

# PUBLIC TRUSTEE ORDINANCE 1970

577

No. 50 of 1970

## An Ordinance to amend the *Public Trustee Ordinance* 1920 and for other purposes

[Assented to 3 December, 1970]

**B**E it ordained by the Legislative Council for the Northern Territory of Australia as follows:—

1.—(1.) This Ordinance may be cited as the *Public Trustee Ordinance* 1970. Short title and citation

(2.) The *Public Trustee Ordinance* 1920 is in this Ordinance referred to as the Principal Ordinance.

(3.) The Principal Ordinance as amended by this Ordinance may be cited as the *Public Trustee Ordinance* 1920-1970.

2.—(1.) Subject to the next succeeding sub-section, this Ordinance shall come into operation on the day on which it receives the assent of the Administrator. Commencement

(2.) Sections 4, 5, 6 and 7 of this Ordinance shall come into operation on the date on which the *Administration and Probate Ordinance* 1969 comes into operation.\*

3. The *Public Trustee Ordinance* 1969 is repealed. Repeal

4. Section 4 of the Principal Ordinance is amended— Powers and duties of Public Trustee

(a) by omitting the words “The Officer” and inserting in their stead the words “Subject to this Ordinance and to any other Ordinance making provision for or in relation to his powers, duties or immunities, the officer”; and

(b) by adding at the end thereof the following sub-sections:—

“(2.) The Public Trustee for the Northern Territory—

(a) is a corporation sole under the name of ‘Public Trustee’;

(b) has perpetual succession;

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\* That date was 8 February, 1971.

(c) shall have an official seal; and

(d) is capable, in his corporate name, of acquiring, holding and disposing of real and personal property and of suing and being sued.

“(3.) All courts, judges and persons acting judicially shall take notice of the seal of the Public Trustee affixed to a document and shall presume that it was duly affixed.”

5. The Principal Ordinance is amended by adding at the end thereof the following sections and Schedule:—

Public Trustee  
may be executor  
or trustee of  
will

“5.—(1.) A person may appoint the Public Trustee executor or trustee of his will either solely or jointly with any other person or persons.

“(2.) If the Public Trustee is so appointed he shall on the death of the person accept the office or trust so reposed in him

“(3.) Where the Public Trustee has accepted such an office or trust—

(a) all moneys belonging to the estate of the deceased person, or received on account of it, shall be received by and remain subject to the control of the Public Trustee alone, and shall be held by him on account of the estate; and

(b) the receipt of the Public Trustee alone shall be a sufficient discharge to a person paying money belonging to the estate.

Public Trustee's  
commission and  
charges

“6.—(1.) In respect of real or personal property (including money) received by the Public Trustee on account of any estate, trust, fund or property coming under his control in accordance with any law in force in the Territory, there shall be charged by and payable to the Public Trustee—

(a) a commission in accordance with the Schedule to this Ordinance; and

(b) all expenses properly incurred by the Public Trustee in the administration, management or control of the estate, trust, fund or property, including exchange, postage, telegrams, auctioneers' and agents' charges, freight, court fees, legal costs, advertising, surveys, valuations, travelling expenses and other disbursements.

“(2.) The provisions of the last preceding sub-section apply whether the Public Trustee is appointed or acts alone or jointly with any other person.

Banking and  
investment

“7.—(1.) Moneys received by the Public Trustee on account of any estate, trust, fund or property coming under his control in accordance with any law in force in the Territory

shall be paid by him forthwith into an account at a bank carrying on business in the Territory and shall, as soon as is reasonably practicable thereafter, be invested by him in accordance with this section until required for payment to the persons entitled to them.

“(2.) Where there is no will or trust requiring such moneys to be invested in specified securities, the Public Trustee may invest them—

- (a) in government securities of—
  - (i) the Commonwealth;
  - (ii) a State of the Commonwealth;
  - (iii) the United Kingdom of Great Britain and Northern Ireland; or
  - (iv) New Zealand;
- (b) in debentures or securities guaranteed by the Government of the Commonwealth or of a State of the Commonwealth;
- (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; or
- (e) on deposit with a savings bank carrying on business in the Commonwealth.

“THE SCHEDULE

Section 6

COMMISSION TO BE CHARGED BY AND PAYABLE TO THE PUBLIC TRUSTEE

1. COMMISSION ON CAPITAL

(1.) Upon the proceeds of all assets realised, or upon moneys got in and collected—

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|---|---------------|
| (a) up to \$5,000                           | 5 per centum  |
| (b) in excess of \$5,000 and up to \$20,000 | 2½ per centum |
| (c) in excess of \$20,000                   | 1 per centum, |

subject to a minimum commission of \$20.

(2.) Upon the value (being the value as assessed for succession duty purposes or, if the property is not valued for succession duty purposes being such value as is fixed by the Public Trustee) of unrealised real and personal property (except money) transferred or deliver in kind to, or specifically appropriated in trust for, any person entitled thereto—

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|---|---------------|
| (a) up to \$5,000                           | 2½ per centum |
| (b) in excess of \$5,000 and up to \$20,000 | 1½ per centum |
| (c) in excess of \$20,000                   | ½ per centum, |

subject to a minimum commission of \$20.

2. COMMISSION ON INCOME

Upon the gross amount of income received—

- (a) in respect of such income not being rents collected by an agent who is employed by and paid a commission by the Public Trustee
 

	5 per centum
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- (b) in respect of such income being such rents
 

	2½ per centum
	or such lesser rate as the Public Trustee thinks fit.”.

Transitional

## 6.—(1.) In this section—

“the commencing date” means the date of commencement of this section;

“the corporation” means the corporation sole constituted by section 4 of the Principal Ordinance as amended by this Ordinance; and

“the officer” means the officer who, immediately before the commencing date, held under the Principal Ordinance the office of Public Trustee for the Northern Territory.

## (2.) Upon the commencement of this section—

(a) all rights, property and assets that, immediately before the commencing date, were vested in the officer in his capacity as Public Trustee are, by force of this sub-section, vested in the corporation;

(b) the corporation has, by force of this sub-section, the like powers, duties and functions in relation to any rights, property or assets so vested in it as the officer would have had in relation to the rights, property or assets if this Ordinance had not been made and the officer had continued to be the Public Trustee for the Northern Territory under the Principal Ordinance; and

(c) the corporation becomes, by force of this sub-section, liable to pay and discharge all the debts, liabilities and obligations of the officer in his capacity as Public Trustee that existed immediately before the commencing date.

(3.) Any contract, agreement or other instrument subsisting immediately before the commencing date to which the officer was a party in his capacity as Public Trustee has effect on and after that date as if—

(a) the corporation were substituted for that officer as a party to the contract, agreement or other instrument; and

(b) any reference in the contract, agreement or other instrument to the Public Trustee for the Northern Territory or to that officer were (except in relation to matters that occurred before the commencing date) a reference to the corporation.

Application

7. Section 6 of, and the Schedule to, the Principal Ordinance as amended by this Ordinance do not apply to or in relation to the administration of the estate of a person who died before the commencement of this section.

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