

THE NORTHERN TERRITORY OF AUSTRALIA

PUBLIC TRUSTEE ACT 1979

No. 84 of 1979

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SCHEDULE 1

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# THE NORTHERN TERRITORY OF AUSTRALIA

No. 84 of 1979

## AN ACT

Relating to the Office of the Public Trustee for the  
Northern Territory

[Assented to 13 July 1979]

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

### PART I - PRELIMINARY

- |   |              |
|---|--------------|
| 1. This Act may be cited as the <u>Public Trustee Act 1979</u> .  | Short title  |
| 2. This Act or any Part or section shall come into operation on a date to be fixed by the Administrator by notice in the <u>Gazette</u> .   | Commencement |
| 3.(1) The Acts set out in Schedule 1 are repealed.  | Repeal       |
| (2) The Act of the State of South Australia set out in Schedule 2 ceases to apply as a law of the Northern Territory.   |              |
| 4.(1) The repeals effected by section 3 shall not -   | Saving       |
| (a) affect any probate, administration, order, matter or thing granted, made, given or done under or in pursuance of any of the repealed Acts; or   |              |
| (b) affect any investigation, inquiry, legal or other proceedings in respect of any matter which the Public Trustee, under any of the repealed Acts, made or commenced.   |              |
| (2) All matters saved by this section are, to the extent that they were respectively in force or in existence immediately before the passing of this Act, hereby preserved and continued and declared to have the same force and effect as if this Act had been in force when, respectively, they were done, suffered, omitted, created, granted, acquired, incurred, held, imposed or made or had accrued or become exercisable or liable to be imposed and they respectively had been |              |

## Public Trustee

done, suffered, omitted, created, granted, acquired, incurred, held, imposed or made or had accrued or had become exercisable or liable to be imposed under this Act.

(3) A matter or proceeding commenced under any Act repealed by this Act and pending or in progress at the passing of this Act may be continued and completed under this Act.

(4) All offences committed and all liabilities, forfeitures and penalties incurred or imposed or liable to be imposed before the passing of this Act may be tried, punished, inquired into and enforced under this Act.

(5) The common fund established by section 8 of the Public Trustee Act 1920 as amended and in force immediately prior to the commencement of this Act shall continue in force and form part of the common fund constituted under this Act and, notwithstanding the repeals effected by section 3, any action taken in relation to investment in that fund and the payment of interest earned on that fund pro rata by the Public Trustee established under the repealed Acts or the Curator of Estates of Deceased Persons appointed under the Administration and Probate Act at any time before the commencement of this Act is as valid and effectual as if section 8 of the Public Trustee Act 1920 as amended and in force immediately prior to the commencement of this Act was in force and provided for investment in the fund and payment of interest pro rata by the Public Trustee or the Curator of Estates of Deceased Persons at that time.

### Definitions

5. In this Act, unless the contrary intention appears -

"administrator" includes -

- (a) a person to whom a grant of probate or administration is made; and
- (b) the Public Trustee, where he is authorized by this Act to administer an estate without a grant being made;

"bank" means a bank within the meaning of the Banking Act 1959 of the Commonwealth;

"common fund" means the common fund constituted under this Act;

## Public Trustee

"Consolidated Fund" means the Consolidated Fund established under the Financial Administration and Audit Act;

"court", in relation to a matter, means a court having jurisdiction in that matter;

"Court" means the Supreme Court of the Northern Territory;

"estate" includes a trust estate;

"grant of administration", in relation to an estate under the control of the Public Trustee, includes an election to administer by the Public Trustee, the grant of probate or letters of administration either with a will annexed or in the estate of an intestate deceased person or any other order of the Court authorizing the Public Trustee to administer the estate;

"Investment Board" means the Public Trustee Investment Board constituted by this Act;

"Judge" means a Judge of the Supreme Court of the Northern Territory;

"Public Trustee" means the Public Trustee appointed under section 8 and includes an Acting Public Trustee appointed under that section while that person is so acting;

"repealed Acts" means the Acts set out in Schedule 1 and Schedule 2.

6. This Act shall bind the Territory.

Act to bind  
Crown

7. The Public Trustee shall, subject to the direction of the Attorney-General, administer this Act.

Public Trustee  
to administer  
Act

### PART II - ADMINISTRATION

8.(1) The Administrator may appoint a person who is an employee within the meaning of the Public Service Act to be the Public Trustee for the Northern Territory.

Appointment  
of Public  
Trustee

(2) The Administrator may appoint a person who is an employee within the meaning of the Public Service Act to be a Deputy Public Trustee for the Northern Territory.

Public Trustee

(3) A Deputy Public Trustee, while he remains in office, shall have and may exercise, perform and discharge, subject to the control and direction of the Public Trustee, all the functions, powers, authorities, discretions, rights and duties of the Public Trustee and all reference in this or in any other Act to the Public Trustee shall, so far as may be necessary for the purpose of giving effect to the provisions of this section, be read as including a reference to a Deputy Public Trustee.

(4) A person, court or judge shall be not concerned to inquire whether or not a Deputy Public Trustee is subject to the control or direction of the Public Trustee in a matter.

(5) The Administrator may appoint a person who is an employee within the meaning of the Public Service Act to be an Acting Public Trustee to hold office during the absence of the Public Trustee from the Territory or during the inability of the Public Trustee, for any reason, to perform the duties of his office.

Public Trustee for the Northern Territory 9.(1) The Public Trustee and his successors in office shall be a body corporate under the name of "Public Trustee for the Northern Territory" and shall by that name be capable of exercising all the functions of an incorporated body, have perpetual succession and a common seal, may by that name sue and be sued and may acquire, hold and dispose of real and personal property.

(2) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Public Trustee affixed to any document or notice and presume that it was duly affixed.

Agent of Public Trustee 10.(1) The Public Trustee may, from time to time, appoint a person, whether within or beyond the Territory, to be his agent or representative as may be necessary.

(2) A person who is appointed under this section as an agent shall be subject to the direction, control, supervision and inspection of the Public Trustee in all matters relating to the business for which he is appointed.

Secrecy 11.(1) The Public Trustee, a Deputy Public Trustee, a member of the staff of the Public Trustee, an agent or representative of the Public Trustee and a member of the Investment Board shall maintain and aid in the maintenance of secrecy of all matters coming to

## Public Trustee

his knowledge relating to the business of the Public Trustee, including the business of the Investment Board, the affairs of any estate under the administration of the Public Trustee or in relation to the affairs of any persons concerned in any such estate.

Penalty: \$1,000 or imprisonment for 12 months.

(2) Before commencing to carry out duties of the Public Trustee, Deputy Public Trustee or a member of the staff of the Public Trustee, an agent or representative of the Public Trustee or a member of the Investment Board, a person appointed in any such manner for the first time shall make and subscribe an oath of secrecy before a person authorized by law to take an oath.

(3) The Public Trustee, a Deputy Public Trustee, a member of the staff of the Public Trustee, an agent or representative of the Public Trustee and a member of the Investment Board is authorized to give information in relation to an estate -

- (a) to a person directly interested in that part of the estate concerning which the information is sought or that person's solicitor or agent;
- (b) for the purpose of assisting in the carrying out of the powers and functions of the Public Trustee; or
- (c) in such other circumstances as he may be required by another law in force in the Northern Territory to divulge that information.

### PART III - PUBLIC TRUSTEE INVESTMENT BOARD

12.(1) There shall be a Board to be called the Public Trustee Investment Board that shall control the investment of money which is from time to time in the common fund of the Public Trustee and available for investment.

Public Trustee  
Investment  
Board

(2) The Investment Board shall meet at such times and places as it thinks fit.

(3) The Investment Board shall consist of -

- (a) the Public Trustee and any Deputy Public Trustee;



Public Trustee

- (b) a representative of the Treasurer; and
- (c) a representative of the Attorney-General.

(4) The quorum at a meeting of the Investment Board shall be the Public Trustee and 2 other members.

(5) The Public Trustee shall be the Chairman of a meeting of the Investment Board.

(6) The Chairman of a meeting of the Investment Board shall have a deliberative vote and in cases of an equality of votes shall have a casting vote.

Delegation  
by Invest-  
ment Board

13.(1) The Investment Board, by instrument in writing, may, from time to time, delegate to the Public Trustee -

- (a) the power to approve any valuation required by this Act or by any other Act or otherwise to be approved by the Investment Board; and
- (b) such of its other powers in respect of the investment of money from time to time in the common fund as it thinks fit.

(2) A delegation under sub-section (1) is revocable and shall not prevent the exercise of any power by the Investment Board.

(3) A delegation made under sub-section (1) may be made subject to such restrictions and conditions as the Investment Board thinks fit, and may be made generally or in relation to any particular matter.

(4) A power delegated under this section by the Investment Board to the Public Trustee may be exercised by a Deputy Public Trustee.

(5) The exercise of a power or the approval of a valuation by the Public Trustee shall be as full and effectual for all purposes as if the exercise or approval had been made by the Investment Board.

PART IV - ACCOUNTS

Accounts of  
Public  
Trustee

14.(1) The Public Trustee shall establish an account to be known as the Public Trustee's Account at a bank approved by the Treasurer.

