

PUBLIC TRUSTEE.

5^c GEO. VI., No. XXVI.

No. 26 of 1941.

AN ACT relating to the appointment of a public trustee, and the powers and duties thereof, and for other purposes.

[Assented to 8th December, 1941.]

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. 1. (1) This Act may be cited as the *Public Trustee Act, 1941*.

Commence- (2) This Act shall come into operation on a day (here-
ment. inafter referred to as the "appointed day") to be fixed by proclamation.

Division of (3) This Act is divided into Parts and Divisions as
Act. follows:—

PART I.—THE PUBLIC TRUSTEE: SS. 4–6.

PART II.—POWERS AND DUTIES OF PUBLIC TRUSTEE: SS. 7–37.

Division (1).—General, s. 7.

Division (2).—Public Trustee as Executor or Administrator: ss. 8–19.

Division (3).—Public Trustee as Trustee : ss. 20–23.

Division (4).—Powers and Duties of Public Trustee with respect to Estates of Insane Patients and Incapable Persons : ss. 24–36.

Division (5).—Powers and Duties of Public Trustee with respect to Persons under Disability and others in certain Cases : s. 37.

PART III.—FINANCIAL : SS. 38–48.

PART IV.—GENERAL : SS. 49–65.

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

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| <p>“Court” means the Supreme Court of Western Australia or a judge thereof and includes the Master when exercising the powers of the Court pursuant to the Administration Act, 1903-1939, or Probate and Administration Rules.</p> | <p>Court.</p> |
| <p>“Curator” means the Curator of Intestate Estates constituted under the Curator of Intestate Estates Act, 1918.</p> | <p>Curator.</p> |
| <p>“Estate” or “estates” means any real or personal property under administration or held, managed, or controlled by the Public Trustee in any capacity whatsoever.</p> | <p>Estate.</p> |
| <p>“Income” includes rents and profits.</p> | <p>Income.</p> |
| <p>“Insane patient” means an insane patient within the meaning of the Lunacy Act.</p> | <p>Insane patient.</p> |
| <p>“Incapable person” includes an incapable person within the meaning of the Lunacy Act; a person deemed to be incapable under the Mental Treatment Act, 1917, and a person certified as incapable under the provisions of section six of the Mental Treatment Act, 1927-1940.</p> | <p>Incapable person.</p> |
| <p>“Lunacy Act” means the Lunacy Act, 1903-1920, and any Act amending that Act.</p> | <p>Lunacy Act.</p> |
| <p>“Master” means the Master of the Supreme Court, and includes the Deputy Master.</p> | <p>Master.</p> |
| <p>“Mental Treatment Act, 1917,” means the mental Treatment Act, 1917 (No. 9 of 1917), as amended by the Mental Treatment Act Amendment Act, 1919 (No. 16 of 1919).</p> | <p>Mental Treatment Act, 1917.</p> |

Minister.	“Minister” means the Minister of the Crown charged for the time being with the administration of this Act.
Official Trustee.	“Official Trustee” means the Official Trustee appointed under the Official Trustee Act, 1921.
Patient.	“Patient” means insane patient.
Public Trustee.	“Public Trustee” means the Public Trustee under this Act and includes the acting Public Trustee.
Regulations.	“Regulations” means regulations made under the authority of this Act.
Rules.	“Rules” means rules of court made under the authority of this Act.
Will.	“Will” includes codicil.

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

3. (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.
- (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.

Repeals and
amendments.
First
Schedule.

PART I.—THE PUBLIC TRUSTEE.

Public Trust
Office and
Public
Trustee.

W.A., 1921,
No. 8, s. 2;
N.Z., 1908, No.
159, ss. 3 and
4;
Tas., 1930,
No. 61, s. 4;

4. (1) There shall be an office called the "Public Trust Office," administered by an officer called the Public Trustee who, subject to the Public Service Act, shall be appointed by the Governor, 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.

Acting Public
Trustee.

5. (1) The Governor in Council may appoint an acting Public Trustee to discharge the duties of the Public Trustee during the illness or absence of the Public Trustee.

