody then, after the death of the testator, the Public Trustee shall deliver the same to such person as the testator may have directed in writing or, in the

absence of such direction, to such person as the Public Trustee thinks entitled thereto.

- (4) Any person may deposit any trust instrument, debenture or other interest bearing security or documents of title to property.

*[Section 54 amended by No. 24 of 1990 s. 123.]*

**55. Inquiries as to property**

- (1) The Public Trustee shall be entitled to require all persons to deliver, convey, transfer, or assign to him all property to which he is entitled.
- (2) For the purpose of ascertaining whether any person is possessed of or entitled to any property which should be so delivered, conveyed, transferred, or assigned, the Public Trustee may institute such inquiries as he thinks proper, and may, by summons under his hand, require any person to appear before him and answer all questions that he may put to such person with reference to any property.
- (3) If any person fails to so deliver, convey, or transfer all property as aforesaid, or if the procedure in the last preceding subsection provided fails to elicit the particulars required, the Public Trustee may take out a summons requiring such person, or any person who may be supposed to be in possession of information relevant to the matter under investigation, to appear before the Court for the purpose of being examined touching such matters, and to produce any documents.
- (4) If the Court is of the opinion that any such person is possessed of or entitled to any property that should be so delivered, conveyed, transferred, or assigned as aforesaid, the Court may make an order requiring such person to deliver, convey, transfer, or assign all such property within such time as the Court may fix. Such order may be made in the absence of the person summoned, if the summons has been duly served upon him, or the Court is satisfied that reasonable efforts have been made to serve the same.

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- (5) The Court may order such person to pay all expenses of and incidental to such summons and any examination consequent thereon; and if the Court does not so order, then such expenses shall be paid out of the general funds of the estate concerned in priority to all other claims, or if the Court so orders, out of any particular portion of such funds.
- (6) Any person who, without valid excuse, fails to attend pursuant to such summons, or who, upon attending refuses to be sworn or neglects to answer any relevant question put to him by or on behalf of the Public Trustee, or who, having been summoned to produce any documents, fails to produce the same without valid excuse, or, if so required by the Court, to hand such documents over to the Public Trustee, or who disobeys any order made by the Court upon the hearing of such summons, shall be guilty of contempt of court; and the Court may make an order for the arrest of such person and his imprisonment, either for such period as the Court thinks fit or until he has purged his contempt to the satisfaction of the Court. The Court may also order such person to pay the expenses of such proceedings.
- (7) Any such person wilfully neglecting to comply with this section shall be liable to a penalty not exceeding \$400, to be recoverable by civil action, at the suit of the Public Trustee.
- (8) In this section the term “*documents*” includes books, papers, deeds, documents, and any writings whatsoever.

*[Section 55 amended by No. 113 of 1965 s. 8.]*

**56. Remedy against Public Trustee**

- (1) Subject to this Act, where any person, by act or thing done or omitted by the Public Trustee, or by any person acting or *bona fide* assuming to act for him, sustains any injury which would have entitled such person to a remedy in respect thereof, if such act or thing had been done or omitted by a private person, then such person shall be entitled to the same remedy against the Public Trustee in his corporate capacity as he would be entitled



to against a private person and shall be entitled to be indemnified under this Act.

Provided that, where the injury is one to which neither the Public Trustee nor any of his officers or agents has in any way contributed, and which neither he nor any of them could by the exercise of reasonable diligence have averted, the Public Trustee shall not be subject to any liability.

- (2) The Consolidated Account or such other fund as may be prescribed, shall be liable to make good all sums required to discharge any liability of the Public Trustee in his corporate capacity.

[Section 56 amended by No. 6 of 1993 s. 10; No. 77 of 2006 s. 4.]

**57. Public Trustee and officers not personally liable except for fraud or crime**

Neither the Public Trustee nor any officer or servant acting or *bona fide* assuming to act under any of the authorities contained in or conferred by this Act, shall be personally liable for any act or thing done or omitted, unless the liability arises from actual fraud or crime.

**58. Public Trustee may take opinion of Court**

The Public Trustee may, *ex parte*, take the opinion or obtain the direction of the Supreme Court upon any question, whether of law or of fact, arising under this Act, or in the course of his duties, or with respect to the exercise of any of the powers over persons or estates conferred upon him by this Act.

Any such question shall be submitted to a Judge in such manner and at such times as he may direct and shall be accompanied by such statement of facts, documents, and other information as he may require; and the Public Trustee or any one authorised by him shall, if the Judge so desires, attend upon him at such time and place as the Judge may appoint. The Judge may, before

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giving his opinion or direction, require the attendance of or communication with any person interested in the estate, but no such person shall have a right to be heard unless the Judge otherwise directs.

The Judge shall give his opinion or direction to the Public Trustee, who shall thereupon act in accordance with such opinion or direction, and shall, upon the request in writing of any such interested person, communicate to him the effect of such opinion or direction.

**59. Certificate of Public Trustee evidence**

A certificate under the hand of the Public Trustee, and sealed with his seal, certifying the nature of his appointment or authority in relation to any trust or estate in course of administration, and any facts on the happening of which such appointment or authority was made or granted, shall be accepted by all courts, officers, and other persons, whether acting under any Act or not, as sufficient evidence of all the facts therein set forth, without production of any other proof whatever.

**60. Custody of documents**

All documents held by the Public Trustee shall be kept in safe custody, in such manner as he directs, and may be produced or parted with by his authority as and when he thinks proper in the conduct of the business of his office.

**61. Registration of titles**

- (1) The Registrar of Titles shall register transmission of any real property to the Public Trustee, when duly appointed, and register all transfers and other instruments executed by the Public Trustee in the same manner as transmission is now entered up and transfers and other instruments registered.
- (2) Whenever in any case the title of the Public Trustee is defective through the non-existence or non-issue of any instrument of title

which ought to be issued, then the Public Trustee may require the same to be issued to him and the proper officer shall, upon application, issue the same to him accordingly.