(2) The Public Trustee may establish such additional accounts as are approved by the Attorney-General at a bank or banks approved by the Treasurer.

## Public Trustee

15. A person who receives money which is payable to the Public Trustee shall pay the money to the Public Trustee as soon as practicable after receipt.

Receipt of  
moneys

16.(1) Nothing in section 14 shall prevent the Public Trustee from opening or keeping open or operating a separate account in connection with a business carried on by him for the benefit of any estate being administered by him.

Separate  
accounts for  
businesses  
of estate

(2) An account referred to in sub-section (1) may be opened with any bank or with any institution approved by the Attorney-General and the receipts of the business for which the account is opened may be deposited in and the outgoings of the business may be paid from the account.

(3) The Public Trustee may delegate to an employee within his office, a manager employed by him for the purpose or an agent or representative appointed by him to manage a business, the power to operate an account opened or maintained in accordance with this section, either alone or in conjunction with any other person or persons.

17.(1) Where the Public Trustee invests money under section 23, he may open a separate account for a particular estate or beneficiary in the name of the Public Trustee and of the estate or beneficiary.

Separate  
accounts for  
particular  
estates

(2) The Public Trustee may operate an account opened under sub-section (1) for the benefit of the estate or of a beneficiary interested in the account in such manner and to such extent as the Public Trustee may, from time to time, determine.

18. The Public Trustee shall forward to the Attorney-General as soon as practicable after 30 June in each year a report on the operations of the Public Trustee during the preceding financial year.

Report

19.(1) The Auditor-General and any officer of his office authorized by him shall, at all times, have access to all the books, accounts, documents and papers in the control of the Public Trustee.

Auditor-  
General to  
have access

(2) The Auditor-General shall inspect and audit the accounts and records of the Public Trustee and shall forthwith draw the attention of the Attorney-General to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his so doing.

Public Trustee

(3) The Auditor-General may, at his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in sub-section (2).

(4) The Auditor-General shall, at least once in each year, report to the Attorney-General the results of the inspection and audit carried out under sub-section (2).

Furnishing  
of inform-  
ation to  
Auditor-  
General

20. The Public Trustee shall at all times furnish to the Auditor-General such information as the Auditor-General requires.

PART V - COMMON FUND

Common  
fund

21.(1) The Public Trustee shall establish and maintain a common fund.

(2) Subject to this Act, the Public Trustee shall invest any moneys which he receives on behalf of an estate, trust or person in the common fund established under sub-section (1).

(3) Where the investment of moneys in a common fund is not consistent with the terms of the trust under which those moneys are received, the Public Trustee shall not invest those moneys in the common fund.

(4) Investments made from the moneys forming part of the common fund shall not be made in the name of an account of, and they shall not belong to, any particular estate, trust or person.

(5) The Public Trustee shall keep an account in his book showing, at all times, the current amount for the time being at the credit of the common fund for each estate, trust or person.

(6) The Public Trustee may sell investments belonging to the common fund and may withdraw any of the moneys belonging to the common fund for any purposes relating to the exercise and discharge of his powers, authorities, duties and functions.

(7) The Public Trustee may, at any time, withdraw from the common fund any amount at credit in the common fund on account of any estate, trust or person.

(8) Amounts withdrawn under sub-section (7) from the common fund shall, as from the date of withdrawal, cease to have a claim for interest or otherwise on the common fund.

## Public Trustee

(9) The Minister may, from time to time, declare by notice in the Gazette the rate of interest payable on moneys invested in the common fund established under this section.

(10) Interest earned by investments made from the common fund shall be credited to an account in the common fund to be called the "Common Fund Interest Account".

(11) The Common Fund Interest Account shall be applied by the Public Trustee -

(a) first, in payment to the credit of the respective trusts or estates, the moneys of which form the common fund, of the interest payable under this Act to each, calculated on the respective minimum monthly balances of such trusts or estates at credit in the common fund; and

(b) secondly, in payment from any balance at credit in the Common Fund Interest Account after the payment referred to in paragraph (a) to the Consolidated Fund.

(12) The payments referred to in sub-section (11)(a) shall be made -

(a) on 31 March and 30 September of each year and at such other times, if any, as the Public Trustee from time to time determines; and

(b) on completion of the administration of the trust or estate.

(13) Moneys in the common fund established under this section shall be invested by the Public Trustee in accordance with the directions of the Investment Board.

22. A power or direction to the Public Trustee in an instrument prescribing the terms upon which the Public Trustee is to hold moneys giving power to the Public Trustee to invest in only one or some of the classes of securities approved by the Investment Board shall not be taken to be a prohibition against investment in the common fund unless there is an express direction prohibiting investment in the common fund.

Prohibition  
of investment  
in common  
fund

23. Where the Public Trustee holds money which is not invested in the common fund he shall invest the money in accordance with any directions applicable to that money and in the event there are no directions then in any investment authorized by the Trustee Act.

Investment  
in accordance  
with directions

Public Trustee

Investment  
Board to  
authorize  
investments

24.(1) The Investment Board may authorize investment of money from the common fund -

- (a) in government securities of the Commonwealth, a State of the Commonwealth, or of the Territory;
- (b) in debentures or securities guaranteed by the government of the Commonwealth, a State of the Commonwealth or of the Territory;
- (c) in securities issued by a city, county, municipal or shire council in the Commonwealth;
- (d) on fixed deposit with a bank carrying on business in the Commonwealth;
- (e) with a savings bank carrying on business in the Commonwealth;
- (f) by way of loan secured by a first registered mortgage of -
  - (i) freehold land in the Commonwealth; or
  - (ii) land held under the provisions of the Darwin Town Area Leases Act, the Crown Lands Act, the Church Lands Leases Act or the Special Purposes Leases Act,

where the amount of the loan does not exceed two-thirds of the estimated value of the property secured by the mortgage according to a valuation approved by the Investment Board;

- (g) by way of loan secured by first mortgage on the debentures or securities set out in paragraphs (a), (b) and (c) where the amount of a loan under this paragraph does not exceed 90 per cent of the estimated value of the debenture or security according to a valuation approved by the Investment Board or 90 per cent of the nominal value of the debenture or security, whichever is the less;
- (h) by way of loan to estates or to beneficiaries pursuant to the provisions of this Act;
- (j) in the purchase of freehold land and land the subject of a lease from the Crown for a period of not less than 25 years in Australia and in the erection or alteration of buildings on land which is for the time being an investment of the common fund or in the improvement of such land or building;

Public Trustee

(k) in any other manner for the time being authorized for investment of trust funds by the Trustee Act; and

(m) in any other security or class of securities which the Minister may, by notice in the Gazette, authorize.

(2) The Investment Board shall have regard to the profits, rents or income of any property before authorizing an investment by way of loan secured by mortgage over the property.

(3) The Investment Board may authorize the advance of moneys on such terms and conditions, including payment of interest, as it sees fit.

25.(1) A sale by the Public Trustee in the exercise of his powers of sale under a mortgage may be by public auction or private treaty and, in the case of a sale by private treaty, advertising shall not be necessary.

Sale by  
Public  
Trustee

(2) Any money expended by the Public Trustee in the exercise of the powers of the Public Trustee under a mortgage shall be -

(a) repayable to the Public Trustee by the mortgagor on demand and until repayment may, at the discretion of the Public Trustee, incur interest chargeable at the maximum rate provided by the mortgage, such interest (if any) to be computed from the date or dates of the money being expended; and

(b) a charge on the mortgagor's interest in the land, the subject of the mortgage, and shall be secured by the mortgage.

26.(1) Where the Public Trustee exercises on behalf of the common fund a power of sale under a mortgage, he may, if he considers it expedient to do so, buy in, purchase or otherwise acquire the land or other property affected by the mortgage.

Public Trustee  
may buy in,  
&c.

(2) Subject to the direction of the Investment Board, the Public Trustee may expend or acquire money from the common fund to exercise the powers under sub-section (1).

(3) Land or other property bought in, purchased or otherwise acquired under this section may be managed, stocked, cultivated, leased, exchanged, sold or otherwise disposed of by the Public Trustee subject to the direction of the Investment Board.

Public Trustee

(4) Any land held under this section shall constitute an investment of the common fund.

Common fund  
may borrow

27.(1) The Public Trustee may, with the approval of the Investment Board, borrow money from the Territory or from a bank on the security of investments held by him in respect of the common fund.

(2) An advance made under sub-section (1) shall be for a period not exceeding 6 months at such rate of interest as is approved by the Attorney-General.

(3) The Attorney-General may approve the renewal of an advance under sub-section (1) at the expiration of the period referred to in sub-section (2).

(4) The term "advance" where used in this section shall include financial accommodation with a bank by way of overdraft.

Territory to  
indemnify  
common fund

28. Where the common fund is insufficient to meet the lawful claims made on it, the Treasurer shall satisfy the deficiency out of money legally available.

Minors

29.(1) Where a person pays money to the Public Trustee for investment thereof in the common fund for the use and benefit of any person under the age of 18 years, the Public Trustee may pay to the beneficiary any interest which may accrue on the sum invested in the same manner as if the beneficiary were of full age.