(2) The acting Public Trustee may, during the period of his appointment, act in the stead of the Public Trustee, and sign and execute all such documents as require signature or execution and do, perform, and discharge all other acts, deeds, and duties pertaining to the office of Public Trustee.

(3) Every court shall take judicial notice of the appointment of the Public Trustee and the acting Public Trustee, their signatures and the seal of the Public Trustee.

Appointment
of Officers.

6. The Governor in Council may, subject to the Public Service Act, appoint such officers, clerks and persons as he thinks fit to assist the Public Trustee in his duties.

PART II.—POWERS AND DUTIES OF PUBLIC TRUSTEE.

Division (1)—General.

Appointment
of Public
Trustee in
various
capacities.

Vic., 1939,
No. 4654,
s. 8;
Qld., 1915,
s. 28;
N.Z., 1908,
No. 159, s. 12.

7. (1) Where the Crown, the Governor in Council, a public officer, a court, a judge, 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, com-

mittee, 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.

Division (2)—Public Trustee as Executor or Administrator.

8. 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.

Appointment of Public Trustee as executor. Vic., 1939, No. 4654, s. 9;

9. 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 twenty-two of the Administration Act, 1903-1939, or any corresponding previous enactment, shall, by virtue of this Act, vest in the Public Trustee.

Pending probate or administration estate of deceased to vest in Public Trustee. W.A., 1903, No. 13, s. 22; Qld., 1915, s. 30.

10. (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:—

Public Trustee may apply for order for administration of estate of deceased person. cf. W.A. 1918, No. 9, s. 6.

- (a) where such person leaves no executor, widow, husband, beneficiary or next of kin resident within the jurisdiction and willing and capable of acting in execution of his or her will or administration of his or her estate;
- (b) where the executor renounces probate of the will of the deceased and all the persons primarily entitled to administration by writing filed with the Master decline to apply for administration;

- (c) where probate or administration is not applied for within six months after the death of such person;
- (d) where, after the expiration of sixty 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 widow, husband 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 paragraph (e) or (f) of subsection (1) of this section 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.

11. 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 or the Master that it will be more beneficial to the estate that it should be administered by such creditor.

12. (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 administration (with the will annexed) of the estate.

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

N.Z., 1908, No. 159, s. 13; Tas., 1930, No. 61, s. 15; Qld., 1915, s. 29.

(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 administration (with the will annexed) of 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 administration of 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 the Master, apply to the Court for an order transferring such estate to the Public Trustee for administration.

Transfer of administration to Public Trustee.

N.S.W. 1913, No. 19, s. 18 (2).

(5) Administration 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.

Application for removal of executor or administrator of an estate and for administration by the Public Trustee.
Qld. 1915, s. 35;
Vic., 1939, No. 4654, s. 13.

13. (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 administration by the Public Trustee of 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.

Assignment of administration bond to 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 administrator 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.

14. (1) Where any person has heretofore died or hereafter dies 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 five hundred pounds and no person within three months of the death of the deceased has taken out 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 intestate, and the value of the property of the intestate as then known, and electing to administer.

Election to administer estate not exceeding £500, without order to administer.
Tas., 1930,
No. 61, s. 20;
N.S.W. 1913,
No. 19, s.
18a.

(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 letters of administration 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 five hundred pounds, 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 for the administration of 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 with the Master his accounts of all transactions in the matter of the estate of such deceased person.

15. 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, 1911-1934, and may in a proper

Public Trustee deemed successor of deceased for licensing purposes.
W.A. 1918,
No. 9, s. 7
(4).

case, with the consent of the Licensing Court, 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.

Power to
Public Trustee
to pay over
balance to
proper officer
of deceased's
domicile.
cf. W.A.
1918, No. 9,
ss. 18 and 19.

16. (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 His Majesty'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.

Where de-
ceased domi-
ciled in
Western Aus-
tralia, power
to Public
Trustee to re-
ceive balance
from proper
officer of an-
other State,
etc.

(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.

Interpretation.

“Proper officer.”

“Territory.”

17. 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 Crown Solicitor, who may then make all necessary applications provided for in the Escheat (Procedure) Act, 1940.

If property has escheated to the Crown.

