

PUBLIC TRUSTEE (AMENDMENT) ACT.

Act No. 26, 1942.

An Act to provide for the incorporation in one common fund of certain balances of accounts kept by the Public Trustee; for these and other purposes to amend the Public Trustee Act, 1913-1938, the Trustee Act, 1925-1940, and certain other Acts; to validate certain matters; and for purposes connected therewith. [Assented to, 14th December, 1942.]

George VI.
No. 26, 1942.

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

1. (1) This Act may be cited as the "Public Trustee (Amendment) Act, 1942."

Short title
and citation.

(2) The Public Trustee Act, 1913, as amended by subsequent Acts and by this Act, may be cited as the Public Trustee Act, 1913-1942.

2. The Public Trustee Act, 1913, as amended by subsequent Acts, is amended—

Amendment
of Act No.
19, 1913.

(a) (i) by omitting from subsection one of section ten the words "any person to act as his agent for the purpose of administering any estate, and any clerk of petty sessions shall, at his request, act as such agent within his district" and by inserting in lieu thereof the words "any officer or employee on the staff of the public trustee or any clerk or acting clerk of petty sessions to be the agent of the public trustee";

Sec. 10.
(Appoint-
ment and
duties of
agents.)

(ii)

No. 26, 1942.

Sec 12.
(General
powers and
duties.)

(ii) by omitting subsection two of the same section;

(b) by inserting next after subsection one of section twelve the following new subsection:—

(1A) Where the public trustee is appointed and acts jointly with any other person in any such capacity as is mentioned in subsection one of this section the following provisions shall have effect:—

- (a) the public trustee and such other person jointly shall have and may exercise and discharge all or any of the powers, authorities, duties and functions which the public trustee, if acting alone, would have had or might have exercised and discharged;
- (b) all moneys under the control of the public trustee and such other person jointly shall be dealt with in the same manner as moneys under the control of the public trustee alone;
- (c) the receipt in writing of the public trustee alone for any money, securities, or other personal property or effects payable, transferable or deliverable to the public trustee and such other person jointly shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

This subsection shall apply to all cases in which the public trustee is appointed and acts jointly with any other person whether such appointment was made before or after the commencement of the Public Trustee (Amendment) Act, 1942.

Sec. 18.
(Grant of
probate or
administra-
tion to the
public
trustee.)

(c) by omitting from subsection one of section eighteen all words after the word "intestacy" and by inserting in lieu thereof the words "the public

public trustee shall be preferred in the No. 26, 1942.
following cases:—

- (a) where the widow or widower has consented in writing to the grant to the public trustee and—
 - (i) the deceased left no child him or her surviving; or
 - (ii) the children or a majority of them are infants; or
 - (iii) a majority of the adult children or of such of them as are resident in New South Wales have consented in writing to the grant to the public trustee; or
 - (iv) so far as can be ascertained after due inquiry by the public trustee there are no adult children resident in New South Wales, or if so resident such children cannot be found; or
 - (v) the interest of the widow or widower, together with the interests of such (if any) of the children as are infants and of such of the children as, being adults, have consented in writing to the grant to the public trustee, constitute a majority in value of the interests in the estate;
- (b) where there is no widow or widower, or where the widow or widower is an insane patient or an insane or incapable person within the meaning of the Lunacy Act of 1898 as amended by subsequent Acts and—
 - (i) the majority in value of the adult next-of-kin or of such of them as are resident in New South Wales have consented in writing to the grant to the public trustee; or
 - (ii)

No. 26, 1942.

- (ii) so far as can be ascertained after due inquiry by the public trustee there are no adult next-of-kin resident in New South Wales, or, if so resident, such adult next-of-kin cannot be found; or
- (iii) the majority in value of the next-of-kin are infants.

In any case in which the public trustee is entitled to be preferred under paragraph (a) or paragraph (b) of this subsection, a certificate under the hand and seal of the public trustee shall be evidence of the facts in that regard stated in such certificate."

Sec. 18A.
(Election
by public
trustee to
administer.)