(2) The receipt of a beneficiary of money paid to him by the Public Trustee under sub-section (1) shall be a sufficient discharge for all money paid to him notwithstanding his incapacity or inability at law to contract or act for himself.

(3) The Public Trustee shall be discharged from liability in respect of any payments made by him under the authority of this section.

Loans to  
estates from  
common fund

30.(1) Where, in any estate administered by the Public Trustee, there is real or personal property but there is not money or not sufficient money available in the estate for the purpose of meeting the payment of -

- (a) the expenses properly incurred by the Public Trustee in the administration of the estate;
- (b) creditors or beneficiaries; or
- (c) money required to carry to full effect any power or discretion which is vested in the Public Trustee,

## Public Trustee

the Public Trustee may, with the approval of the Investment Board, advance to the estate sufficient money out of the common fund as may be necessary for the purpose.

(2) The Public Trustee shall not advance an amount greater than the value of the real and personal property in the estate as estimated in accordance with the valuation approved by the Investment Board less the amount of any debts, actual or contingent, owing by the estate.

(3) A sum of money advanced under this section shall bear interest at a rate approved by the Investment Board and shall be a charge upon the real and personal property of the estate.

(4) The charge upon the real and personal property referred to in sub-section (3) shall rank next in priority to any mortgage or other charge which is registered against or secured on the real or personal property and of which the Public Trustee has notice at the time of the making of an advance.

(5) The Public Trustee may lodge a caveat claiming an interest in land as an equitable mortgagee against the title to any land registered under the Real Property Act to protect the interest of the common fund and the Registrar-General may register the caveat.

(6) A caveat may be lodged under sub-section (5) by the Public Trustee notwithstanding the fact that he is registered as a proprietor of an interest in land.

31.(1) Subject to this section, where a person is entitled to a share in an estate administered by the Public Trustee and the estate is not yet administered to a stage where that payment can be made or the interest has not matured, the Public Trustee may, with the approval of the Investment Board, make an advance out of the common fund to that person not exceeding in aggregate two-thirds of the value of his share as estimated by the Public Trustee and approved by the Investment Board.

Advances to  
beneficiaries  
or estates

(2) An advance made under sub-section (1) shall bear interest at a rate fixed by the Investment Board from time to time.

(3) An advance made under this section and interest that has accrued thereon shall, by force of this Act and without any instrument of assignment, be a first charge on the share of the person so entitled.



## Public Trustee

(4) The Public Trustee may issue a certificate under seal stating the amount advanced under this section and interest owing on the date specified in the instrument, the person to whom the advances have been made and the share against which they are made and the certificate shall be evidence of the facts stated in it.

(5) The provisions of this section shall not apply to the share of any person which is, for the time being, subject to any contingency or is not indefeasibly vested.

(6) An advance made to a person under this section, any interest thereon, or costs, charges and expenses due in connection with the advance or the recovery of the advance shall, in the absence of an express agreement, be repayable on demand and may be recovered from the person to whom the moneys have been advanced in any court of competent jurisdiction.

(7) The Public Trustee may, at any time without notice sell, mortgage, charge or otherwise deal with the share against which an advance has been made under this section.

### PART VI - ACQUISITION OF THE RIGHT TO ADMINISTER ESTATES

Public Trustee 32.(1) A court, judge or person who has power  
may be to appoint -  
appointed  
trustee, &c.

- (a) an executor;
- (b) an administrator;
- (c) an agent;
- (d) an administrator pendente lite;
- (e) a trustee;
- (f) a receiver;
- (g) a manager or committee of the estate of a person under any law in the Northern Territory relating to mental health or protected persons;
- (h) a guardian of the estate of any person; or
- (j) an attorney,

may appoint the Public Trustee, either alone or jointly

## Public Trustee

with another person, and the Public Trustee may act in that capacity.

(2) Notwithstanding any law in force in the Northern Territory, a trustee is discharged from his trust and the powers and duties conferred upon him if, with the consent of the Public Trustee, he resigns leaving or appointing the Public Trustee as sole trustee.

(3) Where a trustee is incapable of acting or has died, then the person nominated for the purposes of appointing new trustees by the instrument creating the trust or, if there is no person able or willing so to act, the continuing or surviving trustee, or the personal representative of the last surviving trustee, may, notwithstanding any law in force in the Northern Territory, appoint the Public Trustee, if the Public Trustee consents, to be the sole trustee and thereby discharges from the date of appointment of the Public Trustee the former trustee from his trust and the powers and duties conferred upon him by that trust.

(4) Where the Public Trustee is appointed to any of the offices or positions referred to in sub-section (1), the Public Trustee may exercise, perform and discharge all the powers and duties and shall be liable to all the obligations pertaining to the office or position to which the Public Trustee is appointed.

(5) Notwithstanding the provisions of any other Act, or rule, or law to the contrary, the Public Trustee upon becoming executor, administrator or trustee pursuant to the provisions of this Part shall not be obliged to inquire into or to institute any proceedings in respect of any acts or omissions or distributions done or omitted or made by any other person whether as executor, administrator, trustee or otherwise at any time before the Public Trustee became the executor, administrator or trustee as aforesaid.

33.(1) An executor or administrator acting under any grant of probate or letters of administration, a receiver appointed by the Court, a committee or manager appointed to manage the estate of a person under any law in the Northern Territory relating to mental health or protected persons, or a guardian of the estate of any person, may, with the consent of the Court, appoint the Public Trustee to exercise, perform and discharge all the powers and duties of that executor, administrator, receiver, committee or guardian.

An executor,  
&c., may  
appoint  
Public Trustee

(2) Notice of the intended application under this section for the consent of the Court and the date on

## Public Trustee

which it is intended to be made shall be advertised once in a newspaper published in the Northern Territory at least 7 days before the making of the application.

(3) The Court may require a person entitled to receipt of any of the income or corpus of the estate in respect of which the application is made or any other person to be served with a notice of the application.

(4) The costs of the application and any appearances are in the discretion of the Court and may be ordered to be paid out of the estate.

(5) Where the Public Trustee is appointed pursuant to this section, the person in whose place the Public Trustee is appointed is released from all liability in respect of acts done or omitted to be done by the Public Trustee acting under an appointment pursuant to this section.

Public Trustee 34.(1) Where a person dies intestate leaving real  
may admin- or personal property situated in the Territory, the  
ister estate Public Trustee may apply for and obtain grant of  
of intestate administration of that person's estate.  
person

(2) Where a person dies intestate and the Public Trustee is not entitled to apply for a grant of administration under sub-section (1), the Public Trustee may, with leave of the Court, apply for and obtain a grant of administration of that person's estate.

(3) The Public Trustee shall be entitled as of right to the grant of administration in an application made under sub-section (1).

(4) If at any time before or after the grant of administration to the Public Trustee under this section a person who is entitled to the grant of letters of administration of the estate of a deceased person applies for a grant of letters of administration, the Court may grant letters of administration to that person.

(5) It shall not be necessary for the Public Trustee to give notice of an application under sub-section (1) to any person who may be entitled to the grant of letters of administration of the estate of a deceased person and the Court shall not require the Public Trustee to give any such notice.

(6) Immediately on the grant of letters of administration of the estate of a deceased person pursuant to the provisions of sub-section (4) -

(a) all the functions, powers, authorities,

## Public Trustee

discretions, rights and duties of the Public Trustee, other than the rights reserved by this sub-section, in relation to the estate of the testator and all liability of the Public Trustee under any contract entered into by the Public Trustee affecting or relating to the estate shall pass to the person obtaining probate or letters of administration with the will annexed and no claim shall thereafter lie against the Public Trustee in respect of any such liability; and

- (b) subject to payment to the Public Trustee of all money due for commission, disbursements, costs, charges and expenses affecting the estate, including the costs of the Public Trustee of and incidental to the application for probate or letters of administration with the will annexed referred to in sub-section (3), the remainder of the estate as is then unadministered by the Public Trustee shall vest in the person obtaining probate or letters of administration.

35.(1) Where the Public Trustee is satisfied that -

Small estates

- (a) the net value of the estate of a deceased person does not exceed \$5,000; and
- (b) application has not been made for a grant of probate of the will or of letters of administration of the estate of the deceased person,

the Public Trustee may administer the estate of the deceased person and for that purpose may call in the estate of the deceased person, sell and convert into money such part of that estate as does not consist of money, pay any debts and liabilities of or relating to the deceased person, being debts and liabilities of which he has notice, and deal with the balance, if any, of that estate as if a grant of administration of the estate of the deceased person had been made to the Public Trustee by the Court.

(2) Where the Public Trustee administers an estate of the deceased person under sub-section (1) and a balance remains after he has dealt with the estate in accordance with that sub-section, the Public Trustee shall deal with the balance of the estate in the following manner:

- (a) if the Public Trustee is of the opinion that the person died testate - as if probate of the last will of the person had been granted to the Public Trustee by the Court; or

Public Trustee

(b) in any other case - as if letters of administration of the estate had been granted to the Public Trustee by the Court.

