

Public Trustee Act 1913 No 19

[1913-19]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **See also**
Courts Legislation Amendment Bill 2006

Authorisation

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New South Wales

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Public Trustee Act 1913 No 19



New South Wales

An Act to constitute a Public Trustee; to prescribe the powers and duties of the Public Trustee and duties; to amend the *Wills, Probate and Administration Act 1898*, the *Administration (Validating) Act 1900* and the *Administration Amending Act 1906*; and for purposes consequent thereon or incidental thereto.

Part 1 Preliminary

1 Name of Act, construction and commencement

This Act may be cited as the *Public Trustee Act 1913* and shall be construed with the *Wills, Probate and Administration Act 1898*, the *Administration (Validating) Act 1900*; and the *Administration Amending Act 1906*.

This Act shall commence on the first day of January, one thousand nine hundred and fourteen.

2 (Repealed)

3 Repeal

The enactments mentioned in the Schedule to this Act are, to the extent therein expressed, hereby repealed:

Provided that nothing in such repeal shall affect the validity of any act or thing lawfully performed or done, or the liability of any person to pay any fees or charges lawfully imposed by the curator or the curator's agents in respect of estates under administration by the curator at the date of the commencement of this Act, but such acts or things shall be deemed to have been performed and done, and such fees and charges imposed by the Public Trustee in the exercise of the Public Trustee's powers under this Act.

4 Office of curator abolished

The office of curator of intestate estates is abolished, but, subject to the provisions of this Act, the former powers and duties of the curator shall be exercised and performed by the Public Trustee.

4A Definitions

In this Act, except so far as the context otherwise indicates or requires:

Adult means a person who has attained the age of eighteen years.

Court means the Supreme Court of New South Wales.

Member of staff means any person employed under Chapter 2 of the [Public Sector Employment and Management Act 2002](#) to assist the Public Trustee in the exercise of his or her functions under this Act, and includes a person appointed as a deputy Public Trustee as referred to in section 6.

Minor means a person under the age of eighteen years.

Prescribed registry means such registry of the Court as may be prescribed by rule of Court.

Principal Act means the [Wills, Probate and Administration Act 1898](#).

Protected person means a protected person within the meaning of the [Mental Health Act 1958](#).

Part 2 The Public Trustee

5 Office of Public Trustee

(1) The Governor is to appoint a person to hold office as the Public Trustee.

(1A) Subject to this Act, the person appointed to the office of Public Trustee holds office for such period (not exceeding 5 years) as is specified in his or her instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

(2) The person for the time being holding the office of Public Trustee may be suspended from his or her office by the Governor for misbehaviour or incompetence, but shall not be removed from office except as hereinafter provided:

The Minister shall cause to be laid before Parliament a full statement of the grounds of suspension within seven sitting days after such suspension if Parliament is in session, and, if not, then within seven sitting days after the commencement of the next session.

The person suspended under this subsection shall be restored to office unless each House of Parliament within twenty-one days from the time when such statement has been laid before it declares by resolution that such person ought to be removed from office; and if each House of Parliament within the said time does so declare such person shall be removed from office by the Governor accordingly.

(3)

- (a) The person for the time being holding the office of Public Trustee shall cease to hold office if he or she:
 - (i) dies,
 - (ii) resigns his or her office by writing under his or her hand addressed to the Governor,
 - (iii) engages in New South Wales in any paid employment outside the duties of his office except with the approval of the Governor,
 - (iv) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,
 - (v) is absent from duty without reasonable cause for a period of fourteen consecutive days except on leave granted by the Governor, or
 - (vi) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the *Mental Health Act 1958* or a person under detention under Part 7 of that Act.

(b) (Repealed)

(3A) (Repealed)

- (4) Notwithstanding anything in any Act nothing contained in this Act shall affect the rights accrued or accruing under the *Public Service Act 1902*, the *Public Service (Amendment) Act 1919* or the *Superannuation Act 1916* to any officer of the Public Service appointed as Public Trustee.
- (5) Any officer of the Public Service appointed as Public Trustee shall continue to contribute to any fund or account and be entitled to receive any deferred or extended leave and any pension, payment, or gratuity, as if he or she were an officer or employee within the meaning of the *Public Service Act 1902*, the *Public Service (Amendment) Act 1919* or the *Superannuation Act 1916*, as the case may be; and for such purpose his or her service as Public Trustee shall be deemed to be service for the purpose of such Acts.
- (6) The replacement of subsection (1) by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2003* does not affect the appointment of a person as the Public Trustee if the appointment was in force immediately before the replacement of that subsection.

6 Deputy Public Trustees

- (1) The Governor may, under and subject to the provisions of the *Public Service Act 1902*, appoint one or more deputy Public Trustees but so that not more than three deputy Public Trustees shall hold office at the same time.

- (2) Subject to this Act, whenever under or pursuant to this or any other Act, or any rule, regulation, by-law, ordinance or other instrument or document whatsoever, anything may be done or is appointed to be done by, or any reference is made to, or any notice or document is required or authorised to be served on, the Public Trustee, the same may be lawfully done by or the reference shall be deemed to extend to or the notice or document may be served on any deputy Public Trustee, and any deputy Public Trustee shall have and may exercise and discharge any of the powers, authorities, duties and functions of the Public Trustee, and shall be entitled to the like immunities as the Public Trustee.