- (d) (i) by inserting in subsection one of section 18A after the words "leaving property" the words "in New South Wales";
- (ii) by omitting from the same subsection the words "four hundred pounds" and by inserting in lieu thereof the words "six hundred pounds";
- (iii) by inserting in subsection two of the same section after the words "leaving property" the words "in New South Wales";
- (iv) by omitting from the same subsection the words "four hundred pounds" and by inserting in lieu thereof the words "six hundred pounds";
- (v) by inserting next after subsection three of the same section the following new subsection:—

cf. Act 1921-
22, No. 48
(N.Z.),
s. 45.

(3A) (a) Where a grant of probate or letters of administration (in this subsection referred to as the "original grant") has been made in respect of the estate of any deceased person (in this subsection referred to as the "original estate") and the person to whom the original grant or any subsequent or substituted grant of probate or letters of administration was made has died leaving part of the original estate unadministered and the gross value, as estimated
by

by the public trustee, of so much of the part of the original estate so left unadministered as is within New South Wales, does not, at the time of the election hereinafter referred to, exceed six hundred pounds, and no person has, since the death of the last executor or administrator, taken out letters of administration de bonis non in respect of the original estate, the public trustee may in all cases where he is entitled to take out letters of administration de bonis non, and in lieu of taking out such letters, file in the office of the Supreme Court an election under his hand and seal setting forth the fact of the original grant, the death of the executor or administrator, and particulars of the property so left unadministered, and electing to administer the property so left unadministered. No. 26, 1942.

(b) On such election being filed the public trustee shall be deemed to be the administrator of so much of the part of the original estate so left unadministered as is within New South Wales in all respect as if letters of administration de bonis non of the original estate had been duly granted to him.

- (vi) by omitting from subsection five of the same section the words "six hundred pounds" and by inserting in lieu thereof the words "one thousand pounds";
- (vii) by inserting next after the same subsection the following new subsections:—

(5A) If after filing such election a later will or a will, as the case may be, is found the public trustee shall, as soon as practicable, file in the said office of the Supreme Court a memorandum under his hand stating the fact.

On such a memorandum being filed the public trustee shall cease to be executor or administrator but may, in any case in which he

No. 26, 1942.

he is entitled to obtain probate or to take out letters of administration, file a further election under this section, or proceed in the ordinary manner to obtain probate or letters of administration.

Where the public trustee is not so entitled the provisions of section 40D of the Wills, Probate and Administration Act, 1898-1940, shall apply in all respects as if a grant of probate or letters of administration to the public trustee had been revoked.

(5B) Where the public trustee has filed an election under subsection one or subsection two of this section in respect of the property of any person to whom a certificate of death on war service relates, or has filed an election under subsection (3A) of this section in respect of property left unadministered by a person to whom a certificate of death on war service relates, and after the filing of such election the certificate of death on war service is cancelled, the public trustee shall, as soon as practicable, file in the office of the Supreme Court a memorandum under his hand stating the fact.

On such a memorandum being filed the public trustee shall cease to be executor or administrator and the provisions of section 40D of the Wills, Probate and Administration Act, 1898-1940, shall apply in all respects as if a grant of probate or letters of administration to the public trustee had been revoked.

In this subsection "certificate of death on war service" means a certificate of death on war service issued pursuant to the National Security (Supplementary) Regulations or the National Security (War Deaths) Regulations made under the National Security Act 1939-1940 of the Parliament of the Commonwealth of Australia or any regulations made under that Act

Act amending or replacing the National Security (War Deaths) Regulations. **No. 26, 1942.**

3. The Public Trustee Act, 1913, as amended by subsequent Acts, is further amended—

Further amendment of Act No. 19, 1913. Substituted secs. 33 & 34 and new secs. 34A, 34B.

(a) by omitting sections thirty-three and thirty-four and by inserting in lieu thereof the following sections:—

33. (1) Where the net value, as ascertained in the manner provided by section fifty-five of the Principal Act, of an intestate estate under administration by the public trustee does not exceed two hundred pounds, the public trustee may, in his absolute discretion, dispose of the whole or any part of the residue which remains after meeting the debts, expenses, liabilities and charges referred to in that section, in accordance with the following provisions:—

Payment to widow or to relatives of illegitimate.

