

PUBLIC TRUSTEE.

No. 64 of 1968.

AN ACT to amend the Public Trustee Act, 1941-1964.*[Assented to 18th November, 1968.]*

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title
and citation.

1. (1) This Act may be cited as the *Public Trustee Act Amendment Act, 1968.*

(2) In this Act the Public Trustee Act, 1941-1964, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Public Trustee Act, 1941-1968.

2. Subsection (3) of section one of the principal Act is amended— ^{S. 1} amended.

- (a) by deleting the heading of Division (4) of Part II and substituting a heading as follows—

Division (4).—Powers and Duties of Public Trustee with respect to Estates of Incapable Patients and of Infirm Persons. Ss. 24-36D. ; and

- (b) by adding after the heading, Division (5) of Part II, a heading as follows—

Division (6).—Powers and Duties of Public Trustee with respect to Un-cared-for Property. S. 37A. .

3. Section two of the principal Act is amended— ^{S. 2} amended.

- (a) by adding after the interpretation, “Incapable patient” and interpretation as follows—

“infirm person” means a person—

- (a) proved to the satisfaction of the Public Trustee to be by reason of senility, disease, illness, or physical or mental infirmity, incapable of managing his affairs; and
- (b) certified under this Act by the Public Trustee to be an infirm person for the purposes of this Act, and not subsequently certified under this Act by the Public Trustee not to be, or to have ceased to be, an infirm person;

but does not include an incapable patient. ;

(b) by adding after the interpretation "Master" an interpretation as follows—

"medical practitioner" means a legally qualified medical practitioner registered under the Medical Act, 1894. ;

(c) by adding after the interpretation, "Minister" an interpretation as follows—

"next of kin" with reference to an incapable patient or an infirm person, means any person who would be entitled to the property of the incapable patient or the infirm person or to any share thereof under any law for the distribution of the property of intestates, if the incapable patient or the infirm person were dead intestate. ; and

(d) by substituting for the words, "acting Public Trustee" in line two of the interpretation "Public Trustee", the words, "Deputy Public Trustee when acting in the place of the Public Trustee" .

S. 5
repealed and
re-enacted.

4. Section five of the principal Act is repealed and re-enacted as follows—

Deputy
Public
Trustee.

5. (1) The Governor may, under and subject to the Public Service Act, 1904, appoint a person to be Deputy Public Trustee.

(2) The person who, immediately prior to the date of the coming into operation of the Public Trustee Act Amendment Act, 1968, held the office of Assistant Public Trustee shall on that date be deemed to have been appointed the Deputy Public Trustee under this section.

(3) When and as often as—

- (a) the Public Trustee is incapacitated by illness, absence or other sufficient cause from performing the duties of his office; or
- (b) the office of Public Trustee is for any reason vacant,

the Deputy Public Trustee shall act as, and in the place of, the Public Trustee during his incapacity or during the vacancy in office of the Public Trustee.

(4) The Deputy Public Trustee while acting as Public Trustee has all the powers of, and shall perform all the duties and functions of, the Public Trustee, except the power of delegation conferred by subsection (5) of this section.

(5) The Public Trustee may by instrument in writing under his seal of office—

- (a) delegate to the Deputy Public Trustee all or any of the powers, duties and functions of the Public Trustee under this Act, as the Public Trustee thinks fit; and
- (b) vary or revoke a delegation given by him under this subsection.

(6) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Public Trustee.

(7) The exercise by the Deputy Public Trustee of any power or function pursuant to this section is sufficient evidence of his authority to do so, and no person shall be concerned to inquire as to that authority or be affected by any notice in relation thereto.

(8) The Deputy Public Trustee is subject in all matters to the direction and control of the Public Trustee.

(9) All deeds and other instruments that, if executed by the Public Trustee, would be signed by him and sealed with his seal of office shall when executed by the Deputy Public Trustee be signed thus—

The Public Trustee
by A.B.
Deputy Public Trustee

and be sealed with the seal of office of the Public Trustee. .

S. 5A added.

5. The principal Act is amended by adding after section five a section as follows—

Judicial
Notice.

