



ANNO VICESIMO SEPTIMO

ELIZABETHAE SECUNDAE REGINAE

No. 73 of 1978

An Act to change the name and style of The Public Curator of Queensland to that of The Public Trustee of Queensland and to consolidate and amend the law relating to him and his office

[ASSENTED TO 8TH DECEMBER, 1978]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short title. This Act may be cited as the *Public Trustee Act* 1978.

2. Commencement. This Act shall commence on a day to be fixed by Proclamation.

Abbreviations. Abbreviations used in references to other Acts in notes appearing at the beginnings of clauses have the following meanings:—Qld. *Public Curator Act* 1915–1974 (Queensland); N.Z. *Public Trust Office Act* 1957 (New Zealand); Vic. the Act of the Parliament of Victoria specified; S.A. the Act of the Parliament of South Australia specified; Tas. the Act of the Parliament of Tasmania specified; U.K. S.R. & O. the Statutory Rules and Orders of the United Kingdom specified; T.A. *Trusts Act* 1973 (Queensland); M.H.A. *Mental Health Act* 1974 (Queensland); P.L.A. *Property Law Act* 1974–1976 (Queensland); T.C.A. *Trustee Companies Act* 1968–1977.

- 3. Arrangement of Act.** This Act is arranged as follows:—
- PART I—PRELIMINARY (ss. 1–6);
- PART II—THE PUBLIC TRUSTEE AND HIS OFFICE (ss. 7–26);
- PART III—APPOINTMENT AS TRUSTEE OR PERSONAL REPRESENTATIVE (ss. 27–46);
- PART IV—POWERS AS PERSONAL REPRESENTATIVE, TRUSTEE, ETC. (ss. 47–55);
- PART V—SPECIAL FUNCTIONS OF A PUBLIC NATURE (ss. 56–63);
- PART VI—MANAGEMENT OF ESTATES OF INCAPACITATED PERSONS (ss. 64–89);
- Division 1—Preliminary* (s. 64);
- Division 2—Protection of Persons Under Disability* (ss. 65–75);
- Division 3—Amendments of Mental Health Act 1974* (s. 76);
- Division 4—Authority Where Other Jurisdictions Involved* (ss. 77–79);
- Division 5—Powers and Duties in the Management of Estates of Incapacitated Persons* (ss. 80–89);
- PART VII—ADMINISTRATION OF PROPERTY OF PRISONERS (ss. 90–97);
- PART VIII—UNCLAIMED PROPERTY (ss. 98–117);
- Division 1—Unclaimed Money* (ss. 98–102);
- Division 2—Other Unclaimed Property* (ss. 103–114);
- Division 3—Payment Into and Out of Unclaimed Moneys Fund* (ss. 115–117);
- PART IX—GENERAL (ss. 118–142);
- Division 1—Notice and Consequences of Appointment* (ss. 118–120);
- Division 2—Notice, Transfer and Registration of Assets* (ss. 121–127);
- Division 3—Indemnities etc.* (ss. 128–136);
- Division 4—Miscellaneous* (ss. 137–142);

SCHEDULES.

4. Crown to be bound. This Act, except where otherwise provided, binds the Crown not only in right of the State but also, as far as the legislative power of Parliament permits, the Crown in all its other capacities.

5. Repeals, amendments and savings. (1) The Acts specified in Part A of the First Schedule are repealed as and to the extent indicated therein.

(2) (a) The *Succession Act 1867–1977* is amended as and to the extent indicated in Part B of the First Schedule.

(b) That Act as so amended may be cited as the *Succession Act 1867–1978*.

(3) (a) The *Companies Act 1961–1975* is amended as and to the extent indicated in Part C of the First Schedule.

(b) That Act as so amended may be cited as the *Companies Act 1961–1978*.

(4) (a) The *District Courts Act* 1967–1976 is amended as and to the extent indicated in Part D of the First Schedule.

(b) That Act as so amended may be cited as the *District Courts Act* 1967–1978.

(5) (a) The *Limitation of Actions Act* 1974 is amended as and to the extent indicated in Part E of the First Schedule.

(b) That Act as so amended may be cited as the *Limitation of Actions Act* 1974–1978.

(6) (a) The *Property Law Act* 1974–1976 is amended as and to the extent indicated in Part F of the First Schedule.

(b) That Act as so amended may be cited as the *Property Law Act* 1974–1978.

(7) Without limiting the provisions of the *Acts Interpretation Act* 1954–1977—

(a) the repeal of any enactment by this Act does not affect any document made or anything whatsoever done under the enactment so repealed or under any corresponding former enactment, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done;

(b) any office, function, trust or power held by the Public Curator under the *Public Curator Act* 1915–1974 shall continue under this Act and shall be held, performed and exercised by him as Public Trustee;

(c) a reference to The Public Curator of Queensland or to the Public Curator, by whatever means expressed, occurring in any Act, grant of any kind, instrument (including an instrument evidencing title to an estate or interest in land), document or other writing shall be read and construed as a reference to The Public Trustee of Queensland.

6. Interpretation. (cf. Qld s. 4, T.A. s. 5, N.Z. s. 2). In this Act, unless the contrary intention appears—

“benefit”, in relation to a person, includes insurance on the life of that person and the education and advancement of that person;

“body” includes a corporation, unincorporated body or association including a partnership or association of persons;

“Common Fund” means the Common Fund provided for in section 19;

“Court” means the Supreme Court or a Judge thereof;

“Deputy Public Trustee” includes the Senior Deputy Public Trustee;

“Election to Administer” means an Election filed pursuant to section 30 or 31;

“estate under administration” means any property held, administered, managed or controlled by the Public Trustee in any particular capacity, whether as personal representative or other trustee or as administrator, guardian, committee, manager, liquidator, receiver or otherwise. The term includes an estate under management as defined in section 64;

- “grant of administration” means—
- (a) probate of the will of a deceased person; or
 - (b) letters of administration of the estate of a deceased person, with or without the will annexed, for general, special or limited purposes; or
 - (c) an Order to Administer; or
 - (d) an Election to Administer, and a reference to the making of a grant of administration includes the filing of an Election to Administer;
- “Incapacitated Person” means an Incapacitated Person as defined in section 64;
- “instrument” includes any deed, will, agreement for a settlement, Act of Parliament or order of a court or any number of such instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act;
- “land” includes tenements and hereditaments, corporeal and incorporeal, and every estate and interest therein, whether vested or contingent, freehold or leasehold, including Crown leasehold and land held on licence or otherwise and whether at law or in equity;
- “Minister” means the Minister for Justice and Attorney-General or other Minister of the Crown for the time being charged with the administration of this Act. The term includes any Minister of the Crown who is temporarily performing the duties of the Minister;
- “mortgage” includes a charge on property for securing money. The terms “mortgagee” and “mortgagor” have corresponding meanings and include persons from time to time deriving title under the original mortgagee or mortgagor (as so defined) respectively;
- “Official Solicitor” means the Official Solicitor to the Public Trustee provided for in section 16;
- “Order to Administer” means an order of the Court made pursuant to Part III authorizing the Public Trustee to administer the estate of a deceased person, whether general or special or limited in any way;
- “owner” in relation to property includes any person having an estate or interest in the property;
- “personal representative” means a person having a grant of administration;
- “proceedings” includes any action, cause or matter and any other procedure, in court or otherwise, whether formal or informal, (including criminal proceedings as to property, the submission to arbitration or the lodging of a caveat) directed to the assertion, enforcement or protection of any right;
- “property” includes real and personal property of every description or kind whatsoever, any estate or interest therein, any debt, any thing in action and any other right or interest whether legal or equitable (including, without prejudice to the generality of the foregoing, rights as to rescission, avoidance or restitution);
- “Public Trustee” means The Public Trustee of Queensland constituted under this Act;

- “ Real Property Acts ” means the *Real Property Act* 1861–1978, the *Real Property Act* 1877–1974, *The Real Property Acts Amendment Act* of 1952, the *Real Property Acts Amendment Act* 1956–1974, the *Real Property Act Amendment Act* 1976, the *Real Property (Commonwealth Defence Notification) Act* 1929–1974, *The Real Property (Commonwealth Titles) Act* of 1924, *The Real Property (Local Registries) Act* of 1887 and *The Registrar of Titles Act* of 1884;
- “ registering authority ” includes the Registrar of Titles under the Real Property Acts, the Registrar of Dealings under the *Land Act* 1962–1978, every mining registrar under the *Mining Act* 1968–1976, and every other person who has, pursuant to law, the duty of registering or certifying title to property or recording dealings with respect thereto;
- “ stock ” includes stock (whether debenture, inscribed or otherwise), shares, debentures, units and notes (secured or otherwise) and other like investments;
- “ trust ” does not include the duties incidental to an estate mortgaged but, with this exception, “ trust ” includes implied and constructive trusts, cases where the trustee has some beneficial estate or interest in the trust property and the duties incidental to the office of a personal representative. The term “ trustee ” has a corresponding meaning;
- “ Unclaimed Moneys Fund ” means the account maintained pursuant to section 25;
- “ under a legal disability ” or other like expression means not of full age or not of full mental capacity or having the status of an Incapacitated Person;
- “ will ” includes a codicil.

PART II—THE PUBLIC TRUSTEE AND HIS OFFICE

7. The Public Trustee of Queensland. (1) The corporation sole constituted under the *Public Curator Act* 1915–1974 under the name and style of The Public Curator of Queensland is hereby preserved, continued in existence and constituted as a corporation sole under the name and style of The Public Trustee of Queensland with perpetual succession and a seal of office.

(2) The seal of office of the Public Trustee may be maintained in as many facsimiles as may be required for the business of the Public Trust Office and any such seal shall be kept in the custody of the Public Trustee or of a District Public Trustee authorized by him to have the custody and use of such seal.

(3) The person who immediately prior to the commencement of this Act was the public curator pursuant to the *Public Curator Act* 1915–1974 shall be, without further appointment, the Public Trustee pursuant to this Act.

(4) The accounts and funds established under the authority of the *Public Curator Act* 1915–1974 or any other Act and existing immediately prior to the commencement of this Act shall continue in existence and be accounts and funds established under and for the purposes of this Act.

The repeal of the *Public Curator Act 1915–1974* shall not affect the continuity or identity of those accounts and funds or any of them and the Public Trustee shall be entitled to carry on any activity heretofore carried on by him as Public Curator.

(5) All actions and proceedings pending at the suit of or against the Public Curator at the commencement of this Act may be continued by or against the Public Trustee under the style of the Public Curator, without any change of designation of the Public Curator or, where the Official Solicitor to the Public Curator is shown as the Public Curator's solicitor in the proceedings, of the Official Solicitor being necessary, as if the operation of this Act had not commenced.

The Public Trustee may enforce any judgment or order made in any such action or proceedings and shall comply with any judgment or order by which the Public Curator is bound to pay any money or transfer any property or do or abstain from doing any act without any further or other authority than this Act.

(6) All property belonging to or vested in the Public Curator as such, whether in his own right or in any capacity whatever, prior to the commencement of this Act, shall continue from the commencement of this Act to belong to, and to be vested in him as Public Trustee; and all registering authorities shall give effect to any dealings by the Public Trustee with any such property without requiring any change of style to be recorded.

(7) The Public Trustee shall retain, under that style, any office or capacity that he had, howsoever arising, under the name of the Public Curator.

8. Appointment of Public Trustee, Deputy Public Trustees, District Public Trustees and other officers. (Qld s. 6). (1) The Governor in Council may from time to time appoint an officer to be Public Trustee, an officer to be Senior Deputy Public Trustee, officers each to be a Deputy Public Trustee and such other officers as may be necessary for the purposes of this Act.

Each officer shall be appointed to and shall hold his respective office subject to and in accordance with the *Public Service Act 1922–1978*.

(2) The Office of the Public Trustee shall be known as the Public Trust Office.

(3) There may be branches of the Public Trust Office, each branch called a District Public Trust Office, in such places as the Governor in Council shall from time to time think fit and the Governor in Council may from time to time appoint an officer to be called District Public Trustee for each District Public Trust Office.

(4) The Minister may from time to time define the boundaries of the locality wherein a District Public Trustee shall conduct the business of the Public Trust Office.

(5) Each officer who, immediately prior to the commencement of this Act, was—

- (a) the senior deputy public curator;
- (b) the deputy public curator;

(c) a local deputy public curator;
shall be respectively—

- (a) the Senior Deputy Public Trustee;
- (b) a Deputy Public Trustee; and
- (c) a District Public Trustee,

in all respects as if appointed to his respective office pursuant to this Act, until his office becomes vacant.

(6) Unless and until altered as a result of action taken pursuant to subsection (3) or (4) the locality wherein each local deputy public curator conducted the business of the public curator immediately prior to the commencement of this Act shall be and become the locality of a District Public Trust Office as if it were established and the boundaries of the locality were defined pursuant to this Act, and an officer who by virtue of subsection (5) becomes a District Public Trustee shall be the District Public Trustee for the locality for which he was the local deputy public curator.

(7) Every Deputy Public Trustee and every District Public Trustee shall exercise his office under the control, supervision and direction of the Public Trustee and, subject thereto, shall have and may exercise, perform and discharge all the functions, powers, authorities, discretions, rights and duties of the Public Trustee and all references in this or any other Act, rule or document to the Public Trustee shall, so far as may be necessary for the purpose of giving effect to the provisions of this section, be deemed to include a reference to each Deputy Public Trustee and District Public Trustee.

(8) No person, court or judge shall be concerned to see or enquire whether any acts, dealings or transactions by or with the Public Trustee, a Deputy Public Trustee, a District Public Trustee or any officers or agents of the Public Trustee are or are not within his or their powers or duly authorized in all the circumstances or as to the necessity for or propriety of his appointment.

(9) All acts or things done or omitted by a Deputy Public Trustee or District 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.

9. Corporate capacities of Public Trustee. (Qld ss. 9 and 13). (1) The Public Trustee shall be capable in law of suing and being sued, of taking, purchasing, holding, alienating, conveying and otherwise dealing with real and personal, movable and immovable property within and outside the State and of doing and suffering all such other acts and things as bodies corporate may by law do and suffer, including all such things as may be necessary or convenient for the purpose of any functions that he may have pursuant to this or any other Act.

(2) The appointment of the Public Trustee, of Deputy Public Trustees and of District Public Trustees and their respective signatures and the seal of The Public Trustee of Queensland shall be judicially noticed.

(3) No bond or other security shall be required from the Public Trustee, any Deputy Public Trustee or District Public Trustee in relation to his appointment to or acting in any office or capacity pursuant to this Act.

10. Contracts and exercise of powers. (Qld s. 10, cf. N.Z. s. 13). The following rules shall apply to any contract made, transaction entered into or power exercised by the Public Trustee under any authority vested in him in that behalf:—

- (a) A contract, transaction or power which, if made, entered into or exercised by a private person, must be made, entered into or exercised by deed, may be in writing and executed under seal by the Public Trustee, a Deputy Public Trustee or a District Public Trustee.
- (b) A contract, transaction or power which, if made, entered into or exercised by a private person, must be in writing signed by the parties to the contract or the person entering into the transaction or exercising the power, may be in writing signed by the Public Trustee, a Deputy Public Trustee or a District Public Trustee.
- (c) A contract, transaction or power which, if made, entered into or exercised by a private person, may be by parol only, may be made, entered into or exercised by parol by the Public Trustee, a Deputy Public Trustee or a District Public Trustee.

11. Appointment of Agents. (Qld s. 11, N.Z. s. 8 (3)). (1) The Public Trustee may appoint any person to act as his agent, either generally or particularly.

(2) If so authorized by the Public Trustee, which authorization may be by general direction, or by reference to particular offices or classes of offices or directed to individuals, any Clerk of a Magistrates Court and any officer of the Public Service of Queensland, shall in the course of his duties act as such agent within his district, and with, under and subject to such powers, conditions and limitations as are contained in such authorization.

(3) Every such agent, not being a Clerk of a Magistrates Court or an officer of the Public Service of Queensland, shall, if required by the Public Trustee, give such security for the due performance of his duties as the Public Trustee thinks proper and sufficient.

(4) Every person who is appointed under this section whether or not he is placed under any other direction, control, inspection or supervision, shall, for the purposes of this Act, be subject to the direction, control, supervision and inspection of the Public Trustee.

12. Sale of property by auction by authorized persons. (cf. Qld s. 59). Where the Public Trustee wishes to sell by auction land or goods in an estate under administration and such land or goods is or are situated at a distance of more than twenty kilometres from the usual place of business of a licensed auctioneer, such land or goods may be offered for sale by auction at a time and place directed by the Public Trustee by a person authorized in writing by the Public Trustee and such person for the purpose of such auction shall not be required to take out an auctioneer's licence.

13. Delegation by Public Trustee. (cf. Qld s. 12, N.Z. s. 11). (1) The Public Trustee may from time to time by writing delegate, either particularly or generally, to any of his officers, employees or agents as he thinks fit all or any of his functions, powers, authorities, discretions, rights and duties howsoever arising, including any delegated to him under any enactment and anything provided for by section 10:

Provided that the officer, employee or agent shall, in respect of all matters delegated, continue to be under the direction, control, supervision and inspection of the Public Trustee.

(2) Every officer, employee or agent of the Public Trustee purporting to act in the course of his employment pursuant to a delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary and no person court or judge shall be concerned to inquire whether or not the delegation has been made.

All things done or omitted by any such officer, employee or agent in the course of his employment shall have the same consequences and effect as if the same had been done or omitted by the Public Trustee.

(3) A delegation under this section may be made to a specified officer, employee or agent or to officers, employees or agents of a specified class or may be made to the holder or holders for the time being of a specified office or class of offices.

(4) Every delegation under this section may be revoked or suspended at will and no such delegation shall prevent the exercise, performance and discharge of any function, power, authority, discretion, right or duty of the Public Trustee.

(5) Where authority to administer any estate or property has been delegated to a District Public Trustee he may, within the limits of the delegation, deal with and dispose of the assets thereof, notwithstanding that those assets are within the district of another District Public Trustee.

(6) Without restricting the generality of the foregoing provisions of this section, it is hereby declared that the powers of delegation conferred by this section shall include power to authorize any officer, employee or agent of the Public Trustee to—

- (a) make an affidavit, oath or declaration required to be made by the Public Trustee under the rules of any court or otherwise, sign any document to be filed in any court, verify any account, or personally attend in any court instead of the Public Trustee;
- (b) subject to the provisions of subsection (1), execute transfers and assurances of any real or personal property on behalf of the Public Trustee;
- (c) give or sign any notice, consent, certificate, instrument or other document that the Public Trustee is empowered to give or sign under the provisions of this Act or any other Act or otherwise.

(7) When exercising an authority pursuant to a delegation under this section, the person exercising it when signing any document or instrument shall sign his personal name adding the words "Duly authorized pursuant to section 13 of the Public Trustee Act" and shall cause the Public Trustee's seal to be affixed in cases requiring the use of such seal and such person's signature shall be judicially taken notice of without further proof and any such document or instrument executed as aforesaid by such person shall have the same effect as if it were executed by the Public Trustee personally.

14. Vacancy or change in office not to terminate authority. (cf. N.Z. s. 11 (6)). Notwithstanding any vacancy in the office of Public Trustee or change in the holder of that office every Deputy Public Trustee,

District Public Trustee, agent, officer, employee or delegate of the Public Trustee shall (subject to any subsequent variation or revocation) have the same power to act in the name of or on behalf of the Public Trustee and all action may be taken by, to or against the Public Trustee in his corporate capacity as would be the case if there had been no such vacancy or change.

15. Declaration of secrecy. (cf. Qld s. 14, N.Z. s. 17). Every member of the staff of the Public Trust Office, every agent of the Public Trustee and every member of The Public Trust Office Investment Board constituted pursuant to section 21 shall be bound to secrecy by declaration in the prescribed form.

16. Employment of solicitors etc. (cf. Qld ss. 15 and 84). (1) The Public Trustee may, subject to the regulations, consult with and employ such solicitors, counsel, bankers, accountants and brokers or other persons as he considers necessary and may remunerate such persons and shall be entitled to be allowed and paid all charges and expenses so incurred.

(2) Where, in the case of an estate under administration, the settlor or testator by the trust instrument has directed that a solicitor, accountant, broker or banker shall conduct the legal or other business of the estate, such person shall be entitled to act therein accordingly, but, in such case, the Public Trustee shall not be liable for the default of such person except to the extent to which the Public Trustee is entitled to be indemnified out of the estate under administration.

Such person may be removed by order of the Court upon the application of the Public Trustee or of any person interested in the estate upon cause shown, and, in such case, the Court may appoint the Public Trustee or any other person to conduct such business or may make such other order as it thinks fit.

(3) There may be an Official Solicitor to the Public Trustee, who shall be a barrister or solicitor of the Supreme Court of Queensland.

(4) The Official Solicitor shall be entitled to act as solicitor in any court or in any proceedings under the title of "Official Solicitor to the Public Trustee" without the necessity of showing his own personal name and, on any change in the holder of the office of Official Solicitor, it shall not be necessary to give any notice of change of solicitor or otherwise formally to record such change.

(5) Notwithstanding the preceding provisions of this section, it shall not be necessary, when a solicitor other than a solicitor in private practice acts for the Public Trustee in any proceedings, for the proceedings to be conducted on behalf of the Public Trustee in the name of such solicitor or for documents filed or delivered on behalf of the Public Trustee in the proceedings to be indorsed with the name or place of business or address for service of the solicitor filing or delivering such documents, but only the corporate name of the Public Trustee and, where an address or place of business is required to be shown, his address for service need be shown thereon.

(6) Notwithstanding that the name of a solicitor does not appear on the record of any proceedings as acting for the Public Trustee, the Public Trustee shall be entitled to the same costs and expenses and in the same manner as if the name of a solicitor did appear on the record of the proceedings.

17. Fees and expenses. (cf. Qld s. 17, N.Z. s. 130). (1) There shall be charged and payable in respect of the duties and services of the Public Trustee such fees, whether by way of percentage or otherwise, as are prescribed.

(2) Expenses (including liabilities incurred) which might be retained or paid out of trust property by a trustee and fees payable under subsection (1) may be retained or paid by the Public Trustee out of an estate under administration in priority to any other claims.

(3) In all proceedings in which the Public Trustee is a party or is in any way interested and the Official Solicitor or any other solicitor or barrister acts on behalf of the Public Trustee, the Public Trustee shall be entitled to full costs and allowances as if he had been represented by a legal practitioner not employed as an officer of the Public Service notwithstanding that such barrister or solicitor is such an officer.

(4) In all proceedings in which the Public Trustee is represented by counsel employed as an officer of the Public Service, he shall be entitled to full costs and allowances as if he had been represented by counsel in private practice and, in the taxation of any bill of costs, fees in respect of such counsel employed as aforesaid shall be allowed the Public Trustee and no item shall be disallowed (whether for barristers' fees or otherwise) merely because the amount thereof has not been paid prior to taxation and the rules relating to costs in any court shall apply subject to this subsection accordingly.

(5) The incidence of the fees and expenses under this section as between corpus and income shall be determined by the Public Trustee.

(6) The Public Trustee shall have a general lien on all property comprised in an estate under administration for the payment of the fees and expenses payable in connection with the administration of the estate under administration and for the payment of the costs, fees and allowances and charges earned by the Official Solicitor or other solicitor or barrister being an officer of the Public Service of Queensland on behalf of the Public Trustee in connection with any proceedings relating to the estate.

(7) The Public Trustee shall have, in respect of any costs and charges for work of a legal nature done by him, by the Official Solicitor or by any other solicitor or barrister being an officer of the Public Service of Queensland on behalf of the Public Trustee, the same rights of lien as a legal practitioner not employed as an officer of the Public Service would have.

18. Accounting (cf. Qld ss. 17 (3), 82). (1) All such fees as are paid or retained out of the estate under administration and all costs, fees and allowances and charges earned by the Official Solicitor or any other solicitor or barrister being an officer of the Public Service of Queensland on behalf of the Public Trustee shall be applied as an appropriation in aid of moneys provided by Parliament for expenses under this Act and, so far as not so applied, shall be paid into the Treasury in whole or in part as directed by Order in Council.