*[Section 61 amended by No. 126 of 1987 s. 105.]*

**62. Fees and commissions deemed testamentary expenses**

The fees and commissions charged by the Public Trustee shall be deemed to be a testamentary expense.

**63. Public Trustee to have lien on policy moneys for premiums**

Where the Public Trustee pays any premiums in respect of any policy of insurance, he shall have a lien on the policy moneys for the amount of the premium so paid, together with interest thereon.

**64. Regulations**

The Governor in Council may from time to time make regulations with respect to all or any of the following matters —

- (a) The conduct of the business of the Public Trust Office.
- (b) Determining the powers and duties of the officers, servants, and persons employed therein.
- (c) The custody of all the property placed therein and the trust instruments and the instruments of title relating thereto; the establishment of a public safe deposit.
- (d) The receipt and payment of moneys under this Act.
- (e) Establishing, keeping, rendering, and auditing of accounts under this Act.
- (f) Transfers of property to and from the Public Trustee under this Act.
- (g) The forms of mortgages, leases, certificates, and other official instruments and documents to be used in the conduct of the business of the Public Trustee.

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- (h) Fixing scales of fees, commissions, and charges to be made by the Public Trustee under this Act.
- (i) Specifying the matters or services for which charges may be made by the Public Trustee or in respect of which remuneration shall be payable to him and fixing by scale or otherwise the amounts thereof or empowering the Public Trustee so to do.
- (j) The payment of profits or other moneys to the Consolidated Account or other accounts.
- (k) Any other matter which by this Act is expressed to be prescribed, or any matter, object, or purpose which may be deemed necessary for giving full effect to this Act or to the administration of the Public Trust Office.

*[Section 64 amended by No. 6 of 1993 s. 13; No. 77 of 2006 s. 4.]*

**65. Rules of court**

The Court may from time to time make all such rules of court as appear to be necessary or proper with respect to applications, orders, and matters and otherwise for regulating practice, procedure, costs, and fees so as to give full effect to this Act.

**[First Schedule**

[section 3(2)]

~~[Heading inserted repealed by No. 649 of 1968/2008 s. 1932.]~~

<b>Number of Act</b>	<b>Title of Act</b>	<b>Extent of Amendment or Repeal</b>
<del>8 Geo. V 23</del>	<del><i>Curator of Intestate Estates Act 1918</i> (No. 9)</del>	<del>The whole repealed.</del>
<del>12 Geo. V 8</del>	<del><i>Official Trustee Act 1921</i> (No. 8)</del>	<del>The whole repealed.</del>
<del>3 Edw. VII 15</del>	<del><i>Lunacy Act 1903</i> (No. 15)<sup>7</sup></del>	<del>In s. 123:— Par. (1) Delete the words “and patients” in line 3; par. (3) delete the whole.  In s. 124:— Delete the words “or patient” in line 4.  In s. 125:— Delete the words “or patient” in lines 4, 8, and 11; delete the words “whether such patient has been discharged or not” in lines 10 and 11.  In s. 126:— Delete the words “and insane patient” in lines 3 and 4; delete the words “and patients” in line 7; delete the words “or the insane patient dies or is discharged from the hospital or other place in which he is detained” in lines 9 and 10.  In s. 127:— Delete the words “or patient” in lines 10 and 11.  In s. 129:— Delete the words “or patients” in line 6.</del>

<b>Number of Act</b>	<b>Title of Act</b>	<b>Extent of Amendment or Repeal</b>
		Sections 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, and 146 are repealed.
		In s. 183: — Insert in subsection (1) par. (a) the words “and to the Public Trustee” after the word “Master” in the first line.
<del>18 Geo. V 13</del>	<del><i>Mental Treatment Act 1927</i> (No. 13)<sup>7</sup></del>	In s. 6: — Delete the words “the Official Trustee Act, 1921” in lines 5 and 6 and substitute “ <i>The Public Trustee Act 1941</i> ”.
<del>7 Geo. V 29</del>	<del><i>Mental Treatment Act 1917</i> (No. 9)<sup>7</sup>, as amended by the <i>Mental Treatment Act Amendment Act 1919</i> (No. 16)<sup>7</sup></del>	In s. 3: — Insert the words “and the Public Trustee Act 1941,” after the words “Lunacy Act, 1903,” in line 7; delete the words “that Act” in line 8 and substitute the words “those Acts”. Repeal the whole of subsection (2).
<del>3 Edw. VII 13</del>	<del><i>Administration Act 1903</i> (No. 13)</del>	Section 22 is repealed.
<del>3 Geo. V c 50</del>	<del><i>Workers' Compensation Act 1912</i><sup>8</sup></del>	In First Schedule, Clause 5: Delete the words “be invested,” in line 5, and substitute “be ordered to be invested,”.

[*Second-Fifth Schedules repealed by No. 24 of 1990 s. 123.*]

**Sixth Schedule**

[section 40A(1)]

Portion of each of Perth Town Lots 851, B4, B9, B9½ and B14 and being Lot 22 the subject of diagram 39052 being the whole of the land in Certificate of Title Volume 541 Folio 28A.