This subsection shall apply whether or not there is a vacancy in the office of Public Trustee.

- (3) Every deputy Public Trustee shall exercise his or her office subject to such conditions and restrictions (if any) as the Public Trustee may impose:
- (a) generally, or
 - (b) in relation to any specified matter or class of matters, or
 - (c) in relation to all matters other than any specified matter or class of matters.
- (4) No person shall be concerned to see or inquire whether:
- (a) any act, dealing or transaction by or with the Public Trustee or any deputy Public Trustee, or any other member of staff, or any agent of the Public Trustee, is or is not authorised, or
 - (b) in the case of any dealing or transaction with a deputy Public Trustee whether any condition or restriction has been imposed upon the exercise of the powers of such deputy Public Trustee, or as to his or her authority; and all acts or things done or omitted by such deputy Public Trustee shall be as valid and effectual and shall have the same consequences as if the same had been done or omitted by the Public Trustee.
- (5) The person who immediately before the commencement of the *Public Trustee (Amendment) Act 1936* held the office of deputy Public Trustee shall be deemed to have been appointed a deputy Public Trustee under this section.
- (6) The provisions of subsection (2) of section 5 shall not apply to any deputy Public Trustee.

7 Public Trustee a corporation sole

- (1) The Public Trustee is hereby constituted a corporation sole under that name, with perpetual succession and a seal of office. The appointment of the Public Trustee and of any deputy Public Trustee and their signatures, and the seal of the Public Trustee, shall be judicially noticed.

(2) The Public Trustee:

- (a) may take proceedings and be proceeded against in its corporate name,
- (b) may, notwithstanding any other provision of this Act, for the purposes for which it is constituted, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property, and
- (c) may do and suffer all other things that bodies corporate generally may, by law, do and suffer and that are necessary for or incidental to the purposes for which it is constituted.

8 (Repealed)

9 Fees charged

- (1) There may be charged in respect of the duties of the Public Trustee such fees, whether by way of percentage or otherwise, as may be prescribed by the regulations.
- (2) Any expenses which might be retained or paid out of the trust property if the Public Trustee were a private trustee may be so retained or paid, and the fees may be retained or paid in the like manner as and in addition to such expenses.
- (3) (Repealed)
- (4) The incidence of the fees and expenses under this section as between corpus and income shall be determined by the Public Trustee.

10 Appointment of agents

- (1) The Public Trustee may appoint any member of staff or any clerk or acting clerk of a Local Court to be the agent of the Public Trustee for such purposes, and with, under, and subject to, such powers, conditions, and limitations as shall be contained in such appointment.
- (2) (Repealed)

11 Property vested and powers transferred

- (1) All orders made by the court empowering the curator of intestate estates to collect, manage, and administer estates shall, on the commencement of this Act, take effect as orders of the court, empowering the Public Trustee to collect, manage, and administer such estates.
- (2) All property, real and personal, including books, documents, moneys, and securities for money, at present vested in or held by or on behalf of the curator of intestate estates by virtue of any order made under any Act, shall on the commencement of this Act pass to and become vested in the Public Trustee.

Part 3 Powers, duties, and immunities of Public Trustee

Division 1 General

12 General powers and duties

(1) The Public Trustee shall, subject to the provisions of this Act and rules made thereunder, be capable of being appointed and of acting under that name:

- (i) as a trustee,
- (ii) as an executor or administrator, including administrator pendente lite,
- (iii) as collector of estates under an order to collect,
- (iv) as an agent or attorney,
- (v) as manager of the estate of a protected person,
- (vi) as guardian or receiver of the estate of a minor,
- (vii) as a receiver of any other property.

The Public Trustee may be appointed and may act jointly with any other person in any such capacity as is mentioned in this subsection.

(1A) Where the Public Trustee is appointed and acts jointly with any other person in any such capacity as is mentioned in subsection (1) 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](#).

- (2) The Public Trustee shall have all the same powers, duties, and liabilities, and be entitled to the same rights and immunities, and be subject to the control and orders of any court as a private person acting in the same capacity.
- (3) The Public Trustee may decline, either absolutely or except upon conditions, to accept any trust or to act in any of the capacities specified in subsection (1), but shall not so decline on the ground only of the small value of the trust property or estate concerned.
- (4) The Public Trustee shall not accept any trust under a deed of arrangement for the benefit of creditors, nor any trust exclusively for religious purposes.