18. Where the net amount payable to any infant out of the residue of any intestate estate of which administration has been granted to the Public Trustee is under one hundred pounds, he may pay or cause to be paid the distributive share, to which such infant is entitled, to the widow, 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.

Payment to widow, etc., of distributive shares of infant children where net amount is under £100
N.Z. 1908, No. 159, s. 23;
Vic., 1939, No. 4654, s. 17.

19. (1) Every estate in respect of which probate or administration is granted to the Public Trustee shall be liable to pay the same duty as would be payable in respect of such estate under the Administration Act if probate or administration in respect thereof were granted to a person other than the Public Trustee.

Duty payable on estates administered by Public Trustee.

(2) The provisions of sections 64 (3) and 116 of the Administration Act, 1903-1939, shall not apply to estates administered by the Public Trustee.

Division (3)—Public Trustee as Trustee.

20. 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.

Public Trustee as trustee.
Vic. 1939, No. 4654, s. 20;
N.S.W. 1913, No. 19 s. 13.

Advisory
trustees.
Vic., 1939,
No. 4654,
s. 21;
Qld., 1915,
s. 41.

21. (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. (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—

Custodian trustee.
Qld., 1915,
s. 42;
Tas., 1930,
No. 61, s. 23;
Vic., 1939,
No. 4654,
s. 22.

- (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;
- (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.

23. 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 Trustee Act, 1900, the Trustees' Powers Act, 1931, or of any other Act.

Public Trustee
may exercise
powers under
Trustee Act.

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

24. (1) The Public Trustee shall have the management and care of the property of every insane patient, and shall have all powers and duties necessary and incident to such management and care.

Power of
Public Trustee
with respect
to estates of
insane
patients and
incapable
persons.
W.A., 1903,
No. 15, s. 123;
W.A., 1921,
No. 8, s. 3,
and Rules.

(2) The Public Trustee may, if he consents to the application, be appointed under the provisions of section one hundred and eleven of the Lunacy Act to undertake the management and care of the property of any incapable person as defined in this Act.

(3) The Public Trustee shall manage and care for any property in accordance with the provisions of this Act.

(4) This section shall not apply in the case of any insane patient or incapable person—

- (a) of whose estate a committee has been appointed under the Lunacy Act or for the management of whose property a person has been appointed under section one hundred and eleven of the said Act; or
- (b) whose property is vested in a Curator or Curators under or by virtue of chapter LXVIII., section six hundred and eighty-four, of the Criminal Code.

Power to apply property of persons acquitted on the grounds of insanity for their benefit.
W.A., 1903, No. 15, s. 132.

25. Where any person has, on the trial of any information, been acquitted on the ground of insanity, or has, upon arraignment upon a criminal charge, been found to be insane, the sheriff shall report the fact to the Public Trustee, who shall thereupon make inquiry respecting the property of such person, and the court may on application by the Public Trustee, on being satisfied of the continued insanity of such person and of his being still in confinement, make any orders with respect to the property of such person, and the application thereof, for the payment of his debts or for his maintenance or benefit, or that of his family, or for carrying on his trade or business.

Title of purchaser from Public Trustee.

W.A., 1903, No. 15, s. 135 (2).

26. Persons dealing with the Public Trustee in respect of any estate over which he has assumed control shall be as fully protected as if the owner of the estate were an insane patient or incapable person at the time of the dealing, although he is not, in fact, then an insane patient or incapable person; and a purchaser or mortgagee from the Public Trustee of any real or personal property of an insane patient or incapable person shall not be bound to inquire as to the Public Trustee's powers so to deal with that property, or as to the application of the purchase money.

Payment over before discharge in certain cases.

W.A., 1903, No. 15, s. 141.

27. If any insane patient is permitted to be absent from a hospital for the insane or licensed house upon trial or otherwise under the provisions of the Lunacy Act, the Public Trustee may in his discretion pay over to the insane patient or to any person on his behalf who gives satisfactory security to the Public Trustee for the proper management and disposal thereof, the whole or any part of the money standing to the credit of the

patient, and may hand over to him or to the person aforesaid all other property forming part of his estate.