*[Sixth Schedule inserted by No. 19 of 1982 s. 3.]*

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**Notes**

<sup>1</sup> This is a compilation of the *Public Trustee Act 1941* and includes the amendments made by the other written laws referred to in the following table<sup>1a-9</sup>. The table also contains information about any reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Public Trustee Act 1941</i>	26 of 1941	8 Dec 1941	1 Jul 1942 (see s. 1(2) and <i>Gazette</i> 26 Jun 1942 p. 689)
<i>Public Trustee Act Amendment Act 1947</i>	12 of 1947	1 Nov 1947	1 Nov 1947
<i>Public Trustee Act Amendment Act 1950</i>	7 of 1950	15 Nov 1950	15 Nov 1950
<i>Public Trustee Act Amendment Act 1953</i>	19 of 1953	7 Dec 1953	7 Dec 1953
<i>Public Trustee Act Amendment Act 1962</i>	34 of 1962	29 Oct 1962	1 Jul 1966 (see s. 2 and <i>Gazette</i> 4 Mar 1966 p. 589)
<i>Public Trustee Act Amendment Act 1964</i>	48 of 1964	19 Nov 1964	19 Nov 1964
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
<i>Public Trustee Act Amendment Act 1968</i>	64 of 1968	18 Nov 1968	18 Nov 1968
<b>Reprint of the <i>Public Trustee Act 1941</i> approved 19 Mar 1969 in Vol. 22 of Reprinted Acts</b> (includes amendments listed above)			
<i>Public Trustee Act Amendment Act 1972</i>	28 of 1972	9 Jun 1972	1 Jul 1972 (see s. 2 and <i>Gazette</i> 30 Jun 1972 p. 2098)
<i>Public Trustee Act Amendment Act 1975</i>	1 of 1975	9 May 1975	9 May 1975
<i>Public Trustee Act Amendment Act 1978</i>	25 of 1978	18 May 1978	Act other than s. 3, 4 and 6: 18 May 1978 (see s. 2(1)); s. 3, 4 and 6: 1 Jul 1978 (see s. 2(2) and <i>Gazette</i> 16 Jun 1978 p. 1872)
<i>Acts Amendment (Master, Supreme Court) Act 1979</i> Pt. XIII	67 of 1979	21 Nov 1979	11 Feb 1980 (see s. 2 and <i>Gazette</i> 8 Feb 1980 p. 383)



Short title	Number and year	Assent	Commencement
<b>Reprint of the <i>Public Trustee Act 1941</i> approved 4 Feb 1981</b> (includes amendments listed above)			
<i>Public Trustee Amendment Act 1982</i>	19 of 1982	27 May 1982	27 May 1982
<i>Public Trustee Amendment Act 1984</i> <sup>10</sup>	46 of 1984	5 Sep 1984	1 Oct 1984 (see s. 2 and <i>Gazette</i> 28 Sep 1984 p. 3153)
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> s. 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Public Trustee Amendment Act 1986</i>	23 of 1986	25 Jul 1986	5 Sep 1986 (see s. 2 and <i>Gazette</i> 5 Sep 1986 p. 3265)
<i>Acts Amendment (Land Administration) Act 1987</i> Pt. XII	126 of 1987	31 Dec 1987	16 Sep 1988 (see s. 2 and <i>Gazette</i> 16 Sep 1988 p. 3637)
<i>Public Trustee Amendment Act 1989</i> <sup>11</sup>	10 of 1989	2 Nov 1989	30 Nov 1989
<i>Guardianship and Administration Act 1990</i> s. 123	24 of 1990	7 Sep 1990	20 Oct 1992 (see s. 2 and <i>Gazette</i> 2 Oct 1992 p. 4811)
<i>Financial Administration Legislation Amendment Act 1993</i> s. 10, 11 and 13	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<b>Reprint of the <i>Public Trustee Act 1941</i> as at 8 Sep 1993</b> (includes amendments listed above)			
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 3(2)	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Statutes (Repeals and Minor Amendments) Act 1994</i> s. 4	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Guardianship and Administration Amendment Act 1996</i> s. 39	7 of 1996	24 May 1996	1 Jul 1996 (see s. 2 and <i>Gazette</i> 28 Jun 1996 p. 3014)
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Trustees Amendment Act 1997</i> s. 18	1 of 1997	6 May 1997	16 Jun 1997 (see s. 2 and <i>Gazette</i> 10 Jun 1997 p. 2661)

**Public Trustee Act 1941**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 100	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Workers' Compensation and Rehabilitation Amendment Act 1999</i> s. 61	34 of 1999	5 Oct 1999	15 Oct 1999 (see s. 2(2) and <i>Gazette</i> 15 Oct 1999 p. 4889)
<i>Trustee Legislation (GST Consequential Amendments) Act 2000</i> Pt. 2	67 of 2000	4 Dec 2000	4 Dec 2000 (see s. 2)
<b>Reprint of the Public Trustee Act 1941 as at 4 May 2001</b> (includes amendments listed above)			
<i>Acts Amendment (Lesbian and Gay Law Reform) Act 2002</i> Pt. 18	3 of 2002	17 Apr 2002	21 Sep 2002 (see s. 2 and <i>Gazette</i> 20 Sep 2002 p. 4693)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 95 <sup>12</sup>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Workers' Compensation Reform Act 2004</i> s. 175	42 of 2004	9 Nov 2004	4 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Statute Law Revision Act 2006</i> s. 7	37 of 2006	4 Jul 2006	4 Jul 2006 (see s. 2)
<b>Reprint 5: The Public Trustee Act 1941 as at 11 Aug 2006</b> (includes amendments listed above)			
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4 and 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Wills Amendment Act 2007</i> s. 25	27 of 2007	26 Oct 2007	9 Feb 2008 (see s. 2 and <i>Gazette</i> 8 Feb 2008 p. 313)

<sup>1a</sup> ~~On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.~~

**Provisions that have not come into operation**

Short title	Number and year	Assent	Commencement
<i>Public Trustee and Trustee Companies Legislation Amendment Act 2008</i> Pt. 2 <sup>13</sup>	9 of 2008	31 Mar 2008	<del>To be proclaimed</del> 1 Jul 2008 (see s.-2(2)) and <i>Gazette</i> 24 Jun 2008 p. 2885)