Division 2 Public Trustee as trustee

13 Appointment under wills and settlements

- (1) The Public Trustee may by that name, or any other sufficient description, be appointed to be trustee of any will or settlement or other instrument creating a trust or to perform any trust or duty belonging to a class which the Public Trustee is authorised by this Act to accept, and may be so appointed whether the will or settlement or instrument creating the trust or duty was made or came into operation before or after the passing of this Act, and either as an original or as a new trustee, or as an additional trustee, in the same cases, and in the same manner, and by the same persons or court, as if the Public Trustee were a private trustee, with this addition, that, though the trustees originally appointed were two or more, the Public Trustee may be appointed sole trustee, and notwithstanding the terms of the trust or the will as to the number of trustees.
- (2) The Public Trustee shall not be so appointed as a new trustee where the will, settlement, or other instrument creating the trust or duty contains a direction to the contrary.
- (3) (Repealed)

14, 15 (Repealed)

16 Vesting of trust property

- (1) Upon any appointment of the Public Trustee being registered under the [Registration of Deeds Act 1897](#), all the trust property in respect of which the Public Trustee is so appointed shall, subject to the trusts thereof, by virtue of such appointment and without other assurances in the law, become and be conveyed, assigned, and transferred, so that the same shall thereupon become and be legally and effectually vested in the Public Trustee:

Provided that where any portion of the trust property is subject to an Act by or under which provision is made for or with respect to the transfer of an estate or interest in

property of the same class or description as that trust property, unless the Court shall make a vesting order in respect thereof, the necessary and appropriate transfers shall be executed and registered so as to transfer such property to the Public Trustee, and until such transfers are so executed and registered such trustees or executors shall not be discharged from the trusts in respect of such portions of the trust property.

- (2) So often as the Public Trustee is appointed under section 13 the Public Trustee shall have the same powers, authorities, and discretions, and shall, subject to the provisions of this Act and rules made thereunder, act as if the Public Trustee had been originally appointed a trustee of the said property.

17 Where consent to appointment refused

Where, by the terms of an instrument of trust or a will, the consent of any person is requisite to the appointment of a trustee, and such person refuses to consent to the appointment of the Public Trustee to such office, or where the person whose consent is so requisite is a minor, or a person of unsound mind, or is absent from the State, or is under any other disability, then such appointment of the Public Trustee may be made without such consent, if the Court so orders and directs.

Division 3 Public Trustee as executor or administrator

18 Grant of probate or administration to Public Trustee

- (1) The Court may grant probate or letters of administration of any will or estate to the Public Trustee by that name.

(1A)

- (a) Where the Public Trustee applies for letters of administration of the estate of any person, domiciled in New South Wales or elsewhere, who died, either before or after the commencement of the *Public Trustee (Amendment) Act 1960*, intestate, leaving property in New South Wales, and letters of administration of that deceased person's estate:

- (i) have not been granted to any person, or
- (ii) have been granted to some person other than the Public Trustee and the grant has been revoked or the person to whom the grant was made has died without completing the administration of the estate,

the Public Trustee shall, subject to paragraph (b), be entitled as of right to a grant of letters of administration of the estate of that deceased person.

- (b) Where letters of administration of any such deceased person's estate:
- (i) have not been granted to any person, or

(ii) have been granted to some person and the grant has been revoked or the person to whom the grant was made has died without completing the administration of the estate,

and the Public Trustee and some other person severally apply for letters of administration of the estate the Court may grant letters of administration of the estate to the Public Trustee or that other person, as the Court thinks fit.

(c) Where the Public Trustee applies for letters of administration of any such deceased person's estate it shall not be necessary for the Public Trustee to cite any person or to obtain or file the consent of any person to such letters of administration being granted to the Public Trustee, and the Court shall not require the Public Trustee to cite any person or obtain or file any such consent.

(d) Nothing in this subsection requires the consent or citation of the Public Trustee to the grant of letters of administration to any other person.

(2) Any executor who has obtained probate or any administrator who has obtained letters of administration, notwithstanding that the executor or administrator has acted in the administration of the deceased's estate, and notwithstanding the existence of any other executor or administrator, may apply to the Court for an order transferring such estate to the Public Trustee for administration.

Upon the making of any such order the estate of the deceased left unadministered and all rights and obligations in respect thereof shall, without other assurances in the law, become and be conveyed, assigned and transferred to the Public Trustee as executor or administrator as the case may be, so that the same shall thereupon become and be legally and effectually vested in the Public Trustee, and subject to the provisions of this Act, the Public Trustee shall have all the powers of such executor or executors, administrator or administrators, and such executor or executors, administrator or administrators, shall not be in any way liable in respect of any act or default in reference to such estate subsequent to the date of such order other than the act or default of the executor or executors or administrator or administrators, or of persons other than the executor or executors or administrator or administrators for whose conduct the executor or executors or administrator or administrators is or are in law responsible:

Provided that where any portion of such estate is subject to an Act by or under which provision is made for or with respect to the transfer of an estate or interest in property of the same class or description as that trust property, the necessary and appropriate transfers shall be executed and registered so as to transfer such property to the Public Trustee, and, until such transfers are so executed and registered, such executor or executors, administrator or administrators shall not be discharged from the trusts in respect of such portions of the estate.