(3) The Public Trustee shall not administer an estate under sub-section (1) unless notice of intention to so administer the estate has been given by the Public Trustee by advertisement in a newspaper published in the Territory.

(4) Where the Public Trustee is in, or comes into, possession of a will of a deceased person whose estate is being administered by the Public Trustee or has been administered by the Public Trustee under sub-section (1), the Public Trustee shall deposit the will with the Registrar of Probates appointed under the Administration and Probate Act.

(5) Where the Public Trustee administers an estate under sub-section (1), neither the Territory nor the Public Trustee is liable for any act done by or under the direction of the Public Trustee in good faith in the course of administering the estate.

Public Trustee 36.(1) Where a will, codicil, deed or other instrument provides for or directs the appointment of 2  
may act as sole trustee or more trustees the trustees appointed under any such will, codicil, deed or other instrument or any other person having the power to appoint new trustees thereof may appoint the Public Trustee as sole trustee under the will, codicil, deed or other instrument unless the appointment of the Public Trustee as sole trustee is expressly prohibited by the will, codicil, deed or other instrument.

(2) An appointment under sub-section (1) may be made without obtaining the consent of the Court.

(3) The Public Trustee appointed in pursuance of this section as a sole trustee may act lawfully as sole trustee.

Court may  
give  
consent

37. Where the consent of a person is required before the appointment of an administrator or trustee and the person -

(a) refuses to consent to the Public Trustee being appointed;

(b) is absent from the Territory;

## Public Trustee

- (c) is not of full age;
- (d) is not of full mental capacity; or
- (e) is under any other disability,

the appointment of the Public Trustee may be made without consent by leave of the Court.

38.(1) Where the Public Trustee is given a grant of administration in substitution for the executor, administrator or trustee originally appointed, all property, functions, powers, authorities, discretions and rights vested in or conferred on the original executor, administrator or trustee by the trust instrument shall, by the appointment, without conveyance, transfer or assignment or the execution of any other instrument, become vested in and exercisable by the Public Trustee as fully and effectually as if he had been named as such executor, administrator or trustee by the instrument.

Public Trustee to have powers of executor, &c., where appointed in substitution

(2) A certificate made in pursuance of sub-section (2) in relation to any property registered under the Real Property Act shall be sufficient evidence for the Registrar-General to register the Public Trustee as the proprietor of the estate or interest described in the certificate.

39.(1) Where a person dies testate leaving real or personal property in the Territory and an application for probate of the will or letters of administration with the will annexed is not made in the Territory within 3 months after the date of the death of the person, the Public Trustee may apply for a grant of administration and the Court may make the grant unless the person entitled to probate or letters of administration with the will annexed applies and shows to the satisfaction of the Court that the delay in making the application for probate or letters of administration with the will annexed is reasonable in all the circumstances.

Public Trustee may apply for probate after 3 months

(2) Where the person entitled to the grant of probate or letters of administration with the will annexed applies in accordance with sub-section (1), no costs shall be awarded against the Public Trustee and, unless the Court otherwise orders, the Public Trustee shall be entitled to his costs out of the estate of the deceased person.

(3) Where the Public Trustee has been given a grant of administration under sub-section (1), a person entitled to probate or letters of administration with the will annexed who has not renounced or refused probate or letters of administration may apply himself,

Public Trustee

or by his attorney, to the Court and the Court may, if it thinks fit, grant probate or letters of administration with the will annexed to that person or his attorney as the case may be in such manner and subject to such limitations or conditions as the Court thinks proper.

(4) An application shall not be made under sub-section (3) until after the expiration of 14 days from the date of service upon the Public Trustee of a notice in writing of the intention of the intended applicant, or his attorney, to apply for probate or letters of administration with the will annexed in that estate.

(5) Immediately on the grant of probate or letters of administration with the will annexed pursuant to the provisions of sub-section (3) -

(a) all the functions, powers, authorities, discretions, rights and duties of the Public Trustee, other than the rights reserved by this sub-section, in relation to the estate of the testator and all liability of the Public Trustee under any contract entered into by the Public Trustee affecting or relating to the estate shall pass to the person obtaining probate or letters of administration with the will annexed and no claim shall thereafter lie against the Public Trustee in respect of any such liability; and

(b) subject to payment to the Public Trustee of all money due for commission, disbursements, costs, charges and expenses affecting the estate, including the costs of the Public Trustee of and incidental to the application for probate or letters of administration with the will annexed referred to in sub-section (3), the remainder of the estate as is then unadministered by the Public Trustee shall vest in the person obtaining probate or letters of administration.

Proof of  
death  
testacy or  
intestacy

40. On an application by the Public Trustee for a grant of administration, in the absence of evidence to the contrary, no further proof of the death testacy or intestacy of any person shall be required than an affidavit by the Public Trustee that, after due inquiries, the Public Trustee is satisfied that the person has died, either testate or intestate, as the case may be.

## Public Trustee

41. The Public Trustee may act as agent for the purpose of obtaining a reseal in the Territory of a grant of administration obtained outside the Territory.

Public Trustee  
may act as  
agent for  
reseal

42.(1) A court may direct the Public Trustee to represent any party in any proceedings or any person or class of persons interested in any proceedings before the court.

Court may  
direct Public  
Trustee to  
act on behalf  
of a person

(2) The Public Trustee shall be entitled to be represented in proceedings referred to in sub-section (1) and the costs and expenses of any such representation, as between solicitor and client, together with a reasonable fee for the services of the Public Trustee, shall be paid to the Public Trustee out of any estate, funds or property, the subject matter of the proceedings, or otherwise as the court thinks fit.

43.(1) On an application by the Public Trustee, whether in common form or in solemn form, for a grant of administration, the Public Trustee shall be entitled to his costs out of the estate and shall not be liable for the costs of any other person.

Public Trustee  
entitled to  
costs

(2) Where the beneficiaries entitled under an intestacy cannot agree as to the person to be appointed administrator, and the Public Trustee, at the request of one or more of those beneficiaries, applies for a grant of administration, the Public Trustee shall not be liable for the costs of any other person, and shall be entitled to his costs out of the estate whether the Public Trustee is appointed the administrator or not.

44. Where a caveat is lodged against an application by the Public Trustee for a grant of administration, the Registrar of Probates shall furnish the Public Trustee a copy of the caveat.

Caveat

45.(1) Where a trustee of a trust estate is empowered to delegate all or any of his functions, powers, authorities, discretions or rights to any person, he may delegate the same to the Public Trustee with his consent and in any such case the Public Trustee may exercise all the functions, powers, authorities, discretions and rights so delegated.

Trustees may  
delegate to  
Public Trustee

(2) The Public Trustee shall be entitled to charge such fees as are prescribed or as may be agreed, not exceeding the prescribed fees where a fee is prescribed, by a trustee delegating to the Public Trustee under sub-section (1).



## Public Trustee

Public Trustee 46.(1) Where the real and personal property of a  
may act person vests in the Public Trustee under section 51(1)  
before of the Administration and Probate Act, the Public  
grant Trustee may, if he thinks fit, until administration is  
granted, exercise with respect to the estate of the de-  
ceased person all such powers and authorities and do  
all such acts and things as he would or could exercise  
or do if the deceased had died intestate and the Public  
Trustee had obtained administration other than the  
distribution of any part of the estate to the person  
beneficially entitled.

(2) Where the Public Trustee acts under sub-  
section (1), the Public Trustee shall not sell, lease,  
exchange, mortgage or partition any portion of the  
real property of the estate unless the real property is  
ordered to be sold, leased, exchanged, mortgaged or  
partitioned by the Court on the application of the  
Public Trustee or another person.

(3) Where the Public Trustee acts under sub-  
section (1), the Public Trustee may not sell any  
portion of the personal property of the estate without  
an order of the Court unless the personal property is  
of a perishable nature or liable to deteriorate or is for  
any other reason liable to decrease unduly in value if  
retained.

(4) A decision by the Public Trustee that per-  
sonal property of an estate which he is administering  
under sub-section (1) is of a perishable nature or is  
liable to deteriorate or is for any reason liable to de-  
crease unduly in value if retained shall be conclusive  
and binding upon all persons.

(5) All costs, charges and expenses incurred by  
the Public Trustee under this section shall be a first  
charge upon the property of the deceased person.

(6) A person who applies for the administration of  
the estate of a deceased person where the Public  
Trustee has acted under sub-section (1), shall, before  
he is entitled to a grant of probate or letters of ad-  
ministration, first pay any costs, charges, commissions  
and expenses incurred by or payable to the Public  
Trustee.

(7) The Public Trustee acting under this section  
shall not be taken to be, or be found to be, liable as  
an executor de son tort.

Notice

47.(1) Before the Public Trustee first acts under  
section 46, the Public Trustee shall give notice in such  
form as he thinks fit to any person known to the  
Public Trustee who would be entitled to apply for ad-

## Public Trustee

ministration that the Public Trustee intends to act under section 46 unless the person forthwith proceeds to apply for administration.