- <sup>2</sup> Repealed in First Schedule to this Act.
- <sup>3</sup> The *Administration Act 1903* s. 22 was repealed by the *Public Trustee Act 1941* s. 3.
- <sup>4</sup> Repealed by the *Liquor Act 1970* which was repealed by the *Liquor Licensing Act 1988*.
- <sup>5</sup> Title now Liquor Licensing Court.
- <sup>6</sup> Repealed by the *Unclaimed Money Act 1990* s. 24.
- <sup>7</sup> Repealed by the *Mental Health Act 1962* which was repealed by the *Mental Health (Consequential Provisions) Act 1996*.
- <sup>8</sup> Repealed by the *Workers' Compensation and Rehabilitation Act 1981* s. 194 which is now known as the *Workers' Compensation and Injury Management Act 1981*.
- <sup>9</sup> Marginal notes in the *Public Trustee Act 1941* referring to the legislation from which provisions were derived have been omitted from this reprint.
- <sup>10</sup> The *Public Trustee Amendment Act 1984* s. 7(2) reads as follows:
- “
- (2) Without limiting the application of that provision, the power contained in section 38(2b) of the principal Act as inserted by subsection (1)(c) of this section shall extend to fees which, at the commencement of this section, have accrued due but have not been paid.
- ”
- <sup>11</sup> The *Public Trustee Amendment Act 1989* s. 6(2) reads as follows:
- “
- (2) Section 5A of the principal Act as enacted before the commencement of this Act shall continue to apply to any deed or other instrument executed by the Deputy Public Trustee before the commencement of this Act.
- ”

<sup>12</sup> The *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* s. 97 reads as follows:

“

**97. References to Crown Solicitor**

If in a written law or other document or instrument there is a reference to the Crown Solicitor that reference may, where the context so requires, be read as if it had been amended to be a reference to the State Solicitor.

”

<sup>13</sup> ~~On the date as at which this compilation was prepared, the~~ The Public Trustee and Trustee Companies Legislation Amendment Act 2008 Pt. s. 25(2) ~~had not come into operation. It~~  ) reads as follows:

“

~~**Part 2 — Public Trustee Act 1941 amended**~~

~~**3. The Act amended**~~

~~— The amendments in this Part are to the *Public Trustee Act 1941*.~~

~~**4. Part I heading inserted**~~

~~— Before section 1 the following heading is inserted —~~

“

~~**Part I — Preliminary**~~

”

~~**5. Section 1A inserted**~~

~~— After section 1 the following section is inserted —~~

“

~~**1A. Object**~~

~~— The object of this Act is to provide community services in respect of trusts, estates and related matters.~~

”

~~**6. Section 2 amended**~~

~~— Section 2 is amended by inserting the following definitions in the appropriate alphabetical positions —~~

“

- ~~“certificated practitioner” has the meaning given to that term in section 3 of the *Legal Practice Act 2003*.~~
- ~~“client” means—~~
  - ~~(a) a beneficiary of the estate of a deceased person which is administered by the Public Trustee;~~
  - ~~(b) the donor of a power of attorney, including an enduring power of attorney, under which the Public Trustee is the donee or substitute donee;~~
  - ~~(c) a person who appoints the Public Trustee to be the executor of the person’s will;~~
  - ~~(d) a person on whose behalf moneys are invested in a Fund;~~
  - ~~(e) a beneficiary of a trust administered by the Public Trustee;~~
  - ~~(f) a person who has appointed the Public Trustee to act as the person’s agent; or~~
  - ~~(g) a member of a class of persons prescribed by the regulations.~~
- ~~“Common Account” means the account established and continued under section 39A(1).~~
- ~~“current agreement” means the agreement entered into under section 6B(1) that is currently in force.~~
- ~~“Fund” means the Common Account or a strategic common account.~~
- ~~“reserve fund” means a fund established under section 44A.~~
- ~~“strategic common account” means an account established under section 39B(1).~~
- ~~“Treasurer’s guidelines” means guidelines issued by the Treasurer under section 47B(2).~~

”.

~~7. Section 3 amended~~

~~Section 3(2) is repealed.~~

~~8. Part I heading replaced~~

~~The Part heading before section 4 is deleted and the following heading is inserted instead—~~

“

~~**Part IA—The Public Trustee**~~

”.

~~9. Section 4 amended~~

~~After section 4(2) the following subsection is inserted—~~

~~“~~

~~(3) The Public Trustee is an agent of the Crown in right of the State and enjoys the status, immunities and privileges of the Crown.~~

~~”~~

~~10. Section 5 amended~~

~~Section 5(1) is amended by deleting “referred to in section 6”.~~

~~11. Sections 6A and 6B inserted~~

~~After section 6 the following sections are inserted in Part IA—~~

~~“~~

~~6A. Use of other government staff, etc.~~

~~(1) The Public Trustee may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee—~~

- ~~(a) in the Public Service;~~
- ~~(b) in a State agency or instrumentality; or~~
- ~~(c) otherwise in the service of the Crown in right of the State.~~

~~(2) The Public Trustee may by arrangement with—~~

- ~~(a) a department of the Public Service; or~~
- ~~(b) a State agency or instrumentality;~~

~~make use of any facilities of the department, agency or instrumentality.~~

~~(3) An arrangement under subsection (1) or (2) shall be made on such terms as are agreed to by the parties.~~

~~6B. Management and performance~~

~~(1) The Minister and the Public Trustee are to enter into a written agreement for each 12-month period in relation to matters prescribed by the regulations.~~

~~(2) A current agreement may provide for any or all of the following—~~

- ~~(a) the determination of a scale of fees under section 38A(1);~~
- ~~(b) the proportion of fees received by the Public Trustee to be credited to the Consolidated Account;~~