(3) (Repealed)

18A Election by Public Trustee to administer

- (1) Where any person has heretofore died or hereafter dies testate, in or out of New South Wales, leaving property in New South Wales the gross value of which, as estimated by the Public Trustee, does not at the time of the election, hereinafter mentioned, exceed such amount as may be prescribed by the regulations, and no person has obtained probate, the Public Trustee may, in all cases where the Public Trustee is entitled to obtain probate, in lieu of obtaining probate, file in the prescribed registry an election under the Public Trustee's hand, or the hand of a person prescribed by the regulations or belonging to a class of persons prescribed by the regulations, and sealed with the Public Trustee's seal setting forth the name, residence, and occupation (as far as then known to the Public Trustee) of the testator at the date of the testator's death, and the property forming the testator's estate and the date of the testator's death as then known to the Public Trustee, and stating that, after due inquiries, the Public Trustee believes that the document annexed to such election is the testator's last will, and that such will has been validly executed according to the law governing the execution of wills, and electing to administer the property according to the provisions thereof.
 - (2) When any person has heretofore died or hereafter dies intestate, in or out of New South Wales, leaving property in New South Wales the gross value of which, as estimated by the Public Trustee, does not at the time of the election hereinafter mentioned exceed such amount as may be prescribed by the regulations, and no person has taken out letters of administration, the Public Trustee may, in all cases where the Public Trustee is entitled to take out letters of administration, and in lieu of taking out such letters, file in the prescribed registry an election under the Public Trustee's hand, or the hand of a person prescribed by the regulations or belonging to a class of persons prescribed by the regulations, and sealed with the Public Trustee's seal setting forth the name, residence and occupation (so far as then known to the Public Trustee) of the intestate at the date of the intestate's death, and the property forming the intestate's estate, and the date of the intestate's death, as then known to the Public Trustee, and electing to administer such estate.
 - (3) On such election being filed the Public Trustee shall be deemed to be executor or administrator (as the case may be) in like manner in all respects as if probate or letters of administration had been duly granted to the Public Trustee.
- (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 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 such amount as may be prescribed by the regulations, 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 the Public Trustee is entitled to take out letters of administration de bonis non, and in lieu of taking out such letters, file in the prescribed registry an election under the Public Trustee's hand, or the hand of a person prescribed by the regulations or belonging to a class of persons prescribed by the regulations, and sealed with the Public Trustee's 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.

- (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 the Public Trustee.
- (4) The Public Trustee shall publish, if the deceased resided in New South Wales at the date of death, in a newspaper circulating in the district where the deceased resided and, in any other case, in a Sydney daily newspaper, a notice that the Public Trustee has made such an election, and such notice shall be conclusive evidence that the Public Trustee is rightfully entitled to administer under this section.
- (5) If after filing such election the gross value of the property to be administered is found to exceed such sum as may be prescribed by the regulations, the Public Trustee shall, as soon as practicable thereafter, file in the prescribed registry a memorandum under the Public Trustee's hand, or the hand of a person prescribed by the regulations or belonging to a class of persons prescribed by the regulations, stating the fact, and proceed in the ordinary manner to obtain probate or letters of administration.
- (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 prescribed registry a memorandum under the Public Trustee's hand, or the hand of a person prescribed by the regulations or belonging to a class of persons prescribed by the regulations, 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 the Public Trustee 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](#) shall apply in all respects as if a grant of probate

or letters of administration to the Public Trustee had been revoked.

(5B) (Repealed)

(6) In this section **will** includes all codicils thereto, and **probate** includes letters of administration with the will annexed, whether granted for general, limited, or special purposes.

Division 4 Public Trustee as collector under an order to collect

19-22 (Repealed)

23 When there is reasonable ground to believe that any person has died intestate leaving property in the jurisdiction, the Public Trustee may obtain order to administer without strict proof of death

- (1) Whenever it is made to appear to the Court that there is reasonable ground to suppose that any person has died either in or out of the jurisdiction of the Court intestate, leaving property within such jurisdiction, the Court may order and empower the Public Trustee to administer the estate of such person both real and personal.
- (2) Every such order shall be valid until revoked, and shall empower the Public Trustee to:
 - (a) collect, manage, and administer the personal estate of such supposed deceased person, and
 - (b) enter upon and receive the rents and profits and otherwise manage the real estate, and
 - (c) pay and discharge the debts and liabilities of such person,in like manner as if such person were certainly dead and the Public Trustee had obtained a grant of probate or letters of administration under the provisions of section 18.
- (3) The Public Trustee shall not proceed to any distribution of the assets without an order of the Court specially authorising the Public Trustee to make such distribution.

24, 25 (Repealed)

26 Consular officers in New South Wales to receive residue for residents in foreign countries

With respect to moneys and personal chattels payable or deliverable by the Public Trustee to the subjects of foreign countries, the Governor may, by notice in the Gazette, notify that such moneys or personal chattels may be paid or delivered to the chief consular officer for such foreign country in New South Wales on behalf of such subject; and the receipt in writing of such chief consular officer shall be a good discharge to the Public Trustee therefor.

27-33 (Repealed)

Division 5 Special powers of Public Trustee

34 Maintenance etc of minor or incapable person

- (1) Where a minor, or a person (in this section hereinafter referred to as **incapable person**) who, in the opinion of the Public Trustee, is unable to give a good discharge, is entitled to moneys in the hands of the Public Trustee, then, with respect to such minor 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 minor or incapable person or the Public Trustee may so apply such moneys.

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

The Public Trustee may at any time and from time to time apply to the Court for directions as to the administration of such moneys or to vary directions which may already have been given in regard thereto, or to determine any matter relating thereto, and any direction or determination of the Court shall, if given effect to by the Public Trustee, exonerate the Public Trustee from any claim or demand by any person whomsoever.

