

PUBLIC TRUSTEE.

No. 46 of 1984.

AN ACT to amend the Public Trustee Act
1941-1982.

[Assented to 5 September 1984.]

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 Amendment Act 1984*.

Short title
and citation.

(2) In this Act the Public Trustee Act 1941-1982 is referred to as the principal Act.

Approved for
reprint 4
February
1981 and
amended by
Act No. 19
of 1982.

(3) The principal Act as amended by this Act may be cited as the Public Trustee Act 1941-1984.

Commence-
ment.

2. This Act shall come into operation on such day or days as is or are respectively fixed by proclamation.

Section 18
amended.

3. Section 18 of the principal Act is amended by deleting “two hundred dollars” and substituting the following—

“ \$1 000 ”.

Section 26
amended.

4. Section 26 of the principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (a), by deleting “one month” and substituting the following—

“ 2 months ”; and

(ii) by deleting “or lease” and substituting the following—

“ , lease or purchase ”;

(b) in paragraph (b) of subsection (2)—

(i) in subparagraph (i), by deleting “or lessee,” and substituting the following—

“ , lessee or vendor, ”; and

(ii) by deleting subparagraph (ii) and substituting the following subparagraph—

“ (ii) having regard to the value of the property at the time when the consideration for the transfer, sale, alienation,

charge, lease or purchase was paid, given, received, accepted or agreed to, that consideration was—

(I) in the case of a transfer, sale, alienation, charge or lease, adequate; or

(II) in the case of a purchase, not excessive. ”; and

(c) in subsection (3), by deleting “or lease,” and substituting the following—

“ , lease or purchase, ”.

5. Section 29 of the principal Act is amended in subsection (4), by deleting “one thousand two hundred dollars” and substituting the following—

Section 29
amended.

“ \$6 000 ”.

6. Section 35 of the principal Act is amended in paragraph (a) of subsection (2), by deleting “fourteen” and substituting the following—

Section 35
amended.

“ 28 ”.

7. (1) Section 38 of the principal Act is amended—

Section 38
amended.

(a) in subsection (1), by deleting “There” and substituting the following—

“ Subject to subsections (2a) and (2b) of this section, there ”;

(b) in paragraph (b) of subsection (2), by inserting after “any estate” the following—

“ other than interest payable to the estate under section 40 (4) of this Act in respect of moneys held in the Common Fund ”; and

(c) by inserting after subsection (2) the following subsections—

“ (2a) There shall not be any fee payable to the Public Trustee in respect of income earned by an estate by way of interest payable to the estate under section 40 (4) of this Act in respect of moneys held in the Common Fund.

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

(2) Without limiting the application of that provision, the power contained in section 38 (2b) of the principal Act as inserted by subsection (1) (c) of this section shall extend to fees which, at the commencement of this section, have accrued due but have not been paid.

Section 40
amended.

8. Section 40 of the principal Act is amended—

(a) by inserting after subsection (3) the following subsection—

“ (3a) The Public Trustee shall deduct, by way of fees in respect of the management of the Common Fund, 6 per centum of the total interest or income earned by investment of moneys forming part of the Common Fund. ”;
and

(b) in paragraph (c) of subsection (4)—

(i) by inserting after “Public Trustee after” the following—

“ deduction of fees in accordance with subsection (3a) of this section and ”; and

(ii) by deleting “referred to in that subsection,” and substituting the following—

“ the moneys of which are held in the Common Fund, ”.

9. Section 49 of the principal Act is amended— Section 49 amended.

(a) in subsection (1), by inserting after paragraph (e) the following paragraph—

“ (ea) subject to subsections (2a) and (2b) of this section, purchase land in fee simple in the State, either alone or with any other person, in the following circumstances—

(i) in the care and management of the estate of an incapable patient or an infirm person; or

(ii) in the course of the administration of any other trust or estate; ”; and

(b) in subsection (2), by deleting paragraphs (i), (ii) and (iii) and substituting the following paragraphs—

“ (a) sell real property of a greater value than \$50 000;

- (b) exchange real property of a greater value than \$25 000, or join in a partition in which the interest of any person entitled thereunder exceeds \$25 000;
 - (c) borrow money to an amount exceeding \$20 000. ”; and
- (c) by inserting after subsection (2) the following subsections—
- “ (2a) The Public Trustee may only exercise the power to purchase land conferred by paragraph (ea) of subsection (1) of this section—
- (a) after obtaining and considering a report in terms of subsection (2b) of this section as to the value of the land; and
 - (b) where the purchase price does not exceed by more than 5 per centum the value of the land as stated in the report referred to in paragraph (a) of this subsection.
- (2b) A report referred to in paragraph (a) of subsection (2a) of this section shall—
- (a) be in writing;
 - (b) be made by a person who is licensed under the Land Valuers Licensing Act 1978 and who is reasonably believed by the Public Trustee to be experienced in valuation of that kind of land in the area of the State in which it is situate; and

(c) contain a statement as to—

- (i) the value of the land;
- (ii) the actual or potential income from the land;
and
- (iii) the prospective outgoings on the land.

(2c) Where the Public Trustee purchases land in exercise of the power conferred by paragraph (ea) of subsection (1) of this section he shall not be chargeable with breach of trust by reason only of the relation borne by the purchase price to the value of the land if he has complied with subsection (2a) of this section. ”.