(2) Where by reason of any act or omission on the part of the Public Trustee or any of his officers or agents any money loss is incurred or any extra payment has been made, the amount involved may, with the approval of the Minister, be charged to profit and loss or any reserve fund of the Public Trust Office without further appropriation than this Act.

19. Common Fund and Investment thereof and of other moneys.
(cf. Qld s. 18). (1) Subject to this Act—

- (a) all moneys vested in or coming into the hands of the Public Trustee, howsoever arising, and whether directed to be invested or not, shall be held in one Common Fund and shall be invested by him;
- (b) income earned by such investments shall be paid into the Common Fund;
- (c) interest, at a rate to be from time to time prescribed, shall be credited annually, on a date to be from time to time fixed by the Public Trustee, to the respective estates having moneys in the Common Fund;
- (d) investments may be made from the Common Fund in any of the investments in which under the *Trusts Act 1973* trustees are authorized to invest trust funds and also in any class of investments from time to time approved for the purposes of this Act by the Governor in Council;
- (e) investments made from the Common Fund by virtue of this subsection shall not be made on account of or belong to any particular estate under administration.

(2) The Public Trustee may—

- (a) invest moneys belonging to an estate under administration in any investment which is authorized by the provisions of a governing trust instrument and, subject to the provisions of any such trust instrument, retain in the form in which it then is any investment existing when the trust becomes vested in him;
 - (b) invest moneys held by him on trust for any person under a legal disability or, when for special reason he considers it desirable that moneys should be separately invested, moneys belonging to any other estate under administration, in any investment in which trustees are authorized by law to invest trust funds;
 - (c) when he is the committee or manager of an estate under management or the manager of the estate of a prisoner under Part VII, continue investments in the form in which they are when he becomes authorized to manage that estate, reinvest from time to time in similar investments and exercise, as fully and effectually as that person could do if he were not under a legal disability or a prisoner to whom Part VII applies and if his estate was not being managed by the Public Trustee, all rights of that person as the holder of any stock or other investment, including the exercise, in whole or in part, of any rights arising thereout to acquire in the name of that person any stock, and for such purpose apply moneys belonging to that person, or sell or dispose of any of such lastmentioned rights.
- (3) When an investment is made or retained in accordance with the provisions of subsection (2)—
- (a) it shall not form part of the Common Fund but shall belong to the particular estate under administration to which the moneys invested or the investments retained belong;
 - (b) income earned by it shall be credited to the particular estate under administration;

- (c) any loss or deficiency in respect of it or of the moneys received therefrom or realized thereby shall be borne by the estate under administration.

20. Advances in course of administration. (cf. Qld s. 21). (1) The Public Trustee may make advances out of moneys standing to the credit of the Common Fund for the purposes of any estate under administration or about to be administered by him.

(2) Where an estate is under administration and there is not sufficient money available to make payments required to be made on account of such estate, whether to the persons entitled thereto or to a share or interest therein or otherwise, the Public Trustee may advance and pay for or on account of such estate any sum of money (not exceeding in the whole one-half the total value of the property in the estate) which he is authorized or required to pay.

(3) Where a person entitled to a share in an estate under administration desires an advance against his share, the Public Trustee may make advances to that person not exceeding in the whole one-half of the value of the share as estimated by the Public Trustee.

(4) All amounts owing in respect of sums so advanced, with all interest thereon, shall be a first charge upon the estate under administration or the share advanced against, as the case may be, and shall bear interest compounded on quarterly rests at the rate of twelve per centum per annum or such other rate as may from time to time be prescribed in substitution therefor or at such lesser rate as may be fixed by the Public Trustee in the particular case.

(5) All interest received under this provision shall be paid into the Common Fund.

(6) A certificate under the hand and seal of the Public Trustee stating the amount owing for advances and interest on a specified date by the estate under administration or person to whom the advances were made and the share if any against which they were made shall be sufficient evidence of the facts until the contrary is proved.

21. Public Trust Office Investment Board. (cf. Qld s. 21A). (1) All investments of the Common Fund shall be controlled and managed by a Board to be called The Public Trust Office Investment Board (in this section referred to as the Board).

(2) The Board shall consist of at least three members one of whom shall be the Public Trustee and the others of whom shall be appointed by the Governor in Council for such term as the Governor in Council shall specify in the appointment in each case and one of whom shall be an officer of the Department of the Treasury.

(3) At a meeting of the Board two members thereof shall form a quorum.

(4) The chairman of the Board shall be appointed by the Governor in Council from among the members thereof and shall preside at all meetings of the Board at which he is present and in his absence or during any vacancy in the office of chairman such one of those present shall preside as they shall choose between them.

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- (5) Subject to subsection (6), the Public Trustee shall—
- (a) not invest funds from the Common Fund without the approval of the Board first had and obtained;
 - (b) satisfy the Board that every proposed such investment of funds by him is legally authorized and that he has done and executed or caused to be done and executed all such acts, matters, and things as he is, by this Act or by any other Act or law or by any relevant instrument, required to do and execute preliminary to such investment;
 - (c) account to the Board continuously for every such investment made by him and produce to the Board from time to time and at all times all such accounts, securities, and other documents, and all such information and reports as will enable the Board to examine the then state of any such investment made by him or as may be required by the Board;
 - (d) in the case of any such investment upon the security of a mortgage or other charge over property report to the Board any breach of any term or condition of such mortgage or charge and exercise against a defaulting mortgagor all such rights and remedies had and possessed by him as the Board shall direct, and account to the Board for the due and proper exercise by him of all such rights and remedies.
- (6) Notwithstanding anything hereinbefore contained this section shall not apply to the following matters, namely:—
- (a) any advance made or to be made by the Public Trustee under and pursuant to the provisions of section 20 from moneys standing to the credit of the Common Fund in respect of any estate under administration or about to be administered by him;
 - (b) any investment from time to time made by the Public Trustee—
 - (i) in debentures issued by a Crown corporation or State instrumentality, which corporation or instrumentality is specially authorized to issue such debentures by the Act constituting such corporation or instrumentality, or in any loan issued by the Government of the Commonwealth of Australia or of any State thereof;
 - (ii) on account of a particular estate, whether made pursuant to the provisions of subsection (2) of section 19 or otherwise in exercise of the Public Trustee's powers;
 - (iii) of portion of the Unclaimed Moneys Fund as and when directed by the Governor in Council so to invest the same under and in accordance with the provisions of section 25;
 - (iv) as an advance by way of a loan to a local body under and within the meaning of the *Local Bodies' Loans Guarantee Act 1923-1975*, the repayment whereof and the payment of interest whereon shall have been guaranteed under that Act by the Treasurer of Queensland on behalf of the Government thereof;
 - (v) on Interest Bearing Deposit with a bank;
 - (vi) with a dealer in the short term money market, approved by the Reserve Bank of Australia as an authorized dealer, who has established lines of credit with that bank as a lender of last resort;

(vii) of a class declared by Order in Council to be one to which this section shall not apply.

(7) Until other appointments in their place are made by the Governor in Council, the persons, who were, immediately prior to the commencement of this Act, the members of The Public Curator Investment Board pursuant to the *Public Curator Act 1915-1974*, shall be members of the Board.

22. Temporary advances to the Public Trustee. (Qld s. 19). (1) In order to admit of the moneys in the Common Fund being kept closely invested or to provide moneys wherewith to make advances in connection with estates under administration, the Public Trustee may, with the approval of the Minister in each case, obtain advances from the Treasurer or other source by hypothecating securities held by him in respect of investments in the Common Fund.

(2) Every such advance shall be for such period and at such rate of interest as are approved by the Minister:

Provided that on the expiration of such period the advance may be renewed for the same or any other period, and so on from time to time.

(3) The total amount of advances to the Public Trustee under this section outstanding at any one time shall not exceed \$1 000 000.

23. Deficiency in Common Fund. (Qld s. 20). If the Common Fund is insufficient to meet the lawful claims thereon, the Treasurer shall, without further appropriation than this Act, pay such sums out of the Consolidated Revenue Fund as are necessary to meet the deficiency.

24. Inspection and audit of books of Public Trustee. (Qld s. 22). (1) The Minister, and any officer of his department authorized by him in writing, shall have at all times access to all the books, accounts, documents, and papers in the Public Trust Office, and the Public Trustee shall at all times furnish to the Minister all such information as the Minister requires.

(2) The *Financial Administration and Audit Act 1977* shall apply to the Public Trustee and the Public Trust Office.

25. Unclaimed Moneys Fund. (cf. Qld s. 24). (1) The account called the "Unclaimed Moneys Fund" established by the public curator pursuant to section 24 of the *Public Curator Act 1915-1974* shall be maintained by the Public Trustee under this Act.

(2) The Governor in Council may direct that the whole or part of the moneys paid to the credit of the Unclaimed Moneys Fund shall be invested in any of the investments referred to in paragraphs (i) and (iv) of provision (b) of section 21 (6) or in any investment of any class from time to time approved by Order in Council, and the interest arising from such investment shall be paid into the Consolidated Revenue Fund.

26. Balance sheet and accounts to be laid before Parliament. (Qld s. 25). The Public Trustee shall in every year not later than the thirty-first day of August transmit to the Minister, to be laid before Parliament—

(a) a profit and loss account setting forth the total revenue and expenditure of the Public Trust Office during the year ended on the thirtieth day of June last preceding or such other date as may be prescribed;

- (b) a balance-sheet setting forth the assets and liabilities as at the thirtieth day of June last preceding or such other date as may be prescribed;
- (c) a statement showing the position and investment of the Unclaimed Moneys Fund.

PART III—APPOINTMENT AS TRUSTEE OR PERSONAL
REPRESENTATIVE

27. Rights and duties to which Public Trustee may be appointed. (cf. Qld s. 28). (1) Where any person or corporation may be appointed or act as a trustee, executor, administrator, next friend, guardian, committee, agent, attorney, liquidator, receiver, manager or director or to or in any other office of a fiduciary nature the Public Trustee may be so appointed or may so act.

(2) Where an official liquidator may be appointed liquidator by a court or judge, such appointment may be made of the Public Trustee where, in the opinion of the court or judge, there are special reasons for so doing.

(3) Notwithstanding the preceding provisions of this section, the Public Trustee's appointment to any office or capacity shall, except where by this or any other Act it is otherwise provided, be subject to his consenting thereto.

(4) The Public Trustee may charge and receive such fees and remuneration as may be prescribed or, if not prescribed, as may be allowed by law, for acting in any capacity to which he may be appointed under this section.

28. The Public Trustee may hold as trustee for the Crown. (cf. Qld s. 28A). (1) If in the opinion of the Governor in Council it is expedient that any moveable or immovable property within or outside Queensland, which is wholly or partly used or held, or which it is proposed shall be wholly or partly used or held, by the Government of the State for governmental, administrative or departmental purposes, should be held by the Public Trustee for and on behalf of Her Majesty in right of the State, the Governor in Council may authorize and direct the Public Trustee to purchase, accept, hold or take that property to be held upon trust for Her Majesty in right of the State.

(2) It shall not be necessary for the Public Trustee to take or hold any such property outside the State of Queensland in or by any name, style, title, or description other than The Public Trustee of Queensland.

(3) Any person desirous of surrendering to the Crown any freehold land in Queensland which is under the Real Property Acts may, with the approval of the Governor in Council, in lieu of transferring the land to Her Majesty, transfer such land to the Public Trustee to be held upon trust as set forth in this section.

(4) Freehold land in Queensland under the Real Property Acts, accepted or taken by the Public Trustee pursuant to subsection (1) may be transferred to him by executing a Memorandum of Transfer, in any form substituted for Form "D" in the Schedules to the Real Property Acts, in favour of the Public Trustee as trustee under this section.

(5) If in the opinion of the Governor in Council it is desirable that the legal estate in any Crown land held or used for governmental, administrative or departmental purposes should be held by the Public Trustee, the Governor in Council may grant such land to the Public Trustee in fee-simple to be held upon trust as set forth in this section, and issue the deed of grant thereof in the name of the Public Trustee as trustee under this section.

(6) The Public Trustee may execute all such deeds, conveyances, assurances, transfers, documents and other writings as may be necessary or expedient for the due execution by him of any trust declared by this section, and no person dealing with him in relation to the execution of any such trust shall be bound to enquire whether he is acting in the proper execution of his powers hereunder.

(7) The Governor in Council may give to the Public Trustee such authorities and directions to purchase, accept, hold and deal with property to which this section applies as he shall think fit, including either general directions as to the manner in which he shall exercise his powers and perform his duties as trustee in relation to any class or classes of matters or property, or directions, either specific or general, as to the manner in which he shall exercise his powers or perform his duties in respect of any particular matter or property, including a direction that he shall deal with such property in accordance with the direction of a specified Minister or other public authority, and the Public Trustee shall hold and deal with such property in accordance with such authorities and directions.

(8) When acting as trustee under this section the Public Trustee shall represent the Crown and shall be a Crown instrumentality, and shall have and may exercise all the powers, privileges, rights and remedies of the Crown.

29. Circumstances in which Public Trustee may apply for Order to Administer. (cf. Qld ss. 32, 33, 34; T.A. s. 18). (1) Where any person has died, whether before or after the commencement of this Act, being at the time of his death domiciled in Queensland or leaving property situated in Queensland and a grant of administration has not been made in Queensland to any other person, the Public Trustee may apply for and be granted an Order to Administer the estate of such person—

- (a) where the deceased is intestate; or
- (b) where the deceased left a will and—
 - (i) the Public Trustee was appointed executor thereby; or
 - (ii) the executors appointed thereby have renounced; or
 - (iii) there is no executor willing and capable of acting in the execution of the will resident in Queensland; or
 - (iv) every executor appointed by the will has died; or
 - (v) no person has applied for probate or letters of administration with the will annexed within a period of three months from the death of the deceased; or
 - (vi) the property or any portion thereof is liable to waste, and the executor is not known or cannot be found.

(2) Where part of an estate of a deceased person in respect of which a grant of administration has been made in Queensland is unadministered and the executor or administrator—

- (a) has died; or

(b) has become bankrupt or incapable; or

(c) is absent from Queensland or cannot be found,

the Public Trustee may apply for and be granted an Order to Administer the estate left unadministered.

(3) On an application under paragraph (a) of subsection (1) no further proof of the death and intestacy of the deceased shall be required than an affidavit that, after due enquiries, the Public Trustee is satisfied of the death and intestacy.

(4) On an application under subsection (1) or paragraph (a) of subsection (2) the Public Trustee shall be entitled as of right to an Order to Administer:

Provided that if some person who would be entitled to a grant of administration applies therefor the Court may make a grant of administration to such person.

(5) It shall not be necessary or required, unless the Court for special reason in a particular case so directs, that the Public Trustee give notice of such application generally or to any person, except in the case of an application under provision (v) of paragraph (b) of subsection (1) or an application under paragraph (b) of subsection (2):

Provided that the Court may in either of such lastmentioned cases dispense with any notice which would otherwise be required.

(6) Notwithstanding any other provisions of this section,

(a) the Court may, in any case where it might make a limited grant of administration to any other person, grant to the Public Trustee an Order to Administer similarly limited;

(b) the Public Trustee may, in any case in which he is entitled to an Order to Administer, apply for and obtain a grant of probate or of letters of administration as the case may be, or may propound a will in solemn form of law.

(7) Where the Public Trustee is granted an Order to Administer with a will whereby any other person was appointed both executor thereof and a trustee thereunder, the Public Trustee shall, while the Order to Administer remains in force, by virtue thereof and without further appointment, be deemed to be appointed a trustee under the will in the place of such person.

(8) In any case where the Public Trustee, pursuant to the provisions of this Act, applies for an Order to Administer or for a grant of probate or of letters of administration, or propounds a will in solemn form of law, he shall, unless the Court otherwise orders in exceptional circumstances, be entitled to his costs out of the estate and not be liable for the costs of any other person.

30. Election to Administer estates under \$20 000 without grant of administration. (cf. Qld s. 37). (1) Where any person dies (whether before or after the commencement of this Act) domiciled in Queensland or leaving property situated in Queensland, and the gross value of his property in Queensland which would pass to his personal representative is estimated by the Public Trustee at the time of the Election hereinafter mentioned not to exceed \$20 000, and there is no grant of administration in force in Queensland, the Public Trustee may, in all cases where he is entitled to obtain an Order to Administer, in lieu thereof file in the Court an Election, in Form 1 of the Second Schedule, to administer the estate with the will or on intestacy as may be the case.

(2) Where a grant of administration has been made in respect of the estate of a deceased person and the person to whom such grant was made has died, whether before or after the commencement of this Act, leaving part of the estate unadministered in Queensland, and the gross value of such part of the estate so left unadministered in Queensland is estimated by the Public Trustee at the time of the Election hereinafter in this subsection mentioned not to exceed the sum of \$20 000, and no person has since the death of the last executor or administrator obtained a grant of administration *de bonis non* in respect of the estate, the Public Trustee may, in all cases where he would be entitled to obtain an Order to Administer, in lieu thereof, file in the Court an Election, in Form 2 of the Second Schedule, to administer the estate so left unadministered.

31. Appointment of Public Trustee in the place of existing personal representative. (cf. Qld ss. 29 & 35, N.Z. s. 46). (1) (a) Where a grant of probate or of letters of administration has been made to any person and part of the estate the subject of such grant is unadministered, the Public Trustee or any person interested may apply to the Court, on the ground that it is for the benefit of any person who is or may be found to be interested in such estate that the existing executor or administrator be removed and that the estate be administered by the Public Trustee, for the granting of an Order to Administer to the Public Trustee and the Court may make such order on the application as it thinks fit.

(b) The applicant, before making any such application, shall give seven days' notice thereof to the existing executor or administrator:

Provided that for any reason which it considers sufficient the Court may hear the application notwithstanding that such notice has not been given.

(2) With the consent of the Court, executors or administrators (with or without a Will annexed) may, unless expressly prohibited, appoint the Public Trustee respectively sole executor or sole administrator, notwithstanding that any consent which would otherwise be requisite has not been obtained:

Provided that if the gross value of the assets requiring administration, as estimated by the Public Trustee, does not exceed \$20 000 and, should the consent of any person to the appointment of an executor or administrator be requisite, that such consent has been obtained, it shall not be necessary to obtain the consent of the Court.

(3) Where there are more executors or administrators than one, the Court may, on the application of any of such executors or administrators, appoint the Public Trustee respectively sole executor or administrator, notwithstanding that any consent which would otherwise be requisite has not been obtained.

(4) (a) When the Court consents to an appointment pursuant to subsection (2) or makes an appointment pursuant to subsection (3), an Order to Administer shall be made in favour of the Public Trustee.

(b) When an appointment is made, pursuant to subsection (2), without the consent of the Court, the Public Trustee shall file in the Court an Election to Administer in Form 3 of the Second Schedule.

(5) (a) This section applies whether or not the date of the Will (if any) or of the death of the deceased person or of the grant of probate (if any) or of the letters of administration is before or after the commencement of this Act.

(b) Subsection (2) or (3) applies to an executor whether or not he has obtained a grant of probate.

(6) Whenever under this section any executor or administrator with the will annexed appoints the Public Trustee executor or administrator, the Public Trustee shall, by virtue of the appointment, be also the sole trustee in respect of any trust created by the will—

(a) where the executor or administrator was trustee; or

(b) where there was no trustee in existence, at the date of the appointment of the Public Trustee.

(7) On any application under this section the Court may make such order or orders as it thinks fit.

32. Effect of Order to Administer. (Old s. 36 (1) & (2)). (1) Subject to this Act, when an Order to Administer is made the Public Trustee shall have the same powers over the property of the deceased as he would have had if probate or letters of administration of such property had been granted to him in the like case and the same consequences shall follow in other respects, and any reference in any other Act or law to probate or letters of administration or a grant of administration or representation or other like expression shall, unless the context otherwise requires, be construed to include a reference to an Order to Administer.

(2) Upon obtaining an Order to Administer, the title of the Public Trustee to any property in the estate and to the rents and profits thereof, shall relate back to and be deemed to have arisen upon the death of the owner of such property as if there had been no interval of time between such death and appointment:

Provided that any acts lawfully done by a prior administrator shall be as valid and effectual as if they had been done by the Public Trustee, and any rights exercisable by such prior administrator shall vest in and be exercisable by the Public Trustee.

33. Consequences of Election (cf. Old s. 37 (3), (4A), (5) & (5A)).

(1) On an Election to Administer being filed the Public Trustee shall be—

(a) the administrator in intestacy or with the will;

(b) the administrator of the estate or of the estate left unadministered,

as the case may be, and the filing of an Election shall, for the purposes of any Act or law, have the same effect as the making by the Court of an Order to Administer.

(2) If, after filing an Election to Administer, the gross value of the property to be administered is found to exceed the sum of \$25 000, the Public Trustee shall, as soon as practicable thereafter, file in the Court a memorandum under his hand stating the fact, and proceed in the ordinary manner to obtain an Order to Administer.

(3) If, after filing an Election to Administer, the Public Trustee finds—

(a) that the deceased person who was supposed to have died intestate has died testate; or

- (b) that the document annexed to the Election as the testator's last will is not the last will or is not the sole last will of the testator, but has been superseded by a later will which is believed to be the testator's last will; or
- (c) that the deceased person who was supposed to have died testate has died intestate, and that the document annexed to the Election as the testator's last will has no testamentary validity or effect; or
- (d) that the said Election is invalid, ineffective or for any other reason ought not to have been filed,

the Public Trustee shall, as soon as practicable, file in the Court a memorandum under his hand stating the facts and revoking the Election, whereupon the Election shall be revoked accordingly and the Public Trustee shall be at liberty to file a fresh Election to Administer under this section or otherwise proceed in accordance with the facts and the provisions of this section shall apply to any such fresh Election as if it had been the Election which had originally been filed.

34. Court may order administration of estate by Public Trustee instead of by Court. (Qld s. 39 (9)). Where proceedings have been instituted in the Court for the administration of an estate, and by reason of the small value of the estate it appears to the Court that the estate can be more economically administered by the Public Trustee than by the Court, or that for any other reason it is expedient that the estate should be administered by the Public Trustee instead of the Court, the Court may order that the estate shall be administered by the Public Trustee, and thereupon (subject to any directions by the Court) this section shall apply as if an Order to Administer had been granted to the Public Trustee.

35. Administration of small estates. (Qld s. 39A). Where the value of the assets of the estate of a deceased person coming into the hands or under the control of the Public Trustee in respect of which estate he would be entitled to file an Election does not exceed \$5 000, he may apply such assets in or towards the payment of any claim of which he has knowledge or to the persons entitled thereto, without filing an Election to Administer and it shall not be necessary for him to cause advertisements to be published calling on creditors to prove their debts.

36. Powers of Public Trustee pending grant. (cf. Qld s. 38, N.Z. s. 61). (1) When any person dies or has heretofore died, whether testate or intestate, and whether the Public Trustee is entitled to a grant of an Order to Administer or some person other than the Public Trustee is appointed executor or is entitled to letters of administration, the Public Trustee may, until administration is granted, exercise with respect to the estate of the deceased person all such powers and authorities and do all such acts and things, other than the distribution of any part of the estate to the person beneficially entitled, as he would have or could exercise or do if the deceased had died intestate and the Public Trustee had obtained an Order to Administer:

Provided that the Public Trustee may not sell, exchange, mortgage or partition any part of the property nor let nor lease the same (except under a periodic tenancy from year to year or for any shorter period or for a fixed term of not longer than one year) unless with the leave of the Court.

(2) Notwithstanding the proviso to subsection (1), the Public Trustee may sell, without obtaining the leave of the Court, any portion of the personal estate which in his opinion is of a perishable nature, is liable to deteriorate or is for any other reason liable to decrease substantially in value if retained.

(3) Before the Public Trustee first acts under this section, he shall give notice in writing or by telegram to any person in Queensland known to the Public Trustee, who (not being under a legal disability) would be entitled to obtain probate or letters of administration, informing such person that he intends to so act unless such person forthwith proceeds to apply for probate or letters of administration.

