

PUBLIC TRUSTEE.

11° GEO. VI., No. XII.

No. 12 of 1947.

AN ACT to amend the Public Trustee Act, 1941.

[Assented to 1st November, 1947.]

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

Short title
and citation.

1. This Act may be cited as the *Public Trustee Act Amendment Act, 1947*, and shall be read as one with the Public Trustee Act, 1941 (No. 26 of 1941), hereinafter referred to as the principal Act, and the principal Act as amended by this Act may be cited as the Public Trustee Act, 1941-1947.

Amendment
of s. 2.

2. Section two of the principal Act is amended by inserting after the words "subject matter" in line two a new definition as follows:—

"Administration," "a grant of administration" and "a grant of letters of administration" include "an order to administer."

3. Section ten of the principal Act is amended as follows:—

Amendment
of s. 10.

(a) By deleting paragraph (a) of subsection (1) and by inserting in lieu thereof new paragraphs as follows:—

(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.

cf. N.Z.
No. 159 of
1908, s. 14.

(b) By deleting the word “primarily” in line three of paragraph (b) of subsection (1), and inserting in lieu thereof the word “first.”

(c) By deleting the word “six” in line two of paragraph (c) of subsection (1) and inserting in lieu thereof the word “three.”

(d) By deleting the word “sixty” in line one of paragraph (d) of subsection (1) and inserting in lieu thereof the word “thirty.”

(e) By inserting after subsection (3) new subsections as follows:—

(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 administration was made, have died, or hereafter die, leaving part of the original estate unadmin-

cf. N.Z. No.
48 of 1921-
1922, s. 45.

istered, 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 five hundred pounds, 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*.

Amendment
of s. 12.

4. Section twelve of the principal Act is amended as follows:—

- (a) By deleting the words “administration (with the will annexed) of” where they occur in line five of subsection (1) and again in lines four and five of subsection (2), and inserting in lieu thereof in each case the words “an order to administer.”
- (b) By deleting the words “administration of” in line four of subsection (3) and inserting in lieu thereof the words “an order to administer.”
- (c) By deleting the word “administration” in line one of subsection (5) and inserting in lieu thereof the words “an order to administer.”

5. Section thirteen of the principal Act is amended by deleting the words "administration by the Public Trustee of" in lines five and six, and inserting in lieu thereof the words "an order to administer by the Public Trustee"; and by deleting the words "or administrator" in line two of subsection (3) and inserting in lieu thereof the words "or is granted an order to administer."

Amendment
of s. 13.

6. Section fourteen of the principal Act is amended as follows:—

Amendment
of s. 14.

- (a) By inserting in subsection (1) after the words "ate or."
- "hereafter dies" in line two the words "tes-
- (b) By deleting from subsection (1) the words "within three months of the death of the deceased" in lines six and seven.
- (c) By inserting in subsection (1) after the words "has taken out" in line seven the words "probate or."
- (d) By deleting the word "intestate" in lines thirteen and fourteen of subsection (1) and inserting in lieu thereof in each case the word "deceased."
- (e) By inserting in subsection (2) after the words "grant of" in line three the words "probate or," and after the word "administration" in line four the words "as the case may be."
- (f) By deleting from subsection (4) the words "for the administration of" in the last two lines, and inserting in lieu thereof the words "to administer."

7. Section eighteen of the principal Act is amended by deleting the words "of the residue of any intestate estate of which" in line two, and inserting in lieu thereof the words "of any testate or intestate estate of which probate or."

Amendment
of s. 18.

8. Section thirty of the principal Act is amended by deleting subsection (4) and inserting in lieu thereof the following:—

Amendment
of s. 30.

- (4) Where the amount of any money standing to the credit of an insane patient or incapable person, and the gross value as estimated by the Public Trustee

Payment of
sum and prop-
erty, not
exceeding
£100, to re-
presentatives
or legatees.

tee of any other property forming the estate, does not exceed in the whole one hundred pounds, the Public Trustee may, in his discretion, after the death of the insane patient or incapable person, pay from such money the funeral expenses and other debts of the deceased of which the Public Trustee has had notice, and pay and hand over such money (or the balance thereof) and property to any person claiming as entitled in the distribution of the estate, or as a legatee under the will, notwithstanding that letters of administration have not been obtained or the will proved, and notwithstanding that legal proof is not given of the right or title of the person claiming as aforesaid.

Amendment
of s. 33.

9. Section thirty-eight of the principal Act is amended by deleting from subsection (2) the words "two and a half per centum of the corpus of any estate and five pounds per centum of income received by the Public Trustee, in respect of any such estate," and inserting in lieu thereof the words—

- (a) as to the gross capital of any estate, two and a half per centum or the sum of five pounds, whichever is the greater;
- (b) as to the income of any estate, five pounds per centum of such income received by the Public Trustee: Provided that this paragraph shall not apply when the Public Trustee is acting merely as agent or attorney.

Amendment
of s. 40.

10. Section forty of the principal Act is amended by deleting subsection (4) and inserting in lieu thereof a subsection as follows:—

(4) The interest payable to the respective estates, the moneys of which are held in the Common Fund, shall be at a rate from time to time fixed by the Public Trustee with the approval of the Minister and published in the *Gazette*, and shall be credited to the respective estates quarterly on the first day of the months of January, April, July and October in each year. The Public Trustee shall not charge or deduct any fee in respect of such credits.