(2) The receipt of the patient, or the person aforesaid, shall be an absolute discharge to the Public Trustee, notwithstanding any informality in or about the granting of such permission as aforesaid.

28. (1) If any real or personal property of an insane patient or incapable person is wrongfully held, detained, converted, or injured, or if any sum of money is due and owing to such patient or incapable person by any person, the Public Trustee may, as such Public Trustee, claim and recover possession of such property or damages for the conversion or injury thereof, or payment of the said sum by summary proceeding on complaint before a judge, who is hereby authorised, on proof to his satisfaction of the said cause of complaint, to make an order requiring the defendant to give up possession of such property, or to pay reasonable damages, to be fixed by the said order, for the conversion or injury thereof, or to pay the sum so due as aforesaid, and, in default of compliance by the defendant with the said order, to order in and by the same or any subsequent order that the defendant be committed to prison for any period not exceeding six months.

Summary proceedings for protection of property of insane patients.
W.A., 1903,
No. 15,
s. 136.

(2) Such judge may, on any complaint under this section, make such order as to costs as he thinks fit, and every order under this section shall have the same effect, and may be enforced in like manner as any judgment, decree, or order of the Supreme Court in its ordinary jurisdiction.

29. Where—

(a) any person within one month before becoming an insane patient; or

(b) any insane patient, before his discharge

has made or executed any transfer, sale, alienation, charge, or lease of any property, real or personal, the court may, on application being made by the Public Trustee and on notice to such persons as the court may direct, set aside the said transfer, sale, alienation, charge, or lease, and may make such order as may be just.

Sale, etc., by patient before his discharge may be set aside.

W.A., 1903,
No. 15, s. 142.

For the purposes of the application the patient shall

be *prima facie* deemed to have been insane at the time when he made or executed the transfer, sale, alienation, charge, or lease.

Payment to discharged patients and to representatives of deceased patients.

W.A., 1903,
No. 15, s. 143.

30. (1) After the discharge or death of an insane patient or incapable person, the Public Trustee may pay over to him, in the case of his discharge, or to his legal representative, in the case of his death, all moneys standing to the credit of that insane patient or incapable person, and may hand over to him or to his legal representative (as the case may be) all other property forming part of his estate.

(2) The receipt of the said insane patient or incapable person or his legal personal representative shall be an absolute release to the Public Trustee, notwithstanding any informality in the discharge, or in the mode of obtaining the same.

(3) The Public Trustee may, in the exercise of his discretion, require a discharged insane patient or incapable person claiming money or property as aforesaid, to obtain the order of the court.

Payment of sum, not exceeding £100, to representatives or legatees.

(4) Where no debt has been proved with respect to the property of an insane patient or incapable person, or no debt remains unsatisfied and the amount of any money standing to the credit of the insane patient or incapable person, and the value 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 and hand over such money and property to any person claiming as entitled in the distribution of his estate, or as a legatee under his will, notwithstanding letters of administration have not been obtained or the will proved, and notwithstanding legal proof is not given of the right or title of the person claiming as aforesaid.

Public Trustee may act until he receives notice of death or discharge of patient.

W.A., 1903,
No. 15, s. 145.

31. (1) Notwithstanding the discharge or death of a patient, the Public Trustee may continue to perform the duties and exercise the powers conferred upon him with respect to the estate of that patient until he receives notice of such discharge or death as aforesaid.

(2) On the discharge or death of a patient, he or his legal personal representatives, as the case may be, shall be bound by and may take advantage of an act lawfully

done by the Public Trustee on behalf of the patient, as if the said act had been done by the patient himself while sane.

32. When any application is made to the court or a judge under the Lunacy Act to appoint any person other than the Public Trustee to undertake the care and management of the property of an incapable person, notice of the application shall be given to the Public Trustee by the person making the same.

Notice of application for appointment of committee or person to be given to Public Trustee.

33. The powers, duties, and functions of the Public Trustee under this Act shall cease—

Cessation of powers of Public Trustee.

- (a) when the insane patient or incapable person dies;
- (b) when the court declares that the insane patient or incapable person has recovered his sanity and/or is capable of managing his affairs.
- (c) upon notice from the Inspector General of the Insane that the person being a patient has been discharged.