- (a) The public trustee may pay, transfer or convey the whole or any part of such residue to the widow (if any) of the intestate.
- (b) Where the intestate was illegitimate and unmarried and has left no lawful issue the public trustee may pay, transfer or convey the whole or any part of such residue to the mother (if living) of the intestate.
- (c) Where the deceased was an unmarried woman and has left no lawful issue but has left an illegitimate child or children the public trustee may pay, transfer or convey the whole or any part of such residue to such illegitimate child or children.

(2) Subject to any disposition made under the authority of subsection one of this section such residue shall be dealt with in accordance with the law relating to the distribution of the estate of a person dying intestate.

34. Where an infant, or a person (in this section hereinafter referred to as "incapable person") who, in the opinion of the public trustee,

Maintenance, etc., of infant or incapable person—moneys not exceeding £500.

No. 26, 1942.

trustee, is unable to give a good discharge, is entitled to moneys in the hands of the public trustee and such moneys do not exceed five hundred pounds, then, with respect to such infant or incapable person, the public trustee may, notwithstanding any law to the contrary, from time to time pay such moneys to such person as the public trustee thinks fit, to be applied by such person for the maintenance, education, advancement or benefit of such infant or incapable person or may himself so apply such moneys.

The public trustee shall not be bound to see to the application of the moneys so paid to such person.

Estates of
less than
£50.

34A. (1) If the net value as estimated by the public trustee of the estate of any deceased person does not exceed fifty pounds and the public trustee has no knowledge of any application having been lodged for probate of the will or letters of administration of the estate of such deceased person, the public trustee, after giving such notice by advertisement or otherwise as the public trustee may deem appropriate, may sell, call in and convert into money the property of the estate of such deceased person and pay the debts and liabilities of such deceased person of which he has notice and deal with the residue in all respects as if probate of the will or letters of administration of the estate of the deceased person had been duly granted to him.

If the public trustee is in possession of any will of the deceased, such will shall be deposited in the probate office of the Supreme Court in the same manner as is provided by section thirty of the Principal Act.

(2) The public trustee shall be entitled to the same commission as he would have been entitled to if probate of the will or letters of administration of such estate had been granted to him and such commission shall be a first charge on such estate.

(3)

(3) Neither the Consolidated Revenue Fund nor the public trustee nor any of his deputies, officers, servants or agents shall be liable for any act done in good faith in pursuance of the powers conferred on the public trustee by this section. No. 26, 1942.

34B. (1) Where the public trustee disputes any claim (whether the claimant claims to be a creditor or to have a beneficial interest in the estate) to which this subsection applies sent in to him as executor or administrator and has served on the claimant the notice referred to in section ninety-three of the Principal Act and the claimant has not, within the period of six months referred to in that section, commenced proceedings to enforce such claim, the public trustee may serve a further notice on the claimant that unless within a period of two months from the date of service of such further notice the public trustee is duly served with process of court issued in proceedings to enforce such claim the public trustee will distribute the estate without regard to the claim. Dispute by
public
trustee of
any claim.

If within the said period of two months the public trustee has not been duly served with such process such claim shall thereupon be barred and become irrecoverable as against the public trustee and the public trustee may proceed to distribute the estate without regard to such claim:

Provided that the public trustee may, if he thinks fit, waive any objection which he might otherwise take to proceedings commenced after the expiration of the said period of two months.

(2) Subsection one of this section shall apply to and in respect of—

(a) a claim of any amount made in respect of an estate the net value of which, as ascertained (without regard to the claim) in the manner provided by section fifty-five of the Principal Act, does not exceed three hundred pounds;

(b)

No. 26, 1942.

(b) a claim not exceeding one hundred pounds in respect of an estate of any value.

(3) The powers conferred by this section shall be in addition to the powers exercisable under subsection two of section ninety-three of the Principal Act.

Sec. 35.
(General powers of public trustee.)

(b) (i) by inserting at the end of subsection one of section thirty-five the following words:—

The power conferred by paragraph (j) of this subsection shall, in any case where the public trustee is appointed trustee, executor or administrator of the estate of any deceased person either alone or jointly with any other person, authorise the payment of the reasonable costs of the erection of a memorial or a tombstone over the grave of such deceased person or, where the deceased person is cremated, the reasonable costs of a memorial or of any arrangements made for the preservation of the ashes of such deceased person.