(4) If such person does not, within twenty-one days after the posting of such notice or the despatching of such telegram, give notice, in writing or by telegram, to the Public Trustee that he intends to apply for probate or letters of administration, or if such person gives such notice but fails for fourteen days thereafter to apply therefor, or makes such application and it is refused, then, unless the Court otherwise orders, the Public Trustee may proceed to exercise any of the powers and authorities given by this section.

(5) If more persons than one are entitled to take out probate or letters of administration, it shall be sufficient to give notice to one of such persons only.

(6) Where it is not actually known to the Public Trustee that there is in Queensland any person entitled to obtain probate or letters of administration or where, in the opinion of the Public Trustee, there are circumstances of emergency, the Public Trustee may exercise the powers and authorities given by this section without giving such notice.

(7) When the Public Trustee is acting under this section—

- (a) he shall in no wise be deemed to be or be liable as an executor *de son tort*;
- (b) he shall have the same rights to be paid or to retain commission and other charges out of the estate of the deceased as if an Order to Administer had been granted to him;
- (c) all expenses incurred by and all payments due to him shall be a first charge upon the property of the deceased person;
- (d) it shall not be necessary for him to register with any registering authority his authority so to act, and the recital by him in any instrument that he is acting pursuant to this section shall be sufficient evidence of his authority to execute that instrument.

37. Power of Public Trustee in relation to devises in certain cases. (cf. **Old s. 53A**). Where the Public Trustee is, pursuant to any provision of this Act, administering the estate or part of the estate of a deceased testator, and the testator has by his will devised land and—

- (a) the Public Trustee is satisfied that the debts and liabilities of the testator or the funeral expenses of the testator or the expenses of administration for which the land is liable could not be fully satisfied without recourse to the land; or
- (b) the devise is (absolutely or subject to any condition and whether such devise takes effect immediately or subject to any prior interest) to an infant, or a person residing beyond the State,

- or whose whereabouts are unknown, or as to whom it is not known whether he is alive or dead, or who has died and who has no person acting in the administration of his estate; or
- (c) the testator had before his death sold or disposed of the land but had not transferred the land in pursuance of such sale or disposition,

the Public Trustee shall, notwithstanding the provisions of any law to the contrary, be entitled to have transmission of the said land entered up to him as trustee in the proper register, and shall have the same powers and authority to deal with that land as though the same had by the will of such testator been devised to him upon trust and, without limiting the powers of the Public Trustee in other respects, he shall, notwithstanding any provision of the testator's will to the contrary, have power to raise such sum or sums of money as he considers sufficient for the purpose of discharging any debts or liabilities charged upon the testator's estate or for the payment of which such estate may be made available, by mortgage or by sale or by lease, at the best rent obtainable and for such duration as he thinks proper, of the land so devised or any part thereof.

38. Public Trustee may be appointed new or additional trustee. (cf. Qld s. 31, N.Z. s. 46). (1) The Public Trustee may be appointed as a new trustee or as an additional trustee in the same cases, in the same manner and by the same persons or court as if he were a private person:

Provided that the Public Trustee shall not be appointed as a new or additional trustee otherwise than by a court, or pursuant to the order of a court, where the trust instrument contains a direction to the contrary.

(2) When the Public Trustee is appointed under this section as a new or additional trustee, he shall, subject to this Act, have the same powers, authorities and discretions and act as if he had been originally appointed a trustee.

39. Appointment of Public Trustee as sole trustee. (cf. Qld s. 29, N.Z. s. 46). (1) Notwithstanding the fact that any governing instrument may provide for or direct the appointment of two or more trustees, trustees appointed under such instrument, including personal representatives whose duties continue in the nature of a trusteeship after their administration is closed, or any other person or persons having the power to appoint new trustees thereof may, unless expressly prohibited, appoint the Public Trustee as sole trustee under the instrument without obtaining the consent of the Court, and the Public Trustee may in any such case lawfully act as sole trustee.

(2) Where there are more trustees, or persons having power to appoint a trustee, than one, any one trustee, or any one of those persons having power to appoint a trustee, may apply to the Court to have the Public Trustee appointed sole trustee.

(3) Where to the appointment of a trustee the consent of any person is requisite, and such person refuses to consent to the Public Trustee being appointed, or where the person to consent is a person under a legal disability, or is absent from Queensland, an appointment of the Public Trustee may be made without such consent if the Court consents thereto.

(4) On any application under this section the Court may make such order or orders as it thinks fit.

40. When Public Trustee being custodian trustee or statutory trustee may act as general trustee. (cf. Qld s. 42, T.A. s. 16). (1) Where by reason of any of the events enumerated in provisions (a) to (h) of subsection (1) of section 12 of the *Trusts Act* 1973 there is no managing trustee capable of acting in the execution of a trust of which the Public Trustee has been appointed custodian trustee under the provisions of section 19 of that Act or section 42 of the *Public Curator Act* 1915-1974, the Public Trustee may act as managing trustee and shall have all the powers given to managing trustees by section 19 of the *Trusts Act* 1973 until such time as new managing trustees are appointed, but it shall not be obligatory for him to so act.

(2) Nothing in this section affects the power of any court or person to appoint new managing trustees, but no such appointment shall take effect until notice thereof in writing is given to the Public Trustee.

(3) Where the Public Trustee, apart from the provisions of this subsection, is a statutory trustee within the meaning of the *Trusts Act* 1973, he shall, until some other person becomes trustee, have all the powers given to and may in every respect act as a trustee who is not a statutory trustee.

(4) Where, pursuant to the provisions of section 42 of the *Public Curator Act* 1915-1974, the Public Curator is, immediately prior to the commencement of this Act, custodian trustee of a trust, he shall continue, as Public Trustee, to be custodian trustee of that trust as if he had been appointed as such pursuant to the provisions of section 19 of the *Trusts Act* 1973.

41. Advisory trustees. (Qld s. 41). (1) In the administration as trustee of any estate under administration the Public Trustee may act with an advisory trustee or advisory trustees as herein provided.

(2) An advisory trustee or advisory trustees may be appointed—

- (a) by order of the Court made on the application of any beneficiary or of any person on whose application the Court would have power to appoint a new trustee; or
- (b) by the trust instrument; or
- (c) by any person having power to appoint new trustees.

(3) Where the Public Trustee acts with an advisory trustee, the trust property shall be vested in the Public Trustee and he shall have the sole management and administration thereof as fully and effectually as if he were the sole trustee:

Provided that—

- (a) he may consult the advisory trustee on any matter relating to the estate under administration; and
- (b) the advisory trustee may advise the Public Trustee on any matter relating to the estate under administration.

(4) In cases of difference between the Public Trustee and an advisory trustee, either the Public Trustee or the advisory trustee may apply to the Court for directions and the directions shall be final, and shall bind both the Public Trustee and the advisory trustee.

(5) No person dealing with the Public Trustee shall be concerned to inquire as to the concurrence or otherwise of the advisory trustee or be affected by notice of the fact that any advisory trustee has not concurred.

(6) The power of appointing a new advisory trustee when exercisable by the continuing advisory trustee shall be exercised by him alone, but the Public Trustee shall have the same power of applying to the Court for the appointment of a new advisory trustee as is possessed by any other person.

(7) In determining the number of trustees for the purposes of the *Trusts Act 1973*, an advisory trustee shall not be reckoned as a trustee.

(8) The regulations may provide, subject to any provisions of the trust instrument, for the remuneration of advisory trustees out of the estate under administration; but notwithstanding any provisions of the trust instrument or of the regulations, the Court may in a particular case make such order as it thinks just, as to what, if any, remuneration any advisory trustee shall receive.

42. Delegation of powers of trustees to Public Trustee. (cf. Qld s. 45 (1)). (1) Where a trustee is empowered to delegate all or any of his powers and functions to any person, he may delegate them to the Public Trustee with his consent and in such case the Public Trustee may exercise all the powers and functions so delegated.

(2) The charges of the Public Trustee shall be such as are prescribed, or, if not prescribed, as are agreed on by the delegating trustee and the Public Trustee and, in default of agreement, as are fixed by the Court.

43. Legacies or shares of person under a disability etc. may be paid to Public Trustee. (cf. Qld s. 45, N.Z. s. 65). (1) A trustee may, with the consent of the Public Trustee, pay any moneys or transfer any investment held by him on trust for any infant, whether the interest of the infant therein be vested or contingent, to the Public Trustee and by writing direct the Public Trustee to hold such moneys or investments and account therefor according to law.

(2) A trustee who is holding any moneys or investment, not exceeding in the aggregate, in the opinion of the Public Trustee, \$5 000 in value, for any person (other than an infant) who, in the opinion of the Public Trustee, on evidence produced to him by such trustee or otherwise, is incapable of giving a discharge therefor or whose whereabouts or whether he is alive or dead are unknown to such trustee may, with the consent of the Public Trustee, pay such moneys or transfer such investment to the Public Trustee and furnish such writing as is referred to in subsection (1).

(3) The trustee shall furnish the Public Trustee with a copy of any relevant trust instrument.

(4) The writing shall declare whether the moneys or investment is the whole amount or the whole remaining amount or part only of the amount to which such infant or other person is entitled, and how much of the amount is capital and how much is income and, in the case of moneys or investment to which an infant is contingently entitled, the person or persons who will become solely entitled thereto, or so much thereof as remains, in the event of the infant failing to attain a vested interest therein, and the shares and interests of these persons; and such other matters as the Public Trustee may require.

(5) The writing shall be certified correct by the trustee and the Public Trustee shall not be under any obligation to enquire into the accuracy of the certificate nor shall the Public Trustee incur any liability through acting upon any statement contained in the writing.

(6) Upon the foregoing provisions of this section being complied with, the writing shall vest in the Public Trustee all the powers of the trustee in respect of the moneys or investment, whether conferred by the trust instrument or by statute or in any other manner, in addition to the powers conferred upon him by this Act (including, in a case to which it is applicable, the provisions of section 19).

(7) The Public Trustee when acting under this section shall be liable only in respect of moneys or investments actually received by him, and shall not be liable for any act, omission or payment done or made by him on the faith of the facts stated in the written direction referred to in this section.

44. Public Trustee may receive and hold moneys of person under a disability. (cf. Qld s. 49A). (1) If any amount of money becomes payable to any person under a legal disability (whether such person is entitled thereto absolutely or is a beneficiary under a discretionary trust for his benefit or the benefit of a number of persons) by the Crown or any person or instrumentality representing the Crown or out of any fund of money, including any provident, superannuation, or benefit fund, by any person or body who or which has control of such fund or moneys, such amount may be paid to the Public Trustee.

(2) The receipt of the Public Trustee for such amount of money shall be a full discharge as to the amount paid, and such person, instrumentality or body so paying shall not thereafter be accountable therefor or be concerned to see to the application thereof.

(3) The Public Trustee shall hold such amount of money on trust for the person under a legal disability.

45. Administration of benefit funds. (cf. Qld s. 49, N.Z. s. 67). (1) Moneys (whether invested or not) in or belonging to any fund raised for the benefit or relief of any person or class of persons, may be paid or transferred to the Public Trustee to be administered by him.

(2) The Public Trustee may recognise as a committee any persons whom he believes to have been appointed or authorized in that capacity by the contributors of a substantial part of the fund, and he may, if he thinks it reasonable to do so, accept the terms of the trust as declared by such committee.

(3) The Public Trustee, after conferring with such committee, if any, may apply to the Court for directions as to the administration of the fund, including the terms of the trusts thereof, and for that purpose may submit a scheme.

(4) The Court may approve the scheme with or without modifications as the Court thinks fit, or otherwise give directions as to the trusts upon which the fund shall be held and administered.

(5) (a) The Public Trustee may himself settle a scheme of administration if—

(i) where there is a committee, the majority of the members thereof consent and the fund does not exceed \$20 000; or

(ii) where there is no committee, the fund does not exceed \$10 000.

(b) The scheme so settled may be incorporated in a declaration of trust by the Public Trustee, who, for the purpose of such trust instrument, shall be deemed to be the settlor of such trust.

(c) Subject to paragraph (e) of this subsection and to subsection (6) every statement or recital in any such trust instrument shall be sufficient evidence of the truth thereof and the provisions of such declaration of trust shall be final and binding on all persons whether beneficially interested thereunder or otherwise.

(d) The Public Trustee may modify such scheme if he thinks fit to do so at any time, but, if there are then, to his knowledge, surviving members of the committee in Queensland, only with the consent of a majority of such members and, upon any such modification being made, the declaration of trust shall be amended accordingly.

(e) The Public Trustee may revoke any such trust instrument if he is satisfied that the scheme incorporated therein is affected by fraud, mistake, or misrepresentation by, or by any member of, the committee or by any agent, servant, or representative of the committee or of any member thereof and upon such revocation may settle another scheme of administration in respect of the fund in question and incorporate such scheme in a declaration of trust:

Provided that, on the application of the committee, the Court may review any action of the Public Trustee pursuant to this paragraph and may make such order as it considers desirable in the circumstances.

(6) On the application of the Public Trustee, or of the Attorney-General on the relation of any person appearing to have a reasonable interest in the manner in which the fund is applied or administered, the Court may, at any time, vary the scheme or give directions on any point or question relating to the scheme or the fund.

46. Consequences regarding previous personal representatives or trustees on Public Trustee becoming authorized. (1) Where, pursuant to the provisions of this Part, the Public Trustee becomes executor, administrator or trustee in place of another person, such person shall, if he has not previously done so, thereupon cease to hold such office.

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

PART IV—POWERS AS PERSONAL REPRESENTATIVE, TRUSTEE, ETC.

47. Application of Part. (cf. T.A. s. 31). This Part shall apply whether or not a contrary intention is expressed in any instrument creating or governing the trust.

48. General powers. (cf. Qld s. 58). Notwithstanding the provisions of any other Act, the Public Trustee when acting as a trustee, may at his discretion, in addition to the powers which he has under any other Act—

- (a) enter into any sharefarming agreement for any period not exceeding three years and renew any such sharefarming agreement;
- (b) subject, where the sum to be expended exceeds \$20 000 in the aggregate, to the sanction of the Court, from time to time expend from the capital of any estate under administration such sum as may reasonably be required—
 - (i) in the purchase of livestock, machinery, plant, implements and other chattels; or
 - (ii) in any undertaking or venture for the benefit or better management of the property, alone or in conjunction with others;
- (c) open any separate bank account and of such nature for the purposes of any estate under administration as he thinks convenient;
- (d) surrender or concur in surrendering any lease, and accept a lease;
- (e) exercise, in whole or in part, as fully and effectually as if he were the absolute owner thereof, all rights arising out of any investment, including rights to acquire any stock, and for that purpose apply funds belonging to the estate under administration;
- (f) grant powers of attorney to any person in or out of Queensland to do anything which he, if personally present, could do;
- (g) notwithstanding the provisions of the *Intestacy Act 1877-1974* sell land of which he is administrator in intestacy, without the necessity of an order of the Court for the purpose, when the value of such land, as estimated by the Public Trustee, does not exceed \$20 000; provided that, where the property is submitted to public auction, the Public Trustee's authority under this section shall not cease or otherwise be affected by virtue of the fact that such property is sold to a bidder at such auction for a sum in excess of \$20 000;
- (h) with the approval of the Minister sell or otherwise deal with land forming part of the estate of a person in respect of which the Crown has any right by way of escheat or devolution or as *bona vacantia*;
- (i) appropriate any part of the property in or towards satisfaction of any legacy payable thereout, or in or towards satisfaction of any share thereof (whether settled, contingent or absolute), to which any person is entitled, but so that—
 - (i) the appropriation shall not be made so as to affect adversely any specific gift; and

- (ii) before any such appropriation is effectual, notice thereof shall be given to—
 - (A) all persons, not under a legal disability, who are interested in the appropriation and whose whereabouts are known to the Public Trustee; and
 - (B) a parent or guardian of any infant who is interested in the appropriation; and
 - (C) any person, other than the Public Trustee, having the care and management of the estate of any person who is not of full mental capacity and who is interested in the appropriation; and
- (iii) the Public Trustee may alter or amend such appropriation and notice within one month from the giving of notice; and
- (iv) any such person to whom such notice has been given may—
 - (A) within one month after receipt of the notice or of the notice of amendment where amendment is notified; or
 - (B) upon his application to the Court within that month, within such extended period as the Court may allow, apply to the Court to vary the appropriation, and the appropriation shall be conclusive save as varied by the Court; and
- (v) when the whereabouts of any person interested are unknown to the Public Trustee, the period of one month within which such person may apply for the variation of the appropriation may be extended by the Court for such period as the Court thinks fit on the application of the Public Trustee or of any person interested; and
- (vi) where the Court is satisfied there are exceptional circumstances, it may, on the application of the Public Trustee, vary the appropriation at any other time.

49. Provision of dwelling house. (cf. T.A. s. 22). (1) The Public Trustee may expend from the capital of an estate under administration such sum or sums as he thinks necessary for any one or more of the following purposes:—

- (a) the purchase of a dwelling house in Queensland or elsewhere;
- (b) the purchase of land in Queensland or elsewhere and for the erection thereupon of a dwelling house;
- (c) the erection of a dwelling house;
- (d) effecting such alterations and repairs to a dwelling house as he thinks fit;
- (e) the purchase for a dwelling house of such furnishings and fittings as he thinks fit,

for the use of any beneficiary in the estate or of any person having a personal licence to reside (whether for life or any lesser period) on land comprised in the estate; and may permit the beneficiary or that person to reside therein upon such terms and conditions consistent with the trusts on which the estate is held and the extent of the interest of the beneficiary or that person as he thinks fit.

(2) When the Public Trustee purchases a dwelling house or other land in exercise of the power conferred by subsection (1), he shall not be chargeable with breach of trust by reason only of the relation borne by the purchase price to the value of the property at the time when the purchase was made if it appears to the Court that—

- (a) in making the purchase he was acting upon a report as to the value of the property made by a registered valuer instructed and employed independently of any owner of the property, whether that valuer carried on business in the locality where the property is situated or elsewhere;
- (b) the purchase price did not exceed the value of the property as stated in the report or the purchase was otherwise reasonable in all the circumstances; and
- (c) the purchase was made under the advice of the valuer expressed in the report.

(3) The Public Trustee may retain as an asset of the estate any property purchased under subsection (1), notwithstanding that no beneficiary under the trust is residing in or on the property.

(4) The term “dwelling house” includes a home unit, town house or other like residence whether the subject of a lease or of a freehold title or otherwise; and also the curtilage of any such dwelling house.

50. Maintenance of infant beneficiary out of capital. (cf. Qld s. 74 & T.A. s. 62). (1) Where an infant is entitled to the capital of an estate under administration or any share thereof, the Public Trustee may, in such manner as he in his absolute discretion thinks fit, from time to time out of that capital or share pay or apply for the maintenance, education (including past maintenance or education) or benefit of that infant the whole or any part of that capital or share.

(2) Money so paid or applied shall be brought into account as part of the share in the estate to which the infant is or becomes absolutely or indefeasibly entitled:

Provided that no payment or application pursuant to this section shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied unless that person is in existence and of full age and consents in writing to the payment or application, or unless the Court, on the application of the Public Trustee, so orders.

- (3) The power conferred by this section may be exercised—
 - (a) whether the infant is entitled absolutely or contingently on his attaining a specified age or on the occurrence of any other event; and
 - (b) notwithstanding that the interest of such infant is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs; and
 - (c) whether the infant is entitled in possession or in remainder or in reversion.

(4) For the purpose of this section the trustee may raise money by sale, mortgage or exchange of the trust property.

51. Public Trustee may hold property to which mentally incapable beneficiary is entitled. (Qld s. 70A). Where it appears to the Public Trustee on reasonable grounds that a person who is beneficially entitled to property that is held by the Public Trustee, including an interest in an estate under administration, is not mentally capable of giving a good discharge for the property and the value of such property as estimated by the Public Trustee does not exceed \$5 000, the Public Trustee may, subject to any Order of the Court, retain the property on trust for that person, with power to apply it for his or her maintenance, education and advancement.

52. Co-trustee may receive income. (Qld s. 76 (5)). The Public Trustee may, if the special circumstances of the case appear to him to render it desirable, pay to his co-trustee or allow him to receive the income of the estate or any part thereof, on such co-trustee undertaking to apply it in the manner directed by the instrument creating the trust.

53. Priority in insolvent estates. (cf. Qld s. 64 (4)). Where the assets available for payment of debts in the estate of a deceased person are insufficient to pay the liabilities in full, the Public Trustee shall apply the assets in the following priority:—

- (a) he shall pay all proper expenses attending the due administration of the estate;
- (b) he shall pay such funeral expenses as he considers properly payable out of the estate;
- (c) he shall apply the assets available for payment of debts in the same way as if an order had been made for the administration of the estate in bankruptcy at the date of death of the deceased person;
- (d) he shall distribute the remaining assets among the persons beneficially entitled thereto.

54. Where residue may be paid to spouse. (Qld ss. 68 & 70). (1) Where the net residue of an intestate estate under administration does not exceed \$2 000 in money or in value as estimated by the Public Trustee, and the intestate is survived by a spouse, the Public Trustee may, if he thinks fit, pay, deliver or transfer the whole of such residue to the spouse.

- (2) Where, in the case of an intestate estate under administration—
 - (a) the intestate is survived by a spouse; and
 - (b) after a lapse of three years from the death of the intestate the Public Trustee does not know of, and has not by reasonable efforts been able to establish, the existence of any person entitled to share as next-of-kin in the balance of the residuary estate,

the Public Trustee may pay or transfer to the spouse the share in question but nothing in this subsection shall prejudice the right of any person entitled to such share or any part thereof to recover the same from the spouse.

55. Public Trustee may pay over to principal administrator and receive property from ancillary administrator. (cf. Qld s. 77 N.Z. s. 133, T.A. s. 54 (2)). (1) Where the Public Trustee is administering the estate in Queensland of a deceased person who at the time of his death appears to the Public Trustee to have been domiciled in some other place and whose

estate in that place is being administered by some person (hereinafter called "the administrator in the domicile"), the Public Trustee may pay over, transfer or deliver to the administrator in the domicile the balance of the estate in Queensland, after any proper distribution thereof, without being under any obligation to see to the application of such balance and without incurring any liability in regard to such payment, transfer or delivery, and may certify to the correctness of any account supplied to that administrator in the domicile accordingly.

(2) Where the Public Trustee is administering the estate of a deceased person who appears to the Public Trustee to have died domiciled in Queensland leaving assets in some other place, and under the authority of the law of that place some person (hereinafter called the "ancillary administrator") is administering such assets therein, the Public Trustee may receive from that ancillary administrator the balance of the proceeds of such assets, and such balance, when so received, shall be dealt with according to the law of Queensland, and shall form part of the estate of the deceased person, and the Public Trustee may act on the faith of any account supplied to him by the ancillary administrator and shall not be obliged to inquire into the administration of the assets of the deceased in such other place.

(3) The Public Trustee may appoint any person (including the Public Trustee or Curator or other like official for another place) to act as his agent or attorney for the purpose of obtaining or confirming authority to act in relation to an estate in any place outside the State, and for the purpose of selling, converting, collecting, getting in, and executing and perfecting assurances of, or managing, or cultivating, or otherwise administering any property real or personal, movable or immovable, forming part of the estate in any place outside the State, or executing or exercising any discretion or trust or power vested in him in relation to any such property, with such ancillary powers, and with and subject to such provisions and restrictions, as he may think fit, including a power to appoint substitutes, and shall not, by reason only of his having made any such appointment, be responsible for any loss arising thereby.