34. On the death of any insane patient or incapable person whose estate is subject to the control of the Public Trustee, or on the supersession or rescission of the relative declaration or order made under the Lunacy Act, or on the cessation of the Public Trustee's powers over the estate of any such person, the Public Trustee may direct and authorise the payment, transfer, or delivery of any funds in his custody or under his control belonging to the insane patient or incapable person, or any documents or effects relating to or forming part of his estate deposited in the Office of the Public Trustee for safe custody, to the person entitled thereto.

Delivery out of funds, documents, and effects.

35. The Public Trustee may, on being satisfied of the death of an insane patient or incapable person, open and read any document deposited with him purporting or alleged to contain any testamentary disposition made by such person, or for the purpose of ascertaining who is therein nominated executor thereof, and whether any direction is contained therein concerning the funeral or place of interment of such person, and shall then deliver the document to the executor or one of the executors therein named, or some other person, to be dealt with according to law

The Public Trustee may open and deliver out will.

Personal effects of insane or incapable persons may be sold.

W.A., 1903, No. 15, s. 144.

36. All personal effects which come to the hands of the Public Trustee belonging to any insane patient or incapable person whose estate is subject to the control of the Public Trustee may be sold by the Public Trustee, if not claimed within two years from the date of the discharge or death of the person concerned. The proceeds of any such sale shall be paid into consolidated revenue, as unclaimed moneys.

Division (5)—Powers and Duties of Public Trustee with respect to Persons under Disability, and others, in certain Cases.

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

37. (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 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.

Ord., 1915, s. 50.

(3) (a) All moneys ordered by a magistrate of a local court to be invested under the provisions of the Workers' Compensation Act, 1912-1939, 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 the magistrate and all other persons concerned.

(b) The Public Trustee shall thereupon hold the said moneys for the person or persons entitled thereto.

(4) Any such sum shall be disbursed by the Public Trustee in accordance with the order of the magistrate who shall determine the manner in which such sum shall be applied: Provided that the investment of any such sum shall be in the sole discretion of the Public Trustee.

(5) 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.

(6) Nothing in this section shall prejudice the lien of a solicitor for any costs which have been allowed by the Master or clerk of the local court as solicitor and client costs. No costs other than those allowed in such taxation shall be payable to any solicitor.

PART III.—FINANCIAL.

38. (1) 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 paid into the Consolidated Revenue Fund. In time of war reduced fees may be prescribed with respect to the trusts and estates of members of the Forces.

Fees and expenses to be prescribed.
Qld., 1915,
s. 17.

(2) Such fees shall not exceed (in addition to all moneys properly expended in respect of the estate) 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.

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

39. (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 an insane patient or incapable 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.

Payment of expenses incurred by Public Trustee.

(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.

40. (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 "Public Trustee Common Fund") to be kept at the Treasury, to be invested by the Public Trustee.

Common fund and its investments.
Qld. 1915,
s. 18;
N.Z., 1908,
No. 159,
s. 32;
Tas., 1930,
No. 61, s. 33.

Investments made from the common fund shall not be made on account of or belong to any particular trust or estate.

Subject to this Act, interest earned by such investments shall be paid into the common fund.

Manner of investment.

(2) The Public Trustee may invest in any of the investments in which, under the Trustee Act, 1900, or any Act amending the same, or any other Act, trustees are authorised to invest trust funds.

(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.

(4) The income belonging to the respective trusts or estates, the moneys of which form the common fund, shall be credited to the respective trusts or estates quarterly, as prescribed, on the first days of January, April, July, and October in each year.

Special investments outside common fund

(5) Provided that moneys expressly directed to be invested otherwise than in the common fund shall not form part of the common fund, and the Public Trustee may invest such moneys in accordance with such direction. But any loss or deficiency in respect of any such investments, or of the money received therefrom or realised thereby, shall be borne by the trust or estate to which such moneys belong, or, if received or realised, would belong.

Temporary advances to Public Trustee.
Qld. 1915,
s. 19.

41. (1) In order to admit of the moneys in the common fund 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 fund.

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

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.