(2) Where a notice is served under sub-section (1) and a person does not, within a period of 21 days after service of the notice, advise the Public Trustee in writing that he intends to apply for administration, or, if that person gives such notice but fails to apply to the Court within 14 days of that notice, or makes an application and is not successful in obtaining a grant of administration then, unless the Court otherwise orders, the Public Trustee may proceed to exercise all or any of the powers or authorities conferred by section 46.

(3) Where more than one person is entitled to apply for a grant of probate or letters of administration and the Public Trustee intends to act under section 46, it shall be sufficient for the Public Trustee to give notice to one only of those persons.

(4) Where, in the opinion of the Public Trustee, the delay caused by the requirement to give notice under sub-section (1) before taking action would cause detriment to an estate or to the interest of a creditor of or a person beneficially entitled in an estate, the Public Trustee may act immediately.

48.(1) Where a person dies leaving real or personal property situated in the Territory and a person other than the Public Trustee makes application for the administration of the estate of the deceased person and the Public Trustee believes that there are substantial or reasonable grounds for opposing the grant but there is no person in the Territory beneficially interested in opposing the grant who is of full age and of full mental capacity, the Public Trustee may -

Public  
Trustee  
may object

- (a) if he thinks it expedient lodge a caveat against the application for the administration pursuant to the Administration and Probate Act; and
- (b) apply ex parte to a Judge in Chambers for direction.

(2) Where an application is made under sub-section (1)(b) to a Judge in Chambers, the Judge may direct the Public Trustee to represent the persons who may be prejudicially affected by the grant and in the corporate name of the Public Trustee oppose the grant on their behalf.

Public Trustee

(3) All costs, charges and expenses incurred by the Public Trustee pursuant to any directions given by the Judge under sub-section (1)(b) shall be paid out of the estate of the deceased person.

Indemnity  
where bona  
fide mistake  
as to death,  
&c.

49.(1) Where the Public Trustee -

- (a) has obtained a grant of administration;
- (b) is administering an estate by virtue of the powers conferred on him under this Part; or
- (c) is appointed or is acting as the executor or a trustee under a will,

and the person whose estate is being administered -

- (d) is alive;
- (e) did not die intestate;
- (f) executed a will which revoked or altered the will under which the Public Trustee is administering the estate; or
- (g) has rendered the authority of the Public Trustee of no effect,

all acts and things done or omitted to be done by the Public Trustee in good faith shall be as good, valid and effectual as if the Public Trustee has been lawfully appointed or entitled to act as such executor, administrator or trustee.

(2) The onus of proving that the Public Trustee has not acted in good faith in respect of any of the matters referred to in sub-section (1) shall be upon the person who alleges it.

Public sub-  
scriptions  
to funds,  
&c.

50.(1) Where a fund is raised by public or private subscription for the benefit or relief of any person or class of person, the person responsible for the raising of the fund may, with the consent of the Public Trustee or by leave of the Court, deposit the fund with the Public Trustee for administration upon such terms and conditions as may be agreed between that person and the Public Trustee or as may be ordered by the Court.

(2) The Public Trustee may, at any time, apply to the Court for directions for the administration of the fund administered by him under this section.

(3) The Public Trustee shall administer a fund established under this section in accordance with the agreed or approved terms.

Public Trustee

(4) The Attorney-General may apply to the Court for confirmation or variation of the terms of a fund administered by the Public Trustee under this section.

51.(1) Where a person applies to a court for an order -

- (a) directing a payment to be made to the Public Trustee;
- (b) vesting property in the Public Trustee; or
- (c) appointing the Public Trustee as administrator, trustee, manager, guardian or committee,

Notice of  
application  
to be served

the Court shall not make an order without the consent of the Public Trustee or until the expiration of a period of 14 days after the service of a notice on the Public Trustee by the person applying to the Court.

(2) Where a court makes an order -

- (a) directing a payment to be made to the Public Trustee;
- (b) vesting property in the Public Trustee; or
- (c) appointing the Public Trustee as administrator, trustee, manager, guardian or committee,

on the application of a person other than the Public Trustee, that person shall serve a sealed copy of the order of the court upon the Public Trustee and deliver to the Public Trustee a statement of the property affected by the order within 28 days of the making of the order.

Penalty: \$500.

(3) The statement of property affected by an order referred to in sub-section (2) shall give details of where the property is situated, by whom it is held, details of any outstanding liabilities against the property and such other details as may be prescribed.

52.(1) The Public Trustee may refuse to accept an appointment in any capacity other than an appointment made by order of the Court.

Refusal to  
accept by  
Public  
Trustee

(2) Where the Public Trustee refuses to accept an appointment under sub-section (1), the person making the appointment or a person beneficially entitled to an interest in property the subject of the appointment, or

## Public Trustee

a person who is otherwise entitled to claim an interest as next friend or guardian ad litem on behalf of the person interested in property the subject of the appointment, may apply to the Court for an order that the Public Trustee be appointed.

(3) Where the Public Trustee refuses an appointment under this section, the Public Trustee shall serve notice on all persons interested in the appointment.

### PART VII - ELECTIONS TO ADMINISTER ESTATES

Small  
estates

53.(1) Where a person has died testate or intestate leaving property situated in the Territory, the gross value of which as estimated by the Public Trustee at the time when he commences to administer the estate does not exceed \$15,000 and no person has obtained a grant of probate or letters of administration in the Territory, the Public Trustee may, instead of applying for a grant of administration in relation to that estate, file in the Court an election in writing under seal to administer the estate.

(2) On an election being filed in accordance with sub-section (1) the Public Trustee shall be taken to be the executor of the will or the holder of letters of administration with the will annexed or in the case of an intestate person letters of administration of the estate of that person, as the case may be, in like manner and to the same extent in all respects as if a grant of administration had been duly made to the Public Trustee.

(3) An election filed under sub-section (1) shall set out the name, address and occupation of the deceased, the date of death of the deceased and details of the property of the deceased.

(4) Where the Public Trustee files an election under this section, the election shall state whether the deceased died -

(a) intestate; or

(b) testate, and in the event that the deceased died testate a statement that after due inquiries the Public Trustee believes that the document annexed to the election is the testator's last will or an exemplification of the last will and that the will has been duly executed in accordance with the law governing the execution of that will.

Public Trustee

(5) If after filing an election under this section the Public Trustee discovers that the gross value of the property situated in the Territory to be administered exceeds \$17,000 calculated at the date on which the Public Trustee commenced administration, the Public Trustee shall file in the Court a memorandum under seal stating the value of the property.

(6) Where the Public Trustee files a statement in accordance with sub-section (5), the Public Trustee shall apply for a grant of administration or a reseal of the grant of administration, as the case may be.

54.(1) Where a grant of administration has been made in the Territory and the holders of that grant by reason of death or other incapacity have left part of the original estate unadministered and the gross value of the property left unadministered as estimated by the Public Trustee at the time when he commences administration does not exceed the sum of \$15,000 and no person has, since the death or incapacity of the last administrator, taken out letters of administration de bonis non, the Public Trustee may instead of applying for letters of administration de bonis non, file in the Court an election in writing under seal stating details of the original grant, the death or other incapacity of the executors or administrators and the particulars of the property left unadministered and electing to administer that property.

Elections  
for part  
administered  
estates

(2) Where the Public Trustee files an election under sub-section (1), he shall be taken to be the administrator of the original estate left unadministered in like manner and to the same extent in all respects as if letters of administration de bonis non had been duly granted to the Public Trustee.

(3) Where, after commencing to administer an estate in accordance with this section, the Public Trustee discovers that the value of the estate calculated at the time when he commenced his administration exceeds \$17,000, the Public Trustee shall file in the Court a memorandum under seal stating the estimated value and shall proceed in the ordinary manner to obtain letters of administration de bonis non in respect of the estate.

55. In determining the value of the property of an estate for the purposes of sections 53 and 54 the Public Trustee shall not include any property situated out of the Territory.

Valuation  
of small  
estates

56. A statement in an election to administer an estate to the effect that any executor or co-executor

Evidence of  
death of  
executor, &c.

Public Trustee .

has died or is unable or unwilling to act or has not made application for probate in the Territory shall, in the absence of evidence to the contrary, be accepted by all courts, officers and persons, whether acting under any Act or not, as sufficient evidence thereof without further proof.

Certificate  
of Public  
Trustee

57.(1) Where the Public Trustee is acting as executor, administrator, attorney, trustee, receiver, manager, committee or guardian, a certificate under the seal of the Public Trustee certifying -

- (a) the capacity referred to in this sub-section in which the Public Trustee is authorized to act;
- (b) the manner in which the Public Trustee became authorized to act in that capacity;
- (c) the time at which the Public Trustee became authorized to act in that capacity; and
- (d) the real or personal property described in the certificate forms part of the estate in respect of which the Public Trustee is acting,

shall, without any further proof, be accepted by all courts, officers and persons whether acting under an Act or not, as sufficient evidence of the respective matters so certified or stated.