5A. All Courts shall take judicial notice of the appointment of the Public Trustee and the Deputy Public Trustee, their signatures and the seal of office of the Public Trustee. .

S. 10
amended.

6. Subsection (4) of section ten of the principal Act is amended by substituting for the words, “five hundred pounds” in lines fourteen and fifteen, the words, “five thousand dollars”.

S. 14
amended.

7. Section fourteen of the principal Act is amended—

- (a) by substituting for the words, “five hundred pounds” in lines five and six of subsection (1), the words, “five thousand dollars”; and
- (b) by substituting for the passage, “five hundred pounds,” in line three of subsection (4), the passage, “five thousand dollars or the property to which the election relates, is found to include property outside the State,” .

8. Section twenty-three of the principal Act is amended— S. 23 amended.

- (a) by adding after the section number, “23.”, the subsection designation “(1)”;
- (b) by substituting for the figures, “1900” in line five the figures, “1962”; and
- (c) by adding a subsection as follows—

(2) In particular, but without limiting the generality of subsection (1) of this section, 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 of the nature for the time being authorised by law 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.

9. The Division heading immediately following section twenty-three of the principal Act is amended by adding after the word, “Patients” being the last word in the heading, the words, “and of Infirm Persons”. Division heading amended.

10. Subsection (4) of section twenty-nine of the principal Act is amended by substituting for the words, “one hundred pounds” in line three, the words, “one thousand two hundred dollars”. S. 29 amended.

S. 35 added.

11. The principal Act is amended by adding after section thirty-four a section as follows—

Certification
of infirm
persons.

35. (1) If it is proved to the satisfaction of the Public Trustee that a person is by reason of senility, disease, illness or physical or mental infirmity incapable of managing his affairs, the Public Trustee may sign and seal with the seal of his office, a certificate in the form in the Second Schedule to this Act that the person is an infirm person for the purposes of this Act.

(2) (a) The Public Trustee shall not sign and seal the certificate as provided in subsection (1) of this section with respect to a person, unless not more than fourteen days before he signs and seals it, two medical practitioners have examined the person independently of each other and at different times and have separately signed a certificate with respect to that person in the form in the Third Schedule to this Act and the certificates have been produced to the Public Trustee.

Vide S. 25
Act No. 30
of 1918.

(b) When the Public Trustee signs and seals a certificate under subsection (1) of this section, he shall cause a copy thereof together with a copy of each of the certificates of the medical practitioners that have been produced to him, to be served personally on the person to whom the certificates relate, and subject to this Act, the first mentioned certificate shall become effective on and from fourteen days after the copy of that certificate is so served.

(3) The Public Trustee is not precluded from signing and sealing a certificate under this section nor is the certificate invalid by reason only that the certificates referred to in subsection (2) of this section that are signed by the medical practitioners and produced to the Public Trustee, purport to certify that the person to whom the certificates relate is incapable of managing his affairs for different reasons or on different grounds.

(4) The Public Trustee may if he thinks fit—

- (a) examine any person in respect of whom certificates have been produced to him under subsection (1) of this section; and
- (b) take or require other evidence relating to that person either orally or by statutory declaration.

(5) (a) A person with respect to whom the Public Trustee has signed and sealed a certificate under subsection (1) of this section or one of the next of kin of that person may, within three months after the certificate has been so signed and sealed, apply, in a summary way, to a judge in chambers for an order directing the Public Trustee to sign and seal a certificate in the form in the Fifth Schedule to this Act certifying that the person is not an infirm person for the purposes of this Act.

*Vide S. 25
Act No. 30
of 1918.*

(b) The judge hearing an application under this subsection or section thirty-six of this Act, may, if he thinks fit, direct the Master to personally examine the infirm person and to take such evidence and to call for such information as to the Master seems necessary, to satisfy him whether the person in respect of whom the application is made is an infirm person and to report thereon to the judge.

(c) On the hearing of an application under this subsection or section thirty-six of this Act, the judge may, whether or not he has directed the Master as provided in paragraph (b) of this subsection, make the order or refuse to make the order or may make such other order, as he thinks fit.