- ~~— (c) — the circumstances in which moneys may be transferred to or from a reserve fund;~~
- ~~— (d) — the uses to which moneys in a reserve fund may be put.~~
- ~~(3) — The annual report of the Public Trustee submitted under the *Financial Management Act 2006* shall include —~~
  - ~~— (a) — a summary of the current agreement; and~~
  - ~~— (b) — a report on the Public Trustee’s performance in relation to matters required by the current agreement to be reported on in the annual report.~~
- ~~(4) — The first current agreement shall be effective on and from the day on which section 11 of the *Public Trustee and Trustee Companies Legislation Amendment Act 2008* comes into operation.~~
- ~~(5) — If a current agreement (other than the first agreement) has not been made in respect of a 12 month period then on the commencement of that period the provisions of the current agreement for the previous 12 month period apply, to the extent that the provisions are relevant, until a current agreement is made for the first mentioned period.~~
- ~~(6) — A current agreement is not legally enforceable.~~

”.

**12. — Heading to Part II Division (1) replaced**

~~— The heading to Part II Division (1) is deleted and the following heading is inserted instead —~~

“

**Division 1 — General**

”.

**13. — Heading to Part II Division (2) replaced**

~~— The heading to Part II Division (2) is deleted and the following heading is inserted instead —~~

“

**Division 2 — Public Trustee as executor or administrator**

”.

**14. — Section 12A inserted**

~~— After section 12 the following section is inserted —~~

“

**12A. Public Trustee's powers on appointment as agent of executor, administrator, etc.**

- ~~In addition to the Public Trustee's powers under section 12, if~~
- ~~(a) a person who is an executor or administrator appoints the Public Trustee as the person's agent to act as executor or administrator in the place of the person;~~
  - ~~(b) a person who may be entitled to apply for a grant of probate appoints the Public Trustee as the person's agent to apply for a grant of probate;~~
  - ~~(c) a person who may be entitled to obtain administration (with the will of a testator annexed) of the testator's estate appoints the Public Trustee as the person's agent to apply for an order to administer the estate; or~~
  - ~~(d) a person who is referred to in section 25 of the Administration Act 1903 as a person who may be granted administration of an estate of a person dying intestate appoints the Public Trustee as the person's agent to apply for an order to administer the estate,~~
- ~~the Public Trustee, if so appointed by power of attorney or other instrument of appointment, may act within the scope of the authority conferred on the Public Trustee as effectually as the person could have acted and may exercise all discretionary and other powers delegated by the principal as fully as the principal could have exercised them.~~

”.

**15. Section 14 amended**

- ~~(1) Section 14(1) is amended by deleting “\$10 000” and inserting instead~~  
~~“ the prescribed amount ”.~~
- ~~(2) Section 14(4) is amended by deleting “sum of \$10 000,” and inserting instead~~  
~~“ prescribed amount, ”.~~
- ~~(3) After section 14(5) the following subsection is inserted~~

“

- ~~(6) In this section~~



~~—“prescribed amount” means the amount prescribed for the purposes of section 10 of the *Trustee Companies Act 1987* for the relevant time.~~

~~”.~~

~~16. Section 18 amended~~

~~Section 18 is amended by deleting “\$1 000, he” and inserting instead—~~

~~“ \$5 000, the Public Trustee ”.~~

~~17. Heading to Part II Division (3) replaced~~

~~The heading to Part II Division (3) is deleted and the following heading is inserted instead—~~

~~“~~

~~Division 3—Public Trustee as trustee~~

~~”.~~

~~18. Section 22A inserted~~

~~After section 22 the following section is inserted—~~

~~“~~

~~22A. Public Trustee’s powers on appointment as trustee’s agent~~

~~If a person who is a trustee appoints the Public Trustee as the person’s agent to act as trustee in the place of the person, the Public Trustee, if so appointed by power of attorney or other instrument of appointment, may act within the scope of the authority conferred on the Public Trustee as effectually as the person could have acted and may exercise all discretionary and other powers delegated by the principal as fully as the principal could have exercised them.~~

~~”.~~

~~19. Heading to Part II Division (4) replaced~~

~~The heading to Part II Division (4) is deleted and the following heading is inserted instead—~~

~~“~~

~~Division 4—Estates of represented persons~~

~~”.~~

**20. ~~Section 29 amended~~**

~~Section 29(4) is repealed and the following subsections are inserted instead —~~

~~“~~

~~(4) Where at the death of a represented person money is standing to his credit, the Public Trustee may, at his discretion, pay that money or pay from that money any amount for or towards the funeral expenses, the debts of the represented person and expenses and fees incurred in performing functions vested in the Public Trustee under an administration order as defined in section 3(1) of the *Guardianship and Administration Act 1990* relating to the represented person.~~

~~(5) Subject to subsection (4), where in relation to the estate of a represented person, letters of administration have not been granted or probate has not issued and legal proof is not given of the right or title of the person claiming, the Public Trustee may, at his discretion, pay the money standing to credit of a represented person, or the balance of that money, and hand over property forming the whole or part of the estate, to any person claiming as entitled in the distribution of the estate or as a beneficiary under the will of the represented person so long as the money paid or the value of the property handed over does not exceed the prescribed amount as defined in section 14(6).~~

~~”~~

**21. ~~Heading to Part II Division (5) replaced~~**

~~The heading to Part II Division (5) is deleted and the following heading is inserted instead —~~

~~“~~

~~**Division 5 — Powers and duties of Public Trustee as to moneys subject to court and other orders**~~

~~”~~

**22. ~~Heading to Part II Division (6) replaced~~**

~~The heading to Part II Division (6) is deleted and the following heading is inserted instead —~~