(2) Where the Public Trustee is executor of, or has a grant of administration of, the estate of any deceased person, a certificate by the Public Trustee under his seal certifying all or any of the following facts, namely:

- (a) the name of the deceased;
- (b) the residential address of the deceased at the time of his death;
- (c) the occupation of the deceased immediately prior to the time of his death;
- (d) the nature or form of the authority by which the Public Trustee is administering the estate;
- (e) the date of granting of the authority referred to in paragraph (d);
- (f) the reference number of the authority referred to in paragraph (d);

## Public Trustee

- (g) the manner in which the Public Trustee became authorized to administer the estate; and
- (h) the time at which the Public Trustee became authorized to administer the estate,

shall, without any further proof, be accepted by all courts, officers and persons, whether acting under an Act or not, as sufficient evidence of the respective matters so certified or stated.

(3) A certificate given under sub-section (1) shall be sufficient for the purpose of an application for the registration of the Public Trustee as the proprietor of any estate or interest in any land under the Real Property Act.

(4) Where the Public Trustee is acting jointly with another person in any of the capacities mentioned in sub-section (1) or (2), a certificate issued in accordance with the conditions of this section shall be accepted by all courts, officers and persons whether acting under an Act or not, as sufficient evidence of the facts set out therein without any other proof.

### PART VIII - UNCLAIMED PROPERTY

58. Where, after due inquiry, it is not known with respect to the ownership of any real or personal property in the Territory -

Appointment  
of Public  
Trustee as  
manager

- (a) who is the owner of the property;
- (b) where the owner of the property is; or
- (c) whether the owner of the property is alive or dead,

subject to this Part, the Public Trustee may be appointed manager of the property.

59.(1) The Public Trustee may apply to the Court to be appointed manager of any property to which section 58 applies.

Public  
Trustee  
may apply

(2) An application under sub-section (1) may be made ex parte by the Public Trustee to the Court and, on the Court being satisfied that the appointment is advisable in the interests of the owner of the property or in the interests of any other person, the Court may order that the Public Trustee be appointed as the manager of that property.



## Public Trustee

(3) The Public Trustee shall cause a notice of his application for appointment as manager under this section to be published in the Gazette.

(4) In any case where the Court considers that due inquiry has not been made as to the owner of a property or of his whereabouts in any application made under sub-section (1) the Court may before making any order, require further inquiry to be made and adjourn the application.

(5) No property shall vest in the Public Trustee by reason only of the fact that he is appointed or becomes manager of that property under this section.

(6) The Public Trustee may apply to the Court for an order vesting the property the subject of this section in the Public Trustee as manager.

Powers as  
manager

60.(1) Unless the Court otherwise orders, the powers of the Public Trustee as manager under this Part of any real or personal property are -

- (a) to take or to recover possession of the property and to recover all money, damages and mesne profits payable to the owner in respect of the property whether the payment became due before or after the Public Trustee became manager of the property;
- (b) to apply the property, money, damages or mesne profits, or any part thereof or income therefrom, for the maintenance or education, including past maintenance or education, or the advancement or benefit, in such manner as the Public Trustee in his absolute discretion thinks fit, of the wife or husband or children of the owner of the property or any other person who is or was dependent upon the owner;
- (c) to complete, carry out, perform or enforce in such manner as the Public Trustee may think fit, any contract affecting the property or entered into by the owner, and exercise any powers conferred by any such contract;
- (d) to pay out of money received, advanced or borrowed by the Public Trustee in the exercise of any powers conferred by this Part, any mortgages, charges or other obligations on or attached to the property, and any debts or other liabilities of the owner of the property;

Public Trustee

- (e) to perform or discharge any obligation or duty imposed by any Act or otherwise upon the owner of the property;
- (f) to do anything requisite to obtaining or perfecting the title to the property;
- (g) in the case of real property, to cut and gather crops growing or situated on the real property and to erect fences on or around the property or to contribute to the erection of any dividing or boundary fences;
- (h) to repair property and raise money on the security of the property for that purpose;
- (j) to exercise any power of sale or other powers conferred upon the owner by any mortgage, lease, Act or instrument;
- (k) to pay or retain all commission, charges and expenses as may be fixed by law;
- (m) in the name of the owner or, at the Public Trustee's discretion, in the corporate name of the Public Trustee, to bring any action or other proceeding relating to the property, and to defend, confess, compromise or submit to judgment in any action, demand or proceedings touching or concerning the property;
- (n) to exercise all the powers which are conferred upon the Public Trustee by this Act relating to the capacity of the Public Trustee as a trustee; and
- (p) to exercise in respect of the property all other powers that may be conferred upon the Public Trustee by the Court.

(2) Any money which the Public Trustee may wish to raise pursuant to the powers conferred by or under this section may be advanced from the common fund or borrowed from any other source.

(3) All deeds and other documents executed by the Public Trustee as manager of any property under this Part shall have effect and may be registered in all respects as if they were executed by the owner of the property.

(4) Where a deed or instrument or document is executed by the Public Trustee in the exercise of his powers under this Part, no court or officer or person

Public Trustee

shall be concerned to see or to inquire whether those powers had or had not become exercisable.

Payment for improvements 61.(1) The Public Trustee may make such payment or allowance for the value of improvements made on, to or in respect of any property of which the Public Trustee is manager under this Part or for any money expended on or in respect of the property as is reasonable.

(2) A payment under sub-section (1) may be made even though the recovery at law cannot be maintained.

Application for directions 62.(1) The Public Trustee, as manager of any property under this Part, may apply ex parte to the Court for directions concerning the property or in respect of the management or administration of the property or the exercise of any power or discretion which the Public Trustee may have.

(2) The Court may order that an application under sub-section (1) be served upon any person it thinks fit.

Unclaimed moneys part of the common fund 63. Any money for the time being held by the Public Trustee under this Part shall form part of the common fund.

Commission, &c., a charge 64.(1) All expenditure incurred by the Public Trustee as manager of any property under this Part and all fees, costs, commission, charges, interest and expenses incurred by, or payable to, the Public Trustee as manager of any property under this Part shall be a charge on the property which charge shall rank next in priority to any mortgage or charge to which the property is subject when the Public Trustee is appointed as manager.

(2) The amount of money for the time being charged on the property under sub-section (1) shall bear interest at a rate fixed from time to time by the Public Trustee.

Money to be held for owner 65.(1) Where the Public Trustee acts under this Part and takes possession of property or receives or recovers any money, damages or mesne profits in respect of any property under this Part, the property, money, damages or mesne profits shall, after payment of all moneys authorized to be applied or expended or charged by the Public Trustee, be held by the Public Trustee for the owner of the property.

## Public Trustee

(2) The Public Trustee may pay any money received under sub-section (1) to the Consolidated Fund and if any person establishes to the satisfaction of the Treasurer that he has a claim to that money the Treasurer shall meet the claim out of money legally available for that purpose.

66.(1) Subject to this section, the Court may order, upon the application of any person, that the Public Trustee ceases to be manager of property under this Part.

Application  
by another  
person

(2) The Court may make an order under sub-section (1) where it is satisfied that -

- (a) the applicant or some other person is lawfully entitled to the property; or
- (b) a period of not less than 7 years has elapsed since the Public Trustee was appointed manager of the property and that notwithstanding due inquiry, the owner of the property has not been ascertained.

(3) Where the Court is satisfied that the applicant or some other person is the owner of the property, the Court in making an order under sub-section (1) shall order that the property be transferred to the owner of the property.

(4) Where the Court is satisfied that the owner cannot be ascertained in accordance with sub-section (2)(b), the Court shall order that the property be converted into money and that the money be paid into the Consolidated Fund.

67. Where an order is made under section 66(4) and a person later establishes to the satisfaction of the Treasurer that he has a claim to the property that was converted into money and pursuant to the order of the Court such money was paid into the Consolidated Fund, the Treasurer shall meet the claim out of money legally available for that purpose.

Payment of  
claim

### PART IX - MISCELLANEOUS

68.(1) Where an estate is in the course of administration by the Public Trustee and a claim is made by a person against the estate, whether as a creditor or beneficiary, the Public Trustee, if in doubt as to the validity of the claim, may institute such inquiries as the Public Trustee thinks proper regarding the claim, and may by a summons, require the claimant or any other persons to appear before a Judge at any time and place stated in the summons and there or at any

Inquiry as  
to claims

## Public Trustee

adjournment of the proceedings to answer all the questions that may be put to them respectively with reference to that claim.

(2) The Public Trustee shall pay or tender to a person summonsed under sub-section (1) the same amount as that person would be entitled to if he had been summonsed as a witness to the Court.

(3) Where a claimant is served with a summons under this section and fails to attend at the time and place set out in the summons, or at any adjournment of the summons, or if he refuses or fails to truly answer any question put to him by or on behalf of the Public Trustee, it shall be lawful for the Public Trustee, by direction of the Judge, to reject the claim.

Application  
to Court by  
Public  
Trustee

69.(1) Where the Public Trustee is acting in the administration of an estate, the Public Trustee may, in respect of any matter arising in the course of that administration, apply ex parte to the Court for approval, advice or direction upon a written statement setting out the facts.

(2) Upon any application under sub-section (1) it shall not be necessary to serve notice of the application on any person or party, unless the Court so directs.