(ii) by omitting from paragraph (n) of subsection two of section thirty-five the word "property" and by inserting in lieu thereof the words "real estate as defined in Part XV of the Conveyancing Act, 1919-1942";

(iii) by omitting from the same paragraph the words "Part XV of the Conveyancing Act, 1919" and by inserting in lieu thereof the words "that Part";

(iv) by omitting from paragraph (o) of the same subsection the words "two hundred and fifty pounds" wherever occurring and by inserting in lieu thereof the words "one thousand pounds";

(c) by inserting next after section thirty-five the following new section:—

35A. (1) The public trustee, when acting alone in relation to any estate, shall not be required to file or file and pass accounts relating to the estate unless the Court, on application by or on behalf of some person interested in the estate, shall so order.

(2)

New sec.
35A.

Public trustee not required to file accounts.

(2) Where the public trustee is appointed No. 26, 1942. and acts jointly with any other person in relation to any estate the public trustee and such other person shall not be required to file or file and pass in the Court accounts relating to the estate unless such other person desires to claim commission for his pains and trouble or unless the Court, on application by or on behalf of some person interested in the estate, shall so order.

(3) The jurisdiction conferred on the Court by this section may be exercised by a judge sitting either in court or in chambers. cf. Act No. 57, 1932, s. 30.

An order under this section may be made upon application heard *ex parte*.

4. (1) The Public Trustee Act, 1913, as amended by subsequent Acts, is further amended— Further amendment of Act No. 19, 1913.

(a) by omitting subsection one of section thirty-six and by inserting in lieu thereof the following subsection:— Sec. 36. (Manner of investment.)

(1) The public trustee may invest any moneys in his hands in any of the securities authorised by the Trustee Act, 1925-1940, or by this Act.

(b) by omitting from subsection two of the same section the words “trustees executors and administrators by sections four and five of the Trustee Act, 1898” and by inserting in lieu thereof the words “a trustee (as therein defined) by the Trustee Act, 1925-1940.”

(2) The amendments made by subsection one of this section shall not invalidate any investment lawfully made by the public trustee before the commencement of this Act.

5. The Public Trustee Act, 1913, as amended by subsequent Acts, is further amended by inserting next after section thirty-six the following new sections:— Further amendment of Act No. 19, 1913. New secs. 36A-36F.

36A. (1) Subject to this Act, balances to the credit of all current accounts in the books of the public trustee at the commencement of the Public Trustee (Amendment) Act, 1942, and at any time thereafter kept by the public trustee in any such capacity as is mentioned Common fund.

Public Trustee (Amendment) Act.

No. 26, 1942.

mentioned in subsection one of section twelve of this Act shall be one common fund and shall be available for investment as provided in this Act.

This subsection shall not apply to or in respect of any estate or trust—

- (a) where investment in the common fund is expressly forbidden by the instrument of trust; or
- (b) where assets are held by the public trustee jointly with any other person and such other person has objected in writing to its application.

(2) Interest received from investments from the common fund shall be credited to an account to be called the Interest Suspense Account and shall be allocated therefrom as provided in this section.

(3) Interest shall be allowed on—

- (a) all capital balances on current account forming part of the common fund;
- (b) income balances on current account forming part of the common fund where, in the opinion of the public trustee, such income should be interest earning.

Interest allowed in respect of income balances shall be computed as from such date as the public trustee may determine.

(4) Pursuant to subsection three of this section, interest shall be credited at such rate and at such time or times as the public trustee may determine.

Except as provided in this section, balances in the common fund shall be deemed not to earn interest.

Estates
Guarantee
and Reserve
Account.

36B. (1) Out of the total amount of interest earned in each year by all investments from the common fund the public trustee may set aside such sum as he may consider necessary, which sum shall be carried to an account to be called the Estates Guarantee and Reserve Account to be kept by the public trustee.

(2)

(2) Any capital profit made upon realisation of investments from the common fund shall be carried to the Estates Guarantee and Reserve Account. No. 26, 1942.