PART V—SPECIAL FUNCTIONS OF A PUBLIC NATURE

56. Property of deceased person deemed to vest in Public Trustee until grant. (cf. Qld s. 30). (1) Where any person dies, being at the time of his death seized, possessed of or otherwise entitled to real or personal property which, but for the provisions of this section, would pass to his personal representative, such property shall, unless—

- (a) he has disposed of it by will; and
- (b) there is an executor able and willing to act,

vest in the Public Trustee and remain so vested until a grant of administration in the estate of such deceased person is made, whereupon so much of the property of the deceased person as is subject to such grant shall vest in the personal representative:

Provided that all acts lawfully done by, to or in regard to the Public Trustee prior to the grant of administration shall be as valid and effectual as if they had been done by, to or in regard to the executor or administrator.

(2) While the property of such deceased person is vested in the Public Trustee under this section, the Public Trustee shall not be required to act in the administration of the estate of the deceased person, nor in any

trusts created by the will, nor exercise any discretions, powers, or authorities of a personal representative, trustee or devisee, merely because of the provisions of this section.

(3) Nothing in this section shall affect the operation of section 16 of the *Trusts Act* 1973, sections 32 and 32A of the *Real Property Act* 1877–1974, section 88 of the *Real Property Act* 1861–1978, section 290 of the *Land Act* 1962–1978 or the provisions of any other Act providing for the registration or recording of any person as entitled to any estate or interest in land in consequence of the death of any person notwithstanding that no grant of administration in the estate of such lastmentioned person has been made.

57. Public Trustee may oppose grant. (cf. Qld s. 78A N.Z. s. 63).

(1) The Public Trustee may, if he considers it desirable to do so, require that the will of any deceased person be proved in solemn form of law.

(2) The Public Trustee shall be deemed to be a person having sufficient interest in the estate of a deceased person to object to, or to be heard upon, an application for a grant of administration in respect of the estate of the deceased person, or to object to a grant of probate or of letters of administration with the will being made except upon proof in solemn form of law, and to file a caveat in the Registry of the Court against such grant, or to apply for an order directing an executor or administrator to whom a grant of probate or of letters of administration with the will has been made to bring the grant into the Registry of the Court.

(3) The Public Trustee, either before or after taking any proceedings under this section, may apply *ex parte* to the Court for directions, and the Court may give such directions as it thinks proper including a direction to the Public Trustee to represent persons who may be prejudicially affected by the making of the grant of administration and to defend on their behalf any action which may be brought for probate or letters of administration with the will in solemn form of law and all costs, charges and expenses incurred by the Public Trustee acting pursuant to any such directions shall be paid out of the estate.

58. Public Trustee may be appointed guardian. (Qld s. 47). The Public Trustee may, by deed or will or by the Court (whether on the application of the Public Trustee or of any other person), be appointed to be a guardian of an infant under any law in force for the time being relating to the guardianship and custody of infants.

59. Compromise of actions by or on behalf of persons under a legal disability claiming moneys or damages valid only with sanction of judge or Public Trustee. (cf. Qld s. 51). (1) In any cause or matter in any court in which money or damages is or are claimed by or on behalf of a person under a legal disability suing either alone or in conjunction with other parties, no settlement or compromise or acceptance of money paid into court, whether before, at or after the trial, shall, as regards the claim of such person under a legal disability, be valid without the sanction of a judge of the Supreme Court (or, in the alternative when the cause or matter is an action in a District Court, a judge of the District Court) or of the Public Trustee, and no money or damages recovered or awarded in any such cause or matter in respect of the claims of any such person under a legal disability, whether by verdict, settlement, compromise,

payment into court or otherwise, before or at or after the trial, shall be paid to the next friend of the plaintiff or to the plaintiff's solicitor or to any other person unless—

- (a) the Supreme Court otherwise directs; or
- (b) if the cause or matter is in a District Court and the amount of money or damages so recovered or awarded does not exceed \$6 000, that court otherwise directs; or
- (c) if the cause or matter is in any other court and the amount of money or damages so recovered or awarded does not exceed \$750, that court otherwise directs.

(2) Any claim for money or damages by or on behalf of a person under a legal disability claiming either alone or in conjunction with other parties may be settled or compromised out of court before action brought, with the sanction of the Public Trustee, but no money or damages agreed to be paid in respect of the claim of any such person, whether by settlement or compromise, shall be paid to any person other than the Public Trustee unless by direction of the Supreme Court or a judge thereof upon application made in that behalf.

(3) Every settlement, compromise, or acceptance of money paid into court when sanctioned by a judge of the Supreme Court or of the District Courts or by the Public Trustee under this section shall be binding upon the person under a legal disability by or on whose behalf the claim was made.

(4) All money or damages paid to the Public Trustee under this section shall, subject to any general or special direction of the Supreme Court or a judge thereof upon application made in that behalf, be held and applied by him on trust for the person under a legal disability:

Provided that in addition to his other powers as a trustee the Public Trustee shall have—

- (a) power to discharge or reimburse any expenses reasonably incurred by or on behalf of the person under disability; and
- (b) where the person under disability is not of full mental capacity, the powers that he would have under Part VI if the moneys or damages were an estate under management and the person under a disability were an Incapacitated Person.

(5) Nothing in this section shall prejudice the lien of a solicitor for costs.

(6) (a) The costs of the plaintiff or, if more than one, of all the plaintiffs in any such cause or matter or incident to the claims therein or consequent thereon shall be taxed by the taxing officer on the request, made in Form 4 of the Second Schedule, of the Public Trustee or of the plaintiff or his next friend, as between party and party and as between solicitor and client, and no authority other than the provisions of this section shall be necessary to require the taxing officer to carry out such taxation.

(b) The taxing officer shall certify the respective amounts of the party and party and solicitor and client costs, and the difference (if any) and the proportions of such difference (if any) payable respectively by or out of the moneys of any party who is a person under a legal disability and by any other party to the cause or matter and no costs other than those so certified shall be payable from such moneys:

Provided that the Public Trustee may, without requiring any such taxation, in any case in which he considers it reasonable to do so, agree to the payment to the solicitor for the plaintiff, or to any person who has incurred costs on behalf of the plaintiff, or to whom costs are payable on the part of the plaintiff of such sum or sums as appears to the Public Trustee to be reasonable.

(7) The result of any such taxation shall be notified to the Public Trustee by the taxing officer.

(8) The Public Trustee in any case in which he is trustee under this section or any person on behalf of whom the Public Trustee is holding moneys hereunder may from time to time apply to the Supreme Court or a judge thereof for directions as to the trust or its administration, or to vary directions which have already been given in regard thereto, or to determine any question arising therein, and such directions or determination may be given accordingly.

(9) In this section—

(a) the term “court” means any court within the jurisdiction of which money or damages is or are claimed by or on behalf of a person under a legal disability suing either alone or in conjunction with other parties; and

(b) the term “taxing officer” means any officer of the court whose duties include the taxation or other assessment of costs in such court.

60. Public Trustee may direct audit of trusts. (cf. Qld s. 55, No. 35 of 1973, s. 20 (2), U.K. S. R. & O., 1912, No. 348 rr. 31–37). (1) Any person interested in a trust, whether as trustee or as beneficiary, and whether his interest is vested or contingent, may make a request in writing to the Public Trustee for an investigation and audit of the condition and accounts of the trust.

(2) The Public Trustee may serve a notice of such request on such trustees and beneficiaries other than the applicant as he thinks desirable and a person on whom such notice is served may make representations to the Public Trustee as to the desirability of the investigation and audit.

(3) After the expiration of fourteen days from the date when the last of the notices under subsection (2) has been served and upon the payment to the Public Trustee by the person who has requested the investigation and audit of such sum, if any, as the Public Trustee shall order him to pay as security for any costs and expenses of the investigation and audit, the Public Trustee may, if it appears to him desirable, appoint, by writing under his hand and seal, some person (hereinafter called the auditor) to carry out an investigation and audit of the condition and accounts of the trust.

(4) The auditor—

(a) on production to any trustee of such writing evidencing his appointment by the Public Trustee, shall have the right to inspect and to take possession of any books, accounts and documents relating to the trust and which are under the control of the trustees or any of them, and may require from any trustee such information and explanation as he considers reasonably necessary for the performance of his duties; and

(b) on production to any other person or body of such writing evidencing his appointment by the Public Trustee, shall have the right to inspect and to take copies of all books, accounts and documents relating to the trust which are under the control of such person or body.

(5) Any person, unless lawfully excused (proof whereof shall lie on him)—

(a) being a trustee, shall furnish to the auditor any information or explanation required by him in accordance with subsection (4);

(b) shall allow the auditor to inspect or take possession of or take copies of any book, account or document which the auditor has the right to inspect, take possession of or take copies of pursuant to subsection (4);

(c) shall not in any way obstruct the carrying on of an investigation or audit pursuant to this section.

Penalty: \$500;

Daily Penalty: \$100.

(6) The auditor, on the completion of the investigation and audit, shall forward to the Public Trustee a report as to the condition and accounts of the trust, including the nature and state of investment of the trust assets, and the Public Trustee shall thereupon supply a copy of the report to the applicant and to every trustee.

(7) It is a lawful excuse for the publication of any defamatory statement made in a report by an auditor under subsection (6) that the publication is made in good faith and is made for the purposes of this section or purports to be so made.

(8) Every beneficiary under the trust shall be entitled at all reasonable times to inspect a copy of the report and, at his own expense, to be furnished with a copy thereof or of extracts therefrom.

(9) The appointment of the auditor may be terminated by the Public Trustee, and, thereupon, or if an auditor resigns or dies before the investigation and audit is completed, a new auditor may be appointed in his place by the Public Trustee.

(10) The remuneration of the auditor and the other expenses of the investigation and audit shall be such as may be prescribed and, if not prescribed, as the Public Trustee considers reasonable, and shall be payable out of the trust property unless the Public Trustee orders that they be paid by the person who has requested the investigation and audit, or by the trustees or any of them personally, or by any two or more of such persons, and in such proportions, as the Public Trustee directs, in any of which cases they shall be payable by such person or persons accordingly.

(11) A person aggrieved by any decision pursuant to subsection (10) may apply to the Court and the Court may make such order as appears just.

(12) A person who wilfully makes a statement which is false in any material particular in any information, explanation, statement of accounts, report or certificate required pursuant to this section shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or to a fine not exceeding \$1 000 or

to both such fine and imprisonment, or, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding \$400 or to both such fine and imprisonment.

(13) The report forwarded by the auditor pursuant to subsection (6) shall be admissible in evidence in any proceedings relating to the trust.

(14) In this section the term "documents" includes vouchers, correspondence, instruments of title and other papers.

(15) This section shall not apply to a trust of which a trustee company as defined by the *Trustee Companies Act 1968-1977* is a trustee.

61. Circumstances when Public Trustee may release mortgage or encumbrance for another. (cf. Qld s. 56; P.L.A. s. 101). (1) Where the mortgagee of property—

- (a) is absent from Queensland; or
- (b) is dead and his estate has not been administered or, so far as appears to the Public Trustee, there is no person currently acting in the administration of the estate; or
- (c) is a person as to whom it is not known whether he is alive or dead; or
- (d) cannot be found; or
- (e) is a corporation or company which has ceased to exist or, in the opinion of the Public Trustee, has ceased to function; or
- (f) is, in the opinion of the Public Trustee, for any other reason unable or unavailable to give a discharge of the mortgage,

and the Public Trustee is satisfied after such enquiries as he considers reasonable that there is no person in Queensland (other than, in the case of a corporation or company which has ceased to exist, the Commissioner for Corporate Affairs) authorized to give such a discharge, the Public Trustee may, if he considers it reasonable to do so, sign a memorandum of discharge in Form 5 of the Second Schedule in regard to the moneys secured by the mortgage or execute a reconveyance in Form 6 of the Second Schedule of any mortgaged property—

- (i) if he is satisfied that the whole of the moneys payable under the mortgage have been paid; or
- (ii) if the whole of the moneys payable have not been paid, on payment to him of such amount as he is satisfied is the whole amount outstanding.

(2) The memorandum of discharge or reconveyance shall operate as if it had been signed by the mortgagee himself and as if it had been made in the form and manner (if any) required to enable the registration of the discharge of such mortgage or of the reconveyance of the mortgaged property to be made by any registering authority and shall be registrable accordingly by such authority who shall also make any other usual endorsements on any documents.

(3) The memorandum of discharge or reconveyance shall be a valid discharge of the mortgage; but, as between the mortgagor and the person entitled to payment of the moneys secured, any amount which is eventually shown by the person entitled to the payment of the moneys secured to have been due and payable at the time of signing by the Public Trustee of the memorandum of discharge or reconveyance (over and above the amount, if any, paid to the Public Trustee under this section) shall continue to be a debt due to the person entitled to the payment of the moneys secured.

(4) The production of the Public Trustee's memorandum of discharge or reconveyance of the mortgaged property shall be sufficient authority to any person in possession of instruments of title to the mortgaged property to deliver the same to the mortgagor; and upon application to it the Court may order any such person to deliver such instruments of title to the mortgagor on production of the Public Trustee's memorandum of discharge or reconveyance and on payment of all proper charges if any.

(5) Moneys paid to the Public Trustee pursuant to subsection (1) shall be held by him on trust for the mortgagee or other person entitled thereto.

(6) For the purpose of effecting registration under subsection (2) a registering authority may dispense with the production of any instrument of title or other instrument and with the publication of any notice or the doing of any other act required to enable registration to be effected.

62. Circumstances where Public Trustee may execute transfer for another. (cf. Qld s. 56A). (1) Where the Public Trustee is satisfied that the owner (which term in this section includes a person entitled, subject to conditions which have been fulfilled, to become the owner) of any land, including an interest in land held under lease or licence from the Crown, has sold the same but has not executed a proper or sufficient transfer of such land or of such lease or licence in form required by law, or that such transfer has been executed but has been lost, destroyed or is otherwise unavailable, and that such owner—

- (a) is absent from Queensland; or
- (b) is dead and his estate has not been administered or, so far as it appears to the Public Trustee, there is no person currently acting in the administration of the estate; or
- (c) is a person as to whom it is not known whether he is alive or dead; or
- (d) cannot be found; or
- (e) is a corporation or company which has ceased to exist or, in the opinion of the Public Trustee, has ceased to function; or
- (f) is, in the opinion of the Public Trustee, for any other reason, unable, or unavailable to execute such transfer,

and, so far as the Public Trustee can ascertain, there is no person in Queensland (other than, in the case of a corporation or company which has ceased to exist, the Commissioner for Corporate Affairs) authorized to execute such transfer, the Public Trustee may, if he considers it reasonable to do so, after giving such public notice (if any) of his intention so to do as he thinks proper—

- (i) upon proof to his satisfaction of the payment of the whole of the purchase money; or
- (ii) upon the payment to him of such amount as he is satisfied is the whole of the money outstanding in regard to the purchase money,

execute a transfer in proper or sufficient form as aforesaid for and on behalf of such owner, and the transfer so executed shall have the same effect in all respects as if it had been executed by such owner.

(2) The production of the transfer executed by the Public Trustee shall be sufficient authority to any person in possession of instruments of title to such land to deliver the same to the transferee; and upon application to it the Court may order any such person to deliver such instruments of title to the transferee on production of the transfer and on payment of all proper charges, if any.

(3) Notwithstanding the provisions of subsections (1) and (2), as between any person entitled to receive payment of the purchase moneys and any person liable to make such payment, any amount payable at the time of execution by the Public Trustee of the transfer (over and above the amount, if any, paid to the Public Trustee under this section) to any person entitled to the payment of the purchase moneys shall continue to be a debt due to such person.

(4) In this section the term "transfer" includes a conveyance, assurance or other instrument transferring, conveying or assuring title.

(5) Moneys paid to the Public Trustee pursuant to subsection (1) shall be held by him in trust for the vendor of the land or other person entitled thereto.

63. Wills, deeds and documents may be deposited. (Old s. 57).

(1) Any person may deposit any trust instrument in the Public Trust Office for safe custody.

(2) Any testator may deposit his will in the Public Trust Office for safe custody, and, after the death of the testator, the Public Trustee shall deliver the will to such person as the testator may have directed in writing, or, in the absence of such direction, to such person as the Public Trustee thinks proper.

(3) The Public Trustee may accept for safe custody debentures or other interest-bearing securities for money, and other documents.

(4) The Public Trustee's liability in respect of any document or security deposited pursuant to this section shall, where a charge is made, be that of a bailee for reward, and, where no charge is made, be that of a gratuitous bailee.

PART VI—MANAGEMENT OF ESTATES OF INCAPACITATED PERSONS

Division 1—Preliminary

64. Definitions. In this Part unless the context otherwise requires—

"estate under management" means the estate of a Patient of which the Public Trustee has been appointed committee, or which the Public Trustee is authorized to manage pursuant to the *Mental Health Act 1974–1978*, or a Protected Estate, or an estate which the Public Trustee is authorized to manage pursuant to Division 4; and cognate expressions have a corresponding meaning;

"Incapacitated Person" means a Patient of whose estate the Public Trustee is committee or manager pursuant to the provisions of the *Mental Health Act 1974–1978* or a Protected Person, or a person whose estate the Public Trustee is authorized to manage pursuant to Division 4;

- “ Patient ” means a person who is a patient within the meaning of clause 1 of the Fifth Schedule to the *Mental Health Act 1974-1978*;
- “ Protected Estate ” means the real and personal estate of a Protected Person (or, where the Order does not extend to the whole estate, that part of the estate of which the Public Trustee has been appointed manager by the Protection Order);
- “ Protected Person ” means a person who or whose estate (in whole or in part) is the subject of a Protection Order or a Certificate of Disability under this Part;
- “ Protection Order ” means an order of the Court appointing the Public Trustee manager to take possession of and to control and manage the estate or part of the estate of the person to whom the order relates.

Division 2—Protection of Persons under Disability

65. Power of Court to make Protection Order. (cf. Qld s. 85B).

(1) Where, upon the application of the Public Trustee, the Court is satisfied that a person—

- (a) by reason of age, disease, illness, or physical or mental infirmity or of his taking or using in excess alcoholic liquors, or any intoxicating, stimulating, narcotic, sedative or other drug is, either continuously or intermittently—
- (i) unable, wholly or partially, to manage his affairs; or
- (ii) subject to, or liable to be subjected to, undue influence in respect of his estate, or any part thereof, or the disposition thereof; or
- (b) is otherwise in a position which in the opinion of the Court renders it necessary in the interest of that person or of those dependent upon him that his property should be protected,

the Court may make a Protection Order appointing the Public Trustee manager to take possession of and to control and manage all or such part or parts as the Court directs of the estate of that person.

(2) Notice of every application under this section shall be served upon the person whose property is sought to be protected, unless the Court in any special case otherwise directs.

(3) Upon such an application the Court may receive in evidence a report by the Public Trustee and may have regard to the matters contained therein (including any medical or other reports incorporated therein).

66. Court may direct investigations. (cf. S.A. No. 22 of 1965, s. 4). (1) If it appears to the Court on the application of the Public Trustee or of any other person who appears to the Court to have a proper interest in making such application that there are reasonable grounds for thinking that a person (hereinafter referred to as the person in question) may be a person in respect of whom a Protection Order should be made for one or more of the reasons provided in section 65, the Court may order that—

- (a) the person in question shall submit to such medical, psychological or other examination as the Court thinks proper;

- (b) any other person having or appearing to have the care or control of the person in question or being in charge of any building or premises where the person in question is, or on reasonable ground is thought likely to be, shall allow such access and give such assistance to any person concerned with the carrying out of any such examination as is reasonable; and
- (c) any persons (including the person in question) or all persons in general shall give to the Public Trustee or any other person or persons specified by the Court such information regarding the affairs of the person in question (including the inspection of books or documents and the copying of them or any parts of them) as is reasonably requested.

(2) Before making an order under subsection (1) the Court shall, if it appears to it to be desirable, order that notice of the application shall be given to the person in question or to any other person whom the Court shall specify.

(3) Where the Court makes an order under subsection (1) it may thereafter receive in evidence any report made in consequence and may have regard to the matters contained in the report.

(4) If, as a result of the reports of the person or any of the persons making any such investigation pursuant to such order or of any other evidence which shall be tendered or which may be given by any person whom the Court directs to be called as a witness, it appears to the satisfaction of the Court that the person in question is a person in regard to whom a Protection Order might be made under section 65, the Court may make such a Protection Order.

(5) When the Protection Order has been made consequent upon an application under subsection (1) of some person other than the Public Trustee, that person shall within twenty-four hours after the making of the Protection Order serve on the Public Trustee notice in writing of the making of the Protection Order.

67. Protection Order in damages action. (cf. S.A. No. 16 of 1973).

(1) Where in any action in the Court (whether commenced before or after the commencement of this Act) by a person for damages for personal injury sustained by him it appears to the Court that that person (hereinafter referred to as the plaintiff) is a person in respect of whom a Protection Order might be made under section 65, the Court may, subject to subsection (2), make such a Protection Order.

(2) The Court may make such Protection Order of its own motion or on the application of any of the following:—

- (a) the plaintiff,
- (b) the next friend of the plaintiff,
- (c) the spouse of the plaintiff,
- (d) the Public Trustee, or
- (e) any other person who appears to the Court to have a proper interest in making such application.

(3) The Court shall, before making a Protection Order under this section, of its own motion or on the application of any person other than the plaintiff, cause notice of its intention to consider the making of a Protection Order to be given personally to the plaintiff, unless the Court in any special case otherwise directs.

(4) The person on whose application a Protection Order has been made under this section or, if the Protection Order has been made by the Court of its own motion, the person having the carriage of the action, shall within twenty-four hours after the making of the Protection Order serve on the Public Trustee notice in writing of the making of the Protection Order.

68. Court may give directions. (Qld s. 85E). The Court, in and by a Protection Order or from time to time, may, in its discretion—

- (a) except from the estate to be taken possession of and controlled and managed by the Public Trustee any part or parts of the estate of the Protected Person, and permit such part or parts to remain in the uncontrolled possession of the Protected Person, or, if there appear to the Court special reasons for so doing, of some other person;
- (b) give its opinion, advice or direction on any matter referred to it by the Public Trustee;
- (c) on the application of the Public Trustee or of any person having a proper interest, authorize or direct any action in regard to the Protected Estate or any other property of the Protected Person, including extending the application of the Protection Order to property not previously subject to it.

69. Variation and duration of Protection Order. (Qld s. 85C (2)).
 (1) A Protection Order may from time to time, on the application of the Public Trustee or of the Protected Person, be varied or rescinded, wholly or in part, as the Court thinks fit, either during the lifetime of the Protected Person or at such time after the death of the Protected Person as the Court determines.

(2) Until it has been rescinded or, in the case of the death of the Protected Person, a grant of administration has been made, a Protection Order shall, subject to any variation pursuant to subsection (1), remain of full force and effect and the Public Trustee shall, notwithstanding the death of the Protected Person, have and be capable of exercising, subject to any such variation, all of the powers conferred upon him in and by the Protection Order, or by this Act, or by any order of the Court:

Provided that at any time after the death of a Protected Person the Public Trustee may sign and seal and file in the Court in the proceedings in which the Protection Order was made or, where pursuant to section 74 (2), proceedings have been commenced by originating summons, in those proceedings, a Notice of Cessation of Management in Form 7 of the Second Schedule and thereupon the powers and duties of the Public Trustee pursuant to the Protection Order shall cease.

70. Where Public Trustee may file Certificate of Disability after notice (cf. Vic. No. 6350, s. 28, Tas. No. 63 of 1963, s. 88). (1) If the Public Trustee is satisfied from information available to him that a person (hereinafter referred to as the person in question) is a person in respect of whom jurisdiction to make a Protection Order is conferred by section 65 and that the estate in Queensland of such person does not exceed in value \$5 000, the Public Trustee may, subject to the subsequent provisions of this section, sign and seal and file in the Court a Certificate of Disability in Form 8 of the Second Schedule.

(2) The Public Trustee shall not sign a Certificate of Disability under this section unless there are produced to him in respect of the person in question reports from two medical practitioners respectively qualified to practise in the place where that person was at the time of examination by the medical practitioner.

(3) Before signing a Certificate of Disability under this section the Public Trustee shall cause notice in writing of his intention to do so, accompanied by copies of this section and of sections 72 and 73, to be served on the person in question and if, within fourteen days of such service, written notification by that person that he objects to the signing of a Certificate of Disability is received by the Public Trustee, he shall refrain from signing such Certificate.