12. The principal Act is amended by adding a section as follows:—

S. 36 added.

36. (1) When a medical practitioner signs a certificate in the form of the Fourth Schedule to this Act and the certificate is produced to the Public Trustee, the Public

*Certification
that person
has ceased
to be an
infirm
person.
Vide S. 25
Act No. 30
of 1918.*

Trustee shall make such inquiries and take such evidence, whether orally or by statutory declaration, with respect to the person to whom the certificate relates, as he thinks fit; and if the Public Trustee is of opinion that that person is no longer incapable of managing his affairs, the Public Trustee shall sign and seal a certificate in the form in the Fifth Schedule to this Act.

(2) (a) When the Public Trustee, on the production to him of a certificate in the form in the Fourth Schedule to this Act signed by a medical practitioner, refuses or fails within thirty days after the certificate is produced to him, to sign and seal a certificate in the form in the Fifth Schedule to this Act, the infirm person concerned or one of his next of kin may apply, in a summary way, to a judge in chambers, for an order directing the Public Trustee to sign and seal a certificate in that form.

(b) On the hearing of an application under this subsection, the judge may make the order or refuse to make the order or may make such other order, as he thinks fit.

(3) Where the Public Trustee pursuant to this section, signs and seals a certificate in the form of the Fifth Schedule to this Act that the person to whom the certificate relates is not or has ceased to be an infirm person, that person thereupon ceases to be an infirm person for the purposes of this Act. .

S. 36A added.

13. The principal Act is amended by adding a section as follows—

Medical certificate insufficient if forwarded only on facts communicated by others.

36A. (1) A person shall not be certified by the Public Trustee as being an infirm person or as having ceased to be an infirm person, on the production to the Public Trustee of a certificate of a medical practitioner that purports to be founded only upon facts communicated to the medical practitioner by others.

(2) A medical practitioner shall not sign a certificate with respect to any person in the form of the Third or Fourth Schedule to this Act, if the medical practitioner is—

- (a) a relative or guardian of that person; or
- (b) a partner, principal or assistant or relative of any other medical practitioner signing a corresponding certificate in respect of that person. .

14. The principal Act is amended by adding a section as follows— S. 36B added.

36B. (1) A medical practitioner who signs any certificate referred to in section thirty-six A of this Act under and for the purposes of this Act— Offences.

- (a) contrary to the provisions of that section; or
- (b) without having seen and personally examined the person to whom the certificate relates at the time and in the manner specified in the certificate,

is guilty of an offence.

Penalty: Three hundred dollars.

(2) A medical practitioner who falsely states or falsely certifies anything in a certificate in the form of the Third or Fourth Schedule to this Act, that is signed by him under and for the purposes of this Act, is guilty of an offence.

Penalty: Three hundred dollars.

(3) A person (not being a medical practitioner) who signs under and for the purposes of this Act any certificate in the form of the Third or Fourth Schedule to this Act in which he describes himself as a medical practitioner is guilty of an offence.

Penalty: Four hundred dollars or six months imprisonment or both. .

S. 36C added.

15. The principal Act is amended by adding a section as follows—

Duties and powers of Public Trustee as to estates of infirm persons.

36C. (1) Subject to and in accordance with this Act and any order or direction of the Court, the Public Trustee shall undertake the care and management of the estates of every infirm person in the State.

(2) For the purposes of subsection (1) of this section, in addition to any other powers conferred or imposed on the Public Trustee by or under this or any other Act, the Public Trustee with respect to the estate of an infirm person may, subject to this Act and under and in accordance with section forty-nine of this Act, exercise all or any of the powers conferred on him by that section.

(3) The powers and duties of the Public Trustee under this section cease when he is notified—

- (a) that the infirm person has died;
- (b) that the infirm person has become an incapable patient; or
- (c) that the infirm person has ceased to be an infirm person.

(4) On the happening of any event mentioned in subsection (3) of this section, the infirm person or his personal representative, as the case may be, is bound by, and may take advantage of, any act lawfully done by the Public Trustee in the name of, and on behalf of, the infirm person, as if the act were done by the infirm person while not subject to any incapacity. .

