

PUBLIC TRUSTEE.

11° Elizabeth II., No. XXXIV.

No. 34 of 1962.

AN ACT to amend the Public Trustee Act, 1941-1953.

[Assented to 29th October, 1962.]

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:—

1. (1) This Act may be cited as the *Public Trustee Act Amendment Act, 1962.* Short title and citation.

(2) In this Act the Public Trustee Act, 1941-1953, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Public Trustee Act, 1941-1962.

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by Proclamation.

S. 1 amended.

3. Section one of the principal Act is amended by substituting for the heading of Division (4) of Part II, in subsection (3), the following heading:—

Division (4)—Powers and Duties of Public Trustee with respect to Estates of Incapable Patients: ss. 24-34.

S. 2 amended.

4. Section two of the principal Act is amended—

(a) by substituting, for the interpretation, “Insane patient”, the following interpretation:—

“Incapable patient” means a person who is a patient within the meaning of the Mental Health Act, 1962, and who is notified to the Public Trustee, by the superintendent, pursuant to that Act, as being incapable of managing his affairs. ;

(b) by inserting immediately after the interpretation, “Incapable patient”, the following interpretations:—

“Manager” has the same meaning as that word has in the Mental Health Act, 1962.

“Mental disorder” has the same meaning as that expression has in the Mental Health Act, 1962. ;

(c) by deleting the interpretations, “Incapable person”, “Lunacy Act”, “Mental Treatment Act, 1917” and “Patient”;

(d) by adding, after the word, “Act”, being the last word in the interpretation, “Rules”, the passage, “, the Supreme Court Act, 1935 or the Mental Health Act, 1962.”; and

- (e) by inserting, immediately after the interpretation, "Rules", the following interpretation:—

"the superintendent" has the same meaning as that expression has in the Mental Health Act, 1962.

5. The principal Act is amended by repealing Division (4) of Part II and re-enacting it with amendments as follows:—

Division (4)
of Part II
re-enacted.

Division (4)—Powers and Duties of Public Trustee with respect to Estates of Incapable Patients.

24. (1) Subject to the succeeding subsections of this section, the Public Trustee has the care and management of the estate of every incapable patient and the provisions of section forty-nine of this Act apply to that care and management.

Incapable
patients.

(2) This section does not apply in the case of an incapable patient whose property is vested in a curator, under, or by virtue of, section six hundred and eighty-four of The Criminal Code.

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

- (a) that the incapable patient has died;
- (b) that a manager of the estate of the incapable patient has been appointed, under the Mental Health Act, 1962; or
- (c) by the superintendent, that the incapable patient—
 - (i) is recovered from his incapacity; or
 - (ii) is discharged.

(4) Where an incapable patient is discharged to after-care, within the meaning of the Mental Health Act, 1962, the Public Trustee may, in his discretion, on the recommendation of the

superintendent, pay over to the patient or to any other person on his behalf who gives security to the satisfaction of the Public Trustee for the proper management or disposal thereof, the whole or any part of the moneys standing to the credit of the incapable patient and may hand over to him or the other person the whole or part of any other property forming part of the incapable patient's estate.

(5) Where the Public Trustee pays moneys or hands over property pursuant to subsection (4) of this section the receipt of the incapable patient or other person therein mentioned is an absolute discharge to the Public Trustee, notwithstanding any informality in or about the discharge to after-care.

(6) Where the Public Trustee has paid moneys or handed over property, pursuant to subsection (4) of this section, and the incapable patient's discharge to after-care is rescinded, the Public Trustee may recover and take possession of any moneys or property of the incapable patient then remaining in the hands or possession of the incapable patient or of any other person on his behalf.

(7) On the happening of any event mentioned in subsection (3) of this section, the patient 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, and on behalf, of the incapable patient, as if the act has been done by the incapable patient while not subject to any incapacity.

25. (1) Where, under the provisions of section six hundred and fifty-two or six hundred and fifty-three of The Criminal Code, a person is found to be, or to have been, of unsound mind and is ordered to be kept in strict custody, the sheriff shall notify the Public Trustee of that

event and the Public Trustee shall thereupon make inquiry respecting the property of that person.

(2) The Court, on the application of the Public Trustee, may, on being satisfied that a person such as is mentioned in subsection (1) of this section is then incapable, by reason of mental disorder, of managing his affairs and that he is still in strict custody, appoint the Public Trustee to be the manager of his estate, with such powers as the Court may, under the provisions of Part VI of the Mental Health Act, 1962, order; and the Court may revoke the appointment or, from time to time, vary the order.

26. (1) Subject to subsection (2) of this section, where—

Transactions
by incapable
patients
may be
set aside.

- (a) a person within one month before becoming an incapable patient; or
- (b) an incapable patient, before being discharged,

has made or executed any transfer, sale, alienation, charge or lease of any property, real or personal, the Court may, on the application of the Public Trustee and on notice to such persons as the Court may direct, set aside the transaction or not, as it thinks fit, and the Court may, in either case, make such other order as it thinks fit.

(2) The Court shall not set aside any transaction pursuant to this section, where—

- (a) the application is not brought within the period of two years commencing on the day of the completion of the transaction; or
- (b) the Court is satisfied that—
 - (i) the transaction was a *bona fide* one, entered into by the transferee, purchaser, alienee, chargee

or lessee, without notice of the disability to which the other party was, or may have been, then subject; and

- (ii) the consideration for the transfer, sale, alienation, charge or lease was, having regard to the value of the property, at the time that consideration was paid, given or agreed to, adequate.