- (2) A reference in subsection (1) to a minor being entitled to moneys in the hands of the Public Trustee includes a reference to a minor who is entitled to those moneys contingently on attaining an age specified in the instrument creating the entitlement.

34A Small estates

- (1) If the net value as estimated by the Public Trustee of the estate of any deceased person does not exceed such amount as may be prescribed by the regulations 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 the Public Trustee 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 the Public Trustee.

If the Public Trustee is in possession of any will of the deceased, such will shall be deposited in the prescribed registry and shall be dealt with in accordance with section 30 of the Principal Act.

- (2) The Public Trustee shall be entitled to the same commission as the Public Trustee

would have been entitled to if probate of the will or letters of administration of such estate had been granted to the Public Trustee and such commission shall be a first charge on such estate.

- (3) Neither the Consolidated Fund nor the Public Trustee nor any member of staff nor any agent of the Public Trustee shall be liable for any act done in good faith in pursuance of the powers conferred on the Public Trustee by this section.

34B Dispute by Public Trustee of any claim

- (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) sent in to the Public Trustee as executor or administrator and has served on the claimant the notice referred to in section 93 of the Principal Act and the claimant has not, within the period of three 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.

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 the Public Trustee thinks fit, waive any objection which the Public Trustee might otherwise take to proceedings commenced after the expiration of the said period of two months.

- (2) (Repealed)
- (3) The powers conferred by this section shall be in addition to the powers exercisable under subsection (2) of section 93 of the Principal Act.

34C Payment of money without grant of administration

- (1) On the death of a person to whom a sum of money, not exceeding such amount as may be prescribed by the regulations, is payable by the Public Trustee, the Public Trustee may, without requiring administration to be taken out in the estate of that person, pay that sum or any part of that sum to a person who the Public Trustee considers is entitled to that sum or part.
- (2) A payment made in good faith pursuant to subsection (1) shall be valid against all persons and the Public Trustee shall be absolutely discharged from all liability in respect of any money so paid by the Public Trustee.
- (3) A person to whom money is paid pursuant to subsection (1) shall be liable to apply

that money in the due course of administration and the Public Trustee may, if the Public Trustee thinks fit, without being liable to see to the application of that money, require that person to give sufficient security, by bond or otherwise, that that money will be so applied.

- (4) (Repealed)
- (5) Nothing in this section affects any right of a person to claim or recover money paid pursuant to subsection (1) from a person other than the Public Trustee.

35 General powers of Public Trustee

- (1) Where the Public Trustee is appointed trustee, executor, or administrator, or is otherwise authorised to act under this Act, then, unless expressly prohibited by this Act or by or under an instrument, the Public Trustee may, at the Public Trustee's discretion, but in addition to and not as restricting any other powers, exercise the following powers:
 - (a) sell property by public auction or private contract, altogether or in parts, and subject to such conditions as the Public Trustee thinks fit,
 - (b) exchange property or join in a partition of property,
 - (b1) postpone the sale, calling in and conversion of any property that the Public Trustee has a duty to sell, other than property that is of a wasting, speculative or reversionary nature,
 - (c) lease property for a term not exceeding 10 years and give to a lessee an option of renewal if the aggregate duration of the lease and any such renewal does not exceed 10 years,
 - (c1) enter into any share-farming agreement for a period not exceeding 3 years,
 - (d) repair and insure against fire or accident any property and the cost of any such repairs shall be charged either to capital or to income or apportioned between capital and income as the Public Trustee may consider equitable,
 - (e) pay rates, taxes, assessments, insurance premiums, and other outgoings,
 - (f) borrow money upon the security of property, and secure the payment thereof and interest by mortgage or charge of such property, with or without a power of sale, and enter into such covenants, provisions, and agreements as may be agreed upon by the Public Trustee and the mortgagee. The power to give such security as aforesaid shall extend to any debt or liability incurred prior to the Public Trustee's appointment, and the Public Trustee may pay the interest secured by such mortgage or charge out of the income, or, if such income be insufficient, out of capital,

- (g) bring or defend any action, suit, or other proceeding, and suffer judgment to go by default, or consent to any decree or order in such action, suit, or proceeding, upon such terms as the Public Trustee thinks fit,
- (h) take proceedings to cause a person to be adjudicated a bankrupt or a company to be placed in liquidation, and vote and act either personally or by proxy at meeting of creditors or shareholders, whether the company be in liquidation or not,
- (i) take criminal proceedings touching or concerning property,
- (j) pay debts, obligations, costs, and expenses,
- (k) carry out contracts entered into before the Public Trustee's appointment to any such office as aforesaid,
- (l) consult with and employ such persons as the Public Trustee may deem expedient for the purpose of advising or assisting the Public Trustee in the due administration of any trust vested in the Public Trustee and remunerate any such person in such manner as the Public Trustee shall think fit,
- (m) do or omit all acts and things, and execute all instruments necessary to carry into effect the powers and authorities hereby given:

The power conferred by paragraph (j) 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.