(4) If to the knowledge of the Public Trustee the person in question has a spouse who is then in Australia and whose address is known to the Public Trustee, the Public Trustee shall, before signing a Certificate of Disability under this section, also cause notice in writing of his intention to do so, accompanied by copies of this section and of sections 72 and 73, to be served on that spouse and if, within fourteen days of such service (which in a case where the notice has been forwarded by registered mail shall be deemed to have been effected at the time when by the ordinary course of post the notice would have been delivered), written notification by the spouse that such spouse objects to the signing of a Certificate of Disability is received by the Public Trustee, he shall refrain from signing such Certificate.

(5) Where written notification, pursuant to this section, of objection to the signing of a Certificate of Disability is received by the Public Trustee, he shall not give further notice, pursuant to this section, of intention to sign a Certificate of Disability, within twelve months of the receipt of such notification of objection, unless the person who had given such notification of objection consents in writing to the signing of a Certificate of Disability (in which case further notice of intention to sign such Certificate of Disability need not be given to the person so consenting).

71. Where Public Trustee may file Certificate of Disability after request. If the Public Trustee is satisfied from information available to him that a person is a person whose estate should be managed, in accordance with this Part, by the Public Trustee, and such person requests the Public Trustee to undertake such management, the Public Trustee may sign, seal and file in the Court a Certificate of Disability in Form 9 of the Second Schedule.

72. Effect of Certificate of Disability. When a Certificate of Disability is filed in the Court, the person to whom it relates shall become a Protected Person and the Public Trustee shall be manager of the estate of such person and all other consequences shall ensue as if a Protection Order had been made under section 65.

73. Duration and variation of authority under Certificate of Disability.

- (1) If at any time after the filing of a Certificate of Disability—
- (a) in the case of a certificate filed under section 70, the value of the estate of the Protected Person is found to be then in excess of \$7 000; or
 - (b) the Public Trustee is satisfied that he should no longer continue to manage the Protected Estate,

he shall as soon as practicable file in the Court a Revocation of such Certificate of Disability and thereupon his authority shall cease.

(2) A Revocation of Certificate of Disability shall be in Form 10 of the Second Schedule and shall be signed and sealed by the Public Trustee.

(3) The authority of the Public Trustee to manage the estate of a Protected Person pursuant to a Certificate of Disability may from time to time, on the application of the Public Trustee or of the Protected Person, be varied or terminated wholly or in part as the Court thinks fit, either during the life-time of the Protected Person, or at such time after the death of the Protected Person as the Court determines.

Until it has been terminated or, in the case of the death of the Protected Person, a grant of administration has been made, or until a Revocation has been filed pursuant to subsection (1), a Certificate of Disability shall, subject to any variation authorized by this Part, remain of full force and effect and the Public Trustee shall, notwithstanding the death of the Protected Person, have and be capable of exercising, subject to any such variation, all of the powers conferred upon him in and by this Part, or by any order of the Court.

74. Originating summons remains open for further applications and where no previous summons, summons to be filed. (cf. Qld s. 85K). (1) An application under section 65 or 66 shall be made by originating summons which, if a Protection Order shall be made in consequence, shall remain open for further application to be made therein from time to time by the Public Trustee, or the Protected Person, or by any other person having a proper interest in so doing.

(2) An application made to the Court in connection with any matter arising out of or in connection with a Protected Estate in respect of which a Protection Order has been made under section 67 or a Certificate of Disability has been filed under section 70 or 71 shall, if no previous application has been made in regard to that Estate subsequent to the making of the Protection Order or the filing of the Certificate of Disability, be made by originating summons and, in addition to the specific relief sought, shall ask for the consideration by the Court of the management of the Protected Estate, and thereafter such summons shall remain open for further application to be made therein from time to time by the Public Trustee, or the Protected Person, or any other person having a proper interest in so doing.

(3) (a) After such notice or service as the Court thinks fit to direct, any person may be made party to the proceedings commenced under subsection (1) or (2), either generally or in any particular matter, and the Court may grant and enforce against such party in matters relating to the Protected Person or the Protected Estate all such judgments, orders, and remedies including injunction and mandamus and other prerogative writs, as the Court might grant and enforce in an action against such party at the suit of the Protected Person or of the Public Trustee.

(b) If the Public Trustee or other such party so requests, the Court may direct that an issue or issues of facts shall be stated and tried by the Court as upon trial of an ordinary action or in such other manner as the Court may direct.

(c) The Court may at any time discharge any party who has previously been made party to the proceedings.

(d) Upon any application to the Court in accordance with this section it shall be necessary to serve with notice of the application only such persons or parties (if any) as the Court on such application requires to have notice thereof.

75. Costs of Public Trustee to be paid out of property. (cf. Qld s. 85k).

(1) Unless the Court otherwise orders, the costs of the Public Trustee, as between solicitor and client, of and incidental to any application or intended application for a Protection Order or any other proceedings pursuant to this Division in respect of any person shall be payable out of the property of that person whether or not a Protection Order is made and whether or not the person in respect of whom the application is made shall then be living or dead.

(2) Nothing in subsection (1) shall in any way prejudice the right of the Public Trustee to recover costs adjudged to be paid by any person in respect of any such matter from such person or affect the liability of such other person in respect of such costs.

*Division 3—Amendments of Mental Health Act 1974***76. Amendments.** (1) The *Mental Health Act 1974* is amended—

(a) by omitting the words “Public Curator” and the words “Public Curator’s” wherever they appear and substituting the words “Public Trustee” and the words “Public Trustee’s” respectively;

(b) by omitting the words “*Public Curator Act 1915–1973*” wherever they appear and substituting the words “*Public Trustee Act 1978*”;

(c) by further amending the Fifth Schedule to the *Mental Health Act 1974* to the extent indicated in Part G of the First Schedule to this Act.

(2) The *Mental Health Act* as so amended may be cited as the *Mental Health Act 1974–1978*.

*Division 4—Authority Where Other Jurisdictions Involved***77. Definitions.** (cf. M.H.A. 5th Sch. cl. 41). In this Division—

“proper officer” means the officer of a reciprocating state who is authorized to manage the estates or affairs of persons who are lacking in capacity to manage their own affairs by reason of senility, disease, illness, consumption of alcohol or other drugs, or physical or mental infirmity; the term includes, in respect of any State of the Commonwealth of Australia (other than Queensland and New South Wales), the Northern Territory of the Commonwealth of Australia and New Zealand, the Public Trustee in and for such State, territory or country and, in respect of the State of New South Wales, the Protective Commissioner and also includes in respect of any reciprocating state the holder of such office as the Governor in Council by Proclamation declares to be an office the holder of which is a proper officer in respect of such reciprocating state;

“reciprocating state” means any State of the Commonwealth of Australia (other than Queensland) any territory of the Commonwealth of Australia, New Zealand, and any other state, country or territory that the Governor in Council by Proclamation declares to be a reciprocating state for the purposes of this Part.

78. Public Trustee may request management in reciprocating state.

(1) Where the Public Trustee is authorized to manage the estate of a Patient or a Protected Person and it appears to him that that person is possessed of, entitled to, or has an interest in or rights in respect of property in a reciprocating state he may, by instrument under his hand directed to the proper officer of that reciprocating state, certify that he is authorized to manage the affairs of that person and request the proper officer to manage in the reciprocating state the affairs of that person.

(2) The Public Trustee may give a discharge to such proper officer for moneys or property of that person which the proper officer pays or transfers to the Public Trustee.

79. Public Trustee may be authorized to manage in Queensland.

(cf. M.H.A. 5th Sch. cl. 42). (1) Where the proper officer of a reciprocating state by instrument under his hand directed to the Public Trustee certifies, by whatever verbal formula, that he is, as such proper officer, authorized to manage the estate or affairs of a person named in the instrument and requests the Public Trustee to manage in Queensland the estate or affairs of that person, the Public Trustee shall be authorized to manage in Queensland the estate of that person.

(2) The Public Trustee may, without seeing to the application thereof and without liability therefor, from time to time pay, transfer or deliver to such proper officer moneys or property of that person.

(3) The authority of the Public Trustee to manage the estate of that person (except as to taking action pursuant to subsection (2)) shall cease—

- (a) if it comes to his notice that that person has died;
- (b) if such proper officer notifies him in writing that the proper officer's authority to manage the affairs of that person has ceased; or
- (c) if the Court so orders on the application of that person or of any person who appears to the Court to have a proper interest in making the application.

*Division 5—Powers and Duties in the Management of
Estates of Incapacitated Persons*

80. Management by Public Trustee of property of Incapacitated Person. (M.H.A. 5th Sch. cl. 14, 15, 16; cf. Tas. No. 63 of 1963, s. 84).

(1) When the Public Trustee becomes committee or manager of the estate or part of the estate of an Incapacitated Person—

- (a) the estate under management shall not thereby become vested in him;
- (b) he shall be entitled to the possession and management of the same in accordance with the provisions of this Division;
- (c) he shall be deemed to be a trustee;
- (d) subject to subsection (3), he shall have in respect of matters of a property, monetary, business or like nature or any rights of a property nature (including proceedings or other action to protect property or enforce rights of a property nature, or rights in aid thereof or ancillary thereto) full power and authority, subject to any order of the Court to the contrary,

to do, in his corporate name or in the name of the Incapacitated Person, anything which the Incapacitated Person could do if he were not under a legal disability;

- (e) without limiting the generality of the foregoing, but subject to the other provisions of this Part, he may apply any property of the Incapacitated Person or otherwise exercise any of his powers under this Division for any of the following purposes:—
- (i) the maintenance or benefit of the Incapacitated Person;
 - (ii) the maintenance or benefit of other persons (whether relatives of the Incapacitated Person or not) for whom a reasonable person, not under a legal disability but otherwise in the position of the Incapacitated Person, might be expected to provide; and
 - (iii) any purpose which a reasonable person, not under a legal disability but otherwise in the position of the Incapacitated Person, might be expected to seek to achieve,
- and for the reimbursement, with or without interest, of any person for any expenditure incurred for any of such purposes.

(2) Without limiting the generality of subsection (1) the powers of the Public Trustee shall extend to the following:—

- (a) taking proceedings to recover any legacy or distributive balance in the estate of a deceased person to which the Incapacitated Person is entitled;
- (b) requiring any person holding or controlling property in respect of which the Incapacitated Person is beneficially interested as *cestui que trust*, beneficiary or next-of-kin to render to the Public Trustee all such information as the Incapacitated Person could have required if he were not under a legal disability, and taking all such proceedings to enforce such rights as the Incapacitated Person could have taken;
- (c) demanding, receiving and recovering property held on trust for the Incapacitated Person and requiring any person holding or entitled to deal with property, in respect of which the Incapacitated Person is beneficially interested, to deal with such property, to the same extent as the Incapacitated Person could have required if he were not under a legal disability, subject however, where the value of the property exceeds \$20 000, to his obtaining the sanction of an order of the Court;
- (d) demanding, receiving and recovering all documents, including wills and other testamentary instruments, belonging to the Incapacitated Person or of which he is, or if not under a disability would be, entitled to possession or custody;
- (e) exercising any options or other powers or rights of the Incapacitated Person arising under any policy of insurance, scheme of superannuation or other arrangement or in respect of any benefit;
- (f) making any application under Part V of the *Succession Act* 1867–1978 or any other Act, which the Incapacitated Person would be entitled to make if he were not under a legal disability, or instituting any proceedings under the *Maintenance Act* 1965–1978 or any other Act or law.

(3) The powers of the Public Trustee as such committee or manager shall in regard to the following be subject to his obtaining the sanction of an order of the Court:—

- (a) selling, joining in or consenting to the sale of any freehold or leasehold property of the Incapacitated Person or in which the Incapacitated Person has a share or interest;
- (b) granting or concurring in granting leases or sub-leases of property for any term exceeding three years;
- (c) making exchange or partition of property and giving or receiving money for equality of exchange or partition;
- (d) borrowing a sum of money exceeding \$10 000 or increasing the amount of any overdraft, loan or advance by such sum or securing the payment of such sum by mortgage or charge and entering into such covenants, provisions and agreements relating thereto as the Public Trustee considers reasonable:

Provided that—

- (i) the Public Trustee may, without obtaining the sanction of an order of the Court, exercise any of the powers referred to in paragraphs (a) to (c) if the value of the property in respect of which the power is to be exercised or of the share or interest of the Incapacitated Person therein, as estimated by the Public Trustee, or the amount of moneys to be expended at any one time, does not exceed the sum of \$20 000;
- (ii) where property is submitted to public auction the Public Trustee's authority shall not cease or otherwise be affected by virtue of the fact that such property is sold to a bidder at such auction for a sum such that the purchase price or the proportion thereof attributable to the Incapacitated Person's interest in the property is in excess of \$20 000.

(4) The Court may authorize or require the Public Trustee to perform, carry out or do any duty, act or thing which the Court considers desirable in relation to the estate, rights or powers of the Incapacitated Person.

81. Miscellaneous provisions as to formal authority. (Qld s. 85H, M.H.A. 5th Sch. cl. 15 (2), 20). (1) Where an Incapacitated Person is registered as proprietor of or is entitled to any estate or interest in land, a registering authority shall record on the register relating to that land, at the request of the Public Trustee, a memorial that the Public Trustee is authorized to manage the estate of that Incapacitated Person.

(2) The Public Trustee may, in the name and on behalf of an Incapacitated Person, execute and do all such assurances and things as the Public Trustee may consider necessary or desirable for effectuating any of the powers conferred upon him by this Act or by any order of the Court and all assurances and things so executed or done shall have the same force and effect as if executed or done by the Incapacitated Person had he not been under a legal disability and no registration or recording of the authority of the Public Trustee so to do shall be necessary.

(3) The powers of the Public Trustee shall extend to property or any rights of a property nature of the Incapacitated Person outside the State and, in particular and without prejudice to the generality of those powers, the Public Trustee is hereby authorized and empowered to receive and give a valid discharge for any legacy or other interest in an estate in which the Incapacitated Person is interested in any place outside the State.

82. Public Trustee may under order of the Court exercise powers or give consent on behalf of Incapacitated Persons. (M.H.A. 5th Sch. cl. 19, Qld s. 85F). When a power is vested in an Incapacitated Person in the character of trustee or guardian, or as a director or other officer of a company, or the consent of any such person to the exercise of a power is necessary in the like character or as a check upon the undue exercise of the power, and it appears to the Court to be expedient that the power should be exercised or the consent given, the Public Trustee may, in the name and on behalf of the Incapacitated Person and under an order of the Court made upon the application of any person interested and subject to any directions which may be included in the order, exercise the power or give the consent in such manner, if any, as the order directs.

83. Limitation of contractual powers of Incapacitated Person. (M.H.A. 5th Sch. cl. 27). (1) No Incapacitated Person shall be capable, without the leave of the Court, of making any transfer, lease, mortgage, or other disposition of the estate under management, or of any part thereof, or of entering into any contract (other than for necessities) affecting the same and every such transfer, lease, mortgage or other disposition or contract, made without such leave, shall be voidable by that Incapacitated Person or by the Public Trustee on his behalf.

(2) The Court may by order give leave to an Incapacitated Person to make any transfer, lease, mortgage, or other disposition of his property, or of any part thereof, or to enter into any contract, if the Court is satisfied that such transfer, lease, mortgage, disposition, or contract is for the benefit of the Incapacitated Person and that he consents thereto with adequate understanding of the nature thereof.

(3) Nothing in this Part shall affect the law relating to the validity of wills or other testamentary dispositions.

(4) Nothing in this section shall invalidate any contract, transfer, lease, mortgage or other disposition entered into or made by any Incapacitated Person if the other party thereto proves that he acted in good faith and for adequate consideration and without knowledge that the Incapacitated Person was an Incapacitated Person.

(5) Except as expressly provided by this section, nothing in this Part shall affect any other provision of law rendering void or voidable any contract, transfer, lease, mortgage, or other disposition of property entered into or made by an Incapacitated Person whether before or after he became an Incapacitated Person, and the Public Trustee may, in his corporate name, or in the name of the Incapacitated Person, do all such acts and take all such proceedings as he may think fit to avoid any such contract, transfer, lease, mortgage or disposition.

84. Proceedings for protection of property of Incapacitated Persons. (M.H.A. 5th Sch. cl. 33). (1) If any real or personal property of an Incapacitated Person is wrongfully held, detained, converted, or injured, or if any sum of money is due and owing to an Incapacitated Person by any person, the Public Trustee may (without prejudice to his right to proceed in any other manner) claim and recover possession of that property, damages for the conversion or injury thereof or payment of the said sum, by application to the Court by originating summons, and the Court may make an order requiring the person proceeded against to give up possession of that property or to pay damages as assessed by the Court for the conversion or injury thereof or to pay the sum due:

Provided that the Court may direct an action or other proceeding to be brought in respect of the matter.

(2) The Court may make such order as to costs as it thinks fit.

(3) Every order under this section shall have the same effect and may be enforced in the same manner as any judgment of the Court.

(4) The provisions of this section shall extend to any money, documents or other property recoverable by the Public Trustee pursuant to the provisions of this Division.

85. Public Trustee may complete matters commenced before authority ceased. (M.H.A. 5th Schedule cl. 2 (2)). If, immediately prior to a time when the authority of the Public Trustee to manage the estate of an Incapacitated Person ceases pursuant to clause 2 (2) of the Fifth Schedule to the *Mental Health Act 1974–1978* or to section 69, 73 or 79, there is anything within the powers of the Public Trustee in relation to the estate which, having been commenced by him, is not completed, then, subject to any order of the Court to the contrary, that thing, if the Public Trustee thinks fit, may be completed by him as if his authority still continued, and for this purpose the provisions of this Act with all necessary adaptations shall apply and extend accordingly.

86. Expenses payable out of estate. (M.H.A. 5th Sch. cl. 28). All expenses incurred by or fees payable to the Public Trustee as manager of an estate under management shall be payable out of the estate, although the Incapacitated Person dies or the estate otherwise ceases to be under the management of the Public Trustee before payment thereof.

87. Public Trustee exempt from personal liability. (M.H.A. 5th Sch. cl. 26). The Public Trustee, acting in pursuance of any provision of this Part or exercising any power conferred or carrying out any duty imposed upon him by the provisions of this Part or by the Court, shall not be officially or personally liable for any injury, damage, or loss sustained in relation thereto by some other person but the estate under management shall be liable therefor.

88. Disposal of property on death where value under \$5 000. (M.H.A. 5th Sch. cl. 34). (1) Where—

- (a) an Incapacitated Person has died; and
- (b) the Public Trustee is holding money or other property belonging to the Incapacitated Person; and
- (c) the amount of the money, or the value of the property as assessed by the Public Trustee, or, if both money and other property are held, the total of the amount of the money and the value of the property as assessed by the Public Trustee does not exceed \$5 000, the Public Trustee may, without requiring the production of a grant of administration, pay such money or deliver such property or pay such money and deliver such property, as the case requires, to a person—
 - (i) who is the husband, wife, father, mother, child, brother, sister, nephew or niece of the Incapacitated Person; or
 - (ii) who satisfies the Public Trustee that in consequence of the death of the Incapacitated Person he is entitled to his property under his will or on intestacy or that he is entitled to obtain a grant of administration of the estate of the Incapacitated Person.

(2) The Public Trustee shall thereupon be discharged from all further liability in respect of such money or other property.

(3) Any person to whom any such money or property is paid or delivered shall apply the same in due course of administration and, if the Public Trustee thinks fit, he may require that person to give sufficient security by bond or otherwise that the money or property will be so applied.

89. Court may order provision made out of estate where property sold, etc. (M.H.A. 5th Sch. cl. 35). (1) Where any property of an Incapacitated Person has been dealt with under this Part by the Public Trustee or under Part IIIA of the *Public Curator Act 1915-1974*, *The Mental Hygiene Act of 1938*, *The Mental Health Acts, 1962 to 1964* or the *Mental Health Act 1974* by the Public Trustee as Public Curator, whether by sale, exchange, charging or other dealing with property, (including the removal of property from one place to another, the application of money in acquiring property, the transfer of money from one account to another or otherwise howsoever) and the Incapacitated Person has died and under his will, or on intestacy, or by any disposition taking effect on his death, any other person would have taken an interest in the property but for such dealing, the Court may, in its discretion and notwithstanding anything contained in any other Act or law or rule or practice or process of law, on application by or on behalf of that other person or his personal representative, order that such provision as the Court thinks fit (not exceeding, in value, in the opinion of the Court, the benefit that the other person would have taken but for the dealing) shall be made out of the estate of the deceased for the other person or his estate.

(2) The provisions of subsections (2) to (10) of section 90 and of sections 92, 93 and 94 of the *Succession Act 1867-1978* shall apply to any such application and any order made thereon as if such application was an application under Part V of the said Act by a person entitled to make such an application.

PART VII—ADMINISTRATION OF PROPERTY OF PRISONERS

90. Application of this Part. This Part shall apply to—

- (a) any prisoner who, after conviction of any indictable offence or offences, is undergoing a sentence of imprisonment for life or for a term of three years or upwards or for such term as, together with any other sentence or sentences imposed upon him, has rendered him liable to imprisonment for a period of three years or upwards;
- (b) an habitual criminal within the meaning of Chapter LXIVA of The Criminal Code;
- (c) a person directed to be detained pursuant to Part IV of *The Criminal Law Amendment Act of 1945*,

and a reference in this Part to a prisoner shall be a reference to any such persons.

91. Public Trustee to manage property of certain prisoners. Except as otherwise provided in this Part the Public Trustee shall, without further or other order or authority, be the manager of the estate of every prisoner to whom this Part applies.

92. Public Trustee may discontinue management after notice. (1) Where the Public Trustee is of the opinion that it is not desirable that he should continue to manage the estate of a prisoner, he shall give to the Comptroller-General of Prisons (hereinafter in this Part referred to as "the Comptroller-General") notice in duplicate in Form 11 of the Second Schedule of his intention to discontinue such management from a date to be stated in the notice, being not less than eight weeks after the date of signing of the notice.

(2) Within seven days of the receipt of any such notice by him the Comptroller-General shall cause a copy of the notice to be delivered to—

- (a) the prisoner if he is not at liberty;
- (b) the Chief Probation Officer if the prisoner is at liberty as a result of a parole order made pursuant to the provisions of the *Offenders Probation and Parole Act 1959-1974* (in this Act referred to as a "parole order");
- (c) the prisoner or such officer or other person as the Comptroller-General considers reasonable if the prisoner is an habitual criminal who is at liberty pursuant to an order made in accordance with section 659G of The Criminal Code.

(3) The Chief Probation Officer or such officer or other person shall take such steps as appear to him to be reasonable to bring the contents and effect of any such notice received by him to the attention of the prisoner without delay.

(4) The Comptroller-General or the Chief Probation Officer or the prisoner or any other person appearing to the Public Trustee to have a proper interest may, within six weeks of the receipt of the notice by the Comptroller-General, make written representations to the Public Trustee that the notice should be revoked and where such representations are made by the prisoner (other than a prisoner who is at liberty as aforesaid) the Comptroller-General shall transmit them forthwith to the Public Trustee.

(5) If the Public Trustee, after considering such representations (if any) or any other matters, determines that he should continue to manage the estate of such prisoner, he shall, prior to the date stated in the notice of intention to discontinue, revoke such notice and give notice to the Comptroller-General in duplicate, in Form 12 of the Second Schedule, of such revocation and, if, to the knowledge of the Public Trustee, the prisoner is at that date at liberty as the result of a parole order, to the Chief Probation Officer.

(6) Unless the prisoner is at liberty as the result of a parole order, the Comptroller-General shall cause a copy of the notice of revocation to be delivered to the prisoner, or, in the case of an habitual criminal who is at liberty pursuant to an order under section 659G of The Criminal Code, to the prisoner or to such officer or other person as he considers reasonable.