(3) For the purposes of an application under this section, the incapable patient shall be deemed to have been incapable of managing his affairs, at the time that he made or executed the transfer, sale, alienation, charge or lease, until the contrary is shown.

(4) A patient becomes an incapable patient, for the purposes of this Act, when the notification of that condition is signed by the superintendent.

Summary
proceedings
for the
protection
of property
of incapable
patients.

27. (1) Where any real or personal property of an incapable patient is wrongly held, detained, converted or injured, or where any sum of money is due and owing to an incapable patient, 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 six 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.

28. (1) The Public Trustee may, in the name and on behalf of an incapable patient, execute and do all such assurances and things as may be necessary for effectuating any of the powers conferred by this Division; and all assurances and things so executed or done have the same force and effect as if executed or done by the incapable patient had he not been under a disability.

Public Trustee may execute assurance; protection of persons dealing with Public Trustee.

(2) Nothing in this Division—

- (a) vests in the Public Trustee the estate of an incapable patient; or
- (b) shall be construed as authorising or requiring the Public Trustee to pay out of the estate of an incapable patient, without an order of the Court, any debt or demand that the incapable patient would not be obliged to pay at law.

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

29. (1) When an incapable patient is discharged, or dies, the Public Trustee may pay over all moneys standing to the credit of the

Payments to discharged patients or to their personal representatives.

incapable patient and hand over all other property, and documents forming part of, or relating to, his estate, in the event of his discharge, to the incapable patient and, in the event of his death, to the personal representative of the incapable patient.

(2) The receipt of the incapable patient, 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) The Public Trustee may, at his discretion, require a discharged incapable patient to obtain an order of the Court for the paying or handing over of money, property and documents.

(4) Where the gross value of the estate of an incapable patient does not, at his death, exceed one hundred pounds and 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 incapable patient; and may, notwithstanding that 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 money, or the balance of that money, and the property forming 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 incapable patient.

Public Trustee may authorise proper officers in other jurisdictions to administer property of incapable patients.

30. (1) Where it appears to the Public Trustee that an incapable patient is possessed of or entitled to, or has an interest in, property in any state (other than this State), or a territory, of the Commonwealth, he may, by instrument in writing under his hand and seal directed to the officer charged by the laws of that state or

territory with the care, recovery, collection, preservation or administration of the estates of insane or incapable patients,—

- (a) certify that the incapable patient is a person incapable of managing his affairs and admitted to, or confined in, an approved hospital in this State, under the provisions of the Mental Health Act, 1962, and that the incapable patient is possessed of or entitled to, or appears to be entitled to or have an interest in, property in that other state or that territory; and
- (b) authorise that officer to collect, manage, sell or otherwise administer that property of the incapable patient.

(2) The Public Trustee may give a discharge to the officer mentioned in subsection (1) of this section, on the payment over, or delivery, to the Public Trustee of the balance of the moneys or other property of the incapable patient, after the payment of all costs, charges and expenses incurred by the officer in the exercise of the authority given him under that subsection and after satisfying, or making provision for, the debts of the incapable patient and claims against him of any persons residing in the other state or the territory.

31. (1) Where the officer charged by the laws of any state (other than of this State), or a territory, of the Commonwealth with the care, recovery, collection, preservation or administration of the property or estates of insane or incapable patients in any hospital, asylum or other place authorised for the reception and care of persons of unsound mind or persons suffering from mental disorder, in that state or territory, by instrument in writing under his hand and seal—

- (a) certifies to the Public Trustee that a person residing in that state or territory is an insane or incapable patient confined to a hospital, asylum

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

or other authorised place and that the patient is possessed of or entitled to, or appears to be entitled to or have an interest in, property in this State; and

- (b) authorises the Public Trustee to collect, manage, sell or otherwise dispose of and administer that property of the patient,

the Public Trustee shall have with respect to that property the powers conferred upon him under this Act, as though the patient were an incapable patient in this State.

(2) The Public Trustee may, without seeing to the application thereof and without liability therefor, pay over, or deliver, to the proper officer mentioned in subsection (1) of this section 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 patient and claims against him of any persons residing in the state, of which he has had notice.

Public Trustee may open and deliver up wills.

32. The Public Trustee may, on being satisfied of the death of an incapable patient or of any person found, under the provisions of the Mental Health Act, 1962, to be incapable of managing his affairs, open and read any document deposited with him and purporting, or alleged, to contain a testamentary disposition made by the incapable patient or other 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.

Personal effects of incapable patients may be sold.

33. Any personal effects belonging to an incapable patient that come to the hands of the Public Trustee may, if not claimed within two years of the discharge or death of the

incapable patient, 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.

34. Every person who is an insane patient, within the meaning of the Lunacy Act, 1903, shall, on the day of the coming into operation of the Public Trustee Act Amendment Act, 1962, be deemed, and continue, to be an incapable patient, within the meaning of this Act, for a period not exceeding three months commencing on that day; but if, during that period, the superintendent notifies the Public Trustee that the person is a patient under the provisions of the Mental Health Act, 1962, and is incapable of managing his affairs, the person shall, subject to that Act, thereafter continue to be an incapable patient.

Transitional
provisions.