Administration  
of Public  
Trustee may  
be referred  
to Court

70.(1) Upon an application to the Court, by any person showing to the satisfaction of the Court that he has an interest in any property for the time being administered by the Public Trustee, the Court may summon the Public Trustee to attend at a time and place in the summons mentioned for the purpose of answering the allegations of the petition.

(2) The Court, on the hearing of such summons may -

- (a) make such order in relation to the conduct of the Public Trustee in the matter giving rise to such petition as the Court thinks fit; and
- (b) order the Public Trustee to produce or to pay and deliver over all money, books and documents in his possession, control or custody to any person or persons named in such order.

Payments, &c., 71.(1) If a court has adjudged, ordered or de-

## Public Trustee

creed that money be paid, or property, real or personal, be delivered up or transferred to a party to a cause or matter, or to any other person, that court may direct in its judgment, order or decree that such money or property be paid, delivered up or transferred to the Public Trustee on behalf of such party or other person.

to Public  
Trustee  
pursuant to  
court orders

(2) The Public Trustee shall, where an order under sub-section (1) is served upon him, accept payment, delivery or transfer, as the case may be, of the money or property and the acceptance shall be a sufficient discharge to the person paying, delivering or transferring that money or property.

(3) The Public Trustee shall hold money or property accepted under this section upon trust to apply the same and the income from it in the manner and for the benefit of the party or other person directed in the judgment, order or decree, or in such manner and for the benefit of such person as the court by which the judgment, order or decree was made, may from time to time direct.

(4) Subject to any direction of the court by which the judgment, order or decree was given or made, the Public Trustee shall have all rights and powers, and shall undertake all duties and liabilities, of a trustee, subject and according to the provisions of this Act, in relation to the money or property.

(5) In this section "court" means any court, or person acting judicially, exercising jurisdiction either within or outside the Northern Territory.

72. Where the Public Trustee is executor, administrator or trustee, or is guardian or is otherwise authorized to act in the administration of an estate, unless the contrary intention is expressed in the governing instrument, the Public Trustee may in his discretion exercise the following powers:

General  
power

- (a) where the power is to raise money by mortgage, to raise money by borrowing without giving security;
- (b) to pay or discharge all debts, liabilities, obligations, costs and expenses;
- (c) to insure both real and personal property against any contingency;
- (d) to carry out or vary contracts entered into before the appointment of the Public Trustee;

Public Trustee

- (e) to set off against the claim of any person with respect to any estate money owing by the claimant whether to the same estate or to another estate under the administration of the Public Trustee;
- (f) to grant a power of attorney to a person either in or out of the Northern Territory to do any act or thing which the Public Trustee could do;
- (g) to bring or defend any action, suit or other proceeding, and suffer judgment to go by default, or to consent to any judgment, decree or order in an action, suit or proceeding upon such terms and conditions as the Public Trustee thinks fit;
- (h) to take proceedings to cause any person to be adjudicated a bankrupt, or any company to be placed in liquidation, and to vote and act either personally or by proxy at meetings of creditors or shareholders;
- (j) to take criminal proceedings touching or concerning the property of the Public Trustee or property which is within the care, control or custody of the Public Trustee, and for the purposes of the proceedings a certificate given under the seal of the Public Trustee shall, unless the contrary is proved, be sufficient evidence to establish that the property is the property of the Public Trustee or is within the care, control or custody of the Public Trustee; and
- (k) at the expense of an estate, to employ such persons as the Public Trustee thinks fit for the purposes of advising and assisting the Public Trustee in the administration or management of the estate or any part of the estate and to remunerate such persons in such manner as the Public Trustee thinks fit.

Public  
Trustee may  
act on  
information

73.(1) The Public Trustee may, in the administration of a trust or an estate, or in the performance of a power or duty under this Act or any other Act, act on information as to matters of fact which to the Public Trustee appear credible.

(2) The Public Trustee may allow a claim which is made before him on oath or upon the affidavit, declaration or statement of the claimant alone or, where the Public Trustee thinks fit to call for other

## Public Trustee

evidence, upon such evidence as the Public Trustee requires.

(3) The Public Trustee may at any time require a person to make a statutory declaration or produce other sufficient evidence to support a claim and may refuse to admit the claim or to take any action to acquit the claim until the declaration or evidence is produced.

(4) Where the Public Trustee acts in good faith and in accordance with this section in acquitting or refusing to acquit a claim, the Public Trustee shall not be liable for any damage suffered by a person by reason of the acquitting or failing to acquit a claim.

74.(1) The Public Trustee may charge on any property which becomes vested in, or which comes into the possession of or under the management or control of the Public Trustee, in addition to the amount of proper expenses in connection with such money or property, a commission and fees in respect of the services of the Public Trustee in connection therewith according to the prescribed scale for the time being.

Payment  
for  
acting

(2) The commission, fees and any money expended in accordance with sub-section (1) may be deducted by the Public Trustee from the money received by the Public Trustee or from any moneys in the same estate or trust or fund which are so received or, with the approval of a Judge, the commission, fees and any money so expended, together with the costs and expenses of raising the same, may be raised by sale or mortgage of, or other charge on, any property of the estate or trust or fund in respect of which the services were rendered.

(3) The Court may direct what part or parts of an estate or trust shall bear the burden of any commission, fees or expenses provided for by this section, and in what proportions, if any, such burden is so to be borne.

(4) The moneys deducted or raised pursuant to this section shall be paid into the Consolidated Fund.

(5) The Administrator may, from time to time, fix by regulation a scale of commission and fees for the purposes of this section.

75.(1) The Public Trustee acting in one capacity may commence proceedings against the Public Trustee acting in another capacity.

Public Trustee  
may sue Public  
Trustee acting



## Public Trustee

in another  
capacity

(2) Where the Public Trustee proposes to commence proceedings, under sub-section (1), the Public Trustee shall apply to the Court for directions as to the manner in which the respective interests are to be represented in the action.

Auctions

76.(1) Where the Public Trustee is realizing any personal property of an estate administered by him and the personal property is not of greater value than \$2,000 in the opinion of the Public Trustee, the Public Trustee may offer the personal property for sale by auction by an employee in the office of the Public Trustee.

(2) For the purposes of sub-section (1) the employee who carries out an auction shall not be required to apply for or obtain an auctioneer's licence under the Auctioneers Act.

Advertising  
for claims

77. Where the Public Trustee is administering an estate under this Act he may, from time to time, cause advertisements to be published in such newspapers as the Public Trustee deems fit calling upon persons who wish to claim against the estate to prove their debts or claims on or before a date fixed in the notice.

Intestate  
distribu-  
tions

78. Where the assets of an estate under administration by the Public Trustee are insufficient to pay the liabilities in full, the Public Trustee shall apply those assets in accordance with the priorities applicable to the distribution of assets under Part II of the Fourth Schedule to the Administration and Probate Act.

Balance of  
estates held  
on trust

79. After payment or deduction of all debts, fees, commission and expenses incidental to the collection, management and administration of an estate, the Public Trustee shall hold the residue of the estate for the person or persons lawfully entitled to the same subject to any further claim for commission or expenses that the Public Trustee may from time to time have.

Small claims

80.(1) Where a person claims, or the Public Trustee has reason to believe a person may claim, to recover out of an estate any money or personal property to the sum or value of \$1,000, as estimated by the Public Trustee, and the Public Trustee refuses to admit that claim or desires to reject the claim, the Public Trustee may serve upon that person a notice in writing requiring him to take legal proceedings within a period of 3 months to establish or enforce the claim and to prosecute the proceedings with all due diligence.

## Public Trustee

(2) Where a notice is served under sub-section (1) and the person upon whom it is served fails within the period of 3 months to commence proceedings, the claim is barred and the person shall not be able to enforce the claim by proceedings in any court.

(3) The Public Trustee may proceed to administer and distribute an estate disregarding a claim barred by virtue of the operation of this section.

81. Subject to this Act, where a beneficiary to an estate being administered by the Public Trustee is an infant, the Public Trustee shall hold the infant beneficiary's interest in the estate upon trust for the infant until he is sui juris.

Infants

82.(1) The Public Trustee may require a person who is in occupation of or has the use or enjoyment of any land as a legal or equitable tenant for life where that land is the subject of an estate being administered by the Public Trustee, to give an undertaking to the Public Trustee with such security as the Public Trustee may require to keep the property in repair and to pay rates and taxes, insurance premiums, assessments, rents, impositions and other outgoings as that person may be legally required to pay.

Undertakings  
by life  
tenants, &c.

(2) Where a legal or equitable life tenant fails to comply with an undertaking given in pursuance of sub-section (1), the Public Trustee may serve a notice requiring him to remedy the default or to give up possession of the land within one month or such further time as the Public Trustee may allow.

(3) Failure to comply with the notice served under sub-section (2) shall terminate the life tenancy, whether legal or equitable, and the Public Trustee may proceed to claim possession of the property as if the life tenant were a trespasser.

83. Where the Public Trustee pays a premium in respect of a policy of insurance over property the subject of an estate being administered by the Public Trustee, the Public Trustee shall have a lien on the proceeds of any claim against that policy of insurance.