~~“~~

~~**Division 6 — Powers and duties of Public Trustee as to uncaared for property**~~

~~”~~

~~23. Part II Division 7 inserted~~

~~After section 37A the following Division is inserted in Part II~~

“

~~Division 7—Other services~~

~~37B. Term used in this Division~~

~~In this Division~~

~~“investment management services” includes any of the following~~

- ~~(a) assisting clients to ascertain their investment objectives, financial situations, risk profiles and particular investment needs;~~
- ~~(b) setting investment policies and objectives for clients;~~
- ~~(c) holding money for investment on behalf of clients;~~
- ~~(d) engaging and retaining suitably qualified financial planners or investment managers for clients;~~
- ~~(e) subscribing to, buying or selling securities and other investments, or accepting new issue entitlements, on behalf of clients;~~
- ~~(f) collecting interest, dividends and other income on behalf of clients;~~
- ~~(g) reviewing a client’s investment portfolio from time to time;~~
- ~~(h) providing accounting information to clients on a regular basis in relation to their investments.~~

~~37C. Provision of services~~

~~(1) The Public Trustee may do any of the following~~

- ~~(a) assist an executor or administrator of a deceased’s estate in exercising or performing any power or duty of the executor or administrator in relation to the administration of the estate;~~
- ~~(b) provide estate planning services to a client or a person who is contemplating appointing the Public Trustee to be the executor of the person’s will;~~
- ~~(c) provide investment management services in relation to investments, whether or not in a Fund;~~

~~and do such things as are necessary for the provision of that assistance or service.~~

- ~~—(2) The Public Trustee is entitled to charge and receive fees and remuneration and recover disbursements for the provision of the assistance or services referred to in subsection (1).~~
- ~~—(3) The Public Trustee may continue to provide the assistance or services referred to in subsection (1) to a person who was a client even though the person is no longer a client.~~
- ~~—(4) Nothing in this Division shall be read as limiting any power that the Public Trustee otherwise has, whether under this Act or any other written law, a court order or an authorisation in an instrument, to invest property other than by way of investment in a Fund.~~

”

~~24. Section 38 replaced by sections 38, 38A and 38B~~

~~Section 38 is repealed and the following sections are inserted instead—~~

“

~~38. Term used in this Part~~

~~In this Part—~~

~~“fees” includes commissions and other charges.~~

~~38A. Scale of fees~~

- ~~—(1) The Public Trustee shall from time to time, in accordance with the current agreement, determine a scale of fees for a function performed, or a service provided, by the Public Trustee under this Act or any other written law.~~
- ~~—(2) A scale of fees has no effect unless it is published in the *Gazette*.~~
- ~~—(3) The Public Trustee shall ensure that the first scale of fees is effective on and from the day on which section 24 of the *Public Trustee and Trustee Companies Legislation Amendment Act 2008* comes into operation.~~
- ~~—(4) The Public Trustee may fix and set out in the scale of fees different rates of fees that may be charged as remuneration in respect of different classes of estate and the time and manner of charging such fees.~~
- ~~—(5) The *Interpretation Act 1984* section 42 applies to and in relation to a scale of fees as if the scale of fees were regulations made under this Act.~~

**38B. — Public Trustee's entitlement to fees and expenses**

- ~~— (1) — The Public Trustee is entitled to charge as remuneration for the functions and services referred to in section 38A(1) fees not exceeding those fixed from time to time by the Public Trustee and set out in the latest published scale of fees before the Public Trustee commences to perform the function or provide the service.~~
- ~~— (2) — Nothing in this section prevents —
  - ~~— (a) — the payment of any fees that a testator in his will has directed to be paid; or~~
  - ~~— (b) — the payment of any fees that have been agreed on between the Public Trustee and a person for whom the Public Trustee performs a function or provides a service under this Act or any other written law,~~~~— either in addition to or instead of the fees provided for by this section.~~~~
- ~~— (3) — Nothing in this section prevents the Public Trustee from being reimbursed for all expenses properly incurred by the Public Trustee in the administration or management of an estate.~~
- ~~— (4) — Any fees charged by the Public Trustee in accordance with this section are payable out of the capital or income of the estate.~~
- ~~— (5) — Any fees which the Public Trustee is entitled to receive in respect of an estate may be paid or deducted out of the estate, in accordance with the time and manner provided for in the latest scale of fees of the Public Trustee published before the commencement of the administration or management of the estate, at any time after the commencement of the administration or management of the estate.~~
- ~~— (6) — In addition to the fees chargeable under this section, the Public Trustee may, in respect of any estate, charge and receive a reasonable fee or remuneration for work involved in the preparation and lodging of returns for the purpose of or in connection with assessments of any duties or taxes (other than probate, death, succession or estate duties).~~
- ~~— (7) — The published scale of fees of the Public Trustee must include a statement to the effect that the Public Trustee may in addition to fees chargeable under this section charge a fee for work involved in the preparation and lodging of returns for the purpose of or in connection with assessments of any duties or taxes (other than probate, death, succession or estate duties).~~

- ~~—(8) There shall not be any fee payable to the Public Trustee in respect of income earned by an estate by way of interest payable to the estate under section 39A(7).~~
- ~~—(9) Where in a particular case the Public Trustee is satisfied that there is proper cause, the Public Trustee may waive, either wholly or in part, any fees determined under this Act.~~
- ~~—(10) The incidence of fees under this section, as between corpus and income, shall be determined by the Public Trustee.~~
- ~~—(11) If immediately before the day on which section 24 of the *Public Trustee and Trustee Companies Legislation Amendment Act 2008* comes into operation the Public Trustee is responsible for performing a function or providing a service of a type referred to in section 38A(1), on or after that day the Public Trustee is entitled to charge as remuneration for performing the function or providing the service fees set out in the first scale of fees referred to in section 38A(3).~~