(7) Where a notice of revocation has been delivered to the Chief Probation Officer pursuant to the provisions of subsection (5) or to an officer or other person pursuant to the provisions of subsection (6), the Chief Probation Officer or other person shall take such steps as appear to him to be reasonable to bring the contents and effect of the notice of revocation to the attention of the prisoner.

(8) Where the Public Trustee has given notice pursuant to subsection (1) of his intention to discontinue the management of the estate of a prisoner after the date stated in the notice, the authority of the Public Trustee to manage under this Part the estate of the prisoner shall cease after that date unless in the meantime the Public Trustee has given notice of revocation pursuant to subsection (5).

93. Public Trustee may resume management by notice. (1) If, after the authority of the Public Trustee to manage the estate of a prisoner has ceased pursuant to section 92,

(a) the Comptroller-General certifies in writing to the Public Trustee that the prisoner is not at liberty by virtue of a parole order or an order under section 659G of the Criminal Code and that it appears desirable that the Public Trustee should again become the manager of such estate, and

(b) the Public Trustee determines that it is so desirable,

the Public Trustee may give notice in duplicate in Form 13 of the Second Schedule to the Comptroller-General that he intends to resume such management, and thereupon, after a date to be stated in the notice (being not less than six weeks after the date of signing of the notice), the authority of the Public Trustee under this Part to manage the estate of such prisoner shall recommence unless the said notice has been sooner revoked by the Public Trustee.

(2) Within seven days of receipt of such notice by the Comptroller-General he shall cause a copy of the notice to be delivered to the prisoner.

(3) The prisoner may, within four weeks of such delivery, make written representations to the Public Trustee that the notice should be revoked, and the Comptroller-General shall transmit such representations forthwith to the Public Trustee.

(4) If the Public Trustee, after considering such representations (if any) or any other matters, determines that he should not again become the manager of such estate, he may, before the notice referred to in subsection (1) takes effect, revoke it and give notice of such revocation in duplicate, in Form 14 of the Second Schedule, to the Comptroller-General who shall cause a copy to be delivered to the prisoner.

94. Powers of Public Trustee. (cf. Qld s. 87). (1) When the Public Trustee is manager of the estate of a prisoner under this Part he shall have full power to deal with any property of the prisoner and to acquire any property for or on behalf of the prisoner and generally may do all such things in relation to property, on behalf of and in the name of the prisoner, as the prisoner could do if he were not a prisoner; and in particular—

(a) he may in the name and on behalf of the prisoner execute all such assurances and take all such proceedings as he considers desirable and the same force and effect shall be given thereto as if executed or taken by the prisoner and no registering or recording of the Public Trustee's authority so to do shall be necessary;

(b) he may cause payment or satisfaction to be made of any debt or liability of the prisoner which is established in due course of law or otherwise to his satisfaction and may cause any

property which comes into his hands to be delivered to any person claiming to be justly entitled thereto if the right of such person is established in due course of law or otherwise to his satisfaction;

- (c) he may cause such payment or other satisfaction to be made out of the property of the prisoner as he thinks fit by way of compensation for any loss or injury alleged to have been suffered by any person through any alleged criminal or fraudulent act of the prisoner;
- (d) he may, in such manner as he considers fit, apply any property of the prisoner for the maintenance or benefit of the prisoner or the prisoner's spouse or any child (including an ex-nuptial child) of the prisoner or any person wholly or partially dependent upon the prisoner;
- (e) where a prisoner is registered as proprietor of or is entitled to an estate in any land a registering authority shall, at the request of the Public Trustee, record on the register relating to such land a memorial of the fact that he is authorized to manage the estate of the prisoner;
- (f) he may, in his corporate name or in the name of the prisoner, institute any proceedings of a property nature or for the recovery of any debt or damage which the prisoner might have instituted but for the provisions of this Part, and in like manner defend any proceedings instituted against the prisoner and, in either case, may enter into such compromise or arrangement as he thinks fit.

(2) All action taken by the Public Trustee under this Part shall be binding on the prisoner and the propriety thereof and the sufficiency of the grounds on which he may have acted shall not be in any manner called in question by the prisoner or any other person.

(3) The Public Trustee shall not be liable for any injury, damage or loss sustained by any other person in relation to any action taken or omitted by him as manager of the estate of a prisoner under this Part, but that estate shall be liable therefor.

(4) The various powers conferred on the Public Trustee by this section may be exercised by him in such order and course as to priority of payments or otherwise as he thinks fit.

95. Restrictions on property dealings or proceedings. (cf. Qld s. 86 (2)). During the time when the Public Trustee is manager of his estate under this Part, a prisoner shall be incapable, except with the consent in writing of the Public Trustee—

- (a) of alienating or charging any property or of making any contract; and
- (b) of bringing or defending any action of a property nature or for the recovery of any debt or damage.

96. Transitional. (1) Where immediately before the commencement of this Act a person was a convict whose estate was vested in the Public Curator pursuant to Part IV of the *Public Curator Act 1915-1974*, that person shall be deemed to be a prisoner to whom this Part applies and all property shall be deemed to be held and all consequences to have ensued as if the provisions of this Part had at all times been in force.

(2) Nothing in subsection (1) shall affect any disposition of property or registration of title made pursuant to the provisions of the *Public Curator Act 1915-1974*.

97. Cessation of Public Trustee's authority. (cf. Qld s. 90). (1) The authority of the Public Trustee to manage the estate of a prisoner under this Part shall cease when that prisoner—

- (a) has received from Her Majesty, or the Governor on behalf of Her Majesty, a pardon for the offence of which he was convicted; or
- (b) has undergone the full term or terms of imprisonment to which he has been sentenced or such other punishment as by competent authority has been substituted for such term or any of such terms; or
- (c) in the case of an habitual criminal has ceased to be such pursuant to the provisions of section 659H of The Criminal Code; or
- (d) dies; or
- (e) as a result of an appeal or otherwise, lawfully ceases to be a prisoner.

(2) If, immediately prior to the ceasing of the authority of the Public Trustee as provided by subsection (1), there is anything within the powers of the Public Trustee in relation to the estate which, having been commenced by him, is not completed, then, subject to any order of the Court to the contrary, that thing, if the Public Trustee thinks fit, may be completed by him as if his authority still continued, and for this purpose the provisions of this Part with all necessary adaptations shall apply and extend accordingly.

PART VIII—UNCLAIMED PROPERTY

Division 1—Unclaimed Money

98. Application of Division. (cf. Qld s. 108). In this Division—

“accountable person” means a person (other than the Crown) or body (other than a body representing the Crown) having as an object the carrying on of any trade, business or profession in the ordinary course of which money is held for payment to others and includes—

- (a) a receiver;
- (b) a statutory authority set up by any Act;
- (c) a trustee company as defined in the *Trustee Companies Act 1968-1977*;
- (d) such other persons or bodies as the Governor in Council by Order in Council shall from time to time declare to be persons to whom this Division applies;

“owner” means the person entitled to any Unclaimed Moneys and the executors, administrators or assigns of such person and his or their lawful attorney or agent in Queensland;

“Unclaimed Moneys” means all principal and interest moneys and all dividends, bonuses, profits, and sums of money whatsoever which at any time have become payable (whether before or after the commencement of this Act) by an

accountable person, in the course of his trade, business or profession, to the owner and the whole or part of which have been in the possession of the accountable person for six years or upwards.

99. Dividends not to be forfeited. (Qld s. 109A). Notwithstanding anything contained in any Act or law or in any memorandum or Articles of Association or deed or other instrument of incorporation of any accountable person, it shall not be lawful for any accountable person to forfeit any moneys from time to time legally payable and distributable as or by way of dividends, bonuses, or profits of that accountable person.

100. Annual Register of Unclaimed Moneys. (cf. Qld s. 110 (1)).

(1) Every accountable person shall keep and maintain a register in Form 15 of the Second Schedule at his principal place of business in Queensland. On the fourteenth day of February in every year each accountable person shall enter in such register the particulars specified in Form 15 of the Second Schedule of all Unclaimed Moneys which have not previously been entered in the corresponding register for any previous year.

(2) On and after the fifteenth day of February in every year and for a period of seven years thereafter such register shall, on payment of a fee of \$1, be open to inspection by all persons at such principal place of business during the hours within which the accountable person transacts his ordinary business.

(3) Every such register shall be advertised by the person keeping it by publishing a copy thereof in the Gazette during the month of February:

Provided that it shall not be necessary to include in such advertisement entries which, with all other moneys entered in the register in respect of the same entitlement, do not exceed in the aggregate \$50 or, if the Public Trustee consents in writing, \$100.

(4) An accountable person who fails to keep or advertise such register, or who refuses inspection thereof, shall be liable to a penalty of \$50 for every day during which such default or refusal continues.

101. Public Trustee may examine accounts. (cf. Qld s. 110 (4)).

(1) The Public Trustee may at any time, if he has reason to believe that an entry should have been made as required by section 100, examine any books, vouchers, accounts, documents, or papers as may in his opinion be necessary for him to determine whether such entry has, or should have, been made and may for that purpose require the production before him or before such person as he may appoint, of all books, vouchers, accounts, documents or papers.

(2) Any person who refuses examination, makes default in or refuses production of any books, vouchers, accounts, documents or papers, as required by subsection (1), shall be liable to a penalty of \$50 for every day during which such refusal or default continues.

(3) If any error is found in any register (or notice aforesaid), the Public Trustee may cause the register to be amended or advertised, or both, at the expense of the accountable person.

102. Unclaimed Moneys to be paid to Public Trustee. (cf. Qld s. 110 (2) and (3)). (1) All Unclaimed Moneys which have not been paid by an accountable person to the owner thereof within one year after they have been or should have been entered in such register shall be paid by such person to the Public Trustee.

(2) An accountable person may deduct out of all Unclaimed Moneys payable by him to the Public Trustee the expenses paid by him in the advertising of the register as aforesaid, and such expenses shall be deducted from the respective balances of such moneys in proportion to the respective amounts thereof.

(3) An accountable person who fails to pay any Unclaimed Moneys to the Public Trustee as herein required shall be liable to a penalty of \$50 for every day during which such default continues.

(4) Any right of the owner to recover such Unclaimed Moneys which exists at the time the accountable person enters such Unclaimed Moneys in the register shall not be prejudiced or affected by such entry and such right may be enforced by such owner at any time before the Unclaimed Moneys are paid to the Public Trustee, but not afterwards:

Provided that the accountable person shall be entitled to deduct from the amount payable to the owner such part of the expenses paid by the accountable person in advertising the notice required by section 100 (3) as the amount claimed bears to the total amount to which the notice relates.

Division 2—Other Unclaimed Property

103. Application of Division. (cf. Qld ss. 92, 101, N.Z. s. 79). (1) This Division does not apply to Unclaimed Moneys as defined in Division 1, or to lands of the Crown in respect of which no contract for the alienation thereof has been made, but, subject thereto, applies to all types of real and personal property in Queensland including—

- (a) any interest in property as co-owner, whether joint or several;
- (b) any debt or other thing in action;
- (c) any statutory claim for compensation; and
- (d) the interest of every person, other than the Crown, in lands of the Crown whether as lessee, licensee or otherwise:

Provided that any dealings by the Public Trustee in accordance with this Division in respect of any interest in lands of the Crown shall be subject to the same conditions and restrictions as similar dealings by the owner of such interest would have been.

(2) Property to which this Division applies shall be deemed to be unclaimed where, in the opinion of the Public Trustee—

- (a) it is not known after due enquiry who the owner of the property is, or where he is, or whether he is alive or dead, or it appears to have been abandoned; or
- (b) the owner of the property is absent from Queensland or dead and after due enquiry it is not known whether he has any agent or personal representative in Queensland with authority to take possession of and administer the property, or it is not known where such agent or personal representative is, or whether such agent or personal representative is alive or dead; or

- (c) the owner thereof is a corporation or company and after due enquiry no officer or agent is known or can be found; or
- (d) it is delivered to the Public Trustee pursuant to section 105.

(3) Property which is by subsection (2) deemed to be unclaimed is hereinafter in this Division referred to as "Unclaimed Property".

104. Manner in which Public Trustee may become administrator. (cf. N.Z. ss. 80, 84). (1) The Court may appoint the Public Trustee as administrator under this Division of any Unclaimed Property, on the application *ex parte* of the Public Trustee, if it appears that the appointment is desirable in the interests of the owner of the property or of any other person, or, in the case of land, to secure the development or better utilization thereof, or otherwise.

(2) If the Public Trustee is of the opinion that the gross value of any Unclaimed Property does not exceed \$5 000 and is satisfied that it is desirable for the reasons specified in subsection (1) that he should become the administrator thereof, he may, without making application to the Court as provided by subsection (1), elect to be such administrator and thereupon he shall become the administrator under this Division of such Unclaimed Property without any order of the Court.

(3) (a) Before making application to the Court pursuant to subsection (1) or electing pursuant to subsection (2) the Public Trustee shall give two months' notice of his intention to do so by advertisement in such newspaper as he considers suitable.

(b) Where, in exceptional circumstances, it is necessary, for the preservation or protection of the property or of its value or for other special reasons, for the period of notice to be abridged or for notice to be dispensed with, the Court may, on the application of the Public Trustee, order that such period be abridged or such notice be dispensed with, or make any other order that it thinks desirable including any order that it has jurisdiction to make under any of the other provisions of this Division.

(c) If the Public Trustee is of the opinion that the gross value of the Unclaimed Property does not exceed \$500, the Public Trustee may elect to become, and thereafter shall become, the administrator of such property under this Division without giving such notice.

(4) The Public Trustee shall not be obliged to take any steps or proceedings to cause himself to be appointed or to become administrator of any Unclaimed Property.

105. Unclaimed property held by hospitals. (cf. Qld s. 107A). (1) Where the governing body of any hospital has in its possession or under its control any property (including money and securities for money) to which some person, whether ascertained or not, is entitled and which property has remained unclaimed for a period of three months or longer (whether such period is wholly before, or partly before and partly after, or wholly after the commencement of this Act) it shall—

- (a) take all reasonable steps to ascertain the identity and whereabouts of the owner of such property and to deliver it to such owner;
- (b) where it is unable to deliver the property to the owner thereof, deliver the same to the Public Trustee, whose receipt shall be sufficient acknowledgement and discharge to the governing body of the hospital therefor.

(2) Such governing body shall give to the Public Trustee all information within its knowledge or within the knowledge of its officers as to the former owner (whether living or dead) of such property, the circumstances and conditions under which the property came into its possession or control, and the names and addresses of any persons who may be entitled to such property at the time of delivery thereof to the Public Trustee.

(3) The Public Trustee shall, upon the receipt of such property, become the administrator thereof under this Division as if he had been appointed by the Court pursuant to section 104 (1).

(4) For the purposes of this section the term "governing body of a hospital" shall mean a Hospitals Board within the meaning of the *Hospitals Act* 1936-1976 and a licensee of a private hospital within the meaning of the *Health Act* 1937-1978.

106. Person in possession of instruments of title shall deliver them to Public Trustee. When the Public Trustee is administrator of any Unclaimed Property and any person is in possession of instruments of title to the property to possession of which the owner of the property would be entitled either absolutely or subject to the performance of any conditions, such person shall, subject to the performance of any such conditions, deliver them to the Public Trustee.

107. Powers as administrator of Unclaimed Property. (cf. N.Z. ss. 81 & 84). (1) Unless the Court in any particular case otherwise orders, the Public Trustee, as administrator of any Unclaimed Property, may in respect of the Unclaimed Property and any money received in respect of it—

- (a) exercise, as if the Unclaimed Property were vested in him, all powers which as trustee he can exercise under this Act or any other Act or law in respect of trust property;
- (b) pay any debts owing by the owner;
- (c) apply the same or part thereof for the maintenance or benefit of the spouse or any child (including an ex-nuptial child) of the owner, or any person who is, or was, wholly or partially dependent upon the owner;
- (d) complete and carry out, or enforce, in such manner as he may think fit, any contract affecting the Unclaimed Property or entered into by the owner, and exercise any powers pursuant to such contract.

(2) The Court may confer on the Public Trustee as such administrator such other powers as it considers expedient.

(3) The Public Trustee may, as administrator of any Unclaimed Property, execute and do all such assurances and things as he may think necessary for effectuating any of the powers conferred on him pursuant to this Division, and all assurances and things so executed and done shall have the same force and effect as if executed or done by the lawful owner of the property not under a disability, no registration or recording of the authority of the Public Trustee shall be necessary and no court, registering authority or other person shall be concerned to see or enquire whether power to execute or do such assurance or thing had or had not become exercisable.

(4) Where the Public Trustee is administrator of any Unclaimed Property he shall, subject to any direction of the Court, have a complete discretion as to whether or not he exercises any of the powers conferred on him by or under this Division, and shall not be liable for anything done or omitted to be done by him in good faith in the exercise of that discretion or power.

108. Property to be held on trust for owner. (cf. Qld ss. 96, 104). Where the Public Trustee, as administrator under this Division, takes possession of any Unclaimed Property or receives or recovers any money or damages in respect of any Unclaimed Property, the property, money, or, as the case may be, damages, after payment or deduction thereout of all money authorized to be applied, expended or charged by the Public Trustee, shall be held by him for the person entitled thereto.

109. Expenses of Public Trustee a charge on the property. (cf. Qld ss. 93, 96, 99, 102; N.Z. s. 87). (1) All expenses incurred by the Public Trustee in the execution of the powers conferred on him by this Division, and all fees, costs, commission, charges, interest and expenses incurred by or payable to the Public Trustee as administrator of any Unclaimed Property under this Division shall be a charge upon the property coming next in priority to any mortgage or charge to which the property is subject when the Public Trustee becomes administrator of the property.

(2) The amount for the time being so charged on the property shall bear interest calculated in the manner provided in respect of advances pursuant to section 20.

(3) Where—

- (a) the Public Trustee has given notice of his intention—
 - (i) to make application to the Court to be appointed administrator of any Unclaimed Property; or
 - (ii) to elect to be administrator of any Unclaimed Property; or
- (b) the Public Trustee has made application to the Court for the period of such notice to be abridged or for such notice to be dispensed with,

and a person entitled to the property the subject of such notice or application establishes his title thereto before the Public Trustee becomes the administrator under this Division, the costs and expenses of the Public Trustee in respect of the property shall be refunded to him out of the Consolidated Revenue Fund.

110. Termination of administration. (cf. Qld s. 106, N.Z. s. 89). (1) The Public Trustee shall cease to be the administrator under this Division of any Unclaimed Property if—

- (a) the Court so orders on application served on the Public Trustee and made by the owner of the property or by his personal representative or duly authorized agent or by any person having any interest in the property or in any part thereof;
- (b) the Public Trustee decides that it is desirable that he should cease to be the administrator of the property; or
- (c) the Public Trustee transfers or delivers property to the owner or his personal representative or duly authorized agent.

(2) The termination of the Public Trustee's administration of any Unclaimed Property shall not affect any charge acquired by the Public Trustee under this Division or the validity of any act or thing done by the Public Trustee while he was administrator of the property.

(3) No order shall be made by the Court under this section without the consent of the Public Trustee except subject to the payment to the Public Trustee of all amounts to which he is entitled under section 109, together with all costs incurred by the Public Trustee of and incidental to the application for such order.

(4) Upon the Public Trustee ceasing to be the administrator of any Unclaimed Property which remains in his name or in his possession the Public Trustee shall transfer or deliver the property to the person entitled thereto.

111. Evidence in respect of Unclaimed Property. (cf. Qld s. 96 (2), N.Z. s. 90). The Court or the Public Trustee when acting under this Division may—

- (a) accept and act upon any evidence available whether legally admissible or not;
- (b) accept a claimant as the owner of or entitled to possession of any property, notwithstanding that the claimant may be unable to adduce such sufficient evidence as would entitle him to obtain or recover possession of the property in other proceedings; and
- (c) have regard to the circumstances of each case in determining the character and sufficiency of the evidence of title adduced.

112. Mistake of fact not to affect validity. (cf. Qld s. 107, N.Z. s. 94). No order made under this Division, or thing done in pursuance of this Division or of any such order, shall be or become invalid or inoperative merely because it has been made or done under a mistake of fact, or because the owner of the property was dead at any relevant time, or because of any disposition of the property made by the owner thereof while the Public Trustee was administrator of the property under this Division.

113. Limitations not affected. Nothing in this Division shall affect the *Limitation of Actions Act* 1974 or any other Act by which a period of limitation is prescribed.

114. Transitional. (1) The Public Trustee shall become administrator under this Division of all property which was vested in him as Public Curator or in respect of which he could exercise any powers under Division 1 or Division 2 of Part V of the *Public Curator Act* 1915–1974 immediately before the commencement of this Act and all property shall be deemed to have been held and all consequences to have ensued as if the provisions of this Part had at all times been in force.

(2) Nothing in subsection (1) shall affect any disposition of property or registration of title made pursuant to the provisions of the *Public Curator Act* 1915–1974.

Division 3—Payment Into and Out of Unclaimed Moneys Fund

115. Unclaimed Moneys to be credited to Fund. (Qld s. 110 (2)). All moneys paid to the Public Trustee pursuant to section 102 shall be placed by him to the credit of the Unclaimed Moneys Fund.

116. Funds held by Public Trustee to be transferred. (cf. Qld s. 109). In the first week of February in every year, all sums of money which on the first day of that month have been in the hands of the Public Trustee to the credit of any estate under administration and unclaimed for the term of six years next preceding, and all interest accrued in respect thereof, shall be placed to the credit of the Unclaimed Moneys Fund.

117. Public Trustee may pay claimant. (cf. Qld s. 111). (1) If a person claims to be entitled to receive any money in the Unclaimed Moneys Fund, the Public Trustee, upon being satisfied that the person has a just claim to receive such money, may, with the approval of the Minister, pay the same to him out of the Unclaimed Moneys Fund.

(2) If any moneys so paid to a claimant are afterwards claimed by any other person, the Public Trustee shall not be responsible for the payment thereof, but such person may have recourse against the claimant to whom the Public Trustee has paid the moneys.

PART IX—GENERAL

Division 1—Notice and Consequences of Appointment

118. Notice to be given to Public Trustee of appointment as trustee. (cf. Qld ss. 44, 112). (1) Notice in writing of any appointment of the Public Trustee as trustee shall, as soon as possible after the trust comes into effect, be given to him by—

- (a) any person having possession of the trust instrument or any of the trust property;
- (b) any person appointed by a testator to be co-trustee with the Public Trustee and not renouncing or disclaiming the trust.

(2) When a court, except upon the application of the Public Trustee, makes an order under this Act or having any relation to the Public Trustee, the person who obtains such order shall forthwith serve upon the Public Trustee a court office copy (however described) thereof, and shall deliver to the Public Trustee a statement of the property affected by the order, where that property is situated and by whom it is held, so far as the same is known to that person, and such other information as the Public Trustee requires.

(3) Upon receiving a notice pursuant to subsection (1) or being served with an office copy of a court order pursuant to subsection (2), the Public Trustee may—

- (a) require any person in possession of any instrument governing or affecting any property subject to the trust or affected by the court order to produce such instrument to him and to supply him with a copy thereof;
- (b) require any person who appears to him to be in a position to do so to supply him with any information in regard to the trust or the property affected by the order, or as to any trustees or persons beneficially interested, or as to any other matters that he considers it desirable to obtain.

(4) Any person who is registered as proprietor or owner (either beneficially or as a trustee) of any property of which the Public Trustee becomes trustee shall execute any documents and do anything which the Public Trustee may reasonably require of him to facilitate the Public Trustee's becoming registered as proprietor or owner of or as entitled to deal with any such property.

119. Rejection of appointment. (cf. Qld ss. 53 (2), 54). (1) The Public Trustee may decline, either absolutely or except upon conditions, to accept any trust or to act in any capacity to which he may be appointed under this Act.

(2) If any appointment of the Public Trustee to any such capacity is not accepted by him, he shall give notice thereof to such persons as he thinks fit.

(3) If any property has become vested in the Public Trustee by virtue of an appointment which is rejected, such property, by virtue of such rejection, shall cease to be vested in the Public Trustee and be deemed not to have become vested in the Public Trustee who may execute and do any instruments and things to give effect to such rejection.