(3) The Estates Guarantee and Reserve Account may be applied for all or any of the following purposes:—

- (a) payment to the common fund of an amount equivalent to the loss upon realisation of any investment made from the common fund;
- (b) payment of any costs incurred in protecting investments made from the common fund;
- (c) payment of such other expenses or charges incurred in respect of the common fund or investments made therefrom as in the opinion of the public trustee are properly chargeable against the Estates Guarantee and Reserve Account;
- (d) payment of any legal costs, charges and expenses not ordered by the court to be charged against a particular estate or trust or otherwise not properly chargeable against a particular estate or trust;
- (e) payment of any legal costs, charges and expenses not ordered by the court to be charged against a particular estate or trust but otherwise properly chargeable against a particular estate or trust where there are insufficient funds in the particular estate or trust to meet such costs, charges and expenses;
- (f) costs and expenses incurred by the public trustee in obtaining legal advice or in legal proceedings to which the public trustee is or is made a party where such costs and expenses are such that by reason of general interest and importance of the subject-matter of the advice or proceedings, they should not, in the opinion of the public trustee, be charged against a particular estate or trust.

No. 28, 1942.

Surplus in-
come from
common
fund.

36c. Where, after allowing interest in pursuance of section 36A of this Act and after setting aside the sum referred to in subsection one of section 36B of this Act, a surplus remains out of the income of investments made from the common fund, such surplus, or so much thereof as the public trustee may determine, may be applied towards production of the annual amount incidental to the working of this Act.

Any amount so applied shall be taken into account in arranging the fees chargeable under section nine of this Act.

Investment
of common
fund.

36d. Moneys in the common fund may be invested—

- (a) in any of the securities authorised by the Trustee Act, 1925-1940; or
- (b) on deposit with the Colonial Treasurer for a period or periods not exceeding twelve months in any one case which deposit shall bear interest at the rate which from time to time is the rate of interest fixed in respect of Commonwealth Loans issued after the commencement of the Public Trustee (Amendment) Act, 1942, and any such deposit may be renewed from time to time for a like period and subject to the like conditions: Provided that the total amount invested on deposit with the Colonial Treasurer shall not, at any one time, exceed five hundred thousand pounds.

Withdrawal
from the
common
fund.

36e. (1) The public trustee may sell investments belonging to the common fund and may withdraw any part of the moneys belonging to the common fund for any purpose of or relating to the exercise and discharge by the public trustee of his powers, authorities, duties and functions in any such capacity as is mentioned in subsection one of section twelve of this Act or for any purpose authorised by or under this or any other Act.

(2) The public trustee may withdraw from the common fund any amount belonging to any particular estate or trust included in the common fund and may separately invest such amount for the benefit of such particular estate or trust.

(3)

(3) Amounts withdrawn from the common fund pursuant to this section shall as from the date of such withdrawal cease to have any claim for interest or otherwise from the common fund. No. 26, 1942.

36f. (1) (a) The public trustee may make advances from the common fund for any purpose of or relating to any estate or trust in course of administration by him. Power to make advances.

(b) Any sum so advanced shall bear interest at a rate to be fixed by the public trustee, and such sum and the interest thereon shall be a charge on the assets of the estate or trust or on the specific asset in respect of which the advance was made.

Where any sum so advanced is applied in or towards the discharge of any debt or liability the charge under this paragraph shall rank in the same order of priority as the debt or liability.

(c) Any interest received under this subsection shall be paid into the Interest Suspense Account.

(2) (a) Where an estate or trust is under administration by the public trustee, and any person beneficially entitled in that estate or trust makes written application to the public trustee for an advance against his beneficial interest, the public trustee may, if he thinks fit, make an advance from the common fund to such person of an amount not exceeding one-half of the value as estimated by the public trustee of such beneficial interest.

(b) Any sum so advanced shall bear interest at a rate to be fixed by the public trustee and such sum and the interest thereon shall be a first charge against the beneficial interest of the person to whom the advance was made subject only to any prior charges upon such beneficial interest of which the public trustee had received notice in writing before the advance under this subsection was made.

(c) Any interest received under this subsection shall be paid into the Interest Suspense Account.

Public Trustee (Amendment) Act.

No. 26, 1942. **6.** The Public Trustee Act, 1913, as amended by subsequent Acts, is further amended—

Further amendment of Act No. 19, 1913.

Sec. 40.
(Accounts.)

(a) by omitting from paragraph (b) of subsection one of section forty the words “expenditure incurred” and by inserting in lieu thereof the words “amount expended”;

Sec. 42.
(Payments to public trustee's account.)