”

~~25. Section 40 replaced by sections 39A to 40, and transitional~~

- ~~—(1) Section 40 is repealed and the following sections are inserted instead—~~

“

~~39A. The Common Account~~

- ~~—(1) The Common Account is established and—
  - ~~—(a) is a continuation of the Common Account referred to in section 40(1) of this Act immediately before the day on which section 25 of the *Public Trustee and Trustee Companies Legislation Amendment Act 2008* comes into operation; and~~
  - ~~—(b) is, on and from that day to be treated as a Fund as defined in section 2.~~~~
- ~~—(2) The Common Account is an agency special purpose account under the *Financial Management Act 2006* section 16.~~
- ~~—(3) In addition to any other investments that the Public Trustee is authorised to make from the Common Account, the Public Trustee may, with the prior approval of the Minister, invest a portion of the moneys standing to the credit of the Common Account in acquiring vacant land and erecting a building on the land or in acquiring land for the purpose of—~~

- 
- ~~— (a) — providing office accommodation for the Public Trustee and persons appointed under this Act; and~~
  - ~~— (b) — leasing to other persons approved by the Minister portions of the building;~~
  - ~~— on such terms and conditions and for such periods as the Minister approves.~~
  - ~~— (4) — The Public Trustee may deduct, by way of fees in respect of the management of the Common Account, up to 6.6% of the total interest or income earned by investment of moneys forming part of the Common Account.~~
  - ~~— (5) — The Public Trustee shall, in accordance with the current agreement, fix from time to time and publish in the *Gazette* the rate or rates of interest payable to the respective estates the moneys of which form part of the Common Account.~~
  - ~~— (6) — The Public Trustee may fix different rates of interest according to —~~
    - ~~— (a) — the source and nature of the different amounts invested from the Common Account;~~
    - ~~— (b) — the period for which those amounts are so invested; and~~
    - ~~— (c) — such other matters as the Public Trustee considers relevant having regard to the circumstances.~~
  - ~~— (7) — The interest payable to the respective estates the moneys of which form part of the Common Account, at the appropriate rate fixed under subsection (5), shall be credited to those estates half yearly on the first day of the months of April and October in each year.~~
  - ~~— (8) — Any balance of the interest received from investments of moneys forming part of the Common Account may be credited to a reserve fund after deduction of —~~
    - ~~— (a) — fees in accordance with subsection (4); and~~
    - ~~— (b) — payments under subsection (7).~~
  - ~~— (9) — Moneys expressly directed to be invested otherwise than in the Common Account shall not form part of the Common Account and the Public Trustee may invest those moneys in accordance with such direction.~~
  - ~~— (10) — Any loss or deficiency in respect of any investment made under subsection (9), or of the money received from or realised by such an investment, shall be borne by the trust or estate to which such moneys belong, or, if received or realised, would belong.~~

**39B. — Establishment of strategic common accounts**

- ~~— (1) The Public Trustee may establish and keep separately one or more accounts to be called a “strategic common account”.~~
- ~~— (2) Each strategic common account is to have a distinguishing name or number.~~
- ~~— (3) Each strategic common account is an agency special purpose account under the *Financial Management Act 2006* section 16.~~

**39C. — Power to invest moneys**

- ~~— (1) The Public Trustee may invest moneys held by the Public Trustee in the course of administering, holding, managing or controlling an estate in any capacity and properly available for investment —
  - ~~— (a) in a Fund; or~~
  - ~~— (b) as trust funds may be invested under Part III of the *Trustees Act 1962*.~~~~
- ~~— (2) Nothing in subsection (1) authorises the investment of moneys if investment of the moneys is contrary to the terms or conditions of the instrument of appointment, the instrument creating the trust or any other instrument or order affecting the holding of the moneys by the Public Trustee.~~

**39D. — Power to invest, and restrictions on investment of, Fund moneys**

- ~~— The Public Trustee may invest the moneys standing to the credit of a Fund but only —
  - ~~— (a) as trust funds may be invested under Part III of the *Trustees Act 1962*; and~~
  - ~~— (b) in accordance with the Treasurer’s guidelines.~~~~

**39E. — How Fund moneys are to be invested, distributed etc.**

- ~~— (1) Investments made from moneys standing to the credit of a Fund shall not be made in the name or on account of, and shall not belong to, any particular estate but are to be held by the Public Trustee proportionately having regard to the proportion which the amount invested in relation to each estate bears to the total amount invested in the Fund in relation to all participating estates.~~
- ~~— (2) At least once every 3 months, the Public Trustee shall distribute to the separate account of each estate participating in a strategic common account, in accordance with its proportional interests determined under subsection (1), the amount of any increase or decrease in the value of the investments held by the fund as~~



determined either by independent valuation or estimated by the Public Trustee.

- ~~— (3) The Public Trustee shall deal with income earned by the Public Trustee in respect of the investment of a strategic common account in the same manner as an investment in a Fund is dealt with and the Public Trustee shall ensure that appropriate records are made in the register of investments and the separate account maintained under section 39F(1) for each participating estate.~~
- ~~— (4) The entitlement of each participating estate to income earned by the Public Trustee in respect of the investment of a Fund shall be calculated on a daily basis from the date of participation to the date of withdrawal.~~
- ~~— (5) The Public Trustee may at any time withdraw from a Fund any amount standing to the credit of an estate in that Fund and shall debit the separate account maintained by the Public Trustee under section 39F accordingly.~~
- ~~— (6) The amount standing to the credit of an estate in a Fund shall be determined for the purposes of withdrawal having regard to distributions made under subsection (2) and to that estate's entitlement to income calculated on a daily basis.~~