42. If the common fund is insufficient to meet the lawful claims thereon, the Treasurer shall, without further appropriation than this Act, pay such sums out of the consolidated revenue fund as are necessary to meet the deficiency.

Deficiency in common fund. Qld., 1915, s. 20; N.Z., 1908, No. 159, s. 35.

43. Moneys in or payable into 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 His Majesty for the purposes of this Act, and shall be recoverable in like manner as money due to the Crown is recoverable.

Public Trust Office funds to be Crown property. N.Z., 1908, No. 159, s. 35.

44. (1) The Public Trustee may make advances out of moneys standing to the credit of the common fund for the purposes of any trust or estate in course of administration or about to be administered by him.

Advances for administration purposes or against shares. Qld., 1915, s. 21.

(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 five pounds per centum per annum, except with the approval of the Minister.

(5) All interest received under this provision shall be paid into the common fund.

(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.

Unclaimed moneys to be paid into consolidated revenue.

W.A., 1918,
No. 9, s. 24;
Qld., 1915,
s. 109.

45. The Public Trustee shall, on or before the thirty-first day of 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 six years next preceding and in respect whereof the Public Trustee has caused an advertisement to be published at least twice at intervals of fourteen days in a newspaper circulating in Perth and the Public Trustee has no information or knowledge of the existence of any person entitled in distribution, or claiming so to be, to be paid to the Treasury 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.

Inspection and audit of books of Public Trustee.

W.A., 1918,
No. 9, s. 23;
Qld., 1915,
s. 22.

46. (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) The accounts of all estates and properties controlled or managed by the Public Trustee shall be audited by the Auditor General, who shall have all the powers in respect of such accounts as are or may be conferred upon him by any Act now or hereafter in force relating to the collection and audit of public moneys and accounts.

Accounts to be kept.

Qld., 1915,
s. 23.
W.A., 1918,
No. 9, s. 22.

47. (1) The Public Trustee shall make or cause to be made an inventory of all estates in course of administration by him, and shall retain the same in his office, and shall keep an account of all his receipts, payments, and dealings in every such estate, and shall retain all letters

received and copies of all letters written by him, and all deeds, papers, and writings of and relating to 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.

48. The Public Trustee shall in every year, not later than the thirtieth day of November, transmit to the Minister, to be laid before Parliament, a report covering the operations of his office during the previous twelve months ended on the thirtieth June next preceding.

Public Trustee's accounts and balance sheet. Qld., 1915, s. 25.

PART IV.—GENERAL.

49. (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

General powers of Public Trustee. W.A., 1903, No. 15, ss. 133, 138, 148; Tas., 1930, No. 61, s. 32; N.S.W., 1913, No. 19, s. 35; N.Z., 1908, No. 159, s. 29; Qld., 1915, s. 58.

- or any compensation or damages for injury to any estate or person;
- (b) lease land or premises for a term not exceeding three 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, realise, mortgage or charge any property. The Public Trustee when acting under this paragraph as executor or administrator shall be subject to the Administration Act, 1903-1939;
 - (f) bring land under the Transfer of Land Act, 1893-1939;
 - (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 his wife or any child, parent or other person dependent on him, and for the education of his children, 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 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, the Public Trustee shall not under paragraph (e) aforesaid—

- (i) sell real property of a greater value than one thousand pounds;
- (ii) exchange real property of a greater value than two hundred and fifty pounds, or join in a partition in which the interest of any person entitled thereunder exceeds two hundred and fifty pounds;
- (iii) borrow money to an amount exceeding one thousand pounds.

(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, 1893-1939),

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.

Appointment
and duties of
agent.

50. (1) The Public Trustee may appoint any person to act as his agent. At the request of the Public Trustee any clerk of courts, 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 clerk of courts, 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.

No bond by
Public
Trustee.
Qld., 1915,
s. 13;
W.A., 1903,
No. 13, s. 26;
W.A., 1918,
No. 9, s. 25;
N.Z., 1908,
No. 159, s.
45.

51. 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.

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.

Public Trustee
may sue him-
self in differ-
ent capacities.
N.Z., 1921-22;
No. 48, s. 79.

52. 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.

Employment
of solicitors,
etc.