(2) (Repealed)

35A Public Trustee not required to file accounts

- (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) Where the Public Trustee is appointed 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 or her pains and trouble or unless the Court, on application by or on behalf of some person interested in the estate, shall so order.
- (3) (Repealed)

Division 6 Investments

36 Manner of investment

- (1) The Public Trustee may invest any money in the Public Trustee's hands in any investment in which a trustee may invest trust funds in accordance with the *Trustee Act 1925* or by this Act.
- (2) The Public Trustee shall, with respect to such investments, have all the powers which are conferred upon a trustee (as therein defined) by the *Trustee Act 1925*.

36A Common fund

- (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 in subsection (1) of section 12 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) Interest allowed on any balance in the common fund under subsection (3) shall be credited:
 - (a) at such time as the Public Trustee may determine in respect of that balance, and
 - (b) at such rate as the Public Trustee may determine in respect of that balance according to the period during which it has formed part of the common fund, its source and nature and any other factor that the Public Trustee considers relevant.

- (5) Except as provided in this section, balances in the common fund shall be deemed not to earn interest.
- (6) Any capital profit or loss made on realisation of investments from the common fund may, at the discretion of the public trustee, be carried to the Interest Suspense Account or the Estates Guarantee and Reserve Account.

36B Estates Guarantee and Reserve Account

- (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 the Public Trustee 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) (Repealed)
- (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.

36C Surplus income from common fund

Where, after allowing interest in pursuance of section 36A and after setting aside the sum referred to in subsection (1) of section 36B, 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 the working of this Act.

Any amount so applied shall be taken into account in arranging the fees chargeable under section 9.

36D (Repealed)

36E Withdrawal from the common fund

- (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 the Public Trustee' powers, authorities, duties and functions in any such capacity as is mentioned in subsection (1) of section 12 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) 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.

36F Power to make advances

- (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 the Public Trustee.
 - (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 the person's beneficial interest, the Public

Trustee may, if the Public Trustee 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.

36G Investment in common fund by the Court

- (1) The Public Trustee shall, within one day after the date of receipt by the Public Trustee, pay into the common fund such money as is forwarded to the Public Trustee for that purpose by a registrar of the Court.
- (2) The Public Trustee shall repay to a registrar of the Court, on demand by the registrar, money paid into the common fund by that registrar under subsection (1) together with interest on that money calculated in accordance with section 36A (3) and (4).

37 Liability of Consolidated Fund

The Consolidated Fund shall be liable to make good all sums required to discharge any liability which the Public Trustee, if the Public Trustee were a private trustee, would be personally liable to discharge except where the liability is one to which neither the Public Trustee nor any member of staff has in any way contributed and which neither the Public Trustee nor any member of staff could by the exercise of reasonable diligence have averted, and in that case the Public Trustee shall not, nor shall the Consolidated Fund, be subject to any liability.

Division 7 Accounts

38 Moneys in Public Trustee's account to be Crown property

Moneys in or payable into the Public Trustee's account by, the Public Trustee, a member of staff or any other person acting or purporting to act under the authority of this Act, shall be deemed to be property of the Crown for the purposes of this Act, and shall be recoverable in like manner as money due to the Crown is recoverable.

39-41 (Repealed)

42 Payments to Public Trustee's account

- (1) Every person into whose hands or under whose control any moneys come which are payable to the Public Trustee shall pay the same to the Public Trustee as soon as

practicable after their receipt and until so paid such person shall be deemed a debtor to the Crown in respect of such moneys.

- (2) It shall, notwithstanding, be lawful for any member of staff or agent of the Public Trustee to pay, out of any moneys in the hands of the member of staff or agent, any claims which the member of staff or agent is directed by the Public Trustee to pay.

Division 8 Shares and stock

43 Shares and stock

- (1) Where the estate of any person which is being administered by the Public Trustee consists wholly or partly of shares, stock, or property in any body, whether corporate or not, or in any association, or where such shares, stock, or property are vested in the Public Trustee under the terms of any settlement, or are purchased by the Public Trustee in the exercise of any trust, direction, or authority imposed or conferred upon the Public Trustee, then, notwithstanding any law or provisions affecting the registration of persons holding shares, stock, or property as trustees, or in any other representative capacity, the Public Trustee shall be entitled to be registered in the Public Trustee's corporate name as the proprietor of such shares, stock, or property as trustee, or in any other representative capacity, as the Public Trustee may require; but under no circumstances shall the Public Trustee's liability in respect of such shares, stock, or property exceed the value of the other assets which, at the time when any demand is made for the satisfaction of any such liability the Public Trustee holds in trust for the person beneficially entitled to such shares, stock, or property.

If such assets are insufficient to meet such liability, then such body or corporation and any person lawfully acting on its behalf shall, in respect of any unpaid balance of such liability, have the same rights and remedies against any such person so beneficially entitled as if the latter were the registered proprietor of such shares, stock, or property.

- (2) The Public Trustee, upon registration, shall for all purposes, excepting as to liability as aforesaid, be deemed to be the registered proprietor of any such shares, stock, or property; and neither the body nor association aforesaid, nor any person dealing with the Public Trustee, shall be concerned to see or inquire whether any acts, dealings, or transactions by or with the Public Trustee are or are not within the Public Trustee's powers.
- (3) Nothing in the *Companies (New South Wales) Code* affects the provisions of this section.