(4) A notice or certificate of acceptance or rejection of any appointment, in writing signed by the Public Trustee, shall be conclusive evidence of such acceptance or rejection.

120. Effect of appointment. (Qld s. 53). (1) Subject to this Act, the Public Trustee, when acting in any capacity under or for the purposes of this Act, shall have the same powers, duties and liabilities and be entitled to the same indemnities and protections as any other person acting in the same capacity and to the powers, indemnities and protections of a trustee and the provisions of all laws in force relating to any such matters, so far as the same do not conflict with this Act, shall apply accordingly.

(2) Upon any appointment or other authority of the Public Trustee as a trustee (other than pursuant to Parts VI, VII or VIII) taking effect, all the estate in respect of which he is so appointed or authorized shall, by virtue of such appointment and without other assurances in law, become vested in him (or, if there is a co-trustee, in him and the co-trustee), subject to the trusts thereof, and upon the production of a request in writing by the Public Trustee any registering authority shall register or record such vesting accordingly.

Division 2—Notice, Transfer and Registration of Assets

121. Notice to be given to Public Trustee of property. (Qld s. 62). When in an estate under administration there is comprised any property which is—

- (a) in the possession of any person or body; or
- (b) entered in the books or accounts or otherwise of any person or body; or
- (c) an interest in the assets of any body, or a right to receive any payments in respect thereof; or
- (d) stock registered in the books of any body; or
- (e) a debt owing by any person or body,

such person or body shall forthwith give notice to the Public Trustee of the extent, nature and situation of such property.

122. Public Trustee may require property to be transferred and may summon persons for examination. (cf. Qld s. 63, M.H.A. 5th Sch. cl. 29, 10 Eliz. 2 No. 55 s. 249). (1) The Public Trustee may require all persons to deliver, convey, or transfer to him or to him and his co-trustee, if any, all property to which he is or they are entitled.

(2) For the purpose of ascertaining whether any person has in his possession or under his control any property which should be so delivered, conveyed, or transferred, the Public Trustee may institute such enquiries as he thinks proper and, in addition to any other rights he may have, shall have power—

- (a) to require any person to disclose any information on oath or by statutory declaration as the Public Trustee may decide; and
- (b) by summons under his hand to require any person to appear before him or before some person appointed in writing by him in that behalf at such time and place as is set out in the summons and answer all questions that may be put.

(3) The Public Trustee shall pay or tender to the person so summoned the same amount as such person would have been entitled to had he been summoned as a witness in proceedings before a Magistrates Court constituted under the *Magistrates Courts Act* 1921–1976 at the place to which such person has been summoned.

(4) Every such summons shall be served by delivering it to the person to whom it is directed or by leaving it at his usual or last-known place of business or abode.

(5) Every person served with such summons who, without reasonable justification or excuse, fails to appear according to the exigency of the summons or, being present, refuses to be sworn or to give evidence or to answer such questions as are put to him by the Public Trustee or the person so appointed as aforesaid, or to produce any books or documents required by the summons to be produced, commits an offence against this Act.

Penalty: \$1 000.

(6) Without prejudice to the provisions of subsection (5), if any person fails to deliver, convey or transfer all property as provided in subsection (1) or, if in the opinion of the Public Trustee the procedure in subsection (2) fails to elicit the particulars required, the Court may, on the application *ex parte* of the Public Trustee, order any person who may be supposed to be in possession of information relevant to the matter under investigation to appear before the Court or a Magistrates Court named for the purpose by the Court in order to be examined on oath concerning the matter and to produce any documents or for either of such purposes.

(7) The Court or Magistrates Court may examine such person on oath concerning the matter and may require him to produce any documents in his custody or power relating thereto, but where he claims any lien on books or papers the production shall be without prejudice to that lien.

(8) If the Court or Magistrates Court is of opinion that any such person is possessed of or entitled to any property that should be so delivered, conveyed or transferred to the Public Trustee or to the Public Trustee and his co-trustee, the Court or Magistrates Court may make an order requiring such person to deliver, convey or transfer all such property within such time as shall be specified in the order.

(9) If any person so ordered to appear, after being tendered the same amount as he would have been entitled to had he been summoned as a witness in proceedings before a Magistrates Court at the place to which he has been summoned, fails or refuses to come before the Court or Magistrates Court at the time appointed, not having a lawful excuse made known to the Court or Magistrates Court at the time appointed and allowed by it, such person shall be guilty of contempt of the Court and, in addition to any penalty for which he may be liable in consequence, may be apprehended and brought before the Court for examination.

(10) Any person appearing before the Court or a Magistrates Court pursuant to any of the preceding provisions, who, without valid excuse, refuses to be sworn or neglects to answer any relevant question put to him by or on behalf of the Public Trustee, or who, having been ordered to produce any documents, fails to produce the same without sufficient excuse, or, if so required by the Court, to hand such documents over to the Public Trustee, or who disobeys any order made by the Court or Magistrates Court pursuant to subsection (8), shall be guilty of contempt of the Court.

(11) The Court, on the application of the Public Trustee or any other person interested, may order that the costs of and incidental to anything done by the Public Trustee under this section shall be borne and paid by such person or out of such part of the estate as the Court may consider just and, failing such order, such costs shall be paid out of the estate as part of the general costs of the Public Trustee.

(12) In this section the term "documents" includes books, papers, deeds, documents, and any writings whatsoever.

123. Moneys and assets of Public Trustee deemed Crown property.
(cf. Qld s. 61). (1)—

- (a) Moneys paid or payable to the Public Trustee, other than on behalf of an estate under administration; and
- (b) moneys paid or payable to the Public Trustee for or on behalf of the Crown,

shall, for the purpose of all rights, remedies and procedure, be deemed to be property of Her Majesty, and shall be recoverable by the Public Trustee by action in any court.

(2) Every person into whose hands or under whose control any moneys come which are payable to the Public Trustee shall pay the same to him as soon as practicable after their receipt and, until such moneys are paid, that person shall be deemed to be a debtor to the Crown in respect of such moneys.

(3) The Public Trustee shall be deemed to acquire and hold investments made from and assets purchased out of the Common Fund as the property of Her Majesty and moneys referred to in subsections (1) and (2) paid or payable to the Public Trustee in respect of such investments shall be deemed to be secured Crown debts and for this purpose the Public Trustee shall be deemed to be a Crown instrumentality.

124. Searches. (Qld s. 27 (4)). The Registrar-General and the Department of Lands and every officer of the Court and every Registrar of Titles, Commissioner for Corporate Affairs, Mining Registrar and other officer having the charge of records which are available for search by the public shall permit the Public Trustee and any person authorized by him in that behalf, free of charge, to make searches of and to make copies of or extracts from any documents of title, or records in the department, registry or office relating to any property or matter in which the Public Trustee is or may be interested.

125. Registration of stock in name of Public Trustee. (cf. Qld s. 60 (2)). (1) A body shall not be entitled to refuse to enter the Public Trustee in any register of ownership by reason only that the Public Trustee is a corporation.

(2) Where any estate under administration by the Public Trustee includes stock in any body, or where, in the administration of any estate, the Public Trustee acquires stock in any body—

- (a) notwithstanding any law or provisions affecting the registration of persons holding stock as trustees or in any other representative capacity, the Public Trustee shall be entitled to be registered as the proprietor of such stock as trustee, or in any other representative capacity, as he may require;
- (b) notwithstanding the provisions of any other Act or law, such body shall not be entitled by reason of its charter, memorandum or articles of association or rules to refuse to so register the Public Trustee in any such representative capacity;
- (c) the liability of the Public Trustee in consequence of such registration shall be limited to the assets which, at the time when any demand is made for the satisfaction of any such liability, he holds on the same trusts;
- (d) the Public Trustee, upon such registration, shall, subject to paragraph (c), be deemed to be the owner of any such stock.

126. Notice of trust not constituted only by entry of Public Trustee on any register of ownership. (cf. Qld s. 60 (1)). (1) The entry of the Public Trustee by that name in a register of members of a company or other register of ownership shall not constitute notice of the existence of a trust.

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

127. Public Trustee may bring land under the Real Property Acts. (cf. Qld s. 27 (1)). When freehold land not under the provisions of the Real Property Acts is an asset in an estate under administration, the Public Trustee, notwithstanding that such land has not vested in him, may take proceedings to have such land brought under the provisions of the Real Property Acts.

Division 3—Indemnities Etc.

128. Remedy against Public Trustee. (cf. Qld s. 81, N.Z. ss. 136, 137).

(1) Subject to the provisions of this Act, where a person, by an act or thing done or omitted by the Public Trustee or by any other person acting or, in good faith and within the scope of an apparent authority as an officer or general agent, assuming to act for him, sustains any loss or injury which would have entitled such firstmentioned person to a remedy in respect thereof if the same had been done or omitted by any other person, such person shall be entitled to the same remedy against the Public Trustee in his corporate capacity as he would have been entitled to against any other person in like case, and shall be entitled to be indemnified under this Act.

(2) The Consolidated Revenue Fund shall be liable to make good all sums required to discharge any liability of the Public Trustee in his corporate capacity.

129. Advertisement for claims and payment. (cf. Qld s. 64, T.A. s. 67). (1) The Public Trustee may, at such times as he thinks fit, cause advertisements to be published in such newspapers as he considers suitable, requiring any person having any claim in regard to an estate under administration, whether as creditor or beneficiary or otherwise, to send to him particulars of such claim on or before a date to be fixed in such notice.

(2) After the date fixed by the notice or the last of the notices to be published, the Public Trustee may distribute or otherwise deal with the estate under administration having regard only to the claims made, whether formally or not, of which he has notice at the time of distribution and he shall not, in regard to any part of an estate so distributed or disposed of, be liable to any person of whose claim he had no notice at the time of the distribution or disposal.

130. Allowance of claims. (Qld s. 66). (1) Subject to the terms of any particular trust, the Public Trustee may, in the administration of any estate under administration or the performance of any power or duty under this Act, act on information which, though not admissible under any rule of evidence, appears to be credible as to matters of fact.

(2) He may at any time require an affidavit, statutory declaration or other sufficient evidence in support of the claim of any person whether as creditor or as beneficially entitled or otherwise and may refuse payment or transfer until such affidavit, declaration or evidence is produced.

(3) He may allow any claim which is made upon or before him upon the evidence of the claimant alone or, where he thinks fit to call for further evidence, upon such further evidence as he requires.

(4) Acting in good faith, he shall not be liable for accepting as correct and acting upon any written statement or declaration by any person whom he believes to be trustworthy, as to any birth, death, marriage or other matter of pedigree or relationship, or other matter of fact, upon which the title to any estate or any part thereof may depend.

131. Barring of claims. (cf. Qld s. 67A, T.A. s. 68). (1) Where—

(a) the Public Trustee refuses to recognize, whether wholly or partially, a claim which has been made—

(i) to or against an estate under administration or any part thereof; or

- (ii) against the Public Trustee on the ground of his being under any liability in respect of which he would be entitled to reimburse himself out of an estate under administration; or
 - (iii) to the ownership of, or of any interest in, any property which the Public Trustee has in his possession or under his control and which appears to him to be an asset in an estate under administration; or
- (b) any person who has been called upon by notice in writing to lodge such a claim fails for a period of one month so to lodge his claim,

the Public Trustee may give notice in writing to the claimant or the person called upon to claim of his refusal to recognize any such claim, in whole or in part, or of his non-receipt of such claim, whichever the case may be.

(2) If such claimant or person called upon does not, within three months after the service of such notice, either satisfy the Public Trustee of the validity of his claim or institute legal proceedings to enforce such claim and serve the Public Trustee with the originating process, the Public Trustee may deal with the estate or property without taking into consideration the existence of any such claim, or taking into consideration only that portion of a claim of which he has not given notice of refusal to recognize, and thereupon the right of such claimant or person called upon to recover the amount of the claim or the portion thereof in respect of which such notice was given shall be absolutely barred as against so much of the estate or property as has been distributed.

132. Cases where estate may be distributed after enquiries. (cf. Qld s. 78; T.C.A. s. 33; Tas. No. 14 of 1977 s. 14). (1) When the Public Trustee is in doubt as to the existence of any person or any class of persons who, if in existence at some particular time, would be entitled to share in any estate under administration by him, or as to the identity of any person entitled to any estate or part of an estate, he may, after such enquiries, including newspaper advertisements, as he considers necessary, pay, deliver or distribute the assets in the estate having regard only to the persons whose claims have then been established to his satisfaction, or who then appear to him to have the best claim in law (including, in a case where the existence of a person at a particular time has not been established to the satisfaction of the Public Trustee, persons who would only have a lawful claim if such firstmentioned person was not in existence at such particular time).

(2) Nothing in this section shall affect the right of such person or persons to follow the estate or any part thereof into the hands of the persons who have received the same pursuant to such payment, delivery or distribution.

133. Payment of moneys etc. to persons abroad. (cf. Qld s. 77, N.Z. s. 132). (1) When any moneys or chattels are payable or deliverable by the Public Trustee to any person in any place beyond the Commonwealth of Australia, he may pay or deliver the same to the chief consular officer for that place in Queensland or in the Commonwealth of Australia, or to any other official (wherever located) of such place who appears to the Public Trustee to be a suitable person to receive the same on behalf of the person entitled, and the receipt of such consular officer or other official shall be a sufficient discharge to the Public Trustee, who shall not be further concerned to see to the application thereof.

(2) Where any moneys or chattels are payable or deliverable by the Public Trustee to any person in any place beyond Queensland, he may pay or deliver the same to any person who is authorized by the law of that place to manage the estate or affairs of such firstmentioned person on the ground of such firstmentioned person's lack of capacity to manage his own affairs.

134. Public Trustee may take opinion of Court on question arising in course of duties. (Qld s. 79, cf. U.K. S.R. & O., 1912, No. 348 r. 15).

(1) The Public Trustee may, without instituting formal proceedings, take the opinion or obtain the direction of the Court upon any question, whether of law or of fact, arising under this Act or in the course of his duties.

(2) The duty of advising and directing upon any such questions shall be assigned from time to time by the Chief Justice to a particular judge of the Court, either generally or in a particular matter.

(3) Any such question shall be submitted to the judge in such manner and at such time as he may direct, and shall be accompanied by such statement of facts, affidavits, documents, and other information as he may require and the Public Trustee or anyone authorized by him shall, if the judge so desires, attend upon the judge at such time and place as he may appoint.

(4) The judge may, before giving his opinion or direction, require the attendance of, or communication with, any person interested, but no such person shall have a right to be heard unless the judge so directs.

(5) The judge shall give his opinion or direction to the Public Trustee and, subject to any order of the Court in other proceedings formally instituted, the Public Trustee, acting in accordance with such opinion or direction, shall be fully indemnified.

(6) The Public Trustee shall, upon the request in writing of any such interested person, communicate to him the effect of such opinion or direction.

135. Validation of acts of Public Trustee under administration granted in error. (cf. Qld s. 83, N.Z. s. 64).

(1) All things done or omitted by the Public Trustee under the bona fide belief, which shall be assumed until the contrary be proved, that a person has died testate or intestate shall, notwithstanding that it is afterwards found that such person had not died at the time in question, or did not die intestate, or that the will is not the valid last will of the deceased, be as valid and effectual as if he had been lawfully appointed or entitled to act as executor, administrator, or trustee.

(2) The Public Trustee may retain out of the estate any commissions, charges, or expenses, including liabilities incurred, that could have been retained or claimed by him had there been no error in the grant of probate or administration or other basis on which the Public Trustee has claimed to administer the estate.

(3) In any such case, nothing in this section shall affect or prejudice any right of any person against any other person to whom the Public Trustee has transferred any property or paid any moneys.

136. Protection of Public Trustee acting under court order. (cf. N.Z. s. 131, T.A. s. 97). Where the Public Trustee acts in good faith under or in pursuance of any judgment, order, opinion or direction of any court or judge, the Public Trustee shall be deemed, so far as regards his own responsibility, to have discharged his duty in connection with the subject matter of the judgment, order, opinion or direction notwithstanding that the judgment, order, opinion or direction is subsequently invalidated, overruled, set aside, or otherwise rendered of no effect.

Division 4—Miscellaneous

137. Public Trustee may sue himself in different capacity. (cf. T.A. s. 59, N.Z. s. 101). Notwithstanding any rule of law or practice to the contrary, the Public Trustee, acting in one capacity, may maintain proceedings against himself acting in another capacity:

Provided that in every such case the Public Trustee may apply for and shall in any case follow the directions of the Court as to the manner in which the opposing interests are to be represented.

138. Certificate or recital of authority evidence. (Qld s. 113). (1) A certificate under the hand of the Public Trustee and sealed with his seal, certifying the nature of his appointment or authority in relation to any estate, property or matter whatsoever, and whether pursuant to any Act or otherwise, and any facts or circumstances on the happening of which such appointment or authority was made or granted or arises, shall be accepted by all courts, officers and other persons, whether acting under any Act or not, as sufficient evidence of all the facts or circumstances therein set forth, without production of any other proof whatever.

(2) Such certificate shall—

- (a) be sufficient for the purposes of bringing any land under the Real Property Acts, or of registering the Public Trustee as proprietor of any estate or interest in any land under those Acts or as lessee or licensee of any land held from the Crown under any lease or licence, or as proprietor of any stock in any body;
- (b) be equivalent for registration purposes to a grant of administration or other order or document of appointment and it shall not be necessary to produce, deposit or register such grant of administration, will or other order or document of appointment or any copy thereof.

(3) A recital contained in any assurance or instrument under the hand of the Public Trustee of any matter upon which his authority in relation to such assurance or instrument depends, including the purport of any will or any other document, shall be sufficient evidence thereof, and no one shall be concerned to enquire beyond such recital.

139. Service of notices. (cf. P.L.A. s. 257). (1) (a) Save as may be expressly provided in this Act, any notice which the Public Trustee is required or authorized by this Act to serve on any person may be served—

- (i) by delivering the notice to him personally;

(ii) by leaving it for him, or by posting it by registered mail as a letter addressed to him, at his usual or last known place of abode or business or, in the case of a corporation, at its registered office or principal place of business in the State.

(b) A notice so posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post the notice would be delivered.

(2) (a) If the person is absent from the State, the notice may be delivered as provided in subsection (1) to his agent in the State.

(b) If the person is deceased, the notice may be so delivered to his personal representative.

(3) If the person is not known, or is absent from the State and has no known agent in the State or is deceased and has no personal representative, the notice may be delivered in such manner as may be directed by an order of the Court.

(4) Notwithstanding anything in the foregoing provisions of this section, the Court may in any case make an order directing the manner in which any notice is to be delivered or dispensing with the delivery thereof.

140. Offences and penalties (cf. M.H.A. s. 63). (1) Save as is expressly provided by or under this Act, every person who contravenes or fails to comply with any provision of this Act, commits an offence against this Act and, if no penalty is expressly provided for that offence, shall be liable on conviction to a penalty of \$500.

(2) All offences against this Act may be prosecuted, except where otherwise indicated, in a summary way under the *Justices Act 1886-1978*, upon the complaint of an officer appointed by the Minister either generally or in a particular case.

141. Relation to other Acts and instruments. (Qld s. 5, N.Z. s. 139 (2) and (3)). (1) Save as by this Act is otherwise expressly provided, the provisions of this Act relating to trusts and wills and other trust instruments apply to those in existence at the commencement of this Act as well as to those hereafter created.

(2) Nothing in this Act shall be construed so as to deprive the Public Trustee of, or to limit or restrict, any powers or authorities vested in or exercisable by him by or under any other Act, instrument or law and all powers and authorities conferred by this Act on the Public Trustee shall be in addition to and not in limitation or restriction of other powers or authorities vested in or exercisable by him by or under any other Act, instrument or law.

(3) Except in so far as is inconsistent with the provisions of this Act, all rights, powers, and remedies conferred by any other Act or law upon any court or judge, or upon the Public Trustee by that style or as Public Curator or upon any other person shall remain unrestricted and the provisions of this Act shall be read and construed as conferring upon such court or judge, or upon the Public Trustee or upon such person the rights, powers and remedies hereby provided in addition to and not in derogation of any rights, powers and remedies conferred by the other Act or law and so that the rights, powers and remedies conferred by that

other Act or law and by this Act shall be capable of being exercised separately, or in aid the one of the other but, nevertheless, the provisions of this Act shall not be restricted by any other Act or law.

142. Regulations etc. (cf. Qld s. 114). (1) The Governor in Council may from time to time make regulations with respect to all or any of the following matters namely:—

- (a) the conduct of the business of the Public Trust Office and the services to be provided by it;
- (b) determining the powers and duties of the officers and other employees of the Public Trustee and of the Public Trustee's agents;
- (c) the custody and disposal of accounts, documents and other records;
- (d) the receipt and payment of moneys under this Act;
- (e) keeping, rendering and auditing accounts under this Act;
- (f) the forms of certificates and other official instruments and documents to be used in the conduct of the business of the Public Trustee;
- (g) providing for the determination of fees and other charges to be made by the Public Trustee under this Act;
- (h) providing for the fixing of fees for legal, conveyancing and other professional services rendered to the Public Trustee or by the Public Trustee or his officers to the public;
- (i) the employment of counsel and solicitors in the Public Trust Office and their duties and authorities;
- (j) the provision of aid in legal proceedings and of other legal assistance for poor persons and others;
- (k) the substitution of other provisions as to modes of procedure in court proceedings for those prescribed by this Act;
- (l) any other matter which by this Act is expressed to be prescribed or any matter, object or purpose which he thinks necessary for giving full effect to this Act or the administration of the Public Trust Office.

(2) The Court may from time to time, in manner provided by *The Supreme Court Act of 1921*, make all such rules of Court as appear to be necessary or proper with respect to applications, orders and matters, under this Act and otherwise for regulating practice and procedure and costs so as to give full effect to this Act.

(3) The Governor in Council may, by Order in Council, amend the Second Schedule by prescribing therein additional forms for use in connection with this Act or by omitting therefrom or varying or modifying or substituting a new form for any form provided therein for use in connection with this Act.

Upon amendment the Schedule as so amended shall be taken to be the Second Schedule to this Act.

(4) The Regulations made under the *Public Curator Act 1915-1974* as in force immediately prior to the commencement of this Act shall continue in force and have full effect as if they had been made under this Act, and may be amended from time to time in the same way as if they had been made under this Act.