16. The principal Act is amended by adding a section as follows—

S. 36D added.

36D. (1) Sections twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty-two and thirty-three of this Act apply to an infirm person and to the estate of an infirm person and in applying those sections a reference therein to—

Certain sections to apply to infirm persons.

- (a) an incapable patient shall be read as a reference to an infirm person;
- (b) the discharge of an incapable patient shall be read as a reference to an infirm person ceasing to be such a person.

(2) For the purposes of so applying section twenty-six of this Act a person becomes an infirm person on the date of the certificate given in respect of that person by the Public Trustee in the form of the Second Schedule to this Act. .

17. The principal Act is amended by adding after section thirty-seven the following heading and section—

Heading and S. 37A added.

Division (6).—Powers and Duties of Public Trustee with respect to Uncared-for Property.

37A. (1) Where—

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

- (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 forty-nine of this Act.

(2) Where an order is made under subsection (1) of this section, 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.

(4) The owner of property in respect of which an order has been made under subsection (1) of this section 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 fourteen 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) of this section, 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 forty-four of this Act 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. .

18. Section forty of the principal Act is amended— S. 40 amended.

- (a) by deleting the words, "Public Trustee" in line four of subsection (1);
- (b) by adding after the word, "interest" in line ten of subsection (1) the words, "or income";
- (c) by adding after subsection (2) a subsection as follows—

21. The principal Act is amended by adding thereto a Schedule as follows—

Third
Schedule
added.

S. 35

THIRD SCHEDULE.

I, C.D. of (insert place of abode or professional address) being a legally qualified medical practitioner do solemnly and sincerely declare and hereby certify that on the day of 19 at I independently of any other legally qualified medical practitioner and at a different time from any other legally qualified medical practitioner personally examined A.B. of and that in my opinion the said A.B. is by reason of senility [or disease, or illness or physical infirmity or mental infirmity] incapable of managing his affairs and that I have formed this opinion upon the following grounds namely—

1. Facts observed by myself [here state the facts]
2. Other facts (if any) communicated to me by others [here state the information and from whom it was obtained]

and I make this solemn declaration by virtue of section 106 of the Evidence Act, 1906.

Declared at this day of 19 .

Before me E.F. Justice of the Peace (or as the case may be).

22. The principal Act is amended by adding thereto a Schedule as follows—

Fourth
Schedule
added.

S. 36.

FOURTH SCHEDULE.

I, C.D. of (insert place of abode or professional address) being a legally qualified medical practitioner do solemnly and sincerely declare and hereby certify that on the day of 19 at I personally examined A.B. of who is an infirm person within the meaning of the Public Trustee Act, 1941, and that in my opinion the said A.B. is no longer incapable by reason of senility [or disease or illness or physical infirmity or mental infirmity] of managing his affairs and that I have formed this opinion upon the following grounds namely—

1. Facts observed by myself [here state facts]

2. Other facts (if any) communicated to me by others [here state the information and from whom it was obtained]
and I make this solemn declaration by virtue of section 106 of the Evidence Act, 1906.

Declared at _____ this _____ day of 19 .

Before me E.F. Justice of the Peace (or as the case may be).

Fifth
Schedule
added.

23. The principal Act is amended by adding thereto a Schedule as follows—

Ss. 35, 36.

FIFTH SCHEDULE.

I, the Public Trustee being satisfied by the production to me of a certificate in the form in the Fourth Schedule to the Public Trustee Act, 1941, signed by

of

a legally qualified medical practitioner [and having made such inquiry and taken such evidence as I thought fit] that A.B. who is an infirm person within the meaning of the Public Trustee Act, 1941, is no longer incapable by reason of senility [or disease or illness or physical infirmity or mental infirmity] of managing his affairs [or having been ordered on the

day of

19

by a judge of the Supreme Court of Western Australia to certify that the said A.B. is not (or has ceased to be) an infirm person for the purposes of the Public Trustee Act, 1941] hereby certify that the said A.B. is not (or has ceased to be) an infirm person for the purposes of the Public Trustee Act, 1941.

Dated this _____ day of _____ 19
at _____

Public Trustee.
(L.S.).