(b) by omitting from subsection one of section forty-two the words “public trustee's account” and by inserting in lieu thereof the words “public trustee”;

Sec. 43.
(Shares and stock.)

(c) by inserting in subsection one of section forty-three after the words “to be registered” the words “in his corporate name”;

Sec. 50.
(Certificate of public trustee evidence.)

(d) by inserting at the end of section fifty the following new subsection:—

(2) Where the public trustee is appointed and acts jointly with any other person (in this subsection referred to as “co-administrator”) as executor or administrator, a certificate under his hand, and sealed with his corporate seal, certifying that he and such co-administrator have taken out probate or letters of administration, and stating the date when such probate or letters of administration were granted, and the name, residence and occupation of the deceased person shall, notwithstanding any law to the contrary, be accepted by all courts, officers and other persons, whether acting under any Act or not, as prima facie evidence of the death of the deceased person, and of the appointment of the public trustee and the co-administrator as executors or administrators without production of any other proof whatever.

Sec. 53.
(Unclaimed balances of intestate estates.)

(e) (i) by omitting from subsection one of section fifty-three the words “the first week of”;

(ii) by inserting next after the same subsection the following new subsection:—

(1A) (a) Where, after any sum of money has been paid into the Treasury pursuant to subsection one of this section, proof to the

the satisfaction of the public trustee is furnished that any person is entitled in distribution to any part of the intestate estate the public trustee shall certify accordingly to the Colonial Treasurer, and shall, in such certificate specify the amount of such money necessary to meet the claim of such person. No. 26, 1942.

(b) Upon receipt of such certificate the Colonial Treasurer shall cause the amount specified in the certificate to be paid to the public trustee for distribution to the person so entitled; but no interest shall be allowed or credited to any person so entitled in respect of such moneys.

(c) Nothing in this subsection shall be construed as imposing upon the public trustee any obligation to continue any inquiries or investigations as to the persons entitled in distribution to any part of an intestate estate after moneys lying to the credit of that estate have been paid into the Treasury pursuant to subsection one of this section.

(iii) by inserting in subsection two of the same section after the words "such estate" the words "and not paid to the public trustee pursuant to subsection (1A) of this section."

7. (1) The Public Trustee Act, 1913, as amended by subsequent Acts, is further amended—

(a) by omitting from section 53A the words "a suitable piece of land and the erection thereon and equipment of a suitable building" and by inserting in lieu thereof the words "suitable land and building and the extension, alteration, renovation, equipment and repair of such building so as to render the same suitable";

(b) by omitting from section 53c the words "said building" and by inserting in lieu thereof the words "works of extension, alteration and renovation";

Further amendment of Act No. 19, 1913.

Sec. 53A.
(Moneys paid into trust account.)

Sec. 53c.
(Vesting in public trustee.)

(c)

Public Trustee (Amendment) Act.

No. 26, 1942.
 Sec. 53D.
 (Recoup-
 ment of
 cost.)

- (c) (i) by inserting in section 53D after the word "land" where firstly occurring the words "and building";
- (ii) by inserting in the same section after the word "work" the words "and any repairs and alterations which may, from time to time, be necessary";
- (iii) by omitting from paragraph one of the same section the words "four pounds" and by inserting in lieu thereof the words "three pounds";
- (iv) by omitting from paragraph two of the same section the words "four pounds" and by inserting in lieu thereof the words "three pounds."

(2) Subsection one of this section shall be deemed to have commenced on the sixteenth day of November, one thousand nine hundred and forty-one.

Amendment
 of Act
 No. 14, 1925.
 Sec. 47.
 (Payments
 to the
 public
 trustee.)

8. (1) The Trustee Act, 1925-1940, is amended—

- (a) by inserting at the end of subsection one of section forty-seven the words "and shall also furnish such information as to the disability or identity of the person for whom such money is held in trust as the public trustee may require";
- (b) by omitting from subsection three of the same section all words after the word "discretion," and by inserting in lieu thereof the words "exercise in respect of such money the powers conferred upon the public trustee by this or any other Act in respect of moneys held in trust for an infant."

(2) The Trustee Act, 1925, as amended by subsequent Acts and by this Act, may be cited as the Trustee Act, 1925-1942.