Division 9 Entitlement to costs in certain cases

43A Application in respect of will

On an application by the Public Trustee, whether in common or in solemn form, for

probate of any will, or for administration with a will annexed, the Public Trustee shall be entitled to the Public Trustee's costs out of the estate, and shall not be liable for the costs of any other person.

43B Application on intestacy

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

Division 10 Protection to Public Trustee

44 Certain acts of Public Trustee taken to be bona fide

Where, under the bona fide belief that a person has died testate or intestate, the Public Trustee takes out probate or administration, or administers under statutory powers, or is appointed or acts as a trustee under a will, and afterwards it is found:

- (a) that such person is living, or
- (b) that such person did not die intestate, or
- (c) that a will exists which revokes or alters the will which the Public Trustee has proved or under which the Public Trustee becomes administrator, or under which the Public Trustee is administering or is acting as trustee, or
- (d) that such last-mentioned will is invalid,

then, notwithstanding that such person is living, or that the deceased did not die intestate, or that the deceased made a will revoking or altering the provisions of the will of which the Public Trustee has taken out probate or administration or under which the Public Trustee is appointed or is acting as trustee, or that such last-mentioned will is invalid, all acts and things done or omitted by the Public Trustee, a member of staff or an agent of the Public Trustee by virtue of such probate or in the course of any such administration, or as such trustee shall unless the contrary be proved, be deemed to have been done or omitted bona fide in the performance of the duty of the Public Trustee, the member of staff or the agent, respectively.

The proof of the absence of such bona fide belief shall be upon any person seeking to controvert it.

Nothing in this section shall be taken to deprive a person who has suffered loss or damage by reason of any such act or omission of the Public Trustee, of any remedy the person may have at law or in equity against the Public Trustee in the Public Trustee's corporate capacity, nor affect the remedy of such person against the person or persons who have

shared in the distribution of any estate or received the benefit of any trust so administered or executed by the Public Trustee.

45 Protection from personal liability for certain acts

The Public Trustee, or any member of staff or any agent of the Public Trustee, is not personally liable to any person for any act done bona fide in the performance of their duties respectively, unless it is shown that such act was done, not only illegally but wilfully or with gross negligence.

46 Protection from personal liability in respect of certain goods

The Public Trustee, or any member of staff or any agent of the Public Trustee, is not personally liable to any person in respect of goods or chattels in the possession of any testator or intestate at the time of the death of the testator or intestate which are sold by the Public Trustee or by the member of staff or the agent as the goods of such testator or intestate, unless the Public Trustee or member of staff or agent knows or has actual notice before the sale that such goods or chattels are not in fact the property of such testator or intestate.

47 Proceeds of sale of goods of third person

In case of any sale by the Public Trustee, or by a member of staff or an agent of the Public Trustee, of goods or chattels belonging to any third person, the amount realised by the sale thereof shall be paid over by the Public Trustee to the owner upon proof of ownership, unless the same has been applied in the payment of the debts of the deceased, or has been distributed according to any will of the deceased, or in the ordinary course of administration, whilst the Public Trustee or member of staff or agent was in ignorance and without actual notice of the claim of such person to the goods or chattels so sold.

48 Remedy against Public Trustee

Where any person, by act or thing done or omitted by the Public Trustee, a member of staff or any other person acting or bona fide assuming to act under this Act, sustains any injury which would have entitled such person to a remedy in respect thereof if the said act or thing had been done or omitted by a private person, then such person shall be entitled to the same remedy against the Public Trustee in the Public Trustee's corporate capacity as he or she would be entitled to against a private person and shall be entitled to be indemnified out of the Public Trustee's account, and if the same is insufficient, then out of such moneys as may be appropriated for such purpose by Parliament.

Part 4 Miscellaneous

49 No bond by Public Trustee

No bond or security shall be required from the Public Trustee before he is appointed, by or under this Act or any other Act, in any of the capacities specified in subsection (1) of

section 12.

50 Certificate of Public Trustee evidence

- (1) When the Public Trustee is executor or administrator, or is by law authorised to administer the estate of any deceased person, a certificate under the Public Trustee's hand, or the hand of a person prescribed by the regulations or belonging to a class of persons prescribed by the regulations, and sealed with the Public Trustee's seal, certifying that the Public Trustee has taken out probate or letters of administration, or is authorised to administer, and stating the date when such probate or letters of administration were granted, or when and how the Public Trustee became authorised to administer, and the name, residence, and occupation of the deceased person shall, notwithstanding any statute or 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 as executor or administrator, or of the Public Trustee's right to administer, without production of any other proof whatever.
- (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 the Public Trustee's hand, or the hand of a person prescribed by the regulations or belonging to a class of persons prescribed by the regulations, and sealed with the Public Trustee's seal, certifying that the Public Trustee 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.