~~**39F. Records as to Funds**~~

- ~~— (1) The Public Trustee shall keep a separate account for each estate participating in a Fund, containing a record of the amount and date of each investment made in the Fund in relation to the estate and the current value of the interest of the estate calculated in accordance with section 39E(2).~~
- ~~— (2) The Public Trustee shall maintain a register of investments in respect of each Fund and record in that register—~~
  - ~~— (a) a description sufficient to identify every investment made by the Fund and details of moneys held to the credit of the Fund; and~~
  - ~~— (b) the value, determined either by independent valuation or estimated by the Public Trustee at least once in every 3 months, of every investment held by the Fund.~~

~~**40. Power to enter into portfolio management contracts as to Fund investments**~~

- ~~— (1) The Public Trustee may enter into any contract or arrangement with any person approved by the Treasurer for the management by that person of a class or classes of investment forming part of a Fund.~~

- ~~— (2) — The terms and duration of a proposed contract or arrangement under subsection (1) shall be approved by the Treasurer before the contract or arrangement is entered into.~~
- ~~— (3) — Subject to any relevant Treasurer’s guidelines, the Public Trustee may delegate to a person referred to in subsection (1) all or any of the Public Trustee’s functions under section 39D with respect to all or part of a Fund.~~

~~”~~

- (2) The last rates of interest fixed and published in the *Gazette* before the day on which section 25 of the *Public Trustee and Trustee Companies Legislation Amendment Act 2008* comes into operation are to be taken on and after that day to be the rates fixed and published in the *Gazette* under section 39A(5) of the *Public Trustee Act 1941* until rates are fixed under section 39A(5).

~~26. — Section 40A amended~~

- ~~— (1) — Section 40A(1) is amended as follows:~~
  - ~~— (a) — in the definition of “purchased land” by inserting after “section 40(2a)” —~~

~~“~~

~~— as in force immediately before the commencement of section 25 of the *Public Trustee and Trustee Companies Legislation Amendment Act 2008*~~

~~”~~

- ~~— (b) — in the definition of “unused portion” by deleting “, on the day that the *Public Trustee Amendment Act 1982* comes into operation, not used for the purposes referred to in section 40(2a).” and inserting instead —~~

~~“~~

~~— not used for the purposes referred to in section 39A(3).~~

~~”~~

- ~~— (2) — Section 40A(2) is amended by deleting “section 40(2a)” and inserting instead —~~

~~“ — section 39A(3) — ”.~~

~~27. — Section 44 amended~~

- ~~— After section 44(4) the following subsection is inserted —~~

“

~~(4a) The interest payable under subsection (4) may be debited against an account of the estate in a Fund on the first day of the months of April and October in each year.~~

”

~~28. Section 44A inserted~~

~~After section 44 the following section is inserted~~

“

~~44A. Reserve funds~~

- ~~(1) The Public Trustee may establish one or more reserve funds to which may be credited amounts under this Act or moneys approved by the Minister in the current agreement.~~
- ~~(2) Each reserve fund is to have a distinguishing name.~~
- ~~(3) The Public Trustee may from time to time apply any of the moneys in a reserve fund in accordance with the current agreement.~~
- ~~(4) The Public Trustee shall invest moneys in a reserve fund in the Common Account.~~

”

~~29. Sections 47A and 47B inserted~~

~~After section 47 the following sections are inserted~~

“

~~47A. Fees for preparation of wills and enduring powers of attorney and providing legal services~~

- ~~(1) Despite anything to the contrary in the *Legal Practice Act 2003*, the Public Trustee may charge a fee and recover disbursements for—
  - ~~(a) the preparation of a will or an enduring power of attorney;~~
  - ~~(b) the provision of a legal service to a client; or~~
  - ~~(c) the provision of a legal service in relation to estates and trusts administered by the Public Trustee.~~~~
- ~~(2) Subsection (1)(a) applies only if the will or enduring power of attorney is prepared under the direction and control of a certificated practitioner.~~

~~— (3) — Subsection (1)(b) and (c) apply only if the legal service is provided under the direction and control of a certificated practitioner.~~

~~**47B. — Treasurer’s approvals and guidelines**~~

~~— (1) — An approval given by the Treasurer under section 40(1) or (2) shall be in writing but may otherwise be given when and how the Treasurer determines.~~

~~— (2) — The Treasurer may issue written guidelines to be followed by the Public Trustee for the purposes of section 39D(b) or 40(3) and may, in writing, amend or revoke those guidelines.~~

~~— (3) — Treasurer’s guidelines are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.~~

~~— (4) — If the Treasurer issues, amends or revokes a Treasurer’s guideline, the text of the guideline, amendment or revocation shall be included in the annual report submitted by the accountable authority of the Public Trustee under the *Financial Management Act 2006* section 61.~~

~~”~~

~~**30. — Section 49 amended**~~

~~— (1) — Section 49(1) is amended as follows:~~

~~— (a) — in paragraph (ea) by deleting “subject to subsections (2a) and (2b),”;~~

~~— (b) — after paragraph (n) by inserting the following paragraph —~~

~~“~~

~~— (na) — pay such sum or sums for the education of the beneficiary of a trust of which the Public Trustee is trustee as to the Public Trustee seems expedient and reasonable;~~

~~”~~

~~— (2) — Section 49(2) is amended by inserting before “, the Public Trustee” —~~

~~“~~

~~— or performing a function or exercising an authority referred to in Schedule 5 clause 1(1) or (2) or 2(1) or (2) of the *Guardianship and Administration Act 1990*~~

~~”~~

~~— (3) — Section 49(2a), (2b) and (2c) are repealed.~~

**31. ~~Section 53 repealed~~**

~~Section 53 is repealed.~~

**32. ~~First Schedule repealed~~**

~~The First Schedule is repealed.~~

”