Qld., 1915,
s. 15;
N.S.W., 1913,
No. 19, s. 57;
Vic., 1939,
No. 4654,
s. 66.

53. (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 administering the affairs of an insane patient or incapable person the Public Trustee shall, as far as practicable, employ the usual solicitor, if any, of such insane patient or incapable 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 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.

Deposit of wills and other documents. Qld., 1915, s. 57.

54. (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 incapable 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.

Inquiries as to property. N.Z., 1921-22, No. 48, s. 96.

55. (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.

(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 two hundred pounds, 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.

Remedy
against Public
Trustee.
Qid., 1915,
s. 81.

56. (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) Consolidated Revenue 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.

Public Trustee
and officers
not personally
liable except
for fraud or
crime.
N.Z., 1908,
No. 159, s. 60.

57. 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. 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.

Public Trustee
may take
opinion of
court.
W.A., 1918,
No. 9, s. 13.

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 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. 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.

Certificate of
Public Trustee
evidence.
Qld., 1915,
s. 113.

60. 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.

Custody of
documents.
Qld., 1915,
s. 26.

61. (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.

Registration
of titles.

(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.

(3) The Registrar of Titles, Under Secretary for Lands, Registrar of Companies and Firms, Under Secretary for Mines, every officer of the Supreme Court, and all public officers entrusted with the keeping of public records, shall permit the Public Trustee and any officer authorised by him in that behalf, free of charge, to make searches of and to make copies of or extracts from any document of title or records in the department or registry relating to any property or estate in which the Public Trustee is or may be interested.

Fees and commissions deemed testamentary expenses.

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

Public Trustee to have lien on policy moneys for premiums.

63. 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.

Regulations.

64. 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 Trustee 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.
- (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 consolidated revenue 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 Trustee Office.

65. 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.

Rules of
Court.

SCHEDULE.

Number of Act.	Title of Act.	Extent of Amendment or Repeal.
8 Geo. V., 23 ...	Curator of Intestate Estates Act, 1918 (No. 9)	The whole repealed.
12 Geo. V., 8 ...	Official Trustee Act, 1921 (No. 8)	The whole repealed.
3 Edw. VII., 15	Lunacy Act, 1903-1920 (No. 15)	<p>In s. 123 :—Par. (1) Delete the words “and patients” in line three ; par. (3) delete the whole.</p> <p>In s. 124 :—Delete the words “or patient” in line four.</p> <p>In s. 125 :—Delete the words “or patient” in lines four, eight, and eleven ; delete the words “whether such patient has been discharged or not” in lines ten and eleven.</p> <p>In s. 126 :—Delete the words “and insane patient” in lines three and four ; delete the words “and patients” in line seven ; delete the words “or the insane patient dies or is discharged from the hospital or other place in which he is detained” in lines nine and ten.</p> <p>In s. 127 :—Delete the words “or patient” in lines ten and eleven.</p> <p>In s. 129 :—Delete the words “or patients” in line six.</p> <p>Sections 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, and 146 are repealed.</p> <p>In s. 183 :—Insert in subsection (1) par. (a) the words “and to the Public Trustee” after the word “Master” in the first line.</p>
18 Geo. V., 13 ...	Mental Treatment Act, 1927 (No. 13)	<p>In s. 6 :—Delete the words “the Official Trustee Act, 1921” in lines five and six and substitute “The Public Trustee Act, 1941”</p>
7 Geo. V., 29 ...	Mental Treatment Act, 1917 (No. 9), as amended by the Mental Treatment Act Amendment Act, 1919 (No. 16)	<p>In s. 3 :—Insert the words “and the Public Trustee Act, 1941,” after the words “Lunacy Act, 1903,” in line seven ; delete the words “that Act” in line eight and substitute the words “those Acts.” Repeal the whole of subsection (2).</p>
3 Edw. VII., 13	Administration Act, 1903-1939 (No. 13)	Section 22 is repealed.
3 Geo. V., c 50 ...	Workers' Compensation Act, 1912-1939	<p>In First Schedule, Clause 5 :—Delete the words “be invested,” in line five, and substitute “be ordered to be invested.”</p>