Insurance  
premiums

84.(1) Where, under an Act, the Public Trustee is directed to make a payment upon the order of a court or Judge being obtained by a person entitled thereto, he may make a payment without such an order if the amount of that payment does not exceed \$1,000.

Payment of  
small amounts

(2) A payment made under sub-section (1) shall be as valid as if authorized by an order of the Court or a Judge.

## Public Trustee

Parties to  
supply  
information

85.(1) Where the Public Trustee gives notice under this section to a person, who is in possession of any property of a deceased person, or who is a debtor, creditor, partner, joint venturer with a deceased person, or in whom a deceased person has invested by way of shares, stock or debenture, and the Public Trustee is administering the estate of the deceased person, the person to whom the notice is directed shall, within 14 days, or such further time as the Public Trustee specifies in the notice, of service of the notice requesting details of the deceased's relationship and interest in property of which that person is aware, supply details in writing to the Public Trustee of the extent, nature and situation of any property, money, shares or debts.

(2) A person who fails to comply with a notice served under sub-section (1) within the time specified in that notice shall be guilty of an offence.

Penalty: \$500.

Failure to  
deliver,  
&c.

86.(1) If a person fails to deliver, convey, transfer or assign to the Public Trustee the property either real or personal to which the Public Trustee is entitled as executor, trustee or administrator of an estate, the Public Trustee may apply to the Court for an order requiring the delivery, conveyance, transfer or assignment by that person to the Public Trustee.

(2) The Court may, in an application by the Public Trustee under sub-section (1), order that a person summoned in pursuance of that application produce to the Court all books, papers, deeds, documents and any writings whatsoever touching or concerning the property or the estate on whose behalf the Public Trustee is acting.

Execution  
under power  
of attorney

87.(1) Where the Public Trustee executes any document under a power of attorney, no person shall require him to furnish evidence by way of statutory declaration that no notice of revocation of the power of attorney by death or otherwise has been received by the Public Trustee.

(2) The execution by the Public Trustee of a document under a power of attorney shall be accepted by all persons as proof of the non-revocation of the power of attorney at the time when the document had been executed.

(3) The Public Trustee acting in pursuance of a power of attorney shall not be liable for his actions by reason only of the fact that, at the time of the action,

## Public Trustee

the person who gave the power of attorney was dead or had done some act to avoid the power of attorney, provided that this fact was not known to the Public Trustee at the time of his so acting.

88.(1) The Public Trustee may, either without charge or for a fee not exceeding the prescribed fee, draw and engross a will or other testamentary instrument for a person.

Wills

(2) A testator may deposit his will with the Public Trustee.

(3) Where, under a will deposited in accordance with this section, the Public Trustee is not appointed executor of that will then upon the death of the testator the Public Trustee shall deliver the will to the person nominated as executor, and in the event of the absence of any such nomination or if the person nominated is dead or cannot be found, the Public Trustee shall deliver the will to such person as the Public Trustee thinks is entitled to possession of the will.

.89.(1) The Public Trustee may accept for safe custody debentures or other securities and any documents of title to property and any other deeds, documents or chattels.

Safe  
custody

(2) The Public Trustee's liability for any thing lodged for safe custody under sub-section (1) is that of a bailee for reward, and where no charge is made, is that of a gratuitous bailee.

(3) Any thing kept in safe custody under this section shall be kept at the direction of the Public Trustee and may be produced or parted with by the Public Trustee's authority as and when the Public Trustee thinks proper in the conduct of the business of the Public Trustee's office.

90. It shall not be incumbent upon any purchaser of land or mortgagee, lessee or other person to or with whom any sale, exchange, purchase, mortgage or lease may be made to inquire as to the authority or power of the Public Trustee to make the sale, exchange, purchase, mortgage or lease.

No inquiry  
by purchaser,  
&c., as to  
powers, &c.

91.(1) In dealings with property the fact that the Public Trustee is the person, or one of the persons, dealt with shall not of itself constitute notice of a trust.

No notice  
of trust

## Public Trustee

(2) A company shall not be entitled to object to entering the name of the Public Trustee in its register of shareholders by reason only that the Public Trustee is a trustee or is a corporation.

(3) Where the Public Trustee holds a share in a company, the company shall, at the request of the Public Trustee, record the name of the estate or person beneficially entitled to a share in that company as well as the name of the Public Trustee.

Public Trustee  
may contract  
with Public  
Trustee in  
another  
capacity  
Certain  
covenants  
void

92. The Public Trustee, in his capacity as trustee or administrator of a trust or estate, may enter into a contract, deed or covenant with himself in his capacity as trustee or administrator of another trust or estate.

93. A covenant or stipulation in a mortgage whereby the money secured by the mortgage shall become due and payable, or any power of sale or entry into possession shall become exercisable, in the event of the Public Trustee becoming entitled in any capacity to administer the estate under the control of the Public Trustee, or any other covenant, stipulation or condition adversely affecting, or tending to affect adversely, the estate or interest of the mortgagor in the event of the Public Trustee so becoming entitled to administer the estate of the mortgagor, shall be null and void.

Actions out-  
side  
Australia

94.(1) Where any personal estate is payable or deliverable by the Public Trustee to a person outside Australia, the Attorney-General may authorize the Public Trustee to pay or deliver the same to any official, consular officer or accredited agent of the country of which that person is a national.

(2) The receipt of an official, consular officer or accredited agent of personal estate payable or deliverable under sub-section (1) shall be a sufficient discharge to the Public Trustee who shall not be further concerned to see to the application of the personal estate.

Dealings  
with other  
Public  
Trustees, &c.

95. Where the Public Trustee is administering the estate in the Territory of a person who, at the time of his death was domiciled outside the Territory and whose estate, in the place of domicile of the deceased, is being administered by the Public Trustee or other like official of the state of domicile, the Public Trustee may pay the proceeds of the estate in the Territory to the Public Trustee or other like official of the state of domicile without incurring any liability in regard to a claimant of the balance and without any obligation to see to the application thereof.

Public Trustee

96. No bond or security shall be required from the Public Trustee upon or in respect of the Public Trustee's appointment in any capacity by or under this Act or under any Act whether as administrator or trustee or as guardian, committee, manager, receiver, agent or attorney or otherwise.

No bond  
required

97.(1) The Public Trustee and any employee, agent or representative of the Public Trustee acting in good faith under any of the authorities contained in or conferred by this Act or any other law in force in the Northern Territory shall not be personally liable for any act or thing done or omitted to be done.

Personal  
indemnity of  
Public Trustee,  
&c.

(2) Where a person sustains injury or suffers loss by reason of any act or thing done or omitted to be done by the Public Trustee or by an employee, agent or representative of the Public Trustee acting or purporting to act in good faith under this Act, and the person who has suffered the injury or loss, would have been entitled to a remedy in respect thereof, the 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 out of the Public Trustee's account, and, if that account is insufficient, then by the Treasurer out of money legally available for that purpose.

(3) The remedy against the Public Trustee and the indemnity afforded by sub-section (2) shall not extend to an injury or loss occasioned by or arising out of an act or thing done or omitted to be done by a person acting jointly with the Public Trustee in an office or position except to the extent that the Public Trustee or an employee in the office of the Public Trustee has contributed to, or could by the exercise of reasonable diligence have averted, that injury or loss.

98.(1) Where, under this Act, notice is required to be given by the Public Trustee or by a person on behalf of the Public Trustee it shall be sufficient if the notice is sent by certified mail addressed to the person to whom the notice is to be given at his last known or then last known place of abode or business.

Service of  
notices

(2) Where notice is sent by post in the manner prescribed by sub-section (1), it shall be deemed to have been given at the time the letter would have been delivered in the ordinary course of post.

99. Subject to this Act, where the Public Trustee is appointed in any of the capacities that he is permitted to be appointed by or under this Act, the Public Trustee shall have the same rights and powers

Public Trustee  
to have the  
powers, &c.,  
of natural  
person

## Public Trustee

and be subject to the same duties and liabilities as a natural person appointed in that capacity.

**Execution of deeds, &c.** 100. Where, under this Act or any other law in force in the Territory, the Public Trustee is required or empowered to execute a deed or other document under seal, the person holding the office of the Public Trustee shall affix the common seal of the Public Trustee and countersign that seal with his signature and in the case of a deed execution in this manner shall be sufficient at law to sign and seal the deed.

**Regulations** 101. The Administrator may make regulations not inconsistent with this Act prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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### SCHEDULE 1

Section 3(1)

No. and Year	Repealed Acts
8 of 1920	<u>Public Trustee Act 1920</u>
50 of 1970	<u>Public Trustee Act 1970</u>
67 of 1978	<u>Public Trustee Act 1978</u>
92 of 1978	<u>Public Trustee Act (No. 2) 1978</u>
9 of 1979	<u>Public Trustee Act (No. 3) 1978</u>

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### SCHEDULE 2

Section 3(2)

SOUTH AUSTRALIAN ACT NO LONGER  
IN FORCE IN THE TERRITORY

No. 486 1890 Public Trustee Act Amendment Act

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