51 Service of orders on Public Trustee

When any court, except upon the application of the Public Trustee, makes any order:

- (a) directing any payment to be made to the Public Trustee, or
- (b) vesting property in the Public Trustee, or
- (c) appointing the Public Trustee to be trustee, executor, or administrator,

it shall be the duty of the person who obtains such order forthwith thereafter to serve upon the Public Trustee a copy thereof, and to deliver to the Public Trustee a statement of the property affected by the order and where such property is situated or by whom held, so far as the same is known to such person, and such other information as the Public Trustee shall reasonably require; and in default thereof, such person shall be liable to a penalty not exceeding 10 penalty units, which may be recovered summarily before a

Magistrate, unless the person proves that such default was due to accident or was unavoidable.

52 Escheat

- (1) If it appears on office found that any real estate vested in the Public Trustee has escheated to the Crown, the net proceeds of sale of such estate shall be paid by the Public Trustee to the Treasurer, and shall be carried to the Consolidated Fund.
- (2) A conveyance by the Public Trustee of such real estate to the purchaser thereof shall operate to pass the right, title, and interest of the deceased intestate to such purchaser.

53-53D (Repealed)

54 Disclosure of property to Public Trustee

Where:

- (a) any corporation, association, or person is in possession of any property of a deceased person, or
- (b) there is to the credit of any deceased person in the books or accounts or otherwise of any corporation, association, or partnership any property or money, or
- (c) under any partnership or association any deceased person is entitled to a share in the assets thereof, or the deceased person's representatives are entitled to any payments as the share in such assets, or
- (d) any deceased person is the registered proprietor of any shares in any corporation or association, or
- (e) any person is indebted to any deceased person,

then if such property, money, shares, or debts are vested in or belong to the Public Trustee, it shall be obligatory on such corporation, association, or person to forthwith give notice to the Public Trustee or the Public Trustee's agent of the extent, nature, and situation of such property, money, shares, or debts.

Any such corporation, association, or person who wilfully neglects to comply with the provisions of this section shall be liable to a penalty of 10 penalty units recoverable by civil action at the suit of the Attorney-General.

55 Reciprocity where deceased domiciled in other States or New Zealand

Where, before or after the commencement of this Act, the court has ordered the curator of intestate estates or the Public Trustee to collect the estate in New South Wales of any person who, at the time of the person's death, was domiciled in one of the other States of the Commonwealth or the Dominion of New Zealand, and whose estate in such other

State or Dominion is being administered by the Public Trustee or curator of such other State or Dominion, the Public Trustee may pay over to the Public Trustee or curator of such other State or Dominion the balance of the proceeds of the estate in New South Wales of the said person, after payment of creditors and the charges provided for under this Act, without any obligation to see to the application of such balance, and without incurring any liability in regard to the payment of such balance, and shall certify to an account in favour of the Public Trustee or curator of such other State or Dominion accordingly.

56 Where deceased domiciled in New South Wales and administration granted in other States or New Zealand

- (1) Where the estate of any deceased person, who, at the time of the person's death was domiciled in New South Wales, is being administered by the Public Trustee under an order of the court made before or after the commencement of this Act, and the Public Trustee or curator of any of the other States or of the Dominion mentioned in the last preceding section has in such other State or Dominion obtained administration of the estate in such other State or Dominion, the Public Trustee may receive from the Public Trustee or curator of such other State or Dominion the balance of the proceeds of the estate in such other State or Dominion.
- (2) Such balance shall, when so received, form part of the estate of the deceased person, and shall be dealt with according to the law of New South Wales.

57 Solicitor, accountant etc conducting business of estate

Where by any settlement, will, codicil, or other testamentary writing a settlor or testator shall direct that any practising solicitor, accountant, broker, or banker shall conduct the legal or other business of his or her estate, such solicitor, accountant, broker, or banker shall be entitled to act therein accordingly, but in such case the Public Trustee shall not be liable for the negligence, malfeasance, misfeasance, nonfeasance, or misconduct of such solicitor, accountant, broker, or banker, and such solicitor, accountant, broker, or banker may be removed by order of the Court upon the application of the Public Trustee or of any person interested in the said estate upon cause shown, and then and in such case the Court may appoint any other person to conduct such business.

58 Stamp duty

No deed or instrument whereby the Public Trustee is appointed as a new trustee or as executor or administrator in the place of any existing executors or administrators or whereby any property is transferred to the Public Trustee in consequence of such appointment shall be liable to stamp duty.

59 Regulations

- (1) The Governor may make regulations:
 - (a) for the conduct of the business of the Public Trustee,

- (b) for determining the duties of members of staff,
- (c) for the custody of all property placed with the Public Trustee and the instruments of title relating thereto,
- (d) for fixing scales of commission and other charges to be made by the Public Trustee under this Act,
- (e) for the receipt and payment of moneys under this Act,
- (f) for keeping, rendering, and auditing accounts under this Act,
- (g) for determining in what securities other than those specified in section 36 moneys may be invested for a period not exceeding twelve months,
- (h) for the safe custody of securities,
- (i) for the custody of the moneys in the Public Trustee's account, and the payment of moneys to or withdrawal of moneys from such account, and the mode of keeping and auditing the said account, and any other account that may be deemed necessary in the business of the Public Trustee,
- (j) for any object or purpose that may be deemed necessary for the administration of this Act.

(2) (Repealed)

60 (Repealed)

Schedule Enactments of Principal Act repealed by this Act

Section 37.

Section 39.

Sections 111 to 137 (Division 6 of Part 2).