SCHEDULES
FIRST SCHEDULE

PART A

[s. 5 (1)]

Number of Act	Short Title	Extent of Repeal
6 Geo. V. No. 14	<i>The Public Curator Act of 1915</i> ..	The whole
15 Geo. V. No. 3	<i>The Public Curator Act Amendment Act of 1924</i>	The whole
17 Geo. V. No. 26	<i>The Public Curator Act Amendment Act of 1926</i>	The whole
2 Geo. VI. No. 1	<i>The Appropriation Act of 1938–1939 No. 1</i>	s. 4 (2)
6 Geo. VI. No. 16	<i>The Public Curator Acts Amendment Act of 1942</i>	The whole
7 Geo. VI. No. 21	<i>The Public Curator Acts Amendment Act of 1943</i>	The whole
7 Geo. VI. No. 28	<i>The Succession Acts and Another Act Amendment Act of 1943</i>	ss. 12, 13 and 14
10 Geo. VI. No. 10	<i>The Public Curator Acts Amendment Act of 1945</i>	The whole
11 Geo. VI. No. 25	<i>The Public Curator Acts Amendment Act of 1947</i>	The whole
3 Eliz. II, No. 33	<i>The Public Curator Acts Amendment Act of 1954</i>	The whole
4 Eliz. II. No. 16	<i>The Bills of Sale and Other Instruments Act of 1955</i>	s. 38
5 Eliz. II. No. 15	<i>The Public Curator Acts Amendment Act of 1956</i>	The whole
6 Eliz. II. No. 2	<i>The Public Curator Acts Amendment Act of 1957</i>	The whole
No. 40 of 1971 ..	<i>Public Curator Act Amendment Act 1971</i>	The whole
No. 47 of 1973 ..	<i>Public Curator Act Amendment Act 1973</i>	The whole

PART B

[s. 5 (2)]

Amendments of the *Succession Act* 1867–1977

Provision amended	Amendment
s. 90 ..	<p>1. Section 90 is amended by—</p> <p>(a) in subsection (7) omitting the words “The Public Curator of Queensland” and substituting the words “The Public Trustee of Queensland”;</p> <p>(b) in subsection (8) omitting the words “the Public Curator of Queensland” and substituting the words “The Public Trustee of Queensland”.</p>

PART C		[s. 5 (3)]
Amendments of the <i>Companies Act 1961-1975</i>		
Provision amended	Amendment	
s. 5 ..	1. Section 5 is amended by, in subsection (1), omitting the definition "Public Curator" and substituting the following definition:— " "Public Trustee" means the Public Trustee within the meaning of the <i>Public Trustee Act 1978</i> ;".	
s. 185 ..	2. Section 185 is amended by— (a) omitting the words "Public Curator" wherever they occur and substituting in each case the words "Public Trustee"; (b) in subsection (10), omitting the words "Division 3 of Part V of The Public Curator Acts 1915 to 1957" and substituting the words "Division 1 of Part VIII of the <i>Public Trustee Act 1978</i> ".	
s. 309 ..	3. Section 309 is amended by, in subsection (3), omitting the words "section fifty-six or section 56A of The Public Curator Acts 1915 to 1957" and substituting the words "section 61 or section 62 of the <i>Public Trustee Act 1978</i> ".	
s. 364 ..	4. Section 364 is amended by— (a) omitting the words "Public Curator" wherever they occur and substituting in each case the words "Public Trustee"; (b) in subsection (5), omitting the words "Division 3 of Part V of The Public Curator Acts 1915 to 1957" and substituting the words "Division 1 of Part VIII of the <i>Public Trustee Act 1978</i> ".	

PART D		[s. 5 (4)]
Amendment of <i>District Courts Act 1967-1976</i>		
Provision amended	Amendment	
s. 106 ..	1. Section 106 is repealed.	

PART E		[s. 5 (5)]
Amendment of the <i>Limitation of Actions Act 1974</i>		
Provision amended	Amendment	
s. 5 ..	1. Section 5 is amended by, in subsection (2), omitting all words from and including the words "and whose" to the end thereof.	

PART F

[s. 5 (6)]

Amendment of the *Property Law Act 1974–1976*

Provision amended	Amendment
s. 4 ..	1. Section 4 is amended by, in subsection (1),— (a) omitting from the definition “patient” the words “Third Schedule to <i>The Mental Health Acts, 1962 to 1964</i> ” and substituting the words “Fifth Schedule to the <i>Mental Health Act 1974–1978</i> ”; (b) omitting the definition “Public Curator” and substituting the following definition:— ““Public Trustee” means the Public Trustee within the meaning of the <i>Public Trustee Act 1978</i> ”; (c) omitting from the definition “trustee corporation” the words “Public Curator” and substituting the words “Public Trustee”.
s. 20 ..	2. Section 20 is amended by, in subsection (11),— (a) omitting the words “Public Curator” wherever they occur and substituting in each case the words “Public Trustee”; (b) omitting from paragraph (a) the words “ <i>Public Curator Act 1915–1973</i> ” and substituting the words “ <i>Public Curator Act 1915–1974</i> or the <i>Public Trustee Act 1978</i> ”.
s. 38 ..	3. Section 38 is amended by, in paragraph (b) of subsection (5), omitting the words “a mentally ill person, a patient, or a protected person within the meaning of the <i>Public Curator Act 1915–1973</i> ” the words “mentally ill person, patient or protected person” and the words “Public Curator” and substituting the words “an Incapacitated Person within the meaning of the <i>Public Trustee Act 1978</i> ”, the words “Incapacitated Person” and the words “Public Trustee” respectively.
s. 71 ..	4. Section 71 is amended by, in subsection (5), omitting the words “Public Curator” and substituting the words “Public Trustee”.
s. 101 ..	5. Section 101 is amended by, in subsection (6), omitting the words “section 56 of the <i>Public Curator Act 1915–1973</i> ” and substituting the words “section 61 of the <i>Public Trustee Act 1978</i> ”.

PART F—continued		[s. 5 (6)]
Provision amended	Amendment	
s. 250 ..	6. Section 250 is amended by— (a) omitting the words “Public Curator” wherever they occur and substituting in each case the words “Public Trustee”; (b) in paragraph (a) of subsection (9) omitting the words “Part V of the <i>Public Curator Act 1915–1973</i> ” and substituting the words “Part VIII of the <i>Public Trustee Act 1978</i> ”; (c) in paragraph (d) of subsection (9) omitting the words “Division 1 of Part V of the <i>Public Curator Act 1915–1973</i> ” and substituting the words “Division 2 of Part VIII of the <i>Public Trustee Act 1978</i> ”.	
s. 251 ..	7. Section 251 is amended by omitting the words “Public Curator” wherever they occur and substituting in each case the words “Public Trustee”.	
s. 252 ..	8. Section 252 is amended by omitting the words “Public Curator” wherever they occur and substituting in each case the words “Public Trustee”.	

PART G		[s. 76]
Amendment of the Fifth Schedule to the <i>Mental Health Act 1974</i>		
Provision amended	Amendment	
Clause 1	1. Clause 1 is amended by inserting, in paragraph (a) of the definition “patient”, after the word “estate” the words “or a person of whose estate or person the Court has appointed a committee pursuant to Clause 10”.	
Clause 2	2. Clause 2 is amended in sub-clause (6) by omitting the words “Part IIIA of the <i>Public Curator Act 1915–1973</i> ” and substituting the words “the <i>Public Trustee Act 1978</i> ”.	
Clause 14	3. Clause 14 is repealed.	
Clause 15	4. Clause 15 is repealed.	
Clause 16	5. Clause 16 is repealed.	
Clause 17	6. Clause 17 is repealed.	
Clause 18	7. Clause 18 is repealed.	
Clause 19	8. Clause 19 is repealed.	
Clause 20	9. Clause 20 is repealed.	
Clause 21	10. Clause 21 is repealed.	
Clause 22	11. Clause 22 is repealed.	
Clause 23	12. Clause 23 is repealed.	

PART G—continued

[s. 76]

Provision amended	Amendment
Clause 24	13. Clause 24 is repealed.
Clause 25	14. Clause 25 is repealed.
Clause 26	15. Clause 26 is repealed.
Clause 27	16. Clause 27 is repealed.
Clause 28	17. Clause 28 is repealed.
Clause 29	18. Clause 29 is repealed.
Clause 30	19. Clause 30 is repealed.
Clause 31	20. Clause 31 is repealed.
Clause 33	21. Clause 33 is repealed.
Clause 34	22. Clause 34 is repealed.
Clause 35	23. Clause 35 is amended by— <ol style="list-style-type: none"> (a) inserting in sub-clause (1) after the word “ Schedule ” the words “, <i>The Mental Hygiene Act of 1938</i> and the <i>Mental Health Acts, 1962 to 1964</i>”; (b) inserting at the end thereof the following sub-clause:— <p>“(3) Nothing in this clause limits the operation of section 89 of the <i>Public Trustee Act 1978</i>.”.</p>
Clause 37	24. Clause 37 is omitted and the following clause is substituted:— <p>“ 37. Effect of appointment of committee. (1) This clause applies to any case where a person other than the Public Trustee has been appointed as the committee of the estate of a patient under this Act.</p> <p>(2) Subject to any order of the Court, the committee shall, by virtue of such appointment, be authorized to—</p> <ol style="list-style-type: none"> (a) take possession of and control and manage all the property of the patient; (b) pay debts and other obligations of the patient; (c) demand, receive and recover all moneys payable or belonging to the patient; (d) let any property of the patient for any period not exceeding twelve months; and (e) do such other things as the Court in the order appointing the committee or subsequently may direct. <p>(3) The Court may, at the time of appointment of the committee or from time to time thereafter, on the application of the committee, the patient or any other person appearing to the Court to have a proper interest, give such directions to the committee as it considers desirable including general directions as to what powers shall or shall not be exercised by the committee or specific directions as to any particular matter.</p> <p>(4) Without prejudice to the generality of subclauses (2) and (3) the powers of the Court under this clause shall extend to any of the following purposes:—</p> <ol style="list-style-type: none"> (a) the maintenance or benefit of the patient; (b) the maintenance or benefit of other persons (whether relatives of the patient or not) for whom a reasonable person, not a patient but otherwise in the position of the patient, might be expected to provide; and

PART G—continued

[s. 76]

Provision amended	Amendment
<p>Clause 37— <i>continued</i></p>	<p>(c) any purpose which a reasonable person, not a patient but otherwise in the position of the patient, might be expected to seek to achieve, and for the reimbursement, with or without interest, of any person for any expenditure incurred for any of those purposes.</p> <p>(5) The patient shall be incapable, without the leave of the Court, of making any transfer, lease, mortgage, or other disposition of his property, or any part thereof, or of entering into any contract (other than for necessities) affecting the same and every such transfer, lease, mortgage or contract, made without such leave, shall be voidable by the patient or by the committee on his behalf.</p> <p>(6) The Court may by order give leave to the patient to make any transfer, lease, mortgage, or other disposition of his property, or of any part thereof, or to enter into any contract, if the Court is satisfied that such transfer, lease, mortgage, disposition or contract is for his benefit and that he consents thereto with adequate understanding of the nature thereof.</p> <p>(7) Nothing in this Schedule shall affect the law relating to the validity of wills or other testamentary dispositions.</p> <p>(8) Nothing in this Schedule shall invalidate any contract, transfer, lease, mortgage or other disposition entered into or made by a patient if the other party thereto proves that he acted in good faith and for valuable consideration and without knowledge that a committee has been so appointed.</p> <p>(9) Except as expressly provided by this clause, nothing in this Schedule shall affect any other provision of law rendering void or voidable any contract, transfer, lease, mortgage, or other disposition of property entered into or made by a patient.”.</p>
<p>Clause 39</p>	<p>25. Clause 39 is amended by—</p> <p>(a) in sub-clause (3), omitting the expression “\$600” and substituting the expression “\$1 000”;</p> <p>(b) in sub-clause (4), inserting after the word “behalf” the words “and the costs of such examination and report shall be payable out of that estate by the committee to the Public Trustee”.</p>
<p>Clause 41</p>	<p>26. Clause 41 is omitted and the following clause is substituted:—</p> <p>“41. Order in protective jurisdiction in reciprocating State to be effective in Queensland on being resealed.</p> <p>(1) In this clause—“reciprocating State” means any State, country or territory which has been declared to</p>

PART G—*continued*

[s. 76]

Provision amended	Amendment
Clause 41— <i>continued</i>	<p>be a reciprocating State by a Proclamation made under clause 40 of the Third Schedule to <i>The Mental Health Acts, 1962 to 1964</i> or clause 41 of this Schedule repealed by the <i>Public Trustee Act 1978</i>, or which has been declared to be a reciprocating State by a Proclamation made under this clause.</p> <p>(2) If at any time the Governor in Council is satisfied that the laws in force in any State, country or territory outside Queensland are such as to enable powers to be exercised in that State, country or territory in the case of patients residing in Queensland substantially similar to the powers conferred by subclause (3) in the case of persons who are mentally ill (which expression includes persons of unsound mind and lunatics) and residing in that State, territory or country, the Governor in Council may by Proclamation declare that State, territory or country to be a reciprocating State for the purposes of this clause.</p> <p>(3) When an order or declaration made by a court of competent jurisdiction under the laws of a reciprocating State in the exercise of its protective jurisdiction (or jurisdiction in lunacy or by whatever other name called) is produced to and a copy thereof is deposited with the Registrar of the Supreme Court of Queensland, such order or declaration shall, upon payment of such fees and duties as are prescribed, be sealed with the seal of the Supreme Court, and shall have the same force, effect and operation and every person acting thereunder shall perform the same duties and be subject to the same liabilities in Queensland as if such order or declaration had been made by the Court:</p> <p>Provided that a person other than the Public Trustee appointed by such an order or declaration shall not act thereunder after it has been so sealed until his appointment has been confirmed by the Court; and the Court may confirm the appointment, or may confirm it upon such terms as the Court thinks fit or may refuse to confirm it.</p> <p>(4) This clause shall apply to such orders and declarations whether made before or after the commencement of this Act.</p> <p>(5) Nothing herein shall limit the operation of clause 10.”</p>
Clause 42	27. Clause 42 is repealed.
Clause 43	28. Clause 43 is repealed.

SECOND SCHEDULE

Form 1

[s. 30 (1)]

(ELECTION BY PUBLIC TRUSTEE TO ADMINISTER ESTATE)

In the Supreme Court of Queensland

In the Matter of the *Public Trustee Act 1978*
andIn the ^(Will of)
(Estate of) *(name of deceased)*late of *(address and occupation)*

deceased (intestate)

Whereas:

1. , late of , in the State of
died at , on the . day of 19
leaving a will dated *(or intestate, or as the case may be)*
and leaving property situated in Queensland which would pass
to his personal representative:

2. The gross value of such property is presently estimated by
The Public Trustee of Queensland not to exceed twenty thousand
dollars:

3. There is no grant of administration in respect of the estate
of the deceased in force in Queensland:

4. The Public Trustee is entitled to obtain an Order to
Administer the said estate:

(5. After due inquiries the Public Trustee believes that the
document dated the . day of 19 . which is
annexed hereto and marked "A" is the last will of the deceased and
has been validly executed according to the law governing the
execution of wills: *(or as the case may be)*)

The Public Trustee of Queensland hereby elects to administer (with the
said will) the estate of the deceased.

Dated this . day of . 19 .

Public Trustee
(or as the case may be)

Form 2

[s. 30 (2)]

(ELECTION BY PUBLIC TRUSTEE TO ADMINISTER ESTATE LEFT
UNADMINISTERED)

In the Supreme Court of Queensland

In the Matter of the *Public Trustee Act 1978*
andIn the (Will of) (name of deceased)
(Estate of)
late of (address and occupation)
deceased (intestate)

Whereas:

1. , late of , in the State of
died at , on the day of 19
leaving a will dated (or intestate or as the case may be):

2. Probate of the said will (or administration of the (real and)
personal estate of the said (as the case may be)) was
granted by the Supreme Court of Queensland to as
(capacity in which grant was made):

3. The said (grantee) died on the day of
19 without having completed the administration of the said
estate in Queensland:

4. The gross value of such part of the estate so left
unadministered in Queensland is presently estimated by the Public
Trustee of Queensland not to exceed twenty thousand dollars:

5. No person has since the death of the said (grantee) obtained
a grant of administration *de bonis non* in respect of the estate
(if probate originally granted, add or probate of the will of the
said (executor)):

6. The Public Trustee is entitled to obtain an Order to
Administer the estate left unadministered:

The Public Trustee of Queensland hereby elects to administer (with the
said will) the estate left unadministered of the deceased.

£ ated this day of 19 .

Public Trustee
(or as the case may be)

Form 3

[s. 31 (4)]

(ELECTION BY PUBLIC TRUSTEE TO ADMINISTER PURSUANT TO
APPOINTMENT BY EXECUTOR OR ADMINISTRATOR)

In the Supreme Court of Queensland

In the Matter of the *Public Trustee Act 1978*
andIn the (Will of)
(Estate of) (*name of deceased*)
late of (*address and occupation*)
deceased (intestate)

WHEREAS:

1. , late of , in the State of
died at , on the day of 19 leaving a
will dated whereof he appointed the
executor (*or* intestate);

2. No grant of administration in respect of the estate of the
deceased has been made in Queensland:

or

2. Probate of the said will (*or* administration of the (real and)
personal estate of the said (*as the case may be*))
was granted by the Supreme Court of Queensland to
as (*capacity in which grant was made*):

3. the (surviving) executor (*or* administrator)
has
have in accordance with s. 31 of the *Public Trustee Act 1978*
appointed the Public Trustee of Queensland sole executor (*or*
administrator):

4. The gross value of the assets requiring administration is
presently estimated by the Public Trustee not to exceed \$20,000:

(5. (*If will not previously proved*) After due enquiries the
Public Trustee believes that the document dated the day
of 19 which is annexed hereto and marked "A"
is the last will of the deceased and has been validly executed
according to the law governing the execution of wills: (*or as the
case may be*)):

The Public Trustee of Queensland hereby elects to administer (with the
said will) the estate of the deceased.

Dated this day of 19 .

Public Trustee
(*or as the case may be*)

Form 4 [s. 59 (6)]
 (REQUEST FOR TAXATION OF COSTS)
 In the matter of the *Public Trustee Act 1978*
 and
 In the Matter of Action No.
 Between
Plaintiff
 and
Defendant
 (or Title of cause or matter as shown in the
 court proceedings)

To the Taxing Officer of the Supreme Court of Queensland at
 (or as the case may be)

The Public Trustee of Queensland (or name of party applying) hereby requests that the costs of the plaintiff (or plaintiffs) be taxed and certified as provided by section 59 (6) of the *Public Trustee Act 1978*.

Dated this day of 19 .
Public Trustee
 (or as the case may be)
 (or description of party, e.g., plaintiff, defendant)

Form 5
 MEMORANDUM OF DISCHARGE OF MORTGAGE OR ENCUMBRANCE
Public Trustee Act 1978, Section 61

The Public Trustee of Queensland pursuant to section 61 of the *Public Trustee Act 1978* hereby certifies that he has received from the within-named mortgagor (or encumbrancer or as the case may be) the sum of (or hereby certifies that he is satisfied as to the payment of all moneys payable) in full satisfaction and discharge of the within obligation.

Dated this day of 19 .
Public Trustee
 (or as the case may be)

Form 6
 RECONVEYANCE
Public Trustee Act 1978, Section 61

Whereas:

1. (insert brief recital of mortgage transaction);
2. The Public Trustee of Queensland is satisfied that the whole of the moneys payable under the said mortgage (or as the case may be) have been paid (or that the whole of the moneys remaining unpaid under the mortgage amount to which has now been paid to him).

The Public Trustee of Queensland Hereby Reconveys (insert description of mortgaged property) to the said free from the said mortgage (or as the case may be).

Dated this day of 19 .
Public Trustee
 (or as the case may be)

Form 7

(NOTICE OF CESSATION OF MANAGEMENT, s. 69)

(Title &c. as in proceedings in which Protection Order made)

NOTICE OF CESSATION OF MANAGEMENT

The Public Trustee of Queensland hereby certifies the abovenamed
has now died and on and from the filing of this Notice the
management of his estate by the Public Trustee shall cease.

Given under the hand of _____ and the seal of The Public
Trustee of Queensland this _____ day of _____, 19 ____ .

Public Trustee
(or as the case may be)

Form 8

[s. 70]

(CERTIFICATE OF DISABILITY BY THE PUBLIC TRUSTEE)

In the Supreme Court of Queensland

In the matter of the *Public Trustee Act 1978*
and

In the Matter of _____ of
in the State of _____, (*occupation*)

CERTIFICATE OF DISABILITY

The Public Trustee of Queensland hereby certifies that he is satisfied
that _____ of _____ in the State of _____, is a person in
respect of whom jurisdiction to make a Protection Order is conferred by
section 65 of the *Public Trustee Act 1978*, and that the estate in
Queensland of the said _____ does not exceed in value five
thousand dollars.

Given under the hand of _____ and the seal of The Public
Trustee of Queensland this _____ day of _____, 19 ____ .

Public Trustee
(or as the case may be)

Form 9 [s. 71]

(CERTIFICATE OF DISABILITY BY THE PUBLIC TRUSTEE)

In the Supreme Court of Queensland

In the Matter of the *Public Trustee Act 1978*
andIn the Matter of of
in the State of , (*occupation*)

CERTIFICATE OF DISABILITY

The Public Trustee of Queensland hereby certifies that he is satisfied that of in the State of , is a person whose estate should be managed in accordance with Part VI of the *Public Trustee Act 1978* and that the said has requested the Public Trustee to undertake such management.

Given under the hand of and the seal of The Public
Trustee of Queensland this day of 19 .

Public Trustee
(*or as the case may be*)

Form 10 [s. 73]

(REVOCATION OF CERTIFICATE OF DISABILITY)

In the Supreme Court of Queensland

In the Matter of the *Public Trustee Act 1978*
andIn the Matter of of
in the State of , (*occupation*)

REVOCATION OF CERTIFICATE OF DISABILITY

Whereas:—

(a) The Public Trustee of Queensland filed a Certificate of Disability pursuant to the provisions of section 70 of section 71 of the *Public Trustee Act 1978* in respect of the abovenamed on the day of 19 ;
and

(b) the value of the estate of the said being managed by the Public Trustee in consequence of the filing of the Certificate of Disability is now found to be in excess of seven thousand dollars:

or

(b) the Public Trustee is satisfied that he should no longer continue to manage the estate of the said :

Now The Public Trustee of Queensland Hereby Revokes the said Certificate of Disability.

Given under the hand of and the seal of The Public
Trustee of Queensland this day of 19 .

Public Trustee
(*or as the case may be*)

Form 11

In the Matter of the Estate of
a prisoner

To The Comptroller-General of Prisons

Public Trustee Act 1978, section 92

NOTICE OF INTENTION TO DISCONTINUE MANAGEMENT OF ESTATE

The Public Trustee of Queensland, being of the opinion that it is not desirable that he should continue to manage the estate of , a prisoner, hereby gives notice that he intends to discontinue the management of such estate as from the day of 19 .

Dated the day of 19 .

Public Trustee

(or as the case may be)

The provisions of section 92 of the *Public Trustee Act 1978* appear on the back hereof.

Form 12

In the Matter of the Estate of
a prisoner

To the Comptroller-General of Prisons or

The Chief Probation Officer

Public Trustee Act 1978, section 92

REVOCATION OF NOTICE OF INTENTION TO DISCONTINUE MANAGEMENT

The Public Trustee of Queensland, having in writing dated given notice of his intention to discontinue the management of the estate of , a prisoner, has, after further consideration, determined that he should continue to manage such estate and accordingly hereby revokes such notice of intention to discontinue management.

Dated the day of 19 .

Public Trustee

(or as the case may be)

Form 13

In the Matter of the Estate of
a prisoner

To the Comptroller-General of Prisons

Public Trustee Act 1978, section 93

NOTICE OF INTENTION TO RESUME MANAGEMENT OF ESTATE

Whereas:—

(a) the Public Trustee of Queensland ceased, pursuant to the provisions of section 92, from the _____ day of 19____ to manage the estate of _____, a prisoner;

(b) the Comptroller-General of Prisons has certified in writing to the Public Trustee that the said _____ is not at liberty by virtue of a parole order or an order under section 659G of The Criminal Code and that it appears desirable that the Public Trustee should again become the manager of such estate; and

(c) the Public Trustee has determined that it is so desirable: The Public Trustee of Queensland hereby gives notice that he intends to resume the management of the estate of the said _____ after the day of 19____.

Dated the _____ day of _____ 19____.

Public Trustee
(or as the case may be)

The provisions of section 93 of the *Public Trustee Act 1978* appear on the back hereof.

Form 14

In the Matter of the Estate of
a prisoner

To The Comptroller-General of Prisons

Public Trustee Act 1978, section 93

REVOCATION OF NOTICE OF INTENTION TO RESUME MANAGEMENT OF ESTATE

The Public Trustee of Queensland, having, in writing dated _____, given notice of his intention to resume the management of the estate of _____, a prisoner, has, after further consideration, determined that he should not again become the manager of the said estate and accordingly hereby revokes such notice of intention to resume management.

Dated the _____ day of _____ 19____.

Public Trustee
(or as the case may be)

Form 15

[s. 100]

(ANNUAL REGISTER OF UNCLAIMED MONEYS)

(Name of accountable person)

Annual Register of Unclaimed Moneys held by _____ on
14 February 19 .

Name of Owner on Books	Total Amount Due to Owner	Description of Unclaimed Moneys	Date of Last Claim